

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-086

FINAL DECISION

ANDREWS, Attorney-Advisor:

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. It was docketed on March 26, 1999, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated January 6, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a xxxx who was discharged from the Coast Guard on xxxx, 199x, asked the Board to correct her record by changing the narrative reason for discharge in block 28 of her DD Form 214 from "Alcohol Rehabilitation Failure" to something else, which she did not specify. She also asked the Board to change her reenlistment code, which is RE-4 (not eligible for reenlistment).

APPLICANT'S ALLEGATIONS

The applicant made no allegations on her own behalf but submitted two reports from the Substance Abuse Rehabilitation xxxxxxxx. The first report, a "Commanding Officer's Summary," indicates that the applicant was in treatment at the center from xxx, 199x, to xxxxx, 199x. The report states that she had completed six weeks of the recommended comprehensive full-day treatment program, which included screening, individual and group therapy, indoctrination in a self-help support group, fitness training, family counseling, and nutritional and stress management education.

The report stated that "she has made maximum therapeutic progress in developing a lifestyle change that will address the referral behavior of dependency with more functional sober living. The potential for a future relapse to substance dependency is always high; therefore, it is essential that the recommended aftercare regimen be strictly followed." The report recommended that the applicant attend weekly individual aftercare meetings and six Alcoholics Anonymous meetings per week. She was prescribed the medication Antabuse.

The second report summarized the care received by the applicant while in treatment at the center. It states that while in treatment, she admitted craving alcohol but was compliant in and enthusiastic about her treatment program.

VIEWS OF THE COAST GUARD

On November 9, 1999, the Chief Counsel submitted an advisory opinion in which he recommended that the Board deny the applicant's request.

The Chief Counsel alleged that the Coast Guard followed established policy and procedure in discharging her by reason of alcohol rehabilitation failure following her second documented "alcohol incident" in xxxx 199x. He stated that she "was afforded all due process" while being discharged.

The Chief Counsel explained that the Coast Guard must use the separation codes and narrative reasons for separation established by the Department of Defense. Regarding the narrative reason assigned to the applicant, the Chief Counsel explained as follows:

As there exists only a finite number of separation codes, a SPD code may be assigned which does not exactly explain an individual member's discharge situation. . . . The only SPD codes available where the discharge is related to the misuse of alcohol and disciplinary action or sufficient misconduct did not occur to warrant an OTH discharge are "PD" codes. The narrative reason for all "PD" codes is "alcohol rehabilitation failure." In some cases, the narrative reason is exactly what transpired. However, in other cases, it is a general statement that serves a multitude of situations in which a member failed to adhere to Coast Guard policy with regards to the use of alcohol.

The Chief Counsel stated that, although the applicant completed an alcohol rehabilitation program, the rehabilitation failure referred to in block 28 of her DD Form 214 is her failure to remain sober after her first alcohol incident. It was this failure, proven by the occurrence of the second alcohol incident, which caused her to be discharged by reason of "alcohol rehabilitation failure,"

although she did complete a treatment course prior to her discharge. Therefore, the Chief Counsel alleged, the assignment of “alcohol rehabilitation failure” as the applicant’s narrative reason for separation “is reasonable as applied to the facts in this case.”

Finally, the Chief Counsel argued, “[b]ecause the statutes and implementing guidance related to [separation] codes do not create individual entitlements or mandate procedures, Applicant has no basis for relief by the BCMR. Even if the Board found error in this case contrary to the Coast Guard’s position, violations of agency procedural regulations do not create private rights not otherwise provided by statute or the Constitution.”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 22, 1999, the BCMR sent the applicant a copy of the Chief Counsel’s advisory opinion and invited her to respond within 15 days. The applicant did not respond.

SUMMARY OF THE RECORD

On xxxxxx, 199x, the applicant enlisted in the Coast Guard for a term of four years. She signed a statement indicating that Coast Guard policy concerning alcohol abuse had been explained to her.

