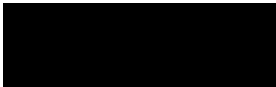


**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-068

FINAL DECISION

 **Attorney-Advisor:**

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. On February 23, 1999, the BCMR received the application, which was completed on February 3, 2000, upon receipt of the applicant's military records.

This final decision, dated September 28, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant asked the Board to upgrade the character of the discharge he received on April 12, 196x, from "under honorable conditions" to "honorable" and to raise his last rank held from xxxxxxxxxxxx to xxxxxxxxxxxx.

APPLICANT'S ALLEGATIONS

The applicant stated that he voluntarily enlisted on November 15, 196x, and had "a good time" in the Coast Guard until a chief warrant officer (CWO) at his unit in xxxxxxxx, asked for a part-time volunteer to work as a cook. The applicant volunteered "much to [his] demise." The CWO gave him non-judicial punishment (NJP) at captain's mast many times. The CWO told him he was "nuts" and sent him to the Naval Hospital in xxxxxxxx for a psychiatric evaluation. Then he was sent to the Public Health Service Hospital in xxxxx for three days for another evaluation, after which, he alleged, he was wrongly discharged for unsuitability.

The applicant stated that his problems in the Coast Guard were caused by the CWO, who was very corrupt and dishonest. He stated that he told a Coast Guard representative who visited him at the Naval Hospital about the CWO's "stealing and dirty dealings," but it did not help him. He alleged that the CWO misappropriated government funds, misused government property, and ordered subordinates to do personal work for him, such as rebuilding the engine of his xxxxx, on government time. He alleged that the CWO constantly abused his authority and did not like anyone who challenged him. He alleged that the CWO promised members who did personal work for him extra leave, but then refused to grant it and instead handed them transfer orders for sea duty. He alleged that the CWO also charged his personal groceries to a Coast Guard account.

The applicant stated that prior to his discharge, he had passed a test for advancement to xxxxx and was awaiting a promotion to pay grade E-4 when the CWO singled him out and got him discharged.

The applicant alleged that after he was discharged, he learned that the Commander of the xxxx District sent a lieutenant commander disguised as a seaman cook to the unit to investigate the applicant's allegations. He alleged that as a result of the investigation, the CWO was "brought up to trial and told to take a discharge with no pension or go to prison."

The applicant further alleged that about three months after the trial, he received a letter from "some Coast Guard office reinstating [his] honorable discharge and apologizing for the incident." He alleged that he called the office and asked to be reenlisted but was told it was not possible. However, he stated, "Oh by the way [he] lost that letter from that office some 30 [years] ago."

The applicant alleged that only recently did he find out his discharge was never corrected. He also argued that, although he has known the nature of his discharge since 196x, the Board should waive the statute of limitations because "an injustice should have no time limit on it to be corrected."

SUMMARY OF THE RECORD

On November 15, 196x, the applicant enlisted as an SR in the Coast Guard for a term of four years. He underwent basic training at xxxxxxxx. Upon finishing basic training in February 196x, he was advanced to xxxxxxxxx and transferred to Coast Guard Station xxxx. His commanding officer at xxx was the CWO.

On July 31, 196x, the CWO assigned the applicant a mark of 3.2 (out of 4.0) for proficiency and a mark of 4.0 for conduct.

On December 6, 196x, the applicant was taken to captain's mast by the CWO for violating Article 91 of the Uniform Code of Military Justice (UCMJ) by being disrespectful "in department" to a petty officer. His NJP was to be restricted to the station for seven days and five days of extra duty.

On December 22, 196x, the applicant was again taken to captain's mast by the CWO for violating Article 91 of the UCMJ by being disrespectful to a petty officer "in his use of language." He was reduced to "the next inferior rate," but the sentence was suspended for six months.

On January 31, 196x, the CWO assigned the applicant a mark of 3.1 for proficiency and 3.2 for conduct.

