

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-217

████████████████████
██████████ SR (former)

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 18, 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 October 18, 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 is a former seaman recruit (SR) who was discharged from the Coast Guard on November 14, 1969, after eighteen days of recruit training due to a physical disability that existed prior to enlistment. He asked the Board to correct his DD 214 to show that he did not request the discharge. He stated that he does not remember asking to be discharged from the Coast Guard.

The applicant stated that he discovered the alleged error in his record in November 2017 upon reviewing his Coast Guard records and argued that the Board should find it in the interest of justice to consider his application because he had always assumed that he had been discharged for medical reasons.

SUMMARY OF THE RECORD

The applicant underwent a pre-enlistment physical examination on September 29, 1969, and was found qualified to enlist in the Coast Guard. He enlisted in the Coast Guard on October 27, 1969, for a term of four years, and on October 28, 1969, he underwent a pre-training physical examination at the recruit training center and was diagnosed with labile hypertension¹ after blood

¹ Hypertension is high arterial blood pressure, and labile hypertension is prehypertension. DORLAND'S ILLUSTRATED MEDICAL DICTIONARY (32nd ed. 2012).

pressure measurements of 156/76 and 152/90. On November 6, 1969, the applicant was evaluated by a medical board to determine if his condition disqualified him from further service in the Coast Guard. The board recommended that he be released from the Coast Guard because of his labile hypertension, which it stated was a “pre-existing physical defect.”

At the conclusion of the medical board on November 6, 1969, the applicant signed two documents that were witnessed by the board’s medical recorder. On the first, he acknowledged

- that the medical board had diagnosed him with labile hypertension;
- that the medical board had recommended that he be released from the Coast Guard “for reason of a pre-existing physical defect”; and
- that he did not want to rebut those findings.

On the second, the applicant acknowledged

- that he knew that the medical board had determined that his labile hypertension constituted a physical disability that had existed prior to his enlistment on October 27, 1969, and was not incurred during or aggravated by his military service;
- that he knew that he was entitled to a full and fair hearing before a Physical Evaluation Board prior to separation if he demanded one;
- that he knew that if he signed the document he would be discharged without any further hearing or disability retired pay, severance pay, or other compensation; and
- that “[w]ith full knowledge of the findings of the Board of Medical Survey convened in my case and with full knowledge of my rights in this matter, I hereby certify that I do not demand a hearing before a Physical Evaluation Board and request that I be separated from the United States Coast Guard as soon as possible.”

On November 14, 1969, the applicant was honorably discharged from the Coast Guard. The remarks block on his DD 214 states that he was discharged because of a “physical disability existing prior to entry on active duty, established by a medical board and individual made application for discharge by reason of physical disability.”

VIEWS OF THE COAST GUARD

On April 3, 2019, a judge advocate (JAG) of the Coast Guard adopted the findings and analysis in a memorandum prepared by the Personnel Service Center (PSC) and recommended that the Board deny relief in this case because the applicant failed to prove that the Coast Guard committed any error or injustice. The JAG argued that the record shows that the applicant asked to be discharged after it was determined that he had a pre-existing medical condition that disqualified him from further service.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 15, 2019, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. The applicant responded on May 13, 2019, and stated that although he signed the form on which he waived his right to a hearing and requested discharge, he does not “remember being involved in the final decision.” He stated that he “will have no problem accepting the final outcome.”

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 submissions, 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.² The applicant received and signed his DD 214 stating that he had requested separation on November 14, 1969. Therefore, although the applicant stated that he discovered the alleged error in 2017, the preponderance of the evidence shows 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.³ 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”⁴ 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.”⁵ Therefore, the Board has conducted a cursory review of the merits, and it finds no reason to excuse the untimeliness of the application:
 - a. The applicant did not justify his long delay in seeking correction of the alleged error on his DD 214.
 - b. The Board's cursory review shows that the applicant's claim lacks potential merit. He claimed that he had never asked to be discharged, as stated on his DD 214, but on November 6, 1969, he and a witness signed a form acknowledging that he had waived his right to a formal hearing and requesting that he “be separated from the United States Coast Guard as soon as possible.”
4. Accordingly, the Board will not excuse the application's untimeliness or waive the statute of limitations and his request should be denied.

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

³ 10 U.S.C. § 1552(b).

⁴ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁵ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

ORDER

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

October 18, 2019

