

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2019-001**

████████████████████  
██████████ BM2 (former)

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**FINAL DECISION**

This proceeding was conducted under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case upon receiving the completed application on October 5, 2018, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated November 1, 2019, 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 boatswain’s mate, second class (BM2/E-5) who was honorably discharged when his enlistment expired on December 12, 2014, alleged that he was improperly discharged without the approval of the Enlisted Personnel Management branch (EPM) of the Personnel Service Center and erroneously received an RE-4 reentry code, which makes him ineligible to reenlist in a regular or reserve component of the military. The applicant asked the Board to void his discharge and reinstate him on active duty “to get back [his] lost time and [be] afforded the opportunity to be processed IAW COMDTINST.”

The applicant stated that he had wanted to enlist after high school in 2001, but when he first spoke to a recruiter, he weighed 310 pounds and was told that he had to weigh no more than 195 pounds to enlist. He achieved that goal in 2008 at age 25, and so he enlisted in the Coast Guard for six years on September 25, 2008. He stated that in the Coast Guard, he gained many skills, made lasting friendships, and was assigned many responsible and significant duties.

The applicant stated that while on active duty, he was repeatedly “put on the weight program for failing [his] weigh ins” but quickly lost the weight to comply with the standards. In early 2012, he received transfer orders to another duty station but was on weight probation and thought that his transfer orders might be canceled because of his weight. Therefore, during his last weigh-in, he was nervous and did not realize that his “hand was slightly touching a railing in the bathroom. The Captain noticed this and [he] was brought to a Captain’s Mast by [his] CO.”

However, he was “cleared of all charges by [his] CO and received no punishment.” In addition, his transfer orders were not canceled.

The applicant stated that at his new station, he qualified as a boat team member, tactical crewman, and coxswain. He “did end up on the weight program again ... and I think this is mostly due to my wife having life threatening complications with her pregnancy and [he] also had some personal issues with one other crewmembers [sic].” He stated that over the years, he “made many attempts to take control of [his] weight from diet and exercise, to surgery, to even more unhealthy means to keep the weight off.” However, his weight never stopped him from doing his job properly and he was able to advance to BM2 in 2014.

The applicant stated that a few months before his enlistment was due to end in 2014, he was told that he would not be allowed to reenlist. Although he admitted that his weight continues to be an issue, he asked to be returned to active duty and “get back [his] time lost.”

The applicant alleged that he discovered the error on December 6, 2017, when he was “notified [his] paperwork was not properly processed by Headquarters due to [his] command not filing the paperwork properly.”

### **SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard for six years on October 28, 2008, through October 27, 2014. According to a Page 7 dated November 8, 2011, he had been placed on weight probation because he was 35 pounds overweight and had 7% excess body fat. He was advised that if he did not comply with the standards by July 3, 2012, he would be processed for separation. The applicant and his commanding officer (CO) signed this Page 7.

On December 13, 2011, the applicant reenlisted for three years through December 12, 2014. The reason for this reenlistment is not in the record.

The applicant failed the semiannual weigh-in in April 2012 but met the terms of his weight probationary period on June 20, 2012. A Page 7 dated June 26, 2012, states that he had been charged with attempting to deceive the XO and CO during the weigh-in, but the CO dismissed the charge with a warning at mast because of extenuating circumstances.

The applicant reported to his new unit on August 1, 2012. He did not fail the weigh-in in October 2012, but a Page 7 dated April 25, 2013, states that he was placed on weight probation because he was 35 pounds overweight and had 3% excess body fat. The Page 7 advised him that if he did not attain compliance by the end of the probationary period, he would be recommended for separation.

According to a Page 7 dated March 11, 2013, the applicant was “assigned into the unit Training Program” with a mentor and required to qualify as a coxswain by September 4, 2013. He was advised of various potential consequences of not certifying by that date, including a change in liberty status, extra duties, and performance probation. The applicant and his OIC signed this Page 7.

On October 13, 2013, the applicant again failed the semiannual weigh-in. On a Page 7 dated December 9, 2013, he was advised that he had met the terms of his weight probation but if he failed the next weigh-in, he would be processed for separation pursuant to the “three-strike rule” regarding three consecutive failed semiannual weigh-ins.<sup>1</sup> The applicant and his OIC signed this Page 7.

