

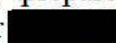
**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-045



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 February 20, 2015, and subsequently prepared the decision as required by 33 C.F.R. § 52.61(c), with the assistance of staff member .

This final decision, dated December 18, 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 boatswains' mate third class (BM3) who was discharged from the Coast Guard on December 6, 1971, asked the Board to upgrade his discharge from "general under honorable conditions" to "honorable."¹ He stated that he discovered the error on December 15, 1971, but did not state why it would be in the interest of justice for the Board to waive the statute of limitations and consider his application on the merits.

SUMMARY OF THE RECORD

The applicant first enlisted in the Coast Guard on October 3, 1966, at age 18. He applicant served four years on active duty and was discharged as a BM3 on October 2, 1970. His DD 214 shows that his character of service was honorable, that he was released from active duty and transferred to the Coast Guard Reserve, and that he received an RE-1 reenlistment code (eligible for reenlistment). The record shows that during his first enlistment he received proficiency marks ranging from 3.4 to 3.7 (on a 4.0 scale); leadership marks of 3.2 to 3.5; and conduct marks of 4.0 with the exception of a mark of 3.2 on September 21, 1970. His final average marks were 3.41 for proficiency; 3.30 for leadership; and 3.91 for conduct.

¹ As noted in the Summary of the Record below, the applicant's record contains two DD 214s reflecting two periods of service, both of which state that he received an honorable discharge.

On November 17, 1970, after a six-week break in service, the applicant reenlisted for six years as a BM3.

The record contains a Page 7 which shows that the applicant was counseled twice in 1971 regarding his performance and his indebtedness. The first entry, dated February 8, 1971, states that he had been counseled regarding his below average proficiency and leadership traits. The second entry, dated April 12, 1971, states that he had been counseled regarding indebtedness and his failure to pay his debts and that he was counseled that he would be recommended for discharge by reason of unfitness for dishonorable failure to pay just debts if he did not make significant efforts to pay his debts. His record also contains a letter from the Commanding Officer (CO) to the applicant providing significant details regarding the applicant's financial responsibility. The letter states that the applicant's March 22, 1971, request to receive an advance on his variable enlistment bonus was denied because of his chronic financial irresponsibility. The letter concluded by informing the applicant that he and his wife had until May 7, 1971, to assure the CO that they understood the seriousness of the situation and would live within a budget.

On April 12, 1971, the applicant was awarded NJP for writing a check to the [REDACTED] Highway Patrol from a checking account with insufficient funds. He was given extra duty for ten days and was reduced in rate to E-3, but the latter punishment was suspended for three months on condition of good behavior.

The record further shows that on June 3, 1971, the applicant's CO received a letter from an employee of a Phillips 66 gas station regarding the applicant's failure to pay a \$26 dollar debt. The CO forwarded the letter to the applicant asking for an explanation of his failure to pay the debt.

On June 9, 1971, the applicant requested to be paid one of his reenlistment bonuses in advance so he could purchase an automobile. His CO approved and endorsed the request, which was forwarded to the Commandant. The Commandant approved his request on June 30, 1971.

The applicant's record also contains a Page 7 showing that he was counseled on four separate occasions between July 26, 1971, and September 21, 1971, regarding his failure to pay his debts.

On October 1, 1971, the applicant was awarded NJP for an unauthorized absence (AWOL) from September 27, 1971, to October 1, 1971, during which period he missed his ship's movement. His enlistment was extended for five days to make up for the lost time.

On October 12, 1971, the applicant's CO notified him that he had initiated action to separate him from the Coast Guard due to unfitness pursuant to Article 12-B-12 of the Personnel Manual because of his established pattern of failing to pay just debts. The CO noted that he might receive an undesirable discharge and that he might be deprived of virtually all veterans' benefits and could encounter substantial prejudice in civilian life. The CO also informed the applicant that he had a right to present his case in person before an administrative discharge board and had the right to be represented by counsel.

On October 21, 1971, the applicant acknowledged in writing that his CO had recommended that he be discharged and that he waived his right to a hearing before an administrative discharge board provided that he would receive at least a general discharge, rather than an undesirable discharge. He stated that he understood that he could expect prejudice in civilian life as a result of an undesirable discharge; waived his right to submit a statement regarding the discharge; and acknowledged that he had been provided with an opportunity to consult with a lawyer. The applicant stated that he sincerely believed that his record would support his assertion that he never contracted a debt that he did not intend to pay. He explained that his ability to pay his debts had diminished after he was transferred to a new assignment for which he did not receive travel allowances.

On November 2, 1971, the CO asked the Commandant to discharge the applicant by reason of unfitness. The CO provided considerable details illustrating the long history of the applicant’s financial irresponsibility and his failure to adhere to a budget that was prepared for him, as well as his two NJPs. The CO recommended a general discharge.

On November 22, 1971, the Commandant directed that the applicant be discharged [REDACTED] General discharge by reason of unfitness under Article 12-B-12 of the Coast Guard Personnel Manual no later than December 6, 1971.

