

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-082


SR (Former)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application and military records on February 2, 2019, and assigned the case to the Deputy Chair to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated January 10, 2020, 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 was a Seaman Recruit who received a general discharge on April 8, 1980. The applicant’s DD-214 shows that her reason for discharge was “unsuitability—apathy, defective attitudes and inability to expend effort effectively.” She asked the Board to correct her record by upgrading her general discharge “under honorable conditions” to an honorable discharge, and to correct her reason for separation to something more appropriate.

At the time she enlisted, the applicant was a single mother to a one-year-old daughter. The applicant’s mother agreed to take temporary custody of the applicant’s daughter so that she could join the Coast Guard. While attending basic training, the applicant was informed that her mother had a heart condition and could no longer care for her daughter. The applicant alleged that there was no one else to care for her daughter. The applicant informed her Sergeant¹ of the situation. The applicant alleged that while her Sergeant was not happy, he agreed to her discharge.

The applicant acknowledged that she signed her DD-214 upon discharge. However, the applicant alleged that she was not aware of her reason for discharge at the time because she was emotional about leaving the Coast Guard and worried about her mother’s health. The applicant stated that it was not until June 2018 that she requested a copy of her DD-214 and learned of her reason for discharge. Upon receiving her DD-214, the applicant was “in shock” as to the stated

¹ The applicant acknowledged that she does not know the name and rank of the superior she informed about her situation. The applicant is likely referring to the First Battalion Officer who initiated action for her discharge.

reason for discharge: “unsuitability—apathy, defective attitudes and inability to expend effort effectively.” The applicant maintained that while enlisted in the Coast Guard she “did wonderful” and “gave no one any problems at all.”

The applicant claimed that she discovered the alleged errors on her DD-214 in June 2018 after she requested a copy of it. She submitted no evidence to support her allegations.

SUMMARY OF THE RECORD

On March 17, 1980, the applicant enlisted in the Coast Guard at age 19. On her enlistment application, she noted that she had a two-and-one-half-year-old daughter. At the time, she was living with her parents, who were 47 years old. Her enlistment documents include a state court order showing that on February 22, 1980, at the applicant’s request, legal custody of her daughter had been awarded to the applicant’s mother because the applicant was entering the military.

On April 2, 1980, after she had been in recruit training for 17 days, the applicant’s First Battalion Officer initiated action for her discharge. In a memorandum dated April 2, 1980, the First Battalion Officer notified the applicant of the following:

“You are hereby notified that I am initiating action to effect your discharge from the U.S. Coast Guard under honorable conditions by reason of Unsuitability. I am doing this because your actions indicate that you are either unable or unwilling to adjust satisfactorily in the Recruit Training Program... I intend to recommend that you be discharged with a General Discharge.”

At the bottom of this memorandum, the applicant acknowledged receipt of the notification and indicated that she did not want to consult legal counsel, to make a statement about the intention to discharge her, to make a statement about the type of discharge recommended, or to make a statement about the type of reenlistment code recommended.

In a separate memorandum also dated April 2, 1980, the First Battalion Officer wrote the following to the Commanding Officer of the training center:

“I recommend that you discharge subject named recruit under the authority of reference (a)^[2] for failure to satisfactorily adjust to the Recruit Training Program... The specific reasons why I am making this recommendation are: (applicant) is homesick. She feels that she was forced into the Coast Guard by her mother. She is now refusing to participate in training... I recommend a General Discharge for Unsuitability due to a lack of general adaptability and a reenlistment code of RE-4.”

The First Battalion Officer also noted that the applicant had been counseled in person about her performance on March 30, March 31, and April 2, 1980, and that she had also been “counseled about the deleterious effects of a General Discharge.”

² Article 12-B-16, CGPERSMAN (CG 207)

On April 8, 1980, the applicant was discharged from the U.S. Coast Guard. The applicant's DD-214 shows a general discharge "under honorable conditions," a separation code of JMJ (motivational problems), and a reenlistment code of RE-4. The narrative for the separation is as follows: "unsuitability-apathy, defective attitudes and inability to expend effort effectively." The applicant signed her DD-214.

On August 8, 1990, the applicant requested a copy of both her DD-214 and Discharge Certificate by submitting a Request Pertaining to Military Records (SF 180).

VIEWS OF THE COAST GUARD

On June 26, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board grant relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC noted that the application was not timely filed but stated that the board may excuse a delay in the interest of justice. PSC stated that according to Article 12.B.16.e.2. of the Coast Guard Personnel Manual,³ a member discharged due to unsuitability is normally issued an honorable discharge. A general discharge may be warranted if there is "evidence of misbehavior, bad faith or failure to make a proportionate effort having due regard for his/her rate and capabilities." The member's record should reflect a history of such behavior. Further, if a general discharge is issued, the commanding officers must summarize the basis for issuing a general discharge on an Administrative Remarks (CG-3307).

