

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-004



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. Upon receiving the completed application on October 31, 2013, the Chair docketed the case and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated August 1, 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

The applicant, who received an honorable discharge for unsuitability on May 19, 1993, asked the Board to upgrade his reentry code from RE-4 (ineligible to reenlist) to RE-1 (eligible to reenlist). He alleged that he was administratively discharged because of a disagreement between him and his Commander about "what constituted 'duty-related' use of a credit card." He alleged that because of his "youthful arrogance and ego, [he] refused to accept a minor punishment for inappropriately using a credit card because [he] did not believe [he] did anything wrong." He was offered the option of being administratively discharged, which he accepted. He alleged that he had performed 12 years of honorable active duty but "was bullied out unjustly" and now wants "to complete my service honorably" but cannot do so unless his RE code is upgraded.

The applicant alleged that he discovered the error in his record on February 26, 2013. He argued that the Board should consider his request because his reentry code is wrong given his record of good evaluations and commendations in the Air Force and Coast Guard.

SUMMARY OF THE RECORD

The applicant served in the Air Force and Air Force Reserve from May 29, 1981, through July 1, 1990; completed 6 years and 13 days of active duty during that period; and advanced to staff sergeant in pay grade E-5.

On July 2, 1990, the applicant enlisted in the Coast Guard as a fireman (FN/E-3) based on his prior military service. He was initially assigned to a harbor station where he worked on engines. However, he attended "A" School to become a yeoman, advanced to YN3/E-4, and was reassigned to serve in the administrative office of an air station.

On November 21, 1991, the applicant was counseled on a Page 7 about "poor performance of duty" at the air station. The Page 7 states that the applicant had been late to work three times since November 8, 1991, and had had to be woken up in the barracks.

On January 31, 1992, the applicant was counseled on a Page 7 about issuing a retired member's identification card to someone whose name and social security number "could not be matched" in the DEERS database and failing to retain documentation of the issuance. The Page 7 states that "[a]lthough this is suspicious, and after an informal investigation proved no foul play, it is concluded that a major administrative error has occurred. You are reminded of the importance associated with the accountability of all ID cards and the need for you to follow the established procedures."

On January 5, 1993, the applicant was counseled on a Page 7 about failing to perform his yeoman watch-standing duties on December 27, 1992. The Page 7 states that this was the second time he had failed to check in by calling the Officer of the Day at the required times and that he had been told the first time, in October 1992, that if he failed to call in at the proper times again, he would be required to perform his watches at the unit. Accordingly, the applicant was ordered to perform his future overnight watches from the barracks. His supervisor noted that "the attitude and maturity you have displayed toward the responsibilities associated with standing a proper watch are not what is expected of a petty officer."

On March 25, 1993, the applicant was awarded non-judicial punishment (NJP) at mast for "knowingly using the Diners Club Travel Card for illegal purchases while not in a TAD status." The Page 7 documenting this NJP states that the applicant had previously been counseled about misusing the card and that, to try to prevent further misuse, his card had been confiscated and secured in a safe where it was to be kept unless he was sent on TAD travel. In addition, the Page 7 states, the applicant had been directly ordered not to use the card except while on TAD travel and not to make illegal purchases with the card. However, while the card was in the safe, the applicant had "knowingly disobeyed this direct order and policy" by using the card number to make illegal purchases. Moreover, he had failed to pay off the debt, and his delinquency had "brought discredit on the Coast Guard." His NJP consisted of a reduction in rate to SNYN/E-3.

On March 26, 1993, the applicant's commanding officer (CO) notified the applicant that he was initiating the applicant's administrative discharge for unsuitability "because of a documented personal history of apathy, defective attitude and a displayed inability to expend effort constructively. Additionally, you have been counseled for financial irresponsibility because of your misuse of the government issued Diners Club credit card." The CO stated that the applicant had consistently failed to follow established procedures and policies and had shown a cavalier attitude toward direct orders. The CO advised him that he was entitled to a probationary period, to consult counsel, to submit a statement about the proposed discharge, and to appear at a hearing before an Administrative Discharge Board (ADB) with legal representation. The CO also noted that he could waive these rights in writing.

