

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-198

████████████████████
██████████ (deceased)

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 September 9, 2015, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated August 26, 2016, 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 the son and representative of a veteran of the Coast Guard, named in the caption above, who received a bad conduct discharge (BCD) on April 27, 1928, pursuant to a court-martial sentence. The applicant asked that his father's 1928 discharge be upgraded. He stated that the records show that his father received an honorable discharge for his first enlistment from 1925 to 1927 and had an average proficiency mark of 3.1 (out of 4.0). The applicant argued that it was unjust for his father to have been charged with desertion and to have received a BCD from his second enlistment because he turned himself in.

In support of his allegations, the applicant submitted a copy of one of his father's military records, which is included in the summary below.

SUMMARY OF THE RECORD

On July 27, 1925, at age 21, the applicant's father enlisted in the Coast Guard for two years. He enlisted in ██████████, and served at stations around the ██████████ as a surfman. He received an honorable discharge when his two-year enlistment expired on July 26, 1927. His performance marks for his first two years show that on a 4.0 scale, he received an average of 3.1 for proficiency in rating, 4.0 for sobriety, 4.0 for obedience, and 2.3 for leadership.

On January 11, 1928, at age 23, the applicant's father reenlisted for two years as a seaman first class (S1c) at a recruiting office in [REDACTED]. He listed his profession as mariner, and he was assigned to a cutter based in [REDACTED]. On March 2, 1928, his command reported that he had not shown up for duty and was considered a deserter. After he had been absent for ten days, he was declared a deserter on March 12, 1928.

On March 27, 1928, the applicant's father turned himself in at the [REDACTED] Division office in [REDACTED]. He was confined for safekeeping pending disciplinary action by the commanding officer (CO) of the [REDACTED] Division pursuant to orders from Headquarters. On April 11, 1928, he was charged with desertion. The Assistant Secretary of the Department of the Treasury directed the CO of the [REDACTED] Division to convene a court-martial to try the applicant's father on the charge.

On April 16, 1928, the applicant's father was tried for desertion by general court-martial. He was found guilty of the lesser offense of being absent without leave (AWOL) from March 2 to 27, 1928. He was sentenced to a dishonorable discharge and forfeiture of all pay except \$20, to be paid upon discharge. On April 21, 1928, the Assistant Secretary approved the proceedings and findings but mitigated the sentence of a dishonorable discharge to a BCD, and the Commandant sent a message to the CO of the Lakes Division to implement the sentence.

On April 27, 1928, the applicant's father underwent a physical examination and signed a form agreeing that he was physically sound. He was discharged with a BCD pursuant to the sentence of the general court-martial "as mitigated."

VIEWS OF THE COAST GUARD

On January 20, 2016, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC) and recommended denying relief.

PSC stated that the application is untimely and should be dismissed for extreme untimeliness. PSC reviewed the facts of the case and recommended that no relief be granted. PSC stated that the original court-martial sentence was already mitigated by upgrading the applicant's father's dishonorable discharge to a BCD. PSC stated that there is no justification for upgrading the BCD.

RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 2, 2016, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to submit a response 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. An application to the Board must be filed within three years of the discovery of the alleged error or injustice in the record.¹ The applicant in this case is the veteran's father, who apparently knew the nature of his discharge in 1928. Thus, the application is very 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*, 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 provide any compelling explanation for his father's failure to dispute the character of his discharge.

5. The Board's cursory review of the merits shows that the applicant's claim cannot prevail. The records show that his father completed a two-year enlistment honorably from July 27, 1925, through July 26, 1927. However, just a few months after he reenlisted on January 11, 1928, he went AWOL and was declared a deserter when he failed to return. He surrendered himself to military authorities more than three weeks later and was sentenced to a dishonorable discharge for being AWOL. The Assistant Secretary of the Treasury upgraded his sentence from a dishonorable discharge to a BCD—perhaps because of his prior honorable two-year enlistment. There is no evidence of any error or injustice in the records, which are presumptively correct.⁵

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)

¹ 10 U.S.C. § 1552(b).

² *Id.*

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).

ORDER

The application for correction of the military record of S1c [REDACTED],
USCG (deceased), is denied.

August 26, 2016

