

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1997-092

FINAL DECISION

██████████ Attorney-Advisor:

This proceeding was conducted according to the provisions of section 1552 of title 10, United States Code. It was commenced on March 26, 1997, upon the BCMR's receipt of the applicant's application.

This final decision, dated September 24, 1998, is signed by the three duly appointed members who were designated to serve as the Board in this case.

REQUEST FOR RELIEF

The applicant, a xxxxxxxxxxxx in the United States Coast Guard, asked the Board to change his military record to show that on April 18, 199x, he received a disability discharge based on a diagnosis of depression. The correction would enable him to receive certain educational benefits for which his current discharge does not qualify him.

APPLICANT'S ALLEGATIONS

The applicant alleged that he was pushed into accepting an honorable discharge by reason of unsuitability with a separation code of JFX (personality disorder). He was told that "[i]t was in [his] best interest." However, at the time of his discharge he had been diagnosed by the Coast Guard as suffering from depression, and it had seriously affected his ability to perform his job.

To support his allegations, the applicant submitted copies of his medical records, letters from doctors who treated him at the time of his discharge, records from private psychiatrists who have treated him, findings of doctors for the

Veterans' Administration (VA), and a copy of the decision of the Coast Guard's Discharge Review Board (DRB).

VIEWS OF THE COAST GUARD

On July 14, 1998, the Chief Counsel of the Coast Guard recommended that the Board deny the applicant the requested relief.

The Chief Counsel contended that the applicant's request "is based on confusion of the separate systems for military disability discharges and the Department of Veteran's [sic] Affairs (DVA) disability rating and benefit system. . . . If Applicant desires DVA educational or other veteran's [sic] benefits, his remedy, if any, is with the DVA."

According to the Chief Counsel, the purpose of the Coast Guard's Physical Disability Evaluation System (PDES), under which members may receive disability discharges, is to "compensate members whose military service is terminated due to a service connected disability" The Chief Counsel alleged that, although the PDES defines "physical disability" to include a mental disease, "it does *not* include such inherent character and behavior defects as personality disorders. . . . For a disability separation, the disability must be of a nature that is, or may be, permanent." The Chief Counsel stated that

the Coast Guard is statutorily precluded from discharging a member for physical disability unless it determines that the member (1) has a disability incurred in military service; (2) that the disability is, or may be, permanent; and (3) that the disability renders the member unfit to perform the duties of his rate or office.

According to the Chief Counsel, the applicant has not proved that, at the time of his discharge, he was unfit to perform his military duties because of a disability incurred in Service. The Chief Counsel submitted a letter from the Chief of the PDES, who concluded that the applicant was properly discharged and recommended that no relief be granted.

The DVA's goal in this regard is different, the Chief Counsel said. The DVA is "responsible for compensating former service members whose earning capacity is reduced, at *any* time, as a *result* of injuries suffered incident to, or aggravated by, military service." [Emphasis in original.] "Reasonable medical professional opinions may differ, and the procedures and presumptions applicable to the [DVA] evaluation process may be fundamentally different from, and more favorable to the veteran than, those applied under the Coast Guard [PDES]." Thus, according to the Chief Counsel, the DVA finding that the applicant was 10% disabled for major depression and that his anxiety mildly impaired his social and industrial functioning does not mean that the Coast Guard erred in discharging him by reason of unsuitability.

The Chief Counsel also dismissed the diagnosis of one private licensed counselor who treated the applicant in the winter of 199x for "major depression" as "unreliable" because she was not a psychiatrist or medical doctor and she did not consult the applicant's military medical record. The Chief Counsel also dismissed the diagnosis of a private psychiatrist who reported that the applicant suffered from depression which was in remission after only one interview.

The Chief Counsel emphasized that the findings of the DRB were not to be considered the views of the Coast Guard. He stated that the Coast Guard had disapproved the DRB's findings because the DRB had no jurisdiction over the applicant's case since the requested relief, if granted, would create a monetary entitlement. He stressed in bold face type that "[t]he DRB members apparently never solicited the views of Coast Guard Physical Disability Evaluation System (PDES) authorities regarding these issues."

