

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2012-061

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

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 after receiving the applicant's completed application on January 17, 2012, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated August 16, 2012, 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, asked the Board to upgrade his reentry code on his discharge form DD 214, issued on May 17, 2002, from RE-3E, which indicates that he is eligible for reenlistment with a waiver, to RE-1, which makes him eligible for reenlistment.

The applicant said that he enlisted in the Coast Guard on March 12, 2002, after serving four years on active duty in the Air Force. During his pre-enlistment physical examination, there was a small spot on his right knee, which he thought was psoriasis, but he was found fit for enlistment. However, when he reported for basic training, he was told that the spot of psoriasis disqualified him from serving on active duty. Even though he completed ten weeks of basic training and was selected for the recruit honor guard, he was removed from training and discharged with an RE-3E reentry code. Upon returning home, he attempted to reenlist in the Air National Guard and was told that he could not because of the RE-3E reentry code. The applicant alleged that he has been trying to get back into the service for almost ten years and only recently learned about the Board.

In addition, the applicant alleged that a physician recently tested the skin on his knee and found that it is not psoriasis and that "the condition was very stable and would in no way interfere with any physical activities that I would undertake."

The applicant noted that over the past ten years, he has served five years as a police officer and five years as a letter carrier for the Postal Service. However, even after five years as a letter carrier, he is technically a “transitional employee” and may be laid off if the Post Office limits service to five days a week and reduces its workforce.

In support of his request, the applicant submitted a letter from a physician and dermatologist, who wrote the following about the applicant on October 1, 2010, “to whom it may concern”:

I am evaluating this patient today for a history of psoriasis. He has apparently had this plaque-like rash on the right leg his entire life. ... He is now seeking to return to the National Guard and was told that psoriasis was on the list of conditions that would disqualify him.

In review of the patient’s chart, it is known that this is a very minimal case in that the original biopsy suggests that this may just be psoriasiform dermatitis or a lichen simplex chronicus. It is my opinion that this is a very stable condition, and in regards to the patient’s previous military history, I see no reason why this should preclude him from entering the National Guard.

The applicant also submitted a letter dated March 18, 2004, from another physician and dermatologist, who wrote that the applicant had “successfully completed a course of treatment for his skin and the slight area of hyperpigmentation on his right anterior thigh, in my opinion, should in no way impede his ability to perform his duties in the military.”

The applicant also submitted three letters of recommendation, dated August 14, 2003, from Air Force personnel who highly recommended allowing him to re-enter the Air Force based upon his past performance.

The applicant also submitted a copy of his Air Force DD 214, which shows that he served in the Air Force for exactly four years, from July 2, 1997, through July 1, 2001; trained to be a fuels journeyman and advanced to paygrade E-4; and was honorably discharged upon the completion of his obligated service with a 1J reentry code, which means that he was eligible to reenlist but elected to separate.

SUMMARY OF THE RECORD

On February 19, 2002, the applicant underwent a pre-enlistment physical. When asked whether he had ever suffered from “skin diseases (e.g. acne, eczema, psoriasis, etc.),” he advised the doctor that he had suffered from “mild acne.” When completing a medical history report, he checked “no” when specifically asked whether he had ever had psoriasis.

On March 12, 2002, the applicant enlisted in the Coast Guard and began recruit training. During his first physical examination on March 13, 2002, the doctor noted that the applicant reported that he had been diagnosed with psoriasis at age 5. The doctor measured three silvery, scaly plaques on the applicant’s right leg at 9 x 5 centimeters, 1 x 1.5 centimeters, and 1 x 2 centimeters and noted that the applicant had undergone laser treatments for pain. The doctor found that the applicant was fit for duty except for being “tracked for psoriasis.”

On March 16, 2002, a doctor noted that the applicant had sought relief for scaly psoriasis plaques on his right knee that began to itch while he was swimming. He prescribed a salve.

A memorandum dated April 21, 2002, shows that a medical board evaluated the applicant's condition and found that he was disqualified from active duty due to psoriasis pursuant to Chapter 3.D.33.q. of the Medical Manual.¹ The applicant signed an acknowledgement of this notification and initialed a statement indicating that he did not desire to request a waiver² for the disqualifying condition and would be processed for discharge.

On April 22, 2002, a physician's assistant noted that the applicant's psoriasis was a disqualifying condition discovered during his MEPS examination and that the applicant was retained in basic training for six weeks and then reevaluated. "He experienced only mild irritation of the plaques without growth or spread. He did complain of finger joint pain for the past 5 months (unknown if related to Psoriasis at this time). Waiver was offered to [the applicant] which he deferred in order to pursue a more suitable career."

On April 24, 2002, the applicant was advised that the commanding officer (CO) of the training center had initiated his discharge due to "erroneous entry" because "a medical physician diagnosed you with Psoriasis. This condition existed prior to your enlistment in the Coast Guard. You were offered a medical waiver and chose to decline this waiver. As a result of this diagnosis, you are not physically qualified for enlistment." The applicant acknowledged this notification, waived his right to submit a statement, and indicated that he did not object to the proposed discharge.

On May 1, 2002, the CO sent the Personnel Command a recommendation that the applicant be discharged "for erroneous enlistment as a result of a pre-existing medical condition: psoriasis." The CO noted that during the applicant's "accession physical, it was noted that [he] had three silvery scaly plaques on his right lower extremity. [He] was kept fit for fully duty and trained until his sixth week of bootcamp at which time he was re-evaluated. He experienced only mild irritation of the plaques without growth or spread. He was offered but declined a waiver request and desires discharge from the service."