A Page 7 dated January 14, 2014, states that the applicant had failed to complete the coxswain certification process in time based on another “certification time line” that his Officer in Charge (OIC) had given him on October 4, 2013. The Page 7 warned him that if he did not complete the certification by January 22, 2014, he would be placed on performance probation. The applicant and his OIC signed this Page 7.

There is no documentation concerning the April 2014 weigh-in in the record before the Board. But a Page 7 dated August 22, 2014, states that the applicant was again placed on weight probation because he was 36 pounds overweight and had 2% excess body fat.<sup>2</sup> The Page 7 notes that it was his second probationary period within 14 months<sup>3</sup> and his sixth documented time on weight probation overall. The applicant and his OIC signed this Page 7.

On a Page 7 dated August 28, 2014, the applicant was counseled by his OIC during his reenlistment interview that he was not recommended for reenlistment by the CO because he had had more than three weight probationary periods. The OIC told him that he could submit an appeal of the CO’s decision to PSC-EPM within 15 days. His OIC also checked a box indicating that the applicant was eligible to reenlist under the criteria in ALCOAST 093/14. There is no documentation of an appeal in the record.

On December 12, 2014, the applicant was honorably discharged. His DD 214 shows that he was discharged due to “non-retention on active duty” pursuant to Article 12.B.12. of the Military Separations Manual, COMDTINST M1000.4,<sup>4</sup> with a JGH separation code<sup>5</sup> and an RE-4 reentry code.

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<sup>1</sup> Chapter 4.A.5. of COMDTINST M1020.8H requires units to recommend for separation any member who “fail[s] to maintain compliance with weight and body fat standards at three consecutive semiannual weigh-ins (Apr-Oct-Apr or Oct-Apr-Oct), also known as the three-strike rule.”

<sup>2</sup> Chapter 1.B.3. of COMDTINST M1020.8H states that COs and OICs must ensure that members are compliant with the weight and body fat standards at all times by conducting assessments as outlined in Chapter 2. Chapter 2.A.2. states that “COs and OICs may direct members who appear non-compliant with weight and body fat standards to be evaluated for compliance outside of regularly scheduled semiannual weigh-ins.”

<sup>3</sup> Chapter 4.A.4. of COMDTINST M1020.8H requires units to recommend for separation any member “placed on weight probation for the third time in a 14-month period.”

<sup>4</sup> Article 1.B.12. of the Military Separations Manual authorizes states that Commander, PSC may authorize the discharge of enlisted members for obesity. This provision had previously appeared in Article 12.B.12. of the Personnel Manual.

<sup>5</sup> Separation code JGH denotes a discharge “when member is not recommended for continued active duty – failure to meet minimum retention requirements.”

**APPLICABLE LAW AND POLICY*****Military Separations Manual, COMDTINST M1000.4***

Article 1.B.1.a. 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. authorizes commands to discharge members upon the expiration of their enlistments unless they have reenlisted. Article 1.B.12. authorizes Commander, PSC to discharge enlisted members for the convenience of the government, which includes discharges for obesity.

Article 1.B.1.d. states that in deciding whether to separate or reenlist a member the Service may evaluate the member’s entire military record.

Article 1.B.4.a. states that “[i]n general, a member who meets the reenlistment standards ... is eligible to reenlist, unless the reason for discharge precludes reenlistment ... or if the commanding officer did not recommend him or her. Commanding officers should not refuse reenlistment to members who have demonstrated a potential for a successful, productive Coast Guard career.”

Article 1.B.4.b. requires members to have a “pre-discharge interview” approximately six months before the end of their enlistment to allow time for members to be processed for separation. At this interview, the member must be informed whether he is eligible to reenlist and, if not, the reason why not.

Article 1.B.5. states that “any time after a commanding officer determines an enlisted member is not eligible to reenlist,” if the member has fewer than eight years of military service, the CO must notify the member why he is ineligible and inform him of the right to appeal the decision through the chain of command to EPM within 15 days. And this information must be documented on a Page 7.

