

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2013-140

██████████
██████████

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 after receiving the completed application on July 3, 2013, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated March 13, 2014, 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 upgrade his narrative reason for separation, separation code, reentry code, and authority for discharge on his DD 214 as shown below:

DD 214 Entry	Current Entry	Requested Entry
Narrative reason for separation	Unsuitability	USCG Released from Active Duty
Separation code	JNC (unacceptable conduct)	N/A or JDR (early release) ¹
Reentry code	RE-3 (eligible with waiver)	RE-1 (eligible to reenlist)
Separation Authority	PERSMAN Art. 12.B.16. (Unsuitability)	MILSEPMAN Art. 2.B.4.a. (Fit for Duty)

The applicant alleged that at the time of his discharge in 2006, he “was not completely aware of the process and potential consequences of the discharge.” He was told that because he was receiving an honorable discharge, there would be no adverse consequences. He stated that he is “not afraid in any way of the water” as demonstrated by his completion of survival rescue swimming training at the ██████████ and a psychological evaluation he submitted. He stated that he has been a ██████████ since 2009 but is fit for duty and would like to join the military.

¹ The applicant alleged that the JDR separation code denotes “early release” but there is no such code authorized in the Coast Guard’s Separation Program Designator Handbook.

The applicant noted that he applied to the Discharge Review Board (DRB) for an upgraded reentry code in 2010 but did not ask for other corrections because he did not know that additional corrections were necessary to allow him to reenter the military. In support of these claims, the applicant submitted various documents, including the following:

- A letter from a clinical psychologist dated August 29, 2012, states that the applicant “does not meet the criteria for a mental or psychiatric condition”; has no symptoms of clinical depression or anxiety; has above average insight, judgment, and reasoning; and shows “no psychological contradictions” to joining the Reserve.
- The applicant’s resume indicates that since he was discharged from the Coast Guard, the applicant has worked as a technician from [REDACTED] - [REDACTED] and [REDACTED] and as a [REDACTED] for the Department of Homeland Security since October 2009 and has received a bachelor’s degree and a master’s degree from online universities.
- A DD 214 shows that the applicant joined the Army Reserve in May 1999, completed boot camp and drilled on inactive duty until ordered to active duty under Title 10 for a year from September 22, 2001, to September 21, 2002. His rating was mortuary affairs specialist, and the DD 214 shows that he received two Army Achievement Medals and an Army Reserve Achievement Medal.
- Documentation from the American Red Cross showing that the applicant “completed the requirements for SURVIVAL SWIM” on September 17, 2009.
- A copy of the decision of the DRB, which is summarized below.
- An incomplete enlistment contract shows that the applicant attempted to enlist in the Army National Guard in June 2013.

SUMMARY OF THE RECORD

On June 27, 2005, the applicant enlisted in the Coast Guard for a term of four years. He completed seven weeks of recruit training and was assigned to a 270’ cutter with a crew of 100. On January 12, 2006, approximately five months after he reported aboard, he was honorably discharged from the Coast Guard with the codes and reasons shown in the table above except that his command originally assigned him an RE-4 reentry code (ineligible to reenlist). The applicant’s Coast Guard record, which is presumptively correct,² contains no documentation showing what conduct caused the applicant to be discharged with the JNC (unacceptable conduct) separation code pursuant to Article 12.B.16. of the Personnel Manual.

In 2011, the applicant asked the Coast Guard DRB to upgrade his reentry code from RE-4 to RE-1. He told the DRB that he had been in 2006 discharged due to a phobia of water but has since overcome the phobia. The DRB noted the lack of documentation explaining the applicant’s discharge in his Coast Guard military record but stated that Coast Guard electronic records show that he never received a performance evaluation and was never awarded nonjudicial punishment (NJP) for misconduct. The DRB stated that given the lack of documentation, the applicant’s RE-4 is “potentially inequitable” and that an RE-3 would be more equitable because the applicant

² 33 C.F.R. § 52.24(b).

might be able to reenlist in another military service with different accession policies. The DRB noted that the applicant had not specifically challenged his reason for discharge and recommended no corrections except that his reentry code be upgraded from RE-4 to RE-3 (eligible to reenlist with a waiver). This relief was granted, and the applicant's reentry code on his DD 214 was corrected to RE-3 by issuance of a DD 215.