On May 11, 196x, the applicant was taken to captain's mast by the CWO for violating Article 108 of the UCMJ by damaging and destroying military property "either willfully or through neglect." He was "[r]educed to the next inferior rate" – from xx to xx.

On July 31, 196x, the CWO assigned the applicant a mark of 3.0 for proficiency and 2.8 for conduct.

On September 16, 196x, the applicant was advanced from xx to xx. However, on September 29, 196x, he was taken to captain's mast for violating Article 91 of the UCMJ by being disrespectful to a superior petty officer and for violating Article 92 by willfully failing to carry out a lawful order. He was restricted to the station and assigned two hours of extra duty per day for ten days.

On January 22, 196x, the applicant was examined by a psychiatrist at the Naval Hospital in xxxxx at the request of the CWO. The applicant told the doctor that he was a friendly person who gets "moods" every once in while because he hated just sitting around and doing nothing. He told the doctor, "I tell people what I think of them to their faces, not afraid of being embarrassed. I have a hard time getting along with petty officers because they like to hard ass guys." The doctor found no evidence of psychosis or psychoneurosis. He stated that the applicant was immature and impulsive and that "[h]is insight was absent." Based on his behavior pattern, the doctor diagnosed a "passive aggressive personality type, which renders him unsuitable for further retention in the U.S. Coast Guard" and recommended that he be administratively discharged.

On January 31, 196x, the CWO assigned the applicant a mark of 3.2 for proficiency and 3.8 for conduct. However, these marks were canceled the next day, February 1, 196x, when he was taken to mast by the CWO for violating Article 91 of the UCMJ by being disrespectful in manner and language towards a superior petty officer. The Court Memorandum indicates that he was reduced in rate from xx to xx. In addition, the CWO assigned him a mark of 2.9 for proficiency and a mark of 1.0 for conduct.

On March 1, 196x, a Medical Board was convened by three doctors at the Public Health Service Hospital in xxxxxx, to review the applicant's case. They examined him and diagnosed a permanent "passive, aggressive personality" disorder that existed prior to entry on active duty. They found him unfit for duty and unsuitable for service, and they recommended that he be administratively discharged due to unsuitability under Article 12-B-10(2) of the Personnel Manual. The same day, the applicant signed a statement indicating that he had been informed of the Medical Board's findings and recommendations and did not wish to submit a statement in rebuttal. The hospital director concurred in the findings and recommendations and forwarded the Medical Board's report to the CWO.

On March 8, 196x, the CWO forwarded the report of the Medical Board to the Commander of the xxxxx Coast Guard District, approving the findings and recommending that the applicant be administratively discharged. On March 20, 196x, the Commander forwarded the report to the Commandant, concurring in the findings and recommendations.

On March 30, 196x, the Commandant ordered the applicant discharged by reason of unsuitability under Article 12-B-10 of the Personnel Manual then in effect. The orders indicate that the type of discharge was to be whatever the applicant was entitled to under the regulations.

On April 12, 196x, the applicant was discharged under "honorable conditions" in accordance with Article 12-B-10 of the Personnel Manual. Both his DD 214 and Record of Discharge are signed by the CWO as the officer authorizing the discharge. The Record of Discharge indicates that the applicant was issued a general discharge due to unsuitability and was not recommended for reenlistment. The last evaluation marks the applicant received were a 3.0 for proficiency and a 2.9 for conduct. The CWO calculated his final average marks to be 3.07 for proficiency and 2.98 for conduct.¹

¹ The BCMR calculates the applicant's final average marks as 3.04 for proficiency and 2.98 for conduct.

The applicant's record contains a form indicating that he ordered copies of his discharge papers on April 16, 196x. It also contains a Request for Information from the Veterans Administration dated March 25, 197x, which indicates that the applicant was seeking disability compensation. The form states that the character of the applicant's discharge was "honorable conditions." The record also contains forms dated February 12, 197x, March 14, 199x, and August 24, 199x, indicating that he again sought and received copies of his discharge papers.

