

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-246

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XXXXXXXXXXXXXXXXXXXX

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. The Chair docketed the case after receiving the completed application September 3, 2009, 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 June 16, 2010, 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 an "uncharacterized" discharge on June 29, 1988, which was his 17th day of basic training. His DD 214 shows that his discharge was an "entry level separation" with a JGA separation code and an RE-3L reenlistment code. He asked the Board to correct his discharge from uncharacterized to honorable, to upgrade his reenlistment code to RE-1, and to upgrade his separation code to something more appropriate.

The applicant alleged that during his induction he was asked to fill out many forms, and he did so honestly. On one such form, he alleged, he admitted that he had drunk two six-packs of beer in a day. However, he alleged, he had only done so in the days leading up to his enlistment. Nevertheless, he was soon told that he was going to be discharged because of his alcohol consumption. He was told that there was nothing he could do about the discharge but that he would be able to reenlist.

The applicant stated that recently he was discussing his experience with a retired member of the Coast Guard, who asked to see his DD 124. Upon inquiry, he learned that his separation code, JGA, indicates that there was a problem with his conduct or performance during basic training, "which was not the case." The applicant alleged that he got into no trouble at all during basic training and was discharged simply because of his answer to a question about how much alcohol he drank. The applicant asked the Board to correct his DD 214 because it erroneously indicates the reason for his discharge.

The applicant alleged that he discovered the errors in his record on June 1, 2009, when he learned the meaning of the codes, and that the Board should excuse the untimeliness of his application because he was never told what the codes on his DD 214 meant and so he never knew that they have undesirable definitions.

SUMMARY OF THE RECORD

On January 19, 1988, at age 17, the applicant enlisted in the Coast Guard Reserve under the delayed entry program. He reported for basic training on June 13, 1988. During a physical examination on June 15, 1988, the applicant was asked about his alcohol ingestion. The doctor noted his answer as “frequently—2-3 cans/day x 7 months.” The examining physician’s assistant found him not qualified for basic training. The applicant signed a statement indicating that he did not give the medical staff permission to share his medical information with his parents.

On June 17, 1988, a medical board of doctors reviewed the applicant’s case, diagnosed him as alcohol abusive, noted that his condition was not a physical disability, and recommended that he be discharged pursuant to Article 12-B-12 of the Personnel Manual with an RE-3 reenlistment code. The narrative summary of the medical findings states that during a medical interview, the applicant

stated he required 2-3 cans of beer a day in order to function, stating he needed alcohol daily. He stated he drank beer at breakfast-time, on getting up, as well as other times during the day, sometimes as often as 7 beers a day. These 7 beers were spaced over the course of the day but were required. Accordingly, he was referred to Red Tag Review for further inquiry into his alcohol usage. At Red Tag, it was obvious that the use of 7 cans of beer a day did not impress this recruit as an indication of a possible alcohol problem. He was, therefore, referred to the Medical Board for an evaluation.

On June 20, 1988, the applicant was advised of the finding and recommendation of the medical board. He signed a form indicating that he did not want to submit a rebuttal statement.

On June 29, 1988, the applicant received an uncharacterized discharge, pursuant to Article 12-B-20 of the Personnel Manual, with a JGA separation code¹ and an RE-3L reenlistment code.² The applicant signed his DD 214 with this information. There is no documentation of misconduct in his record.

VIEWS OF THE COAST GUARD

On January 12, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case.

¹ Under COMDTINST M1900.4B, the JGA separation code denoted an “entry level separation – performance, conduct or adaptability deficiencies” authorized by the CO of the training center.

² An RE-3L reenlistment code indicates that a member is eligible for reenlistment except for the fact that the member has already undergone one entry-level separation and therefore needs a waiver to reenlist.

The JAG stated that the application was not timely filed because the applicant knew that he had received an uncharacterized discharge in 1988. The JAG argued that the applicant has not submitted any relevant documentation to support his request for relief. Therefore, he stated, the case should be denied for untimeliness and lack of merit.

