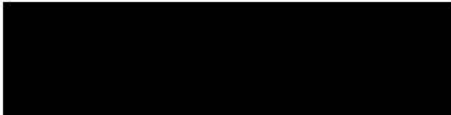


**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-086



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 April 5, 2016, and assigned it to staff attorney [REDACTED] to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated March 3, 2017, 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 was discharged from the Coast Guard on April 11, 2007, asked the Board to correct his discharge form, DD Form 214, by upgrading his reentry code from RE-4 (ineligible to reenlist) to RE-1 (eligible to reenlist). He stated that an RE-4 reentry code is unjust due to the circumstances of his discharge. The applicant noted that it has been nine years since his discharge, and that he has reflected upon his mistakes and has improved his life. He stated he has earned his Associate's Degree and an Airframe and Powerplant license. He further stated that alcohol is no longer a part of his life.

In support of his request, the applicant submitted five letters of recommendation, two letters of commendation for outstanding and meritorious performance while in the Coast Guard, copies of his Airframe and Powerplant licenses, a copy of his Associate's degree in Applied Science, and a copy of his DD 214.

The first letter the applicant submitted was from a current commander in the Coast Guard, who stated the following:

I have known [the applicant] both professionally and personally for about 12 years now and hold him in the highest regard as an individual, a friend and a professional Coast Guardsmen. ... As the HU-25 Aviation Engineer, I was in charge of this shop and all 50 of its personnel. I was immediately impressed with [the applicant's] work ethic and level of knowledge for such a junior petty officer and new member of this unit. His "can do" attitude was prevalent on a daily basis and was an inspiration for all of us... His positive

attitude and cheerful disposition was infectious and helped keep morale in the shop at an all time high. ... Although away on leave during Hurricane Katrina's landfall, [the applicant] cut his leave short and immediately made his way back to the storm battered region to assist in the massive rescue efforts following the storm. He selflessly stood port and starboard duties to allow other members to care for their families and storm damaged homes. His efforts as a fully qualified dropmaster/observer in the HU-25 were instrumental saving and assisting numerous lives... While not flying as part of the rescue/logistics effort, [the applicant's] maintenance efforts helped the HU-25 Shop achieve unprecedented availability numbers near 100% so that the aircraft could continue logistics and rescue efforts. ... During [the applicant's] tenure at ATC Mobile, he received a DUI and was discharged from the Coast Guard in 2007. Since then, we remained in contact and he always regretted his actions and not being a part of the service that he enjoyed and loved so much... During the course of my career, my duties required me to evaluate numerous officers and enlisted on both personal and professional character traits... [The applicant] has demonstrated solid leadership and technical skills and a genuine concern for the well-being of others. Although there was a lapse in judgment, I do believe that [the applicant] routinely displayed excellent judgment and analytical skills as a Petty Officer and deserves a second chance. I would be honored and proud to once again serve alongside [the applicant] in the Coast Guard and urge the board to grant relief so that he may have the opportunity to re-enlist and continue his career.

The applicant also submitted a letter from a current lieutenant in the Coast Guard, who stated the following:

[The applicant] and I first met when we were both stationed as Aviation Maintenance Technicians...in the early 2000s. [The applicant] was junior to me and often worked on under my guidance on very technical issues... We flew search and rescue missions during Hurricane Katrina saving thousands of lives at our station alone. I remember [the applicant] as a solid performer who had the ability to grasp extremely complex technical issues with ease and take even unpopular ideas and unite members of maintenance crews to get the specific job done. And not just to get an aircraft repaired, but to do it right the first time, in a professional manner and in an infectious devotion to duty... [W]hen I found out that [the applicant] had made a mistake and [was] leaving the Coast Guard due to an alcohol incident that happened off duty I was shocked. I found it a very unfortunately situation, not only for [the applicant] but for the Coast Guard as well... [The applicant] has recognized the mistakes of his past and has moved forward. With [the applicant's] strong devotion to duty and country I feel that he has matured significantly in the past nine years, recognizes the mistakes he has made and wants to do nothing more than serve his country in any capacity afforded to him.