On May 13, 2002, the Personnel Command issued orders for the applicant to be discharged due to erroneous entry under Article 12.B.12. of the Personnel Manual. The applicant's DD 214, which he signed, shows that on May 17, 2002, he was honorably discharged due to "erroneous entry" with the RE-3E reentry code and a JFC separation code, which means that he was involuntarily discharged because he had "erroneously enlisted, reenlisted, extended or was inducted into a Service component (not related to alcohol or drug abuse)."

On February 25, 2003, the Discharge Review Board advised the applicant that it lacked authority to review his request and that he could apply to the BCMR, instead.

¹ Past or current psoriasis is a disqualifying condition for enlistment. Medical Manual, Chap. 3.D.33.

² Chapter 3.F.2. of the Medical Manual states in part that "[i]f the member's condition is disqualifying but he/she can perform his/her duty, a waiver request could be submitted in lieu of immediate referral to a Medical Evaluation Board. If the request is denied, then a Medical Evaluation Board is required."

VIEWS OF THE COAST GUARD

On March 14, 2012, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in this case. In so doing, he adopted the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC).

PSC noted that the application is not timely and argued that it should be denied due to untimeliness. Regarding the merits of the case, PSC alleged that the applicant's claim lacks merit because the record shows that he was properly discharged because of a disqualifying medical condition that pre-existed his enlistment. Therefore, his RE-3E reentry code applies because it makes him "eligible for reenlistment except for a disqualifying factor." PSC noted that to reenlist, the applicant need only persuade a service recruiter to "initiate the accession process and provide a waiver for his condition." PSC alleged that 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 April 26, 2012, the applicant responded to the views of the Coast Guard. He alleged that his medical records show that the diagnosis of psoriasis is erroneous. In addition, he alleged that PSC's claim that he is eligible for enlistment with the RE-3E code is incorrect because two different recruiters for the Air National guard have told him that the RE-3E makes him ineligible to reenlist. The applicant stated that under Air National Guard Instruction 36-2002, Table 1.9, the only acceptable entry codes from the U.S. Coast Guard are as follows: R1, 1, 3J, 3X.

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. The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice.³

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 or injustice in his record. The applicant received his DD 214 with an RE-3E reentry code in 2002. Therefore, his application is 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

³ The Board notes in this regard that the Discharge Review Board does not normally handle medical cases and rejected the applicant's application due to a lack of jurisdiction in 2003.

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. Regarding the delay of his application, the applicant argued that it is in the interest of justice for the Board to excuse the delay because his reentry code is preventing his reenlistment in the Air National Guard. However, the record shows that the applicant was advised in 2003 that he should apply to the BCMR, and there is no evidence that anything prevented him from doing so.

5. A cursory review of the merits of this case indicates that the applicant was properly discharged for erroneous entry because (a) under the Medical Manual, a diagnosis of psoriasis is disqualifying for enlistment; (b) the applicant failed to disclose his diagnosis of psoriasis during his pre-enlistment physical examination in February 2002; (c) when the diagnosis was discovered during recruit training, the applicant refused to seek a waiver and opted to be discharged because of the psoriasis; and (d) he received due process under Article 12.B.12. of the Personnel Manual in that he was notified of the proposal to discharge him for erroneous entry and of his right to object and to submit a statement and he waived those rights. Under COMDTINST M1900.4D, the only reentry codes authorized when members are discharged for erroneous entry are an RE-4 (ineligible for reenlistment) or an RE-3E, which means that the member was discharged because of a disqualifying factor and is eligible to reenlist if a military recruiting command is satisfied that the problem that caused his discharge no longer exists and so grants him a waiver.

6. Although the applicant alleged that he has proved that the diagnosis of psoriasis was erroneous, the letter from his dermatologist does not state that the diagnosis is erroneous. Instead, the dermatologist wrote that “this is *a very minimal case* in that the original biopsy suggests that this *may* just be psoriasiform dermatitis or a lichen simplex chronicus.” (Emphasis added.) Therefore, the applicant has not submitted evidence that overcomes the presumption that the diagnosis in his military record is correct. 33 C.F.R. § 52.24(b); *see Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties “correctly, lawfully, and in good faith.”).

7. The Board notes that the applicant has apparently tried to reenlist in the Air National Guard to no avail because under Air National Guard Instruction 36-2002, Table 1.9, the only acceptable reentry codes from the Coast Guard are R1, 1, 3J, 3X. However, AGNI 36-2002 is erroneous and extremely out of date because the R1 and 3J codes have not been authorized since September 1993.⁴ The only reentry codes authorized for Coast Guard personnel since September 1993 are those listed in Chapter 2 of COMDTINST M1900.4D.⁵ Under COMDTINST M1900.4D, the Coast Guard’s reentry codes are the same as the Navy’s, and Table 1.9 in ANGI 36-2002 shows that a Navy veteran with an RE-3E is eligible to enlist in the Air National Guard.

⁴ COMDTINST M1900.4D, issued in September 1993, revised the Coast Guard’s authorized reentry codes and, in particular, discontinued the RE-R1 and RE-3J codes authorized under COMDTINST M1900.4C.

⁵ For the list of authorized reentry codes for Coast Guard personnel, see Chapter 2 of COMDTINST M1900.4D, which is available online at http://www.uscg.mil/directives/listing_cim?files=20&id=1000-1999.

The Board finds that neither AGNI 36-2002's out-of-date table nor the Air National Guard's refusal to reenlist the applicant prove that the RE-3E on his Coast Guard DD 214 is erroneous or unjust.

8. Based on the record before it, the Board finds that the applicant's claim cannot prevail on the merits. Accordingly, the Board will not excuse the application's untimeliness or waive the statute of limitations. The applicant's request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

Marion T. Cordova

Anthony C. DeFelice

Rebecca D. Orban