


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1998-047

FINAL DECISION

 Attorney-Advisor:

This proceeding was conducted according to the provisions of section 1552 of title 10 of the United States Code. It was commenced upon the BCMR's receipt of the applicant's application on May 27, 1997. On December 31, 1997, the Chairman denied the application for lack of substantial proof. On January 26, 1998, the Chairman redocketed the application following a further submission by the applicant.

This final decision, dated February 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 fireman (FN; pay grade E-3) in the Coast Guard, asked the Board to correct his record by changing the narrative reason for discharge in block 28 of his DD Form 214 from "Alcohol Rehabilitation Failure" to "Unsuitability." The applicant also asked that his reenlistment code be changed from an RE-4 (not eligible for reenlistment) to one that would allow him to enlist in a different military service.

APPLICANT'S ALLEGATIONS

The applicant alleged that he was discharged as a result of two alcohol incidents. The first incident involved driving under the influence (DUI) in July 1996. He alleged that he was then referred to Level I alcohol treatment but had to wait seven months (until after the second incident) before he was allowed to attend by his command. The second incident was an alcohol-related assault he committed on New Year's Eve, December 31, 1996. Thereafter, although he agreed to and was ordered to undergo Level II treatment, none was made available. He alleged that he was also recommended for chemical dependency screening but was never sent.

The applicant argued that his late Level I treatment and nonexistent Level II treatment were not his fault. He alleged that after both incidents he had signed a form indicating his willingness to undergo treatment. In addition, he "repeatedly requested to complete the Level I treatment for months after [his] first incident in July 1996, and was ignored by [his] command due to underway schedules, dockside availability, and manpower shortages." "The Board should know that an E-3 in any service does not take it upon [him]self to decide to go [on temporary active duty] somewhere, whether it's for Level II treatment, or anything else. To do so would be to go AWOL." He alleged that he "would have gladly gone [to treatment], as [he] hated nearly every day aboard CGC Hammer, and hated [him]self for getting a DUI in July 1996 and preventing [him]self from going to class A school."

The applicant alleged that on February 28, 1997, he was notified by his group commander that he was to be administratively discharged by reason of unsuitability (see below). He also alleged that his DD Form 214 worksheet had stated "Unsuitability" in block 28 (see below). He signed the worksheet and returned it to the group commander. The applicant stated that he did not respond to the group commander's letter recommending discharge for "Unsuitability due to alcohol abuse" because the Personnel Manual "clearly states that a member may be discharged after two alcohol incidents."

When he received the final copy of his DD Form 214, however, the narrative reason in block 28 had been changed to "Alcohol Rehabilitation Failure." The applicant stated that he had not agreed "to be labeled an alcoholic rehabilitation failure, and most definitely would have protested such an action had [he] known that was to be the narrative cited on [his] DD-214."

Because he was discharged before he could undergo Level II treatment, the applicant argued, the narrative reason for separation on his DD Form 214, "Alcohol Rehabilitation Failure" is untrue and unfair. In fact, because he was not diagnosed as an alcoholic, he was never even recommended for a rehabilitation program although he was recommended for dependency evaluation.

The applicant further alleged that, since completing the Level I treatment program just prior to his discharge, he has "had no problems whatsoever due to alcohol use." He "feel[s] very strongly that had [he] been afforded an opportunity to complete the recommended training necessitated by [the] first incident, in a timely manner, [he] could have avoided the second incident altogether."

The applicant alleged that he has undergone considerable hardship because of the false narrative reason for separation stated on his DD Form 214. He alleged that he had been turned down for unemployment compensation after his discharge because of his DD Form 214. He also alleged that a job offer had been rescinded after the prospective employer had reviewed his DD Form 214.

VIEWS OF THE COAST GUARD

Advisory Opinion of the Chief Counsel

On January 12, 1999, the Chief Counsel submitted an advisory opinion in which he recommended that the Board grant partial relief.

The Chief Counsel stated that the Personnel Manual requires commanding officers to process members for separation after a second alcohol incident. Articles 12.B.16.b.(5) and 20.B.2.h.2. COMDTINST M1000.2A. He further stated that the applicant was afforded all due process he was owed prior to being separated.

