

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2011-074

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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 19, 2011, 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 October 13, 2011, 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 aviation electronics technician, second class (AET2/pay grade E-5) who was honorably discharged on April 25, 2006, asked the Board to correct his discharge form DD 214 to show that he was discharged for "Completion of Required Active Service" with an MBK separation code, instead of "Separation for Miscellaneous/General Reasons" with a KND separation code.

The applicant alleged that the KND code means "Failure to Obtain Retainability" and so implies that he was discharged for negative reasons. The applicant alleged that he completed not only his first enlistment but several extensions before he opted to leave active duty and so the MBK code would be accurate. He noted that his discharge orders state that he should be discharged with an MBK code.

The applicant alleged that he learned the meaning of his separation code and realized it was erroneous on October 29, 2009, when he went to an Army recruiting office in Gilroy, California. The recruiter looked up the meaning of the code and told him that it means "Failure to Obtain Retainability." Therefore, the applicant applied to the Discharge Review Board (DRB) to have the code corrected. However, the DRB decided that since he entered the temporary separation program before he decided not to return to active duty, his separation code should be KND. The applicant stated that when he requested a temporary separation, he was told that he could return to active duty if he wanted to. Therefore, he argued, the KND code is not accurate and the

MBK code would be accurate because he had completed his obligated service when he entered the temporary separation program on April 25, 2006. The applicant disputed the DRB's finding that he had not completed his required active service and so was not entitled to the MBK code. The applicant submitted several documents to support his allegations, which are included in the summary below.

SUMMARY OF THE RECORD

On August 13, 1998, the applicant enlisted in the Coast Guard Reserve for eight years under the delayed entry program. On October 26, 1998, he enlisted on active duty for four years, through October 25, 2002. Thereafter, he extended his enlistment for three one-year periods, through October 25, 2005. A print-out from the Coast Guard's database shows that he then extended his enlistment for six months, through April 25, 2006.

On March 3, 2006, the Coast Guard issued separation travel orders because the applicant had not obligated service past April 25, 2006. The orders state that his separation code should be MBK.

On March 13, 2006, the applicant requested a temporary separation pursuant to Article 12.F.1. of the Personnel Manual to pursue his education in environmental science. Under Article 12.F.1., members may request temporary separations for up to two years and are guaranteed reenlistment in the same pay grade at the end of that period as long as they are still fit for duty.

On April 25, 2006, the applicant was released from active duty. His DD 214 shows that he was released pursuant to Article 12.F.6. of the Personnel Manual and assigned an RE-1 reentry code (eligible to reenlist) and a KND separation code with "Separation for Miscellaneous/General Reasons" as his narrative reason for separation.

On April 26, 2006, the applicant reenlisted in the Reserve for six years.

In November 2009, the applicant applied to the DRB and requested separation code KAK (which is not a separation code used by the Coast Guard) or MBK ("Completion of Required Active Service"). The DRB denied the applicant's request on July 8, 2010. The DRB stated that the applicant received a temporary separation pursuant to Article 12.F. of the Personnel Manual and that in accordance with Article 12.F.6., members separating temporarily receive the KND separation code and "Separation for Miscellaneous/General Reasons" as their narrative reason for separation. The DRB also alleged that "MBK is not applicable as the applicant had remaining obligated service at the time of separation." The DRB claimed that "the assignment of a code that reflects completion of required active service is not appropriate as the applicant did not complete his required service, rather he was separated early under an authorized program at his request." The DRB also noted that "KND is not derogatory as the applicant contends."

VIEWS OF THE COAST GUARD

On May 4, 2011, the Judge Advocate General of the Coast Guard recommended that the Board deny relief in this case. In so doing, he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

The PSC stated that because the applicant enlisted in the Reserve for eight years on August 13, 1998, the end of his military service obligation was August 12, 2006, and he obligated himself to serve at least four years on active duty and the remainder in the Reserve. Therefore, on April 25, 2006, the applicant had not completed all of his previously obligated service.

The PSC stated that because of the applicant's "pending expiration of active duty enlistment terminating on April 25, 2006," he was issued separation orders on March 3, 2006, assigning him the MBK separation code, which is the correct code for members who are discharged due to their completion of all their required active service. However, he thereafter submitted a request for a temporary separation under Article 12.F. His request was approved, and he was issued new separation orders assigning him the KND separation code in accordance with policy. The PSC stated that the claim that the KND code means "Failure to Obtain Retainability" is false.

