

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2020-038



FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on November 19, 2019, and assigned the case to the Deputy Chair to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated August 26, 2022, 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 former Gunner's Mate, Third Class (GM3/E-4) who was honorably discharged on July 6, 2017, asked the Board to correct her record to show that she was medically retired with at least a 30% disability rating.¹ The applicant argued that she was improperly discharged due to an adjustment disorder² when she should have been medically retired due to Post-Traumatic Stress Disorder (PTSD).

The applicant, through counsel, stated that she was the victim of sexual assault while she was in the Coast Guard. In 2012, the applicant was sexually assaulted by her supervisor while they were at a bar. Before the assault, she stated, her supervisor was someone whom she trusted and felt safe around. The day after the assault, the applicant experienced her first panic attack. She stated that after she reported what had happened, she was flown home to be with her family. The applicant attended counseling and was placed on anti-anxiety medication. She stated that after her

¹ Active duty members may be permanently retired due to disability incurred in the line of duty if they have at least 20 years or if the disability is rated at least 30%. 10 U.S.C. § 1201.

² An "adjustment disorder" is a psychological response to an identifiable stressor that results in the development of emotional or behavioral symptoms. Adjustment disorders are normally temporary and disappear when the stressors disappear. Adjustment disorders are not personality disorders. American Psychiatric Association, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, FOURTH EDITION, TEXT REVISION (2000)* (DSM-IV-TR), p. 679. The Coast Guard relies on the DSM when diagnosing members with psychological conditions. See Coast Guard Medical Manual (COMDTINST M6000.1B), Chap. 5.B.1.

supervisor was found guilty at most of several violations of the Uniform Code of Military Justice (UCMJ), she tried to move forward with her career.

In October 2013, the applicant was transferred to a new base. Shortly after arriving, she suffered from panic attacks, depression, and insomnia. The applicant also stated that it was at this base that she was diagnosed with PTSD. She stated that she regularly met with a psychiatrist and psychologist and was prescribed medication. Additionally, she stated that she paid thousands of dollars out-of-pocket for a service dog.

In August 2016, the applicant again received orders to report to a new base. Just before she was transferred, she made the decision to separate from her husband. Once she reported to her new base, she participated in two back-to-back weeks-long patrols. The applicant stated that she was unable to check in with her healthcare providers regarding her mental health while on patrol, and she quickly fell into a deep depression. She stated that while she was typically a high performer, her performance quickly declined. The applicant attributed the decline in her performance to her anxiety and PTSD. She stated that she was having difficulty completing simple tasks that were once no problem. For instance, she experienced feeling a sense of doom when she climbed up to reach the ammo lockers. She stated that when she was unable to secure the ammo lockers, she was removed from the ship for a mental health evaluation.

The applicant stated that soon after being removed from the ship, she was informed that she was being discharged due to a personality disorder. She alleged that this was the first time she was informed that she was diagnosed with a personality disorder. She stated that she went to the mental health clinic because she was confused as to how she could be discharged while she was receiving treatment for PTSD caused by military sexual trauma (MST). However, a doctor at the mental health clinic stated that the applicant had never been diagnosed with PTSD. At this point, the applicant went to her primary care physician to ask about the possibility of a Medical Evaluation Board (MEB). The applicant stated that her primary care physician also denied that she had been diagnosed with PTSD and accused her of trying to get money from the Coast Guard.

The applicant argued that she was improperly denied an MEB because her mental health providers at her new base were unable to see her complete medical records from her previous bases. The applicant stated that for some reason, her medical records from her previous bases were not properly included in her personnel record. Specifically, the applicant stated that her records were missing documentation that she had been diagnosed with acute stress disorder in 2012 and with generalized anxiety disorder and PTSD in 2014. The applicant argued that had her medical providers had access to her complete medical records, she would have properly received an MEB and been medically retired.

To support her application, the applicant submitted hundreds of pages of medical records. The relevant records are included in the summary of the record below.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on July 22, 2008. After completing recruit training, the applicant pursued the gunner's mate rating.

