

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-005

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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 October 16, 2006, upon receipt of the application and military records.

This final decision, dated June 13, 2007, is approved and 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, whose DD 214 reflects an "uncharacterized" discharge due to "entry level performance and conduct," was discharged from boot camp on September 28, 2001. She asked the Board to correct her DD 214 to show that she received an honorable discharge because she was separated as a result of a medical problem and not because of any misconduct. The applicant alleged that she discovered the error on July 12, 2006, when she began trying to get medical benefits for pain in her legs.

SUMMARY OF THE RECORD

On August 7, 2001, the applicant enlisted in the Coast Guard. Within a week of beginning boot camp, she sought help for pain in her ankles, knees, and hips. She reported that she had suffered some knee pain in high school. Her ankles were found to be swollen and tender.

On August 20, 2001, a radiologist reported that x-rays taken on August 16, 2001, showed that the applicant had no fractures, dislocations, bone or joint abnormalities, foreign bodies, or soft tissue calcification. The applicant was diagnosed with "overuse syndrome" and prescribed physical therapy and anti-inflammatory agents. However, the pain in her ankles, knees, and hips continued without much improvement.

Another medical record indicates that the applicant was motivated to succeed but felt that she was being accused of malingering by her superiors at the training center. She admitted that she had previously suffered knee pain during her physical education classes in high school.

On September 19, 2001, the applicant was evaluated by a doctor for a Medical Board and found “not [to] meet the minimum standards for enlistment and retention” and to be “unqualified for continued service” as a result of “overuse syndrome of both lower extremities” pursuant to Chapter 3.D.10.d.(1) of the Medical Manual. She was informed of the determination and indicated that she would not seek a waiver of her condition. She also agreed with a statement that she was not suffering from any injury or illness. The doctor found her “fit for discharge with no limitations” and recommended that she be processed for discharge. He noted that if she underwent six months of rehabilitation and fitness training, she could reapply for enlistment.

On September 28, 2001, the applicant received an uncharacterized discharge under Article 12.B.20. of the Personnel Manual with “entry level performance and conduct” as her narrative reason for discharge, an RE-3L reenlistment code, and a JGA separation code, which denotes an involuntary discharge “when member has inability, lack of effort, failure to adapt to military or minor disciplinary infractions during the first 180 days of active military service.

VIEWS OF THE COAST GUARD

On February 28, 2007, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant partial relief in this case. He adopted the findings and analysis of the case provided in a memorandum by the Coast Guard Personnel Command (CGPC).

CGPC noted that the application was untimely and that the applicant did not apply to the Discharge Review Board (DRB) before applying to the BCMR.

CGPC stated that the applicant was properly awarded an uncharacterized discharge because she was only in the Service for 53 days, so any other character of service would be unjustified. CGPC cited a provision in the current Personnel Manual in making this claim. CGPC stated, however, that block 28 on the applicant’s DD 214 was not completed in accordance with COMDTINST M1900.4D, the instruction manual for completing DD 214s. CGPC stated that block 28 should state “Entry Level Separation,” rather than “Entry Level Performance and Conduct.” CGPC argued that no other relief is warranted under the regulations.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 1, 2007, the Chair sent the applicant a copy of the Coast Guard’s advisory opinion and invited her to respond within 30 days. No response was received.

APPLICABLE REGULATIONS

Chapter 3.D.10.d.1. of the Coast Guard Medical Manual provides that “chronic pain (719.4) of one or both lower extremities that ... would interfere with walking, running, weight

bearing, or the satisfactory completion of training or military duty” is a disqualifying condition for enlistment.

Article 12.B.20.a.1. of the Personnel Manual in effect in 2001 authorizes “uncharacterized” discharges for members with fewer than 180 days of active service who “[d]emonstrate poor proficiency, conduct, aptitude or unsuitability for further service during the period from enlistment through recruit training.” Article 12.B.20.a.2. states that an “uncharacterized discharge is used for most recruit separations, except for disability ... or in cases when another type of discharge may be appropriate.” (On March 5, 2002, after the applicant’s discharge, Article 12.B.20.a.1. was amended when Change 35 was incorporated in the Personnel Manual by adding subparagraph c, which provides that uncharacterized discharges are also authorized for members who “[e]xhibit minor pre-existing medical issues not of a disabling nature which do not meet the medical/physical procurement standards in place for entry into the Service.”)

Article 12.B.12.a.5.c. authorized discharges for the convenience of the Government when a “member undergoing recruit training in an original enlistment who has fewer than 60 days’ active service has a physical disability not incurred in or aggravated by a period of active military service; i.e., the defect existed before the member entered the Service.”

Article 12.B.12.a.12. authorized discharges for the convenience of the Government when a member has a “condition that, though not a physical disability, interferes with performance of duty; e.g., enuresis or somnambulism.”

