

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1998-080

FINAL DECISION

ANDREWS, Attorney-Advisor:

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. It was commenced upon the BCMR's receipt of the applicant's request on May 11, 1998.

This final decision, dated March 11, 1999, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a former xxxxxx in the Coast Guard, asked the Board to correct his military record by changing his reenlistment code from RE-3Y (eligible for reenlistment except for disqualifying factor: unsatisfactory performance) to RE-1 (eligible for reenlistment).

APPLICANT'S ALLEGATIONS

The applicant alleged that he "was discharged unfairly due to possible personality conflict and not given a proper chance to appeal the process." He also alleged that his service record did not show that he was a "bad sailor" and that his supervisor at his unit, xxxxxxxxxxxx, had called him a good worker.

VIEWS OF THE COAST GUARD

On February 11, 1999, the Chief Counsel of the Coast Guard submitted an advisory opinion recommending that the Board deny the requested relief due to lack of proof.

The Chief Counsel alleged that the “basis for Applicant’s discharge is fully documented in his record. . . . The Applicant on the other hand has provided zero evidence in support of his application and has failed to meet his burden of proof to establish that error was committed.”

The Chief Counsel attached to his advisory opinion a memorandum prepared by the Coast Guard Personnel Command (CGPC) concerning the applicant’s case. CGPC stated that the applicant had received seven adverse administrative entries in his record during his two years on active duty. “Given the serious discipline and performance problems exhibited, an early discharge was justified.” He was therefore discharged for “unsatisfactory performance” and assigned the reenlistment code RE-3Y.

CGPC explained that the RE-3Y reenlistment code means that “the applicant is eligible for reenlistment provided a recruiter is convinced that he is better mentally prepared to endure the rigors and discipline that are required of military service.”

CGPC alleged that all proper administrative procedures were followed in the applicant’s case:

Under [the procedures of the Personnel Manual], three notification letters are given to the member. The first places the member on probation; the second informs the member that discharge procedures have been initiated; and the third informs the member that they are being recommended for discharge and that they have the right to an appeal. These letters (they are not CG-3307s) are not required to be placed in the member’s official service record, and in this case, they weren’t.

However, CGPC stated, because the third letter, notifying the member of his right to an appeal, was not placed in the applicant’s record, “it can not be determined whether he did or did not receive notification.”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 11, 1999, the Chairman sent the applicant a copy of the views of the Coast Guard and invited him to respond within 15 days. On February 24, 1999, the applicant responded.

The applicant stated that in addition to the correction of his reenlistment code, he would like his separation code to be changed from JHJ. He did not indicate what separation code he would want to replace it.

The applicant further alleged that his record aboard the xxxx had been good until a new commanding officer and boatswain's mate arrived on board. He alleged that the "Senior Enlisted Petty Officers began to play games and attempted to set me up."

The applicant alleged that, after he was placed on probation, he was evaluated every month and got progressively better, until his marks were straight 4s. However, his commanding officer decided to discharge him after being woken by a phone call on the bridge, where the applicant was supposed to be on watch. The applicant alleged that he had been given tasks to do on the mess deck, but the captain thought he was just sleeping or watching movies. Several officers on the ship told him that "there would be no RE code on [his] DD-214" and that he would get medical benefits and GI Bill benefits, as if he had completed four years instead of only two. After leaving the xxxx, he discovered that he might not receive these benefits but was told that the time during which he could have appealed his discharge had passed.

Finally, the applicant stated the following:

I do not deny anything that was placed in my service record. I made mistakes and I admitted to them. I also did a lot of things right. Things that are not stated. I feel that my supervisor and department head were looking for someone to act as a slave. Someone to do [their] dirty work, so they could just sit around. . . .

APPLICABLE REGULATIONS

Article 12.B.9. of the Coast Guard Personnel Manual (COMDTINST M1000.6A) provides the procedure for discharging enlisted members "whose performance demonstrates they cannot or will not contribute to supporting the Coast Guard's missions." Article 12.B.9.c. sets the criteria for separation for unsatisfactory performance:

To discharge a member as an unsatisfactory performer, commanding officers must clearly show the member has been given the proper direction to improve his or her performance and adequate time to demonstrate he or she could become a productive Service member. . . . [T]he unsatisfactory performance pattern, the appraisal marks described [sic] must be supported by thorough documentation, including copies of Administrative Remarks, disciplinary action, and any other attempted corrective or training action. Unsatisfactory performers generally can be identified by one or more of the following traits: . . .

2. After 30 June 1983, the member must meet the standards for an honorable discharge as described in Article 12.B.2.f.

Article 12.B.2.f. includes the following among the criteria for an honorable discharge: “[p]roper military behavior and proficient performance of duty with due consideration for the member’s age, length of service, grade, and general aptitude”; and “a minimum characteristic average of 2.5 in each factor over the period of the enlistment.”

