

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-009

XXXXXXXXXXXXXXXXXX.
, SA/E-2 (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 October 16, 2006, upon receipt of the applicant's completed application for correction.

This final decision, dated May , 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, a former seaman apprentice (SA) who served one year in the Coast Guard before being discharged for misconduct, asked the Board to correct her record by upgrading her reenlistment code from RE-4 (ineligible for reenlistment) to RE-1 (eligible for reenlistment). She also asked the Board to correct the date of birth listed on her DD 214.¹ Although she went AWOL (absent without leave) three times and stated that she had "no intention of returning," she argued that she should not have received an RE-4 reenlistment code because:

1. She was not trained in a rating after graduating from basic training.
2. Her living quarters were not suitable for a female.
3. She was placed into a rating for which she had not received any training.
4. She was denied a transfer from Oregon Inlet.
5. She was not afforded the opportunity for training.

The applicant stated that when she arrived at her first duty station (Cape Hatteras), she did not have a "rating"² and as a result was "given grass cutting and asphalt laying duties." She also stated that after three months, she requested and received a transfer to Oregon Inlet. She

¹ The applicant's DD 214 (Certification of Release or Discharge From Active Duty) lists her date of birth as June 3, 1962. Her correct date of birth is June 3, 1963.

² The majority of new Coast Guard enlistees have not received training in a specialty when they report to their first duty station. Training in a specialty is obtained via attendance at "A" school or via on-the-job training (striking).

alleged that on her first night at the new unit she was asked to assist with a search and rescue, but that she “had no prior training beside in [basic training] making floats out of your clothes. I was young and scared and extremely inexperienced.” To avoid going on the rescue mission, she alleged that “I told them I wasn’t going” and created a “story about being gay so that I could be discharged.”

The applicant then alleged that after the Coast Guard determined that she was not gay and had merely made that claim so she could be discharged, she was returned to her unit at the Oregon Inlet. However, she alleged that unit did not have adequate housing for her because she was the only female in the unit. As a result, she alleged, she was required to live in the unit’s guest quarters, which were located adjacent to a common area used by other members of her unit. She also alleged that her unit was “not equipped to handle female soldiers” and that she was “not given an opportunity to be transferred after the first transfer.” She also stated that she tried to talk to her commander about her concerns but was “turned away.”

Finally, the applicant stated that she “would like the opportunity to serve my country.” She added that “I made several mistakes while in the Coast Guard, and if my maturity level was at the level then as now, I would have made a career in the Guard. My decisions would have been different. I would have never gone AWOL. All I ask for is the chance to prove I can serve my country.”

In support of her application, the applicant submitted letters from her mother and father attesting to her character. The applicant’s mother stated that

[the applicant] informed me many times by letters and phone calls that she was unhappy at Cape Hatteras and wanted to leave. [The applicant] was the only female at the Group. Her living quarters was a room over the Group’s Main Office outside a poolroom. [The applicant] expressed to me several times she requested a transfer from her Commander at the time but was denied. I’m aware that she went AWOL several times and I can say that I did not approve of it at all. My husband (her father) at the time always told her to go back and try to talk to someone about her situations. [The applicant] was only 19 at the time of enlisting and very immature, it was her first time being away from home and ... she was the only female at her duty station.

...

It is 20 years later and though she went AWOL ... she never deserted and tried to cope while she was there. At that time she did not have any avenues to turn to. She is now a responsible adult and has had her own business and has the opportunity to enlist in the Armed Forces and serve her country. Situations may arise, but with her knowledge and maturity today, she will be able and capable of handling any diversity that may come her way. All I ask is to give my daughter another chance and reconsider changing her RE Code from 4 to 1.

The applicant’s father stated that he

personally spoke to [the applicant’s] commander about her third AWOL after witnessing her living conditions and how she was not being trained. We talked briefly [and] he expressed concerns about my daughter. His concerns trouble me because he was not trying to find a solution to any of her concerns. ... My daughter did not receive the training she was supposed to receive at her duty station. She left straight from Basic and went to cutting grass. I personally believe because they did not have females stationed at Cape Hatteras, they did not know how to accommodate her when she arrived. Her living quarters were isolated. Away from the barracks

where the men were in. A small room on top of the Group office where guests stay. Outside her room was a pool table where all of the guys would come and play pool.

...

I am asking for a change in her RE Code, so that she may be able to enlist again. I do not think she should be punished for the rest of her life for someone else's personal feelings. She wants to fix helicopters and work on tankers. She is extremely gifted in putting things back together. Please give my daughter another chance. Please allow her to enlist with a RE-1 code.

