DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-029

[redacted]

FINAL DECISION

This is a proceeding under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. Upon receiving the completed application on December 18, 2013, the Chair docketed the case and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 5, 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

The applicant, who was honorably discharged on June 30, 1995, asked the Board to upgrade his reentry code from RE-3R (eligible to reenlist with waiver) to RE-1 (eligible to reenlist). He stated that he was honorably discharged for the "Convenience of the Government" and that his RE-3R reentry code is negative and does not match the nature of his discharge. The applicant stated that he only recently learned from a recruiter that he will not be able to reenlist because of the RE-3R on his DD 214 and that it is in the interest of justice for the Board to upgrade his reentry code because it is erroneous and he wants to enlist in the Air Force Reserve.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on February 25, 1985, as an E-1. Upon completing boot camp on April 26, 1985, he advanced to E-2 and was assigned to a cutter. He advanced to seaman, E-3, in August 1986 after completing 18 months of service. He attended "A" School to earn the [redacted] rating [redacted] and advanced to [redacted] E-4 on February 26, 1988.

As an [redacted] the applicant was assigned to an air station for four years, after which, he was transferred to another air station. He completed several special training courses and received fairly average performance evaluations with good conduct marks and recommendations for advancement. However, he did not advance in rate and remained an [redacted]

On July 27, 1993, the applicant was counseled in writing about the High Year Tenure (HYT) program, under which members who fail to advance in rate are separated. The applicant was counseled that if he had not advanced to [redacted]/E-5 or placed above the cut-off for advancement on an advancement list by June 30, 1995, he would be discharged from the Service pursuant to ALCOAST 056/93. The applicant acknowledged this counseling with his signature.

On June 30, 1995, the applicant was honorably discharged with separation pay for the "Convenience of the Government" under the HYT program pursuant to Article 12-B-12 of the Personnel Manual because he was still an [redacted]/E-4 and had not placed above the cut-off on an advancement list. The applicant's DD 214 shows a JBC separation code, denoting an involuntary discharge for exceeding the maximum allowed time in grade, and an RE-3R reentry code. Under the Separation Program Designator Handbook, any RE-3 code means that the veteran is eligible to reenlist except for the problem that caused his discharge, and so a recruiter must get a waiver from the recruiting command to reenlist the veteran. The RE-3R specifically means that a waiver is required because the veteran was discharged for being "unsuccessful in obtaining [a] professional growth objective."

VIEWS OF THE COAST GUARD

On April 7, 2014, the Judge Advocate General recommended that the Board deny the applicant's request based on a memorandum prepared by the Personnel Service Center (PSC) and on the Board's decision to deny relief in a similar case, BCMR Docket No. 2000-166.

PSC stated that the application should be denied for untimeliness. Regarding the merits of the claim, PSC stated that the applicant was properly discharged under HYT, pursuant to which members are subject to separation if they do not advance from E-4 to E-5 within seven years of active Coast Guard service or ten years of total military service, whichever is greater. PSC noted that HYT was new in 1993 and so members were personally counseled about it and given two years to meet the requirements. Members who did not meet the requirements were honorably discharged and assigned an RE-3R reentry code. Therefore, PSC argued, the applicant's RE-3R was properly assigned and should not be changed.

In support of these allegations, PSC submitted a copy of COMDTINST 1040.10, which was issued on May 15, 1993, and announced the rules for HYT. Under paragraph 2.a.(4) of Enclosure (1) to COMDTINST 1040.10, the enlistment contracts of members in pay grade E-4 may not be extended past seven years of active Coast Guard service or ten years of total military service, whichever is greater. Paragraph 2.e. states that members who do not meet their professional growth point by advancing may be discharged with the RE-3R reentry code. Paragraph 2.j. states that members discharged pursuant to HYT are not entitled to a hearing before an Administrative Discharge Board. Paragraph 3 states that separations under the HYT program would be delayed until June 30, 1995, so that members would have two years to try to advance.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 8, 2014, the Chair sent a copy of the Coast Guard's advisory opinion to the applicant and invited him to respond within thirty days. No response has been received.

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.

2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.[1] Although the applicant alleged that he discovered the error in his record in 2013, he was counseled about the HYT program in 1993, received and signed his DD 214 with the RE-3R code in 1995, and presumably understood what it meant at that time. The preponderance of the evidence shows that the applicant knew about his RE-3R upon his discharge in 1995. Therefore, his application is untimely.

3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.[2] In *Allen v. Card*, the court held that the Board should not deny an application for untimeliness without "analyz[ing] both the reasons for the delay and the potential merits of the claim based on a cursory review"[3] to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted 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."[4]

4. The applicant did not explain why he waited more than fifteen years to challenge his reentry code but argued that it is in the interest of justice for the Board to consider his request because his reentry code is erroneous and not in keeping with his honorable discharge for the Convenience of the Government and because he wants to enlist in the Air Force Reserve. The Board finds that the applicant's argument is not compelling because he has failed to provide a reason for his delay in seeking correction of the alleged error.

5. A cursory review of the record shows that the applicant was properly discharged with an RE-3R under the HYT program because he had served in the Coast Guard for more than ten years without advancing beyond E-4. An RE-3R is not an absolute bar to reenlisting. To reenlist, a veteran with an RE-3 must convince a recruiter that the Service needs his skills and that the problem that caused the discharge no longer exists, in which case the recruiter can get a waiver to reenlist him. The record contains no evidence that substantiates the applicant's allegations of error or injustice in his official military record, which is presumptively correct.[5] Based on the record before it, the Board finds that the applicant's claim cannot prevail on the merits.

6. Accordingly, the Board will not excuse the application's untimeliness or waive the statute of limitations. The applicant's request should be denied.

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[1] 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.
[2] 10 U.S.C. § 1552(b).
[3] *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).
[4] *Id*. at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).
[5] 33 C.F.R. § 52.24(b); *see Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties "correctly, lawfully, and in good faith.").

ORDER

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

September 5, 2014

[redacted]