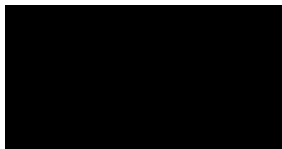


**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:



BCMR Docket No. 2013-083

FINAL DECISION ON RECONSIDERATION

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. It was docketed upon the BCMR's receipt of the applicant's military records on March 19, 2013. This case is a reconsideration of BCMR Docket No. 2001-002, in which the applicant was denied an upgrade of his RE-4 reentry code, which makes him ineligible to reenlist. This application on reconsideration is assigned a new docket number, Docket No. 2013-083.

This final decision on reconsideration, January 7, 2014, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

In the application on reconsideration, the applicant asked the Board to upgrade his RE-4 reenlistment code to RE-1 (eligible to reenlist), as he did in the previous application.

SUMMARY OF THE BOARD'S DECISION IN BCMR DOCKET NO. 2001-002

The applicant alleged that the separation code in block 26 of his discharge form (DD 214) was inconsistent with an RE-4 code. On October 4, 1994, the applicant enlisted as a fireman apprentice in the Coast Guard for four years. His military record contains many Administrative Remarks ("page 7s") concerning poor performance, such as wearing an improper uniform, using offensive language, not qualifying for any "A" School to advance above the rank of seaman, losing his watch-standing qualification, not paying attention to duty, not following proper procedures, showing a lack of motivation and initiative, and possessing "a flexible integrity which he bends to suit his needs."

On March 9, 1999, the applicant was placed on performance probation for one year in accordance with Article 12.B.16. of the Personnel Manual. The record indicates that he had 16 negative page 7s and that he was unable to perform the most simple tasks expected of him without close supervision or to learn from his mistakes. The applicant was not recommended for advancement or reenlistment.

The applicant signed an acknowledgment of the recommendation against reenlistment and he was notified of his right to submit a written appeal within 15 days of the notice via the chain of command. There is no record of any written appeal in his personal data folder.

On October 3, 2000, the applicant was released into the Reserve upon the expiration of his enlistment. He refused to sign his DD 214, which showed an honorable discharge by reason of "completion of required active service." He received an RE-4 reenlistment code and a JBK separation code, which means it was an involuntary discharge directed upon the completion of required service. Having served less than eight years on active duty, he was not entitled to appear before an Administrative Discharge Board. At the time of discharge, his average evaluation marks (on a scale of 1 to 7, with 7 being best) were 3.96 for military bearing, 3.43 for work performance, 3.87 for professionalism, and 3.42 for leadership.

On February 23, 2001, the Chief Counsel of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request for a change in his reenlistment code. The Chief Counsel argued that the applicant "was accorded all of the rights to which he was entitled" and was properly separated in accordance with Articles 1.G.5., 12.B.5.c., and 12.B.11. of the Personnel Manual. He argued that under Article 12.B.5.b., the applicant was only entitled to notice and an opportunity to submit a written appeal within 15 days. He alleged that the record proves that the applicant was not denied these rights.

The Chief Counsel further alleged that the applicant's discharge and RE-4 reenlistment code "are well supported by Applicant's extensive history of adverse marks and [page 7] entries ... [which] reveal in great detail Applicant's poor performance and work habits, and lack of adaptability for service in the Coast Guard."

In the previous application, the Board made the following pertinent findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submissions, and applicable law:

3. The record indicates that the applicant was counseled many times over the course of his six years in the Coast Guard about his poor performance. In addition, he was counseled and put on one years' performance probation in March 1999, but his performance did not improve. On September 1, 2000, he was notified that because his performance had not improved, he would not be allowed to reenlist when his enlistment expired on October 3, 2000, and that he would receive an RE-4 reenlistment code. Because he had served less than eight years on active duty, he was not entitled to have his CO's decision reviewed by an Administrative Discharge Board. He was notified of his right to submit a written appeal under Article 12.B.5.b. of the Personnel Manual but apparently did not take advantage of it.

4. [Upon discharge], the applicant's DD 214 indicates that he was . . . assigned a JBK separation code, for an involuntary separation at the expiration of an enlistment, which may properly be paired with an RE-4 reenlistment code under

the provisions of the SPD Handbook. Therefore, the codes on the applicant's DD 214 are not inconsistent . . .

