

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1997-115

 **Attorney-Advisor:**

FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The application was filed on May 2, 1997, and completed on September 14, 1998, upon the BCMR's receipt of the applicant's military and medical records.¹

This final decision, dated July 13, 2000, 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 former xxxxxxxxxxxxxxxx in the Coast Guard, asked the Board to correct his military record to show that the disability discharge he received on June 15, 198x, was based not only on certain physical disabilities but also upon a diagnosis of paranoid schizophrenia.² In addition, he asked the Board to order the Coast Guard to

¹ After his application was completed, the applicant submitted substantial new evidence on November 5, 1998, and waived his entitlement to a decision within 10 months under 14 U.S.C. § 425. After the Chief Counsel's advisory opinion was received on August 18, 1999, the applicant was granted several extensions of the time to reply. He responded to the advisory opinion on February 2, 2000, but requested a further extension and submitted more substantial new evidence on June 15, 2000.

² Schizophrenia is a serious organic mental disorder characterized by loss of contact with reality (psychosis), hallucinations, delusions, abnormal or disorganized thinking, bizarre behavior, and great difficulty functioning in social and work settings. People with schizophrenia often have a blunted or flat affect, with poor eye contact, one- or two-word answers for questions, lack of emotional expressiveness, and lack of motivation and interests. Stressful life events or substance abuse may trigger the onset of schizophrenia in biologically vulnerable individuals. The onset may be sudden, over a period of days or weeks, or gradual, over a few years. The peak age of onset for men is between 18 and 25 years old. See THE MERCK MANUAL OF MEDICAL INFORMATION: HOME EDITION, Chapter 91.

pay him disability severance pay which, he alleged, he was promised and owed but never received.

APPLICANT'S ALLEGATIONS

The applicant alleged that he was discharged in 198x not only because of his physical disabilities but also because of his schizophrenia. He alleged that the Coast Guard should have assigned him a disability rating for his schizophrenia and granted him a physical disability retirement. The applicant also alleged that he never received the severance pay he was promised.

SUMMARY OF THE APPLICANT'S MEDICAL AND MILITARY RECORDS

On November 26, 197x, the applicant enlisted in the Coast Guard for a term of four years. The applicant's pre-entry physical examination revealed no abdominal, visceral, psychiatric, or neurological problems. He underwent basic training in xxxxxxxx and was transferred to the Coast Guard cutter Xxxx based in xxxxxx, on March 21, 198x.

Two days later, on March 23, 198x, the applicant's command sent a message to the Commandant stating that the applicant was debilitated by right shoulder pain and seasickness. In addition, his medical records showed that during basic training he had reported for sick call 56 times with a variety of physical complaints. The applicant was repeatedly requesting to be taken off the cutter, and his seasickness appeared "extreme." The command recommended that he be admitted to the Public Health Service hospital in xxxxxxxx because the cutter was headed to xxxxxxxx, where "treatment of real/imagined ailments ... are [sic] sparse."

On March 25, 198x, when the applicant attended sick call complaining of seasickness and shoulder pain, the examining physician diagnosed a recurrent dislocated shoulder, found him not fit for duty, and referred him to an orthopedist. He also referred the applicant for psychiatric evaluation to rule out a mental disorder, such as anxiety or psychosis. The applicant's command reported that he had stopped responding to questions and begun to ramble.

On March 26, 198x, the applicant reported to sick call complaining of being very nervous and "seeing things." He was interviewed by a psychologist, who reported that the applicant's "affect was subdued" but that he reported feeling "desperate" not to return to his ship and had thought about killing himself. The applicant reported sometimes seeing faces in front of him, but stated it was probably his imagination. His eye contact with the psychologist was poor. He reported being preoccupied with his heart murmur. The psychologist found him not fit for duty "pending further evaluation in psych." An orthopedist examined him and determined that his shoulder probably required surgery.

On April 1, 198x, the applicant was evaluated by a psychiatrist. He complained of constant nervousness. He told the psychiatrist that he had begun feeling nervous

after he was diagnosed with a heart murmur at the age of 18, but that his nervousness had increased significantly after coming to xxxxxx. He stated that his anxiety increased when he was aboard the cutter because he was not confident of his swimming ability and was afraid of the water.

On April 8, 198x, the applicant's right shoulder was evaluated by an orthopedic surgeon. He told the surgeon that he had dislocated it approximately 15 times since injuring it while playing basketball 3 years earlier. The applicant also complained of having injured his left shoulder 4 times. He was referred for surgery. In addition, it was discovered that he had a bilateral hernia. The doctor recommended that the hernia be repaired surgically after the applicant recovered from his orthopedic surgery.

On April 10, 198x, the applicant underwent surgery at a U.S. Public Health Service Hospital in xxxxxxxx to reconstruct his right shoulder. He spent three weeks recuperating in the hospital. His chart indicates that he was "very anxious" much of the time. On April 14, 198x, a nurse found him standing on a bed reaching for the window shade. She reported that he worried that people thought he was crazy, needed constant reassurance, and seemed very confused. The applicant was moved to a psychiatric ward for observation and evaluation. He told a psychiatrist that he had felt very anxious and fearful ever since he left home. The psychiatrist diagnosed an acute anxiety reaction probably caused by morphine and decreased the amount of morphine being given. He stated that the applicant's affect was "blunted" and that he should be reevaluated after he came off the medication. The applicant's chart indicates that he continued to suffer great anxiety and insomnia and to have a "flat" affect. On April 21, 198x, a psychiatrist prescribed "2 mg qhs" of Haldol (haloperidol).³

On April 22, 198x, a psychologist administered a Rorschach test. On April 29, 198x, the applicant's attending psychiatrist wrote that "[d]ata suggests [sic] a differential diagnosis of 1) Acute psychotic episode [due to] surgery [unreadable] v. 2) Schizophrenia." The psychiatrist noted that the drug Haldol had been effective. Later that day, the psychiatrist wrote that the applicant remained very anxious and suspicious. His impression was that the applicant suffered from an "acute organic psychosis vs. functioning thought disorder (psych testing shows some type of thought disorder)." He ordered that the applicant's dosage of Haldol be increased to "4 mg qhs."

