

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-062



FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the applicant's completed application on March 19, 2015, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated January 8, 2016, 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 was honorably discharged from the Coast Guard on September 14, 1984, asked the Board to correct his discharge form DD 214 by adding the Meritorious Unit Commendation Medal and the Good Conduct Medal. He alleged that he received the first award while assigned to the Marine Safety Office in [REDACTED], in 1980 and 1981, and that he receive a Good Conduct Medal upon completing three consecutive years of honorable and faithful service.

The applicant also asked the Board to upgrade his separation code, JMB; his narrative reason for separation, "Unsuitability"; and his reentry code, RE-4 (ineligible to reenlist) on his DD 214. He argued that these entries "should be upgraded appropriately based on my honorable and faithful service in the United States Coast Guard."

The applicant alleged that he discovered the errors in his record on February 2, 2015. He argued that it is in the interest of justice for the Board to consider his application because the information on his DD 214 is preventing him from "securing federal/civilian employment."

SUMMARY OF THE RECORD

On July 7, 1980, the applicant enlisted in the Coast Guard as a seaman recruit (E-1) for four years, through July 6, 1984. Upon completing boot camp, he advanced to fireman apprentice (E-2) and was assigned to the Marine Safety Office (MSO) in [REDACTED], and reported there on September 16, 1980.

On January 23, 1981, the applicant [REDACTED] was reassigned [REDACTED] from the MSO to the Coast Guard Yard in [REDACTED]. In February 1981, the applicant was assigned to a Coast Guard cutter, which was [REDACTED] in pre-commissioning status. In March 1981, he was permanently assigned to the cutter, which was homeported in [REDACTED]. The pre-commissioning crew of the cutter was awarded a Meritorious Unit Commendation for their work from January 5 to March 23, 1981.

In September 1981, the applicant was transferred to the training center in Yorktown, Virginia, to attend [REDACTED] "A" School and earn the [REDACTED] rating. While attending "A" School, he advanced to E-3. In January 1982, the applicant successfully completed [REDACTED] "A" School, earned the [REDACTED] rating, and returned to his cutter in [REDACTED]. In September 1982, he advanced to [REDACTED].

On March 25, 1982, the applicant was punished at mast for "act[ing] in a disorderly manner with intent to inflict damage upon himself, a ... crewmember, and government property." He was awarded non-judicial punishment (NJP) of restriction to the cutter for 30 days with extra duties. [REDACTED]

On his performance evaluation dated September 30, 1983, the applicant received some good marks but low marks for "Judgment," "Responsibility," "Grooming," "Setting Priorities," "Evaluating Others," and "Evenhandedness."

On October 7, 1983, the Engineering Officer of the applicant's cutter counseled him on a Page 7. The Page 7 states that the applicant had gone on liberty ashore, drunk to excess, faked a back injury, and called an ambulance, which transported him to the hospital at the Coast Guard's expense. The Engineering Officer noted that such an "event has happened several times in the past and resulted in letters from the ambulance company and the [REDACTED] Coast Guard District, embarrassing this command. During this counseling, I ordered [the applicant] not to do anything ashore that would embarrass or discredit this command or the engineering department again."

On January 30, 1984, the applicant was taken to mast and awarded NJP for disobeying a direct order by taking a Coast Guard van "to chow." He was awarded forfeiture of \$200 in pay and reduction to pay grade E-3, but this punishment was suspended for six months on condition of good behavior.

In January and February 1984, the applicant underwent alcohol rehabilitation treatment at the Alcohol Rehabilitation Center (ARC) in [REDACTED]. He returned to his cutter in [REDACTED] on February 20, 1984.

On his performance evaluation dated March 30, 1984, the applicant received a performance evaluation with some good marks but low marks for "Adaptability," "Judgment," "Responsibility," "Loyalty," "Integrity," "Sobriety," "Conduct," "Customs and Courtesies," "Communicating with Others," "Setting Priorities," "Using Resources," "Keeping Supervisor Informed," "Workmanship," "Meeting Deadlines," "Learning from Experience," "Enforcing Standards," "Evaluating Others," "Setting an Example," and "Evenhandedness." At the end of March 1984, the applicant was transferred from the cutter to the training center in Yorktown, for

further training. In May 1984, having completed the training, the applicant was transferred from the training center to Coast Guard District [REDACTED] based in [REDACTED].