***Reenlistment Eligibility Regulations***

Article 1.A.5. of COMDINST M1000.2 states that to be eligible to reenlist, a member must have certain minimum evaluation marks, must be physically qualified to reenlist, and must have a specific recommendation regarding reenlistment from his or her command.

ALCOAST 093/14, issued on March 7, 2014, states the following:

SUBJ: IMPLEMENTATION OF ADDITIONAL REENLISTMENT CRITERIA

A. Enlisted Accessions, Evaluations, and Advancements, COMDTINST M1000.2 (series)

B. Military Separations, COMDTINST M1000.4 (series)

1. To ensure the Coast Guard retains a disciplined, high-performing workforce, reenlistments and/or extensions should only be offered to those members (active and reserve) who maintain high professional standards and adhere to the Coast Guards core values. Therefore, to be eligible for

reenlistment or extension of (re)enlistment, a member must meet two basic criteria: receive a positive recommendation from their commanding officer and meet the eligibility criteria listed in REF A and paragraph 2 below.

2. In addition to the eligibility requirements listed in Articles 1.A.5. and 1.A.7. of REF A, all active and reserve members, regardless of duty status, must meet the following eligibility requirements during their current period of enlistment (to include any extensions):

- a. Achieve a minimum factor average of 3.5 on their enlisted performance evaluations,
- b. Have no more than one unsatisfactory conduct mark,

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- h. Have no more than three weight probationary periods, ...

3. The commanding officers recommendation remains an integral part of the reenlistment process and provides commands an opportunity to clearly articulate a member's suitability for continued service. ...

4. Members must meet all eligibility requirements to reenlist/extend. Members who meet the eligibility criteria but are not recommended for reenlistment by their commanding officer who have less than eight years total active and/or reserve military service may submit an appeal to CG PSC-EPM-1 for active duty members or CG PSC-RPM-1 for reserve members. Members who have eight or more years of total active and/or reserve military service are entitled to a reenlistment board. Additionally, 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 for active duty members or CG PSC-RPM-1 for reserve members, regardless of total years of service.

5. These updated reenlistment eligibility criteria are effective 17 March 2014. Article 1.B.4.b. of REF B requires commands to conduct a pre-discharge interview approximately six months prior to a member's expiration of enlistment (EOE) to notify a member whether they are eligible to reenlist. To accommodate this provision, members whose EOE is within six months of the 17 March 2014 effective date (17 September 2014) will not be screened against these updated reenlistment criteria. Members whose EOE is after 17 September 2014 who desire to reenlist or extend their enlistment must be screened against these updated reenlistment criteria within the timeframe of Article 1.B.4.b. of REF B. Commanding officers should coordinate with their servicing personnel office for electronic and paper records reviews prior to effecting enlistments/ extensions. The updated reenlistment eligibility criteria shall not be used as a tool to separate members that would otherwise be eligible under Article 1.B. of REF B.

6. Members not eligible for reenlistment/extension of enlistment will be discharged from the active or reserve component, as applicable, upon the expiration of their enlistment in accordance with the provisions of Article 1.B.11. of REF B with an RE-3 reenlistment code.

The associated Frequently Asked Questions included the following:

**7. If I am not recommended for reenlistment/extension, what options do I have?**

Members who meet the reenlistment eligibility criteria but are not recommended for reenlistment by their commanding officers may submit an appeal to CG PSC-EPM-1 or CG-PSC-RPM-1, as applicable, if they have **less** than eight years total active and/or reserve military service.

On October 1, 2014, PSC's attorney reported to the JAG's office that PSC's interpretation of paragraph 4 of ALCOAST 093/14 is as follows:<sup>6</sup>

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<sup>6</sup> See BCMR Docket Nos. 2015-002, 2015-150, 2016-003, and 2016-196 (upholding PSC's interpretation).

- 1) Eligible & recommended = reenlist
- 2) Eligible & not recommended = request a waiver/appeal from epm-1 (less than 8 years' service) or reenlistment board (over 8 years' service)
- 3) Not eligible & recommended = request a waiver/appeal from epm-1 regardless of years in service – no reenlistment board
- 4) Not eligible & not recommended = no reenlistment, no waiver/appeal

### ***Weight and Body Fat Program Manual, COMDTINST 1020.8H***

Chapter 1.B.3. of COMDTINST M1020.8H states that COs and OICs must ensure that members are compliant with the weight and body fat standards at all times by conducting assessments as outlined in Chapter 2.

