



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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-224


 (former)


FINAL DECISION


This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the completed application on July 8, 2017, 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 April 6, 2018, 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  (E-5) who was discharged on October 1, 2016, asked the Board to correct his record by reinstating him on active duty, crediting him for lost time, and awarding him back pay and allowances. In the alternative, he requested that his discharge certificate form DD 214 be corrected to show the appropriate separation and reenlistment code in accordance with the proper discharge authority.

The applicant explained that after graduating high school and enlisting in 2006, he received two Non-Judicial Punishments (NJPs) for "having an inappropriate relationship with a female crewmember." He stated that he learned a hard lesson and he now realizes that his poor judgment "was caused primarily because of [his] young age." He stated that when it came time to decide to reenlist or extend his enlistment, he was informed that the Coast Guard was considering giving the  rating a reenlistment bonus, so he decided to extend his contract and wait to see if there was a bonus.

The applicant stated that while he was stationed at his next assignment he was asked once again if he would like to reenlist or extend. He stated that he was "still under the false assumption concerning the reenlistment bonus" so he decided not to reenlist at that time as his extension was still in effect. Towards the end of 2012, he claimed, he was informed that the  rating was about to receive a reenlistment bonus by his Command Master Chief. The Command Master Chief reportedly concurred with the applicant's plans to wait to reenlist for the bonus to be announced.

The applicant stated that he had looked forward to reenlisting with the Coast Guard and had planned to make the Coast Guard his “career to the end.”

When his enlistment was coming to an end, the applicant stated, he decided to reenlist despite the fact that there was no bonus so that he could “continue on with [his] career.” He asserted that at “no time during any meetings or interviews did any Coast Guard personnel advise [him], ‘due to being mastred under the UCMJ [he] was automatically ineligible to reenlist.’” He stated that he was approached by the Officer in Charge (OIC) of his command and was advised that he was ineligible to reenlist because of the UCMJ violations nearly nine years earlier.¹ The applicant stated that he was in total shock when he heard this. He thought the matter was done with as he had never been advised that having two NJPs issue would make him ineligible to reenlist. He explained to the OIC that the UCMJ violations had happened nine years ago when he was only eighteen, that he had had no other violations in the interim, and that he wished to continue his career in the Coast Guard. The OIC said something to the effect of “that’s the policy.”

The applicant was informed by the OIC that it was possible to get a waiver in order for the applicant to be able to reenlist. The OIC indicated that “he would submit a recommendation for [the applicant’s] reenlistment” if the applicant could pass the Boarding Officer Oral Board. The applicant failed the test. He stated that there was “virtually no time to study” due to the demands of life on a cutter.

The applicant stated that he accepted his DD 214 as written because he had no idea that it would affect his future career. He added that his time at his last assignment was very difficult and he received “unfavorable treatment” aboard that cutter. As a result, he “opted not to challenge the DD214 or [his] ineligibility to reenlist.” He feels that he should have received a more favorable reenlistment code, though, and asked that the Board consider granting his requests.

In support of his application, the applicant provided copies of many of the positive and neutral administrative entries in his military record. He also provided copies of relevant documents which are discussed below in the Summary of the Record.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on October 2, 2006. His original enlistment contract was for a period of four years. On October 2, 2010, he extended his enlistment for four years, through October 1, 2014. On October 2, 2014, he again extended his enlistment for a period of two years, making the end of his enlistment October 1, 2016.

On July 9, 2008, the applicant received NJP for failure to obey a lawful general order or regulation. The Court Memorandum notes that the applicant was advised of his right to confer with counsel and he voluntarily consented to the proceeding. The Offense Narrative states “Found guilty of Article 92: Failure to obey order [or] regulation in that [REDACTED] ... violated [Cutter] INST1610.1 and CH. 8H of the CG Personnel Manual regarding inappropriate interpersonal relationships by sleeping in the same bed as ... in a motel room.” The applicant received a suspended sentence of reduction in paygrade to E-3 (rated) and forfeiture of \$450 for two months.

¹ The applicant had received two NJPs on July 9, 2008, and November 13, 2008.

The NJP was also documented with a disciplinary Enlisted Employee Review (EER), on which he received an Unsatisfactory conduct mark and was Not Recommended for advancement.

