

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2011-237

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

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 upon receipt of the applicant's completed application on August 25, 2011, and subsequently prepared the final decision for the Board as required by 33 CFR § 52.61(c).

This final decision, dated May 17, 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 asked the Board to correct his record by changing the reason for his separation from "unsuitability" to one that is more favorable. He alleged that it was unjust to give him an unsuitability discharge after he served on active duty for 16 years and received 4 good conduct awards, as well as several other awards and decorations.

The applicant stated that he discovered the alleged error on July 31, 2011. He also stated it is in the interest of justice to excuse any untimeliness because listing unsuitability as the reason for his discharge could cause future employers to question his character.

SUMMARY OF THE RECORD

The military record indicates that the applicant enlisted in the Coast Guard in 1979 and was discharged on July 31, 1995. It also shows that on September 6, 1994, an administrative remarks page (Page 7) was placed in the applicant's record advising the applicant that on August 18, 1994, the command received notification that he was delinquent on his cellular phone bill. The page 7 noted that the applicant had been counseled about his financial irresponsibility on May 2, 1994, because he had written an insufficient funds check to a federal building cafeteria. The page 7 advised the applicant of the following:

In accordance with section 12-B-16 of the . . . Personnel Manual, you are informed this date that you are being considered for unsuitability discharge due to financial irresponsibility and are hereby placed on a 6 month probationary period commencing 12 September 1994. If you fail to demonstrate sufficient progress in overcoming this deficiency, you will be recommended for discharge.

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Counseling sessions will be conducted and documented by your staff supervisor twice monthly. In addition, you are required to report the status of this and any other outstanding debts to your supervisor (including a copy of the cellular one statement) on a monthly basis during the probationary period.

On March 7, 1995, the applicant met the provisions of his 6-month probationary period for financial irresponsibility and was released from probation.

On May 2, 1995, one of the applicant's creditors wrote to his command complaining that the applicant was behind in his payments on a debt.

On May 25, 1995, the applicant's commanding officer (CO) informed the applicant that the CO was recommending that the applicant be discharged from the Coast Guard by reason of unsuitability due to financial irresponsibility.

On June 1, 1995, the applicant signed a statement wherein he acknowledged notification of the proposed discharge, waived his right to make a statement, waived his right to an administrative discharge board, and did not object to the discharge.

On June 6, 1995, the applicant's CO recommended that the Commander, Military Personnel Command (MPC) discharge the applicant by reason of unsuitability due to financial irresponsibility. The CO stated that the applicant has established a record of indebtedness that he has been unable to manage. The CO told the Commander that the applicant had fallen back into his old mode of acquiring debt without a means to manage it two months after completing a six-month probationary period.

On July 10, 1995, MPC informed the applicant's CO that the applicant was entitled to an administrative separation board because he had more than 8 years of military service. MPC required the CO to provide the applicant with written notification of his right to a hearing and to counseling by a lawyer. MPC noted that the applicant could waive the administrative hearing in writing.

On July 11, 1995, the applicant waived his right to an administrative discharge board on condition that MPC authorize a discharge under honorable conditions or higher.

On July 14, 1995, MPC approved the applicant's honorable discharge from the Coast Guard under Article 12.B.16. of the Personnel Manual. He directed that "JNC" (involuntary discharge due to unacceptable conduct) be assigned as the separation code.

VIEWS OF THE COAST GUARD

On April 30, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant partial relief, in accordance with a memorandum from the Commander, Personnel Service Center (PSC).

PSC noted that the applicant was untimely and could be denied for that reason. PSC stated that “the only mention the applicant makes regarding the untimeliness . . . is ‘[t]his could cause any future employer concern about my character.’”

PSC recommended that the narrative reason on the applicant’s DD 214 be changed from “unsuitability” to “unacceptable conduct” to match the JNC separation code. In recommending this relief, the Coast Guard stated that ALCOAST 562/08 issued after the applicant’s discharge stated that “block 28 (narrative reason for separation) of a DD 214 shall specify only the narrative reason for separation found in the Separation Program Designator (SPD) Handbook for a corresponding code.” The corresponding reason for the “JNC” separation code is unacceptable conduct.

PSC did not recommend any other relief and asserted that the applicant had not demonstrated any error or injustice in his record, except for the one noted.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 2, 2011, the Board sent a copy of the views of the Coast Guard to the applicant for his response. The Board did not receive a reply.

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 section 1552 of title 10 of the United States Code.
2. The application was not timely. To be timely, an application for correction of a military record must be submitted within three years after the applicant discovered the alleged error or injustice. *See* 10 U.S.C. § 1552(b). Although the applicant stated that he did not discover the alleged error until July 31, 2011, the DD 214 that he signed and received upon his discharge clearly states “unsuitability” as the narrative reason for separation. Therefore, the Board finds that the preponderance of the evidence shows that the applicant knew he had been discharged for “unsuitability” upon his discharge from the Coast Guard in 1995. The application was submitted approximately thirteen years beyond the statute of limitations.
3. The applicant argued that it is in the interest of justice to excuse the untimeliness because the unsuitability narrative reason for separation may cause future employers to question

his character. However, the applicant presented no evidence that he has suffered in his civilian employment due to having unsuitability listed as the narrative reason for separation on his DD 214. Therefore, the Board is not persuaded to excuse the untimeliness for this reason. In addition, the explanation offered by the applicant does not explain why he did not take action sooner to correct the alleged error.

4. The Board may still consider the application on the merits, if it finds 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 in assessing 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 stated 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.

5. The Board finds that it is in the interest of justice to excuse the untimeliness in this case based upon the strength of its merits. In this regard, the Board notes that the Coast Guard's advisory opinion recommended a change in the narrative reason for the applicant's separation.

6. The advisory opinion recommended, and the Board agrees, that the applicant's DD 214 should be corrected to show "unacceptable conduct" instead of "unsuitability" as the reason for his separation. In this regard, PSC noted that ALCOAST 562/08 states that "block 28 (narrative reason for separation) of a DD 214 shall specify only the narrative reason for separation found in the Separation Program Designator (SPD) Handbook for a corresponding code." Under the SPD Handbook, a JNC separation code requires "unacceptable conduct" as the narrative reason for separation. Although ALCOAST 562/08 was issued in 2008 after the applicant's discharge, the advisory opinion stated that as a matter of equity, the applicant's DD 214 should be corrected to reflect current policy. The Board received no objection from the applicant to the Coast Guard's recommendation.

7. Therefore, the applicant's request for relief should be granted in part by correcting his narrative reason for separation to "unacceptable conduct."

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of XXXXXXXXXXXXXXXXXXXX, USCG, for correction of his military record is granted in part. His DD 214 shall be corrected to show the reason for separation in block 28 as “unacceptable conduct.”

No other relief is granted.

Lillian Cheng

Thomas H. Van Horn

Barbara Walthers