Chapter 2 of COMDTINST M1020.8H requires each command to conduct semiannual weigh-ins. Chapter 2.A.2. states that a CO or OIC may also direct members to undergo a weigh-in whenever they “appear non-compliant with weight and body fat standards ... outside of regularly scheduled semiannual weigh-ins.”

Chapter 3.D. of COMDTINST M1020.8H states that weight probationary periods “begin immediately upon a non-compliant weigh-in.” If a member fails a semiannual weigh-in while already on probation, that counts “as a consecutive strike toward the three-strike rule to prevent a pattern of non-compliance.”

Chapter 4.A. of COMDTINST M1020.8H states that any member who meets one of the following criteria must be recommended for discharge by the command:

1. Separation In Lieu of Probation. Members who exceed their BMI screening weight and maximum allowable body fat percentage to such an extent that they would be placed in a probationary period greater than eight months by body fat calculations and more than 35 weeks by weight calculations (Members who exceed these standards are required to complete a form CG-6050, prior to being recommended for separation).
2. Failure to Progress During Probation. Members who fail to demonstrate reasonable and consistent progress during probation (example: a member who is not halfway towards compliance at the midpoint of their probationary period).
3. Non-Compliant at End of Probation. Members who fail to comply with their weight or body fat by the end of their probation.
4. Third Probationary Period in 14 Months. Members who have been placed on weight probation for the third time in a 14-month period (The 14-month period begins on the date the member is placed on probationary status).
5. Three Consecutive Failed Semiannual Weigh-Ins. Members who fail to maintain compliance with weight and body fat standards three consecutive semiannual weigh-ins (Apr-Oct-Apr or Oct-Apr-Oct), also known as the three-strike rule.
  - a. A failed semiannual weigh-in that occurs while a member is on probation does count as a strike for the purposes of this policy.
  - b. Failed compliance noted during a weigh-in for any other purpose (i.e., to attend a service school requiring demonstrated compliance) does not count as a strike.
  - c. A member who fails a third consecutive semiannual weigh-in while on probation will be processed for separation regardless of the current probationary period.

Chapter 4.C. of COMDTINST M1020.8H requires the command to submit a separation package to PSC “within 30 calendar days of the date the separation conditions listed in section 4.A. of this Manual are met.” The package must include a memorandum recommending separation and the Page 7s showing non-compliance with the standards.

### VIEWS OF THE COAST GUARD

On April 10, 2019, a judge advocate of the Coast Guard submitted an advisory opinion in which she recommended that the Board grant partial relief and adopted the findings and analysis provided in a memorandum prepared by PSC.

PSC noted that the application was not timely filed and that during six years of active duty, the applicant was placed on weight probation six times. PSC also stated that the applicant was ineligible to reenlist pursuant to the criteria in ALCOAST 093/14 because he was on weight probation four times during his final enlistment from December 13, 2011, to December 12, 2014.

PSC stated that in accordance with ALCOAST 093/14, the applicant was ineligible to reenlist, as well as not recommended for reenlistment, and so he was discharged when his enlistment expired on December 12, 2014. However, PSC stated, in accordance with ALCOAST 093/14, the applicant should have received an RE-3 reenlistment code.

PSC also stated that the applicant must have been discharged by his unit’s Servicing Personnel Office (SPO), instead of PSC, because PSC cannot find a separation authorization order or other documentation. PSC stated that the SPO did not have authority to discharge the applicant by reason of obesity under Article 1.B.12. of the Military Separations Manual without separation orders from PSC. Therefore, PSC recommended that the Board grant partial relief in this case. PSC did not recommend returning the applicant to active duty because pursuant to ALCOAST 093/14 he was both ineligible to reenlist when his contract ended on December 12, 2014, and not recommended for reenlistment by his CO. Therefore, PSC stated, “he would have been discharged at the end of his enlistment.” However, PSC recommended that in the interest of justice the applicant be issued a new DD 214 with the following information:

- Separation Authority: COMDTINST M1000.4 ART 1.B.11.<sup>7</sup>
- SPD Code: KBK<sup>8</sup>
- Narrative Reason: Expiration of Enlistment/Fulfillment of Obligated Service
- Reentry Code: RE-3<sup>9</sup>

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<sup>7</sup> Article 1.B.11. of COMDTINST M1000.4 authorizes a CO to discharge an enlisted member whose enlistment expires and who does not reenlist.