On December 6, 1971, the applicant was discharged from the Coast Guard. His DD 214 shows that he was discharged for unfitness pursuant to Article 12-B-12 of the Coast Guard Personnel Manual, received an *honorable* discharge, was issued a general discharge certificate (DD-257CG), and was not recommended for reenlistment. His record contains a Page 7 signed by the applicant stating that he had been issued a general discharge and had received a General Discharge Certificate (DD 257CG). His record shows that his final average of performance marks were 3.03 in proficiency; 3.03 leadership; and 3.40 in conduct.

APPLICABLE LAW

Article 12-B-3 of the Coast Guard Personnel Manual in effect in 1971 states that there are five discharges and characters of separation for enlisted members:

TYPE OF DISCHARGE	CHARACTER OF SEPARATION
Honorable	Honorable
General	Under honorable conditions
Undesirable	Conditions other than honorable
Bad conduct	Conditions other than honorable
Dishonorable	Dishonorable

Article 12-B-12(c)(6) of the Personnel Manual states that the Commandant may award an undesirable discharge to an enlisted member if the member “[f]ails or refuses to pay just and legal debts.”

VIEWS OF THE COAST GUARD

On August 17, 2015, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant alternative relief regarding the applicant's request based on the findings and analysis provided in a memorandum submitted by Commander, Coast Guard Personnel Service Center (PSC).

PSC noted that the application is untimely, that the applicant provided no justification for his delay in filing his application, and that the case "should not be considered by the Board beyond a cursory review."

Regarding the merits of the applicant's claim, PSC stated that his record contains evidence of multiple counseling sessions for failing to pay debts, which led his CO to the conclusion that the applicant was financially unreliable. PSC stated that the applicant was notified of his pending discharge, the reason therefor, and his right to a hearing. PSC stated that the applicant waived his right to a hearing and received a general discharge, instead of an undesirable discharge. PSC stated that the applicant was properly discharged for unfitness in accordance with the policy in effect in 1971. PSC noted that current policy for financially irresponsible members is similar to that in effect in 1971. Therefore, PSC argued, the applicant's request should be denied.

PSC noted, however, that the applicant's final DD 214 erroneously shows that he received an honorable discharge, which is inconsistent with the notation that he was issued a DD-257CG (general discharge certificate) and with the Commandant's separation orders. PSC stated that because the applicant was not authorized an honorable discharge, his DD 214 should be corrected to show that he received a general discharge "under honorable conditions."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 21, 2015, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within thirty 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 submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.
3. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.² The applicant was discharged from the Coast Guard in

² 10 U.S.C. § 1552(b); 33 C.F.R. § 52.22.

1971 but did not submit his application to the Board until 2013. The record shows that the applicant knew of the alleged error in his record—his receipt of a general discharge—in 1971, and so his application is untimely.

4. 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

5. The applicant did not provide a reason for the delay in submitting his application to the Board nor did he provide any compelling reason why the Board should waive the statute of limitations in this case.

6. The Board’s review indicates that the applicant’s claim lacks merit. Although he alleged that he “had no adverse actions” while in the Coast Guard, his military records show that during his final year on active duty, he repeatedly failed to pay his debts, went AWOL, and missed his ship’s movement. While subject to an undesirable discharge for unfitness under Article 12-B-12 of the Personnel Manual, the applicant waived his right to a hearing on condition that he receive at least a general discharge, instead of an undesirable discharge. The record shows that the applicant received due process, and there is no evidence that substantiates his allegation of error or injustice with regard to his receipt of a general discharge, which is presumptively correct.⁶ Based on the record before it, the Board finds that the applicant’s claim cannot prevail on the merits.

7. The Coast Guard recommended that the Board grant “alternative relief” by correcting the applicant’s DD 214 to show that he received a general discharge “under honorable conditions,” instead of an honorable discharge, based on the Commandant’s orders and other documentation showing that the applicant was actually awarded a general discharge, although his DD 214 states “honorable.” However, under 10 U.S.C. § 1552, the Board may only make corrections that an applicant requests or that are in the applicant’s favor.⁷ Therefore, although the word “honorable” on the applicant’s DD 214 dated December 6, 1971, is incorrect, the Board will not make this correction unless the applicant requests it, which he has not.

³ 10 U.S.C. § 1552(b).

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).

⁶ 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.”).

⁷ 10 U.S.C. § 1552(b) (requiring the applicant or his or her representative to request the correction); *see Friedman v. United States*, 141 Ct. Cl. 239, 252-53 (1958) (holding that “[t]he Correction Boards were established for the purpose only of reviewing, on application of a member of the military personnel, a military record to correct errors or injustices *against* such personnel and not to review and reverse decisions of other established boards *favorable* to such personnel).

8. 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)



ORDER

The application of former BM3 [REDACTED], USCG, for correction of his military record is denied.

December 18, 2015
Date

