

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-043

████████████████████
██████████

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 December 7, 2016, and assigned it to staff attorney ██████████ to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated August 18, 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 member of the Coast Guard who was discharged after nine days of recruit training in 1995, asked the Board to correct his DD Form 214 by upgrading his separation code, reentry code, and separation authority. The applicant gave no explanation as to his delay in filing the application, but stated that he requested his military records from the National Archives and received them on November 7, 2016.

The applicant argued that his DD 214 incorrectly states his separation code, reentry code, and separation authority. He explained that during a standard dental exam at recruit training, it was discovered that the applicant had Temporomandibular Joint Dysfunction (TMJ) and that he had had the condition prior to entering the Coast Guard. He stated that he was unaware he had the condition, as he had no adult dental records. He had seen a dentist when he was a child, but he stated he was not informed of any diagnosis at that time. He argued that he did not fraudulently enter the Coast Guard by concealing a known condition.

The applicant argued that his DD 214 does not accurately reflect Coast Guard policy. He stated that his separation code was designated as JDT¹, but it should have more properly been JFT to denote failure to meet physical standards. He was assigned an RE-4 reentry code, denoting that

¹ The Separation Program Designator (SPD) Handbook states that the separation code JDT denotes an involuntary discharge for “fraudulent entry into the military – drug abuse.”

he was ineligible to reenlist in the military. The applicant claimed that he should have received an RE-3G code, which would denote that he could reenlist with a waiver. His DD 214 states that the separation authority is Article 12.B.18. of the Personnel Manual, which pertains to separations due to misconduct. The applicant claimed that he was not separated due to any misconduct. The separation authority should have been Article 12.B.12., which is the article for separations for involuntary discharges, and in particular the applicant stated he should have received an involuntary discharge for reason of failure to meet physical standards. He reiterated that he did not fraudulently conceal or misrepresent any condition known to him when he entered, and he never used or was accused of using illicit drugs while in the Coast Guard.

SUMMARY OF THE RECORD

A Medical Record Narrative Summary states that the applicant underwent a pre-enlistment physical examination on February 3, 1995. At that time, his dental condition was recorded as “acceptable.”

The applicant entered the Coast Guard on July 25, 1995, at age 18 after signing a four-year service contract. On July 27, 1995, he underwent a dental examination. The Medical Record Narrative Summary states that the dentist recommended that five of the applicant’s teeth be extracted. The dentist also noted that the applicant had “marginal gingivitis with localized areas of periodontal disease” and “current symptoms and past history” of TMJ. The applicant had reported having muscle spasms, his jaw locking in a closed position, and headaches. He also reported that he had missed ten days of school because of his jaw dysfunction. The summary further states that the applicant had been seen in the summer of 1994, when the applicant was 17, for “specialty consults for correction of his condition.” At that time, it was reportedly recommended that the applicant receive dental surgery and receive a dental appliance. Due to insurance coverage issues, the treatment did not take place and the applicant’s symptoms continued. It was recommended that the applicant be disqualified from training “because of the long term and complex nature of the treatment required to correct [the applicant’s] preexisting condition.”

The Medical Record Narrative Summary further noted that a medical board convened on July 27, 1995, and determined that the applicant did “not meet the minimum standard for enlistment” in the Coast Guard due to a disqualifying condition that existed prior to his enlistment. The board found that the condition was not caused or aggravated by his period of active duty service. The board recommended that the applicant be separated in accordance with Article 12.B.12. of the Personnel Manual. The applicant signed an acknowledgement of the board’s findings on August 1, 1995.

An administrative form CG-3307 was entered into the applicant’s record on August 2, 1995, stating that the applicant was discharged in accordance with Article 12.B.20. of the Personnel Manual due to “Entry Level Separation.” The form states that the applicant was assigned a reentry code of RE-3L, meaning that he would be eligible to reenlist except for a disqualifying factor; therefore, he would need to obtain waiver in order to reenlist in the armed forces.

The applicant was discharged from the Coast Guard on August 2, 1995. His DD 214 states that he entered active duty on July 25, 1995, and separated on August 2, 1995. His type of separation states Discharged, the character of service is General, and his reentry code is RE-4 (ineligible to reenlist). The separation code is JDT, which according to the Separation Program Designator Handbook, denotes an involuntary discharge for “fraudulent entry into the military – drug abuse,” and the narrative reason for separation on his DD-214 is “Entry Level Separation.” The separation authority is Article 12.B.18. of the Personnel Manual.