<sup>8</sup> Separation code KBK denotes a voluntary discharge initiated by the member upon the “completion of required active service” and does not entitle the member to transition benefits, whereas code JBK denotes an involuntary discharge initiated by the Service upon “completion of required active service” and does entitle the member to transition benefits.

<sup>9</sup> An RE-3 reentry or reenlistment code means that the member is “eligible for reenlistment except for a disqualifying factor,” for which the member must receive a waiver to reenlist. COMDTISNT M1000.4, Art. 1.B.2.g.; COMDTINST M1100.2E, Chap. 2.D.1.a.5.a.

## APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 24, 2019, the applicant responded to the views of the Coast Guard. He stated that his application was timely filed because he did not discover that he had been erroneously discharged without EPM's authorization until December 2017, when someone from PSC called him and told him that he had not been properly discharged. That person did not mention a three-year time limit for applying the BCMR put provided him with the form, told him to attach a written statement, and told him to email it to her, which he did. Then on September 18, 2018, she told him that he had to mail in a paper copy and that it had to have his signature. Shortly after he did that, he received a letter from the BCMR stating that his case had been docketed for review.

## 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 regulations:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. The preponderance of the evidence shows that the application was timely filed within three years of the applicant's discovery of the alleged error<sup>10</sup> because PSC has agreed with the applicant that his discharge package was not authorized through PSC-EPM, as the applicant alleged, and the applicant would have no way of knowing that PSC had decided that his discharge was not properly authorized except in the manner he alleged: On December 6, 2017, someone at PSC told him that his discharge paperwork had not been properly processed by Headquarters.
3. The applicant alleged that his discharge was erroneous and unjust and that he should be reinstated on active duty and awarded back pay and allowances because he was improperly discharged without the approval of PSC-EPM. In 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.<sup>11</sup> 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."<sup>12</sup>
4. When the applicant's enlistment was ending in 2014, he was not recommended for reenlistment by his CO because he had been on weight probation more than three times, as stated in the Page 7 dated August 28, 2014. The Page 7 dated August 22, 2014, states that he had been on weight probation six times since he enlisted for six years in 2008. Not all of this documentation is in the record before the Board,<sup>13</sup> but a weight probationary period begins whenever

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<sup>10</sup> 10 U.S.C. § 1552(b).

<sup>11</sup> 33 C.F.R. § 52.24(b).

<sup>12</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

<sup>13</sup> The Board does not have the applicant's medical records.



a member fails a weigh-in<sup>14</sup>—either a semiannual weigh-in or a weigh-in directed when a member appears to be out of compliance with the standards.<sup>15</sup> And the records available show that the applicant had failed semiannual weigh-ins in October 2011, April 2012,<sup>16</sup> April 2013, October 2013, and August 22, 2014. In light of the applicant’s long-term difficulty with complying with the Coast Guard’s weight and body fat standards, the Board finds that the CO’s decision not to recommend him for reenlistment was neither erroneous nor unjust.

5. The Page 7 dated August 28, 2014, advised the applicant that he was not recommended for reenlistment by his CO but that he met the new eligibility criteria for reenlistment published in ALCOAST 093/14. His eligibility for reenlistment under the new criteria is not clear, however, because the applicant was already on weight probation when his second enlistment began on December 13, 2011, and his failed weigh-ins on April 2012, April 2013, October 2013, and August 22, 2014, initiated new probationary periods,<sup>17</sup> although some of them overlapped. The rules state that failed weigh-ins during long probationary periods count as “strikes” but do not expressly state that overlapping or concurrent probationary periods are counted.<sup>18</sup> Because of his failed weigh-ins, if overlapping or concurrent probationary periods count under the rules, the applicant was ineligible to reenlist not only because he was not recommended by his CO but also because he had had “more than three weight probationary periods” during his enlistment.<sup>19</sup>