In support of these allegations, the PSC submitted copies of the applicant's separation and travel orders, issued on April 10 and 11, 2006, which show that he was to be temporarily separated pursuant to Article 12.F. of the Personnel Manual and assigned the KND separation code with "Separation for Miscellaneous/General Reasons" as the narrative reason for separation. The PSC also submitted copies of pages of the SPD Handbook showing the meaning of the MBK and KND codes.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 9, 2011, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within thirty days. No response was received.

APPLICABLE LAW

Article 12.F.1.1. of the Personnel Manual states that "[t]he Temporary Separation policy allows Coast Guard members to temporarily separate and pursue growth or other opportunities outside the service, while providing a mechanism for their return to active duty." Article 12.F.1.2. states that "[p]ersonnel who already have an approved separation date may request, prior to that date, to be separated under this policy." Articles 12.F.6. and 12.F.2. authorize a member to be temporarily separated from active duty for up to two years and guarantee the member reenlistment at either the same rate or, under certain circumstances, a higher rate at the end of the temporary separation period.

The Separation Program Designator (SPD) Handbook states that a member who undergoes a "voluntary release or transfer to another Service component upon completion of required service" receives an MBK separation code and "Completion of Required Active Service."

The SPD Handbook states that the KND code is for a member whose “voluntary discharge [is] allowed by established directive when a Service component does not have a Service reporting requirement for specific reasons and desires to identify reasons collectively ‘All other reasons’ which qualify a member for separation.”

The SPD Handbook does not contain any code that means “temporary separation.” It also does not contain any code that means “failure to obtain retainability,” but the KGH code is for a member whose “voluntary discharge [is] allowed by established directive when member is recommended for continued active duty—failure to meet minimum retention requirements.” The corresponding narrative reason for separation is “Non-Retention on Active 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. The application was timely filed within three years of the applicant’s discovery of the alleged errors in his record and within three years of the decision of the DRB.¹

2. The applicant alleged that he was erroneously assigned a separation code implying that his performance was unsatisfactory and that, instead, he should have received the MBK separation code. The Board begins its analysis in every case by presuming that the disputed information in the applicant’s military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.² Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”³

3. When the applicant refused to obligate additional active duty in 2006, the Coast Guard properly issued him separation orders on March 3, 2006, assigning him the MBK separation code because, as of his separation date, April 25, 2006, he would have completed all of his required *active* service (although not all of his previously obligated military service because his continuing Reserve enlistment would not end until August 12, 2006). If the applicant had been separated pursuant to those orders, his DD 214 would properly have shown the MBK separation code but he would not have had the same rights as a member separated under Article 12.F. of the Personnel Manual.

4. The applicant was not separated pursuant to the orders issued on March 3, 2006, because on March 13, 2006, he requested a temporary separation pursuant to Article 12.F. of the Personnel Manual, under which he was guaranteed reenlistment at the same rate within two years

¹ 10 U.S.C. § 1552(b); *Ortiz v. Secretary of Defense*, 41 F.3d 738, 743 (D.C. Cir. 1994).

² 33 C.F.R. § 52.24(b).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

of his separation. The Coast Guard approved this request and issued new orders on April 10 and 11, 2006, for the applicant to be temporarily separated in accordance with the separation authority in Article 12.F.6. of the Personnel Manual. The applicant's DD 214 shows that he was separated pursuant to this second set of separation orders.

5. The applicant alleged that the assignment of the KND separation code to him on his DD 214 is unjust because the KND code, he alleged, implies something negative about his performance or status. The applicant is mistaken about the meaning of the KND code. According to the SPD Handbook, it means only that his "voluntary discharge [was] allowed by established directive when a Service component does not have a Service reporting requirement for specific reasons and desires to identify reasons collectively 'All other reasons' which qualify a member for separation." The narrative reason for separation on his DD 214 summarizes this definition aptly as "Separation for Miscellaneous/General Reasons," which is the narrative reason prescribed by the SPD Handbook for those assigned the KND code. Because there is no separation code specifically authorized for members undergoing temporary separations pursuant to Article 12.F.6. of the Personnel Manual, the assignment of the KND code and the "miscellaneous/general" narrative reason for separation is correct.

6. The applicant has not proved by a preponderance of the evidence that his KND separation code is erroneous or unjust. Therefore, his application should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCGR, for correction of his military record is denied.

Anthony C. DeFelice

Frank E. Howard

Jeff M. Neurauter