Article 12.B.9.d. requires notification of unsatisfactory performers as follows:

Commanding officer must notify in writing a member whose performance record (12 months preferred in most cases, but as least six months for extremely poor performers) is such that he or she may be eligible for discharge under this Article and that his or her unsatisfactory performance may result in discharge if that performance trend continues for the next six months. . . .

Article 12.B.9.e. requires members whose performance has not improved after six months to be notified in writing of the proposed discharge action. This letter informs the member that he may submit a letter on his behalf. Members are required to sign a statement acknowledging this notification and indicating whether they object or do not object to their discharge and whether they will or will not submit a letter on their own behalf.

Article 12.B.9.d.2. requires members who are discharged by reason of unsatisfactory performance to be assigned either an RE-4 or an RE-3Y reenlistment code. The RE-4 is mandated when “the member’s unsatisfactory performance has primarily been related to personal conduct.” The RE-3Y is mandated when “the member’s overall performance of duty is the reason for discharge and the commanding officer determines that the member may be eligible for reenlistment at a later date.”

SUMMARY OF APPLICANT’S MILITARY RECORD

On January 23, 199x, the applicant enlisted as a seaman apprentice in the Coast Guard for a period of four years. On September 15, 199x, he was promoted to xxxxx. His personnel record includes the following administrative entries reflecting on the quality of his performance:

10/10/9x A page 7 entry commends the applicant for his outstanding performance on board the cutter xxxx from September 30, 199x, to October 4,

199x. The applicant worked long hours and sacrificed liberty time to sand and paint the hull.

- 1/7/9x A page 7 entry commends the applicant for his actions during a sudden severe squall. The applicant helped save a boat from being smashed against a pier.
- 2/4/9x A page 7 entry commends the applicant for sacrificing his liberty time to assist a visiting cutter and its crew.
- 3/28/9x A page 7 entry notes that the applicant is eligible to wear the Coast Guard Sea Service Ribbon upon completion of one year of sea service.
- 9/25/9x A page 7 entry notes that the applicant was counseled for "substandard work performance." He had failed to complete two assigned tasks and could not tie a bowline knot when asked to do so. The page 7 also states that the applicant had "demonstrated a terrible deficiency in seamanship skills" during moorings by failing to work the lines safely and properly. The page 7 warns that "[y]our nonchalant attitude toward work will not be tolerated" and that "[i]f your standard of work does not improve, you will receive extra military instruction and may be put on performance probation which can result in cancellation of 'A' school orders or for discharge for unsuitability."
- 11/1/9x A page 7 entry notes that the applicant had been assigned a mark of "Not Recommended" on his evaluation based on "unsatisfactory performance, poor proficiency in basic seamanship skills and poor watchstanding."
- 11/1/9x A page 7 entry notes that the applicant had received a mark of 2 (out of 7, with 7 being highest) for "Professional/Specialty Knowledge," "Quality of Work," "Monitoring Work," and "Setting an Example" on his performance evaluation. The page 7 notes that

[o]n numerous occasions he was unable to tie basic knots or demonstrate safe and competent linehandling skills. He was removed from working both line 1 and line 2 for failure to rig the heaving lines correctly and make heaving line throws to the pier during mooring stations. Additionally, during boat detail, he had to be corrected numerous times for having his hands too close to the cleat when working the line under tension. He also failed to carry out simple tasks

[The applicant] consistently produced sub-standard work and failed to make any progress towards improving the quality of his work. On two occasions he was caught gundecking logs during underway QMOW watches and he failed to complete assigned work His nonchalant attitude towards work assignments and poor skills have resulted in him having to be closely supervised during all projects. . . . He failed to stand proper watches as QMOW by not plotting DR's, checking magnetic and gyro courses or using radar fixes when required.

[The applicant sets] a poor example for newly assigned personnel. Even though he was the senior seaman by time in grade, he failed to set an example of good work ethic and he failed to show sound seamanship and painting practices and knowledge. His poor watch-standing habits while having another person break-in under him have allowed for the potential for juniors to develop the same bad habits. His inability to perform at the level of a seaman has precluded him from being involved in training any newly assigned personnel.

11/10/9x The applicant received nonjudicial punishment at a captain's mast for failure to obey orders, making false official statements, and "general." His punishment of seven days' restriction and extra duties and reduction to paygrade E-2 was suspended for a four-month probation period.

11/10/9x A page 7 entry that is virtually identical to one dated November 1, 199x, notes that the applicant received a mark of "Not Recommended" on a performance evaluation conducted after he went to mast and received nonjudicial punishment for poor performance.

11/10/9x A page 7 entry notes that the applicant received a mark of "Unsatisfactory" for conduct on the performance evaluation conducted following his nonjudicial punishment for his poor performance.

