

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-214

**XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX**

FINAL DECISION

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 after receiving the applicant's completed application on August 3, 2009, and subsequently prepared the final decision for the Board as required by 33 CFR § 52.61(c).

This final decision, dated April 22, 2010, 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 asked the Board to correct his separation code so that he is entitled to transition assistance benefits.¹ He alleged that he was told by YN1 W that he would be entitled to transition benefits, but he recently learned that TRICARE would not grant benefits to him.

The applicant was discharged on August 21, 2008, after serving seven years, seven months, and 6 days on active duty. He was discharged by reason of unsuitability with a JPD (alcohol rehabilitation failure) separation code and a RE-4 (not eligible to reenlist) reenlistment code. He alleged that the JPD separation code is preventing him from receiving transition benefits.

The applicant enlisted in the Coast Guard on January 16, 2001. On May 2, 2002, an administrative entry (page 7) was placed in the applicant's record documenting his first alcohol incident because he was found intoxicated at work. The page 7 warned the applicant that any further alcohol incidents or underage drinking could result in his separation from the Coast Guard. The applicant was punished at captain's mast for underage drinking on May 6, 2002. He was referred to the command drug and alcohol representative (CDAR) for screening.

¹ Transition benefits are certain programs and benefits provided to members who are involuntarily separated from the service with a qualifying separation code to assist the member and family in making a smooth transition from military to civilian life.

The applicant attended the “Alcohol and Drug Impact Education” program from August 6, 2002, to August 8, 2002. This education consisted of films, lectures and discussion groups on the subjects of alcohol, drug abuse, alcoholism, decision-making, group interaction, individual counseling, and study of recovery related literature. The applicant was also required to attend at least one AA meeting. A page 7 states that the applicant was deemed not to be alcohol dependent or abusive.

A July 21, 2003 page 7 documented several instances in which the applicant’s behavior was not acceptable due to his alcohol consumption. On this same date, the applicant in a drunken state entered a room at a hotel where minors were consuming alcohol and had to be assisted back to his room by police officers who had arrived earlier. The page 7 also notes that earlier on January 20, 2003, alcohol was involved in an altercation the applicant had with civilians while on liberty. On May 18, 2003, alcohol was also involved in the applicant’s placement on report for damaging government property and for conduct prejudicial to good order and discipline by engaging in an altercation with civilians.

On November 20, 2003, the applicant was evaluated by a military psychiatrist. The psychiatrist diagnosed the applicant as abusing alcohol and recommended that the applicant return to his command and that the CDAR monitor him. The psychiatrists noted that the applicant last took a drink of alcohol on July 21, 2003.

On May 7, 2008, a page 7 was placed in the applicant’s record documenting a second alcohol incident. The page 7 noted that the applicant was absent from quarters because he was in his rack drunk. The page 7 also noted that the applicant had driven his automobile while under the influence of alcohol. The applicant was informed on the page 7 that since this was his second alcohol incident he would be processed for discharge from the Coast Guard.

On July 25, 2008, the applicant was punished at captain’s mast for operating a vehicle while drunk, for being drunk on duty, and for being incapacitated for duty due to wrongful indulgence of alcohol.

From June 9, 2008 to June 20, 2008, the applicant was treated as an outpatient in the substance abuse rehabilitation program at a naval hospital. Upon release from the program, the applicant’s aftercare plan included abstaining from alcoholic beverages for the first 90 days after completing treatment, meeting with the CDAR on a weekly basis for 90 days, and participating in a twelve-step, abstinence-based group support program at least twice weekly for 90 days. The applicant’s after care plan also included the following:

“If a decision is made to drink after 90 days, remain within the guidelines for moderate drinking of two standard drinks per day for a total of fourteen drinks per week. Consume no more than four drinks per 24 hour period and consume each drink over a least a thirty-minute period. No drinking and driving.”

On July 3, 2008, the applicant's commanding officer (CO) advised the applicant that he was recommending his separation from the Coast Guard for unsuitability due to alcohol abuse. The CO noted the two alcohol incidents in May 2002 and May 2008.