6. A member who is not recommended for reenlistment by his or her CO is not eligible to reenlist.<sup>20</sup> Therefore, the CO’s recommendation is an important criterion for reenlisting. However, a member who, like the applicant, had less than eight years of service could appeal his CO’s non-recommendation for reenlistment if he was eligible to reenlist under the other criteria in ALCOAST 093/14.<sup>21</sup> But a member with less than eight years of service had no right to appeal the non-recommendation if he was not eligible to reenlist under the other criteria.<sup>22</sup> Because the applicant’s command believed on August 28, 2014, that he was eligible to reenlist except for the CO’s non-recommendation, he was advised that he had the right to appeal the non-recommendation for reenlistment within 15 days.<sup>23</sup> The applicant did not claim to have appealed his CO’s non-recommendation, and there is no evidence that he did so.

7. The applicant argued that he should be reinstated on active duty because his discharge paperwork was not processed and approved through PSC-EPM. And PSC stated that it has no documentation showing that it had approved the applicant’s discharge and so the applicant “was clearly discharged erroneously.” But according to the Military Separations Manual,

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<sup>14</sup> COMDTINST M1020.8H, Chap. 3.D.

<sup>15</sup> *Id.* at Chap. 2.A.

<sup>16</sup> The records show that the applicant did not achieve compliance with the weight standards after being placed on probation in Fall 2011 until June 20, 2012.

<sup>17</sup> COMDTINST M1020.8H, Chap. 3.D. (stating that weight probationary periods “begin immediately upon a non-compliant weigh-in”).

<sup>18</sup> *Id.* at Chap. 4.A.5.a.

<sup>19</sup> ALCOAST 093/14, para. 2 h.

<sup>20</sup> COMDTINST M1000.4, Art. 1.B.4.a.

<sup>21</sup> *Id.* at Art. 1.B.5.; ALCOAST 093/14, para. 4.

<sup>22</sup> ALCOAST 093/14, para. 4.

<sup>23</sup> COMDTINST M1000.4, Art. 1.B.5. (providing 15-day appeal period).

Commander, PSC is not the only discharge authority. Paragraph 6 of ALCOAST 093/14 states that “[m]embers not eligible for reenlistment/extension of enlistment will be discharged from the active or reserve component, as applicable, upon the expiration of their enlistment in accordance with the provisions of Article 1.B.11. of [the Military Separations Manual].” And discharges under Article 1.B.11. do not require the authorization of PSC.<sup>24</sup> Therefore, unless the applicant timely appealed his CO’s non-recommendation—and there is no evidence of such an appeal—nothing in ALCOAST 093/14 or the Military Separations Manual prevented the applicant’s CO from legally authorizing his discharge when his enlistment expired in accordance with Article 1.B.11. Therefore, the fact that PSC has no record of having authorized the applicant’s discharge does not prove that his discharge was erroneous or unjust.

8. Even if the applicant had been erroneously discharged, he would not be entitled to reinstatement on active duty with back pay and allowances, as he requested. When an enlisted member is improperly discharged from active duty, he may be entitled to reinstatement and back pay and allowances but only through the end of his enlistment contract.<sup>25</sup> Therefore, because the applicant was discharged on the last day of his enlistment contract, he would not be entitled to reinstatement and back pay and allowances even if the Board had found that he had been erroneously discharged.

9. The applicant was not eligible to reenlist due to his CO’s non-recommendation,<sup>26</sup> and there is no evidence that he appealed the non-recommendation. Even if he had appealed the recommendation, the preponderance of the evidence shows that his appeal would have been denied because the applicant was still on weight probation in Fall 2014 and had shown a long-term inability to maintain compliance with the Coast Guard’s weight and body fat standards. Therefore, the Board finds that even if the applicant did timely appeal his CO’s non-recommendation, the lack of processing of that appeal by PSC would not render his discharge upon the termination of his enlistment contract erroneous or unjust.

