

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2005-143

XXXXXXXXXXXXXXXXXXXX
Xxx xx xxxxx, SR/E-1 (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. The Chair docketed the case on August 11, 2005, upon receipt of the applicant's completed application for correction.

This final decision, dated April 26, 2006, 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 recruit (SR; pay grade E-1) who served 23 days in the Coast Guard, asked the Board to correct his record by upgrading his reenlistment code from RE-4 (not eligible for reenlistment) to RE-3 (eligible for reenlistment except for a disqualifying factor). He alleged that he has been denied employment because many potential employers view his RE-4 reenlistment code as representing a "discharge of integrity, dishonesty, and lying." The applicant alleged that he was wrongfully discharged from the Coast Guard for misconduct after he was accused of failing to reveal his history of migraine headaches upon his enlistment. He further alleged that he disclosed this fact during his pre-entry physical and at several times during his short tenure in the Coast Guard. The applicant also noted that he already petitioned the Discharge Review Board (DRB) and that it upgraded the narrative reason for discharge on his DD Form 214 from "misconduct" to "physical standards," but that the DRB did not upgrade his reenlistment code.

SUMMARY OF THE RECORD

The record contains a medical screening form, dated December 1, 1995, completed by the applicant in preparation for his pre-enlistment physical. On the form he indicated that he had taken the drug Cafergot¹ at age 4 for headaches, but that he had not taken the medication since then. On December 4, 1995, the applicant underwent a pre-enlistment physical examination at a Military Entrance Processing Station (MEPS) to determine his physical qualifications for enlistment. The applicant completed another report of medical history dated December 4, 1995, on which he indicated that he did not have, nor did he ever have, "frequent or severe headache." The Chief Medical Officer who examined the applicant at the MEPS station determined that he was qualified for duty in the Coast Guard and he enlisted in the Coast Guard on February 6, 1996.

On February 7, 1996, the applicant completed a pre-training physical at the Coast Guard Training Center (TRACEN) Cape May. The applicant completed another report of medical history and indicated that he had or has "frequent or severe headache." The physician performing the physical indicated on the bottom of the medical history form that the applicant might have had pediatric migraines in the past but that he [the applicant] had not experienced any episodes as an adult. The examining physician noted that the applicant was qualified for training and active duty in the Coast Guard.

On February 13, 1996, the applicant reported to one of the training center's emergency clinics complaining of a migraine that he had been experiencing for three days. After examining the applicant, the physician's assistant (PA) determined that he was suffering from a migraine headache. The PA also noted that the applicant had experienced another migraine episode approximately two weeks earlier and had a 10-year history of migraines. The applicant was admitted to the hospital for treatment and observation of his migraine.

On February 14, 1996, the applicant was discharged from the hospital and the Senior Medical Officer wrote a memorandum to the applicant's Battalion Officer wherein he recommended that the applicant be discharged because of his medical condition (migraine headaches). The Senior Medical Officer also assigned another medical officer to conduct a medical board to determine the applicant's fitness for continued service in the Coast Guard.

On February 22, 1996, the Coast Guard conducted a "substitution physical examination" of the applicant to determine his fitness for continued duty. The examining PA diagnosed him with a history of recurrent migraine headaches that existed prior to enlistment. The PA noted that the applicant was "fit for duty – for the purpose of discharge from the Coast Guard only." The narrative summary completed

¹ Cafergot is the trade name for the drug containing ergotamine tartrate and caffeine, and is commonly used in the prevention of vascular headaches. At www.pharma.us.novartis.com/products/name/cafergot.jsp (last visited April 5, 2006).

by the PA who evaluated the applicant noted that he was recommending his discharge for recurrent migraines because the pre-enlistment physical conducted at the MEPS station had failed to reveal

[a] long-standing history of migraine headaches. [Applicant] states that he was diagnosed with migraines as a young child. [Applicant] would have 2-3 episodes per week until age 11 or 12, when his pattern of headaches would be 2-3 a month. This migraine history continued up until his arrival at TRACEN Cape May. [Applicant] used Cafegot to treat his headaches and was advised to use Imitrex, but declined. [Applicant] states that he disclosed his migraine history to the medical doctor at MEPS.

At the conclusion of the substitution physical exam, the applicant was provided with a document notifying him that his diagnosis disqualified him from service in the Coast Guard. The applicant indicated that he did not want to request a waiver.

On February 28, 1996, the applicant was discharged from the Coast Guard pursuant to Article 12.B.18.² of the Coast Guard Personnel Manual. He received a discharge "under honorable conditions," a separation code of JDT³, and "misconduct" as his narrative reason for separation. The record indicates that the applicant received an RE-4 reenlistment code (not eligible for reenlistment). He had served in the Coast Guard for 23 days.

Prior to filing his application with the Board, the applicant petitioned the DRB for a change of the narrative reason for separation listed on his DD Form 214. The applicant asked the DRB to change the narrative reason from "misconduct" to "medical." On May 1, 2004, the DRB approved the applicant's request and changed the narrative reason for separation on his DD 214 from "misconduct" to "physical standards." In addition, the DRB changed the discharge authority from 12.B.18. of the Coast Guard Personnel Manual to 12.B.12.⁴ of the Personnel Manual. On July 15, 2004, the Commandant reviewed the DRB's decision and approved its findings.

