

**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-039

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

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 Chair docketed the case on December 4, 2006, upon receipt of the applicant's completed application and military and medical records.

This final decision, dated June 28, 2007, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant asked the Board to correct his record to show that he was discharged from the Coast Guard in 1987 by reason of physical disability instead of by reason of convenience of the government due to good and sufficient reason, as determined by the Commandant.

The applicant did not specifically identify the medical disability that he allegedly incurred while on active duty that would have entitled him to a discharge by reason of physical disability. A review of the Department of Veterans Affairs medical record suggests that he is seeking a physical disability separation due to schizophrenia and/or a hearing loss.

The applicant alleged that the ship's doctor was not a physician and "certainly was not a psychiatrist." He alleged that he requested that the executive officer allow him to speak with the commanding officer (CO) of the cutter about receiving a medical discharge, but the executive officer refused to allow him to speak with the CO and told the applicant that he did not deserve a medical discharge.

The applicant stated that he discovered the alleged error in 1989, but did not provide a reason why it is in the interest of justice for the Board to waive the statute of limitations in his case.

SUMMARY OF RECORD

On July 13, 1987, the applicant enlisted in the Coast Guard. His enlistment medical examination showed that he was in good health and qualified for enlistment.

On September 24, 1987, the CO referred the applicant to a United States Air Force hospital for a mental health evaluation. The CO stated the following in his referral:

[The applicant] reported aboard this unit on 16 September and within two days, he had advised the command that he no longer wanted to be in the Coast Guard and wanted to quit. After that, he became despondent and withdrawn, speaking only when questioned then only mumbling and looking at the deck. He also mentioned suicide as a way out of the Coast Guard, although he did not specifically threaten it.

I discussed this problem at length with [the applicant] on 22 September and he indicated that his wife was leaving him because of the pressures of military life . . . He is 19 years of age and his wife is 18. He told me that he is primarily unhappy because (1) the recruiter who signed him up into the Coast Guard lied and (2) the Coast Guard is placing his family life in jeopardy.

The chief of the mental health service at an Air Force hospital issued a mental evaluation report on the applicant dated October 5, 1987. The mental health evaluation stated the following:

Mental Status Evaluation: Reveals a 19 year old young man that looks approximately the stated age. He was dressed cleanly and appropriately in service uniform and demonstrated good personal hygiene and cleanliness. He related in a compliant, childlike manner, often using the word "Yessir." He exhibited a simplistic approach to life and problems and saw such in a simple black or white dichotomy, with no gray area. If he made up his mind on a specific issue, it would be extremely difficult, if not impossible, to influence such by logic or making him view the issue from another viewpoint. There was no evidence of cognitive dysfunctions, in terms of hallucinations, illusions or delusions. His prevalent affect was one of frustration and despondency, although he was able to demonstrate a good range of affect that was appropriate to the thought content. He is not seen as suicidal or homicidal currently, although the possibility of self-destructive acting out if frustrated with his wants cannot be ruled out. My assessment of his intelligence would be in the low-normal range, and there was no evidence of intellectual dysfunctions.

Impression:

1. No evidence of psychiatric or personality disorder.
2. Phase of life problem.
3. Immature, impulsive, oppositional personality traits.

Discussion and Recommendations: This individual's current perception ("I hate the Coast Guard, they lied to me."), his simplistic way of viewing life as black and white, his borderline normal intelligence, a past history suggestive of oppositional behavior disorder of childhood and adolescence, and his current personality traits, make me question this individual's ability to make a successful adjustment to the U.S. Coast Guard. Counseling in a military setting is not feasible, nor expected to alter his current views and functioning. It is my recommendation that the commander seriously consider administrative separation as in the best interest of both the Coast Guard and this individual.

On October 13, 1987, a United States Public Health Service (USPHS) captain and medical officer wrote that he agreed with the opinions of the Air force psychiatrist and concurred that the applicant's immature personality traits significantly impaired his ability to function in the military environment. The captain recommended that the applicant be separated from the service for unsuitability.

On October 15, 1987, the applicant's CO informed the applicant that he was recommending that the applicant be honorably discharged from the Coast Guard because two medical doctors had diagnosed the applicant as having immature personality traits and both doctors had recommended the applicant's discharge.

On October 15, 1987, the applicant acknowledged the proposed discharge for the convenience of the government and stated that he had no objections to the discharge.