PSC stated that applicant did not have any disciplinary infractions or misconduct documented in her personnel record. Additionally, there is no Administrative Remarks accompanying the general discharge that summarizes the basis for the applicant's discharge. The only negative information in the applicant's personnel record stated that she was "refusing to participate in basic training due to being homesick."

PSC noted that as of June 15, 1983, discharging a recruit in basic training normally results in an uncharacterized discharge for "Entry Level Performance and Conduct." Because uncharacterized discharges were not yet authorized in 1980, PSC recommended granting the following relief:

³ However, Article 12.B.16.e. of the Personnel Manual concerns only members who are discharged pursuant to a recommendation from a Medical Board:

District commanders and commanding officers of training centers are authorized to discharge by reason of unsuitability enlisted members having less than 4 months' active service in an original enlistment when such discharge is recommended by a medical board. ... 2. An individual discharged under authority of this paragraph shall normally be issued an honorable discharge if he/she has made a sincere effort to maintain proper military behavior and to perform his/her duties in a proficient and industrious manner. The issuance of a general discharge is warranted where there is evidence of misbehavior, bad faith or failure to make a proportionate effort having due regard for his/her rate and capabilities. The basis upon which a general discharge is warranted shall be summarized on page 7 of the service record. Such entry should reflect a record of disciplinary infractions in training, culpable failure to conform to minimum standards for recruit or reserve training, or poor attitude.

- Type of Separation: Discharge
- Character of Service: Honorable
- Separation Authority: Art 12-B-20 CG PERSMAN^[4]
- SPD Code: JGA
- RE Code: RE-3
- Narrative Reason for Separation: Entry Level Performance and Conduct

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 22, 2019, the applicant responded to the views of the Coast Guard and stated that she has no objection to the Coast Guard's recommendation that the Board grant relief. However, the applicant rejected the reason for her separation in the First Battalion Officer's letter to the Commanding Officer that stated that she was forced into the Coast Guard and refusing to participate in training. The applicant maintained that the sole reason for her wanting to leave the Coast Guard was to care for her daughter.

APPLICABLE LAW AND POLICY

Article 12.B.2. of the Coast Guard Personnel Manual in effect in 1980 discusses the types of discharge available to enlisted personnel on active duty:

(c) Types of Discharge. There are five types of discharge with corresponding character of separation as follows:

- (1) Honorable Discharge (DD Form 256 CG)—separation with honor.
- (2) General Discharge (DD Form 257 CG)—separation under honorable conditions.
- (3) Discharge Under Other Than Honorable Conditions (DD Form 794 CF)—separation under conditions other than honorable.
- (4) Bad Conduct Discharge (DD Form 259 CG)—separation under conditions other than honorable.
- (5) Dishonorable Discharge (DD Form 260 CG)—separation with dishonor.

(d) Reasons for Discharge. There are twelve formal reasons for discharge as follows:

- (1) Expiration of enlistment.
- (2) Fulfillment of service obligation.
- (3) Convenience of the Government.
- (4) Dependency or hardship.
- (5) Minority.
- (6) Disability.
- (7) Unsuitability.
- (8) Security.
- (9) Misconduct.
- (10) Sentence of a court-martial.
- (11) Personal abuse of drugs other than alcoholic beverages.
- (12) Discharge for the good of the service.

...

(f) Standards for Discharge.

(1) Honorable Discharge. A separation with an honorable discharge may be affected by the member's commanding officer or higher authority when the individual is eligible for or subject to discharge

⁴ This is the authority for uncharacterized discharges in the 2011 Personnel Manual.

and it has been determined that the member merits an honorable discharge under the standards prescribed in this paragraph. Issuance of an honorable discharge is condition upon:

- a. Eligibility for discharge for one of the following reasons:
 1. Expiration of enlistment.
 2. Fulfillment of service obligation.
 3. Convenience of the Government.
 4. Dependency or hardship.
 5. Minority.
 6. Disability.
 7. Unsuitability.
 8. Misconduct.
 9. Personal abuse of drugs other than alcoholic beverages.
 10. When directed by the Commandant.

...

(2) General Discharge. A separation with a general discharge may be effected by the member's commanding officer or higher authority when the member is eligible for or subject to discharge and it has been determined that a general discharge is warranted under the standards prescribed in this paragraph. A general discharge will be issued to a member (also refer to subparagraph (1) c. hereof): 12-B-2(f) (2)

- a. Who is eligible for discharge for one of the reasons listed in subparagraph (1)a. and
- b. Whose final average marks are less than 2.7 in proficiency or 3.0 in conduct, or
- c. When, based on the individual's overall military record, the Commandant directs the issuance of a general discharge. NOTE: When a general discharge is issued for one of the reasons listed in subparagraph (1) a. through 6. hereof, the specific basis therefore shall be included in an entry on page 7 of the service record.