On May 1, 198x, a psychiatric intern reported that "[p]sychiatric testing indicated underlying thought disorder. Acute schizophrenic reaction now in remission." Later that day, another psychiatrist stated that the applicant's affect was flat but there were currently no overt signs of psychosis. On May 2, 198x, the applicant was discharged from the hospital and told to continue taking Haldol (4 mg qhs) and to report to the

³ Haldol is a brand name of the generic drug haloperidol, which is an antipsychotic drug prescribed for various psychotic disorders, including schizophrenia.

psychiatric clinic in xxxxxxxx in three weeks, after he returned from convalescing at home in xxxxxx. His diagnoses on discharge were reported as follows: "1. Right recurrent anterior shoulder dislocation. 2. Acute psychotic episode, following surgery with possible underlying disorder. 3. Heart murmur, with mitral valve echodensities. 4. Left inguinal hernia, asymptomatic."

On May 9, 198x, while on leave convalescing at home in Xxxxx, the applicant was admitted to the U.S. Public Health Service Hospital in xxxxxxxx for psychiatric evaluation. On May 19, 198x, a psychiatrist at the hospital diagnosed him with "phobic neurosis 300.00." The psychiatrist found that the applicant had a "neurotic fear of water" but no thought disorder, although he seemed "somewhat anxious" and admitted that he sometimes feared people were laughing at him. The applicant, he reported, told him that he had joined that Coast Guard hoping to avoid any duties near the water.

On May 21, 198x, the applicant underwent "surgical repair of bilateral inguinal hernias." After recuperating, he began daily physical therapy for his shoulder. He continued to attend sick call frequently with a wide variety of complaints, including pain in his left shoulder that he attributed to an injury that occurred in July 197x, prior to his enlistment.

On June 11, 198x, the applicant told a doctor at sick call that he was very afraid his symptoms would return since he had been taken off Haldol. The doctor reported that they "[d]iscussed relationship between mind and body and how his thoughts and attitudes play [a] key role in his anxiety. Encouraged [the applicant] to continue physical activities (basketball and swimming) as well as to resume his relaxation exercises [twice] daily to help control his anxiety."

On September 11, 198x, the applicant was examined by his orthopedic surgeon who determined that his shoulder had a limited range of motion despite physical therapy. The surgeon reported "shoulder external rotation (-10 to neutral), limited abduction up to 90 only, limited anterior flexing to 100. No lack of extension." He concluded that there was "residual impairment to a significant degree" after surgery. He wrote that "[i]n addition to his overall psychological problem, I feel he should be present at [a physical evaluation board] for evaluation."

On September 23, 198x, the applicant appeared before an initial medical board (IMB) at the hospital in Xxxxx. The IMB diagnosed "post Bristow's shoulder repair, right shoulder," found him fit for light duty, and referred him for evaluation by a physical evaluation board. The applicant signed a statement indicating that he did not desire to rebut the IMB's findings. However, on October 22, 198x, the IMB's report was returned by the Physical Disability Evaluation staff due to the IMB's failure to comply with Articles 17-B-6 and 17-B-7 of the Personnel Manual.

On November 20, 198x, the applicant was evaluated by a psychiatrist at the Xxxxx hospital in preparation for his upcoming second IMB. The psychiatrist found that he suffered from a phobic neurosis and was fit for limited duty. He reported the following:

... In April of 198x he was hospitalized while stationed in Xxxxxxx for repair of his right shoulder dislocation. ... During the period of his hospitalization, [the applicant] described what in some ways sounds like a brief psychotic episode during which he began to behave bizarrely, for example at one point threatening to jump from a window. He also recalls experiencing the feeling that his thoughts were being controlled and having auditory hallucinations. He remembers being given Haloperidol (dose unknown) which seemed to alleviate these problems. ...

[The applicant] notes that prior to his enlistment in the Coast Guard, he had never learned to swim. He relates further that even after completion of Boot Camp, he still had not learned to swim. During the course of subsequent sea duties, for example tending buoys in xxxxxx and later ship duty on the xxxxxx, he experienced recurrent bouts of "sea-sickness". He notes that he has since had increasing fear of the water and goes to great lengths to avoid any kind of waterborne activities. In addition to his fear of the water, [the applicant] states that he has come to fear flying [The applicant] also admitted to having someone else take a swimming test for him in Boot Camp. ...

ASSESSMENT:

Axis 1. Simple phobic neurosis (water/flight), DSM 3 300.29.

Rule out^[4] schizophrenia, paranoid type, sub-chronic, DSM 3 295.31.

Axis 2. Dependent personality disorder, DSM 3 301.60.

Axis 3. Dislocation, right shoulder, status post-surgical repair, now with diminished function; left inguinal hernia repair; left varicocele and epididymitis; motion sickness.

Axis 4. Severity of psychosocial stressors - moderate, Code IV.

Axis 5. Highest level of adaptive function over the past year: poor, Level V.

Regarding the rule out listed above under Axis 1, it is unclear at this time whether or not what sounds as a brief psychotic episode during April of 198x represents an isolated incident, or evidence of an incipient or subchronic schizophrenic illness. His suspiciousness and guardedness when questioned specifically about different aspects of disordered thinking during the interview suggest this possibility should be kept in mind.

RECOMMENDATIONS:

[The applicant's] neurotic symptoms of fear of water and flying, plus his motion sickness, would certainly interfere with his usefulness to the Coast Guard. It appears as though, over the course of the last year, the symptoms are worsening and that separation from the service would be in order. [The applicant] presents no disqualifying mental defects which are rateable as a disability under the Veterans Administration schedule for rating disabilities. Also, he is mentally responsible, both able to distinguish right from wrong, and to adhere to the right. He also has the mental capacity to understand any action which is being contemplated in his case.

