

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2005-056

XXXXXXXXXXXXXXXXXXXX.
Xxx xx xxxx, SN (former)

FINAL DECISION

Author: Hale, D.

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on January 25, 2005, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated September 22, 2005, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant asked the Board to correct her record by upgrading her reenlistment code (RE-4)¹ so she can reenlist in the Coast Guard. The applicant argued that the code should be upgraded because she was experiencing family problems and was under duress when she admitted to being a homosexual in an effort to obtain a discharge from the Coast Guard under the "don't ask, don't tell" policy. In support of her request, she alleged that:

I was discharged on the 18th of March 1999 for violating the "Don't ask, Don't tell" policy. The choice I made to do so is the greatest regret of my life. That was over five years ago. As I have grown as an adult, it has become increasingly obvious to me that I am well suited for a career in the United States Coast Guard and that the decision I made as a young adult had consequences I was unable to comprehend at the time.

¹ A reenlistment code of RE-4 means the applicant is "ineligible for reenlistment" into the Armed Forces.

In her letter to the Board, the applicant also stated that she admitted to being a homosexual because family and health problems had caused her to “fall into depression” and that she had become very ill. In addition, she alleged that she had “a severe personality conflict with [her] immediate supervisor” and had “exhausted all other avenues for transfer before my admission of homosexuality.”

In another letter to the Board, the applicant stated that she would have never violated the “don’t ask, don’t tell” policy if it were not for the bias and disregard that she experienced at her last duty station. Finally, she stated “While I was awaiting discharge ... I did not know I could simply retract my statement and remain in the Coast Guard. I was afraid if I retracted my statement that punitive measures would have been taken against me for lying.”

SUMMARY OF THE APPLICANT’S RECORD

On August 5, 1997, the applicant enlisted in the Coast Guard. After completing recruit training, she was assigned to a cutter. The record contains a handwritten note dated 23 Jan 99 stating “I [the applicant] spoke this afternoon with Chief [C], our CEA², and admitted to him that I was gay. I had a meeting with Chief and Mrs. [N] later that afternoon and told her the same thing.”

The record also contains an undated, typewritten letter from Chief C, stating the following:

On 23 January 1999 [the applicant] approached and asked to meet with me on a Command Chief issue. During this meeting, [the applicant] confessed to being gay. After our meeting I notified the Commanding Officer, LTJG [N], of [the applicant’s] disclosure. After notifying Mrs. [N] we then met with [the applicant] where she again confessed to being gay. This statement is true and accurate to the best of my knowledge.

The record also contains a typewritten statement from LTJG N regarding the admission made to her by the applicant. The letter states:

On Saturday January 23, 1999, the CGC [Coast Guard Cutter][S] was moored at ISC New Orleans in a Commission, Special Status. On this day, MKC [C] (the [S’s] Command Chief) asked if he could speak to me. He informed me that [the applicant] made the statement to him that she was gay. I met with [the applicant] with MKC [C] in attendance. I informed [the applicant] that MKC [C] had spoken to me regarding their talk earlier. I explained to her that whatever she was going to tell me, she was obligated to tell the truth or she would be in violation of the UCMJ. I then asked her if she would like to tell me anything and

² Command Enlisted Advisor.

she said to me "I am gay." I informed [the applicant] that because of her admission, I would be required to start administrative proceedings for her discharge from the service. She said that she understood. ... This statement is true to the best of my knowledge.

On January 25, 1999, the Commander, Coast Guard Group Mobile, issued a letter informing the applicant that she was being discharged from the Coast Guard for homosexual conduct. In his letter, the Commander noted that he had received credible information that she had made a statement indicating that she was homosexual. The Commander indicated that the final decision on the type of discharge she would receive would rest with the Commander, Personnel Command. The letter also informed the applicant that she had the right to submit a rebuttal and to consult with legal counsel.

On January 26, 1999, the applicant submitted a response to the Commander's January 25, 1999, letter. In her letter, the applicant acknowledged that her discharge had been proposed and that she had been provided the opportunity to consult legal counsel. Finally, she indicated that she waived her right to a hearing, waived her right to counsel, did not object to being discharged from the Coast Guard, and did not wish to submit a statement on her behalf.