The applicant submitted another letter from a current lieutenant in the Coast Guard, who stated the following:

[The applicant] and I served together...from 2002-2003, and have remained friends and in close contact since that time. During my time serving with [the applicant], I saw first-hand what he can offer to the Coast Guard. Serving with [the applicant] was an absolute pleasure, where he displayed a work ethic and devotion to duty like no other. His performance, leadership ability, and drive for success are what the Coast Guard needs from its members to ensure our mission is carried out in a way the public demands. [The applicant] and I worked together on many high-profile Search and Rescue and Law Enforcement operations, where he was instrumental to the successful missions of saving lives and protecting the security of our nation. I fully understand [that the applicant] has made some mistakes in the past that resulted in him being Honorably Discharged from the Coast Guard and not being afforded the opportunity to reenlist. However, after speaking with him over the past few years, I can attest that he has learned from his mistakes and has matured as an individual. Based on my conversations with him, he wants nothing more than to reenter the Coast Guard and serve his country. I fully endorse [the applicant's] reenlistment back into the Coast Guard and it would be an honor to serve with him once again.

The applicant submitted a letter from a current Chief Warrant Officer, who served with the applicant and has remained friends with him since they met in 2003. This letter echoed the

other letter's description of the applicant as an enthusiastic professional whose excitement was contagious to any team he served on. The letter further stated the following:

[The applicant] made a very serious mistake that ended his career and he has had a significant amount of time to mature and grasp the gravity of his actions. He holds the Coast Guard in the highest regard, which is evident in his fight for reenlistment. After years of keeping in touch, I know his fight is genuine and wants to prove that he embodies the Coast Guards Core Values. There isn't a doubt in my mind, if given the opportunity, that he will be an asset to the Coast Guard and the next team he works with for years to come.

The applicant also submitted a letter from a current detective with a local police department, who had been stationed with the applicant while serving active duty in the Coast Guard. In addition to speaking highly of the applicant's work ethic, responsibility, honesty, and reliability, the letter stated the following:

[The applicant] took pride in being a Coast Guardsmen. [The applicant] would be awake before reveille every morning. He would immediately begin his duties conducting boat check off to make sure all equipment was working properly and ready for operations... When you needed something fixed and fixed properly, [the applicant] was the person you would call. [The applicant] would also not hessitate [sic] to assist with duties that were not his responsibility... On numerous occasions, the deck department would be short handed during station projects such as painting buildings, boats and even setting tile... I distinctly recall [the applicant] with these projects after his work day had ended. It was not his responsibility to help the deck department and he was never asked. [The applicant] would simply come to me...if he could help. [The applicant] embraced the Honor, Respect, and Devotion to Duty that makes a Coast Guardsmen worth of the title. [The applicant] was an asset to the Coast Guard when I met him and believe he will be to this day. He in all of his duties went beyond what was required of him. He motivated the people around him to work hard. He helped anyone who needed it without being asked. He took pride in his physical fitness to make sure he was prepared for any mission.

SUMMARY OF THE RECORD

On December 4, 2001, the applicant enlisted in the Coast Guard as an E-1. On that date, the Coast Guard drug and alcohol policies were explained to him. On February 25, 2003, the applicant was advised on the contents of Article 20.B.2. of COMDTINST M1000.6A, concerning the expected conduct of Coast Guard personnel with regard to alcohol. This included counseling on underage drinking (the applicant was 23 at this time), drug and alcohol abuse, and an explanation that two alcohol incidents are normally grounds for separation by reason of unsuitability due to alcohol abuse.

On October 22, 2003, the applicant received an administrative entry ("Page 7") denoting his first "alcohol incident."¹ The Page 7 states that on October 16, 2003, the applicant was a student at AMT "A" School when he was involved in an "alcohol incident" which resulted in being charged with failure to obey orders, being drunk while on duty, and insubordination. The applicant appeared at mast and was found guilty of insubordination, causing an afterhours disturbance in the barracks, and failing to obey standing orders which forbid drinking while on

¹ According to COMDTINST M1000.6A, Article 20.A.2.d., an alcohol incident is defined as "Any behavior, in which alcohol is determined, by the commanding officer, to be a significant or causative factor, that results in the member's loss of ability to perform assigned duties, brings discredit upon the Uniformed Services, or is a violation of the Uniform Code of Military Justice, Federal, State, or local laws."

duty, including while on standby status. As a result, the applicant received a paygrade reduction on suspended sentence pending his performance in “A” School, restriction to base for 15 days, and two hours of extra military instruction (EMI) daily for 17 days. Further, the applicant was rendered ineligible to advance or compete in the Servicewide Examination, and would be required to graduate from “A” School in pay grade E-3, albeit with an AMT designator (ANAMT). He would not be eligible for promotion to AMT3/E-4 until the beginning of the next marking period.

