



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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-162

 (former)

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 July 9, 2014, and assigned it to staff member  to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated April 24, 2015, 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, who received an honorable discharge from the Coast Guard on June 16, 2014, for unacceptable conduct, asked the Board to "overturn" his discharge or change his reentry code from RE-4 to RE-2.¹ His DD 214 currently shows that he received an honorable discharge for "unacceptable conduct" in accordance with Article 1.B.15. of the Military Separations Manual. He also received a HNC² separation code and an RE-4 reentry code (ineligible for reenlistment).

The applicant argued that his discharge was improper because there were several people at his unit who "were out to get me" and who were questioning every move that he made. He stated the problems started soon after he arrived at the unit as a new E-4 with a wife who was seven months pregnant and "high risk."³ He stated that he was forced to take a lot of time off

¹ The RE-2 reenlistment code is assigned to members ineligible for reenlistment due to retirement. Article 1.B.2.g. of the Separations Manual.

² HNC denotes an involuntary discharge directed by in lieu of further processing or convening of a board (board waiver) when member performs acts of unacceptable conduct (i.e., moral and/or professional dereliction) not otherwise listed. The Separation Program Designator (SPD) Handbook also states that an RE-4 reenlistment code and a narrative reason for separation of "Unacceptable Conduct" must be assigned to members being discharged with the HNC separation code.

³ The applicant stated that his wife was high risk because she was a "special needs dependent with a high risk pregnancy."

from work to take care of his wife after their baby was born but that certain personnel at his unit were unsympathetic and told him that it was their personal goal to put him out of the service.

The applicant stated that things got worse for him a few years later following his knee surgery. He said that the surgery was a bit more complicated than usual because of the amount of damage that had to be repaired, and that the surgeon who performed the operation gave him 30 days off so he could recover. The applicant explained that the doctor's office told him that they would contact his unit to let them know that he would be recovering at home for 30 days, but that after three days he (the applicant) received a call from his unit demanding that he come back to work. He stated that when he arrived, he "sat in a room full of E-7s" who told him that he was absent from work and that they were thinking about kicking him out of the military.

The applicant stated that several years later he was put on performance probation following a period in which he was grieving over the loss of his aunt who had helped raise him. He alleged that personnel within his unit were completely unsympathetic and that one of the SKCs asked the YNs if it was too late to reverse the reenlistment contract that the applicant had recently signed.

The applicant stated that the "last straw" occurred while he was still on performance probation. He explained that during a routine inspection of one of the unit's trucks, he failed to notice that the power steering fluid was low and that an SKC discovered this and told him that he could have killed his coworkers and that he would have been sentenced to life in jail for murder. The applicant also alleged that due to a misunderstanding between himself and an SN he was not allowed to take the test for E-5.

In support of his application to the Board, the applicant submitted five letters of support from members of his former units. All of the letters praise his outstanding service, professionalism, poise, and selfless service to the Coast Guard.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on April 12, 2005, and after recruit training he attended and completed [REDACTED] "A" School.⁴

On October 13, 2006, a Page 7⁵ was placed in the applicant's record to document counseling that he had failed to complete his qualifications as 41 UTB (utility boat) engineer.

On November 13, 2006, a Page 7 was placed in the applicant's record to document his failure to complete his qualifications as a small boat engineer on the 41 UTB, despite having been given a one-month extension.

⁴ "A" School is the Coast Guard's advanced training school where members are trained in their chosen specialty (rate). Class "A" schools range in length from five weeks to five months, depending on the career field.

⁵ A Page 7 (CG-3307, or Administrative Remarks) entry documents any counseling that is provided to a service member as well as any other noteworthy events that occur during that member's military career.

On June 4, 2007, a Page 7 was placed in the applicant's record to document his failure to properly follow task direction during a quarterly inventory.

On September 14, 2007, a Page 7 was placed in the applicant's record to document his failure to arrive for quarters on time.

On September 4, 2008, a Page 7 was placed in the applicant's record to document that his qualification as a Boarding Team Member and M240 gunner had been rescinded due to the loss of a 30 round M16 magazine into the water and his subsequent unauthorized entry into the water to retrieve the magazine.

On March 25, 2010, a Page 7 was placed in the applicant's record to document counseling for his improper use of a government computer.

