

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2005-066

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

FINAL DECISION

AUTHOR: Hale, D.

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The application was docketed on February 17, 2005, upon receipt of the applicant's completed application and military records.

This final decision, dated November 17, 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, a former seaman apprentice (SA) in the Coast Guard, asked the Board to correct her military record by upgrading her RE-4¹ reenlistment code and changing the narrative reason for separation (unacceptable conduct) on her DD Form 214 so she can reenlist in the Coast Guard. The applicant did not specify which reenlistment code or narrative reason she wanted to replace those in her Coast Guard record.

The applicant alleged that she was discharged from the Coast Guard because she "did not agree with the practice of the Coast Guard dumping all trash, paint cans & brushed [sic] over the side of the ship into the Pacific Ocean." She also stated, "That was my job. I just couldn't bring myself to do that."

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

Finally, the applicant stated that she now understands that there is nothing she can do to prevent the Coast Guard from dumping its trash at sea and that she would like to reenlist in the Coast Guard.

SUMMARY OF THE RECORD

On June 25, 1996, the applicant enlisted in the Coast Guard for a term of four years. After completing recruit training, she was assigned to a cutter.

On September 23, 1996, a Page 7² was placed in the applicant's record to document counseling about her obligation to be financially responsible and that future financial irresponsibility might result in disciplinary action.

The applicant's record indicates that she was seen by her ship's chief health services technician several times between October 22, 1996, and October 26, 1996. The applicant sought treatment for persistent motion sickness, and the record states that as of October 26, 1996, the "motion sickness was resolving."

On October 26, 1996, the applicant's commanding officer (CO) placed another Page 7 in her record to document that she had been counseled about the difficulties and administrative burdens she had placed on her supervisors since her arrival onboard the ship. Specifically, the Page 7 noted that one of her supervisors was forced to spend a great deal of time resolving issues with her spouse's overseas screening situation and that her failure to disclose the fact that her husband was incarcerated demonstrated her questionable integrity.

On December 13, 1996, the applicant's CO placed a Page 7 in her record to document counseling about her decision to place her name on a list to attend a Coast Guard school for radarman training, despite the fact that she had clearly expressed a desire to terminate her enlistment. The Page 7 also states that the applicant had "demonstrated neither the ability, maturity, nor the potential to succeed as a petty officer."

On January 2, 1997, a physician with a United States Public Health Service (USPHS) facility in Hawaii evaluated the applicant. The physician's narrative summary indicates that the applicant claimed to have experienced at least 20 episodes of sleepwalking and that one of these episodes had occurred while she was on a ship. He diagnosed the applicant as having somnambulism (sleepwalking). He also noted that the applicant claimed to be claustrophobic and that she had a problem with authority. He recommended that the applicant be discharged under 12.B.12.³ of the Coast Guard Personnel Manual.

² A Page 7 (CG-3307, Administrative Remarks) entry documents any counseling that is provided to a service member during their military career.

³ Article 12.B.12. of the Coast Guard Personnel Manual allows a commander to discharge members for the "convenience of the government" and 12.B.12.a.12. permits discharges for a

On January 17, 1997, the applicant submitted a memorandum to the Commander, Coast Guard Personnel Command (CGPC), wherein she requested to be released from active duty because she was unable to cope with being away from her family. In her request, the applicant also wrote that she had been disappointed seeing her shipmates throw garbage over the side of the ship, that she "can't live in an environment that creates this much pollution," and that she had been "reprimanded by my superiors for refusing to help dump trash; no matter how biodegradable they say it is." The applicant also attributed her inability to adjust to shipboard life to the fact that she was frequently seasick and sleepwalked once during her ship's patrol.