The Chief Counsel called the DRB's findings that the Coast Guard should have convened an initial medical board (IMB) and assigned the applicant a disability discharge "unfounded" and "irrelevant." The applicant's depression was "a reaction to stressors caused by the pre-existing personality disorder and did not constitute a ratable disability" incurred in service. Therefore, the Chief Counsel stated, "Because there was no service-connected disability, there was no requirement for the Coast Guard to convene an initial medical board." Moreover, even if an IMB had been convened, the diagnosis of personality disorder would probably have been confirmed because "[m]ilitary medical authorities had concluded that Applicant's episodes of dysthymia [depression/irritable mood] were the result of his personality disorder, and were not a separate or persistent medical condition."

SUMMARY OF THE RECORD

- 4/30/9x The applicant enlisted in the Coast Guard for a term of four years.
- 11/7/9x The applicant sought help at a mental health clinic at the Coast Guard Support Center in xxxxxxxx. He told Dr. x, a psychologist, that he had suffered depressive episodes ever since a serious car accident four years earlier had prevented his participation in sports. He stated that he had suffered mood swings lasting for several days, with fatigue, sleepiness, poor concentration, and low self-esteem during depressed periods, and racing thoughts, talkativeness, fast driving, buying sprees, high self-esteem, and less need for sleep when he was "feeling really good" in between the periods of depression. He stated that he occasionally heard someone calling his name. Dr. x recommended

that the applicant be hospitalized for evaluation of a potential depressive disorder.

- 12/2/9x The applicant again consulted Dr. x and reported many of the same symptoms, which his wife confirmed. He stated that his grandmother, mother, aunt, and uncle had all been diagnosed as manic depressive. When told that he would undergo a Physical Evaluation Board if he was prescribed lithium, he stated that "he could live with that because he [had] mixed feelings about the Coast Guard." Dr. x decided to "rule out" a diagnosis of "296.5 Manic Depressive Disorder (depressed type)," found him "temporarily fit for duty," and sent him to a hospital for evaluation.
- 12/4/9x The applicant was admitted to xxxxxx Naval Hospital to be evaluated for bipolar disorder and personality disorder. The applicant described his depressive episodes as "twelve to fifteen hours of sleep per night, often lasting five to eight days, usually precipitated by an argument with wife." He described his manic episodes as "increased food intake, gains eight to twenty pounds in one week. Does good job at work. . . . He only requires four to six hours of sleep" The applicant denied having auditory or visual hallucinations. His wife said he became very angry and aggressive in bad traffic. The applicant's mother reported that there was no history of psychiatric disorders in the family but stated that she had been depressed for a long time and that she had to take medication to handle the stress created when the applicant visited her.
- 12/10/9x The applicant was discharged from the hospital. Dr. x, who signed a four-page report on the applicant, found no evidence of grandiose behavior and described his mood as "euthymic" (good/stable) and his affect as "full." Dr. x reported that the applicant had shown "no signs of mood disorder" and that his "history [is] consistent with a personality disorder with poor coping skills." The doctor diagnosed "Axis I: Marital Discord" and "Axis II: Mixed personality disorder not otherwise specified with borderline and narcissistic/ histrionic traits," and recommended that the Service administratively separate the applicant.
- 12/10/9x The head of the Mental Health Department at the hospital reported that the applicant had undergone a psychiatric evaluation by a social worker, who diagnosed a "severe, longstanding (301.90) Personality Disorder, not otherwise specified with Borderline Features." He further reported that

[t]his disorder existed prior to enlistment and is of such severity as to render this person incapable of serving adequately in the United States Coast Guard. . . . There are no disqualifying mental/physical defects which are rated as a disability under the VETERANS ADMINISTRATION FOR RATING DISABILITIES. The service member does not presently require, and will not benefit from, psychiatric treatment or hospitalization Although the member is not presently suicidal or homicidal, he is judged to represent a continuing risk to self, others, and government property if retained in military service. It is further recommended that this individual not be permitted to perform duties involving the use of weapons, ordinance, or government vehicles. In light of this information, it is most strongly recommended that the service member be expeditiously separated administratively by the command. . . ."

Dr. x concurred in the diagnosis. Despite the recommendation and for unknown reasons, the applicant was not discharged.

