DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of
the Coast Guard Record of:

[redacted]

BCMR Docket No. 2015-184

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 on August 15, 2015, upon receipt of the completed application, and prepared the decision for the board as required by 33 C.F.R. § 52.61(c).

This final decision, dated July 1, 2016, 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 requested and received an other than honorable (OTH) discharge on February 8, 2013, to avoid trial by court-martial, asked the Board to upgrade his discharge so that he will be eligible for veterans' benefits.

The applicant stated that he enlisted in February 2004 and was a good sailor and kept out of trouble until his last duty station. He wrote that "[w]ith life comes stress and while dealing with this [stress] during my last year of the military I chose the wrong coping method." The applicant stated that while in the brig, he attended every AA meeting to try to better himself, and after leaving the brig he began a six-month program to better himself and learn to handle his "coping difficulties."

The applicant alleged that because he performed six years of active duty with no punishment, he should have an honorable discharge in his record. He alleged that because he extended his enlistment for the convenience of the Coast Guard to accept transfer orders, his only DD 214 shows that he received an OTH discharge. The applicant asked for an upgrade to an honorable discharge so that he will be eligible for veterans' educational benefits and can further his education.

In support of his allegations, the applicant submitted copies of his military records and the following documents:

- A letter from the legal director of Narconon of [redacted] stating that the applicant had successfully completed the program from September 1, 2013, through January 29, 2014.
- A printed description of the treatment plan of Narconon and its weekly schedule.
- A letter from the Department of Veterans' Affairs (DVA), dated April 19, 2013, which states that the applicant's claim for educational benefits had been denied because he did not receive an honorable discharge. The letter explains that "[i]ndividuals must receive an honorable discharge to qualify for benefits under the Post-9/11 GI Bill. As of January 4, 2011, an honorable character of service is required for all service periods." The letter also includes instructions for appealing the decision to the Board of Veterans' Appeals.

SUMMARY OF THE RECORD

On February 23, 2004, at the age of 20, the applicant enlisted in the Coast Guard for six years of active duty followed by two years of Reserve duty. Before enlisting, he signed a Statement of Understanding in which he acknowledged that he would be eligible for educational benefits as long as he received an honorable discharge (among other criteria). He also signed a Page 7 (CG-3307) acknowledging having been counseled about the Coast Guard's drug policies. The applicant also received "Substance Abuse Free Environment (SAFE) Awareness" training in April 2004.

A report of investigation dated December 13, 2012, states that the applicant's unit began an investigation on November 19, 2012, when a nearby Base command inquired about the applicant's numerous requests to use the Base's government vehicles even though the applicant's unit had its own motor pool of government vehicles. The investigation also uncovered numerous abnormal charges on the fuel cards for the unit's boats, and the applicant had access to these cards. Surveillance videos obtained from four gas stations showed the applicant using the unit's boat fuel cards to pay for fuel for his own vehicle on various dates in November 2012 and the cards were often used to pay for fuel at more than one pump at a time.

The investigator concluded that the applicant had inappropriately reserved government vehicles to obtain the use of their fuel cards and had misused the unit's boat fuel cards on numerous occasions, often at more than one pump while he was at the gas station. Therefore, he also concluded that the applicant had received cash from other individuals in exchange for paying for their fuel at the gas stations with the Coast Guard's fuel cards. He recommended that the applicant be tried by court-martial for larceny.

The applicant was charged with larceny, a violation of Article 121 of the Uniform Code of Military Justice (UCMJ), as well as with disobeying orders and making false official statements. On December 14, 2012, the applicant signed a "Request for Discharge for the Good of the Service," pursuant to Article 1.B.20. of COMDTINST M1000.2. Specifically, he "request[ed] a discharge under other than honorable [OTH] conditions for the good of the Service." He acknowledged having consulted counsel, who "fully advised [him] of the implications of such a request," including the fact that an OTH discharge would deprive him of virtually all veterans' benefits and that he could expect to encounter substantial prejudice in

civilian life because of his OTH discharge. He acknowledged that he was requesting an administrative OTH discharge because of his "misconduct contained in the court-martial charges preferred against me." He acknowledged that he was allowed to submit a sworn or unsworn statement on his behalf and that his request was being made "voluntarily, free from any duress." The request was signed by the applicant and his counsel.

The applicant's commanding officer forwarded his request for an OTH discharge through the Group Commander and the Area Commander to the Personnel Service Center (PSC), and all recommended that it be approved.

On February 1, 2013, PSC issued separation orders authorizing the applicant's OTH discharge. The applicant was discharged on February 8, 2013. His DD 214 shows that he received an OTH discharge with an RE-4 reentry code (ineligible to reenlist) and "Triable by Court Martial" as his narrative reason for separation. His DD 214 also states the following:

> Enlistment/active service term extended for 2 years and 4 months on 10 02 23. Extension was at the request of and for the convenience of the government. Enlistment/active service term extended for 1 year on 12 06 23. Extension was at the request of and for the convenience of the government. … MGIB Info: Member's initial contract was for 06 years.

Following his discharge, the applicant applied to the Coast Guard's Discharge Review Board (DRB). On December 29, 2014, the DRB issued a decision denying the applicant's request and finding that his OTH discharge was proper and equitable in light of the charges against him.

VIEWS OF THE COAST GUARD

On January 5, 2016, the Judge Advocate General submitted an advisory opinion adopting the findings and analysis in a memorandum on the case prepared by PSC and recommending that the Board deny the applicant's request for relief.

