

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2021-072


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 on May 4, 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 August 26, 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 Seaman Recruit (SR/E-1) who received a general discharge under honorable conditions on July 16, 1981, asked the Board to correct his record by upgrading his discharge to honorable.¹

The applicant discussed several aspects of his post-service life to support his upgrade request. First, the applicant stated that he has been a productive member of society since his discharge. To support this assertion, he stated that he has never been arrested and that he earned three college degrees. Next, the applicant stated that his post-service career was focused on improving the quality of life for others. After retiring as a correctional officer, he started a private detective and security agency. Finally, the applicant stated that he currently cares for both his sick wife and elderly father.

Regarding the delay in his application, the applicant stated that he did not submit an application earlier because he could not afford an attorney. He also stated that it was not until recently that he was advised by a fellow veteran that he could receive an upgrade to his discharge.

¹ 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

He argued that his recruiter and company commander should have informed him that he was entitled to an upgrade in his discharge.

To support his application, the applicant submitted the following: documentation that he is a Minister of his faith; a letter from 2006 stating that he was an exceptional employee at a central booking and intake center; an Award of Excellence from a housing commissioner; an article about his positive work as a social services coordination supervisor; his college transcripts; and his resume.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on May 26, 1981.

On June 15, July 2, and July 6, the applicant was counselled regarding his unwillingness to participate in training.

On July 8, 1981, the applicant received notification from his Third Battalion Officer at the Coast Guard Training Center that he was initiating action to discharge him. The applicant's unwillingness to participate fully in the recruit training program or be assigned to duty was stated as the reason. For example, the applicant failed the following performance tests: swim; rates and ranks; nautical terms; military conduct, and the academic test. The applicant stated that he was unwilling to participate in training because he was "unable to deal with the pressures." He expressed a desire to be sent home and elected not to participate in any further training. The applicant was notified that because he had demonstrated an unwillingness to participate in the program he entered voluntarily, he would receive a general discharge and an RE-4 reenlistment code. The applicant was notified that a general discharge could have an adverse effect on him in the future and that he had the right to consult with legal counsel.

That same day, the applicant acknowledged receipt of the notification to discharge him. He indicated that he did not wish to consult with legal counsel or make a statement regarding his discharge.

On July 16, 1981, the applicant received an Administrative Remarks form ("Page 7") stating that he would be issued a general discharge in accordance with Article 12.B.16. of the Coast Guard Personnel Manual by reason of unsuitability.

Also on July 16, 1981, the applicant was discharged from active duty in accordance with Article 12.B.16. of the Coast Guard Personnel Manual. His DD-214 shows "under honorable conditions" as the characterization of discharge; "unsuitability" as the narrative reason for separation; MJM (motivational problems) as his separation code; and RE-4 (not eligible to reenlist) as his reenlistment code. The applicant signed his DD-214.

VIEWS OF THE COAST GUARD

On October 4, 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 application is not timely. Regarding the merits of the case, PSC argued that the applicant failed to prove that the Coast Guard committed an error or injustice. Further, PSC stated that there is no policy that allows for discharges to be upgraded solely because the applicant so requests.

The JAG reiterated that the application is not timely. The JAG argued that the lack of timeliness should not be excused because the applicant alleged that he did not know earlier that he could apply to the Board to request an upgrade to his discharge. Regarding the merits of the case, the JAG argued that the applicant's post-service conduct does not demonstrate that his characterization of service is erroneous or unjust.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 6, 2021, 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.2. of the Coast Guard Personnel Manual in effect in 1981 discusses the standards for a general discharge as follows:

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 a Page 7 of the service record.

Article 12.B.16.b. of the Coast Guard Personnel Manual 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, 12-B-16(b)(3) (contd) apparently beyond the control of the individual, elsewhere not readily describable.

On July 7, 1976, the General Counsel for the Department of Transportation issued a memorandum setting the policy of the Board regarding the effect of post-service conduct on records corrections. The memorandum states that “the Board should not upgrade discharges solely on the basis of post-service conduct.” This policy has not been reversed and remains binding on the Board.

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 record shows that the applicant signed and received his DD-214 upon his discharge on July 16, 1981. 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.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 almost forty years after being discharged to submit an application to the Board. Regarding the delay in applying to the Board, the applicant explained that he did not submit an application earlier because he could not afford an attorney. However, an attorney is not required to submit an application to the Board and the applicant is not represented by an attorney in the present case. He also argued that it was not until recently that he was advised by a fellow veteran that he could receive an upgrade to his discharge. 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.

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).

b. A cursory review of the merits of this case shows that the applicant's claim lacks potential merit. The applicant's request to upgrade his characterization of service is not a request to correct an error or injustice. Instead, the applicant's request is based on his post-service conduct. The Board notes that the evidence indicates that the applicant has been a law-abiding citizen who has had a lengthy career since his discharge. However, the delegate of the Secretary informed the Board on July 7, 1976, by memorandum that "the Board should not upgrade discharges solely on the basis of post-service conduct."⁶ The disputed record is presumptively correct,⁷ and the record contains no evidence that substantiates his allegations of error or injustice in his official military record.

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)

⁶ Memorandum of the General Counsel to J. Warner Mills, et al., Board for Correction of Military Records (July 7, 1976).

⁷ 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 SR [REDACTED] [REDACTED] [REDACTED] USCG, for correction of his military record is denied.

August 26, 2022

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