

DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of  
Coast Guard Record of:

BCMR Docket  
No. 1999-069

FINAL DECISION

██████████ Deputy Chairman:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14, United States Code. It was docketed on February 22, 1999, upon the Board's receipt of the applicant's complete application for correction of his military record.

This final decision, dated November 4, 1999, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a former enlisted member in the Coast Guard, asked the Board to upgrade his discharge under honorable conditions to an honorable discharge.

The applicant enlisted in the Coast Guard on August 18, 1942 and was discharged on May 18, 1946. He served three years, seven months and one day on active duty.

SUMMARY OF RECORD AND SUBMISSIONS

The applicant alleged that the discharge under honorable conditions was based on a captain's mast (non-judicial punishment) for allegedly being absent without leave (AWOL). He stated that after being at sea for several weeks, the ship pulled into port, and an announcement was made that half of the crew could have overnight liberty. He and several other members took advantage of this opportunity and went ashore. The applicant stated that upon their return to the ship the next morning, they were told that they had been AWOL. He stated that he was given captain's mast for this incident, which is the only blemish on his record. He alleged that he should have received an honorable discharge.

The applicant did not provide the date that he discovered the alleged error or injustice. There is a three year statute of limitations in cases of this sort. Despite the three year statute of limitations, the applicant did not provide a reason why the Board should find it in the interest of justice to waive the statute in his case.

### **Views of the Coast Guard**

On September 30, 1999, the Board received the views of the Coast Guard. The Chief Counsel did not object to the untimeliness of this application and recommended that the Board grant the applicant's request for relief. He stated the following:

The Board should grant relief in this case because the Applicant's discharge was improperly characterized. Under the Personnel Instructions in effect at the time of his separation from the Coast Guard in 1946, the applicant's record satisfied the requirements for an honorable discharge. Additionally, his record does not support a General Discharge under the following edition of the regulations, nor under the current day CGPERSMAN, COMDTINST M1000.6A regulations. Furthermore, even if the characterization of the discharge was proper under the personnel regulations in 1946, such characterization is an injustice. The record shows no indication of other than honorable service by the applicant, service that would be characterized as such under any version of the personnel regulations.

The Coast Guard stated that under the regulations in effect at that time, a member could receive an honorable discharge if the member was discharged at the end of an enlistment, if the member's marks averaged not less than 2.75 in proficiency in rating and a 3 in conduct, and if the member was never convicted by a general Coast Guard court, or more than once by a summary court, or more than twice by a Coast Guard deck court. The Chief Counsel stated that the applicant satisfied all of these conditions. He stated that the applicant's discharge was due to the expiration of enlistment, his average mark in proficiency was 2.89 and 3.0 in conduct, and he was not convicted by a Coast Guard court.

### **Applicant's Response to the Views of the Coast Guard**

On October 7, 1999, the Board received the applicant's response to the Coast Guard views. He stated that he had no objection to the Coast Guard recommendation that he be granted relief.

### **FINDINGS AND CONCLUSIONS**

The Board makes the following findings and conclusions on the basis of the applicant's submissions and military record, and applicable law:

1. The BCMR has jurisdiction over this matter pursuant to section 1552 of title 10, United States Code. The application was not timely.

2. To be timely, an application for correction of a military record must be submitted within three years after the discovery of the alleged error or injustice. See 33 CFR 52.22. The applicant was discharged under honorable conditions approximately 53 years before he filed his application with the Board. The Board may still consider the application on the merits, however, if it finds it is in the interest of justice to do so.

3. Although the applicant did not provide an explanation for not filing his application sooner, his military record and the Coast Guard's submission indicate that the applicant would prevail on the merits of his application. See Allen v. Card, 799 F. Supp 158 (D.D.C. 1992). Therefore, the Board finds that, in the absence of an objection by the Coast Guard, it is in the interest of justice to waive the three year statute of limitations in this case.

4. The Board finds that the Coast Guard committed an error by discharging the applicant under honorable conditions. The applicant has demonstrated by a preponderance of the evidence that he met the requirements for an honorable discharge from the Coast Guard in 1946. He met those requirements by being discharged by reason of expiration of enlistment, by having the necessary proficiency and conduct marks, and by not having any Coast Guard courts during his enlistment.

5. Accordingly, the applicant's request should be granted.

[ORDER AND SIGNATURES ON NEXT PAGE]

**ORDER**

The application of \_\_\_\_\_ USCG, for correction of his military record is granted. His record shall be corrected to show that he received an honorable discharge from the Coast Guard on March 18, 1946.