⁴ The notation "rule out" means that the doctor believes the medical condition might exist and should be investigated.

On December 5, 198x, the applicant underwent personality testing at the hospital in xxxxxx. The psychologist reported that he suffered from depression, anxiety, and somatic concern, resulting in chronic physical complaints. The applicant told the psychologist that he sometimes felt possessed by evil spirits and heard "very queer" things. He began receiving regular psychophysiologic treatment at the xxxxxx hospital, including training in biofeedback and relaxation techniques. The treatment continued until he was discharged in June 198x.

On December 29, 198x, the applicant's orthopedic surgeon examined him and found "range of right shoulder - flexion 125 [degrees], abduction 90 [degrees], external rotation 5 [degrees] past neutral, internal rotation 80 [degrees]. Muscular strength in flexion and abduction = good. Rotation = fair." He concluded that his "partial permanent impairment of right shoulder is expected [to continue] indefinite[ly]" and that his complaints of pain, numbness, and weakness were probably due to post-traumatic arthrosis caused by the Bristow's shoulder repair. He found the applicant fit for limited duty: "no overhead, heavy lifting, pulling, pushing over 20 lbs."

On January 12, 198x, the applicant was evaluated by a second IMB at the hospital in Xxxxx. The IMB found that he suffered from shoulder dislocation, phobic neurosis, motion sickness, a hernia that had been repaired, and a heart murmur. The board made an "orthopedic recommendation" that he was fit for limited duty. The board also made a "psychiatric recommendation" that he be administratively discharged. In addition, the board recommended that he be evaluated by a physical evaluation board. The applicant signed a statement indicating that he did not wish to rebut the findings of the IMB. The board's report was approved.

On February 11, 198x, a physical evaluation board (PEB) was convened to evaluate the applicant. A lieutenant commander "law specialist" was assigned as counsel for the applicant. The PEB found the applicant unfit for duty by reason of a physical disability described as "status post, Bristow's procedure for anterior shoulder, dislocation - right - rated by analogy to arm, limitation of motion of - at shoulder level." The PEB found that he was 20 percent disabled but that he had been 20 percent disabled by the condition of his right shoulder at the time he enlisted. It also found that, although his condition had been aggravated while on active duty, zero percent of his disability was attributable to in-service aggravation. The PEB also found him to be zero percent disabled by a heart murmur and "status post inguinal hernia repair." The PEB's report did not mention any mental illness or phobia. It recommended that he be separated with severance pay because of his shoulder disability.

On February 25, 198x, the applicant was counseled by the law specialist regarding whether he should accept or reject the findings of the PEB. On March 6, 198x, the applicant rejected the findings and demanded a hearing before a formal PEB.

On April 14, 198x, the applicant was prescribed Haldol (4 mg qhs) by a doctor at the Xxxxx hospital due to increasing anxiety. A week later, the doctor wrote that he increasingly suspected "schizophrenic process." He prescribed Stelazine (10 mg qhs).⁵ The applicant continued to report anxiety and various physical symptoms at his psychophysiologic treatment appointments.

On May 7, 198x, the applicant's psychiatrist reported that he had "refused medical board and plans to abide by [the] findings of the board in February. This means he'll probably leave service." The applicant continued to complain of anxiety, fear of sleeping, and numerous physical complaints.

After being counseled by a different law specialist regarding his upcoming hearing and about whether he should accept or reject the findings of the PEB, the applicant signed a statement on May 13, 198x, indicating that he accepted the findings and waived his right to a formal hearing upon the condition that he be discharged "on or after 27 May 198x so that [he would] qualify for 4 months [of] severance pay."

On May 28, 198x, the president of the Coast Guard's Physical Review Council approved the PEB's findings and recommendation. He explained that "[a]fter conferring with the CPEB President, the situation reflected under V.A. Code 5299/5201 is that the evaluatee entered the service with recurrent dislocation of his right shoulder, at a 20% level of disability. Corrective surgery performed in the Service resulted [in] (as is normal for the procedure) a limitation of motion, also ratable to 20 percent. Because the corrective procedure was unable to correct the pre-existent condition without introducing another, aggravation at 0 percent is appropriate."

On June 9, 198x, the proceedings and findings of the PEB were approved by the Commandant, and the applicant's command was ordered to discharge him in accordance with Article 12-B-15 of the Personnel Manual and to award him severance pay. On June 11, 198x, the applicant's command completed a Personnel Action form, CG-3312A, signed by the applicant, indicating that he was entitled to disability severance pay and a lump sum for unused annual leave.

On June 15, 198x, the applicant was honorably discharged under Article 12-B-15 of the Personnel Manual. His separation code was JFL, meaning that he was involuntarily discharged due to a physical disability and was entitled to severance pay. The applicant signed a document stating the following in part: "[I] hereby request that all final documents and monies due to me be forwarded to my separation address as indi-

⁵ Stelazine is a brand name of the generic drug trifluoperazine, which is an antipsychotic drug often prescribed for schizophrenia.

cated on my DD 214. I have received a substantial portion of my final pay.”⁶ A payroll form, DD 113-1C, indicates that he received \$2,234.40 in severance pay.

On June 23, 198x, the applicant filed a claim with the Veterans Administration (VA). On December 15, 198x, the VA granted him a 20-percent disability rating for his right shoulder.

In August 198x, the applicant sought treatment for pain in his left shoulder. He told the orthopedic surgeon that he had injured his left shoulder while wrestling in summer camp in 197x, prior to his enlistment.

In November 198x, the applicant began treatment for “irritability, explosiveness, confusion, anxiety, and phobic fears” at a mental health clinic in Xxxxx.

