


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-064

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

 This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on February 2, 2004, upon the BCMR's receipt of the applicant's completed application and military records.

This final decision, dated October 28, 2004, is 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 discharged from the Coast Guard on August 6, 1999, asked the Board to correct his discharge form, DD Form 214, by

- (1) correcting the "effective date of pay grade" shown on his DD 214;
- (2) correcting the pay grade shown on his DD 214 from E-3 to E-4;
- (3) correcting his separation code from JPD, which, according to the Separation Program Designator (SPD) Handbook, denotes an involuntary discharge "when a member failed through inability or refusal to participate in, cooperate in, or successfully complete a treatment program for alcohol rehabilitation"; and
- (4) upgrading his reentry code from RE-4 to RE-3 or RE-1 so that he can join the Reserve.

The applicant alleged that the "effective date of pay grade" shown on his DD 214—November 3, 1995—is the date he advanced to E-4, not the date he was reduced to

E-3 as the result of non-judicial punishment (NJP) at a captain's mast. He asked that this discrepancy be corrected.

With respect to his pay grade upon discharge, the applicant stated that he was a [REDACTED]; pay grade E-4) for more than three years and was on the advancement list for promotion to E-5 when he was taken to mast and punished with a reduction in grade. With respect to the JPD separation code, the applicant alleged that it was unjust because he completed alcohol rehabilitation treatment prior to his discharge. He alleged that since his discharge he has "been rehabilitated, realized that [he] had a problem, and ... solved it." He argued that the corrections he is requesting would benefit both himself and the Coast Guard.

SUMMARY OF THE RECORD

On September 27, 1993, the applicant enlisted in the Coast Guard. He completed boot camp, served on a cutter for more than one year, and then attended [REDACTED] "A" School to join the [REDACTED] rating. Upon graduating from [REDACTED] "A" School on November 3, 1995, he advanced from [REDACTED] E-3) to [REDACTED] E-4. He was again assigned to a cutter, the Xxxx, where he subsequently qualified as a [REDACTED].

On January 27, 1998, the applicant's command completed a special performance evaluation for him. The Executive Officer (XO) of the Xxxx entered a form CG-3307 ("page 7") in his record "to document an unsatisfactory conduct mark due to an alcohol incident." The XO assigned the applicant a low mark of 2 (on a scale of 1 to 7, with 7 being best) in the category "Health and Well Being" and documented the mark on another page 7. The XO also prepared a page 7 to document the termination of the applicant's eligibility period for a Good Conduct Award. The applicant signed these entries in acknowledgment.

On March 3, 1998, the XO prepared another page 7, which the applicant also signed, to counsel the applicant about the alcohol incident:

On 03MAR98 you were referred to the XXXX Command Drug and Alcohol Representative (CDAR) for evaluation. On 27JAN98 you failed to get up for divisional muster at the assigned time. When the division LPO and CPO tried to wake you there was a strong smell of alcohol coming from the area of your rack. It took 4 hours for you to get out of the rack. During an investigation you admitted to drinking alcohol the previous evening and that it was a contributing factor in preventing you from executing your assigned duties.

You have been counseled on policies concerning alcohol use/abuse and the serious nature of this incident. A date will be set for you to be screened at a local CAAC facility. No other action is pending.

This is considered your first alcohol incident for documentation purposes. Per Chapter 20 of the Personnel Manual, COMDTINST M1000.6 (series), any further alcohol incidents may result in your separation from the Coast Guard.

On March 19, 1998, the XO entered another page 7 in the applicant's record to document the following:

On 17MAR98 you missed quarters and almost missed sailing of XXXX from xxxxxxxxxx. If other crew members had not gone to your hotel room when it was recognized you were missing you would most likely have missed sailing. On the same day you failed to lay to your assigned billet during flight quarters and had to be piped. You were found in your rack by your supervisor. On 18MAR98, you missed the morning divisional muster and again were found in your rack by your supervisor.

