DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 2001-091

FINAL DECISION

[redacted] Chair:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was docketed on June 1, 2001, upon the Board's receipt of the applicant's complete application for correction of his military record.

The final decision, dated June 27, 2003, is signed by three duly appointed members who were designated to serve as the Board in this case.

The applicant asked the Board to correct his record to show that he was retired from active duty by reason of physical disability in the grade of lieutenant commander (LCDR) retroactive to January 2, 198X, the date he was discharged from the Coast Guard. He also requested promotion to commander (CDR) in the Coast Guard Reserve on the date of his actual promotion; back pay and allowances as a retired LCDR from January 2, 198X through the date of his promotion to CDR, USCGR and as a retired CDR from the date of promotion to CDR, USCGR to the present. He further requested the re-computation of his retired pay using the total number of reserve points accrued as of that date. He requested that the severance pay he received upon his discharge from the Coast Guard be recouped from any back pay award that he may receive based on a correction to his record. The applicant made the following alternative requests:

1. Disability retirement from the Coast Guard Reserve due to Bipolar Disease and other causes identified in his Veteran's Administration disability evaluation retroactive to the date he was placed on the Reserve Retired list, with back pay and allowances from that date. He also requested that the Coast Guard waive the repayment of his severance pay.

2. Referral of his case to the Central Physical Evaluation Board for full and formal consideration in accordance with the Coast Guard Physical Disability Evaluation System (COMDTINST M1850.2C) based on the presumption that his Bipolar Disease arose while he was on active duty. He further requested promotion to CDR in the Reserve, effective on the day of his actual promotion, with back pay and allowances as a retired LCDR from 2 January 198X through the date of his promotion to CDR USCGR

and back pay and allowances as a retired CDR from the date of his promotion to CDR until the present. He also requested recomputation of his Reserve points and that the severance pay he received upon his discharge from active duty be recouped from any back pay that he may receive as a result of a correction to his record

3. The granting of such other relief as the Board deems equitable.

SUMMARY OF RECORD AND SUBMISSIONS

The applicant alleged that his Bipolar Disorder[1] was disqualifying for active duty under the standards of the Department of Veterans Affairs [DVA] and under COMDTINST M6000.1B (Coast Guard Medical Manual). He further alleged that his Bipolar Disease was incurred on and aggravated by his active duty as a regular Coast Guard officer between June 197X and January 198X. The applicant stated that a Naval psychiatrist, who evaluated him in 199X at the request of the Coast Guard, supports his allegation that his Bipolar disease was incurred on and aggravated by his Coast Guard active duty service.

The applicant explained that there is no explicit reference to Bipolar Disease in his medical record because the Coast Guard failed to diagnose it, despite his specific requests for psychiatric help in 19XX, the one year of counseling he received in the early 70s, and the obvious decline in his performance in the early 1980s. He asserted that the decline in his performance was significant enough to cause the flight surgeon to recommend the applicant's down-grade from aircraft commander to first pilot, together with his placement on antidepressants for sleep related problems. He argued that Bipolar Disorder is difficult to diagnose because it usually manifests itself over a long period of time. He alleged that he repeatedly sought assistance, but the Coast Guard failed to diagnose his Bipolar Disorder while on active duty.

Background

The applicant graduated from the Coast Guard Academy and served on active duty from June 3, 197X until January 2, 198X, when (according to the DD Form 214) he was discharged from the regular Coast Guard because he was not selected for promotion to CDR, after twice being considered for promotion to that grade. However other evidence in the military record states that the applicant requested voluntary discharge from the regular Coast Guard, which was approved by the Commandant.[2] Subsequent to his discharge on August 1, 198X, the applicant accepted a commission in

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[1] Bipolar is defined as "pertaining to mood disorders in which both depressive episodes and manic or hypomanic episodes occur. Dorland's Illustrated Medical Dictionary, 29th edition, p. 214.

[2] In an earlier BCMR case filed by this applicant (Docket No. 126-88) and not related the issues in this one, the Board wrote, "On October 15, 198X, the applicant requested voluntary discharge from the Regular Coast Guard. On November 14, 198X, the Commandant approved his request for discharge and directed that he be separated on January 2, 198X. The applicant was discharged as directed."

the Coast Guard Reserve as a lieutenant (LT). The applicant served in the Coast Guard Reserve until his retirement on July 1, 199X, at the rank of CDR.

The applicant's Coast Guard Reserve service seemed uneventful until about November 199X when during his quadrennial physical examination, he was found to exceed the Coast Guard's weight standards. The applicant noted on the medical examination form that he had been taking daily doses of Zoloft and Depakote since 199X, and that he had suffered from depression or excessive worry and had been treated for a mental condition.

On November 6, 199X, the applicant was placed on weight probation and directed to lose all excess weight by March 4, 199X. The applicant did not meet this deadline and requested an extension of his probation, citing his medical condition and medication as the reasons for his inability to comply with weight standards. The applicant's command recommended that the Commandant disapprove the request for an extension of weight probation and requested that the applicant be transferred to the inactive status list (ISL)[3].