On December 29, 198x, the VA sent a “Request for Information” to the Coast Guard asking for verification of the disability for which he had received severance pay and of the amount of severance pay he had received. In response, the Coast Guard indicated on the form that the applicant had been paid \$2,234.40 in severance pay and attached a copy of a medical report to indicate the nature of his disability. In addition, on March 22, 198x, the Coast Guard issued a recoupment order for \$108.26, which was determined to have been overpaid to the applicant for excess leave at the time of his discharge.

On January 6, 198x, the applicant filed a claim with the VA for disability compensation. He sought compensation for a “nervous condition” acquired while in the Coast Guard. On January 21, 198x, the VA denied that his “phobic neurosis” was service connected because the applicant had told his doctors in 198x that he had a long-standing fear of water and had gotten someone else to take his swimming test for him.

On January 28, 198x, the applicant filed a claim with the VA for increased disability compensation due to infertility. On March 15, 198x, the VA denied service connection for infertility because it was determined that his infertility was not caused by any of the surgical procedures or conditions he suffered while in service.

On February 3, 198x, the applicant was diagnosed by a psychiatrist as having anxiety with dysthymic factors and a personality disorder with schizotypal traits. On February 16, 198x, he was examined by an orthopedist who determined that he had 110 degree abduction and 135 degree flexion in his right shoulder.

⁶ The separation address shown on his DD 214 was the address of his parents, wife, and child, in Xxxxx.

On August 16, 198x, the applicant filed a claim with the VA for increased compensation due to his "nervous condition" and disability in his left shoulder. On December 21, 198x, the VA denied that the two conditions were service connected.

In September 198x, the applicant sought psychiatric treatment at the VA Medical Center's Mental Hygiene Clinic in Xxxxx. On November 5, 198x, the applicant was tested by a psychologist, who diagnosed him as having an anxiety disorder and a schizotypal personality disorder.

On January 25, 198x, the applicant sought help for anxiety at the VA Medical Center. He stated that he was taking Bentyl and Xanax,⁷ but they were not effective. He reported fear of water, bridges, heights, driving, being alone, being in a crowd, and dying. The doctor noted that the applicant had joined the Coast Guard hoping he would overcome his fear of water or be stationed away from the water. The doctor found no psychotic symptoms and diagnosed "1. Phobic reactions, multiple, water, bridges and high place. 2. Anxiety chronic. 3. Schizoid personality [disorder]. ..." He referred the applicant for psychological evaluation and prescribed Triavil,⁸ which he continued to take for several years. On April 11, 198x, the doctor at the medical center increased the applicant's dosage of Triavil because he had suffered "several panic episodes, one requiring hospitalization."

On October 3, 198x, the Board of Veterans Appeals found that the applicant suffered from a service-connected psychiatric disorder, stomach disorder, right shoulder disability rated as 20-percent disabling, and "residuals of left inguinal hernia repair, currently evaluated as less than compensably disabling." The Board indicated that the applicant had initially sought service connection for a condition of his left shoulder but had later withdrawn the issue from the Board's consideration.

On November 7, 198x, the applicant was evaluated by a psychiatrist for the VA. He reported that the applicant had not been able to keep a job and had withdrawn from school because of his nervousness and because people laughed at him. The psychiatrist diagnosed him as a paranoid schizophrenic who was "competent for VA purposes" but "certainly unemployable at this time."

⁷ Bentyl is a brand name of the generic drug dicyclomine hydrochloride, which is prescribed for abdominal pain associated with stress-induced digestive problems. Xanax is a brand name of the generic drug alprazolam, which is a tranquilizer often prescribed for anxiety disorders.

⁸ Triavil is a brand name of the combined generic drugs amitriptyline hydrochloride (a tricyclic antidepressant) and perphenazine (an antipsychotic tranquilizer), which is prescribed for anxiety, agitation, depression, and schizophrenia.

On December 5, 198x, the VA rated the applicant 50 percent disabled (but competent) with service-connected paranoid schizophrenia effective since the date of his discharge, June 15, 198x.

On February 14, 198x, the applicant underwent psychological testing at the VA Medical Center. The psychologist diagnosed him with "Axis I - Schizophrenic disorder, paranoid type, chronic atypical depression. Axis II - Schizotypal personality (pre-morbid). Axis III - Multiple physical complaints. Axis IV - Psychosocial stressors: Unemployed, marital conflict, poor interpersonal relationships. Severity: 5, high. Axis V - Highest level of adaptive functioning in the past year: 5, poor." He recommended that the psychotropic medications be continued.

On October 15, 198x, the VA awarded the applicant a 100-percent disability rating for service-connected paranoid schizophrenia. The rating was effective as of August 23, 198x. The applicant continued to be treated with antipsychotic medications for schizophrenia, for which he was hospitalized several times. His doctors sometimes diagnosed schizophrenia and sometimes schizoaffective disorder. In addition, his physical disabilities required numerous surgeries.

In April 199x, after the applicant complained of diminished libido, he was found to have a low testosterone level. After testing, he was diagnosed with hypopituitarism and empty sella syndrome.⁹ One of his doctors wrote the following:

The etiology of this is unknown at this time, but the question was raised whether chronic antipsychotic use^[10] (with their Dopamine blocking qualities, which subsequently raised his Probactin levels) may be a possible causative agent. However, even when this was explained to the patient, he wanted to continue with the antipsychotic medications given that the psychotic symptoms were clearly much worse for him than the low hormonal levels.

On August 4, 199x, an endocrinologist reported that he was "doing quite well now on his replacement therapy for his panhypopituitarism." He stated that because of this condition, the applicant was taking hydrocortisone and testosterone, as well as

⁹ The pituitary gland is contained in the sella turcica and controls the function of most endocrine glands. It secretes, *inter alia*, enkephalins and endorphins, which control pain perception, mood, and alertness. A person with partial empty sella syndrome has an enlarged sella with a small pituitary gland. He may experience headaches and loss of vision due to the enlargement of the sella. Persons with hypopituitarism have underactive pituitary glands, which may be caused by a tumor, infection, irradiation, etc. The symptoms of hypopituitarism in adults include impotence, infertility, and depression. See THE MERCK MANUAL OF MEDICAL INFORMATION: HOME EDITION, Chapter 144.