On June 10, 2009, the applicant had an initial psychiatric evaluation. The applicant's chief complaint was stated as follows: "I just can't take it anymore." The applicant was recommended to seek counseling because she had recently lost her temper and had a change of personality. The psychiatrist noted that the applicant was married but was seeking a divorce and that she was experiencing conflict with her current boyfriend. The psychiatrist also noted that the applicant had a history of abuse, trauma, and molestation. For instance, the applicant's father had cut her face when she was nineteen years old which resulted in a crushed larynx. The applicant stated that she was experiencing the following symptoms: anorexia, irritability and yelling at colleagues, decreased focus, and poor concentration as evidenced by having to read everything twice. The psychiatrist diagnosed the applicant with an adjustment disorder with anxiety and depressed mood. The disposition was noted as follows:

1. Assessment and discussion: Pt has had a long history of conflicted relationships, which included physical abuse. Pt has never addressed the impact of her family of origin domestic violence dysfunction and is clearly struggling not to repeat the pattern. Pt is bright and insightful and a good candidate for individual and perhaps in the future group psychotherapy to address these issues. Presently however, she would benefit from an SSRI to reduce her irritability and edginess because her symptoms are impacting her work situation.
2. Will check TSH be r/o and contributing thyroid factor to her present symptoms.
3. Continue IT with Ms. [redacted] LCSW and if temper continues to be a problem, refer to anger management group.
4. RTC 2 weeks.

Between June 2009 and December 2012, the applicant was repeatedly diagnosed with an adjustment disorder with anxiety and depressed mood, as well as recurrent major depression.

On September 14, 2012, the applicant was stationed on a cutter.

According to a Coast Guard Investigative Service (CGIS) report, on December 1, 2012, the applicant was on liberty at a local bar with several members of her cutter. While the applicant was on the dance floor, she was approached by her supervising Petty Officer First Class, GM1 P, who began flirting with her. GM1 P told the applicant that he knew that she wanted him and could never resist him. That evening, GM1 P approached the applicant about ten times and asked her to leave the dance floor and join him at the bar. Each time, he caressed the applicant's back or stomach in a seductive manor. The applicant told GM1 P "no" and to "stop" on numerous occasions. Later in the evening, the applicant was standing with her back to GM1 P. He then proceeded to lick her neck. The applicant spun around to face GM1 P, who then placed his hand between her legs and began flicking his tongue at her. The applicant withdrew and yelled for someone to get GM1 P out of the bar. GM1 P was found to have committed the following offenses under the UCMJ for his actions towards the applicant: Maltreatment, Abusive Sexual Contact, Drunk and Disorderly Conduct, and Failure to Obey a Lawful General Order (Sexual Harassment).

On December 14, 2012, the applicant was referred to a psychological evaluation by her primary care provider due to a reported "panic attack" she experienced while discussing the assault by her supervisor. The applicant stated that since her assault, she had experienced the following: intrusive thoughts of the event, exaggerated startle response when her husband touched her unexpectedly in bed, difficulty sleeping, negative dreams related to the assault, extremely poor

concentration and mind going blank, difficulty remembering the details of the event, emotional numbness, avoidance of work and public places, and decreased ability to experience pleasure. The applicant also reported physiological responses to the assault that made her feel like she was going to die including an increased heart rate, hyperventilating, becoming very hot and sweaty, losing her balance, and shaking. The applicant stated that while she had experienced similar symptoms approximately one and half years before the assault, the symptoms had resumed since her assault. The psychologist determined that the applicant met the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) diagnostic criteria for acute stress disorder. The psychologist stated that the applicant's treatment plan included weekly individual psychotherapy. The applicant was provisionally considered psychologically fit for full duty. However, the psychologist noted that the applicant would be continually assessed to determine her fitness for duty upon her entry into individual psychotherapy.

On October 4, 2013, the applicant was stationed as a GM3 at a Coast Guard station.

On September 29, 2014, the applicant was evaluated by her primary care physician. The applicant told her physician about the assault by GM1 P that occurred in 2012. She complained of anxiety, sleeping problems, hypervigilance, and depressed mood. The physician noted that the applicant's symptoms were consistent with anxiety, depression, and PTSD. The applicant agreed to go for psychiatric and psychological evaluations.

On January 21, 2015, the applicant had a therapy appointment with Dr. G. She decided to go to therapy because she had been feeling depressed and anxious. The applicant told Dr. G that in 2012, she had been sexually assaulted by her former supervisor. She stated that while she reported the assault, she felt as though justice was not done. The applicant stated that shortly after the assault, she was diagnosed with acute stress disorder and attended four therapy sessions. She reported experiencing the following: panic attacks, trouble staying by herself, nightmares, an increase in appetite, and a diminished sex drive. The applicant stated that she "feels dead inside." Dr. G noted that the applicant seemed anxious and detached. Dr. G diagnosed the applicant with PTSD and recommended that she attend weekly individual therapy.

On January 28, 2015, the applicant had a therapy appointment with Dr. G. The session was focused on helping the applicant verbalize in detail the sexual assault she experienced and her associated feelings. The applicant stated that she had a lot of anger towards GM1 P and that it continued to affect her relationships. She stated that she did not like to be touched by her husband and that she felt detached from her feelings. Dr. G diagnosed the applicant with anxiety, unspecified, and depressive disorder.