On April 7, 199X, the Commandant disapproved the applicant's transfer to the ISL. The Commandant commented that the applicant's Bipolar Disorder was considered physically disqualifying for military service and directed the applicant's command to arrange for a military psychiatric evaluation of the applicant and an initial medical board (IMB)[4]. The Commandant also directed that the applicant perform no further Reserve drills.

On May 1, 199X, a Coast Guard clinic physician diagnosed the applicant as suffering from clinical depression and referred him to the psychiatry department of a Naval hospital for further evaluation.

A psychiatrist at the Naval hospital evaluated the applicant in two sessions. The September 199X medical note indicates that the applicant was there for an evaluation of his sleep apnea and unipolar[5] cyclical depression in connection with his pending medical board. The psychiatrist stated that the applicant was currently on medications

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[3] ISL is a list of officer personnel in the Standby Reserve who may not earn points for retirement or qualify for, or be promoted, and may not receive pay and allowances.

[4] A medical board is a clinical body normally comprised of one or more medical officers who describe an individual's disease or injury, the physical impairment, and the impairment of function, including any latent impairment. It includes a written professional opinion on whether the member's physical and mental qualifications satisfy the medical standards for retention. The IMB is the written report of a medical board convened by an entity other than the president of the Central Physical Evaluation Board to evaluate a member's fitness for duty and to make recommendations consistent with the findings.

[5] Unipolar "[pertains] to mood disorders in which only depressive episodes occur." Dorland's, p. 1911.

with good control of his hypomanic[6] and depressive symptoms. He stated that the applicant's "symptoms have been pervasive throughout his career (primarily depression). This has been confirmed by active duty flight surgeon." The psychiatrist noted that the applicant was morbidly obese, held a security clearance, and had no current depressive or manic symptoms. He also noted that the applicant was not suicidal, homicidal or psychotic and that his judgment and insight were within normal limits. The psychiatrist scheduled a second evaluation for the applicant and requested that he bring his medical record.

On November 17, 199X, the applicant had his second evaluation by the psychiatrist in connection with the pending medical board proceedings. He described the applicant at that time as mildly agitated and anxious, but not suicidal. The psychiatrist stated that "documentation from active duty period demonstrates that [the applicant] suffered from this affective disorder while serving on active duty and that it was aggravated while on active duty as a helicopter pilot." He again referred to a flight surgeon's report. He diagnosed the applicant as suffering from Bipolar disorder with mixed features, primarily depression, with intermittent suicidal ideation (none current). He stated that the applicant needed to be "medically boarded from the Coast Guard" and recommended a medical board, which should have occurred while the applicant was on active duty.

On January 6, 199X, the applicant had a medical physical evaluation for the purpose of his pending medical board. He noted that he was taking Effexor, Lithium and Ritalin and had been treated for Bipolar Disorder and Depression. The applicant also indicated that he had or has suffered from the following while in the military: frequent or severe headaches; dizziness or fainting spells; eye trouble; ear, nose or throat trouble; hay fever; head injury; pain or pressure in chest; cramps in legs; frequent indigestion; broken bones; tumor, growth, cyst, cancer, rupture/hernia; car, train, or air sickness; and frequent trouble sleeping. In response, the physician noted that the applicant had a history of bilateral knee chondromalacia with occasional pain; history of rupture patellar tendon left leg in 199X, requiring extensive rehabilitation; history of chronic prostatitis; weight gain secondary to current/previous medications; recurrent tennis elbow; history of esophageal spasm, acid reflux, intermittent but current; right leg phlebitis 196X, completely recovered within three months; fractured second metacarpal left hand; mild seasonal allergy; head injury 1981 NCNS; headaches as child resolved; struck in eye in 1975 playing racket ball resolved; fainting as child, but now gets disoriented; and obstructive sleep apnea since May 199X.

Initial Medical Board

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[6] Hypomania is defined as "an abnormality of mood resembling mania . . . but of lesser intensity." Dorland's, p. 864.

On January 8, 199X, an IMB was held in the applicant's case to determine the applicant's fitness for duty due to Bipolar Disorder, Mixed[7]. The IMB stated the following:

