

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2021-045

■■■■ ■■■■ ■■■■
SN (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 on April 15, 2021, 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 December 8, 2022, 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 (SN/E-3) who was honorably discharged from the Coast Guard on June 10, 1988, asked the Board to correct his record by changing his separation code on his DD-214¹ from JND, which signifies separation for miscellaneous/general reasons, to a separation code that signifies that he was separated due to hardship.

The applicant argued that although he does not have any evidence to submit, all discussions during his discharge and appeal process reflected that he was discharged by reason of hardship.

The applicant addressed the delay in submitting his application. He stated that he did not discover the alleged error until October 1, 2020, as a result of the revised Department of Veterans Affairs (VA) benefits requirements. He stated that under the new requirements, he no longer qualifies for benefits because of his JND separation code.

¹ The DD Form 214 provides the member and the service with a concise record of a period of service with the Armed Forces at the time of the member's separation, discharge or change in military status (reserve/active duty). In addition, the form is an authoritative source of information for both governmental agencies and the Armed Forces for purposes of employment, benefit, and reenlistment eligibility, respectively. The DD 214 is issued to members who change their military status among active duty, reserve, or retired components or are separated/discharged from the Coast Guard to a civilian status. COMDTINST M1900.4D.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on January 12, 1987.

On April 25, 1988, the applicant sent a memorandum to his Commanding Officer (CO) and the Commander of his District. In the memorandum, he requested that he be discharged for the convenience of the government in accordance with Article 12.B.12. of the Coast Guard Personnel Manual. The applicant stated that his request was based on his financial situation. He stated that his income as a Seaman (E-3) was not enough to support his family. The applicant explained that his wife was pregnant and that they already had one young child. He stated that his wife was unable to find employment that paid enough to offset the cost of childcare. In addition to the costs of raising a family, the applicant stated that he had a significant debt of more than \$16,000.

That same day, the CO forwarded the applicant's request to be discharged for the convenience of the government to the Commandant. He strongly recommended granting the applicant's request. The CO stated that he was convinced that the only way for the applicant to pay his bills was by taking a second job or by leaving the service for a better paying job. However, the CO stated that in order for the applicant to get a second job, he would have to be assigned ashore. He acknowledged that this was an unrealistic limitation for a member of the Coast Guard. The CO also stated that the applicant had shown little effort toward solving his financial problems. While the applicant did meet with a financial advisor, he had not disposed of his credits cards or expressed any willingness to change his lifestyle. As a result of the applicant's financial irresponsibility, he was placed on probationary status. The CO stated that while he had not received complaints from the applicant's creditors, he argued that such complaints were inevitable. He argued that by granting the applicant's request, the Coast Guard would eliminate a potential long-term personnel problem.

On June 10, 1988, the applicant was honorably discharged. His DD-214 shows "convenience of the government" as the narrative reason for separation; RE-4 (ineligible for reenlistment) as the reenlistment code; and JND (separation for miscellaneous/general reasons) as the separation code. The word "hardship" does not appear anywhere on the DD-214.

VIEWS OF THE COAST GUARD

On September 10, 2021, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which he 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 applicant's request should be denied because it is untimely. Regarding the merits of the case, PSC argued that the applicant's request should be denied because he failed to show that the Coast Guard committed an error or injustice. PSC stated that the applicant requested to be discharged for the convenience of the government because he was in significant financial debt. The applicant's command granted his request based on the belief that his discharge would eliminate a potential long-term personnel problem.

The JAG reiterated that the applicant's request should be denied because he failed to show that the Coast Guard committed an error or injustice. The applicant argued that his separation code should be changed because all discussion pertaining to his discharge reflected that he was discharged by reason of hardship. However, the JAG argued that there is nothing in the applicant's record to support his assertion. First, the JAG cited the applicant's memorandum dated April 25, 1988, which requested that he be discharged for the convenience of the government in accordance with Article 12.B.12. of the Coast Guard Personnel Manual. The JAG also argued that the CO's memorandum does not contain any discussion of discharging the applicant by reason of hardship. Finally, the JAG noted that according to Coast Guard policy at the time of the applicant's discharge, a hardship discharge was not available for members who alleged hardship purely for financial reasons.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 4, 2021, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. In his response, the applicant contested the JAG's recommendation to deny relief.

The applicant argued that his separation code constitutes an injustice. He argued that according to his research, the separation code JND signifies "OTHER, Concealment of arrest record." The applicant argued that this is an injustice because he has never been arrested.

The applicant reiterated that his separation was by reason of hardship. Specifically, he stated that he was experiencing hardship with both his family and finances. At the time of his discharge, the applicant's pregnant wife was restricted to bedrest and was unable to care for their two year-old child. He stated that due to his career in the Coast Guard, he was unable to care for them or afford to hire help. The applicant argued that he was advised by his superiors to apply for a convenience of the government discharge because it would expedite the discharge process.