On January 31, 1997, three Page 7s were placed in the applicant's record. The first Page 7 advised her that she had received a mark of "2" in the Stamina dimension of the Enlisted Performance Evaluation Form (EPEF) and a mark of "1" for her outwardly display of a lack of commitment to the Coast Guard, its mission, and the command and crew of her ship.⁴ The second Page 7 noted that the applicant had received a mark of "1" in the Loyalty and Adaptability dimensions on her EPEF because of her lack of commitment to the Coast Guard and her demonstrated inability to "adapt to the Coast Guard, shipboard life, and separation from her family." The third Page 7 advised her that she had received a mark of "Not Recommended" for promotion for the evaluation period ending January 17, 1997, because she did not possess the maturity, judgment, or positive attitude required of Coast Guard personnel in the next higher pay grade.

Also on January 31, 1997, the applicant's acting CO informed her in writing that he had initiated her administrative discharge from the Coast Guard. The CO cited her apathy and attitude as his reasons for recommending her discharge. The endorsement at the bottom of the memorandum indicates that the applicant acknowledged receipt of the discharge recommendation, did not desire to make a statement, and did not object to being recommended for discharge.

On February 11, 1997, the applicant's CO sent a memorandum to the Commander, CGPC, wherein he recommended that the applicant be discharged from the Coast Guard pursuant to Articles 12.B.12.a.9.⁵ and 12.B.16.b.3.⁶ of the

condition, not a physical disability, that interferes with the performance of duty; e.g., somnambulism.

⁴ Enlisted members are marked on a scale of 1 to 7 (7 being best) in various categories of performance.

⁵ Article 12.B.12.a.9. authorizes commanders to discharge members for motion sickness.

⁶ Article 12.B.16.b.3. authorizes commanders to discharge members for apathy, defective attitude, and inability to expend effort constructively.

Coast Guard Personnel Manual. The CO recommended that she be discharged because she (a) demonstrated a lack of maturity and judgment, (b) experienced extended periods of motion sickness while on board, (c) consistently demonstrated a negative attitude, and (d) had requested to be discharged from the Coast Guard because of her inability to cope with shipboard life, in addition to several personal reasons. The CO also noted that a medical officer with the USPHS had recommended the applicant be discharged because she was unfit for sea duty.

On February 28, 1997, CGPC notified the applicant's CO that she was to be discharged from the Coast Guard no later than March 28, 1997. CGPC directed that the applicant receive an honorable discharge by reason of unsuitability under Article 12.B.16. of the Personnel Manual, a JNC⁷ separation code, and the appropriate narrative reason for discharge listed in the separation program designator (SPD) handbook.

On March 28, 1997, the applicant was honorably discharged from the Coast Guard. Her DD Form 214 indicates that she received a separation code of JNC, an RE-4 reenlistment code, and the narrative reason for separation was "unacceptable conduct."

On January 16, 2002, the applicant petitioned the Discharge Review Board (DRB) for an upgrade of her reenlistment code and to have the narrative reason for discharge (unacceptable conduct) removed from her DD Form 214. On November 19, 2002, the DRB unanimously voted to deny the applicant's request. On March 6, 2003, the Commandant of the Coast Guard approved the recommendation of the DRB.

VIEWS OF THE COAST GUARD

On July 5, 2005, the Judge Advocate General (JAG) of the Coast Guard, relying on a memorandum from CGPC, submitted an advisory opinion recommending that the Board grant relief. The JAG recommended that (a) the applicant's SPD code be changed from JNC (unacceptable conduct) to KFV (condition, not a disability), (b) her reenlistment code be changed from RE-4 to RE-3G,⁸ and (c) the narrative reason for discharge on her DD Form 214 be changed from "unacceptable conduct" to "condition, not a disability."

⁷ The separation code JNC is assigned when a member is involuntarily discharged for acts of unacceptable conduct (i.e., moral and/or professional dereliction) not otherwise listed. The only reenlistment code authorized is RE-4. SPD Code Handbook, page 2-63.

⁸ A reenlistment code of RE-3G means the applicant is eligible for reenlistment except for a condition, not a physical disability, that interferes with performance of duty.

The JAG argued that he failed to find any evidence to substantiate the applicant's discharge for moral and/or professional dereliction. He stated that while the applicant may have demonstrated some degree of unsatisfactory performance during her enlistment, "the administrative processing of the applicant's discharge creates doubt as to whether the SPD and reenlistment codes issued were appropriate or a just application of Coast Guard policy."