On February 4, 2015, the applicant had a therapy appointment with Dr. G. The session was focused on understanding how the applicant's childhood experiences were affecting her. The applicant reported that she did not have episodes of intense anxiety in the last week but that she continued to feel sad and stressed. The applicant stated that during her childhood, she and her mother were victims of physical abuse by her father.

On February 11, 2015, the applicant had a therapy appointment with Dr. G. The session was focused on managing the applicant's anxiety. During the session, the applicant explained that

it was difficult for her to express her feelings in therapy. She stated that she had always kept her experiences to herself and that it was difficult for her to open up. The applicant tried to read aloud a letter that she had written to GM1 P. She was unable to read the letter because she began to cry and feel pain in her chest. However, the applicant was able to read the letter to herself and was able to calm down.

On February 18, 2015, the applicant had a therapy appointment with Dr. G. The session was focused on the applicant's anger towards GM1 P. The applicant stated that she had seen a comment that he made on social media, and her anger become worse because she felt that he did not get the punishment he deserved. During the appointment, the applicant read aloud a letter she wrote to GM1 P. Dr. G noted that the applicant was calm during most of the reading, but that she had some discomfort in breathing after reading the letter. The applicant was able to practice abdominal breathing and self-talk to calm herself down.

On February 19, 2015, the applicant had an appointment with her psychologist. She was diagnosed with anxiety, depression, and possible PTSD. The psychologist recommended that the applicant attend weekly psychiatric evaluations.

On March 3, 2015, the applicant had a therapy appointment with Dr. G. The session was focused on helping the applicant manage her emotions. During the session, the applicant stated that she was sleeping better and did not report having nightmares. She also stated that she had spoken to her father for the first time in years. The applicant stated that speaking to her father was very hard and she feared that he would contact her more. During the session, the applicant cried and talked about some of the trauma caused by her father. For instance, she stated that her father had threatened to kill her multiple times. The applicant was very emotional and upset. Dr. G diagnosed the applicant with depressive disorder and PTSD.

On March 26, 2015, the applicant had a therapy appointment with Dr. G. During the session, the applicant stated that she had been feeling better. She stated that she had not been irritable and her relationship with her husband was improving. The applicant stated that she was offered the opportunity to go on a mission that could help her career, but that she could not go for fear of running into her father. When the applicant imagined having to see her father, she became anxious and began to cry. Through relaxation techniques, she was able to calm herself down. Dr. G noted that a therapy dog was being considered as part of the applicant's treatment plan.

On April 9, 2015, the applicant had a therapy appointment with Dr. G. During the session, the applicant indicated that she had injured herself while at work. She stated that her father had called her on the day of the accident, and she expressed that she had mixed feelings about their relationship. Dr. G noted that therapy continued to focus on helping the applicant manage her feelings about this relationship and the abuse she had endured from her father.

On April 22, 2015, the applicant went to her primary care clinic for a panic attack she experienced while attending a sexual harassment training. The applicant was diagnosed with anxiety disorder and PTSD and was immediately referred to the emergency room.

On May 18, 2015, Dr. G wrote a letter to recommend that the applicant's dog be trained as a service dog as part of her treatment for PTSD.

Also on May 18, 2015, the applicant had a therapy appointment with Dr. G. During the session, the applicant stated that she had recently learned that GM1 P was serving jail time. She indicated that this information had allowed her to feel at peace because he could not hurt anyone else. The applicant reported having fewer nightmares and being able to sleep better. She also indicated that she had been able to talk to her father and had lost some of the fear she had of him because she felt "in control."

On June 3, 2015, the applicant had a therapy appointment with Dr. G. During the session, the applicant expressed that she was having physical pain due to an injury she had suffered at work. Despite the injury, she stated that she continued to sleep well and that her mood continued to improve. The applicant told Dr. G that she had spoken with her father but feared that her feelings about him would resurface. Dr. G. and the applicant continued to work on her feelings towards her father and the abuse she had suffered.

On June 17, 2015, the applicant had a therapy appointment with Dr. G. During the session, the applicant expressed worry about an injury she suffered while she was at work. She stated that she might need surgery to address the injury and that this could end her career in the Coast Guard. Dr. G and the applicant continued to work on the trauma she experienced in her childhood. The applicant continued to describe episodes of abuse in her life and how her father would treat her and her mother.

On March 1, 2016, a nonprofit organization wrote a declaration to certify the applicant's dog as a fully trained service dog. The nonprofit noted that the applicant's dog was specifically trained to assist her as a PTSD service dog in accordance with the Psychiatric Service Dog Guidelines. The nonprofit stated that the service dog was a necessary and integral component of the applicant's management of her PTSD as recommended by her physician.

