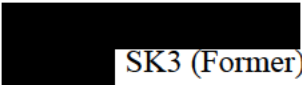


**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-011

 SK3 (Former)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application and military records on November 21, 2018, and this decision of the Board was prepared pursuant to 33 C.F.R. § 52.61(c).

This final decision, January 31, 2020, 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 storekeeper third class (SK3) who was discharged from active duty on May 16, 1946, asked the Board to correct his record to show that he was in the regular Coast Guard and not in the Coast Guard Reserve. He stated that he enlisted on active duty in 1945 for a period of three years, served "full time, 7 days a week, 24/7" but that someone typed "USCGR-R"¹ on the back page of his DD 214.² The applicant alleged that his Coast Guard records referring to his service as reserve service are preventing him from receiving certain "aid and assistance" because "being in the Reserve does not afford me a consideration for my claim."

The applicant submitted several documents in support of his request:

- (a) Honorable Discharge certificate dated May 16, 1946.
- (b) Various discharge documents showing that he was discharged from the Reserve on May 16, 1945.

¹ United States Coast Guard Ready Reserve.

² The applicant is referring to his Notice of Separation from the U.S. Naval Services – Coast Guard (NAVCG -553) which was the precursor to the DD Form 214.

- (c) Honorable Discharge certificate indicating that he was discharged from the USCGR-R on January 15, 1954.
- (d) Certificate of Appreciation from the State of Maryland recognizing the applicant's military service during World War II.
- (e) Letter from the Commander, Fifth Coast Guard District, dated December 9, 1954, notifying him that he had been issued an honorable discharge certificate for his service in the USCGR-R from January 16, 1951, to January 15, 1954.
- (f) Notice of Separation from the U.S. Naval Service – Coast Guard, showing that he enlisted into active service on March 9, 1945, and served for one year, two months, and eight days, before being separated on May 16, 1946. It states that he was a reservist during his active service.

The applicant stated that he discovered the alleged errors in his record on September 20, 2018, and argued that the Board should find it in the interest of justice to consider his application because he desperately needs assistance.

SUMMARY OF THE RECORD

The applicant's enlistment contract shows that he enlisted in the Coast Guard Reserve on March 9, 1945. His record contains orders issued the same day stating that he had enlisted in the Coast Guard Regular Reserve and was being immediately called to active duty.

The applicant was discharged from active duty on May 16, 1946.

On December 27, 1950, the applicant applied for reenlistment in the Coast Guard Reserve, and he was enlisted in the Reserve for a term of three years as of January 16, 1951, and assigned to inactive duty.

On March 15, 1951, the applicant was assigned to Organized Reserve Training Unit 05-140 for training duty in a drill pay status. On November 12, 1951, the Commanding Officer of that unit recommended that the applicant be transferred to Volunteer Status because of his continued absence from scheduled drills since August 1951. On November 15, 1951, the applicant was notified that effective immediately he would be assigned to the volunteer reserve.

On August 11, 1953, the applicant was notified by the Fifth CG District Commander that effective January 1, 1953, he had been placed in the Coast Guard Ready Reserve (USCGR-R) and his reserve category changed to USCGR-R. It also notified him that as a Ready Reservist he was "liable for active duty in the time of war."

On January 15, 1954, the applicant was honorably discharged from the Reserves after serving four years, two months, and eight days.

A Statement of Creditable Service in the applicant's record dated November 22, 1951, shows that he enlisted in the Coast Guard Reserve on March 9, 1945, and served on active duty from March 9, 1945, to May 16, 1946.

VIEWS OF THE COAST GUARD

On April 23, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion and adopted the findings and analysis in a memorandum submitted by the Commander, Personnel Service Center (PSC). PSC noted that the application is untimely and argued that relief should be denied because the applicant's record is correct. PSC argued that the applicant's record is correct because he enlisted in the Coast Guard Reserve for a term of three years and during that enlistment he served one year, two months, and eight days of active service, which is correctly recorded on his May 16, 1946, Notice of Separation. The PSC argued that being called to active service would not have changed the applicant's status as a reservist but did give him active duty time for creditable service, which is evident on his May 16, 1946, Notice of Separation and his May 22, 1951, statement of creditable service.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 1, 2019, the BCMR sent the applicant a copy of the Coast Guard's recommendation and invited him to submit a response. 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 submission and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. An application must be filed within three years of the date that the applicant discovers the alleged error or injustice.³ The applicant was discharged from active duty on January 15, 1954, but did not submit his application to the Board until September 29, 2018, more than 64 years after he was discharged. Therefore, the preponderance of the evidence shows that the application was not timely filed.

2. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.⁴ 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”⁵ 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 are for the delay, the more compelling the merits would need to be to justify a full review.”⁶ In accordance with this direction, the Board has conducted a cursory review of the merits and finds no reason to excuse the untimeliness of the application:

³ 10 U.S.C. § 1552(b).

⁴ *Id.*; 33 C.F.R. 52.22.

⁵ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁶ *Id.* at 164, 165; see also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

a. The applicant did not explain or justify why he waited more than 64 years after his discharge to request correction of his military record. He failed to show that anything prevented him from seeking correction of the alleged error or injustice more promptly.

b. The applicant's enlistment contract, orders, Notice of Separation, and other documents in his record show his status as a reservist who served on active duty during World War II. They are presumptively correct,⁷ and they prove that he served on active duty for one year, two months, and eight days. The applicant apparently believes that having been a reservist on active duty is causing him to be denied benefits that he would receive had he been in the Regular Coast Guard, but this assumption is incorrect because his active service as a reservist entitles him to the same veterans' benefits that he would be entitled to for serving that same period of active duty in the regular Coast Guard.

3. Accordingly, the Board will not excuse the application's untimeliness or waive the statute of limitations and his request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁷ 33 C.F.R. § 52.24(b).

ORDER

The application of former SK3 [REDACTED], USCGR, for correction of his military record denied.

January 31, 2020

