DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of
the Coast Guard Record of:

[redacted]

BCMR Docket No. 2016-093

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 April 8, 2016, and assigned it to staff member [redacted] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated February 3, 2017, 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, a former [redacted] second class [redacted] who was discharged from the Coast Guard on September 8, 2005, for alcohol rehabilitation failure asked the Board to upgrade his reentry code from RE-4 (ineligible to reenlist) to RE-1 (eligible) so he can enlist in the Army National Guard.

The applicant stated that he was very young when he was in the Coast Guard and was not aware of the "long term effects" of the poor choices he made while on active duty and how those choices would affect him in the years following his discharge. In support of his application, he submitted a copy of his Associate in Applied Science degree from a community college; copy of his Universal Technician certificate; and a copy of his Gas Heating Mechanic license.

The applicant stated that he discovered the alleged error in his record on September 5, 2005, and argued that the Board should find it in the interest of justice to consider his application so he may once again serve his country.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on June 28, 2000, and completed [redacted] School in December 2002. On October 3, 2004, a Page 7[1] was placed in his record to document his September 3, 2004, arrest by the local police department for driving under the influence (DUI) and the Page 7 stated that his driving privileges on Coast Guard installations had been revoked for one year. In addition, his driving privileges in [redacted] had been revoked for 90 days. The Page 7 also states that on September 4, 2004, he was referred to the Command Drug and Alcohol Representative (CDAR) for a consultation and that he had been counseled on the Coast Guard's policies concerning alcohol use, abuse and dependence, and the serious nature of his first alcohol incident.

The Page 7 also states that on September 24, 2004, the applicant underwent alcohol screening at a local Air Force Base and it was determined, based on his answers to the screening questions, that he was not alcohol abusive or dependent. It also states that he would be required to attend level one outpatient treatment. Finally, the Page 7 states that this was his first "alcohol incident"[2] and that any further incident may result in his separation from the Coast Guard.

On October 30, 2004, another Page 7 was placed in the applicant's record documenting his second arrest for DUI while operating an off-road vehicle on public streets. The Page 7 states that he was previously counseled on October 22, 2004, on Coast Guard policies concerning alcohol use and abuse and that the CDAR would arrange an appointment with a provider who would determine the nature of his relationship with alcohol. The Page 7 also states that this was his second alcohol incident and that he would be processed for separation from the Coast Guard.

On November 8, 2004, a Page 7 was placed in the applicant's record to document that he had been screened at a Chemical Dependency Recovery Program where it was determined that he met the criteria for a diagnosis of alcohol dependency in accordance with the Diagnostic and Statistical Manual of Mental Disorders (DSM) IV and that he had been recommended for a 28-day Partial Hospitalization Program (PHP). It states that he would receive his treatment beginning on November 8, 2004. Finally, the Page 7 states that had had been advised of the contents of Chapter 20 of the Personnel Manual, COMDTINST M1000.6, regarding policy for alcohol incidents, expected conduct of Coast Guard personnel, and the continued care plans available for those who have problems with alcohol abuse.

On December 7, 2004, a Page 7 was placed in the applicant's record to document that he had successfully completed a 28-day partial hospitalization program and that his aftercare

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[1] A Page 7 (CG-3307, or Administrative Remarks) entry documents any counseling that is provided to a service member as well as any other noteworthy events that occur during that member's military career.

[2] Article 20.A.2.d. of the Personnel Manual in effect in 2004 and 2005 states that an alcohol incident is "any behavior, in which alcohol is determined, by the commanding officer, to be a significant or causative factor, that 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, Federal, State, or local laws. The member need not be found guilty at court-martial, in a civilian court, or be awarded non-judicial punishment for the behavior to be considered an alcohol incident."

program should consist of abstinence from alcohol for the rest of his Coast Guard career; a one-year evaluation of his performance; weekly meetings with a CDAR to monitor and support his recovery; and attendance at a minimum of one Alcoholics Anonymous meeting per week or a minimum of two Adult Children of Alcoholics meetings per week. It also states that his failure to comply with this aftercare plan or involvement in a third alcohol related incident would result in separation from the Coast Guard.

