

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2006-063

XXXXXXXXXXXXX
XXXXXXXXXXXXX, SN/E-3 (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 February 24, 2006, upon receipt of the applicant's completed application for correction.

This final decision, dated October 19, 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 (SN; pay grade E-3) who served a little more than two years in the Coast Guard before being discharged for refusing to attend treatment for his alcohol abuse, asked the Board to correct his record by upgrading his reenlistment code (RE-4 - ineligible for reenlistment) so he can reenlist in the Coast Guard. The applicant stated that the RE-4 reenlistment code is unjust and that there "isn't enough reason to justify such a code attached to my faithful and honorable time in service. It is a hard lesson learned, but it should not prohibit me from making the military a career choice."

In support of his application, the applicant submitted three letters from individuals attesting to his character. He submitted letters from his stepfather and two Coast Guard members who worked with the applicant at Group San Francisco.

The applicant's stepfather stated that

I have seen him develop into the fine young man he has become. I have always known him to be courteous, attentive to detail and willing to offer a helping hand to those who need it.

While [the applicant] was stationed in Yerba Buena Island, my wife and I went to San Francisco and visited with [the applicant] for three days. The personnel we met at the base spoke highly of him.

Since [the applicant's] return from his tour or service in the Coast Guard I have noticed a remarkable sense of increased maturity. I believe this is due to his innate qualities, but I also attribute this to the level of training he received in the Coast Guard.

[The applicant] has been a dedicated law-abiding citizen. I have complete confidence that he would be a valuable asset to the Coast Guard if he rejoins.

Storekeeper, second class C (SK2 C), who worked with the applicant at Group San Francisco, stated the following in his letter supporting the applicant's request,

During his time in our office, [the applicant] showed nothing but determination and hard work throughout the office. Out of the three strikers, [the applicant] was the hardest working, and most willing to learn the trades of being a storekeeper. Whenever we tasked [the applicant] anything, whether it is SK work, or simply running around for us, he would finish it on or way before the time expected. When he decided to put his name on the SK A school list, I knew he would not have any trouble getting through the course.

Being a PO2 [petty officer second class] on Group San Francisco meant also being a part of the duty rotation for Officer of the Day (OOD). [The applicant] was a member of the gate guard watch, and one of the few to be fully Charlie qualified... On many occasions [the applicant] would have duty on my OOD days, and just like his work in the office or while at MAA [Master At Arms], he did not disappoint me in his production, or willing[ness] to do things. He would always volunteer for the watches members did not want, or stand by for anyone who needed a standby.

I know [the applicant] has gotten himself into some trouble while serving in the Coast Guard, but I feel he was young, and in the wrong place at the wrong time. I know he has learned from his mistakes and I feel he is one of the few people who deserve a second chance, and the Coast Guard can only benefit from him being allowed back in. Not only will they be getting a hard worker, but a loyal one. Honor, Respect, and Devotion [to] duty best describes [the applicant].

SK2 F, who also worked with the applicant at Group San Francisco, stated the following with respect to the applicant's character:

... [The applicant] worked under me during his time at our office. I soon came to find out that [the applicant] was a hard worker and was very eager to learn the roles and responsibilities of a Storekeeper. He was very reliable and I could count on him to get the job done when I assigned him work. His interaction with other people in our office and with various vendors over the phone [was] very professional. I believe [the applicant] would be a great asset to any office he worked in. ...

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on April 9, 2002. On January 1, 2003, while stationed at Coast Guard Station Venice, an administrative entry (Page 7)¹ was placed in his record documenting that he had been selected as the Station Venice Sailor of the Quarter. The Page 7 states, *inter alia*, that the selection "recognizes your superior abilities as a Boatcrew Member as well as your outstanding performance as a member of the Deck Department." The Page 7 also states that his "unwavering desire to get the job done right combined with your eagerness to assist your fellow crewmembers has been an example for your peers to follow."

On January 16, 2003, another Page 7 was placed in the applicant's record by the Chief, Operations Support Branch at the Training Center (TRACEN) Petaluma, notifying him that he was being disenrolled from Food Service Specialist (FS) A school. The Page 7 states that he was being disenrolled because he was arrested by the California Highway Patrol for driving under the influence of alcohol. The Coast Guard apparently did not document this arrest as an alcohol incident.

On January 29, 2003, the applicant received a Letter of Commendation from the Commandant. The letter stated that the applicant was being commended for his performance while assigned to the deck department at Coast Guard Station Venice. The letter noted that the applicant "participated in the response to over 40 Search and Rescue cases" and was instrumental in assisting in the rescue of a fishing boat crewman who had sustained serious injury to both of his legs. The letter further noted, "As a member of the boatcrew, you immediately rendered first aid and acted as a Spanish language translator ensuring vital information was passed to the flight surgeon." In addition, the Commandant noted that in the applicant's eagerness to promote the Coast Guard, he had volunteered his time and gave demonstrations to the children at a local YMCA.

