DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-110

[redacted] SN (former)

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 22, 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 February 17, 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, a former seaman in the Coast Guard Reserve who was discharged in 2008, asked the Board to correct his record by changing his reentry code from RE-4, ineligible to reenlist, to RE-1, eligible to reenlist, so that he may serve his country. He stated that his discharge was inequitable in light of his service in the Marine Corps prior to his service in the Coast Guard Reserve. The applicant argued that he was not informed of his drill schedule, despite his attempts to contact his Reserve command. The applicant further claimed that he was not given any documentation regarding his discharge, despite his requesting it. He stated that he was not made aware of his ineligibility to reenlist.

On August 10, 2012, the applicant received a decision from the Discharge Review Board (DRB) regarding the alleged injustice. The applicant stated that the DRB's findings were inaccurate. He argued that the DRB's decision included his rank in the Marine Corps as an E-4, although the applicant claimed he was an E-5.

The applicant also pointed out that the DRB admitted that there was no discharge paperwork available in his records. The applicant contended that this substantiates his claim "as to the impropriety of the unit sector… Into the unit's inability of the unit [sic] to provide the basic information needed to complete service." He stated that he was "in fact prepared for duty but was unable to be given a time to appear for duty." The applicant claimed that the reason

there was no discharge package is because he "was asked to come in and sign a discharge form that [he] was never given a copy of nor was [he] given the re-enlistment implications."

The applicant claimed that he attempted to contact "the administration" and the "command element" within his unit multiple times, and he was told that no drill schedule existed for reservists and that there was no reserve command element to contact. He stated that he left messages for the administration chief, who "eventually" contacted the applicant, and asked him to complete the applicant's yearly training. The applicant claimed that he could not ascertain any additional information regarding drill scheduling. He stated his next contact with the administration chief was "months later" when the chief asked the applicant to "come in and sign a release form service which amounted to a discharge." The applicant again complained that he never received a copy of his discharge documents.

In support of his application, the applicant submitted the following certificates, all from the Marines Corps: good conduct for the period of June 13, 1994, to June 12, 1997, a certificate of outstanding service, honorable discharge on October 21, 2001, honorable service on October 21, 2001, honorable discharge on November 20, 2006, honorable service on January 23, 2007, and four administrative entries outlining applicant's duties and achievements. He also submitted a certificate from Munitions and Electronics Maintenance School, designating him as an honor graduate. Lastly, he submitted a certificate of appreciation from Vietnam Veterans of America dated April 8, 2006. The applicant stated that his citations received during his service in the Marine Corps are evidence of his quality and character of service.

SUMMARY OF THE RECORD

On November 1, 2006, the applicant enlisted in the Coast Guard Reserve for a period of four years. On November 1, 2006, the applicant signed a document that stated he would be "required to participate satisfactorily in the Selected Reserve for the first 4 years of [his] 4 year enlistment." The document further stated that he would be required to "attend at least 90% of scheduled IDT drills plus at least 12 days of annual training each fiscal year… If [the applicant failed] to participate satisfactorily, [he might] be discharged, possibly under Other Than Honorable conditions."

According to the applicant's Leave and Earnings Statements (LESes), he was paid active duty for training in November of 2006 and July of 2007. He was also paid for attending drills in July and August of 2007 and March of 2008. His last LES is from March 2008. Therefore, from November 2006 through March 2008, the applicant attended drills during 3 out of 17 months and skipped 14 drill weekends. The LESes show that during the period November 1, 2006, through October 31, 2007, the applicant received 44 qualifying points, and for the period November 1, 2007, through his discharge on April 4, 2008, he received 7 qualifying points.

The applicant was discharged from the Reserve on April 4, 2008, under honorable conditions for misconduct and received an RE-4 reenlistment code.

VIEWS OF THE COAST GUARD

On November 3, 2016, the Judge Advocate General (JAG) of the Coast Guard recommended that the Board deny relief in this case. The JAG argued that, while the applicant claimed he was not advised of drilling times or locations, the applicant has not substantiated his claim with any credible evidence. Nor has the applicant identified any individuals he attempted to contact. The JAG stated that, to the contrary, the record shows that the applicant was contacted by his reserve unit and that he drilled on several occasions. The JAG also adopted the findings and analysis provided in a memorandum submitted by the Personnel Service Center (PSC).

