

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

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 1999-081

FINAL DECISION

Chairman:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on February 3, 2000, upon the Board's receipt of a complete application for correction of a military record.

This final decision, dated November 16, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

REQUESTED RELIEF

The applicant enlisted in the Coast Guard for three years on December 15, 1942. He was honorably discharged on April 23, 1946.

He alleged that the service number on his Certificate of Honorable Discharge was [REDACTED]. He alleged that this was not his service number. On March 22, 1999, the applicant asked that his Certificate of Honorable Discharge be changed to [REDACTED]. He alleged that this was his correct service number.

VIEWS OF THE COAST GUARD

On July 28, 2000, the Chief Counsel of the Coast Guard recommended to the Board that the application be denied for untimeliness and lack of proof.

According to the Chief Counsel, an application must be filed within three years of the date the alleged error or injustice was or should have been discovered. 10 U.S.C. § 1552(b); 33 CFR §52.22. The Chief Counsel said this application was untimely by approximately 50 years; the alleged error should have been discovered when the certificate was issued to him when he was discharged in 1946. The Chief Counsel also said that the applicant did not provide "sufficient evidence to warrant a finding that it would be in the interest of justice to excuse the failure to file timely."

The Chief Counsel said that the applicant failed to provide proof of error or injustice. He said that the applicant's evidence consists only of an illegible photocopy of his Certificate of Honorable Discharge. This evidence does not meet the applicant's burden of proving error or injustice, and it does not overcome the presumption that the government officials involved executed their duties "correctly, lawfully, and in good faith." Arens v. United States, 969 F.2d 1034, 1037 (1990).

The Chief Counsel said that even if the Certificate of Honorable Discharge erroneously reflected an incorrect service number, it is a harmless error because the document served no official purpose. Another document, the Notice of Separation from U.S. Naval Service - Coast Guard had an official purpose; it established entitlements to benefits and it correctly reflected applicant's service number.

RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 31, 2000, the Board sent a copy of the views of the Coast Guard to the applicant, with an invitation to explain any disagreements with those views, within 15 days. No response was received from the applicant.

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 submission, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code.
2. Section 1552(b) of the United States Code provides that a claim for correction of a military record shall be made within three years after the discovery of an alleged error or injustice, unless the Board concludes that it is in the interest of justice to waive untimeliness and adjudicate the application on the merits.
3. An application for correction of the applicant's discharge was received by the BCMR more than 50 years after the date of the alleged error or injustice.
4. In 1992, the United States District Court for the District of Columbia said that the Board should conduct a "cursory review" of the merits of an application as part of its examination of the question of whether it was in the "interest of justice" to waive untimeliness and adjudicate the application on the merits. Allen v. Card, 799 F. Supp. 158 (D.D.C. 1992).

5. cursory examination of the merits of this application indicates that it is not in the interest of justice to award relief. The applicant did not prove that the wrong service number was attached to a Certificate of Honorable Discharge. His evidence consisted of a photocopy that was illegible.

6. Other pertinent documents in the applicant's military record refer to his service number as [REDACTED] See Termination of Service, NAVCG-2500-C; Notice of Separation from the U.S. Naval Service - Coast Guard, NAVCG-535; Enlistment Contract NCG-2500. According to the Coast Guard, the Notice of Separation from the [Service] is the document that determines entitlements to benefits. The Certificate of Honorable Discharge, NAVCG-2510, the copy of which was illegible, was an obsolete form that is no longer available for reissuance.

7. Although the record proves that the applicant's service number was in fact [REDACTED] the Board could not grant relief for the following reasons: First, the copy of the discharge certificate he submitted was illegible. Second, the certificate he was issued in 1946 is no longer in production. Third, discharge certificates are produced for the members themselves. No copy is retained in the applicant's record.

8. The documents that are that are retained in a veteran's official records, like the Termination of Service and the Notice of Separation, show his service number correctly.

9. Therefore, the applicant's official military record contains no errors with respect to his service number. Accordingly, the application should be denied.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application to correct the military record of
[REDACTED] is denied.

