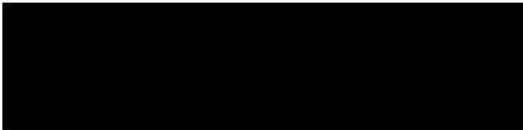


**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-185



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 July 21, 2014, upon receipt of the completed application and records, and assigned it to staff member [REDACTED] as required by 33 C.F.R. § 52.61(c).

This final decision, dated April 24, 2015, 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, a retired [REDACTED] asked the Board to change his separation on September 29, 2012, from a Reserve retirement (RET-2 status) for "sufficient service for retirement" (more than 20 years of qualifying service) to a medical separation due to physical disability. The applicant alleged that his diagnosis of post-traumatic stress disorder (PTSD) qualifies him for a medical separation from the Coast Guard.

SUMMARY OF THE RECORD

The applicant served on active duty in the U.S. Navy for ten years from March 1988 to March 1998. On May 27, 1999, he enlisted in the Coast Guard Reserve, assigned to Port Security Unit (PSU) [REDACTED] in [REDACTED], and thereafter drilled and performed periods of annual training regularly. He served on active duty under Title 10 for more than 8 months from July 2003 to April 2004, and his DD 214 for this period shows that he had been deployed overseas for 6 months and 23 days during this period. He also served on Title 10 active duty orders at the PSU for about 21 months from January 9, 2006, through September 30, 2007. On December 1, 2007, he began serving on an extended active duty contract, which was further extended through September 29, 2012, when he retired. His Coast Guard DD 214s show no sea service but 6 months and 23 days of foreign service.

While on active duty on December 9, 2010, the applicant was seen at a naval hospital for sleep issues. The applicant reported that he had been having difficulty sleeping for about three weeks. The A/P¹ was noted as insomnia. The applicant was prescribed Atarax and released without limitations.

On February 3, 2011, the applicant was seen at a naval hospital for possible PTSD symptoms. A physician's assistant noted the A/P as PTSD, and the applicant was released without limitations.

On March 21, 2011, the applicant was seen at a naval hospital for a psychiatric examination concerning his "extensive corpse retrieval history now having PTSD." The psychiatrist reported the following:

Pt² is 41-yr old divorced...activated reservist USCG E-7. Pt's rate is engineer...Prior to joining the Coast Guard as a Reservist, pt was in the USN for 10 years. Pt was deployed for Desert Storm. Pt was also a responder to Hurricane Katrina in 2005.[³] Pt has been active duty for 22 years...Pt reported that around Thanksgiving 2010 he began noticing feelings of anxiety and a change in his mood. Pt reported that he began getting less sleep, consuming more caffeine, having a decrease in appetite, and overreacting to situations that normally wouldn't bother him.

...

Pt stated that he felt like no matter how much he accomplished, he couldn't get enough done. Pt also stated that he started noticing himself giving up on things, whereas he never would have before. Additionally, pt said that he started feeling jealous in his relationship. Pt described an incident where his hands started shaking, and he felt like he had no control over it. Pt said he wasn't feeling anxious at the time, but attributes the reaction to a panic attack. Pt reported that he was directed to a psychologist...Pt said he has had 3 sessions with [the psychologist] over the past few weeks, and he has already begun to notice an improvement in symptoms.

The Diagnostic Impression is noted as follows:

Axis I: Anxiety D/O NOS

Axis II: Diagnosis Deferred

Axis III: Noncontributory

Axis IV: Deployment related stressors; Occupational stressors; Relationship stressors

Axis V: 65

The Recommendation is noted as follows:

Pt is deemed fit for full duty.

On May 23, 2011, the applicant returned to the naval hospital for a follow-up appointment. In the Chronological Record of Medical Care, the Diagnostic Impression is noted as Anxiety Disorder D/O, NOS⁴.

¹ Assessment & Plan.

² Patient.

³ Hurricane Katrina hit the Gulf Coast in late August 2005. The applicant was not on active duty during that period but served on active duty from January 9, 2006, through September 30, 2006.

⁴ Anxiety Disorder Not Otherwise Specified.

On November 17, 2011, the applicant returned to the naval hospital for a follow-up examination. The Diagnostic Impression noted is Anxiety D/O NOS. The applicant was deemed psychiatrically fit for full duty.