On June 22, 1984, the [REDACTED] District command advised the Commandant that the applicant's performance marks did not qualify him to extend [REDACTED] under the prior marking system (a 4.0 scale) but did qualify him to extend under the new system (a 7.0 scale). The command reported that the applicant had been involved in "several drinking incidents," had undergone rehabilitation treatment at the ARC, and had been awarded NJP in March 1982 and January 1984. The command noted that it had established an aftercare plan for the applicant's rehabilitation treatment. The command asked [REDACTED] four-year extension be canceled and replaced with a shorter one to allow the command to evaluate his suitability [REDACTED] continuation on active duty [REDACTED].

On June 28, 1984, the [REDACTED] District command advised Coast Guard Personnel Command (CGPC) that the applicant's four-year extension contract had been canceled and replaced with a six-month extension "to allow further evaluation to determine reenlistment eligibility."

On July 27, 1984, the applicant was transferred to the Support Center in [REDACTED] for a medical evaluation. He was assigned to the Support Center until his discharge.

On August 16, 1984, the applicant underwent a psychiatric evaluation and told the doctor, "I don't want to stay in [the Coast Guard]." The doctor noted that the applicant continued to suffer from the "problem cluster" of alcohol dependency and mixed personality disorder with antisocial and passive-aggressive features, which had existed prior to his enlistment. The doctor found the applicant physically fit for duty but recommended administrative separation "due to inability to cope in a military setting associated with diagnosed Personality Disorder."

On August 20, 1984, the applicant's commanding officer (CO [REDACTED]) notified him by memorandum that he had initiated the applicant's discharge under Article 12.B.16. of the Personnel Manual due to a diagnosed personality disorder and had recommended an honorable discharge. The CO advised him that he had a right to object and to submit a statement on his own behalf. In response, the applicant signed a memorandum acknowledging notification of the proposed discharge, waiving his right to submit a statement, and indicating that he did not object to being discharged.

On September 4, 1984, the District Commander recommended to the Commandant that the applicant receive an honorable discharge by reason of unsuitability "due to his inability to cope in a military environment by reason of a [REDACTED] personality disorder." He noted that the [REDACTED] had been involved in several alcohol incidents, received NJP twice, undergone rehabilitation treatment, and had received a six-month extension on his enlistment but was not qualified for reenlistment. In response, the Commandant issued orders for the applicant to be discharged by reason of "Unsuitability."

On his final performance evaluation, the applicant received very low marks, including marks of 2 (on a scale of 1 to 7) for "Grooming," "Knowledge," "Determining Priorities," "Using Resources," "Guidance Required," "Learning from Experience," "Keeping Supervisor Informed," "Observing Safety Practices," "Evaluating Others," "Looking Out for Others,"

“Setting an Example,” “Appearance,” “Communicating,” “Professionalism,” “Adaptability,” “Judgment,” “Responsibility,” “Loyalty,” and “Sobriety.”

On September 14, 1984, the applicant received an honorable discharge. His DD 214 shows the separation code of JMB, which denotes an involuntary discharge for unsuitability due to a diagnosed personality disorder; “Unsuitability” as the narrative reason for separation; and an RE-4 reentry code, which means that he is ineligible to reenlist in the Coast Guard, pursuant to Article 12.B.16. of the Personnel Manual. His DD 214 does not list any medals or ribbons in block 13. The applicant signed his DD 214 as well as a Page 7 noting his discharge for “Unsuitability” and his ineligibility to reenlist.

VIEWS OF THE COAST GUARD

On August 18, 2015, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief and adopting the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC noted that the application was not time filed and argued that it should be denied on that basis. Regarding the merits of the applicant’s claims, PSC stated that the applicant was properly discharged in accordance with Article 12.B.16. of the Personnel Manual after he was diagnosed with a personality disorder and has submitted no evidence to show that his discharge was erroneous or unjust.

Regarding his claim that he is entitled to a Good Conduct Medal, PSC noted that he did not receive a Good Conduct Medal because he did not perform three consecutive years of satisfactory service without receiving NJP. PSC did not address the applicant’s request that his DD 214 reflect his receipt of a Meritorious Unit Commendation Medal.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 18, 2015, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to submit a response in writing within thirty days. No response was received.

