

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-195

██████████
██████████

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 4, 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 asked the Board to correct the discharge form DD 214 he received on November 26, 1954, to show that he was released from active duty into the Reserve as a radioman first class (RM1/E-6), instead of an RM2/E-5. The applicant stated that in 1953, he was serving aboard the USCGC ██████████ when the captain told him that if he reenlisted for another year on the ship, the captain would advance him to RM1. The applicant stated that the ship was very short-handed regarding RMs and the captain offered him the advancement as an inducement to stay. Therefore, he agreed to reenlist and served another year on the ship. The applicant alleged that he discovered the error in 2015.

SUMMARY OF THE RECORD

On November 27, 1951, the applicant enlisted on active duty in the regular Coast Guard as a seaman recruit/E-1. Following recruit training, he advanced to seaman apprentice/E-2 and attended RM "A" School for 24 weeks. While at school, he advanced to seaman/E-3 on May 16, 1952. He graduated and earned the RM designation on August 25, 1952. After "A" School, the applicant was assigned to Radio Station ██████████ for several months. He advanced to RM3/E-4 on a probationary basis on December 1, 1952.

In January 1953, the applicant was transferred from ██████ to the USCGC ██████. In August 1953, he was transferred again to the USCGC ██████. About a year later, on September 1, 1954, his advancement to RM3/E-4 was redesignated as “permanent.”

On September 10, 1954, the Commandant sent the Third District Commander a memorandum listing the names of nineteen members whose advancements had been authorized. The memorandum shows that the applicant’s advancement from RM3 to RM2 was authorized as of September 16, 1954. On September 16, 1954, the applicant advanced to RM2/E-5 while serving aboard the USCGC ██████.

The applicant’s DD 214 shows that he was released to inactive duty in the Reserve on November 26, 1954, as an RM2/E-5. It shows that his RM2 date of rank is September 16, 1954. His discharge was honorable and he had served 3 years, 2 months, and 13 days on active duty.

VIEWS OF THE COAST GUARD

On January 20, 2016, the Judge Advocate General 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 denying relief.

PSC stated that the application is not timely and there is no justification for the applicant’s delay. PSC stated that the applicant’s records clearly show that he was advanced to RM2/E-5 just a couple of months before he was released from active duty, and there is no record indicating that he was ever advanced to RM1/E-6. PSC noted that the applicant submitted no evidence to support his allegation and concluded that his request should be denied.

RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 2, 2016, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within thirty days. No response was received.

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 received and signed his DD 214 showing his rate as RM2/E-5 in 1954. Therefore, although he stated that he discovered the alleged error in his record in 2015, the preponderance of the evidence shows that the applicant knew the contents of his DD 214 and any error therein no later than his discharge in 1954. Therefore, his application is untimely.

¹ 10 U.S.C. § 1552(b).

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 his failure to timely complain about his rate on his DD 214, and the Board’s cursory review of the records shows that the RM2/E-5 rate on his DD 214 is not erroneous or unjust. The applicant’s records clearly show that he was authorized advancement to RM2/E-5 on September 16, 1954, just a couple of months before he was released from active duty, and there is no evidence that he was ever advanced to RM1/E-6. These records are presumptively correct,⁵ and the applicant has submitted nothing that contradicts them except his own statement.

5. Accordingly, the Board will not excuse the untimeliness of the application or waive the statute of limitations. The applicant’s request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

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).

⁵ 33 C.F.R. § 52.24(b).

ORDER

The application of former [REDACTED] USCG, for correction of his military record is denied.

July 29, 2016

