

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2010-131

**XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX**

FINAL DECISION

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 Chair docketed the case upon receiving the completed application on March 11, 2010, 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 November 18, 2010, 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, who was honorably discharged on March 30, 1994, asked the Board to correct the reenlistment code and separation code on his DD 214. His DD 214 currently shows an RE-4 reenlistment code, which means that he is ineligible to reenlist, and a JFC separation code, which denotes an involuntary discharge when the individual was erroneously enlisted.

The applicant alleged that he was discharged for having too many cavities in his teeth. He alleged that he has had his cavities corrected and would like to serve his country by joining the Army. He stated that he did not seek a correction earlier because following his discharge he began a career in criminal justice.

SUMMARY OF THE EVIDENCE

On August 5, 1992, the applicant underwent a pre-enlistment physical examination. The doctor listed his dental condition as acceptable.

On October 8, 1993, the applicant enlisted in the Reserve under the delayed entry program. On March 22, 1994, he enlisted in the regular Coast Guard and began basic training. Upon examination on March 24, 1994, a dentist reported that five of the applicant's teeth required extraction; that ten other teeth were carious; that four of these carious teeth required endodontic intervention; that another tooth had already undergone a root canal and needed extensive restoration or extraction; and that he had generalized gingivitis and continuing poor oral

hygiene. A medical board convened and recommended that the applicant be administratively discharged because of his pre-existing dental problems. The applicant was informed of the board's findings and of the proposed discharge and elected not to submit a written statement.

On March 30, 1994, the applicant was honorably discharged. A Page 7 in his record shows that he was assigned an RE-3E reenlistment code, which would make him "eligible for enlistment except for disqualifying factor. A waiver must be obtained in order to reenlist." However, his DD 214 shows an honorable discharge pursuant to Article 12-B-12 of the Personnel Manual with an RE-4 reenlistment code and a JFC separation code.

VIEWS OF THE COAST GUARD

On June 18, 2010, the Judge Advocate General (JAG) submitted an advisory opinion in which he recommended that the Board grant partial relief in this case. In so doing, he adopted the facts and analysis provided by the Personnel Service Center (PSC) in an attached memorandum.

The PSC stated that the application was untimely and could be denied due to untimeliness. The PSC noted, however, that according to the Page 7 in the applicant's record, he was supposed to receive an RE-3E reenlistment code, which would have made him eligible to reenlist with a waiver. Therefore, the PSC recommended that the Board upgrade the applicant's reenlistment code to RE-3E but not change the separation code, which should "stand as issued."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 20, 2010, the applicant responded to the views of the Coast Guard. He stated that he agrees with the recommendation in the advisory opinion to upgrade his reenlistment code to RE-3E and to let the separation code remain unchanged.

SUMMARY OF THE LAW

Under Article 12-B-12 of the Personnel Manual in effect in 1994, the Coast Guard could discharge members for the convenience of the Government if they had a physical defect that existed prior to their enlistment and was not aggravated by their military service.

Under the Separation Program Designator Handbook, members who have been erroneously enlisted by the Coast Guard may be discharged under Article 12-B-12 of the Personnel Manual with a JFC separation code and either an RE-3E or RE-4 reenlistment code.

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. Under 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22, an application to the Board must be filed within three years after the applicant discovers, or reasonably should have discovered, the alleged error or injustice. The applicant was discharged and received his DD 214 with the RE-4 reenlistment code in 1994. Therefore, his application is untimely.

3. Pursuant to 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 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 164-65; see *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

4. Although the applicant did not justify his delay in seeking the requested correction of his record, a cursory review of the merits of his claim reveals that the reenlistment code on his DD 214 is erroneous. Therefore, Board finds that it is in the interest of justice to excuse the untimeliness of his application.

5. The applicant’s military record shows that he was discharged solely because significant dental problems disqualified him for military service at the time. His record contains no evidence of disciplinary or performance problems. Under the Separation Program Designator Handbook, members being discharged for erroneous entry because they were not qualified for enlistment could be assigned either an RE-3E or RE-4 reenlistment code. The Page 7 dated March 30, 1994, in the applicant’s record shows that he was supposed to receive an RE-3E reenlistment code, which would have made him eligible to reenlist with a waiver once his dental problems were fixed. However, his DD 214 was completed with an RE-4 code, rendering him ineligible to reenlist. Therefore, the Board finds that the applicant has proved by a preponderance of the evidence that his RE-4 code is erroneous and should be upgraded to an RE-3E.

6. The Board notes that the applicant also challenged his separation code, JFC, in his application. However, there is no evidence that this code is erroneous, and it appears to have been applied correctly under the regulations. Therefore, the Board finds that no correction of the separation code is warranted.

7. Accordingly, partial relief should be granted by upgrading the applicant’s reenlistment code from RE-4 to RE-3E.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former SR xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted in part. The Coast Guard shall correct his DD 214 to show that his reenlistment code in block 27 is RE-3E.

Bruce D. Burkley

Robert F. Parker

Thomas H. Van Horn