

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2013-013

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████████████████████

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 application upon receipt of the applicant's completed application on October 31, 2012, and subsequently prepared the final decision as required by 33 CFR § 52.61(c).

This final decision, dated July 12, 2013, 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 ALLEGATION

The applicant alleged that his social security number (SSN) is incorrectly stated in his military record. He asked the Board to correct his SSN on his DD 214. Also, the applicant alleged that the date of his discharge from the Coast Guard is incorrectly stated on his DD 214. He stated that it should be May 5, 1982 instead of May 3, 1985. As evidence, the applicant submitted a copy of social security card and a copy of his DD 214.

The applicant stated that he discovered the alleged error on July 26, 1976, the date he enlisted in the Coast Guard. He stated that it is in the interest of justice to excuse his untimeliness because he "just recently moved into a DVA [Department of Veterans' Affairs] shelter for homeless veterans and one of the counselors noticed the difference in the [SSN] numbers."

VIEWS OF THE COAST GUARD

On March 14, 2013, 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 submitted by the Commander, Personnel Service Center (PSC).

PSC noted that the application was untimely, but stated that it would provide the applicant with a DD 215 correcting his SSN because the Coast Guard has verified that the SSN in his military record is actually incorrect.

With regard to the date on which he was discharged, PSC stated that that date is correct. In this regard, PSC stated that:

- The applicant was convicted at special court-martial of unauthorized absence in May 1982 and his sentence included a bad conduct discharge (BCD).
- The applicant could not be discharged until the appellate court reviewed his BCD and the Coast Guard Clemency Board reviewed his request for clemency.
- On March 6, 1984, the appellate court approved the sentence and on March 28, 1985, the Clemency Board's decision not to grant clemency was approved by the Commandant, who subsequently directed that the applicant be discharged.
- On April 4, 1985, the Convening Authority for the special court-martial ordered the execution of the BCD.
- On May 3, 1985, the applicant was actually discharged with a BCD.

PSC stated that the applicant was sent on appellate leave awaiting the appellate court's review of his sentence and the Coast Guard's review of his clemency request. PSC stated that he could not be discharged until the review and clemency processes were completed. Therefore, his May 3, 1985 discharge date is correct.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 18, 2013, the Board sent a copy of the views of the Coast Guard to the applicant for a response. The documents were returned to the Board by the U.S. Post Office due to an insufficient address. The applicant has not contacted the Board with his new address. Therefore, the Board was unable to send the applicant a copy the advisory opinion.

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 section 1552 of title 10 of the United States Code.
2. With regard to the applicant's SSN, the Coast Guard stated that it has verified that the SSN in the applicant's military record is incorrect and that the Coast Guard will issue a DD 215 correcting the applicant's SSN. Therefore, the issue is moot.

3. With regard to the applicant's allegation that his discharge date is incorrect, 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 or should have discovered the alleged error or injustice. *See* 33 CFR 52.22. The applicant was discharged in 1985 over 27 years ago. At that time he was sent a DD 214 documenting the discharge. The applicant did not state the date on which he discovered the alleged error with regard to his discharge date. However, he should have discovered the alleged error when he received his DD 214 in 1985 discharging him from the Coast Guard. The applicant provided no explanation why he could not have submitted his application sooner.

4. Although the application is untimely, the Board must still perform at least a cursory review of the merits to determine whether it is the interest of justice to waive the statute of limitations. 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. A cursory review of the merits indicates that the applicant is not likely to prevail on the claim that his discharge date is erroneous because he presented no evidence that the date is incorrect. The undisputed record before the Board indicates that the applicant was not discharged at the time of his May 1982 court-martial conviction, but rather when the appellate court reviewed and approved his BCD and the Coast Guard Clemency Board denied his request for clemency in May 1985. Therefore, his request should be denied because it is untimely and it is not in the interest of justice to excuse the untimeliness.

6. As discussed above, the Coast Guard will correct the applicant's SSN through the issuance of a DD 215, as stated on the record. However, the request to correct the date of the applicant's discharge from the Coast Guard should be denied because it is untimely.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former [REDACTED] for correction of his military record is denied except that the Coast Guard shall issue a DD 215 correcting his social security number on his DD 214 if it has not done so already.

