
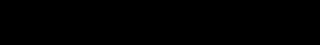


**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-002


Allegedly 
SR (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 on November 1, 2023 and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated November 14, 2024, 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 Honorable discharge on December 9, 1963 during recruit training for Unsuitability, asked the Board to correct his record by changing his name on his Form DD-214 from John Michaele Hertzig (hereinafter JMH) to Patrick Marshall Emerson Hertzig (hereinafter PMEHE), changing the reason for separation,¹ and awarding him Mustering-out payments.²

The applicant alleged that at the time of his enlistment he was only 15 years old and could not legally enlist, so he used his brother's identity to enlist. According to the applicant, at the time of his enlistment he did not appreciate the honor that came with serving in the Coast Guard and if he had it to do over again, he would have fought to stay in and continue serving. He claimed that he was not mature enough to understand the responsibility that came with serving. The applicant asked this Board to issue him a corrected DD-214 reflecting his name and not his brother's.

¹ The applicant did not specify what he wanted his narrative reason for separation changed to.

² Mustering-out payments were established under the now superseded Mustering-out Payment Act which was established to provide former service members coming home from World War II with payments to veterans while they looked for work or underwent training.

SUMMARY OF THE RECORD

JMH enlisted in the Coast Guard on September 3, 1963.

The documents presented at the time of enlistment reflected that name of JMH with a date of birth of June 23, 1946. The applicant's father signed a consent form on August 21, 1963 consenting to JMH's enlistment.

On November 15, 1963, a Recruit Training Officer issued a memorandum wherein he recommended that the JMH be separated. Specifically, the Training Officer stated that the "subject man" had been in training for approximately ten weeks and during that period his performance had been unsatisfactory. The training officer noted that the "subject man" had been absent without leave once and have proven to be unsatisfactory in two other companies. The training officer noted JMH had "rebelled against all authority and regulation – [JMH] has not responded to numerous counselling." The training officer recommended JMH be generally discharged by reason of unsuitability (inaptitude).

On December 9, 1963, JMH was presented with notice that he was being discharge from the Coast Guard for inaptitude. He was given the opportunity to submit a statement which he declined to do.

On December 9, 1963, JMH was discharged from the Coast Guard for Unsuitability. The DD Form 214 reflects JMH was issued an Honorable characterization of service and was not entitled to Mustering-out Payment Act payments.³ JMH had three months and seven days of active service.

VIEWS OF THE COAST GUARD

On July 10, 2024, a judge advocate (JA) of the Coast Guard submitted an advisory opinion in which he 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 applicant's long and unnecessary delay in contesting his DD-214 has caused the Coast Guard to rely on 60 year old records. According to PSC, it is possible that vital evidence would have been available to the Coast Guard has gone missing or become unavailable during the long delay.

PSC further argued that the applicant's military record was retrieved from National Archives and there is no evidence present in the acquired records to hint that the applicant, PМЕH, fraudulently enlisted in the Coast Guard under his brother's name of JMH. PSC contended that the applicant could have submitted sworn declarations from family members attesting to this fraudulent enlistment but failed to do so. PSC explained that a consent form, signed by the applicant's father, with a witness for the enlistment of a minor into the armed forces named JMH as the service member, not PМЕH. PSC argued the father's consent and declaration supports the fact that the member who actually served in the Coast Guard was JMH, not PМЕH.

³ See Note 2.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 24, 2024, the Chair sent the applicant a copy of the Coast Guard’s views and invited him to respond within thirty days. As of the date of this decision, no response had been received.

APPLICABLE LAW AND POLICY

Under Article 12.B. of the Personnel Manual, in effect in 1970⁴, provides the following guidance on separating a service member due to unsuitability:

Article 12.B.3. Standards of Discharge. The type and character of discharge or separation and the reasons therefor will be determined in accordance with the following:

a. Honorable Discharge (DD Form 256 CG). A separation with an honorable discharge may be effected by the individual’s commanding officer or higher authority when the individual is eligible for or subject to discharge and it has been determined that he merits an honorable discharge under the standards prescribed in this paragraph. Issuance of an honorable discharge is conditioned upon:

(l) Eligibility for discharge for one of the following reasons:

...

g. Unsuitability.

...

Article 12.B.10. Unsuitability.

(a) Discharge of enlisted personnel by reason of unsuitability shall be directed only by the Commandant except as provided in paragraph (c) hereof. Discharge by reason of unsuitability will not be issued in lieu of disciplinary action except upon determination by the Commandant that the interests of the Service as well as the in-dividual will best be served by adminis-trative discharge.