You have initiated a steady downward trend in your performance over the past two months. ... Your supervisors are frustrated with your performance and have given you every opportunity to improve Presently you are considered to be the lowest performer in the Auxiliary Division. Instead of setting an example as a petty officer, at this point the junior non-rated personnel have work habits, positive attitudes and motivation you could learn from.

With less than six months remaining on your tour [on the cutter] you have an opportunity to finish your tour on a strong note, or you can continue the trend you have started. Continued poor performance ... will not be tolerated ... [and] will result in increasingly more severe action by the command.

In addition to being late it was found that you shared a hotel room with crewmembers of the opposite sex. Per XXXX Instruction 1611.1B, cohabitating with a crewmember of the opposite gender is unacceptable.

After completing his tour on the cutter, the applicant was transferred to an Integrated Support Command (ISC).

On February 10, 1999, a woman who had been a subordinate of the applicant's on the Xxxx reported that he was the father of her child.¹ On February 24, 1999, after an investigation, the applicant was charged with having committed adultery with her and with four other crewmates aboard the cutter in 1997 and 1998. All but the first of these adultery charges were dismissed. A notation in the record indicates that they were dismissed because they were more than two years old. The applicant was also charged with making a false official statement to an investigator and with committing indecent acts with a subordinate female by engaging in sexual intercourse with her on March 17, 1998, in the public bathroom of a dance club and in a hotel room in the presence of two other persons.

¹ This fact appears in a letter from the CO of the ISC to CGPC dated June 9, 1999 (discussed below).

On April 28, 1999, the applicant's CO withdrew his recommendation for advancement due to the pending charges. He prepared a page 7 to document this action, and the applicant signed it.

The applicant was informed of his rights, conferred with counsel, and accepted NJP for the charges against him. At mast on May 17, 1999, his CO ordered the following punishments: restriction to base for 45 days; extra duties for 45 days; and reduction in grade to E-3 (because the applicant retained his designator, his rating became [REDACTED]).

On May 26, 1999, the applicant's CO prepared a page 7 for the applicant's record stating the following:

On 17 May 1999, during Captain's Mast, you were found in violation of two counts (Adultery and Indecent Act) of Article 134, UCMJ. Circumstances relating to these violations identify that alcohol abuse was a significant causative factor. You committed these offenses on 17 Mar 1998 while attached to CGC Xxxx on liberty in xxxxxxx. You stated that you were "drunk" and "passed out" on the night these violations occurred, which clearly meets the established criteria for an alcohol incident.

You were counseled on the policies concerning alcohol use/abuse and the serious nature of this incident. You have been scheduled for 22 Jun 1999 screening appointment at CAAC Based on the result of forthcoming screening, an alcohol education/treatment may be scheduled as necessary.

This is your second documented alcohol incident. As per [Article 20.B. of the Personnel Manual], I am required to process you for separation, in accordance with Article 12.B.16 of the Personnel Manual, COMDTINST M1000.6A (series).

Also on May 26, 1999, the CO informed the applicant that he was recommending to the Personnel Command that the applicant be discharged for unsuitability, in accordance with Article 12.B.16.b.5. of the Personnel Manual, because of his second alcohol incident. The CO informed the applicant that he had a right to submit a statement in his own behalf that would be forwarded with the CO's recommendation.

On May 28, 1999, the applicant received a performance evaluation in which he received marks of 2 for Responsibility and Integrity and an unsatisfactory conduct mark. In addition, he was not recommended for advancement and his eligibility period for a Good Conduct Award was terminated. The CO prepared page 7s to document these marks, and the applicant signed them.

On June 4, 1999, the applicant submitted his statement objecting to his discharge. He listed his duties and stated that his name was on an advancement list for promotion to [REDACTED]2. He stated that he "continue[d] to strive forward despite the administrative actions awarded me" and that he was in counseling and would be screened for alcohol dependence. He also noted that his marks supported an honorable discharge.

