

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-151

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

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 after receiving the applicant's completed application on May 18, 2009, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated February 25, 2010, 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 who enlisted in the Coast Guard at age 15 on June 19, 1947, and received a general discharge on October 18, 1948, asked the Board to upgrade his general discharge to an honorable discharge.

The applicant alleged that when he was discharged in 1948, he did not understand the difference between a general discharge under honorable conditions and an honorable discharge. He was told he would be eligible for veterans' benefits. The applicant further alleged that he did not discover that he had not received an honorable discharge until 1998. He asked the Board to excuse the untimeliness of his application because he "would very much like to leave a clean record for [his] descendents."

SUMMARY OF THE EVIDENCE

On June 19, 1947, the applicant enlisted in the Coast Guard. He claimed to be 17 years old with a birth date of February 5, 1930, and his father signed a consent, declaration, and oath agreeing to his enlistment and affirming this birth date. The applicant's recruiter signed a declaration stating that he had been shown the applicant's birth certificate and seen that his date of birth was February 5, 1930. Following recruit training, the applicant was assigned to the York Spit Light Station, a lighthouse at the mouth of the York River on the Virginia shore of the Chesapeake Bay. He advanced to seaman, second class (S1c) and then to seaman (E-3).

On July 3, 1948, the applicant submitted a written request to be discharged. He stated that he had realized that he was too young to be of any value to the service. He asked to be discharged so that he could finish school (his education had stopped in the 7th grade) and help his father on the family farm. The applicant further stated that his physical defects were embarrassing and rendered him “an undesirable in any unit of the service.”

Also on July 3, 1948, the Officer in Charge (OIC) of York Spit Light Station sent the District Commander a recommendation that the applicant be discharged. He stated that the applicant “is a minor and has become dissatisfied [and] consequently is of little or no value to the service.” The OIC also reported that the applicant had an “uncontrollable bladder.”

On July 12, 1948, the District Commander forwarded the recommendation for discharge to the Commandant. He stated that the applicant had admitted to having falsified the birth certificate he showed to his recruiter by changing his year of birth from 1932 to 1930. He noted that pursuant to Personnel Circular No. 19-48, members who fraudulently enlist with parental consent by misstating their age should be discharged for misconduct by reason of fraudulent enlistment rather than by reason of minority. He attached to the discharge recommendation a certified copy of the applicant’s birth certificate with a date of birth of February 5, 1932.

On July 15, 1948, the Commandant ordered that the applicant be evaluated by a Board of Medical Survey to determine his fitness for duty. From August 4 to 19, 1948, the applicant was hospitalized for evaluation of his enuresis.¹ On September 14, 1948, the Board of Medical Survey reported that the applicant admitted having been troubled by enuresis all of his life and that the problem occurred most frequently when he could hear the sound of water. His enuresis had thus increased since he joined the Coast Guard, and the OIC of the York Spit Light Station had reported that the condition was chronic. The medical examination had revealed no physical abnormality that would cause enuresis. However, the Board of Medical Survey noted that the applicant had enlisted at age 15 and was still just 16 years old. The applicant was diagnosed with enuresis existing prior to enlistment, and the Board of Medical Survey recommended that he be discharged for unsuitability because of his chronic enuresis.

On October 11, 1948, the Commandant informed the District Commander that in light of the report of the Board of Medical Survey, the applicant would receive a general discharge for unsuitability.

On October 18, 1948, the applicant received a general discharge under honorable conditions by reason of unsuitability. He was issued an honorable service button but not an honorable discharge button and was counseled about his “rights and benefits as a veteran.” The applicant’s final average marks, on a 4.0 scale, were 2.83 for proficiency and 4.0 for conduct. The applicant signed his Notice of Separation and a Termination of Service form, both of which clearly state that he was receiving a “GENERAL DISCHARGE.” The discharge certificate he was issued was an honorable discharge certificate with the words “GENERAL DISCHARGE” typed above the calligraphic “Honorable Discharge” on the form.

¹ Enuresis is a medical term for bed-wetting.

