

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 18-96

FINAL DECISION

██████████ Chairman:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on November 1, 1995, upon the Board's receipt of the applicant's request for correction of his military record. A completed application was received March 1, 1996, four months later.

This final decision, dated January 3, 1997, is signed by the three duly appointed members who were designated to serve as the Board in this case. It was issued within ten months of the Board's receipt of all the elements of a complete application.

Applicant's Request for Relief

The applicant, a retired commissaryman second class (CS2; pay grade E-5), served in the Coast Guard from August 24, 1961 until August 23, 1969.

The applicant asked the BCMR to correct his military record to show that he served on active duty for six months from 1961 to 1962, rather than for five months and 27 days, as stated on his DD Form 214. He said that his release from active duty should have been effective on May 1, 1962, rather than on April 27, 1962, because the former date would have given him 180 days for "V.A. benefits."

After the applicant's release from active duty, he served in the Coast Guard Reserve until August 23, 1969. He was discharged on that date with marks of 3.32 in proficiency, 3.31 in leadership, and 4.0 in conduct.

Upon the applicant's enlistment on August 24, 1961, the applicant signed a document that contained the following text:

1. In accordance with the provisions of [Reserve Instruction No. 3-61], you are hereby assigned to Administrative Reserve Unit, ARU 07-3 00, pending completion of initial six-months active duty for training.

2. Upon completion of initial period of six-months active duty for training, you will be transferred to a reserve unit for completion of your military obligation.

3. . . . You will be retained in the Ready Reserve and the ARU 07-300, until completion of initial six-months active duty for training.

On April 28, 1962, the day after the applicant was released from active duty, he was transferred to the reserve in a drill pay status. He claimed that he should have been released from active duty on May 1, 1962, so that he would have had 180 days of active duty, which he claimed was necessary to make him eligible for VA benefits.¹

The applicant did not allege that he had ever been denied VA benefits. He did allege that the Coast Guard committed an error or injustice.

On October 22, 1996, the BCMR received an advisory opinion from the Coast Guard recommending that it deny relief to the applicant on three grounds.

The Coast Guard recommended that the application should be denied for untimeliness. The applicant should have discovered the alleged error in 1962, when he was released from active duty, rather than in 1995. Under Board regulations, an application should be submitted for correction within three years after the alleged error should have been discovered.

The Coast Guard also recommended that the application be denied on the ground that it does not "include a specific allegation of error or injustice, accompanied by substantial proof in support of such allegation." According to the Service, the applicant has neither alleged an error or injustice on the part of the Coast Guard nor has he submitted any proof of an error or injustice other than a statement that he was "supposed to be released" with no supporting authority.

Notwithstanding, the Coast Guard stated that it reviewed this application on the merits. The Coast Guard Personnel Command said that the phrase "not to exceed 6 months" does not mean that the class would take the full six months "to the day." The Service concluded that there was no error or injustice, and that there was no basis for continuing a member on active duty with pay and allowances for the sole purpose of the member qualifying for DVA benefits.

¹ As a reservist on active duty with an eight-year service obligation, he served far more than 180 days on active duty. For example, he served 13 days on active duty in September, 1962 and 13 days on active duty in July 1963, in addition to the 177 days he served on active duty from 1961 to 1962.

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.

2. The application does not include a specific allegation of wrongdoing (error or injustice) against the Coast Guard. The applicant also did not submit any evidence or proof that the Coast Guard submitted an error or injustice. The closest that the applicant came to an allegation was a statement that he was "supposed to be released" but he never explained why either was an error or injustice.

3. An application for correction of a military record should be denied when the applicant neither alleges nor proves that the Coast Guard has committed an error or injustice.

4. In light of the failure of this application to show either error or injustice, it is not necessary to address the issue of timeliness.

5. Accordingly, the application should be denied.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application of former _____
(Ret.) for correction of his military record is denied.

USCG,