> Review of the evaluee's Health Record, shows that the evaluee had a routine quadrennial physical on 6 Nov[ember] 199X. Depression was noted and the evaluee was on medication of Zoloft 25 mg daily and Depakote 250 mg BID at that time. This physical was erroneously qualified by both the examining physician and the reviewer, for at that time, the evaluee had been treated for depression for approximately 3 years. Previous physical examinations on 28 Nov[ember] 8X, 21 Oct[ober] 8X [discharge physical] . . . , 12 Apr[il] 198X (annual aviator examination by a CDR H) revealed no significant or disqualifying defects. The examination by [CDR H] does note on the SF93; "pt[patient] has [occasional] anxiety with [problems] for a day or two - [patient] recently had close friend die and deaths in family. It has been over 1 year since these deaths and he is doing well with only normal situational job [problems]." On the SF 88, Dr. H. qualified the evaluee for Service Group I aviation assignments (i.e. pilot) . . ., and did not note any defects, nor recommend further examinations . . . A thorough review of the health record revealed no other comments whatsoever regarding the evaluee's mental health, other than those noted above.
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> The flight surgeon report referred to . . . by [the Naval psychiatrist] was a letter dated 11/18/9X from [CDR H] (now retired), which was subsequently provided by the evaluee. [CDR H's] actions in regard to the grounding and aircraft accident are not documented in the evaluee's health record, however, [CDR H] found the evaluee fit for aviation duties in April 198X . . . The evaluee had also provided a recent letter from a Capt . . . a former executive officer, concerning the evaluee's behavior/performance at this same period of time. It should be noted, that neither [CDR H] nor [the] Capt . . . questioned the evaluee's fitness for aviation duties or fitness for duty in the Coast Guard.
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> PHYSICAL EXAMINATION: Physical examination on 6 Jan 199X was unremarkable except for obesity. Present medications: Effexor 75 mg BID, Lithium 300 mg BID, and Ritalin 10 mg BID.
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> OPINIONS: It is the opinion of the Board that the diagnosis of Bipolar Disorder, Mixed is correct, that the patient is not fit for full duty in the U.S. Coast Guard and it is expected that the evaluee will never be fit for

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[7] "A mixed (Bipolar) Episode is characterized by a period of time (lasting at least 1 week) in which the criteria are met both for a Manic Episode and for a Major Depressive Episode nearly every day." Diagnostics and Statistical Manual of Mental Disorders, Fourth Edition, p. 362.

> full duty. Although this condition may have begun during a period of active duty, it is clear it was not a condition of sufficient severity to be physically disqualifying (per Medical Manual) or a disability (per PDES Manual), and the evaluee continued in a fit for full duty status until his separation from active duty. Further there is no evidence that the condition was aggravated by reserve duty.
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> RECOMMENDAITON: Referral to Reserve Personnel Management Division for disposition

On February 26, 199X, the applicant submitted a rebuttal to the IMB. In it, he alleged that the IMB disregarded the opinion of the Naval psychiatrist that the applicant's Bipolar Disorder was incurred on and aggravated by active duty. He further alleged that the IMB did not have evidence of the medical treatment he received from a social worker prior to 1978 because the evidence was not in his medical record, and although he requested the records from the hospital they had not arrived at the time he submitted his rebuttal. He also alleged that the IMB "[gave] undue weight to the Coast Guard's failure to detect [his] condition while on active duty." Last, he argued that the IMB's conclusion that his condition would have been neither disqualifying nor a disability was not justified. In this regard, the applicant argued that if he had been diagnosed in the early 1970's, it would have been necessary, according to the Medical Manual, to process him through the physical disability evaluation system.

On March 26, 199X, the Commander, Coast Guard Personnel Command returned the IMB to the applicant's command without action. CGPC stated the following:

> [A] Physical Evaluation Board must find whether or not each disability is the proximate result of performing active duty or inactive duty training. In reviewing the IMB on 20 March 199X, a Central Physical Evaluation Board that included a [CDR] in the Coast Guard Reserve was unable to find a link between [the applicant's] reserve duties and his diagnosed disability. The IMB does not support a finding that the disability is connected to [the applicant's] service in the Coast Guard Reserve.
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> A Claim by [the applicant] that he was disabled and unfit when released from active duty must be handled through the Board for Correction of Military Records.

On July 1, 199X, the applicant was transferred to the Retired Reserve without pay until he reaches age 60.

Statements Submitted by the Applicant

1. The applicant submitted a medical note from a civilian nurse, dated November 9, 199X. The note indicates that the applicant referred himself for counseling

for the purpose of exploring the severity and origin of his feelings of depression, particularly in light of the fact that many of his family members suffered either from depression or Bipolar Disorder. The note states that the applicant felt overwhelmed, guilt, and a lack of energy, with suicidal ideation, over the past few weeks. No diagnosis was contained in this note.

2. In a November 18, 199X letter, the flight surgeon (CDR H), who was mentioned in the Naval psychiatrist's report, wrote that from 1980 to the summer of 1983, he and the applicant, whom he considers a friend, were stationed at the same air station. He was the flight surgeon/family practice physician and only medical officer for the air station. He stated that the applicant had informed him that the applicant was undergoing a fitness for duty psychiatric evaluation due to Bipolar Disorder, to which CDR H stated the following:

> I feel bad that I did not help [the applicant] get diagnosed sooner. In retrospect, he seemed to meet all the criteria for these diseases. [The applicant] is blessed with a very superior intellect and very friendly but overpowering personality, which makes any attempt to deal with him . . . a challenge.
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> [The applicant] was known for never being in emotional control and never being able to stay on task. He would have great periods of energy . . . [b]ut he would then be distracted by other projects, or becoming emotionally detached and lose his ability to concentrate and care. I spent hours in consultation with the two CO's and XO's that tried to get work out of him.
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> I grounded [the applicant] once and then concurred with downgrading him from aircraft commander to first pilot. This was due to a severe depressive episode that occurred about the time he made a wheels up landing. However, he had become distracted and despondent before the minor incident and I think the accident was the result of the depression and inability to concentrate, not the other way around. There was also another period of time when he was what seemed overly distracted and despondent after a friend of his was killed in a CG helo accident. I think he was briefly treated with antidepressants, but only for "sleep" so we could preserve his ability to return to flying without the mandatory full psych evaluation and NAMI bureaucracy that it would have caused. . .
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> I . . . [agree] that [the applicant's] behavior would be best explained by the diseases with which he is now diagnosed. I wish him well with his treatment and hope he will soon lose the "he's out of control because he's

so smart" label he has carried with him his entire life. This very poor excuse for his behavior never seemed right to me.

