

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2006-072**

XXXXXXXXXXXX  
XXXXXXXXXXXX, SA/E-2 (former)

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**FINAL DECISION**

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This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case on March 17, 2006, upon receipt of the applicant's completed application for correction.

This final decision, dated October 19, 2006, is 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 apprentice (SA; pay grade E-2) who served approximately five years in the Coast Guard, asked the Board to correct his record by upgrading his 1964 discharge (under other than honorable conditions). The applicant stated that "he was foolish young man" when he was in the Coast Guard and that he went AWOL (absent without leave) on several occasions in an attempt to straighten out infidelity issues with his former spouse. He also stated that he has led a clean life since his discharge, and that he has been "checked out by the federal government and state government" and issued a gun permit and liquor license. In his application for correction, he alleged that he waited to submit his request because "I was told to wait, keep a clean record, then ask for the BCD<sup>1</sup> [bad conduct discharge] removed."

**SUMMARY OF THE RECORD**

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<sup>1</sup> Pursuant to a sentence by a Special Court Martial dated May 3, 1963, the applicant was ordered to be discharged from the Coast Guard with a bad conduct discharge. However, the applicant's DD 214 indicates that the reason for his discharge was "other than desertion (Court-Martial)" and describes his character of service as "conditions other than honorable."

The applicant enlisted in the Coast Guard on May 13, 1958. His troubles began shortly after reporting to recruit training, and during his five years in the Coast Guard he went AWOL and received non-judicial punishment (NJP)<sup>2</sup> on ten occasions and was convicted by courts martial three times. The applicant's record of Uniform Code of Military Justice (UCMJ) offenses and courts martial includes the following:

- June 23, 1958 – Summary Court Martial, for violating Article 86 (AWOL) – sentenced to 10 days' confinement at hard labor and forfeiture of \$15.
- February 24, 1960 – NJP for violating Article 86 – awarded 7 days' restriction.
- March 3, 1960 – NJP for violating Article 92 (dereliction of duty, 2 counts) – awarded 2 weeks of restriction.
- September 20, 1960 – NJP for violating Article 86 – awarded 6 days' restriction.
- October 18, 1960 – NJP for violating Article 134 (breach of the peace) – awarded 6 days' restriction.
- March 3, 1961 – NJP for violating Article 86 – awarded 3 days' confinement on bread and water.
- May 26, 1961 – Summary Court Martial, for violating Article 86 – sentenced to 15 days at hard labor without confinement; 15 days' restriction, and forfeiture of \$30.
- October 13, 1961 – NJP for violating Articles 86 and 87 (missing movement of vessel) – awarded 7 days' confinement.
- September 14, 1962 – NJP for violating Articles 134 and 86 – awarded reduction (suspended) and 14 days of extra duty.
- May 3, 1963 – Special Court Martial, for violating Article 85 (desertion) of the UCMJ, for the period November 23, 1962, through January 26, 1963. He pled guilty to the lesser charge of AWOL, and upon conviction was ordered "to be discharged from the Service with a bad conduct discharge,

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<sup>2</sup> Article 15 of the UCMJ provides NJP as a disciplinary measure that is more serious than administrative corrective measures but less serious than trial by court martial.

to forfeit \$72 per month for 6 months, and to be confined at hard labor for 6 months.”

- August 20, 1963 – NJP for violating Article 86 – awarded 7 days’ restriction.
- October 30, 1963 – NJP for violating Article 86 – awarded 30 days’ restriction.
- December 5, 1963 – NJP for violating Article 86 – awarded 8 days’ restriction and 8 days of extra duty.

On September 26, 1963, a Special Court Martial Review reviewed the applicant’s May 3, 1963, conviction and held that his conviction and sentence, including a bad conduct discharge, were “found to be correct in law and fact and are affirmed.”

On October 30, 1963, the Assistant Secretary of the Treasury approved the recommendation that the applicant receive a BCD.

On January 30, 1964, the applicant was discharged from the Coast Guard pursuant to Article 12.B.15. of the Coast Guard Personnel Manual. The record indicates that his character of service was “conditions other than honorable.”

In 1975, the applicant received a replacement discharge certificate dated May 2, 1975, which indicated that he was discharged from the Coast Guard “by bad conduct discharge (under other than honorable conditions).”

### **VIEWS OF THE COAST GUARD**

On July 12, 2006, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he adopted the findings of the Coast Guard Personnel Command (CGPC) and recommended that the Board deny the applicant’s request. The JAG argued that the applicant failed to submit a timely application and failed to supply any justification for the lengthy delay. CGPC stated that the bad conduct discharge is proportionate to the nature of the applicant’s offenses and that his record fully supports the awarded character of service. Finally, CGPC noted that the applicant’s record of ten NJPs and three court-martial convictions in a five-year span clearly supports his bad conduct discharge and that “any call for clemency in this case would be unjustified given the applicant’s abysmal record.”

### **APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On July 26, 2006, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. The BCMR did not receive a response.

## 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. The application was untimely.

2. An application to the Board must be filed within three years of the day the applicant discovers the alleged error in his record. 10 U.S.C. § 1552(b). The applicant was issued a DD Form 214 on January 30, 1964, with a discharge characterized as "conditions other than honorable." This information is clearly marked on the DD 214 and thus he knew or should have known that he had received a discharge characterized as other than honorable. Moreover, the applicant received a replacement discharge certificate in May 1975, which clearly states that he received a "bad conduct discharge (under other than honorable conditions)." Therefore, the Board finds that the application was filed more than 39 years after the statute of limitations expired and is untimely.

3. Under 10 U.S.C. § 1552(b), the Board may waive the three-year statute of limitations if it is in the interest of justice to do so. In *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that in assessing whether the interest of justice supports a waiver of the statute of limitations, the Board "should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review." The court further instructed 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." *Id.* At 164, 165. See also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

4. The applicant did not allege that his discharge from the Coast Guard was in error or unjust. In his application for correction, he merely stated that he has led a clean and normal life since his discharge and simply wants to clear his name. Explaining the lengthy delay in submitting his application, he alleged that "I was told to wait, keep a clean record, then ask for the BCD [to be] removed."

5. A cursory review of the record indicates the Coast Guard committed no error or injustice in awarding the applicant a discharge characterized as other than honorable. The record indicates that during the applicant's approximately five years of service in the Coast Guard, he received ten NJPs for a variety of offenses and three

court-martial convictions. The applicant argued that his discharge should be upgraded because he has led a clean life since his discharge. On July 8, 1976, however, the delegate of the Secretary established the following policy concerning the upgrading of discharges: “[T]he Board should not upgrade discharges solely on the basis of post-service conduct.” The delegate of the Secretary stated that the Board *may* upgrade a discharge if it is judged to be unduly severe in light of contemporary standards. However, the applicant has submitted no evidence to prove that his BCD is unduly severe under modern standards.

6. Accordingly, due to the lengthy delay and the probable lack of success on the merits of his claim, the Board finds that it is not in the interest of justice to waive the statute of limitations in this case. It should be denied because it is untimely.

**[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]**

**ORDER**

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

