


**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 2000-061

FINAL DECISION

 Chairman:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on February 3, 2000, upon the Board's receipt of the applicant's complete application.

The final decision, dated November 16, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a seaman first class in the Coast Guard Reserve (S1c(R), was honorably discharged from the service on January 9, 1946. He requested his discharge documents be corrected to show he was active Coast Guard rather than reserve Coast Guard.

The applicant requested the change because he alleges that his current description of service is preventing him from receiving benefits from the Department of Veterans Affairs.

VIEWS OF THE COAST GUARD

On July 28, 2000, the Chief Counsel of the Coast Guard submitted an advisory opinion recommending that the application be denied.

The Chief Counsel recommended that the application be denied as untimely on the ground that it was filed more than three years after the applicant discovered or reasonably should have discovered the alleged error or injustice. 10 U.S.C. § 1552; 33 CFR § 52.22. According to the Coast Guard, the applicant's application was "untimely by approximately 50 years," and the applicant did not provide a reason why its acceptance is in the interest of justice.

The Chief Counsel also concluded that the applicant could point to no error in his record. According to the Chief Counsel:

Applicant's original enlistment document clearly proves he enlisted in the United States Coast Guard Reserve. There are no documents showing he enlisted or served in the Regular Coast Guard. Therefore, there is no error for the Board to correct . . . In his application, Applicant confuses 'Active Duty Coast Guard' with 'Regular Coast Guard.'

The Commander of the Coast Guard Personnel Command (CGPC) said that [b]enefits derived from military service are normally based on active duty time rather than which component (Active or Reserve) a member has served in."

APPLICANT'S RESPONSE TO COAST GUARD VIEWS

The Board sent a copy of the views of the Coast Guard to the applicant on July 31, 2000, with an invitation to him to submit a response to those views within 15 days.

On August 15, 2000, the Board received a response from the applicant in which he stated that a representative of a veteran's hospital in [REDACTED] "advised [him] this error (change from Reserve to Regular CG) needed to be corrected."

FINDINGS AND CONCLUSIONS

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of section 1552 of the United States Code.

2. Section 1552 (b) provides that a claim for correction of a military record shall be made within three years after the discovery of an alleged error or injustice, unless the Board concludes that it is in the interest of justice to waive untimeliness and adjudicate the application on the merits.

3. The applicant's application for correction was received by the Board approximately 53 years after the date of the alleged error or injustice.

4. In 1992, the United States District Court for the District of Columbia said that the Board should conduct a "cursory review" of the merits of an application as part of its examination of the question of whether it was in the "interest of justice" to waive untimeliness and adjudicate the application on the merits. Allen v. Card, 799 F. Supp. 158 (D.D.C. 1992).

5. Cursory examination of the merits of this application indicates that it is not in the interest of justice to waive untimeliness.

6. The applicant was on active duty in the reserve Coast Guard. The Board found that his Notice of Separation from the Coast Guard was accurate. It indicates that he enlisted in the Coast Guard Reserve on March 12, 1943, and performed 2 years, 9 months, and 27 days of active duty as a member of the Reserve, including 1 year, 2 months, and 7 days of sea service during World War II.

7. Veteran's benefits are awarded by the Department of Veterans Affairs (DVA) on the basis of the veteran's months of active duty and their character of service.

8. Any veteran who performed a sufficient number of months of active duty service and who, like the applicant, received an honorable discharge should be eligible for benefits whether they enlisted in the regular Coast Guard or the Coast Guard Reserve.

9. Therefore, it is not apparent to the Board why the DVA would deny the applicant benefits because he performed active duty as a member of the Reserve rather than the regular Coast Guard. If the applicant takes a copy of his Notice of Separation to his local DVA office (a copy of which is enclosed with this opinion but which is not part of this opinion), they should be able to explain to him any veterans' benefits to which he may be entitled because of his active duty service.

10. Accordingly, the application should be denied because no error or injustice was committed by the Coast Guard.

[ORDER AND SIGNATURES ON SUCCEEDING PAGE]

ORDER

The application to correct the military record of [REDACTED]
[REDACTED] USCGR, is denied.

[REDACTED]