


DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of Coast Guard Record of:



BCMR Docket
No. 149-96


FINAL DECISION

 Chairman:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on August 20, 1996, upon the BCMR's receipt of the applicant's application for correction.

This is the final decision in this case, dated August 29, 1997. It is signed by three duly appointed members, who were designated to serve as the Board in this case.

Request for Correction

The applicant, a former  (pay grade E-5), asked the Board to upgrade his RE-4 reenlistment code (not eligible for reenlistment) to an RE-1 reenlistment code (eligible for reenlistment). He stated that he wanted the upgrade so that he would have a second chance to serve in the Coast Guard, a chance that was "impossible with a RE code 4." He alleged that the RE-4 code "was not appropriate for the few, minor, regulatory infractions in [his] record."

The applicant admitted that his "inferior appearance" during his service made him "unsuitable" for a Coast Guard career, but he asserted that he had overcome these deficiencies in the course of completing college degrees in law enforcement.

The applicant enlisted in the Coast Guard on active duty on November 30, 1987. He was honorably discharged from the Service on March 29, 1992, after four years and four months of active duty. He was discharged for expiration of enlistment with separation code JBK (completion of required active service).

His military record includes, in addition to the marks and comments infra regarding reenlistment, the following: (1) 10/31/91 - "On several occasions you were found on watch wearing your shirt unbuttoned and your shirt tail out. . . . You have been placed on the weight reduction program and have made little or no progress toward achieving even your allowable weight." (2) 9/25/91 - "[C]ounseled for . . . unacceptable military appearance. . . ." [You appear to be]over the commandant's maximum allowable weight" (3) 4/8/91 - "During the time frame you were repeatedly reminded that your uniform and overall appearance were below the standard expected of a prospective second class." (4) 12/7/89 - Denied permission to participate in March 1990 SWE (Service-wide Examination) due to substandard performance.

Views of the Coast Guard

On July 23, 1997, the Coast Guard recommended to the BCMR that it not grant relief to the applicant. The Coast Guard recommended that it deny relief for failure of proof that the applicant suffered an error or injustice and for untimeliness.

According to the Service, the applicant stated, on January 16, 1992, that he did not intend to reenlist. The Service further stated that the applicant's "subsequent inferior performance and lack of concern for his appearance . . . caused the command to re-evaluate his suitability for reenlistment." The Service alleged that the applicant's allegation of error or injustice was not "supported by evidence" and that there was a presumption that the government officials carried out their duties correctly. The decision that he was not eligible for reenlistment was, in the opinion of the Coast Guard, "correct." The applicant was discharged on March 28, 1992.

The Service also alleged that the application was untimely (not submitted within three years after the alleged error or injustice). The applicant was discharged on March 28, 1992; the application for correction was received by the BCMR three years and five months later, on August 20, 1996.

Response of the Applicant to the Views of the Coast Guard

On August 5, 1997, the BCMR received a submission from the applicant in response to the views of the Coast Guard. The applicant pointed out that the Coast Guard's recommendation on reenlistment "was denied in the final days" of his service. He alleged that there was no evidence that he managed to hide four years of poor performance which was only revealed during the "final weeks."

Conversely, the applicant asked rhetorically how a communications watchstander could function for 2 1/2 years, handle thousands of messages, and have numerous performance evaluations conducted "without mention of such incompetence."

REQUIREMENTS FOR REGULAR REENLISTMENT

The following page 7 (administrative remarks) entry was made in the applicant's record on March 28, 1992: "Member discharged this date Not recommended for reenlistment, assigned reenlistment code of RE-4." The YN1 who wrote this entry gave no reason for the assignment, but he did set forth the applicant's final characteristic average scores. According to the 3/28/92 page 7 entry, they were 3.4 for military factor; 3.6 for team factor; 3.7 for work factor; 3.8 for leadership factor; 3.5 for representing the Coast Guard factor; and 3.8 for human factor.

Article 1.G.5 of the Personal Manual sets forth the eligibility requirements for regular reenlistment. Article 1.G.5.1.a. provides that to be eligible for regular reenlistment a person evaluated, using only one form (nonrated, petty officer, or chief petty officer) during the enlistment, "must have a minimum dimension average equal to above three for the given factor and did not receive an unsatisfactory conduct mark."

