

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

Application for Correction of
Coast Guard Record of:

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

BCMR Docket
No. 2001-076

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14, United States Code. It was docketed on April 18, 2001, upon the BCMR's receipt of the applicant's complete application for correction of her military record.

This final decision, dated March 21, 2002, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant is xxxxxxxxxxxxxx in the Coast Guard. On March 9, xxxx, the applicant received an uncharacterized discharge¹ due to an entry level separation, with a JGA (entry level performance and conduct) separation code and an RE-3L reenlistment code (eligible for reenlistment, except for disqualifying factor: entry level performance/conduct). The applicant asked this Board to restore her to active duty so that she can appear before an administrative discharge board (ADB). She also requested back pay and allowances. The applicant claimed that she was entitled to an ADB prior to her discharge because she had the necessary eight years of military service to qualify for an ADB.

The applicant enlisted in the Coast Guard for four years on February 27, xxxx and was discharged on March 9, xxxx. She served xxxxx in the Coast Guard. The applicant stated that prior to enlisting in the Coast Guard, she had served approximately xxxxxx in the Army Reserve. (Other than a reference to her Army service in an alcohol evaluation report, the applicant's military records do not contain any evidence of her Army service.)

¹ An uncharacterized discharge is authorized for members separated at entry level who have fewer than 180 days of active service and demonstrated poor proficiency, conduct, aptitude or unsuitability for further service during the period of enlistment through recruit training. However, an uncharacterized discharge is not to be used for separations due to a disability of for prior service members entering recruit training. See 12.B.20 of the Personnel Manual.

SUMMARY OF RECORD AND SUBMISSIONS

The applicant's request for the correction of her military record is based on the alleged failure of the Coast Guard to provide her with an ADB hearing prior to discharging her.

Upon reporting for recruit training, the applicant was evaluated for substance abuse. The evaluation report noted that the applicant had six years of prior service in the Army Reserve. The report further stated the following:

[The applicant] states that she first tried beverage alcohol at age 14 (beer; got drunk), with regular usage beginning between the ages of 16 and 17 years. During this time, member reports drinking 2 times per week, and would drink enough to get drunk on each occasion. At age xx, member states that she drank daily, consuming from 1 to 3 beers per occasion (and would also consume 7 to 8 beers per occasion 1 time per month). At age 24, [the applicant] says that she drank daily, consuming 4 to 5 beers per occasion. During the last 12 months, this pattern has remained the same. Member's most recent consumption of alcohol took place the Monday prior to her arrival for basic training (4 to 5 beers). [The applicant] admits that the most alcohol consumed in one episode was 12 beers, and that she consumes this amount 1 time per month.

The evaluation report also stated that the applicant had tried other drugs. According to the report, she has suffered blackouts and loss of control as a result of alcohol use. The addictions prevention specialist, who performed the alcohol evaluation, recommended that the applicant be discharged because of alcohol abuse.

On March 6, xxxx, a medical doctor evaluated the applicant. The doctor stated that the applicant met the criteria for a diagnosis of alcohol abuse and her future prognosis for military duty was poor. This individual also stated that "[the applicant] did not meet the minimum standards for enlistment and retention in the Coast Guard, per COMDTINST M6000.1B § 5-B-5.j."

On March 8, xxxx, the applicant was informed that her commanding officer (CO) was recommending her discharge from the Coast Guard because of unsuitability due to alcohol abuse. The CO informed the applicant that she was not qualified for enlistment

because a medical doctor had diagnosed her as suffering from alcohol misuse. He further advised her that he recommended that she receive an honorable discharge. He also advised the applicant that she could submit a written statement. On March 8, xxxx, the applicant acknowledged notification of the proposed discharge, waived her right to submit a statement, and did not object to the discharge. (The applicant was offered an opportunity to request a waiver for her alcohol abuse but declined to do so.)

On March 9, xxxx, an administrative remarks (page 7) entry was placed in the applicant's record documenting her discharge. It also stated that the applicant had been "provided Certificate of Release or Discharge from Active Duty Form (DD-214) and other separation documents as required by Article 12-B-53 of the Personnel Manual. The applicant acknowledged this entry on the same date.

Views of the Coast Guard

On October 16, 2001, the Board received an advisory opinion from the Chief Counsel of the Coast Guard recommending that the Board deny the applicant's request for relief.

The Chief Counsel stated that according to the Personnel Manual, a member with eight years or more of military service is entitled to a hearing before an ADB, if the Coast Guard intends to discharge the member involuntarily prior to the end of that member's enlistment. See Article 12.B.5., Personnel Manual. However, with respect to this applicant's situation, the Chief Counsel stated the following:

When notified of her CO's decision to process her for discharge . . . the Applicant never objected and instead affirmatively waived her right to submit a statement on her behalf. Based upon these actions, it is evident that the Applicant wanted to be discharged. Now, months later, Applicant desires to appear before an administrative discharge board and receive back pay and allowances. If Applicant genuinely opposed her discharge, she should have noted her objections on March 8, xxxx, when she submitted a statement to her Commanding Officer. Instead, Applicant did just the opposite and attested that she had no objection to being discharged. Applicant's request to appear before an administrative discharge board should be denied for lack of merit. By not objecting to her discharge notification, Applicant waived her right to an administrative discharge board.

