

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-196

██████████
██████████ LTJG (deceased)

FINAL DECISION

This proceeding was conducted according to 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 completed application on September 3, 2015, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated July 29, 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 is the daughter and next of kin of a veteran of the Coast Guard Reserve, named in the caption above, who served on active duty during World War II and who received a medical discharge under honorable conditions on October 12, 1945, because of somnambulism. The applicant alleged that her father's discharge should have been characterized as honorable rather than just medical under honorable conditions. She alleged that her father's somnambulism was a symptom of post-traumatic stress disorder (PTSD).

In support of her allegations, the applicant submitted copies of some of her father's military records, which are included in the summary below.

SUMMARY OF THE RECORD

On September 26, 1942, the applicant's father enlisted in the Coast Guard Reserve. He reported for active duty at the Coast Guard Academy on November 18, 1942, and on December 19, 1942, he was discharged to accept an appointment as a cadet. On March 17, 1943, he completed Reserve officer training at the Academy and accepted a three-year appointment as an ensign. He served several months as a duty officer at a patrol base and then was assigned to the Captain of the Port in Philadelphia, where he was responsible for loading explosives on ships. He was promoted to lieutenant junior grade (LTJG) on January 1, 1944, and assigned as the commanding officer (CO) of a small cutter on August 30, 1944.

On a fitness report dated March 31, 1945, the applicant's father received marks of 3.0 for ability to command, 3.0 as an executive or division officer, and 3.2 for administration (on a 4.0 scale). On the comparison scale, he was rated average, and his commanding officer noted that he was "fundamentally a good officer" but needed more experience.

On August 16, 1945, a Senior Medical Officer in the Philippines reported that the applicant's father had been seen sleep walking aboard his cutter on numerous occasions and was recommended for hospitalization and a Board of Medical Survey. He attached statements from witnesses to the sleep walking. A chief bosun reported that he and the applicant's father (his CO) had shared living quarters and that he had been awakened at least three or four times that year and seen the CO get out of his bunk and walk around the wardroom or the deck. Another bosun reported having seen the CO walking around the deck at 2:00 a.m. one night. And a LTJG who had shared a stateroom with the applicant's father en route to the Philippines in June and July 1945 reported that he had seen him walking in his sleep a few times during the voyage.

On August 20, 1945, Coast Guard Headquarters issued orders detaching the applicant's father from his cutter and directing him to return to the continental United States for a Board of Medical Survey. On September 6, 1945, the applicant's father reported to the U.S. Marine Hospital in San Francisco to appear before a Medical Board of Survey based on a diagnosis of somnambulism. He was observed in the hospital for four days and then released pending action on the results of the survey.

The Report of Medical Survey, dated September 10, 1945, states that the applicant's father had suffered from somnambulism even before he enlisted and that his condition was not aggravated by his service or a result of his own misconduct. The report states that he told the doctors that he had been sleep walking intermittently since the age of 12 and that it happened more often whenever his responsibilities or stresses were increased. He told the doctors that "[a]board his ship, he has often walked about the decks in his sleep and is in constant anxiety lest he harm himself in one of these attacks." The doctors on the Board of Medical Survey recommended that he be separated because "his somnambulism will continue to be a menace to his own safety and to the safety of his shipmates." The report also states that he had been informed and did not desire to rebut the recommendation.

A military telegram in the applicant's father's record from the District to the Commandant notes the results of the Board of Medical Survey; states that he had been assigned to temporary duty while awaiting Headquarters' action on the survey results; and states that he was eligible for and requesting release to inactive duty.

On September 14, 1945, the District Medical Officer forwarded the Report of Medical Survey with a recommendation that the applicant's father be discharged for a physical disability that existed prior to his enlistment. The District Command approved and forwarded this recommendation to the Commandant on September 17, 1945.

On October 12, 1945, the applicant's father was issued separation orders "pursuant to a general demobilization" and directed to report to a medical officer at the hospital to determine whether he was physically qualified to be released from active duty. He was released on terminal

leave the same day and issued a certificate of satisfactory service and an honorable lapel button. His Notice of Separation states that he was released from active duty “under honorable conditions” when his leave ended on December 22, 1945. He was discharged from the Reserve when his three-year appointment ended in 1946.

VIEWS OF THE COAST GUARD

On January 20, 2016, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC) and recommended granting relief.

PSC stated that although the application was not timely filed, it is in the interest of justice for the Board to consider the case on the merits and grant relief. PSC stated that the applicant’s father was separated due to somnambulism and was issued an honorable lapel button, but his Notice of Separation states “under honorable conditions.” PSC stated that there is no evidence in the record that his service was anything other than honorable and “it appears to be an error or an injustice that his honorable characterization of service is not clear on his discharge documentation.” PSC recommending correcting the military record to show that he received an honorable discharge.

RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 21, 2016, the applicant responded to the views of the Coast Guard and agreed with them.

APPLICABLE REGULATIONS

Article 584(4) of the 1940 Regulations for the United States Coast Guard provided that honorable discharges were awarded under any of five conditions: expiration of enlistment; convenience of the government; hardship; minority (age); and disability not the result of own misconduct. A general discharge “under honorable conditions” could be awarded “for the same [five] reasons as an honorable discharge and issued to individuals whose conduct and performance of duty have been satisfactory but not sufficiently deserving or meritorious to warrant an honorable discharge.”

Under Article 4952(1) and (2) of the 1934 Personnel Instructions, members could receive an honorable discharge only if (a) they had a final average proficiency in rating mark of “not less than 2.75” and a final average conduct mark of at least 3.0; (b) they were “[n]ever convicted by general Coast Guard court or more than once by a summary Coast Guard court, or more than twice by a Coast Guard deck court”; and (c) they were being discharged for one of the following reasons: expiration of enlistment, convenience of the government, minority, hardship, or physical or mental disability not the result of own misconduct. Members being discharged for one of these reasons listed could receive a general discharge under honorable conditions if their marks did not meet the minimums required for an honorable discharge or if they had been convicted once by a general court martial, twice or more by a summary court martial, or at least three times by a deck court.

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 concerning this matter pursuant to 10 U.S.C. § 1552.
2. An application to the Board must be filed within three years of the discovery of the alleged error or injustice in the record.¹ The applicant in this case is the daughter of the veteran, who apparently knew the nature of his discharge in 1945. Thus, the application is untimely by approximately more than 70 years.
3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.² 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”³ 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.”⁴
4. The applicant did not provide any compelling explanation for her father's failure to dispute the character of his discharge. However, the Board will excuse the untimeliness of the application because a cursory review of the merits shows that her father's service and discharge should have been characterized as fully honorable, instead of “under honorable conditions.” The record shows that he was processed for a medical separation due to somnambulism, which he had suffered from intermittently since he was 12 years old. Before his somnambulism became an issue, his performance marks were good and there is no evidence of any discipline or lower marks in his record. With the medical separation pending, he was sent home on terminal leave on October 12, 1945, and released from active duty when his leave ended on December 22, 1945. Therefore, the Board finds that his record should be corrected to show that he received an honorable discharge, and he should be issued an honorable discharge certificate.
5. Accordingly, the applicant's request should be granted.

(ORDER AND SIGNATURES ON NEXT PAGE)

¹ 10 U.S.C. § 1552(b).

² *Id.*

³ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁴ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

ORDER

The application for correction of the military record of LTJG [REDACTED], USCGR (deceased), is granted. The Coast Guard shall correct his record to show that he received an honorable discharge and shall issue an honorable discharge certificate for him and send it to the applicant, who is his daughter.

July 29, 2016