On April 20, 2012, the applicant was examined by a psychiatrist at the naval hospital, who found that the applicant had ongoing anxiety/irritability and PT⁵ symptoms since what he described as his several combat-related deployments. He was diagnosed with Anxiety Disorder Not Otherwise Specified, R/O^[6] PTSD. The applicant had a Global Assessment of Functioning (GAF): 60-65.⁷ The applicant was deemed fit for duty and ordered to follow up with his mental health provider in a week. The applicant declined groups at the time.

On April 27, 2012, the applicant was seen by a psychiatrist at a naval hospital for a follow-up examination. The A/P noted is Anxiety D/O NOS and PTSD. The diagnosis noted is Anxiety D/O NOS, R/O PTSD. He was prescribed Remeron and Atarax and deemed fit for duty.

On May 23, 2012, the applicant was seen by a psychiatrist at a naval hospital for a follow-up examination. The A/P noted is Anxiety D/O NOS, R/O PTSD. The diagnosis noted is Anxiety D/O NOS, R/O PTSD. The applicant was deemed fit for duty and released without restrictions.

On June 7, 2012, the applicant saw a psychiatrist at a naval hospital for a follow-up examination. The diagnosis noted is Anxiety D/O NOS, R/O PTSD. The applicant was deemed fit for duty and ordered to follow up with his mental health provider in four weeks.

On July 5, 2012, the applicant was seen by a psychiatrist at a naval hospital for a follow-up examination. The A/P is noted as Anxiety D/O NOS, Likely PTSD. The diagnosis noted is Anxiety D/O NOS, R/O PTSD.

On September 29, 2012, the applicant was voluntarily honorably retired from the Coast Guard Reserve, pursuant to his request, for “sufficient service for retirement.” He had served more than 17 years on active duty and more than 4 years on inactive duty.

⁵ Post-traumatic.

⁶ R/O means “rule out”—not that the diagnosis has been ruled out but that it is a possible diagnosis that needs to be ruled out.

⁷ The Global Assessment of Functioning (GAF) is for reporting the clinician’s judgment of the individual’s overall level of functioning. This information is useful in planning treatment and measuring its impact, and in predicting outcome. American Psychiatric Association, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, FOURTH EDITION, TEXT REVISION (2000) (DSM-IV-TR), p. 32 *et seq.* The Coast Guard relies on the DSM when diagnosing psychiatric conditions. *See*, U.S. COAST GUARD, COMDTINST M6000.1B, MEDICAL MANUAL Chap. 5.B.1. (Change 1, Feb 16, 2007). A GAF score of 60-65 indicates some mild symptoms or some difficulty in social, occupational, or school functioning, but generally functioning pretty well, has some meaningful interpersonal relationships. A score ranging between 51 and 60 indicates moderate symptoms (e.g., flat affect and circumstantial speech, occasional panic attacks) or moderate difficulty in social, occupational, or school functioning (e.g., few friends, conflicts with co-workers or peers). DSM-IV-TR, at 34.

In General Medical – Compensation Disability Benefits Questionnaire dated November 27, 2012, the results of the applicant's examination conducted by DVA notes psychiatric conditions of "Mental Disorders (Other Than PTSD) and PTSD (Initial or Review).

In a PTSD Disability Benefits Questionnaire dated December 14, 2012, the results of the applicant's examination conducted by the DVA notes that the applicant has a diagnosis of PTSD that conforms to DSM-IV criteria "based on today's evaluation."

VIEWS OF THE COAST GUARD

On December 18, 2014, the Judge Advocate General (JAG) submitted an advisory opinion in which he recommended denying relief based in the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC).

PSC noted that a physician's assistant diagnosed the applicant with PTSD on February 3, 2011, but was unqualified to do so. In this regard, PSC noted that under the Coast Guard Medical Manual, Chapter 5.A.1.b, only a psychiatrist or a clinical psychologist or clinical social worker with a PhD employed by the military or the DVA is qualified to make such an assessment. PSC stated that the applicant was evaluated by a psychiatrist, and the diagnosis was "Anxiety Disorder Not Otherwise Specified, R/O (Rule Out) PTSD," on July 5, 2012. Moreover, the applicant was declared to be "fit for duty" on this evaluation date. Additionally, there were no further medical evaluations in the applicant's health record prior to his separation from the Coast Guard on September 29, 2012, indicating a change from his duty status of "fit for duty" or a confirmed diagnosis of PTSD.

