

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-041



FINAL DECISION

This is a proceeding under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the applicant's completed application on February 13, 2015, and prepared the decision as required by 33 C.F.R. § 52.61(c).

This final decision, dated December 31, 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, who received an uncharacterized discharge from the Coast Guard on July 28, 2006, after just 33 days of recruit training, asked the Board to correct her record to show that she received an honorable medical retirement because of a physical disability. She alleged that her uncharacterized discharge due to a diagnosis of adjustment disorder was erroneous and unjust and that she should have received a disability separation for depression and anxiety. She stated that she continues to suffer from this disability. Therefore, she asked the Board to change her separation code from JGA (denoting an entry level separation) to SFJ (denoting mandatory retirement due to permanent disability) and to award her the retirement benefits she should have received.

The applicant stated that in May 1998, she graduated from high school with an "advanced diploma" because she had taken several advanced classes, and she ranked fourth in her class with a grade point average of 3.7. She began attending college in the fall of 1998 but dropped out after three semesters, she alleged, because of financial hardship, and began working full time at a jewelry store. The applicant alleged that she excelled at this store and became a store manager in June 2003. Because of an excessive commute and long hours, she left this position and became a sales associate at another retail store in June 2004.

The applicant alleged that in June 2006, at age 26, she decided to join the Coast Guard because several members of her family had served in the military. She stated that when she enlisted on June 26, 2006, she was in good mental and physical health, as indicated on her pre-

enlistment physical examination, and had high expectations of herself. However, during basic training, she began suffering from sleep issues, concentration issues, chest pain, breathing issues, vision issues, a respiratory infection, right ankle pain, and “pain from foot stress fractures caused by marching in her boots.” She alleged that she “also endured being shoved by a shipmate, social alienation, depression, and anxiety.” She noted that “she did not feel like she was meeting the high standards she established for herself, no matter how hard she tried,” which was distressful. She was not one of the top members of her training company, whereas previously, she had always met her achievement goals. Her symptoms included difficulty concentrating and difficulty processing and retaining basic information. Her lack of sleep caused her to feel clumsy and inept. Her distress caused her to have difficulty breathing and chest pains. The applicant stated that despite her “wholehearted attempts to overcome what she considered her personal deficiencies, she didn’t feel she even came close to her goals.”

The applicant alleged that she also had difficulty breathing while running and doing other exercises in basic training, and she caught an upper respiratory infection from other recruits. The applicant alleged that her eyesight also deteriorated because she did not get new glasses from the Coast Guard because the Coast Guard had not processed an eyesight waiver that she needed to enlist. She had to wear her own, old glasses, and she “struggled to see anything.” In addition, she alleged, she developed stress fractures in her feet from marching and strained her right ankle.

Regarding her social isolation, the applicant stated that her company of recruits had “no sense of camaraderie” and she did not “bond” with any of them. Therefore, she had no one to talk to about her depression and anxiety. Moreover, some of the male recruits “made it clear to her that they did not think women belonged in the military,” and while marching one day, another recruit shoved her because she was not marching “fast enough,” and she almost fell.

The applicant stated that because of her distress, she sought help. She attended sick call on the morning of July 21, 2006. The applicant described her symptoms to the practitioner and was sent to a psychiatrist, with whom she had a 15-minute conversation. She alleged that the psychiatrist only asked her why she had come and whether she thought her symptoms would improve. At the time, she stated, she was very emotional because she had failed a significant part of her training the day before and would be reverted to start over. She alleged that the psychiatrist failed to ask all of the questions he should have, failed to wait to see if her condition improved, failed to determine if her condition was caused by a physical problem, and misdiagnosed her with maladjustment and situational depression, but told her that he had diagnosed her with depression. She alleged that her symptoms met the criteria for various depressive disorders, anxiety disorders, panic attack, and sleep disorder, and that if the psychiatrist had followed proper procedures, she would have been properly diagnosed with a disability.

