

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-067

██████████
████████████████████

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 on March 25, 2015, upon receipt of the completed application, and assigned it to staff member ██████████ as required by 33 C.F.R. § 52.61(c).

This final decision, dated February 5, 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, a former hospital corpsman, third class (HM3) who served in the Coast Guard from January 20, 1969, to January 28, 1971, before being discharged due to a physical disability (psoriasis), asked the Board to correct his record to show that he was an HM2 at the time of his discharge. He also asked the Board to correct his record to show that he received a Unit Commendation from the U.S Navy.

In support of the applicant's request that his record be corrected to show that he was an HM2 at the time of discharge, he submitted a copy of his DD 214 which indicates that he was an HM3 at the time of his discharge but had completed the Coast Guard Institute's "Hospital Corpsman Second Class" course on April 18, 1970. He also submitted a copy of a letter he received from the Commanding Officer of the U.S. Coast Guard Institute certifying his completion of the course.

In support of the applicant's request for a Unit Commendation from the Navy, he submitted a copy of a Meritorious Unit Commendation citation issued by the Secretary of the Navy to "TASK FORCE 43" citing the unit's meritorious service while participating in Operation Deep Freeze in support of the United States scientific program in Antarctica from August 22, 1969, to March 10, 1971.

Regarding the lengthy delay in submitting his application, the applicant stated that he discovered the errors in his record in January 2015, and although he was discharged in 1971, he

argued that it is in the interest of justice to consider his application because he never “paid attention to the errors” until the Department of Veterans Affairs (DVA) asked him for a copy of his DD 214.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on January 20, 1969, for a term of four years and after recruit training he completed the Hospital Corpsman (HM) “A” School¹ on August 7, 1969. He attended the Hospital Corpsman Clinical Experience Course from August 14, 1969, to October 10, 1969.

On November 24, 1969, the applicant was assigned to temporary assigned duty (TAD) aboard the CGC [REDACTED] and remained on the cutter through January 16, 1970.

On April 18, 1970, the applicant completed the Coast Guard Institute’s Hospital Corpsman Second Class course.

On July 15, 1970, the applicant’s commanding officer recommended that the applicant be advanced to HM2 and requested that he be allowed to take the servicewide exam (SWE) for advancement on September 15, 1970.

On August 13, 1970, the applicant’s unit sent a memorandum to the Commandant stating that the applicant had been diagnosed with generalized psoriasis and would probably be referred to a formal medical board for evaluation.

On September 8, 1970, a Coast Guard Central Physical Evaluation Board determined that the applicant was fit for duty. However, the applicant objected and requested a formal hearing.

On October 29, 1970, the applicant was represented by counsel before a Formal Physical Evaluation Board (FPEB), which found that the applicant was unfit to perform the duties of his rating by reason of physical disability (psoriasis). The FPEB stated that the disability might be of a permanent nature and recommended that the applicant be placed on the temporary disabled retired list.

On October 30, 1970, the president of the FPEB sent a report to the Commandant with the FPEB’s recommendations. The report was forwarded for review by the Physical Review Council.

On December 14, 1970, the applicant’s command sent a message to the Commandant citing “HQ ADV AUTH 17-70” and stating that the applicant’s “advancement to HM2 not effected. Pending action by Physical Review Council on Formal PE Board.”

On December 17, 1970, the Commandant sent a letter to the applicant notifying him that the Physical Review Council had disagreed with the findings of the FPEB and recommended that

¹ “A” School is the Coast Guard’s advanced training school where members are trained in their chosen specialty (rate). Class “A” schools range in length from five weeks to five months, depending on the career field.

he be separated with severance pay at 10% because the applicant's psoriasis was responding to treatment. The applicant signed this letter, indicating that he had reviewed the substitute findings of the Physical Review Council and concurred with them.

On December 23, 1970, the Commandant of the Coast Guard sent a message to the applicant's command stating that the part of HQ ADV AUTH 17-70 that authorized the applicant's advancement to HM2 had been canceled.

On January 22, 1971, the Commandant of the Coast Guard sent a message to the applicant's command directing that he be separated from the Coast Guard with severance pay in accordance with Article 12-B-9 of the Coast Guard Personnel Manual. The message states that the highest rating held by the applicant during his service was HM3.

The applicant was honorably discharged on January 28, 1971, after serving two years and nine days of active service, and his DD 214 indicates that he was discharged due to a physical disability pursuant to Article 12-B-9 of the Coast Guard Personnel Manual. His DD 214 indicates that he was an HM3 at the time of his discharge and had received the Antarctic Service Medal and the National Defense Service Medal.

On September 6, 1973, the applicant submitted a request to correct the Place of Entry into Current Active Service on his DD 214 from [REDACTED]. In response, the Coast Guard issued a DD 215 making the correction to his DD 214.

VIEWS OF THE COAST GUARD

On September 11, 2015, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant partial relief. In so doing, he adopted the findings and analysis provided in a memorandum, dated July 20, 2015, signed by the Commander, Personnel Service Center (PSC).

PSC argued that the application is untimely because the applicant was discharged in 1971 and that the Board should not consider the application beyond a cursory review because the applicant did not provide sufficient justification for the lengthy delay in filing his application. With regards to the applicant's claim that he should have been an HM2 upon discharge, PSC argued that his current record is correct because although he completed the Hospital Corpsman Second Class course on April 18, 1970, he was found unfit for duty on October 30, 1970, by a the FPEB and his advancement to HM2 was therefore canceled on December 23, 1970. Accordingly, PSC argued, the highest rank he held at the time of his discharge on January 28, 1971, was HM3 and his DD 214 is correct.