VIEWS OF THE COAST GUARD

On July 28, 2000, the Chief Counsel of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in this case because of its untimeliness and lack of merit.

The Chief Counsel argued that the applicant knew or should have known of the character of his discharge in April 196x. Therefore, he stated, the application "is untimely by approximately xx years" and should be denied under the Board's three-year statute of limitations.

The Chief Counsel also argued that the applicant has failed to provide any evidence that his discharge due to unsuitability was either procedurally or substantively erroneous. He argued that "[a]bsent strong evidence to the contrary, it is presumed that the officials involved in processing Applicant for discharge executed their duties correctly, lawfully, and in good faith." *Arens v. United States*, 969 F.2d 1034, 1037 (1990); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

The Chief Counsel stated that under Article 12.B.10.e.1. of the Personnel Manual in effect in 196x, the applicant was entitled to notification of his pending discharge and an opportunity to make a statement but was not entitled to a hearing before an Administrative Discharge Board because he served less than eight years on active duty. He alleged that the record shows that the applicant received notification and did not object to being discharged.

The Chief Counsel also stated that the record shows that the applicant was properly examined and diagnosed by a psychiatrist in accordance with Article 12.B.10.d. of the Personnel Manual prior to being discharged. He stated that the psychiatrist's report and the report of the Medical Board that examined the applicant showed that he suffered from a passive aggressive personality that was incompatible with military service. He alleged that the Coast Guard complied with all applicable regulations in 196x and that members with passive aggressive personalities are still administratively discharged today.

The Chief Counsel stated that the applicant's final average marks qualified him for a general, rather than honorable, discharge. He stated that the minimum average marks required for an honorable discharge in 196x were 2.7 in proficiency and 3.0 in conduct. Moreover, he alleged that the applicant's multiple NJPs and two reductions in rate also warranted a general discharge.

Finally, the Chief Counsel alleged that the applicant never held a rank in pay grade xxxxxx. Therefore, he stated, the request for a higher rank "is wholly without foundation." In addition, he argued, the applicant has failed to prove that his reduction in rate to xx was erroneous or unjust.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 31, 2000, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond within 15 days. On August 10, 2000, the applicant responded. He stated that he was telling the truth about the CWO and he named several other members whom, he alleged, were stationed at xxxxx and would verify his allegations about the CWO.²

APPLICABLE LAWS

Article 12-B-5 of the Coast Guard Personnel Manual in effect in 196x (CG-207) stated that members should be assigned conduct marks for each evaluation period as follows:

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| 4.0 | Conduct good. Conforms to military standards and regulations. No courts-martial convictions, nonjudicial punishments or minor civil convictions. |
| 3.9 to 3.3 | Conduct satisfactory but occasionally lax. No courts-martial convictions. Not more than one nonjudicial punishment or minor civil conviction. |
| 3.2 to 2.5 | Meets minimum standards of conduct, or not more than one summary court-martial conviction, or not more than 2 minor offenses (NJP or civil) during the period. |
| 2.4 to 0 | Conduct unsatisfactory. Repeatedly commits minor military and/or civil offenses or convicted by special or general court-martial. |

² The BCMR informed the applicant in a letter dated August 11, 2000, that it has no authority to conduct investigations and that all evidence must be submitted by him. No response was received from the applicant.

Article 12-B-2(f)(2) stated that members being discharged for unsuitability with final average marks lower than 2.7 in proficiency or 3.0 in conduct should be issued a general discharge rather than an honorable discharge.

Article 12-B-10 authorized administrative discharges for members by reason of unsuitability. The conditions listed as rendering a member unsuitable included inaptitude, apathy, defective attitude, and personality disorders listed in Chapter 5 of the Medical Manual (CG-294) “[a]s determined by medical authority.” Such members were entitled to written notice of the reason they were being considered for discharge and an opportunity to make a statement on their own behalf. Article 12-B-16(d). Members being discharged for unsuitability due to the appearance of a mental disorder had to undergo a psychiatric examination and had to be evaluated by a Medical Board.

