

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2019-053**

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SR (former)

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**FINAL DECISION**

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. 2507. The Chair docketed the case on November 1, 2018, after receiving the application and military records, and prepared the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated November 22, 2019, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT’S REQUEST, ALLEGATIONS, AND EVIDENCE**

The applicant, who was discharged from the Coast Guard in 1985, asked the Board to correct his record to ensure that he receives “transportation pay from ██████████ or leave pay if I am due this money.” To support his request, the applicant submitted a copy of his DD 214, which shows that he served on active duty from November 18, 1982, to August 30, 1985, and received a general discharge for misconduct (drug abuse). It also shows that he was born in ██████████ that his Home of Record when he enlisted was ██████████ that his place of enlistment was ██████████; and that he was stationed in Boston, Massachusetts, when he was discharged.

The applicant’s DD 214 also states that he had been paid for 68 days of accrued leave (although 60 days is the statutory total allowed). But a Personnel Action form issued on August 20, 1985, states that he would receive a general discharge for misconduct on August 30, 1985, and includes the following notes:

- 60.0 Total NBR DYS LUMP SUM LV
- NBR DYS LUMP SUM SLB ENTITLED
- 60.0 NBR DYS LUMP SUM NON-SLB ENTITLED
- NOT ENTITLED TO MALT [mileage allowance in lieu of transportation]. MEMBER IS SUBJECT TO REIMBURSEMENT NOT TO EXCEED COST TO GOVERNMENT BY LEAST COSTLY MODE OF TRANSPORTATION.

The applicant alleged that he discovered these errors in his record in October 2017.

### **VIEWS OF THE COAST GUARD**

On May 22, 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. In making this recommendation, the JAG adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC noted that the case is untimely and stated that the applicant's records show that he was paid for 60 days of leave in a lump sum. From the applicant's record, PSC submitted a copy of a Leave and Earnings Statement dated August 30, 1985, which states, "PAID THIS DATE \$1240.80 FOR (60.0) DAYS UNUSED LEAVE."

Regarding the applicant's claim that he is owed transportation pay from [REDACTED] PSC stated that the current Joint Travel Regulations at 051002, paragraph J, state that a member who is discharged after having served less than 90% of his initial enlistment may receive no per diem for travel. PSC stated that the applicant enlisted for 4 years on November 18, 1982, and was discharged 2 years, 10 months, and 13 days later, on August 30, 1985. Therefore, he did not complete 90% of his enlistment and was not entitled to per diem while traveling home.

PSC stated that the applicant was entitled to reimbursement for his transportation by the least costly mode available, as noted on the Personnel Action form he submitted. But because his travel occurred in 1985, "there is no way to verify if a payment was ever made or submitted by the applicant."

### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On May 23, 2019, the Chair sent the applicant a copy of the views of the Coast Guard and invited her to respond. 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 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 submitted within three years of the applicant's discovery of the alleged error or injustice in her record.<sup>1</sup> Although the applicant claimed that he discovered the alleged errors in 2017, he was discharged in 1982 and must have known at that time whether he had been paid for his unused leave and whether he had been reimbursed for his travel home. The preponderance of the evidence shows that the applicant's request is untimely.

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<sup>1</sup> 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.<sup>2</sup> 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”<sup>3</sup> 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.”<sup>4</sup> Pursuant to these directions, the Board finds the following:

a. The applicant has not justified his very long delay in requesting leave pay and transportation pay.

b. A cursory review of the merits of this case shows that the applicant’s claim lacks potential merit. His record contains a pay statement showing that on his date of discharge, he was paid for 60 days of unused leave, which by law is the maximum number of days of leave one can sell. The record also indicates that he was not entitled to MALT or per diem for his trip home but was entitled to submit his receipt for transportation home by the least expensive means available. Whether he did so is unknown, and he has submitted no evidence to support his claim that he was denied reimbursement.

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.

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<sup>2</sup> 10 U.S.C. § 1552(b).

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

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

**ORDER**

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

November 22, 2019