The applicant alleged that she was misdiagnosed with an adjustment disorder with depression, and that this diagnosis is not supported by the information in her medical records. She also alleged that she was not properly counseled and did not know she was being discharged due to an alleged adjustment disorder rather than depression. She cannot recall hearing the words “adjustment disorder” or “administrative discharge” from the doctor or anyone else prior to her discharge. The applicant alleged that her diagnosis and discharge were erroneous and unjust because the psychiatrist and the command of the training center failed to follow applicable

policies.¹ She alleged that she was denied due process and never informed of her rights and should have been allowed to submit an objection and fight her administrative discharge without disability benefits. She stated that she was counseled about her discharge along with ten other recruits who were being discharged the same day, July 28, 2006, and they were each given their military files and shipped out together. She alleged that they did not receive the thorough counseling that the Coast Guard was required to provide.

The applicant alleged that following her discharge, she was “an emotional disaster” and since then, she has been treated for depression, anxiety, and other disabilities, all of which developed during her 33 days on active duty due to mistreatment.² She alleged that she has also developed medical conditions secondary to these disabilities, including muscle spasms in her shoulder, heart palpitations, gastro-intestinal problems, gastro-esophageal reflux disease, migraines, concentration issues, sleep disturbance, asthma, etc., which make her daily life challenging. She alleged that she has managed these service-connected disabilities by herself while working at her State’s Department of Rehabilitation Services.

The applicant alleged that she discovered the error in her record on August 15, 2013, because before that date, she did not know that she had been diagnosed with an adjustment disorder. She argued that it is in the interest of justice for the Board to consider her request on the merits because she was misdiagnosed by her Coast Guard psychiatrist and her record is incorrect. She alleged that the JGA code indicates that she had a performance or conduct problem but she was never counseled about poor performance or punished. The applicant stated that she was never a troublemaker and never complained about her physical problems or about being shoved.

In support of her allegations, the applicant submitted copies of her personal, military, and medical records, some of which are included in the Summary of the Record below, and the following:

- A Wellness Center document dated June 11, 2009, shows that the applicant, a new patient, sought help for irregular menses, cramping, sleep problems, and migraines. The nurse practitioner noted that the applicant reported nervousness, depression, and insomnia, for which she took Lexapro 10, and that she should be evaluated for adjustment disorder and ADD (attention deficit disorder).
- A Wellness Center document dated March 21, 2011, shows that the applicant sought “happy medicine” to help her with a “hostile work environment.” The practitioner listed her conditions as GAD (generalized anxiety disorder), insomnia, fatigue, migraine headaches, and muscle spasms.
- A two-page medical report of a new-patient visit on April 3, 2012, shows that the applicant sought a refill of her Lexapro prescription for depression and insomnia. The nurse noted that she was also taking medication for muscle spasms and allergies.

¹ The Board notes that many of the policies cited by the applicant are inapplicable to her case because they are Department of Defense policies and/or were published after her discharge.

² Other than her allegation that another recruit once shoved her while they were marching, the applicant did not allege any mistreatment during recruit training.