VIEWS OF THE COAST GUARD

On November 24, 2013, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case.

The JAG alleged that the application is untimely because it was filed more than three years after the applicant's discharge. The JAG alleged that the applicant had "constructive notice" of the content of his DD 214 on his date of discharge because he signed it. However, the JAG noted, the applicant claimed that he did not know that he needed other corrections made to his DD 214 to be able to reenlist.

The JAG argued that the applicant has submitted no evidence to substantiate that his DD 214 was prepared erroneously and has admitted that he had a water phobia at the time of his discharge. The JAG noted that the DRB has upgraded the applicant's reentry code to RE-3, which has allowed the applicant to enlist in the Army National Guard. Therefore, the JAG concluded, nothing about the applicant's discharge shocks the sense of justice such that it would require relief. However, the JAG stated, if the Board determines that relief should be granted, the Coast Guard "would not object to changing the SPD code to 'JFY,' [sic] narrative reason: 'Condition, Not a Disability.'"

In making this recommendation, the JAG adopted the findings and analysis in a memorandum prepared by the Personnel Service Center (PSC). PSC stated that no relief should be granted based on the available information but also noted that, according to the SPD Handbook, "the next likely code the applicant would have received was JFV (Condition, not a disability)" based on his fear of water, in which case he would have received an RE-3 or RE-4 reentry code.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 14, 2013, the applicant responded to the views of the Coast Guard and disagreed with them except to the extent that they recommend that his narrative reason for separation be corrected to "Condition, Not a Disability." The applicant noted that the Coast Guard has failed in its duty to retain his complete military records and so there is no supporting documentation regarding his phobia. He alleged that the Coast Guard also failed to counsel him properly because he was told that there would be "no negative consequences" as a result of his honorable discharge and did not learn the meaning of the codes and separation authority until he tried to enlist in the Texas Air National Guard in 2010.

Moreover, the applicant alleged, he has not been able to reenlist because the Texas Air National Guard will only take recruits with an RE-1 code and, after accepting his application with the RE-3, the Texas Army National Guard ultimately rejected him because of the JNC separation code, which, in the Army, apparently denotes misconduct.

The applicant stated that he is 33 years old, married for more than 12 years, has three children, was honorably discharged from the Army with an RE-1, has studied and earned degrees, has worked hard as a technician for major companies and as a border patrol agent for the Department since 2009 with no problems. The only thing standing in his way of joining the Army National Guard is the JNC code for “Unacceptable Conduct” that the Coast Guard gave him based on a temporary phobia that he has overcome—not misconduct.

APPLICABLE REGULATIONS

Article 12.B.16. of the Personnel Manual in effect in 2006 authorizes the separation of enlisted members due to unsuitability for military service because of inaptitude (e.g., inability to learn, lack of adaptability), personality disorders, adjustment disorders, apathy, unsanitary habits, alcohol abuse, and financial irresponsibility.

Article 12.B.12. of the Personnel Manual authorizes the separation of members for the convenience of the Government for motion sickness, obesity, and other conditions that are not disabilities but that interfere with the performance of duty, such as somnambulism or enuresis.

The Separation Program Designator (SPD) Handbook states that when a member is involuntarily discharged for performing “acts of unacceptable conduct (i.e., moral and/or professional dereliction),” the member may be discharged pursuant to Article 12.B.16. of the Personnel Manual with an RE-4 reentry code, a JNC separation code, and “Unacceptable Conduct” as the narrative reason for separation on the DD 214.