On March 29, 1992, the applicant was given a 3.4 for military factor; 3.6 for team factor; 3.7 for work factor; 3.8 for leadership factor; 3.5 for representing the Coast Guard factor; and 3.8 for human factor on his cumulative marks statement. According to his DD Form 214, he was given a Coast Guard Good Conduct Medal for the period ending September 21, 1991.

Article 1.G.5.3 requires that the member be recommended for reenlistment by the officer effecting discharge. This provision is not applicable to this case because the person who failed to recommend the applicant for reenlistment was not a commissioned or a warrant officer.

DENIAL OF REENLISTMENT ELIGIBILITY

On March 2, 1992, the applicant's commanding officer, an LCDR, wrote a lengthy administrative remarks (page 7) entry concluding that the applicant "would not be recommended for reenlistment." The LCDR concluded that the applicant's "lack of concern for [his] appearance and inferior performance have caused a review of that determination and I have decided to assign you a reenlistment code RE-4, not recommended for reenlistment." The LCDR said that

"over the past 5 years" the applicant has demonstrated "unwillingness to follow the appropriate regulations of the Coast Guard Office" and has shown "disregard for military authority and failed to act as directed."

In 1989, the applicant's request to participate in the 1990 SWE was denied due to substandard performance; in 1990, he was counseled regarding some areas that are still in need of improvement; in 1990, the applicant was assigned a mark of "2" in military factor (grooming); in 1991, he was assigned a mark of "2" in military factor (uniform), and a mark of "2" in leadership factor (setting an example), military factor (uniform), and representing the Coast Guard (appearance).

In June 1992, he was determined to be 6.5 pounds overweight. He met his required weight in July 1991, but two months later, in September 1991, he was determined to be 17 pounds overweight. In October, 1991, a page 7 entry was made that stated that his "blatant disregard for the program by continuing to gain weight is cause for a mark of '3' in the conduct category." In January, 1992, he was placed on weight probation.

In March 1992, the LCDR described him as unable to "conform to a military life-style." His "constant disregard" of Coast Guard standards on weight, uniform, and work performance confirm his lack of commitment to a career in the military. The LCDR stated that he is therefore not recommended for reenlistment.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the submissions of the applicant and of the Coast Guard, the military record of the applicant, and applicable law.

1. The Board has jurisdiction to determine the issues in this proceeding under section 1552 of title 10, United States Code.

2. Technically, the application was not filed timely. According to section 52.22 of the Board's regulations, an application is timely if it is received three years after the alleged error or injustice. The applicant was discharged from the Coast Guard on March 28, 1992, but his application for correction was not received by the BCMR until three years and five months later, on August 20, 1996. The breach was technical because the Board is empowered by 10 U.S.C. 1552(b) to waive the limitations period in the interest of justice.

3. It is in the interest of justice to waive a delay of five-months. The Coast Guard did not indicate that it suffered any prejudice by this delay.

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4. The Coast Guard decision to deny reenlistment to the applicant stated that he was overweight, on June 25, 1991 and October 31, 1991. According to administrative remarks entries on other occasions, he was on probation for exceeding the Commandant's maximum allowable weight standards on October 31, 1991, and he was on weight probation on January 15, 1992."

5. The Coast Guard, in response, said that "under the authority of the Commandant, district commanders may issue directives concerning internal administration and personnel over which they exercise command, control, or supervision."

6. The applicant admitted, on August 5, 1997, that he exceeded Coast Guard weight standards. In fact, the record indicates that "almost all of [his] performance related administrative remarks were directly drawn from, or related to [his] weight condition."

7. On the basis of the applicant's persistent violation of Coast Guard weight standards, he should have been discharged with reenlistment code RE-3F (Eligible for Reenlistment except for disqualifying factor: Exceeds weight standards).

8. The Coast Guard committed error or injustice in discharging the applicant with reenlistment code RE-4 because his marks met the standards for regular reenlistment under Article 1.G.5.1 of the Personnel Manual.

9. Accordingly, the applicant's reenlistment code should be changed from RE-4 to RE-3F.

ORDER

The application to correct the military record of [REDACTED]
[REDACTED] USCG is granted by changing his reenlistment code from
RE-4 to RE-3F (Eligible for Reenlistment except for disqualifying factor: Exceeds
weight standards).

