DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-183

[redacted]

FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. After receiving the completed application on December 2, 2014, the Chair docketed the case and assigned it to staff member [redacted] to prepare the draft decision as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 18, 2015, 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 asked the Board to upgrade the Bad Conduct Discharge (BCD)[1] that he received from the Coast Guard on August 16, 1989, pursuant to a court-martial sentence. He also requested a copy of his discharge form DD 214.

The applicant alleged that information was left out of his trial by court-martial that would have resulted in a different outcome had it been included. The applicant also claimed that due to his "youth and lack of knowledge for the law," he was "misled and misinformed" during the court-martial proceedings. He stated that he "did not even understand all what was going on [in his] case" or the charges against him. Further, the applicant claimed that his commanding officer (CO) never informed him of his command's intent to discharge him.

The applicant submitted no evidence to support his allegations.

[1] The applicant's DD 214 describes his character of service as "Under Other than Honorable Conditions" (OTH), but he actually received a BCD—a punitive discharge awarded by a court-martial. The narrative reason for separation on the DD 214 is "Bad Conduct."

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on June 15, 1987, at age 21, after serving in the National Guard for several months. He completed boot camp, advanced from seaman recruit to seaman apprentice, and was assigned to a patrol boat based near his home of record on September 18, 1987.

From October 3 to 28, 1987, the applicant was absent without leave (AWOL) from his unit. He returned voluntarily and was punished at mast (non-judicial punishment/NJP) on November 5, 1987, for violations of Articles 87, 89, 90, and 91 of the Uniform Code of Military Justice (UCMJ), and awarded reduction in rate to seaman recruit, fifteen days' restriction to base, and a forfeiture of half his pay for one month ($369.00). On November 6, 1987, the applicant's CO recommended to the Commandant that the applicant be discharged under other than honorable conditions because the applicant

> had only been aboard [the cutter] for a few days when he decided that Coast Guard life wasn't for him. He was absent without authorization for 23 days and he missed two patrols. He has been very open, during his short time aboard, about his contempt for authority in general, for commissioned officers, for petty officers, for shipboard life, and for the Coast Guard. His peers distrust and dislike him. He has advised them that having to work, to go to sea, and to take orders from superiors constitutes a violation of his "rights."

On November 10, 1987, the applicant went AWOL again, and he did not return until December 3, 1987. On December 15, 1987, he was transferred from the cutter to the local Sector office. On January 8, 1988, he was again punished at mast for his unauthorized absence and for breaking his restriction to base. His punishment included thirty days' restriction with extra duties and forfeiture of $100.00 per month for three months.

On March 4, 1988, the applicant was punished at mast again for committing an indecent assault upon a woman by making obscene phone calls from the base "with intent to gratify his sexual desires." His punishment was restriction to base for sixty days, extra duties for forty-five days, and forfeiture of half his pay per month for two months.

On March 5, 1988, the applicant again went AWOL. Because he did not return for more than thirty days, he was declared a deserter on April 4, 1988. He surrendered on May 15, 1988. He was charged with unauthorized absence, breaking restriction, and failing to obey a lawful order, as well as desertion. In a plea agreement, the Coast Guard withdrew the charge of desertion, and the applicant pled guilty to unauthorized absence.

At a special court-martial on June 28, 1988, the applicant was convicted and sentenced to three months' confinement to be followed by a BCD. The convening authority reduced the

confinement to 75 days. The applicant completed his confinement on August 2, 1988, and was authorized appellate leave while his appeal was pending.

Following a legal review that found the proceedings to be "correct in law and fact," on June 13, 1989, the Commandant did not grant clemency, approved the BCD, and ordered its execution. On August 16, 1989, the applicant was discharged with a BCD. A note in his record with his DD 214 states that he refused to sign it.

VIEWS OF THE COAST GUARD

On January 9, 2015, the Coast Guard submitted an advisory opinion, which recommended denying the applicant's request regarding his character of discharge but granting "partial relief" by sending him a copy of his DD 214.[2]

The Coast Guard stated that the application was not timely filed and that the applicant failed to provide any justification for his delay.

Regarding the applicant's discharge, the Coast Guard argued that the applicant's discharge and character of service were issued in accordance with policy and are supported by his poor military record. The Coast Guard noted that the applicant failed to submit any evidence to support his claims of error and injustice and clearly knew upon his sentencing and request for appellate leave that he had been awarded a BCD.

The Coast Guard concluded that there is "little merit" in the applicant's claims and recommended that the Board deny relief, except for sending the applicant a copy of his DD 214.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 16, 2015, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited him to respond within thirty days. On January 28, 2015, the Chair received a letter from the applicant requesting an extension of the time to respond and information about sources for guidance in preparing his response. On February 10, 2015, the Chair granted the applicant a 90-day extension, through May 16, 2015, and sent him a pamphlet including information about seeking assistance from veterans' organizations.

On May 6, 2015, the Chair received a letter from the applicant requesting another 90-day extension. He stated that he was trying to find prior members who had worked with him and/or attended the trial. He alleged that he did not receive an "equal and fair" judgment at his court-martial. In response, the Chair granted the applicant another 90-day extension through August 14, 2015.

[2] Because a copy of the DD 214 was sent to the applicant along with a copy of the views of the Coast Guard on January 16, 2015, this "partial relief" has already been granted.

No further communication has been received from the applicant.

FINDINGS AND CONCLUSIONS

1. The Board has jurisdiction over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record. The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice.

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 from the Coast Guard in 1989, and the preponderance of the evidence shows that the applicant knew of the alleged error in his record when he refused to sign his DD 214 in 1989. Therefore, 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 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. The applicant provided no justification for his delay in challenging his discharge, and the Board's cursory review of the merits of this case indicates that the applicant was properly awarded a BCD pursuant to his court-martial sentence. There is no evidence of error or injustice in the record, which contains ample evidence of misconduct supporting the character of his discharge. With no evidence that substantiates the applicant's allegations of error or injustice in his official military record, which is presumptively correct,[7] 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 for an upgraded discharge should be denied. The Board has already complied with the applicant's request to send him a copy of his DD 214, and so no further action is required.

(ORDER AND SIGNATURES ON NEXT PAGE)

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[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).
[6] *Id*. at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396, 1405 n14, 1407 n19 (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.

September 18, 2015

[redacted]