APPLICABLE LAW

Article 12-B-16(b) of the Personnel Manual in effect in 1984 authorized the Commandant to direct the discharge of an enlisted member for, *inter alia*,

- (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.

Under Article 12-B-16(d), prior to recommending a member for such a discharge, the CO was required to notify the member of the proposed discharge; permit him to submit a statement on his own behalf; and, if a General discharge was contemplated, allow him to consult with an attorney.

Under the SPD Handbook, a member assigned the JMB separation code could receive either an RE-4 (ineligible to reenlist) or an RE-3G reentry code (reenlistment requires waiver).

COMDTINST M1900.4B, the manual for preparing DD 214s in effect in 1984, states that block 13 of a member's DD 214 is supposed to list "all decorations, medals, badges, commendations, citations, and campaign ribbons awarded or authorized for all periods of service."

Chapter 5.A.2. of the Medals and Awards Manual, COMDTINST M1650.25D, states that the Good Conduct Medal is "[a]warded for satisfactory service which is defined as proficiency in rating, sobriety, obedience, industry, courage, and neatness throughout such period of service. As of 1 July 1983, an individual is required to perform three consecutive years of satisfactory service to earn this award." (Before 1983, the minimum period was four years.) One of the criteria listed for creditable service toward the award is that the member must receive no NJP, court-martial, reprimand, or civil conviction during the three-year period.

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 over this matter under 10 U.S.C. § 1552(a).
2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.¹
3. Under 10 U.S.C. § 1552(b), an application to the Board must be filed within three years after the applicant discovers the alleged error or injustice in his record. The applicant in this case received and signed his DD 214 with the alleged errors in 1984. Therefore, although he alleged that he discovered the errors in 2015, the Board finds that the preponderance of the evidence shows that the applicant knew the contents of his DD 214 in 1984 but waited thirty years to challenge them. Therefore, his application is not timely.
4. Pursuant to 10 U.S.C. § 1552(b), the Board may excuse the untimeliness of an application if it is in the interest of justice to do so. In *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that to determine whether the interest of justice supports a waiver of the statute of limitations, the Board "should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review." The court further instructed 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."²
5. The applicant provided no compelling reason for his delay in applying to the Board. He has not shown that anything prevented him from challenging the contents of his DD 214 more promptly.

¹ *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

² *Allen v. Card*, 799 F. Supp. 158, 164-65 (D.D.C. 1992); see *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

6. The Board's cursory review of the merits of [REDACTED] claims shows that only one of his claims has any merit. [REDACTED] that his DD 214 reflect his receipt of the Meritorious Unit Commendation. He received [REDACTED] this commendation while assigned to MSO Valdez, and in accordance with COMDTINST M1900.4B, it should appear on [REDACTED] 3 of his DD 214. The Board's review shows that his request for a Good Conduct Medal has no merit, however, because he received NJP in both 1982 and 1984 and so did not serve three continuous years without NJP, as required by COMDTINST M1650.25D. Likewise, his request for an upgraded separation code, reentry code, and narrative reason for separation has no merit. These entries on his DD 214 are presumptively [REDACTED] correct and well supported [REDACTED] the record. He submitted no evidence to show that they are erroneous or unjust. Under Article 12.B.16. of the Personnel Manual in effect in [REDACTED] 84, the Commandant was authorized to [REDACTED] administratively discharge members diagnosed with [REDACTED] personality disorder for "Unsuitability," as the applicant was. In addition, the record shows that the applicant [REDACTED] received all due process in that he was notified of the basis for the proposed discharge and afforded an opportunity to object and to submit a statement on his own behalf. He did not object, and he waived his right to submit a statement.

7. Accordingly, the Board will not excuse the untimeliness or waiver [REDACTED] of limitations for the applicant's claims except for his claim regarding the Meritorious Unit Commendation, which should be granted. His request for the Good Conduct Medal and for an upgraded separation code, reentry code, and narrative reason for separation should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

[REDACTED]

[REDACTED]

[REDACTED]

ORDER

The application of former [REDACTED], USCG, for correction of his military record is granted in part. The Coast Guard shall correct block 13 of his DD 214 to show that he was awarded a Meritorious Unit Commendation. All other requests for relief are denied.

January 8, 2016

