

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2019-128**

  
Seaman Recruit (former)

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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. § 2507. The Chair docketed the case after receiving the completed application on May 14, 2019, and assigned the case to the Deputy Chair to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated April 3, 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, a former Seaman Recruit who was discharged in 1981, asked the Board to correct his record by upgrading his character of service from general "under honorable conditions" to an honorable discharge.<sup>1</sup>

To support his request, the applicant stated that he regrets the poor decisions that he made while in the Coast Guard. He alleged that his father passed away and that put him in a "tail spin" that resulted in very poor decisions. He stated that his general discharge has made it difficult for him to apply for jobs.

**SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard on September 10, 1979. He completed recruit training on November 2, 1979, and was advanced to Seaman Apprentice.

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<sup>1</sup> There are five types of discharge: three administrative and two punitive. The three administrative discharges are honorable, general under honorable conditions, and under other than honorable (OTH) conditions. The two punitive discharges may be awarded only as part of the sentence of a conviction by a special or general court-martial. A special court-martial may award a bad conduct discharge (BCD), and a general court-martial may award a BCD or a dishonorable discharge.

On April 18, 1980, the applicant was placed on report for disobeying a direct order<sup>2</sup> and falsifying an official record.<sup>3</sup> On May 20, 1980, he went to Captain's Mast (mast) and was found to have committed both offenses. His punishment was restriction to the base and extra duty for seven days.

On June 30, 1980, the applicant was placed on report for disobeying a direct order. On July 10, 1980, he went to mast and was found to have committed the offense. His punishment was restriction to the base for fourteen days and reduction to Seaman Recruit (suspended for three months).

On September 23, 1980, the applicant was placed on report for three charges of being absent without leave.<sup>4</sup> On October 15, 1980, he went to mast and was found to have committed the offenses. His punishment was restriction to the base and extra duty for fourteen days.

On April 2, 1981, the applicant was placed on report for the willful disobedience of a lawful order.<sup>5</sup> On April 27, 1981, the applicant was placed on report for being absent without leave and improper uniform.<sup>6</sup> On May 19, 1981, he went to mast and was found to have committed the offenses. His punishment was forfeiture of \$100.00 in pay for one month.

On June 28, 1981, the applicant was placed on report for being absent without leave and violating a general order by coming to work in civilian clothing.<sup>7</sup> On July 9, 1981, he went to mast and was found to have committed the offenses. His punishment was reduction to Seaman Recruit and to perform extra duty for ten days.

On July 5, 1981, the applicant was involved in a fight and was placed on report for several violations of the UCMJ. These violations were under investigation at the time of the applicant's discharge.

On July 13, 1981, the applicant's Commanding Officer (CO) sent a letter to the District Commander requesting that the applicant be granted an honorable discharge by reason of misconduct for his frequent involvement of a discreditable nature with military authorities. The CO stated that extensive counseling by several officials had been unproductive. He described the applicant as follows:

[The applicant] is an unnecessary administrative and supervisory problem to this command. His further retention in the Coast Guard is no longer desirable and would have an adverse impact upon this command.

Also on July 13, 1981, the applicant was notified by his CO that he had initiated action for his discharge. The CO cited frequent involvement of a discreditable nature with military authorities as the reason. The CO stated that the final decision regarding his discharge and type of discharge

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<sup>2</sup> Article 92, UCMJ.

<sup>3</sup> Article 107, UCMJ.

<sup>4</sup> Article 86, UCMJ.

<sup>5</sup> Article 91, UCMJ.

<sup>6</sup> Article 134, UCMJ.

<sup>7</sup> Article 92, UCMJ.

rested with the Commandant. The applicant was notified that he had the right to submit a statement on his own behalf, that he could disagree with the CO's recommendation and that any rebuttal would be forwarded to the Commandant, and that he had the right to consult with an attorney. That same day, the applicant acknowledged notification of his proposed discharge and did not object. He attached a statement on his behalf that acknowledged his reoccurring problems in the Coast Guard. He concluded by stating that being discharged would be to the advantage of both himself and the Service.

On July 22, 1981, the District Commander (Commander) recommended approving the CO's request to discharge the applicant. However, the Commander stated that considering the nature and frequency of the applicant's military offenses, he felt that a general discharge would be more appropriate than an honorable discharge.

On July 25, 1981, the applicant was authorized to go on emergency leave for twelve days to attend his father's funeral.

On July 27, 1981, the applicant was arrested for indecent exposure while he was on emergency leave. The applicant's brother informed the Coast Guard on July 29, 1981. He later pled guilty to the lesser offenses of disturbing the peace and trespassing. He was sentenced to a \$700 fine.

On July 29, 1981, the Commandant (G-PE) sent a letter to the applicant's Commander directing that the applicant be issued a general discharge for misconduct due to frequent involvement under Article 12.B.18. of the Coast Guard Personnel Manual. The letter further directed that the applicant be afforded an opportunity to make a statement and consult with legal counsel.