- A three-page medical report dated June 18, 2013, shows that the applicant asked to change a medication that made her feel jittery; sought help for migraines and a refill for a medication for muscle spasms.
- Medical notes dated from October 2013 through May 2014, show that the applicant sought help for depression and anxiety and an evaluation for bipolar disorder because her mother had it and the applicant thought she might too. She advised the therapist, a licensed social worker, that she had been diagnosed with depression, ADD, adjustment disorder, and generalized anxiety disorder with panic attacks. She told the therapist that she was first diagnosed while in recruit training in 2006 and “has really never recovered” and had suffered from depression, GAD, OCD (obsessive compulsive disorder), and ADD since her discharge from the Coast Guard. The therapist noted that she “appears to be stuck in failure of boot camp for Coast Guard and the helplessness she felt while there” and diagnosed her with major depressive disorder, recurrent, moderate, as well as generalized anxiety disorder and AD/HD, combined.
- On May 27, 2014, the applicant’s therapist signed a letter to the BCMR on her behalf. The therapist stated that the applicant’s diagnoses included major depressive disorder, recurrent, moderate; generalized anxiety disorder; and attention deficit/hyperactivity disorder, combined type. The therapist also noted that the applicant claimed that her symptoms began while she was in the Coast Guard.
- Pages 17 and 18 of Progress Notes regarding the applicant’s claim for veteran’s disability benefits for anxiety, major depression, sleep disturbance, and allergies, which she submitted, shows that the Department of Veterans’ Affairs (DVA) doctor found that her conditions were not service connected.
- In a letter dated March 4, 2014, the applicant’s father wrote that although she had been very excited to join the Coast Guard before she enlisted, she was different after she was discharged and “seemed down.” He attributed her mood to her feeling crushed because she had been discharged. After her discharge, he wrote, the applicant tried to find a federal job but did not and finally found a job with the State. Her father wrote that a “few years ago,” the applicant told him that “she had been dealing with depression since her discharge from the military and that she had tried not to let anyone see it.” She also told him that she had recently begun counseling for depression and anxiety.
- The applicant also submitted letters from other relatives, high school and college classmates, coworkers, and her supervisor, who praised the applicant’s kindness, work ethic, responsibility, and determination to succeed. Her supervisor noted that she was an excellent assistant and that her work had not been adversely affected by her numerous health issues, although she had missed work on occasion due to migraine headaches.

SUMMARY OF THE RECORD

In December 2005, the applicant underwent a pre-enlistment physical examination, which determined that she was fit for duty except that she would need a waiver for poor eyesight to continue on active duty. Her vision screening had shown a “refractive error of -8.25 diopters in the right eye and corrected distant visual acuity of 20/70 in the right eye and 20/50 in the left eye” with corrective lenses and 20/>400 in each eye without corrective lenses.

On June 26, 2006, the applicant enlisted in the Coast Guard and reported for recruit training. A medical report dated the same day, which the applicant submitted, shows that she reported having no changes in her physical condition since her prior examination and that she had no asthma, no bone or joint problems, and no psychological problems. The doctor found that she was fit for duty.

On July 19, 2006, the Enlisted Personnel Management branch of the Personnel Command issued a medical waiver for the applicant to enlist despite her poor eyesight.

On July 20, 2006, while still in recruit training, the applicant sought counseling. She had just reverted from week 04 to week 02 of training. According to the doctor's notes, she complained of "feeling like I am in a nightmare and I can't wake up" for the past two weeks. The applicant reported "crying all the time"; getting tense and feeling like needles were poking her heart; having trouble breathing, eating, and sleeping; feeling sad and physically sagging; "having thoughts of disappearing just to get away"; and having these symptoms increase after she reverted. The applicant told the doctor that she was having trouble with the training, did not think she was "cut out" for it, and did "not want to be here if she is going to be a basket case all the time." The doctor noted that the applicant was crying, had "bags and dark circles" under her eyes, and appeared "malaised." The doctor also noted that the applicant had "lost everything" in Hurricane Katrina and had decided to start anew by joining the Coast Guard. The doctor diagnosed her with "adjustment disorder with anxiety and depressed mood" and made her an appointment for her with a psychiatrist the next day.

On July 21, 2006, a psychiatrist reported that the applicant had a disqualifying diagnosis—adjustment disorder with depression—and did not meet the minimum standards for enlistment or retention. The psychiatrist noted that the applicant reported suffering from symptoms of reactive depression since she began recruit training, including "poor sleep, poor appetite, sadness, tearfulness, nervousness, and apathy, [which] have worsened over the course of her training. Most recently she was reverted 02 weeks. This has exacerbated her symptoms and now she has no desire to continue training. [She] was counseled, however, she remained fixed in her depressive symptoms and resolve that the USCG was not for her. Therefore secondary to her maladjustment to [boot camp she] is being recommended for discharge. Her mental status is significant for situational depression. Her prognosis is fair. She would need to receive counseling to address her poor coping skills and have clearance by a psychiatrist prior to reenlistment." The psychiatrist and the applicant both signed a health record noting that she had undergone a substitute physical examination for the purpose of discharge and was fit for discharge without limitations. The applicant "den[ied] any other injury or illness at the present time."