- 1/21/9x The applicant requested a prescription for Pamelor (a tricyclic antidepressant) at the xxxxx clinic. He stated that his psychologist had said he needed the medication immediately and that his mother had recently been diagnosed with "genetic depression" and was taking Pamelor. Dr. x found that the applicant had anxiety and "may be mildly depressed" and prescribed doxepin (a tricyclic antidepressant).
- 1/24/9x The applicant consulted Dr. x and reported feeling much better since beginning to take doxepin. The doctor provisionally diagnosed "Axis I: 311.00 Depressive Disorder [unspecified]" and "Axis II: 301.84 Passive-Aggressive Personality [Disorder]." Dr. x referred him to Dr. x for evaluation for a possible organic disorder.
- 2/4/9x Dr. x reported that he had ruled out bipolar disorder. His working diagnosis was "311.00 Depressive [Disorder] [unspecified]," and he renewed the applicant's prescription for doxepin.
- 3/10/9x Dr. x ruled out organic personality disorder, diagnosed personality disorder (301.90), and renewed the prescription for doxepin.
- 3/27/9x Dr. x examined the applicant and again diagnosed a depressive mood disorder (311.00) and passive-aggressive traits.
- 5/15/9x Dr. x examined the applicant. He found him not depressed and "fit for full duty."

- 6/29/9x The applicant consulted with Dr. x of the xxxxxx Support Center, who noted that "psychiatry finds he is F[it] F[or] D[uty]" and continued the prescription for doxepin.
- 8/26/9x The applicant was evaluated in order to receive a security clearance. The xxxxxxxx Psychiatric Clinic found no evidence of depression, thought disorder, anxiety disorder, affect disorder, sleep disorder, or adjustment disorder, and attributed his earlier complaints to such "transient life stressors" as his new marriage, new baby, new job, and relocation. The applicant did not meet the criteria for personality disorder, received no Axis I or II diagnosis, and was found "fit for full duty."
- 12/30/9x The applicant reported to his ship's chief medical officer that for the previous two weeks he had been thinking of hurting himself, had heard his name called when no one was there, had been having nightmares, and had lost his appetite. The applicant's commanding officer ordered him to undergo a psychiatric evaluation at the xxxxxxxxxxxx Medical Center.
- 1/6/9x The applicant spent a week at the xxxxxxxx Medical Center. Dr. x, the Chief of xxxxxxxx, reported that the applicant's "depressive symptoms" had apparently "cleared upon arrival." Dr. x diagnosed him with an "Axis I: Adjustment Disorder Not Otherwise Specified (DSM III-R 309.90), In Remission" and an "Axis II: Avoidant Personality Disorder (DSM III-R 301.82), with Passive Aggressive Traits." Dr. x found "no disqualifying mental or physical defects which are ratable as a disability . . . [but] this individual does have a personality disorder which interferes with duty performance and [his] conduct and is so severe that his ability to function in the military environment is significantly impaired. Separation is in the best interests of [the applicant] and the U.S. Coast Guard." The applicant's prognosis was "poor." He was referred to the self-help organization called Adult Children of Alcoholics.
- 1/10/9x The applicant was notified that, based on the diagnosis he received at xxxxxx, he was to be discharged by reason of unsuitability due to a personality disorder. He signed a memorandum stating that he did not object to the proposed discharge and that he did not desire to submit a statement on his own behalf.
- 1/14/9x The applicant underwent a full medical examination at the Coast Guard Support Center in xxxxxx to determine if he was qualified for

discharge. He told Dr. x, a psychiatrist at the Mental Health Clinic, that his symptoms of depression had begun three years earlier. Personality tests revealed a "pattern of passive-aggressive and avoidant traits which manifest as difficulty with assertiveness and getting his needs met, which builds up and results in avoidance and/or temper outbursts and depression." Dr. x diagnosed "Axis I: Dysthymia" and "Axis II: Personality Disorder [with] Avoidant [and] Passive-Aggressive [Traits]. Personality Disorder likely interwoven [with] Dysthymia—Disorder diagnosable at this time—however, Disorder is mild and amenable to treatment." [Emphasis added.] He recommended that the applicant be separated and given "follow-up treatment for dysthymic condition through VA system." [Emphasis added.]