3. The applicant's XO[8] for the period July 198X through June 198X submitted a statement dated November 18, 199X. He wrote that the applicant had periods of lethargy and very high energy. He observed that the applicant appeared capable of working long hours without fatigue. He stated that during the applicant's high energy periods he was very quick, witty and cheerful. At other times, according to the XO, the applicant was much quieter and seemed not to be himself; he was deliberate in speech and action. The XO stated that at times the applicant seemed unusually tired, wherein he was compelled to ask the applicant about routine tasks during these periods. The XO offered the following memory about the applicant: "I vividly remember an occasion when [the applicant] spoke at a pilots meeting to admit that he had briefly fallen asleep while flying one night during the previous week . . . (One must realize that falling asleep at any time while flying is in itself astonishing but to have it happen in that risky area on a night mission when adrenaline normally would be flowing heavier is incredible.)"

4. The applicant submitted a recent statement from another CDR[9] who was at various times from 198X to 198X, the applicant's supervisor, first as operations officer (Ops) and then as XO. The Ops described the applicant's performance during the period as widely variable, fully capable of outstanding performance one minute and incapable of completing the most routine task the next. He recalled that during one of the applicant's low periods, the applicant mentioned that he was having "disaster fantasies" in which he was involved in an aircraft crash and that each time he flew, he asked his wife to make sure that his children did not forget him. The Ops continued:

I was quite concerned about this, and told the applicant I wasn't sure he should be flying if he felt that way. I . . . discussed it . . with [CDR H] . . .

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[8] This individual was the applicant's supervisor for the performance period from January 1, 198X until June 3, 198X. He gave the applicant 3s in managing resources and speaking skills and a 2 in occupational field skills. In his comments the supervisor noted that the applicant performed poorly in managing the club and the club manager and that he had completed three assigned tasks late. He also stated that the applicant had encountered some problems with flying. He stated that the applicant had identified the problems himself and it was the supervisor's opinion that "[the applicant's] problems resulted from inadequate exposure to flying . . . and a general feeling of discomfort and no confidence in himself or the helicopter (resulted from the death of a very close friend in a crash of a CG helicopter)." The supervisor also wrote that the applicant displayed sound management and leadership traits in his position as Head of the Services Department.

[9] This individual was the applicant's supervisor on the OER for the period January 1, 198X to April 27, 198X. The applicant received no below average marks on this evaluation. The supervisor wrote that the applicant had been reinstated as an aircraft commander. He further commented, "[The applicant's] one weakness in this area is still an occasional tendency to be very heavy-handed, using his physical presence, command voice, and intelligence to intimidate subordinates. In one case, he typed and sent a detailed memo to a junior officer explaining why a short rough draft of a letter should have been written differently. In that case, I feel that a short phone cal or conversation would have been more appropriate, but for the most part his counseling of subordinates concerning performance . . . is extremely well done."

> the Air Station Flight Surgeon. . . As I recall, we decided to wait and see if [the applicant's] outlook improved, but soon afterwards [the applicant] made a "wheels up" landing while conducting a public demonstration . . . and was grounded. . . He was then downgraded from aircraft commander to first pilot or copilot for several months. . . . In hindsight I think we should have instead pursued a medical discharge or retirement of [the applicant] based on these cumulative events. Most probably our decision not to was a natural reaction trying to avoid risking [the applicant's career].

5. The applicant submitted a statement dated February 22, 199X, from a captain, who in his capacity as a social worker treated the applicant for approximately one year some time between 197X and 197X. The captain stated that he did not have any of the applicant's medical records upon writing this statement, but he recalled that the applicant was referred to him by the dispensary psychiatrist for counseling to assist the applicant with enhancing his relationships with his coworkers and his ability to deal with phase of life problems.[10] The captain stated the following:

> I do remember treating you for Phase of Life problems during that time period for approximately one year with weekly 45-minute psychotherapy sessions. The things that I do remember that stood out [was the applicant's] very analytical approach to problem solving, setting goals that were impossible to achieve with concomitant feeling of inadequacy, frustration and periods of excitement and unwarranted sorrow. These periods of excitement and sorrow were, at that time, considered to be within the normal range and did not appear to pose a threat to yourself and others.