On November 7, 2003, the applicant was screened by the Substance Abuse Rehabilitation Program per COMDTINST M 1000.6A, Article 20.B.2.e., and based on his answers was found not to meet criteria for alcohol dependency or abuse. It was recommended that he return to command with no further action from the Program.

On February 28, 2007, a Page 7 was entered into the applicant’s record which stated that on February 23, 2007, he completed the outpatient treatment program at a Substance Abuse Rehabilitation Clinic. The Page 7 included an aftercare plan that stated the applicant must abstain from alcohol for three years, meet with his unit medical personnel monthly for a year and then every three months for two years, and attend a minimum of three Alcoholics Anonymous meetings per week for one year and then four meetings per month for two years. The applicant was counseled that any failure to comply with the aftercare program “may result in [his] separation from the Coast Guard in accordance with chapter 20 of the Personnel Manual, COMDTINST M1000.6 (series).”

The applicant’s personnel file contains no other documentation explaining what led to the February 28, 2007, Page 7, or documentation of any incident dated between this Page 7 and his DD 214. The documentation the command submitted to Headquarters to initiate his discharge was not entered in his personnel file. On April 11, 2007, the applicant was discharged from the Coast Guard. He received a separation code of “JPD,” which denotes alcohol rehabilitation failure,” and a reentry code of RE-4, making him ineligible for reenlistment.

VIEWS OF THE COAST GUARD

On September 14, 2016, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case. In so doing, he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC argued that the application is not timely, and therefore should not be considered by the Board beyond a cursory review.² PSC claimed that the applicant has not proven by a preponderance of the evidence that his reentry code should be upgraded from an RE-4. While the applicant offered his post-service conduct as justification, PSC argued that is not sufficient to upgrade a reentry code. PSC deferred to the applicant’s DD 214, which states that the applicant received a “JPD” separation code. According to the Separation Program Designator handbook, a “JPD” code is assigned to members who have “failed through inability or refusal to participate

² Under 10 U.S.C. § 1552(b), an application to the Board must be filed within three years of the date the applicant discovers the alleged error in his record.

in, cooperate in, or successfully complete a treatment program for alcohol rehabilitation.” Although ALCOAST 125/10 authorized the use of an RE-3 code for members who receive a “JPD” separation code, PSC stated that an RE-4 is still appropriate for members who failed to complete alcohol treatment.

Regarding the circumstances surrounding the applicant’s discharge, PSC stated that “no further documentation could be located for the applicant in regards to his separation or the details that surround his failure, refusal, or inability to complete his alcohol rehabilitation.”

PSC did recommend granting alternative relief by changing the narrative reason for separation on the applicant’s DD 214 from “unsuitability” to “alcohol rehabilitation failure” to align with the JPD separation code.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 14, 2016, the applicant responded to the views of the Coast Guard. The applicant stated that he disagreed with the Coast Guard’s recommendation. As for timeliness, he stated that he was not advised as to the three-year limitation. While he acknowledged that ignorance is not an excuse, he stated that he felt it is in the interest of justice to consider his application because he was young at the time of discharge and unaware of his rights.

The applicant noted that after his 2003 alcohol incident, he was screened by the Substance Abuse Rehabilitation Program and found not to meet criteria for alcohol dependence or abuse. He alleged that he was given no aftercare program after this incident as a result. In 2007, he was given an aftercare program after successfully completing outpatient treatment, which he argued he followed as instructed and showed proof to his Command Drug and Alcohol Representative (CDAR). He insisted that he did not fail alcohol rehabilitation and that he followed his aftercare program as he was instructed.