On September 9, 1981, the applicant was discharged in accordance with Article 12.B.18. of the Coast Guard Personnel Manual. His DD-214 shows "under honorable conditions" as the character of discharge; "misconduct" as the narrative reason for separation; RE-4 (ineligible for reenlistment) as his reenlistment code; and HKA (pattern of misconduct) as his separation code. The applicant signed his DD-214.

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

On October 30, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC argued that the application is not timely. Further, PSC argued that the applicant is not eligible for an upgrade of his characterization of service. According to PSC, the applicant's characterization of service was appropriate and within policy as outlined in the Coast Guard Personnel Manual.

The JAG reiterated that the application is not timely. The JAG argued that the applicant did not establish that the Coast Guard committed an error or injustice. To the contrary, the record

shows that the applicant was properly separated from the Coast Guard due to frequent involvement of a discreditable nature with civil or military authorities. To support this claim, the JAG noted that the applicant went to Captain's Mast on six separation occasions between April 1980 and September 1981. Further, the applicant was afforded an opportunity to make a statement contesting the general discharge and to consult with an attorney. In the applicant's statement, he confirmed his desire to be discharged.

The JAG acknowledged that the loss of a parent is undeniably difficult. However, there is nothing within Coast Guard policy that would allow this to impact the applicant's characterization of service. Even if it was appropriate for consideration in determining the applicant's characterization of service, he failed to raise the issue at the time of his discharge. The JAG argued that the applicant has waived the right to argue his characterization was in error or unjust on this basis.

The JAG concluded by stating that the Coast Guard does not have a policy that permits the upgrade in characterization of service due to post-service conduct. The JAG noted that even if the applicant had lived his life without issue since his discharge, the applicant committed a series of crimes punishable under the Uniform Code of Military Justice that warranted his general discharge. The applicant must be held accountable for his actions.

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

On November 5, 2019, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. No response was received.

#### **APPLICABLE LAW AND POLICY**

Article 12.B.2.f. of the Personnel Manual in effect at the time of the applicant's discharge stated, in relevant part, the following with respect to a general discharge:

(2) General Discharge. A separation with 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 warrant... a general discharge will be issued to a member.

...

(d) When based on the individual's overall military record, the Commandant directs the issuance of a general discharge.

Article 12.B.18.b. of the Personnel Manual in effect at the time of the applicant's discharge discusses the discharge of members by reason of misconduct:

- a. An enlisted member may be separated by reason of misconduct with a discharge under other than honorable conditions, general discharge, or honorable discharge as warranted by the particular circumstances of a given case. Discharge by reason of misconduct and the type of discharge to be issued will be directed only by the Commandant. (See article 12.B.10.)
- b. The Commandant may direct the discharge of a member for misconduct in any of the following cases:

...

(5) Frequent involvement of a discreditable nature with civil or military authorities.

...

e. Members with less than 8 years of total active and/or inactive military service, recommended for discharge by reason of misconduct and an honorable or general discharge is contemplated shall be processed as follows:

(1) The member shall

(a) Be informed in writing of the reason(s) for being considered for discharge (specifically state one or more of the reasons listed in paragraph b. that are supported by known facts).

(b) Be afforded an opportunity to make statement in writing. If the member does not desire to make a statement such fact shall be set forth in writing over the member's signature. If the member refuses to sign a statement the member's commanding officer will so state in writing.

(c) if a general discharge is contemplated, be afforded an opportunity to consult with a lawyer within the meaning of Article 27(b)(1), UCMJ.

### 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.<sup>8</sup> The record shows that the applicant signed his DD-214 and was discharged on September 9, 1981. The applicant did not provide an explanation for the delay in his application. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 1981, 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.<sup>9</sup> 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"<sup>10</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>11</sup> Pursuant to these requirements, the Board finds the following:

a. The applicant waited more than 37 years to submit an application to the Board. The applicant provided no explanation for his delay in seeking correction of his DD-214 and no compelling argument that it is in the interest of justice for the Board to excuse his delay.

b. A cursory review of the merits of this case shows that the applicant's claim lacks potential merit. The disputed record is presumptively correct,<sup>12</sup> and the record contains no evidence that substantiates his allegations of error or injustice in his official military record. The

<sup>8</sup> 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

<sup>9</sup> 10 U.S.C. § 1552(b).

<sup>10</sup> *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

<sup>11</sup> *Id.* at 164, 165; see also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

<sup>12</sup> 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.").

applicant argued that his father's death caused him to commit regrettable decisions that led to a general discharge. However, his Commanding Officer initiated the applicant's discharge on July 13, 1981, and the applicant's Commander determined that a general discharge was appropriate for the applicant on July 22, 1981—before the applicant went on emergency leave to attend his father's funeral. And their decisions were based on the applicant's multitude of military offenses that he committed before his father died. The Coast Guard's decision to issue the applicant a general discharge for misconduct was fully in compliance with the Coast Guard Personnel Manual in effect at the time of the applicant's discharge.

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)**

**ORDER**

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

April 3, 2020