The Chief Counsel explained that "the character and nature of the separation [were] made by the Commander, Coast Guard Personnel Command." Regarding the narrative reason assigned to the applicant, the Chief Counsel explained as follows:

As there exists only a finite number of separation codes, a SPD code may be assigned which does not explain an individual member's discharge situation exactly. . . . The only SPD codes available where the discharge is related to the misuse of alcohol and disciplinary action or sufficient misconduct did not occur to warrant an OTH discharge are "PD" codes. The narrative reason for all "PD" codes is "alcohol rehabilitation failure." In some cases, the narrative reason is exactly what transpired. However, in other cases, as in the Applicant's case, it is a general statement, which serves all situations in which a member failed to adhere to Coast Guard policy with regards to the use of alcohol. There is no standard code, which would accurately document the reason for Applicant's separation. In particular, the code JPA and its corresponding narrative reason, "Personal Alcohol Abuse," would be inaccurate because it is used for discharge as a result of self-referral for alcohol abuse or an alcohol abuse testing procedure which is not the situation in the instant case. However, if the Board should so choose, the assignment of a JNC SPD code would not be objectionable. JNC is assigned when a member is involuntarily discharged by established directive when the member performs acts of unacceptable conduct not otherwise listed. The narrative reason listed on the member's DD-214 would be "Unacceptable Conduct" along with an RE-4 reenlistment code.

The Chief Counsel pointed out that the applicant could have received a less favorable characterization pursuant to Article 12.B.16. and 12.B.18. of the Personnel Manual. However, the Chief Counsel stated, "'Alcohol Rehabilitation Failure' [is] the standard code that most closely describes [the applicant's] circumstances (under the theory that the member failed to rehabilitate himself after notice regarding the effects of a first alcohol incident)."¹

¹ The Chief Counsel also explained at length why the applicant had been denied unemployment benefits. Pursuant to [redacted] State Law and 5 U.S.C. § 8521, the Chief Counsel stated, the state will only pay unemployment benefits to members separated before completing their first term if they are separated under an early release program or because of medical disqualification,

Regarding the timing of the applicant's treatment, the Chief Counsel alleged that "[t]he Coast Guard had no duty to provide alcohol treatment to the Applicant prior to his discharge." "Article 20:B:3.b.2. [of the Personnel Manual] specifically states that the scheduled separation or release to inactive duty for any reason shall not be delayed for the sole purpose of completing their alcohol treatment nor would completion of [Level II] treatment affect the decision leading to or the nature of the Applicant's discharge. . . . Therefore, there was no error or injustice on the part of the Coast Guard by discharging the applicant prior to his completion of alcohol rehabilitation treatment."

The Chief Counsel attached to his advisory opinion a memorandum he received from the Commander of the Personnel Command in September 1998 regarding the applicant's case (see below).

Memorandum of the Commander of the Military Personnel Command

The Commander of the Military Personnel Command recommended to the Chief Counsel that no relief should be granted. He stated that the applicant's command had adhered to the Personnel Manual's provisions for the Alcohol Abuse Program in Article 20.B. "in relation to the [applicant's] discharge and all events leading up to it." He explained that only the PD separation codes are available when a member misuses alcohol and misconduct is not an issue. "Alcohol Rehabilitation Failure," he stated, is sometimes "a blanket statement to cover all situations in which a member failed to adhere to Coast Guard policy with regards to the use of alcohol. [The Department of Defense] is currently in the process of creating an SPD code specifically for situations similar to this one for Coast Guard use in the future."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 13, 1999, the Chairman sent the applicant copies of the advisory opinion and the memorandum from the Personnel Command. On January 26, 1999, the applicant responded. He stated that he would consider the Chief Counsel's recommended change to a JNC code to "constitute full relief" as long as it would not change the character of service description, which is now "honorable."

SUMMARY OF THE RECORD

On February 27, 1996, the applicant enlisted in the Coast Guard after serving in the [REDACTED] for almost 10 years. He signed a form indicating that his recruiter had fully explained to him the Coast Guard's drug and alcohol policy.

On July 16, 1996, the applicant was arrested for driving under the influence of alcohol. This was his first alcohol incident. He was not referred for

pregnancy, parenthood, disability, hardship, personality disorder, or inaptitude. Therefore, the changes requested by the applicant would not make him eligible for unemployment benefits.

screening until November 4, 1996. On that day, a counselor at the Naval Station [REDACTED] Counseling and Assistance Center (CAAC) determined that the applicant was not alcohol dependent, nor an alcohol abuser. The center recommended that he attend an Alcohol IMPACT Course and be placed in a Level I treatment program. The report further stated that, "without the recommended program, [the applicant's] potential for further abuse is moderate." Instead, the applicant was sent to Navy DWI/DUI Remedial Training, which he completed on November 15, 1996.

