

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-121

████████████████████
Seaman Recruit (Former)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the completed application on April 10, 2018, and assigned it to staff attorney ██████████ to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated December 21, 2018, 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, a former Seaman Recruit who was discharged on June 4, 1985, stated on his application in the block for identifying the error or injustice to be corrected that he was “forced to sign discharge papers without any offer or choice to attend AA [Alcoholics Anonymous] or given any help” and that he “was never given an opportunity to prove [his innocence].” He claimed that his record was erroneous or unjust because he “was given alahol by the military for moral and was confronted with a abusive superior under the influence and being the lowest man on the pole [sic].” Regarding the timeliness of the application, the applicant stated that he had never given it much thought.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on July 30, 1984. On August 9, 1984, during recruit training, the applicant acknowledged that he was “given a full explanation of the USCG drug and alcohol abuse program by the Command Drug and Alcohol Program Representative.”

On January 31, 1985, the applicant was punished at Captain's Mast for “willfully destroy[ing] by smashing, a chair or military property in barracks.” He was awarded fourteen days

of restriction, seven days of extra duty, forfeiture of seven days of pay for one month, reduction in rank to Seaman Recruit, and replacement of the chair (cost \$23.60).

On February 20, 1985, the applicant received a Page 7¹ regarding his first alcohol-related incident. The applicant signed and acknowledged this Page 7. It states:

You have been involved in one alcohol related incident as outlined in Chap 20, COMDTINST M1000.6. You are directed to seek treatment or education as deemed necessary by this command. If you are involved in a second alcohol related incident, this command, except in exceptional situations, will ordinarily commence discharge procedures in accordance with Chap 20, COMDTINST M1000.6, 20-B-4c.

On April 2, 1985, the applicant received another Page 7 regarding his second alcohol-related incident. The applicant signed and acknowledged this Page 7. It states:

You have been involved in a second alcohol related incident in accordance with COMDTINST M1000.6 Chap 20, 20-B-4c. Since this is your second alcohol related incident, this command will ordinarily commence discharge procedures. In those cases where the commanding officer feels that an exceptional situation warrants [sic] consideration for a waiver, a request shall be forwarded via the chain of command to commandant (G-PS), who shall direct the appropriate action.

On April 15, 1985, the applicant was punished at Captain's Mast for "having knowledge of an order not to use the ship's van, [but] fail[ing] to obey by wrongfully taking ship's van." In addition, the applicant had wrongfully operated a government vehicle while drunk and wrongfully appropriated a government vehicle valued at approximately \$10,000. The applicant was awarded forty-five days of restriction, forty-five days of extra duty, and forfeiture of \$310 for two months. The notes state that the applicant was advised of his rights to appeal this determination.

The applicant was informed on April 18, 1985, that his command had initiated discharge proceedings due to having two alcohol-related incidents within two months of each other. He was told of his rights with respect to the pending discharge.

On April 19, 1985, the applicant wrote a statement in response to the notification of his discharge initiation. He stated that he was not contesting the discharge, but he requested an honorable characterization of service. He stated that he had "only" been to Captain's Mast twice over the "course of [his] career" and there was "no doubt but that [he had] been an outstanding worker while serving in the Coast Guard." The applicant explained that he had been experiencing personal problems with the recent unexpected deaths of his mother, father, and grandmother. He stated that he felt all interests would be best served if he were separated from the Coast Guard with an honorable discharge.

On April 22, 1985, the results for the applicant's alcohol screening were released. He was determined to be psychologically dependent on alcohol. He had revealed that he had periodically used alcohol since the age of ten and regularly used alcohol since the age of thirteen. The applicant

¹ An Administrative Remarks record entry, form CG-3307, better known as a "Page 7," is used to document a member's notification of important information, achievements, or counseling about positive or negative aspects of a member's performance in the member's military record.

had stated that he felt he had a problem with alcohol. Several recommendations were made, including that the applicant should attend at least two AA meetings per week.

