

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-190

██████████
████████████████████

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 and military records on August 14, 2014, and assigned it to ██████████ to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated May 22, 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, a former seaman, asked the Board to correct his military record by changing his April 6, 1950, general discharge to an honorable discharge. He stated that his general discharge was unjust because he was wrongly accused of having liquor on board the ship when in fact it was his shipmates who had brought liquor into the berthing area while he was on quarterdeck watch. He stated that he was very young when this happened and that he regrets the incident. Regarding the lengthy delay in submitting his application, he stated that he discovered the error on January 1, 2014, and argued that it is in the interest of justice to waive the statute of limitations and consider his application because he was told that his general discharge would be upgraded to honorable within six months but that it was never done.

SUMMARY OF THE APPLICANT'S MILITARY RECORD

The applicant enlisted in the Coast Guard at the age of 17 on February 6, 1947. On January 2, 1948, at age 18, he was found guilty at a general court-martial for Drunkenness on Duty and Violation of a Lawful Regulation (having liquor on board a vessel). He was sentenced to three months in jail and a dishonorable discharge, but the discharge was mitigated to a bad

conduct discharge (BCD).¹ The BCD was to be executed following his release from jail, but if his conduct during the first two months of his confinement was deemed satisfactory, then he would be released from jail, restored to duty, and the BCD would be held in abeyance during a six-month probation. The applicant's conduct during his incarceration was deemed to be satisfactory and on April 9, 1948, he was released, restored to active duty, and his enlistment was extended 60 days because of his confinement.

On the night of July 30, 1948, at age 19, the applicant was found to be absent without leave (AWOL) for four hours and ten minutes. Although he was restricted to his vessel by the officer of the deck, the next evening, July 31, 1948, he again went AWOL, for approximately thirteen hours, and returned at 6:30 a.m. the next morning. Based on this misconduct, on August 5, 1948, his CO recommended that his April 9, 1948, probation be terminated and the BCD executed.

On August 26, 1948, the Commandant denied the request from the applicant's CO to terminate the probation and execute the sentence. The Commandant noted that the applicant was placed on probation for a period of six months on January 2, 1948, and that his probationary period had ended on July 1, 1948.

On September 15, 1948, the applicant's periods of AWOL between July 31, 1948, and August 1, 1948, were disposed of at Coast Guard Deck Court. He was fined \$20 in pay per month for three months.

The applicant completed his enlistment and was discharged on April 6, 1950, with a general discharge "under honorable conditions." He was "recommended for reenlistment." His average proficiency in rating (PIR) mark was 3.14 (on a 4.0 scale), and his average conduct mark (not including marks for periods of less than one month, which are not to be counted) was 3.72.

APPLICABLE REGULATIONS

Paragraph 3(c) of Personnel Circular 19-48, issued on May 26, 1948, states the following:

The type and character of discharge issued depends upon the reason for discharge, service record, and certain other conditions, as set forth in the "Discharge Table" attached to and forming a part of this circular as Inclosure (1). If a commanding officer believes that an individual is entitled to a type of discharge different from that indicated he should so recommend to the Commandant (PE). Such recommendations should be accompanied by a transcript of pertinent parts of the man's service record.

Paragraph 4(b) of the circular states that a general discharge "is a separation from the Service "under honorable conditions." It is given for the same reasons as an honorable discharge and is issued to individuals whose conduct and performance of duty have been satisfactory but

¹ There are five types of military discharge for enlisted members. Three are administrative discharges: honorable; general, under honorable conditions; and under other than honorable (OTH) conditions. Two are punitive and may only be awarded by a court-martial: bad conduct discharge (BCD) and dishonorable discharge.

not sufficiently deserving or meritorious to warrant an honorable discharge. It is also given for the additional reasons of inaptitude and unsuitability.”

Paragraph 15(a) states that “[o]rdinarily, an honorable discharge will not be issued if an individual has been convicted of an offense by a General Court or has been convicted by more than one Summary Court in his current enlistment or any extension thereof.”

The Inclosure (1) table is missing from the Board’s copy of the circular, but the language in the circular was republished in the first Coast Guard Personnel Manual in 1953. The table states that for an honorable discharge, the member must “[n]ot [be] convicted by a General Courts-Martial or more than once by a Special Courts-Martial. Minimum final average marks of 2.75 in Proficiency in Rating and 3.25 in Conduct.” These conviction limitations and minimum final average marks requirements had been in effect since at least the start of World War II on December 7, 1941. Personnel Bulletin No. 4-46.