On xxxx, 199x, the applicant received an “unsatisfactory” conduct mark as non-judicial punishment (NJP) pursuant to a captain’s mast, which found that she had consumed alcohol while under age 21, assaulted the Officer of the Day while intoxicated, and abused the government email system. She was assigned 20 days of restriction, 20 days of extra duties, and she was fined \$300.

As a result of her first alcohol incident, the applicant underwent alcohol dependency screening and was ordered to attend individual counseling sessions, Alcoholics Anonymous meetings, and educational classes. The applicant apparently began this treatment and soon sought an increased level of treatment. However, on xxxxx, 199x, eight days before she was scheduled to go to the xxxxxxx for in-patient rehabilitative treatment, the applicant was discovered drunk and disorderly by the Officer of the Day, who found her drinking alcohol. On xxxxxx, 199x, she began treatment at the xxxxxxxxx.

On xxxxxxx, 199x, the applicant was informed that she was being recommended for discharge due to unsuitability, pursuant to Article 20 of the Personnel Manual, because of her second documented alcohol incident. She was informed that she could submit a statement on her own behalf. On xxxxxxx,

199x, the applicant submitted a formal objection to her pending discharge. She stated that after her first alcohol incident she was screened and told that she had a "high probability of alcohol dependency." This confused her because she thought she was a "normal" drinker. After a second screening, she was ordered to seek treatment by seeing a counselor and attending one classroom session and one Alcoholics Anonymous meeting per week. However, she continued to drink through this month-long program and realized her problem was worse than she thought. Therefore, she stated, she approached a store keeper first class in her unit and "asked her if [she]'d get in trouble for asking for a higher level [of] treatment." As a result, a medical officer called her in and told her they would prescribe Antabuse for her. He also told her to see her counselor the next day, but she skipped it because she was later told it was cancelled since she was being sent to an alcohol treatment center in xxxxxx. Before leaving for the center, however, "a night of hard drinking turned into insane behavior which affected several of my co-workers, the duty station, and my supervisor." The applicant stated that she believed the treatment program would enable her to tackle her problems in a sober condition. She asked for a "second chance" to remain in the Coast Guard.

On xxxxx, 199x, the Coast Guard Personnel Command ordered the applicant's command to discharge her no later than xxxxxx, 199x, by reason of unsuitability under Article 12.B.16 of the Personnel Manual with a separation code of "JPD" and the corresponding narrative reason for separation appearing in the Separation Designator Program (SPD) Handbook. On xxxxxxx, 199x, the applicant was honorably discharged from the Coast Guard with a JPD separation code, an RE-4 reenlistment code, and "Alcohol Rehabilitation Failure" as her narrative reason for separation.

APPLICABLE REGULATIONS

Article 20 of the Personnel Manual (COMDTINST M1000.6A) contains the regulations regarding alcohol abuse by Coast Guard members. According to Article 20.B.2.e., "[a]ny member who has been involved in alcohol incidents or otherwise shown signs of alcohol abuse shall be screened in accordance with the Alcohol Abuse Treatment and Prevention Program The results of this alcohol screening shall be recorded and acknowledged on a [Page 7]"

According to Article 20.B.2.h.2., "[e]nlisted members involved in a second alcohol incident will normally be processed for separation in accordance with Article 12.B.16." Enlisted members must be discharged after a third incident.

According to Article 20.B.3.b., "[c]ommanding officers shall seek appropriate treatment for members who have abused alcohol or been diagnosed as

alcohol dependent. . . . Members shall be treated for alcohol abuse or dependency as prescribed by competent medical authority. However, if they are otherwise qualified, their scheduled separation or release to inactive duty for any reason shall not be delayed for the sole purpose of completing alcohol treatment.”