On August 10, 2016, the applicant was stationed as a GM3 on a Coast Guard cutter.

Between January 20, 2017, and February 3, 2017, the Executive Officer of the applicant's ship held Request and Complaint Masts. At such time, multiple shipmates expressed concern regarding the applicant's well-being. The Executive Officer also received reports that the applicant had been involved in disruptions in "berthing areas rivaling fights," had problems with work-related performance, and was experiencing possible suicidal thoughts and severe depression.

On February 4, 2017, the applicant was voluntarily evacuated from her ship over concerns regarding her mental stability and safety. Her shipmates were concerned for her safety after she had made several vague remarks about the topic. Additionally, it was noted that the applicant had shown a significant decrease in work performance, was engaging in verbal confrontations with shipmates, and was potentially abusing alcohol while on port calls. The applicant reported significant stressors, including a pending divorce, having to leave for patrol shortly after arriving at a new unit, the conditions of the ship, and separation from her service dog.

Also on February 7, 2017, the applicant had a mental health examination. She denied active symptoms of PTSD other than recent irritability while underway. The applicant was diagnosed with unspecified depressive disorder, with a history of an adjustment disorder and PTSD. She was prescribed antianxiety and antidepressant medication. Regarding the applicant's social history, the medical provider noted that she had a history of significant childhood abuse and multiple sexual assaults.

On February 9, 2017, the applicant was evaluated for a fifteen-minute safety-check by Dr. L who was a licensed clinical psychologist at a Naval Health Clinic. According to the applicant, her shipmates reported to the command that her work performance had decreased and that she had appeared depressed. During the appointment, she discussed her relationship with her husband. The applicant expressed a desire to start the legal proceedings for a divorce. Although she was legally separated from her husband, she continued to live with him. The applicant stated that the situation was anxiety provoking because her husband was dependent and needy. She agreed to discuss moving to the barracks if her husband's behavior became too overwhelming for her. The applicant expressed a desire to follow-up with mental health services. Dr. L diagnosed the applicant with an adjustment disorder with anxious mood. Dr. L determined that the applicant was fit for full duty and recommended that she return to the command.

On March 28, 2017, Dr. L provided a mental health status of the applicant. She stated that on February 9, 2017, the applicant had been diagnosed with an adjustment disorder with anxiety and Cluster B³ personality traits. She stated that there were several situational stressors that were causing the applicant a moderate level of stress in the form of an adjustment disorder. Dr. L noted that one of the main stressors to the applicant was the "military lifestyle, role, and responsibility." She stated that continued service would likely worsen the applicant's adjustment disorder symptoms. Further, Dr. L stated that the prognosis for therapeutic intervention was fair to poor. As a result, she deemed the applicant unsuitable for continued duty. Dr. L recommended that the applicant be separated from the Coast Guard by reason of convenience of the government—mental condition. She stated that there was no evidence that the applicant was suffering from PTSD.

On April 11, 2017, CAPT P notified the applicant that he was initiating action to separate her from the Coast Guard due to unsuitability. Specifically, CAPT P cited the applicant's diagnosis with a disqualifying condition as the reason. The applicant was notified that she had the right to consult with a lawyer. She was further notified that she could appear before an Administrative Separation Board (ASB) or waive that right on the condition that she receive a certain type of characterization of service.

Also on April 11, 2017, the applicant acknowledged that she had been notified of her discharge. She elected to consult with a military lawyer and waived her right to make a statement at the time.

On April 12, 2017, CAPT P sent a memorandum to the Advancements and Separations Branch of the Personnel Service Center recommending the applicant for discharge. CAPT P cited

³ According to the DSM-5, Cluster B is called the dramatic, emotional, and erratic cluster. It includes the following: Borderline Personality Disorder; Narcissistic Personality Disorder; Histrionic Personality Disorder; and Antisocial Personality Disorder.

the applicant's adjustment disorder with anxiety as the reason. CAPT P noted that since the applicant had served more than eight years in the Coast Guard, she was eligible for an ASB.

Also on April 12, 2017, the applicant submitted a memorandum entitled Exercise of Rights Involuntary Separation. The applicant indicated that she had consulted with a military lawyer and understood the rights that she was about to exercise. She further indicated that she waived her right to appear before an ASB on the condition that she receive an honorable discharge.

On July 6, 2017, the applicant was discharged for unsuitability in accordance with Article 1.B.15. of the Military Separations Manual. Her DD-214 shows "honorable" as the character of discharge; "adjustment disorder" as the narrative reason for separation; RE-4 (ineligible for reenlistment) as the reenlistment code; and JFY (adjustment disorder) as the separation code.

