

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-127



FINAL DECISION

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. After receiving the applicant's completed application on May 2, 2014, the Chair docketed the application and assigned it to [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated January 23, 2015, 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 (SN/E2), enlisted in the Coast Guard on July 20, 1942. The applicant alleged that his date of birth and date of entry into the Coast Guard are listed incorrectly on his service record. According to the applicant and supporting documentation, the applicant's actual date of birth is [REDACTED] 1925. The applicant also alleged that the service notation for his time assigned to the office of the Captain of the Port (COTP) [REDACTED] was recorded incorrectly on his discharge form and throughout his service record. The applicant alleged that he served at COTP [REDACTED] not COTP [REDACTED] as noted in his service record, and that therefore, his Notice of Separation is incorrect. The applicant was discharged on February 11, 1946, and his Notice of Separation shows his entry date into the Coast Guard as July 20, 1942. This is a net service of 3 years, 6 months, and 22 days. The applicant stated that he discovered the error in 1965 and has been trying to correct the error for years with no luck.

In support of his application the applicant submitted: (1) his Notice of Separation; (2) letter of authorization dated February 11, 1946, authorizing the applicant to receive the American Area Campaign Ribbon, the Asiatic-Pacific Area Campaign Ribbon, and the World War II Victory Ribbon; and (3) a copy of his birth certificate from the [REDACTED] Department of Health certifying that the applicant was born on [REDACTED] 1925.

SUMMARY OF THE RECORD

The applicant was born in [REDACTED], on [REDACTED] 1925, and enlisted in the Coast Guard on July 20, 1942. The applicant stated on his enlistment contract that his date of birth was [REDACTED] 1924, making him 17 years and 7 months old at the time of enlistment. The applicant’s father also stated on the *Consent, Declaration, and Oath of Parent or Guardian* form that the applicant’s date of birth was [REDACTED] 1924. Throughout the applicant’s personnel record, various forms, and letters regarding the applicant, the applicant’s date of birth is noted as [REDACTED] 1924. The applicant’s service record also has the applicant’s date of birth as [REDACTED] 1924.

The applicant enlisted in the Coast Guard for three years on July 20, 1942. However, the applicant claims that he entered the service in 1941. A letter dated February 5, 1952 from the Departments of the Army and the Air Force, National Guard Bureau, regarding the verification of the type of discharge the applicant received from the U.S. Coast Guard, shows the applicant’s date of enlistment as July 20, 1942, and his date of birth as [REDACTED] 1924, in [REDACTED], [REDACTED]. In a reply to the February 5th letter, a response letter dated February 6, 1952, verified that the applicant was assigned to active duty and served until February 11, 1946, when he was issued a discharge under honorable conditions at the expiration of his enlistment. The letter also stated that the applicant was born on [REDACTED] 1924, in [REDACTED].

The applicant’s Notice of Separation, dated February 11, 1946, states that the applicant was discharged under honorable conditions on February 11, 1946. His date of entry into active service is shown as July 20, 1942, giving him a net service of 3 years, 6 months, and 22 days on the date of his discharge.

The applicant’s service record states that the applicant served at COTP [REDACTED] from January 21, 1943, to May 27, 1943. The applicant’s service abstract also includes the applicant’s time at COTP [REDACTED]

Departed from—		Reported to—	
Capt. [REDACTED]	10-6-42	COTP [REDACTED]	10-16-42
COTP [REDACTED]	11-30-42	[REDACTED] Dist. Off.	12-1-42
[REDACTED] Dist. Off.	1-3-43	COTP [REDACTED]	1-3-43
COTP [REDACTED]	1-21-43	COTP [REDACTED]	1-21-43
COTP [REDACTED]	5-27-43	CGDTS [REDACTED]	5-29-43

VIEWS OF THE COAST GUARD

On September 22, 2014, the Judge Advocate General (JAG) submitted an advisory opinion recommending that the Board grant partial relief in this case in accordance with the findings and analysis provided in a memorandum submitted by the Commanding Officer, Coast Guard Personnel Service Center (PSC).