¹⁰ The doctor noted that at this time the applicant was taking Trilafon (32 mg qhs), Doxepin (200 mg qhs), and lorazepam (1 mg tid), an anti-anxiety medication.

Trilafon and Doxepin for his psychiatric symptoms.¹¹ The applicant continued to be treated for panhypopituitarism and schizophrenia. His doctors determined that anti-psychotic medications were probably not the primary cause of his pituitary problems but might have been "secondarily responsible."

On October 23, 199x, the endocrinologist wrote a letter to the applicant's psychiatrist regarding recent medical complaints. He noted that the psychiatrist had prescribed Trilafon (32 mg qhs), Valium (5 mg tid), and Imipramine (150 mg qhs). He stated that "[t]he evidence that this patient really has a pituitary tumor is rather limited and in fact his radiologic studies suggest that he has a partially empty fossa. I believe the majority of his symptoms are related to his psychiatric problems." The results of several tests taken that day were normal.

On October 7, 199x, an endocrinologist reported that the applicant's tests were normal and that his complaints were thought to be "mainly caused by his psychological problems." The endocrinologist stated that, although the applicant had been diagnosed with schizophrenia, the diagnosis had been changed to anxiety disorder. He indicated that the applicant's condition had improved since he stopped taking "the major tranquilizers."

On April 26, 1999, the applicant's primary physician wrote a letter "to whom it may concern." He reported that the applicant had been misdiagnosed as schizophrenic in 198x by the VA and was still taking antipsychotics in 1992. The applicant's current diagnosis is "anxiety disorder with an adjustment reaction," which sometimes requires the applicant to take anti-anxiety medication. He based his opinion in part on the assessment of the applicant's psychiatrist, who stated in a letter to the physician that the applicant never had schizophrenia or any other thought disorder.

On May 1, 1999, the Department of Veterans Affairs (DVA) informed the applicant that there would be no change in his benefits. The applicant had requested that they change his diagnosis from schizophrenia to "adjustment disorder with anxious mood" to improve his chances of being employed. The DVA stated that

[s]ince service connection has already been granted for schizophrenia, and because modification of the diagnosis for the service-connected disorder would result in no additional compensation benefits, the issue of entitlement to service connection for adjustment disorder with anxious mood is considered a moot point. As with many mental disabilities, diagnoses often varies [sic], however, in the opinion of the Board, schizophrenia best represents the veteran's overall psychiatric condition.

¹¹ Trilafon is a brand name of the generic drug perphenazine (an antipsychotic tranquilizer), which is prescribed for agitation and schizophrenia. Doxepin is a tricyclic antidepressant prescribed for depression and anxiety disorders, including anxiety neurosis with somatic concern.

On August 17, 1999, a psychologist for the DVA examined the applicant and reported that he had apparently been misdiagnosed with schizophrenia because of a pituitary tumor. She stated that this was the opinion of his primary physician, who had treated him for nine years; his psychiatrist, who had been treating him for 2 years; and a private psychologist who had followed his case for 13 years. She stated that the applicant had not been treated for schizophrenia or shown any symptoms of it since he was treated for empty sella syndrome in 1993.

IEWS OF THE COAST GUARD

On August 18, 1999, the Chief Counsel of the Coast Guard recommended that the Board deny the applicant the requested relief.

The Chief Counsel stated that relief should be denied because the applicant filed his application some 13 years after the expiration of the BCMR's 3-year statute of limitations. The Chief Counsel alleged that the applicant knew of the PEB's findings on May 13, 198x, when he accepted them upon the condition that he receive 4 months' severance pay. Moreover, the Chief Counsel argued, the applicant should have known of the alleged error at the latest in December 198x, when the VA issued its final decision granting him service connection for schizophrenia. Therefore, the Chief Counsel stated, the BCMR should deny relief because strong interests, such as efficient use of government resources, prompt resolution of claims, and loss of evidence, "weigh against excusing untimeliness in the present case because the record shows that the Applicant was well aware of his disability status in December 1994."

Moreover, the Chief Counsel stated, even if the BCMR should decide to waive the statute of limitations, relief should be denied for lack of proof. He argued that a cursory review of the merits, required under *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995), indicates that the Commandant's decision was justified because the applicant "was not treated or rated for [paranoid schizophrenia] while serving on active duty."

The Chief Counsel also stated that the apparent contradiction between the VA's findings and those of the Coast Guard with regard to the applicant's disability is "explained by distinguishing the function and purpose of the Coast Guard's Physical Disability Evaluation System [PDES] from those of the Department of Veterans' Affairs [DVA]." The law underlying the PDES, he alleged, "is designed to compensate members whose military service is terminated due to a service-connected disability and to prevent the arbitrary separation of individuals who incur disabling injuries." A member's unfitness to perform duties is the "sole standard for a physical disability separation."

In contrast, the Chief Counsel argued, 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.” He alleged that “[t]he procedures and presumptions applicable to the DVA evaluation process are fundamentally different from, and more favorable to the veteran, than those applied under the Coast Guard’s Physical Disability Evaluation System.” Because “[t]he DVA’s subsequent finding that the Applicant was disabled is not binding on the Coast Guard nor indicative of differing or conflicting medical opinions between Coast Guard and DVA medical officials,” the Chief Counsel argued, “there was no error or injustice as to his disability rating.”

