

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2012-219**

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**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 application upon receipt of the applicant's completed application on August 3, 2012, and subsequently prepared the final decision as required by 33 CFR § 52.61(c).

This final decision, dated May 30, 2013, 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 military record by upgrading her RE-4 (not eligible to reenlist) reenlistment code to RE-3P (eligible to reenlist; except for a physical disability).<sup>1</sup> The applicant stated that she was discharged because of sea sickness, but the RE-4 reenlistment code she received prevents her from enlisting in a non-seagoing branch of the military.

The applicant stated that her chain of command and the medical staff on board the cutter to which she was assigned were indifferent to her medical condition, and that indifference created a hostile work environment for her. She stated that because of coercion she waived her right to make a statement regarding her discharge and did not object to it. She stated that as a junior enlisted member she was not fully aware of her rights or the seriousness of her situation.

While on active duty, the applicant was punished at captain's mast on March 7, 2009, for dereliction of duty and for failing to report for watch duty at the appointed time, in violation of Articles 134 and 92 of the Uniform Code of Military Justice. An entry in her service record

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<sup>1</sup> On March 18, 2010, the Coast Guard issued ALCOAST 125/10 that eliminated the letter codes that were previously associated with the RE-3 reenlistment code. For example prior to the ALCOAST, a member under the applicant's circumstances might have received an RE-3X for the JFV separation code, but under the current policy, the member would receive an RE-3.

describes her actions as follows: “Absent without leave for failing to show up for duty cook assignment, then being found in the berthing areas on the phone during the time she was supposed to be in the galley preparing the morning meal.” She was punished with 45 days of restriction and reduced to pay grade E-3. She alleged that she was punished at captain’s mast because her mast representative was less than helpful.

The applicant submitted medical entries that show she was diagnosed with sea sickness and with an adjustment disorder. She stated that she was referred to a counselor to help manage the stress she suffered due to the hostile work environment.

Prior to filing her application with the Board, the applicant asked the Discharge Review Board (DRB) to upgrade her reenlistment code. On January 4, 2012, the DRB denied her request. She alleged that the DRB’s decision was based in part on her captain’s mast for making a phone call during duty hours, which according to the applicant, was for the purpose of discussing her medical condition. She stated that the only other basis cited by the DRB for not upgrading her reenlistment code was one instance of tardiness. She stated that her sea sickness and the adverse effects from the prescribed medication were the reasons for her tardiness

### **BACKGROUND**

The applicant enlisted in the Coast Guard on November 27, 2007. After recruit training she attended Food Specialist “A” school. She reported to her command, a Coast Guard cutter, on August 10, 2008. The record shows that the applicant was diagnosed with sea sickness on August 29, 2008 and was unable to complete two missions with her unit due to the condition. She was treated for this condition on several occasions. An April 13, 2009 separation physical noted that she had chronic seasickness that disrupts her daily routine while underway and in port despite premedication and other prophylaxis. The medical record shows also that the applicant was diagnosed with an adjustment disorder.

On March 8, 2009, the applicant’s commanding officer (CO) informed the applicant that the CO had initiated action to discharge her from the Coast Guard by reason of convenience of the government due to chronic sea sickness.

On March 8, 2009, the applicant acknowledged the proposed discharge, waived her right to make a statement, and did not object to being discharged.

On March 9, 2009, the CO recommended that the Commander, Coast Guard Personnel Service Center (PSC) discharge the applicant with an honorable discharge due to chronic motion sickness. The CO attached a narrative summary of the applicant’s military record that showed that an administrative remarks page (page 7) was placed in her record documenting the fact that she was consistently late for work, watch, and duty cook assignments. The narrative also indicates that she was punished at captain’s mast on March 7, 2009, for dereliction of duty and absent without leave for failing to show up for cook duty assignment. According to the narrative, the applicant was found in the berthing area on the phone during the time she was supposed to be in the galley preparing the morning meal. Her punishment included a reduction in rate. The narrative noted that while assigned to the cutter, the applicant had received one performance

evaluation as a result of her captain's mast which contained mostly marks of 2, an unsatisfactory conduct mark, and a recommendation against advancement.

A medical officer at the Integrated Support Command Kodiak recommended that the applicant be administratively discharged from the Coast Guard due to chronic motion sickness. The medical officer stated that the applicant's condition rendered her unsuitable for continued service in the Coast Guard.

On April 13, 2009, PSC approved the applicant's honorable discharge from the Coast Guard for the convenience of the government due to a "condition, not a disability that interferes with performance of duty."

