

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-055



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 December 22, 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 September 14, 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 Seaman Apprentice (SA) in the Coast Guard Reserve who was discharged on November 1, 2000, asked the Board to correct his record by upgrading his "Discharge with Misconduct." The applicant stated that he performed his duties at the time to the best of his abilities. He asserted that he took pride in serving the Coast Guard, but circumstances in his personal life had an effect on his military career. He stated that his civilian job and personal life "took time from military responsibilities." The applicant claimed that he did not disregard his Reserve schedule but he was exhausted and stressed.

Regarding the delay in his application, the applicant stated that he "worked very hard in Basic Military training to earn an E-2 paygrade" but did not provide any additional explanation. In support of his application, he provided assorted documents from his military record, some of which are discussed below in the Summary of the Record.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard Reserve on May 4, 1999, in the RK program.¹ He completed basic training, advanced to SA, and was assigned to a Reserve unit for drills.

¹ The Reserve Administration and Training Manual, Article 4-A-1 states that the minimum drill attendance required for satisfactory participation in the RK program is 90% of scheduled drills.

The applicant received a negative Page 7² on January 8, 2000, regarding his absences from Reserve drills. It states the following:

You reported on board ... 24July99, at the time you had indoctrination on the RK program and your duties and responsibilities [sic]. You were given your drill dates from the months of Aug & Sept. Prior to each quarter you were again given your drill dates.

Since reporting on board ... you were absent without excuse on the following dates: 14AUG99, 11SEP99, 21NOV99, and 19DEC99. You have already been counselled about your attendance. You are directed by this letter to comply with your military obligation. This will become part of your service record and will reflect on your evaluation. Failure to comply will have the following consequences:

1. Processing for a discharge for misconduct.
2. Recoupment of any bonus monies.
3. Recoupment of any G.I. Bill monies.

The applicant acknowledged this Page 7 by signature on January 22, 2000.

A Retirement Point Statement shows the applicant's earned points from the date of his enlistment through April 30, 2000. He earned 53 points for his Initial Active Duty Training (IADT) from May 4, 1999, through June 25, 1999. He earned two points per scheduled drill weekend day from July 24, 1999, through April 30, 2000, except when he earned 0 points on the following dates:

- August 14, 1999
- September 11, 1999
- November 21, 1999
- December 18, 1999
- December 19, 1999
- April 8, 2000
- April 9, 2000
- April 30, 2000

In total, the applicant earned 24 Inactive Duty Training (IDT) points during this period. He also received 15 membership points. Therefore, his total for this period was: $24 + 15 + 53 = 92$.

The applicant received a second negative Page 7 on May 13, 2000, regarding continuing issues with his drill attendance. The applicant refused to acknowledge this Page 7 with his signature. It states the following:

On 25Apr00 you were counselled by Captain ..., USCGR regarding your IDT participation. You were given an excused absence for 25/26MAR00.^[3] You were instructed to perform the make-up drills on 08, 09APR00. You reported on board at 0930hrs on 08APR00 and 0830 hrs on 09APR00. Our IDT drills commence at 0715hrs. On

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.

³ These dates do not appear on the Retirement Point Statement discussed above.

both occasions the RK's had departed to the USCGC ... for training. You were directed to report to ... on 08APROO for possible training. You ignored this directive and went home. On 09APR00 you reported on board at 0930hrs. You were counseled by ... and again sent home with an unexcused absence. On 13MAY00 you reported on board at 0830hrs. It is recommended that you be given a discharge for misconduct for failure to participate.

According to the applicant's record, he was discharged on November 1, 2000. He received a separation code of JBK and a reentry code of RE-4 (ineligible to reenlist).

VIEWS OF THE COAST GUARD

On May 29, 2018, 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 not timely and therefore should not be considered beyond a cursory review. PSC argued that the applicant has not shown that an error or injustice occurred during his discharge or in his record. PSC asserted that the applicant received a JBK separation code, which is "Completion of Required Active Service" and not a misconduct code. PSC stated that the JBK code is authorized to accompany an RE-1 or an RE-4 reentry code. PSC therefore recommended that the Board deny relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 13, 2018, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. The applicant replied on June 16, 2018, and stated that he disagreed with the Coast Guard's advisory opinion.

The applicant stated that his application is untimely because the Coast Guard Reserve was an "important part of [his] life and career and it was worth reviewing." He stated that he decided to join the Reserve because he lived with his widowed mother and did not have any siblings. He asserted that the Coast Guard "life and responsibilities require[d] time and attention." The applicant stated that he worked a full time job, including overtime hours, in addition to his Reserve duties. He stated that he was aware he did not attend some of his required drills as mentioned in the negative Page 7s. However, he asserted that he was not aware of his "rights as a USCG service man regarding hardship (RE-3H); conditions (not physical) that affect [his] military responsibilities (RE-3G); [and] sole surviving son (RE-3S)." He stated that the RE-3 code could qualify him for reenlistment. He noted that he earned over the 50 required points for a satisfactory year while he was in the Reserve.

APPLICABLE REGULATIONS

According to the Separation Program Designator Handbook, the separation code JBK indicates an involuntary discharge for "Completion of Required Active Service."

The Certificate of Release or Discharge from Active Duty, DD Form 214, COMDTINST M1900.4D, Chapter 2 lists all of the reentry codes. RE-3H was the reentry code used for hardship; RE-3G was the reentry code used for “Condition (not physical disability) interfering with performance of duty); and RE-3S was used for “Sole surviving son/daughter and certain family members.”

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 from the Coast Guard Reserve in 2000. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 2000, and his application is untimely.
3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.⁵ 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 “analyz[ing] both the reasons for the delay and the potential merits of the claim based on a cursory review”⁶ 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.”⁷
4. Regarding the delay of his application, the applicant explained that being a part of the Reserve was important to him and he felt it was worth being reviewed. The Board finds that the applicant’s explanation for his delay is not compelling because he failed to show that anything prevented him from seeking correction of the alleged error or injustice more promptly.
5. A cursory review of the merits of this case indicates that the applicant’s claim cannot prevail. The record contains no evidence that substantiates the applicant’s allegations of error or injustice in his official military record, which is presumptively correct.⁸ As a reservist in the RK program, the applicant was required to attend at least 90% of the scheduled drills at his unit for his performance to be considered satisfactory. His Retirement Point Statement for his first year of service shows that he missed eight drills not including the drills from which his command excused him. He received a negative Page 7 on January 8, 2000, warning him that if he did not improve his attendance he could receive a “discharge for misconduct.” He received a second negative Page 7 on May 13, 2000, when he was informed that his command was recommending

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

⁵ 10 U.S.C. § 1552(b).

⁶ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁷ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

⁸ 33 C.F.R. § 52.24(b); *see Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties “correctly, lawfully, and in good faith.”).

that he be discharged for misconduct based on his repeated absences. The applicant ultimately was discharged with a separation code of JBK, which indicates an involuntary discharge for completion of required active service – *not* a misconduct separation code. The record supports an RE-4 reenlistment code because of his repeated absences and tardiness to his scheduled drills. Based on the record before it, the Board finds that the applicant’s claim cannot prevail on the merits.

6. Accordingly, the Board will not excuse the application’s untimeliness or waive the statute of limitations. The applicant’s request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

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

September 14, 2018