Regarding the applicant's claim that he is entitled to a Unit Commendation from the U.S. Navy, PSC stated that the applicant is qualified for the Navy Meritorious Unit Commendation because he served aboard the CGC Glacier (part of Task Force 43) during a period for which the Navy Meritorious Unit Commendation was awarded. PSC recommended that that the applicant's DD 214 be corrected to show that he received the Navy Meritorious Unit Commendation.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 17, 2015, the Chair mailed the applicant a copy of the advisory opinion and invited him to submit a written response within 30 days. The applicant responded on October 11, 2015, and disagreed with the Coast Guard's argument that he was not an HM2 upon discharge.

In his response, the applicant stated that it was not until January 2015 that he noticed in his old Coast Guard paperwork that his recommended date of advancement to HM2 was prior to the determination of his medical status and discharge for a physical disability. He stated that he continued to serve on duty as a hospital corpsman in the dispensary while being evaluated by the FPEB. He argued that he earned the HM2 title "in a timely and honorable manner" and simply wants his record corrected as a matter of pride.

APPLICABLE POLICY

Article 5-C-1(e) of the Coast Guard Personnel Manual issued in 1967, states that personnel may be advanced through the SWE and recommendation of the commanding officer. The SWE for advancement to pay grades E-4 through E-6 are normally conducted semi-annually in March and September.

Article 5-C-2(5) of the manual states that commanding officers are responsible for determining the advancement eligibility of each member.

Article 5-C-12(a) of the manual states that personnel awaiting action of a physical evaluation board may participate in the SWE but may not be advanced in rate until they have been returned to or restored to full duty.

Article 3.A.13.e.2. of the current Coast Guard Enlisted Accessions and Advancements Manual states that personnel who have been declared unfit for duty by the Commandant's final action on physical disability retirement and separation procedures are ineligible for participation in the SWE competition.

Enclosure (8) to the Coast Guard Medals and Awards Manual states that the Navy Meritorious Unit Commendation is available to members who served on Task Force 43 aboard any one of four cutters, including the CGC Glacier, between December 24, 1969, and April 6, 1970.

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. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.² The applicant was discharged and received his DD 214 on January

² 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

28, 1971, but did not submit his application until 2015. All of his separation paperwork refers to him as an HM3, not an HM2. Therefore, while the applicant may have forgotten the circumstances of his canceled advancement and discharge as an HM3 in the interim, the Board finds that the preponderance of the evidence shows that he knew of the alleged error regarding his rate in his record in 1971, and this claim is untimely.

2. The Board may excuse the untimeliness of claim 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

3. Regarding the delay of his request, the applicant alleged that he did not discover the error in his rate until recently when he happened to take a look at his Coast Guard record while retrieving it for the DVA. The Board finds that his explanation for his delay is not compelling because he knew his rate at the time of his discharge and failed to show that anything prevented him from seeking correction of the alleged error more promptly.

4. A cursory review of the merits of this case indicates that the applicant’s claim that he should have been advanced to HM2 prior to his discharge cannot prevail. The record shows that sometime after he took the SWE for advancement to HM2 on September 15, 1970, Coast Guard Headquarters issued Advancement Authorization 17-70, which is not in the record. The date of the authorized advancement is unknown, but on December 14, 1970, the applicant’s command notified Commandant that it had not effected the applicant’s advancement because of the pending action by the Physical Review Council, and on December 23, 1970, Headquarters canceled the authority to advance the applicant. The cancellation of the pending advancement is presumptively correct, and the applicant has submitted nothing to prove that the cancellation was improper under the regulations in effect in December 1970. Article 5-C-12(a) of the Personnel Manual states that personnel awaiting action of a physical evaluation board may participate in the SWE but may not be advanced in rate until they have been returned to or restored to full duty. While the applicant may have been performing duty during this period, he had been found unfit for duty by the FPEB on October 29, 1970, and later by the Physical Review Council as well, which means that he was not returned or restored to full duty status prior to his discharge. Therefore, the record indicates that the cancellation of his advancement was not erroneous or unjust, and the Board finds no grounds for excusing the untimeliness of this claim.

5. With regard to the applicant’s request for a Navy Meritorious Unit Commendation, however, because the applicant left the CGC [REDACTED] before the commendation was awarded to the unit, he may not have known he had received it until he recently reviewed his record. Moreover, the evidence of record reveals that he is entitled to the commendation and that

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).

his DD 214 erroneously fails to show it. Therefore, the Board finds that even if this request is untimely, which is not clear, it is in the interest of justice to excuse the untimeliness of the applicant's request for the commendation. In addition, the Board finds that the applicant is eligible to receive the Navy Meritorious Unit Commendation because he was assigned to duty aboard the CGC [REDACTED] during a period for which the commendation was authorized. He was assigned to the CGC [REDACTED] from November 25, 1969, through January 16, 1970, and Enclosure (8) to the Medals and Awards Manual states that the Navy Meritorious Unit Commendation was authorized for members who served on Task Force 43 aboard any one of four cutters, including the CGC [REDACTED] between December 24, 1969, and April 6, 1970.

6. Accordingly, the Board will not excuse the application's untimeliness or waive the statute of limitations with respect to the applicant's claim that he should have been discharged as an HM2, and his request to have his record corrected to show that he was an HM2 at the time of discharge should be denied. But the applicant's request to have his record corrected to show that he is eligible to receive the Navy Meritorious Unit Commendation should be granted.

(ORDER AND SIGNATURES APPEAR ON NEXT PAGE)

ORDER

The application of former [REDACTED] [REDACTED] [REDACTED], USCG, for correction of his military record is granted in part as follows: The Coast Guard shall correct block 24 of his DD 214 to show that he was awarded a Navy Meritorious Unit Commendation. All other requests for relief are denied.

February 5, 2016

