



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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-255

 SA (former)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the completed application July 26, 2017, and assigned it to staff attorney  to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated May 11, 2018, 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 Apprentice who was discharged on August 15, 1969, asked the Board to correct his record by upgrading his discharge to Honorable and by changing his reason for discharge from character disorder to conscientious objector. (His DD 214 shows a General discharge under honorable conditions with separation code 265 but no narrative reason for separation.)

The applicant stated that he had joined the Coast Guard in order "to be able to serve [his] country without participating in the Vietnam War," to which he morally objected. He asserted that he was "defrauded by a recruiter who swore the Coast Guard had no involvement in Vietnam," which turned out to be a false statement. He stated that the character disorder referenced on his DD 214¹ "was the result of conflict between [his] moral integrity and [his] fraudulent recruitment, which put [him] in an irresolvable moral dilemma." He argued that because President Carter had pardoned all draft resisters of the Vietnam War, the applicant's discharge should be upgraded to an honorable one because he "did in fact try to honorably serve [his] country."

Regarding the nearly fifty-year delay in his application, the applicant stated that he was unaware he could apply for an upgrade to his DD 214; nor did he "know the meaning of the Reason for Discharge Code." He added that the DD 214 has had negative consequences on his whole life

¹ A DD 214 is prepared to document a member's release or discharge from a period of active duty.

and he therefore asks that the Board consider his request in the interest of justice so that his “good name” can be restored. In support of his application, the applicant provided several documents which are discussed below in the Summary of the Record.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on November 24, 1967. He spent about three months in basic training at Cape May before being assigned to Base [REDACTED]

From March 15 through June 21, 1968, the applicant was absent without leave (AWOL). He was declared a deserter after one month, on April 15, 1968. Upon his return, he was hospitalized from June 21 through July 11, 1968, for a psychiatric evaluation. The doctor noted that the applicant reported that he had deserted to Canada because he was about to be reassigned from Base [REDACTED] to [REDACTED]. He reported that he felt “lonely and also felt an increasing conviction against military life. He had a sense of losing his identity in service, some pacifist principles and some identification with ‘rebellious’ youth.” The applicant reported that his parents had taken him to see a psychologist at age 10 and that he had undergone group therapy for six weeks at age 16. He also admitted that he had taken LSD while he was AWOL. The doctor reported that the applicant’s manner at the hospital “was characterized by subservience or passiveness although after a few days he appears more angry and demanding.” The doctor diagnosed him with “personality disorder, passive-aggressive type.” He stated that the applicant was “quite unable to adapt to military life” and recommended that the applicant be administratively discharged.

On August 5, 1968, the applicant was found guilty at a Special Court Martial for violating the Uniform Code of Military Justice (UCMJ) Article 86, Absence Without Leave. He had been AWOL from March 15, 1968, at 5:00 p.m. to June 21, 1968, at 5:15 p.m. The applicant was sentenced to hard labor for four months, restriction to his unit for two months, and reduction to paygrade E-1. Only the confinement at hard labor and reduction in paygrade were approved and executed.

Upon his release from the brig, the applicant was transferred to CGC [REDACTED] an ocean-going tug based in [REDACTED]. On April 6, 1969, the applicant received non-judicial punishment (NJP) for violating UCMJ Article 134, General Article the same day. There is no additional information regarding the nature of the offense. He was sentenced to restriction to the vessel for twenty days and extra duties for twenty days.

On May 13, 1969, the applicant received NJP for violating UCMJ Article 86, AWOL. He had been absent from 7:50 a.m. until 7:57 a.m. the morning of May 12, 1969. He was sentenced to extra duties for two days.

On June 23, 1969, the applicant’s Commanding Officer (CO) sent a memorandum to the Commandant regarding the applicant. The CO stated that the applicant was transferred to his unit on October 23, 1968, after being released from the Naval Brig near his last assignment. The CO stated that since then, the applicant had been “repeatedly counseled concerning the standards of behavior expected of him.” The CO stated that while assigned to his unit, the applicant’s performance had varied from mediocre to unsatisfactory. The CO stated the following:

As soon as he finds himself starting to get along with his shipmates and seniors he rebels, apparently feeling that any degree of cooperation he displays is a “sell out” to his beliefs. He is a self-proclaimed anarchist and feels that no one has the right to interfere with his personal freedom. He is practical enough, however, to obey direct orders and for that reason his conduct record [at the unit] is not as bad as one knowing his earlier record might expect.