6. On July 5, XXXXX, a civilian neuropsychiatrist, who has treated (and continues to treat) the applicant for manic-depressive illness and sleep apnea since 199X, wrote that the applicant has had both of these conditions during most of his adult life, including the period of his active duty service. This individual stated that the applicant's manic-depressive illness has resulted in recurring episodes of serious, sometimes incapacitating depression, extending back to active duty. This diagnosis, according to this individual, is consistent with that of the flight surgeon and the applicant's two former active duty supervisors.

The nueropsychiatrist stated that the applicant's sleep apnea, which has been confirmed by polymnography, has been the cause of his long-standing problems

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[10] A clinical note dated November 7, 197X corroborates the captain's statement that the applicant was referred to him for counseling. The medical note states that the applicant's main problem at that time "centered around a constant need to be first coupled with a feeling of low self-esteem. He is motivated to work on his problems and this should be regarded as an asset for the future." The note further stated that the captain agreed to counsel the applicant once a week for patient oriented supportive, non-directive psychotherapy. The captain stated that he found "[the applicant] as extremely competent to continue in his career as a Coast Guard Flight Officer."

staying awake while driving and flying. According to this doctor, the sleep apnea diagnosis is consistent with the experiences documented in the letter from the flight surgeon and the applicant's former active duty supervisors.

Pertinent Excerpts from Copies of the Applicant's Medical Record

According to the evidence of record, the applicant had five complete physical evaluations while on active duty. The dates for these evaluations were February 22, 198X, April 8, 198X, April 7, 198X, April 12, 198X, and October 21, 198X. On each examination except for the one dated April 12, 1983, the applicant indicated that he had never attempted suicide, never had frequent trouble sleeping, depression or excessive worry, or never had nervous trouble of any sort or been treated for a mental condition. The applicant indicated on the forms he completed for his April 12, 198X annual flight physical, that he had frequent trouble sleeping, depression, and or excessive worry. In this regard, the physician stated the following: Patient has occasional job related anxiety and problems sleeping for a day or two -- patient recently had a close friend die and deaths in family. It has now been more than a year since these deaths and he is doing well with any normal situational job problems."

Pertinent Excerpts and summaries from the Applicant's Performance Record

Active Duty

The applicant's performance record reveals from 197X until approximately 198X, he performed his duties in an excellent manner. In addition to the comments discussed in footnotes 1 and 2, the applicant encountered some problems in his performance as the as chief of the teleprocessing services branch. In officer performance evaluations (OERs) covering the periods September 1, 198X to December 31, 198X and from January 1, 198X to July 31, 198X, the applicant received marks of 3 in writing skills, occupational field skills, and judgment on two performance evaluations. Some of the comments on these OERs were:

"Immerses himself in the activities of the Branch for familiarization purposes and to educate/assist subordinates. Needs to recognize when this involvement is required vice something that is purely self-gratifying. "

"In dealing with problems as more than just obstacles to overcome, he sometimes overacts; i.e., recommending quick and complicated solutions to routine administrative problems."

"[I]n his enthusiasm to "please all of the people all of the time", tends to over task himself and his Branch thereby losing sight of his original goals. Thus, some projects are always in the development stage with completion just around-the corner."

The applicant's last two active duty OERs for the period August 1, 198X to March 31, 198X and from April 1, 198X to January 2, 198X, contain average to above average marks, with the reporting officer describing the applicant as an exceptional officer.

The applicant's active duty record also reveals that he graduated from the Coast Guard Academy and successfully completed flight school and the Naval Post graduate school. His record contains numerous letters of appreciation and awards. He also regained his aircraft commander certification after losing it after the wheel up landing.

Reserve Performance Record

The record does not contain any evidence that the applicant encountered any performance difficulty in his Reserve career, reaching the rank of CDR, until December 19, 199X, when he was determined to be out of compliance with weight standards. The applicant indicated on forms completed for this physical evaluation that he was taking daily doses of Zoloft and Depakote. He also indicated that he had been treated for a mental condition and that he had suffered from depression and excessive worry. The physician noted that the applicant suffered from clinical depression.

Department of Veterans Affairs Rating [DVA] Decision

After the Applicant's retirement from the Coast Guard Reserve, he submitted a claim for disability compensation to the DVA, which granted the applicant a 50% service connected disability rating for Bipolar Disorder effective March 2, 199X.[11] The DVA's 50% disability rating was assigned because it determined that the applicant had occupational and social impairment with reduced reliability and productivity resulting from some of the following symptoms: "flattened affect; circumstantial, circumlocutory, or stereotyped speech; panic attacks more than once a week; difficulty in understanding complex commands; impairment of short-and long-term memory (e.g., retention of only highly learned material. Forgetting to complete tasks); impaired judgment; impaired abstract thinking; disturbances of motivation and mood; difficulty in establishing and maintaining effective work and social relationships."

The DVA report states that the applicant's military medical record reveals during the period from June 27, 19XX to January 2, 19XX, the applicant was treated for a neuropsychiatric condition. The report noted that the applicant had been treated in 19XX by a psychiatrist and in 19XX by a social worker.