On July 8, 2011, the applicant's doctor provided him with a convalescent leave request, indicating that the applicant would need 30 days of convalescent leave to recover from his recent orthopedic surgery.

On August 12, 2011, the applicant was placed on performance probation for six months as a result of his failure to complete required tasks, failure to obey orders from supervisors, lying to supervisors, and lack of communication with supervisors.

On September 29, 2011, the applicant's doctor completed a Work Status Statement indicating that the applicant had undergone arthroscopy with a chondroplasty⁶ and should not run, jump, or lift more than 10 pounds.

On January 19, 2012, the applicant's doctor completed a Work Status Statement indicating that the applicant had undergone arthroscopy with a microfracture procedure and could do clerical/desk jobs and should not lift more than 25 pounds.

On April 13, 2012, the applicant was placed on performance probation for a second time as a result of inaptitude (readiness of skill and/or ability to learn).

On September 6, 2012, a Page 7 was placed in the applicant's record to document counseling for his lack of responsibilities as a 3rd Class Petty Officer,

On February 15, 2013, a Page 7 was placed in the applicant's record to document that his performance probation had been continued through December 1, 2012, because he had not demonstrated the ability and determination to learn his job as a Storekeeper.

On October 1, 2013, the applicant was counseled on a Page 7 that he was being placed on performance probation for a third time as a result of inaptitude (readiness of skill and/or ability to learn). The Page 7 states that the applicant would be assigned a mentor and that if he, the applicant, failed to make reasonable and consistent progress in overcoming his deficiencies then his

⁶ Chondroplasty is the surgical repair of cartilage. DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, 32nd ed. (2012).

commanding officer (CO) could request that he be discharged at any time during his performance probation.

On October 30, 2013, a Page 7 was placed in the applicant's record to document counseling for his unwillingness to follow supply-related policies and procedures and his general lack of military bearing.

On April 2, 2014, a Page 7 was placed in the applicant's record to document counseling for his failure to follow orders and for his lack of good judgment.

On April 29, 2014, the applicant was notified of his CO's intent to discharge him from the Coast Guard pursuant to Article 1.B.15. of COMDTINST M1000.4 for inaptitude because during performance probation, he had failed "to make reasonable and consistent progress to overcome his deficiencies." The applicant's CO noted that the applicant had been unwilling to follow policies, unable to follow orders or use good judgment, and unreliable. In addition, the CO stated, the applicant "did not demonstrate the potential required for advancement" and should be separated. The applicant acknowledged this notification and exercised his right to consult an attorney regarding his right to an administrative separation board.

On May 6, 2014, the applicant consulted with counsel regarding his proposed separation and indicated in writing that he would waive his right to an administrative separation board on the condition that he receive an honorable discharge. However, he submitted a statement asking to be retained on active duty.

On May 7, 2014, the applicant's CO sent the Personnel Service Center (PSC) a recommendation that the applicant be discharged for "unsuitability due to inaptitude" based on his unwillingness to follow policies, inability to follow orders, and lack of good judgment. The CO noted that his record showed that he had had similar problems previously during his nine years on active duty and had been placed on performance probation three times.

On May 13, 2014, PSC authorized the member's separation for unsuitability and indicated that his DD 214 should indicate HNC as the SPD code, unacceptable conduct as the narrative reason for separation, and an RE-3 reenlistment code (eligible to reenlist with a waiver).⁷

On June 16, 2014, the applicant was given an honorable discharge in accordance with Article 1.B.15. of the Personnel Manual with an HNC separation code and an RE-4 reenlistment code (ineligible to reenlist), and Unacceptable Conduct as the narrative reason for separation.

APPLICABLE LAW

Article 1.B.15.a. of the Military Separations Manual states that Commander, Personnel Service Center (PSC) shall direct the discharge of enlisted members for unsuitability. Article 1.B.15.b. states that the purpose of discharges for unsuitability is to free the Service of members considered unsuitable for further service because of several different things, including inaptitude, apathy, and defective attitudes. "Inaptitude" is described as applying to members who are "unfit

⁷ An RE-3 reenlistment code is not a bar to enlistment or reenlistment and shall not, by itself, be the reason to reject a prospect or applicant. Article 2.E.1.b.5. of the Coast Guard Recruiting Manual.

due to lack of general adaptability, want or readiness of skill, clumsiness, or inability to learn.” Apathy and defective attitudes are described as an “inability to expend effort constructively, or other observable defect for which a separation designator code (SPD) exists that renders a member unsuitable for further military service.”