On April 27, 2003, the applicant was stopped by security personnel at TRACEN Petaluma and it was determined that he was driving with a blood alcohol level of .09. On April 28, 2003, the Coast Guard issued a memorandum to the applicant notifying him that his driving privileges on TRACEN Petaluma and all other military installations were being suspended for one year.

On May 13, 2003, a Page 7 was placed in the applicant's record documenting the April 27, 2003, incident. The Page 7 noted that on April 29, 2003, he was evaluated by

¹ A Page 7 entry documents any counseling that is provided to a service member as well as any other noteworthy events that occur during that member's military career.

the Command Drug and Alcohol Representative (CDAR) at TRACEN Petaluma. The Page 7 further noted that the CDAR determined that the applicant met the diagnostic criteria for substance abuse. Finally, the Page 7 noted that this was "being considered his first alcohol incident for documentation purposes" and that "per chapter 20 of the Personnel Manual, COMDTINST M100.6 (series), any further incidents may result in your separation from the U.S. Coast Guard."

On April 4, 2004, the applicant was arrested for public drunkenness. On May 4, 2004, another Page 7 was placed in the applicant's record documenting the arrest and informing him that "it has been determined that this be classified as an Alcohol Situation." The Page 7 also noted that the applicant had been seen by the TRACEN medical officer on May 4, 2004, who issued a diagnosis of alcohol abuse. Finally, the Page 7 noted that on May 4, 2004, the applicant was offered treatment for alcohol abuse and that he declined that treatment. The Page 7 includes a paragraph which states that "You are advised that by declining to attend and complete treatment you will be recommended for discharge from the U.S. Coast Guard. Furthermore, declining treatment prior to discharge may disqualify you for alcohol treatment by the Department of Veterans Affairs in the future." The Page 7 is signed by the applicant.

On May 5, 2004, the applicant was notified by memorandum from TRACEN Petaluma that he was being recommended for discharge by reason of unsuitability because he refused treatment for alcohol abuse. The memorandum notified the applicant that he had the right to make a written statement in response to the proposed discharge. The applicant signed a "First Endorsement" to the May 5, 2004, letter and acknowledged that he was being recommended for discharge. He also indicated that he did not object to an honorable discharge, did not want to make a statement, and did not desire to receive treatment for substance abuse.

On May 5, 2004, TRACEN Petaluma sent a letter to Coast Guard Personnel Command (CGPC) requesting authority to discharge the applicant for unsuitability due to a diagnosis of "alcohol abusive" and for refusing treatment.

On May 20, 2004, CGPC authorized TRACEN Petaluma to discharge the applicant no later than June 18, 2004.

On June 3, 2004, the applicant was discharged from the Coast Guard pursuant to Article 12.B.16. of the Coast Guard Personnel Manual. He received an "honorable discharge," a separation code of JPD,² and "unsuitability" as the narrative reason for separation. The record indicates that the applicant received an RE-4 reenlistment code. He had served in the Coast Guard for two years, one month, and 25 days.

² JPD denotes an involuntary discharge directed by established directive when a member failed through inability or refusal to participate in, cooperate in, or successfully complete a treatment program for alcohol rehabilitation.

Prior to filing his application with the Board, the applicant submitted a request to the Coast Guard's Discharge Review Board (DRB) for the same relief requested from the BCMR. On August 31, 2005, the DRB denied the applicant's request, stating that his discharge had been carried out in accordance with Coast Guard policy. However, the DRB recommended that the narrative reason for discharge listed on the applicant's DD 214 be changed from "Unsuitability" to "Alcohol Rehabilitation Failure." On November 21, 2005, the Commandant reviewed the DRB's decision and approved its finding that the applicant's discharge was proper.

VIEWS OF THE COAST GUARD

On June 20, 2006, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he adopted the findings of the Coast Guard Personnel Command (CGPC) and recommended that the Board deny the applicant's request. CGPC argued that the applicant's discharge was in accordance with Coast Guard policy because he refused treatment for alcohol abuse and did not object to an honorable discharge. CGPC also argued that the applicant's RE-4 reenlistment code is proper because it is the only reenlistment code allowed for a member discharged for alcohol rehabilitation failure.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 27, 2006, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. The BCMR did not receive a response.