PSC stated, with regard to the applicant's date of birth on his discharge documentation, that it was common practice during WWII for those interested in enlisting to fraudulently apply underage. The applicant provided a copy of his birth certificate showing his date of birth as [REDACTED] 1925, rather than [REDACTED] 1924, as listed on his enlistment contract and parental consent form. In order to be eligible to enlist in the Coast Guard at that time, a person must have been at least 17 years old. With the date listed on the applicant's birth certificate, [REDACTED] 1925, the applicant would have been only 16 years and 7 months at the time of enlistment into the Coast Guard. PSC acknowledged that the birth certificate provided by the applicant is most likely correct and argued therefore that the applicant's date of birth should be changed on his discharge documentation.

PSC also stated that the applicant's [REDACTED] regarding his date of entry into the Coast Guard and record of service at COTP [REDACTED] cannot be substantiated. The applicant's service record and enlistment contract clearly state that the applicant entered the Coast Guard on July 20, 1942. With regard to the applicant's claim that the service notation for his time at COTP [REDACTED] recorded incorrectly, PSC noted that the applicant's service record included both COTP [REDACTED] and COTP [REDACTED]. Therefore, while his service record is not incorrect for noting COTP [REDACTED] they make the recommendation to also add COTP [REDACTED] to the applicant's discharge documentation.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 9, 2014, the Chair of the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. The BCMR did not receive a response.

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. [REDACTED]
2. Under 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22, an application to the Board must be filed within three years after the applicant discovers the alleged error or injustice. The applicant stated that he discovered the alleged error in his record in 1965 and has tried to have the error corrected for years. The applicant provided no evidence, however, to substantiate his claim that he has tried to correct this error in the past. Since the date of discovery is outside the three-year limitation, the Board finds that the application is untimely. [REDACTED]
3. Pursuant to 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).

██████████ The applicant did ██████████ justify his reasoning for wanting the requested relief. However, because a cursory review of the merits reveals that the Coast Guard has recommended that the Board grant partial relief, the Board finds that it is in the interest of justice ██████████ untimeliness of the application and consider the case on its merits.

5. The applicant requested correction of his Separation Form from the Coast Guard and Service Record, specifically correction of his date of entry, date of birth, and service description for his time at COTP ██████████. The applicant alleged that his date of entry, date of birth, and the service notation for COTP ██████████ were each recorded incorrectly on his separation form and throughout his servi██████████ord.

6. The applicant’s birth certificate shows that the applicant’s date of birth was in fact ██████████ 1925, contrary to the date noted in his enlistment contract, service record, and discharge██████████entation. A ██████████ Coast Guard noted in the advisory opinion, it was common during ██████████ World War II for those interested in enlisting to falsify ██████████ and apply while underage. If this error had been caught at the time, he would be discharged for being a minor, but the applicant completed his service commitment and was honorably discharged. Therefore, since the applicant provided sufficient evidence to show that he was born in 1925, not 1924, his discharge documentation should be corrected to show the applicant’s correct date of birth.

7. The applicant also alleged that his date of entry into the Coast Guard is incorrect. The applicant stated that he enlisted in the Coast Guard in 1941, rather than 1942. The applicant provides no evidence, however, to support this claim, and his military records clearly show that he enlisted in 1942. Therefore his request to have the year changed from 1942 to 1941 should be denied.

8. The applicant also requested that the Board correct his discharge documentation to account for his time at COTP ██████████. The applicant’s service record and service abstract include both COTP ██████████ and COTP ██████████ where the applicant served from January 21, 1943 to May 27, 1943. While his separation notice was correct in including COTP ██████████ since the applicant did in fact serve there, the applicant’s service record also makes note of his time at COTP ██████████. Therefore, the applicant’s request to have COTP ██████████ included in his separation paperwork should be granted.

9. Accordingly, partial relief should be granted by correcting the applicant’s date of birth on his discharge documentation to show the correct date of ██████████ 1925. The applicant’s discharge documentation should also be modified to reflect the applicant’s time at COTP ██████████. No other relief should be granted.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former S2c [REDACTED] USCG, for correction of his military record is granted in part. The Coast Guard shall—

- Correct his date of birth on his discharge documentation to show that he was born on [REDACTED] 1925; and
- Add COTP [REDACTED] as a place where he served to his discharge documentation.

No other relief is granted.

January 23, 2015

