

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2021-092

██████████ ██████████ ████
SN (former)

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 June 24, 2021, and assigned the case to the Deputy Chair to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated June 30, 2022, 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 from the Coast Guard on April 9, 2004, asked the Board to correct her record by changing the “discharge code” and removing “unsuitability” on her discharge form DD-214. The Board interpreted this as a request to change her separation code, narrative reason for separation, reenlistment code, and separation authority.

The applicant argued that her DD-214 should be changed because the supervisory staff constantly harassed her regarding her pregnancy and abilities. For example, she stated that she was only reprimanded for group issues. The applicant stated that following her pregnancy, she experienced depression which ultimately led to her discharge. Regarding the delay in submitting her application, the applicant acknowledged that she discovered the alleged error immediately upon discharge. However, she stated that she was under the impression that her DD-214 could not be changed. The applicant did not explain what changed her mind.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on June 9, 2003.

On December 2, 2003, the applicant received a negative Administrative Remarks form (“Page 7”). The Page 7 stated that on December 1, 2003, the applicant inquired about the Coast

Guard's policy on facial piercings because she wanted to pierce her lip. She was instructed by two supervisors not to do so. However, the applicant defied her supervisors and pierced her lip that afternoon. The applicant was counseled on the Coast Guard Uniform Regulations Manual which prohibits jewelry, other than earrings for women, that are attached to any body part visible while wearing the uniform.

On February 13, 2004, the applicant attended nonjudicial punishment (NJP) proceedings for failing to obey a lawful regulation¹ and for willfully damaging her room.² The charges stemmed from the applicant improperly having two kittens in her room that caused \$1,000.00 worth of damage. The charges were dismissed and she was issued a warning. However, during the proceeding, the applicant told her Commanding Officer (CO) that she did not have a lip plug when, in fact, she did have such object in her lip. The applicant received NJP for making a false official statement.³ As NJP, the applicant received extra duty for 10 days.

On March 11, 2004, the applicant was notified that her CO had initiated action to discharge her due to unsuitability. The CO stated that the applicant's performance marks supported an honorable discharge. The CO stated that the applicant had been insubordinate and disrespectful to her immediate chain of command. The CO cited four specific incidents. The first incident occurred on December 1, 2003, when the applicant pierced her lip despite receiving orders that same day from her supervisor explicitly directing her not to do so. The second incident occurred on January 8, 2004, when the applicant was unable to fund her return from an out-of-state trip. The applicant's command was forced to arrange and express ship a \$500 loan check on "good faith" that she would honor the loan upon her return. The third incident occurred on January 12, 2004, when the applicant's command discovered that she had maintained two kittens in her barracks against unit instructions and caused damage. The final incident occurred on February 13, 2004, when the applicant gave a false official statement to her CO when asked whether she had a lip plug in her mouth.

That same day, the applicant acknowledged notification of her proposed honorable discharge and did not object. She waived her right to submit a statement on her behalf. She also waived her right to consult with a lawyer.

Also on March 11, 2004, the applicant's CO sent a letter to the Enlisted Personnel Management Division of the Personnel Service Center requesting that the applicant be honorably discharged by reason of unsuitability. The CO stated that since the applicant's arrival, she had been a constant disciplinary and administrative burden to her supervisors and the unit. The CO cited the same incidents that were included in the applicant's notification for discharge. The CO stated that the applicant was clearly not cut out for the military and that a speedy discharge was in the best of interest of the Coast Guard.

On April 9, 2004, the applicant was discharged for unsuitability. Her DD-214 shows "honorable" as the character of discharge; "ART. 12-B-16, COMDTINST M1000.6A," which authorizes discharges for unsuitability, as the separation authority; "unacceptable conduct" as the

¹ Art. 92, UCMJ.

² Art. 108, UCMJ.

³ Art. 107, UCMJ.

narrative reason for separation; RE-4 (ineligible for reenlistment) as the reenlistment code; and JNC (unacceptable conduct) as the separation code. The applicant signed her DD-214.

VIEWS OF THE COAST GUARD

On December 23, 2021, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC argued that the application is not timely. Regarding the merits of the case, PSC argued that the applicant failed to show that the Coast Guard committed an error or injustice. Specifically, PSC argued that the applicant failed to substantiate her claims. PSC stated that the applicant was properly discharged after several disciplinary infractions and behavioral issues. Further, PSC stated that the applicant acknowledged her CO's intent to discharge her, waived her right to submit a statement, waived her right to consult with a lawyer, and did not object to the discharge.

The JAG reiterated that the applicant failed to show any evidence that Coast Guard committed an error or injustice. First, the JAG contested the applicant's assertion that she was only reprimanded for group issues. The JAG stated that the applicant received NJP for individual misconduct. Moreover, the JAG noted that the applicant did not rebut any of the underlying misconduct that precipitated her discharge. The JAG also contested the applicant's assertion that she was harassed or treated unjustly by the command. The JAG stated that the applicant provided no evidence or support with her application.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 24, 2022, the Chair sent the applicant a copy of the Coast Guard's views and invited her to respond within thirty days. No response was received.

