

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2011-186

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

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 June 16, 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 March 16, 2012, 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 received a general discharge "under honorable conditions" on May 25, 2005, with a JPD separation code for "alcohol rehabilitation failure" and an RE-4 reentry code (ineligible to reenlist) on his discharge form DD 214. Pursuant to a decision of the Discharge Review Board (DRB), on May 10, 2010, the Coast Guard issued a DD 215 to correct the applicant's separation code and narrative reason for separation on his DD 214 to JND and "miscellaneous/general reasons," respectively. The applicant asked the BCMR to order the Coast Guard to reissue his DD 214 to incorporate the less prejudicial information and to upgrade his reentry code as well. The applicant stated that he wants his reentry code upgraded so that he can enlist in the Air Force to get tuition assistance and prove that he can serve his country honorably.

SUMMARY OF THE RECORD

On [REDACTED] the applicant enlisted in the Coast Guard at age 19. Upon completing boot camp, the applicant was assigned to a [REDACTED]. On January 6, 2004, he was counseled about the unit's rules and policies, including alcohol policy.

On September 17, 2004, the applicant was directed on a Page 7 not to enter another member's room unless invited by that member and not to borrow or use other members' personal property without permission. The Page 7 noted that he had been verbally counseled about these issues and policies already and that further infractions would result in charges.

On November 22, 2004, the applicant was counseled on a Page 7 for having allowed a guest to operate the shore-side detachment's [REDACTED] in a reckless and dangerous manner. His visitor privileges were suspended for two months and he was advised that additional incidents would result in disciplinary action.

On November 23, 2004, the applicant was counseled on a Page 7 about failing to report for morning muster and arriving 45 minutes later after being called by his supervisor.

On December 14, 2004, the applicant was punished at mast after being arrested on November 27, 2004, for driving while intoxicated (DWI). He was charged with disobeying an order by drinking while underage and with bringing discredit upon the Armed Forces. His punishment included restriction to the station with extra duties for seven days and reduction to pay grade E-1.

On January 11, 2005, the applicant was counseled about being out of uniform by wearing the wrong belt on January 10, 2005, and about wearing the wrong belt again on January 11 even though the correct belt was available locally. He was ordered to purchase the correct belt before morning muster the next day.

On January 12, 2005, the applicant underwent screening for alcohol abuse or dependency as a result of his arrest for DWI. On January 25, 2005, he completed a Substance Abuse Awareness Seminar.

On January 26, 2005, the applicant was placed on report for failing to obey an order and bringing discredit upon the Armed Forces because he had been treated for a gunshot wound on January 17, 2005, and the emergency room doctor reported that the applicant had been drinking alcohol. On February 1, 2005, the applicant's command entered a Page 7 in his record noting that the applicant had received a gunshot wound while on liberty and that a hospital report showed that he had consumed alcohol while underage. The command advised him that this conduct constituted his second "alcohol incident" and that he would be recommended for discharge.

On February 10, 2005, the applicant's command advised him on a Page 7 that his arrest for DWI while underage was his first "alcohol incident" and that he would be recommended for discharge if he received a second one. On another Page 7 dated February 10, 2005, the applicant's command noted that the applicant had been told at mast that his arrest for DWI on November 27, 2004, constituted his first alcohol incident and that a second one would cause him to be recommended for discharge.

On February 10, 2005, the applicant was punished at mast for disobeying an order by carrying a weapon onto Coast Guard property on February 8, 2005, without the approval of the command. He was awarded 30 days of restriction to the station with extra duties and forfeiture of \$450.00.

On February 10, 2005, the Group Commander notified the applicant in writing that he had initiated the applicant's discharge because of the two alcohol incidents. The Group Com-

mander noted that he was recommending that the applicant receive a general discharge based upon his multiple infractions and advised the applicant that he had a right to consult a lawyer, to object to the discharge, and to submit a statement on his own behalf. The applicant acknowledged the notification and objected to the proposed discharge but waived his right to submit a statement.

On February 22, 2005, the Group Commander sent the Coast Guard Personnel Command a recommendation that the applicant receive a general discharge because of his two alcohol incidents. The Group Commander listed the applicant's multiple infractions and also noted that although the applicant claimed that he had been shot in the leg by an unknown assailant on the street on January 17, 2005, the police had reported that there were no traces of blood, bullets, or shell casings at the alleged scene and that the nature of the wound indicated that the applicant was sitting down at the time he was shot. The Group Commander stated that the applicant's repeated descriptions of the event contained many inconsistencies and that he could not provide a reasonable explanation for the incident.

On February 27, 2005, the applicant was counseled about having made 123 minutes worth of long distance phone calls on Coast Guard cell phones, including 65 consecutive minutes while he was on watch.

On March 3, 2005, the applicant was discovered with beer in the barracks and a female guest and an infant in his room after hours. Witnesses reported that his breath smelled of alcohol, he was overheard asking another member to claim possession of the beer, and he then blamed the alcohol on his female guest. The applicant also used profanity when speaking to superior petty officers. He was placed on report for failing to obey an order and insubordinate conduct.