The applicant was evaluated by a DVA psychiatrist on June 5, 199X and diagnosed as having the following conditions: Bipolar disorder and obsessive-compulsive disorder traits, obesity, sleep apnea, and knee problems. The DVA Mental Status Examination found that the applicant was alert, oriented, and cooperative with

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[11] The DVA also granted the applicant service connection for his fracture 2nd metacarpal, left hand with a 0% disability rating; service connection for bilateral chondromalacia with a 10% disability rating; service connection for chronic prostatitis with a 10% disability rating.

the interview. His speech was of normal speed and his thought processes were logical and coherent, with no evidence of loosening of associations or flight of ideas. There was no evidence of delusions or suicidal or homicidal ideations. There were no current auditory or visual hallucinations and memory was intact. The psychiatrist wrote the following about the applicant's insight. "[The applicant's] insight into his present condition appears to be intact, and his judgment at this time appears to be okay as he is currently under the care of a psychiatrist and receiving treatment with medications, although he does report times of impulsivity when he gets into a more manic episode." The psychiatric report stated that it appeared that the applicant's symptoms had impaired his functioning at work, as the applicant reports that on some occasions he will have many ideas, generate a lot of work, and at other times when his mood is lower he is quite sluggish and unable to get things done. It also states that the disease has impaired the applicant's home life creating conflict between him and his wife.

On November 20, XXXX, the DVA granted the applicant a 50% service connected disability rating for sleep apnea. The DVA report noted that the applicant had sleep apnea symptomatology while on active duty and he was recently treated for the condition at a DVA medical center. The report stated that current medical evidence shows that the applicant has mild dyspnea on exertion and experiences mild afternoon fatigue.

Views of the Coast Guard

On February 23, 2003, the Board received an advisory opinion from the Chief Counsel of the Coast Guard, recommending that the Board deny relief to the applicant. The Chief Counsel commented that the applicant's active duty records contain no evidence of a Bipolar Disorder diagnosis and the only evidence that the disease existed during the applicant's active duty period was constructed years (1997 and later) after his 1986 discharge. In this regard the Chief Counsel stated the following:

> In his health record, Applicant consistently responded in the negative to any question concerning depression, nervous disorder, suicidal tendencies, or trouble sleeping. The Applicant argues that the DVA rating decision of 60% for his conditions substantiates an error with respect to the Coast Guard's failure to rate him for a disability retirement. The sole basis for a physical disability determination in the Coast Guard was (and is) unfitness to perform duty . . . Any long-term diminution in the Applicant's earning capacity attributable to his military service is properly a matter for the DVA, not the Coast Guard or the BCMR.
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> Notwithstanding the fact that the Applicant contends that the Coast Guard should have retired him with a ratable disability, it should be noted that throughout the Applicant's active duty career he was found capable of performing all the duties assigned to him. This fact is made stronger by

the fact that the Applicant had a successful career as a reserve officer after his discharge from active duty.

The Chief Counsel stated that the findings of the DVA regarding the applicant's alleged disabilities have no bearing or legal effect on the Coast Guard's medical findings. In this regard, the Chief Counsel stated that the DVA, taking the whole person into consideration, determines to what extent a veteran's civilian earning capacity has been reduced as a result of physical disabilities and provides compensation. In contrast, the Coast Guard determines if a member is unfit to perform his military duties and then rates to what extent the medical condition prevents the member from performing his duties. He further stated as follows:

> The procedures and presumptions applicable to the DVA evaluation process are fundamentally different from, and more favorable to the veteran than, those applied under the PDES (Coast Guard's Physical Disability Evaluation System). The DVA is also not limited to the time of Applicant's retirement from the Service. If a service-connected condition later becomes disabling, the DVA may award compensation on that basis. The DVA's finding that the Applicant was 60% disabled due to a combination of disorders isn't binding on the Coast Guard nor indicative of an error by the Coast Guard at the time of the applicant's discharge.

With respect to the applicant's several allegations of error in the IMB process, the Chief Counsel stated the IMB was properly constituted because regulations do not require that a board certified psychiatrist sit on the IMB, even if a mental disability is being considered. He stated that the IMB considered all of the evidence and afforded the applicant all the rights required under the regulation.

The Chief Counsel asserted that the applicant has failed to show by a preponderance of the evidence that the Coast Guard committed an error or injustice by not evaluating him under the physical disability evaluation system while on active duty. He stated that absent strong evidence to the contrary, it is presumed that Coast Guard officials carried out their duties lawfully, correctly, and in good faith. Arens v. United States, 969 F. 2d 1034, 1037 (D.C. Cir. 1990).

Applicant's Response to the Coast Guard Views

On April 3, 2003, the applicant submitted a reply to the views of the Coast Guard. He stated that the Coast Guard should accept and act on the written evaluation of the Naval psychiatrist, who determined that the applicant suffered from Bipolar Disorder that was incurred on active duty. In addition, the applicant points out that the Navy psychiatrist stated that the disorder "should have been handled on active duty." The applicant also quoted from current letters he obtained from the flight surgeon and the neuropsychiatrist. Both doctors stood by their earlier statements. One doctor wrote that there is ample evidence in the applicant's record that he suffered from Bipolar

Disorder while on active duty. The neurospychiatrist expressed concern that the IMB made a decision without having a psychiatrist as a board member.