In her application to the BCMR, the applicant acknowledged that her application was untimely, but argued that the Board should consider it because she did not notice the RE-4 reenlistment code on her DD 214 until she sought to enlist in the Army.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on July 12, 1982, at the age of 19. After completing recruit training she advanced to Seaman Apprentice (SA) and was assigned to USCG Group Cape Hatteras. She was then assigned within the Group to USCG Station Oregon Inlet, North Carolina.

On November 16, 1982, the applicant went AWOL and did not return until December 1, 1982. She received non-judicial punishment (NJP)³ and received 15 days' restriction and 15 days' extra duty.

On December 2, 1982, the applicant once again went AWOL and did not return until she was apprehended by the Greensboro Police Department on December 22, 1982. She received NJP and was awarded 26 days' restriction, 26 days' extra duty, and reduction to pay grade E-1 (suspended for three months).

On April 22, 1983, the applicant received NJP for failing to follow an order to pay a debt. She was awarded 30 days' restriction, 30 days' extra duty, and forfeiture of \$100 for one month.

On June 6, 1983, the applicant was AWOL and received NJP. She was awarded 45 days' restriction, 45 days' extra duty, and forfeiture of one day's pay.

On June 15, 1983, the Commander of Group Cape Hatteras notified the applicant via memorandum that he had initiated action to discharge her from the Coast Guard. He stated that he was recommending she receive a general discharge under honorable conditions for her "frequent involvement of a discreditable nature with military authorities" as indicated below:

- a. AWOL – November 16, 1982 (16 days)
- b. AWOL – December 2, 1982 (20 days)
- c. Failure to obey an order issued by a superior petty officer
- d. AWOL – June 6, 1983 (1 day)

³ Article 15 of the Uniform Code of Military Justice (UCMJ) provides NJP as a disciplinary measure that is more serious than administrative corrective measures but less serious than trial by court martial.

- e. Frequent counseling sessions during 1982 and 1983 concerning tardiness, absences, and indebtedness.

In his letter to the applicant, the Commander noted that the decision concerning her discharge and the type of discharge would rest with the Commandant, and that if she received a general discharge she could expect to encounter prejudice during her civilian life. He also informed her that she had the right to consult with a military lawyer, could submit a statement on her own behalf, and that her rebuttal to his recommendation, if any, would be forwarded to the Commandant.

On June 15, 1983, the applicant signed a "First Endorsement" to the Commander's letter, acknowledging notification of her proposed discharge, acknowledging that she had been provided the opportunity to consult with a lawyer, indicating that she waived her right to submit a statement, acknowledging that she understood that if she was awarded a general discharge that she could expect to encounter prejudice in civilian life, and indicating that she did not object to being discharged from the Coast Guard.

In a June 16, 1983, memorandum to the Commandant, the Commander, USCG Group Cape Hatteras, recommended that the applicant be discharged from the Coast Guard. Citing the applicant's four NJPs and counseling regarding her conduct and performance, the Commander recommended that she receive a general discharge under honorable conditions for her misconduct and frequent involvement of a discreditable nature with military authorities. The Commander noted that

after a brief two week communication watch break-in at the Group Office, she was transferred to Station Oregon Inlet. [The applicant] approached her Officer in Charge after only two weeks at the station indicating that she couldn't work for the Coast Guard anymore and wanted to quit. She was transferred back to the Group Office on 18 October 1982. At the Group Office she was counseled by superior petty officers on work performance regularly and began improving her work habits until 10 November 1982, when she received a report that a cousin had died. She was given a five days emergency leave and did not return for duty until 1 December 1982. After a brief stay (one day) at the Group Office she left again, until 22 December 1982.

...

[The applicant's] performance at Group Cape Hatteras has been hindered by her absences on a regular basis and indebtedness. She has repaid those crewmembers and merchants the money borrowed earlier this year. [The applicant] has no desire to advance in the Coast Guard. She wants out and believes the Coast Guard is keeping her from fulfilling her intentions in life.

On July 7, 1983, the Commander, Fifth Coast Guard District, endorsed the recommendation that the applicant receive a general discharge under honorable conditions for misconduct due to frequent involvement of a discreditable nature with military authorities.

On July 21, 1983, the Commandant approved the applicant's general discharge from the Coast Guard by reason of misconduct, pursuant to Article 12.B.18. of the Coast Guard Personnel Manual.

On August 12, 1983, the applicant was discharged from the Coast Guard. Her DD 214 indicates that she was discharged under honorable conditions for misconduct under Article

12.B.18. of the Personnel Manual, received separation code HKA,⁴ and an RE-4 reenlistment code. Her DD 214 lists her date of birth as June 3, 1962.

On November 9, 2006, the Coast Guard issued the applicant a DD 215 (correction to DD 214) correcting the date of birth on her August 12, 1983, DD 214 to June 3, 1963.

