

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-149

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 case after receiving the completed application on June 6, 2014, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated March 27, 2015, 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 is a veteran of World War II who received a general discharge under honorable conditions on October 6, 1945. The applicant stated that he believes his general discharge was unjust. He alleged that he received the general discharge because he is African American. He noted that he was discharged during "a different era regarding equal rights for blacks." The applicant stated that he knew of the alleged error in 1945 but did not promptly contest it because he thought he "would not be able to seek a reversal of my discharge because of the unfairness [toward] blacks in the services."

In support of his allegations, the applicant submitted a copy of his Termination of Service form,¹ which shows that he received a general discharge "Under Honorable Conditions" upon the expiration of his enlistment on October 6, 1945, in accordance with Personnel Bulletin 94-45.

SUMMARY OF THE RECORD

On March 22, 1940, at age 19, the applicant enlisted in the Coast Guard. He was assigned immediately to the CGC [REDACTED] as a mess attendant.

¹ The DD 214 discharge form was not yet issued during World War II.

On December 20, 1940, the applicant was convicted at summary court-martial of having been absent over leave (AOL) from September 30, 1940, to October 16, 1940, an unauthorized absence of 17 days. He was “[s]entenced to lose liberty for 30 days, to forfeit \$20.00 from pay, and perform 20 extra hours of police duty.”

On June 19, 1941, the applicant advanced to Mess Attendant, Second Class.

From November 1, 1941, to April 20, 1942, the applicant served temporarily aboard the CGC [REDACTED]. Upon leaving the [REDACTED] he returned to the [REDACTED].

On July 23, 1942, the applicant advanced to Officer’s Steward, Third Class (Std3c), having completed Cooks & Bakers School.

On March 19, 1943, the applicant was punished at captain’s mast for having been AWOL from March 16 to 19, 1943.

On July 2, 1944, the applicant was reported as being absent over leave (AOL) because he had failed to return to his ship, the USS [REDACTED], following authorized liberty. On July 9, 1944, the command reported that the applicant had not returned and had missed the sailing of the vessel that day. The applicant remained absent for 27 days until he surrendered himself to authorities in [REDACTED], on July 29, 1944. He was escorted under guard to a brig.

On August 19, 1944, the applicant was convicted at summary court-martial of having been absent without leave (AWOL) from July 3 to July 29, 1944, an unauthorized absence of 26 days. He was sentenced to be confined for 15 days, to lose \$25.00 of his pay per month for three months, and to perform 30 extra hours of police duty. The Convening Authority remitted the period of confinement, however.

On February 1, 1945, the applicant advanced from Steward, Third Class to Second Class (Std2c).

The applicant’s Notice of Separation, dated October 6, 1945, shows that he was discharged “Under Honorable Conditions” and “[s]eparated by reason of eligibility under point system” since the war had ended in August. The applicant’s final average marks were calculated as 2.96 (out of 4.0) for proficiency in rating (PIR) and 3.60 for conduct. Aside from the two extended unauthorized absences for which he was tried by summary court-martial and the 3-day period for which he was punished at mast, the applicant’s record also reflects several absences for hospitalization “due to own misconduct.”

VIEWS OF THE COAST GUARD

On October 2, 2014, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended denying relief. The JAG stated that the applicant’s two convictions by summary court-martial disqualified him for an honorable discharge, and he submitted nothing to show that the convictions were unjust. The JAG also adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC noted that the application is untimely and may be denied on that basis since he has not justified his delay. PSC stated that the applicant's request for relief should be denied because, as noted in prior BCMR decisions, under Article 584 of the 1940 Coast Guard Regulations and Article 4592 of the Personnel Instruction then in effect, members qualified for an honorable discharge if they "were never convicted by General Coast Guard court or more than once by Summary Coast Guard court, or more than twice by a Coast Guard deck court." PSC stated that the character of the applicant's discharge should remain "under honorable conditions" because he was twice convicted by summary court-martial and did not meet the standard for an honor[REDACTED]harge. [REDACTED] [REDACTED]

RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 15, 2014, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. No response was received.

APPLICABLE REGULATIONS

Article 584(4) of the 1940 Regu[REDACTED] United States Coast Guard provided that honorable discharges were awarded under any of five conditions: expiration of enlistment; convenience of the government; hardship; minority (age); and disability not the result of own misconduct. A [REDACTED]e "under honorable conditions" could be awarded "for the same [five] reasons as an honorable discharge and issued to individuals whose conduct and performance of duty have been satisfactory but not sufficiently deserving or meritorious to warrant an honorable discharge."

Under Article 4952(1) and (2) of the 1934 Personnel Instructions, members could receive an honorable discharge only if (a) they had a final average proficiency in rating mark of "not less than 2.75" and a final average conduct mark of at least 3.0; (b) they were "[n]ever convicted by general Coast Guard court or more than once by a summary Coast Guard court, or more than twice by a Coast Guard deck court"; and (c) they were being discharged for one of the following reasons: expiration of enlistment, convenience of the government, minority, hardship, or physical or mental disability not the result of own misconduct. Members being discharged for one of these reasons listed could receive a general discharge under honorable conditions if their marks did not meet the minimums required for an honorable discharge or if they had been convicted once by a general court martial, twice or more by a summary court martial, or at least three times by a deck court.

Article 1.B.2.f.1.c. of the current Military Separations Manual states that, to receive an honorable discharge prior to 1983, a "member must have made a minimum final average of 2.7 in proficiency and 3.0 in conduct."

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 or injustice in his record.² Because the applicant knew the character of his discharge in 1945, his application is untimely by more than 65 years.

3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.³ 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”⁴ 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.”⁵

4. The applicant did not provide any compelling explanation for waiting more than 60 years to dispute his character of discharge.

5. A cursory review of the merits of this case shows that the applicant is unlikely to prevail. Although the applicant’s final average marks met the requirements for an honorable discharge under Article 4952(1) and (2) of the 1934 Personnel Instructions, he was twice tried by summary court-martial for extended periods of unauthorized absence, which were not due to hospitalization. The two convictions by summary court-martial disqualify him for an honorable discharge under the regulations, and the applicant has submitted no information or evidence to show that the convictions were based on racial prejudice or were otherwise erroneous or unjust. The applicant stated that the 1940s was “a different era regarding equal rights for blacks,” but he did not show that the racial prejudice he experienced caused or justified the extended periods of unauthorized absence for which he was convicted by summary courts-martial.

6. Accordingly, the Board will not excuse the untimeliness of the application or waive the statute of limitations. The applicant’s request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

² 10 U.S.C. § 1552(b).

³ *Id.*

⁴ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁵ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

ORDER

The application of former [REDACTED] 2 [REDACTED], USCGR, for correction of his military record is denied.

March 27, 2015