PSC opined that the applicant has the burden of proving by a preponderance of the evidence that an error or injustice has occurred. Furthermore, the Coast Guard is presumed to have acted properly, legally, and in good faith in its review and adjudication of this matter. The JAG, therefore, concluded that although the applicant's record does reflect a diagnosis of PTSD dating back to February 2011, the source of this diagnosis was not qualified to make it; nor did the condition preclude the applicant from continuing his performance of duty.

PSC further opined that the sole standard in making determinations of physical disability as a basis for retirement or separation shall be "*unfitness*" to perform the duties of office, grade, rank, or rating because of disease or injury incurred or aggravated through military service. Additionally, continued performance of duty until a member is scheduled for separation or retirement for reasons other than physical disability creates a presumption of fitness for duty. A member being processed for reasons other than physical disability "*shall not*" be referred for disability evaluation. PSC concluded that there was no indication in the applicant's record of action on part of his Command to submit his case to a Medical Board or that his Command believed he was unfit to perform his duties. PSC concluded that the applicant was not eligible for referral to a disability evaluation nor entitled to a medical separation (Medical Board) from the Coast Guard because he did not demonstrate unfitness to perform his duties as specified in COMDTINST M1850.2D, Physical Disability Evaluation System, Chapter 2.C.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 11, 2015, the applicant responded to the Coast Guard's advisory opinion. He stated that he believes that PSC did not present his full medical history accurately and his personal testimony was not appropriately considered.

The applicant stated that the information used in PSC's memorandum depicts an inexact timeline of his treatment and an inaccurate view of what role each provider played in his PTSD diagnosis and treatment. He stated that the psychiatrist was the doctor who diagnosed him with PTSD and provided most of his counseling. He further stated that he only saw the physician assistant for renewing his prescriptions.

The applicant asserted that an LCSW (licensed, certified social worker) was the mental health provider assigned for counseling when he contacted the naval hospital Mental Health Clinic in January 2011. The earliest appointment the applicant could schedule was with the LCSW in February 2011. According to the applicant, he was still in crisis and could not wait for the appointment date, so he contacted the USCG crisis hotline and was referred to another doctor (hereinafter, "the referral doctor"). The applicant stated that by the time he first met the LCSW he had already been in counseling with the referral doctor for several weeks. His first interaction with the LCSW consisted of the applicant informing the LCSW of the counseling he had received from the referral doctor. The applicant further stated that when the LCSW asked him about his mental state, he would respond that he was getting better but still needed treatment. The LCSW advised the applicant that she would try to schedule an appointment with the clinic psychologist, but would refer him back to the referral doctor until then. The applicant claimed he never received an appointment with the clinic psychologist.

In response to the JAG's conclusion that only a physician's assistant diagnosed him with PTSD, the applicant stated that he does not recall meeting the physician's assistant. He can only assume, based on the date, that the physician's assistant was the person directed to document the LCSW's diagnosis into his record after he reported it to his command's medical department. Furthermore, the applicant stated that the Coast Guard's determination that the diagnosis of PTSD was ruled out confuses him because he only saw the physician's assistant for medication.

In response to the Coast Guard's conclusion that the applicant was declared fit for duty despite his mental health condition, the applicant stated that he believes the determination regarding his fitness was due to a misunderstanding by the command's medical department and the LCSW who both misrepresented his condition. He stated that, at the time of his diagnosis, his command had already removed him from his primary duties and reassigned him to collateral duty, so he could concentrate solely on his treatment. He further stated that he had the full support of his fellow chiefs who would assist him with any other issues to ensure he made it through the last year of his career. The applicant alleged that his command thought that, with so little time left in his career and the full support of his command, a declaration of unfitness for duty was unwarranted at that time. However, the applicant stated he was told that without command's support he have been declared unfit.

APPLICABLE LAW AND POLICY

Title 10 U.S.C. § 1201 provides that a member who is found to be “unfit to perform the duties of the member’s office, grade, rank, or rating because of physical disability incurred while entitled to basic pay” may be retired if the disability is (1) permanent and stable, (2) not a result of misconduct, and (3) for members with less than 20 years of service, “at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination.”

Title 10 U.S.C. § 1203 provides that such a member whose disability is rated at only 10 or 20 percent under the schedule shall be discharged with severance pay.