On November 10, 2017, the applicant had an appointment with a clinical psychologist, Dr. F, at a Department of Veterans Affairs (VA) medical center. The history of the applicant's illness was noted as follows:

Veteran claimed that her symptoms began after a MST [military sexual trauma] in 2012. Since that time veteran noted that she has had trouble connecting with others and constantly worries about other people attacking her. Allegedly, the symptoms caused difficulties with colleagues in the Coast Guard and was "pushed out after failure to adapt." Veteran reported that she has been triggered by scenes on television where someone licked a person's face. Veteran claimed that she had "sleep paralysis" after the sexual assault. As she was falling asleep or walking, veteran disclosed that she would see shadows moving in her room and coming towards her. She was so scared that she was allegedly unable to move. Veteran noted that the last time she experienced "sleep paralysis" was in 2015.

During the appointment, the applicant also discussed issues such as an attempted suicide at the age of fourteen in which she overdosed, physical abuse by both her mother and father, and a sexual assault that had occurred when she was in high school in which her boyfriend pressured her to have sex with him and a friend. The integrated clinical summary of the applicant stated the following:

[The applicant] is a... NSC veteran who separated from the Coast Guard in July 2017. Her current symptom presentation meets full criteria for PTSD, associated with childhood abuse and MST. She exhibits symptoms including intrusive memories, hypervigilance, avoidance (talking about events and feelings), difficulties with sleep, and anger/irritability. Furthermore, the veteran also experiences frequent feelings of sadness, detachment, anxiousness, social isolation, and anhedonia. Her current difficulties in managing her mood, concentration, and maintaining relationships have been attributed to the PTSD, but are likely long-standing from childhood and have worsened via exposure to stressors in the military, specifically the MST. The physical abuse during childhood and MST have likely influenced her tendency to be more emotionally labile, which then causes her to feel more anxious, withdraw, and increase her depression. It is important to note that while some of the veteran's current anxiety may be attributed to the PTSD, she is currently in the middle of several significant life transitions including leaving the military in July 2017 and finalizing her divorce.

Veteran denies any significant difficulties with alcohol or other drugs, but currently smokes cannabis on a daily basis and recreationally uses cocaine approximately once a month. She uses the cannabis to manage her anxiety and assist with sleep. Even though the veteran claims to be open to reducing cannabis usage, she also becomes defensive during discussion about developing strategies for reduction.

Beyond symptoms of PTSD, most prominent within veteran's presentation is her interpersonal functioning and emotional dysregulation. The veteran's presentation includes fluctuations in emotional reactivity, causing difficulties in interpersonal interactions and supports her sense of feeling out of control. Initially, the veteran claimed that this pattern of emotional dysregulation and interpersonal difficulties began after the MST, but actually appears to have begun in childhood related to the childhood physical abuse by her parents and sexual assault by her boyfriend. Her long-standing history of childhood trauma supports a complex PTSD presentation which has clearly impacted personality development and functioning. It is consistent with an erratic, impulsive, and dysregulated personality style consistent with Cluster B Personality disorders.

The application was diagnosed with the following: 1) PTSD, chronic; 2) adjustment disorder with anxiety and depression; 3) cannabis use disorder, moderate; 4) cocaine use disorder, mild; 5) R/O (meaning need to rule out; i.e., possible) major depressive disorder, recurrent; and 6) R/O cluster B personality disorder.

On March 30, 2020, LCDR R, a Lieutenant Commander for the U.S. Public Health Service, reviewed the applicant's BCMR application and medical records pursuant to 10 U.S.C. § 1552(g) and provided the following psychological opinions:

- Q. Did the veteran have a mental health condition or experience a sexual assault or sexual harassment that may excuse the conduct or poor performance that adversely affected the discharge or may otherwise warrant modifying the discharge?
- A. The member had a diagnosis of post-traumatic stress disorder.
- Q. Did the mental health condition exist and/or did the experience of a sexual assault or sexual harassment occur during military service?
- A. Yes. The acute stress disorder was diagnosed Dc 2012 1.5 weeks after the alleged assault and further carried a diagnosis of post-traumatic stress disorder in 2017 which is annotated by the ER physician at [redacted] Medical Center with patient also granted use of a therapy dog.
- Q. Is there a correlation between the mental health condition, sexual assault, and/or sexual harassment and the conduct or poor performance that adversely affected the discharge? If so, please explain.
- A. Yes. Patient was referred back to mental health in 2017 by command for performance issues. The psychologist noted an increase in anxiety and stress related to impending divorce and that the patient was requesting her therapy dog for PTSD be flown back to [redacted] to help her with her stress. However, despite the military medical records annotating (to include a reference from the psychologist in 2017) the member having PTSD, the psychologist diagnosed the encounter as "adjustment disorder."
- Q. Was applicant's diagnosis of an Adjustment Disorder erroneous?
- A. Yes.

