

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2012-126

**XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX**

FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the application upon receipt of the applicant's completed application on May 1, 2012, and subsequently prepared the final decision as required by 33 C.F.R. § 52.61(c), with the assistance of D. Hale.

This final decision, dated January 18, 2013, 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 asked the Board to correct his military record by changing it to show that he did not receive a hardship discharge. He stated that his DD Form 214 shows that he received a hardship discharge but alleged that that he never requested a hardship discharge nor did he deserve to be discharged. The applicant enlisted in the Coast Guard on July 28, 1954, and was discharged on December 4, 1961.

The applicant alleged that the discharge was racially motivated and that he was given the hardship discharge "without explanation." He argued that the racial divide that existed in 1961 prevented him from advancing in his Coast Guard career, and alleged that he was discharged because he had made "one too many" requests to be advanced.

Regarding the lengthy delay in submitting his application, the applicant stated that he discovered the alleged errors in his record on December 4, 1961, and argued that it is in the interest of justice to waive the untimeliness because he has been trying for more than 50 years to have the hardship discharge removed from his record.

BACKGROUND

The applicant enlisted in the Coast Guard on July 28, 1954. On August 1, 1956, he submitted a request to his Command for a transfer so he could be closer to a sick family member.

The request received two positive endorsements from his Command and was forwarded to Coast Guard Headquarters (CGHQ) for final approval, but there is nothing in the record documenting the response from CGHQ. On August 23, 1961, the applicant submitted another request for a transfer because of "an urgent family problem which necessitates my presence..." His request stated that he was trying "in every way possible to circumvent a hardship with the least bother to the Coast Guard." The request received positive Command endorsement but the 3rd Coast Guard District Personnel Chief forwarded the request to the Commandant as disapproved, because the applicant was "ineligible for inter-district rotation." The applicant was also instructed that "if his request is to be considered on a hardship basis, it has not been properly documented under current instructions."

On October 6, 1961, the applicant submitted another application to the Commandant for a hardship transfer to the Baltimore area. In the letter he cited mounting domestic problems and that his pay was insufficient to properly care for his family. The final sentence of the applicant's letter states "[I]f the above request is disapproved, it is further requested that I be considered for a hardship discharge."

On October 6, 1961, the applicant's Commanding Officer (CO) submitted a first endorsement to the applicant's request but stated that the information contained in the applicant's letter does not "adequately justify either a hardship transfer or discharge." The CO noted that inadequate planning had caused the applicant's financial problems even though several officers from the applicant's cutter had attempted to solve the problem. The CO, however, concurred that "a transfer to an area with a lower cost of living and permission for outside employment would be a probable solution to the alleged hardship."

On October 25, 1961, the applicant's transfer request was reviewed by the Commandant and the subsequent memorandum was issued to the Commander, 3rd Coast Guard District. The Commandant stated that a panel of officers at Headquarters had reviewed the applicant's request and concluded that it did not meet the requirements for a hardship transfer, but recommended that he be given a "hardship separation if he so desires." The memo stated that provided the applicant is recommended for reenlistment and no disciplinary action is pending, he could be transferred to the Coast Guard Reserve and released to inactive duty to complete a total of eight year's service in accordance with Section 4(d)(3) of the Universal Military Training and Service Act, as amended.

The Commandant's memo also stated that if the applicant is not recommended for reenlistment, then he should be discharged by reason of "HARDSHIP, ARISING SINCE ENLISTMENT", pursuant to Article 12-B-7 of the Coast Guard Personnel Manual, and item 11c of DD Form 214 shall indicate Code 227.

The record shows that the applicant was discharged to the Coast Guard Reserve on December 4, 1961. His DD Form 214, which he signed, shows that he received an honorable discharge and that his reason for discharge was "Hardship – (Code 227)" pursuant to Article 12-B-7 of the Coast Guard Personnel Manual. His rate at the time of discharge was commissaryman, second class (CS2).

VIEWS OF THE COAST GUARD

On October 3, 2012, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in this case. In so doing, he adopted the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC). The PSC pointed out that the application is untimely since the applicant was discharged in 1961 and he did not provide a reason for his delay in seeking a correction to his record. The PSC argued that the Board should deny relief because in his October 6, 1961, request to the Commandant, the applicant specifically requested a hardship discharge in the event that his request for a hardship transfer was denied. PSC stated that a panel of officers concluded that the applicant's request did not meet the requirements for a hardship transfer and subsequently disapproved the request. However, the PSC stated that the panel also concluded that the applicant's hardship was permanent in nature and thus authorized a hardship separation if the applicant wanted one. PSC stated that "it would appear more likely than not that the applicant decided to accept the offer of a hardship separation."

The PSC stated that the 1961 policies regarding hardship discharge are no longer available for reference. However, it noted that the Coast Guard's actions in response to the applicant's requests for hardship transfer or discharge "closely align with current service policy" as set forth in the current Military Separations Manual, and it can "be inferred that the Coast Guard followed the policy in place at the time of his discharge."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 23, 2012, the Board sent a copy of the views of the Coast Guard to the applicant for a response. The Board did not receive a reply.

APPLICABLE LAW

Article 12-B-7-c-3 of the Coast Guard Personnel Manual (1961) provides that the Commandant may direct a hardship discharge or release from active duty when the dependency or hardship is not of a temporary nature, and the conditions have arisen or been aggravated since entry into the Service.

Article 1.D.2.c. of the current Coast Guard Military Separations Manual provides that the Commander (PSC) may direct the discharge of a member when an undue or genuine dependency exists, is not of a temporary nature, and the conditions have arisen or been aggravated excessively since the member entered the Service. Examples include situations in which the member's family is undergoing hardship more severe than normal, and the hardship is long-term or permanent.

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 submission and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.

2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.

3. The application was not timely. Under 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22, an application to the Board must be filed within three years after the applicant discovers, or reasonably should have discovered, the alleged error or injustice. The applicant was discharged in 1961, and his application to the Board states that he discovered the error on December 4, 1961. Therefore, he knew of the alleged error in his record in 1961 and his application was submitted approximately 48 years beyond the statute of limitations.

4. The applicant asserted that it is in the interest of justice to waive the untimeliness because he has been trying for more than 50 years to have the hardship discharge removed from his record. The Board finds that the applicant's explanation for his delay is not compelling because he failed to show that anything prevented him from discovering and seeking correction of the alleged error or injustice more promptly.

5. 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, 164 (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." 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).

6. A cursory review of the merits of this case indicates that the applicant is not likely to prevail on his claim. He has not demonstrated that the Coast Guard committed an error or injustice in discharging him because of a hardship. Contrary to his allegation, the record shows that the applicant requested a hardship discharge. Although the applicant made several requests for a hardship transfer (which were denied), in an October 6, 1961 letter he requested a hardship discharge if his renewed request for a hardship transfer was denied. He stated that if his request for a hardship transfer was not approved, "it is my further request that I be considered for a hardship discharge." Subsequently, the Coast Guard approved the applicant's request for a hardship discharge and he was discharged on December 4, 1961. There is nothing in the record to indicate that he opposed the hardship discharge until April 10, 2012, the date on which the BCMR received his application for correction of his record. Nor is there evidence in the record to prove that the applicant was unable to advance further in his career due to racial bias. The evidence is that he requested to be discharged from the Coast Guard due to hardship related to family issues. The record contains no evidence that substantiates the applicant's allegations of error or injustice with regard to his discharge.

7. Accordingly, the application should be denied because it is untimely and because it is not in the interest of justice to excuse the untimeliness.

ORDER

The application of former XXXXXXXXXXXXXXXXXX, for correction of his military record is denied.