On June 9, 1999, the CO sent to Commander, Coast Guard Personnel Command (CGPC) his recommendation that the applicant be honorably discharged for unsuitability because of the two alcohol incidents. The CO forwarded with his recommendation the applicant's statement and supporting documentation.

On June 24, 1999, the Personnel Command ordered the applicant's CO to discharge him no later than July 22, 1999, by reason of unsuitability under Article 12.B.16 of the Personnel Manual with a JPD separation code. The separation orders state that block 28 of the applicant's DD 214 "shall only indicate the appropriate narrative reason for disch[arge] found in the Separation Program Designator (SPD) Handbook."² On July 8, 1999, the applicant's command requested authority to delay the discharge until August 6, 1999, so that the applicant could complete rehabilitation treatment. On July 13, 1999, CGPC approved the delay.

On August 2, 1999, the CO of a Naval Medical Clinic wrote a letter to the applicant's CO to document the fact that between July 6 and August 2, 1999, the applicant attended and successfully completed treatment for alcohol dependence. The treatment included 36 hours of group counseling sessions; 3 individual counseling sessions; and "3 reviews of the patient's progress before a Multiple Disciplinary Team meeting."

On August 6, 1999, the applicant was honorably discharged from the Coast Guard as an [REDACTED] E-3 with a JPD separation code, an RE-4 reenlistment code, and "Unsuitability" as his narrative reason for separation.³ The DD 214 also shows "Routine" as the type of separation and "R 241704Z JUN 99" as the separation authority.

IEWS OF THE COAST GUARD

On May 5, 2004, the Judge Advocate General (TJAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant limited relief by correcting the date of rank shown on his DD 214. TJAG also noted that the type of separation and separation authority shown on the DD 214 are erroneous and should be corrected. However, TJAG argued that no relief is warranted with respect to the applicant's other requests.

² Under the SPD Handbook, the proper narrative reason for separation for a member discharged with an SPD separation code is "Alcohol Rehabilitation Failure."

³ The Separation Program Designator (SPD) Handbook provides that the proper narrative reason for separation to be shown on the DD 214 of a member assigned the JPD code is "Alcohol Rehabilitation Failure." However, whoever prepared the applicant's DD 214 typed in "Unsuitability" instead. Since the applicant has not asked for his narrative reason for separation to be corrected, the Board will not address it—especially since the correction would not necessarily be considered an improvement of his record.

TJAG argued that the JPD and RE-4 codes are correct because the applicant was involved in two alcohol incidents. TJAG pointed out that after the first incident, on March 3, 1998, the applicant was counseled about the incident, referred for screening, and advised that a second such incident would likely result in his separation. TJAG pointed out that the applicant's second alcohol incident occurred less than two weeks later. TJAG argued that the applicant's "failure to curb his intemperate use of alcohol, with full knowledge of the likely consequences of his actions, correctly resulted in his separation from the Coast Guard." TJAG further argued that

[t]here are a limited number of separation codes available to the Coast Guard. The JPD code is the code used to separate members in Applicant's position who have had a second alcohol incident. It is unfortunate that Applicant's second incident occurred before he received the substantial treatment at a professional facility he was later afforded, but his failure to curb his drinking after screening and counseling by the Command Drug and Alcohol Representative [on March 3, 1998] was sufficient non-compliance for purposes of discharge. The RE-4 reenlistment code is the only code authorized for members separated for their second alcohol incident.

TJAG alleged that "the BCMR's scope of review of non-judicial punishment (NJP) cases is limited" and argued that the BCMR should defer to the CO's decision pursuant to *Chevron U.S.A. Inc., v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-4 (1984). TJAG argued that "[w]hen assessing the appropriateness of a punishment, the Board must be particularly deferential to the broad discretion of military authorities, which are best able to assess appropriate punishments in light of unit missions and the concomitant needs of good order and discipline at their units."