PSC stated that the application is not timely and therefore should not be considered by the Board beyond a cursory review. PSC argued that, due to the untimeliness of the application, the Coast Guard is prejudiced in its ability to locate records relating to the applicant's discharge or evidence to defend the accuracy of his discharge.

PSC stated that, when the applicant enlisted in the Coast Guard Reserve, he signed a document that stated he would be "required to participate satisfactorily in the Reserve for the first four years of [his] enlistment…[and he] must attend at least 90% of scheduled IDT drills plus at least 12 days of annual training each fiscal year." The enlistment document further stated that if the applicant "fail[ed] to participate satisfactorily, [he] may be discharged, possibly under Other Than Honorable conditions."

According to the applicant's Direct Access Career Summary, PSC stated that the applicant was discharged Under Honorable Conditions for misconduct, and assigned an RE-4 reenlistment code. The separation code assigned to the applicant was "JKD," which denotes "involuntary discharge directed by established directive…when member has been absent without leave."[1] The JKD separation code requires an RE-4 reentry code. PSC stated that the applicant did not receive a DD 214 discharge form because he did not complete over 90 days of Active Duty Training (ADT), and was therefore not entitled to one.[2]

PSC further pointed out that the applicant's 2012 DRB decision correctly stated that the applicant did not meet the requirements for satisfactory participation, given that he only completed 51 qualifying points during his time in the Coast Guard Reserve. While the applicant contended that he was not advised of his drilling schedule, PSC argued that he did not provide sufficient evidence to substantiate this allegation. PSC stated that it is presumed that the applicant's command correctly advised him of his drill schedule and obligations. PSC agreed with the DRB's decision that the applicant's character of service and reenlistment should not be upgraded.

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[1] Separation Program Designator Handbook.

[2] According to DoDI 1336.1, personnel being separated from a period of active duty for training will be furnished a DD 214 when they have served 90 continuous days or more.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 17, 2016, the applicant submitted a response to the Coast Guard's advisory opinion. He alleged that he was unaware of his reentry code until he tried to enlist in the Army in 2012. He argued that the Board should grant relief because there is no "discharge package" in his record and so there is no evidence supporting his RE-4 reentry code. The applicant repeated his claim that he was never provided with a drill schedule despite his several requests.

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 may be filed with the DRB within fifteen years of discharge. An applicant's statute of limitations is tolled until a decision is received from the DRB. Therefore, under *Ortiz v. Secretary of Defense*, 41 F.3d 738, 743 (D.C. Cir. 1994), an applicant must file with the BCMR within three years of the DRB's decision. The applicant was discharged from the Coast Guard Reserve on April 4, 2008. He submitted an application with the DRB on January 25, 2012. He received a decision from the DRB on August 10, 2012. He filed his application with the BCMR on April 21, 2016, more than three and a half years after the DRB decision. The application is therefore untimely because it was filed more than three years after the decision of the DRB was issued.

3. Pursuant to 10 U.S.C. § 1552(b), the Board may excuse the untimeliness of an application if it is in the interest of justice to do so. In *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that to determine whether the interest of justice supports a waiver of the statute of limitations, the Board "should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review." The court further instructed 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. The applicant did not explain his delay in seeking an upgrade of his reentry code following the DRB decision. He stated that he would like his reentry code upgraded so that he may continue to serve his country honorably. He claimed that, based on his character of service in the Marine Corps, his discharge from the Coast Guard Reserve was inequitable. In considering allegations of error and injustice, the Board begins its analysis in every case by presuming that the disputed information in an applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of 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]

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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).

5. A cursory review of the case indicates that it lacks potential merit. While the applicant points to his service in the Marine Corps, that service is irrelevant when considering the validity of his discharge and reentry code from the Coast Guard. Even had the applicant's prior service been with the Coast Guard, it would not be relevant. One single act of misconduct can earn a Coast Guardsman a general discharge and RE-4 reentry code. In this case, however, the applicant's pay records show that although he drilled on three weekends, he habitually failed to attend drills at his unit. Given that the applicant's LESes show that he did not attend 14 drill weekends in a 17-month period, the record supports the Coast Guard's claim that he was shirking his responsibilities. Although the applicant claimed that he was unaware of the drill schedule, his pay records show that he did drill on a few occasions, which is strong evidence that with due diligence he could have learned the drill schedule and shown up for drills regularly as the other reservists presumably did. Therefore, the Board finds that the applicant's claim is unlikely to 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.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

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

February 17, 2017

[redacted]