

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-046

██████████
██████████

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 completed application on November 24, 2017, and assigned it to staff attorney ██████████ to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated August 17, 2018, 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 discharged after less than two months of service in 1995, asked the Board to correct his record by upgrading his characterization of discharge from uncharacterized to a medical discharge. He claimed that veterans' agencies "require a more specific condition." The applicant claimed that he discovered the alleged error in August 2017 because of the "Veterans Employment Guidelines."

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on December 19, 1995. On a Report of Medical Examination for the applicant's pre-enlistment physical on November 1, 1995, the doctor noted that the applicant had moderate pes valgus planus (flat feet) and sometimes felt pain in his knee when walking, but the applicant reported that the conditions were asymptomatic, and he was found fit for enlistment. Upon reporting to the training center, however, a dentist found that he was not dentally qualified for service and would need a waiver of his dental condition to be allowed to complete recruit training and serve on active duty.

Three days later, on December 22, 1995, the applicant filled out a Report of Medical History and wrote "I am currently in good health and am taking no medication." However, he also wrote that he was "having foot problems due to marching in issued boots" and that he had previously been rejected for service and was "advise[d] to have foot surgery and knees looked at."

On December 29, 1995, the applicant sought a “shaving chit.” The doctor noted that the applicant was not in the habit of shaving before he enlisted and had used clippers. Since shaving, he had developed folliculitis which caused irritated skin and a burning sensation. He was advised to shave only every fourth day and to use clippers in between.

On January 5, 1996, a medical note states, the applicant’s folliculitis was resolving, but he complained that he was having problems with his boots because they were too big and he was developing blisters. New boots were recommended for him.

On January 24, 1996, the applicant complained of back pain and was diagnosed with a muscle strain. On January 26, 1996, the applicant was found fit for full duty because his muscle strain had resolved.

On January 31, 1996, the applicant complained that he had hurt his knee while exercising. He was prescribed ice and ibuprofen and placed on limited duty for one day. At a follow-up appointment the next day, he reported that his knee was feeling much better and was not painful. The doctor found that his knee had a free range of motion and found him fit for full duty.

On February 2, 1996, a doctor noted that the applicant had corns on his feet, which were causing him pain.

On February 9, 1996, the applicant was found fit for duty and discharge. The doctor wrote that the applicant had “no complaints at present.” And the applicant signed this statement: “I deny any injury or illness at this present time.”

On February 13, 1996, the applicant was advised not to shave due to folliculitis.

The applicant was discharged on February 14, 1996, after one month and twenty-six days of active duty. He received an uncharacterized discharge, a JGA separation code, an RE-3L reentry code,¹ and his narrative reason for separation is “Entry Level Separation.”

VIEWS OF THE COAST GUARD

On April 19, 2018, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case. In doing so, he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC). PSC stated that the application is not timely and therefore should not be considered beyond a cursory review. PSC stated that uncharacterized discharges are authorized for members who are separated at the entry level who have fewer than 180 days of active duty service and exhibit minor pre-existing medical issues not of a disabling nature which do not meet the medical or physical standards for entry into the Coast Guard. The Commanding Officer (CO) of the Training Center has the authority to discharge recruits with an uncharacterized discharge and to assign a separation

¹ An RE-3L reentry code indicates that a member is eligible for reenlistment except for the fact that the member has already undergone one entry-level separation and therefore needs a waiver to reenlist.

code of JGA. PSC argued that the CO properly discharged the applicant and there was no error in processing the applicant's discharge or on his DD-214.²

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 30, 2018, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. No response was received.

APPLICABLE REGULATIONS

The Personnel Manual was in effect at the time of the applicant's discharge. Article 12.B.20.a.1.a. states that uncharacterized discharges are authorized for members who have "fewer than 180 days of active service on discharge" and exhibit poor proficiency, conduct, aptitude, or unsuitability or "minor pre-existing medical issues not of a disabling nature which do not meet the medical physical procurement standards in place for entry into the Service." Article 12.B.20.b. states that only the Commander (CGPC-epm-1) and the CO of the Training Center "have final authority to discharge a member under this Article." Article 12.B.20.g. lists the codes which may be used with uncharacterized discharges. JGA is listed as one of those codes.

According to the Separation Program Designator Handbook, when the JGA separation code is used, the reason for separation to be used is "Entry Level Performance and Conduct." This code is used when there have been performance, conduct, or adaptability deficiencies.

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.³ The applicant was discharged in 1996, when he received and signed his DD 214 showing an uncharacterized character of service. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 1996, and 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.⁴ 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"⁵ to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted that "the longer the delay

² A DD 214 is prepared to document a member's release or discharge from a period of active duty.

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

⁴ 10 U.S.C. § 1552(b).

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

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.”⁶

4. Regarding the delay of his application, the applicant claimed that he discovered the alleged error in 2017. The Board finds that the applicant’s explanation for his delay is not compelling because he received and signed his DD 214 showing the uncharacterized character of service in 1996 and he failed to show that anything prevented him from seeking correction of the alleged error or injustice more promptly.

5. A cursory review of the merits of this case indicates that his claim cannot prevail. The record shows that before he enlisted, the applicant was diagnosed with flat feet and admitted to having some knee pain while walking. In addition, he was found not to be dentally qualified for service and was advised that a waiver would be needed to allow him to complete recruit training. While at the training center, the applicant was seen by the medical staff with complaints of blisters and corns on his feet, a muscle strain in his back, and folliculitis resulting from shaving. The reason for the applicant’s discharge is not clear in the record, but his uncharacterized discharge and JGA code are presumptively correct,⁷ and there is no evidence that he was disabled at the time of his discharge. The applicant acknowledged by signature on February 9, 1996, at his pre-separation physical examination that he had no injury or illness. According to the SPD Handbook, the JGA code is issued to recruits who, for various reasons, fail to adapt to military life. Therefore, the assignment of the JGA codes indicates that the CO of the training center found that the applicant was not adapted to military life. The applicant has submitted no evidence showing that his uncharacterized discharge was incorrect or unjust. Based on the record before it, the Board finds that the applicant’s claim cannot prevail on the merits.

6. 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)

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

⁷ 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 former [REDACTED] USCG, for correction of his military record is denied.

August 17, 2018