TJAG alleged that the applicant "has failed to assert or prove *any* factual or legal error" and has not overcome the "strong presumption that military officials involved performed their duties correctly, lawfully, and in good faith." *Arens v. United States*, 969 F.2d 1034, 1037 (1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979). TJAG argued that the applicant did not appeal his NJP and that the Board should therefore deem the matter of his reduction in grade waived "absent compelling circumstances that prevented the Applicant from raising such issues within the military justice system."

Finally, TJAG argued that the applicant "has failed to present any substantial reason for granting clemency." He argued that the "Board's clemency power should be reserved for those unusual cases where unanticipated circumstances cause the lawful punishment of a commanding officer to have an effect that shocks the conscience or conflicts with notions of fundamental fairness." Moreover, TJAG argued that the applicant's "conduct was more than sufficiently egregious for his commanding officer to conclude that it was inappropriate for him to continue to serve as a Third Class Petty Officer."

TJAG included with his advisory opinion and adopted a memorandum on the case prepared by the Coast Guard Personnel Command (CGPC). CGPC stated that the applicant's discharge form, DD 214, shows his correct pay grade upon discharge (E-3) since he had been reduced in rank, but not the correct date of rank. CGPC stated that the date of rank shown on the DD 214 should be the date the applicant was reduced in rank to E-3 (May 17, 1999), not the date he advanced to E-4 (November 3, 1995). CGPC further stated that in accordance with regulations, the type of separation on the DD 214 should be "Discharged," not "Routine," and the separation authority should be "Article 12-B-16, CG PERSMAN," not "R 241704Z JUN 99."

CGPC noted that "the record is incomplete with regard to the required documentation that the Applicant was screened and received any appropriate treatment after his first alcohol incident," as required under Article 20.B.2.e. of the Personnel Manual. However, CGPC pointed out that the applicant made "no allegation that he was not properly screened and treated" after his first incident, so presumably it took place.

Regarding the SPD code, CGPC stated that the applicant was screened and treated after his first incident and "the fact that [he] suffer[ed] a second alcohol incident is evidence that [he] failed treatment, regardless of successful treatment after a second incident." CGPC noted that there is no SPD code that means "second alcohol incident."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 6, 2004, the Chair sent the applicant a copy of the Chief Counsel's advisory opinion and invited him to respond within 30 days. No response was received.

APPLICABLE REGULATIONS AND PRIOR CASES

Coast Guard Personnel Manual (COMDTINST M1000.6A)

Article 20 of the Personnel Manual contains the regulations regarding alcohol abuse by Coast Guard members. Article 20.B.2.d. defines an “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.” 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].” The page 7 must also include a “statement of recommended treatment, if any.”

Article 20.A.2.e. states that “alcohol screening” is an “evaluation by a physician, clinical psychologist, or a DoD or civilian equivalent CAAC counselor to determine the nature and extent of alcohol abuse.” The evaluation and recommendation for treatment are based on the answers provided by the member in an interview.

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.”

Article 12.B.16. authorizes the administrative discharge of members for alcohol abuse pursuant to Article 20.B.2. It also authorizes the administrative discharge of members for “not adhering to core values.”

COMDTINST M1900.4D

Chapter 1.E. of COMDTINST M1900.4D provides the instructions for completing DD 214s. The instructions provide that blocks 4a and 4b on a DD 214 are to contain the rate and pay grade “in which separated.” Block 23 is for the type of separation and should contain one of the following: “Discharged,” “Released from Active Duty,” “Retired,” “Resigned,” or “Commission Revoked.” Block 25 is for the separation

authority and should contain “the appropriate separation authority associated with a particular authority and reason for separation as shown in the SPD Handbook, unless otherwise directed by [the Military Personnel Command].” Block 26 is for the separation code, and the instruction states that it should contain “the appropriate separation code (SPD) 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 granting discharge authority.” Block 27, which is for the reenlistment code, should show “only the proper reenlistment code associated with a particular SPD Code as shown in the SPD Handbook.” Block 28, which is for the narrative reason for separation, should show the reason specified by the Military Personnel Command “by pertinent letter or orders issued.”