FINDINGS AND CONCLUSIONS

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

1. The BCMR has jurisdiction of the case pursuant to section 1552 of title 10, United States Code. The application is timely.

2. The Chairman has recommended disposition of this case without a hearing. 33 CFR 52.51. The Board concurs in that recommendation.

3. Not only must the applicant prove that he incurred Bipolar Disorder while on active duty, he must also prove that he was unfit to perform the duties of his grade and rank as a result of this disease while on active duty. The applicant has not shown by a preponderance of the evidence that during his active duty service from 197X to 198X, he suffered from Bipolar Disorder. There is some evidence that while on active duty, he experience some symptoms that possibly could have been the early warning signs that he would eventually develop a Bipolar Disorder. There are no entries in his medical record showing that he was ever diagnosed with this disorder, while on active duty. Moreover, during the required medical examinations while on active duty, the applicant denied that he had experienced depression, nervous disorder, suicidal tendencies or trouble sleeping, except during a 198X examination in which he indicated that he had had trouble sleeping, depression, and excessive worry. His active duty medical record indicates that CDR H (the flight surgeon) who examined the applicant, attributed these problems to job related anxiety and the death of a friend. There is no evidence in the active duty medical record indicating that the applicant was ever placed on medications for the treatment of depression (although temporarily given medication to help him sleep), lost time form work due to depression or some other mental illness, or was considered unfit to perform his duties. In fact, CDR H qualified the applicant for flight duties during the 198X physical examination.

4. The 19XX medical note from the social worker indicated that his counseling sessions with the applicant "centered around a constant need to be first coupled with a feeling of low self-esteem." However, the social worker wrote that he found the applicant "extremely competent to continue in his career as a Coast Guard Flight Officer."

5. The various recent statements submitted by the applicant are insufficient to establish that the applicant suffered from Bipolar Disorder while on active duty and that he was unfit to perform his duties due to such a disability. In recent statements on behalf of the applicant, CDR H (the flight surgeon), as well as two of the applicant's active duty supervisors, mentioned the applicant's inability to focus at times, his

depression over a his friend's death, and his wheels up landing resulting in the applicant's being downgraded from aircraft commander to first pilot. However, CDR H never states that it was his medical opinion that the applicant suffered from a Bipolar Disorder in 198X. He stated that in retrospect the applicant seemed to meet all the criteria for the disease. Moreover, in his April 12, 198X, evaluation of the applicant for his annual flight physical, he wrote the following: "Patient has occasional job related anxiety and problems sleeping for a day or two -- patient recently had a close friend die and deaths in his family. It has now been [more than] 1 year since these deaths and he is doing well with any normal situation job problems." From this evidence, the Board concludes that CDR H was not concerned that the applicant's depression was anything other than a temporary matter. CDR H found the applicant fit for duty, including flight duty. If at the time that he examined the applicant, CDR H believed that the applicant suffered from a Bipolar Disorder, he certainly would not have found him qualified to fly an aircraft, without putting him through a fitness for duty determination.

6. The other evidence, from the Navy psychiatrist and the civilian neuropsychiatrist, is equally unpersuasive in establishing that the applicant suffered from Bipolar Disease and was unfit to perform his duties while on active duty. The Naval psychiatrist who examined the applicant in 199X for the IMB, stated that based on "documentation from his active duty period" (referencing the CDR H's report) it was his opinion that the applicant's Bipolar Disorder was incurred on and aggravated by his active duty. This psychiatrist does not relate any other specific evidence from the applicant's medical or performance record covering a period of approximately 15 years of active duty to support his conclusion that the applicant suffered from Bipolar Disorder while on active duty. His evaluation of the applicant does not provide the Board with a detailed description of the applicant's medical, family or social history; for instance the psychiatrist does not discuss how soon after his discharge did the applicant began treatment with a civilian psychiatrist. The neuropsychiatrist began treating the applicant in 199X, well after his discharge from the Coast Guard.

7. The letters from the applicant's two active duty supervisors from the 1980's suggest that the applicant at times had difficulty focusing and that he suffered from "depression" upon his friend's death. However, suffering a short-term depression upon the death of a close friend does not seem unusual. Each of the supervisors also reported that at times the applicant seemed to have boundless energy. Whether these were symptoms of oncoming Bipolar Disorder or not, this Board concludes that the applicant's fitness for duty was not in question since neither supervisor took any steps to have the applicant medically examined.