10. Although the applicant has not proven by a preponderance of the evidence that he should be reinstated on active duty, the Coast Guard recommended that the Board grant partial relief by changing the authority for his discharge from Article 1.B.12. of the Military Separations Manual to Article 1.B.11., as specified in paragraph 6 of ALCOAST 093/14. The applicant’s DD 214 states that he was discharged for “non-retention on active duty”—i.e., for failing to meet the reenlistment standards—in accordance with Article 1.B.12. of the Military Separations Manual, COMDTINST M1000.4. But Article 1.B.12. requires the approval of PSC for discharging members. Article 1.B.11. authorizes commands to discharge members when their enlistments expire and they have not reenlisted. Because the applicant was in fact discharged by his command when his enlistment expired, the Board agrees that his DD 214 should be corrected to show that he was discharged pursuant to Article 1.B.11., instead of Article 1.B.12., in accordance with ALCOAST 093/14.

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<sup>24</sup> *Id.* at Art. 1.B.1.a.

<sup>25</sup> *Thomas v. United States*, 42 Fed. Cl. 449, 453 (1998) (“No one has a right to enlist or re-enlist in the armed forces unless specially granted such a right by statute or regulation. *Maier v. Orr*, 754 F.2d 973, 980 (Fed. Cir. 1985). A serviceman who has been improperly discharged is entitled to recover pay and allowances only to the date on which his term of enlistment would otherwise have expired. *Id.* at 983.”).

<sup>26</sup> COMDTINST M1000.4, Art. 1.B.4.a.

11. The Coast Guard also recommended changing the applicant's separation code on his DD 214. His separation code is currently JGH, which denotes an involuntary discharge under Article 1.B.12. of the Military Separations Manual due to "non-retention on active duty" when the member does not meet minimum retention standards. The Coast Guard recommended changing his separation code to KBK, which denotes a voluntary discharge due to "completion of required active service" under Article 1.B.11.<sup>27</sup> But the Board is persuaded that the applicant would have reenlisted if he had been authorized to do so, and so his discharge should not be characterized as "voluntary," especially since that would deprive him of entitlement to transitional benefits and any separation pay he might have received. Therefore, the Board finds that his separation code should be changed to JBK, which denotes an involuntary discharge due to "completion of required active service" under Article 1.B.11. and does not remove or diminish the applicant's entitlements.

12. The applicant complained that his RE-4 reentry code makes him ineligible to reenlist in any military service. The Coast Guard recommended upgrading it to an RE-3, which is the code specified by ALCOAST 093/14 and means that the member is eligible to reenlist but a waiver is required because of the circumstances that caused the discharge.<sup>28</sup> Members who are discharged with the JBK separation code may receive either an RE-1 or an RE-3,<sup>29</sup> and an RE-4 is not authorized. ALCOAST 125/10 states that for separation code JBK, "RE-1 is default, with RE-3 assigned when commanding officer does not recommend member for reenlistment." Given the requirement for the RE-3 in ALCOAST 093/14, the applicant's long-term non-compliance with the Coast Guard's weight standards, and the fact that his CO did not recommend him for reenlistment and originally assigned him an RE-4, the Board finds that his RE-4 should be upgraded to an RE-3.

13. Accordingly, the applicant's request for reinstatement on active duty with back pay and allowances should be denied because he has not proven by a preponderance of the evidence that his discharge from active duty at the end of his enlistment on December 12, 2014, was erroneous or unjust. However, alternative relief should be granted by directing the Coast Guard to issue him a new DD 214 with the following corrected entries:

- Block 25 should show COMDTINST M1000.4, Article 1.B.11., as the separation authority;
- Block 26 should show separation code JBK;
- Block 27 should show reentry code RE-3; and
- Block 28 should show "Completion of Required Active Service" as his narrative reason for separation.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

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<sup>27</sup> Separation Program Designator (SPD) Handbook.

<sup>28</sup> COMDTINST M1100.2E, Chap. 2.D.1.a.5.

<sup>29</sup> ALCOAST 125/10.

**ORDER**

The application of former BM2 [REDACTED], USCG, for correction of his military record is denied, but the following alternative relief is granted: The Coast Guard shall issue him a new DD 214 (not a DD 215) with the following entries:

- Block 25 shall show COMDTINST M1000.4, Article 1.B.11., as the separation authority;
- Block 26 shall show separation code JBK;
- Block 27 shall show reentry code RE-3; and
- Block 28 shall show “Completion of Required Active Service” as his narrative reason for separation.

November 1, 2019

