

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2011-232

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the completed application on August 25, 2011, 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 May 2, 2012, 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, now a Staff Sergeant in the Army National Guard, asked the Board to upgrade her Coast Guard reentry code from RE-4 (ineligible to reenlist) to an RE-3, which would allow her to reenlist with a waiver and to change the narrative reason for separation on her discharge form DD 214 from “Unsuitability” to “Hardship.” The applicant alleged that she was a great service member from April 28, 1986, to January 18, 1989, even though she had serious financial and personal issues while taking care of her twin toddlers. She alleged that her naiveté and immaturity interfered with her military career in the Coast Guard. The applicant noted that after her discharge in 1989, she has enlisted in the Army National Guard, served on two deployments, been promoted to E-6, and received two Army Commendation Medals, an Army Achievement Medal, and a Bronze Star, in addition to other awards. The applicant submitted certificates of these awards and also her annual Army performance evaluations, which contain many marks of “excellent” and show that her current duties as a noncommissioned supply officer in charge include supervising others and being responsible for equipment and supplies valued at \$22 million.

The applicant admitted that she knew about her RE code in 1989, but stated that at the time, “she was not entirely sure that an RE code could be changed and I feel that after 22 yrs in a reserve status and 8 of those full time in the military that I have proven to be suitable for military service.”

The applicant's military record contains significant documentation showing that she passed many bad checks while in the Coast Guard and was counseled many times on Page 7s and captain's masts. It also shows that she gave birth to twins in 1987.

VIEWS OF THE COAST GUARD

On October 20, 2011, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he adopted the findings and analysis provided in a memorandum on the case submitted by Commander, Coast Guard Personnel Service Center (PSC), who recommended that the Board deny relief.

PSC stated that the application should be denied for its untimeliness because the applicant was properly discharged for financial irresponsibility and she has not submitted any evidence showing that her discharge was erroneous or unjust. In support of this recommendation, PSC submitted the following documents from the applicant's record:

- On December 8, 1988, the applicant submitted a "Request for Discharge" through her chain of command. She stated that "[d]uring the past twelve months, I have experienced severe financial difficulties. This has led to warrants being issued against me for bad checks. My involvement with civil authorities has been ongoing and the worst is yet to come. ... I realize that a less than Honorable Discharge may be awarded. Regardless of the type of discharge, I will not object. ... I realize that I have created my own problems, but I do not see any hope of satisfactorily resolving these problems in the near future. I also realize that a discharge will not relieve me of my civil obligations, but will quite possibly prevent future UCMJ action, which is inevitable if I remain in the Coast Guard."
- On December 12, 1988, the Group Commander forwarded the applicant's request for discharge and recommended that she receive an honorable discharge for "Unsuitability." He noted that court-martial charges had not yet been preferred but information regarding her financial irresponsibility was still coming to light and well more than 1,000 man-hours had been spent investigating complaints against her. He noted that on August 16, 1988, the applicant had been awarded nonjudicial punishment for writing bad checks, but nevertheless went to a local store that afternoon and wrote a bad check for \$139.46. He noted that some bad checks were still being processed.
- On December 19, 1988, the District Commander forwarded the applicant's request for discharge to the Commandant, noting that the applicant had "brought a great deal of dishonor to the Coast Guard." He also noted that while she would benefit from being discharged, it was also in the best interest of the Coast Guard to discharge her expeditiously.
- On January 18, 1989, the applicant received an honorable discharge with a JMH separation code, denoting financial irresponsibility; an RE-4 reentry code; and "Unsuitability" as the narrative reason for separation on her DD 214.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 24, 2011, the Chair sent the applicant a copy of the views of the Coast Guard and invited her to respond within thirty days. The Board received no response.

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 over this matter pursuant to 10 U.S.C. § 1552. The application was not timely filed under 10 U.S.C. § 1552(b) because it was filed more than three years after the applicant knew that she had been discharged for "Unsuitability" with an RE-4 reentry code.

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

3. Regarding the delay of her application, the applicant explained that she "wasn't entirely sure that an RE code could be changed" when she was discharged in 1989. The Board finds that the applicant's explanation for her delay is not compelling because she failed to show that anything prevented her from seeking correction of her record more promptly.

4. The Board's cursory review of the merits of this case indicates that the applicant has submitted insufficient evidence to prove that her narrative reason for separation and her RE-4 code are erroneous or unjust. Although she submitted substantial evidence of her long-term, honorable service in the Army National Guard, she submitted nothing showing that her Coast Guard records are erroneous or unjust. In this regards, the Board notes that there is no evidence that the applicant's financial problems were caused by hardship or that she is no longer financially irresponsible. Her Coast Guard records are presumptively correct. 33 C.F.R. § 52.24(b). Based on the record before it, the Board finds that the applicant's claim cannot prevail on the merits.

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

ORDER

The application of former xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, for correction of her military record is denied.

Andrew D. Cannady

Peter G. Hartman

Dorothy J. Ulmer