Chapter 3.F. of the Coast Guard Medical Manual, COMDTINST M6000.1E, lists the conditions that may be disqualifying for retention in the Service. Chapter 3.F.1.c. states the following:

Members are ordinarily considered fit for duty unless they have a physical impairment (or impairments) that interferes with the performance of the duties of their grade or rating. A determination of fitness or unfitness depends upon the individual's ability to reasonably perform those duties. Active duty or reserves on extended active duty considered permanently unfit for duty shall be referred to a Medical Evaluation Board (MEB) for appropriate disposition.

Chapter 3.F.16.b. of the Medical Manual states that PTSD may be disqualifying for retention if there is “[p]ersistence or recurrence of symptoms sufficient to require treatment (medication, counseling, psychological or psychiatric therapy) for greater than twelve (12) months. Prophylactic treatment associated with significant medication side effects such as sedation, dizziness, or cognitive changes or requiring frequent follow-up that limit duty options is disqualifying. Prophylactic treatment with medication may continue indefinitely as long as the member remains asymptomatic following initial therapy.”

Chapter 2.C.2. of the Physical Disability Evaluation System (PDES) Manual, COMDTINST M1850.2D, states the following:

Fit For Duty/Unfit for Continued Duty. The following policies relate to fitness for duty:

a. The sole standard in making determinations of physical disability as a basis for retirement or separation shall be unfitness to perform the duties of office, grade, rank or rating because of disease or injury incurred or aggravated through military service. Each case is to be considered by relating the nature and degree of physical disability of the evaluatee concerned to the requirements and duties that a member may reasonably be expected to perform in his or her office, grade, rank or rating. In addition, before separation or permanent retirement may be ordered:

• • •

b. The law that provides for disability retirement or separation (10 U.S.C., chapter 61) is designed to compensate a member whose military service is terminated due to a physical disability that has rendered him or her unfit for continued duty. That law and this disability evaluation system are not to be misused to bestow compensation benefits on those who are voluntarily or mandatorily retiring or separating and have theretofore drawn pay and allowances, received promotions, and continued on unlimited active duty status while tolerating physical impairments that have not actually precluded Coast Guard service. The following policies apply:

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

(a) the member, because of disability, was physically unable to perform adequately in his or her assigned duties; or

(b) acute, grave illness or injury, or other deterioration of the member's physical condition occurred immediately prior to or coincident with processing for separation or retirement for reasons other than physical disability which rendered him or her unfit for further duty. ...

(2) A member being processed for separation or retirement for reasons other than physical disability shall not be referred for disability evaluation unless the conditions in paragraphs 2.C.2.b.(1)(a) or (b) are met.

c. If a member being processed for separation or retirement for reasons other than physical disability adequately performed the duties of his or her office, grade, rank or rating, the member is presumed fit for duty even though medical evidence indicates he or she has impairments.

• • •

f. The following standards and criteria will not be used as the sole basis for making determinations that an evaluatee is not fit for duty by reason of physical disability:

(1) inability to perform all duties of the office, grade, rank, or rating in every geographic location and under every conceivable circumstance. ...

• • •

(5) the presence of one or more physical defects that are sufficient to require referral for evaluation ...

(6) pending voluntary or involuntary separation, retirement, or release to inactive status (see article 2.C.2.b.(1)).

h. An evaluatee found unfit to perform assigned duties because of a physical disability normally will be retired or separated. ...

i. The existence of a physical defect or condition that is ratable under the standard schedule for rating disabilities in use by the Department of Veterans Affairs (DVA) does not of itself provide justification for, or entitlement to, separation or retirement from military service because of physical disability.

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. Under 10 U.S.C. § 1552(b), an application to the Board must be filed within three years after the applicant discovers the alleged error or injustice. The applicant in this case filed his application within the three-year statute of limitations. Therefore, the application is considered untimely.

