

DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of  
Coast Guard Record of:

BCMR Docket  
No. 2000-076

FINAL DECISION

██████████ Deputy Chairman:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on February 18, 2000, upon the Board's receipt of the applicant's complete application for correction of his military record.

This final decision, dated December 14, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a former fireman apprentice (FA; pay grade E-2) in the Coast Guard, asked the Board to correct his DD Form 214<sup>1</sup> by removing "alcohol rehabilitation failure" as the narrative reason for his separation. He was honorably discharged by reason of alcohol rehabilitation failure, with an RE-4 (not eligible for reenlistment) reenlistment code and a JPD (alcohol rehabilitation failure) separation code.

The applicant was discharged on January 10, 2000, after having served one year, six months, and four days on active duty.

**SUMMARY OF RECORD AND SUBMISSIONS**

The applicant alleged that the DD Form 214 is in error because it states that he was discharged due to alcohol rehabilitation failure. He stated that the basis for his discharge was involvement in a second alcohol incident, not alcohol rehabilitation failure. He stated that he was going to be discharged from the Coast Guard whether or not he successfully completed an alcohol rehabilitation program. The applicant participated in a treatment program after his second alcohol incident and there is nothing in the record to suggest that he did not successfully complete that program.

**Background**

On February 16, 1999, an administrative remarks (page 7) entry<sup>2</sup> was entered into the applicant's record documenting his first alcohol incident. The entry stated that on

<sup>1</sup> A DD Form 214 is a certificate of release or discharge from active duty.

<sup>2</sup> An administrative remarks (page 7) entry documents any counseling that is provided to a service member as well as documenting any other noteworthy events that occur during that individual's military career.

February 8, 1999, the applicant, who was under the legal age for alcohol consumption, was observed by shore patrol drinking alcohol at an enlisted club. The shore patrol took the applicant back to his unit. The CO ordered the applicant to abstain from alcohol until he reached the legal drinking age (21). According to the page 7 entry, the applicant was counseled on the policies concerning the use/abuses of alcohol and underage consumption of alcoholic beverages. The page 7 noted that the unit's collateral duty alcohol representative (CDAR) did not recommend an alcohol screening for the applicant at that time.

On August 30, 1999, a page 7 entry was entered in to the applicant's record documenting his second alcohol incident. During a Canada patrol, senior petty officers observed the applicant consuming alcohol although, according to Canadian law, he was under age. The legal drinking age in Canada is 19. The page 7 entry stated that the applicant admitted to knowing that his drinking while under age constituted an alcohol incident. The page 7 entry further stated that the unit had held counseling/training sessions on the legal drinking age in Canada and the United States, which the applicant had attended. The applicant was advised that he would be processed for separation in accordance with Chapter 20-B-2(h)(I) of the Personnel Manual because he had been involved in a second alcohol incident.

On September 15, 1999, the applicant received a substance abuse evaluation from a trained professional. The clinician stated that the applicant did not appear to be suffering from a substance dependency disorder but from episodic alcohol intoxication. The clinician recommended that the applicant attend six outpatient educational sessions that were designed for individuals with substance related problems.

On October 4, 1999, a page 7 entry was entered into the applicant's record stating the following: "On 15 September 99, you were screened by . . . Outpatient Services . . . after your second alcohol incident. [Outpatient Services] recommended level 0.5 educational treatment, which consists of six educational outpatient sessions. . . . Your sessions will begin immediately and will be held from 0930 - 1100 Monday and Friday. . . ." The applicant was reminded that he would be processed for separation from the Service because of having incurred a second alcohol incident.

On November 20, 1999, the applicant was informed that the commanding officer (CO) had initiated action to discharge him from the Coast Guard because the applicant had incurred two alcohol incidents. The CO recommended that the applicant receive an honorable discharge and an RE-4 (not eligible for reenlistment) reenlistment code. The applicant acknowledged the notification of proposed discharge, waived his right to make a statement, did not object to the discharge, and did not desire to consult with a lawyer.

In a letter to the Commander, Coast Guard Personnel Command (CGPC), dated November 20, 1999, the CO recommended that the applicant's discharge be delayed until late December 1999, so that he could complete the outpatient educational treatments. This letter also indicates that the applicant was taken to non-judicial punishment (NJP) after his first alcohol incident.

On December 9, 1999, CGPC approved the applicant's discharge by reason of unsuitability, with a JPD separation code. He directed that the applicant be discharged no later than January 10, 2000. The applicant was discharged on January 10, 2000.

### Views of the Coast Guard

On November 16, 2000, the Board received an advisory opinion from the Chief Counsel of the Coast Guard. He recommended that the Board deny relief to the applicant.

The Chief Counsel stated that the applicant failed to prove that his discharge by reason of alcohol rehabilitation failure was erroneous. He stated that the "applicant's 'alcohol rehabilitation failure' was his failure to remain uninvolved with alcohol after his first incident and was not an evaluative comment based on the member's performance at a post-incident abuse program."

