

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-148

XXXXXXXXXXXXXXXXXXXXX,
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

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This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on July 7, 2004, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated March 17, 2005, 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 asked the Board to correct his record by upgrading his RE-3G¹ reenlistment code to RE-1.² The applicant argued that the code should be upgraded because he "would like to serve [his] country" and that although he was discharged for medical reasons, he has not had any medical problems since leaving the Coast Guard.

SUMMARY OF THE APPLICANT'S RECORD

On May 22, 1990, the applicant enlisted in the Coast Guard. On August 23, 1990, the applicant underwent a pre-training physical and was determined to be in good health and qualified for training and placement into the recruit training program.

¹ A reenlistment code of RE-3G means the member is eligible for reenlistment except for a condition (not physical disability) interfering with performance of duty.

² RE-1 means the applicant is eligible for reenlistment.

According to the applicant's record, he was doing well until the third week of recruit training (September 2, 1990), when he reported to recruit sick call with complaints of malaise, nasal congestion, murky black urine, and vague back pain. During his visit to sick call, the applicant stated that he did not think he was emotionally fit or ready for training. Although the physical examination was essentially negative, the applicant was nonetheless admitted to the hospital on September 2, 1990, for further tests and evaluation. While in the hospital, the applicant was diagnosed as having idiopathic recurrent renal hematuria.³ The attending physician noted that the applicant was not fit for full duty for an indefinite period of time.

On September 7, 1990, the applicant was evaluated in the hospital by a civilian psychologist and was also diagnosed as having an atypical anxiety disorder associated with avoidant personality disorder. The psychologist recommended that the applicant be discharged from the Coast Guard.

On September 13, 1990, the applicant was discharged from the hospital, and the discharging physician noted that he was "fit for limited duty, no training, to be followed in the outpatient department." Shortly after being discharged from the hospital, the applicant was evaluated for the purpose of an initial medial board (IMB).⁴ On October 17, 1990, after evaluating the applicant's medical history, the IMB recommended that the applicant be discharged from the Coast Guard because he was not fit for full duty and training. The IMB stated that the applicant did not meet the minimum standard for enlistment and retention in the Coast Guard.

On November 1, 1990, the Coast Guard's Central Physical Evaluation Board (CPEB)⁵ determined that the applicant was not fit for duty and he was found to be 10% disabled as a result of his recurrent renal hematuria. On November 28, 1990, the findings of the CPEB were approved and the applicant was directed to be separated from the Coast Guard. The applicant accepted the CPEB findings, under the advice of counsel.

On March 25, 1991, the applicant was discharged from the Coast Guard pursuant to Article 12.B.12 of the Coast Guard Personnel Manual. He received an honorable discharge, a separation code of JFV⁶, and the narrative reason for separation was

³ Blood from the kidneys in the urine with no known cause. Dorland's Medical Dictionary, 2000.

⁴ An IMB is a written report of a medical board convened by appropriate authority to evaluate a member's fitness for duty and to make recommendations consistent with the findings. Article 2.A.24. of the PDES Manual.

⁵ The CPEB is a permanently established administrative body convened to evaluate, on a record basis, whether active duty, reservists, or temporarily disabled retired members are fit for duty, and if they are not, to determine and rate their disabilities. Article 4.A.1. of the PDES Manual.

⁶ JFV is used to denote an involuntary separation when a physical condition, not a physical disability, interferes with the performance of duty. SPD Code Handbook, page 2-5.

“convenience of the government.” The record indicates that the applicant received a RE-3G reenlistment code. He served for 7 months and 5 days.

On May 15, 1991, the applicant submitted a claim for disability benefits thru the Veterans Administration (VA). On October 10, 1991, the applicant underwent a Medical Examination for Disability Evaluation at the VA, and was diagnosed as having hematuria and high blood pressure.

On January 29, 1992, the VA completed its rating decision and although it determined that the applicant’s hematuria was service connected, they nonetheless denied disability benefits because the applicant was asymptomatic. The VA noted that “although VA lab tests revealed findings referable to the applicant’s condition, the symptoms were non-disabling and no impairment in earning capacity for civil occupations is noted.” In addition, the VA failed to find service connection for the applicant’s anxiety disorder with avoidant personality, and disability benefits for this condition were also denied.

VIEWS OF THE COAST GUARD

On November 15, 2004, 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. The JAG argued that the applicant failed to submit a timely application and failed to show why it was in the best interest of justice to excuse the delay.

In addition, the JAG argued that the applicant offered no evidence that the Coast Guard committed any error or injustice when it discharged him. The JAG stated that the applicant was separated for a physical disability and a RE-3G reenlistment code was entirely appropriate. JAG argued that the Board should not change the applicant’s reenlistment code because changing the code from RE-3G to RE-1 would allow the applicant to enlist in any branch of the armed forces without demonstrating that his previously disqualifying physical condition was resolved.

However, the JAG and CGPC recommended that the Board grant alternative relief because the Coast Guard made errors in the separation and reenlistment codes that the applicant received. CGPC stated that the applicant should have been given a separation code of JFR⁷ and a reenlistment code of RE-3P.⁸ CGPC stated that these codes would have been more appropriate because they more accurately depict the circumstances of the applicant’s discharge. CGPC also stated that the original

⁷ JFR: Discharge for a physical disability not existing prior to entry on active duty established by physical evaluation board processing.

