

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2019-018**

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MK2 (former)

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**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 on September 21, 2018, after receiving the applicant's completed application and military records, 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 December 20, 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 AND ALLEGATIONS**

The applicant, a former machinery technician (MK) who served in the Coast Guard reserve from 1979 to 1981, asked the Board to correct his record to show that he was an MK1 at the time of discharge and that he received the following medals during his enlistment:

- Humanitarian Service Medal (HSM)
- Expert Rifle medal
- National Defense Service Medal (NDSM)

The applicant stated that his "discharge documents" show that he was an MK1, but he did not submit these documents or anything showing his rate, rank, or pay grade at the time of his discharge. With respect to the medals that he requested, the applicant argued that he is eligible to receive the HSM for his participation in an operation called Mariel Boatlift<sup>1</sup> 1980.

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<sup>1</sup> The "Mariel boatlift" refers to a mass emigration of more than 125,000 Cubans from Mariel Harbor in Cuba to the United States from April to September 1980. According to the Coast Guard Aviation Association,

Key West was the primary departure and arrival point for the exile boats making the trip to Mariel and back. The SAR responsibility was along the coast out to 30 miles offshore. The group had quadrupled in size and operated and supported an imposing group of additional resources consisting of 110-foot, 95-foot and 82-foot patrol boats, and a large number of 41-foot utility boats. To assist with coastal rescue and surveillance, an HH-52A and two HH-3F Coast Guard helicopters were also assigned. As the tempo of operations continued to increase, with no let-up

In support of his application, the applicant submitted a copy of a form of the National Personnel Records Center (NPRC), which he completed by hand on February 8, 2018, to request a NDSM, the HSM, and the Rifle Marksmanship Ribbon w/E.

The applicant stated that he discovered the error on December 15, 1981, and argued that the Board should find it in the interest of justice to consider his application because he earned the rank and awards. He also stated that he contacted the Coast Guard about these issues in the past but never received an answer.

### SUMMARY OF THE RECORD

The applicant served in the Georgia National Guard from October 1964 to January 1970. His DD 214 for that service shows that he qualified as an expert with the M-14 rifle and was an E-5 at the time of his discharge.

On September 21, 1979, the applicant enlisted in the Coast Guard Reserve for two years as an MK2/E-5 in Training Category A. He was assigned to a Reserve unit in Georgia, which was part of the Seventh District, headquartered in Miami, Florida.

The applicant drilled regularly during his first and performed twelve days of annual training in March 1980. In August 1980, he received orders that involuntarily recalled him to active duty at Group Key West, Florida, from September 21 to 30, 1980, under the authority of 14 U.S.C. § 764.<sup>2</sup>

An Achievement Sheet (CG-3303) in the applicant's record shows that he passed tests to advance to MK1 in May and July 1980 and was advanced to MK1 on January 1, 1981, based on a letter from Headquarters dated February 12, 1981. This entry is signed by an ensign at the District Reserve unit in Miami "by direction."

A Statement of Creditable Service completed at Coast Guard Headquarters on March 18, 1981, refers to him as an MK2 and does not show his service in the Georgia National Guard.

On a Personnel Action form dated March 23, 1981, a chief yeoman at the District Reserve office adjusted the applicant's pay base date from September 21, 1973, to April 21,

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in sight, the Group Commander, burdened with increased responsibilities, needed assistance in coordinating and maintaining air assets at his disposal. ... On 25 September 1980 the Coast Guard Cutter *Point Thatcher* was patrolling north of Mariel. A look at the cutters radar screen showed a series of blips on the radar screen departing the harbor entrance. By the next morning it had been confirmed that none of the 58 boats carried refugees. The boat crews told the Coast Guard that they had been forced to leave by the Cuban government. The 159-day boatlift was over! ... The shortest distance between Mariel and a port in the United States was across the Florida Straits to Key West.

The Coast Guard Aviation Association, "1980 – Mariel Boatlift: U.S. Coast Guard Operations During the 1980 Cuban Exodus," available at <https://cgaviationhistory.org/1980-mariel-boatlift-u-s-coast-guard-operations-during-the-1980-cuban-exodus/> (last viewed December 19, 2019).

<sup>2</sup> The orders actually cite 15 U.S.C. § 764, but it does not apply to the Coast Guard.

1974. The chief yeoman referred to the applicant as an MK2.

On March 29, 1981, the applicant's Commanding Officer (CO) at his unit in Georgia sent a memorandum to Headquarters, through the District Reserve office, asking that the applicant's Retirement Point Statement be corrected to reflect his service in the Georgia National Guard and two periods of active duty training in the Coast Guard Reserve. The CO referred to the applicant as an MK1. Headquarters acknowledged receipt of this request and also referred to the applicant as an MK1. The applicant's Retirement Point Statement was corrected, but the form does not show the member's rate.

On April 28, 1981, the same ensign who had signed the Achievement sheet to show that the applicant had advanced to MK1 as of January 1, 1981, signed a Personnel Action form showing that the applicant had earned 2 points for completing a correspondence course and entered his rate on the form as MK2.

On a Personnel Action form dated May 26, 1981, the same ensign entered a qualification code in the applicant's record and referred to him as an MK2.