VIEWS OF THE COAST GUARD

On April 28, 2017, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion and recommended that the Board grant relief in this case. The JAG adopted the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC).

PSC recommended that the Board grant relief because the applicant’s DD 214 includes erroneous entries. PSC stated that Article 12.B.12. of the Personnel Manual pertains to discharges for the convenience of the government due to erroneous enlistments when the member has fewer than 60 days of active service and has a physical disability that was not incurred or aggravated in the military. Article 12.B.18. pertains to discharges due to a member’s misconduct that procured a fraudulent enlistment through a deliberate misrepresentation or omission. Article 12.B.20. pertains to uncharacterized discharges, which PSC stated, are used for most recruit separations for members who had minor, pre-existing medical conditions which were not disabling but do not meet the physical standards for military service.

PSC stated that the applicant had a pre-training dental examination on July 27, 1995, which revealed that the applicant had current symptoms as well as a past history of TMJ. The medical personnel recommended that the applicant be discharged under Article 12.B.12. of the Personnel Manual, and the applicant had signed the discharge recommendation. In addition, an administrative entry was prepared on the same day the applicant was discharged stating that he had been discharged in accordance with Article 12.B.20. of the Personnel Manual, and assigned an RE-3L reentry code.

PSC therefore recommended that the applicant’s request be granted due to the inconsistencies in his record and lack of evidence that the applicant had fraudulently entered the Coast Guard or had abused illicit drugs. PSC recommended that separation under Article 12.B.12. would be the most appropriate, and a separation code of GGH to denote that the applicant was involuntarily discharged as a result of a medical board recommendation that found him unable to meet the minimum retention standards due to a pre-existing medical condition.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 2, 2017, the Board sent a copy of the Coast Guard’s advisory opinion to the applicant and invited a response within 30 days. No response was received.

APPLICABLE REGULATIONS

Article 12.B.12.a.5. of COMDTINST M1000.6A, the Personnel Manual in effect in 1995, states that a member may be discharged for convenience of the government due to an erroneous enlistment, reenlistment, extension, or induction for a member undergoing recruit training in an original enlistment who has fewer than 60 days' active duty service who did not incur or aggravate a physical disability.

Article 12.B.18.b.2. authorizes a discharge due to misconduct for a member who procured a fraudulent enlistment, induction, or period of active service through any deliberate material misrepresentation, omission, or concealment which would have resulted in rejection of the member had it been known at the time.

Article 12.B.20.a.2. authorizes uncharacterized discharges for most recruit separations and for members who exhibit minor pre-existing medical issues that are not disabling when the member does not meet medical or physical standards for entry into the service.

The Separation Program Designator (SPD) Handbook states that the separation code JDT denotes an involuntary discharge for "fraudulent entry into the military – drug abuse." The GGH code denotes an involuntary discharge that is "based upon recommendation of board when member is not recommended for continued active duty [for] failure to meet minimum retention requirements." The associated narrative reason for separation is "Non-Retention on Active Duty." The SPD Handbook states that the reentry code may be either RE-3G or RE-4. The reentry code RE-3G is assigned for a condition which is not a physical disability, but interferes with performance of duties. The reentry code RE-3L is assigned for "entry level performance and conduct" separations and a member "must have waiver to reenlist."

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. The applicant was discharged from the Coast Guard in 1995, and he signed the DD-214. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error or injustice in his record in 1995, and 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*, 799 F. Supp. 158 (D.D.C. 1992), the court stated 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

² 10 U.S.C. § 1552(b).

³ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

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 Although the applicant in this case did delay filing his application, the evidence reveals significant prejudicial errors in his record, as explained below, and so the Board finds that it is in the interest of justice to excuse the untimeliness of the application.