The applicant was honorably discharged on May 11, 2009, with a JFV (condition not a disability) separation code and an RE-4 reenlistment code.

As stated above, on January 4, 2012, the DRB denied the applicant's request for upgrading her reenlistment code. The DRB stated that based upon the applicant's only enlisted employee review (performance evaluation) in March 2009 documenting her captain's mast, her marks were below those required for reenlistment under Article 1.A.5.a.(1) of the Enlisted Accessions, Evaluations, and Advancements Manual. The DRB noted that she received a factor average of 2.28 in "leadership," 2.25 in "performance," and 2.0 in "military," where the regulation required a factor average equal to or above three for the given factor. The DRB stated that the applicant's conduct and performance while serving in the Coast Guard do not warrant a more favorable reenlistment code than the RE-4.

### **VIEWS OF THE COAST GUARD**

On March 14, 2013, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in accordance with a memorandum from the Commander, Personnel Service Center (PSC).

The JAG argued that the application was not timely, even though the applicant filed her application with the Board within three years after the DRB's decision. The applicant was discharged on May 11, 2009 and filed her application with the DRB on June 4, 2011. The DRB issued its decision in the applicant's case on November 15, 2011, and the applicant was notified of that decision on January 10, 2012. She filed her application with the Board on August 23, 2012. The JAG argued that even though the BCMR has jurisdiction over an application until the applicant exhausts all of his or her administrative remedies, and the DRB is a potential avenue for an administrative remedy, the applicant had from January 10, 2012 (date of letter notifying her of the DRB decision) until May 11, 2012 (three years from the date of her discharge) to file a timely application with the Board.

The JAG stated that even if the application was timely, the Coast Guard did not commit an error or injustice by assigning the applicant an RE-4 reenlistment code. In this regard, the JAG argued that the applicant failed to prove by a preponderance of the evidence that the Coast Guard committed an error or injustice by providing her with an RE-4 reenlistment code. The

JAG stated that under the Separation Program Designator (SPD) Handbook, a member discharged due to a “condition, not a disability” may be assigned either an RE-3 or RE-4 reenlistment code. The JAG argued that the discharge authority used his discretion and determined that the applicant should be given an RE-4 reenlistment code based upon his review of the applicant’s record, which included a substandard enlisted employee review (performance evaluation).

The JAG also argued that the applicant failed to prove by a preponderance of the evidence that the Coast Guard committed an error or injustice when the DRB reviewed her discharge and denied relief. The JAG stated that the DRB noted that “[t]he applicant’s conduct and performance while serving in the Coast Guard do not warrant a more favorable reenlistment code than RE-4.”

Last the JAG argued that any error on the part of the Coast Guard served to benefit the applicant because by receiving an honorable discharge, the applicant received a better discharge characterization than she should have received. Under Chapter 12.B.2.f.1.d. of the Coast Guard Personnel Manual then in effect, stated that to be eligible for an honorable discharge a member being discharged “must have a minimum characteristic average of 2.5 in each performance factor over the period of enlistment. The applicant did not meet this requirement because she had an average below 2.5 in three performance factors.

The JAG attached comments from PSC who recommended denying relief for the reasons articulated by the JAG.

### **APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On March 18, 2013, the Board sent 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.

### **APPLICABLE REGULATIONS**

#### ***Coast Guard Personnel Manual***

Article 1.G.5. states that to be eligible for regular reenlistment, a person must have a minimum dimension average equal to or above three in a given factor and the officer effecting discharge must recommend the member for reenlistment.

Article 12.B.1.a. established the second chance program that permits the waiver of almost all policy discharge authorities to allow for the retention of members with potential for further useful service, despite the member having made youthful mistakes that would otherwise result in discharge.

Article 12.B.53.e.2. states that a member shall be required to surrender all outer garments and distinctive parts of the uniform on separating from active duty if the member’s commanding officer has reason to believe the individual will bring discredit on the uniform or if the member’s

commanding officer believes the member's service record or the circumstances surrounding the discharge warrant surrendering the uniform.

### ***Separation Program Designator (SPD) Handbook***

For the JFV separation code, the SPD Handbook authorizes an RE-3 or RE-4 reenlistment code. The JFV separation denotes an involuntary discharge that is directed by established directive when a member has a condition, not a disability that interferes with his or her 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 military record and submissions, the Coast Guard's submission and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code. The application was timely because the applicant submitted her application to the Board within 3 years of her January 4, 2012 DRB decision. *See Ortiz v. Secretary of Defense*, 41 F.3d 738, 743 (D.C. Cir. 1994).