VIEWS OF THE COAST GUARD

On September 30, 2009, the Judge Advocate General of the Coast Guard recommended that the Board waive the statute of limitations and upgrade the applicant's discharge to honorable. In so doing, he adopted the findings and analysis provided in a memorandum submitted by the Coast Guard Personnel Service Center (CGPSC).

CGPSC stated that under Article 12.B.14.i. of the current Personnel Manual, a minor discharged due to his minority may receive either an honorable or a general discharge pursuant to Article 12.B.2.f. of the Personnel Manual. CGPSC stated that under Article 12.B.2.f., the applicant would likely have received an honorable discharge because of his marks and conduct. Therefore, CGPSC argued, because under current policy the applicant would have received an honorable discharge, his general discharge should be upgraded "in the interest of equity and fairness."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 15, 2009, the applicant responded to the views of the Coast Guard and stated that he is grateful that the Coast Guard recommended that the Board grant relief and that he hopes the Board will accept that recommendation.

APPLICABLE REGULATIONS

Article 12.B.14.i. of the current Personnel Manual states that a "member discharged for minority shall be given an honorable or general discharge, as appropriate, under Article 12.B.2.f." Article 12.B.14.g. states that "[t]he enlistment of a minor who enlisted with false representation of age or without proper consent will not in itself be considered a fraudulent enlistment."

Article 12.B.2.f. states that a commanding officer or higher authority can effect a member's separation with an honorable discharge if the member is discharged for one of the reasons listed, and the list includes "Minority (age)." Prior to June 30, 1983, to receive an honorable discharge, "the member must have made a minimum final average of 2.7 in proficiency and 3.0 in conduct." In addition, the separation authority should consider whether the member showed "[p]roper military behavior and proficient performance of duty with due consideration for the member's age, length of service, grade, and general aptitude."

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 10 U.S.C. § 1552.

2. An application to the Board must be filed within three years of the date the applicant discovers, or reasonably should have discovered, the alleged error in his record.² The applicant signed and received his Notice of Separation and Termination of Service form, both of which clearly show that he was receiving a general discharge on October 18, 1948. Therefore, he knew or should have known that he had received a general rather than an honorable discharge in 1948. His application was untimely.

3. Pursuant to 10 U.S.C. § 1552(b), the Board may excuse the untimeliness of an application if it is in the interest of justice to do so. In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that to determine 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.”³ 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.”⁴

4. The applicant did not explain or justify his long delay in requesting an honorable discharge. However, because a cursory review of the merits reveals that the Coast Guard has recommended that the Board grant relief, the Board finds that it is in the interest of justice to excuse the untimeliness of the application and consider the case on its merits.

5. The record shows that in 1947 the applicant enlisted at age 15 by misrepresenting his age with the help of his family. Upon his discharge in 1948 at age 16, he had advanced to seaman (E-3), had received perfect conduct marks of 4.0, and had a final average proficiency in rating mark of 2.83. Therefore, the Board agrees with the Coast Guard that under current regulations in Article 12.B. of the Personnel Manual, the applicant would receive an honorable discharge.

6. Although the applicant’s general discharge was correctly issued in accordance with the policy in effect in 1948, the Board finds that his discharge should be upgraded to honorable in the interest of justice. The delegate of the Secretary has instructed the Board with respect to upgrading discharges that it “should not upgrade a discharge unless it is convinced, after having considered all the evidence ... that in light of today’s standards the discharge was disproportionately severe vis-à-vis the conduct in response to which it was imposed.”⁵ In light of today’s standards, the applicant’s general discharge was disproportionately severe vis-à-vis his conduct when enlisting and serving in the Coast Guard.

7. Accordingly, relief should be granted.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

² 10 U.S.C. § 1552; 33 C.F.R. § 52.22.

³ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁴ *Id.* at 164-65; see *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

⁵ Memorandum of the General Counsel to J. Warner Mills, *et al.*, Board for Correction of Military Records (July 8, 1976).

ORDER

The application of former SN xxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted.

The Coast Guard shall correct his record to show that he received an honorable discharge and shall send him an honorable discharge certificate.