The applicant received a general discharge under honorable conditions on June 4, 1985. His DD 214 bears his signature over his name and shows that he received an RE-4 reenlistment code, indicating that he is ineligible for reenlistment; a JMG separation code, denoting a discharge for unsuitability due to alcohol abuse; and the narrative reason for separation is “Unsuitability.”

VIEWS OF THE COAST GUARD

On October 3, 2018, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case. The JAG stated that according to 33 C.F.R. § 52.24(a) the applicant must “procure and submit with his or her application such evidence, including official records, as the applicant desires to present in support of his or her case.” Section 52.24(b) states that the Board is to begin by “presuming administrative regularity on the part of the Coast Guard.” The JAG argued that the application was “devoid of a cognizant request.” The JAG stated that the applicant seemed to claim that he had been deprived of rights during his discharge processing but he did not articulate a remedy. The JAG asserted that it cannot be required to “ascertain what the applicant wants, and neither should [the] Board.”

The JAG argued that even if the applicant had stated a cognizant request for relief, he was discharged more than thirty-three years ago and “the passage of time has rendered it impossible to provide a relevant remedy.” Therefore, the JAG argued that his untimeliness alone was reason to deny relief. In addition, should the Board consider the application on its merits, the JAG noted that the applicant did not provide any evidence with his application. Instead, the applicant’s record shows that he received two alcohol-related incidents and was properly processed for discharge as a result. The JAG argued that there was “no evidence that the Coast Guard did not in fact follow all policies in the handling of the applicant at the time he was allegedly injured by the Coast Guard.

In making this recommendation, the JAG also adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC). PSC stated that the application is not timely and therefore should not be considered on the merits. PSC argued that the applicant has not shown that an error or injustice was committed while he was being processed for discharge. The applicant acknowledged all relevant documents with his signature when he could have refused to sign. PSC asserted that there is no evidence of undue influence or coercion in the record. PSC therefore recommended that the Board deny relief.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 1, 2018, the Chair sent the applicant a copy of the Coast Guard’s views and invited him 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 submission 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 or injustice.² The applicant was discharged and signed his DD 214 in 1985. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 1985, and his application is untimely.
3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.³ In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board should not deny an application for untimeliness without “analyz[ing] both the reasons for the delay and the potential merits of the claim based on a cursory review”⁴ to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted 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.”⁵
4. Regarding the delay of his application, the applicant stated that he had never given it much thought. The Board finds that the applicant's explanation for his delay is not compelling because he failed to show that anything prevented him from seeking correction of the alleged error or injustice more promptly.
5. A cursory review indicates that the case cannot prevail on the merits. The Board strongly disagrees with the JAG's allegation that the applicant's complaint is unclear because he is obviously complaining about the nature of his discharge—a general discharge under honorable conditions for “Unsuitability” due to alcohol abuse. As a Board of equity, the BCMR has never required the level of specificity in pleading that the JAG would impose on this veteran just to consider his discharge upgrade request. However, in this case, the record contains no evidence that substantiates the applicant's allegations of error or injustice in his official military record, which is presumptively correct.⁶ The applicant did not provide any evidence or specific assertions regarding his claim that he was “forced to sign discharge papers” or that he was never given a chance to prove his innocence. The record shows that the applicant enlisted in the Coast Guard having abused alcohol since he was ten years old, received two alcohol-related incidents within two months of each other, smashed Government property, misappropriated a Government vehicle, drove drunk, was punished at Captain's Mast twice, and so served less than a year of his enlistment. The applicant would have been able to assert his innocence at these Masts had he chosen to. The Board sees no evidence of coercion or a lack of due process throughout the entire

² 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

³ 10 U.S.C. § 1552(b).

⁴ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁵ *Id.* at 164, 165; see also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

⁶ 33 C.F.R. § 52.24(b); see *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties “correctly, lawfully, and in good faith.”).

process from the applicant's first alcohol-related incident to his discharge. Based on the record before it, the Board finds that the applicant's claim cannot prevail on the merits.

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

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former Seaman Recruit, [REDACTED], USCG, for correction of his military record is denied.

December 21, 2018

