

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2008-117

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XXXXXXXXXXXXXXXXXXXXXXXXXXXX

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 May 2, 2008, upon receipt of the applicant's completed application, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated February XX, 2009, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant, a former fireman who was discharged on July 31, 1953, asked the Board to upgrade the character of his discharge from General to Honorable. The applicant made no specific allegations of error or injustice and did not explain why he waited more than 50 years to dispute the character of his discharge through this Board.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on November 1, 1949. During his enlistment, he was taken to captain's mast fourteen times for various offenses—primarily being absent without leave (AWOL) or absent over leave (AOL). In addition, he was convicted by a special court martial for a 29-day unauthorized absence and then by a summary court martial for a 3-day unauthorized absence.

Although the applicant requested reenlistment, the Commandant did not authorize it and instead authorized a General Discharge because of the applicant's unsatisfactory record of service. Upon his discharge on July 31, 1953, the applicant's final average conduct mark was 3.12 and his final average proficiency in rating mark was 2.52.

VIEWS OF THE COAST GUARD

On August 12, 2008, the Judge Advocate General (JAG) of the Coast Guard recommended that the Board deny the applicant's request. The JAG adopted the findings and analysis provided in a memorandum on the case prepared by the Coast Guard Personnel Command (CGPC).

CGPC stated that the application is untimely. In addition, the applicant provided no reason for his delay and made no allegations of error or accomplishments that would support an upgrade of his discharge. CGPC also noted that the applicant's record "reveals a significant pattern of misconduct. CGPC stated that under current standards, the applicant might have received a General or an Honorable discharge, but that it cannot recommend relief given the applicant's numerous offenses and the lack of any evidence of the applicant's post-discharge conduct.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 14, 2008, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. No response was received.

APPLICABLE REGULATIONS

Under Chapter 12-B-4 of the Coast Guard Personnel Manual in effect in 1953, members could receive an Honorable discharge if (a) they were never convicted by a general court-martial and were convicted not more than once by a special court-martial and (b) their final average marks were at least 2.75 for proficiency in rating and 3.25 for conduct. Members could receive a General discharge if they had been convicted only once by a general court-martial or more than once by a special court-martial or if their marks did not meet the requirements for an honorable discharge.

Under Article 12.B.18. of the Personnel Manual in effect today, Commander, CGPC, may authorize an Honorable, General, or Other than Honorable (OTH) administrative discharge for a member due to misconduct. Article 12.B.2.f.1.c. states that to receive an Honorable discharge, a member whose service pre-dated the change in the evaluation system dated June 30, 1983—when the Coast Guard switched from a 4.0 marking scale to a 7.0 marking scale—"must have made a minimum final average of 2.7 in proficiency in rating and 3.0 in conduct.

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 10 U.S.C. § 1552.
2. An application to the Board must be filed within three years after the applicant discovers the alleged error in his record.¹ The applicant received the General discharge, which he seeks to have upgraded, in 1953. Therefore, his application is untimely.

¹ 10 U.S.C. § 1552(b).

3. Pursuant to 10 U.S.C. § 1552(b), the Board may excuse the untimeliness of an application if it is in the interest of justice to do so. In *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that to determine whether the interest of justice supports a waiver of the statute of limitations, the Board “should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review.” The court further instructed 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.”²

4. The applicant provided no explanation or justification for his more than 50-year delay in applying to this Board.

5. The Board’s review of the record indicates that the applicant’s request has no potential for success on the merits. His military record reveals a very long string of petty and not-so-petty offenses. With convictions by both special and summary courts martial and final average marks of 3.12 for conduct and 2.52 for proficiency, the applicant did not meet the minimum requirements for an Honorable discharge under Chapter 12-B-4 of the Personnel Manual in effect in 1953. Nor do his marks meet the requirements for an Honorable discharge under Article 12.B.2.f.1.c. of the current Personnel Manual. The long list of offenses committed by the applicant shows that for most of his enlistment he was a significant administrative and disciplinary burden to the Coast Guard rather than an asset.³ The Board is not persuaded that his General discharge was disproportionately severe at the time it was granted or in light of today’s standards.⁴

6. Accordingly, the Board should not waive the statute of limitations, and the application should be denied for untimeliness and lack of merit.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

² *Allen v. Card*, 799 F. Supp. 158, 164-65 (D.D.C. 1992); see also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

³ This case is similar to BCMR Docket No. 2006-072, in which the Board granted no clemency on a Bad Conduct discharge because during that applicant’s 5 years of active duty, he was taken to mast 10 times for a variety of petty offenses and was convicted of being AWOL 3 times by courts martial.

⁴ Memorandum from the General Counsel of the Department of Transportation to the BCMR (July 7, 1976) (stating that the Board should not upgrade a veteran’s discharge unless, in light of today’s standards, it was “disproportionately severe”).

ORDER

The application of former FN xxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied.

Lillian Cheng

Paul B. Oman

Darren S. Wall