

**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2010-232

**XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX**

FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case upon receipt of the applicant's completed application on August 24, 2010, and subsequently prepared the final decision for the Board as required by 33 CFR § 52.61(c).

This final decision, dated May 19, 2011, is approved and 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 asked the Board to correct her record by changing her RE-3B¹ (parenthood) reenlistment code to RE-1 (eligible to reenlist) so that she can return to the Service. The applicant stated that at the time, she had no choice but to request discharge because she was the single parent of three small children, with no support system. She stated that she has been remarried for 12 years and that her husband has adopted her children. The last adoption occurred in March 2000. She stated that she has earned a degree in accounting since her discharge.

The applicant enlisted in the Coast Guard on September 26, 1989 and was discharged on April 19, 1995. The applicant listed July 10, 2010 as the date she discovered the alleged error. She explained that her reenlistment code was not in error, but she wanted it amended so that she could reenlist. In support of her application, she offered her college transcript, marriage license, and her children's adoption decrees.

¹ RE-3B means that a member is eligible to reenlist, except for unavailability for worldwide assignment due to parenthood.

Applicant's Discharge from the Coast Guard

On March 6, 1995, the applicant requested to be discharged from the Coast Guard due to dependency. On March 9, 1995, the applicant's commanding officer (CO) recommended that the Commander, Military Personnel Command approve her request for discharge. The CO noted that there was no solution readily available except discharge.

On March 23, 1995, the Commander, Military Personnel Command approved the applicant's discharge. The applicant was honorably discharged on April 19, 1995 by reason of convenience of the government, with a KDG separation code and a RE-3B reenlistment code. The applicant acknowledged receipt of her DD 214 (discharge document) with her signature.

VIEWS OF THE COAST GUARD

On December 17, 2010, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief as recommended by the Commander, Personnel Service Center (PSC). PSC noted that the application was untimely, but stated that it should still be considered because of its merits.

On the merits, PSC noted that the applicant's RE-3B reenlistment code was correct and in accordance with policy. PSC also noted that the reenlistment code is not a bar to reenlistment and that the applicant is eligible to reenlist in the Coast Guard. However, PSC stated that she must seek reenlistment through a recruiter and prove "the disqualifying factor has been resolved before reenlistment can take place."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 20, 2010, the Board mailed a copy of the views of the Coast Guard to the applicant for a response. The Board did not receive a reply from the applicant.

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 of the United States Code.

2. The application was not timely. To be timely, an application for correction of a military record must be submitted within three years after the applicant discovered or should have discovered the alleged error or injustice. See 33 CFR 52.22. The applicant was discharged in 1995 because of parenthood. Her current husband adopted the last of her children on March 21, 2000, which cured her unavailability for worldwide assignment due to parenthood. Therefore, the applicant should have filed an application with the Board within 3 years of March 21, 2000. She waited another 10 years before filing an application with the Board. Although the applicant listed July 10, 2010 as the date she discovered the alleged error, she knew at the time of

her discharge in 1995 that she had an RE3-B because it was listed on her DD 214. The applicant has not put forth a persuasive reason why she did not file her application sooner.

3. However, the Board may still consider the application on the merits, if it finds it is in the interest of justice to do so. In Allen v. Card, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that in assessing whether the interest of justice supports a waiver of the statute of limitations, the Board "should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review." The court further instructed that "the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review." *Id.* at 164, 165. See also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

4. With respect to the merits, the Board notes that the applicant stated that the reenlistment code was not an error. The Board agrees. The RE-3B was assigned in accordance with Coast Guard policy and accurately describes the reason for her discharge. Nor does the Board find the RE-3B reenlistment code to be an injustice because it is not a bar to reenlistment. The applicant is eligible to reenlist if otherwise qualified and if she can persuade a recruiter that her parenthood issue has been resolved.

5. Accordingly, the applicant's request should be denied because it is untimely and because it lacks merit.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former XXXXXXXXXXXX, USCG, for correction of her military record is denied.

