


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-181


SA (former)

FINAL DECISION

This is a proceeding under the provisions of section 1552 of Title 10 and section 2507 of Title 14 of the United States Code. The Chair docketed the case after receiving the applicant's completed application on June 5, 2018, and assigned it to staff member  to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated May 31, 2019, 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 seaman's apprentice (SA) discharged from the Coast Guard on June 13, 1997, for unsuitability, asked the Board to upgrade his reentry code from RE-4 (ineligible to reenlist) to RE-3 (eligible with waiver). He stated that at the time of his discharge he was unaware that his RE-4 reenlistment code would affect him later in life and that he has "learned the hard way from my underage decision to consume alcohol." He argued that the RE-4 reenlistment code is too harsh considering his age at the time and the fact that he was stationed in Alaska, "a very remote environment."

The applicant stated that he discovered the alleged error in his record on January 1, 2001, and argued that the Board should find it in the interest of justice to consider his application so he can enlist in the Army National Guard and "retire in my military career."

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on May 23, 1995, at the age of 19. He completed recruit training and was assigned to a cutter homeported in Alaska. On June 19, 1996, the applicant was punished at mast for failing to obey a lawful order by driving his personal vehicle

while his driving privileges were suspended. On February 7, 1997, the applicant signed two Page 7s¹ acknowledging the following:

- The applicant acknowledged that he had attended Level I Alcohol Education at a clinic from January 27 through February 1, 1997, and that no need for additional treatment had been indicated.
- The applicant acknowledged that he had incurred his first “alcohol incident”² (underage drinking) on January 17, 1997, when he was stopped by security as he walked through the Coast Guard station’s gate after they smelled alcohol on his breath. A breathalyzer showed that his blood alcohol content was 0.08%. This Page 7 states that on January 21, 1997, the applicant was referred to the Command Drug and Alcohol Representative (CDAR), who counseled him on the Coast Guard’s policies concerning alcohol use, abuse and dependence, and the serious nature of his first alcohol incident, and that on January 27, 1997, he underwent alcohol screening at a local clinic and was found to have an alcohol abuse problem. The Page 7 further states that on January 31, 1997 (while attending Level I treatment), he was referred to another facility for a confirmatory diagnosis, and the Coast Guard medical officer recommended no additional treatment. Finally, the Page 7 notes that any further alcohol incident or use of alcohol while underage could result in his separation from the Coast Guard.

On March 25, 1997, another Page 7 was placed in the applicant’s record documenting his incurrance of a second “alcohol incident” when military police had “responded to a domestic call” at his home on March 22, 1997, and cited him for being “disorderly conduct and drunkenness as a minor.” The Page 7 states that his blood alcohol content measured 0.221% and that he was again referred to the CDAR and counseled on the policies concerning alcohol use/abuse. The Page 7 also states that because this was his second alcohol incident, he would be processed for separation from the Coast Guard due to continued alcohol abuse and that he was eligible for alcohol treatment from the Department of Veterans Affairs.

On May 8, 1997, a Page 7 was placed in the applicant’s record to document that he had been evaluated at a mental health center on April 29, 1997, where it was determined that he met the criteria for a diagnosis of alcohol abuse disorder in accordance with the Diagnostic and Statistical Manual of Mental Disorders (DSM) IV and that he had been recommended for Level II outpatient alcohol treatment. Finally, the Page 7 notes that he had been advised that he had the right to refuse the outpatient treatment but that refusing treatment would result in his being processed for separation. The applicant acknowledged this notification and elected not to participate in Level II treatment.

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 An “alcohol incident” is “[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.” U.S. Coast Guard Personnel Manual, COMDTINST M1000.6A, Art. 20.B.2.d.

Also on May 8, 1997, the applicant was notified by memorandum that his Commanding Officer (CO) was recommending his discharge as a result of his two alcohol incidents in accordance with the Personnel Manual. The CO noted that the decision on the applicant's discharge and the type of discharge would rest with the District Commander and the Coast Guard Personnel Command (CGPC). The applicant signed this notification and indicated that he did not object to being discharged and did not want to submit a statement.

On May 16, 1997, CGPC authorized the applicant's honorable discharge for alcohol rehabilitation failure in accordance with Article 12.B.16. (Unsuitability) of the Personnel Manual, no later than June 13, 1997. CGPC indicated that his DD 214 should show the JPD separation code, which denotes a discharge for alcohol abuse.