A Marks form in the applicant's record shows his rate as MK2 on his semiannual evaluation dated June 30, 1981, as well as on his separation from the Reserve on September 20, 1981. Each set of marks is signed by a lieutenant commander at the District Reserve office in Miami.

An Administrative Remarks form dated September 20, 1981, prepared by the District's Reserve office in Miami shows that the applicant was honorably discharged from the Coast Guard Reserve upon completion of his two-year enlistment. The form shows his rating as MK2.

A Personnel Action form dated September 20, 1981, and signed by a chief yeoman at the District's Reserve office in Miami shows that the applicant was honorably discharged upon the expiration of his enlistment on that date. It shows his rating as MK2.

The applicant's record also contains a copy of an NPRC form that the applicant completed and submitted online on February 8, 2018. It shows that he requested only the NDSM and the Rifle Marksmanship Ribbon w/E and not the HSM. The form shows that upon review, NPRC did not check a box to show that the applicant was entitled to those awards.

### **APPLICABLE LAW AND REGULATIONS**

Chapter 7-C of the Reserve Administrative Training Manual (RATMAN) in effect in 1981 included the rules for advancing from E-5 to E-6. Enclosure 7-5 to the RATMAN provides the general eligibility requirements to advance, which include having at least 12 months in pay grade; 48 drill points and 12 days of active duty training during the prior year; and 12 months in Training Category A. It also shows that there was no obligated service requirement to advance to E-6.

Enclosure 7-6 to the RATMAN lists the following procedures for advancing reservists to E-6 that following the Servicewide Examination for advancement:

- The CO of the Coast Guard Institute disseminates the advancement eligibility list;
- Commandant (Reserve Administrator) “shall automatically advance personnel and provide listing of those advanced to district commander (r)”;
- The District Commander (r) shall “[m]ake service record entry reflecting advancement. Advise units of those advanced”;
- The unit CO shall notify the District Reserve office immediately if the member is no longer recommended or eligible for the advancement.

Chapter 7-C-7 of the RATMAN provides the procedures for reducing a member in rate as a result of nonjudicial punishment (NJP), court-martial, incompetency, or erroneous advancement. Chapter 7-C-7a.(1)(d) states, regarding erroneous advancement, that a member may be immediately reduced in grade with no loss of pay if it is discovered that the member was advanced erroneously due to no fault of his own and solely as a result of an administrative error.” The RATMAN does not include any procedures required to reduce the rate of a member who was erroneously advanced.

Chapter 5.A.16 of the current Medals and Awards Manual states that the HSM may be awarded to members of the Armed Forces and their Reserve components who distinguish themselves as individuals or as members of units or ships by meritorious, direct, non-routine participation in a significant military operation of a humanitarian nature, subsequent to April 1, 1975. “Direct participation is defined as being physically present at the designated location, having directly contributed to and influenced action.” Enclosure 17 to the manual lists the operations for which the HSM is authorized. It does not include any operation named the Mariel Boatlift, but it does include the Cuban Refugee Relief Operation from April 21 to September 28, 1980.

Chapter 5.A.4 of the current Medals and Awards Manual states that the NDSM is awarded to personnel under the following conditions:

- (1) Honorable active service as a member of the Armed Forces for any period (inclusive) from 27 June 1950 to 28 July 1954; from 1 January 1961 to 14 August 1974; from 2 August 1990 to 30 November 1995; or from 12 September 2001 to a date to be determined by the Secretary of Defense. Only one award of the National Defense Service Medal may be authorized for each period of eligibility.
- (2) Any member of the Coast Guard Reserve who, after 31 December 1960, becomes eligible for the Armed Forces Expeditionary Medal or the Vietnam Service Medal must be considered to be performing active service for the purpose of eligibility for the National Defense Service Medal.
- (3) Members of the Selected Reserve in good standing who served for any period between 2 August 1990 and 30 November 1995, or from 12 September 2001 to a date to be determined by the Secretary of Defense will be eligible for the National Defense Service Medal. Any member of the Coast Guard Reserve, who, between 2 August 1990 and 30 November 1995, became eligible for the Southwest Asia Service Medal, will also be eligible for the award of the National Defense Service Medal.
- (4) Cadets attending the Coast Guard Academy during the above periods are eligible for this medal. Public Health Service members and the Chaplain Corps are also eligible.

(5) For purposes of this award, the following individuals are NOT eligible unless specifically included in the paragraphs above:

(a) Reserve personnel on short tours of active duty to fulfill training obligations under an inactive duty training program;

(b) Any person on temporary active duty to serve on boards, courts, commissions, and like organizations;

(c) Any person on active duty for the sole purpose of undergoing a physical examination;  
or

(d) Any person on active duty for purposes other than for extended active duty.

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

On May 17, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in accordance with a memorandum submitted by the Commander, Personnel Service Center (PSC). Both the JAG and the PSC argued that the application is untimely by nearly 38 years and noted that the applicant did not provide any justification for the untimeliness of his application for relief.

