

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2012-157



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 upon receipt of the applicant's completed application on May 24, 2012, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated February 28, 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 upgrade the character of his 1961 discharge from General Under Honorable Conditions to Honorable. He stated that he was only 18 years old when he was discharged and "did not have the knowledge or sense to request a review of my discharge." The applicant alleged that, had he contested the discharge, it would have been an Honorable medical discharge. The applicant argued that it is in the interest of justice for the Board to excuse the untimeliness of his application because he was not old enough or knowledgeable enough in 1961 to contest his discharge.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on January 19, 1960, at age 17. After completing recruit training, he was assigned to Group Cape May.

On September 27, 1960, the applicant was hospitalized for psychiatric evaluation after he got drunk and assaulted superior officers. The referring doctor noted his history of misconduct and his attitude of not caring about the rules. The applicant denied having hallucinations, delusions, or amnesic episodes. The doctor noted that the possible diagnoses ranged from schizophrenia to depression to psychomotor epilepsy.

On October 31, 1961, the applicant underwent a pre-discharge physical examination. He was found fit for discharge and unsuitable for military service because of his “paranoid personality.”

On a hospital report dated October 27, 1961, a psychiatrist reported that before enlisting in the Coast Guard, the applicant had spent a year in a special school because of anti-social behavior, truancy, and delinquency. The applicant began his initial interview with the psychiatrist while sitting on the floor and mumbling. Tests showed that the applicant had a “bright normal intelligence” but also a “flattened affect and regressed, impulsive emotional responses.” The doctor diagnosed the applicant with a “paranoid personality”—a “primary inherent personality defect which is not secondary to any disease or injury and existed prior to his entrance into the Coast Guard.” The doctor stated that the applicant had “no disqualifying mental or physical defects which are ratable as a disability under the standard schedule for rating disabilities in current use by the Veterans Administration” and recommended that the assault charge against him be dropped and that he be retained in the hospital until he could be administratively discharged for unsuitability.

On November 3, 1961, the applicant acknowledged that he had been informed that he was being recommended for discharge “for unsuitability due to a Paranoid Personality.” He noted that he did “not care to make any statement in [his] own behalf.”

On November 21, 1961, the applicant’s Group Commander sent the Commandant a memorandum in which he recommended that the applicant be discharged “for unsuitability and for having experienced extreme difficulty adjusting to service life, caused primarily by an inherent personality defect which is not secondary to any disease or injury and existed prior to his entrance into the Coast Guard.” The Group Commander noted that since being assigned to the Group in May 1960, the applicant had been punished five times at mast and once at summary court-martial for offenses such as periods of unauthorized absence, failing to make reveille, and failing to perform watch rounds properly. The Group Commander also noted that the applicant had been hospitalized since September 27, 1961 for in-patient mental health treatment pending action. The Group Commander’s recommendation was endorsed for approval by the District Commander.

On December 4, 1961, the Commandant ordered that the applicant be discharged for unsuitability pursuant to Article 12-B-10 of the Personnel Manual with an honorable or general discharge “as warranted by his military record in accordance with the standards set forth in Article 12-B-3.”

On December 15, 1961, at age 18, the applicant received a general discharge under honorable conditions. The Record of Discharge indicates that the applicant was discharged due to unsuitability and was not recommended for reenlistment. His final average marks were 3.1 for proficiency in rate, 3.1 for leadership, and 3.44 (hand corrected to 3.43) for conduct.

VIEWS OF THE COAST GUARD

On December 3, 2012, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant relief by upgrading the character of the applicant's discharge from general to honorable.

The JAG noted that the application was not timely filed but recommended that the Board grant relief because the applicant met the requirements for an honorable discharge based on the Commandant's discharge orders and the applicant's final average marks. In this regard, the JAG noted that the discharge orders stated that the applicant should receive an honorable or general discharge based on the requirements of Article 12-B-3 of the Personnel Manual, and under that article, the applicant met the minimum requirements for an honorable discharge. Therefore, the applicant's general discharge was erroneous and should be upgraded to honorable.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 21, 2012, the applicant responded to the views of the Coast Guard. He asked the Board to excuse the untimeliness of his application and grant the relief recommended by the JAG.

APPLICABLE LAWS

Article 12-B-3 of the Coast Guard Personnel Manual in effect in 1961 stated that a member could receive an honorable discharge for unsuitability if (a) the member had no conviction by general court-martial and only one by summary court-martial, and (b) the member's minimum final average marks were at least 2.7 for proficiency in rate and 3.25 for conduct.

Article 12-B-10 authorized administrative discharges for members by reason of unsuitability. The conditions listed as rendering a member unsuitable included inaptitude, apathy, defective attitude, and personality disorders listed in Chapter 5 of the Medical Manual (CG-294) "[a]s determined by medical authority." Such members were entitled to written notice of the reason they were being considered for discharge and an opportunity to make a statement on their own behalf. Article 12-B-16(d).

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. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice in his record. 10 U.S.C. § 1552(b). The record indicates that the applicant signed and received his discharge certificate, DD 214, showing his general

discharge under honorable conditions on December 15, 1961. Therefore, his application was not timely filed.

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

4. Although the applicant long delayed seeking correction of his general discharge, the Board’s cursory review of the record reveals compelling evidence that the applicant’s general discharge was awarded in error. Therefore, the Board finds that it is in the interest of justice to excuse the untimeliness of the application and to consider the claim on its merits.

5. The record shows that the applicant enlisted at age 17 and was discharged less than two years later, while still 18 years old, following many incidents of misconduct. After he got drunk and assaulted superior officers in September 1961, he underwent extensive, in-patient psychiatric evaluation and was diagnosed with a “paranoid personality” disorder, rather than a mental or physical disability that would warrant a medical separation and disability rating. Therefore, he was subject to an administrative discharge for unsuitability under Article 12-B-10 of the Personnel Manual. He received due process under Article 12-B-16(d) of the manual in that he was notified of the proposed discharge and afforded an opportunity to submit a statement on his own behalf, but he waived that right. The Board notes that under current regulations, members diagnosed with paranoid personalities disorders are also subject to administrative discharges for unsuitability. COMDTINST M1000.4, Article 1.B.15.b.(2).

6. Although the Board finds no error or injustice in the proceedings resulting in the applicant’s administrative discharge for unsuitability, the Board agrees with the JAG that the applicant met the requirements for an honorable discharge under Article 12-B-3 of the Personnel Manual and so should have received an honorable discharge, instead of a general discharge, in accordance with the Commandant’s discharge orders citing Article 12-B-13. The applicant met the requirements for an honorable discharge in Article 12-B-3 because he was never convicted by general court-martial and convicted only once by special court-martial, and his final average marks were above the prescribed minimum marks of 2.7 for proficiency and 3.25 for conduct.

7. The applicant’s administrative separation for unsuitability was proper, but the characterization of his discharge as general under honorable conditions was erroneous because he met the requirements for an honorable discharge under the regulations in effect in 1961 and the Commandant’s orders. Therefore, the applicant’s discharge should be upgraded to honorable.

ORDER

The application of former [REDACTED] for correction of his military record is granted as follows:

The Coast Guard shall correct his record to show that he received an honorable discharge by issuing him a DD 215 to correct his DD 214. The Coast Guard shall also issue and send him an honorable discharge certificate.