Also on July 21, 2006, the clinic advised the training center's administration by memorandum that the applicant was disqualified for continued service due to her adjustment disorder with depression; that the medical officer who made the determination was the psychiatrist; and that the applicant had been informed of her condition and the recommendation for discharge. The applicant also signed this memorandum, acknowledging that she had read and understood the information on the memorandum and had had the opportunity to ask questions about her condition and been counseled.

Also on July 21, 2006, the applicant signed a CG-4057 stating that she agreed that at the time she was “reasonably able to perform my current duties” or had a “high expectation of recovery in the near term”; that her medical conditions had been documented in her record but “do not in themselves indicate a disability”; that to receive disability benefits from the Coast Guard, she would have to be found unfit to perform her assigned duties before separation; and that after separation, she should submit any claims for disability benefits to the DVA.

On July 28, 2006, the applicant received an “uncharacterized” discharge from the Coast Guard. Her DD 214 shows that she was discharged under the authority of Article 12.B.20. of the Personnel Manual, with a JGA separation; an RE-3L reentry code, meaning that she may reenlist with a waiver; and “Entry Level Separation” as her narrative reason for separation. She signed her DD 214 as well as a Page 7 (CG-3307), which notified her that she was being discharged with an “Entry Level Separation” and “Uncharacterized Discharge for Entry Level Performance and Conduct due to Adjustment Disorder with Depression and assigned reenlistment code RE-3L.” She acknowledged that she had been counseled about her rights upon separation, understood her rights, and had all her questions answered.

In 2013, the applicant applied to the DVA for benefits. On May 20, 2014, the DVA’s doctor reported that none of her medical complaints were service-connected in that they were not caused by or related to the adjustment disorder she experienced when trying to adjust to military service. The doctor noted that adjustment disorders normally disappear when the stressor—in this case military training—stops and that the applicant’s adjustment disorder presumably stopped within six months of her discharge. The doctor noted that she did not seek treatment for depression after her discharge until June 2009; that there is little information in her medical records that corroborates her diagnoses or that links the onset of her depressive symptoms in June 2009 to her adjustment disorder in 2006.

On May 23, 2014, the DVA advised the applicant that her claims for benefits for allegedly service-connected disabilities, including a neurological disorder, asthma, sinus condition, major depression, adjustment disorder, anxiety, stress disorder with sleep disturbance and memory loss, gastrointestinal problems, vision problems, fatigue, muscle pain, joint pains, allergies, headaches, and cardiovascular symptoms, were all denied. The DVA denied service-connection for these conditions for various reasons, including the lack of evidence of current disabilities or of treatment for the condition while in the Coast Guard. Her vision problems were determined to be congenital. She immediately appealed the denial.

VIEWS OF THE COAST GUARD

On August 7, 2015, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny the requested relief but grant alternative relief in this case in accordance with the recommendation of the Personnel Service Center (PSC), which the JAG attached and adopted.

The JAG stated that the applicant was properly discharged from boot camp in accordance with Article 12.B.20. of the Personnel Manual after she was diagnosed with an adjustment disorder and told doctors that the Coast Guard was not for her and she was not “cut out for boot

camp.” The JAG noted that the applicant was counseled but remained determined to leave the Coast Guard and signed a Page 7 acknowledging her diagnosis and that she had been counseled about her rights upon separation and had her questions answered.

