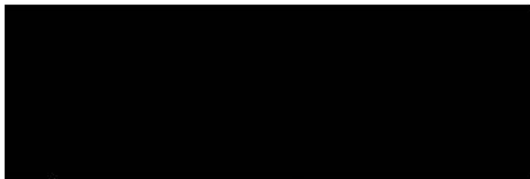



**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:



BCMR Docket No. 1998-002

FINAL DECISION

 Attorney Advisor:

This proceeding was conducted according to the provisions of section 1552 of title 10, United States Code. It commenced upon the BCMR's receipt of the applicant's request on October 2, 1997.

This final decision, dated September 11, 1998, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a former fireman apprentice (FA) in the United States Coast Guard, asked the Board to correct his military record by changing his reenlistment code from RE-4 to one which would allow him to enlist in the Air Force.

ALLEGATIONS OF THE APPLICANT

The applicant alleged that, at the time of his hardship discharge in June 1997, he was not told that the RE-4 reenlistment code he had received would not allow him to reenlist in the Coast Guard or enlist in another service once the hardship was over. The applicant submitted affidavits from his mother and grandmother stating that, because the applicant's brother had moved closer to their home and would now be able to assist them, the hardship which had required the applicant's discharge from the Service no longer existed.

VIEWS OF THE COAST GUARD

On August 7, 1998, the Chief Counsel of the Coast Guard submitted an advisory opinion recommending that the Board deny the requested relief due to "failure of proof."

The Chief Counsel alleged that the applicant's "service record clearly indicates that he was advised on 30 June 1997 that he was not being recommended for reenlistment." According to the Chief Counsel, the same entry in the applicant's record showed that he had also acknowledged having read Article 12-B-53 of the Coast Guard Personnel Manual and having had all his questions answered.

The Chief Counsel stated that a commanding officer has "considerable discretion" in deciding what RE code to assign to members with less than eight years of service. He alleged that, unless the Board finds "clear proof that Applicant was prejudiced by a violation of a procedural right, an error of material fact, or an abuse of discretion," it must presume that the applicant's commanding officer carried out his duty correctly in assigning an RE-4 to the applicant.

The Chief Counsel also stated that the applicant's commanding officer had to choose between an RE-3H and an RE-4 because the applicant was being discharged by reason of hardship, and his choice of the RE-4 code was clearly supported by the applicant's military record, which shows a history of poor performance and conduct and several page 7 (administrative remarks) entries. According to the Chief Counsel, the commanding officer's decision to assign the applicant an RE-4 was "clearly within his discretionary authority" given the applicant's "marginal to poor performance."

On August 18, 1998, the BCMR sent a copy of the Chief Counsel's advisory opinion to the applicant with an invitation to respond within fifteen days. The applicant did not respond.

APPLICABLE REGULATIONS

Article 1-G-5 of the Coast Guard Personnel Manual (COMDTINST M1000.6) sets as one requirement for reenlistment that the officer effecting discharge recommend the member for reenlistment.

Article 2-C-4 of the Coast Guard Manual for Preparing the Certificate of Release of Discharge from Active Duty, DD Form 214 (COMDTINST M1900.4C) requires officers effecting the voluntary discharge of a member for hardship to assign the member a reenlistment code of RE-3H (eligible for reenlistment except for disqualifying factor: hardship) or RE-4 (not eligible for reenlistment).

Article 12-B-4d.(5) of the Personnel Manual requires members who are assigned an RE-4 to be "informed as to the reason for the determination and . . . to sign a statement on CG-3307 of the Personnel Data Record as having been so informed."

Article 12-B-53d.(2) of the Personnel Manual, which the applicant acknowledged reading when he signed the Page 7 entry on the day he was discharged, includes the following information:

Every member discharged who is not recommended for reenlistment shall be informed that:

- (a) Fraudulent enlistment in any branch of the Armed Forces will undoubtedly be detected by fingerprints; and
- (b) If concealment of any previous service and discharge results in enlistment, that individual will be subject to disciplinary authority.