VIEWS OF THE COAST GUARD

On December 22, 2005, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he adopted the findings of the Coast Guard

² Article 12.B.18. of the Coast Guard Personnel Manual authorizes discharge for members who procure a fraudulent enlistment, induction, or period of active service through any deliberate material misrepresentation, omission, or concealment which, if known at the time, might have resulted in rejection.

³ JDT denotes an involuntary discharge when a member procured a fraudulent enlistment, induction or period of military service through deliberate material misrepresentation, omission, or concealment of drug use/abuse. SPD Handbook, Pg. 2-23.

⁴ Article 12.B.12. of the Manual authorizes discharge of personnel for a medical condition.

Personnel Command (CGPC) and recommended that the Board grant the applicant's request.

CGPC stated that the applicant's discharge for physical standards as determined by the DRB is consistent with Coast Guard policy and that RE-4 is the appropriate reenlistment code given the applicant's character of service. However, CGPC stated that although the applicant did not specifically request that the BCMR upgrade his character of service, his record of service does not justify a general discharge, "under honorable conditions." CGPC noted that there are no negative administrative remarks or punitive actions in the applicant's record during his 23 days of active service and that the DRB determined that the applicant did, in fact, reveal his history of migraine headaches prior to enlistment. Accordingly, the CGPC argued that the applicant's DD 214 should reflect that he received an honorable discharge with an RE-3G reenlistment code because those changes would be consistent with a member discharged for the convenience of the government because of an inability to meet physical readiness standards.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 4, 2006, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. The applicant responded on March 11, 2006, and did not object to the Coast Guard's recommendation.

APPLICABLE REGULATIONS

Article 12.B.18.b. of the Coast Guard Personnel Manual states that the Commander may authorize a discharge for misconduct for members procuring a fraudulent enlistment, induction, or period of active service through any deliberate material misrepresentation, omission, or concealment which, if known at the time, might have resulted in rejection.

Article 12.B.12.a. of the Personnel Manual provides that the Commander may authorize or direct the separation of enlisted members for a number of reasons, including a condition, not a physical disability, that interferes with the performance of duty.

The Separation Program Designator (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
JDT	Fraudulent entry	RE-4	12.B.18.	Involuntarily discharge when a member procured a

	Into military service, drug abuse			fraudulent enlistment, induction or period of military service through deliberate material misrepresentation, omission, or concealment of drug use/abuse.
JFT	Physical standards	RE-4 or RE-3G	12.B.12.	Involuntary discharge when a member fails to meet established physical readiness standards.

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 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 his record.⁵ Although the applicant filed his application more than three years after he knew or should have known that he received a discharge for misconduct, he 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 his administrative remedies and his application is considered timely.⁶

2. The applicant alleged that although the DRB already upgraded the narrative reason for separation on his DD 214 from "misconduct" to "physical standards," he is still harmed by the RE-4 reenlistment code. In fact, the applicant alleged that he has been denied employment because some employers view his RE-4 reenlistment code as representing "a discharge of integrity, dishonesty, and lying." However, nothing in the applicant's Coast Guard record indicates why he should receive an RE-4, which many consider derogatory. The applicant's record does not contain any negative administrative remarks or punitive actions during his 23 days of service, and the DRB already determined that the applicant did, in fact, reveal his history of migraine headaches prior to his enlistment. The Board agrees with the DRB that there is insufficient evidence to conclude that the applicant fraudulently concealed his history of headaches prior to his enlistment.

3. The JAG recommended that the Board upgrade the applicant's reenlistment code to RE-3G to be consistent with the applicant's discharge for his failure to maintain physical readiness. The DRB changed the narrative reason for discharge on the applicant's DD 214 from "misconduct" to "physical standards" and changed the separation authority from Article 12.B.18. to Article 12.B.12. of the Personnel Manual. Article 12.B.12. of the Manual permits an RE-3G reenlistment code as well as an RE-4 for

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

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

a discharge resulting from a member's failure to meet physical readiness standards. In light of the fact that the applicant's record is devoid of anything derogatory and that the DRB changed the narrative reason for discharge to "physical standards," the applicant's reenlistment code should be upgraded from RE-4 to RE-3G in accordance with Article 12.B.12. of the Personnel Manual.

4. Although the applicant did not specifically request a change to the character of service listed on his DD 214, the JAG recommended that the applicant's character of service should be changed from "under honorable conditions" to "honorable." The Board agrees. Nothing in the applicant's record justifies his general discharge.

5. In light of the applicant's allegations and the JAG's recommendations, the Board finds that his DD 214 should be corrected to show a reenlistment code of RE-3G and the character of service as "honorable." The Coast Guard should issue the applicant a new DD 214 so that the erroneous derogatory information on his original DD 214 — such as the JDT separation code denoting drug abuse — need not be seen by future employers.

ORDER

The application of former SR xxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted as follows:

Block 24 shall be corrected to show "Honorable" as the character of service.

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

The Coast Guard shall issue the applicant a new DD 214 reflecting these corrected entries as well as the corrections made by the DRB. The following notation may be made in Block 18 of the DD 214: "Action taken pursuant to order of BCMR."

Bruce D. Burkley

J. Carter Robertson

George A. Weller