On October 22, 1987, the CO recommended that the Commandant discharge the applicant from the Coast Guard for the convenience of the government. The CO stated that the applicant told him that he would do whatever was necessary to get out of the Coast Guard despite extensive counseling by the executive officer, the applicant's department head, and himself. The CO further stated that as a result of the applicant's lack of response to counseling and leadership, he was referred for a mental evaluation. The chief of the mental health service who performed the evaluation recommended that the applicant be discharged from the Coast Guard as it would be in the best interest of the government and the member. The CO also noted the concurrence by the USPHS captain that the applicant should be discharged.

On October 31, 1987, the applicant agreed with the results of a physical examination that he was qualified for discharge from the Coast Guard.

On November 5, 1987, the Commandant directed that the applicant be discharged from the Coast Guard with an honorable discharge.

On December 15, 1987, the applicant was honorably discharged from the Coast Guard for the convenience of the government, as determined by the Commandant, with a corresponding JND (convenience of the government) separation code and an RE-4 (not eligible for reenlistment) reenlistment code.

Department of Veterans' Affairs (DVA) Records

On July 2, 2005, the applicant submitted an application to the DVA for disability compensation. He claimed that he was suffering from paranoid schizophrenia that was incurred while serving on active duty from July 2, 1987 through December 15, 1987. On July 24, 2006, the DVA issued a decision denying the applicant's claim for service connection for paranoid schizophrenia. The DVA noted that the applicant's Coast Guard medical record showed no complaints, treatment, observation or diagnosis for paranoid schizophrenia while the applicant was in the Coast Guard.

VIEWS OF THE COAST GUARD

On April 26, 2007, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request, in accordance with the memorandum from the Commander, Coast Guard Personnel Command (CGPC), attached as Enclosure (1) to the advisory opinion.

CGPC noted that the application was untimely, but offered the following opinions and conclusions if the Board chose to consider the application on the merits.

The command referred [the applicant] for a mental evaluation which yielded no medical/psychiatric diagnosis, but recommended administrative separation. The applicant was processed for discharge for the convenience of the government and concurred with the discharge. He accepted the findings of his alternate separation physical which revealed no disqualifying medical conditions or conditions that would warrant Physical Disability Evaluations (PDES) Processing. The applicant was discharged with an honorable discharge after completing 5 months and 3 days of active service.

The applicant's record and discharge processing are presumptively correct and the Applicant has not provided any evidence to support any error or injustice . . . the applicant has not met his burden of proving an error or injustice.

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On April 26, 2007, the Board sent the applicant a copy of the views of the Coast Guard giving him 30 days to respond to the advisory opinion. The Board did not receive a reply from the applicant.

FINDINGS AND CONCLUSIONS

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

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

2. The application was not timely. To be timely, an application for correction of a military record must be submitted within three years after the alleged error or injustice was or should have been discovered. See 33 CFR 52.22. Although the applicant stated that he discovered the alleged error in 1989, he did not file an application with the Board until 2006, some seventeen years later.

3. However, the failure to file timely may be waived, if the Board finds that it is in the interest of justice to do so. Although the applicant did not explain why it would be in the interest of justice for the Board to excuse his failure to file timely, the Board must perform a cursory review of the merits to determine whether it is in the interest of justice to waive the statute of limitations in this case. In Allen v. Card, 799 F. Supp. 158, 164 (D.D.C. 1992, the Court stated that in assessing whether the interest of justice supports a waiver of the statute of limitations, the Board "should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review."

4. Based upon a cursory review of the merits, the Board finds that it is unlikely that the applicant will prevail on his claim for a physical disability separation. There is no evidence in the Coast Guard medical record that the applicant incurred a debilitating condition during his five months of active duty. Moreover, the Board notes that the applicant's 2005 DVA claim for disability compensation was denied by the DVA. The DVA also found no evidence in the Coast Guard medical record that the applicant suffered from schizophrenia while on active duty. Nor is there any evidence in the record that the applicant incurred a hearing loss or disease while in the Coast Guard.

5. The applicant's claim that he was not evaluated by a doctor or psychiatrist while on active duty is refuted by the record. The Board notes in this regard that he was evaluated by the chief of mental services of an Air Force hospital and by a USPHS medical officer.

6. Accordingly, due to the length of the delay, the lack of a persuasive reason for not filing his application sooner, and the probable lack of success on the merits of his claim, the Board finds that the applicant's should be denied because it is untimely and because it lacks merit.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

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