On March 29, 1993, the applicant acknowledged his CO's intent to discharge him in writing. The applicant also acknowledged consulting an attorney about his right to a probationary period and to a hearing before an ADB and waived those rights.

On March 31, 1993, the applicant signed a Page 7 stating that he had been offered a six-month performance probationary period to improve his performance but had decided to waive probation and to accept an administrative discharge for unsuitability.

On April 8, 1993, the applicant's CO sent the Commandant a recommendation that the applicant be administratively discharged for unsuitability based on his "apathy, defective attitude and an inability to expend effort constructively." The CO noted that the applicant had displayed his apathy on numerous occasions; had been counseled numerous times about poor performance, habitual tardiness, and failure to stand proper watches; and had been punished for misusing his government credit card even after being formally counseled following a prior unauthorized use of the card. The CO also noted that the applicant had "voiced a strong desire to be discharged from the Coast Guard" and had waived his right to a probationary period. The District Commander forwarded the CO's memorandum to the Commandant on April 15, 1993, and strongly recommended that the applicant be discharged with an RE-4.

On April 21, 1993, the applicant signed another memorandum with the subject line, "Conditional Waiver of a Hearing Before an Administrative Discharge Board," in which the applicant acknowledged having consulted counsel and acknowledged his right to an ADB. The applicant waived his right to an ADB on condition that he receive an honorable discharge.

On April 27, 1993, the Commandant issued orders for the applicant to receive an honorable discharge for unsuitability within 30 days pursuant to Article 12-B-16 of the Personnel Manual. The applicant was honorably discharged for unsuitability with an RE-4 reentry code on May 19, 1993.

VIEWS OF THE COAST GUARD

On February 24, 2014, the Coast Guard submitted an advisory opinion and recommended that the Board deny the applicant's request based on a memorandum prepared by the Personnel Service Center (PSC). PSC stated that the Board should deny relief because the record shows that the applicant was properly discharge for unsuitability and because he has submitted no evidence supporting his claims.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 26, 2014, the Chair sent a copy of the Coast Guard's advisory opinion to the applicant and invited him to submit a response within 30 days. No response has been 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 Although the applicant alleged that he discovered the error in his record in 2013, he received his DD 214 with the RE-4 in 1993, had many years of military service, and had been counseled about his discharge by an attorney. Therefore, the preponderance of the evidence shows that the applicant knew about his RE-4—the alleged error in his record—in 1993, and 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. The applicant did not explain why he waited more than 20 years to challenge his reentry code but argued that it is in the interest of justice for the Board to consider his request because his reentry code is erroneous and because of his record of honorable service in the Air Force and Coast Guard. The Board finds that the applicant’s argument is not compelling because he has failed to show that anything prevented him from seeking correction of the alleged error or injustice more promptly.
5. A cursory review of the record shows that the applicant was properly discharged in accordance with Article 12-B-16 of the Personnel Manual as a result of numerous conduct and performance problems reflecting an apathetic attitude and inability or unwillingness to follow orders. He alleged that he was young and was bullied into accepting the discharge, but he was 30 years old and waived his right to both a probationary period and a hearing before an ADB after consulting counsel. He alleged that his NJP resulted from a disagreement over the proper use of a government credit card, but the record shows that he knowingly misused the card number to make illegal purchases after the card had been confiscated and stored in a safe to try to prevent him from misusing it. The record contains no evidence that substantiates the applicant’s allegations of error or injustice in his official military record, which is presumptively correct.⁵ Based on the record before it, the Board finds that the applicant’s claim cannot prevail on the merits.
6. Accordingly, the Board will not excuse the application’s untimeliness or waive the statute of limitations. The applicant’s request should be denied.

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).

⁵ 33 C.F.R. § 52.24(b); see *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties “correctly, lawfully, and in good faith.”).

ORDER

The application of former [REDACTED] [REDACTED] USCG, for correction of his military record is denied.

August 1, 2014