- 1/14/9x A physician assistant at the Support Center misread Dr. x's handwriting and typed "DISORDER DISGUIASABLE AT THIS TIME. DISORDER IS MILD AND AMENDABLE [sic] TO T[reatment]" on the report of the applicant's medical examination. [Emphasis added.] He added "NCD," which means "not considered disqualifying," to the end of the doctor's diagnosis and found the applicant to be "qualified" for discharge and to "meet the standards for retention/discharge as described in section 3-F" of the Coast Guard Medical Manual (COMDTINST M6000.1). The report was reviewed and signed by a dentist and a medical administration officer. It was not signed by a licensed medical doctor; the regulations do not require it.
- 1/26/9x The applicant reported feeling great stress, sleeplessness, and depression to Dr. x of the xxxxxxxx Support Center. Dr. x prescribed doxepin for the applicant's apparent "depression."
- 1/28/9x Dr. x noted rescheduling an appointment with the applicant to occur after the doctor had consulted with Dr. x and Ms. m, who was counseling the applicant.
- 2/9/9x The applicant reported to Dr. x that the doxepin was working. He felt better, could concentrate better, and was sleeping well.
- 2/16/9x Dr. x delayed the applicant's discharge one month for further evaluation and a "possible medical board."
- 2/25/9x The Military Personnel Command responded to Dr. x's request by instructing the Support Center to "expedite IMB" for the applicant and to notify them if the discharge was not effected within 30 days.

- 3/4/9x The applicant consulted Dr. x about increased stress. The doctor continued to prescribe doxepin.
- 3/12/9x The xxxxxx Support Center notified the Commandant of the Coast Guard that the applicant had been "found to be physically qual[ified] for disch[arge] by competent med[ical] auth[ority]" on March 4, 199x, and that he would be discharged immediately. Other than Dr. x's brief notes about stress and doxepin, there are no medical records dated March 4, 199x, in the applicant's records.
- 3/14/9x The applicant consulted Ms. m, xxxxx, a counselor for Coast Guard members, four times between January 3 and March 7, 199x. Ms. m diagnosed "Axis I: Dysthymia, 300.40" and "Axis II: None" based on his symptoms of depressed mood, sleep disturbance, hopelessness, anxiety, low energy, low self-esteem, poor concentration, and difficulty in making decisions, which had "persisted continuously except while [he was] on medication." She did "not ma[k]e a diagnosis of an underlying Personality Disorder (Axis II) because [she] believe[d] [his] responsiveness to treatment (psychodynamic and medication), [his] willingness to undertake and persist in treatment, and [his] family history of alcoholic and depressed parents [were] all significant contraindicators of a personality disorder."
- 3/15/9x The applicant had one appointment with Dr. x, a private psychiatrist, who diagnosed "Major Dep[ression] Remit 296.30" and advised him to continue outpatient therapy after being discharged.
- 3/18/9x The applicant reported to Dr. x that he was feeling better. Dr. x found that his mood was good and there was no sign of thought disorder. He continued the prescription for doxepin. Dr. x also wrote a letter to the VA in which he stated that the applicant had been diagnosed with Dysthymia but responded well to doxepin. He recommended that the applicant continue to take doxepin. He stated that Dr. x had confirmed the diagnosis.
- 4/18/9x The applicant received an honorable discharge by reason of unsuitability with a separation code of JFX (personality disorder).
- 1/4/9x An adjudicator for the VA "reviewed all the evidence of record including diagnosis of personality disorder and adjustment disorder versus dysthymia or major depression. The available evidence that pertains to a diagnosis of depression dates back some three years and

strongly supports the major depression or dysthymia diagnosis and gains added support by the favorable response to the antidepressant medications. The reported weight loss during the time the veteran was depressed is more suggestive of major depression than dysthymia. The diagnosis given by the VA examiner was of major depression, recurrent in partial remission on medication. Service connection is granted with a 10 percent evaluation assigned to reflect the mild social and industrial impairment."

- 6/7/9x The applicant applied to the DRB to have his discharge changed from "unsuitability" to "disability." He argued that, due to his "ratable condition" of Major Depression, he should have received an IMB prior to being discharged.
- 2/14/9x The DRB reviewed a summary of the records and found that "an initial medical board was required by regulation, was recommended and requested, and yet was never convened." It concluded that, "had an initial medical board been conducted by the Coast Guard through the PDES, it would probably have reached the same diagnosis as the VA had reached." It also accepted a VA finding that the applicant's condition was service connected. It recommended that the reason for the applicant's discharge be changed from "unsuitability" to "disability."
- 2/3/9x The Commandant disapproved the DRB's recommendations due to that Board's lack of jurisdiction. The Chief Counsel explained that the DRB has "no authority to change the reason for discharge to 'medical' because such a change would create a monetary entitlement."

