

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2020-044



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 December 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 October 1, 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 Fireman Damage Controlman (FNDC/E-3) who was honorably discharged on July 13, 1984, asked the Board to correct his date of birth on his DD-214. He also asked the Board to change the narrative reason for separation on his DD-214, which currently states "misconduct." The applicant did not specify what narrative reason for separation he wants substituted for "misconduct."

The applicant stated that his DD-214 shows his correct month and year of birth. However, he argued that his DD-214 incorrectly shows that he was born on the fourth day of the month rather than the twenty-second day of the month. To support his request, the applicant submitted a copy of his Certificate of Birth and his Birth Record, which both show that he was born on the twenty-second day of the month and year stated on his DD-214.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on July 24, 1979. On the applicant's enlistment contract, his date of birth and his parents' names are the same as those on his Certificate of Birth.

On January 9, 1980, the applicant received non-judicial punishment (NJP) for possession and use of marijuana onboard a vessel.¹ The applicant's punishment was restriction to his cutter for 30 days, extra duty for 30 days, and reduction to pay grade E-1.

On February 21, 1981, the applicant was arrested by civilian authorities for possession of marijuana. He subsequently failed to appear in court. The possession of marijuana charge was eventually dismissed.

On June 30, 1982, the applicant was arrested by civilian authorities for driving under the influence of alcohol. He subsequently failed to appear in court. Almost two years later, the applicant was convicted of driving under the influence of alcohol and failing to appear in court. For both convictions, the applicant's sentence was a fine of \$592.00, 48 hours in jail, enrollment in an alcohol treatment or counselling program, and 3 years' summary probation.

On February 22, 1984, the applicant was arrested by civilian authorities for driving under the influence of alcohol. The disposition of this arrest is unknown.

On March 14, 1984, the applicant received NJP for being absent without leave.² The applicant's punishment was extra duty for 15 days and reduction in grade from E-4 (DC) to E-3 (FNDC).

On May 24, 1984, the Commander of the applicant's District recommended that the applicant be discharged for misconduct. He stated that while the applicant was a good performer, he failed to demonstrate many of the traits desired in Coast Guard personnel. Further, he stated that the applicant's actions had brought discredit upon the Service. He cited the applicant's arrest for possession of marijuana and his two arrests for driving under the influence of alcohol. He recommended that the applicant be discharged by reason of misconduct due to frequent involvement of a discreditable nature with civil authorities.

On July 13, 1984, the applicant was discharged for misconduct in accordance with Article 12.B.18. of the Coast Guard Personnel Manual. His DD-214 shows "honorable" as the character of discharge; "misconduct" as the narrative reason for separation; RE-4 (ineligible for reenlistment) as his reenlistment code; and HKA (frequent involvement of a discreditable nature with civil or military authorities) as his separation code. The applicant's DD-214 states that he was born on the fourth day of the same month and year shown on his Certificate of Birth and his Birth Record. The applicant signed his DD-214.

VIEWS OF THE COAST GUARD

On April 20, 2020, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board grant partial relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

¹ Article 134, UCMJ.

² Article 86, UCMJ.

PSC recommended that the Board grant the applicant's request regarding changing the date of birth on his DD-214. PSC stated that the applicant's Certificate of Birth and Birth Record, in addition to multiple documents in his military record, show his correct date of birth as the twenty-second day of the month and year listed on his DD-214. Further, PSC stated that the applicant attempted to have his date of birth corrected previously, but the correction was not properly executed on his DD-214.

PSC recommended that the Board deny the applicant's request regarding changing his narrative reason for separation from "misconduct" to something else. PSC argued that the applicant failed to show that the Coast Guard committed an error or injustice regarding his narrative reason for separation. Instead, PSC stated that the applicant was properly discharged by reason of misconduct due to his frequent involvement of a discreditable nature with civil or military authorities.

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.

APPLICABLE LAW AND POLICY

Article 12.B.18.b. of the Personnel Manual in effect at the time of the applicant's discharge discusses discharging members by reason of misconduct:

a. An enlisted member may be separated by reason of misconduct with a discharge under other than honorable conditions, general discharge, or honorable discharge as warranted by the particular circumstances of a given case. Discharge by reason of misconduct and the type of discharge to be issued will be directed only by the Commandant. (See article 12.B.10.)

b. The Commandant may direct the discharge of a member for misconduct in any of the following cases:

- ...
- (5) Frequent involvement of a discreditable nature with civil or military authorities.

Under COMDTINST M1900.4B, which contains the Commandant's instructions for the preparation and distribution of the Certificate of Release or Discharge from Activity Duty, DD Form 214, members who are being discharged for frequent involvement of a discreditable nature with civil or military authorities and have less than eight years of military service must be assigned an HKA separation code, "misconduct" as the narrative reason for separation, and an RE-4 (ineligible to reenlist) reenlistment code.

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.³ The record shows that the applicant signed his DD-214 and was discharged on July 13, 1984. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 1984, and his application is untimely.

3. 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 Although the applicant in this case did delay filing the application, the evidence of record reveals a significant, prejudicial error in his record, as explained below, and so the Board finds that it is in the interest of justice to excuse the untimeliness of the application.

4. The applicant alleged that his date of birth on his DD-214 is erroneous. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant’s military record is correct as it appears in the military record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁷ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”⁸

5. The applicant alleged that his date of birth on his DD-214 is erroneous. The Board agrees. The applicant’s DD-214 shows that he was born on the fourth day of the month and year listed on the form. However, the applicant provided a copy of his Certificate of Birth and Birth Record, which show that he was born on the twenty-second day of the same month and year. Further, as acknowledged by PSC, some of the applicant’s military records, such as his enlistment contract, show that he was born on the same date listed on his Certificate of Birth and Birth Record. Finally, PSC acknowledged that the applicant had previously attempted to have his date of birth corrected on his DD-214, but the Coast Guard failed to properly correct the form. Therefore, the applicant has proven by a preponderance of the evidence that his date of birth on his DD-214 is erroneous.

6. The applicant also asked the Board to change his narrative reason for separation on his DD-214. However, the applicant failed to allege or show that the narrative reason for separation was either erroneous or unjust. The applicant’s record shows that in a three-year period between February 1981 and February 1984, he was arrested once for possession of marijuana and twice for driving under the influence of alcohol. While the possession of marijuana charge was dropped, the applicant was convicted of at least one charge of driving under the influence and one charge of

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

⁴ 10 U.S.C. § 1552(b).

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).

⁷ 33 C.F.R. § 52.24(b).

⁸ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

failing to appear in court. The disposition of the second charge of driving under the influence was not included in the applicant's record. In addition to the applicant's civil arrests and convictions, he received NJP twice. First, on January 9, 1980, the applicant received NJP for use and possession of marijuana onboard a vessel. Then, on March 14, 1984, the applicant received NJP for being absent without leave. Given the applicant's civil arrests and convictions and his two NJPs, the applicant was properly separated from the Coast Guard for misconduct due to frequent involvement of a discreditable nature with civil or military authorities. According to COMDTINST M1900.4B, members who are discharged for frequent involvement of a discreditable nature with civil or military authorities who have less than eight years of military service are assigned "misconduct" as the narrative reason for separation. Therefore, the applicant has failed to prove by a preponderance of the evidence that his narrative reason for separation is erroneous or unjust.

7. Accordingly, partial relief should be granted by correcting the applicant's date of birth on his DD-214 to the twenty-second day of the month and year shown on the form. No other relief should be granted.

(ORDER AND SIGNATURES ON NEXT PAGE)