On December 10, 1996, the applicant's command documented his first alcohol incident by entering a page 7 in his record. The page 7 states that "[y]ou will be required to complete a one week alcohol IMPACT course and receive command level one counseling and support Any further alcohol incidents may result in your separation from the U.S. Coast Guard." On December 30, 1996, the applicant acknowledged this entry.

On January 1, 1997, the applicant was arrested for assault committed while under the influence of alcohol. On January 9, 1997, the applicant's command documented this second alcohol incident in his record. The page 7, which the applicant signed, advised him that he was being processed for separation and would be eligible for treatment through the Department of Veterans Affairs (DVA).

On February 12, 1997, the applicant's command sent him to the CAAC for another screening. On February 21, 1997, the center reported that he was an alcohol abuser but not alcohol dependent. It noted that, although it had previously recommended that he be sent to an alcohol IMPACT course, this had not yet happened. It recommended that he be further evaluated for chemical dependency and placed in a Level II treatment program. The report stated that the applicant "is amenable to the above recommendations, and with the recommended program he appears to have fair potential for future productive service. However, without the recommended program, his potential for further abuse is moderate."

On February 24, 1997, the applicant's group commander informed him that he was being recommended for administrative discharge "by reason of unsuitability due to alcohol abuse." The DD Form 214 Worksheet provided to the applicant and signed by him showed a separation code of JPD, a reenlistment code of RE-4, and a narrative reason for separation of "Unsuitability." On February 28, 1997, the applicant submitted his response, in which he waived his right to submit a statement on his behalf regarding his discharge for unsuitability due to alcohol abuse. He also wrote a note stating that he was "willing to undergo Level II treatment as recommended by the Mayport C.A.A.C. if such treatment is available prior to separation date."

On March 3, 1997, the applicant's group commander recommended to the Personnel Command that the applicant be administratively discharged "for unsuitability due to alcohol abuse." He noted that the applicant did not object and had "provided a statement in which he states that he will accept Level II

Treatment only if it does not exceed his separation date." On the same day, the CAAC reported that the applicant had undergone the alcohol IMPACT course and "appeared to gain an understanding of alcohol's potential health risks and the need for responsible use."

On March 20, 1997, the Personnel Command ordered that the applicant be discharged with a JPD separation code and appropriate narrative reason. It also ordered that he be provided Level II treatment prior to separation unless he waived it in writing. However, the order received by the group commander stated merely that the applicant should be provided with Level II treatment prior to separation; the waiver provision was deleted. The group commander was also told to advise the Personnel Command if the applicant was not discharged by April 16, 1997.

On April 16, 1997, the applicant was honorably discharged from the Coast Guard with a JPD separation code, an RE-4 reenlistment code, and "Alcohol Rehabilitation Failure" as a narrative reason for separation.

APPLICABLE REGULATIONS

Article 20 of the Personnel Manual (COMDTINST M1000.6A) contains the regulations regarding alcohol abuse by Coast Guard members. Under Article 20.B.1., entitled "Responsibility," a member's commanding officer is responsible for initiating any administrative action necessitated by an alcohol incident pursuant to Article 20.B.2.

According to Article 20.B.2.e., "[a]ny member who has been involved in alcohol incidents or otherwise shown signs of alcohol abuse shall be screened in accordance with the Alcohol Abuse Treatment and Prevention Program The results of this alcohol screening shall be recorded and acknowledged on a [Page 7]"

According to Article 20.B.2.h.2., "[e]nlisted members involved in a second alcohol incident will normally be processed for separation in accordance with Article 12.B.16."

According to Article 20.B.3.b., "[c]ommanding officers shall seek appropriate treatment for members who have abused alcohol or been diagnosed as alcohol dependent. . . . Members shall be treated for alcohol abuse or dependency as prescribed by competent medical authority. However, if they are otherwise qualified, their scheduled separation or release to inactive duty for any reason shall not be delayed for the sole purpose of completing alcohol treatment."

According to Article 20.B.3.c., "[c]ommanding officers shall request alcohol rehabilitation treatment in accordance with the Alcohol Abuse Treatment and Prevention Program, COMDTINST M6330.1 (series)."