On June 13, 1997, the applicant was discharged. His DD 214 indicates that the separation authority was Article 12.B.16.; his separation code is JPD; his reenlistment code is RE-4 (ineligible); and the narrative reason for separation states that he was discharged for "unsuitability." A Page 7 in his record states that he was provided with a copy of his DD 214 and counseled about his separation in accordance with Article 12.B.53. of the Personnel Manual.

APPLICABLE LAW AND POLICY

Coast Guard Personnel Manual (COMDTINST M1000.6A)

Article 20 of the Personnel Manual in effect in 1997 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."

Article 20.B.2.j. states that "[u]nderaged drinking is considered an alcohol incident. Underaged drinking does not necessarily require screening if it is a first incident. The CDAR should counsel the member, determine if there are any other indications of alcohol-related problems, and recommend whether screening is needed based on this interview. If this is the second incident, discharge proceedings shall commence as described in Article 20.B.2.g."

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.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.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 due to “unsuitability,” including alcohol abuse pursuant to Article 20.B.2. Article 12.B.16.d. states that a member being honorably discharged for unsuitability is entitled to written notification of the reason for discharge and an opportunity to object to the discharge and submit a written statement.

Article 12.B.53. lists the matters about which a member being discharged must be advised. Article 12.B.53.d. requires that a member be advised about reenlistment, including fraudulent enlistment and concealment of military service if he or she is not recommended for reenlistment. In addition, Article 12.B.53.h. requires that members be counseled about the Discharge Review Board and the BCMR.

COMDTINST M1900.4D

Chapter 1.E. of COMDTINST M1900.4D provides the instructions for completing DD 214s in 1997. The instructions provide that block 25 on the DD 214 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 [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 Personnel Command “by pertinent letter or orders issued.”

The Separation Program Designator (SPD) Handbook, an enclosure to the DD 214 instruction, states that the only reenlistment code authorized for members separated with a JPD separation code under Article 12.B.16. of the Personnel Manual is RE-4 (ineligible to reenlist in the Coast Guard). The JPD denotes an “[i]nvoluntary discharge when a member failed through inability or refusal to participate in, cooperate in, or successfully complete a treatment program for alcohol rehabilitation.” The handbook also states that the narrative reason for separation in block 28 should be “Alcohol Rehabilitation Failure.”

VIEWS OF THE COAST GUARD

On March 1, 2019, a judge advocate (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 incurring two underage alcohol incidents and declining to attend outpatient rehabilitative treatment. The JAG noted that the applicant's sole basis for relief is his belief that his reenlistment code should have been an RE-3 due to his age and the remoteness of his duty station, but there is no policy that allows for consideration of the age of the member or the circumstances that led to the consumption of alcohol. Finally, the JAG stated that based on the applicant's two alcohol incidents and his refusal to accept treatment when it was offered resulted in a separation with an RE-4 reenlistment code in accordance with Coast Guard policy.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 5, 2019, 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. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.³ The preponderance of the evidence shows that the applicant received his DD 214 showing his reenlistment code on June 13, 1997, and was counseled about his ineligibility to reenlist at the time. Therefore, the Board finds that his application is untimely.
3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.⁴ 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 the delay and the potential merits of the claim based on a cursory review"⁵ 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."⁶
4. 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 deeply regrets his underage drinking and 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

³ 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

⁴ 10 U.S.C. § 1552(b).

⁵ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁶ *Id.* at 164, 165; see also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

anything prevented him from seeking correction of the alleged error or injustice within three years of his discharge in 1997, when he was advised that he was ineligible to reenlist.

5. A cursory review of the merits of this case indicates that the applicant's claim cannot prevail. The record shows that he received two alcohol incidents and was discharged from the Coast Guard in accordance with Articles 12.B.16 and 20.B.2.h.2. of the Coast Guard Personnel Manual then in effect, which provide that members involved in a second alcohol incident will normally be processed for separation. The record also shows that the applicant received Level I rehabilitation treatment following his first alcohol incident and refused to participate in treatment following his second alcohol incident. He also received due process under Article 12.B.16. of the Personnel Manual, but he opted not to object to the discharge and not to submit a statement. Although the applicant argued that he should have an RE-3 so that he can reenlist in the National Guard, under the SPD Handbook then in effect, the RE-4 reenlistment code was the only authorized reenlistment code for members discharged for alcohol abuse. Moreover, the effect of reenlistment codes is a matter of each military service's policy, not law. If in 2019 the National Guard considers the applicant ineligible to reenlist because of the RE-4 on his 1997 Coast Guard DD 214, his ineligibility is a result of National Guard recruiting policy, not law.

6. 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)

ORDER

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

May 31, 2019

