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

Application for the Correction of
the Coast Guard Record of:

[redacted]

**BCMR Docket No. 2013-019**

## FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the applicant's completed application on November 5, 2012, and assigned it to staff member [redacted] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated August 8, 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, a former seaman apprentice, asked the Board to correct his discharge form DD 214 dated June 4, 1996, by upgrading his RE-4 reentry code, which makes him ineligible to reenlist. He alleged that the assignment of the RE-4 code "was personal and unjust." He stated that he discovered the error in his record on June 4, 1996, but that it is in the interest of justice for the Board to consider his request because the code has prevented him from reenlisting and from pursuing certain civilian careers.

### SUMMARY OF THE RECORD

The applicant enlisted on active duty on August 15, 1994, for a term of four years. After completing recruit training, he was assigned to a large icebreaker.

On June 19, 1995, a social worker reported that the applicant had been voluntarily referred for counseling by a doctor due to "multiple personal issues, alcohol abuse, rule out depression." The applicant told the social worker that he had had a "bad temper, had time making people understand me and depression" for about eight years. The applicant stated that he lacked friends on the ship because he had a "bad reputation … due to at least two public displays of anger including trying to provoke a fist fight and often being under the influence of alcohol. He described himself as painfully self-conscious and afraid to talk to people and to express his feelings for fear of rejection. He said he used alcohol to lower his social inhibition and numb the pain of his social isolation." The applicant admitted to consuming 80 ounces of malt liquor

daily. The social worker diagnosed the applicant with alcohol abuse and a Avoidant Personality Disorder with Antisocial Features that might warrant an administrative discharge but noted that he was psychiatrically fit for duty.

On October 8, 1995, an officer sent the command an email regarding a visit by the city police, who had wanted to arrest the applicant for domestic violence. Although the police report was slightly different from that of the applicant, "both involved hitting and spitting. The police said the girl had been dragged down stairs, by [the applicant], resulting in scraped hands, knees, a torn shirt, and pants. [The applicant] said she hit him and when he pushed her away, she fell down the stairs." The police agreed not to arrest the applicant if he was kept on the cutter, but noted that he would be charged with domestic violence.

On October 17, 1995, the applicant signed a statement admitting that two days earlier he had fractured his hand by hitting a bulkhead next to his berthing out of frustration following a telephone call with his fiancé in [redacted]. He was punished at mast for this self-injury and awarded restriction to the unit for one month and forfeiture of $300.00 in pay.

On December 5, 1995, the applicant's command entered a Page 7 in his record reporting that screening has shown that the applicant was abusing alcohol. The applicant was ordered to meet with the Command Drug and Alcohol Representative twice a week and to attend at least three Alcoholics Anonymous meetings per week.

On January 11, 1996, the applicant, represented by an attorney, "stipulate[d] to the accuracy of police reports, witness statements, and other reports and records" regarding the domestic assault on October 8, 1995. The municipal court at the icebreaker's homeport placed the applicant on probation for two years and ordered him to attend domestic violence treatment and to have no contact with the woman in question.

On January 18, 1996, the applicant's CO advised him in writing that he was initiating the applicant's discharge and recommending him for a general discharge under honorable conditions. The CO stated that he was initiating the discharge primarily because the applicant had been diagnosed with an Avoidant Personality Disorder with Antisocial Features, but also because of "numerous other problems which show you are not able to serve adequately in the Coast Guard." The CO noted in particular that the applicant's performance had become "marginal" and described several prior incidents of poor conduct and performance documented in his record, such as failing to repay a $1,371.80 debt he incurred by using his brother's phone card without permission; being absent from duty on May 7, 1995; reporting for duty routinely late and almost 3 hours late on May 15, 1995; being involved in domestic violence; breaking his own hand by punching a bulkhead; abusing alcohol; and taking 8 months, instead of the usual 3 months, to become qualified in basic damage control on board the cutter. The CO advised the applicant that he had a right to disagree with the recommendation and to submit a statement on his own behalf.

