

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-017



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 2, 2017, and assigned it to staff attorney [REDACTED] to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated July 27, 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, a former Commissaryman 3rd Class (CS3; E-4) who was discharged in 1957, asked the Board to correct his record by removing from his record a declaration that he was "a straggler" on June 9 and 10, 1952. He stated that he was not absent during this time and therefore the reference to him being a straggler should be removed from his record. He claimed that he took twenty days of leave from May 17, 1952, to June 7, 1952, and that he returned on time. He also stated that this leave was after "untangl[ing] target cables that were wrapped around the propellers of [a] ship, endangering the ship and crew." He added that he never received any honors or recognition for his heroic acts that day and in conjunction with the incorrect straggler comments makes for a "grave injustice" in his record.

Regarding the timing of his application, the applicant stated that he discovered the error when he received the decision from the Board of Veterans' Appeals on February 19, 2014. With his application, the applicant provided a copy of a DD-214¹ provided to him at the end of his first enlistment and a copy of the Board of Veterans' Appeals decision, which found that his diagnosis of Post-Traumatic Stress Syndrome was related to an in-service stressor.

¹ A DD-214 is prepared to document a member's release or discharge from a period of active duty.

SUMMARY OF THE RECORD

The applicant enlisted on February 16, 1951. A Transcript of Quarterly Efficiency Marks in the applicant's file notes that on December 13, 1951, he was awarded two weeks of extra duty at Commanding Officer's (CO's) Mast for being away without leave. On December 26, 1951, he was awarded restriction for two weeks at CO's Mast for failure to make quarter for muster. On March 7, 1952, the applicant was away without leave for a period of fifty-five minutes. At another CO's Mast, he was restricted to base for a period of five days. He was not declared a deserter or straggler in any of these entries.

According to a Leave Record in the applicant's personnel file, the applicant took twenty days of leave beginning on May 17, 1952, and returned on time on June 7, 1952. There are no other periods of leave mentioned afterwards on this page. There are no mentions of leave on June 9 or 10, 1952, in the applicant's record.

The applicant received a DD-214 for his first period of enlistment, although he immediately reenlisted and therefore there was no break in service. His first enlistment began on February 16, 1951, and ended on February 18, 1954, and therefore covers the dates which the applicant claims he was declared "a straggler." This DD-214 has no mention of the applicant deserting the Coast Guard or of being "a straggler." There is no entry on this DD-214 for time lost.

The applicant was discharged on February 18, 1957, due to his enlistment coming to an end. There is no mention of desertion or of being a "straggler" on his DD-214. There is no entry on this DD-214 for time lost.

VIEWS OF THE COAST GUARD

On March 29, 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 because the applicant was discharged in 1954, and therefore should not be considered beyond a cursory review. PSC recommended that the Board deny relief because there is no documentation that the applicant was ever declared a straggler. Instead, PSC argued that his record "clearly shows" that he had been on leave from May 17, 1952, to June 7, 1952. There is no mention in his record of him being absent June 9, and 10, 1952. PSC recommended the Board deny relief for these reasons.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 12, 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.

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.² The applicant was discharged in 1954 and signed and received his DD 214s at that time. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record no later than 1954, 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.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
4. Regarding the delay of his application, the applicant claimed that he discovered the alleged error on February 19, 2014, the date of the Board of Veterans’ Appeals decision. Even if the Board was to find this explanation persuasive, the applicant dated his application September 22, 2017, and the Board received his application on October 10, 2017, more than three years later. The Board finds that the applicant’s explanation for his delay is not compelling because 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 it cannot prevail. The record contains no evidence that substantiates the applicant’s allegations of error or injustice in his official military record, which is presumptively correct.⁶ The Board has reviewed the applicant’s record and there is no mention of desertion or straggling on any date. There is also no mention of the applicant taking leave on June 9 and 10, 1952. The applicant was found to be away without leave on December 13, 1951, failed to make quarters for muster on December 26, 1951, and was away without leave again on March 7, 1952. But he has not shown that those records are erroneous, and in none of these instances did the Coast Guard declare him a straggler or a deserter. 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)

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).

⁶ 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 CS3 [REDACTED] USCG, for correction of his military record is denied.

July 27, 2018