Article 12.B.16. of the Coast Guard Personnel Manual in effect in 1980 discusses the discharge of enlisted personnel by reason of unsuitability in relevant part:

- ...
- (b) Discharges by reason of unsuitability are effected to free the Service of persons considered unsuitable for further service because of:
- (1) Inaptitude. Applicable to those persons who are best described as inapt due to lack of general adaptability, want or readiness of skill, unhandiness, or inability to learn.
 - (2) Personality Disorders. As determined by medical authority, personality behavior disorders and disorders of intelligence listed in Chapter 5, CG Medical Manual (CG-294).
 - (3) Apathy, defective attitudes, and inability to expend effort constructively. A significant observable defect, apparently beyond the control of the individual, elsewhere not readily describable.
 - (4) Unsanitary habits.
 - (5) Alcohol abuse. Failure through inability or refusal to participate in, cooperate in, or complete an alcohol abuse treatment and rehabilitation program.
 - (6) Homosexual (Class III cases) or other aberrant tendencies. Class III cases are process under Article 12-B-33 and when an enlisted person is determined to be a Class III homosexual, discharge will be by reason of unsuitability under authority of this Article.
 - (7) Financial

Article 12.B.13. of the Coast Guard Personnel Manual in effect in 1980 permits members to request release from active duty due to dependency or hardship. The member must demonstrate that a genuine dependency or hardship exists, that it is not temporary, and that it has been aggravated since the member's entry in the Service. A written application for discharge from active duty due to hardship is required.

Article 1.B.2.c. of the current Military Separations Manual, M1000.4, describes the types of discharges as follows:

1. There are five types of discharge for characterized separations:
 - a. Honorable Discharge, DD Form 256 CG, Separation with honor,
 - b. General Discharge,
 - c. Discharge Under Other Than Honorable Conditions,
 - d. Bad Conduct Discharge, or
 - e. Dishonorable Discharge,
2. An Uncharacterized Discharge applies when separation is without specific character. There is no certificate for this type discharge.

Article 1.B.19. of the Military Separations Manual, M1000.4, defines an uncharacterized discharge as follows:

1. Uncharacterized discharges are authorized for all members separated at the entry level on or after 15 June 1983 who:
 - a. Have fewer than 180 days of active service on discharge, and
 - b. Demonstrate poor proficiency, conduct, aptitude or unsuitability for further service during the period from enlistment through recruit training, or
 - c. Exhibit minor pre-existing medical issues not of a disabling nature which do not meet the medical/physical procurement standards in place for entry into the Service.
2. An uncharacterized discharge is used for most recruit separations, except for disability, prior service members entering recruit training, or in cases when another type of discharge may be appropriate as described in Article 1.B.15. of this Manual for recruits with serious infractions.

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.⁵ The record shows that the applicant signed her DD-214 and was discharged on April 8, 1980. The applicant alleged that she does not recall seeing her reason for discharge at the time because she was emotional about leaving the Coast Guard and worried about her mother's health. The record also shows that the applicant then requested a copy of her DD-214 and Discharge Certificate on August 6, 1990. Therefore, although the applicant alleged that she did not discover the error on her DD-214 until June 2018, the preponderance of the evidence shows that she knew of the alleged error in her record in 1980. The applicant did not submit her application to the Board until February 12, 2019. Therefore, the Board finds the application is untimely.
3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.⁶ 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"⁷ to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted that "the longer the delay

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

⁶ 10 U.S.C. § 1552(b).

⁷ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

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.”⁸ Pursuant to these requirements, the Board finds the following:

a. The applicant waited more than 38 years to submit an application to the Board. The applicant provided no reasonable explanation for her delay in seeking correction of her discharge and no compelling argument that it is in the interest of justice for the Board to excuse her delay.

b. A cursory review of the merits of this case shows that the applicant’s claim lacks potential merit. Although the Coast Guard recommended granting relief because there is no Page 7 in her record, Article 12.B.16.e.2. of the Coast Guard Personnel Manual required a Page 7 only for members being discharged pursuant to the recommendation of a Medical Board. And the memorandum from the First Battalion Officer shows that she had been counseled three times and that the basis for recommending her general discharge was her refusal to participate in recruit training. The disputed records are presumptively correct,⁹ and the applicant submitted no evidence to substantiate her allegation that her mother was first diagnosed with a heart problem during the 17 days that the applicant was in recruit training.

4. Accordingly, the Board will not excuse the application’s untimeliness or waive the statute of limitations to conduct a thorough review of the merits. The applicant’s request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁸ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

⁹ 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 SF [REDACTED], USCG, for correction of her military record is denied.

January 10, 2020

