

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2018-048**

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██████████ SR/E-1

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**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 application upon receipt of the completed application and military records on February 9, 2018, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated December 7, 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, who received a general discharge “under honorable conditions” from the Coast Guard on September 29, 1972, after three months and four days of recruit training, asked the Board to upgrade his discharge to honorable. He wrote the following on his application:

In 1972, I went to a USCG recruiter in Salem, NJ. I felt compelled to serve my country. In June 1972, the recruiter handed me the entrance exam. I explained to him that I could not read the test. He said not to worry and took the examination for me. While in Basic Training I was asked to read something, which I could not. I was sent to Fort Dix, NJ to learn to read. It was there I was diagnosed [sic] as being illiterate. It was then decided by the ranking officers to discharge me under honorable conditions. I sincerely request that my discharge be upgraded to HONORABLE. Thank you for your time and consideration regarding this matter.

The applicant also stated that, although he knew about his general discharge in 1972, it is in the interest of justice for the Board to waive the statute of limitations in this case because he “was a young man and wanted to serve my country. I sought out the USCG. I volunteered to serve my country, I was not drafted. My intentions and actions were honorable, therefore, the Character of Service should reflect the same.” He submitted a copy of his DD 214 in support of his request.

### SUMMARY OF THE RECORD

On May 19, 1972, at age 20, the applicant completed a four-page Application for Enlistment by hand, primarily in script. On the application, he listed the names, locations, and dates of the schools he had attended, and the list shows that he had graduated from one school in 1969 and from a public high school in 1972. As references, the applicant named a friend of the family, two neighbors, a teacher, and a high school official. All indicated that his intelligence was average. The teacher noted that the applicant's home environment had been "unsatisfactory." The local police reported that he had no criminal record.

On May 23, 1972, on the Report of Medical History that he completed for his pre-enlistment physical examination, the applicant wrote (in the same handwriting that appears on his Application for Enlistment) that he was in good health and that he had gotten sea-sick both times he had been on a boat. He denied having frequent or severe headaches. The doctor noted that the applicant reported having previously fractured his skull in a car accident. The doctor evaluated him and found him "mentally qualified" for enlistment, as well as physically qualified.

On June 26, 1972, the applicant enlisted in the Coast Guard and began recruit training. On July 6, 1972, he was counseled about "deficiencies in meeting demands of Recruit Training."

The applicant's medical records show that on July 12, 1972, he complained of having aches in his legs while running and having frequent headaches. He reported that he had been getting headaches since his prior car accident. He was referred to a neurologist to determine whether he was malingering. The neurologist noted the applicant's history of head trauma but stated that the results of a neurological examination had been normal. He also noted that the applicant had said that he got headaches whenever anyone yelled at him and so he had been getting headaches since he enlisted. The neurologist reported that the applicant could return to duty.

Following a hearing on September 20, 1972, a Recruit Evaluation Board (REB) reported on September 22, 1972, that after starting recruit training on June 26, 1972, the applicant had claimed that he could not read and was placed on Training Hold and sent to Fort Dix Remedial Reading School. Subsequently, he was returned to the training center and continued training. The REB stated that the applicant had accumulated 85 demerits while in training and on September 11, 1972, he had been placed on Training Hold again. The REB noted that before he enlisted, the applicant's score on the Armed Forces Qualification Test (AFQT) had been 44%, meaning that he had scored as well or better than 44% of the people who took the test. In addition, his scores on the different vocational aptitude tests—on which the mean score is always 50—were as follows: general classification: 37, arithmetic: 38, mechanics: 47, clerical: 51, shop practices: 45, and electronics: 45. The REB also reported his scores on tests that he took after enlistment:

- 1<sup>st</sup> Progress Test: 40, 38
- Marlinspike Test (seamanship): 70
- PE Test: failed
- Swim Test: passed
- Revised Beta Intelligence Test (a non-verbal test): "Average" range

- USAFI Achievement Test: “Reading and Spelling below 6<sup>th</sup> grade level both before and after Fort Dix School.”

During his hearing, the applicant made the following statements to the REB:

- “I couldn’t read the Progress Test. At Fort Dix they had to tell me most of the words when I read. I was trying. I took the entrance test for the Coast Guard just once and guessed at all the answers. The test was hard.”
- “I just got out of high school. They pushed me through because of my age. I repeated several grades in grammar school. I was in special reading classes in high school, but in regular classes for all my other subjects. I didn’t deserve to graduate from high school. They just gave me a diploma.”
- “I drove a truck for my dad’s business. We had an argument and I left to join the Coast Guard.”
- “I don’t think I can make it through the Progress Test. I read and afterward I forget what I read. I never could get spelling or reading. I don’t think I’m suitable for the Coast Guard. I’d like to get out and go to trade school for truck driving.”
- “I couldn’t take any notes for the Progress Test because the guy talked too fast. A lot of guys I talked to say if you can’t read or spell you can’t make it through the Coast Guard.”
- “I never saw the neurologist at Fort Dix (when asked about his leg hurting at Fort Dix). I left before he had a chance to see me. ([The applicant’s] health record does in fact have an entry made by a neurologist at Fort Dix.) I got some of my demerits for not going to cal [calisthenics] because my leg was hurting.”

