

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2020-123

██████████ ██████████ ██████████

SN

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on November 5, 2018, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated February 17, 2023, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant, a former Seaman (SN/E-3) who was honorably discharged on August 13, 2007, asked the Board to correct his record by upgrading his reenlistment code from RE-4 to RE-1. The applicant alleged that prior to his service in the Coast Guard, he served honorably in the United States Navy, and received a reenlistment code of RE-1. The applicant desires to rejoin the Navy, but alleged that because he received an RE-4 reenlistment code from the Coast Guard he can no longer rejoin the Navy.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on August 3, 2006, following prior service in the United States Navy.

On November 28, 2006, the applicant submitted a request for early release.

On February 9, 2007, the applicant's Commanding Officer (CO) endorsed the applicant's request for an early release. The applicant explained to his CO that when he joined the Coast Guard as an occupation, he pictured himself in a position of assisting others. The CO discussed other positions and jobs within the Coast Guard that may interest the applicant and according to the CO,

the applicant initially considered and agreed to an offer to work in a Marine Safety Office. However, the applicant later changed his mind, and once again requested that he be granted an early release from the Coast Guard. The CO's endorsement stated that the applicant had been performing well at the station and had shown no signs of being a hinderance, but the CO preferred having an individual that wanted to be a part of the Coast Guard and would strive to be as productive as their ability would allow. The CO explained that he did not believe that the applicant had the desire or the drive to meet his full potential within the Coast Guard, and that discharging the applicant was in the Coast Guard's best interest.

On February 9, 2007, the applicant's Sector Commander endorsed the CO's recommendation for discharge.

On March 9, 2007, Coast Guard Personnel Service Center (CG-PSC) denied the applicant's request and Command endorsements.

On July 5, 2007, following a self-referral, the applicant was diagnosed with Axis I Adjustment Disorder with depression.

On July 12, 2007, subsequent to his Adjustment Disorder diagnosis, the applicant was notified of the Coast Guard's intent to separate him due to unsuitability.

On August 13, 2007, the applicant was honorably discharged from the Coast Guard for unsuitability and given a reenlistment code of RE-4.

On September 18, 2008, the applicant timely applied to the Discharge Review Board (DRB). The applicant requested that his reenlistment code be upgraded from an RE-4 to and RE-1.

On March 16, 2010, the DRB issued its final decision, wherein it granted the applicant alternate relief and ordered the issuance of a DD-215 correcting the applicant's Separation Authority from Article 12.B.16 (Unsuitability) to Article 12.B.12 (Convenience of the Government), his Separation Code from JNC to JND, and Narrative Reason from Unsuitability to Separation for General/Miscellaneous Reasons. The applicant's request for an upgraded reenlistment code was denied. The DRB informed the applicant that if he desired to seek further redress, this Board would be the appropriate forum.

VIEWS OF THE COAST GUARD

On November 10, 2020, a judge advocate (JAG) of the Coast Guard submitted a memorandum in which she recommended the Board deny relief and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

The JAG argued that the applicant received the DRB's final decision on March 16, 2010, making his application to the Board untimely. The JAG explained that the applicant has failed to provide a justification for his delay in applying for relief.

The JAG further argued that the applicant has failed to provide sufficient evidence demonstrating that he was a victim of an error or that his reenlistment code causes a manifest injustice. According to the JAG, the Coast Guard acted in accordance with its stated policies when it provided the applicant with an RE-4 reenlistment code due to his unsuitability. In addition, the JAG claimed that the applicant was on notice of his separation details and did not object, but instead signed his DD-214. The JAG explained that the applicant is now encountering resistance from a separate military branch due to his reenlistment code, but that does not rise to the level of manifest injustice. Accordingly, the applicant’s request for relief should be denied.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 15, 2020, the Chair sent the applicant a copy of the Coast Guard’s views and invited him to respond within thirty days. As of the date of this decision, no response was received.

APPLICABLE LAW AND POLICY

Article 12.B.12. of the Coast Guard Personnel Manual (2007) provides the following guidance on separations for unsuitability:

Article 12.B.12.a. Reasons for Discharge. Commander, CGPC may authorize or direct enlisted members to separate for the convenience of the Government for any of these reasons. Commanding Officer, Training Center Cape May has final authority to discharge personnel listed in Article 12.B.12.a.5.c.

...

7. A member’s inability to perform prescribed duties, repeated absenteeism, or non-availability for worldwide assignment.

...

16. When the Commandant so directs for good and sufficient reasons.

Under the Coast Guard’s Separation Program Designator (PSD) Handbook, the JND separation code is an “involuntary” code and provides that enlisted members who receive an SPD code of JND are to receive a reenlistment code of RE-1 or RE-4.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on the applicant’s military record and submissions, the Coast Guard’s submission and applicable law:

1. The Board has jurisdiction over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record. The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

2. The application filed by the applicant was not timely. To be timely, an application for the correction of a military record must be submitted to the Board within three years after the alleged error or injustice was discovered.¹ The record shows that the applicant received notice of the DRB's final decision on March 16, 2010, wherein he was notified that his request for an upgraded reenlistment code was denied. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in March of 2010, yet did not submit his application to the Board until November 5, 2018. His application is therefore 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 "analyzing both the reasons for the delay and the potential merits of the claim based on a cursory review"³ to determine whether the interest 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 Pursuant to these requirements, the Board finds the following:

a. Regarding his delay in filing his application, the applicant failed to explain what caused his delay in applying to the Board for relief. The Board finds that the applicant's request for consideration is not persuasive because he failed to show that anything prevented him from seeking correction of the alleged error or injustice more promptly.

b. A cursory review of the merits of this case shows that the applicant's claim regarding his reenlistment code lacks potential merit. The record shows that upon his initial discharge, the applicant was given a reenlistment code of RE-4. The record further shows that the applicant timely applied to the DRB for relief, but his request for an upgraded reenlistment code was denied. Finally, the record shows that on April 1, 2010, the applicant received notice of the DRB's final decision and informed the applicant that if he wished to seek further redress, this Board would be the appropriate forum. Therefore, the preponderance of the record shows that the applicant was aware of the additional relief available to him, but chose not to take that course. There is no record that the applicant sought additional relief with this Board. The reason given by the applicant for his current application is the Navy's refusal to allow him reenlistment due to the reenlistment code he received from the Coast Guard. This reason is not sufficient to warrant a waiver of the statute of limitations. Moreover, Coast Guard policy required that due to the nature of the applicant's separation, he was to receive a reenlistment code of RE-4. The applicant has failed to submit evidence showing that his reenlistment code was erroneous and unjust, and the record is presumptively correct.⁵

4. Accordingly, with respect to the applicant's request for an upgraded reenlistment code, the Board will not excuse the application's untimeliness or waive the statute of limitations

¹ 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

² 10 U.S.C. § 1552(b).

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

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).

to conduct a more thorough review of the merits. The applicant's request should therefore be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former SN [REDACTED] [REDACTED] USCG, for the correction of his military record is denied.

February 17, 2023

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Date: 2023.03.13 09:45:40 -04'00'

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