

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 1998-033

FINAL DECISION

██████████ Deputy Chairman:

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

This final decision, dated September 24, 1998 is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a former boatswain's mate third class (BM3; pay grade E-4), stated that he received an "honorable discharge but [the] reason . . . states misconduct." (The Board interpreted the applicant's statement as a request to change the reason for his discharge. The applicant did not state what the reason for discharge should be.) The applicant also received an RE-4 (not eligible for reenlistment) reenlistment code.

The applicant enlisted in the Coast Guard on November 10, 1992, and was discharged on March 26, 1996. He spent three years, four months, and 15 days on active duty in the Coast Guard. Prior to enlisting in the Coast Guard, the applicant served in the Army.

SUMMARY OF RECORD AND SUBMISSIONS

The applicant provided the following statement:

I was asked by the command if I wanted to get out of the Coast Guard. I said yes because I was having marital problems and I just wanted out of the area. Before this a Mr. [illegible] told me that I was being kicked out of the Coast Guard[.] . . . [A] few days later the command told me that they could not kick me out and that is when they asked me [if I wanted to get out].

[Two] months ago I talked to a National Guard Recruiter about going in the National Guard. After he reviewed my DD 214, he told me that I also had been coded in for not being able to return to the service until March

98. I was never told of this when I was discharged. I had no counsel, no disciplinary action taken.

The applicant's service record shows that on February 15, 1996, the applicant's CO informed the applicant that he was recommending the applicant for discharge by reason of misconduct due to frequent involvement with civilian authorities. (The subject line in that letter to the applicant read "recommendation for misconduct discharge [capital lettering deleted]." The applicant acknowledged notification of the proposed discharge, did not object to the discharge, and submitted a statement in his own behalf. In his statement with respect to the discharge, the applicant stated that the way he handled his personal problems may have been wrong, but he wanted to keep them out of the work place. He stated that the thought of losing his wife and son caused him to lose control. He stated that there was no one for him to talk to. He indicated that he suffered from and has been treated for depression, but he did not want anyone to know this. He stated that he believed that his job performance was all that mattered.

The CO further explained his reasons for requesting the applicant's discharge in a letter to the Commander, Coast Guard Personnel Command (CGPC). The CO stated as follows:

[The applicant] was arrested by city of [REDACTED] police on 27 January 1996 for family violence when he assaulted the boyfriend of his estranged wife with a knife. [The applicant] received injuries during the assault which required medical attention. [The applicant] denied that he had been arrested when questioned about the incident. [The applicant] was listed as a suspect by the [REDACTED] police in an incident of assault by threat when he confronted his estranged wife's boyfriend threatening to kill him on February 12, 1996.

The Commander, CGPC, approved the applicant's discharge on March 4, 1996.

Views of the Coast Guard

On June 25, 1998, the Chief Counsel submitted the views of the Coast Guard. He did not recommend that any relief be granted to the applicant. He stated that the applicant had failed to prove that the Coast Guard committed an error in discharging the applicant by reason of misconduct and in assigning him an RE-4 reenlistment code.

The Chief Counsel noted that there were police reports in the applicant's military record that support the basis for the applicant's discharge as outlined by the CO in his letter to the Commander, CGPC.

The Chief Counsel stated that the applicant, in his statement, did not dispute the CO's characterization of his actions, but the applicant admitted to them.

The Chief Counsel stated that the applicant had no right to counsel at the government's expense, inasmuch as the CO recommended that he receive an honorable discharge.

The Chief Counsel argued that both the applicant's discharge by reason of misconduct and his RE-4 reenlistment code were correct. The Chief Counsel further stated that there is no requirement for disciplinary action before a member is separated for misconduct. That is particularly so in this case because the applicant was notified that he was recommended for discharge because of misconduct, had exhibited a pattern of discreditable involvement with civilian authorities, and did not offer any evidence to rebut the evidence of misconduct.

The Chief Counsel stated that the applicant did not have to be counseled regarding his eligibility for reenlistment. He also stated that the applicant did not present any evidence that he was misled regarding the RE-4 reenlistment code.

Applicant's Response to the Views of the Coast Guard

In response to the views of the Coast Guard, the applicant submitted a statement from his wife. She stated that she and the applicant had marital problems. At one point after mentioning these problems to one of the applicant's superiors, the applicant was taken to a mental hospital. She stated that the applicant's doctor stated that he needed marriage counseling. She stated that she was told by the applicant's chief petty officer that the hospitalization would have no effect on the applicant's career.

The applicant's wife stated that the "other man" was the instigator of the incidents that led to the police involvement for which the applicant was discharged.

The applicant's wife stated that the applicant's high performance marks should count for something. She stated that when the applicant made the choice to get out of the Coast Guard, both she and the applicant were assured that it would not be "dishonorable." She stated that the applicant was a criminal justice major at the time of his discharge and he knew that "any discredit on his discharge would affect his chosen career."

APPLICABLE REGULATIONS

Article 12-B-18b. of the Personnel Manual states that "[t]he Commander, Military Personnel Command may direct the discharge of a member for misconduct in any of the following cases:

"(5) Frequent involvement of a discreditable nature with civil or military authorities."

The Separation Program Designator Handbook, section two, authorizes the assignment of an RE-4 reenlistment code with the JKN separation code. The JKN code indicates that there has been an "[i]nvoluntary discharge directed by established directive (no board entitlement) when member has established a pattern of misconduct consisting solely of minor disciplinary infractions."

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 was timely.

2. The applicant has not established that the Coast Guard committed an error or injustice in discharging him by reason of misconduct or in assigning him an RE-4 reenlistment code. The applicant acknowledged, in writing, that his CO was recommending discharge by reason of misconduct. The applicant did not object to the discharge in his written statement, although he offered an explanation for his actions in that statement. The applicant's reasons and explanations do not mean that the Coast Guard erred in discharging him by reason of misconduct.

3. Pursuant to the Personnel Manual and the Separation Program Designator Handbook the discharge by reason of misconduct and the RE-4 reenlistment code were appropriate.

4. The applicant has failed to prove an error or injustice. Accordingly, the applicant's request for relief should be denied.

ORDER

The application of
his military record is denied.

JSCG, for correction of