SPD Handbook

The Separation Program Designator 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	Authority	Explanation
JPD	Alcohol Rehabilitation Failure	RE-4	12-B-16	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	12-B-16	Involuntary discharge ... when member performs acts of unacceptable conduct (i.e., moral and/or professional dereliction) not otherwise listed.

BCMR Docket No. 1998-047

In BCMR Docket No. 1998-047, the applicant was discharged by reason of alcohol rehabilitation failure following two alcohol incidents. After the first, an arrest for driving under the influence in July 1996, his screening was delayed due to his cutter’s underway schedule until November 1996. In November, he was finally screened and in December, his command formally documented his first alcohol incident and ordered him to undergo Level I rehabilitative treatment. However, before he began treatment, on January 1, 1997, he was arrested for assault committed while under the influence of alcohol. Therefore, his command recommended his discharge and referred him to Level II treatment. He was discharged on April 16, 1997, before completing the

treatment program, with a JPD separation code and "alcohol rehabilitation failure" as his narrative reason for separation.

In his advisory opinion for Docket No. 1998-047, the Chief Counsel of the Coast Guard recommended that the Board change the applicant's separation code to JNC and his narrative reason for separation to "unacceptable conduct." The Board found that the narrative reason for separation "alcohol rehabilitation failure" was inaccurate because the applicant's screening and treatment were delayed by the Coast Guard and his treatment was not completed by the time he was discharged. Therefore, the Board granted the relief recommended by the Chief Counsel and did not change the applicant's reenlistment code, which was RE-4.

BCMR Docket No. 1999-086

In BCMR Docket No. 1999-086, the applicant was discharged by reason of alcohol rehabilitation failure following two alcohol incidents. After her first alcohol incident, she was promptly screened and ordered to begin alcohol rehabilitative treatment. However, she subsequently realized the low-level treatment was not working and sought a higher level of treatment. Before receiving that treatment, she had a second alcohol incident. She successfully completed the higher level of alcohol rehabilitative treatment, but was then discharged due to her second documented alcohol incident.

The Chief Counsel recommended that the Board deny relief because, although the code and narrative reason shown on her DD 214 did not perfectly describe her situation, they were the closest available terms in the SPD Handbook. The Board found that that applicant was properly discharged following her second alcohol incident under Article 20.B.2.h.2. of the Personnel Manual because the rehabilitative treatment she received after her first alcohol incident failed. The Board found that, "[w]hile it is admirable that she voluntarily sought and successfully completed a higher level of treatment after her second alcohol incident, this does not negate the fact that the applicant initially failed to be rehabilitated and that she was discharged as a result of that initial failure." The Board held that her case was distinguishable from that of the applicant in BCMR Docket No. 1998-047, whose treatment was delayed for many months by the Coast Guard and did not even begin until after his second alcohol incident. In contrast, the applicant in BCMR Docket No. 1999-086 was properly and timely referred for rehabilitative treatment.

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. An application to the Board must be filed within three years after the applicant discovers the alleged error in his record. 10 U.S.C. § 1552. The applicant was discharged and received his DD 214 on August 6, 1999. Therefore, his application was untimely.

3. Pursuant to 10 U.S.C. § 1552(b), the Board may waive the three-year statute of limitations if it is in the interest of justice to do so. To determine whether it is in the interest of justice to waive the statute of limitations, the Board should conduct a cursory review of the merits of the case and consider the reasons for the delay.⁴ A cursory review of the merits of this case indicates that the Coast Guard has admitted that the applicant's DD 214 contains errors and has recommended that the Board grant partial relief. Therefore, the Board finds that it is in the interest of justice to waive the statute of limitations in this case.