8. Article 2.C.2.b. of M1850.2c (Physical Disability Evaluations Manual) states that disability separation or retirement is designed to compensate a member whose military service is terminated due to a physical disability which renders the member unfit for continued duty. It further states that neither the disability evaluation system nor the law at 10 U.S.C., Chapter 61 is to be "misused to bestow compensation benefits

on those who are voluntarily or mandatorily retiring or separating and have therefore drawn pay and allowances, received promotions, and continued on unlimited active duty while tolerating physical impairments that have not actually precluded Coast Guard service." Therefore, even if the applicant did have Bipolar Disorder while on active duty, it was not Bipolar that caused his separation from active duty. As noted by the BCMR in an earlier unrelated case filed by this applicant, he requested to be discharged and the Commandant approved that request. The applicant's active duty career was not cut short by a physical disability, but by the applicant's request to be discharged, as confirmed by his last active duty OER. However, under 14 U.S.C. § 283 and the Article 12.A.13.f. of the Personnel Manual, the applicant could have remained on active duty as a twice-failed LCDR until he earned 20 years of active service, upon which he would have been retired.

9. Since the applicant continued to perform his duties until the time of separation from active duty, there is a presumption that he was fit for duty. In order to overcome this presumption, the applicant must establish by a preponderance of the evidence that (1) because of the disability, he was physically unable to perform adequately in his assigned duties; or (2) because he suffered an acute, grave illness or injury immediately prior to or coincident with processing for separation, which rendered him unfit for further duty. A review of the applicant's service record reveals that he more than adequately performed his duties, while encountering some challenges. Although he lost his aircraft commander designation in the early 1980's, he regained that status. He went on, as the advisory opinions points out, to have a solid career in the Coast Guard Reserve. The applicant has failed to rebut the presumption that he was fit for duty while on active duty. Since he has failed to rebut this presumption, his case should not have been referred for a disability evaluation. Chapter 2.C.2.b.(2) of COMDTINST M1850.2C states, "A member being processed for separation or retirement for reasons other than physical disability shall not be referred for disability evaluation unless he [overcomes the presumption of his fitness for duty]", which the applicant has not done.

10. In light of the above findings, the Board finds that the Coast Guard did not commit a violation of Chapter 5.B.10 of the Medical Manual in not processing the applicant through the Physical Disability Evaluation System for alleged Bipolar disease upon his discharge from active duty. Moreover, a referral would not have guaranteed that the applicant would have been found unfit to perform his duties. Chapter 3.F.(2) of the Medical Manual states that possessing a member for a disqualifying condition does not mean automatic retirement or separation. This section reinforces unfitness for duty as the standard on which a disability retirement or separation is to be based.

11. The fact that the DVA granted the applicant a service-connection for Bipolar Disorder is not proof by a preponderance of evidence that the Coast Guard committed an error or injustice by not granting him a discharge due to physical disability. The Court of Federal Claims has stated 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).

12. The applicant complained that he had other medical conditions, in addition to the Bipolar Disorder for which he should have been granted a disability separation. However all of the other conditions mentioned by the applicant were noted in his medical record. Apparently, these conditions did not interfere with the applicant's ability to perform the duties of his rate and grade.

13. The applicant has also failed to establish a causal link between his Bipolar Disorder and his reserve duties, which normally consist of one weekend drill per month and short periods of active duty training. The applicant would be entitled to a medical retirement as a Reservist, if he establishes eligibility under either 10 U.S.C. § 1201 or 10 U.S.C §1204, which requires a showing that his Bipolar Disorder and unfitness for duty were the proximate result of performing active duty or inactive duty training. It would be very difficult for the applicant to show that his Bipolar Disease was incurred during a weekend drill or a short period of active duty. The evidence offered by the applicant shows that he was diagnosed and/or treated by a civilian psychiatrist for a mental disorder beginning some time in 199X. However, the applicant did not bring this to the attention of the Reserve program until a 199X physical examination in which he was determined to be overweight. The applicant performed his Reserve duties in an excellent manner. Accordingly, the applicant has failed to establish that the Bipolar Disorder was the proximate result of Reserve active duty or active duty training. Nor has he shown that he was unfit to perform those duties.

14. There is no merit in the applicant's argument that the IMB was not properly composed because it did not include a psychiatrist as a member. Chapter 3.C.1 of COMDTINST does not require a psychiatrist to be a member of an IMB even when considering a mental disability. Chapter 3.C.3 requires a psychiatrist to be a member of a medical board if there is a question of mental competency. There is no evidence in the record that the applicant was or is incompetent. In addition, the Navy psychiatrist who evaluated the applicant specifically for the IMB stated that his judgment and insight were within normal limits, as did the DVA psychiatrist who examined him on June 5, 199X.

15. All of the applicant's contentions have been considered; those not discussed within the Findings and Conclusions are either irreverent or not dispositive of the issues in this case.

16. In conclusion, the Board finds that the Coast Guard properly discharged the applicant in 198X at his request. There is insufficient evidence in the medical record establishing that the applicant suffered from Bipolar Disorder while on active duty. The applicant has also failed to rebut, by a preponderance of the evidence, the fitness for duty presumption created by the fact that he adequately performed his duties until he was separated from the active duty Coast Guard. Neither has the applicant shown that his Bipolar was incurred on or aggravated by his Reserve service. Accordingly, the Board finds no basis on which to grant relief. The applicant's request should be denied.

ORDER

The application of xxxxxxxxxxx, USCGR (Ret.), for the correction of his military record is denied.