Regarding the merits, the Coast Guard argued that the applicant's request should be denied because his record does not contain any errors which require correction. Regarding his claim that he was an MK1 at the time of his discharge from the Coast Guard, the JAG admitted that there are some discrepancies in his record related to his advancement the MK1 but argued that "there are no documents rising to the level of preponderance of the evidence to establish that he was, in fact, advanced." Moreover, the JAG stated, the Coast Guard contacted the applicant asking for any documents he might have to show that he was advanced to MK1, but the only document he could produce was already in his record.

The Coast Guard argued that the applicant is not eligible to receive the HSM or the NDSM because there is nothing in the record to show that he is eligible for either medal. The JAG noted that the HSM was awarded to personnel who participated in the Cuban Refugee Relief Operations from April 21, 1980, to September 28, 1980, but there is nothing in the applicant's record to show that he participated in that operation. The JAG also noted that his record contains orders for the applicant to travel to Coast Guard Group Key West from September 20, 1980, to September 21, 1980, but that "it remains unclear if the operation [Mariel Boatlift] that the applicant believes makes him eligible is the same as in the manual." Regarding the applicant's request for the NDSM, the PSC argued that his records do not contain anything to show that he earned or was awarded the NDSM.

The JAG recommended that the Board deny the applicant's request for the Expert Rifleman Medal. The JAG stated that his record does not contain a CG Form 3029 (Small Arms Range Sheet) which is used to capture a member's score for qualification at a firing range; nor does it contain any other documentation verifying any of his range scores. The Coast Guard noted that the applicant was unable to provide any evidence other than his own assertion that he earned the rifle marksman ribbon.

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

On May 22, 2019, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. The Board did not receive a response.

### FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on 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.<sup>3</sup> The applicant was discharged on September 20, 1981, and stated that he has known about the alleged errors in his record since December 1981. Therefore and because he did not submit his application to the Board until February 13, 2018, the Board finds that his application is untimely.
3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.<sup>4</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>5</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>6</sup> Although the applicant in this case long delayed filing the application, the Board's cursory review of the evidence of record reveals two significant errors in his record. Therefore, the Board finds that it is in the interest of justice to excuse the untimeliness of the application.
4. The Achievement Sheet signed by a Seventh District Reserve officer shows that the applicant was advanced to MK1/E-6 effective as of January 1, 1981, in accordance with a letter from Commandant dated February 12, 1981. The applicant's CO explicitly acknowledged this advancement by referring to the applicant as an MK1 when he asked Coast Guard Headquarters to revise the applicant's most recent Retirement Points Statement on March 29, 1981. And there is no documentation of a reduction in rank in the applicant's records. Therefore, although other personnel forms, including the forms documenting his discharge, referred to the applicant as an MK2, the Board finds that the preponderance of the evidence shows that the applicant had been advanced to MK1 and was still an MK1 upon his honorable discharge on September 20, 1981.

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<sup>3</sup> 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

<sup>4</sup> 10 U.S.C. § 1552(b).

<sup>5</sup> *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

<sup>6</sup> *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

5. The preponderance of the evidence also shows that the applicant is entitled to an HSM for his participation in the Cuban Refugee Relief Operation—also known as the Mariel Boatlift—in September 1980. The record shows that in August 1980 the Coast Guard issued orders that involuntarily recalled him to active duty and sent him to Group Key West for ten days in September 1980 under the authority of 14 U.S.C. § 764. At the time, that statute authorized members of the Reserve to be called up for emergency augmentation of the regular forces in times of serious natural or manmade disasters, accidents, or catastrophes. The only such event occurring at the time in and around Group Key West was the Cuban Refugee Relief Operation. Therefore, the Board finds that he is entitled to the HSM.

6. Although the applicant requested an NDSM, he was not a member of the Coast Guard during any of the periods for which this medal has been awarded, as listed in Chapter 5.A.4. of the Medals and Awards Manual. Therefore, this request should be denied.

7. The applicant asked that his Coast Guard record be corrected to show that he received an Expert Rifle medal, but there is no evidence that he received this medal while in the Coast Guard. His DD 214 from the Georgia National Guard shows that he qualified as an expert with the M-14 rifle, and if he had qualified to receive a DD 214 from the Coast Guard, his prior service medals would be included on it,<sup>7</sup> but the applicant did not receive a Coast Guard DD 214 because he never performed 90 consecutive days of service.

8. Accordingly, partial relief should be granted by correcting the applicant's record to show that he was an MK1/E-6 upon his date of discharge and that he is entitled to wear the HSM. His other requests should be denied.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

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<sup>7</sup> COMDTINST M1900.4B, the instruction for completing DD 214s in effect in 1981, states that block 13 of a DD 214 shall include “all decorations, medals, badges, commendations, citations, and campaign ribbons awarded or authorized for all periods of service.”

**ORDER**

The application of former MK2 [REDACTED], USCGR, for correction of his military record is granted in part as follows:

- The Coast Guard shall correct his record to show that he was an MK1/E-6 when he was discharged from the Reserve on September 20, 1981.
- The Coast Guard shall correct his record to show that he is entitled to wear the Humanitarian Service Medal for his participation in the Cuban Refugee Relief Operation in September 1980.

His other requests for relief are denied.

December 20, 2019