The CO advised the applicant that he could submit a statement in his behalf; that he could disagree with the discharge recommendation in a rebuttal that would be forwarded with the CO's recommendation; and that he could consult with a lawyer.

The applicant acknowledged the proposed discharge, acknowledged that he could encounter some prejudice if he were to receive a general discharge, acknowledged that he was provided with the opportunity to consult with a lawyer, and elected to submit a statement on his own behalf.

In his statement, the applicant noted his military awards and performance. He noted that he had completed alcohol treatment and that he was willing to undergo further treatment, if necessary. He stated that due to the training he had already received, it was in the Coast Guard interest to keep him on active duty. He asked to remain in the service.

On July 3, 2008, the CO recommended to Commander, Coast Guard Personnel Command (CGPC) that the applicant be discharged from the Coast Guard by reason of unsuitability due to alcohol abuse. He noted the applicant's two alcohol incidents. The CO did not recommend the applicant for the second chance program.

On July 24, 2008, CGPC approved the applicant's discharge from the Coast Guard by reason of unsuitability due to drug abuse under Article 12.B.16. of the Personnel Manual. CGPC assigned "JPD" as the separation code and RE-4 as the reenlistment code.

The applicant was discharged on August 21, 2008.

VIEWS OF THE COAST GUARD

On December 10, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request. The JAG adopted the facts and analysis provided by Commander, Personnel Service Center (PSC) and asked that PSC's comments be accepted as the Coast Guard's advisory opinion. PSC recommended that the application be denied and stated the following:

According to [Article 20.B.2.h.of the Personnel Manual] policy reads that enlisted members involved in a second alcohol incident will normally be processed for separation in accordance with [Article 12.B.16. of the Personnel Manual]. The corresponding SPD code for members being separated for a second alcohol incident is JPD, narrative reason "Alcohol Rehabilitation Failure" with explanation for its intended application as, "Involuntary discharge." This is directed by established directive (no board entitlement) when a member failed through inability or refusal to participate in, cooperate in, or successfully complete a treatment program for alcohol rehabilitation. Thus, JPD would be the

correct code for the applicant in this case. The only associated reentry code for JPD is RE-4.

According to [the applicant's standard travel orders], in the remarks section, [it] indicates "MBR is not entitled to transition assistance benefits: Separation Code JPD."

PSC stated that any problem the applicant has with TRICARE is beyond the purview of the Coast Guard and should be addressed with TRICARE. Finally, the JAG stated that the Coast Guard is presumptively correct, and the applicant has failed to substantiate any error or injustice with regards to his record.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 11, 2009, the Chair sent the applicant a copy of the view of the Coast Guard and allotted him thirty days to submit a reply. The BCMR did not receive a response from the Applicant.

APPLICABLE LAW

Personnel Manual (COMDTINST M1000.6A)

Article 20.A.2.b. states that alcohol abuse is a general term for the misuse of alcohol which interferes with the user's health, safety, job performance, family life, or other required social adaptation.

Article 20.A.2.c. defines alcohol dependence as a chronic disease characterized by repetitive, compulsive ingestion of alcohol which interferes with the user's health, safety, job performance, family life, or other required social adaptation. The Health Promotions Manual (COMDTINST M6200.1) contains the criteria to establish a diagnosis of alcohol dependence and alcohol abuse.

Article 20.A.2.d. of the Personnel Manual defines Alcohol Incident as follows: "Any 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 (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." This provision further states, "The member must actually consume alcohol for an alcohol incident to have occurred."

Article 20.B.2.g. states that upon the first alcohol incident an enlisted member shall be counseled and a page 7 documenting the counseling shall be placed in the member's PDR, with the member's written acknowledgement. The counseling should include advice on the Coast Guard policy on alcohol abuse and a warning that a subsequent incident normally will result in separation action.

Article 20.B.2.h.2. states that enlisted members involved in a second alcohol incident will normally be processed for separation in accordance with Article 12.B.16. of the Personnel Manual (unsuitability).

Article 20.B.2.i. states that enlisted members involved in a third alcohol incident shall be processed for separation from the Coast Guard under Article 12.B.16. of the Personnel Manual.

