

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2006-123

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

AUTHOR: Andrews, J.

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 Chair docketed the case on June 2, 2006, upon receipt of the completed application and military records.

This final decision, dated February 15, 2007, 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, who was discharged from the Coast Guard on November 12, 2004, asked the Board to correct his discharge form, DD Form 214, by upgrading his reenlistment code from RE-4 (ineligible to reenlist) to RE-1 (eligible to reenlist).

The applicant stated that he was erroneously discharged for alcohol rehabilitation failure even though he only had one "alcohol incident"¹ in his record, whereas the Personnel Manual requires two such incidents to occur before a member can be discharged for alcohol rehabilitation failure.² The applicant stated that when he applied to

¹ Article 20.A.2.d.1. of the Personnel Manual defines an "alcohol incident" as "[a]ny behavior, in which alcohol is determined, by the commanding officer, 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, 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."

² Article 20.B.2.h.2. of the Personnel Manual states that "[e]nlisted members involved in a second alcohol incident will normally be processed for separation in accordance with Article 12.B.16."

the Discharge Review Board (DRB) for correction of his DD 214, that board corrected his narrative reason for discharge and separation code but unfairly refused to correct his reenlistment code.

The applicant alleged that his discharge was unjust because he had never been taken to mast for nonjudicial punishment since the Executive Officer (XO) of his unit "didn't have evidence to mast me. So they put something together to discharge me." The applicant alleged that the second incident for which he was discharged was an "alcohol-related situation"³ rather than an "alcohol incident."

SUMMARY OF THE RECORD

On May 20, 2003, the applicant enlisted in the Coast Guard. On January 9, 2004, the applicant was suspended from Operations Specialist "A" School because on January 7, 2004, he had been stopped by base police and charged with driving under the influence (DUI) of alcohol. His blood alcohol content (BAC) was measured at 0.131%. An administrative entry ("page 7") in his record notes that he had a "court date of 29 JAN 04." The applicant was notified in a memorandum that he was ordered not to drive a vehicle within the limits of any military installation for a period of one year.

On January 21, 2004, the applicant was counseled about missing mandatory musters and keeping his supervisor advised of his location.

On January 26, 2004, the applicant was screened for alcohol addiction and found not to meet the criteria for substance abuse or dependence. The XO documented the applicant's DUI on January 7, 2004, as his first "alcohol incident." The applicant was advised in a page 7 dated February 6, 2004, that any further alcohol incident could result in his discharge pursuant to Article 20 of the Personnel Manual.

On February 13, 2004, the applicant was counseled about failing to obey an order to clean the "Head facilities" at the base shotgun range.

Following his disenrollment from "A" School, the applicant was transferred to a cutter. On March 11, 2004, the XO of the cutter wrote the following on a page 7 for the applicant's record:

On 09MAR2004 you were escorted to the [cutter] after ISC Seattle base security guards discovered you were drinking alcoholic beverages in your car while parked on base.

³ Article 20.B.2.d. states that an "alcohol-related situation is defined as any situation in which alcohol was involved or present but was not considered a causative factor for a member's undesirable behavior or performance. ... Commands shall not use the term 'alcohol-related situation' when a member's behavior clearly meets the criteria of an 'alcohol incident.'" The Personnel Manual does not require the discharge of a member due to a second alcohol-related situation.

Base security reported that at approximately 0250 you were observed removing an alcoholic beverage from the trunk of your vehicle [from] which you then took a drink. You were confronted by base security and escorted to the base Command Duty Officer. During your escort and while in the presence of the CDO, you increasing[ly] became belligerent and confrontational. Repeatedly you had to be asked to calm down. You were then escorted to your ship, ..., where you were remanded into the custody of the OOD. Previously on 02MAR2004, you had another encounter with OSC Seattle base security. Base security officers observed you removing beer from the trunk of your car and had refused to cooperate when the security personnel asked [you] to pick up an empty beer carton that an acquaintance with you threw onto the ground. At this time you were specific[ally] and clearly informed that ISC Seattle was a dry base and that no alcoholic beverage or the consumption of such was allowed. Again, your behavior was confrontational and disrespectful toward base security. You were determined to be intoxicated and had to be refrained by base security from driving your car off base. On 07JAN2004, you were charged with a DUI when you attempted to drive onto Training Center Petaluma while intoxicated. A breath sensor was utilized and your BAC at the time was 0.13 which is above the legal limit in the state of California. You were charged with your first alcohol incident and disenrolled from OS "A" School. You were also notified, via Memorandum, that your driving privileges onto any military installation were immediately suspended for a minimum period of one year. Since your arrival to the [cutter], you have routinely driven onto base in direct violation of this standing order.

