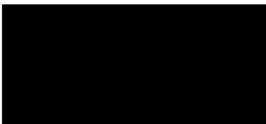



**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-268

 (former)

FINAL DECISION

This proceeding was conducted according to the provisions of section 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the completed application on September 1, 2017, and assigned it to staff attorney  to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated July 20, 2018, 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, who was discharged from the Coast Guard on September 11, 2017, asked the Board, through counsel, to correct his discharge form, DD Form 214,¹ by upgrading his reenlist code from RE-4 (ineligible to reenlist) to RE-1 (eligible to reenlist) or RE-3 (eligible to reenlist with waiver); upgrading his separation code and reason for discharge from "Misconduct"; and making him and his family eligible for benefits under the Transition Assistance Management Program (TAMP).²

The applicant stated that he appeared before an Administrative Separation Board (ASB), which recommended his retention in the Coast Guard. However, the Final Reviewing Authority (FRA) went against this recommendation and decided to discharge him. The applicant argued that "one mistake should not affect the rest of [his] life." Specifically in reference to the request that the Board upgrade his separation code and reason for discharge, the applicant stated that the discharge code is preventing him and his children from receiving medical insurance through TAMP during his transition from military life.

¹ A DD 214 is prepared to document a member's release or discharge from a period of active duty.

² According to the TRICARE website, TAMP "continues to provide the minimum essential coverage that is required under the Affordable Care Act, but it is temporary." Those who are eligible may receive up to 180 days of health and dental coverage. <https://tricare.mil/About/MEC/LoseTRICARE>.

In support of his application, the applicant provided many documents, including many very positive employee evaluations, which are discussed in the Summary of the Record, below. He also provided three letters from members of his chain of command at his final unit in the Coast Guard. They are letters of recommendation for employment and speak very highly of the applicant's accomplishments at the unit, his stamina, work ethic, demeanor, and ability to handle himself under pressure. All three letters highly recommended the applicant for employment and gave glowing endorsements of his skills and personality.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on March 4, 2003. Prior to the incident for which he was discharged, the applicant had been receiving high marks of 5, 6, and 7 (on a scale of 7) on his Enlisted Employee Reviews (EERs).³ The applicant had always received a "satisfactory" conduct mark and, other than once in 2005, he had always been recommended for promotion.

On February 23, 2016, the applicant was convicted in a local court of driving while intoxicated (DWI) on December 11, 2015. He was sentenced to attend twelve hours of the State's intoxicated driving program, he was fined \$639, and his license was suspended. As a result of the DWI, the applicant was processed for separation from the Coast Guard for misconduct.

The ASB convened and considered the applicant's case on August 4, 2016. The ASB found that there was evidence to support separation due to the Commission of a Serious Offense.⁴ However, in light of the applicant's excellent military record, the ASB recommended that he be placed on probation in lieu of involuntary separation.

The FRA made a final decision on July 24, 2017, and agreed with the ASB that there was enough evidence to support separation for Commission of a Serious Offense but disapproved the recommendation to retain the applicant on probation in lieu of involuntary separation. The FRA stated that on December 9, 2015, in preparation for the unit's holiday party, an all hands meeting was held at the applicant's unit wherein the Command Drug and Alcohol Representative briefed the members, including the applicant, on Coast Guard alcohol policy. This brief included "several resources for him (and the rest of the crew) to avoid driving under the influence of alcohol." Two vans were provided with designated drivers to transport crew members, the Commanding Officer (CO) offered his residence as lodging for attendees, and unit barracks rooms were offered as a place to stay the night. The FRA stated that the "command went above and beyond in an attempt to make the event as safe as possible."

The FRA stated that the following day, the day of the holiday party—the applicant drove himself to the event and consumed alcohol. When the party had ended, the applicant's shipmates "intervened because they observed that [the applicant] was too intoxicated to drive." They designated a driver to take him and his vehicle to the barracks for him to stay the night and the applicant agreed to this plan. The applicant was taken to the barracks and he was observed entering the building. "Despite these precautions and expression of a clear understanding that he was going to remain in the barracks overnight, [the applicant] left the station and attempted to drive home."

³ On an EER, members receive marks on a scale of 1 to 7, with 7 being the highest, in 25 performance dimensions.

⁴ Military Separations Manual, COMDTINST M1000.4, Article 1.B.17.b.(3).

The applicant was “so inebriated” that he did not recall how he collided with the median barrier or how he damaged another vehicle. The collision severely damaged his own vehicle and damaged a second vehicle. Hours after the holiday party had ended, a breathalyzer test resulted in a Blood Alcohol Content of .15%, which is almost twice the legal limit in the State.