4. The applicant asked the Board to correct his military record by upgrading his separation authority, separation code, and reentry code on his DD-214 and alleged that they are erroneous and unjust. 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 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

5. Prior to enlisting, the applicant received a pre-enlistment physical examination on February 3, 1995, at which point it was determined that his dental condition was acceptable. After the applicant entered active duty, he received a pre-training examination on July 27, 1995, when it was discovered that the applicant suffered from TMJ and other dental conditions. A medical board determined that the applicant should be discharged due to his pre-existing condition in accordance with Article 12.B.12. of the Personnel Manual. An administrative form dated August 2, 1995, states that the applicant was discharged in accordance with Article 12.B.20. of the Personnel Manual. The DD 214, on the other hand, states that the applicant was discharged under Article 12.B.18., the section that pertains to misconduct. The Coast Guard recommended, and the Board agrees, that the applicant’s DD 214 should be corrected to show that the separation authority for his discharge was Article 12.B.12. The applicant signed an acknowledgement that he would be discharged in accordance with this article on August 1, 1995. In addition, under the provisions in the SPD Handbook, it does appear to best fit the applicant’s discharge conditions. The applicant apparently had been seen by a dentist and/or orthodontist in the summer of 1994 for his dental conditions, although he states that he was not personally informed of the conditions because he was a minor. In either case, there is no evidence that the Coast Guard intended to discharge the applicant under Article 12.B.18. The Board therefore finds that the applicant’s DD 214 should be corrected to state that the separation authority is Article 12.B.12. of the Personnel Manual.

6. The applicant requested that his separation code be upgraded. His DD 214 states that his separation code is JDT, which denotes an involuntary discharge for “fraudulent entry into the military – drug abuse.” There is no evidence that the applicant was found to have abused drugs or discharged for that reason. The Coast Guard recommended that the separation code be changed to GGH, which denotes an involuntary discharge under Article 12.B.12. of the Personnel Manual that is “based upon recommendation of board when member is not recommended for continued active duty [for] failure to meet minimum retention requirements.” The Board finds that the JDT separation code is erroneous, and that his DD 214 should be changed to show that he received a

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).

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).

GGH separation code. In addition, his narrative reason for separation should be corrected to “Non-Retention on Active Duty,” the prescribed narrative reason under the SPD Handbook.

7. The applicant’s DD 214 shows that he received a general discharge, which is normally issued in cases of misconduct or extremely poor performance.⁷ Article 12.B.20.a.2. authorizes uncharacterized discharges for most recruit separations and for members who exhibit minor pre-existing medical issues that are not disabling when the member does not meet medical or physical standards for entry into the service. Because there is no evidence that the applicant committed misconduct, the Board finds that the character of his discharge should be corrected to “uncharacterized.”

8. The applicant also requested that his reentry code be upgraded. He received an RE-4 reentry code. Either an RE-4 or RE-3G reentry code is authorized for a GGH separation code according to the SPD Handbook in effect at the time. However, the handbook also shows that an RE-4 is primarily awarded for discharges due to misconduct, such as fraud or drug and alcohol abuse. According to the administrative remarks entered into his record the same day as his discharge, the applicant was to have received an RE-3L reentry code, but according to the SPD Handbook, the RE-3L code is authorized for entry-level discharges for performance and conduct issues under Article 12.B.20. of the Personnel Manual. The Coast Guard did not make a recommendation about the applicant’s reentry code. Because the applicant was not discharged for performance or conduct issues, there is no evidence of misconduct, and the RE-3G code is authorized for a GGH separation code, the Board finds that the applicant’s DD 214 should be corrected to show a reentry code of RE-3G.

9. Accordingly, the applicant’s DD 214 should be corrected. Specifically, the Coast Guard should correct block 24 to show that he received an “uncharacterized” discharge, block 25 to show that he was discharged under Article 12.B.12. of the Personnel Manual, block 26 to show a GGH separation code, block 27 to show a reentry code of RE-3G, and block 28 to show “Non-Retention on Active Duty” as his narrative reason for separation. These corrections should be made by preparing a new DD-214, instead of issuing a DD 215.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁷ Coast Guard Personnel Manual, Article 12.B.2 f.

ORDER

The application of former [REDACTED] for correction of his military record is granted as follows:

The Coast Guard shall issue him a new DD-214 incorporating the following corrections:

- Block 24 shall show an “uncharacterized” discharge;
- Block 25 shall show “Article 12-B-12, CG PERSMAN”;
- Block 26 shall show a “GGH” separation code;
- Block 27 shall show an “RE-3G” reentry code; and
- Block 28 shall show “Non-Retention on Active Duty” as the narrative reason for separation

The following notation may be made in Block 18 of the DD-214: “Action taken pursuant to order of the BCMR.”

August 18, 2017

