

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-234



FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the completed application on August 4, 2017, and assigned it to staff attorney [REDACTED] to prepare the decision for the Board pursuant to 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, a former Fireman who was discharged on November 23, 2016, asked the Board to correct his record by making him eligible for separation pay. He stated on his application that he was requesting "approval for unemployment benefits and wages to be released to the [State] Workforce Commission." He stated that he was submitting this application as an "unemployment appeal after your denial for the financial support after being discharged."¹ He claimed that he was told he would be able to file for unemployment after he was released from the Coast Guard. He stated that he requested financial aid while he searched for employment. The applicant stated that despite attending many recruitment events he has been unable to obtain interviews for positions. He asked that the Board "reconsider [the] decision of denial of financial aid to assist [the applicant] with financial assistance." He stated that "backing out of words" will cause him a "huge loss" and he has no other source of income. He asked the Board to favorably consider his request.

In support of his application, the applicant provided several documents from his military record and his entire military medical record. Relevant documents are described below in the Summary of the Record.

¹ The "your" presumably means the Coast Guard because this is his first application to the Board.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on February 10, 2015. During the applicant's time in the Coast Guard, he received several negative Page 7s² documenting "continued failures to report to work prior to liberty expiring" and driving under the influence of alcohol. He received non-judicial punishment (NJP) for these offenses on April 19, 2016, and September 14, 2016. He was subsequently processed for discharge.

The applicant was discharged on November 23, 2016, under honorable conditions with a total of one year, nine months, and fourteen days of active duty service. He received an RE-4 reentry code, indicating that he is ineligible for reenlistment, his separation code is JKA, and his narrative reason for separation is "Pattern of Misconduct."

VIEWS OF THE COAST GUARD

On December 28, 2017, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case. In doing so, he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC stated that the application is timely and should be considered on the merits. PSC stated that it was unclear what the applicant requested. PSC had attempted to reach out to the applicant to determine what exactly he was requesting but was unable to get in touch with him. The Coast Guard "does not provide unemployment benefits and the applicant did not qualify for separation pay because he was discharged for misconduct." PSC recommended that the applicant get in touch with his local and state veteran affairs or state employment office for assistance with obtaining unemployment benefits. PSC recommended that the Board deny the requested relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 22, 2018, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. No response was received.

APPLICABLE REGULATIONS

The Separation Program Designator Handbook states that the code JKA corresponds with "Pattern of Misconduct" as the reason for separation. The Handbook also notes that a member discharged for this reason is not eligible for Involuntary Separation Pay in accordance with Department of Defense Instruction (DoDI) 1332.29.

Involuntary Separation Pay is available to members in accordance with DoDI 1332.29 who meet enumerated eligibility criterion. To be eligible for separation pay, a service member must have completed at least six years of active duty, must have an honorable characterization of

² An Administrative Remarks record entry, form CG-3307, better known as a "Page 7," is used to document a member's notification of important information, achievements, or counseling about positive or negative aspects of a member's performance in the member's military record.

discharge, must have been involuntarily separated through denial of reenlistment or denial of continuation of active duty under specific listed conditions, must be in a written agreement to serve in the Ready Reserve, and must sign a disclosure statement.

To be eligible for half separation pay, all of the same requirements must be met except that a member may have an honorable or under honorable conditions discharge. The reason for discharge can be the same as the specific reasons given for full separation pay or weight control failure, parent or custody of child, military security program, disability that existed before service, mental or physical conditions not constituting a disability, alcohol or drug abuse rehabilitation failure, or failure to meet minimum retention standards.

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. The application was timely.

2. The applicant alleged that it is erroneous and unjust that he received no separation pay.³ 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 his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁴ 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."⁵

3. The applicant has not proven by a preponderance of the evidence that he is eligible for full or half separation pay. The Separation Program Designator Handbook clearly states that members who receive the JKA separation code are not eligible for involuntary separation pay pursuant to DoDI 1332.29. DoDI 1332.29 states that in order to receive either separation pay or half separation pay a member must have had at least six years of active duty service. The applicant served on active duty for only one year, nine months, and fourteen days. The applicant did not meet any of the other criteria for separation pay either. Although a member who is separated under honorable conditions may be eligible for half separation pay, the member cannot have been separated for misconduct. Therefore, the applicant is also ineligible for half separation pay, notwithstanding the fact that he does not meet the other eligibility requirements.

³ The application stated that he was requesting "unemployment benefits and wages." PSC has tried to contact the applicant to verify that he is requesting separation pay, but they were unable to get in contact with him. Based on the applicant's apparent request for financial assistance, the Board believes that he is requesting separation pay, as the Coast Guard does not provide unemployment benefits or wages.

⁴ 33 C.F.R. § 52.24(b); *see* Docket No. 2000-194, at 35-40 (DOT BCMR, Apr. 25, 2002, approved by the Deputy General Counsel, May 29, 2002) (rejecting the "clear and convincing" evidence standard recommended by the Coast Guard and adopting the "preponderance of the evidence" standard for all cases prior to the promulgation of the latter standard in 2003 in 33 C.F.R. § 52.24(b)).

⁵ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

4. Accordingly, the applicant's request for relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

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

July 20, 2018

