


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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-097


SS2 (former)

FINAL DECISION

This is a proceeding under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on March 16, 2019, and assigned the case to the Deputy Chair to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated March 20, 2020, 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 Subsistence Specialist who was honorably discharged from the Coast Guard on July 23, 1978, asked the Board to correct his DD-214 by upgrading his rank from Subsistence Specialist Second Class (SS2; pay grade E-5) to Subsistence Specialist First Class (SS1; pay grade E-6).

The applicant alleged that on January 1, 1978, he was advanced to SS1. However, his DD-214 shows that he was discharged as an SS2 in pay grade of E-5.

The applicant stated that he discovered the alleged error on his DD-214 on February 13, 2019. In response to the delay in applying to the Board, the applicant stated: "I feel that I should be receiving what I did accomplish while I served with honor."

SUMMARY OF THE RECORD

The applicant enlisted as a Seaman Recruit (E-1) in the Coast Guard on July 24, 1972. Upon completing recruit training, he advanced to Seaman Apprentice (E-2) and was enrolled in "A" School to become a Subsistence Specialist. On February 23, 1973, the applicant advanced from Seaman Apprentice to Seaman (E-3). On August 1, 1973, upon graduating from SS "A" School, the applicant advanced to SS3 (E-4). On April 1, 1975, he advanced to SS2 (E-5).

On a decorative certificate dated January 1, 1978, which the applicant submitted, the Group Commander appointed him to SS1. On an undated Achievement Sheet (CG-3303), the applicant's advancement to SS1 was documented and signed by the Lieutenant Deputy Group Commander. However, that entry was subsequently struck out in red ink and signed again by the same officer.

On January 12, 1978, the applicant's commanding officer (CO) sent Coast Guard Headquarters a request to withhold the applicant's advancement to SS1. The CO stated that the applicant did not meet the obligated service requirements for advancement because his enlistment was to expire on July 23, 1978. According to the obligated service requirements, the applicant was required to remain on active duty for at least one year from the date of his advancement. The CO stated that the applicant did not intend to extend his enlistment.

On January 13, 1978, a message to the applicant's command confirmed that his advancement to SS1 had been canceled and that his name had been removed from the September 1977 SS1 advancement eligibility list.

On February 28, 1978, an Administrative Remarks form ("Page 7") advised the applicant that he was recommended for reenlistment. The form noted that he did not intend to reenlist. The applicant's rate was listed as SS2.

On March 10, 1978, the applicant signed a Report of Medical Examination form. The applicant's rate was listed as SS2 and his pay grade was listed as E-5.

On May 9, 1978, the applicant signed a Personnel Action form (CG-3312A) that stated that he was to be honorably discharged due to the expiration of his enlistment. The form noted that he was recommended for reenlistment. The applicant's rate was listed as SS2.

On June 30, 1978, the applicant's marks were documented on a Marks form (CG-3306). On this entry, the applicant's rate was listed as SS2.

On July 23, 1978, the applicant signed a Page 7 stating that he was to be honorably discharged that same day after six years of service. It informed the applicant that he had three months to reenlist in order to remain in a continuous service status. His rate was listed as SS2.

On July 23, 1978, the applicant signed a Security Acknowledgement/Termination Statement form (CG-3326) and a Termination of Health Record form, both of which listed his rate as SS2.

Also on July 23, 1978, the applicant received two letters. The first letter contained important information about his separation from the Coast Guard. The second letter stated that he could request a separation document indicating the narrative reason for his separation. The letters were addressed to "SS2 [applicant's name] [applicant's social security], USCG". The applicant responded that same day requesting the separation document. The letter was addressed from "SS2 [applicant's name] [applicant's social security], USCG". Later that day, the applicant received the separation document with the narrative reason for his separation. The letter was addressed to "SS2 [applicant's name] [applicant's social security], USCG".

On July 23, 1978, the applicant was honorably discharged from the Coast Guard. His DD-214, which he signed, shows a rank of SS2 and a pay grade of E-5.

VIEWS OF THE COAST GUARD

On August 20, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC stated that the application is untimely. PSC also stated that the application should be denied because the applicant did not demonstrate an error or injustice in not being advanced to SS1. According to PSC, the applicant was required to obligate one year of service in order to receive his advancement. Since the applicant did not want to reenlist, he remained a SS2 (E-5) until he was discharged.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 21, 2019, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. No response was received.

APPLICABLE LAW AND POLICY

Article 5.C.25.C. of the Coast Guard Personnel Manual in effect in January of 1978 discusses the procedure for cancelling an advancement:

If at any time prior to effecting an advancement a commanding officer wishes to withdraw his recommendation because an individual has failed to remain eligible and it appears that eligibility will not be attained prior to expiration of current eligibility list, the commanding officer shall advise the Commandant (G-PE) to remove the individual's name from the eligibility list. When the commanding officer notifies the Commandant that he has withdrawn his recommendation, he shall state his reasons for the action and include a statement that the individual understand the reason his/her name will be removed from the eligibility list. This notification is not for the purpose of a review of the commanding officer's decision, but rather to allow for orderly personnel and financial planning by the Commandant. The only review of the commanding officer's decision under paragraph (b) or (c) of this Article would be a complain under Article 138 UCMJ.

Article 5.C.25.D. of the Coast Guard Personnel Manual in effect in January of 1978 discusses the obligated service requirement for advancement in relevant part:

Personnel with less than 8 year's active Coast Guard service being advanced to pay grade E-6 will be required to remain on active duty for 1 year from date of advancement.

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 submission 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 after the applicant discovers the alleged error or injustice.¹ The record shows that the applicant signed his DD-214 stating that he was an SS2 in pay grade E-5 and was discharged on July 23, 1978. The applicant also signed several other official Coast Guard documents after his alleged advancement on January 1, 1978, that clearly identified his rate as SS2. Therefore, although the applicant alleged that he did not discover the error on his DD-214 until February 13, 2019, the preponderance of the evidence shows that he knew of the alleged error in his record in 1978. The applicant did not submit his application to the Board until March 16, 2019. Therefore, the Board finds the application is untimely.
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 Pursuant to these requirements, the Board finds the following:
 - a. The applicant waited more than forty-one years to submit an application to the Board. The applicant provided no reasonable explanation for his delay in seeking advancement to SS1/E-6 and no compelling argument that is in the interest of justice for the Board to excuse his delay.
 - b. A cursory review of the merits of this case shows that the applicant’s claim lacks potential merit. The disputed record is presumptively correct,⁵ and the record contains no persuasive evidence that substantiates his allegations of error or injustice in his official military record. The record shows that on January 1, 1978, the applicant was appointed to SS1/E-6 even though he did not meet the obligated service requirements by agreeing to serve at least one more year on active duty. The applicant was to be discharged on July 23, 1978, and he was authorized to but did not reenlist. Therefore, the Board finds that the Coast Guard did not commit an error by cancelling the applicant’s advancement.
4. Accordingly, the Board will not excuse the application’s untimeliness or waive the statute of limitations to conduct a thorough review of the merits. The applicant’s request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

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

² 10 U.S.C. § 1552(b).

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); see *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties “correctly, lawfully, and in good faith.”).

ORDER

The application of SS2 [REDACTED], USCG, for correction of his military record is denied.

March 20, 2020