Article 1.B.15.c. of the manual provides that COs will not initiate administrative discharge action for inaptitude, apathy, or defective attitudes until they have afforded a member a reasonable probationary period to overcome these deficiencies. When commands contemplate discharging a member for these reasons, they shall counsel the member that a formal probationary period of at least six months has begun and make an appropriate Page 7 entry in the member’s personnel data record (PDR) that administrative discharge processing will be initiated unless the member shows significant improvement in overcoming the deficiency during the probationary period. The member must acknowledge this entry in writing. COs are authorized to recommend discharge at any time during probation if the member is not attempting to overcome the deficiency.

Chapter 1 of COMDTINST M1900.4D, states that the Coast Guard shall enter the appropriate reenlistment code to denote whether or not the member is recommended for reenlistment, and shall use only the proper reenlistment code associated with a particular SPD Code as shown in the SPD Handbook.

The SPD Handbook mandates the assignment of an RE-4 reenlistment code with the HNC separation code for discharges due to unacceptable conduct pursuant to Article 1.B.15. of the Military Separations Manual.⁸ It further states that the HNC code is to be used when there is an involuntary discharge in lieu of further processing or convening of a board (board waiver) when member performs acts of unacceptable conduct (i.e., moral and/or professional dereliction) not otherwise listed.

SPD Code	Narrative Reason for Separation	RE Code	Separation Authority	Explanation
HNC	Unacceptable conduct	RE-4	[1.B.15.]	Involuntarily discharge in lieu of further processing when member performs acts of unacceptable conduct (i.e., moral and/or professional dereliction) not otherwise listed.

Article 1.B.9. of the Separations Manual states that the Coast Guard can afford to retain only those members who better the organization as a whole, and occasionally members do not contribute to supporting the Coast Guard’s missions because of their unsatisfactory or disruptive performance. Members whose performance demonstrates they cannot or will not contribute to supporting the Coast Guard’s missions may be discharged.

The SPD Handbook permits the assignment of an RE-4 or an RE-3Y reenlistment code with the HHJ separation code for discharges due to unsatisfactory performance. It states that the HHJ code is to be used when there is an involuntary discharge in lieu of further processing or

⁸ The SPD Handbook has not been updated and so still cites the Personnel Manual, which was canceled in September 2011. Article 1.B.15. of the Military Separations Manual is the article corresponding to the one cited by the handbook.

convening of a board (board waiver) when a member fails to perform duties and assignments satisfactorily.

SPD Code	Narrative Reason for Separation	RE Code	Separation Authority	Explanation
HHJ	Unsatisfactory Performance	RE-3Y RE-4	[1.B.9.]	Involuntarily discharge in lieu of further processing when member fails to perform duties and assignments satisfactorily.

VIEW OF THE COAST GUARD

On November 3, 2014, the Judge Advocate General (JAG) of the Coast Guard adopted the findings and analysis in a memorandum prepared by the Personnel Service Center (PSC) and recommended that the Board grant alternative relief in this case.

The PSC argued that the applicant was properly discharged in accordance with Article 1.B.15. of the Military Separations Manual based on three separate performance probationary periods and multiple negative Page 7s, but that the reenlistment code on his DD 214 is incorrect and should be changed. The PSC argued that alternative relief should be granted because the applicant should have received an RE-3 reenlistment code, instead of the RE-4 that is currently noted on his DD 214. The PSC stated that when it originally reviewed the applicant's discharge packet it had recommended that he receive an RE-3 reentry code, but the RE-4 code was erroneously placed on his DD 214.

APPLICANT'S RESPONSE TO THE VIEW OF THE COAST GUARD

On November 14, 2014, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. No response was received. The package was returned by the Post Office as undeliverable and unforwardable, and a voicemail message left by the BCMR staff was not returned.

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 concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely.