Today’s standards for discharge appear in Article 1.B.2.f. of the Military Separations Manual (COMDTINST M1000.4, Change 1), which states that an enlisted member is eligible for an Honorable discharge if the member’s service was characterized by “[p]roper military behavior and proficient performance of duty with due consideration for the member’s age, length of service, grade, and general aptitude. The Service will not necessarily deny a member a discharge solely for a specific number of courts-martial convictions or actions under Article 15, UCMJ during his or her current enlistment or obligated service.” In addition, the article states that the member’s minimum final average marks under the old performance evaluation system had to be at least 2.7 for proficiency and 3.0 for conduct.

Article 1.B.2.(g) of the Military Separations Manual states that a general discharge is given when the member is discharged because they are a user, possessor, or distributor of illegal drugs or paraphernalia; when the member has tampered with drug urinalysis samples or documentation; when the member’s final average marks are less than the minimum required for an honorable discharge; or when “based on the individual’s overall military record or the severity of the incident(s) which results in discharge, Commander (CG PSC-EPM-1) directs issuing a general discharge.”

VIEWS OF THE COAST GUARD

On December 29, 2014, the Judge Advocate General (JAG) submitted an advisory opinion in which he recommended that the Board deny relief. In recommending denial, the JAG adopted the findings and analysis in a memorandum on the case prepared by the Personnel Service Center (PSC).

PSC argued that the application is untimely and that the applicant provided no justification for waiting more than 64 years to submit his application. PSC also argued that the application should be denied because the applicant did not meet the eligibility requirements for an honorable discharge at the time of his separation in 1950. PSC noted that the applicant was found guilty at court martial on January 2, 1948, and Article 4592 of the USCG Personnel

Instructions and Article 584 of the USCG regulations state that a member qualifies for an honorable discharge if they were never convicted by general Coast Guard court.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 16, 2015, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond. The applicant responded on February 3, 2015, and stated that he disagreed with the Coast Guard's recommendation. He argued that he was not provided legal counsel during his court martial and was told that his discharge would be automatically upgraded to honorable. The applicant also argued that he should have never been sent to general court martial because he was wrongfully accused of having alcohol on the ship and stated that he never drank or smoked cigarettes when he was in the Coast Guard.

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.² The applicant stated that he discovered the alleged errors in his record on January 1, 2014, but he was discharged in 1950 and his DD 214, which he signed, indicates that he had received a general discharge and was issued a general discharge certificate. Therefore, he delayed applying to the Board for 64 years and 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."³
4. The applicant alleged that he did not delay in applying to the Board and that he discovered the error in his record in January 2014. The record shows, however, that he received his DD 214 and general discharge certificate in 1950 and yet failed to challenge his lack of an honorable discharge for 64 years. The applicant has not justified his very long delay in disputing his general discharge.
5. The record shows that a few months after the applicant enlisted, he was convicted by a general court-martial for drunkenness and having alcohol aboard the ship, which are criminal offenses under the Uniform Code of Military Justice. Although he was sentenced to 90

² 10 U.S.C. § 1552(b).

³ *Allen v. Card*, 799 F. Supp. 158, 164-65 (D.D.C. 1992).

days in the brig and a dishonorable discharge, the discharge was mitigated to a bad conduct discharge, and then the sentence was further mitigated to just 60 days in the brig and six months on probation on condition of good behavior. The applicant completed his probationary period and so did not receive a bad conduct discharge. However, just a few days later, he went AWOL twice on consecutive days and was punished at mast.

6. Personnel Circular 19-48, which was in effect in 1950, states that a member who has been convicted by a general court-martial is not eligible for an honorable discharge. Therefore, the Board finds that the applicant was correctly issued a general discharge in 1950 because he had been convicted by a general court-martial on January 2, 1948, for drunkenness and having alcohol aboard the ship. Furthermore, the delegate of the Secretary has instructed the Board with respect to upgrading discharges that it “should not upgrade a discharge unless it is convinced, after having considered all the evidence ... that in light of today’s standards the discharge was disproportionately severe vis-à-vis the conduct in response to which it was imposed.”⁴ The applicant has not submitted any evidence or information that persuades the Board that his general discharge was disproportionately severe or unjust given his prior misconduct aboard the cutter.

7. Accordingly, the applicant’s request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁴ Memorandum of the General Counsel to J. Warner Mills, *et al.*, Board for Correction of Military Records (July 8, 1976).

ORDER

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

May 22, 2015

