

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2013-098



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 after receiving the applicant's completed application on April 11, 2013, and subsequently assigned it to [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated January 23, 2014, 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, who was honorably discharged from the Coast Guard on July 7, 1978, after completing almost three years of active duty, asked the Board to change a code that appears on one copy of his DD 214. The code, JMH, is one that was then used for members who were discharged because of financial irresponsibility in accordance with Article 12-B-16 of the Personnel Manual. The applicant stated that while in the Service, he and his wife incurred enormous hospital bills for the treatment of their infant son who died. He was overwrought with grief and did not know what to do. Now, he has been married for 37 years, he is an owner-operator of a truck, his credit is good, and he and his wife are trying to buy their first home through the DVA. He believes that the JMH code will prevent them from doing so.

SUMMARY OF THE RECORD

The applicant enlisted on active duty on August 18, 1975, at age 18. He got married in October 1975. Notes in his record show that he was counseled about indebtedness and failing to pay his debts on June 1, 1977. He was advised that if he did not show progress in paying off his debts, he would be discharged.

On August 2, 1977, the applicant's infant son died. Records show that the Coast Guard reimbursed him for the resulting transportation and burial expenses on September 15, 1977. On September 21, 1977, the applicant was again counseled about his failure to pay debts.

On May 12, 1978, the applicant's commanding officer (CO) advised the applicant that he intended to recommend his discharge due to financial irresponsibility based upon the numerous letters the command had received about the applicant's debts. The CO advised him that he had a right to submit a statement on his own behalf.

On May 20, 1978, the applicant objected to the discharge, which he said would cause him more problems. He noted that he had been unable to find part-time work in the towns closest to his unit and so he and his wife had recently moved to a city 40 miles away, where she had found a full-time job and he had applied for numerous part-time jobs. He noted that his indebtedness had been reduced to less than \$1,200.00, and he had every intention of paying his bills.

On May 31, 1978, the applicant's CO recommended to the Commandant that the applicant be discharged due to financial irresponsibility. He stated that the command had received letters about the applicant's unpaid debts since February 1977 and, despite counseling, the debts had not been paid and the applicant's creditors had begun to take court action. The CO attached numerous letters from banks, utilities, and the applicant's landlord. He also included a letter signed by a doctor, who stated that the applicant had apparently used the CHAMPUS insurance money that was supposed to pay for his son's health care for other purposes. The doctor included a note signed by the applicant, who admitted to having "cash[ed] an insurance check that was meant for the services of [the doctor]."

On June 6, 1978, the District Commander forwarded the CO's recommendation to the Commandant. He noted that the applicant's young son had died in August 1977, and so "we looked to see if that death might have had some bearing on their financial situation. While it may have, it is noted that more than several letters of complaint of non-payment of bills or failure to live up to contractual arrangements originated before the early August 1977 passing of their son." He noted that the applicant had been counseled about his failure to pay debts in June 1977 and that subsequent to that counseling, the applicant had failed to pay many more debts. He concluded that the applicant had made no attempt or showed any desire to liquidate his debts and get his finances in order and so he recommended that the proposed discharge be approved.

On June 27, 1978, the Commandant issued orders for the applicant to be honorably discharged with the JMH separation code denoting financial irresponsibility.

On August 18, 1978, the applicant was discharged for unsuitability due to financial irresponsibility in accordance with Article 12-B-16 of the Personnel Manual then in effect.

VIEWS OF THE COAST GUARD

On July 31, 2013, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request.

The JAG adopted the findings and analysis provided by the Personnel Service Center (PSC) in a memorandum dated July 22, 2013. PSC stated that the application is untimely and should be denied on that basis. PSC also stated that the applicant was properly discharged for financial irresponsibility. PSC noted that he was counseled about his debts before his son died but continued to accumulate unpaid debts after that counseling and that his command determined

that he showed no indications of paying off the debts. Therefore, PSC concluded, his JMH separation code was accurate and should remain unchanged.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 6, 2013, the Chair sent a copy of the views of the Coast Guard to the applicant and invited him to respond within 30 days. No response was received.

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. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.¹ The record shows that the applicant knew he had been discharged for financial irresponsibility with the JMH code in 1978. Therefore, his application is untimely.
3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.² In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board should not deny an application for untimeliness without "analyz[ing] both the reasons for the delay and the potential merits of the claim based on a cursory review"³ to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted 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. Regarding the delay of his application, the applicant explained that he is now attempting to buy a house with a loan from the DVA and believes that the JMH code denoting financial irresponsibility on his 1978 DD 214 might prevent him from getting the loan. He stated that he has become a responsible owner-operator of a truck and has a good credit record.
5. A cursory review of the merits of this case indicates that the JMH code is not erroneous because the applicant was properly discharged in accordance with Article 12-B-16 of the Personnel Manual then in effect for failing to pay his debts. The applicant claimed that the debts were due to medical and burial expenses resulting from the tragic death of his infant son, but as a member of the military, his son's medical expenses were reimbursed by CHAMPUS and the burial expenses, including those for transportation and the funeral home, were reimbursed by the Coast Guard. However, the applicant and his wife apparently cashed the CHAMPUS check and spent the money on other things.

¹ 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

² 10 U.S.C. § 1552(b).

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

⁴ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

6. It would be very unfortunate and could indeed be considered an injustice if a JMH code on a 35-year-old DD 214 prevented a veteran with a good credit history from receiving a home loan through the DVA. The applicant alleged that the JMH code could prevent him from receiving such a loan, but he submitted no evidence to show that the DVA has denied him a loan either solely or in part because of the JMH code.

7. The application is untimely, and applicant has not proved by a preponderance of the evidence that the JMH code on his DD 214 is erroneous or unjust. Therefore, his request should be denied. However, if he has documentation showing that he has been denied a DVA loan because of the JMH code, he should submit it to the Board within six months of the date of this decision, and the Board will grant further consideration of his case.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former SN [REDACTED] USCG, for correction of his military record is denied, but the Board will grant further consideration of his case if within six months of the date of this decision he submits documentation showing that the DVA denied him a home loan because of the JMH code denoting financial irresponsibility on his DD 214.

January 23, 2014

