

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-266

[REDACTED]
SN/E-3 (former)

FINAL DECISION

This is a proceeding under 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 applicant's completed application on August 31, 2017, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated July 20, 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, who received an uncharacterized entry-level separation from the Coast Guard on July 7, 1989, after 25 days of recruit training, asked the Board to change her reentry code from RE-3E (eligible to reenlist with a waiver) to RE-1 (eligible to reenlist). She stated that she was discharged only because she needed more time to recover and heal from her foot surgery and alleged that she was told by her Coast Guard doctor that she could return to active duty in six months to a year.

The applicant stated that she discovered the alleged error in her record on July 7, 1989, and argued that the Board should find it in the interest of justice to consider her application because she was very young when she enlisted in the Coast Guard, did not understand the ramifications of an RE-3E code, and her mother was not present to assist her when she was discharged.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on June 13, 1989, and was discharged 25 days later on July 7, 1989, while undergoing recruit training at the USCG Training Center in Cape May, New Jersey. She underwent a pre-enlistment examination at the Military Entrance Processing Station (MEPS) on February 1, 1989, and the clinical evaluation notes in Block 36 that the applicant had abnormal feet and the words "A.P.P., mild" are written in the notes section to

explain the abnormal finding. A clinical narrative summary prepared on June 28, 1989, also noted that the applicant filled out a Report of Medical History on February 1, 1989, and indicated that she never had or did not have any foot trouble. The applicant had another pre-training examination on June 15, 1989, and neither exam revealed any disqualifying characteristics or features.

On June 24, 1989, the applicant was treated in a Coast Guard clinic for her complaint of painful feet and told them that she had received surgery on the 5th digits of both feet one month before entering the Coast Guard for a congenital hammer toe deformity. She stated that the doctor who had performed the surgery told her that she would not have any problem getting through Coast Guard training. However, the applicant told the Coast Guard clinic that three weeks after arriving at Cape May the pain in her feet was getting worse and that she had extreme pain and tenderness over the 5th digits of both feet.

The applicant was referred to a Coast Guard staff physician, who further examined her and took x-rays of her feet. He noted that her pain was likely caused by inflammation from the previous surgery and recommended that she not be allowed to continue training. The physician stated that the applicant should return home and allow an adequate amount of healing time and then reapply to the Coast Guard when the problem clears up.

The Coast Guard convened a medical board to evaluate the applicant and on June 28, 1989, it determined she did not meet the minimum standards for enlistment and that the condition existed prior to her enlistment. The board recommended that she be separated from the Coast Guard in accordance with Article 12-B-12 of COMDTINST M1000.6.

The DD 214 in the applicant's record shows that she received an honorable discharge for the convenience of the government, pursuant to Article 12-B-12 of the Coast Guard Personnel Manual, after serving for 25 days. She received an RE-3E reentry code and a JFC separation code, which denotes an involuntary discharge when a member erroneously enlisted (not related to alcohol or drug abuse).

APPLICABLE LAW AND POLICY

Chapter 1 of COMDTINST M1900.4D, the manual for preparing DD 214s, states that the Coast Guard shall enter the appropriate reentry code to denote whether or not the member is recommended for reenlistment and shall use only the proper reentry code associated with a particular separation code as shown in the SPD Handbook. The handbook mandates the assignment of an RE-3E or RE-4 reentry code with the JFC separation code for erroneous entry discharges.

SPD Code	Narrative Reason for Separation	RE Code	Separation Authority	Explanation
JFC	Erroneous entry (other)	RE-3E or RE-4	12-B-12	Involuntary discharge directed by established directive when member erroneously enlisted into a service component (not related to alcohol or drug abuse).

Article 12-B-12-a-5 of COMDTINST M1000.6A, the Personnel Manual in effect in 1989, states that the Commander, (CGPC) may direct enlisted members to separate for the convenience of the government for an erroneous enlistment.

VIEWS OF THE COAST GUARD

On February 8, 2018, the Judge Advocate General (JAG) of the Coast Guard adopted the findings and analysis in a memorandum prepared by the Personnel Service Center (PSC) and recommended that the Board deny relief in this case.

PSC stated that the application is untimely and that the applicant did not provide any justification for her delay in applying to the Board. Regarding the merits, PSC stated that the applicant was properly discharged after a Coast Guard physician determined that she needed more time to recover from the foot surgery that she had shortly before entering basic training and the physician indicated that she could reapply to the Coast Guard at a later time. PSC argued that there was no error or injustice within the processing of the applicant's DD 214 because the SPD and RE codes on her DD 214 are consistent with the SPD Handbook.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 12, 2018, the Chair sent the applicant a copy of the views of the Coast Guard and invited her to respond within 30 days. She requested and was granted a 60-day extension but the Chair did not receive her response to the Coast Guard's recommendation.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. An application to the Board must be filed within three years of the day the applicant discovers the alleged error in his record. 10 U.S.C. § 1552(b). The Board finds that the application is untimely because the applicant knew upon her discharge in 1989 that she had received an RE-3E reentry code.
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." *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).
4. Regarding the delay of her application, the applicant argued that the Board should consider her application because she was only 17 years old when she enlisted and did not understand the problems that a RE-3E code could create. The applicant did not explain what problems the RE-3E code is causing her, and her explanation for her delay is not compelling because she

failed to show that anything prevented her from seeking correction of the alleged error or injustice more promptly.

5. A cursory review of the merits indicates that the applicant's claim is unlikely to prevail. The record shows that she was unable to complete recruit training because she was still recovering and experiencing pain from foot surgery that she had undergone shortly before reporting for basic training. She was seen by a physician at the training center's clinic who determined that she was unfit for basic training because she was still in recovery, and a medical board recommended that she be discharged. The RE-3E reentry code that she was assigned means that she was eligible to reenlist except for a disqualifying factor (being in recovery from foot surgery) and so she would need to completely heal from the surgery before attempting to reenlist in the Coast Guard. An RE-3E is not a legal bar to reenlisting. Instead, an RE-3E indicates that there was a problem that caused the member's discharge that a military service should consider before reenlisting the member. Military recruiters may request review and waiver from their recruiting commands if they want to enlist a veteran with an RE-3 reentry code. Therefore, the applicant's RE-3E meant that she would need to show that her pre-existing foot condition had resolved to receive a waiver and reenlist in the Coast Guard.

6. In light of the lack of evidence supporting the applicant's allegation of injustice and her failure to justify her long delay in filing her application, 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], USCG, for correction of her military record is denied.

July 20, 2018

