


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-209


STM2c (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 September 4, 2019, and this decision of the Board was prepared pursuant to 33 C.F.R. § 52.61(c).

This final decision, September 4, 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 Steward's Mate, second class (STM2c)¹ who was discharged from active duty on November 17, 1944, asked the Board to issue him a DD 214 documenting his Coast Guard service. He stated that he received a NAVCG 9833² (Statement of Creditable Service) upon his discharge, but would like to have a DD 214 instead because he has stage four cancer and needs a DD 214 because it is "more recognized" and so his representative can "handle his affairs." In support of his request, the applicant submitted a copy of his NAVCG 9833, the contents of which are provided below in the Summary of the Record.

The applicant indicated that he discovered the alleged error in his record on June 20, 2018, but did not state why he did not discover the error sooner nor did he state why the Board should find it in the interest of justice to consider his application.

SUMMARY OF THE RECORD

The applicant's record shows that he enlisted in the Coast Guard on October 23, 1942.

¹ Steward's Mates worked in the Wardroom for the Officers. The rating was disestablished in 1944.

² The DD 214 was not issued before January 1, 1950. Instead, several similar forms were used by the military services, including the WD AGO 53, WD AGO 55, WD AGO 53-55, NAVPERS 553, NAVMC 78PD and the NAVCG 553. <https://www.archives.gov/personnel-records-center/dd-214> (last visited on June 19, 2020).

His record reflects some disciplinary issues, including the following:

- February 9, 1943 - Deck Court: Intoxication and incapacitated for duty
- May 10, 1943 - Deck Court: Absent Over Leave (AOL) for 27 hours
- June 2, 1943 - Deck Court: Absent Without Leave (AWOL) 20 hours
- June 2, 1943 - Deck Court: Disobedience of lawful order
- May 4, 1944 - The applicant received a summary court martial where he was charged with striking the steward-in-charge with a two by four. The court recommended that he receive a bad conduct discharge, but the convening authority remitted the bad conduct discharge. The applicant was discharged on November 17, 1944, and his discharge papers state that he received a “discharge under honorable conditions.”

The applicant was issued a NAVCG 9833, Statement of Service in the U.S. Coast Guard, on December 19, 1945, and it shows that he was discharged under honorable conditions by reason of a physical disability. The statement indicates that during his enlistment he was absent without leave (AWOL) from April 21, 1943, to April 22, 1943, and “absent own misconduct” from August 4, 1944, to August 11, 1944, and from September 8, 1944, to September 18, 1944. His record also contains a second Statement of Creditable Service (NAVCG 2511-B) that was prepared on May 22, 1945, which shows the same enlistment and discharge dates as the NAVCG 9833. Finally, the applicant’s record contains a Certificate of Discharge Under Honorable Conditions which shows that he was discharged on November 17, 1944.

On May 20, 1948, the President of Panel, Board of Review, Discharges and Dismissals (now known as the Discharge Review Board), issued a letter to the Secretary of the Treasury stating that the Board of Review had met on May 13, 1948, to review the applicant’s request to upgrade his discharge under honorable conditions. The Board declined to grant the applicant an honorable discharge and affirmed his discharge “under honorable conditions,” noting that his record “indicates a constant series of offenses which, under normal circumstances, would have entitled him to an undesirable discharge.” The Board of Review also noted that his average mark for proficiency in rating was only 2.43 and his average conduct mark was 2.72.³

³ Under Articles 4952(1) and (2) of the 1934 Personnel Instructions, members could receive an honorable discharge only if (a) they had a final average proficiency in rating mark of “not less than 2.75” and a final average conduct mark of at least 3.0; (b) they were “[n]ever convicted by general Coast Guard court or more than once by a summary Coast Guard court, or more than twice by a Coast Guard deck court”; and (c) they were being discharged for one of the following reasons: expiration of enlistment, convenience of the government, minority, hardship, or physical or mental disability not the result of own misconduct. Members being discharged for one of these reasons listed could receive a general discharge under honorable conditions if their marks did not meet the minimums required for an honorable discharge or if they had been convicted once by a general court martial, twice or more by a summary court martial, or at least three times by a deck court.

Article 584(4) of the 1940 Regulations for the United States Coast Guard provided that honorable discharges were awarded under any of five conditions: expiration of enlistment; convenience of the government; hardship; minority (age); and disability not the result of own misconduct. A general discharge “under honorable conditions” could be awarded “for the same [five] reasons as an honorable discharge and issued to individuals whose conduct and performance of duty have been satisfactory but not sufficiently deserving or meritorious to warrant an honorable discharge.”

VIEWS OF THE COAST GUARD

On February 7, 2020, 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 stated that the application is untimely and argued that the applicant's request for a DD 214 should be denied because Department of Defense Instruction (DoDI) 1336.01 does not provide any guidance on replacing previous forms of proof of service that were issued before the creation of the DD 214, with a subsequent DD 214. However, PSC argued that because it is unlikely that the applicant has sufficient documents to prove his military service, alternative relief should be granted by providing him with all of the documents the JAG provided to the Board with its advisory opinion, which includes two Statements of Creditable Service and a copy of the applicant's Certificate of Discharge Under Honorable Conditions.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 5, 2020, 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.

APPLICABLE LAW

Department of Defense Instruction 1336.1 was published on August 20, 2009, and establishes and implements policy for the preparation and distribution of the revised DD 214. It does not authorize creating DD 214s for members who were discharged before the implementation of the DD 214.

COMDTINST 1900.4E was published by the Coast Guard on April 11, 2016, and contains directions for the preparation and distribution of the Certificate of Release or Discharge from Active Duty, DD Form 214. Like DoDI 1336.1, it does not authorize creating DD 214s for members who were discharged before the creation and implementation of the DD 214.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on 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.⁴ The applicant was discharged from active duty on November 17, 1944, but did not submit his application to the Board until July 26, 2018, more than 73 years after he was discharged. Although the applicant alleged that he discovered the error in his record in 2018, he received his discharge documentation in 1944 and simply decided that it was inadequate in 2018. The Board finds, therefore, that the application was not timely filed.

⁴ 10 U.S.C. § 1552(b).

2. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.⁵ 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”⁶ 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.”⁷ 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:

a. The applicant did not explain or justify why he waited more than 73 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 NAVCG 1933 is presumptively correct,⁸ and it accurately documents that he served on active duty in the Coast Guard from October 23, 1942, to November 17, 1944. His record also contains a second Statement of Creditable Service which reflects the same service dates as those on his NAVCG 1933. Under 10 U.S.C. § 1552, the Board is authorized to “correct an error or remove an injustice” in any Coast Guard military record, but the applicant has not shown any error in his record. And the Board is not persuaded that his record is unjust simply because it contains the correct discharge documentation for 1944.

3. Accordingly, the Board will not excuse the application’s untimeliness or waive the statute of limitations and his request should be denied. The Coast Guard recommended that the Board grant alternative relief by providing the applicant with copies of the documents submitted by the JAG with its advisory opinion, but the Board notes that these documents were already sent to the applicant when the Board sent the applicant a copy of the Coast Guard’s advisory opinion.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁵ *Id.*; 33 C.F.R. 52.22.

⁶ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁷ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

⁸ 33 C.F.R. § 52.24(b).

ORDER

The application of former STM2c [REDACTED], USCG, for correction of his military record is denied.

September 4, 2020