On March 8, 1996, the applicant acknowledged the CO's notification. He stated that he had initially been assigned to the engineering division on the cutter, but two colleagues started gossiping about him and the gossip spread throughout the ship. The applicant transferred to the deck department, but the gossip had already spread there, and he "felt extremely isolated, indif-

ferent, friendless, and hurt. No matter what I did it was never enough." He alleged that there were cliques and favoritism, and his

> hurt turned into hatred and anger. I felt if they are going to treat me like an animal then I will become one. That is the mentality I took. I wanted revenge and to be the victimizer and not the victim. I encountered many incidents of racism, more than I can write. They called me [the N word] to my face many times. They told me, "There are still enough trees in [redacted]," and "If this were the old days I would have you shine my shoes for me, boy."

The applicant further alleged that his crewmates lied about him, and he received EMI (extra military instruction) "for nothing." He alleged that because the crew was "95% white male," he

> had no one to turn to and no one who cared. No one liked me. I started to avoid people. I never joined in on any of the activities. I wanted to be alone. I wanted to die. It was like hell. When we would pull into ports of call, I would drink heavily to try to blot out the pain of being lonely. … I would see how people would show favoritism to others but when it came to me and the other two African American males, they would treat us differently.

The applicant stated that when a lot of new crewmembers arrived aboard, he hoped to "start new," but the new crewmembers "listened to the rumors and acted the same as the others." The applicant alleged that he told a doctor, but "they swept it under the carpet and did not even try to seek help for me." His requests for help were ignored. He would not speak to the Command Enlisted Advisor, however, because he "did not feel comfortable discussing these issues with him." The applicant alleged that he had developed the personality disorder because of the way he had been treated.

Regarding the charge of domestic violence, the applicant claimed that the judge had dismissed the case and that his record was clean.

The applicant alleged that he was being discharged "based purely on the color of my skin" because he had done nothing to warrant it and did not deserve a general discharge. The applicant alleged that three other junior enlisted members on the cutter who had committed misconduct had all received honorable discharges. The applicant alleged that since being reassigned to a shore unit, he had attended regular counseling sessions and had no problems with other personnel.

On April 26, 1996, the CO sent his recommendation for discharge to the Personnel Command. He noted in response to the applicant's statement that the applicant had

> 1. … raised a variety of very serious allegations. A curious aspect is that none of these issues were ever brought to anyone's attention prior to notification of his discharge recommendation, neither the Command Civil Rights Officer (CRO) who is Hispanic, nor his Departmental Leading Petty Officer, an E-6 Boatswainsmate who is Black and one of the most respected members of the crew.
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> 2. Regarding the most serious allegation, that he encountered more incidents of racism than he could write, the Civil Rights Officer interview [the applicant] and was able to sort out a single incident where [the applicant] provided a name of the alleged racist and three witnesses. These individuals were separately interviewed by the CRO and reported that there had been an altercation in June 1995 where an E-2 had used a racial slur in the heat of an argument. Although the incident

> was not reported to any supervisor, the perpetrator and a witness stated that a sincere apology was made once tempers had cooled. No other incidents of any nature were reported.
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> 3. [The applicant states that the ship is 95% white males, leaving him no one to turn to for support. [The cutter's crew of 141 has a diverse composition, including six black males, eight Hispanic males, nineteen females, and three males of Asian or Pacific Island ethnicity. This amounts to 25% of our crew meeting the definition of a minority. The crew is extremely harmonious. During our recently completed deployment there was a noted lack of friction, racial, gender-related, or otherwise in spite of the demands associated with an Antarctic deployment.

Regarding the applicant's other complaints, the CO claimed that if the applicant did not get help, it was because he did not request help, and that the applicant's new shore unit reported that he was not obeying orders to attend weekly counseling sessions, Alcohol Anonymous meetings, and meetings with the Command Drug and Alcohol Representative. Therefore, the applicant "has continued to be non-compliant even while protesting his proposed discharge and has misrepresented the facts regarding his repeated misconduct … This command does not initiate discharge procedures lightly, but it is crystal clear that [the applicant] is not capable of performing at even a minimal level sufficient to justify his continued service in the Coast Guard. It is strongly recommended that he be discharged upon the completion of his [alcohol rehabilitation treatment]."