Your actions on 07MAR04 and 09MAR2004 in direct violation of base policy along with your blatant disrespect toward Base Security and the Base Command Duty Officer has brought discredit upon yourself and the US Coast Guard. As per Section 20-B, Personnel Manual, COMDTINST M100.6, this is in direct violation of Coast Guard policy concerning the use of alcohol. This is considered your second alcohol incident for documentation purposes. Per Chapter 20 of the Personnel Manual, COMDTINST M1000.6, you will be immediately process[ed] for administrative separation from the US Coast Guard.

The applicant's record also contains incident reports by the base security officers and the Base Command Duty Officer confirming the statements in this page 7.

On March 31, 2004, the applicant was counseled on a page 7 about his lack of military bearing and neglect of duties during a mooring evolution, which "endangered other department personnel and their safety."

On April 12, 2004, the applicant was counseled on a page 7 about having been involved in an unacceptable sexual relationship with a fellow crewmate on March 4, 2004.

On April 14, 2004, the commanding officer (CO) of the cutter informed the applicant that he was initiating the applicant's honorable discharge due to his second alcohol incident and the applicant's behavior during his first week aboard the cutter. The CO informed the applicant that he could submit a statement on his own behalf.

The applicant objected to his discharge and submitted two statements—one handwritten and one typed—on his own behalf. Regarding the DUI, the applicant alleged that his BAC documented on a ticket as only 0.09% and that the judge allowed him to plead to reckless driving instead of DUI. Regarding the events during his first week aboard the cutter, he denied having been belligerent towards the security guards or anyone else; he denied having been told prior to March 9, 2004, that alcohol was not allowed on base; and he denied having driven his vehicle on base. He alleged that “every time my car was moved, someone else was the driver.” He admitted that before base security knocked on his car door on March 9, 2004, he had gotten a beer out of his trunk and was drinking it in his car while he used his cell phone, but alleged that he did not then know that the base was “dry.” Regarding the events of March 4, 2004, the applicant denied having entered women’s berthing and denied having a relationship with a female crewmate.

On April 14, 2004, the CO recommended that the applicant be discharged due to his second alcohol incident. The CO stated that the applicant was found drinking alcohol on base on March 6, 2004, and was warned that it was not allowed. However, the applicant was again found drinking alcohol on base on March 9, 2004. The CO noted that the “circumstances surrounding [the alleged inappropriate relationship on March 4, 2004] also included consumption of alcohol and were the subject of an inconclusive CGIS investigation involving an alleged sexual assault.” The applicant was temporarily assigned to ISC Seattle while he was considered for a “second chance.”

On October 27, 2004, upon returning from five months underway, the applicant’s CO recommended against granting the applicant a waiver under the “second chance” program.

On November 12, 2004, the applicant was honorably discharged for “alcohol rehabilitation failure” with a JPD separation code (which denotes an involuntary discharge due to alcohol rehabilitation failure) and an RE-4 reenlistment code in accordance with Article 12.B.16. of the Personnel Manual, which authorizes discharges for unsuitability.

Following his discharge, the applicant applied to the DRB for correction of his DD 214. He alleged that he did not fail alcohol rehabilitation but attended an alcohol abuse program on September 30, 2004. On March 24, 2005, the DRB found that the applicant’s discharge was proper and equitable but recommended that his narrative reason for separation be changed from “alcohol rehabilitation failure” to “separation for miscellaneous/general reasons” and that his separation code be changed to JND so that his record would show that he was discharged under Article 12.B.12. of the Personnel Manual, which authorizes discharges for the convenience of the Government. The DRB stated that it “felt that the discharge was carried out in accordance with Coast Guard policy in that after two alcohol incidents the member will be recommended for dis-

charge. The JPD code was not properly documented in the service record. The more appropriate separation code should be reflected as JND with a narrative reason Separation for Miscellaneous/General Reasons referencing Personnel Manual Article 12-B-12. The reentry code of RE-4 is deemed appropriate and should remain unchanged." The DRB's recommendation was approved on June 27, 2005, and the applicant was issued a DD 215 to correct his DD 214.

