

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


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Application for Correction  
of Coast Guard Record of:

BCMR Docket  
No. 2000-081

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**FINAL DECISION**

 Chairman:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on March 1, 2000, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated January 25, 2001, is signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST**

The applicant, a former seaman's apprentice (SA; pay grade E-2), asked the Board to change his reenlistment code of RE-4 (not eligible for reenlistment) to a code indicating he is eligible for reenlistment with a waiver (RE-3). He also requested that his place of birth be corrected.

The applicant enlisted in the Coast Guard on October 16, 1995, under an initial contract for four years. He was honorably discharged on September 15, 1999, with a JBK separation code (completion of required active service) and an RE-4 reenlistment code (not eligible for reenlistment). While on active duty, his highest pay grade was E-2.

**VIEWS OF THE COAST GUARD**

On August 22, 2000, the Board received the advisory opinion of the Coast Guard from the Chief Counsel of the Coast Guard. The Chief Counsel recommended that relief be granted to the applicant.

The Chief Counsel stated that under Article 12 of the Personnel Manual, a member who fails to attain grade E-3 during his initial four-year enlistment is ineligible to reenlist. Article 12.B.4.a. provides in part as follows:

Generally, the Service does not allow commanding officers to reenlist a member in the E-2 pay grade when they complete four years of active duty . . . [C]ommanding officers shall assign members in the E-2 pay grade at the end of their four-year enlistment or active duty period the designation "Not Eligible for Reenlistment" (Reenlistment Code RE-4).

The applicant failed to reach the grade of E-3 during his first enlistment, which means that he was ineligible to reenlist as provided by Article 12.B.4.a.

The Chief Counsel also stated that the applicant might be barred from reenlistment by requirements in Article 12.G.3. of the Personnel Manual. This section establishes "professional growth points" for enlisted members. If a member is at grade E-2 and has four years of active military service, he or she cannot extend beyond four years of service.

The Chief Counsel, on the other hand, found that the Coast Guard failed to follow its own regulations when it assigned the applicant an RE-4 reenlistment code without affording him notice and the opportunity to appeal in accordance with the provisions of Article 12.B.5 of the Personnel Manual. The Chief Counsel stated that a member with less than eight years of military service is entitled to know why he or she is ineligible to reenlist, and he or she may submit a written appeal. According to the Chief Counsel, the applicant's record "failed to reveal documentation of the required notification of discharge and appellant rights."

The Chief Counsel said that an agency's violation of its own regulations is unconstitutional if the regulations are necessary to afford a member procedural due process. *May v. Gray*, 708 F. Supp. 716, 723 (1988). The military, he said, is bound by due process as governed for the Coast Guard by Article 12.B.5 of the Personnel Manual. The Chief Counsel said that the Coast Guard violated its own regulations by its failure to afford applicant notice and by its failure to comply with the terms of Article 12.B.5 of the Personnel Manual. Although the applicant's discharge was proper, the assignment of the RE-4 reenlistment required proper notice.

The Chief Counsel noted that the applicant's officer-in-charge spoke very highly of the applicant's performance and said he would not hesitate to recommend the applicant for a waiver of the regulation so that he could receive an RE-3 code. The Chief Counsel also noted that the applicant did not commit misconduct or have any serious disciplinary incidents.

Accordingly, the Chief Counsel recommended that the applicant's reenlistment code be changed from RE-4 to RE-3R (eligible for reenlistment except for professional growth points).

The Coast Guard also issued a correction to the applicant's DD Form 214 (DD Form 215) and thus granted applicant's request to have his place of birth corrected.

#### APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 28, 2000, the Board sent a copy of the views of the Coast Guard to the applicant, with an invitation to him to submit a response. On September 14, 2000, the Board received a response from the applicant stating that he agreed with the finding of the Coast Guard that "due process was not afforded to [him]" and with the recommended change in his reenlistment code.

#### 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 submission, and applicable law:

1. The Board has jurisdiction of this case pursuant to section 1552 of title 10, United States Code. The application is timely.
2. The applicant was honorably discharged on October 15, 1995 at pay grade E-2 after approximately four years of active duty, with a JBK separation code and a reenlistment code of RE-4 (not eligible for reenlistment).
3. Article 12.B.4.a. of the Personnel Manual provides that a member who fails to attain the grade of E-3 prior to the end of his first enlistment is not eligible to reenlist. That section provides that commanding officers shall assign members in the E-2 pay grade at the end of four years active duty reenlistment code RE-4.
4. Article 12.G.3 of the Personnel Manual (professional growth points) also provides that a member is ineligible for reenlistment if he or she fails to attain E-3 by the end of the first enlistment.
5. The Coast Guard discharged the applicant without notice and without informing him of the opportunity to appeal the nature of his discharge. He was not notified why he was ineligible to reenlist, and he was not notified that he could submit a written appeal within 15 days of notification. Such notice and opportunity are required by Coast Guard regulations.
6. An agency's violation of its own regulations is unconstitutional where, as

here, the regulations are necessary to afford a member procedural due process. Having elected to assign the applicant an RE-4 reenlistment code under Article 12.B.4.a., the Coast Guard could only do so by complying with the terms of Article 12.B.5.

7. Accordingly, the applicant's reenlistment code should be changed from RE-4 to RE-3R (eligible for enlistment except for disqualifying condition: professional growth points).

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**[ORDER AND SIGNATURES ON FOLLOWING PAGE]**

**ORDER**

The military record of former [redacted] shall be corrected by changing the reenlistment code assigned to him from RE-4 (not eligible for reenlistment) to RE-3R (eligible for reenlistment except for disqualifying condition professional growth points).

Administrative relief was previously granted as to applicant's request to have his place of birth corrected on his official record.