VIEWS OF THE COAST GUARD

On June 17, 2020, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board grant alternate relief in this case by directing the Coast Guard to refer the applicant's case to a Medical Evaluation Board (MEB).

The JAG argued that the applicant failed to provide sufficient evidence that her PTSD was unfitting at the time of her separation from the Coast Guard. The JAG acknowledged that the applicant submitted numerous medical records that show a history of her mental health treatment while on active duty. Specifically, the JAG stated that the applicant provided proof of a diagnosis of PTSD in 2015. However, the JAG argued that the applicant must show more than simply a diagnosis of a disqualifying medical condition while on active duty. To receive a medical separation, a member must show that a disease or injury resulted in "unfitness to perform the duties of office, grade, rank, or rating." The JAG argued that if the applicant had been unfit to perform her duties due to PTSD, she presumably would have been processed through an MEB sometime between 2015 and 2017. However, the JAG argued that by all appearances, the applicant was effectively managing her PTSD. Rather than being unfit for duty due to PTSD, the JAG stated that the applicant was found unfit for duty due to an adjustment disorder. The JAG argued that unfitness due to an adjustment disorder does not necessarily infer unfitness due to PTSD. To support this assertion, the JAG stated that the applicant denied experiencing PTSD symptoms when she was evacuated from the cutter due to concerns over her mental health. The JAG argued that by the applicant's own statements, it appears more likely that her unfitness for duty was caused by an adjustment disorder rather than PTSD.

The JAG acknowledged that the applicant's request falls outside of the scope of the DHS liberal consideration policy. However, the JAG argued that in the spirit of liberal consideration, the applicant should be permitted to present her case to an MEB to determine whether her PTSD rendered her unfit for duty at the time of her discharge. The JAG stated that in reviewing this case, the Coast Guard sought a psychological opinion from LCDR R. He opined that the applicant's diagnosis of an adjustment disorder in February 2017 was an error. The JAG argued that while the applicant's adjustment disorder might not have been erroneous, it might not have been the only condition that impacted her fitness for continued duty. In fact, the JAG acknowledged that LCDR R established a link between the applicant's PTSD and her conduct which ultimately led to her separation.

The JAG stated that granting the applicant alternative relief by referring her to an MEB would give her the opportunity to show whether her PTSD was unfitting at the time of her separation. The JAG stated that if an MEB finds that the applicant's PTSD was unfitting at the time of her separation, her case should be processed by the Physical Disability Evaluation System (PDES). Finally, the JAG stated that if the applicant is medically separated, she should receive back-pay.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 5, 2020, the Chair sent the applicant a copy of the Coast Guard's views and invited her to respond within thirty days. In her response, the applicant argued that her original

application provides the Board with sufficient evidence to change her separation to a medical retirement. In the alternative, she argued, the Board should at least direct the Coast Guard to refer her case to an MEB.

APPLICABLE LAW AND POLICY

Article 2.D. of the Physical Disability Evaluation System Manual, COMDTINST M1850.2D, discusses the PDES process in relevant part:

1. Medical Evaluation Board (MEB). A member is introduced into the PDES when a commanding officer (or medical officer or higher authority as described in chapter 3) questions the member's fitness for continued duty due to apparent physical and/or mental impairment(s) and directs that an MEB be convened to conduct a thorough examination of the member's physical and/or mental impairment(s). The results of this examination, prepared in MEB format, should be as detailed as possible so as to provide a complete portrait of the member's physical and mental impairments for subsequent review.

Chapter 2 of the Physical Disability Evaluation System Manual defines conditions that are considered physical disabilities and conditions that are not considered physical disabilities as follows:

9. Conditions or Defects not Physical Disabilities. Certain conditions and defects may cause a member to be unfit for continued duty and yet not have physical disabilities within the meaning of the law, thereby subjecting the member to administrative separation. These conditions include, but are not limited to, alcoholism; allergy to uniform clothing; character disorders; enuresis; heat intolerance with disturbances of thermal regulation; inability to be fitted in uniform clothing; motion/travel sickness; obesity; primary mental deficiency; pseudofolliculitisbarbae of the face and/or neck; somnambulism; stuttering or stammering; systemic or marked allergic reactions following stings by red ants, bees, wasps or other stinging insects; unsanitary habits including repeated venereal disease infections. A full listing of personality and intelligence disorders is contained in chapter 5 of the Medical Manual, COMDTINST M6000.1 (series).

