

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-012

██████████
██████████ AS (former)

FINAL DECISION

This proceeding was conducted under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. After receiving the completed application and the applicant's military records on October 22, 2015, the Chair docketed the case and prepared the decision for the Board as required by 33 C.F.R. § 33 C.F.R. § 52.61(c).

This final decision, dated September 22, 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, who was a seaman apprentice in the Coast Guard from March 4 to May 7, 1946, asked the Board to upgrade his discharge from general under honorable conditions to honorable. He alleged that one day just after he and his friend left the showers, another new recruit accused him of stealing his watch by saying, "That Mexican took my watch and I want it back." The applicant stated that in response, he told his accuser that he resented being called Mexican and being accused of stealing the watch because he already had a watch that was probably better than the one he was accused of stealing. He called his accuser a liar. However, the applicant was placed in a holding room and held for two weeks without any contact or information. Only another recruit who was a friend of his visited him. After two weeks, he was taken to a separation center, given a general discharge, and sent home to Denver.

The applicant alleged that he was treated unjustly because he never had any kind of hearing or trial. Therefore, he argued, it is in the interest of justice for the Board to consider his application. He stated that after his discharge from the Coast Guard he "served seven years in the U.S. Army, five of those years in the active reserve." In support of these allegations, the applicant submitted the following:

- A copy of the honorable discharge certificate of the applicant's friend, dated May 18, 1947, and a written statement signed by this friend. His friend wrote that he was with the applicant, having just left the showers, when another recruit accused the applicant of stealing his watch

and then told the chief in charge of the barracks, "That Mexican stole my watch." The applicant denied it and said he had a watch of his own that was probably better than the other recruit's. However, the applicant was placed in a holding room, where the friend was able to visit him a week later. They did not know what was going to happen and when the friend tried to visit the applicant again, the applicant was already gone. After he was discharged and went home to Denver, the applicant told him that he had been locked in the room for two and one-half weeks before being sent to a separation center and given a general discharge. The applicant told him that he never had any kind of trial or hearing.

- The applicant's Notice of Separation from the Coast Guard shows that he was credited with just 24 days of service from March 4 to May 7, 1946, and received a general discharge under honorable conditions.
- The applicant's general discharge certificate is dated May 7, 1946.
- The applicant's honorable discharge certificate from the Army, dated February 25, 1954, which shows that he enlisted on October 13, 1948, and was released to the Reserve on July 13, 1950.

SUMMARY OF THE RECORD

On March 4, 1946, the applicant enlisted in the Coast Guard at age 17 and was sent to a training center to begin recruit training. A recruiter's memorandum in his record shows that his friend was enlisted the same day.

A psychiatric report in his record, dated March 15, 1946, states that the applicant was mildly immature but had no psychiatric disease.

On March 18, 1946, the Commanding Officer of the training center convened a Suitability Board to review the applicant's suitability for military service. The transcript of the hearing bears the applicant's name and shows that he identified himself by name. It also shows that he was advised that he had been charged with taking something from another recruit that did not belong to him. The applicant responded, "This boy took my blanket and I took his ring." He stated that he had given the ring back but the other boy did not give him back the blanket. After his friend told him that he had seen the other boy take the blanket, the applicant took the ring from the boy's locker and offered to give it back if the boy gave him the blanket back. The applicant stated that he also took the other boy's sunglasses. When asked why he did not report that his blanket was missing, the applicant stated that he "didn't know who had it then."

The applicant confirmed that his blanket was stenciled with his name. When a member of the board stated, "My understanding is that you didn't find your blanket in this boy's possession," the applicant replied that he did not have a chance to look for it and that the boy likely disposed of the blanket before it could be found in his possession. When asked if he knew that it was considered stealing to take another's possessions out of his locker, the applicant replied that he did not intend to steal the things and that he intended to return them and get his blanket back. The applicant stated that when the other boy came out and found the applicant standing beside the boy's locker with the boy's ring and sunglasses, the boy grabbed his watch and told the

applicant that he would turn the applicant in to the command, so the applicant gave him his ring and sunglasses back. One member of the Suitability Board stated, “Didn’t you tell me you had taken the ring just to ‘get even’ with the fellow?” and the applicant replied, “‘Get even’ was to get my blanket back. I wasn’t going to keep it.” At the end of the hearing, the applicant was advised that the board would recommend that he receive an unsuitability discharge, which would be a discharge under honorable conditions, and that the applicant had the right to submit a written statement in rebuttal. The applicant replied that he had “nothing to say.”