The JAG argued that the applicant has failed to prove by a preponderance of the evidence that she is entitled to the relief she requested. The JAG noted that although she alleged that the psychiatrist failed to evaluate and diagnose her properly, she submitted no evidence to overcome the presumption of regularity. In addition, there is no evidence that the applicant’s adjustment disorder resulted from any traumatic event during boot camp or “reflect more than a difficult adjusting to Basic Training, which is very common.” The JAG noted that the applicant was not entitled to a medical board based on her diagnosis and on the fact that she had less than 180 days of service. The JAG claimed that the Coast Guard “acted with administrative regularity in accordance with well established policy.”

In the attached memorandum, PSC noted that the application is not timely and so should receive only a cursory review. PSC claimed that the psychiatrist who evaluated and diagnosed her on July 21, 2006, must be presumed to have performed his duties properly and that the applicant did not submit evidence that the psychiatrist did not. PSC stated that the applicant was properly discharged in accordance with Article 12.B.20. of the Personnel Manual, which authorizes uncharacterized discharges for members within 180 days of enlistment who demonstrate unsuitability for further service or exhibit “minor pre-existing medical issues not of a disabling nature which do not meet the medical/physical procurement standards in place for entry into the service.” PSC noted that uncharacterized discharges are used for most members separated within 180 days and that Chapter 5.A.3. of the Medical Manual provides that members who are diagnosed with adjustment disorders and are unable to adapt to military life or duty may be administratively separated. PSC stated that under the SPD Handbook, the JGA separation code may be used for members discharged due to an inability to adapt to military life during the first 180 days of service.

Regarding the applicant’s claims that she was not counseled, PSC pointed out that her medical and military records show that she was counseled but remained determined to be discharged. Finally, PSC noted that under Article 12.B.20. of the Personnel Manual, the CO of the training center has final authority to award an uncharacterized discharge to a recruit, such as the applicant, because of her inability and lack of desire to adjust to military life and may do so without giving a recruit written notice or an opportunity to object.

PSC recommended, however, that the Board grant “alternative relief” by changing the applicant’s reentry code, RE-3L, to RE-3 to comport with a new policy dropping the letter on RE-3 codes, which was issued in 2010 in ALCOAST 125/10, and by changing her narrative reason for separation, “Entry Level Separation,” to “Entry Level Performance and Conduct,” because the latter is the narrative reason for separation specified for entry level separations and the JGA separation code in the SPD Handbook.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 1, 2015, the applicant submitted her response to the Coast Guard's advisory opinion. Regarding the Coast Guard's claim that her application was untimely, the applicant repeated her allegation that she did not know until August 2013 that she had been discharged due to a diagnosis of adjustment disorder. She also alleged that she was not told about the BCMR.

Regarding the Coast Guard's claim that she did not submit evidence that overcomes the presumption of regularity, the applicant referred the Board to two reports of the U.S. Government Accountability Office, GAO-09-31 and GAO-10-1013T, concerning the Department of Defense not following requirements for separations due to personality disorders and erroneous personality disorder and adjustment disorder diagnoses and discharges. She also noted that an article published by the Veterans Legal Services Clinic at Yale Law School in February 2014 reported that 100% of all discharges of Coast Guard members due to an adjustment disorder or personality disorder from FY 2001 through FY 2005 and from FY 2008 through FY 2012 violated Coast Guard regulations in some way and that the greatest compliance achieved, in FY 2007, had been just 30%. She also pointed out recent congressional bills aimed at changing the military's handling of mental health issues, recent changes to the Coast Guard Medical Manual regarding the provision of mental health care and diagnosis, and new policies in the new Military Separations Manual. The applicant alleged that these documents overcome the presumption of regularity accorded her psychiatrist and separation processing.

Regarding the Coast Guard's claim that she was properly assigned an entry level separation for her performance or conduct, the applicant pointed out that there are no derogatory reports in the military record regarding her performance or conduct. In addition, she argued that changing her narrative reason for discharge to "Entry Level Performance and Conduct" is not allowed under Coast Guard policy.