PSC argued that the Board should deny relief because the applicant has not submitted "any evidence to suggest that his discharge was erroneous or unjust, a conclusion also determined by the Discharge Review Board." PSC noted that the applicant was afforded due process in the proceedings and had voluntarily requested the OTH discharge, in accordance with Article 1.B.20. of the Military Separations Manual,[1] knowing that the OTH discharge would deprive him of virtually all veterans' benefits, including educational benefits.

[1] Article 1.B.20.a. of the Military Separations Manual, COMDTINST M1000.4, states that an "enlisted member may request a discharge under other than honorable conditions for the good of the Service. A discharge for the good of the Service is intended as an administrative substitute in situations where a member could potentially face a punitive discharge if convicted by a special or general court-martial. Members may request a discharge for the good of the Service if charges have been preferred against them and the maximum punishment, as described in the Manual for Courts-Martial, for the preferred charges includes a punitive discharge."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

In response to the views of the Coast Guard, the applicant stated that he understands that his last few months of service "were not commendable." He explained that he was having marriage problems and used alcohol to deal with them, which made things worse. However, the applicant explained that he believes he should have at least one DD 214 showing an honorable discharge in his record because he initially enlisted for six years and extended the enlistment twice to accept transfer orders. The applicant argued that if he had reenlisted, instead of extending his enlistment, to accept the transfer orders, he would have received an honorable discharge from his initial enlistment. He alleged that if he had received an honorable discharge for his first enlistment, he would be eligible for educational benefits despite receiving an OTH discharge for his second enlistment.

The applicant stated that he is not trying to minimize his misconduct and that he is taking full responsibility for his action, for which he is truly sorry. However, because he received no punishment during his first eight years of service, he is asking the Board to correct his record to show that, instead of extending his enlistment twice, he reenlisted to obligate the additional service and received an honorable discharge from his first enlistment when he reenlisted.

The applicant stated that he is currently employed at an inpatient substance abuse program, which allows him to help others, and it would be of great help to him to have an honorable discharge.

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 filed.

2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.[2]

3. The applicant alleged that the lack of an honorable discharge in his record is erroneous and unjust because he completed six years of service without incurring discipline and only committed misconduct during his last few months of service while serving on an extension of his original enlistment. He alleged that the lack of an honorable discharge in his record is erroneous and unjust because he completed his original enlistment and the OTH discharge deprives him of educational benefits. In 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 the applicant bears the burden of proving by a

[2] *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

preponderance of the evidence that the disputed information is erroneous or unjust.[3] 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."[4]

4. The preponderance of the evidence shows that the applicant voluntarily requested an OTH discharge to avoid trial by court-martial and potential felony convictions for repeatedly stealing from the Coast Guard. He made this request after consulting counsel and knowing that it would deprive him of virtually all veterans' benefits, including educational benefits. Therefore, the OTH discharge he received on February 8, 2013, is neither erroneous nor unjust.

5. The applicant argued that he should have one honorable discharge in his record for his years of service before he began committing misconduct. If he had reenlisted for three to six years, instead of extending his enlistment for the minimum number of months required, when he received transfer orders in either February 2010 or June 2012, then his record would reflect one enlistment ending in an honorable discharge and a second enlistment ending with the OTH. He argued that this change would entitle him to veterans' educational benefits even though the letter he received from the DVA states that to be eligible for educational benefits, "an honorable character of service is required for all service periods." The applicable statute, 38 U.S.C. § 3311, titled "Educational assistance for service in the Armed Forces commencing on or after September 11, 2001: entitlement," is not explicit about whether entitlement to educational benefits may be based on a prior enlistment ending in an honorable discharge:

> (a) Entitlement.--Subject to subsections (d) and (e), each individual described in subsection (b) is entitled to educational assistance under this chapter.
>
> (b) Covered individuals.--An individual described in this subsection is any individual as follows:
> (1) An individual who--
> (A) commencing on or after September 11, 2001, serves an aggregate of at least 36 months on active duty in the Armed Forces (including service on active duty in entry level and skill training); and
> (B) after completion of service described in subparagraph (A)--
> (i) continues on active duty; or
> (ii) is discharged or released from active duty as described in subsection (c).
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> (c) Covered discharges and releases.--A discharge or release from active duty of an individual described in this subsection is a discharge or release as follows:
> (1) A discharge from active duty in the Armed Forces with an honorable discharge. …

6. The applicant's DD 214, however, is completely correct in showing that his original enlistment was for six years and that his enlistment was extended twice for the convenience of the government. Changing his record to appear otherwise might make him eligible for educational benefits, but it would not be a correction of an error in his record. Instead, it would disguise the applicant's extensions on active duty from the DVA, which is tasked by Congress with administering veterans' educational benefits.

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[3] 33 C.F.R. § 52.24(b).

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

7. The circumstances of this case are similar to [redacted] o. 6175-05 of the Board for Correction of Naval Records (BCNR). In that case, the applicant completed his original 4-year enlistment contract honorably and began committing the misconduct that resulted in his OTH discharge during a 26-month extension of his 4-year enlistment. The BCNR noted that the applicant might be eligible for educational benefits "based on the completion of your initial four year enlistment. However, the decision to grant benefits can only be made by the Department of Veterans Affairs." Therefore, the BCNR denied relief.

8. The Board finds that the applicant's entitlement to educational benefits should be determined by the DVA in accordance with its existing policies for similarly situated veterans, specifically those veterans who have less than honorable discharges because of misconduct committed while serving on an extension of their original enlistment. The applicant's character of service is correct on his DD 214, and the Board will not change it to try to manipulate the DVA's decision regarding his eligibility for educational benefits. If the applicant has not already done so, he should consider following the DVA's instructions for appealing the denial of his educational benefits based on his completion of his original 6-year enlistment.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

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

July 1, 2016

[redacted]