



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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-171


SA (former)

FINAL DECISION

This proceeding was conducted in accordance with the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. After receiving the applicant's completed application and military records, the Chair docketed the case on May 25, 2017, and assigned it to staff member  to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated February 2, 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 apprentice who was honorably discharged in 1990 for the convenience of the government, asked the Board to correct her discharge form DD 214 to show she was discharged on August 15, 1990, and not June 21, 1990, which is the discharge date currently shown on her DD 214. She stated that before being discharged, she was "ordered to remain on the base in the barracks" until her separation date and that she was placed on leave in July 1990 and was not released from active duty until August 15, 1990. She further stated that there was a great deal of confusion surrounding her discharge and that she signed her DD 214 under duress and was not afforded the opportunity to review the information. She alleged that she was ordered to go on leave and that "[t]he last 11 months of records in [her] service record are unaccounted for." The applicant stated that she discovered the alleged error in her record on February 15, 2017, when she applied for veterans' benefits.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on July 25, 1988, for a term of four years. Her record contains several CG-3307s ("Page 7s") documenting repeated failure to meet the Coast Guard's maximum weight allowance. On February 22, 1990, her Commanding Officer (CO) notified her by letter that he was contemplating her discharge from the Coast Guard for the convenience of the government due to obesity because she had not met the Coast Guard's weight standards. The applicant signed this notification and circled words at the bottom to show that she

desired to consult an attorney and would submit a written statement refuting the proposed discharge. On February 26, 1990, the CO sent a letter to Naval Legal Services asking them to provide counsel to the applicant regarding her pending discharge.

On May 8, 1990, the applicant's CO sent a letter to the Commandant in which he asked that the applicant be discharged from the Coast Guard because, despite nutritional counseling and encouragement to exercise, she had been unable to comply with the Coast Guard's weight standards and was 25 pounds overweight. The CO's letter does not include a statement from the applicant, and on May 11, 1990, the District Command forwarded the letter to the Commandant, recommended approval, and noted that the applicant had decided not to submit a statement regarding the proposed discharge. On May 21, 1990, the Commandant issued orders for the applicant to be discharged from the Coast Guard within thirty days pursuant to Article 12-B-12 of the Coast Guard Personnel Manual.¹

A Personnel Action form dated July 13, 1990, states that she had been discharged effective June 21, 1990, and had not been owed anything for accumulated leave. Her DD 214, which she signed, also shows that she was honorably discharged on June 21, 1990, for the convenience of the government, pursuant to Article 12-B-12 of COMDTINST M1000.A. Block 12c, "Net Active Service This Period," shows that she had served 1 year, 10 months, and 21 days on active duty, from July 25, 1988, through June 21, 1990.

APPLICABLE LAW AND REGULATIONS

COMDTINST M1900.4D contains the Commandant's instructions for the preparation and distribution of the DD 214. DD 214 provides the member and the service with a concise records of a period of service with the Armed Forces at the time of the member's separation. Chapter 1.D.2.a. of the instruction provides that all entries are for the current period of active duty through the date of separation listed in block 12b on the form.

VIEWS OF THE COAST GUARD

On October 17, 2017, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in accordance with a memorandum submitted by the Commander, Personnel Service Center (PSC). PSC argued that relief should be denied because the application is untimely, and with regards to the merits, noted that the applicant failed to show that an error or injustice occurred because a review of her record did not reveal any further correspondence or documentation to show that she was discharged after the discharge date on her DD 214.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 31, 2017, the BCMR sent the applicant a copy of the Coast Guard's views and invited her to respond within 30 days. The Chair did not receive a response.

¹ Article 12-B-12 of the Coast Guard Personnel Manual states that a member may be discharged for the convenience of the government for a variety of reasons, including obesity.

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. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.² The applicant received and signed her DD 214 in 1990, upon her discharge from the Coast Guard. Therefore, the preponderance of the evidence shows that she knew of the alleged error in her record in 1990, and her application is untimely.

2. 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 for the delay, the more compelling the merits would need to be to justify a full review.”⁵

3. The applicant was discharged in 1990 and did not apply for a correction of her date of discharge until 2017, after she applied for veteran's benefits. The Board finds that her explanation for the delay is not compelling because she failed to show that anything prevented her from seeking correction of the alleged error or injustice within three years of her discharge.

4. A cursory review of the merits of this case indicates that the applicant's claim cannot prevail. The applicant's records show that on May 21, 1990, the Commandant ordered that she receive an expedited discharge due to obesity, and a Personnel Action form states that she was discharged on June 21, 1990. Moreover, she signed her DD 214 on June 21, 1990. She alleges that she was forced to remain on base and in the barracks and forced to take leave and that she was not released from active duty until August 15, 1990, but she did not submit anything to corroborate this claim; nor is there anything in her records to show that she remained on active duty or remained in the barracks after June 21, 1990. Likewise, there is no evidence of duress, and her records show that she received all due process under the applicable policies for obesity discharges. The record contains no evidence that substantiates her allegation of error or injustice in her official military records, which are presumptively correct.⁶ Therefore, the Board finds that her application lacks potential merit.

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

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.”).

ORDER

The application of former SA [REDACTED], USCG, for correction of her military record is denied.

February 2, 2018