Article 20-B-2k. states that with respect to unsuccessful treatment, members refusing to undergo the treatment deemed necessary by the commanding officer, failing to complete this treatment, or violating an alcohol rehabilitation aftercare plan will normally be processed for separation.

Article 20-B-2l. states that members diagnosed as alcohol dependent must abstain from alcohol use in order to maintain sobriety . . . A second episode of alcohol consumption after completion of an aftercare program by members who have been diagnosed as alcohol dependent will result in separation from the Coast Guard.

Article 20-B-3d. states that "the commanding officer shall advise members in writing of the following prior to treatment: . . . (2) Successfully completing a treatment program after one alcohol incident will allow the member to continue a career in the Coast Guard. Members . . . violating an alcohol rehabilitation aftercare plan normally will be separated from the Coast Guard."

Health Promotions Manual (COMDTINST M6200.1)

Chapter 2.A.1. states that the purpose of Chapter 2 of the Manual is to set the policy and procedures for the Coast Guard Addictions Treatment and Prevention Programs.

Chapter C.31. of the instruction defines rehabilitation as the restoration to a normal or optimum state of health and constructive activity by medical treatment, physical and/or psychological therapy.

Chapter F.1. states, "Any member involved in an alcohol incident or situation where treatment is not recommended should attend an alcohol awareness education program such as the 20-hour Navy PREVENT or Coast Guard SAFE Alcohol-IMPACT course, or community sponsored program."

Chapter J.4. defines rehabilitation failure as follows: "A rehabilitation failure occurred when a member does not complete an alcohol rehabilitation program or aftercare plan due to noncompliance, or has an alcohol incident during a rehabilitation or aftercare program."

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 was involuntarily discharged from the Coast Guard on August 21, 2008 by reason of unsuitability due to alcohol abuse (two alcohol incidents). He is requesting that his JPD (alcohol rehabilitation failure) separation code be changed so that he is eligible for transition assistance benefits. Pursuant to Enclosure (4) to COMDTINST 1900.2A, a JPD separation code disqualifies a member from receiving transition benefits. The applicant alleged that a YN1 at his unit told him that he would be entitled to transition assistance benefits, but TRICARE denied his request for medical care after his discharge from the Coast Guard.

3. Article 20.B.2.h.2. states that enlisted members involved in a second alcohol incident will normally be processed for separation in accordance with Article 12.B.16. of the Personnel Manual (unsuitability). Therefore, the Coast Guard acted within the authority of Chapter 20 of the Personnel manual by discharging the applicant after his second documented alcohol incident. There is no dispute in the record that the applicant had two alcohol incidents that interfered with the applicant's performance of his duties. The Board notes that when the applicant was informed that he was being processed for separation, he was told that the basis for his separation was unsuitability due to alcohol abuse based on the two alcohol incidents.

4. Since the basis for the discharge—alcohol abuse based upon two alcohol incidents—was proper, the issue in this case is whether the JPD separation code listed on the applicant's DD 214 accurately and fairly describes the reason for his separation. Chapter 1.D.2. of the DD 214 instruction states that the DD 214 must be accurate and complete to fulfill the purposes for which it was designed. Subsection 4.a. of the instruction states that the DD 214 is an authoritative source of information for both governmental agencies and the armed forces for purposes of employment, benefits, and reenlistment eligibility.

5. Based upon a review of the authorities pertinent to the issue of rehabilitation failure, coding the applicant's separation as alcohol rehabilitation failure was erroneous. According to the Separation Program Designator (SPD) Handbook, the JPD (rehabilitation failure) separation code is assigned when a member failed through inability or refusal to participate in, cooperate in, or successfully complete a treatment program for alcohol rehabilitation. Article 20.B.2.k of the Personnel Manual defines unsuccessful treatment as refusing to undergo the treatment the commanding officer and competent medical authority deem necessary, failing to complete the treatment, or violating an alcohol rehabilitation aftercare plan. Chapter J.4. of the Coast Guard Health Promotions Manual defines rehabilitation failure as follows: "A rehabilitation failure occurred when a member does not complete an alcohol rehabilitation program or aftercare plan due to noncompliance, or has an alcohol incident during a rehabilitation or aftercare program." The record shows that after his first alcohol incident, the applicant successfully completed the 20 hour "alcohol and drug-IMPACT education" program and according to a page 7 he was not considered to be alcohol dependent or abusive. There is no documentation in the military record that the applicant was provided with an aftercare plan upon completing the IMPACT education