4. The applicant alleged that the "effective date of pay grade" shown on his DD 214 is incorrect in that it shows the date he was advanced to E-4 (November 3, 1995) rather than the date he was reduced to E-3 (May 17, 1999). He asked the Board to correct the discrepancy. The Coast Guard admitted and the record shows that the applicant was reduced to pay grade E-3 on May 17, 1999. The Board finds that the applicant is entitled to have the discrepancy between his pay grade and his date of rank corrected.

5. The applicant asked the Board to correct the pay grade shown on his DD 214 from E-3 to E-4.⁵ The record indicates that the applicant was reduced to pay grade E-3 as a result of NJP on May 17, 1999, after he was charged with several violations of the UCMJ. He was not re-advanced to E-4 prior to his discharge. Moreover, the applicant has submitted no evidence to show that the charges against him were false, and the record indicates that he received due process with respect to the NJP. Therefore, the Board finds that the pay grade shown on his DD 214 is not erroneous. Moreover, the Board finds that the reduction in pay grade as punishment for his misconduct

⁴ *Dickson v. Sec'y of Defense*, 68 F.3d 1396 (D.C. Cir. 1995); *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁵ TJAG argued that "the BCMR's scope of review of non-judicial punishment (NJP) cases is limited" and that the BCMR should defer to the CO's decision pursuant to *Chevron U.S.A. Inc., v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-4 (1984). However, under 10 U.S.C. § 1552, Congress limited the Board's authority only with respect to court-martial convictions, not with respect to NJP. In addition, the case cited by TJAG is inapplicable as it concerns the level of deference a court should show the decision of a federal agency, whereas the Board serves on behalf of the Secretary, who is not required to defer to the Coast Guard by the decision in *Chevron*. Instead, under 33 C.F.R. § 52.24(b), the Secretary has directed the Board to accord Coast Guard records a presumption of regularity that the applicant must overcome to prove his case by a preponderance of the evidence.

was not unduly harsh and does not constitute treatment by military authorities that “shocks the sense of justice.”⁶

6. The applicant asked the Board to correct his separation code, which is JPD. He did not specify which separation code he wants in lieu of JPD. According to the SPD Handbook, the JPD code is to be used “when a member failed through inability or refusal to participate in, cooperate in, or successfully complete a treatment program for alcohol rehabilitation.” The applicant alleged that he successfully completed alcohol rehabilitation treatment on August 2, 1999, four days before his discharge. CGPC argued that whether the applicant completed rehabilitation after his second alcohol incident is irrelevant because the applicant was screened and treated after his first incident and “the fact that [he] suffer[ed] a second alcohol incident is evidence that [he] failed treatment, regardless of successful treatment after a second incident.” CGPC pointed out that the applicant has not alleged that he was not properly screened and treated after his first alcohol incident in 1998, and the applicant did not respond to CGPC’s argument after a copy of the Coast Guard’s recommendation was sent to him.

7. The record indicates that the applicant’s first alcohol incident occurred on January 27, 1998, when the applicant almost missed his ship’s movement because he had gotten drunk. However, the applicant’s command did not document the incident and refer him for screening until March 3, 1998, presumably because the ship was underway in the interim. On March 3, 1998, the applicant was advised that a second alcohol incident might result in his discharge and that a “date will be set for you to be screened at a local CAAC facility.” Because the command failed to document the results of the screening, as required by Article 20.B.2.e. of the Personnel Manual, the date of the screening and the treatment provided are unknown. As CGPC pointed out, the applicant has made no allegations with respect to the screening or treatment he received as a result of his first alcohol incident. The applicant’s second alcohol incident occurred on March 17, 1998, two weeks after he was counseled, warned about the repercussions of another alcohol incident, and, presumably, referred for screening. However, the second incident was not discovered until more than a year later when the applicant admitted at mast on May 17, 1999, that he had been drunk on March 17, 1998, when he had sex with a female member in a public restroom and in a hotel room with others present.