SUMMARY OF APPLICANT'S MILITARY RECORD AND SUBMISSIONS

On March 21, 1995, the applicant enlisted in the Coast Guard for a term of four years. On October 16, 1995, the applicant received orders for a humanitarian assignment to [REDACTED] so that he could be closer to (within 50 miles of) his parents' and grandparents' home. On March 28, 1997, the applicant applied for a "dependency discharge." He submitted death certificates showing that both his father and grandfather had died in December 1995. He stated that his mother and grandmother were frail and unable to cope either physically or emotionally without his help at home. He stated that his only brother was away from home at college and could not return without giving up a scholarship. He also submitted affidavits from his mother and grandmother stating that they badly needed him at home.

On June 30, 1997, the applicant received an honorable discharge from the Coast Guard by reason of "hardship" and with a separation code of KDB (hardship) and a reenlistment code of RE-4 (not eligible for reenlistment). On the same day, the applicant signed the following statement:

I have read and been counseled on the contents of article 12-B-53 of the Personnel Manual, COMDTINST M1000.6 (series) concerning my rights on separation from the Coast Guard. I understand my rights as described therein and have had all of my questions answered.

As outlined in Article 12-D-3, Personnel Manual, COMDTINST M1000.6 (series), I understand that due to the nature and characteristic of my discharge that [sic] I will not be recommended for reenlistment. I hereby acknowledge receipt of my discharge documents.

The applicant's military record contains the following entries which are indicative of the quality of his job performance:

- 7/27/95 Page 7 noting unauthorized absence from assigned duty.
- 7/27/95 Page 7 noting that on June 11, 1995, the applicant had failed to pay a hotel bar tab.
- 9/30/95 Page 7 commendation for assisting in set up and clean up of Coast Guard Day picnic
- 11/9/95 Page 7 noting mark of "Not Recommended" for evaluation period "due to the poor condition of uniforms, marginal grooming and sobriety issues which he has been slow to improve. On occasion he has failed to treat his supervisors with the proper courtesy that they deserve as petty officers. He is beginning to understand his job requirements quicker and with fewer repeated mistakes. This is making work less frustrating for him and easier to work long hours without tiring. He has been late to quarters and several times showed up in a poor uniform because he had been out late the previous night partying. Only within the last month of this evaluation period has he shown a consistent improvement in commitment to this ship and crew. His level of performance is at the minimum requirements for an E-2 and does not meet the requirements for recommendation to E-3. Continued improvement as shown in the last month will increase his value to this command. ..."
- 4/16/96 Page 7 noting misuse of government phone by making personal phone call costing \$2.50.
- 4/15/97 Page 7 noting mark of "Progressing" for evaluation period because the applicant "has not obtained the skill level he should be at for the allotted time he's been onboard. [He] needs supervision in all tasks except for watchstanding and jobs such as cleaning or painting. [He] does not retain the knowledge he learns during new tasks and apply them when asked to complete at a later date. His goals at this time seem to be not on his job at hand but more towards how he can get out of the Coast Guard. His supervisors will continue to work with him and give him the help he needs to obtain the necessary skills required for advancement."
- 6/30/97 DD Form 214 shows award of Commandant's Letter of Commendation (for helping to clean up mud and debris after a flood), National Defense Service Medal, Coast Guard Marksman Rifle Ribbon, and Coast Guard Marksman Pistol Ribbon. Submissions of the applicant include a Coast Guard Meritorious Unit Commendation for help during a flood.

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 section 1552 of title 10, United States Code. The application was timely.

2. The Board finds that, given the applicant's poor job performance, the applicant's commanding officer acted clearly within his discretionary authority in assigning the applicant an RE-4.

3. The applicant alleged that he was not told that the RE-4 reenlistment code would not allow him to reenlist in the Coast Guard or another service once the cause of his hardship was resolved. However, on the day of his discharge, the applicant signed a statement to the effect that he understood that he was not being recommended for reenlistment. He also signed a statement to the effect that he had read Article 12-B-53 of the Personnel Manual.

4. Although the applicant might not remember having been told he would not be recommended for reenlistment in the Coast Guard or any other service, on the day of his discharge, he did sign a statement acknowledging having been informed of these facts.

5. Therefore, the Board finds that the Coast Guard committed no error or injustice in discharging the applicant with an RE-4 reenlistment code.

6. Accordingly, the applicant's request for relief should be denied.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application for correction of the military record of [REDACTED]
[REDACTED] USCG, is hereby denied.