On December 27, 2004, the Officer in Charge (OIC) of the applicant's duty station submitted a memorandum to the Commander, Coast Guard Personnel Command (CGPC), recommending that the applicant be retained, in lieu of administrative discharge for unsuitability due to alcohol abuse. In the memorandum, the OIC argued that the applicant should be retained on active duty in accordance with Chapter 20.B.2.h.2.a. of COMDTINST M1000.6, the Coast Guard Personnel Manual. The OIC noted that the applicant had successfully completed a 28-day inpatient treatment program and that his performance of duty was stellar. He noted that the applicant was "an outstanding worker, able to prioritize what needs to be done and carry the task to completion." The OIC also stated that the applicant had assured him that he would never use alcohol again.

The memorandum and package submitted by the OIC in support of the applicant's retention on active duty also contained a statement from the applicant. In the statement, he asked to remain on active duty and stated that he was an asset to the Coast Guard and not a liability. He admitted that he did have a problem with alcohol in the past and that after recognizing his weakness he sought and underwent treatment. He asserted that he would never drink again because "nothing good has ever come of it."

On January 6, 2005, an officer at the District Command submitted an endorsement to the OIC's December 27, 2004, letter, stating that he strongly supported the applicant's retention on active duty. He noted that although the applicant had two alcohol incidents within a short period of time, he had completed a hospital program and had taken steps to ensure that he had a strong support mechanism in place.

On January 19, 2005, CGPC ordered that the applicant be retained on active duty provided he satisfactorily completed his aftercare program. CGOC stated that if the applicant was involved in any further incidents then he would be recommended for separation.

On June 27, 2005, the applicant was once again arrested by local police and charged with burglary, criminal mischief, and indecent conduct. The arresting officer noted in his arrest report that the applicant was drunk at the time of his arrest and had admitted to drinking about 15 beers.

On June 28, 2005, the applicant was notified by memorandum that his OIC was recommending his discharge as a result of his arrest for burglary, criminal mischief, and indecent conduct on June 27, 2005. The OIC noted that the decision on his discharge and the type of discharge would rest with the District Commander and CGPC.

On June 28, 2005, the applicant submitted his response to the recommended discharge and indicated that he did not object to being discharged.

On June 28, 2005, the applicant's OIC sent a memorandum to CGPC recommending that the applicant be honorably discharged by reason of unsuitability (third alcohol incident).

On August 8, 2005, the Sector Commander forwarded the OICs recommendation to CGPC and strongly recommended that the applicant be discharged due to his third alcohol incident.

On August 10, 2005, CGPC authorized the applicant's honorable discharge for alcohol rehabilitation failure in accordance with Article 12.B.16. (Unsuitability), with an effective date of September 8, 2005. CGPC indicated that his DD 214 should show the JPD separation code, but did not state which reenlistment code should be listed on the applicant's DD 214. The applicant's DD 214 indicates that he received a discharge characterized as honorable; the separation authority is Article 12.B.16.; the separation code is JPD; the reenlistment code is RE-4; and the narrative reason for separation states that he was discharged for alcohol rehabilitation failure.

APPLICABLE POLICY

Article 12.B.16.b.5. of the Coast Guard Personnel Manual (PERSMAN) in effect in 2005 authorizes the discharge of members unsuitable for military service because of alcohol abuse.

Article 20.B.2.h. of the Personnel Manual states that enlisted members involved in a second alcohol incident shall normally be processed for separation from the service pursuant to Article 12.B.16. of the Personnel Manual.

Article 20.B.2.i. of the Personnel Manual states that enlisted members involved in a third alcohol incident shall be processed for separation from the service pursuant to Article 12.B.16. of the Personnel Manual.

Chapter 1 of COMDTINST M1900.4D, the manual for preparing DD 214s, states that the Coast Guard shall enter the appropriate reenlistment code to denote whether or not the member is recommended for reenlistment and shall use only the proper reenlistment code associated with a particular separation Code as shown in the SPD Handbook.