8. The applicant has not alleged that he was not screened and treated after his first alcohol incident and before his second alcohol incident, and the Board will not assume so based only on the absence of a page 7 documenting the results of the screening. The record does contain a page 7 dated March 3, 1998—two weeks before the second alcohol incident—which indicates that the applicant was referred for alcohol

⁶ See *Sawyer v. United States*, 18 Cl. Ct. 860, 868 (1989), *rev’d on other grounds*, 930 F.2d 1577 (citing *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976)).

screening. Absent any relevant allegation by the applicant, the Board presumes that his command ensured that he was promptly screened at the CAAC and provided whatever treatment was indicated during his interview at the CAAC⁷ during the two weeks between March 3 and March 17, 1998. Moreover, he was warned on March 3 that a second alcohol incident would likely result in his discharge. The fact that he had another alcohol incident on March 17 shows that he did not take the warning seriously and failed to be rehabilitated. It was this failure at rehabilitation that led—more than one year later—to his administrative discharge with a JPD separation code.

9. This applicant's case is distinguishable from that of the applicant in BCMR Docket No. 1998-047 because there is no evidence or allegation in this case that whatever treatment was recommended after the applicant's first alcohol incident was delayed until after his second alcohol incident; the applicant has only alleged that he did complete rehabilitative treatment in 1999 after his second alcohol incident and before his discharge. The fact that he completed rehabilitative treatment after his second alcohol incident and before his discharge does not negate the fact that he failed to stay sober after his first alcohol incident and was discharged because of that failure. Therefore, the Board finds that the applicant's JPD separation code is neither erroneous nor unjust.

10. The applicant asked the Board to upgrade his reenlistment code so that he can join the Reserve. He alleged that he has recognized his problem with alcohol and solved it. However, he submitted no evidence of his sobriety. Moreover, an RE-4 is the only reenlistment code authorized by the SPD Handbook for members discharged due to alcohol abuse. The applicant has not persuaded the Board that his reenlistment code should be upgraded.

11. In reviewing the applicant's record, CGPC noted that whoever prepared the applicant's DD 214 made erroneous entries in blocks 23 and 25. CGPC recommended that the Board correct these blocks *sua sponte*. The applicant did not respond to the recommendation. Block 23 indicates that the type of separation was "Routine," which is not an authorized type of separation; the block should state "Discharged." As the mistaken entry of the word "Routine" in block 23 could cause confusion as to the applicant's military status in his civilian life, the Board finds that it should be corrected to say "Discharged." Block 25 of the applicant's DD 214 shows "R 241704Z JUN 99" as the separation authority. This notation apparently refers to the discharge orders issued by the Personnel Command on June 24, 1999. Under the SPD Handbook, block 25 should show Article 12.B.16. as the separation authority. Article 12.B.16. of the Personnel Man-

⁷ The Board notes that, while it is possible that the rehabilitative treatment provided to the applicant in March 1998 after his first alcohol incident was not at the same level as that provided in 1999, the level of treatment he received in March 1998 depended on the answers he himself provided to the CAAC screener about his alcohol use.

ual governs discharges by reason of "Unsuitability," which is the narrative reason for separation shown in block 28, directly below block 25 of the DD 214. As the applicant did not object to CGPC's recommendation and as the Board does not see how the correction of block 25 to conform to block 28 and the requirements of the SPD Handbook could harm the applicant, the Board shall order this correction as well.

12. Accordingly, partial relief should be granted in accordance with these findings.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former [REDACTED], USCG, for correction of his military record is granted in part as follows:

Block 12.h. on his DD 214 shall be corrected to reflect the date May 17, 1999.

Block 23 on his DD 214 shall be corrected to show that he was "Discharged."

Block 25 on his DD 214 shall be corrected to show that the separation authority was Article 12.B.16. of the Personnel Manual.

No other relief is granted.

