

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-090

██████████
██████████

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 April 2, 2014, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated December 5, 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 asked the Board to correct his military record by upgrading his general discharge from the Coast Guard Reserve on March 23, 1972, to an honorable discharge. The applicant stated that he needs the upgrade because he is having difficulty getting a VA loan for housing. He argued that it is in the interest of justice for the Board to consider the case on the merits because he never received any punishment while in the Reserve, he had six dependents to take care of, and he is 66 years old and has never gotten into any trouble.

SUMMARY OF THE APPLICANT'S MILITARY RECORD

On March 24, 1966, at age 18, the applicant enlisted in the Coast Guard Reserve as a seaman recruit (SR/E-1) for six years. For five months beginning on September 19, 1966, the applicant served on active duty to complete his initial training. He completed recruit training and shipboard training aboard the CGC ██████████. On February 17, 1967, he was honorably released from active duty as a seaman apprentice (E-2) and ordered into "drill pay status," in which he was required to attend drills one weekend per month and serve on active duty for training two weeks per year at a Reserve unit near his home.

As a reservist, the applicant drilled regularly at a local unit and performed his annual training each year. He completed the coursework to advance to SN/E-3 in July 1970 and advanced on August 1, 1970, almost three and one-half years after he enlisted.

For reasons unapparent in the record, although the applicant drilled very regularly, he never advanced beyond SN/E-3, and he received very low marks in both proficiency and leadership, although his conduct marks were always perfect 4.0s.

When his enlistment ended on March 22, 1972, the applicant was not recommended for reenlistment by his commanding officer. His final average performance marks were 2.56 for proficiency, 2.61 for leadership, and 4.00 for conduct. He was awarded a general discharge on the basis of his poor performance marks.

VIEWS OF THE COAST GUARD

On July 22, 2014, the Judge Advocate General (JAG) submitted an advisory opinion in which he recommended that the Board deny the requested relief. In recommending denial, the JAG adopted the facts and analysis in a memorandum on the case prepared by the Personnel Service Center (PSC).

PSC stated that under Article 1.B.2.f.(1)(c) of the Military Separations Manual, before 1983 (when the rating scale changed from 4.0 to 7.0), a member had to have earned a final average mark of at least 2.7 for proficiency in rating and at least 3.0 for conduct to receive an honorable discharge. Because the applicant's final average mark for proficiency in rating was just 2.56, he did not qualify for an honorable discharge. Therefore, and because the applicant submitted no compelling evidence of error or injustice, PSC recommended that the Board deny relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 24, 2014, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to submit a written response within thirty days. No response has been received.

APPLICABLE REGULATIONS

Under Article 12-B-13 of the Personnel Manual in effect in 1973, a member had to have minimum final average marks of 2.7 in proficiency and 3.0 in conduct to receive an honorable discharge. If not, the member could receive a general discharge.

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 after the applicant discovers the alleged error in his record.¹ The applicant received his general discharge in 1973. Therefore, his application is 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, 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.”²

4. The applicant did not explain his delay in seeking an upgrade of his discharge. He argued that it is in the interest of justice for the Board to review the merits of his case because he is 66 years old and never got in trouble. However, the Board finds that this argument is not compelling because nothing prevented the applicant from complaining about his general discharge and discovering the existence of the Board sooner if he believed his discharge was erroneous or unjust.

5. A cursory review of the case indicates that it lacks potential merit. Although the applicant showed up for drill regularly and received perfect 4.0 conduct marks, his record shows that he never attempted to earn a skill rating to become a useful, trained member of the Coast Guard Reserve. Instead, he remained a seaman apprentice for three and one-half years and then never advanced beyond seaman. The requirements for an honorable discharge in Article 12-B-13 of the Personnel Manual in effect in 1973 include not just acceptable conduct, with an average conduct mark of at least 3.0, but also an average proficiency mark of at least 2.7. Thus, an honorable discharge requires a minimal level of effort on the part of a reservist to train and become a skilled, useful member—a level of effort beyond mere attendance without punishable misconduct. Given the lack of any explanation from the applicant regarding his very low proficiency marks and the lack of any documentation showing that he was a hard worker who tried but failed to earn a skill rating during his six years in the Reserve, the Board finds no grounds for disregarding the minimum requirements for an honorable discharge under the regulation. Therefore, the Board finds that the applicant’s claim is unlikely to 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.

(ORDER AND SIGNATURES ON NEXT PAGE)

¹ 10 U.S.C. § 1552(b).

² *Allen v. Card*, 799 F. Supp. 158, 164-65 (D.D.C. 1992).

ORDER

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

December 5, 2014