The applicant continued to assert that the psychiatrist's report is inaccurate and fails to justify his diagnosis and recommendation. She argued that it lacks essential evidence of observed appearance, behavior, attitude, level of consciousness, speech and language, mood, affect, thought processes and content, insight, judgment, etc., which are required under the new Medical Manual. She complained that he failed to provide details of what counseling he provided or what factors led him to believe she should be discharged. She argued that she should have been provided an opportunity to overcome any shortcomings, but the psychiatrist did not give her this opportunity and did not take into account that her recent reversion from week 04 to week 02 might be influencing her emotions and responses. She also repeated many of her prior allegations.

Regarding the Page 7 she signed about her discharge, the applicant denied having been properly counseled or being given a copy of any policy to read. She stated that without proper counseling and with no copy of the policy, she had no way to know her rights.

The applicant also complained that a copy of her DD 214 that she received appears to have been altered. She submitted an enlarged version of a copy of her DD 214 on which all the

type is broken and blurred in the manner sometimes caused by faxing, and her reentry code is blurred and appears to be either RR3L or RE3L and most of her initials do not appear, whereas on another copy, without broken and blurry type, the reentry code clearly reads RE3L and her initials are fully present.

The applicant concluded by arguing that the Board should grant relief because recent research, congressional attention, and policy changes reflect the Coast Guard's long-term failure to comply with policies in mental health diagnosis and separations.

APPLICABLE REGULATIONS

Article 12.B.20. of the Coast Guard Personnel Manual in effect in 2006, COMDTINST M1000.6A (Changes 1 to 40), authorized uncharacterized discharges for recent recruits as follows:

12.B.20.a. Definition

1. Uncharacterized discharges are authorized for all members separated at the entry level on or after 15 June 1983 who:

- a. Have fewer than 180 days of active service on discharge, and
- b. Demonstrate poor proficiency, conduct, aptitude or unsuitability for further service during the period from enlistment through recruit training, or
- c. Exhibit minor pre-existing medical issues not of a disabling nature which do not meet the medical/physical procurement standards in place for entry into the Service.

2. An uncharacterized discharge is used for most recruit separations, except for disability, prior service members entering recruit training, or in cases when another type of discharge may be appropriate as described in Article 12.B.16. for recruits with serious infractions.

12.B.20.b. Authority

Only Commander (CGPC-epm-1) and Commanding Officer, Training Center Cape May have final authority to discharge a member under this Article. ...

12.B.20.c. Discharge Certificate

No discharge certificate will be issued to a member awarded an uncharacterized discharge. Only a DD-214 will be issued.



12.B.20.e. Counseling

As with most other types of separations, Commanding Officer, Training Center Cape May should not initiate uncharacterized discharge processing until he or she has formally counseled the member about deficiencies and afforded him or her an opportunity to overcome them as reflected in appropriate counseling or personnel records.



12.B.20.g. Separation Program Designator

1. The following codes are authorized to be used with uncharacterized discharges: JCM, JDA, JDK, JDU, JFA, JFC, JFN, JFT, JFV, JFW, JFX, JGA, JHF, JND, JRB, KDS, KFN, LGA

2. Reentry (RE) codes will be issued only in accordance with Article 12.B.2.g. and the Certificate of Release or Discharge from Active Duty, DD-214 Instruction, COMDTINST M1900.4 (series).

The Coast Guard Medical Manual in effect in 2006, COMDTINST M6000.1B, established the Coast Guard's medical policies and instructions for active duty personnel at the time in question. Physical standards applicable to all Coast Guard Personnel are described in Chapter 3.F. of the manual, which also includes a non-exhaustive list of medical conditions and defects that are disqualifying, including adjustment disorders at Chapter 3.F.16.e. Chapter 3.F.16.e. states, "Transient, situational maladjustment due to acute or special stress does not render an individual unfit because of physical impairment. However, if these conditions are recurrent and interfere with military duty, are not amenable to treatment, or require prolonged treatment, administrative separation should be recommended (see Chapter 5 Section B)."