The JAG also noted that prior to the applicant's request for separation, there was no record of any intent to discharge her for unacceptable conduct. Furthermore, he noted that although CGPC directed that the applicant be ultimately discharged for unacceptable conduct, her command had in fact recommended that she be discharged for immaturity, apathy, financial irresponsibility, motion sickness, and sleepwalking, none of which are classified as unacceptable conduct in the Coast Guard Personnel Manual. He added that because there was nothing in the record to support a discharge for unacceptable conduct, her discharge should have been classified "under a more specific Coast Guard article (i.e., apathy, financial irresponsibility, or condition, not a disability)."

The JAG also stated that the applicant's CO should not have initiated her discharge for inaptitude, apathy, defective attitudes, or financial irresponsibility until she had been afforded a reasonable probationary period to overcome her deficiencies. The JAG added that the applicant's CO had a responsibility to counsel her that a formal probationary period of at least six months had begun and such counseling should have been recorded via a Page 7 entry. The JAG added that the applicant should have been informed that the discharge process would be initiated unless she showed significant improvement in overcoming her deficiencies during the probationary period.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 12, 2005, the BCMR sent the applicant a copy of the views of the Coast Guard and invited her to respond within 30 days. A response was not received.

APPLICABLE LAW

Article 12.B.12.a. of the Coast Guard Personnel Manual provides that the Commander, CGPC, may authorize or direct an enlisted member to separate for the convenience of the government for a number of reasons, including motion sickness and somnambulism (sleepwalking).

Article 1.E. of the Coast Guard instruction for completing discharge forms states that a member's DD Form 214 should show a separation code and reenlistment code "as shown in the Separation Program Designator Handbook or as stated by [CGPC] in the message granting discharge authority."

The SPD Handbook includes the following combinations of codes and narrative reasons for separation, which might apply to the applicant's case:

SPD Code	Narrative Reason for Separation	RE Code	Separation Authority	Explanation
JNC	Unacceptable conduct	RE-4	12.B.16	Involuntarily discharge [by direction] when member performs acts of unacceptable conduct (i.e., moral and/or professional dereliction) not otherwise listed.
KFV	Condition, not a disability	RE-3G RE-3X ⁹ RE-4	12.B.12	Voluntary discharge when a condition, not a physical disability, interferes with the performance of duty (motion sickness, etc.).

Article 12.B.16. of the Personnel Manual states that the Commander, CGPC, shall direct the discharge of enlisted members for unsuitability and that the purpose of such a discharge is to free the service of members considered unsuitable for further service for a variety of reasons, including inaptitude, apathy, and financial irresponsibility.

Article 12.B.16.c. of the Personnel Manual provides that commanding officers will not initiate administrative discharge for inaptitude, apathy, defective attitudes, unsanitary habits, or financial irresponsibility until the member has been afforded a reasonable probationary period to overcome the deficiencies. The Article also states that the member shall be counseled that a formal probationary period of six months has begun and such counseling shall be entered on a Page 7. The member must acknowledge this entry in writing. The Article affords commanding officers the discretion to "recommend discharge at any time during the probationary period if the member is not attempting to overcome the deficiency."

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:

⁹ A reenlistment code of RE-3X means the applicant is eligible for reenlistment except for motion sickness or for being a non-swimmer.

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. An application to the Board must be filed within three years after the applicant discovered or reasonably should have discovered the alleged error in her record.¹⁰ Although the applicant filed her application more than three years after she knew or should have known that she received a discharge for unacceptable conduct and an RE-4 reenlistment code, she filed it within three years of having timely filed an application with the DRB, which has a 15-year statute of limitations. Therefore, the applicant has exhausted her administrative remedies and her application is considered timely.¹¹

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.

3. The applicant's CO, citing a demonstrated lack of maturity and judgment, unfitness for sea duty, and a poor attitude towards the Coast Guard, recommended that she be discharged for unsuitability. However, the applicant's DD Form 214 indicates that she was discharged for unacceptable conduct (moral and/or professional dereliction). Her DD Form 214 also indicates that she received a JNC separation code and an RE-4 reenlistment code, the latter of which permanently bars the applicant from reenlisting in the armed forces.