The applicant argued that he felt the “JPD” separation code was unjustified in light of the fact that he completed the outpatient and aftercare programs as assigned. He stated that there is “no documentation showing that [he] did not comply with, refuse, or fail any treatment or aftercare program.” In his response, he asked that he be granted an RE-1 or RE-3 reentry code. He further stated the following:

The Coast Guard stands for the highest traditions and core values which I hope to exemplify to the fullest by remaining alcohol free and advancing through the ranks. I truly hope above all things that an exception can be granted on my behalf so I can prove to my family and coworkers that my past mistakes as a younger man can be put behind me. I also hope to bring my experiences to the table in order to prevent others from making the same mistakes I have made. Please consider me for a last chance to prove that I am worthy of being an enthusiastic and productive member of the U.S. Coast Guard.

DISCHARGE REVIEW BOARD DECISION

On September 21, 2016, the applicant applied to the Discharge Review Board (DRB) requesting that his separation code and his reentry code on his DD 214 be changed. The applicant argued that the JPD separation code was erroneous, given that he had completed

alcohol rehabilitation in full, and he provided proof of graduation to the DRB. He also requested that his reentry code be changed from RE-4 to RE-1. On February 6, 2017, the DRB issued a decision. The DRB changed the applicant's separation code to JND, and changed the narrative reason for separation to "miscellaneous/general reasons." The DRB decided not to change the applicant's reentry code.

In its findings, the DRB stated that that applicant received an alcohol incident in 2003, and thereafter "in December 2006, he received his second alcohol incident when he was cited for driving under the influence...In February 2007, the applicant successfully completed a treatment program and then he was recommended for discharge." The DRB found that the JPD separation code is used when a member is "unable to complete outpatient treatment, an objection or refusal for treatment altogether, or a relapse after direct orders of alcohol abstinence...None of these actions occurred in this case." The DRB therefore recommended that the applicant's separation code be changed to JND, with a narrative of "miscellaneous/general reasons." The applicant appeared telephonically in front of the DRB, and confirmed that he had received a DUI as his second alcohol incident. Therefore, the DRB recommended that no change be made to the applicant's reentry code, because ALCOAST 125/10 specifically states that in cases involving a DUI, an RE-4 code is prescribed.

APPLICABLE REGULATIONS

COMDTINST M1000.6A, Coast Guard Personnel Manual

Article 12.B.2.g states the following regarding reentry codes: RE-1 Eligible for reenlistment. RE-3 Eligible for reenlistment except for a disqualifying factor. RE-4 Not eligible for reenlistment.

Article 12.B.16.b states that one of the causes for discharge for unsuitability is alcohol abuse.

Article 12.B.16.d. outlines a member's rights regarding an unsuitability discharge. "In each case processed in accordance with this Article, commanding officers shall: 1. Advise the member in writing...he or she is being considered for discharge. Specifically state one or more of the reasons listed in Article 12.B.16.b. 2. Afford the member the opportunity to make a written statement on his or her own behalf. If the member does not desire to make a statement, commanding officers shall state such fact in writing over the member's signature and that shall constitute his or her statement."

Article 12.B.16.j. lists the documentation that a command must submit when recommending a member for discharge due to unsuitability: "In every case of discharge for unsuitability, the documents listed below are required. Include them with the recommendation submitted to Commander...for decision... 1. A copy of the letter notifying the member of the reason(s) for administrative processing and of his or her rights. 2. If applicable, the member's declaration or waiver of opportunity to consult with counsel. 3. The member's signed statement of awareness, statement on his or her own behalf, or refusal to make a statement... 5. A copy of the closed out CG-3306...showing average Proficiency, Leadership, and Conduct marks and a

copy of the current Enlisted Employee Review showing factor marks. 6. Summary of military offenses. 7. Any other pertinent comments or recommendations over the commanding officer's signature."

Article 20.A.2.d.1. defines alcohol incident as "any behavior, in which alcohol is determined, by the commanding officer, to be a significant or causative factor, that results in the member's loss of ability to perform assigned duties, brings discredit upon the Uniformed Services, or is a violation of the Uniform Code of Military Justice, Federal, State, or local laws. The member need not be found guilty at court-martial, in a civilian court, or be awarded non-judicial punishment for the behavior to be considered an alcohol incident."