The JAG adopted the findings and analysis of the case provided in a memorandum by the Coast Guard Personnel Service Command (PSC). The PSC stated that the commanding officer (CO) of the training center was authorized to discharge recruits and that the applicant's administrative discharge was processed correctly because he had "satisfied the conditions for an uncharacterized discharge" under Article 12.B.20. Therefore, the PSC argued, the applicant has failed to substantiate any error or injustice with respect to his discharge.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 27, 2010, the applicant responded to the views of the Coast Guard. The applicant stated that because he was discharged at age 17, he was unaware of the importance and ramifications of what was happening. The applicant admitted that he used alcohol but denied that he had "required" alcohol, as stated in the medical board's report. He stated that he had simply admitted to what he had drunk "in the week leading up to the time of training in 'parties' and such." Therefore, he alleged, it was wrong for the Coast Guard to conclude that he had a drinking problem. The applicant noted that he was not treated for withdrawal symptoms and further stated that although he was told that he was being discharged for alcohol abuse, no one told him that they thought that he *required* alcohol or that they thought it was a long-standing problem.

APPLICABLE REGULATIONS

Under Article 12-B-12 of the Personnel Manual in effect in 1988, the Commandant could authorize the separation of an enlisted member due to "erroneous enlistment" if the member had a condition that was not a physical disability but that interfered with the member's performance of duty. The RE codes authorized for such separations were RE-3G (eligible to reenlist with a waiver) or an RE-4 (ineligible to reenlist).

Under Article 12-B-20.a., the CO of the training center could authorize the "uncharacterized discharges" of members with less than 180 days of active duty who had demonstrated "poor proficiency, conduct, aptitude, or unsuitability for further service during the period from enlistment through recruit training." Article 12-B-20.e. stated that "[a]n uncharacterized discharge will be used for most recruit separations, other than for disability, or prior service personnel entering recruit training." According to the COMDTINST M1900.4B, the only separation and reenlistment codes authorized for an "entry-level separation" under Article 12-B-20 were the JGA and the RE-3L.

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. Under 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22, an application to the Board must be filed within three years after the applicant discovers, or reasonably should have discovered, the alleged error or injustice. The applicant clearly knew that he had received an uncharacterized discharge in 1988 since he signed the DD 214. Therefore, his request for an honorable discharge is untimely. The applicant alleged that he did not understand the meaning of the separation and reenlistment codes on his DD 214, but he admitted that he was advised about his reenlistment eligibility and about the reason for his separation at the time of his discharge. Therefore, the Board finds that his requests regarding his reenlistment code and separation code are also untimely.

3. Pursuant to 10 U.S.C. § 1552(b), the Board may excuse the untimeliness of an application if it is in the interest of justice to do so. In *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that to determine whether the interest of justice supports a waiver of the statute of limitations, the Board “should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review.” The court further instructed 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.” *Id.* at 164-65; see *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

4. The applicant alleged that his military records are erroneous and unjust and that he should have received an honorable discharge, an RE-1 reenlistment code, and a separation code that does not reflect a problem with his performance or conduct. Under the Personnel Manual and the manual for preparing DD 214s (COMDTINST M1900.4B) in effect in 1988, however, new recruits who were deemed unsuitable for service received an uncharacterized discharge with a JGA separation code and an RE-3L reenlistment code. The record shows that soon after reporting for basic training, the applicant advised medical personnel at the training center that he required two to three cans of beer a day in order to function even though he was then just 17 years old. A medical board of physicians recommended that he be discharged. The CO apparently agreed that the applicant’s daily alcohol consumption rendered him unsuitable for military service and discharged him in accordance with the regulations. Although the applicant now denies having told anyone that he needed beer everyday in order to function, his military medical records are presumptively correct and he has not submitted evidence to support his allegations of error or injustice. In light of the medical board’s report, the Board is not persuaded that the applicant’s uncharacterized discharge with a JGA separation code and an RE-3L reenlistment code is erroneous or unjust.

5. The Board notes that although the applicant alleged that the JGA denotes a discharge due to performance or conduct problems, the actual meaning of the JGA code was much broader and included recruits who were deemed unsuitable or unadaptable for military service. In addition, the RE-3L code does not mean that the applicant is ineligible to reenlist; it means that he is eligible to reenlist but would need a waiver because of his prior entry-level separation.

6. Accordingly, the applicant’s request should be denied because of the untimeliness of the application and the lack of merit in his claims.

ORDER

The application of former SR xxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied.