Under the SPD Handbook, members who are involuntarily discharged for a “condition, not a physical disability, which interferes with the performance of duty (enuresis, motion sickness, allergy, obesity, fear of flying, et al.)” in accordance with Article 12.B.12. of the Personnel Manual may receive a JFV separation code, an RE-3 or RE-4 reentry code, and “Condition, Not a Disability” as their narrative reason for separation.

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 10 U.S.C. § 1552. The application was timely filed within three years of the decision of the DRB³ and within three years of the applicant’s discovery of the meaning of the JNC code.⁴

2. The applicant alleged that his reentry code, separation code, narrative reason for separation, and separation authorization on his DD 214 are erroneous and unjust. When considering allegations of error and injustice, the Board begins its analysis by presuming that the dis-

³ *Ortiz v. Secretary of Defense*, 41 F.3d 738, 743 (D.C. Cir. 1994) (holding that in discharge cases over which the DRB has jurisdiction, the BCMR’s three-year limitations period does not begin to run until the DRB has issued a decision).

⁴ 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

puted 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.⁵ 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."⁶

3. The documentation of the Coast Guard's processing of the applicant for discharge is not in his military record. Assuming that the applicant's allegation that he was discharged because of a fear of the water is true, however, the Board finds that his completion of a survival swim for the Red Cross does not prove that his reentry code should be upgraded from RE-3 to RE-1. In this regard, the Board notes that the applicant would have had to complete a swimming test during Coast Guard boot camp, before his discharge. Being able to swim or tread water in controlled testing conditions, however, does not prove that the applicant did not and would not in the future, due to fear, refuse to get underway on his cutter or to jump in the ocean during a drill or emergency. Therefore, the Board finds no grounds for upgrading the applicant's reentry code. He has not persuaded the Board that the problem that caused his discharge would not interfere with his service if he were allowed to reenlist in the Coast Guard.

4. The applicant alleged that his separation code, JNC, is erroneous and unjust because it denotes a discharge due to "unacceptable conduct," even though he was discharged because of his fear of water. It is certainly possible that the applicant's fear caused him to refuse to perform some part of his assigned duties, and under the SPD Handbook, dereliction of one's professional duties may result in a JNC separation code. However, a phobia such as fear of the ocean could also result in a discharge for "Condition, Not a Disability," with a JFV separation code pursuant to Article 12.B.12. of the Personnel Manual in effect in 2006. Given that the Coast Guard apparently failed to retain the documentation of the applicant's separation processing in his military records, the Board finds that in the interest of justice, the separation code, narrative reason for separation, and authority for separation shown on his DD 214 should be corrected to reflect this latter, less prejudicial type of discharge.

5. The Board notes that the applicant asked to be discharged pursuant to Article 2.B.4.a. of the Military Separations Manual. However, that manual did not exist when the applicant was separated, and Article 2.B.4.a., regarding a member's fitness for duty, is inapplicable to the reason for his discharge.

6. Accordingly, partial relief should be granted by correcting the applicant's DD 214 to reflect a discharge for a "Condition, Not a Disability" with separation code JFV pursuant to Article 12.B.12. of the Personnel Manual, but his reentry code should remain RE-3. Given the prejudicial nature of the JNC code and "Unsuitability" narrative reason for separation shown on his current DD 214, the corrections should be made by issuance of a new DD 214.

⁵ 33 C.F.R. § 52.24(b).

⁶ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

ORDER

The application of former SN [REDACTED] USCG, for correction of his military record is granted in part. The Coast Guard shall issue him a new DD 214 with the following entries made in the original:

- Block 18 shall state, "Action taken pursuant to order of BCMR";
- Block 25 shall show Article 12.B.12. of the Personnel Manual;
- Block 26 shall show separation code JFV;
- Block 27 shall show reentry code RE-3; and
- Block 28 shall show "Condition, Not a Disability" as the narrative reason for separation.

March 13, 2014