Guidelines for the disposition of adjustment disorder cases are listed in Chapter 5.B.3 of the Medical Manual, which states that adjustment disorders "are generally treatable and not usually grounds for separation. However, when these conditions persist or treatment is likely to be prolonged or non-curative (e.g. inability to adjust to military life/sea duty, separation from family/friends) process in accordance with [Article 12 of the Personnel Manual] is necessary." The list of adjustment disorders includes adjustment disorder with depressed mood.

Under the SPD Handbook in effect in 2006, a member discharged under the authority of Article 12.B.20. of the Personnel Manual during the first 180 days of service for failing to adapt to the military should receive an RE-3L reentry code and "Entry Level Performance and Conduct" as the narrative reason for separation on the DD 214.

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 over this matter under 10 U.S.C. § 1552(a).
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 alleged that she discovered that she had been discharged due to a diagnosed adjustment disorder in 2013, but the memorandum that she signed on July 21, 2006, and the Page 7 that she signed on July 28, 2006, both clearly state that she was being discharged due to adjustment disorder with depression. The fact that she has been diagnosed with other illnesses at various times in the interim does not persuade the Board that, if her symptoms persisted continuously after her discharge as she alleged, she could not have challenged her discharge within three years, as 10 U.S.C. § 1552(b) requires.

The applicant also acknowledged on the Page 7 being counseled about her rights on separation as listed in Article 12.B.53. of the Personnel Manual, and the CG-4057 she signed shows that she knew that her medical condition was not considered a disability by the Coast Guard. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged errors and injustice that she is asking the Board to correct in this case at the time of her discharge in July 2006, and her application is not timely.

3. Pursuant to 10 U.S.C. § 1552(b), the Board may excuse the untimeliness of an application if it is in the interest of justice to do so. In *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that to determine 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.” The court further instructed that “the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review.”³

4. The applicant argued that it is in the interest of justice for the Board to excuse her delay and consider the case on the merits because she was misdiagnosed by her Coast Guard psychiatrist and her record is incorrect. She also alleged that she was unaware that she could challenge her discharge through the BCMR. However, on the day of her discharge from the Coast Guard, the applicant signed a Page 7 acknowledging that she had read and understood Article 12.B.53. of the Personnel Manual, which advised her of her right to apply to the BCMR to correct her records. In addition, the Board finds that the fact that the applicant has received other diagnoses in the interim does not prove that her diagnosis in July 2006 was erroneous, and she has not provided a compelling reason why she could not have challenged her diagnosis and discharge within three years of her separation. The Board notes in this regard that according to her father, she was able to doggedly pursue civilian employment after her discharge and has been employed full time at a State agency for many years.

5. The Board’s cursory review of the merits of this case shows that the applicant’s request for a disability retirement cannot prevail. Her Coast Guard medical records show that on July 20, 2006, after about three weeks of boot camp, she told a doctor that she had been crying all the time, felt like she was in a nightmare, was having trouble breathing, eating, and sleeping, and did not think she was “cut out” for the Coast Guard. She stated that her symptoms had persisted for a couple of weeks. The doctor noted her recent losses during Hurricane Katrina and her recent reversion to week 02 of training, diagnosed her with an adjustment disorder with anxiety and depressed mood, and referred her to a psychiatrist. The next day, July 21, 2006, the applicant was evaluated by a psychiatrist and reported similar symptoms of depression since the beginning of training. She expressed a desire to leave training and, despite counseling by the psychiatrist, remained resolved that the Coast Guard “was not for her.” The psychiatrist diagnosed her with an adjustment disorder with situational depression, and he and the applicant signed forms stating that she was fit for discharge and did not have any other injury or illness.

³ *Allen v. Card*, 799 F. Supp. 158, 164-65 (D.D.C. 1992); see *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

These medical records are presumptively correct,⁴ and the applicant has not shown that they do not accurately reflect what she told the doctors or what the doctors did. The doctors' medical notes provide ample basis for the recommendation that she be administratively discharged due to her adjustment disorder, as well as for the determination by the CO of the training center that she should be discharged because she was not adapting to the military and did not want to continue training.