SUMMARY OF DIAGNOSES

DATE	NAME	DIAGNOSIS	NUMBER
12/2/9x	Dr. x	<u>No</u> manic depression ¹	<u>No</u> 296.5
12/10/9x	Dr. x	Personality disorder ²	301.90
12/10/9x	Dr. x	<u>No</u> mood disorder ¹ Personality disorder ² & marital discord ²	
12/10/9x	Social worker	Personality disorder ² & <u>no</u> ratable disabilities	301.90
1/21/9x	Dr. x	May be mildly depressed but fit for duty. Prescribed doxepin.	
1/24/9x	Dr. x	Depressive disorder not specified ¹ & Passive-aggressive personality disorder ²	311.00 301.84
2/4/9x	Dr. x	Personality disorder ² but <u>No</u> bipolar disorder ¹	<u>No</u> 310.10

3/10/9x	Dr. x	Personality disorder ² & doxepin	301.90
3/27/9x	Dr. x	Depressive disorder ¹	311
5/15/9x	Dr. x	Fit for duty	
8/26/9x	Oakland Psy.Clinic	No disorders. Fit for full duty	
1/6/9x	Dr. x	Adjustment disorder not specified ² & Avoidant personality disorder ² which interferes with duty performance <u>No</u> disqualifying mental defects & <u>No</u> ratable disabilities	309.90 301.82
1/14/9x	Dr. x	Personality disorder ² with avoidant & passive-aggressive traits interwoven with dysthymia ¹ which is "mild and amenable to treatment"	
1/14/9x	Physician Assistant	Found qualified for discharge	
1/26/9x	Dr. x	Depression ¹	
3/14/9x	Ms. m	Dysthymia ¹ & <u>no</u> personality disorder ²	300.40
3/15/9x	Dr. x	Major depression ¹ in remission	296.30

¹Persons diagnosed with this condition are to be processed in accordance with the PDES Manual.

²Persons diagnosed with this condition are to be processed in accordance with Chapter 12 of the Personnel Manual (administrative separation).

APPLICABLE REGULATIONS

Applicable Provisions of the Personnel Manual

Section 12-B-6 of the Coast Guard Personnel Manual (COMDTINST M1000.6A), which requires each member not being discharged for a physical or mental disability to undergo a physical examination prior to separation, provides the following:

b. When the physical examination is completed and the member is found to be physically qualified for separation, the member will be so advised and will be required to make a signed statement as to agreement or disagreement with the findings. . . .

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d. When disqualifying physical or mental impairments are found . . .

(3) If the member does not desire to reenlist or is being discharged for reasons other than expiration of enlistment, and the physical or mental impairment is deemed to be of a permanent

nature a medical board shall be held in accordance with chapter 17
.....

(4) If the member does not desire to reenlist or is being discharged for other than expiration of enlistment, and the disability is deemed to be of a temporary nature, the member may be retained, with personal consent, in accordance with article 12-B-11f.(1)(a), in order that the necessary treatment may be provided the member and a medical board held if indicated

According to Section 17-B-5.1. of the Personnel Manual, “[i]f an evaluatee is found ‘not fit for duty’ because of a condition which is not a disability . . . the evaluatee will be separated without benefits.”

According to Section 17-B-5.2. of the Personnel Manual, “[i]f an evaluatee has both a condition that is not a disability, and also a ratable disability, the evaluatee is entitled to benefits only if the ratable disability, considered alone, is determined to render the evaluatee not fit for duty.”

Applicable Provisions of the Medical Manual

The Coast Guard Medical Manual (COMDTINST M6000.1B) governs the disposition of members with psychiatric disorders. According to Section 3-B-3, during the medical examination a member must undergo prior to separation,

. . . the examiner shall consult the appropriate standards of this chapter to determine if any of the defects noted are disqualifying for the purpose of the physical examination. . . .

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When the individual is not physically qualified for the purpose of the examination . . . , the reviewing authority will arrange for the examinee to be evaluated by a medical board and provide administrative action as outlined in [the PDES Manual].