program.² Although the applicant was screened for and diagnosed with alcohol abuse on July 21, 2003, he was not referred for treatment. Instead he was sent back to his command to be monitored by the CDAR. Approximately five years later the applicant had had a second documented alcohol incident on May 5, 2008, and he was referred to and participated in an outpatient substance abuse rehabilitation program from June 9-20, 2008. No judgment can be made about his success with respect to this treatment and aftercare plan because he was discharged on August 21, 2008 approximately two months after completing the outpatient program. The record before the Board does not support an alcohol rehabilitation failure separation code. The applicant's situation does not meet the SPD Handbook's explanation for the JPD code, the Personnel Manual's definition of unsuccessful treatment, or the Health Promotions Manual's definition of rehabilitation failure.

6. Since the JPD separation code is erroneous, the Board must determine what corrections to the applicant's record are necessary to correct this error and/or injustice. The separation codes used in Block 26 of the DD 214 are taken from a comprehensive listing in the SPD Handbook. After reviewing the SPD Handbook, it appears that YPA (personal alcohol abuse) is the only other alcohol-related separation code. The SPD Handbook states that YPA is appropriate when a member is "[released] from custody and control of a Service component by virtue of a void enlistment or induction, when there is a personal abuse of alcohol evidenced by the results of an approved testing procedure for identification of alcohol abusers . . ." Since the applicant's enlistment was not a void enlistment, YPA would be even more inaccurate and prejudicial than the JPD code.

7. The only just resolution for the instant situation is to follow the precedent in BCMR Docket No. 2000-127. The applicant in that case also received an alcohol rehabilitation failure separation code, even though he had not refused to participate in, cooperate in, or successfully complete any rehabilitation program. The Deputy General Counsel approved the Board's final decision directing that the applicant's record be corrected to show that he was discharged due to miscellaneous/general reasons, under Article 12.B.12 of the Personnel Manual (convenience of the government), and with a JND (miscellaneous/general reasons) separation code.

8. The Board is not addressing the issue of the applicant's reenlistment code because he has not raised it. In this regard, the Board would note that although the applicant had over seven years of active duty and was an average to above average performer, the RE-4 reenlistment code appears justified. In this regard, the Board notes that the applicant was provided with resources to manage his alcohol abuse and provided leniency by not having his July 2003 incident declared as an alcohol incident. Despite the efforts of the Coast Guard, the applicant committed a second documented alcohol incident and was punished at captain's mast for driving while drunk and for being incapacitated for duty due to the consumption of alcohol.

9. Accordingly, the applicant has shown that the Coast Guard committed an error and/or injustice by coding the reason for his separation as alcohol rehabilitation failure and he is entitled to relief. The Board notes that since January 2002 it has called to the Coast Guard's attention the problem of having adequate separation codes that accurately reflect situations where members

² According to Chapter 2.C.32 of the Coast Guard Health Promotions Manual, the SAFE IMPACT course is not treatment, but it is the first educational intervention toward the treatment continuum."

are discharged because of two or more alcohol incidents. The Board recommends that the Coast Guard consider revising the SPD Handbook to address this situation.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former XXXXXXXXXXXX, for the correction of his military record is granted. His DD 214 shall be corrected in the following manner:

Block 25 shall be corrected to show Article 12.B.12. of the Personnel Manual as the separation authority.

Block 26 shall be corrected to show JND as the separation code.

Block 28 shall be corrected to show “separation for miscellaneous/general reasons” as the narrative reason for separation.

The Coast Guard shall issue a new DD Form 214 to the applicant with these corrections. Block 18 may be corrected to state, “Action taken as result of BCMR.”

No other relief is granted.

Evan R. Franke

James E. McLeod

Adrian Sevier