

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 1998-022

FINAL DECISION

██████████ Deputy Chairman:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on November 4, 1997, upon the Board's receipt of the applicant's application for correction.

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.

The applicant, a former food subsistence specialist third class (FS3; pay grade E-4) in the Coast Guard, asked the Board to upgrade his reenlistment code. He was honorably discharged by reason of completion of obligated service with an RE-4 (not eligible for reenlistment) reenlistment code and a KBK (completion of required obligated service) separation code.

The applicant enlisted in the Coast Guard on August 10, 1993 and was discharged on October 9, 1997. He served four years and two months on active duty.

SUMMARY OF RECORD AND SUBMISSIONS

The applicant alleged that he should not have been assigned an RE-4 reenlistment code. He stated that the problems he encountered on active duty resulted from an attention deficit disorder (ADD).

In October 1996, a physician's assistant thought the applicant suffered from ADHD (attention deficit hyperactivity disorder) and indicated that he needed further evaluation.

On October 17, 1996, the applicant was referred by his command to a licensed social worker for an examination because of the command's concern about his poor job performance. The social worker stated that "[the applicant] is in the low average IQ range. . . . He . . . has exhibited poor judgment in the workplace, and again lacks insight or understanding of the consequences of his behavior."

The social worker recommended that the applicant be tested by a clinical psychologist "to rule out ADD, dyslexia, or any other learning disability that may be interfering with his work performance."

On September 11, 1997, the applicant was tested by the Director of Neuropsychiatry at Naval Medical Center [REDACTED]. He diagnosed the applicant as suffering from ADHD, predominantly inattentive type and probable disorder of written expression. The director stated that the administrative separation that was in progress at that time was indicated. He provided the following impression of the applicant's condition:

An abbreviated study which is consistent with clinically significant adult ADHD possibly with a subtle coexisting learning disorder affecting spelling abilities. Significant symptoms of inattention both as a child and adult are self-reported, and his self-report is supported by the findings from limited objective assessment. Current intellectual functioning falls in the low average-average range and would have tested higher had it not been for mild-moderately deficient performances on subtests assessing freedom from distractibility. Academic skills fall at the upper end of the low average range except spelling, which may reflect a subtle learning disability involving written expression. Overall, the profile is entirely consistent with the long-standing history of attention difficulties.

Service Record Entries

10/31/94 The applicant was assigned a 2 (on a scale of 1 to 7) in professional/specialty knowledge dimensions on his performance evaluation dated 31 October 1994. The applicant had difficulty showing an adequate degree of proficiency in his job and any assignment given.

5/29/95 The applicant was again counseled about his poor performance.

9/15/96 The applicant was counseled because he failed to follow orders not to cook more sausage than was needed. This entry further stated that the applicant had been told several times to ask questions and to write everything down in a green book to help him remember directions..

11/23/96 The applicant received a page 7 entry for outstanding performance from 26 October 96 through 23 November 96. He was commended for combating damage throughout the ship while continuing to prepare the daily meals in a timely manner.

1/10/97 The applicant was counseled on his continued failure to follow assigned tasking and common galley procedures.

1/16/97 The applicant acknowledged in writing that he was told during his reenlistment interview that he was not recommended for reenlistment.

3/14/97 The applicant received a page 7 entry acknowledging that he received marks of 2 in using resources, working with others, professional/specialty knowledge, and quality of work.

3/18/97 The applicant was not recommended for advancement.

9/6/97 The applicant was assigned a 2 in the quality of work professional/specialty knowledge dimension on his enlisted evaluation for the period dated September 8, 1997. On a separate page 7 entry of the same date, he acknowledged that he was not recommended for advancement.

Views of the Coast Guard

On December 15, 1997, the Board received the views of the Coast Guard in this case. The Chief Counsel, on behalf of the Coast Guard, did not recommend that the RE-4 reenlistment code be changed. The Chief Counsel stated that the applicant's RE-4 reenlistment code was supported by his inability to perform assigned duties while in the service and by his diagnosis of ADHD.

The Coast Guard argued that the Board should not upgrade the applicant's RE-4 reenlistment code absent a showing, to a reasonable medical probability, that the condition for which the applicant was discharged was not a permanent condition. The Service stated that the applicant has not provided evidence that his ADHD is anything but a permanent condition rendering him unsuitable for Service.

The Coast Guard further stated the following:

Use of this code serves the purpose for which RE-codes were designed: administrative efficiency in military recruiting of prior service members. The services are not prohibited, if service needs dictate, from recruiting persons with RE-4 codes, It would be inappropriate, however, for the Board to substitute its judgment for that of the Coast Guard so as to defeat the important, intended purpose of the RE-code system.