Finally, the applicant again addressed the delay in his application. He stated that he had no reason to "dive deep" into his DD-214 until he was denied VA benefits. The applicant explained that he currently has a VA home loan. He stated that he would like to refinance his home, but that he does not qualify because of his separation code.

APPLICABLE LAW AND POLICY

Article 12.B.12. of the Personnel Manual in effect at the time states that members can be discharged for the convenience of the government for any of the following reasons:

...

(6) To provide for early separation of personnel under various authorized programs and circumstances.

Article 12.B.13.c.(3) discusses conditions under which a hardship discharge can and cannot be granted:

The Commandant may direct discharge or release from active duty when it is considered that an undue or genuine dependency or hardship exists, that the dependency or hardship is not of a temporary nature, and that the conditions have arisen or been aggravated to an excessive degree since entry into the Service and the member has made every reasonable effort to alleviate the hardship by means of application for basic allowance for quarters and voluntary contributions which have proven inadequate. Examples of meritorious cases are those in which the evidence shows either:

- (a) As a result of the death or disability of a member of an individual's family the release from active duty of the member is necessary for the support or care of a member or members of the family; or
- (b) The member's family is undergoing hardship more severe than the normal hardships encountered by dependents or families of members of the Coast Guard; that this hardship is not of a temporary nature and the release of the member will result in the elimination of, or will materially alleviate, the condition, and that there are no means of alleviation readily available other than by release from active duty. Pregnancy of an enlisted man's wife is not in itself a circumstance for which release from active duty will be authorized.

Article 12.B.13.c.(4) details the circumstances under which a hardship discharge can be denied:

Undue hardship does not necessarily exist solely because of altered present or expected income or because the member is separated from the family or must suffer the inconveniences normally incident to a seagoing military service.

Article 12.B.13.d. discusses how enlisted members may request a hardship discharge. In relevant part:

... Such requests must be accompanied by at least two affidavits substantiating the dependency or hardship claim and establishing that the dependency or hardship occurred after entrance into the Service...

Article 12.B.13.e. discusses how the Coast Guard should respond to a complete request for hardship discharge:

Before forwarding the request, the commanding officer shall interview the member in order to elicit any further information and will insure that the required information is supplied. The forwarding endorsement shall include a statement, a transcript of performance marks, and a definite recommendation.

According to the Separation Program Designator (SPD) Handbook, a separation code of JND is appropriate when a member is involuntary discharged by an established directive when a service component does not have a service reporting requirement for specific reasons and desires to identify reasons collectively "all other reasons" which qualify a member for separation in accordance with 12.A.15. or 12.B.12. of the Coast Guard Personnel Manual.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on 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 record shows that the applicant signed and received his DD-214 with the JND separation code and without the word “hardship” when he was discharged on June 10, 1988. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 1988, 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 Pursuant to these requirements, the Board finds the following:

a. The applicant waited more thirty-two years to submit an application to the Board. Regarding the delay in applying to the Board, the applicant stated that he discovered the alleged error in October 2020 after the VA revised its benefits requirements. The Board finds that the applicant’s explanation for the delay is not compelling because he failed to show that anything prevented him from seeking correction of the alleged error or injustice more promptly.

b. A cursory review of the merits of this case shows that the applicant’s claim lacks potential merit. The applicant argued that his separation code should be changed to show that he was discharged by reason of hardship. However, the applicant did not provide any evidence to support his request. Instead, the applicant’s record shows that he was discharged for the convenience of the government in order to eliminate a potential long-term personnel problem due to his significant debt. Further, even though the applicant was experiencing both family and financial problems at the time of his discharge, he did not submit a request for a hardship discharge with the required affidavits to his command, and he did not show that he would have been eligible for a hardship discharge. According to Article 12.B.13.c. of the Coast Guard Personnel Manual, undue hardship does not necessarily exist solely because of altered present or expected income or because the member is separated from the family.

c. In his reply to the advisory opinion, the applicant argued that his separation code constitutes an injustice because the code denotes “OTHER, Concealment of arrest record.” However, according to the SPD Handbook, a JND separation code denotes “separation for miscellaneous/general reasons” and is appropriate for members who were discharged for the convenience of the government in accordance with Article 12.B.12. of the Coast Guard Personnel Manual. Therefore, the disputed record is presumptively correct,⁶ and the record contains no evidence that substantiates his allegations of error or injustice in his official military record.

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).

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.”).

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 SN [REDACTED] [REDACTED] [REDACTED] USCG, for correction of his military record is denied.

December 8, 2022

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