On January 27, 1999, the Commander, Coast Guard Group Mobile, issued a memorandum to the Commander, Coast Guard Personnel Command (CGPC), recommending that the applicant be administratively discharged by reason of unsuitability. In support of his recommendation, he noted that the applicant had voluntarily submitted a statement stating she was gay.

In February 1987, CGPC directed that the applicant be discharged by reason of homosexual conduct under Article 12.E.3. of the Personnel Manual. The authorized separation code was HRB (homosexuality) and CGPC directed that the appropriate narrative reason for separation should be determined from the separation program designator (SPD) handbook.

On March 18, 1999, the applicant was honorably discharged from the Coast Guard for unsuitability with a separation code of HRB³ and an RE-4 reenlistment code.

On February 18, 2002, the applicant petitioned the Discharge Review Board (DRB) wherein she sought a review of her discharge and an upgrade of her reenlistment code. On August 27, 2002, the DRB unanimously voted to deny the applicant's request. On December 11, 2002, the Commandant approved the recommendation of the DRB.

VIEWS OF THE COAST GUARD

³ The separation code HRB is assigned when a member is involuntarily discharged after admitting to being a homosexual or bisexual. SPD Code Handbook, page 2-72.

On June 7, 2005, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he adopted the findings of the CGPC and recommended that the Board deny the applicant's request. The JAG argued that the applicant was properly separated after admitting that she was a homosexual. The JAG further argued that the applicant was afforded the opportunity to a hearing before an administrative board and to submit a statement on her own behalf, both of which she unconditionally waived.

The JAG also stated that the applicant failed to provide any evidence supporting her allegations that she was under duress when she admitted to being a homosexual.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On or about June 8, 2005, the Chair sent a copy of the views of the Coast Guard to the applicant and invited her to respond within 30 days. No response was received.

APPLICABLE LAW

Article 12.E.1. of the Coast Guard Personnel Manual states, in pertinent part, that under the current "don't ask, don't tell" policy of the armed services, the suitability of a person will be judged on their conduct and ability to meet the required standards of duty performance and discipline. A member's sexual orientation is considered a personal, private matter and is not a bar to continued service unless manifested by homosexual conduct. The Personnel Manual further states that a member may only be separated if credible information about homosexual conduct exists. Credible information does not exist if the only information known concerns an associational activity, such as going to a gay bar, possessing or reading homosexual publications, associating with known homosexuals, or marching in a gay rights rally in civilian clothes.

Article 12.E.3. of the Personnel Manual states that a service member shall be separated if he or she states he or she is a homosexual or bisexual, or words to that effect, unless there is a further approved finding the member has demonstrated that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

The SPD Handbook states that a member involuntarily discharged for a homosexual admission shall receive a separation code of HRB and an RE-4 reenlistment code.

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 submission, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely.
2. The applicant was discharged from the Coast Guard because she made a verbal admission to her Commanding Officer (CO) that she was a homosexual in an effort to get discharged from the service. Although she claims that she was experiencing family problems and was under duress when she made the admission, the applicant

has not provided any evidence of duress or other aggravating factors to support this allegation.

3. The Board notes that the Coast Guard's decision to discharge the applicant was not an arbitrary one. On January 23, 1999, the applicant approached her Chief and freely admitted that she was a homosexual. Later that day, the applicant volunteered the same admission during a meeting with her CO. Furthermore, the applicant admits that she chose to violate the Coast Guard's "don't ask, don't tell" policy in an effort to obtain a discharge. The applicant actively sought a discharge by explicitly stating that she was a homosexual, and the Coast Guard discharged her accordingly. Although the applicant now states that that the "decision I made as a young adult had consequences I was unable to comprehend at the time," the Board is loath to grant relief and undo the applicant's volitional admission and its consequences without evidence of duress, error, or injustice.

4. The Board finds that the Coast Guard committed no error at the time of the applicant's discharge. The applicant openly claimed to be homosexual and clearly expressed her desire to be discharged from the Coast Guard. The Coast Guard informed her by written notice that she was being discharged for unsuitability and that she would be ineligible for reenlistment. The Coast Guard also afforded the applicant the opportunity to seek legal counsel, but the applicant chose not to do so, and she was discharged pursuant to Article 12.E.3. of the Personnel Manual.

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

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former SN XXXXXXXXXXXX xxx xx xxxx, USCG, for the correction of her military record is denied.

Frank H. Esposito

Randall J. Kaplan

Dorothy J. Ulmer