Applicant's Response to the Views of the Coast Guard

On December 19, 1997, a copy of the Coast Guard views was mailed to the applicant with a letter advising him that he could submit a response. The applicant responded on January 6, 1998.

The applicant stated that until recently he did not know that he suffered from ADD. He stated that he was slow in school but good with his hands. He tried college but had to drop more than half of his classes to keep a C average.

The applicant stated that he took the test four times to attend "A" school to become a cook. He stated that he was allowed to graduate from "A" school even though he was not ready for graduation. Once on the cutter (his assignment after A school), the command referred the applicant to various professionals because of poor work performance. According to the applicant, he was diagnosed as having ADD (attention deficit disorder) approximately one month prior to his discharge from the Service.

The applicant stated that he has taken the drug ritalin. However, because of the side effects associated with ritalin, he has opted for a treatment based on natural supplements. The applicant stated he had had impressive results with this dietary treatment.

The applicant stated that he now believes that he can be ritalin free and do a competent job. He stated that he wants a reclassification of his RE-4 reenlistment code so that he can enter the Reserve.

The applicant submitted copies of his active duty medical evaluations. These were already in his service record.

APPLICABLE REGULATIONS

The Separation Program Designator Handbook authorizes either an RE-1 (eligible for reenlistment) or an RE-4 (not eligible for reenlistment) reenlistment code with the separation code KBK. The Handbook explains the KBK code as follows: "Voluntary discharge allowed by established directive upon completion of required service."

The Separation Program Designator Handbook authorizes the assignment of an RE-3G or an RE-4 reenlistment code with the Kfv separation code. The SPD Handbook states that the Kfv separation code for "condition, not a disability" is appropriate when there is a "[v]oluntary discharge directed by established directive when a physical disability, which interferes with the performance of duty (Enuresis, motion sickness, allergy, obesity, fear of flying, et al.)."

FINDINGS AND CONCLUSIONS

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

1. The BCMR has jurisdiction over this matter pursuant to section 1552 of title 10, United States Code. The application is timely.

2. Notwithstanding the views of the Coast Guard, the Board finds that it was an injustice to assign the applicant an RE-4 reenlistment code. This code should be changed to an RE-3G (eligible for reenlistment except for disqualifying factor). The applicant's illness, ADHD, was newly diagnosed, beyond his control, a significant factor in his inability to bring his performance into compliance with the expectations of his superiors, and potentially treatable. Although the applicant did not submit any post discharge medical evaluations, he stated that he has been treated with the drug, ritalin.

3. The applicant's command was aware that the applicant had some sort of a problem (other than misconduct or a desire to get out of the Coast Guard) and sought help for him. It was because of the command's referrals that the applicant's disorder was eventually diagnosed. While the applicant was on active duty for approximately four years, his disorder was not medically diagnosed until approximately one month prior to his discharge.

4. The Board is not persuaded that the applicant's CO considered the applicant's illness in assigning him an RE-4 reenlistment code. The Board notes that the applicant's reenlistment interview wherein he was advised that he would not be recommended for reenlistment and the negative advancement recommendations occurred prior to his ADD diagnosis. The reenlistment interview occurred on January 16, 1997, the most recent negative advancement recommendation occurred on September 6, 1997 and the medical evaluation at the National Medical Center, Portsmouth, occurred on September 11, 1997. The applicant was discharged on October 9, 1997. There was little opportunity between the applicant's ADD diagnosis and the date of his discharge to determine if his performance would have improved with treatment for the disorder. It is unjust to assign a negative reenlistment code to a member on account of an illness that can be treated.

5. The Board finds that an RE-3G (condition not a disability) is appropriate in this case because it more accurately describes and explains the applicant's performance while on active duty. Moreover the RE-3G reenlistment code would allow the applicant the opportunity, should he overcome his condition, to apply for enlistment in the Reserve.

6. The Separation Program Designator Handbook directs that for an RE-3G reenlistment code, the separation authority should be Article 12-B-12 of the Personnel Manual, the separation code should be KFV, and the narrative reason should be a "condition not a disability".

7. The Coast Guard committed an injustice in assigning the applicant an RE-4 reenlistment code. The RE-3G reenlistment code would be more accurate in this case. Accordingly, relief should be granted to the applicant.

[SIGNATURES AND ORDER ON NEXT PAGE]

ORDER

The application of
for correction of his military record is granted. His DD Form 214 shall be
corrected in the following manner:

Block 25 shall be corrected to show Article 12-B-12, Personnel Manual as
separation authority.

Block 26 shall be corrected to KFV (condition not a physical disability) as
the separation code.

Block 27 shall be corrected to show RE-3G as the reenlistment code.

Block 28 shall be corrected to show convenience of the government as the
reason for separation.