⁸ RE-3P means that the member is eligible for reenlistment except for a disqualifying factor (physical disability).

reenlistment code of RE-3G does not preclude the applicant from reenlisting in the Coast Guard.

CGPC also noted that correcting the applicant's reenlistment code to RE-3P would be of little or no benefit to the applicant because both the RE-3G and RE-3P codes have the same affect on the applicant's ability to reenlist. To wit, before the applicant could reenlist in any of the armed forces, these reenlistment codes would require that he present proper documentation and verification of resolution of the condition for which the code was originally assigned.

Finally, CGPC noted that if the applicant wishes to reenlist in the Coast Guard, he may do so by applying at any local recruiting office with documentation and/or statements concerning resolution of the disqualifying factors for which he was originally discharged. Although the JAG and CGPC did not recommend that the

requested relief be granted, neither objected to correcting the applicant's record if the following corrections were requested by the applicant:

- a. Separation Code: JFR
- b. Reenlistment Code: RE-3P
- c. Narrative Description: Physical Disability

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 19, 2004, the Chair sent a copy of the views of the Coast Guard to the applicant and invited him to respond within 30 days. No response was received.

APPLICABLE LAW

Article 12.B.12.a.5.12. of the Coast Guard Personnel Manual in effect in 1991 authorized the Commandant to discharge members at the convenience of the government if they had "[a] condition, not a physical disability which interferes with performance of duties." Article 12.B.12. required that a member discharged for the convenience of the government be given an honorable or general discharge, as appropriate under article 12.B.2.

The Separation Program Designator (SPD) Handbook authorizes the assignment of an RE-3G, RE-3X, or a RE-4 reenlistment code with the JFV separation code. It states that the JFV code is to be used for "involuntary separation as directed by established directive, when a condition, not a physical disability, interferes with the performance of duty." The authorized narrative reason for separation for this code is "...condition, not physical disability, interfering with performance of duty." The only authorized reenlistment codes are RE-3G, RE-3X, and RE-4.

The SPD Handbook authorizes the assignment of a RE-3P or a RE-4 reenlistment code with the JFR separation code. It states that the JFR code is to be used when there is an involuntary separation as directed by established directive, for a "*physical disability not existing prior to entry on active duty* established by physical evaluation board processing." A member in receipt of this code is not entitled to severance pay. The authorized narrative reason for separation under this code is "Physical Disability." The only authorized reenlistment codes are RE-3P and RE-4.

Article 2.E.1.b.5: M1100.2D, the Coast Guard Recruiting Manual, states that an RE-3 (alpha character) reenlistment code is not a bar to enlistment or reenlistment and shall not be, by itself, the reasons to reject a prospect or 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 submission, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.

2. An application to the Board must be filed within 3 years after the applicant discovers or should have discovered the alleged error in his record. 10 U.S.C. § 1552. The applicant signed and received his discharge documents indicating that his reenlistment code was RE-3G when he signed his Certificate of Release From Active Duty (DD214) in 1991. The applicant did not provide an explanation why he waited nearly 14 years to seek an upgrade of his reenlistment code. The Board finds that the applicant knew or should have known the meaning of the reenlistment code when he signed his DD214. Thus, his application was untimely.

3. Pursuant to 10 U.S.C. § 1552, the Board may waive the 3-year statute of limitations if it is in the interest of justice to do so. To determine whether it is in the interest of justice to waive the statute of limitations, the Board should consider the reason for the delay and conduct a cursory review of the merits of the case. *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992). Although the applicant has not explained his delay, a cursory review of the merits of this case indicates that the JAG and CGPC have determined that an error was made and that the applicant's separation and reenlistment codes were unjust. Therefore, the Board finds that it is in the interest of justice to waive the statute of limitations in this case.

4. The applicant was properly discharged from the Coast Guard because of a physical disability (hematuria) which caused him to be unfit for duty. The Board notes that this diagnosis is fully supported by the extensive medical documentation in the applicant's service record. There is no evidence in the record that the Coast Guard committed any error or injustice in discharging him for this physical disability. Moreover, the record indicates that the applicant received all due process with respect to his discharge, in accordance with the Physical Disability Evaluation System Manual.

5. Although the applicant's discharge was proper, both the JAG and CGPC concluded that the applicant's separation code, reenlistment code, and narrative reason for separation were inappropriate and should be changed. The JAG and CGPC stated that because the applicant was discharged for a physical disability, a reenlistment code of RE-3P, a separation code of JFR, and a narrative reason for separation by reason of physical disability "would more accurately depict the circumstances of the applicant's discharge." In light of the recommended changes to the applicant's reenlistment code,

separation code, and narrative reason for separation, the Board finds that the separation authority should be changed from 12.B.12. to 12.B.15. of the Personnel Manual.

6. A member of the BCMR staff contacted the applicant and asked him if he would accept the alternative relief recommended by the Coast Guard. The applicant responded in the affirmative. Accordingly, the applicant's record should be corrected to reflect the changes recommended by the JAG and CGPC.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former XXXXXXXXXXXXXXXXXXXX, USCG, for the correction of his military record is denied, except that his DD Form 214 shall be corrected as follows:

Block 25 shall be corrected to show Article 12.B.15 of the Personnel Manual as the separation authority.

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

Block 27 shall be corrected to show RE-3P as the reenlistment code.

Block 28 shall be corrected to show Physical Disability as the narrative reason for separation.

The Coast Guard shall issue the applicant a new DD Form 214.

Quang D. Nguyen

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