Article 12.B.12.c. stated that a “member being discharged for the Government’s convenience shall be given an honorable or general discharge, as appropriate, under Article 12.B.2.” Article 12.B.2.f.1.f.(3) provides that a member is not ineligible for an honorable discharge simply because the member is discharged during recruit training and so has received no performance evaluation.

The Separation Program Designator Handbook in effect in 2001 authorized the use of the following codes, narrative reasons, and reenlistment codes:

SPD Code	Narrative Reason	RE Code	Authority	Explanation
JGA (as on applicant’s DD 214)	Entry Level Performance and Conduct	RE-3L	12-B-20	Involuntary discharge ... when member has inability, lack of effort, failure to adapt to military or minor disciplinary infractions during first 180 days of active military service.
JFW	Failed Medical/Physical Procurement Standards	RE-3G RE-3X RE-4	12-B-12	Involuntary discharge ... when member fails to meet established medical and/or physical procurement standards.
JFV	Condition, Not a Disability	RE-3G RE-3X RE-4	12-B-12	Involuntary discharge ... when a condition, not a physical disability, ... interferes with the performance of duty (Enuresis, motion sickness, allergy, obesity, fear of flying, et al.)
JFN	Disability, Existed Prior to Service, Medical Board	RE-3P	12-B-15	Involuntary discharge ... for physical disability which existed prior to entry on active duty and was established by a medical board.
JFC	Erroneous Entry (Other)	RE-3E RE-4	12-B-12	Involuntary discharge ... when individual erroneously enlisted ... (not related to alcohol or drug abuse).

Under Chapter 2 of COMDTINST M1900.4D, the instruction for completing DD 214s,

- RE-3E denotes that the veteran is eligible to reenlist but was discharged due to an “erroneous enlistment”;
- RE-3G denotes that the veteran is eligible to reenlist except for a disqualifying factor, which is a “condition (not a disability)”;
- RE-3L denotes an “entry level separation, must have waiver to reenlist”;
- RE-3P denotes that the veteran is eligible to reenlist except for a physical disability;
- RE-3X denotes that the veteran is eligible to reenlist except for the fact that he or she is a nonswimmer or has motion sickness; and
- RE-4 denotes that the veteran is not eligible to reenlist.

OTHER BCMR CASES

In BCMR Docket No. 2006-113, the applicant enlisted two months after having had torn ligaments in his thumb surgically repaired. Two days after he reported for recruit training, a physical examination of his thumb revealed that it had not yet healed completely. On the applicant’s third day in the Coast Guard, a Medical Board reported that he had a pre-existing disqualifying condition and did not meet the minimum standard for enlistment under the Medical Manual. The Medical Board recommended that the applicant be separated under Article 12-B-12 of the Personnel Manual but be given favorable consideration for reenlistment after sixty days. The applicant received an honorable discharge for “erroneous entry (other)” ten days after he enlisted. His DD 214 reflected a JFC separation code, an RE-3E reenlistment code, and Article 12-B-12 as the separation authority. The applicant asked for an RE-1 reenlistment code but the Board found that the RE-3E was correct because the applicant had not been physically eligible for reenlistment on the day of his discharge and had not proved to the Board that his thumb was completely healed.

In BCMR Docket No. 2007-040, the applicant received an honorable discharge 51 days after beginning boot camp because of a diagnosed “lumbar syndrome” that pre-existed his enlistment. His DD 214 showed a JFC separation code, “enlisted in error” as the narrative reason for separation, an RE-4 reenlistment code, and Article 12-B-12 as the narrative reason for separation. The Coast Guard recommended that his reenlistment code be corrected to RE-3E and that the narrative reason for separation be corrected to “erroneous entry” as provided under the SPD Handbook. This case has not yet been decided by the Board.

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. CGPC pointed out that the applicant has not filed an application with the DRB. However, the DRB does not handle matters that may involve monetary benefits and so does not docket cases involving medical or disability allegations. Therefore, the Board finds that the applicant has exhausted her effective administrative remedies in this case as required under 33 C.F.R. § 52.13.

2. An application to the Board must be filed within three years after the applicant discovers the alleged error in her record. 10 U.S.C. § 1552(b). The applicant was discharged in September 2001 and knew or should have known that she had received an “uncharacterized,” nonmedical discharge at that time. Therefore, her application was untimely.

3. Under 10 U.S.C. § 1552(b), the Board may excuse the untimeliness of an application if it is in the interest of justice to do so. In *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that to determine whether the interest of justice supports a waiver of the statute of limitations, the Board “should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review.” The court further instructed that “the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review.” *Id.* at 164, 165. See also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

4. Although the applicant’s reason for not filing her application within three years is not compelling, a cursory review of her record shows that the applicant was discharged for a pre-existing medical condition but her DD 214 reflects a discharge for poor performance and conduct during recruit training. In light of the obvious and prejudicial errors on the applicant’s DD 214, the Board will waive the statute of limitations.