VIEWS OF THE COAST GUARD

On January 8, 2007, 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 failed to submit a timely application and failed to supply any justification for the lengthy delay. Notwithstanding the untimeliness, CGPC argued that the applicant's discharge was "in accordance with Coast Guard policy for processing personnel for misconduct." CGPC noted that she was recommended for a general discharge because during her short enlistment she received NJP on four occasions, three of which involved "absence without leave culminating in a total of 36 days absence and on one occasion she was apprehended by civilian authorities." CGPC also noted that the fourth NJP "stemmed from failure to obey an order regarding payment of just debts." CGPC also noted that in her application to the BCMR, the applicant acknowledged her conduct issues which she attributed to immaturity.

CGPC noted that that the applicant did not contest her discharge nor did she disagree with the Coast Guard's issuance of a general – under honorable conditions discharge. Rather, CGPC stated, the applicant based her request for correction upon her allegation that she has matured since the time of her discharge and upon her desire to join the Army. CGPC stated that it would be "inconsistent to assign a reenlistment code other than RE-4 in conjunction with a general discharge."

CGPC noted that on November 9, 2006, the Coast Guard issued the applicant a DD 215 to correct the date of birth on her DD 214.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 17, 2007, the Chair sent the applicant a copy of the views of the Coast Guard and invited her to respond within 30 days. The BCMR did not receive a response.

APPLICABLE REGULATIONS

Article 12.B.18. of the Coast Guard Personnel Manual states that the Commander, CGPC, may direct a discharge for misconduct and the type of discharge (under other than honorable, general, or honorable) as warranted by the particular circumstances of a given case, including a member's "discreditable involvement with civil or military authorities."

⁴ A separation code of HKA denotes an involuntary discharge approved by recommendation of a board resulting from a pattern of misconduct of a discreditable nature with civil or military authorities. The only reenlistment code permitted for a discharge due to misconduct is RE-4.

The Separation Program Designator (SPD) handbook mandates an RE-4 reenlistment code for a member discharged for a pattern of misconduct of a discreditable nature with civil or military authorities.

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.

2. Under 10 U.S.C. § 1552(b), an application to the Board must be filed within three years after the applicant discovers the alleged error in her record. The applicant received her discharge and RE-4 code in 1983. Although she stated that she discovered the alleged error (her inability to reenlist) when she recently decided to enlist in the Army, the Board notes that the applicant was afforded legal counsel concerning the effect of her discharge under honorable conditions and finds that she knew or should have known that she would not be allowed to reenlist prior to or upon her discharge in 1983.⁵ Moreover, her DD 214, which has her signature, clearly indicates RE-4 as her reenlistment code. Therefore, her application was untimely.

3. Pursuant to 10 U.S.C. § 1552(b), however, 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."⁶

4. The Board finds that the applicant has failed to provide an adequate explanation for waiting more than 23 years to bring a claim. Her statement that she did not seek a correction to her military record earlier because she did not realize that she was ineligible to reenlist until she tried to enlist in the Army, is not persuasive.

5. A cursory review of the record indicates the Coast Guard committed no error or injustice in awarding the applicant a discharge under honorable conditions and an RE-4 reenlistment code. The applicant's record indicates that she went AWOL on three separate occasions for a total of 37 days, and received NJP on four occasions. She also stated that each time she went AWOL she had no intention of returning. In accordance with the SPD handbook, an RE-4 code is the only reenlistment code authorized for members discharged due to misconduct. Although the applicant provided letters from her mother and father and argued that her conduct was excusable because of her situation, she has not submitted sufficient evidence to overcome the presumption that her discharge and RE-4 reenlistment code were proper.

⁵ "An application for correction of a record must be filed within three years after the applicant discovered or reasonably should have discovered the alleged error or injustice." 33 C.F.R. § 52.22.

⁶ *Allen v. Card*, 799 F. Supp. 158, 164-65 (D.D.C. 1992).

6. The applicant also asked the Board to correct the date of birth on her DD 214. The Board notes that the Coast Guard issued the applicant a DD 215 on November 9, 2006, to remedy the error.

7. Accordingly, the Board finds that it is not in the interest of justice to waive the statute of limitations in this case because the applicant failed to justify her long delay in seeking relief and she is not likely to prevail upon the merits of her claim. Therefore, her request for an upgrade of her reenlistment code should be denied because it is untimely and because it lacks merit.

[ORDER AND SIGNATURES APPEAR ON FOLLOWING PAGE]

ORDER

The application of former XXXXXXXXXXXXXXXX, XXXXXXXXXXXX USCG, for correction of her military record is denied.
