

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-003



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 and military records on October 13, 2016, and prepared the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated June 23, 2017, 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 member of the Coast Guard who was discharged on October 18, 1996, after 2 months and 22 days of service at the recruit training center, asked the Board to correct her discharge form DD 214 by upgrading her character of separation from uncharacterized to honorable. She alleged that her DD 214 is incorrect because she received an honorable discharge. In support of her claim, the applicant submitted documents from the Department of Veterans' Affairs (DVA) showing that the DVA has reported her discharge as honorable and that she has a combined 40% disability rating for conditions deemed service-connected by the DVA. She alleged that she discovered the error on her DD 214 in 2016.

SUMMARY OF THE RECORD

The applicant entered the Coast Guard on July 22, 1996, at age 27. According to her medical records, On August 2, 1996, she went to the training center clinic complaining of pain in her left shin after running and stated that she had woken up with a sore lower back and left shoulder that morning. She was treated with ibuprofen, moist heat, and limited duty.

The applicant's records show that she attended the clinic frequently with complaints of shoulder pain, back pain, and headaches. She was provided physical therapy and prescribed ibuprofen and amitriptyline. She was admitted to the clinic ward and underwent orthopedic and neurological examinations. The results of MRIs and x-rays were normal except that an MRI of

her cervical spine showed a “small hemangioma on the C7 vertebral body and a focal disc protrusion at C5-6 that abutted the cord.” The radiologist could not determine whether the condition was new or old, however, and the doctors found that the applicant’s complaints were inconsistent with the test results and objective findings. She showed a full range of motion.

On September 17, 1996, the applicant was released from the ward. A physical examination on September 18, 1996, revealed no objective findings. Based on her “continued complaints of injury despite collaborative findings she was referred for psychological evaluation on 20 September. The psychologist diagnosed the applicant with an adjustment disorder with somatization and a somatoform disorder and recommended that she be discharged for unsuitability.

The Medical Officer concluded that the applicant’s physical condition did not amount to a physical disability but that it had been “aggravated by a brief period of active military service.”

On October 15, 1996, the applicant signed a statement pursuant to her pending discharge. She acknowledged that her diagnoses were an adjustment disorder with somatization, a somatoform disorder, and back pain, resolved, and that her conditions were disqualifying for enlistment. She indicated that she did not want a waiver to remain in the Coast Guard and did not want to rebut the findings and recommendations.

On October 18, 1996, the applicant was discharged. Her DD 214, which she signed, shows an uncharacterized, entry-level separation pursuant to Article 12-B-20 of the Personnel Manual.¹

VIEWS OF THE COAST GUARD

On March 28, 2017, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion and recommended that the Board deny relief in this case. The JAG adopted the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC).

PSC noted that the applicant was not timely filed and should not be considered by the Board beyond a cursory review because the applicant provided no justification for her delay.

PSC stated that before her discharge, the applicant was informed of her diagnoses and decided not to rebut them and not to request a waiver to remain in the Coast Guard. PSC stated that the applicant was properly discharged with an uncharacterized separation in accordance with the policy in the Personnel Manual. PSC argued that the applicant’s uncharacterized discharge was appropriate and that no relief is warranted.

¹ Article 12.B.18.b.4. of COMDTINST M1000.6A, the Personnel Manual in effect in 1996 authorizes the commanding officer (CO) of the training center to award “uncharacterized” discharges for most members who are separated due to unsuitability, conduct or performance issues, or failing to meet standards if they have less than 180 days of active service.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 1, 2017, the Board sent a copy of the Coast Guard's advisory opinion to the applicant and invited 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 submission 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. The applicant alleged that she discovered the error in 2016, but when she was discharged from the Coast Guard in 1996, she signed her DD 214 showing an uncharacterized discharge. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in her record in 1996, and her application is 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*, 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"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 provided no explanation for her delay, and the Board's cursory review of the merits of this case shows that her claim cannot prevail. Pursuant to Article 12.B.20. of the Personnel Manual in effect in 1996, the commanding officer of the training center was authorized to award new recruits uncharacterized discharges if they were found to be unsuitable for service. The applicant's DD 214 is presumptively correct,⁵ and the applicant's record shows that she was found unsuitable for service during recruit training and discharged with an uncharacterized discharge. The DVA documents she submitted do not prove that her uncharacterized discharge is erroneous or unjust. Based on the record before it, the Board finds that the applicant's claim cannot prevail on the merits.
5. 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)

² 10 U.S.C. § 1552(b).

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); 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.").

ORDER

The application of former  for correction of her military record is denied.

June 23, 2017

