

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-157

FINAL DECISION

██████████ Attorney-Advisor:

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The application was filed on July 13, 1999, and completed on May 1, 2000, upon receipt of the applicant's military records.

This final decision, dated March 22, 2001, is 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, a former xxxxxxxxx, asked the Board to correct his military record by changing his reenlistment (RE) code from RE-3L (entry level separation; must have waiver to reenlist) to RE-1 (eligible for reenlistment). He alleged that he was wrongly discharged and assigned an RE-3L reenlistment code due to a misunderstanding about information on his enlistment papers. He alleged that he did not report any arrests on his enlistment papers because he did not know his juvenile record was "valid." In addition, he alleged that he admitted having used marijuana a different number of times to a psychologist from the number of times he reported on his enlistment papers. He argued that these are both "petty reasons to be discharged" and asked to be given another opportunity to serve in the military.

SUMMARY OF THE APPLICANT'S MILITARY RECORD

On April 14, 199x, the applicant enlisted in the Coast Guard. On that day, he signed a DD 1966 enlistment form, denying having ever used illegal substances. He wrote his initials beside the "no" response for the question "Have you ever tried or

used or possessed any narcotic, ... or cannabis (to include marijuana or hashish) ... except as prescribed by a licensed physician?" Directly underneath that question and response, he signed a certification stating that the information on the form was true and that he knew that, if the information were proved false, he could receive a less than honorable discharge. The form provides space for a recruit to explain "yes" responses, and three of the applicant's responses to other questions are explained.

The next day, April 15, 199x, he signed an SF-93 medical history form, admitting to the use of illegal substances.

On May 1, 199x, the applicant was discharged from the Coast Guard. He was assigned an "uncharacterized" discharge, an RE-3L reenlistment code, and a JGA separation code, which reflects an involuntary discharge "when a member has inability, lack of effort, failure to adapt to military or minor disciplinary infractions during the first 180 days of active military service." The narrative reason for separation shown on his discharge form DD 214 is "entry level separation."

VIEWS OF THE COAST GUARD

On November 8, 2000, the Chief Counsel of the Coast Guard submitted an advisory opinion recommending that the Board dismiss the applicant's case for failing to exhaust administrative remedies or deny relief for lack of merit.

The Chief Counsel argued that the case should be dismissed because the applicant has not exhausted his administrative remedies by applying to the Discharge Review Board (DRB) for "a change in the character of, and/of reason for, the discharge." He argued that the applicant's "premature application to the BCMR deprives the Coast Guard of opportunities to develop the relevant factual record and review its own actions."

Regarding the merits of the application, the Chief Counsel argued that the applicant has not submitted any evidence in support of his allegation that would overcome the presumption that Coast Guard officials acted correctly, lawfully, and in good faith in carrying out their duties with respect to his discharge. *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979). The Chief Counsel alleged that "uncharacterized" "entry level" discharges are proper for members discharged within 180 days of enlistment under Article 12.B.20.a. of the Personnel Manual and that the applicant has failed to prove that the Coast Guard committed any procedural or substantive error in discharging him.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 9, 2000, the BCMR sent a copy of the Chief Counsel's advisory opinion to the applicant with an invitation to respond within 15 days. The applicant responded on December 23, 2000.

The applicant stated that he did not agree with the Chief Counsel's recommendation. He said that the difference between the forms he signed on April 14 and 15, 199x, was a simple mistake and that he "didn't intentionally try to mislead the Coast Guard in any way." Moreover, he alleged that at the time of his discharge, he was told he could reenlist at any time. However, when he tried to reenlist, the recruiter refused to consider getting a waiver for him.

APPLICABLE REGULATIONS

Under 33 C.F.R. § 51.3, a "former member may apply to the DRB for a change in the character of, and/or the reason for, the discharge."

Article 12.B.20 of the Personnel Manual provides that the commanding officer of the Coast Guard Training Center is authorized to award "uncharacterized" discharges for members who have completed fewer than 180 days of active service and who have "demonstrated poor proficiency, conduct, aptitude or unsuitability for further service during the period from enlistment through recruit training." Article 12.B.20.e. states that "an uncharacterized discharge will be used for most recruit separations, other than for disability." Article 12.B.20.f. states that such discharges "should not be initiated until the member has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records."

Article 12.B.18.b.(2) of the Personnel Manual authorizes the Commander of the Military Personnel Command to discharge an enlisted member for misconduct upon discovery that the member "[p]rocure[d] a fraudulent enlistment, induction, or period of active service through any deliberate material misrepresentation, omission or concealment which if known at the time might have resulted in rejection."

The Separation Program Designator (SPD) Handbook states that members who are involuntarily discharged because of "inability, lack of effort, failure to adapt to military or minor disciplinary infractions during the first 180 days of active military service" receive a JGA separation code and an RE-3L reenlistment code.

The SPD Handbook also states that members with less than 8 years of active service who are involuntarily discharged because they have "procured a fraudulent enlistment, induction, or period of military service through deliberate material misrepresentation, omission or concealment" shall be assigned a JDA separation code, an RE-4 reenlistment code, and "fraudulent entry into military service" as the narrative reason

for separation shown on their discharge forms. Members may be assigned either an RE-4 or an RE-3E reenlistment code if they are involuntarily discharged because they “erroneously enlisted, reenlisted, extended or [were] inducted into a Service component.” Such members are assigned a JFC separation code and “erroneous entry (other)” as a narrative reason for separation.

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 Chief Counsel argued that the case should be dismissed for failure to exhaust administrative remedies by applying to the DRB for a change of discharge. Under 33 C.F.R. § 51.3, veterans “may apply to the DRB for a change in the character of, and/or the reason for, the discharge.” However, the applicant has asked only for a change in his RE code. Although a change in the character of discharge ordered by the DRB may result indirectly in a change of RE code and the BCMR sometimes revises discharges along with RE codes, veterans need not apply to the DRB before applying to the BCMR when their requests concern solely their RE codes. Moreover, even if the BCMR denies the applicant’s request, he may still seek relief by applying to the DRB for a correction of his character of or reason for discharge any time within 15 years of his date of discharge.

3. The applicant alleged that he was discharged and assigned an RE-3L reenlistment code due to a mistake and misunderstanding on his enlistment papers. He alleged that he did not intend to mislead the Coast Guard, although he admitted that information on his discharge papers concerning his use of marijuana and his criminal record was false. However, his initials and signature on the DD 1966 indicate that he intentionally hid his previous drug use when he enlisted on April 14, 199x. Moreover, he did so knowing that any false information on the form might result in a less than honorable discharge.

4. Although the applicant could have been discharged for misconduct due to his fraudulent enlistment, under Article 12.B.20. of the Personnel Manual, it was within the discretion of the commanding officer of his training center to award him an “uncharacterized” discharge for poor conduct or unsuitability, along with a JGA separation code and an RE-3L reenlistment code. These are the codes specifically designated for recruits in training who prove unsuitable for military service.

5. Absent strong evidence to the contrary, Coast Guard officials are presumed to have acted correctly, lawfully, and in good faith in carrying out their duties. *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979). The applicant submitted no evidence indicating that the commanding officer of the training center erred or committed an injustice in discharging him with an RE-3L reenlistment code.

6. The applicant has not proved by a preponderance of the evidence that his commanding officer committed any error or injustice in discharging him with an RE-3L reenlistment code. Although at least one military recruiter has apparently refused to seek a waiver for the applicant so that he can reenlist, that refusal does not prove that the Coast Guard committed any error or injustice with respect to his RE code.

7. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of XXXXXXXX, USCG, for correction of his military record is hereby denied.