On March 7, 2005, the applicant was placed on report for failing to obey an order after he admitted to being the owner of a bottle of gin found in the station's refrigerator, contrary to station rules.

On April 18, 2005, the District Commander endorsed the recommendation that the applicant receive a general discharge and further recommended that he receive an RE-4 reentry code.

On April 19, 2005, the applicant was directed not to use any of the station's cell phones without express permission and to obtain permission for any personal visitors to the unit.

On April 20, 2005, the applicant was counseled about his failure to qualify as a riverdeck seaman and boat crewmember in a timely manner. He was placed on port and starboard duty to facilitate his completion of the qualifications.

On April 27, 2005, the Personnel Command issued orders for the applicant to be separated with a general discharge due to "alcohol rehabilitation failure" and an RE-4 reentry code within 30 days. The applicant was discharged on May 25, 2005.

In 2009, the applicant petitioned the DRB to upgrade his discharge from general to honorable and to upgrade his reentry code. The DRB found that the applicant's general discharge with an RE-4 was proper and equitable based on his pattern of misconduct, "disregard for authority, an unwillingness to comply with rules and regulations, and a severe lack of integrity." However, the DRB recommended that the applicant's separation code and narrative reason for separation be changed "to reflect Miscellaneous/General reasons as a more appropriate narrative reason given the lack of documentation regarding alcohol rehabilitation failure." On April 23, 2010, the Coast Guard Chief of Staff reviewed the DRB's recommendation and approved it, correcting the applicant's separation code to JND and his narrative reason for separation to "miscellaneous/general reasons." The DD 215 showing these corrections was issued on May 10, 2010.

VIEWS OF THE COAST GUARD

On September 9, 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 submitted by the Personnel Service Center (PSC).

PSC stated that Coast Guard policy in ALCOAST 125/10 requires use of an RE-4 "for cases involving DUI, associated alcohol related misconduct, or members who fail to complete or refuse treatment." Therefore, PSC stated, the applicant's reentry code should not be upgraded. PSC also concurred in the DRB's finding that the applicant record of misconduct and "severe lack of integrity" supported the RE-4.

PSC stated that the DD 215 is the form for correcting a DD 214 and "has the same weight and force as a DD 214." PSC stated that "when a DD 215 is issued, a new DD 214 is not."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 20, 2011, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to submit a response within 30 days. No response was received.

APPLICABLE REGULATIONS

Under the Separation Program Designator (SPD) Handbook, a member involuntarily discharged for "miscellaneous/general reasons" with a JND under Article 12.B.12. of the Personnel Manual may receive either an RE-4 or RE-1 (eligible to reenlist) reentry code.

ALCOAST 125/10 states that the JND separation code may also be used for unsuitability discharges under Article 12.B.16. of the Personnel Manual and that an RE-3 may be assigned for members separated as a result of two alcohol incidents but that an "RE-4 is prescribed for cases involving DUI, associated alcohol-related misconduct," or failure or refusal to complete 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. Although the application was filed more than three years after the applicant's discharge, it was filed within three years of the decision of the DRB. Therefore, under *Ortiz v. Secretary of Defense*, 41 F.3d 738, 743 (D.C. Cir. 1994), the application is considered timely.

2. The applicant asked the Board to upgrade his reentry code from RE-4 to RE-1 and to order the Coast Guard to issue him a new DD 214 incorporating the corrections made by the DRB. 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. 33 C.F.R. § 52.24(b). 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." *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

3. The applicant has not proved by a preponderance of the evidence that his reentry code should be upgraded to RE-1. His record of misconduct fully supports the decision of Commander, Personnel Command to award him an RE-4, and the RE-4 is correct pursuant to SPD Handbook and ALCOAST 125/10.

4. Because employers often demand to see veterans' DD 214s before hiring them, it is very important for DD 214s to be fair and not to unduly tarnish members' records. Although the applicant was arrested for DWI and clearly failed to obey the law about underage drinking on numerous occasions, in light of the highly prejudicial nature of a discharge by reason of "alcohol rehabilitation failure," the Board finds that the corrections made to the applicant's DD 214 by issuance of a DD 215 should be made, instead, by issuing him a new DD 214.

5. Accordingly, partial relief should be granted by ordering the Coast Guard to issue the applicant a new DD 214 incorporating the corrections made on the DD 215 issued on May 10, 2010. In addition, the following sentence shall be added to the remarks in block 18 because a duplicate DD 214 is being issued: "Action taken pursuant to order of BCMR." The applicant's request for an upgraded reentry code should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

The Coast Guard shall issue him a new DD 214 incorporating the corrections made on the DD 215 issued on May 10, 2010. In addition, the following sentence shall be added to the remarks in block 18 because a duplicate DD 214 is being issued: "Action taken pursuant to order of BCMR."

No other relief is granted.