On November 13, 2008, the applicant again received NJP for failure to obey a lawful general order or regulation. The Court Memorandum states that he was advised of his right to confer with counsel and he voluntarily consented to the proceeding. The Offense Narrative states: "Found Guilty of Article 92: Failure to obey order or regulation. [Shipmates] found [applicant and female shipmate] in [applicant's] Barrack's room at 0930 on 28OCT08 with the door closed and reported they appeared to be getting dressed ... Member found in violation of Article 8H (Personnel Manual COMDTINST M1000.6A)." The applicant's previous sentence suspension was vacated, he was reduced to pay grade E-2 (rated), and he was awarded restriction with extra duties for 45 days. This NJP was also documented with a disciplinary EER with an Unsatisfactory conduct mark and a mark of Not Recommended for advancement.

On October 9, 2015, the applicant received a negative administrative entry, Page 7,² regarding his failure to certify as a Boarding Officer. It included a training timeline for the applicant to become certified within five weeks. It is signed by the OIC and the applicant and dated October 24, 2015. The Page 7 states the following:

You are being counseled on your failure to certify as Boarding Officer at this unit. You completed the Basic Boarding Officer course on 05JUN2015 but have failed to pass your oral board on two occasions. You were counseled on 25AUG2015 to complete your certification by 01OCT2015. You are being placed on a training schedule that will ensure you receive proper knowledge to fulfill your role as a Boarding Officer... Failure to do so may result in further administrative action such as placement on performance probation as well as the loss of my recommendation for your advancement and re-enlistment.

On May 5, 2016, the applicant completed a Preseparation Counseling Checklist. In box 7.a., he marked that he was "Separating Voluntarily" as opposed to "Retiring" or "Separating Involuntarily." In box 25.b., regarding the applicant's post-military goals, he stated that he planned to decompress for about a year and then go into business with his uncle.

On June 2, 2016, the applicant completed a Career Intentions Worksheet. Section 4 contains three questions. It states that if the answer to any of the questions is no, the member must contact his career counselor or unit administrative staff. The applicant answered "No" to the question "Has your unit conducted a 6-month predischarge interview and if you are separating, completed a Preseparation Counseling Checklist?" Section 5 concerns the CO's determination of eligibility and recommendation for reenlistment. Box 5C is checked, indicating that the applicant was not eligible for reenlistment but that he was recommended by the CO for reenlistment. Under the "Separation Section" of the Worksheet, Box 13 is checked, which states, "I want to be discharged (military obligation completed)."

The applicant was honorably discharged on October 1, 2016. He had exactly 10 years of active duty service. He was discharged under the separation authority COMDTINST M1000.4 1.B.11. His separation code is JBK and his reentry code is RE-4, indicating that he is ineligible to

² An Administrative Remarks record entry, form CG-3307, better known as a "Page 7," is used to document a member's notification of important information, achievements, or counseling about positive or negative aspects of a member's performance in the member's military record.

reenlist in the military. The narrative reason for separation is “Completion of required active service.” The applicant signed his DD 214 on August 30, 2016.

VIEWS OF THE COAST GUARD

On December 12, 2017, the Judge Advocate General of the Coast Guard submitted an advisory opinion recommending that the Board grant partial relief in accordance with a memorandum submitted by the Commander, Personnel Service Center (PSC).

PSC stated that the application is timely and therefore should be considered on the merits. PSC noted that on the Preseparation Counseling Worksheet the applicant marked that he was voluntarily separating from the Coast Guard and did not indicate that he was separating involuntarily; nor did he claim in his application that he was forced to select on this form that he was voluntarily separating.

PSC noted that Section 4 of the Career Intentions Worksheet states that the applicant answered “No” to the question “Has your unit conducted a 6-month predischarge interview and if you are separating, completed a Preseparation Counseling Checklist?” PSC stated that a 6-month pre discharge interview could not be found in the applicant’s military record. The applicant did, however, complete a Preseparation Counseling Sheet on May 5, 2016 (discussed in the Summary of the Record). The instructions to Section 4 state that if a member answers “No” to any of the questions, they must contact a career counselor or unit administrative staff member. According to Section 5, the applicant was not eligible to reenlist but he did have his CO’s recommendation to reenlist. PSC noted that this “is contrary to the applicant’s statement on his application that he did not receive his command’s recommendation to reenlist.”