Article 20.A.4.e. describes administrative and disciplinary actions for driving under the influence of an intoxicant. "3.c. Performance Evaluations: (1) Enlisted Members: A special Enlisted Performance Evaluation to reflect a civil conviction, a military conviction, or the award of non-judicial punishment for occurrences of DUI is required by Section 10.B. Alcohol incidents must also be documented in the member's [Personnel Data Record (PDR)] per Article 20.B.2."

Article 10.B.1. discusses the Enlisted Employee Review System (EERS). "Purpose: 5. To provide critical information that may affect discharges, re-enlistments, good conduct, advancement eligibility, and reductions in rate." Article 10.B.2.a.(1)(a) describes required supporting marks as "Enlisted employee reviews that result in assignment of an unsatisfactory conduct mark or low competency marks...must be supported by an adverse remarks entry for: (1) Non-judicial punishment; (2) Court-martial; (3) Civil conviction; (6) Alcohol incidents."

Article 20.B.2.e.1. discusses alcohol screening. "Any member who has been involved in an alcohol incident or otherwise shown signs of alcohol abuse shall be screened in accordance with the procedures outlined in the Health Promotions Manual... The results of this alcohol screening shall be recorded and acknowledged on a CG-3307 entry or letter, as appropriate, in the member's PDR with a copy to Commander... The entry shall describe the facts of the incident or risk factors, the results of the alcohol screening, the position and organization of the individual conducting the screening, and a statement of the treatment recommended, if any."

Article 20.B.2.g. describes a first alcohol incident. "The first time a member is involved in an alcohol incident...the commanding officer shall ensure this counseling is conducted; for enlisted members recorded on a CG-3307 entry in the member's PDR; acknowledged by the member; and a copy sent to the Commander... This entry is in addition to that required by Article 20.B.2.e. 1. The member shall be counseled on Coast Guard policy on alcohol abuse contained in this article. 2. ... Enlisted members will be advised an additional incident normally will result in discharge **and**, a statement shall be made that the member has been involved in his or her first alcohol incident and a subsequent incident normally will result in separation action." Emphasis in original.

Article 20.B.2.h.2. states that "[e]nlisted members involved in a second alcohol incident will normally be processed for separation in accordance with Article 12.B.16."

Article 20.B.2.k.1. describes unsuccessful treatment for alcohol abuse. “Members refusing to undergo the treatment the commanding officer and competent medical authority deem necessary, failing to complete this treatment, or violating an alcohol rehabilitation aftercare plan normally are processed for separation.”

Separation Program Designator Handbook

The Separation Program Designator Handbook permits the use of the following codes, narrative reasons, and reentry codes:

SPD Code	Narrative Reason	RE Code	Authority	Explanation
JPD	Alcohol Rehabilitation Failure	RE-4	12-B-16	Involuntary discharge ... when a member failed through inability or refusal to participate in, cooperate in, or successfully complete a treatment program for alcohol rehabilitation.
JND	Separation for Miscellaneous/ General Reasons	RE-1 or RE-4	12-B-12	Involuntary discharge ... when a Service component ... desires to identify reasons collectively “All other reasons” which qualify a member for separation

ALCOAST 125/10

According to ALCOAST 125/10, released in 2010, “JND” may receive a reentry code of RE-1, RE-3, or RE-4. A “JPD” code may receive a reentry code of RE-3 or RE-4. An RE-3 separation code is prescribed for individuals who are separated as a result of two alcohol incidents under Article 12.B.16.b.5. However, an RE-4 is prescribed for cases involving DUI, associated alcohol-related misconduct, or members who fail to complete or refuse treatment.

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, or reasonably should have discovered, the alleged error or injustice.³ Although the applicant in this case filed his application more than three years after he knew of the alleged error on his discharge form, DD 214, he filed it within three years of the decision of the

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

Discharge Review Board, which has a fifteen-year statute of limitations. Therefore, the application is considered timely.⁴

3. The applicant asked the Board to upgrade his reentry code from RE-4 to RE-1 or RE-3 so that he may reenter the military. He alleged that the RE-4 is unjustly preventing him from reenlisting. When considering allegations of error and injustice, the Board begins its analysis in every case 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 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

4. Article 20.B.2.e.1. of the Personnel Manual requires entry of a Page 7 documenting the results of alcohol abuse and dependency screening whenever a member incurs an alcohol incident. The entry must describe the facts of the incident or risk factors. Article 20.B.2.g. requires entry of a separate Page 7 documenting a member's counseling after a first alcohol incident and the consequences of a second alcohol incident. In October 2003, these procedures were followed, and the appropriate Page 7s were entered into the applicant's file and included the applicant's acknowledgements. The applicant was warned in writing about the consequences of a second alcohol incident.