According to Section 3-B-6 of the Medical Manual, which is entitled “Separation Not Appropriate by Reason of Physical Disability,”

[w]hen a member has an impairment (in accordance with section 3-F of this manual) an Initial Medical Board shall be convened only if the conditions listed in paragraph 2-C-2.(b) [of the PDES Manual] are also met. Otherwise the member is suitable for separation.

Section 3-F-1.c. of the Medical Manual states the following:

Fitness for Duty. Members are ordinarily considered fit for duty unless they have a physical impairment (or impairments) which interferes with the performance of the duties of their grade or rating. A determination of fitness or unfitness depends upon the individual's ability to reasonably perform those duties. Members considered temporarily or permanently unfit for duty shall be referred to an Initial Medical Board for appropriate disposition.

According to Sections 3-F-2 and 3-F-16 of the Medical Manual, the following medical conditions "are normally disqualifying" for administrative discharge or retention in the Service, and persons with disqualifying conditions "shall be referred to an Initial Medical Board":

b. Affective (mood) disorders: anxiety, somatoform, or dissociative (neurotic) disorders. Persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization, lack of significant improvement of symptoms by hospitalization, symptoms requiring extended treatment, or the necessity for duty in a protected environment. . . .

c. Personality, sexual, factitious, psychoactive substance use disorders; personality trait(s); disorders of impulse control not elsewhere classified. These conditions may render an individual administratively unfit rather than unfit because of a physical impairment. Interference with performance of effective duty will be dealt with through appropriate administrative channels (see section 5-B).

The "disposition" of members diagnosed with a "disqualifying" psychiatric condition is to be determined according to Section 5-B of the Medical Manual. According to Section 5-B-2, if a member is diagnosed with one of the following Axis II personality disorders, and if the disorder is found to be disqualifying for retention under the terms of Section 3-F, the member shall be separated in accordance with Chapter 12 of the Personnel Manual: 301.82 (avoidant), 301.90 (not otherwise specified, includes passive-aggressive).

According to Section 5-B-10 of the Medical Manual, if a member is diagnosed with one of the following Axis I mood disorders, and if the disorder is found to be disqualifying for retention under the terms of Section 3-F, the member shall be processed in accordance with the PDES Manual: 296 (major

depressive disorder), 300.4 (dysthymic disorder), 311 (depressive disorder not otherwise specified).

Applicable Provisions of the PDES Manual

The PDES Manual (COMDTINST M1850.2B) governs the separation of members because of physical disability. Section 2-A-6 of the manual states the following:

Certain conditions and defects may cause an evaluatee to be unfit for continued duty and yet not be physical disabilities within the meaning of the law, thereby subjecting the evaluatee to administrative separation. These conditions include . . . character disorders . . .

Section 2-A-15 of the PDES Manual defines the term “fit for duty” as “. . . the status of a member who is physically and mentally able to perform the duties of office, grade, rank, or rating. . . .”

Section 2-A-21 of the PDES Manual states that the terms “physical impairment” and “physical defect” include mental diseases but not personality disorders.

Section 2-A-36 of the PDES Manual states the term “physical disability” includes mental diseases that render a member unfit for continued duty but not personality disorders.

Section 2-C-2 of the PDES Manual states the following:

b.(1) Continued performance of duty until a service member is scheduled for separation or retirement for reasons other than physical disability creates a presumption of fitness for duty. This presumption may be overcome if it is established by a preponderance of the evidence that:

(a) the service member, because of disability, was physically unable to perform adequately the duties of office, grade, rank or rating; or

(b) acute, grave illness or injury, or other deterioration of the member’s physical condition occurred immediately prior to or coincident with processing for separation or retirement for reasons

other than physical disability which rendered the service member unfit for further duty.

(2) Service members who are being processed for separation or retirement for reasons other than physical disability shall not be referred for disability evaluation unless their physical condition reasonably prompts doubt that they are fit to continue to perform the duties of their office, grade, rank or rating.

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i. The existence of a physical defect or condition that is ratable under the standard schedule of rating disabilities in use by the [Department of Veterans Affairs] does not of itself provide justification for, or entitlement to, separation or retirement from military service because of physical disability. Although a member may have physical impairments ratable in accordance with the VASRD, such impairments do not necessarily render the member unfit for military duty. . . .