The Separation Program Designator (SPD) Handbook permits the use of the following codes, narrative reasons, and reenlistment codes, which might apply to the applicant’s case:

SPD Code	Narrative Reason	RE Code	Explanation
JPD	Alcohol Rehabilitation Failure	RE-4	Involuntary discharge . . . when a member failed through inability or refusal to participate in, cooperate in, or successfully complete a treatment program for alcohol rehabilitation.
JNC	Unacceptable Conduct	RE-4	Involuntary discharge . . . when member performs acts of unacceptable conduct (i.e., moral and/or professional dereliction) not otherwise listed.

BCMR DOCKET No. 1998-047

In BCMR Docket No. 1998-047, the applicant was discharged by reason of alcohol rehabilitation failure following two alcohol incidents. The first, an arrest for driving under the influence, occurred in July 199x, but his screening was delayed due to his cutter’s underway schedule until November 199x. In November, he was finally screened and sent to Navy DWI/DUI Remedial Training. In December, his command formally documented his first alcohol incident and ordered him to undergo Level I rehabilitative treatment. However, before he began treatment, on January 1, 199x, he was arrested for assault committed while under the influence of alcohol. Therefore, his command recommended his discharge and referred him to Level II treatment. He was discharged on April 16, 199x, before completing the treatment program, with a JPD separation code and “alcohol rehabilitation failure” as his narrative reason for separation.

In his advisory opinion for Docket No. 1998-047, the Chief Counsel of the Coast Guard recommended that the Board change the applicant’s separation code to JNC and his narrative reason for separation to “unacceptable conduct.” The Chief Counsel’s analysis of the case and Coast Guard policy was very similar to his analysis in this case. However, he concluded that “if the Board should so choose, the assignment of a JNC SPD code would not be objectionable.”

In its Final Decision in Docket No. 1998-047, the Board found that the narrative reason for separation “alcohol rehabilitation failure” was inaccurate

because the applicant's treatment was delayed by the Coast Guard and thus was not completed by the time he was discharged. Therefore, the Board granted the relief recommended by the Chief Counsel and did not change the applicant's reenlistment code, which was RE-4.

FINDINGS AND CONCLUSIONS

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

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

2. The applicant alleged that the narrative reason for separation shown on her DD Form 214 was in error because she successfully completed alcohol rehabilitation treatment prior to her discharge. She asked that her narrative reason for separation and her reenlistment code be changed.

3. The record indicates that after her first alcohol incident, the applicant was properly and promptly screened and ordered to begin alcohol rehabilitative treatment. However, she subsequently realized the low-level treatment was not working and sought a higher level of treatment. Prior to receiving that treatment, she had a second alcohol incident. She successfully completed the higher level of alcohol rehabilitative treatment, but was discharged due to her second documented alcohol incident.

4. The Chief Counsel recommended that the Board deny relief because, although the code and narrative reason shown on the applicant's DD Form 214 do not perfectly describe the applicant's situation, they are the closest available terms in the SPD Handbook. Only codes and narrative reasons appearing in the handbook may be used, and there is no separation code or narrative reason specifically designed for members who successfully complete rehabilitative treatment prior to being discharged due to a second alcohol incident.

5. The Board finds that the applicant was properly discharged following her second alcohol incident under Article 20.B.2.h.2. of the Personnel Manual. The record indicates that the rehabilitative treatment the applicant received after her first alcohol incident failed. While it is admirable that she voluntarily sought and successfully completed a higher level of treatment after her second alcohol incident, this does not negate the fact that the applicant initially failed to be rehabilitated and that she was discharged as a result of that initial failure.

6. The applicant's case is distinguishable from that of the applicant in BCMR Docket No. 1998-047, whose treatment was delayed for many months by the Coast Guard and did not even begin until after his second alcohol incident. In contrast, the applicant in this case was properly and timely referred for rehabilitative treatment.

7. The applicant has not proved by a preponderance of the evidence that the narrative reason for separation shown on her DD Form 214 is inaccurate. Nor has she proved that the RE-4 reenlistment code assigned to her is unjust.

8. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application for correction of the military record of former XXXXX, USCG, is hereby denied.

Nancy Lynn Friedman

Michael J. McMorrow

Karen L. Petronis