Article 3.F.16 of the Coast Guard Medical Manual, COMDTINST M6000.1F, discusses psychiatric disorders that may be considered disqualifying conditions in relevant part:

b. Affective disorders; anxiety, post-traumatic stress disorder or somatoform disorders. Persistence 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. Any member requiring medication for any of the above disorders must be removed from aviation duty. (Incapacity of motivation or underlying personality traits or disorders will be processed administratively. See Military Separations, COMDTINST M1000.4 (series) for further guidance.)

c. Mood disorders. Bipolar disorders or recurrent major depression do not require a six (6) month evaluation period prior to initiating a medical board. All other mood disorders associated with suicide attempt, untreated substance abuse, requiring hospitalization, or requiring treatment (including medication, counseling, psychological or psychiatric therapy) for more than twelve (12) months. Prophylactic treatment associated with significant side effects such as sedation, dizziness, or cognitive changes, or frequent follow-up that limit duty options is disqualifying. Prophylactic treatment with medication(s) may continue indefinitely as long as the member remains

asymptomatic following initial therapy. Any member requiring medication for any of the above disorders must be removed from aviation duty. (Incapacity of motivation or underlying personality traits or disorders will be processed administratively. See Military Separations, COMDTINST M1000.4 (series) for further guidance.)

d. Personality; sexual; factitious; psychoactive substance use disorders; personality trait(s); disorders of impulse control not elsewhere classified. These conditions may render an individual administratively unfit rather than unfit because of a physical impairment. Interference with performance of effective duty will be dealt with through appropriate administrative channels (see Chapter 5 Section B of this Manual).

e. Adjustment Disorders. 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 of this Manual).

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.⁴
3. The application is timely because it was filed within three years of the applicant's discovery of the alleged error or injustice in the record, as required by 10 U.S.C. § 1552(b).
4. The applicant alleged that her discharge was erroneous and unjust because she should have been processed under the PDES and medically retired. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in the military record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁵ 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."⁶
5. The applicant argued that her administrative separation was erroneous because she suffered from PTSD. On September 29, 2014, the applicant was evaluated by her primary care physician. The applicant told her physician about the assault by GM1 P, and she complained of anxiety, sleeping problems, hypervigilance, and depressed mood. Her physician noted that the

⁴ *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

⁵ 33 C.F.R. § 52.24(b).

⁶ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

applicant's symptoms were consistent with anxiety, depression, and PTSD. Shortly thereafter, the applicant started attending weekly psychiatric sessions with Dr. G. According to the applicant's medical records, the weekly psychiatric sessions with Dr. G lasted approximately six months. Dr. G consistently diagnosed the applicant with PTSD. Then, in March 2016, a nonprofit organization certified the applicant's dog as a fully trained PTSD service dog and stated that the dog was a necessary and integral component of the management of her PTSD. Finally, about four months after being discharged from the Coast Guard, the applicant had an appointment with a clinical psychologist at the VA. The clinical psychologist stated that the applicant's symptom presentation met the criteria for PTSD.

The Board notes that one clinical psychologist, Dr. L, stated that there was no evidence that the applicant was suffering from PTSD. Dr. L evaluated the applicant on February 9, 2017, just two days after she was evacuated from the cutter. However, as the applicant asserted, Dr. L may not have had the applicant's complete medical records to properly diagnose her since she had recently reported to the unit. Further, Dr. L's diagnosis of the applicant followed a single fifteen minute safety-check. During the safety-check, the applicant primarily discussed her relationship issues with her husband. She did not bring up her childhood abuse or sexual assaults. Therefore, Dr. L's determination that the applicant was not suffering from PTSD was likely based on incomplete information and is not persuasive. The Board finds that the applicant has shown by a preponderance of the evidence that she suffered from PTSD at the time of her discharge.

6. The applicant argued that she was erroneously discharged due to a personality disorder. However, there is nothing in the applicant's record to support a finding that she was diagnosed or discharged due to a personality disorder. Instead, the applicant was discharged due to an adjustment disorder. According to the Diagnostic and Statistical Manual of Mental Disorders, an adjustment disorder is a psychological response to an identifiable stressor that results in the development of emotional or behavioral symptoms. The applicant's medical records show that she had a history of an adjustment disorder. The applicant's records show that on June 10, 2009, she was first diagnosed with an adjustment disorder. Then, between June 2009 and December 2012, the applicant was repeatedly diagnosed with an adjustment disorder with anxiety and depressed mood.

