

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 2000-043


FINAL DECISION

 Chairman:

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 BCMR docketed this proceeding on January 7, 2000, upon receipt of the applicant's completed application.

This final decision, dated October 26, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

REQUESTED RELIEF

The applicant, a  was honorably discharged from the Coast Guard on December 15, 1995. The basis of his separation from the Service was unsuitability due to alcohol abuse.

The applicant asked the Board to change his unsuitability discharge to early retirement under Temporary Early Retirement Authority (TERA). Solicitations for TERA were authorized on January 16, 1996, pursuant to ALDIST 007/96.

The applicant waived his right to legal counsel, his right to submit a statement on his own behalf, and his right to have his case considered by an administrative discharge board (ADB). He alleged that he would not have waived his right to an ADB if he had known that an ALCOAST message would be released shortly after his discharge, which solicited early retirements from certain officers and enlisted members. Applicant alleged that he would then have been able to retire, rather than to be "ashamed" at how his military career ended.

The applicant does not allege that the Coast Guard committed an error or injustice, but he seems to imply that the circumstances of his discharge, when seen in the light of the subsequent ALCOAST message, resulted in an injustice to him.

SUMMARY OF RECORD

October 13, 1988 – Directed to attend a 5-day alcohol awareness course after he refused to participate in inpatient alcohol rehab treatment program.

July 17, 1991 – Arrested for driving under the influence. Pleaded guilty to driving while impaired, documented as first alcohol incident.

1991 - Completed treatment program at Naval Alcohol Rehabilitation Center.

September 24, 1995 -- Arrested by police for operating a motor vehicle under the influence of alcohol. Registered a.12 blood alcohol content.

October 5, 1995 – Civilian conviction for disorderly conduct due to circumstances involving the use of alcohol.

October 24, 1995 – Notified that his actions constituted 2d and 3d alcohol incidents and that he would be processed for discharge from the Coast Guard for unsuitability.

VIEWS OF THE COAST GUARD

On July 12, 2000, the Chief Counsel of the Coast Guard submitted an advisory opinion recommending that relief be denied in this case.

The Chief Counsel concluded that the applicant is not entitled to any relief. The Chief Counsel said the applicant received "the full measure of due process owed to him" before he was discharged for unsuitability due to alcohol abuse.

According to the Personnel Manual, an enlisted member involved in a third alcohol incident must be discharged. Personnel Manual Art. 20.B.2.i. As a member with more than eight years service, the applicant was entitled to an opportunity to make a statement, counsel, and an ADB, but he waived those rights.

The Chief Counsel also said that the applicant failed to understand the TERA early retirement process. Even if the applicant had remained on active duty until after the ALCOAST was issued and had then applied for early retirement, he has failed to prove he would have been approved for early retirement. The Chief Counsel said that the "Coast Guard had discretionary authority to deny Applicant a TERA retirement."

The Chief Counsel concluded that the circumstances of the applicant's discharge do not rise to the level of an injustice and that the applicant should be denied relief for lack of merit and lack of proof.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the submissions of the Coast Guard, and applicable law:

1. The Board has jurisdiction of the case pursuant to section 1552 of title 10, United States Code. The application was timely.
2. The applicant had three alcohol incidents, and a person with three such incidents is required to be processed for discharge by reason of unsuitability due to alcohol abuse.
3. The applicant waived his rights under the Personnel Manual to make a statement, to consult with counsel, and to an ADB hearing. Accordingly, none of his due process rights were denied.
4. The applicant has not proved that he would have received a TERA retirement if he had applied when he was still on active duty.
5. The applicant has not proved that the Coast Guard committed an error or injustice.
6. Accordingly, the application should be denied.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application to correct the military record of [REDACTED]
[REDACTED] USCG, is denied.

