

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-122

████████████████████
████████████████

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the applicant's completed application on March 30, 2017, and assigned it to staff member ██████████ to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated November 9, 2017, 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 on September 25, 1972, asked the Board to correct his discharge form, DD 214, to show that he was discharged as a seaman (SN/pay grade E-3), instead of a seaman apprentice (SA/pay grade E-2).¹

The applicant claimed that he was put in "such a place in life" that he was unable to handle military life without fighting. He stated that he was degraded every day, called names, passed over for promotion, and taken to mast "over and over." At one of the applicant's duty stations, he claimed that of the fifty members in his unit, only two were African-American. He stated that both of them were constantly "degraded with name calling" and were even segregated at times. He stated that he would get called a name and would "lose it by fighting." The applicant explained that he would then get taken to Mast where he would "get busted down in rank/rate." He stated that he passed the seaman test but was passed over for promotion. He requested that the Board reinstate him to a seaman from a seaman apprentice. Regarding his delay in filing, he stated "I was younger th[e]n and I did get my reason why."

¹ Although the applicant indicated that he was discharged as an SA/E-2, he was actually discharged as an SR/E-1.

SUMMARY OF THE RECORD

The applicant enlisted as a seaman recruit (SR) in the Coast Guard on February 13, 1970, less than three months after his 17th birthday. After completing recruit training on May 1, 1970, he was advanced from SR to SA and assigned to an overseas unit. On October 5, 1970, he advanced from SA to SN.

The applicant was taken to mast and awarded non-judicial punishment (NJP) on March 17, 1971, for violation of the Uniform Code of Military Justice (UCMJ) Article 91 for “assaulting a superior petty officer who was in execution of his official duties.” He was awarded seven days’ restriction, seven days of extra duty, and reduction in rate from SN to SA. The reduction in rate was suspended for six months on condition of good behavior. On March 26, 1971, the rate reduction suspension was vacated due to misconduct.

On March 30, 1971, the applicant received NJP for violating UCMJ Article 128 on March 26, 1971, for “assaulting another member of the crew, of a lower rating than himself.” The applicant was awarded fourteen days’ restriction, fourteen days of extra duty, and reduction in rate. The reduction in rate was suspended for six months on condition of good behavior.

During the summer of 1971, the applicant was assigned to a stateside shore unit. On September 27, 1971, he advanced from SA to SN.

On December 13, 1971, the applicant received NJP for violating UCMJ Article 86 for failure to report for his watch and being absent without authorization for less than twenty-four hours. He was awarded restriction for seven days.

The applicant again received NJP on June 27, 1972, for violating UCMJ Article 92 for “having knowledge of a lawful order...to clean scullery machine, which he failed to obey.” He was awarded restriction for four days.

On July 24, 1972, the applicant’s commanding officer (CO) sent a message to the District’s Medical Office regarding the applicant. The message stated that the applicant had reported twenty minutes late on April 18, 1972, and so he had been charged one extra day of leave. The applicant “frequently arrived late, indicating automobile trouble.” He did not receive NJPs for these instances. The CO noted that before reporting to the command, the applicant had received four NJPs for UCMJ violations “ranging from assaulting a superior officer to arriving late for assigned watches.” He had received one NJP at this command for failure to obey a lawful order. At the time this message was written, two additional charges were pending for violation of UCMJ Article 86, for being absent from his place of duty. The CO noted that his “department head is totally dissatisfied with [his] work.”

The applicant received NJP on August 4, 1972, for three counts of violating UCMJ Article 86 for absencing himself from his place of duty on July 18, 1972, July 20, 1972, and August 3, 1972. He pled guilty to all three counts and was awarded restriction for fourteen days and reduction in pay grade from SN to SA.

The applicant called his command on August 11, 1972, while he was in an absentee status and inquired as to “when his discharge papers would be ready.” The Executive Officer informed the applicant that he would not recommend an administrative discharge until he returned to the Coast Guard.

On August 14, 1972, the applicant willingly returned to his command after being absent without leave since August 4, 1972.

On September 8, 1972, the applicant received a Summary Court-Martial conviction for violating UCMJ Article 86, absent without proper authority; Article 92, failure to obey an order; and Article 134, breaking restriction. He was awarded 20 days of confinement at hard labor, a \$75 fine, and reduction in rate to SR.

Also on September 8, 1972, a Personnel Action Sheet was entered into the applicant’s record indicating his various unauthorized absences from that command, which were from August 4 to 13, 1972; August 16 to 31, 1972; and September 8 to 21, 1972.

On September 11, 1972, the applicant was notified by his CO that a Medical Officer had recommended that the applicant be administratively discharged for unsuitability due to immaturity. The applicant acknowledged the notification and declined to submit a statement. He was discharged in the rate of SR by reason of unsuitability on September 25, 1972, after serving for two years, six months, and three days. He originally received a general discharge, but it was later upgraded to honorable.²

The applicant requested a copy of his records in 1979, stating that he needed documentation of his sea time. This request was fulfilled on June 12, 1979. He also requested a copy of his records on February 8, 1991, stating that he needed a copy of his military and medical records. This request was fulfilled on May 3, 1991.

VIEWS OF THE COAST GUARD

On August 29, 2017, the Judge Advocate General (JAG) of the Coast Guard recommended that the Board deny relief in this case. The JAG noted that the applicant did not deny any of his misconduct but instead argued that his misconduct resulted from his unfair treatment. The JAG argued that even if there was evidence of the applicant’s poor treatment, “it would not excuse him to go on unauthorized absences or to assault other members of his unit.” In addition, the JAG stated that the applicant’s claim is barred by the doctrine of laches. In recommending that the Board deny relief, the JAG adopted the findings and analysis provided in a memorandum submitted by the Personnel Service Center (PSC).

² The applicant’s discharge was upgraded to an honorable discharge on May 18, 1978, in lieu of a general discharge pursuant to a decision from the Special Discharge Review Board. His discharge was reviewed after President Carter implemented a plan for review of “the discharge of certain Vietnam era personnel.” The applicant “met one or more of the criteria for upgrade” and his discharge was therefore upgraded.

PSC stated that the application is untimely and should be denied on that basis. However, regarding the merits of the case, PSC stated that in light of the applicant's numerous unauthorized absences, NJPs, and a Summary Court-Martial, the applicant's reduction in rate was appropriate. PSC argued that the applicant's discharge is presumptively correct and that there is no error or injustice in the applicant's record.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 7, 2017, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited a response 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 date the applicant discovers the alleged error in his record.³ The applicant was discharged in 1972 and knew that he had been reduced in rate at that time. In addition, he has requested his records at least twice since being discharged. Therefore, his application was not timely filed.
3. 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 (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."⁴ 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."⁵
4. The applicant did not justify his long delay in requesting correction of his record. The Board's cursory review indicates that the applicant's case cannot prevail on the merits. The record shows that he was discharged as an SR after multiple NJPs and a Summary Court-Martial conviction for repeated unauthorized absences. The applicant received an honorable discharge despite his offenses and abbreviated service, and the Board finds insufficient grounds in the record to justify reversing his reduction in rate.
5. Accordingly, the Board will not excuse the application's untimeliness or waive the statute of limitations. The applicant's request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

³ 10 U.S.C. § 1552; 33 C.F.R. § 52.22.

⁴ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁵ *Id.* at 164-65; see *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

ORDER

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

November 9, 2017

