

**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. 2018-157**

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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. § 425. The Chair docketed the case after receiving the completed application on June 12, 2018, and prepared the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated March 8, 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 alleged that he is being deprived of benefits that he is entitled to as a veteran of the Coast Guard who received an honorable medical discharge. He alleged that he discovered the error in May 2001 and that it is in the interest of justice for the Board to consider his claim because he had just been advised to complete and submit his application form.

**SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard on February 4, 1972, and was honorably discharged just 26 days later on February 29, 1972. He was 21 years old. His DD 214 and other records state that he was discharged because of a physical disability that had pre-existed his enlistment.

A Report of Medical Board dated February 22, 1972, explains that during the applicant's original pre-enlistment physical examination on January 18, 1972, he was found qualified for enlistment because he met the medical standards for enlisting in the Army. After the applicant enlisted in the Coast Guard on February 4, 1972, however, he was referred to an Ophthalmology Clinic, where his eyesight was found to be 20/400+ in his right eye and 20/400+ in his left eye. Although his eyesight was correctible to 20/20 in both eyes, his eyesight without glasses did not meet the standards for enlistment in the Coast Guard under Chapter 3-C-24 of the Medical Manual. The Medical Board explained that the minimum visual requirements for enlistment in the Coast Guard were higher than those in the Army because of the possibility that a member would lose his

corrective lenses while aboard ship, which could be hazardous to himself and his crewmates. Therefore, the Medical Board recommended that the applicant be discharged “on the basis of a pre-existing physical defect neither incurred in nor aggravated by” his service in the Coast Guard.

On February 22, 1972, the applicant certified that he had been advised of the findings and recommendation of the Medical Board and did not desire to submit a rebuttal.

On February 22, 1972, the applicant also signed a “Request for separation from the U.S. Coast Guard.” He acknowledged having been advised that the Medical Board had found that he had defective vision and that the disability had existed before he enlisted on February 4, 1972, and was neither incurred in nor aggravated by his military service. He acknowledged that he had a legal right to a full and fair hearing before a Physical Evaluation Board but he waived that right. He acknowledged that he would be discharged in the near future without compensation, and he asked to be discharged “as soon as possible.”

On February 29, 1972, the applicant signed a Termination of Health Record form on which he indicated that he agreed with the findings of the Medical Board that he was physically fit for discharge. He also signed a CG-3307 acknowledging that he had been advised that he could file a claim with the Veterans Administration (VA) for compensation, pension, or hospitalization but did not desire to submit a claim at that time.

The applicant’s DD 214 shows that he was honorably discharged without severance pay in accordance with the Personnel Manual, CG-207, due to “Physical Disability Existing Prior to Enlistment.”

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

On November 16, 2018, a judge advocate of the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief and adopted the findings and analysis in a memorandum on the case prepared by the Personnel Service Center (PSC).

PSC noted that the application was not timely filed. In response to the applicant’s request, PSC stated that shortly after he enlisted, the applicant was found not to meet the Coast Guard’s minimum requirements for vision and so was evaluated by a Medical Board and recommended for discharge by a Medical Board because of his pre-existing disability. The applicant was advised of the Medical Board’s findings and recommendation and indicated that he did not wish to submit a rebuttal or demand a hearing before a Physical Evaluation Board. He also indicated that he did not want to file a claim with the VA before being discharged.

PSC recommended that the Board deny relief because he has failed to show that the Coast Guard denied him any benefits that he was entitled to.

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

On November 30, 2018, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to submit a response within thirty days. No response was received.

### APPLICABLE LAW AND POLICY

According to Chapter 3-C-24 of the Coast Guard Medical Manual then in effect, to qualify for enlistment in the Coast Guard, a recruit had to have “binocular visual efficiency” of at least 20% without corrective lenses and 90% with corrective lenses. According to Table 1 in Chapter 3-C-24, someone with 20/400 vision in both eyes had a binocular visual efficiency of just 3% without corrective lenses.

According to Article 1-B-15 of the Personnel Manual then in effect, CG-207, a recruit could be discharged “for physical disability that was not incurred in or aggravated by a period of active military service” pursuant to the findings and recommendation of a Medical Board if the recruit did not meet the minimum physical standards, was informed of his right to a hearing, and waived the right to a hearing.

### 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.<sup>1</sup> The record shows that the applicant’s defective vision was discovered shortly after his enlistment on February 4, 1972, and he knew at the time of his discharge 26 days later that he was being discharged for a pre-existing disability—defective vision—without compensation. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 1972, and his application is not timely.
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>
4. The applicant provided no justification for his delay, and a cursory review of the merits shows that his claim cannot prevail. The applicant’s complaint is vague, but he appears to believe he should be entitled to benefits from the Coast Guard because he received an honorable medical discharge. However, there is no evidence that the applicant suffered any injury or illness while on active duty that would entitle him to benefits from the Coast Guard. The finding of the

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

<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).

Medical Board that the applicant's defective vision pre-existed his enlistment and was not incurred in or aggravated by his military service is presumptively correct,<sup>5</sup> and the applicant has submitted nothing to rebut that finding. The Board knows of no benefits that the applicant is legally entitled to receive from the Coast Guard.

5. 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)**

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<sup>5</sup> 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 SR [REDACTED] USCG, for correction of his military record is denied.

March 8, 2019