5. In 2007, however, the applicant's record is incomplete because documentation of his second alcohol incident—a DUI that he admitted to the DRB—is now missing. Pursuant to Article 20.B.2.e.1. of the Personnel Manual, his command presumably prepared a Page 7 documenting the "alcohol incident" with a description of the facts of the incident and another Page 7 documenting the results of alcohol abuse screening. According to Article 20.B.2.h., after a second alcohol incident, an enlisted member should be processed for separation in accordance with Article 12.B.16., which discusses discharge by reason of unsuitability. Article 12.B.16.j. states that in every case of discharge for unsuitability, the command forwards the Page 7s and other documents to Headquarters with the recommendation for separation, including a copy of a letter notifying the member of the reason for administrative processing, the member's signed acknowledgment and statement, and a copy of the CG-3306 showing certain marks on the member's Enlisted Employee Review. This discharge package, which led to the applicant's discharge, was not timely entered in his record and has apparently been lost in the interim.

6. The evidence in the record of what occurred to cause the applicant's discharge is in the applicant's first letter of recommendation from a current commander in the Coast Guard and the applicant's own admission during a telephonic appearance before the DRB that he was cited for DUI. In the letter, the commander stated that the applicant "received a DUI and was discharged from the Coast Guard." This evidence of a DUI is supported by the Page 7 dated February 23, 2007, showing that the applicant was referred for alcohol rehabilitation treatment by his command and had completed the treatment.

⁴ *Ortiz v. Secretary of Defense*, 41 F.3d 738, 743 (D.C. Cir. 1994).

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).

7. The Board concurs with the DRB's decision to change the applicant's separation code to "JND," as there is no evidence that the applicant failed to complete alcohol rehabilitation following his first alcohol incident. According to the Separation Program Designator Handbook in effect in 2007, a "JND" separation code could be assigned a reentry code of either RE-1 or RE-4. The ALCOAST 125/10, released in 2010, gave the RE-3 code wider availability. This included allowing the "JND" code to receive an RE-1, RE-3, or RE-4 reentry code. Although the ALCOAST was not specifically made retroactive, the statutes that govern the BCMR allow for review in light of current policy in the interest of justice. However, under the ALCOAST, while an RE-3 is prescribed for individuals who are separated as a result of two alcohol incidents under Article 12.B.16.b.5. (unsuitability discharge for alcohol abuse), an RE-4 is prescribed for cases involving DUI, associated alcohol-related misconduct, or failing to complete or refuse treatment.

8. As to the issue of the applicant's reentry code, then, the question pursuant to ALCOAST 125/10 becomes whether the preponderance of the evidence shows that the applicant was arrested for a DUI, committed alcohol-related misconduct, or failed or refused treatment. There is no evidence that the applicant either failed or refused to complete treatment or committed alcohol-related misconduct other than DUI in 2006 or 2007. The inquiry, then, is whether the preponderance of the evidence shows that the applicant was arrested for DUI.

9. As noted above, most of the documentation of the applicant's second alcohol incident and his separation processing is missing from his personnel file. The evidence of the DUI appears in the first letter of recommendation and in information from the DRB of what the applicant admitted during his telephonic appearance. This evidence is persuasive, however, and the Board finds that the preponderance of the evidence in the record does show that the applicant committed DUI as his second alcohol incident. Because ALCOAST 125/10 specifically states that an RE-4 is prescribed for cases involving DUI, the Board finds that the applicant has not proven by a preponderance of the evidence that his RE-4 reentry code is erroneous or unjust.

10. The Board notes that although the RE-4 is correct, it is not an absolute bar to reenlistment because reenlisting veterans is a matter of recruiting policy, not law. The military services have sometimes made exceptions and recruited veterans with RE-4s based on service needs. However, whether to make such an exception based on the applicant's character references should be the decision of the Recruiting Command, not the Board.

11. Accordingly, the applicant's request must be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

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

March 3, 2017