5. The record shows that the applicant’s lower extremities were not strong enough for her to participate in boot camp. The training center’s doctor diagnosed her with “overuse syndrome,” recommended her discharge, and told her that she could reapply if she underwent six months of fitness training. The applicant agreed with his assessment that she was not suffering from an injury or illness. Therefore, the Board finds that the applicant was discharged due to a pre-existing medical condition that was not a disability. The JGA separation code and narrative reason for separation on her DD 214 are clearly erroneous and unfair since they indicate that her performance and conduct during boot camp were unacceptable, which was not the case.

6. The Coast Guard recommended that the Board change only the applicant’s narrative reason for separation from “Entry Level Performance and Conduct” to “Entry Level Separation.” This recommended correction, however, would leave the applicant with a JGA separation code, which also denotes poor performance and conduct, and with a narrative reason for separation that was not listed in the SPD Handbook in 2001. In making this recommendation, the Coast Guard cited Article 12.B.20.a.1.c. of the Personnel Manual, which was not yet in effect when the applicant was discharged in September 2001.

7. The Coast Guard argued that the applicant was properly awarded an uncharacterized discharge because she was only in the Service for 53 days, and so any other character of service would be unjustified. Article 12.B.20.a.1. of the Personnel Manual in effect in 2001, however, stated that uncharacterized discharges are for new members who “[d]emonstrate poor proficiency, conduct, aptitude or unsuitability for further service during the period from enlistment through recruit training.” Article 12.B.20. was not amended to authorize uncharacterized discharges for members, like the applicant, who “[e]xhibit minor pre-existing medical issues not of a disabling nature which do not meet the medical/physical procurement standards in place for

entry into the Service” until March 5, 2002, more than five months after the applicant’s discharge on September 28, 2001.

8. Article 12.B.12. of the Personnel Manual in effect in 2001, on the other hand, expressly authorized discharges for recruits who had medical conditions that prevented their performance of training and active service, and recruits discharged under Article 12.B.12. were eligible for honorable discharges. The Board notes that the applicant in BCMR Docket No. 2006-113 received an honorable discharge for “erroneous entry (other)” with a JFC separation code because of incompletely healed thumb ligaments after just ten days in boot camp. Similarly, the applicant in BCMR Docket No. 2007-040 received an honorable discharge for erroneous entry with a JFC separation code just 51 days after he enlisted because of a pre-existing back problem. Therefore, it appears that before Change 35 to the Personnel Manual on March 5, 2002, members who, like the applicant, were discharged because a pre-existing medical condition prevented them from participating in boot camp could receive an honorable discharge by reason of “erroneous entry (other)” with a JFC separation code under Article 12.B.12. of the Personnel Manual.

9. The Board notes that the circumstances of the applicant’s discharge could also be considered a “condition, not a disability,” since the doctor indicated that six months of rehabilitation therapy and fitness training would make the applicant’s lower extremities sufficiently fit for her to participate in recruit training. However, because members in the applicant’s circumstances have previously been discharged by reason of “erroneous entry (other)” under Article 12.B.12., the Board finds that this is the most appropriate reason for discharge under the applicable regulations, whereas the correction recommended by the Coast Guard would not be in accordance with the Personnel Manual in effect in September 2001.

10. There is no evidence in the applicant’s military records to show that she did not try her best to succeed during recruit training. Therefore, the Board finds that if she had been properly discharged under Article 12.B.12. of the Personnel Manual, she would have received an honorable discharge.

11. Accordingly, relief should be granted by making the following corrections to the applicant’s DD 214 and other military records:

- The character of service in block 24 should be “Honorable.”
- The separation authority cited in block 25 should be Article 12.B.12. of the Personnel Manual.
- The separation code in block 26 should be JFC.
- The reentry code in block 27 should be RE-3E.
- The narrative reason for separation in block 28 should be “Erroneous Entry (Other).”

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former SN xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of her military record is granted in part as follows:

The Coast Guard shall correct her records and issue her a new DD 214 (not a DD 215) to show the following:

- The character of service in block 24 shall be "Honorable."
- The separation authority cited in block 25 shall be Article 12.B.12. of the Personnel Manual.
- The separation code in block 26 shall be JFC.
- The reentry code in block 27 shall be RE-3E.
- The narrative reason for separation in block 28 shall be "Erroneous Entry (Other)."

The following notation may be made in block 18 of the new DD 214: "Action taken pursuant to order of BCMR."

Kathryn Sinniger

Dorothy J. Ulmer

Thomas H. Van Horn