

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2003-137

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

ANDREWS, Deputy Chair:

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The case was docketed on September 15, 2003, upon receipt of the application and military records.

This final decision, dated May 20, 2004, 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 seaman recruit (SR; pay grade E-1) in the Coast Guard, asked the Board to correct his military record by upgrading the reenlistment code on his discharge form (DD 214) so that he would be eligible to reenlist. He was discharged on May 27, 1988, after just nine months and four days of active duty, with an RE-4 reenlistment code (ineligible for reenlistment), a JMB separation code (unsuitable due to a personality disorder), and "unsuitability" as the narrative reason for separation shown on his DD 214. He asked the Board to upgrade his reenlistment code to at least RE-3. (An RE-3 code means that a member is eligible for reenlistment except for an interfering condition. The member must receive a waiver from the Service through his recruiter to reenlist.)

APPLICANT'S ALLEGATIONS

The applicant alleged that when he joined the Coast Guard at age 20 in 1987, he was very immature and upset by the fact that his father had recently left his mother for

another woman and they were calling him and "slandering" each other. He stated that he joined the Coast Guard primarily to escape from this family situation, as he had been living at home.

The applicant alleged that he was not kicked out of the Coast Guard and could have stayed in. He alleged that in 1988, he "took advantage of an early-out program in 1988 made possible by budget cuts of the Reagan Administration and went home." He alleged that he initiated his discharge when he heard about the program.

The applicant stated that while in the Coast Guard, he did have a problem with a roommate, who kept using his toiletries without asking. The two of them went to captain's mast for fighting. But they learned their lessons, and the matter was quickly forgotten.

The applicant stated that, upon his discharge, he worked for a family friend for several years while he attended school. He became a licensed vocational nurse and is "currently working at hospitals and long-term care facilities." He alleged that he loves what he is doing but would like the chance to serve the wounded soldiers in Iraq. He also alleged that he discovered the error in his record in March 2003.

SUMMARY OF THE RECORD

On August 24, 1987, the applicant enlisted in the Coast Guard for a term of four years. After completing boot camp on October 23, 1987, he was advanced to seaman apprentice (SA; pay grade E-2) and assigned to Group XXXXXXXXXX.

On December 9, 1987, the applicant was taken to captain's mast for having "struck another Coast Guard [member] on the head with a cordless phone and cut him above the left eye" two days earlier. The Officer in Charge (OIC) sentenced him to "forfeit 3 days pay for 1 month, 7 days restriction, 14 days extra duty." However, the OIC suspended the forfeiture of pay and extra duty for two months.

On January 20, 1988, the applicant was counseled in writing by his commanding officer (CO) about his performance. The CO stated that while serving at his first duty station (a cutter), the applicant had been "unable or unwilling to cooperate with [his] shipmates" and had repeatedly shown a lack of respect for authority. Therefore, the CO wrote, he had been transferred ashore to the Engineering Department on January 5, 1988. The CO further stated that, despite continuing counseling by his new supervisors, the applicant had not shown any effort to improve his conduct, show respect for others, or "contribute to the team effort." In addition, a complaint had been lodged against him regarding his conduct with a minor female, "which reflects very poorly on the Coast Guard." Therefore, the CO stated, he was going "to investigate the feasibility of your administrative discharge by reason of unsuitability," and "[a]ny future non-

conformance to rules, regulations or military standards will be dealt with most severely.”

On February 8, 1988, the applicant was taken to captain’s mast for having bitten a fellow seaman on the shoulder on February 2, 1988. His sentence was restriction to base for 30 days and reduction to SR/E-1. However, the reduction in rate was suspended for six months.

On February 24, 1988, a psychiatrist diagnosed the applicant with a “personality disorder, not otherwise specified [with] dependent and passive/aggressive features.” His report indicates that the applicant’s CO had requested the evaluation because of a “history of repeated misbehavior.” The psychiatrist stated that the applicant admitted to “the violations cited with the exception of statutory rape, stating ‘I cannot tolerate the Coast Guard.’; ‘I’m homesick and need to go back to Texas.’” The psychiatrist found the applicant’s judgment and insight to be poor. He reported that “[g]iven the nature of this individual’s personality structure, the repeated behavioral violations demonstrated thus far on active duty, and the lack of motivation to improve his performance or to remain on active duty, it is felt that further efforts to rehabilitate or develop this individual into a satisfactory member of the military will be unsuccessful.”