4. The Board agrees with the JAG's recommendations because there is nothing in the applicant's record to support a discharge for unacceptable conduct. The applicant's record contains several Page 7s documenting problems with financial responsibility and her lack of commitment to the Coast Guard. She was not recommended for promotion because her command determined that she "did not possess the maturity, judgment, and positive attitude required of Coast Guard personnel in pay grade E-3 or higher." Moreover, there are several memoranda in the applicant's record that clearly state that her discharge was being recommended because of her apathy, attitude, and history of immaturity. The record abundantly illustrates that the applicant was ill prepared for shipboard life and her CO recommended that she be discharged for unsuitability. However, there is nothing in the record to warrant the applicant's discharge for "moral and/or professional dereliction."

5. The JAG alleged that the applicant was not afforded sufficient due process to be discharged under Article 12.B.16. of the Personnel Manual. The Board agrees. The applicant's CO recommended that she be discharged from the Coast Guard pursuant to Articles 12.B.12.a. and 12.B.16.b.3. of the Personnel Manual. Under Article 12.B.16.c., members being considered for discharge due

¹⁰ 10 U.S.C. § 1552; 33 C.F.R. § 52.22.

¹¹ 33 C.F.R. § 52.13(b); *Ortiz v. Sec'y of Defense*, 41 F.3d 738, 743 (D.C.C. 1994).

to inaptitude, apathy, defective attitudes, unsanitary habits, or financial irresponsibility must be afforded a reasonable probationary period to overcome the deficiencies. The applicant was not afforded a probationary period and was not given the opportunity to overcome her deficiencies. However, since the applicant did not object to being discharged and the JAG is recommending that her record be corrected to show that she was discharged pursuant to Article 12.B.12 of the Personnel Manual, instead of Article 12.B.16., the Board finds the error to be harmless.

6. The JAG recommended that the applicant's record be corrected by (a) changing the SPD code from JNC to KFV (condition, not a disability), (b) changing the reentry code from RE-4 to RE-3G, and (c) changing the narrative reason for discharge from "unacceptable conduct" to "condition, not a disability." The Board agrees with the JAG's recommendation that the applicant's DD Form 214 should be corrected to reflect that she was discharged for a "condition, not a disability" with an RE-3G reenlistment code. The applicant's record contains medical evidence stating that she had been diagnosed with motion sickness and was unfit for sea duty. In addition, the applicant's CO noted that her extended periods of motion sickness had contributed to her unfitness. If the applicant is discharged for the convenience of the government under Article 12.B.12.a.9. (motion sickness), her discharge will be characterized as a discharge due to a "condition, not a disability," and the available reenlistment codes under the SPD Handbook are RE-3G, RE-3X, or RE-4. An RE-3G code is not a permanent bar to enlistment but requires the applicant to satisfy a recruiting command that she no longer suffers from the problem(s) that led to her discharge before she will be allowed to reenlist. See Article 2.E.1.b.5. of the Coast Guard Recruiting Manual.

7. Accordingly, the applicant's record should be corrected to indicate that she was discharged pursuant to Article 12.B.12. of the Coast Guard Personnel Manual with an SPD code of KFV and a reenlistment code of RE-3G. In addition, the narrative reason for discharge should be changed to "condition, not a disability."

ORDER

The application of former xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of her military record is granted as follows:

Block 25 of her DD Form 214 shall be corrected to show Article 12.B.12. of the Personnel Manual as the separation authority.

Block 26 shall be corrected to show KVV as the separation code.

Block 27 shall be corrected to show RE-3G as the reenlistment code.

Block 28 shall be corrected to show "Condition, Not a Disability" as the narrative reason for separation.

The Coast Guard shall issue the applicant a new DD 214 reflecting these corrected entries.

No copy of the Final Decision shall be placed in her record.

Elizabeth F. Buchanan

Donald A. Pedersen

Darren S. Wall