

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

Application for Correction
of the Coast Guard Record of:

BCMR Docket No. 2009-148

**XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX**

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 upon receipt of the applicant's completed application on May 18, 2009, and subsequently prepared the final decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated January 28, 2010, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED AND ALLEGATIONS

The applicant asked the Board to correct his DD 214 (certificate of discharge from active duty) record by adding the words "completion of initial service honorably." The applicant began a two-year period of active duty on November 2, 1999. Through a series of extension agreements, he extended his enlistment for a total of four years and five months, which would have amounted to a total of six years and five months of active duty if it had all been served. However, on December 19, 2005, the applicant was discharged with a general discharge under honorable conditions, by reason of misconduct, with a JKN¹ separation code and an RE-4 (not eligible to reenlist) reenlistment code. At the time of his discharge, the applicant had served six years, one month, and eighteen days on active duty.

In the remarks section of the DD 214 it states, "MGIB INFO: MEMBER'S INITIAL SERVICE CONTRACT WAS FOR FOUR YEARS." The applicant argues that if he had been allowed to remain on active duty and to complete the total number of years he had agreed to under his enlistment and extension agreements, he would have been honorably discharged and therefore he would be able to use his MGIB benefits "in which I paid into." He further stated, "I most respectfully request these documents be reviewed, my DD 214 be amended and allow my GI benefits to be granted to me."

¹ A JKN separation code is assigned to a member whose involuntary discharge is directed by established directive when the member has established a pattern of misconduct consisting solely of minor disciplinary infractions. Separation Program Designator (SPD) Handbook.

PERTINENT EXCEPTS FROM APPLICANT'S MILITARY RECORD

On November 1, 2005, the applicant's commanding officer (CO) informed the applicant that he was recommending that the commandant discharge the applicant from the Coast Guard with a general discharge due to misconduct. The applicant was convicted at a special court-martial of being an accessory after the fact, making a false official statement, counterfeiting United States currency, passing counterfeit United States currency, and making a false statement to a federal investigator, all violations of the Uniform Code of Military Justice (UCMJ). The CO told the applicant that due to the serious nature of the offenses, he was initiating the administrative discharge without a probationary period. The applicant was informed that he could submit a written statement in his own behalf, that he could disagree with the CO's recommendation and his rebuttal would be forwarded with the discharge recommendation, and that he could consult with a lawyer.

On November 1, 2005, the applicant acknowledged the notification to discharge him and requested an opportunity to consult with military counsel.

The applicant submitted an undated letter in response to the proposed discharge in which he requested an honorable discharge and a RE-1 (eligible for reenlistment) reenlistment code. The applicant stated in his letter that other than the court-martial, he had no other disciplinary actions during the six years he had been in the Coast Guard. He noted the good he had done by assisting with youth sports, volunteering to participate in various education programs, participating in Habitat for Humanity projects, and installing new play ground equipment at a local academy. The applicant stated that he needed an honorable discharge so that he could retain his MGIB benefits. He also requested an RE-1 reenlistment code so that he could serve in the military again.

On November 7, 2005, the CO asked Commander, Coast Guard Personnel Command (CGPC) to discharge the applicant by reason on misconduct due to his conviction at a special court-martial. The CO stated that due to the seriousness of the offenses of which the applicant was convicted, he should be discharged with a general discharge. The CO stated that he did not desire to retain the applicant until his scheduled end of enlistment on April 1, 2006 because of the administrative and managerial burden such retention would create.

On November 18, 2005, CGPC approved the applicant's discharge from the Coast Guard with a general discharge by reason of misconduct. CGPC directed that the applicant be assigned separation code JKN. The applicant was discharged on December 19, 2005.

VIEWS OF THE COAST GUARD

On July 28, 2009, the Board received an advisory opinion from the office of the Judge Advocate General (JAG) of the Coast Guard. The JAG concurred with the comments provided by the Commander, Personnel Service Center (PSC), which were attached as an enclosure to the advisory opinion.

PSC recommended that the applicant's request be denied because COMDTINST M1900.4D does not contain a provision for including language on a DD 214 such as that requested by the applicant.

PSC recommended correcting two other errors on the DD 214, with the consent of the applicant. In this regard, PSC stated that item 24 (character of discharge) on the DD 214 should read under honorable conditions rather than general discharge; and item 25 (separation authority) should read "COMDTINST M1000.6 ART 12-B-16" rather than "COMDTINST M1000.6 ART-12-C-5."²

PSC stated that if the applicant had questions regarding his eligibility for the MGIB, he should contact the Department of Veterans Affairs or the Coast Guard's MGIB liaison.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 29, 2009, the Board sent the applicant a copy of the Coast Guard views and invited him to submit a reply. The Board did not receive a response from the applicant.

FINDINGS AND CONCLUSIONS

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

1. The BCMR has jurisdiction of the case pursuant to section 1552 of title 10, United States Code. The application was not timely.

2. Under 33 C.F.R. § 52.22, an application to the Board must be filed within three years after the applicant discovers, or reasonably should have discovered, the alleged error or injustice. The applicant did not provide a date on which he discovered the alleged error or injustice, but he should have discovered it on December 19, 2005 the date of his discharge. The language he seeks to have added to the DD 214 was not on the document when he received it. If the applicant believed information was not included on his DD 214, he should have raised the issue at that time. The applicant's application was submitted four months past the statute of limitations.

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

² On January 4, 2010, the Board received a DD 149 from the applicant requesting an upgrade of his discharge and reenlistment code. The applicant exhausted his administrative remedy by applying to the DRB, which denied his request for an upgrade of his general discharge under honorable conditions and his request for an upgrade of his reenlistment code on June 2, 2009. However, the DRB informed the applicant that it had corrected his DD 214 to describe his character of service as "under honorable conditions" instead of "general" and to show the separation authority as Article 12-B-18 of the Personnel Manual instead of Article 12-C-5. Therefore, it is not necessary for the Board to address the two administrative errors noted by PSC.

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.” *Id.* at 164, 165.

4. With respect to the merits of this case, the applicant is not likely to prevail because DD 214s are prepared according to COMDTINST M1900.4D, which does not authorize adding the language requested by the applicant to the DD 214. The instruction provides the following direction with regard to the MGIB information in Block 18: “Enter the following statement inserting the appropriate number of years as shown: ‘MGIB INFO: MEMBER’S INITIAL SERVICE CONTRACT WAS FOR (NUMBER OF YEARS)’” Therefore, the applicant’s DD 214 with regard to this element is correct. Additionally, adding the phrase “completion of initial service honorably” would be inconsistent with the character of the discharge awarded to the applicant. Further, the DD 214 already shows in other areas that the applicant completed more than his initial four year obligation because it credits him with six years, one month, and eighteen days of active duty. The reasons for the applicant’s non-receipt of MGIB benefits is more than likely his general discharge under honorable conditions due to misconduct.

5. Accordingly, the applicant's request with regard to adding certain language to his DD 214 should be denied because it is untimely and lacks merit.

6. On January 4, 2010, the Board received a new DD 149 from the applicant requesting that his general discharge under honorable conditions be upgraded to honorable and his reenlistment code be upgraded to RE-1. The applicant has exhausted his administrative remedy with the DRB, which denied upgrading his discharge and reenlistment code on June 2, 2009. The Board has treated this recently received request as a new application to be decided at a later date.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

Robert S. Johnson, Jr.

Randall J. Kaplan

Thomas H. Van Horn