PSC stated that the applicant was ineligible to reenlist at the end of his enlistment due to having two unsatisfactory conduct marks within his enlistment period. PSC stated that the records show that the applicant’s command had in fact recommended him for reenlistment, but he had voluntarily elected to be separated. PSC argued that he was not denied the ability to appeal his ineligibility because he did not take advantage of the waiver process. PSC therefore recommended the Board deny his request to be reinstated on active duty and to receive back pay, allowances, and credit for time in service.

With regards to the applicant’s request for alternative relief—to have his DD 214 corrected—PSC argued that his separation code, JBK, is what is “normally assigned to those members who voluntarily separate at their end of enlistment and are either ineligible and/or not recommended to reenlist.” According to the applicant’s DD 214, he was separated through his command and not under the authority of CG PSC-EPM-1. PSC stated that the reenlistment code is in line with Coast Guard policy, but is supposed to have been assigned on a case-by-case basis between either an RE-3 or an RE-4 by CG PSC and not the command.³ PSC therefore recommended that the DD 214 be corrected from RE-4 to RE-3 “as [REDACTED] was an error in the processing of the applicant’s discharge.” CG PSC-EPM-1 was the appropriate discharge authority for members who are ineligible to reenlist. PSC asserted that the applicant still received the proper separation code. However, he would have received an RE-3 had his discharge been properly

³ Enlisted Accessions, Evaluations, and Advancements manual, COMDTINST M1000.2, Article 1.A.5.d.(3).

processed through CG PSC-EPM-1. PSC stated that if the applicant “desires reenlistment back into the U.S. Coast Guard, it is recommended he work through his local recruiting office after correction of his DD-214 RE code has been made.”

PSC stated that they contacted the applicant’s last cutter via email which verified the timeline of events leading up to his discharge. The OIC confirmed that the applicant had received his recommendation to reenlist in the Coast Guard. The OIC also stated that the applicant had been counseled on a Page 7 regarding his ineligibility to reenlist, but the OIC was unable to locate a copy of the document.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 2, 2018, the Chair sent the applicant a copy of the Coast Guard’s views and invited him to respond within 30 days. The applicant replied on January 18, 2018, and disagreed with the Coast Guard’s advisory opinion.

The applicant stated that he received a Page 7 informing him that if he did not pass the Boarding Officer Board by November 30, 2015, he would not be recommended for reenlistment. The Advisory Opinion asserted that he willingly checked the box that he chose to voluntarily separate from the Coast Guard. The applicant stated that this was false. The “only reason” why he checked that box was because he was told that he would not be recommended for reenlistment because he did not pass the board on time. He stated that he did not fight the issue because “at this time in [his] life [he] was emotionally and verbally brought down by [his] command and literally felt like [he] had no way out and had no one on [his] side to help [him] figure this out and get through this.” He respectfully requested that the Board consider granting his requests.

APPLICABLE REGULATIONS

The Enlisted Accessions, Evaluations, and Advancements manual, COMDTINST M1000.2A, Article 1.A.5. states that in order to be eligible for reenlistment, “a member must receive a positive recommendation from their commanding officer... and meet the eligibility criteria listed in Article 1.A.5.b. of this Manual. Article 1.A.5.b. lists the Eligibility Criteria for advancement. Each member must meet all listed criteria unless an appeal is approved by Commander (CG PSC-EPM). Paragraph (4) states that a member must have “no more than one unsatisfactory conduct mark during the current period of enlistment.”

Article 1.A.5.d. states that members who do not meet eligibility criteria but who are recommended for reenlistment by their CO may submit for an appeal to the Commander (CG PSC-EPM-1). The member must be “afforded the opportunity to submit a written statement for consideration” by the Commander.” Paragraph (3) states that members who are discharged because they do not meet eligibility requirements will be issued an RE-3 or an RE-4 reenlistment code.

Article 1.B.1.a. of the Military Separations Manual, COMDTINST M1000.4, states that “Commander, Coast Guard Personnel Service Center is the Discharge Authority in all cases of administrative separation except in those cases specified in Articles 1.B.7, 1.B.9, 1.B.11, 1.B.14,

1.B.15, and 1.B.19. of this Manual in which the district commander, logistics/service center commands, or commanding officer, as appropriate, may be the Discharge Authority.”