Finally, the Chief Counsel stated, the record reflects that the applicant received 4 months’ severance pay, amounting to \$2,234.40, on the day he was discharged, June 15, 198x. The Chief Counsel stated that payment of this sum is shown on the form DD 113.1C and on a letter from the Fifth District dated June 18, 198x, in the applicant’s service record.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 23, 1999, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond within 15 days. The applicant requested several extensions prior to responding on February 2, 2000.

The applicant stated that he does not recall ever telling his doctors in the Coast Guard that he had suffered frequent shoulder dislocations prior to entering the service. He stated that he remembers telling his doctors that he had dislocated his shoulder many times while in basic training.

The applicant alleged that the psychotic episode he suffered while hospitalized in April 198x and his continuing anxiety and treatment with anti-psychotic medications throughout the remainder of his active service prove that his mental illness began while he was on active duty.

The applicant also alleged that the law specialists assigned to counsel him regarding his options before and after the medical board met did not have his best interest at heart. He stated that in 198x, he was young, sick, and ignorant of his rights. He stated that his law specialists, knowing that he had a nervous disorder and was taking psychotropic medication, used his desire to leave the service and did not advise him as they should have.

The applicant alleged that between 198x and 2000, he has had five surgeries on his left shoulder and three on his right shoulder.

Finally, the applicant stated that he recently discovered that he had been misdiagnosed. He stated that for the past 20 years, he has been unfairly stigmatized and rendered unemployable by the diagnosis of paranoid schizophrenia. He alleged that if the Coast Guard had properly diagnosed his medical conditions prior to discharging him in 198x, his life would have been entirely different.

APPLICABLE REGULATIONS

Applicable Provisions of the Personnel Manual

Article 12-B-15 of the Coast Guard Personnel Manual in effect in 198x (CG-207) stated that members with any of the medical conditions listed in Article 17 should be evaluated by a medical board in accordance with the terms of that article. Article 17-K-7(a) states that members' shoulders must allow forward elevation of the arm to 90 degrees forward and abduction to 90 degrees (held straight out to side). Article 17-K-15 lists as conditions that require evaluation by a medical board "[r]ecurrent psychotic episodes, or a single well-established psychotic episode with existing symptoms or residuals thereof sufficient to interfere with performance of duty" and psychoneuroses with "[s]evere symptoms, persistent or recurrent, requiring hospitalization or the need for continuing psychiatric support."

Article 17-A-10(d) stated that personality disorders are not physical disabilities, although they may make a member unfit for military duty. Article 17-K-15(c) stated that personality disorders "may render an individual unsuitable rather than unfit because of physical disability. Interference with performance of effective duty will be dealt with through appropriate administrative channels."

Article 12-B-16 authorized administrative (rather than medical) discharges for members by reason of unsuitability. The conditions listed as rendering a member unsuitable included inaptitude (lack of adaptability or skill) and personality disorders listed in Chapter 5 of the Medical Manual (CG-294) "[a]s determined by medical authority." Article 12-B-12 authorized administrative discharges for the convenience of the government for members with motion sickness or other conditions not considered physical disabilities.

Article 17-A-1(h) stated that "[e]ntitlement to disability retirement or separation arises only on a determination of physical unfitness to perform duties. It does not arise at the convenience of the member on the mere existence of a disability or a condition ratable under the Veterans Administration Schedule for Rating Disabilities [VASRD], which has not affected his performance of duty."

Article 17-A-12(c) provided that the VASRD "does not relate to findings of unfitness for military duty. Although a member may have physical defects ratable in accor-

dance with the VA schedule, such disabilities per se, regardless of degree, do not necessarily render him physically unfit for military duty.”

Article 17-A-20(e) stated that the “usual effects of medical and surgical treatment in service having the effect of ameliorating disease or other conditions incurred before entry into service, including postoperative scars, absent or poorly functioning parts or organs, do not constitute aggravation unless the treatment was required to relieve disability which had been aggravated by service.”

Article 17-A-23 stated that “[w]hen there is reasonable doubt whether a member is fit or unfit or as to the nature of the condition causing unfitness, these matters should be resolved on the basis of further clinical investigation and observation and such other evidence as may be adduced.”

Article 17-L-1(j) provided that “[i]n cases involving aggravation by active service, the rating will reflect only the degree of disability over and above the degree existing at the time of entrance into the active service, whether the particular condition was noted at the time of entrance into the active service or is determined upon evidence of record to have existed at that time. It is necessary, therefore, in all cases of this character to deduct from the present degree of disability, the degree, if ascertainable, of the disability existing at the time of entrance into active service”

According to Article 17-B-7, an IMB report was required to “present a summary of the pertinent data concerning each complaint, symptom, disease, injury or disability presented by the evaluatee, which causes or is alleged to cause impairment of his health. ... the report must contain data to permit a reviewer to conclude whether the evaluatee suffers impairment of health in any respect, and the degree thereof. The report of the medical board shall not assign a percentage rating.” The IMB report was also required to indicate whether the member was (1) fit for duty, (2) unfit for duty for reasons other than physical disability, or (3) unfit for duty by reason of a physical disability. If the member was found unfit for duty by reason of physical disability, the IMB was supposed to refer him to a PEB. The IMB was also supposed to recommend whether the member should be administratively discharged for unsuitability. Article 17-B-8 allowed the member to indicate his acceptance of the IMB report or to submit a reply, rebutting the IMB’s findings.

According to Article 17-C-5, a PEB was required to review the IMB report and make a finding as to whether the member was (1) fit for duty, (2) unfit for duty by reason of a condition or defect that was not a disability according to the terms of Article 17-A-10, or (3) unfit for duty by reason of a physical disability. For each physical disability found, the PEB was required to assign a percentage of disability and the percentage of any aggravation incurred while on active duty.

Under Article 17-C-9, each member was entitled to be counseled about the PEB process by an attorney or law specialist. After the PEB issued a report, the counsel was required to review the case and advise the member regarding his right to reject the PEB's findings and demand a full hearing before a formal PEB. If the member accepted the PEB's findings, the report was forwarded to the Commandant for final action.