The Medical Manual (CG-294) in effect in 196x governed the disposition of members with psychiatric disorders. According to Article 5-C and 5-D, a member with a passive-aggressive personality disorder was eligible for an administrative discharge.

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 submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code.
2. An application to the Board must be filed within three years after the applicant discovers the alleged error in his record. 10 U.S.C. § 1552. The record indicates that the applicant signed and received his discharge papers on April 12, 196x. In addition, the record indicates that he ordered copies of his discharge papers on April 16, 196x, February 12, 197x, March 14, 199x, and August 24, 199x, but he did not submit his application to the Board until February 1999. Therefore, although the applicant claimed that he did not discover that the character of his discharge was still general under honorable conditions until recently, the Board finds that his application was not filed until more than xx years after the Board's three-year statute of limitations expired.
3. Pursuant to 10 U.S.C. § 1552, the Board may waive the three-year statute of limitations if it is in the interest of justice to do so. To determine whether it is in the interest of justice to waive the statute of limitations, the Board

must conduct a cursory review of the merits of the case. *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

4. The applicant's record indicates that after repeated disciplinary infractions, he was referred by his command to a psychiatrist at the Naval Hospital in xxxxx for psychiatric evaluation on January 22, 196x. The psychiatrist diagnosed him as having a personality disorder and recommended that he be administratively discharged for unsuitability. That diagnosis and recommendation were confirmed by a Medical Board of three doctors at the Public Health Service Hospital in xxxxx on March 1, 196x. That same day, the applicant signed a document acknowledging notification of the Board's findings and recommendations and stating that he did not wish to submit a statement in rebuttal. The Medical Board's report and recommendation were approved and forwarded by the applicant's commanding officer and the Commander of the xxxxx District. On March 30, 196x, the Commandant ordered the applicant discharged for unsuitability with the type of discharge to which he was entitled under the regulations. He was discharged "under honorable conditions" on April 12, 196x.

5. The applicant's record indicates that he was taken to captain's mast and awarded NJP five times during his two years at xxxxxx. His final average conduct mark was 2.98. Therefore, under Article 12-B-2(f)(2) of the Personnel Manual then in effect, he was not eligible for an honorable discharge and was issued a general discharge under honorable conditions.

6. The applicant alleged that his commanding officer, the CWO at xxxxxx, misappropriated government funds, property, and personnel for his personal use. However, he submitted no evidence in support of his allegations. Moreover, even if the Board were to assume his allegations were true, the CWO's larceny would not prove that the applicant's conduct marks were erroneous or that the psychiatrist's and other doctors' diagnosis of his personality disorder was wrong. The applicant admitted to the psychiatrist that he had "a hard time getting along with petty officers" and liked to "tell people what I think of them to their faces." These statements indicate that the applicant got into trouble with many superior officers, not just the CWO, and that he was clearly unsuitable for military service.

7. The applicant's record indicates that although he twice was advanced to pay grade xxx, first as an xx and later as an xx, he was also twice demoted back to pay grade xxx due to his misconduct. The record further indicates that he was never advanced to pay grade xx and that, at the time of his discharge, he was in pay grade xxx.

8. The applicant alleged that he once received a letter from an office of the xxxx Coast Guard District stating that his discharge would be upgraded. However, he presented no evidence to prove this allegation and there is no evidence of it in his military records.

9. The applicant has failed to prove by a preponderance of the evidence that his discharge under "honorable conditions" while in pay grade xx was erroneous or unjust.

10. Accordingly, the applicant's request should be denied both for its untimeliness and for lack of merit.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application of former XXXXXXXX, USCG, for correction of his military record is hereby denied.