VIEWS OF THE COAST GUARD

On October 2, 2006, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny the applicant's request. The JAG adopted the findings and analysis of the case provided in a memorandum by the Coast Guard Personnel Command (CGPC).

CGPC noted that although the applicant claimed there was no evidence that he was drinking alcohol during his second alcohol incident, he admitted that he had been drinking alcohol in his own written statement objecting to his discharge.

CGPC stated that the DRB's rationale for changing the applicant's separation code and narrative reason for separation is not clear since the DRB did conclude that the applicant's discharge as a result of his second alcohol incident was proper.

CGPC stated that the applicant was properly screened and counseled following his first alcohol incident on January 7, 2004. CGPC stated that the applicant's second alcohol incident—drinking on a dry base on March 9, 2004—occurred just days after he had been warned that he could not drink on base. CGPC alleged that the remainder of the applicant's record reveals "a repeated pattern of nonconformity to rules as evidenced by negative service record entries." CGPC alleged that the applicant's poor record supports the assignment of an RE-4 as the appropriate reenlistment code. CGPC stated that there "is no evidence of error or injustice with regards to the applicant's discharge or assignment of the RE-4 reenlistment code."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 3, 2006, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited him to respond within 30 days. No response was received.

APPLICABLE REGULATIONS

The Separation Program Designator Handbook permits the use of the following codes, narrative reasons, and reenlistment codes:

SPD Code	Narrative Reason	RE Code	Authority	Explanation
JPD	Alcohol Rehabilitation Failure	RE-4	12-B-16	Involuntary discharge ... when a member failed through inability or refusal to participate in, cooperate in, or successfully complete a treatment program for alcohol rehabilitation.
JND	Separation for Miscellaneous/ General Reasons	RE-1 or RE-4	12-B-12	Involuntary discharge ... when a Service component ... desires to identify reasons collectively "All other reasons" which qualify a member for separation

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. The application was timely.

2. The applicant argued that his reenlistment code should be upgraded because he did not have a second alcohol incident and so was improperly discharged. His military record, however, contains ample evidence to show that on March 9, 2004, the applicant incurred an alcohol incident by drinking alcohol on base, contrary to standing orders, and becoming belligerent with both base security officers and the Command Duty Officer. The applicant's behavior as described in the page 7 dated March 11, 2004, and in the incident reports certainly meets the definition of an alcohol incident under Article 20.A.2.d.1. of the Personnel Manual. Although the applicant now claims that he was not drinking alcohol when discovered by base security on March 9, 2004, the officer's incident report and the applicant's own statement in objection to the recommended discharge show that he took a beer out of the trunk of his car, sat in his car, and proceeded to drink the beer even though he had been warned on March 2, 2004, that the base was "dry" after base security saw him removing beer from his car's trunk.

3. Because base police had already stopped the applicant while driving under the influence of alcohol on January 7, 2004, his behavior on March 9, 2004, constituted his second alcohol incident. He had been properly warned after the first alcohol incident that a second such incident would likely result in his discharge. Therefore, under Article 20.B.2.h.2. of the Personnel Manual, the applicant's command committed no error in initiating his discharge in accordance with Article 12.B.16.

4. The applicant's record contains the required page 7s documenting his two alcohol incidents and screening results. His record also shows that he was properly

notified of his CO's recommendation for discharge and allowed to submit a statement on his own behalf. The record indicates that the applicant received all due process under Article 12.B.16. of the Personnel Manual with respect to his discharge.

5. The applicant alleged that his RE-4 code is unjust. However, the Board finds that his discharge and RE-4 code do not constitute error or treatment by military authorities that "shocks the sense of justice."⁴ The applicant's record reveals a pattern of disruptive and disrespectful conduct that, along with his two documented alcohol incidents, fully supports the assignment of the RE-4. He has submitted no evidence to overcome the presumption of regularity afforded the Coast Guard in this matter.

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

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

⁴ See *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 xxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied.

Patrick B. Kernan

J. Carter Robertson

Richard Walter