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

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 1999-087

FINAL DECISION

[REDACTED] Chairman:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on February 3, 2000, when the application was completed by the Board's receipt of the applicant's military records.

The final decision, dated November 30, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

REQUESTED RELIEF

The applicant was discharged from the Coast Guard on January 17, 1945, with an undesirable (discharge under other than honorable conditions) discharge. On March 24, 1999, he stated in his application to the Board that the undesirable discharge should be changed to an honorable discharge.

The applicant asked the Board to upgrade his discharge to an honorable one because his "intention [on] entering military service was to serve my country honorably and proudly and to better myself." He claimed that his ability to serve was impaired by the following factors:

1. My level of education prevented me from understanding the law in general and the consequences of breaking the law.
2. My youth and immature judgement prevented me from understanding the full impact of going AWOL and interfering with an officer of the law.

3. I have never lived off the Indian Reservation for a long period of time; therefore, I lacked the necessary skills to live in a dominant society

5. I believe that the punishment given to me was too severe for the crime I committed compared to today's standards.

The applicant also said that he was proud to have served his country and "regret[s] the unworthy conduct." He said that since the discharge he has stopped abusing alcohol and has never been arrested again.

SUMMARY OF RECORD

The applicant joined the active duty Coast Guard Reserve on August 28, 1943. He was discharged on January 17, 1945.

On July 25, 1944, the applicant was tried by summary court martial for being absent without leave for 43 days. He was ordered confined for two months (later reduced to 43 days) and fined \$20 a month for eight months (later reduced to 2.5 months).

On October 10, 1944, the applicant was awarded punishment for being absent without leave for three days. A deck court martial (captain's mast) awarded him 20 days' confinement and a fine.

On December 9, 1944, the applicant was arrested by the [REDACTED] Police for interfering with police officers in the performance of their duties. He was tried by police court, found guilty, and sentenced to 30-day imprisonment (suspended).

The following excerpt is from the report of the arresting officer: "They all appeared to be intoxicated and officers approached them for investigation, showing their badges and declaring they were police officers. [REDACTED] [the applicant] refused to recognize their presence and finally struck at Officer [M] [. . .The] officers therefore used sufficient force to effect an arrest."

On January 17, 1945, the applicant was discharged with an undesirable discharge due to his trial and conviction by civil authorities.

VIEWS OF THE COAST GUARD

On July 28, 2000, the Chief Counsel of the Coast Guard recommended denying relief in this case. The Chief Counsel said that the applicant's request should be denied for lack of merit.

On June 27, 2000, the Commander of the Coast Guard Personnel Command stated an additional basis for recommending denial: "The application is not timely."

The Chief Counsel concluded that the applicant failed to prove that the Coast Guard committed error or injustice by discharging him with an undesirable discharge.

The Chief Counsel said that absent strong evidence to the contrary, Coast Guard officials are presumed to have carried out their official duties "correctly, lawfully, and in good faith." Arens v. United States, 969 F. 2d 1034, 1037 (Fed Cir. 1990). Coast Guard regulations in effect at the time of the applicant's discharge gave the Commandant the authority to direct an applicant's discharge for trial and conviction in a civil court. Coast Guard Regulations (1940) Art. 584(4). The Chief Counsel said that the 1944 police report stated that the applicant, intoxicated and belligerent, struck one of the arresting officers. The Chief Counsel said that the applicant failed to prove by a preponderance of the evidence that the civil conviction was erroneous or that the undesirable discharge that resulted from the conviction was erroneous.

The Chief Counsel also alleged that the applicant failed to establish that the Coast Guard committed injustice. He said that the "[a]pplicant has failed to furnish any evidence, other than his self-serving allegation, that would establish that an injustice . . . was committed by discharging him with an Undesirable discharge." The Chief Counsel also said that the applicant did not meet the burden of showing that he was eligible to receive an honorable discharge, notwithstanding his discharge due to a civil conviction. According to the Chief Counsel, the applicant received proficiency and conduct marks, which averaged less than the required minimum standards under the regulations in effect at the time of the arrest.

According to the Chief Counsel, the applicant's conduct and performance while in the Coast Guard "would be viewed as harshly as it was in 1945. The Coast Guard does not tolerate members who resist lawful arrest or absent themselves from their unit without permission." Accordingly, the Chief Counsel said the applicant has failed to prove he was eligible for an honorable discharge.

APPLICANT'S RESPONSE TO COAST GUARD VIEWS

On July 31, 2000, a copy of the Coast Guard's views was sent to the applicant with an invitation to respond to it within 15 days. On August 15, 2000, the Board received a response from the applicant.

The applicant acknowledged receipt of "the Coast Guard advisory opinion and I have no objection to the recommendation."

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. The application was not timely.

3. Section 1552(b) of title 10 of the United States Code provides that a claim for correction of a military record shall be made within three years after the discovery of an alleged error or injustice, unless the Board concludes that it is in the interest of justice to waive untimeliness and adjudicate the application on the merits.

4. An application for correction of the applicant's undesirable discharge in 1945 was received by the BCMR in 1999, more than 51 years after the date of expiration of the Board's three-year statute of limitations.

5. The applicant asked the Coast Guard to upgrade the undesirable discharge he received in 1945 to an honorable discharge. He claimed that his youth, low level of education, and lack of experience off an Indian reservation accounted for his behavior that led to an undesirable discharge,

6. In 1992, the United States District Court for the District of Columbia said that the Board should conduct a "cursory review" of the merits of an application as part of its examination of the question of whether it was in the "interest of justice" to waive untimeliness and adjudicate the application on the merits. Allen v. Card, 799 F. Supp. 158 (D.D.C. 1992).

7. Cursory examination of the merits of this application indicates that it is not in the interest of justice to waive the statute of limitations. The applicant was arrested by the Los Angeles Police, and tried and convicted of a civil offense. This was a sufficient basis for awarding him an undesirable discharge under Article 585(4) of Coast Guard regulations at the date of his discharge.

8. Accordingly, the application should be denied.

ORDER

The application to correct the military record of
, USCG, is denied.