The applicant was again diagnosed with an adjustment disorder with anxious mood on February 9, 2017, which became the basis for her discharge. When the applicant was evacuated from the cutter, she identified several significant stressors that were impacting her mental health including her pending divorce, having to leave for patrol shortly after arriving at a new unit, the conditions of the ship, and separating from her service dog. According to Dr. L, these stressors were causing the applicant a moderate level of stress and diagnosed the applicant with an adjustment disorder. However, after reviewing the applicant's medical records pursuant to 10 U.S.C. § 1552(g), LCDR R, a Lieutenant Commander for the U.S. Public Health Service, provided a psychological opinion in which he concluded that the applicant's diagnosis of an adjustment disorder in February 2017 was erroneous. LCDR R failed to provide any evidence to contest the diagnosis of an adjustment disorder other than the applicant's diagnosis of PTSD, but a diagnosis of PTSD does not preclude a diagnosis of an adjustment disorder. Further, the applicant's diagnosis of an adjustment disorder was confirmed by a clinical psychologist at the VA on November 10, 2017, just four months after she was discharged. Therefore, the applicant failed to show by a

preponderance of the evidence that she was improperly diagnosed with an adjustment disorder at the time of her discharge.

7. The applicant argued that the Coast Guard committed an error in failing to issue her a medical retirement. While the applicant has proven that she suffered from PTSD while in the Coast Guard, that is insufficient to issue her a medical retirement. Pursuant to Article 2.C.2.a. of the PDES Manual, “[t]he 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.” In this case, the record shows that the applicant was not ably performing her duties. Specifically, the applicant was evacuated from her cutter due to concerns regarding her mental safety, a significant decrease in work performance, verbal confrontations with shipmates, and potential abuse of alcohol during port calls. However, at the time, the applicant had been diagnosed with both PTSD and an adjustment disorder. The applicant did not explain how her unfitness to perform her duties was due to PTSD rather than an adjustment disorder. In fact, on the same day the applicant was removed from the cutter, she denied experiencing active symptoms of PTSD other than irritability. Therefore, the applicant failed to show by a preponderance of the evidence that the Coast Guard committed an error in failing to issue her a medical retirement.

8. Although the applicant is not immediately entitled to a medical retirement, she has proven by a preponderance of the evidence that she is entitled to be processed through the PDES. According to Chapter 1.D. of the PDES Manual, when a commanding officer questions a member’s fitness for continued duty due to apparent physical and/or mental impairments, an MEB is convened to conduct a thorough examination of the member. According to Article 3.F.16.e. of the PDES Manual, an adjustment disorder is not considered a physical or mental impairment and so an MEB was not convened. However, PTSD is considered a mental impairment that can warrant an MEB, and the record shows that the applicant had been diagnosed with and suffering various symptoms of PTSD on and off for several years, primarily anxiety. Given that she was discharged because of symptoms of both adjustment disorder and PTSD, and she had already been diagnosed with PTSD, the Board finds that an MEB would have convened to examine her. Therefore, the applicant has proven by a preponderance of the evidence that the Coast Guard erred in failing to evaluate her under into the PDES when she was found unfit for duty because of her mental health.

9. The applicant asked the Board to correct her military record to show that she was medically separated in 2017. The record shows that in 2017, the Coast Guard found the applicant to be unfit for duty because of an adjustment disorder. However, the applicant has proven by a preponderance of the evidence that she had also been diagnosed with PTSD at the time of her discharge. Disability ratings and medical separations are properly determined by doctors and medical boards, and the BCMR is not composed of doctors. Therefore, the Board finds that the applicant is entitled to an MEB as doctors and the PDES should be responsible for making the ultimate determination regarding the applicant’s disability rating and medical retirement. Should a correction of her record be necessary to reflect the results of her PDES processing, the applicant will be entitled to any pay and benefits due as a result of the correction, as provided by 10 U.S.C.

§ 1552(c)(1).⁷ In addition, her DD 214 will be corrected and reissued to reflect the results of her PDES processing.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁷ 10 U.S.C. § 1552(c)(1) (“The Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another’s service in the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard, as the case may be, or on account of his or another’s service as a civilian employee.”).

ORDER

The application of former [REDACTED] [REDACTED] [REDACTED] [REDACTED] for correction of her military record is denied. However, alternative relief is granted as follows:

Within 120 days of the date of this decision, the Coast Guard shall convene a Medical Evaluation Board to evaluate her Post-Traumatic Stress Disorder. The Coast Guard shall then process her in accordance with the Physical Disability Evaluation System Manual, COMDTINST M1859.2 (series). Upon completion of the PDES processing, the Coast Guard shall issue her a new DD-214 reflecting the outcome of that processing. In addition, the Coast Guard shall pay her any amount she is due as a result of her PDES processing and any corrections made to her record as a result of this order.

August 26, 2022

[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]