5. The applicant has not proved that the Coast Guard committed any error or injustice in discharging him upon the expiration of his enlistment or in assigning him an RE-4 reenlistment code. The poor performance documented in his military record amply supports his command's determination not to make him eligible for reenlistment. The record also indicates that he was frequently counseled and given many opportunities to improve but failed to do so. The applicant also has not proved that the Coast Guard denied him due process in notifying him of the nature and reason for his discharge and of his right to appeal.

6. Accordingly, the applicant's request for relief should be denied.

APPLICATION FOR RECONSIDERATION

On September 18, 2012, the Chair granted the applicant reconsideration of the final decision in Docket No. 2001-002. The Chair determined that the applicant submitted new relevant evidence and therefore met the requirement for reconsideration under 33 C.F.R. § 52.67. The applicant's new evidence consists of documentation showing that since his discharge, he has earned an Associate of Arts degree in Administration of Justice/Criminal Justice and an Associate of Arts degree in Real Estate. He also submitted evidence that he has completed 132-Hour Security Academy Training from the Fresno Adult School.

The applicant stated that he has worked hard to reach his goals since his discharge. He stated that he believes that he would make a positive impact in the Army or Naval Reserves.

The Chair was also aware in granting reconsideration that the Coast Guard has amended its policy with regard to assigning reenlistment codes by making the RE-3 the default reenlistment code in most cases. The policy change occurred in 2010 and was of potential benefit to the applicant.

VIEWS OF THE COAST GUARD ON RECONSIDERATION

On July 18, 2013, the Board received the views of the Coast Guard from the Judge Advocate General (JAG). He recommended that the Board grant alternative relief in accordance with a memorandum from the Commander, Personnel Service Center (PSC). PSC recommended alternative relief for the applicant by changing his RE-4 reenlistment code to RE-3, based upon the change of policy that occurred in 2010. ALCOAST 125/10, issued on March 18, 2010, states that RE-3 is the default code unless there is specific service misconduct, e.g., DUI or civil disturbance. PSC stated that under current policy members discharged with JBK as the separation code are normally given an RE-3 reenlistment code (eligible to reenlist except for disqualifying factor).

**APPLICANT'S REPLY TO THE VIEWS OF THE COAST GUARD ON
RECONSIDERATION**

On July 30, 2013, the applicant responded to the views of the Coast Guard and stated that his application was ready for decision by the Board.

APPLICABLE REGULATIONS

Under the Separation Designator Program (SPD) Handbook, members who have served less than eight years on active duty and who are involuntarily discharged at the end of an enlistment should be assigned a JBK separation code and either an RE-1 or RE-4 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 concerning this matter pursuant to section 1552 of title 10 of the United States Code.
2. The applicant requested on reconsideration, as in the original application, to have his reenlistment code upgraded to RE-1. In BCMR Docket No. 2001-002, the Board denied the applicant's request to upgrade his RE-4 reenlistment code to RE-1 based on his record of poor performance. On September 18, 2012, the Chair granted the applicant reconsideration after he submitted new evidence of his post-service education. In addition, after the applicant's discharge, the Coast Guard changed its policy with regard to assigning reenlistment codes by making RE-3 the default reenlistment code in most cases, instead of an RE-4. The applicant was discharged in 2000 and the policy change occurred in 2010.
3. Under 33 C.F.R. § 52.67, a request for reconsideration must be filed within two years after issuance of the final decision. However, this requirement maybe waived if it is in the interest of justice to do so. The Board finds that it is in the interest of justice to waive the timeliness requirement because the JAG has recommended relief for this applicant due to a recent policy change for assigning reenlistment codes. This change occurred in 2010 and the applicant filed his request for reconsideration in 2012.
4. Although the applicant's reenlistment code was assigned properly at the time of discharge, the Coast Guard recently updated its policy on reenlistment codes. In ALCOAST 125/10, issued on March 18, 2010, the Coast Guard made RE-3 is the default reenlistment code unless there is specific in-service misconduct, e.g., DUI or civil disturbance. While the applicant's record shows that he received numerous page 7s, his record contains no captain's masts or civil convictions. Therefore, the Board agrees with the JAG that the applicant's reenlistment code should be upgraded from RE-4 to RE-3.

5. The applicant's record should be corrected to grant the relief discussed in the above finding.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The application of former SN [REDACTED] for correction of his military record by upgrading his reenlistment code is granted in part as follows: Block 27 of his DD 214 shall be corrected to show RE-3 as his reenlistment code instead of RE-4.

No other relief is granted.

January 7, 2014

Date

