

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2010-216

**XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX**

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 upon receipt of the applicant's completed application on July 29, 2010, and subsequently prepared the final decision for the Board as required by 33 CFR § 52.61(c).

This final decision, dated April 28, 2011, 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 record by changing his RE-3G¹ reenlistment code so that he is eligible to enlist in another branch of the Armed Forces. Prior to enlisting in the Coast Guard on March 16, 2006, the applicant had served in the Marine Corps for four years.

The applicant stated that he was in the prior service training program, but he was not allowed the full 3 weeks to complete the swimming qualification. He stated that a determination was made at the end of the first week of training that he had not progressed enough to qualify within the 3-week period. Therefore, he, along with some others, was removed from the prior service training program at the end of the first week and required to start training all over. He asked to be sent home because he believed that he had been treated unfairly. The applicant was discharged honorably on April 14, 2006, due to unsuitability, with an RE-4 reenlistment code (not eligible to reenlist) and a JNC² (unacceptable conduct) separation code.

¹ RE-3G means that a member is eligible to reenlist, except for a condition, not a physical disability, that interferes with the performance of duty.

² According to the Separation Program Designator (SPD) Handbook, the JNC separation code means that a member has been involuntarily discharged for acts of unacceptable conduct, such as moral or professional dereliction.

Applicant's Discharge from the Coast Guard

On April 3, 2006, the commanding officer (CO) of the Coast Guard Training Center, Cape May informed the applicant that action had been initiated to discharge him from the Coast Guard with an honorable discharge due to unsuitability because he had refused to train. On the same date, the applicant acknowledged the proposed discharge, waived his right to submit a statement in his behalf, and did not object to his discharge.

Also, on April 3, 2006, the CO asked Commander, Coast Guard Personnel Service Center (PSC) for authority to discharge the applicant for unacceptable conduct by reason of unsuitability due to inaptitude.³ The CO stated that the applicant reported for basic training in the prior service training program on March 16, 2006. However, on March 27, 2006, the applicant failed to pass the physical fitness requirements and was placed in a regular eight-week recruit company to afford him the extra time and instruction that would enable him to complete the areas in which he was deficient. The CO stated that on March 28, 2006, the applicant stated that he wanted to quit the program and refused to train further. The CO stated that although the applicant was counseled at length, he still refused to train and maintained his request to be discharged from the Coast Guard.

On April 10, 2006, PSC authorized the applicant's discharge from the Coast Guard with an honorable discharge by reason of unsuitability due to inaptitude. PSC also directed that the JNC separation code be assigned to the applicant. The applicant was discharged on April 14, 2006. He had served on active duty in the Coast Guard for 30 days at the time of his discharge.

Discharge Review Board (DRB) Decision

Prior to filing his application with the Board, the applicant sought relief from the Discharge Review Board (DRB). A majority of the DRB (4 of 5) voted to change the narrative reason for the applicant's discharge from unsuitability to "physical standards," his separation code from JNC (unacceptable conduct) to KFT⁴ (physical standards), the separation authority from Article 12.B.16 (unsuitability) of the Personnel Manual to Article 12.B.12 (convenience of the government), and his reenlistment code from RE-4 (not eligible to reenlist) to RE-3G.⁵ On November 10, 2009, the Commandant approved the DRB majority decision (DRB)

The DRB noted in its decision that it had only the evidence submitted by the applicant and could not properly adjudicate the case due to a lack of documentation regarding the

³ Article 12.B.16.b.1. of the Personnel Manual explains that an unsuitability discharge due to inaptitude applies to members best described as unfit due to lack of general adaptability, want or readiness of skill, clumsiness, or inability to learn.

⁴ The KFT separation code is assigned when a voluntary discharge is allowed by established directive for a member who fails to meet established physical readiness standards.

