

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2013-010



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. The Chair docketed the application upon receipt of the applicant's completed application on October 17, 2012, and subsequently prepared the final decision as required by 33 CFR § 52.61(c).

This final decision, dated July 12, 2013, 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 ALLEGATION

The applicant asked the Board to correct his record by upgrading his September 21, 1976 general discharge under honorable conditions to an honorable discharge. The applicant did not list the date on which he discovered the alleged error; nor did he give a reason why it would be in the interest of justice to excuse his untimely application.

The applicant stated that his general discharge under honorable conditions is not in error, but it is unjust. He stated that he was advised by an admiral that a general discharge would have no negative effect except that he could not work for the federal government. The applicant stated that today a general discharge carries a stigma and negatively impacts his ability to obtain any type of employment.

The applicant's military record shows that he enlisted in the Coast Guard Reserve (inactive duty) for 6 years on June 28, 1972. He agreed to become a member of the Ready Reserve immediately upon enlistment and to satisfactorily participate in the Reserve.¹ Before beginning inactive duty, the applicant was required to complete recruit training and a period of post-recruit training. After completing his required active duty, the applicant was assigned to a Reserve unit to begin his inactive duty drills.

¹ For the Selected Reserve satisfactory participation means attending at least 90% of the unit's 48 scheduled drills and performing at least 12 days of active duty training annually.

The military record indicates that the applicant met his inactive duty drill obligation for the anniversary year July 27, 1973 to July 26, 1974 by earning 72 drill points. He earned 66 points for the year July 27, 1974 to July 26, 1975.

On April 5, 1975, the applicant sent the Commandant a letter asking to be transferred to non-pay, non-drill status. He told the Commandant that it had become difficult for him to drill because he was planning to start a business and that he would be required to operate that business in the evenings and on weekends.

On April 27, 1975, the applicant's commanding officer (CO) recommended that the applicant's request for transfer to non-pay status be approved.

On May 9, 1975, the Commander Eighth Coast Guard District recommended that the applicant's request be disapproved. The Commander stated that flexibility within the Reserve program permitted the applicant to fulfill his drilling obligation without interfering with his civilian employment. The Commander stated that there was ample opportunity for the applicant to drill on weekdays.

On May 22, 1975, the Commandant disapproved the applicant's request to be transferred to non-pay status. The Commandant stated that there was ample flexibility within the Reserve system to accommodate the applicant drill needs.

On July 25, 1976, the applicant's CO recommended that the applicant be administratively discharged from the Coast Guard because of shirking (misconduct). The CO noted that the applicant had missed 12 drills between March and June 1976 and that he had missed 4 drills earlier in October 1975.

On July 30, 1976, the Commander returned the administrative discharge request to the CO so that the CO could advise the applicant of his right to submit a statement and his right to consult with an attorney.

On August 12, 1976, the Commander, Eighth Coast Guard District wrote to the applicant's CO about the applicant's unsatisfactory participation in the Reserve because he had accumulated 12 absences. The Commander stated that personnel who continue to perform unsatisfactorily shall be recommended for administrative discharge in accordance with the Reserve Administrative Training Manual.

On August 28, 1976, the applicant's CO, informed the applicant that he was recommending his administrative discharge from the Reserve due to shirking (misconduct). On the same date, the applicant signed a statement stating that he did not wish to make a statement; nor did he wish to seek advice of counsel.

On September 15, 1976, the Commandant directed that the applicant be discharged from the Reserve with a general discharge due to misconduct (shirking). On September 21, 1976, the applicant was discharged from the Coast Guard with a general discharge.

VIEWS OF THE COAST GUARD

On March 14, 2013, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which the JAG noted that the application was untimely by approximately 36 years and should be denied for that reason. The JAG argued that the merits of the applicant's application do not support a waiver of the untimeliness because the applicant failed to provide a sufficient explanation for not filing his application sooner and he failed to prove that the Coast Guard committed an error. Further, the JAG stated that he was not persuaded that the applicant had provided sufficient proof that his general discharge under honorable conditions was unjust.

The JAG attached a memorandum from the Commander, Personnel Service Center (PSC) as a part of the advisory opinion. PSC argued that the application should be denied because it is untimely. PSC noted that the applicant admitted that the Coast Guard did not commit an error and stated that the applicant's record is correct as it currently stands.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 18, 2013, the Board sent a copy of the views of the Coast Guard to the applicant for a response. The Board did not receive a reply from the applicant.

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 section 1552 of title 10 of the United States Code.

2. The application was not timely. To be timely, an application for correction of a military record must be submitted within three years after the applicant discovered the alleged error or injustice. *See* 33 CFR 52.22. Although the applicant did not list the date on which he discovered the alleged error, the Board finds that he should have discovered the error at the time of his discharge from the Coast Guard Reserve on September 21, 1976. The applicant was notified of the proposed discharge and given an opportunity to submit a statement and consult with an attorney, which he declined. Therefore, the application is untimely and the applicant did not provide a reason for why it is in the interest of justice to excuse his untimeliness.

3. Although the application is untimely, the Board must still perform at least a cursory review of the merits to determine whether it is the interest of justice to waive the statute of limitations. In *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that in assessing whether the interest of justice supports a waiver of the statute of limitations, the Board "should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review." The court further stated 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." *Id.* at 164, 165.

4. A cursory examination of the merits indicates that the applicant is not likely to prevail because he admitted that the Coast Guard did not commit an error in discharging him with a general discharge. He offered no evidence, except for his own statement, that the Coast Guard committed injustice by discharging him from the Reserve with a general discharge. He argued that a general discharge today carries more of a stigma than it did in 1976, but he submitted no evidence of how his general discharge has negatively impacted his civilian life. Therefore, the applicant submitted insufficient evidence to prove that his general discharge under honorable conditions is unjust.

5. The application should be denied because it is untimely and it is not in the interest of justice to excuse the untimeliness.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