On June 4, 1996, the Personnel Command issued orders for the applicant to receive a general discharge for unsuitability with separation code JFX in accordance with Article 12-B-16 of the Personnel Manual. The applicant was discharged the same day with a general discharge under honorable conditions, an RE-4 reentry code, and a JFX separation code corresponding to the narrative reason for separation shown on the DD 214, which is "Personality Disorder." He had served 1 year, 9 months, and 13 days on active duty.

## VIEWS OF THE COAST GUARD

On May 23, 2013, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant relief in this case.

The JAG stated that the applicant was discharged in accordance with the policy in effect in 1996, which authorized the RE-4 reentry code for members discharged due to a diagnosed personality disorder. The JAG noted, however, that the policy has recently been changed in ALCOAST 125/10 to allow members discharged due to a diagnosed personality disorder to receive an RE-3 reentry code and that the BCMR's own policy allows the Board to take current standards and mores into account in deciding whether a discharge is unduly severe and should be corrected. The JAG concluded that the Board should, in the interest of justice, consider the case on the merits and grant relief even though the application was not timely filed because the new policy in ALCOAST 125/10 authorizes a default RE-3 code for members being discharged due to a personality disorder with separation code JFX. In making this recommendation, the JAG concurred with findings and analysis provided by the Personnel Service Center in a memorandum on the case.

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

On June 13, 2013, the applicant responded to the Coast Guard's advisory opinion. He agreed with the recommendation for relief and made many more allegations about how he was treated in the Coast Guard, although he also accepted full responsibility for his actions at the time.

The applicant alleged that many of the problems he encountered in the Coast Guard "were in part directly related to the double standards I encountered while stationed on board and the fact I felt many times singled out for doing the same things many others were doing, or worse, yet were never reprimanded for." For example, he alleged that he witnessed a lot of infidelity, drunkenness, and hazing aboard the cutter. However, there were cliques among the crewmembers that "would cover for each other in order to prevent any disciplinary actions." He noted that there were others on board who abused alcohol, but he was singled out and discharged. Because of this unequal treatment, he became depressed, resentful, and uninterested in performing his duties. The applicant alleged that the investigation his command conducted did not substantiate his claims only because the people who were interviewed lied to the investigator.

The applicant alleged that the two allegations of violence against him are erroneous. He alleged that in the first incident, he got into a verbal altercation with a crewmate while on leave in an "establishment," and the crewmate hit him while they were being escorted out by security. In the second incident, he hit not the bulkhead, but a chair with a hidden metal plate underneath, when his girlfriend in [redacted] told him that she was putting their baby up for adoption if he could not live with her. The applicant later received a letter from the State of [redacted] stating that if he was not physically present in [redacted] on a certain date, he would lose all his rights as a parent and could not seek custody in the future. The applicant requested a transfer or leave to go to [redacted] but his command denied the request because he was not married to the baby's mother. He never did see the child.

Regarding the allegation of domestic violence, the applicant stated that an officer on base saw the woman hit the applicant, and the officer barred the woman from the base and dealt with the police when they arrived. The applicant alleged that he was not drunk; that he was the victim rather than the aggressor; and that he later pled guilty in court, even though he was not guilty, simply because he was "young and ignorant." He was also punished at mast and removed from the cutter to a shore unit for 30 days of restriction and docked pay while the cutter deployed. The applicant stated that he performed so well while he was stationed ashore that the shore unit did not process him for discharge, but when he was returned to the cutter, he was again harassed and taunted. His crewmates would "sit and conspire [about] how they could provoke me to react." They once left him in Canada, so that he had to find his own way back to Seattle and was absent from work, and they would secretly urinate in his drinks. The applicant alleged that the number of such incidents is too long to list. When the command processed him for discharge, he was told he would never be allowed to serve in the military again. He asked a female crewmate what he had done to be treated so badly, and she told him, "You never did anything. We just did not like you." The applicant asked the Board to contact a crewmate who would testify on his behalf, and noted that he would be willing to speak to the Board himself about these matters.

## APPLICABLE REGULATIONS

Article 12-B-16.b. of the Personnel Manual (COMDTINST M1000.6A) in effect in 1996 authorizes administrative discharges for enlisted personnel due to unsuitability if they are diagnosed with one of the personality disorders listed in Chapter 5 of the Medical Manual. The list of personality disorders that qualify a member for administrative discharge in Chapter 5.B.2 of the Medical Manual includes Avoidant Personality Disorders.