⁵ The minority of the DRB voted to change the narrative reason for the applicant's discharge to failure to complete course of instruction, his separation code to KHF (means same as narrative reason), and his reenlistment code to RE-1 (eligible to reenlist). The minority stated that it appears that the applicant's request for a voluntary discharge was granted and that failure of instruction appears to be the proper basis. The minority also stated that the applicant's honorable discharge from the Marine Corps was a mitigating factor.

applicant's separation. Nonetheless, the DRB stated that the applicant's inability to swim should not preclude him from service in another branch of the military, if that was the only reason for the applicant's discharge. The DRB stated that an RE-1 reenlistment code was not appropriate in this case because the applicant could not swim, and to assign an RE-1 would misrepresent the applicant's abilities to an Armed Forces Recruiter. The DRB noted that an RE-3G provides the applicant with the opportunity for immediate reenlistment in the Armed Services without seeking a waiver if he meets the swimming qualification required by a particular branch of the Service. The Coast Guard has corrected the applicant's record to reflect the changes ordered by the DRB through the issuance of DD 215.

On July 19, 2010, the BCMR received the applicant's application seeking an upgrade of the RE-3G reenlistment code to RE-1.

VIEWS OF THE COAST GUARD

On November 10, 2010, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief as recommended by the Commander, Personnel Service Center (PSC). PSC stated the following:

[On April 3, 2006], Training Center Cape May requested discharge of the applicant for his refusal to train and desire to quit as a result of failing to pass the physical fitness requirements of basic training.

[On April 3, 2006] the applicant was formally notified that he was being recommended for discharge pursuant to his refusal to train.

[On April 3, 2006], the applicant did not object to being discharged from the Coast Guard.

[On April 14, 2006], the applicant was honorably discharged for reason of unsuitability and received a separation code of JNC and reentry code of RE-4, making him ineligible for reenlistment.

[On February 18, 2009], the applicant successfully petitioned the Coast Guard's [DRB] for a reentry code upgrade. Upon approval from the Commandant . . . the applicant's reentry code was changed to RE-3G.

[T]he reenlistment code, RE-3G, makes the applicant "eligible for reenlistment except for a disqualifying factor." In the applicant's case, the reenlistment code RE-3G signifies a "Condition (not physical disability) interfering with performance of duty."

[According to a DD 215 issued on November 24, 2009], the applicant's record . . . was officially amended to reflect the outcome adjudicated by the DRB

[T]he applicant is able to reenlist but must first “prove the disqualifying factor has been resolved before enlistment can take place.” If the applicant chooses to reenlist, he must go through a service recruiter to initiate this accession process.

PSC concurs with the findings of the [DRB] . . . in their entirety, as the Coast Guard is presumptively correct with the administrative discharge of this applicant. The applicant has failed to substantiate any error or injustice with regard to [his] record.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 15, 2010, the Board mailed a copy of the views of the Coast Guard to the applicant for a response. The Board did not receive a reply from the applicant.

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 DRB changed the narrative reason for the applicant’s discharge, his separation code, and his reenlistment code from RE-4 to RE-3G. The only issue before this Board is whether the RE-3G reenlistment code should be upgraded to RE-1, as requested by the applicant. The Board is not persuaded to upgrade the applicant’s RE-3G reenlistment code and finds that the RE-3G is generous, considering the applicant’s attitude and stern refusal to train, even though he had failed to pass the physical fitness requirements and the Coast Guard was willing to allow him additional time to meet them. Additionally, an RE-1 would mislead recruiters into believing that the applicant had no problems during his short enlistment, which is simply not the case.

3. Moreover, the Separation Program Designator (SPD) Handbook is the authority for assigning reenlistment codes. In this regard, the SPD Handbook does not authorize the assignment of an RE-1 reenlistment code with the KFT separation code, but it does authorize an RE-3G for a failure to meet physical readiness standards.

4. The Board notes that an RE-3G is not a bar to reenlistment. The applicant can apply for reenlistment in the Armed Forces, but must show that he can meet the swimming qualification for those Services that require it.

5. Accordingly, the applicant’s request for an RE-1 reenlistment code should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

Anthony C. DeFelice

Peter G. Hartman

Vicki J. Ray