(b) Discharges by reason of unsuitability are effected to free the Service of persons considered unsuitable for further service because of:

(1) Inaptitude. Applicable to those persons who are best described as inapt due to lack of general adaptability, want or readiness of skill, unhandiness [*sic*], or inability to learn. (See NOTE.)

(2) Character and behavior disorders. As determined by medical authority, character and behavior disorders and disorders of intelligence listed in Chapter 5, CG Medical Manual (CG-294).

(3) Apathy, defective attitudes, and inability to expend effort constructively. A significant observable defect, apparently beyond the control of the individual, elsewhere not readily describable. (See NOTE.)

⁴ While dated after JMH’s separation, this version of the Personnel Manual was the closest version the Board was able to locate.

NOTE: Administrative discharge action under the provisions of (1), (3), (5), and (7) above will not normally be initiated until a member has been counseled concerning his deficiencies and afforded a reasonable opportunity to overcome them. Appropriate entries shall be made on page 7 of the service record to indicate time and nature of counseling, recruit training company personnel evaluations, progress reports, personal knowledge of training officer of subjects, and any other facts which may be pertinent.

...

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 over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record. The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

2. The application filed by the applicant was not timely. To be timely, an application for the correction of a military record must be submitted to the Board within three years after the alleged error or injustice was discovered or should have been discovered.⁵ The record shows that a JMH received his DD-214 on December 9, 1963. Therefore, the preponderance of the evidence shows that the applicant, if he was in fact posing as his brother at the time, knew of the alleged error in his record in December 1963 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.⁶ 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 "analyzing both the reasons for the delay and the potential merits of the claim based on a cursory review"⁷ 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."⁸ In this instance, the Board finds that it is in the interest of justice to waive the statute of limitations and review the applicant's request for relief based on a full review of the record.

4. The Board may correct any military record of the Coast Guard when necessary to correct an error or remove an injustice.⁹ Error means either legal or factual error.¹⁰ Injustice, when not also error, is treatment by the military authorities that shocks the sense of justice but is not

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

⁶ 10 U.S.C. § 1552(b).

⁷ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁸ *Id.* at 164, 165; see also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

⁹ 10 U.S.C. § 1552(a); 33 C.F.R. § 52.2(a).

¹⁰ *Sawyer v. United States*, 18 Cl.Ct. 860, 868 (1989), *rev'd on other grounds*, 930 F.2d 1577 (Fed.Cir.1991).

technically illegal.¹¹ 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 record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.¹² 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.”¹³

5. The applicant alleged that he enlisted in the Coast Guard using his brother, JMH’s, identity because at the time he was only 15 years old and too young to enlist. The Board’s review of the record shows that a JMH enlisted in the Coast Guard on September 3, 1963. The record further shows that in his short time in the service, JMH struggled with performance issues and was ultimately separated. Finally, the Board’s review of the record shows that the applicant’s father signed a waiver for the applicant’s brother and the named service member on the consent form was JMH. This consent form allowed a JMH to serve at the age of 17. Other than the applicant’s claims, there is no evidence that it was in fact the applicant and not his brother who served in the Coast Guard. All entries in the official military personnel file refer to the former service member as JMH. The applicant submitted no evidence, including proof that the fingerprint cards contained in the service file belonged to him and not his brother, JMH. Nor has the applicant submitted statements from family members to support that he served under his brother’s identity. Without more, the Board will not change the service member’s name contained within the records. Because the Board has found that the applicant has failed to prove by a preponderance of the evidence that he was the service member who actually served, the Board will not address the applicant’s request to change his reason for discharge or his entitlements to Mustering-out payments.

6. For the reasons outlined above, the applicant has not met his burden, as required by 33 C.F.R. § 52.24(b), to overcome the presumption of regularity afforded the Coast Guard that its administrators acted correctly, lawfully, and in good faith.¹⁴ He has not proven, by a preponderance of the evidence, that he was the individual who enlisted in the Coast Guard in 1963, and was entitled to a DD-214 reflecting his name instead of his brother’s. Accordingly, the applicant’s requests should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

¹¹ *Id.*

¹² 33 C.F.R. § 52.24(b).

¹³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanden v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

¹⁴ *Muse v. United States*, 21 Cl. Ct. 592, 600 (1990) (internal citations omitted).

ORDER

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

November 14, 2024