The CO summarized the applicant’s punishments and his average marks, which were a 2.33 out of 4 in Proficiency and 2.50 out of 4 in Conduct. He also [redacted] a psychological evaluation in the applicant’s record which came to the conclusion that the applicant was not then and would “not in the future adapt to service life.” The applicant was notified of the proposed discharge and given the opportunity to prepare a statement on his behalf. The CO ultimately recommended a General Discharge by reason of unsuitability.

[redacted] At [redacted] [redacted] memorandum was an undated statement from the applicant. He stated that he understood he was being considered for a General Discharge by reason of unsuitability and he felt “that this course of action would be the best possible both for the service and [himself].” He found it difficult to stay in an institution “whose members continuously make [him] the victim of their moral, philosophic, and religious prejudices.” He stated that when he joined the Coast Guard, he had hoped that he would be able to work creatively as an individual within their framework. He claimed that he came to learn, however, that even an institution with “the most noble purposes is subject to political manipulation, corruption, dehumanization and hypocrisy.” He stated that he could not be happy unless he was free, as God intended, to follow his conscience. He went on to state that he had been subject to physical and mental conflicts which were “perpetuated and increased in intensity until [he was] constantly on the verge of committing some act which would be harmful to [himself] or others.” He concluded that the only relief from this situation would be separation from the Coast Guard at the earliest date.

On July 17, 1969, Commandant authorized the applicant’s discharge by reason of unsuitability with a 265 separation code and either an Honorable or General Discharge.

The applicant was discharged on August 15, 1969, after one year, two [redacted]s, and five days of active duty [redacted] with a General Discharge. His DD 214 reflects a discharge “under honorable conditions” pursuant to Article 12-B-10 of the Personnel Manual then in effect, which authorizes discharges for unsuitability for various conditions, including character and behavior disorders. His DD 214 also shows separation code 265, which denotes a separation due to a character or behavior disorder, and reenlistment code RE-4 (ineligible).

On February 2, 2017 (the same date he applied to this Board), the applicant sent an application for correction of his DD 214 to the Discharge Review Board (DRB). On this application, he requested that the reason for discharge be changed to “Uncharacterized” or in the alternative “something more appropriate.” On March 20, 2017, the DRB replied to the applicant and stated that they had no authority to consider the application because the DRB’s statute of limitations is fifteen years and the applicant had waited longer than fifteen years to submit his request.

VIEWS OF THE COAST GUARD

On February 8, 2018, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief, based on the analysis of the case provided in a memorandum from the Commander, Personnel Service Center (PSC). PSC stated that the application is not timely because the applicant was discharged in 1969 and therefore should not be considered beyond a cursory review. PSC asserted that the applicant did not show that an error or injustice occurred in the processing of his discharge. PSC further stated that a review of his record shows that he never left the United States, so he never fought in Vietnam which was his stated desire. The applicant's record "indicates a pattern of unwillingness to conform to military rules and regulations which prompted the discharge recommendation of unsuitability." PSC therefore recommended that the Board deny relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 12, 2018, the Chair sent the applicant a copy of the Coast Guard's advisory opinion 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 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.² The applicant was discharged from the Coast Guard in 1969. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 1969, and his application is untimely.
3. 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
4. Regarding the delay of his application, the applicant explained that he was unaware that he could apply to the Board. He also asked that the Board consider his application in the interest of justice so that he could restore his "good name." The Board finds that the applicant's

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

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).

explanation for his delay is not compelling because he failed to show that anything prevented him from contesting his discharge more promptly.

5. The Board's cursory review of the record indicates that the applicant's request for an Honorable Discharge as a conscientious objector has no potential for success on the merits. The record contains evidence showing that he was lonely and unhappy in the Coast Guard and that he had expressed some pacifist views, but it also shows that he was discharged because of a diagnosed passive-aggressive personality disorder that had resulted in consistently poor behavior and repeated misconduct, and these records are presumptively correct.⁶ The record shows that the applicant was hospitalized for more than two weeks for a psychiatric evaluation, which concluded with a diagnosis of a passive-aggressive personality disorder and inability to adapt to military life. The record also contains a statement from the applicant himself in which he acknowledged that he was being considered for a General Discharge, requested a prompt discharge, and even threatened harm to others and himself if he was not discharged. Nor did the applicant's average proficiency and conduct marks meet the requirements for an Honorable Discharge.⁷ Based on the record before it, the Board finds that the applicant's request for an Honorable Discharge as a conscientious objector cannot prevail on the merits.

6. 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)

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 Coast Guard Personnel Manual, CG-207, Article 12-B-2(f), required average marks of at least 2.7 for proficiency and 3.0 for conduct to receive an Honorable Discharge.

ORDER

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

May 11, 2018