Article 12-B-16.d. of the Personnel Manual states that members with less than eight years of service who are being recommended for discharge by reason of unsuitability must (a) be informed in writing of the reason they are being considered for discharge, (b) be afforded an opportunity to make a statement in writing, and (c) be afforded an opportunity to consult with counsel "if the member's character of service warrants a general discharge."

Under the Separation Program Designator (SPD) Handbook, members who are being discharged because they have been diagnosed with a personality disorder must be assigned a JFX separation (or SPD) code, "Personality Disorder" as the narrative reason for separation, and either an RE-4 (ineligible to reenlist) or RE-3G (eligible to reenlist with a waiver) reentry code.

ALCOAST 125/10, issued on March 18, 2010, announced a new policy under which an RE-3 code became the "default RE code for members discharged prior to the end of their enlistment in most cases" and the "normal standard unless a different code is authorized by the discharge authority." The ALCOAST also notes that in cases where the member has committed in-service misconduct, the RE-4 may still be used, and that the letter designators, such as the G in RE-3G, would no longer be used. The affected separation codes are listed in paragraph 3 of the ALCOAST, and the list does not include the JFX separation code denoting separation due to a diagnosed personality disorder. Paragraph 5 states, "Those SPD codes not listed in paragraph 3 above remain unchanged."

## 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 over this matter under 10 U.S.C. § 1552(a). The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice.[1]

2. Under 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22, an application to the Board must be filed within three years after the applicant discovers the alleged error or injustice. The applicant discovered the error in his record when he was discharged in 1996 and advised that, with an RE-4 code, he would not be allowed back into the military. Therefore, his application is untimely.

[1] Under 10 U.S.C. § 1553(a), the Discharge Review Board has authority to upgrade veterans' RE codes only within the first 15 years from the date of discharge.

3. Pursuant to 10 U.S.C. § 1552(b), the Board may excuse the untimeliness of an application if it is in the interest of justice to do so. In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that to determine 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."[2] 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."[3]

4. The applicant did not explain why he delayed requesting correction of his reentry code for so long. However, a cursory review of the record reveals that the JAG has recommended that the Board grant relief in this case. Therefore, the Board finds that it is in the interest of justice to excuse the untimeliness of the application to consider the merits of the case.

5. The applicant alleged that his RE-4 reentry code is unjust because it has prevented him from getting certain civilian jobs and from reenlisting in the military. When considering allegations of injustice, 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.[4] Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."[5]

6. Under the SPD Handbook, members assigned a JFX separation code because they are being discharged due to a diagnosed personality disorder may receive either an RE-3G or RE-4 reentry code. The Coast Guard argued that because its policies regarding reentry codes changed in 2010 with the issuance of ALCOAST 125/10, the applicant's reentry code should be upgraded from RE-4 to RE-3. ALCOAST 125/10 does change policy by making the RE-3 code the default code for certain separation codes listed in paragraph 3 of ALCOAST 125/10, but separation code JFX is not on the list. Therefore, in accordance with paragraph 5 of ALCOAST 125/10, the new policy does not apply to members who, like the applicant, are discharged due to a personality disorder with separation code JFX.

7. As the applicant alleged, an RE-4 reentry code can prevent a veteran's employment by certain civilian employers who are familiar with reentry codes and see the veteran's DD 214. Because employers often demand to see former service members' DD 214s before hiring them, it is extremely important for DD 214s to be fair and accurate and not to unduly tarnish service members' records without just cause. The applicant's RE-4 on his DD 214, however, is neither erroneous nor unjust because his record of misconduct while on active duty strongly supports the command's decision to assign him the RE-4 to prevent him from reenlisting.

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[2] *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).
[3] *Id.* at 164-65; s*ee Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).
[4] 33 C.F.R. § 52.24(b).
[5] *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

8. Accordingly, the applicant's request should be denied because he has not proved by a preponderance of the evidence that his RE-4 reentry code is erroneous or unjust.

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

## ORDER

The application of [redacted] for correction of his military record is denied.

[redacted]