On March 28, 1946, the Suitability Board at the training center issued a report stating that on March 14, 1946, the applicant had been punished at mast for “‘Appropriating private property to his own use, to wit: Pilfering the locker of a shipmate and removing a ring and sunglasses.’ In view of youth and low mentality, he was ordered to appear before this Board rather than to stand trial by Summary Court Martial.” The board noted that basic training had not yet started when the incident occurred and found the applicant unsuitable for retention in the Coast Guard because of “low intelligence and the fact that he did take something that did not belong to him, and in so doing he exhibited impulsive, immature behavior, and poor judgment.” The board noted that the applicant had been advised of the recommendation but did not want to submit a statement in rebuttal. The board found the applicant “unsuited for military service” and recommended that he be discharged.

On April 2, 1946, the Commanding Officer of the training center approved the recommendation of the Suitability Board and forwarded it to Coast Guard Headquarters.

On April 24, 1946, Coast Guard Headquarters authorized general discharges under honorable conditions for three recruits, including the applicant, based on the “Reports of Suitability Boards, U.S. Coast Guard Training Station, Alameda, California, dated 28 March, 1946,” pursuant to Personnel Bulletin No. 107-045.

On April 5, 1946, the applicant underwent a physical examination and was found physically fit for discharge.

On May 7, 1946, the applicant received a general discharge under honorable conditions for unsuitability. Because of his confinement, he was credited with just 24 days of active service.

VIEWS OF THE COAST GUARD

On March 16, 2016, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended denying relief. He adopted the findings and analysis provided in a memorandum on the case submitted by the Commander of the Coast Guard Personnel Service Center (PSC).

PSC stated that the application is extremely untimely and so should be denied “due solely to its extreme untimeliness.”

Regarding the applicant's general discharge, PSC stated that under Personnel Circular No. 19-48, a member discharged for unsuitability received a general discharge under honorable conditions. PSC noted that the applicant received a Suitability Board and "had nothing to say in rebuttal" to that board's recommendation to discharge him for unsuitability.

PSC argued that the applicant has not shown that his discharge was erroneous or unjust. PSC noted that although the applicant denied having any kind of hearing, the record shows otherwise. PSC pointed out that the record shows that the applicant was brought before a Captain's Mast for misappropriating private property to his own use and then appeared before a Suitability Board in lieu of Summary Court-Martial. PSC stated that the Suitability Board's recommendation was properly approved, and the applicant has not submitted evidence to show that he was discharged unjustly. Therefore, PSC recommended that his request be denied.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

In response to the views of the Coast Guard, the applicant denied having received either a Captain's Mast or a Suitability Board. The applicant alleged that the only thing he was accused of taking was a wrist watch, that he was never missing a blanket, and that there was no ring or pair of sunglasses involved. The applicant alleged that the transcript, although it bear his name, must be documentation for one of the other two members whose discharge for unsuitability was authorized on April 24, 1946.

The applicant stated that he and his friend "were leaving the barracks to go to chow [when] this recruit came up to us with a squad leader and pointed at me and said that 'Mexican' took my watch!" He repeated his allegations about how he reacted and about being placed in a room like a cell, which he did not leave until he was transferred to the separation center. The applicant repeatedly denied that his discharge had anything to do with a blanket, ring, or sunglasses. He stated that the transcript was either "made up" or for one of the other members discharged at the same time.

The applicant complained that the Coast Guard had failed to address the statement he submitted from his friend who was present at the training center and who supported the applicant's claims.

The applicant also pointed out that while the Suitability Board found him unsuitable for military service, he joined the Army in 1948 and received an honorable discharge from the Army Reserve six years later with a rank of staff sergeant. He stated that he also served in the Colorado National Guard and served as a Post Commander for the American Legion for three years.

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. 10 U.S.C. § 1552(b). The applicant received his general discharge in 1946 and so his application is extremely 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.”¹

4. The applicant did not justify the extreme untimeliness of his application, and the Board’s cursory review of the case indicates that his claim cannot prevail on the merits. His military records show that he received a general discharge for unsuitability after he was found to have misappropriated another recruit’s private property a few days after he enlisted. His records further show that he appeared before both a Captain’s Mast and a Suitability Board, which found that he was then unsuitable for military service due primarily to immaturity and impulsiveness. Although the applicant denies that these records are accurate, his name is on them, they are in his record, and they are presumptively correct.² The applicant’s claims of error and injustice and of the circumstances of his discharge and the claims of his friend—submitted almost 70 years after the events in question—are unconvincing.

5. Accordingly, the Board will not excuse the untimeliness of the application or waive the statute of limitations. The application should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

¹ *Allen v. Card*, 799 F. Supp. 158, 164-65 (D.D.C. 1992); *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

² 33 C.F.R. § 52.24(b).

ORDER

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

September 22, 2016