The Chief Counsel stated that the applicant was properly processed and discharged from the Service. Under the authority of Article 12.B.16.b.(5) and 20.B.2.h.2, a CO is required to process a member for separation after a second documented alcohol incident. With respect to the reason for separation and the separation code, the Chief Counsel offered the following:

All five Armed Services use DOD's SPD [separation program designator] handbook to assign SPD codes. 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 (other than honorable) 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, it is a general statement that serves a multitude of situations in which a member failed to adhere to Coast Guard policy with regard to the use of alcohol. In the instant case, Applicant alleges his "alcohol rehabilitation failure" SPD code was in error because his discharge was unrelated to his completion of a substance abuse program after his second alcohol incident. However, that is not the "alcohol rehabilitation failure" the SPD code refers to. Applicant's "alcohol rehabilitation failure" was his failure to remain alcohol free after his first incident and was not an evaluative comment based on the member's performance at a post-incident abuse program. Therefore, the Board may properly conclude the assignment of the SPD "JPD" for "alcohol rehabilitation failure" is reasonable as applied to the facts in this case.

Moreover, these codes are for the internal use of the Coast Guard and the other Armed Forces. Applicant failed to complete his enlistment because of misconduct involving his misuse of alcohol. Because the statutes and implementing guidance related to SPD codes do not create individual entitlements or mandate procedures, Applicant has no basis for relief by the BCMR. Even if the Board found error in this case contrary to the Coast Guard's position, violations of agency procedural regulations do not

create private rights not otherwise provided by statute or the Constitution. See, e.g. United States v. Caceres, 440 U.S. 741 (1979).

### **Applicant's Response to the Views of the Coast Guard**

On August 16, 2000, a copy of the Coast Guard views was mailed to the applicant. The applicant did not submit a response to the views of the Coast Guard.

### **APPLICABLE REGULATIONS**

#### *Personnel Manual*

Article 12.B.16.b. of the Personnel Manual states that the purpose of an unsuitability discharge is to free the Service of members considered unsuitable for further service because of: . . . 5. Alcohol abuse.

Chapter 20.A.2.d. of the Personnel Manual defines alcohol incident as "[a]ny behavior in which the use or abuse of alcohol is determined to be a significant or causative factor and which results in the member's loss of ability to perform assigned duties, brings discredit upon the Uniformed Services, or is a violation of the Uniform Code of Military Justice (UCMJ) or federal, state, or local laws. . . [T]he member must actually have consumed alcohol."

Chapter 20.B.2.h.2. of the Personnel Manual states that enlisted members involved in a second alcohol incident will normally be processed for separation in accordance with Article 12.B.16. (unsuitability) of the Personnel Manual.

Chapter 20.B.2.j. of the Personnel Manual states that underage drinking is considered an alcohol incident.

#### *Separation Program Designator (SPD) Handbook*

"This handbook is to be used in conjunction with the Certificate of Release or Discharge From Active Duty, DD Form 214 (COMDTINST M1900.4 (series)). The direction provided in that instruction refers to this handbook. This handbook contains a comprehensive listing of the Separation Program Designator (SPD) Codes used in Block 26 of DD Form 214."

The Separation Program Designator (SPD) Handbook states that the JPD (alcohol rehabilitation failure) separation code is assigned when there is an "involuntary discharge directed by established directive (no board entitlement) when a member failed through inability or refusal to participate in, cooperate in, or successfully complete a treatment program for alcohol rehabilitation."

#### *Certificate of Release or Discharge from Active Duty (DD Form 214)*

COMDTINST M1900.4D states that "[t]he DD Form 214 provides the member and the service with a concise record of a period of service with the Armed Forces at the time of the member's separation, discharge or change in military status. . . . In addition,

the form is an authoritative source of information for both governmental agencies and the Armed Forces for purposes of employment, benefit and enlistment eligibility, respectively."

This instruction further states that it is to be used in conjunction with the Separation Program Designator Handbook. In completing block 26 (separation code) on the DD Form 214, the instruction states that the appropriate separation code associated with a particular authority and reason for separation as shown in the SPD handbook or as stated by the military personnel command in the message authorizing discharge should be entered in this block.

### FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's submissions and military record, the Coast Guard's submission, and applicable law:

1. The BCMR has jurisdiction over this matter pursuant to section 1552 of title 10, United States Code. The application is timely.

2. This case involves two separate but related matters: the first is whether the basis for the separation itself is in accord with the regulation; and the second is whether the DD Form 214 fairly and accurately describes the reason for the applicant's separation from the Coast Guard. The applicant was processed for separation because of his involvement in a second alcohol incident. Section 20.B.2h.2. states that an enlisted member will normally be processed for separation after a second alcohol incident pursuant to Article 12.B.16 (unsuitability) of the Personnel Manual. The applicant's alcohol incidents consisted of underage drinking, which Chapter 20 of the Personnel Manual classifies as alcohol incidents. Therefore, the applicant was processed for and discharged from the Coast Guard in accordance with the regulation.

