

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2020-028



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 on November 5, 2019, and assigned the case to the Deputy Chair to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated August 6, 2021, 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 Recruit (SR/E-1) who received an uncharacterized discharge from the Coast Guard on September 6, 2002, asked the Board to issue him a third DD-214 documenting his alleged service from September 2002 to September 2006.

The applicant stated that he enlisted in the Coast Guard three times. Shortly after he enlisted the first two times, he was discharged for medical reasons. The applicant received DD-214s that documented his first two enlistments. Then, he alleged, he enlisted for a third time around September 2002 after he had received clearance to do so. The applicant alleged that he served four years and that he received a general under honorable conditions discharge around September 2006. However, the applicant stated, he never received a DD-214 for his final enlistment. To support his allegation, the applicant argued that a local Department of Veterans Affairs medical center was able to view his third DD-214 on a computer, but that the center was unable to print him a copy.

The applicant stated that he discovered the alleged error in his record on October 26, 2006. Then, in 2013, he requested his separation documents from the National Archives, but he was informed that they did not have any personnel records of him. He was advised by the National Archives to contact the Coast Guard. Although it has been more than three years since he discovered the alleged error in his record, the applicant argued that it is in the interest of justice to consider his application because he needs his third DD-214 to receive benefits.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on June 18, 2002, and was discharged 18 days later on July 5, 2002, while undergoing recruit training at the USCG Training Center. The applicant was discharged in accordance with Article 12.B.20. of the Coast Guard Personnel Manual. His DD-214 shows “uncharacterized” as the characterization of discharge; “failed medical/physical procurement standards” as the narrative reason for separation; JFW (involuntary discharge directed by established directive when member fails to meet established medical and/or physical procurement standards) as his separation code; and RE-3G (eligible for reenlistment except for disqualifying factor: condition (not physical disability) interfering with performance of duty) as his reenlistment code. The applicant signed his DD-214.

The applicant reenlisted in the Coast Guard on August 13, 2002, and was discharged 25 days later on September 6, 2002, while undergoing recruit training at the USCG Training Center. The applicant was discharged in accordance with Article 12.B.20. of the Coast Guard Personnel Manual. His DD-214 shows “uncharacterized” as the characterization of discharge; “failed medical/physical procurement standards” as the narrative reason for separation; JFW (involuntary discharge directed by established directive when member fails to meet established medical and/or physical procurement standards) as his separation code; and RE-3G (eligible for reenlistment except for disqualifying factor: condition (not physical disability) interfering with performance of duty) as his reenlistment code. The applicant signed his DD-214.

The applicant’s record does not include any additional DD-214s or any documentation showing that he was affiliated with the Coast Guard after September 6, 2002.

VIEWS OF THE COAST GUARD

On April 13, 2020, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC argued that the application was not timely. Regarding the merits of the case, PSC argued that the applicant failed to show that the Coast Guard committed an error or injustice. After the applicant was discharged for the second time, his personnel records do not show that he was again affiliated with the Coast Guard. Specifically, PSC stated that there is no documentation showing that the applicant was employed or paid by the Coast Guard for any service performed after September 6, 2002.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 7, 2020, the Chair sent the applicant a copy of the Coast Guard’s views and invited him to respond within thirty days. No response was received.

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.
2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.¹ The applicant alleged that he was discharged from the Coast Guard in September 2006, and he acknowledged that he discovered the alleged error on October 26, 2006. Therefore, the preponderance of the evidence shows that the application is untimely because the applicant knew in 2006 that he had not received a third DD-214.
3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.² 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"³ 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."⁴ Pursuant to these requirements, the Board finds the following:
 - a. The applicant waited more than fourteen years to submit an application to the Board. Regarding the delay in his application, the applicant argued that it is in the interest of justice to consider his application because he needs his third DD-214 to receive benefits. The Board finds that the applicant's explanation for his delay is not compelling because he failed to show that anything prevented him from seeking correction of the alleged error or injustice more promptly.
 - b. A cursory review of the merits of this case shows that the applicant's claim lacks potential merit. The applicant argued that the Coast Guard erred when it failed to provide him a DD-214 for his third enlistment. However, the applicant's record does not contain any evidence that he enlisted in the Coast Guard for a third time. As noted by PSC, there is nothing in the applicant's record to show that he was affiliated with the Coast Guard after his second discharge on September 6, 2002. Further, the applicant did not provide any evidence that he enlisted for a third time or that he ever completed a four-year enlistment. The applicant's allegation that a local Department of Veterans Affairs medical center was able to view a third DD-214 for him is unpersuasive since he did not submit any evidence to support this allegation. The disputed record is presumptively correct,⁵ and the record contains no evidence that substantiates his allegations of error or injustice in his official military record.

¹ 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

² 10 U.S.C. § 1552(b).

³ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁴ *Id.* at 164, 165; see also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

⁵ 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.").

4. Accordingly, the Board will not excuse the application's untimeliness or waive the statute of limitations to conduct a thorough review of the merits. The applicant's request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

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

August 6, 2021

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED] -0400
[REDACTED]