


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-033

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

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 on November 24, 2006, upon receipt of the application and military records.

This final decision, dated August 16, 2007, 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 was honorably discharged on December 22, 1982, as an E-2 (seaman apprentice) during a reduction in force (RIF or general demobilization). The applicant alleged that she agreed to be discharged during the RIF only when she was told that her pay grade would be restored to E-4 90 days after her discharge. The applicant admitted that she discovered the error in 1984 but argued that the Board should waive the three-year statute of limitations “[b]ecause it is the correct thing to do.”

SUMMARY OF THE RECORD

On September 24, 1979, the applicant enlisted in the Coast Guard as an E-1. She advanced to E-2 upon completion of boot camp on November 16, 1979, and to E-3 on June 1, 1980. The applicant attended SS “A” School to earn the subsistence specialist rating, received the designation on July 24, 1980, and was advanced to SS3, pay grade E-4, on December 15, 1980.

On July 10, 1982, the applicant was convicted at court-martial for falsely altering, signing someone else’s name to, and uttering several money orders with intent to defraud, and for stealing about \$921.55 from her unit’s non-appropriated fund. The specifications included five violations of Article 123 and one violation of Article 121 of the Uniform Code of Military

Justice. She was sentenced to reduction to E-2, restriction for 60 days, and forfeiture of \$300.00 per month for six months. The sentence was approved on November 23, 1982.

On December 22, 1982, the applicant received an honorable discharge during a general demobilization. She had not advanced since her reduction to E-2. Her separation code, LCC, denotes an involuntary separation pursuant to a general demobilization or force reduction.

VIEWS OF THE COAST GUARD

On April 12, 2007, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case. He argued that the application should be denied because of its untimeliness and adopted the findings and analysis of the case provided in a memorandum by the Coast Guard Personnel Command (CGPC).

CGPC stated that under Chapter 1.E. of COMDTINST M1900.4, a DD 214 is supposed to show the member's pay grade at the time of separation. CGPC stated that there is no regulation or policy that advances or restores the rates of former members after they have been discharged.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 24, 2007, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited her to respond within 30 days. No response was received.

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 her record. 10 U.S.C. § 1552(b). The applicant was discharged in December 1982 and knew or should have known that she was discharged as an E-2 at that time. The applicant stated that she discovered the alleged error—not being restored to E-4—in 1984. Therefore, her application was untimely.
3. Under 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).

4. The applicant argued that the Board should waive the statute of limitations “[b]ecause it is the correct thing to do.” The applicant did not explain why she waited more than twenty years to request correction of the alleged error, and the Board does not find her argument that “it is the correct thing to do” to be compelling.

5. The record shows that the applicant was reduced from E-4 to E-2 on July 10, 1982, as part of a court-martial sentence for stealing more than \$900 from her unit’s non-appropriated fund and for falsifying several money orders with intent to defraud. Her DD 214 shows that she was honorably discharged during a general demobilization on December 22, 1982, when her pay grade was still E-2. As CGPC stated, under COMDTINST M1900.4, the DD 214 is supposed to show the member’s pay grade at the time of discharge, not the highest pay grade held during the enlistment.

6. The applicant alleged that her discharge was voluntary and that she only agreed to it because someone told her that her pay grade would be restored to E-4 90 days after her discharge. However, her LCC separation code indicates that her discharge was not voluntary, and there is no regulation, policy, or other evidence to support her claim that her pay grade should have been restored 90 days after her discharge.

7. Given the lack of evidence supporting the applicant’s allegations, the Board finds that it is unlikely that her case can prevail upon the merits. Accordingly, the Board should not waive the statute of limitations in this case. The applicant’s request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former SA xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of her military record is denied.