On March 1, 1988, the applicant was notified of his pending discharge “for unsuitability due to [a] personality disorder.” The CO stated that he would recommend an “honorable” discharge.¹ The applicant was notified that he had a right to submit a statement in his own behalf and could consult with a Coast Guard attorney. On the same day, the applicant acknowledged receipt of the notification and indicated that he wanted to consult an attorney and make a statement in his own behalf.

On March 17, 1988, the applicant submitted a statement concerning his “general discharge” to his CO. He stated that he had valued the training he had received and regretted the inconvenience he had caused. He indicated that he had joined the Coast Guard in order to escape his home town upon the dissolution of his parents’ marriage. He stated that he realized “it was poor judgment on [his] part to think that joining the Coast Guard would eliminate [his] problems.” He stated that he believed that he had been properly punished for his disciplinary infractions at two masts but that the general discharge recommended by his CO would be punishing him again for the same infractions. He indicated that he wanted to leave the Service and go home.

On March 17, 1988, the applicant’s CO wrote to the Commandant requesting permission to discharge the applicant for unsuitability due to a personality disorder. The CO stated that the applicant had “continually displayed disruptive behavior since reporting to his first unit.” He stated that after the applicant’s first week at his first duty

¹ In the applicant’s record, there is a question mark after the word “honorable” in the text of the letter.

station, the OIC told him that the applicant would not be a productive crewmember "because of his belligerent attitude toward authority and his inability to get along with anyone on the boat." The CO noted that "after several minor incidents," the applicant had struck another member with a telephone in December 1988 and, thereafter, had continued his disruptive behavior. The CO stated that the applicant had gotten into a fight in the barracks on February 2, 1988. He further stated that although no charges had been filed, he had "received information from xxxxxxxx, California, that [the applicant] had forced unwanted affections on a young high school girl."

The CO attached to his letter the report of the psychiatrist and the applicant's own statement. He noted that the applicant had been notified of his intention and had received legal counsel on March 16, 1988. The CO recommended that the applicant receive a general discharge as soon as possible.

On April 11, 1988, the Commandant authorized the CO to discharge the applicant by reason of unsuitability with a JMB separation code under Article 12.B.16. of the Personnel Manual. The Commandant ordered that the applicant receive the type of discharge (honorable or general) to which he was entitled under Article 12.B.2. of the Personnel Manual.

On April 14, 1988, the applicant's CO vacated the suspension of his reduction to E-1, which therefore went into effect.

On May 27, 1988, the applicant was honorably discharged under Article 12.B.16. of the Personnel Manual, with an RE-4 reenlistment code, a JMB separation code, and a narrative reason for separation of "unsuitability."

VIEWS OF THE COAST GUARD

On January 12, 2004, the Judge Advocate General of the Coast Guard submitted an advisory opinion recommending that the Board waive the statute of limitations and grant relief by upgrading the applicant's reenlistment code to RE-3G. He based this recommendation on a memorandum on the case prepared by the Coast Guard Personnel Command (CGPC).

CGPC stated that the record indicates that the Coast Guard committed no errors in discharging the applicant and that the applicant's "record of dealing with problems in a violent and defiant manner was ample justification to separate him with [an RE-4] reenlistment code."

CGPC noted, however, that the regulations in effect in 1988 allowed members receiving the JMB separation code to receive either an RE-4 or RE-3G reenlistment code. Based on the applicant's alleged success at completing his education and finding a

vocation, CGPC stated, it appears that “over the years, the Applicant may have overcome the behavioral traits that led to his separation.” In light of his strong desire to serve his country in the Armed Forces and the fact that his skills could be of service to his country, CGPC recommended that the Board upgrade his reenlistment code to RE-3G, which “does not automatically bar or allow his accession, but will require him to fully document and demonstrate to service recruiting authorities that he has overcome and resolved the behaviors that led to his separation.”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 20, 2004, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. On February 17, 2004, the applicant responded, thanking the Board for the “favorable decision” and stating that, as soon as the correction is approved, he will start the process for reenlisting in the Navy or Air Force Reserves to “put [his] nursing skills to new uses.”

APPLICABLE LAW

Article 12.B.16. of the Coast Guard Personnel Manual authorizes enlisted personnel to be discharged by reason of unsuitability at the direction of the Commandant for inaptitude, personality disorders, apathy, defective attitudes, inability to expend effort constructively, unsanitary habits, alcohol abuse, financial irresponsibility, or sexual harassment. Article 12.B.16.b. authorizes unsuitability discharges for members diagnosed with one of the “personality behavior disorders ... listed in Chapter 5, CG Medical Manual” Chapter 5.B.2. of the Medical Manual lists personality disorders that qualify a member for administrative discharge pursuant to Article 12 of the Personnel Manual. The list includes personality disorders not otherwise specified.