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code.

2. The application was timely because it was filed within three years of the applicant's honorable discharge by reason of unsuitability due to a personality disorder.

3. During his time in service, the applicant was twice hospitalized for psychiatric evaluation. Both times, he was diagnosed as having (1) a severe, long-standing personality disorder, which interfered with his performance of duty, and (2) no mood or bipolar disorder or other disqualifying defect or ratable disability. In addition, after both hospitalizations, the applicant's doctors recommended that the applicant be separated administratively. However, Dr. x, Dr. x, and Dr. x, Coast Guard doctors who examined the applicant many times in 199x and 199x, diagnosed him as having both a personality disorder and a depressive mood disorder. The antidepressant drug doxepin relieved his symptoms of depression, and the applicant was found fit for duty.

4. In January 199x, the applicant was processed for administrative discharge as a result of Dr. x's diagnosis and recommendation after the second hospitalization. In accordance with Section 12-B-6.b. of the Personnel Manual, the applicant was notified on January 10, 199x, that he was to be discharged by reason of unsuitability due to a personality disorder. He signed a memorandum stating that he did not object to the proposed discharge and that he did not desire to submit a statement on his own behalf. Although the applicant did not object to the proposed discharge on January 10, 199x, his medical examination for discharge, several psychological consultations, and most of his processing for discharge occurred during the fourteen weeks that passed before he was discharged. The Board finds that the applicant did not waive his right to object to what happened during those weeks.

5. On January 14, 199x, the applicant underwent a medical examination in accordance with Section 12-B-6 of the Personnel Manual. Dr. x diagnosed him as having both dysthymia (a depressive mood disorder) and a personality disorder. He described the applicant's condition as a personality disorder "interwoven" with dysthymia, which was then "diagnosable" but "mild and amenable to [treatment]." Dr. x recommended that the applicant continue treatment for his dysthymia through the VA. The physician assistant who completed the report on the applicant's physical examination misread Dr. x's handwriting, reported the word "diagnosable" as "disguisable," and determined that the applicant's condition was "not considered disqualifying." Despite this mistake, and in light of the definitions of disorders which are considered disqualifying in Section 3-F of the Medical Manual, the Board finds that Dr. x's diagnosis that the dysthymia was "mild and amenable to [treatment]" fully supports the physician assistant's conclusion that the applicant was qualified for discharge.

6. Prior to the applicant's discharge on April 18, 199x, he was further examined by Drs. x and x of the Coast Guard and by Dr. x, a private psychiatrist, and Ms. m, a licensed therapist. All four diagnosed the applicant as having a depressive mood disorder (although they disagreed about which one he had), which was relieved by doxepin. Ms. m contradicted a diagnosis of all previous examiners by finding no sign of personality disorder. Therefore, the Board finds that, at the time of his discharge, the applicant had recently been diagnosed by Coast Guard medical personnel with both (a) a depressive mood disorder (dysthymia), which was relieved by doxepin (an anti-depressant medication), and (b) a severe, long-standing personality disorder, which interfered with his performance of duty.

7. There is evidence in the record indicating that, in late January or early February 199x, Dr. x consulted with Dr. x and Ms. m concerning the

applicant's psychiatric condition. On February 16, 199x, Dr. x sought to delay the applicant's discharge for a "possible medical board." The Military Personnel Command agreed to the delay and ordered the xxxxx Support Center to "expedite" the IMB. The xxxxx Support Center, however, did not convene an IMB. Instead, on March 12, 199x, the center notified the Commandant that, on March 4, 199x, the applicant had been found to be physically qualified for discharge by competent medical authority. The applicant was examined by Dr. x on March 4, 199x, but the doctor made no notation of this finding. Dr. x noted only that the applicant was still dysthymic and that his prescription for doxepin was renewed. Although these records indicate there was some confusion about the processing for the applicant's discharge, the Board does not believe that they prove the Coast Guard wrongly evaluated the applicant's medical condition or improperly denied him a medical board.