The FRA noted that the ASB’s analysis included the applicant’s “performance, concluding that he [was] a top performer.” The FRA agreed that the applicant had displayed above average performance and agreed that this was a factor to consider, but stated that the ASB “failed to consider the seriousness of [the applicant’s] misconduct, which outweigh[ed] the performance record.” He noted that the applicant had directly defied an order when he left the barracks and committed DWI after being ordered to stay in the barracks until the following day. The FRA therefore disapproved the ASB’s recommendation to retain the applicant on probation because it was “contrary to the evidence that the Board considered.” He ordered that the applicant be separated with an honorable characterization of service.

The applicant was honorably discharged on September 11, 2017. He had a total of fourteen years, six months, and eight days of active duty service. His narrative reason for discharge is “Misconduct” with a separation code GKQ and a reentry code of RE-4 (ineligible to reenlist).

VIEWS OF THE COAST GUARD

On February 20, 2018, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case. In so doing, he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC stated that the application is timely and therefore should be considered on its merits. PSC argued that the applicant has failed to provide any evidence of an error or injustice in his record. PSC argued that the FRA took his performance into account when making his final decision but found that the seriousness of the offense outweighed the applicant’s military record. PSC stated that the discharge proceedings were within Coast Guard policy and therefore recommended that the Board deny relief. No specific recommendation was made regarding the applicant’s TAMP request.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 26, 2018, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond. On April 13, 2018, the applicant, through counsel, responded and stated that he had “no objections to the views of the Coast Guard and the case is ready.”

APPLICABLE REGULATIONS

Title 10 U.S.C. § 1145 states that members of the armed forces who are involuntarily separated from active duty and their dependents are entitled to temporary medical and dental care.

The Transition Assistance Program, COMDTINST 1900.2A, Article 5.b.(2) states:

Certain involuntarily separated members are eligible for transition benefits ... Eligibility for transition benefits depends on the nature and characterization of a member's discharge. In general, members must meet the following conditions to be eligible for benefits: (a) were on active duty after 30 September 1994; (b) were or will be involuntarily separated with a qualifying SPD code; and (c) were or will be discharged under conditions characterized as either honorable or general under honorable conditions.

Enclosure 4 lists the SPD codes that are eligible for involuntary separation benefits. Enclosure 4 states that only the SPD codes listed are eligible for TAMP benefits. The code GKQ is not listed.

The Separation Program Designator Handbook states that the code GKQ corresponds with "Misconduct (Serious Offense)" as the reason for separation. The Handbook also notes that a member discharged for this reason is not eligible for TAMP benefits.

The Military Separations Manual, COMDTINST M1000.4, Article 1.B.17.b.(3)(b) states that "mandatory administrative discharge processing is required for members who engage in drunken or impaired operation of a vehicle, aircraft or vessel ... [A]dministrative discharge processing shall be initiated for: (1) Any member who is convicted by domestic or civil authorities."

Article 1.B.36.g. states that when a member is processed for separation they must be informed of the Continued Health Care Benefit Program, COMDTINST 1760.7 (series).

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 submission and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely.
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.⁵
3. The applicant asked the Board to upgrade his reentry code from RE-4 to RE-1 or RE-3, to upgrade his reason for discharge and separation code, and to make him eligible for TAMP benefits. 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.⁶ 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."⁷

⁵ *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).

⁶ 33 C.F.R. § 52.24(b).

⁷ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

4. The applicant argued that his reentry code, reason for separation and separation code should be upgraded because “one mistake should not affect the rest of [his] life.” In support of his application, the applicant provided the Board with many of his excellent performance evaluations. The ASB took the applicant’s military record and his evaluations into account when it recommended that he be retained in the Coast Guard on probation. The FRA also took these into account when he decided that the “one mistake” outweighed the applicant’s prior performance. The FRA’s decision clearly describes his reasoning, including that the applicant’s unit had gone above and beyond to ensure that members would not drink and drive, that the unit had ensured that he was driven to the barracks after the party and ordered to spend the night there, and that the applicant had disobeyed this order to stay in the barracks and tried to drive home with a BAC of almost twice the legal limit. Per the FRA’s decision, the applicant was discharged for misconduct due to his conviction for the serious offense of driving under the influence of alcohol. The applicant has not submitted evidence showing that he was denied due process in his discharge proceedings, which were presumptively handled correctly.⁸ The Board finds that the applicant has not proven by a preponderance of the evidence that an error or injustice exists with respect to his discharge for misconduct and therefore will not upgrade his reentry code, his reason for discharge, or his separation code.

5. The applicant also asked that the Board retroactively make him and his family eligible for TAMP benefits. He received a separation code of GKQ. According to the Separation Program Designator Handbook, members who receive this separation code are explicitly not eligible for TAMP benefits. The Transition Assistance Program, COMDTINST 1900.2A, Enclosure 4 lists the separation codes that are eligible for TAMP benefits and the GKQ code is not listed among them. The Board finds that the applicant was not eligible for TAMP benefits and that he has not proven that an error or injustice exists in this regard.

6. Accordingly, the applicant’s request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁸ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

ORDER

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

July 20, 2018