2. The applicant alleged that his discharge was erroneous and unjust and asked the Board to correct his record by overturning his discharge or by changing his reentry code from RE-4 to RE-2. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and he bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁹ Absent evidence to the contrary, the Board

⁹ 33 C.F.R. § 52.24(b).

presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”¹⁰

3. The Board is persuaded that the applicant was properly discharged for inaptitude/unsatisfactory performance because his record is awash with no less than nine negative Page 7s, detailing the deficiencies in his performance, and he was placed on performance probation three times between August 12, 2011, and October 1, 2013, because of his repeated failures to complete required tasks, failure to obey orders, lying to supervisors, and lack of communication with supervisors. In fact, he was afforded three extended probationary periods to help him overcome his deficiencies before his CO took action to discharge him, although only one probationary period is required by Article 1.B.15.c. of the Separations Manual. The Board finds no grounds in the record for overturning the applicant’s discharge or reinstating him on active duty.

4. The record shows that the applicant was advised in writing on April 29, 2014, that he was being discharged for inaptitude, pursuant to Article 1.B.15. of the Military Separations Manual, based on his unsatisfactory performance, which was described as an unwillingness and inability to follow orders and policy. Based on this notification, he requested retention but waived his right to an administrative separation board on condition that he would receive an honorable discharge. The applicant did receive an honorable discharge, but his DD 214 also shows a discharge for Unacceptable Conduct with an HNC separation code and RE-4 reenlistment code. This combination comports with the SPD Handbook but not with PSC’s orders, which authorized an RE-3 reentry code, even though an RE-3 is not authorized by the SPD Handbook for members discharged for Unacceptable Conduct with an HNC separation code.

5. PSC recommended granting partial relief by upgrading the applicant’s reenlistment code to RE-3 based on PSC’s separation authorization for the applicant. Because an RE-3 code is not an absolute bar to reenlistment,¹¹ it is considered much less prejudicial than an RE-4 code, which is a bar to reenlistment and may make it difficult for veterans to get certain law enforcement jobs. Although, under the SPD Handbook, members discharged for Unacceptable Conduct cannot receive an RE-3 code, members discharged for Unsatisfactory Performance can. Given that PSC intended for the applicant to have an RE-3 and that the problem that caused his discharge is at least as, if not more accurately described as Unsatisfactory Performance, the Board finds that his DD 214 should be corrected to show that he was honorably discharged with an RE-3¹² reenlistment code for Unsatisfactory Performance, which corresponds to an HHJ separation code. This combination makes the applicant’s DD 214 consistent with policy and more accurate regarding the reason for his discharge, and it allows him to have the RE-3 code Commander, PSC apparently intended he should have.

¹⁰ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

¹¹ Coast Guard Recruiting Manual, Chapter 2.E.1.b.5.a. (providing that a veteran with an RE-3 may reenlist if he can get a waiver from the Recruiting Command by proving that the condition or circumstance that caused him to be discharged before his enlistment expired no longer exists).

¹² ALCOAST 125/10 makes the RE-3 code—without any letter specifying a subcategory—the default reenlistment code to be used except in cases where an RE-4 is appropriate because the member committed significant misconduct.

6. The applicant's request to have his discharge overturned should he be denied because he has not proved by a preponderance of the evidence that his discharge for unsatisfactory performance was erroneous or unjust.¹³ However, partial relief should be granted by ordering the Coast Guard to issue him a new DD 214 with separation code HHJ in block 26, reenlistment code RE-3 in block 27, and "Unsatisfactory Performance" as the narrative reason for separation in block 28, in accordance with Article 1.B.9. of the Military Separations Manual. In addition, the following sentence should be added to the remarks in block 18 because a duplicate DD 214 is being issued: "Action taken pursuant to order of BCMR."

(ORDER AND SIGNATURES ON NEXT PAGE)

¹³ See *Sawyer v. United States*, 18 Cl. Ct. 860, 868 (1989), *rev'd on other grounds*, 930 F.2d 1577 (citing *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976) (finding that for purposes of the BCMRs under 10 U.S.C. § 1552, "injustice" is treatment by military authorities that "shocks the sense of justice").

ORDER

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

- Block 18 – The following remark shall be added: “Action taken pursuant to order of BCMR.”
- Block 25 – The Separation Authority shall be Article 1.B.9. of COMDTINST M1000.4.
- Block 26 – The Separation Code shall be HHJ.
- Block 27 – The Reentry Code shall be RE-3.
- Block 28 – The Narrative Reason for Separation shall be “Unsatisfactory Performance.”

April 24, 2015