Under Article 17-D-8, if a member rejected the PEB's findings, he was entitled to be represented by counsel before a formal PEB. The counsel was supposed to be "an attorney or [an officer] who is well acquainted with the regulations and procedures governing physical evaluation boards." The counsel was required to "prepare his case in accordance with the law and regulations and the best interest of the evaluatee."

Applicable Provisions of the Physical Disability Evaluation System (PDES)

On April 7, 198x, after the applicant's medical boards but prior to his discharge, the Commandant replaced Article 17 of the Personnel Manual with COMDTINST M1850.2, the PDES Manual. The provisions of the PDES Manual were not substantively different than those in Article 17 with respect to the issues in the applicant's case.

Applicable Provisions of the Medical Manual

The Coast Guard Medical Manual (CG-294) in effect in 198x governed the disposition of members with personality disorders. According to Chapters 5-C and 5-D, a member with either a schizoid or paranoid personality disorder was eligible for an administrative discharge rather than a disability separation. Members with psychoses and psychoneuroses were to be evaluated by medical boards in accordance with Article 17 of the Personnel Manual.

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. An application to the Board must be filed within 3 years after the applicant discovers the alleged error in his record. 10 U.S.C. § 1552. The record indicates that the applicant signed and received the findings of his physical evaluation board (PEB) and his discharge documents in 198x. Moreover, he was first diagnosed with schizophrenia in 198x and with hypopituitarism and empty sella syndrome in 1993. Thus, the

applicant applied for relief more than 3 years after he knew or should have known of the alleged errors in his record.

3. Pursuant to 10 U.S.C. § 1552, the Board may waive the 3-year statute of limitations if it is in the interest of justice to do so. To determine whether it is in the interest of justice to waive the statute of limitations, the Board should conduct a cursory review of the merits of the case. *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992). A cursory review of the applicant's record indicates that while serving on active duty, he suffered at least one incident of psychosis, and a psychiatrist reported a need to "rule out" schizophrenia. However, the applicant's PEB did not mention any mental illness in its report of his disabilities. Therefore, the Board finds that it is in the interest of justice to waive the 3-year statute of limitations in this case.

4. The record indicates that at the time the applicant enlisted in November 197x, he failed to inform the Coast Guard of any problems with his shoulders or of any phobia. However, while serving on active duty, the applicant told his doctors that, prior to joining the Coast Guard, he had injured both of his shoulders, which frequently became dislocated. In addition, the records show that he told his doctors that he had been afraid of the water prior to enlisting and had joined the Coast Guard hoping either to avoid duty near water or to overcome his fear of water. He admitted to one doctor that he could not swim and had cheated during basic training by having someone else take his swimming test for him.

5. While recuperating in the hospital after a Bristow's operation on his right shoulder in April 198x, the applicant suffered a psychotic episode, which the doctors attributed to the morphine he was taking because of the surgery. They lowered his morphine dosage and prescribed Haldol, an antipsychotic medication, to take during his recuperation. They also recommended that he be evaluated by a psychiatrist after his recuperation. Therefore, in May 198x, the applicant was admitted to the Public Health Service Hospital in Xxxxx for psychiatric evaluation. A psychiatrist determined that he was very anxious and suffered from a phobia: fear of water.¹²

6. The record indicates that the applicant's command and his doctors were aware that he had some psychological problem, as well as trouble with his shoulders. Therefore, in September 198x, he was evaluated by an IMB in accordance with Article 17-B of the Personnel Manual. An orthopedic surgeon determined that the applicant's shoulder did not meet the mobility standards required for retention in the Coast Guard under Article 17-K-7(a) of the Personnel Manual. The doctor also noted that the applicant had an "overall psychological problem." The report of this first IMB was rejected by the Coast Guard for an error that is not specified in the record.

¹² The applicant also underwent surgery for bilateral hernias at this time, but he did not allege that the Coast Guard committed any error with respect to this medical condition in his application to the Board.

7. In November and December 198x, the applicant underwent orthopedic and psychiatric examinations in preparation for his second IMB. The orthopedist found permanent impairment of his right shoulder and prohibited him from performing duties that would involve raising his arms over his head or lifting, pulling, or pushing more than 20 pounds. The psychiatrist found that the applicant had a dependent personality disorder and simple phobic neurosis. He concluded that the applicant “presents no disqualifying mental defects which are rateable as a disability.” However, he also recommended that paranoid schizophrenia be “ruled out” and referred the applicant for psychological testing. The psychological tests revealed only that the applicant suffered from depression, anxiety, and somatic concern. Absent strong evidence to the contrary, government agents, including officers of the Public Health Service, are presumed to have executed their duties correctly, lawfully, and in good faith. See *Arens v. United States*, 969 F.2d 1034, 1037 (1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 197x). Moreover, although the Board has authority to correct records reflecting medical decisions, it should give great deference to the professional assessments of medical experts who actually examined a member at the pertinent time in question. Therefore, the Board concludes that the preponderance of the evidence indicates that paranoid schizophrenia was properly “ruled out” by the psychological testing conducted in December 198x in preparation for the applicant’s second IMB.

8. In January 198x, in light of the results of the psychiatric, psychological, and orthopedic evaluations, the second IMB found the applicant suffered from phobic neurosis and an impaired right shoulder. It determined that he was fit for only limited duty because of his shoulder and should be administratively discharged because of his phobia, in accordance with Article 17-B-7 of the Personnel Manual. It also recommended that he be evaluated by a PEB. The applicant signed a statement indicating he did not wish to rebut the IMB’s findings, in accordance with Article 17-B-8.