Article 1.B.11.a. of the Military Separations Manual states in pertinent part that “[u]nless a member voluntarily or involuntarily remains beyond the normal enlistment expiration date as provided in this Article or by other instructions the Commandant issues, a member shall be discharged or released from active duty and transferred to the Reserve to fulfill any remaining service obligation on the day before the applicable enlistment anniversary date ... A member who has declined to reenlist on the day after discharge shall not be discharged in a foreign country except when Commander (CG PSC-EPM-1) specifically authorizes.”

According to the Separation Program Designator (SPD) Handbook, the JBK separation code is used for service-initiated discharges upon completion of required of active service. The reason for discharge shall be “Completion of required active service”; the separation authority is Article 1.B.11. of the Military Separations Manual;⁴ and the authorized reenlistment codes are RE-1 or RE-4. However, ALCOAST 125/10, issued on March 18, 2010, revises the authorized reenlistment codes in the SPD Handbook and states that for the JBK code, an RE-1 should be assigned unless the member is not recommended for reenlistment by his command, in which case an RE-3 code should be assigned.

Article 1.B.5.c. states that if a CO determines that a member with 8 or more years of service is ineligible to reenlist, the member must acknowledge the information in writing and must acknowledge having the right to object and to have a hearing before a reenlistment board. These regulations, however, were revised by ALCOAST 093/14, issued on March 7, 2014, which listed new reenlistment eligibility criteria, including having no more than one unsatisfactory conduct mark during the member’s current enlistment. Paragraph 4 of the ALCOAST states that “members who do not meet the eligibility criteria, but are recommended for reenlistment/extension by their commanding officer, may also submit an appeal to CG PSC-EPM-1 ... regardless of total years of service.” Under paragraph 4, only members who are eligible to reenlist but are not recommended for reenlistment by their COs and who have more than eight years of service are entitled to a hearing before a reenlistment board.

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. The application was timely.

⁴ When the SPD Handbook was issued, the separation rules appeared in the Personnel Manual, which was canceled on September 30, 2011, when the separation rules were transferred into corresponding articles of the new Military Separations Manual. Therefore, although the handbook refers to Article 12.B.11. of the Personnel Manual, at the time of the applicant’s discharge, these rules had been transferred to Article 1.B.11. of the Military Separations Manual.

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.⁵

3. The applicant alleged that his discharge from the Coast Guard was 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.⁶ 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."⁷

4. The applicant first alleged that his command erred in disallowing him to reenlist at the end of his enlistment. However, Article 1.A.5.b.(4) of the Enlisted Accessions, Evaluations, and Advancements manual states that a member may not have more than one Unsatisfactory conduct mark during his current period to be eligible for reenlistment. The Board does not doubt the applicant's accounts of informal discussions regarding the possibility of a reenlistment bonus being authorized for his rating. However, discussing the possibility of a bonus being authorized for the [REDACTED] rating is not a promise that the applicant would be eligible to reenlist. The applicant received two Unsatisfactory conduct marks on EERs dated July 9, 2008, and November 13, 2008, and his command was therefore correct in determining that he was ineligible to reenlist.

5. The applicant also alleged that it was an injustice to keep him from reenlisting because of mistakes he made nearly nine years earlier when he was a teenager. By the applicant's own admission his command gave him the option to pursue a waiver, as discussed in Article 1.A.5.b. of the Enlisted Accessions, Evaluations, and Advancements manual and paragraph 4 of ALCOAST 093/14, but the applicant did not attempt to obtain a waiver and instead chose to voluntarily separate as evidenced by the May 5, 2016, Preseparation Counseling Checklist and the June 2, 2016, Career Intentions Worksheet. The Board finds that the applicant has not proven by a preponderance of the evidence that his discharge was unjust even though he had not received an Unsatisfactory conduct mark on an EER since 2008.

6. In the event that the applicant's requests for reinstatement were not granted, he asked that his DD 214 be corrected. He first requested that his separation code be changed. According to the Separation Program Designator, the JBK separation code is used for service-initiated discharges when the member has completed his required active service. This code corresponds to the narrative reason for separation, "Completion of required active service," which he received. After the applicant's original enlistment and two extensions, his end of enlistment

⁵ *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).

⁶ 33 C.F.R. § 52.24(b); *see* Docket No. 2000-194, at 35-40 (DOT BCMR, Apr. 25, 2002, approved by the Deputy General Counsel, May 29, 2002) (rejecting the "clear and convincing" evidence standard recommended by the Coast Guard and adopting the "preponderance of the evidence" standard for all cases prior to the promulgation of the latter standard in 2003 in 33 C.F.R. § 52.24(b)).

