

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-040

XXXXXXXXXX

XXXXXXXXXXXX, 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 December 4, 2006, upon receipt of the applicant's completed application for correction.

This final decision, dated June 28, 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, a former seaman recruit (SR; pay grade E-1) who served approximately two months in the Coast Guard before being honorably discharged for a back problem which existed prior to his enlistment, asked the Board to correct his record by upgrading his reenlistment code from RE-4 (ineligible for reenlistment) to one that would allow him to reenlist in the Armed Forces.¹ The applicant stated that he was an immature 18 year old when he enlisted in the Coast Guard and "was not ready to be separated from his sick mother." He further stated that in the years following his discharge he has matured and feels that he can serve his country "faithfully and honorably."

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on May 23, 1988, at the age of 18. Shortly after reporting to Training Center (TRACEN) Cape May for recruit training, the applicant was evaluated numerous times at sick call for an assortment of medical complaints, including foot, ear, and back pain. During several of these visits, he stated that he was dissatisfied with recruit training, lacked motivation, and wanted to be discharged from the Coast Guard. On June 28,

¹ The Board presumes that the applicant would prefer that his RE-4 reenlistment code be upgraded to RE-1, which would make him eligible for reenlistment in any of the Armed Forces.

1988, the applicant was diagnosed by an orthopedic surgeon as suffering from “lumbar syndrome with functional overlay.” The doctor determined that the applicant was not a candidate for continued training and recommended that he be referred to a Medical Board to determine if he was fit for duty.

On June 29, 1988, a Medical Board convened and determined that the applicant did not meet the minimum standard for enlistment in the Coast Guard because he had a history of chronic or recurrent low back pain that existed prior to enlistment. The Medical Board recommended that he be discharged from the Coast Guard. The applicant concurred with that recommendation.

On July 13, 1988, the applicant was discharged from the Coast Guard pursuant to Article 12.B.12. of the Coast Guard Personnel Manual. He received a discharge characterized as “honorable,” a separation code of JFC,² and “Enlisted in Error” as the narrative reason for separation. The record indicates that the applicant received an RE-4 reenlistment code. He had served 52 days in the Coast Guard.

VIEWS OF THE COAST GUARD

On April 24, 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 correct the applicant’s reenlistment code from RE-4 to RE-3E³ and change the narrative reason for separation from “Enlisted in Error” to “Erroneous Entry.” CGPC stated that although the application was untimely, the applicant’s reenlistment code should be changed because the assignment of an RE-4 code was in error. CGPC noted that under the Separation Program Designator (SPD) Handbook in effect at the time of the applicant’s discharge, RE-3E was the prescribed reenlistment code for a member discharged with the JFC SPD code, and the proper narrative reason for separation was “Erroneous Entry (Other).”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 27, 2006, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. In his response, the applicant stated that he did not object to the Coast Guard’s recommendations.

APPLICABLE REGULATIONS

Article 12.B.12.a.5.c. of the Personnel Manual provides that the Commander, CGPC, may authorize or direct enlisted members to separate for the convenience of the government when a “member undergoing recruit training in an original enlistment who has fewer than 60

² JFC denotes an “involuntary discharge directed by established directive when a member erroneously enlisted, reenlisted, extended, or was inducted into a Service component (not related to alcohol or drug abuse). Separation Program Designator (SPD) Handbook, 2-29.

³ RE-3E indicates that the member is eligible for reenlistment except for a disqualifying factor (erroneous enlistment). SPD Handbook, 3-1.

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.”

The SPD Handbook lists the SPD Code, narrative reason for separation, and the reenlistment code authorized for a member discharged under Article 12.B.12. for an erroneous entry, not related to alcohol or drug abuse. At the time of the applicant's discharge, the proper SPD Code for a member discharged under Article 12.B.12.a.5.c. for an erroneous entry was JFC, the correct narrative reason for separation was “Erroneous Entry (Other)”, and the only available reenlistment code was RE-3E.

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 his record. The applicant received his discharge and RE-4 reenlistment code in 1988, but did not state why he waited 18 years to seek a correction to his record. The Board notes that the applicant's DD 214, which has his signature, clearly indicates RE-4 as his reenlistment code. Thus, the Board finds that he knew or should have known that he would not be allowed to reenlist prior to or upon his discharge in 1988.⁴ Therefore, his 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 applicant did not explain why he waited 18 years before applying to the Board. However, a cursory review of the record reveals that the applicant's DD Form erroneously bears an RE-4 reenlistment code, contrary to the requirements of the Coast Guard's SPD Handbook. In addition, the SPD Handbook indicates that the applicant's DD 214 should state “Erroneous Enlistment (Other)” as the narrative reason for separation, rather than “Enlisted in Error.” Moreover, the JAG recommended that the Board upgrade the applicant's reenlistment code to RE-3E and correct the narrative reason for separation. In light of the obvious and prejudicial errors on the applicant's DD 214, the Board finds that it is in the interest of justice to waive the statute of limitations.

4. The Board finds that the applicant's DD 214 should be corrected to conform to the requirements of the SPD Handbook. His reenlistment code should be RE-3E and “Erroneous Enlistment (Other)” should be his narrative reason for separation. The Coast Guard should issue the applicant a new DD 214 with these changes.

⁴ “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.

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

- Block 27 of his DD 214 shall be corrected to show RE-3E as the reenlistment code.
- Block 28 of his DD 214 shall be corrected to show "Erroneous Entry (Other)" as the narrative reason for separation.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former SR XXXXXXXXX, xxxxxxxxxxxx, USCG, for correction of his military record is granted. The Coast Guard shall issue him a new DD 214 (not a DD 215) to show the following:

- Block 27 of his DD 214 shall be corrected to show RE-3E as the reenlistment code.
- Block 28 of his DD 214 shall be corrected to show “Erroneous Entry (Other)” as the narrative reason for separation.

The following notation shall be made in Block 18 of the new DD 214: “Action taken pursuant to order of BCMR.”

Julia Andrews

Jordan S. Fried

Richard Walter