9. In February 198x, a PEB reviewed the applicant’s record and found him 20 percent disabled by the post-surgical condition of his right shoulder. However, it also determined that he had been 20 percent disabled by frequent dislocations of his shoulder prior to entering the service. Therefore, the PEB found that zero percent of his disability was attributable to in-service aggravation. This determination was correct under Article 17-L-1(j) of the Personnel Manual. The PEB’s failure to mention any mental illness was not an error because the phobias and personality disorders with which the applicant had been diagnosed by the Coast Guard did not constitute physical disabilities under Chapter 5 of the Medical Manual, Article 17 of the Personnel Manual, or the VASRD.

10. The record indicates that the applicant was counseled for his PEB by a law specialist in accordance with Article 17-C-9 of the Personnel Manual. On March 6, 198x, he rejected the findings of the PEB, requesting a formal hearing. The record indicates

that the applicant continued to feel anxious and seek psychological treatment. In April 198x, a doctor reported that he increasingly suspected “schizophrenic process” and had prescribed an antipsychotic drug. In May 198x, the applicant was counseled by another law specialist in preparation for his formal hearing. If he had appeared before a formal hearing, it is possible the PEB’s report would have been revised since his doctor increasingly suspected “schizophrenic process.” The PEB’s report might also have been revised to reflect any change in the condition of his shoulder. His medical records indicate that, by February 198x, the mobility of his shoulder had improved and met the Coast Guard’s standard for retention on active duty.

11. After being counseled by the law specialist, the applicant chose to accept the PEB’s report on condition that he receive at least 4 months of severance pay. Although the applicant alleged that the law specialist did not have his best interest in mind when he counseled him, the applicant did not prove that the law specialist advised him erroneously or in bad faith. Nor did the applicant prove that he was mentally incompetent to make the decision to accept the PEB’s findings. Moreover, there is no evidence to indicate that his mental condition was so disabling that the Coast Guard should have overridden his decision and convened a new PEB. The applicant continued to perform duty limited by the condition of his shoulder until his discharge on June 15, 198x.

12. The record indicates that the Coast Guard followed the proper procedures required by Articles 12 and 17 of the Personnel Manual, Chapter 5 of the Medical Manual, and the then-new PDES Manual with respect to the applicant’s medical boards and discharge. Under Articles 12-B-12, 12-B-16, and 17-K-15(c) of the Personnel Manual, Chapter 5 of the Medical Manual, and the provisions of the PDES Manual, the mental conditions that the applicant had been diagnosed with while in service – phobias, a personality disorder, and depression – did not constitute physical disabilities so as to entitle him to any disability rating. The only ratable condition he had been diagnosed with was the condition of his right shoulder, which the PEB determined was 20 percent disabling. The applicant did not prove that the condition of his right shoulder was more than 20 percent disabling when he was discharged in June 198x.

13. Although the applicant alleged that he never received the severance pay he was promised, documents in his military record indicate that he did receive \$2,234.40 in severance pay. The applicant has not proved by a preponderance of the evidence that these records are incorrect.

14. Initially, the applicant alleged that the Coast Guard erred by not diagnosing his schizophrenia. The record indicates that, after he left the Coast Guard, his diagnosis worsened gradually from anxiety and phobias in November 198x, to chronic anxiety and a personality disorder with schizotypal traits in 198x, to schizoid personality disorder in 198x, to paranoid schizophrenia in 198x. These diagnoses were made by the

VA, which in December 198x back-dated his initial 50-percent disability rating for schizophrenia to the date of his discharge. However, a diagnosis of schizophrenia in 198x does not prove the applicant suffered from it in 198x. The onset of schizophrenia may be very gradual, as indicated by the VA's diagnoses. Moreover, it is unclear whether the applicant ever suffered from schizophrenia. His doctors now report that his only mental illness is an anxiety disorder, which is not a rateable physical disability.

15. Under Article 17-A, the VA's decision to back-date his disability rating to his date of discharge is not determinative of whether the Coast Guard should have awarded him a 50-percent disability rating. The Court of Federal Claims has held that "[d]isability ratings by the Veterans Administration 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. . . . 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. . . . Accordingly, Veterans Administration ratings are not determinative of issues involved in military disability retirement cases." *Lord v. United States*, 2 Cl. Ct. 749, 754 (198x). Therefore, in light of the medical evidence and applicable law, the Board finds that the Coast Guard did not err or commit injustice by not diagnosing the applicant with schizophrenia in 198x.

16. The applicant later argued that the Coast Guard should have diagnosed his pituitary problems, which, he alleged, may have caused his psychotic symptoms. However, the applicant did not prove that there was anything wrong with his pituitary gland when he left the Coast Guard in 198x. His panhypopituitarism, empty sella syndrome, and possible pituitary tumor were not detected until 1993. Moreover, at least one of his doctors hypothesized that his pituitary problems may have been caused by the heavy doses of antipsychotic medicine prescribed him by the VA in the late 1980s. Therefore, the Board finds that the applicant has not proved by a preponderance of the evidence that the Coast Guard erred or committed injustice by not diagnosing his pituitary problems in 198x.

17. It is apparent from the record that the applicant has suffered greatly from medical problems during the past two decades. However, the Coast Guard's diagnoses and actions in 198x must be judged in light of his medical condition and fitness for duty in 198x. The record does not indicate that in 198x, the Coast Guard committed any error or injustice in diagnosing him with phobias and personality disorders, which do not constitute rateable disabilities, rather than with schizophrenia; in not diagnosing his pituitary problems, which were not discovered until 1993 and may not have existed in 198x; or in discharging him due to the condition of his shoulder, rated to be 20-percent disabling. The Coast Guard was not required in 198x to foresee the future and assign him disability ratings for medical conditions he would develop years later. When after leaving active duty, a veteran becomes disabled by medical conditions he incurred

while on active duty, his remedy lies with the Department of Veterans Affairs, not with the Coast Guard.

18. Accordingly, the applicant's request should be denied.

ORDER

The application of former XXXXXXXXXXXX, USCG, for correction of his military record is hereby denied.

