


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2006-096

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXX, SR/E-1 (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 on April 14, 2006, upon receipt of the applicant's completed application for correction.

This final decision, dated November 2, 2006, is adopted 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 recruit (SR; pay grade E-1) who served 24 days in the Coast Guard before being discharged for misconduct (drug use), asked the Board to correct his record by upgrading his reenlistment code from RE-4 (ineligible for reenlistment) to RE-1 (eligible for reenlistment) so he can reenlist in the Coast Guard. The applicant stated that when he tested positive for marijuana use upon reporting to recruit training, he "panicked, and in a moment of youthful indiscretion, went absent without leave [AWOL]." He also stated, "The mistake [drug use] I made prior to my enlistment taught me a lesson I will not soon forget. The time that has elapsed between my discharge and now has been anything but wasteful. I am 24 years old, and have matured a great deal. My only wish is to better myself by serving my country in the United States Coast Guard."

In support of his application, the applicant submitted a letter from his current employer, Mr. B, who stated that he has known the applicant for more than seven years. Mr. B. stated that the applicant has "proven himself to be a responsible and respectful young man." Mr. B. also noted that the applicant "was always an individual I could

count on, and worked well with others. [The applicant] continually proved his ability and desire to learn more as his stay with the restaurant continued. His growth in the culinary field was evident right away, and he became an essential member of our team." Finally, he stated that the applicant would "be an incredible asset in any work environment. He has a work ethic that is unparallel [sic], and a desire to improve and excel in every area."

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on July 27, 1999, at the age of 17. As part of the enlistment process, the applicant signed an administrative entry (Page 7)¹ which stated "... I also understand that that upon reporting to recruit training, I will be tested by urinalysis for the presence of illegal drugs. If my urine test detects the presence of illegal drugs, I will be subject to immediate general discharge by reason of misconduct. By signing below I am certifying I have not knowingly ingested any illegal drug for the last 60 days." Shortly after reporting to Training Center (TRACEN) Cape May for recruit training, the applicant submitted a urine sample for urinalysis. On August 13, 1999, the applicant went AWOL and did not return until August 19, 1999.

On August 20, 1999, a Page 7 was placed in the applicant's record by the Commanding Officer (CO) at TRACEN Cape May notifying him that he was being discharged from the Coast Guard because the urinalysis conducted upon his arrival at TRACEN had tested positive for an illegal substance. The Page 7 indicates that the applicant would be awarded a general discharge by reason of misconduct and that he would receive an RE-4 reenlistment code.

On August 20, 1999, the applicant was discharged from the Coast Guard pursuant to Article 12.B.18. of the Coast Guard Personnel Manual. He received a discharge characterized as "under honorable conditions," a separation code of JDT,² and "misconduct" as the narrative reason for separation. The record indicates that the applicant received an RE-4 reenlistment code. Out of his 24 days in the Coast Guard, he had been AWOL for 6.

Prior to filing his application with the Board, the applicant submitted a request to the Coast Guard's Discharge Review Board (DRB) for an upgrade of his discharge and

¹ A Page 7 entry documents any counseling that is provided to a service member as well as any other noteworthy events that occur during that member's military career.

² JDT denotes an "involuntary discharge directed by established directive when a member procured a fraudulent enlistment, induction, or period of military service through deliberate material misrepresentation, omission, or concealment of drug abuse." Separation Program Designator (SPD) Handbook, 2-23.

reenlistment code. On May 10, 2005, the DRB denied the applicant's request, stating that his discharge had been carried out in accordance with Coast Guard policy and that his character of service and reenlistment code were proper. On August 9, 2005, the Commandant reviewed the DRB's decision and approved its finding that the applicant's discharge was proper.