2. The Board begins its analysis in every case by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust. 33 C.F.R. § 52.24(b)

3. The applicant was discharged for convenience of the government due to "condition, not a disability" (sea sickness). Although the applicant did not have the performance marks normally required for an honorable discharge, the Commandant exercised his discretion under Article 12.B.2.f.(1) and awarded her an honorable discharge based upon the recommendation of her CO. The applicant was assigned a JFV separation code and an RE-4 reenlistment code.

4. The applicant asked the Board, as she did before the DRB, to change her RE-4 reenlistment code to an RE-3P, which under current policy would be a request to change her reenlistment code to an RE-3 (no letter modifier). On March 18, 2010, the Coast Guard issued ALCOAST 125/10 that eliminated most letter codes previously associated with the RE-3 reenlistment code.<sup>2</sup>

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<sup>2</sup> Prior to the issuance of ALCOAST 125/10, the SPD Handbook reserved the RE-3P for members whose physical conditions meet the requirements for physical disabilities, as determined by a physical evaluation board within the Coast Guard's Physical Disability Evaluation System (PDES). Chapter 2.A.9. of the PDES Manual states that certain conditions and defects may cause a member to be unfit for continued duty and yet not have physical disabilities within the meaning of the law, thereby subjecting the member to an administrative separation. This provision of the Manual lists motion/travel sickness as such a condition for administrative discharge. The applicant was administratively discharged under Article 12.B.12.a.9. of the Personnel Manual for the convenience of the government due to sea sickness (motion sickness), and therefore, an RE-3P reenlistment code would not have been appropriate for her circumstances under the previous policy. In fact, prior to March 18, 2010, the SPD Handbook authorized an RE-3G, RE-3X, or an RE-4 reenlistment code for a separation due to a "condition, not a disability." Prior to the modification of the SPD Handbook, the RE-3G was assigned to members discharged due to personality

5. There is no evidence in the record that the Coast Guard assigned or intended to assign the applicant any reenlistment code except for the RE-4. Contrary to the applicant's argument, her receipt of an honorable discharge due to "condition, not a disability" (sea sickness) does not mean that she is entitled to an RE-3 reenlistment code (eligible for reenlistment, except disqualifying factor) instead of the RE-4 reenlistment code that she received. The Board finds that the applicant's performance record, although limited by her short time in the service, does not support the assignment of a reenlistment code that would allow her to reenlist in the Coast Guard if cured of her sea sickness or to enlist in another branch of the service. Her performance evaluation marks in several factors on the only performance evaluation she received do not average out to a three, which is required for reenlistment under Article 1G.5.1.a. of the Personnel Manual. Further, section 1.G.5.3. states that the applicant required the recommendation of the officer effecting discharge, i.e., her CO to be eligible for reenlistment. There is no evidence in the record that the applicant's CO recommended or intended to recommend her for reenlistment. In this regard, the Board notes that in the CO's communication to PSC requesting the applicant's discharge, he stated that she was not eligible for the second chance program<sup>3</sup> and that she should be required to surrender her uniforms.<sup>4</sup> Such comments are not the actions of a CO who intends to recommend a member for reenlistment. In addition, according to the applicant's executive officer she was consistently late for work, watch, and duty cook assignments while assigned to the cutter.

6. While the applicant disagrees with her RE-4 reenlistment code, her military record while sparse, does not prove that the CO's or PSC's judgment was erroneous. Moreover, the SPD Handbook allows for the RE-4 reenlistment code with a JFV separation code. With regard to her allegation that she suffered under a hostile work environment, she presented insufficient evidence to prove this claim.

7. Accordingly, the applicant has failed to prove by a preponderance of the evidence that her reenlistment code is in error or unjust.

**[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]**

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disorders. Therefore, under the previous policy, the RE-3X would have been the more appropriate reenlistment code for the applicant's situation, if recommended by her CO and approved by the discharge authority.

<sup>3</sup> The second chance program allows for the waiver almost all policy discharge authorities and for the retention of the member on active duty.

<sup>4</sup> A member can be required to surrender his or her uniform if the CO has concerns that the member would bring discredit upon the uniform or if the member's service record or the circumstances surrounding the member's discharge warranted surrendering the uniform. Article 12.B.53.2.b. & c. of the Personnel Manual.

**ORDER**

The application of former [REDACTED] USCG, for the correction of her military record is denied.