The REB concluded that the applicant “could succeed academically” as his records from Fort Dix showed but that he was “not, however, willing to put forth the necessary effort to achieve success. His level of performance is unsatisfactory and will not improve despite efforts to motivate him.” The REB recommended that the applicant receive a general discharge for unsuitability. The REB’s recommendation was approved.

On September 21, 1972, the applicant underwent a pre-discharge physical examination and was found fit for discharge.

On September 29, 1972, the applicant received a general discharge “under honorable conditions” for unsuitability. His command noted on a CG-3307 entry that he had committed “repeated disciplinary infractions during recruit training.”

### **VIEWS OF THE COAST GUARD**

On April 26, 2018, the Board received the advisory opinion of the Coast Guard from a judge advocate (JAG), who recommended that the Board deny relief in this case and adopted the findings and analysis in a memorandum prepared by the Personnel Service Center (PSC).

PSC noted that the application was not timely filed. PSC stated that the applicant received a general discharge “under honorable conditions” for unsuitability in accordance with the recommendation of the REB “for repeated disciplinary infractions during recruit training.” The REB determined that he had gone to remedial reading school and was sent back to resume recruit training, but he had accumulated 85 demerits and was not putting forth the appropriate effort to succeed.

PSC stated that the applicant’s request should be denied because under Chapter 12-B-10 of the Personnel Manual then in effect, “an honorable discharge should only be issued to those individuals who have shown a sincere effort to maintain proper military behavior and to perform their duties in a proficient and industrious manner.” PSC stated that the REB’s report shows that the applicant was not meeting this standard. PSC stated that, “while the claim that the Applicant’s recruiter took his entrance exam is disturbing, the Applicant was party to this fraudulent event.”

### **APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On April 30, 2018, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within thirty days. The applicant was granted an extension of the time to respond in accordance with 33 C.F.R. § 52.26, and he submitted his response through a representative on June 30, 2018.

The representative stated that the applicant had faced many challenges during his life and the biggest was in inability to read. He stated that the applicant is a truck driver and “managed to get his license by having the test given to him orally.” He repeated the applicant’s allegations about a recruiter taking the test for him when he told the recruiter he could not read. In addition, he stated that the applicant “has no recollection of being a disciplinary problem and does not recall receiving any demerits.” The representative stated that the applicant “is worthy of an Honorable Discharge.”

### **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 or injustice.<sup>1</sup> The applicant received his general discharge in 1972, and so his application is untimely by more than forty years.
3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.<sup>2</sup> In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the

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<sup>1</sup> 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

<sup>2</sup> 10 U.S.C. § 1552(b).

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”<sup>3</sup> 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.”<sup>4</sup>

4. The applicant provided no excuse or explanation for his very long delay in filing his application. Although he alleged that he was illiterate when he enlisted in the Coast Guard and illiteracy could arguably explain some delay, the record shows that before he enlisted, he was able to complete an Application for Enlistment in his own handwriting as well as the AFTQ and vocational tests with fairly average results. The Board finds that the applicant has not provided a compelling reason to excuse his long delay in contesting his character of discharge.

5. The Board’s cursory review of the record shows that the applicant’s claim cannot prevail. He alleged that his general discharge was unfair because his actions and intentions were honorable, a recruiter took the entry test for him, and he was discharged due to illiteracy. However, this claim is refuted by the applicant’s own testimony to the REB. The applicant told the REB, “I took the entrance test for the Coast Guard just once and guessed at all the answers. The test was hard.” The applicant’s AFQT score shows that he performed as well or better than 44% of the other test takers, and he received similar scores on vocational testing. The REB noted that tests conducted after the applicant enlisted showed that his literacy was at a level no higher than a sixth grader’s, but that is not illiterate, and he apparently read well enough to be returned to recruit training after taking remedial reading classes at Fort Dix. The record shows that the applicant received a general discharge from the Coast Guard for accumulating numerous demerits for misconduct and failing to put forth sufficient effort. These records are presumptively correct,<sup>5</sup> and the applicant has submitted insufficient evidence to overcome the presumption. The Board’s cursory review shows no grounds for upgrading his discharge.

6. Therefore, 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)**

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<sup>3</sup> *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

<sup>4</sup> *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

<sup>5</sup> 33 C.F.R. § 52.24(b).

**ORDER**

The application of former SR [REDACTED], 405-860, USCG, for correction of his military record is denied.

December 7, 2018