3/24/9x A page 7 entry notes that the applicant received marks of "Unsatisfactory" and "Not Recommended" on his performance evaluation for his four-month performance probation period. The page 7 notes that

[d]uring this marking period [the applicant's] watchstanding abilities have been questioned numerous times. Shortly after he received non-judicial punishment for deficient watchstanding, and acting as a break-in watchstander, [the applicant] failed to complete a proper round by entering aft steering space. Three months after regaining his qualification as inport crewman, he was again relieved as inport

watchstander for failing to prioritize his responsibilities by failing to maintain a regular presence on the bridge and allowing the cellular phone, the ship's primary means of communication while inport in xxxxxx, to go unanswered for over an hour. . . .

- 3/26/9x A page 7 entry notes that the applicant received marks of 2 for "Professional/Specialty Knowledge," "Quality of Work," "Monitoring Work," "Responsibility," "Motivation Towards Advancement," and "Setting an Example" on his performance evaluation. The page 7 lists numerous instances of very poor performance and includes the following statements:

During this marking period you displayed professional knowledge equivalent to that of an entry-level Seaman Apprentice. . . . As underway QMOW, your inconsistent watchstanding has caused the OOD's to constantly monitor your fixes and log keeping. . . . numerous projects you were assigned needed to be redone. . . . Despite having been onboard for nearly two years, this exemplifies your inability to follow the letter and spirit of the standing orders and maintain a proper watch without constant supervision. . . . Despite being placed on performance probation and continuous training and counseling from your supervisors, your work and watchstanding did not improve. . . . [Y]ou ran out of drop cloths and . . . climbed through the window of another unit's storage room and took supplies from them without permission. . . . Your slipshod work and watchstanding reflect your inability to retain training and counseling which you have received throughout the marking period. . . . Your inability to make a decision, even in the most routine matters which you have been assigned since reporting aboard, have also set a bad example and hindered unit progress.

- 5/1/9x A page 7 entry notes that the applicant was discharged by reason of unsuitability. However, the applicant's DD Form 214, dated May 4, 199x, shows that he was honorably discharged pursuant to Article 12.B.9. of the Personnel Manual by reason of unsatisfactory performance with a JHJ separation code ("involuntary discharge . . . when a member fails to perform duties and assignments satisfactorily") and an RE-3Y reenlistment code ("eligible for reenlistment except for disqualifying factor: unsatisfactory performance").

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, United States Code. The application was timely.

2. The applicant requested an oral hearing before the Board. The Chairman, acting pursuant to 33 C.F.R. § 52.31, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.

3. The applicant alleged that he was unfairly discharged due to a personality conflict and that he was not given an opportunity to appeal his discharge. He also alleged that he was not a "bad sailor" and that one supervisor had called him a good worker. The applicant did not submit any evidence to support these contentions. He asked the Board to change his reenlistment code from RE-3Y to RE-1 and to change his separation code from JHJ to something else.

4. The Chief Counsel of the Coast Guard recommended that the Board deny the requested relief. He alleged that the applicant's record supported his discharge for unsatisfactory performance and that all proper procedures had been followed.

5. The applicant's record contains several page 7 entries that thoroughly document numerous incidents of poor performance. A page 7 entry dated September 25, 199x, notified the applicant that his performance was inadequate and could lead to his discharge. In November 199x, the applicant was placed on performance probation for four months, but his performance did not improve despite extra counseling and training he apparently received. The applicant's record shows that he met the criteria for discharge for unsatisfactory performance under Article 12.B.9.c. of the Personnel Manual. The applicant presented no evidence to support his allegations that he had performed well and that his discharge was due to a "possible personality conflict." Therefore, the Board finds that the applicant has failed to show by a preponderance of the evidence that his discharge for unsatisfactory performance was unjust.

6. The applicant had no right to appear before an Administrative Discharge Board prior to his discharge because he had served on active duty for fewer than eight years. Under Article 12.B.9.e. of the Personnel Manual, he had a right to attach a letter of objection to his acknowledgement of his notification of his pending discharge. The regulations do not require the notification or the applicant's acknowledgement to be entered into his personnel record. The Board believes that the regulations should require that these letters be entered into members' personnel records so that there would be proof that the proper proce-

dures were followed. Although the Coast Guard alleged that the proper procedures were followed, it did not produce copies of the letters. The Board finds that, even if the Coast Guard failed to notify the applicant of his right to attach an objection to his acknowledgement of his discharge notification, the error would have been harmless as the applicant's discharge for unsatisfactory performance was fully justified by his record.

7. Under Article 12.B.9.d.2., the applicant could have received an RE-3Y or an RE-4 reenlistment code. He was assigned the less harsh RE-3Y code, which allows him to reenlist if he can convince a recruiter that his performance will improve. The Coast Guard did not err in assigning the applicant an RE-3Y reenlistment code.

8. Therefore, the Coast Guard committed no error or injustice in discharging the applicant by reason of unsatisfactory performance with an RE-3Y reenlistment code.

9. Accordingly, the applicant's request for relief should be denied.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application for correction of the military record of XXXXXXXXX,
USCG, is hereby denied.

Barbara Betsock

Gareth W. Rosenau

David M. Wiegand