3. The applicant alleged that he was erroneously retired from the Coast Guard when he should have been evaluated for a medical separation under the PDES because of his PTSD. The Board begins its analysis in every case by presuming that the disputed information is correct as it appears in the applicant's record. The applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁸ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."⁹

4. The record shows that the applicant was voluntarily retired on September 29, 2012, pursuant to his own request, because he had completed more than twenty years of qualifying service toward a Reserve retirement. Accordingly, Chapter 2.C.2.b. of the PDES Manual, which states the following, applied to him at the time of his separation:

The law that provides for disability retirement or separation (10 U.S.C., chapter 61) is designed to compensate a member whose military service is terminated due to a physical disability that has rendered him or her unfit for continued duty. That law and this disability evaluation system are not to be misused to bestow compensation benefits on those who are voluntarily or mandatorily retiring or separating and have theretofore drawn pay and allowances, received promotions, and continued on unlimited active duty status while tolerating physical impairments that have not actually precluded Coast Guard service. The following policies apply:

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

(a) the member, because of disability, was physically unable to perform adequately in his or her assigned duties; or

(b) acute, grave illness or injury, or other deterioration of the member's physical condition occurred immediately prior to or coincident with processing for separation or retirement for reasons other than physical disability which rendered him or her unfit for further duty. ...

(2) A member being processed for separation or retirement for reasons other than physical disability shall not be referred for disability evaluation unless the conditions in paragraphs 2.C.2.b.(1)(a) or (b) are met.

5. The record before the Board shows that despite impairments, the applicant continued to serve on active duty until he retired, which creates a presumption of fitness. In addition, the record contains no evidence supporting the applicant's claim that he was unfit to perform his duties in 2012. To the contrary, his psychiatrist repeatedly found him fit for duty even while diagnosing him with anxiety and possible (R/O) PTSD. Nor is there any evidence that the applicant suffered an "acute, grave illness or injury, or other deterioration of [his] physical condition" at the time of his retirement. Therefore, the preponderance of the evidence shows that the applicant's psychiatric condition in 2012 did not meet the standards in either paragraph 2.C.2.b.(1)(a) or (b) of the PDES Manual. Based on the medical evidence and the regulations, the Board finds that the applicant's command and doctors committed no error or

⁸ 33 C.F.R. § 52.24(b).

⁹ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

injustice by not convening a medical board or processing him for a medical separation under the PDES.

6. The applicant is apparently being treated for PTSD by the DVA. Assuming the DVA has assigned or will assign him a disability rating for PTSD, such evidence would not prove that the Coast Guard committed any error or injustice by allowing him to retire voluntarily without PDES processing. Under 38 U.S.C. § 4.1, the DVA considers the extent to which all of a veteran's "service-connected" disabilities currently render him unable to work in civilian life, whether or not these disabilities rendered the veteran unfit for duty at the time of separation. In contrast, under 10 U.S.C. § 1201, the Coast Guard assigns disability ratings according to the member's permanent inability to perform the duties of his office, grade, rank, or rating because of physical disability. The Coast Guard only rates disabilities that render the member permanently unfit for duty,¹⁰ and the applicant's psychiatrist expressly found that he was fit for duty despite his mental condition. DVA ratings are "not determinative of the same issues involved in military disability cases,"¹¹ and the fact that the DVA may have diagnosed the applicant with PTSD and assigned him a disability rating for PTSD would not prove that the Coast Guard erred or committed an injustice by not processing him under the PDES after he requested retirement.

7. Accordingly, the Board finds that the applicant's request should be denied because the preponderance of the evidence does not support his claim that the Coast Guard's decision to allow him to retire pursuant to his request and not to process him under the PDES was erroneous or unjust.

(ORDER AND SIGNATURES APPEAR ON PAGE)

¹⁰ COMDTINST M1850.2C, PDES Manual, Art. 2.C.3.a.(3)(a).

¹¹ *Lord v. United States*, 2 Cl. Ct. 749, 754 (1983); see *Kirwin v. United States*, 23 Cl. Ct. 497, 507 (1991) ("The VA rating [in 1986] is irrelevant to the question of plaintiff's fitness for duty at the time of his discharge in 1978. Indeed, the fact that the VA retroactively applied plaintiff's 100% temporary disability rating only to 1982, and not 1978, gives some indication that plaintiff was not suffering from PTSD at the time of his discharge."); *Dzialo v. United States*, 5 Cl. Ct. 554, 565 (1984) (holding that a VA disability rating "is in no way determinative on the issue of plaintiff's eligibility for disability retirement pay. A long line of decisions have so held in similar circumstances, because the ratings of the VA and armed forces are made for different purposes.").

ORDER

The application of [REDACTED], USCGR (Retired), for correction of his military record is denied.

April 24, 2015