The Separation Program Designator (SPD) Handbook permits the use of the following codes, narrative reasons, and reenlistment codes, which might apply to the applicant's case:

SPD Code	Narrative Reason	RE Code	Explanation
JPD	Alcohol Rehabilitation Failure	RE-4	Involuntary discharge . . . when a member failed through inability or refusal to participate in, cooperate in, or successfully complete a treatment program for alcohol rehabilitation.
JNC	Unacceptable Conduct	RE-4	Involuntary discharge . . . when member performs acts of unacceptable conduct (i.e., moral and/or professional dereliction) not otherwise listed.

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 of the United States Code.

2. The applicant alleged that the narrative reason for separation shown on his DD Form 214 was false and had caused him to lose a job offer and unemployment benefits in civilian life. He alleged that the narrative reason shown, "Alcohol Rehabilitation Failure," was in error because the Coast Guard had never placed him in the recommended rehabilitation programs. Instead, he was discharged in accordance with regulations after his second alcohol incident. The applicant did not contest his discharge, but he asked the Board to change the narrative reason for separation on his DD Form 214.

3. The Chief Counsel recommended that the Board grant partial relief by changing the applicant's separation code from JPD to JNC and by changing the narrative reason for separation from "Alcohol Rehabilitation Failure" to "Unacceptable Conduct." The Chief Counsel explained that although the code and narrative reason shown on the applicant's DD Form 214 did not perfectly describe the applicant's situation, they had been used because they were the closest available terms in the SPD Handbook. The Chief Counsel stated that a new code and narrative reason are currently being developed for persons being discharged after two alcohol incidents but prior to any rehabilitation treatment. The Chief Counsel further stated, however, that the RE-4 reenlistment code was not in error and that the recommended change would not help the applicant get unemployment benefits. Upon reviewing the Chief Counsel's advisory opinion, the applicant stated that he would consider the recommended change "full relief" as long as the character of his service ("honorable") would not change.

4. The Board finds that the applicant was properly discharged subsequent to his second alcohol incident in accordance with Article 20.B.2.h.2. of the Personnel Manual. However, because the applicant's command delayed evaluation of the applicant and the treatment recommended by medical personnel as required by Article 20.B.3., the applicant did not undergo rehabilitative treatment prior to his discharge. The applicant's discharge prior to treatment was nevertheless proper in accordance with Article 20.B.3.b. of the Personnel Manual and with his signed statement that he did not wish his discharge to be delayed until after treatment.

5. In light of these circumstances, the Board finds that the narrative reason for separation currently shown on the applicant's DD Form 214 is inaccurate. The Coast Guard completes DD Form 214s in accordance with uniform rules used by all the armed services and does not tailor them to each member's specific situation. Nevertheless, the Board believes that under these circumstances, the use of an inaccurate narrative reason that may improperly mislead the applicant's future employers is unjust.

6. The Chief Counsel recommended that the Board change the applicant's SPD code and narrative reason to JNC and "Unacceptable Conduct." The Board finds that the JNC code and "Unacceptable Conduct" provide a somewhat more accurate and fairer description of the circumstances surrounding the applicant's discharge than the code and reason originally assigned. The use of the JNC code does not necessitate a change in the character of the applicant's service.

7. The applicant also requested that his reenlistment code of RE-4 be changed to one that would allow him to enter a military service other than the Coast Guard. The applicant stated that the RE-4 was not in keeping with the "honorable" character of his service. However, RE-4 is the only reenlistment code that can be assigned to members discharged with either a JPD or a JNC separation code. In addition, the applicant has not presented any evidence that the RE-4 code was unjustly assigned to him. Therefore, the Board finds that the Coast Guard did not err by assigning an RE-4 code to the applicant, and no relief is due in regard to this request.

8. Accordingly, the applicant's request to have the narrative reason for separation on his DD Form 214 changed should be granted. The narrative reason should be changed to "Unacceptable Conduct" and the associated SPD code should be changed to JNC. The applicant's reenlistment code should not be changed.

[ORDER AND SIGNATURES APPEAR ON THE NEXT PAGE]

ORDER

The application for correction of the military record of :
USCG, is hereby granted in part as follows:

The separation code in block 26 of the applicant's DD Form 214 shall be changed to "JNC."

The narrative reason for separation in block 28 of his DD Form 214 shall be changed to "UNACCEPTABLE CONDUCT."

No other changes shall be made.