The SPD Handbook mandates the assignment of an RE-4 reenlistment code with the JPD separation code for alcohol rehabilitation discharges pursuant to Article 12.B.16. of the Personnel Manual. It further states that the JPD code is to be used when there is an involuntary discharge directed by established directive when a member failed through inability or refusal to participate in, cooperate in, or successfully complete a treatment program for alcohol rehabilitation.

VIEWS OF THE COAST GUARD

On September 8, 2016, the Judge Advocate General (JAG) of the Coast Guard adopted the findings and analysis in a memorandum prepared by the Personnel Service Center (PSC) and recommended that the Board deny relief in this case because it is untimely and the applicant did not provide any justification for the delay. The JAG argued that the applicant was properly discharged after violating the terms of his alcohol and rehabilitation plan by consuming alcohol and was assigned an RE-4 reenlistment code in accordance with Coast Guard policy.

In the attached memorandum, PSC noted that the applicant was not discharged after his second alcohol incident and was retained in the Service on the condition that any further incident would result in a recommendation for separation. PSC argued that after he received a third alcohol incident on June 27, 2005, when he violated his aftercare plan by consuming alcohol and he was properly discharged for unsuitability and alcohol rehabilitation failure. Finally, PSC noted that the applicant received an RE-4 reenlistment code in accordance with ALCOAST 125/10, which states that an RE-4 is appropriate for cases involving DUI, alcohol related misconduct, or members who fail to complete or refuse treatment.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 27, 2016, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. The Chair did not receive a response.

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. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.[3]

3. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.[4] The applicant received his DD 214 showing his discharge and reenlistment code on September 8, 2005, and the Board finds that his application is untimely.

4. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.[5] In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board should not deny an application for untimeliness without "analyz[ing] both the reasons for

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[3] *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

[4] 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

[5] 10 U.S.C. § 1552(b).

the delay and the potential merits of the claim based on a cursory review"[6] to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted that "the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review."[7]

5. Regarding the delay of his application, the applicant argued that the Board should find it in the interest of justice to consider his application because he wants to enlist in the Army National Guard and once again serve his country. The Board finds that his explanation for the delay is not compelling because he failed to show that anything prevented him from seeking correction of the alleged error or injustice within three years of discovering it in his record.

6. A cursory review of the merits of this case indicates that the applicant's claim is without merit. The record shows that he received two alcohol incidents and was not discharged from the Coast Guard, despite Article 20.B.2.h. of the Coast Guard Personnel Manual, which states that enlisted members involved in a second alcohol incident will normally be processed for separation. The record also shows that following his second alcohol incident, the applicant's command fully supported his retention on active duty and convinced CGPC that he was an asset to the Coast Guard and was committed to his aftercare program. However, the record also shows that despite the aftercare program and his promise to never drink alcohol again, he received a third alcohol incident after violating his aftercare plan by being drunk when he was arrested for burglary, criminal mischief, and indecent conduct. At this point, he was properly discharged for alcohol rehabilitation failure, pursuant to Article 12.B.16. of the Personnel Manual.

7. The Board notes that the applicant did not claim that there are any errors in his record; he simply asked that his youthful indiscretions and poor judgment be overlooked and his reenlistment code be upgraded so that he may enlist in the National Guard and once again serve his country. However, the applicant has not proved by a preponderance of the evidence that his reentry code should be upgraded to RE-1. His record of alcohol abuse and misconduct, including two DUIs and an arrest for burglary, criminal mischief, and indecent conduct, fully supports the decision of his command to award him an RE-4, and the RE-4 is the required reenlistment code pursuant to the SPD Handbook. The Board also notes that the military services have sometimes enlisted veterans with RE-4 codes, so an RE-4 code is not always a bar to reenlistment. Whether the National Guard will enlist him more than a decade after he received the RE-4 is a matter of that military service's recruiting policy, not statute or regulation.

8. Accordingly, the Board will not excuse the application's untimeliness or waive the statute of limitations. The applicant's request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

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[6] *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

[7] *Id*. at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

ORDER

The application of former [redacted], USCG, for correction of his military record is denied.

February 3, 2017

[redacted]