The Chief Counsel stated that the Coast Guard's failure to offer the applicant an opportunity to appear before an ADB was harmless error because her past history of drug and alcohol abuse would have resulted in her discharge. In this regard, the Chief

Counsel noted that the applicant indicated on her enlistment contract that she had not engaged in drug use, but during her evaluation for alcohol abuse she admitted that she had used drugs prior to her entry into the Coast Guard. The Chief Counsel stated “[g]iven the Coast Guard’s law enforcement mission of drug interdiction, if the Applicant had disclosed her nine years of prior drug abuse when she applied for a Coast Guard enlistment, the Applicant would never have been allowed to enlist into the Coast Guard.”

The Chief Counsel stated that the applicant’s misrepresentation about her prior drug use on her enlistment contract could expose her to a discharge due to misconduct, if she were placed before an ADB. An ADB examines a member’s entire record and “as such the misrepresentation that Applicant made in her enlistment documents concerning her long term drug and alcohol abuse will certainly be considered by the ADB when making its determination on whether the Applicant should be retained in the Coast Guard . . .” The Chief Counsel stated that since the original basis for the discharge is sound, there is no reason to subject the applicant to a probable misconduct discharge.

Applicant's Response

On October 18, 2001, the Board mailed the applicant a copy of the views of the Coast Guard. She did not submit a response.

APPLICABLE REGULATIONS

Article 5-B-5.j. of COMDTINST M6000.1B (Medical Manual) list alcohol abuse as a disorder that is disqualifying for appointment, enlistment, or induction into the Coast Guard. This provision also directs that a member be processed for separation under Chapter 20 (Drug and Alcohol Abuse) of the Personnel Manual.

Chapter 20.B.2.n. of the Personnel Manual states “Under the Medical Manual . . . members diagnosed with alcohol abuse or alcohol dependence within six months of enlistment are not physically qualified for enlistment. If appropriate, unit commanders shall recommend discharge under Article 12.B.16 (unsuitability) of the Personnel Manual.”

Article 12.B.31a. defines an administrative discharge board as a “fact-finding body appointed to render findings based on the facts obtained and recommend either retention in the Service or discharge. If recommending a discharge, the board also recommends a reason for discharge and the type of discharge certificate to be issued.”

Article 12.B.32.a. states that both the government and respondent are entitled to legal representation before administrative discharge boards that are convened and constituted under Article 12.B.31.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code. The application was timely.

2. The Personnel Manual grants Coast Guard service members with eight years of military service the right to an ADB hearing in certain instances. If the applicant had the eight years of military service, it appears that she should have been offered the opportunity to have her case heard by an ADB. The applicant has not shown by a preponderance of the evidence that she had the necessary eight years of military service. The only evidence of any previous military service in her Coast Guard record is a comment in the alcohol evaluation report that she had served in the Army for six years, not eight. She presented nothing from the Army showing the length of her service in the Reserve component of that organization. Accordingly, the applicant has not demonstrated by a preponderance of the evidence that she had the necessary eight years of military service to qualify for an ADB.

3. Although ADBs are offered to members with eight years of military service, the members must affirmatively choose to appear before an ADB. The Board is persuaded that the applicant wanted to be discharged from the Coast Guard and would have chosen not to appear before an ADB, if one had been offered. The Board is persuaded in this finding because the applicant did not object to her discharge when given the opportunity to make a statement in her behalf. In fact, she waived her right to make a statement at all. If the applicant had wanted to remain in the Coast Guard or disagreed with the medical finding that she suffered from alcohol abuse, she would have objected to being discharged and/or the reason for discharge when given the opportunity to do so. She has not presented any evidence showing that she would not have waived her right to an ADB at the time of her discharge, if one had been offered to her. Nor has she denied that she abused alcohol.

4. Even if the Coast Guard committed an error by not offering the applicant an opportunity to appear before an ADB, that error was not prejudicial. The applicant was not qualified for service because of alcohol abuse. Although she could have received an honorable discharge, the reason for that discharge would have been listed on the DD

Form 214 as personal alcohol abuse.² The uncharacterized discharge she received, with the RE-3L (eligible for reenlistment except for disqualifying factor: entry level separation) is much more favorable than one due to personal alcohol abuse even with an honorable discharge.

5. Moreover, the applicant could possibly have been processed for discharge due to misconduct for fraudulent enlistment based on her denial of drug use, to which she later admitted. The uncharacterized discharge is more favorable than a discharge due to misconduct.

5. Technically, the applicant should not have been discharged with an uncharacterized discharge because she had prior Army service. However, since this error benefits the applicant, the Board will not act to correct it. The Board's policy is to make corrections that improve a record not worsen it. The applicant has not presented any evidence indicating that she would have received a discharge any more favorable than the uncharacterized discharge, even if she had gone before an ADB.

6. The applicant has failed to demonstrate an error or injustice in this case that requires corrective action. Accordingly, her request for relief should be denied.

² The Separation Code and Designator (SPD) handbook authorizes a YPA separation code for a discharge by reason of personal alcohol abuse with an RE-4 (not eligible for reenlistment) reenlistment code.

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USGC for correction of her military record is denied.