⁷ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

was October 1, 2016. This is the date he was ultimately discharged. The Board therefore finds no error with respect to the JBK separation code on the applicant's DD 214.

7. The applicant also requested that the separation authority be corrected on his DD 214, which currently states that he was separated pursuant to Article 1.B.11. of COMDTINST M1000.4, which is the article of the Military Separations Manual that authorizes discharges due to expiration of enlistment. PSC claimed that the applicant's command erred by failing to process the applicant's separation through PSC, but this claim appears to be incorrect given that the applicant declined to request a waiver of the reenlistment eligibility criteria. Article 1.B.1.a.(1), "Discharge Authority," of COMDTINST M1000.4 states that Commander, PSC is the discharge authority for all administrative separations except as provided in Articles 1.B.7., 1.B.9., 1.B.11., 1.B.14., 1.B.15., and 1.B.19. of the manual, "in which the district commander, logistics/service center commands, or commanding officer, as appropriate, may be the Discharge Authority." Under Article 1.B.11., PSC is only required to authorize a separation when a member's enlistment ends if the member is being discharged in a foreign country. Therefore, the applicant's command did not abuse its discretion by exercising the authority in Article 1.B.11. to discharge him when his enlistment ended since he had opted not to contest his ineligibility to reenlist and indicated on his May 5, 2016, Preseparation Counseling Checklist and the June 2, 2016, Career Intentions Worksheet that his discharge was voluntary. According to the DD 214 Manual, the separation authority on a DD 214 should reference the appropriate article of the manual under which the member is being separated. Because the applicant was discharged when his enlistment expired and Article 1.B.11. of COMDTINST M1000.4 authorizes discharges due to expiration of enlistment, the Board finds that no correction of the separation authority on his DD 214 is warranted.

8. The applicant asked, as alternative relief, that the reenlistment code on his DD 214 be upgraded. The Coast Guard recommended upgrading the applicant's code from RE-4 to RE-3 because Article 1.A.5.d. of the Enlisted Accessions, Evaluations, and Advancements manual states that members who are discharged because they do not meet eligibility requirements will be issued either an RE-3 or an RE-4 reenlistment code. And PSC stated that CG PSC-EPM-1 would likely have given the applicant an RE-3 reenlistment code if the applicant had been discharged based on his ineligibility to reenlist. With an RE-3, a member may be able to obtain a waiver to reenlist in the Armed Forces again should he so choose. Under ALCOAST 125/10, however, members who receive the JBK code normally receive an RE-1 (eligible to reenlist) and are issued an RE-3 (requires a waiver to reenlist) only if their command does not recommend them for reenlistment. In this case, PSC has reported that the applicant's OIC recommended him for reenlistment, although the applicant recalls being told that he would not be recommended for reenlistment unless he qualified as a Boarding Officer and he failed to do so.

9. Under ALCOAST 125/10, a member receives an RE-1 with a JBK code unless his command does not recommend him for reenlistment, whereas for a member discharged based on his ineligibility to reenlist, the best reenlistment code authorized under Article 1.A.5.d. of the Enlisted Accessions, Evaluations, and Advancements manual is an RE-3. The applicant was ineligible to reenlist in 2016 because he had received two Unsatisfactory conduct marks during his enlistment. After he was informed of his right to request a waiver of the reenlistment eligibility criteria and declined to do so, his command exercised its discretion and authority to discharge the

applicant pursuant to Article 1.B.11. of the Military Separations Manual with a JBK separation code because the applicant had indicated on his May 5, 2016, Preseparation Counseling Checklist and June 2, 2016, Career Intentions Worksheet that he was separating voluntarily. Accordingly, the Board finds that the applicant's reenlistment code should be upgraded to RE-1, as authorized under ALCOAST 125/10, because the preponderance of the evidence shows that he was recommended for reenlistment by his command.

10. Accordingly, the applicant's request for reinstatement should be denied because he has not shown that his discharge was erroneous or unjust, but partial relief should be granted by directing the Coast Guard to correct his reenlistment code in Block 27 of his DD 214 from RE-4 to RE-1.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former [REDACTED], USCG, for correction of his military record is granted in part as follows: The Coast Guard shall correct his DD 214 to show that he received an RE-1 reenlistment code. No other relief is granted.

April 6, 2018