6. The Board's review also shows that the CO of the training center properly discharged the applicant pursuant to Article 12.B.20. of the Personnel Manual. She had served less than 180 days, and her failure to adapt to the military, which involved constant crying, loss of sleep and appetite, and a lack of desire to continue training, met the criteria of Article 12.B.20.a.1.b. that a member "[d]emonstrate poor proficiency, conduct, aptitude or unsuitability for further service during the period from enlistment through recruit training." Before a recruit can be discharged under Article 12.B.20., Article 12.B.20.e. requires only that the CO provide counseling and an opportunity to overcome the problems. The psychiatrist's report shows that the applicant was counseled and rejected the opportunity to stay in training, and she acknowledged having been counseled about her diagnosis and the psychiatrist's recommendation for discharge on the memorandum dated July 21, 2006. In addition, she acknowledged on the CG-4057 that she was reasonably able to perform her duties or expected to recover from her symptoms soon, and the only legal basis for a disability retirement is a permanent unfitness for duty because of a permanent disability.⁵ The record contains no substantial evidence supporting the applicant's recent claims that she incurred a disability during her 33 days of boot camp.

7. The applicant made numerous allegations about her doctors' evaluations and procedures being inadequate. She also argued that her more recent diagnoses, published statistics, and recent policy changes prove that she did not receive a proper evaluation, an accurate diagnosis, or due process in her discharge. However, she has not shown that her doctors misdiagnosed her in 2006. The fact that the symptoms she was experiencing when she was trying but failing to adjust to military training are also symptoms of illnesses she has been diagnosed with more recently does not prove that her diagnosis in July 2006 was erroneous. Nor do the statistics and recent policy changes prove that her doctors or the Coast Guard committed an error or injustice in discharging her in 2006.

8. The Board's cursory review of the merits of this case shows that the applicant received due process under Article 12.B.20. of the Personnel Manual and that the psychiatrist's diagnosis and recommendation were amply supported by the applicant's continuing symptoms and desire to leave boot camp. Given the lack of apparent merit in the applicant's claims and the lack of justification for her delay in filing her application, the Board finds that it is not in the interest of justice to excuse the untimeliness of the application or to conduct a full review of the merits of each of her claims. Accordingly, the Board will not waive the statute of limitations. The applicant's request should be denied.

⁴ 33 C.F.R. § 52.24(b); see *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties "correctly, lawfully, and in good faith.").

⁵ Physical Disability Evaluation Manual, Chapter 2.C.2.

9. The Board notes that PSC recommended that the Board change the applicant's reentry code from RE-3L to RE-3 based on policy that went into effect after her discharge. Because the RE-3L was correctly assigned under the policies applicable in 2006, the Board will not direct this change. PSC also recommended changing the applicant's narrative reason for separation on her DD 214 from "Entry Level Separation" to "Entry Level Performance and Conduct" to comport with the requirements of the SPD Handbook, which was in effect in 2006. Although the latter is the correct narrative reason for separation corresponding to separation code JGA in the SPD Handbook, under 10 U.S.C. § 1552, the Board may only make corrections that an applicant requests or that are at least in the applicant's favor.⁶ The applicant did not request this correction and it is not clearly in her favor. Therefore, the Board will not order this alternative relief.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁶ 10 U.S.C. § 1552(b) (requiring the applicant or his or her representative to request the correction); see *Friedman v. United States*, 141 Ct. Cl. 239, 252-53 (1958) (holding that "[t]he Correction Boards were established for the purpose only of reviewing, on application of a member of the military personnel, a military record to correct errors or injustices *against* such personnel and not to review and reverse decisions of other established boards *favorable* to such personnel).

ORDER

The application of former SA [REDACTED], USCG, for correction of her military record is denied.

December 31, 2015