VIEWS OF THE COAST GUARD

On August 21, 2006, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he adopted the findings of the Coast Guard Personnel Command (CGPC) and recommended that the Board deny the applicant's request. CGPC argued that the applicant's discharge was in accordance with Coast Guard policy for processing members with pre-service drug abuse. CGPC also argued that the applicant's RE-4 reenlistment code is proper because it is the only reenlistment code allowed for a member discharged for pre-service drug abuse. Finally, CGPC stated that "given the applicant's character of service 'Under Honorable Conditions' it would be inconsistent to assign a reenlistment code other than RE-4 with a General Discharge."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 24, 2006, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. The BCMR did not receive a response.

APPLICABLE REGULATIONS

Article 12.B.18.b.4. of the Manual provides that any member involved in a drug incident or the illegal, wrongful, or improper sale, transfer, manufacture, or introduction onto a military installation of any drug will be processed for separation from the Coast Guard with no higher than a general discharge. Commanding Officer, TRACEN Cape May is delegated the final discharge authority for members assigned to recruit training under this Article in specific cases of drug use before enlistment (as evidenced by a positive urinalysis shortly after training). New inductees shall sign a CG-3307 entry acknowledging that the presence of drugs in their bodies upon arrival for recruit training is grounds for a general discharge for misconduct.

The SPD Handbook lists the reenlistment code authorized for a member discharged for fraudulent enlistment through deliberate material misrepresentation, omission, or concealment of drug use. The only available reenlistment code 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 submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code. The applicant applied to the DRB approximately six years after his discharge, and the DRB issued its final decision on May 19, 2005. According to *Ortiz v. Secretary of Defense*, 41 F.3d 738 (D.C. Cir. 1994), the BCMR's three-year statute of limitations begins to run at the conclusion of DRB proceedings for an applicant who is required to exhaust administrative remedies by applying to the DRB before seeking redress from the BCMR. The Chair received the applicant's BCMR application on March 31, 2006, and therefore, it was timely.

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.

3. The applicant asked the Board to upgrade his RE-4 reenlistment code to RE-1 so he can reenlist in the Coast Guard. The applicant stated that his panic and subsequent AWOL from recruit training were the result of "youthful indiscretion" and that the experience has taught him a lesson he will not soon forget. He also states that he has matured a great deal and that his "only wish is to better myself by serving my country in the United States Coast Guard."

4. The record indicates that the applicant signed a Page 7 before signing his enlistment contract on July 27, 1999, acknowledging that he understood that "upon reporting to recruit training, I will be tested by urinalysis for the presence of illegal drugs. If my urine test detects the presence of illegal drugs, I will be subject to immediate general discharge by reason of misconduct. By signing below I am certifying I have not knowingly ingested any illegal drug for the last 60 days."

5. The record indicates that the applicant tested positive for illegal drug use upon his arrival at TRACEN Cape May and was counseled via a Page 7 on August 20, 1999, that he was being discharged for misconduct because his urinalysis tested positive for an illegal substance. The Page 7 also indicates that the applicant would receive an RE-4 reenlistment code.

6. The Board finds that the applicant was properly discharged subsequent to his positive urinalysis for an illegal substance. In accordance with Article 12.B.18.b.4. of the Personnel Manual, the CO at TRACEN Cape May had the final authority to recommend the discharge of any member who tested positive for illegal drug use upon their arrival at TRACEN Cape May.

7. The applicant has failed to prove by a preponderance of the evidence that his discharge for drug use was in any way erroneous or unjust or that he was denied any due process pursuant to his discharge under Article 12.B.18. of the Personnel Manual. Moreover, an RE-4 code is the only reenlistment code authorized for anyone discharged due to concealment of drug use. Therefore, the applicant has not proved that his receipt of the RE-4 code is erroneous or unjust and this case does not constitute "treatment by military authorities that shocks the sense of justice." See *Sawyer v. United States*, 18 Cl. Ct. 860, 868 (1989), *rev'd on other grounds*, 930 F.2d 1577 (citing *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976)).

8. Accordingly, the applicant's request should be denied.

ORDER

The application of former SR XXXXXXXXXXXXXXXX., xxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied.