APPLICABLE LAW AND POLICY

Article 12.B.16.b. of the Coast Guard Personnel Manual in effect in 2004, discusses the reasons for discharging a member for unsuitability as follows:

The purpose of discharges for unsuitability is to free the Service of members considered unsuitable for further service because of:

1. Inaptitude. Applies to members best described as unfit due to lack of general adaptability, want or readiness of skill, clumsiness, or inability to learn.
2. Personality Disorders. As determined by medical authority, personality behavior disorders and disorders of intelligence listed in the Medical Manual, COMDTINST M6000.1 (series), Chapter 5.
3. Apathy, Defective Attitudes, and Inability to Expend Effort Constructively. A significant observable defect, apparently beyond the member's control, not readily describable elsewhere.
4. Unsanitary Habits.
5. Alcohol Abuse. See Article 20.B.2. for guidelines on alcohol abuse cases.
6. Financial Irresponsibility.

The Separation Program Designator (SPD) Handbook, which is Enclosure 2 to the DD-214 Manual, COMDTINST M1900.D, states that one of the authorized narrative reasons for separation for members being discharged under Article 12.B.16. of the Personnel Manual is “unacceptable conduct.” The corresponding separation code is JNC, and it means that the member is being involuntarily discharged “when member performs acts of unacceptable conduct (i.e., moral and/or professional dereliction) not otherwise listed.” The only authorized reenlistment code for this type of discharge is RE-4.

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.⁴ The applicant was discharged in 2004 and received and signed her DD-214 at the time. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in 2004, and the application is untimely. However, the Board may excuse the untimeliness of an application if it is in the interest of justice to do so,⁵ and the Board will excuse the untimeliness in this case because the applicant’s request falls under the Board’s “liberal consideration” guidance since the applicant is challenging her type of discharge based in part on an alleged mental health problem.⁶ Therefore, the Board waives the statute of limitations in this case.
3. The applicant alleged that her honorable discharge for unsuitability is erroneous and unjust because a mental health condition—depression—caused or contributed to the behavior that resulted in the discharge. 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 the record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁷ 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.”⁸ And under the “liberal consideration” guidance, when deciding whether to upgrade the discharge of a veteran based on an alleged mental health condition, the Board must liberally consider the evidence, including the applicant’s claims, and decide whether the preponderance of the evidence shows that the veteran had a mental health condition while in the Service that could excuse the veteran’s misconduct; whether the mental health condition actually excused the misconduct that adversely affected the discharge; and, if not,

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

⁵ 10 U.S.C. § 1552(b).

⁶ DHS Office of the General Counsel, “Guidance to the Board for Correction of Military Records of the Coast Guard Regarding Requests by Veterans for Modification of their Discharges Based on Claims of Post-Traumatic Stress Disorder, Traumatic Brain Injury, Other Mental Health Conditions, Sexual Assault, or Sexual Harassment” (signed by the Principal Deputy General Counsel as the delegate of the Secretary, June 20, 2018).

⁷ 33 C.F.R. § 52.24(b).

⁸ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

whether the mental health condition outweighs the misconduct or otherwise warrants upgrading the veteran's discharge.⁹

4. The applicant alleged that she suffered from depression while serving in the Coast Guard. Specifically, the applicant alleged that she developed depression following her pregnancy. However, the applicant did not provide any evidence that she suffered from or was diagnosed with depression while she was in the Coast Guard. Further, the applicant's military records do not indicate that she suffered from depression while in the Service. Even if the applicant had proven that she suffered from depression while in the Coast Guard, she did not explain how depression caused or excused her misconduct. Therefore, the applicant has not proven by a preponderance of the evidence that she suffered from depression at the time of her misconduct.

5. The applicant argued that her separation authority on her DD-214 is erroneous and unjust. Specifically, she asked the Board to remove "unsuitability" on her DD-214. However, the applicant's DD-214 does not explicitly state "unsuitability." Instead, the applicant's separation authority shows that she was discharged in accordance with Article 12.B.16. of the Coast Guard Personnel Manual. Article 12.B.16. of the manual states that enlisted members could be discharged if they were unsuitable for further service because of the following: inaptitude; personality disorders; apathy, defective attitudes, and inability to expend effort constructively; unsanitary habits; alcohol use; and financial irresponsibility. The applicant argued that her separation authority should be changed because her command constantly harassed her regarding her pregnancy and abilities. However, the applicant failed to provide any evidence that she was harassed because of her pregnancy. Further, there is nothing in the applicant's record to suggest that she was harassed, or even criticized, about her abilities. In fact, the CO recommended that the applicant receive an honorable discharge due to her performance marks. Instead, the applicant's record shows that she was discharged as a result of her insubordination. In the notification for discharge, her CO cited four specific examples of insubordination. One of the examples included the applicant giving a false official statement to her CO while she was at an NJP proceeding for another offense. Therefore, the applicant has not proven by a preponderance of the evidence that her separation authority, separation code, or narrative reason for separation is erroneous or unjust.

6. The applicant argued that her discharge code, which presumably refers to her reenlistment code of RE-4, on her DD-214 is erroneous and unjust. The applicant did not specify to what she wanted her reenlistment code changed. However, according to the SPD Handbook, the only authorized reenlistment code for members who are discharged for unacceptable conduct with a JNC separation code is RE-4. Therefore, the applicant has not proven by a preponderance of the evidence that her reenlistment code is erroneous or unjust.

7. Therefore, the applicant's request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁹ *Id.*

ORDER

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

June 30, 2022

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