

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 2000-007

FINAL DECISION

Chairman:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The application for correction was received on October 7, 1999, and the case was docketed on February 3, 2000, upon the BCMR's receipt of the applicant's military records.

This final decision, dated October 26, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

REQUESTED RELIEF

The applicant was discharged from the Coast Guard on January 5, 1944 after nine months and 25 days of creditable service. He was discharged with an Ordinary Discharge under Honorable Conditions due to a physical disability that was not service connected (i.e. that existed prior to service).

The applicant alleges that his disabilities (specifically a "nervous disorder" and "stomach problems") were in fact service connected.

VIEWS OF THE COAST GUARD

On July 31, 2000, the Board received the Coast Guard's views as to the current application.

The Coast Guard recommended that the application be denied as untimely on the ground that it was filed more than three years after the applicant discovered or reasonably should have discovered the alleged error or injustice. 10 U.S.C. § 1552; 33 CFR § 52.22. According to the Coast Guard, the applicant's application was "untimely by approximately 50 years," and the applicant provided no justification for that delay.

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The Coast Guard also said that the applicant suffered medical disabilities before he enlisted. "On 23 November 1943, Applicant was diagnosed with mixed psychoneurosis and pylorospasm, reflux. It was determined that Applicant suffered from those conditions prior to entering the service."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

The Board sent a copy of the views of the Coast Guard to the applicant on August 2, 2000, with an invitation to him to submit a response within 15 days. No response was received from the applicant. The views of the Coast Guard were sent to the applicant at the address given in his application; the envelope was returned to the Board by the Postal Service marked "not deliverable as addressed."

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 submission, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code.

2. Section 1552(b) of the United States Code provides that a claim for correction of a military record shall be made within three years after the discovery of an alleged error or injustice, unless the Board concludes that it is in the interest of justice to waive untimeliness and adjudicate the application on the merits.

3. An application for correction of the applicant's discharge was received by the BCMR more than 55 years after the date of the alleged error or injustice and more than 52 years after the expiration of the statute of limitations.

4. The applicant's justification for the 52-year delay was that he did not know the "Board existed." He made no effort to procure relief.

5. In 1992, the United States District Court for the District of Columbia said that the Board should conduct a "cursory review" of the merits of an application as part of its examination of the question of whether it was in the "interest of justice" to waive untimeliness and adjudicate the application on the merits. Allen v. Card, 799 F. Supp. 158 (D.D.C. 1992).

6. Cursory examination of the merits of this application indicates that it is not in the interest of justice to award relief to the applicant. The Coast Guard conducted a medical examination of the applicant and discovered preexisting nervous disorders.

7. The applicant has not alleged an error or injustice on the part of the Coast Guard that would warrant a grant of relief.

8. Accordingly, the application should be denied.

ORDER

The application to correct the military record of [REDACTED], USCG, is denied.