8. According to Section 3-F-2 of the Medical Manual, if a member is found to have a "disqualifying" physical impairment during a medical exam, a medical board "shall" be held to determine the member's disposition. However, Section 3-B-6 states that the Coast Guard shall convene an IMB for members with disqualifying impairments only if the requirements of Section 2-C-2.b. of the PDES Manual are met. That section requires members to prove by a preponderance of the evidence that they are not fit for duty because of a disability. It also states that members such as the applicant, who are being processed for separation for reasons other than physical disability, shall not be referred to a medical board "unless their physical condition reasonably prompts doubt that they are fit to continue to perform the duties of their office, grade, rank or rating." Therefore, the Board finds that, to prove that the Coast Guard erred by not convening a medical board to evaluate him for disability discharge, the applicant must prove that, at the time of his discharge, (a) he had a disqualifying physical impairment which rendered him unfit for duty or (b) his physical condition reasonably prompted doubt as to his fitness for duty.

9. Section 3-F-16 of the Medical Manual lists personality disorders among those medical conditions that are "normally disqualifying" for retention in service. It also states, however, that personality disorders may render a member "administratively unfit" for duty rather than physically unfit for duty. Under Section 5-B-2, such members may be processed for administrative discharge in accordance with Chapter 12 of the Personnel Manual rather than in accordance with the PDES Manual. In addition, Section 17-B-5.1. of the Personnel Manual provides that a member who is found unfit for duty for a condition which is not a disability may be separated administratively. Under the definitions provided in Sections 2-A-6, 2-A-21, and 2-A-36 of the PDES Manual, personality disorders are not physical impairments or disabilities. Thus, although Dr. x reported that the applicant's personality disorder interfered with

his ability to perform his current duties, the Board finds that the applicant's diagnosis of personality disorder did not require the Coast Guard to convene a medical board or to grant him a disability discharge.

10. Section 3-F-16 also lists mood disorders among those medical conditions that are "normally disqualifying," but there must be "[p]ersistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization, lack of significant improvement of symptoms by hospitalization, symptoms requiring extended treatment, or the necessity for duty in a protected environment." Although the applicant was hospitalized twice during his time in the Coast Guard, both hospitalizations were for evaluation of his psychiatric condition rather than because of a diagnosed mood disorder. At his medical examination for discharge, Dr. x described the applicant's mood disorder as "diagnosable" but "mild and amenable to treatment." Furthermore, Drs. x, x, x, x, and x and Ms. m all found that his depressive symptoms were relieved by doxepin. Therefore, the Board finds that the applicant's mood disorder did not meet the definition of one that is "normally disqualifying" for retention. In addition, none of the doctors who diagnosed the applicant as having dysthymia found that he was unfit for duty, and Drs. x and x had earlier found him fit for duty despite having diagnosed him with dysthymia.

11. According to Section 17-B-5.2. of the Personnel Manual, if a member has both a condition that is not a disability, such as a personality disorder, and a disqualifying disability, such as a mood disorder, the member is entitled to the benefits that come with a disability discharge only if the disability, considered alone, is determined to render the member not fit for duty. Therefore, the Board finds that, even if the applicant's mood disorder had met the definition of "normally disqualifying" for retention, he would not have been entitled to a disability discharge unless the mood disorder also rendered him unfit for duty, which it did not.

12. The applicant argued that the disability rating he received from the VA proved he should have received a disability discharge. However, as the Chief Counsel of the Coast Guard stated, and pursuant to Section 2-C-2.i. of the PDES Manual, the applicant's VASRD rating does not prove that he would have been found unfit for duty by a medical board. The Court of Federal Claims has held that "[d]isability ratings by the Veterans Administration [now the Department of Veterans Affairs] and by the Armed Forces are made for different purposes. The Veterans Administration determines to what extent a veteran's earning capacity has been reduced as a result of specific injuries or combination of injuries. [Citation omitted.] The Armed Forces, on the other hand, determine to what extent a member has been rendered unfit to perform the duties of his office, grade, rank, or rating because of a physical disability. [Citation omitted.]

Accordingly, Veterans Administration ratings are not determinative of issues involved in military disability retirement cases." Lord v. United States, 2 Cl. Ct. 749, 754 (1983).

13. Therefore, the Board finds that the applicant has not proved by a preponderance of the evidence that the Coast Guard committed any error or injustice by not convening a medical board or by discharging him by reason of unsuitability due to personality disorder.

14. The applicant's request should be denied.

ORDER

The application for correction of the military record of former XXXXXXXX, is hereby denied.