APPLICABLE REGULATIONS

Article 20 of the Coast Guard Personnel Manual contains the regulations regarding alcohol abuse by Coast Guard members. Article 20.A.2.d. states that an alcohol incident is "any behavior, in which alcohol is determined, by the commanding officer [CO], to be a significant or causative factor, that results in the member's loss of ability to perform assigned duties, brings discredit upon the Uniformed Services, or is a violation of the Uniform Code of Military Justice (UCMJ), Federal, State, or local laws. The member need not be found guilty at court-martial, in a civilian court, or be awarded non-judicial punishment for the behavior to be considered an alcohol incident."

Article 20.A.2.e. of the Personnel Manual states that "alcohol screening" is an "evaluation by a physician who has attended Addiction Orientation for Health Care Provider training or who has equivalent training regarding substance abuse and

chemical dependency, clinical psychologist, or a DoD civilian equivalent Counseling And Assistance Center counselor to determine the nature and extent of alcohol abuse. An evaluation by a Collateral Duty Alcohol Representative [CDAR] does not satisfy the screening requirement contained in this manual." The evaluation and recommendation for treatment are based on the answers provided by the member in an interview.

Article 20.B.2.k. of the Personnel Manual states that members refusing to undergo the treatment deemed necessary by the CO and a competent medical authority are normally processed for separation.

The Separation Program Designator (SPD) handbook mandates an RE-4 reenlistment code for a member discharged for refusing to participate in a treatment program for alcohol rehabilitation.

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. The application was timely.
2. The applicant requested that the reenlistment code on his DD 214 be upgraded so he can reenlist in the Coast Guard. The applicant stated that the RE-4 reenlistment code is unjust and it prohibits him from having a career in the military.
3. The record indicates that the applicant experienced numerous problems related to his alcohol consumption during his service in the Coast Guard. In January 2003, he was disenrolled from A School because he had been arrested by the local authorities for driving under the influence. On April 27, 2003, the applicant was once again stopped by local law enforcement and was found to be driving while intoxicated. On April 28, 2003, he was referred to the Command Drug and Alcohol Representative (CDAR) at TRACEN Petaluma for evaluation, who subsequently noted that the applicant met the diagnostic criteria for substance abuse. The Coast Guard informed the applicant that the April 27, 2003, incident was "being considered his first alcohol incident for documentation purposes" and that "any further incidents may result in your separation from the U.S. Coast Guard."

4. The record indicates that the applicant was arrested on April 4, 2004, for public drunkenness, and the Page 7 documenting the incident noted that the incident would be recorded as an "alcohol situation," in lieu of an "alcohol incident." The applicant was referred to a TRACEN Petaluma medical officer, in accordance with Article 20.A.2.e. of the Personnel Manual, who provided a diagnosis of alcohol abuse and recommended that the applicant complete a 14-day outpatient treatment program. The record indicates that the applicant declined treatment for his alcohol abuse, and that he was counseled that his refusal to attend and complete the treatment would result in his being recommended for discharge from the Coast Guard. The Board notes that on May 5, 2004, when the applicant was told that he was being discharged from the Coast Guard, he once again indicated that he "did not desire to receive treatment for substance abuse." The applicant also did not object to being discharged.

5. The Board finds that the applicant was properly discharged subsequent to his failure to participate in an alcohol treatment program. In accordance with Article 20.B.2.k. of the Personnel Manual, the applicant's CO had the authority to recommend discharge of any member who had refused to undergo the treatment deemed necessary by the CO and a competent medical authority.

6. The applicant has failed to prove by a preponderance of the evidence that his discharge for alcohol rehabilitation failure following his refusal to attend treatment for his alcohol problem was in any way erroneous or unjust or that he was denied any due process pursuant to his discharge under Article 12.B.16. of the Personnel Manual. In accordance with the SPD Handbook, an RE-4 code is the appropriate reenlistment code for a member discharged for refusing to participate in a treatment program for alcohol rehabilitation. Although the applicant provided a letter from his stepfather and letters from two Coast Guard members who knew him prior to his discharge, he has not submitted sufficient evidence of successful rehabilitation treatment for alcohol abuse or evidence of his sustained sobriety following such treatment. In light of the current record, the applicant has not proved that his receipt of the RE-4 code is erroneous or unjust.³

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

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

³ For purposes of the BCMRs, "injustice" is "treatment by military authorities that shocks the sense of justice." *Sawyer v. United States*, 18 Cl. Ct. 860, 868 (1989), *rev'd on other grounds*, 930 F.2d 1577 (citing *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976)).

ORDER

The application of former SN XXXXXXXXXXXX, xxxxxxxxxxxx, USCG, for correction of his military record is denied.

Philip B. Busch

Francis H. Esposito

William R. Kraus