Article 12.B.16.d. of the Personnel Manual states that members with less than eight years of service who are being recommended for discharge by reason of unsuitability must (a) be informed in writing of the reason they are being considered for discharge, (b) be afforded an opportunity to make a statement in writing, and (c) be afforded an opportunity to consult with counsel if a less than honorable discharge is contemplated.

COMDTINST M1900.4C, the instruction for completing discharge forms in effect in 1988, states that a member’s DD 214 should show a separation code, reenlistment code, and narrative reason for separation as stated in the discharge orders issued by the Military Personnel Command or as shown in the instruction. Article 2.C. of the instruction states that members who are involuntarily discharged because of a personality disorder shall be assigned a separation code of JMB, a narrative reason for separation of “unsuitability,” and a reenlistment code of RE-4 or RE-3G. An RE-3G code means the

discharged member is eligible for reenlistment except for a "condition (not a physical disability) interfering with performance of duty."

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.

2. An application to the Board must be filed within three years after the applicant discovers the alleged error in his record. 10 U.S.C. § 1552. The record indicates that the applicant signed and received his discharge documents in 1988. Although the applicant stated that he did not discover the allegedly erroneous reenlistment code on his DD 214 until March 2003, the Board finds that he either knew or should have known of his non-eligibility for reenlistment in 1988. Thus, his application was untimely.

3. The Board may waive the three-year statute of limitations if it is in the interest of justice to do so. 10 U.S.C. § 1552(b). Factors for the Board to consider in determining whether it is in the interest of justice to waive the statute of limitations include any stated reasons for the delay and whether a cursory review of the record indicates that there is some merit in the case. *See Dickson v. Secretary of Defense*, 68 F.3d 1396, 1405 (D.C. Cir. 1995); *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992). The applicant did not explain why he delayed seeking an upgrade of his reenlistment code. However, the Board's review of the record indicates that the Judge Advocate General has recommended granting certain relief. Therefore, the Board will waive the statute of limitations and consider the application on the merits.

4. The record indicates that the applicant was habitually uncooperative, disrespectful, and disruptive while serving in the Coast Guard, beginning from his first week at his first duty station in October 1987. The record also indicates that the applicant was transferred and counseled many times by his superiors about his behavior and that by January 20, 1988, his commanding officer had already decided that he should be discharged because of his disruptive behavior. He was taken to captain's mast twice for fighting. On February 24, 1988, he was diagnosed with a personality disorder by a psychiatrist, who stated that "further efforts to rehabilitate or develop this individual into a satisfactory member of the military will be unsuccessful." Although the applicant's commanding officer recommended that he receive a general discharge, he received an honorable discharge.

5. Under Article 12.B.16. of the Personnel Manual, the applicant was subject to an unsuitability discharge because of his diagnosed personality disorder. The Board notes that the diagnosis is supported in the record by the evidence of the applicant's uncooperativeness, disrespect, disruptiveness, and misconduct. The record indicates that the applicant received all due process with respect to his discharge, in accordance with Article 12.B.16.d. of the Personnel Manual. There is no evidence in the record that the Coast Guard committed any error or injustice in discharging him for unsuitability with a JMB separation code and an RE-4 reenlistment code.

6. Despite the lack of evidence of error or injustice in the record, the Judge Advocate General recommended that the applicant's reenlistment code be upgraded to RE-3G, based apparently upon his potential usefulness as a licensed vocational nurse. The applicant submitted no evidence of his license or of his employment record. Nor has he submitted any evidence that he has overcome his diagnosed personality disorder. Moreover, the applicant's allegation that he voluntarily chose to be discharged under an "early-out program" casts doubt on his candor and credibility before the Board. Therefore, despite the Judge Advocate General's belief that the applicant might be useful to a military service, the Board is not persuaded that the applicant's RE-4 reenlistment code is erroneous or unjust.

7. Accordingly, the applicant's request should be denied. However, if the applicant submits significant evidence of his alleged vocation, stability of employment, and mental health, the Board will grant further consideration.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application of former SR xxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied. However, if he submits significant evidence of his alleged vocation, stability of employment, and mental health, the Board will grant further consideration.

Bruce D. Burkley

Harold C. Davis, MD

John M. Dickinson