3. The next question is whether the reason for separation (alcohol rehabilitation failure) and the corresponding JPD separation code that are listed on the applicant's DD Form 214 accurately and fairly describe the reason for his separation. The Board is persuaded that the Coast Guard committed an error or injustice by listing alcohol rehabilitation failure as the reason for the applicant's separation from the Coast Guard. The reason for the applicant's separation was his involvement in a second alcohol incident not "alcohol rehabilitation failure." These two terms are not synonymous. The SPD Handbook makes this distinction clear when it states that the alcohol rehabilitation failure separation code (JPD) is assigned "when a member failed through inability or refusal to participate in, cooperate in, or successfully complete a treatment program for alcohol rehabilitation." (Emphasis added.)

4. There is no evidence in the record that the applicant failed through inability or refusal to participate in, cooperate in, or successfully complete a treatment program for alcohol rehabilitation. He was not recommended for alcohol screening or treatment after his first alcohol incident. He was only counseled about the use/abuse of alcohol and told to abstain. This type of counseling does not constitute a treatment program.

5. After the applicant's second alcohol incident, he received an alcohol screening and the clinician recommended that he attend six outpatient educational sessions. Although he was not determined to be alcohol dependent at that time, the clinician determined that the applicant would benefit from outpatient sessions. From the evidence of record, the applicant attended these sessions. There is no evidence that he refused to participate in, cooperate in, or successfully complete this treatment program. In fact, there was very little time between the date the applicant was to have completed the program (late December 1999) and the date he was separated (January 10, 2000). Therefore, the Board finds that the reason for the applicant's separation "alcohol rehabilitation failure" is either in error or unjust. Nowhere on the DD Form 214 does it state that the applicant was discharged because of an involvement in a second alcohol incident. A reading of the DD Form 214 suggests that the applicant was given treatment for alcohol abuse/dependency but incurred a relapse. This is simply not the case.

6. The Coast Guard argues that the codes in the SPD handbook, which is used by the five Armed services, will match the basis for separation in some cases, but in others "it is a general statement that serves a multitude of situations in which a member failed to adhere to Coast Guard policy with regard to the use of alcohol." This may well be true, but the issue is whether the applicant is entitled to have a DD Form 214 that describes the reason for his separation in a fair and accurate manner. It is unfair to list the applicant as a alcohol rehabilitation failure when he was not entered into a treatment program after his first alcohol incident or when he was not provided with the time necessary to determine if he benefited from the treatment program he participated in after his second alcohol incident. As stated above, the applicant was due to complete the treatment program after his second alcohol incident in late December 1999, but he was discharged on January 10, 2000. There is nothing in the record that suggests that the applicant refused to participate in, cooperate in, or successfully complete this treatment program. Being labeled an alcohol rehabilitation failure carries with it a certain stigma, which is even more reason that the narrative reason for separation and its code should fairly and accurately depict the circumstances under which it is given.

7. The Chief Counsel argues that the alcohol rehabilitation failure mentioned in the applicant's case is the failure to remain alcohol free after his first alcohol incident. This interpretation by the Chief Counsel appears to be contrary to the explanation provided in the SPD Handbook for alcohol rehabilitation failure. As stated above this explanation clearly states the alcohol rehabilitation code is assigned when a member failed through inability or refusal to participate in, cooperate in, or successfully complete a treatment program for alcohol rehabilitation." (Emphasis added.)

8. The Board notes that when the applicant was informed that he was being processed for separation, he was told that the basis for his separation was his involvement in a second alcohol incident. He was never told that he was being discharged because of "alcohol rehabilitation failure." The DD form 214, which contains the separation code, was given to the applicant on the day he was being discharged from the Coast Guard. See COMDTINST M1900.4D.

9. Chapter 20 of the Personnel Manual states that a member will normally be discharged in accordance with Article 12.B.16 (unsuitability) of the Personnel Manual

after a second alcohol incident. However, since unsuitability is not listed in the SPD handbook as a narrative reason for separation, it has no corresponding separation code. Therefore, the Board cannot assign unsuitability as the reason for the applicant's separation on the DD Form 214. The only other separation code in the SPD Handbook that will fit the applicant's situation is the JND separation code. The narrative reason that corresponds to this code is "separation for miscellaneous/general reasons" and the separation authority is 12.B.12 (convenience of the government) of the Personnel Manual. Either an RE-1 (eligible for reenlist) or an RE-4 (ineligible for reenlistment) reenlistment code may be assigned with this separation code. Therefore, the Board will not change the applicant's RE-4 reenlistment code. There is ample justification in the record for discharging the applicant from the Coast Guard and for not recommending him for reenlistment.

10. The Board notes the Chief Counsel's argument that the Coast Guard's violation of agency regulations would not create a private right of action on the part of the applicant. However, 10 USC 1552 gives the applicant the right to request the correction of errors or injustices that may exist in his record.

11. Accordingly, relief should be granted to the applicant.

**ORDER**

The application of former FA for correction of his military record is granted. His DD Form 214 shall be corrected in the following manner:

Block 25 shall be corrected to show Article 12-B-12, Personnel Manual as the separation authority.

Block 26 shall be corrected to show JND as the separation code.

Block 28 shall be corrected to show "separation for miscellaneous/general reasons" as the narrative reason for separation.

