

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2021-070


MK3 (Former)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on April 28, 2021, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated February 16, 2023, 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 Machinery Technician, Third Class, (MK3/E-4), asked the Board to correct a CG-3309 (“Page 9”) in his record to reflect his reenlistment in the Coast Guard Reserve on November 18, 1974. The applicant alleged that the Page 9 does not reflect his discharge date after reenlisting in 1974. He explained that he is applying for a home loan from the Department of Veterans Affairs (VA) but was told he was one day shy of having the required 6 years of service.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard Reserve on November 18, 1968. He entered active duty for a period of 5 months to complete basic training. The applicant was issued a DD-214 for this period of active duty ending on April 17, 1969, after which he was transferred to the Coast Guard Reserve.

The applicant continued serving in the Reserve until November 17, 1978.

VIEWS OF THE COAST GUARD

On November 1, 2021, a Judge Advocate (JAG) for the Coast Guard submitted an advisory opinion in which he recommended that the Board grant alternate relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

The JAG argued that the applicant has not shown that the Coast Guard committed an error or injustice necessitating relief but may not have the necessary documentation to provide proof to the VA of his qualifying total service. The JAG explained that the applicant's November 17, 1974, Page 9 accurately reflects that he was discharged on that date, and reenlisted for another 3 years, effective November 17, 1974. The JAG stated that this document would not show a later discharge date because this would be reflected on a later document when the applicant's reenlistment expired. The JAG further stated that a search of the applicant's service record uncovered documents that he can utilize to show over 6 years of creditable service. The JAG recommended that the Coast Guard mail the applicant an Annual Retirement Points Statement which is sufficient proof that he served more than 6 years.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 24, 2022, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. As of the date of this decision, no response has been received.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on the applicant's military record and submissions, the Coast Guard's submission and applicable law:

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 that the applicant has not already pursued.

2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.¹ The applicant was discharged on November 17, 1978. Therefore, the preponderance of the evidence shows that he knew of the alleged errors in 1978 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.² 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

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

² 10 U.S.C. § 1552(b).

and the potential merits of the claim based on a cursory review”³ 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.”⁴ Although the applicant in this case did delay filing the application and has not justified his delay, the Coast Guard has recommended that the Board grant alternate relief in this case. Therefore, the Board finds that it is in the interest of justice to excuse the untimeliness of the application.

4. The Board’s review of the applicant’s record shows that although he was discharged in November 1978, he may have not been provided with all of the documentation that accurately reflected his time serving in the Coast Guard. Accordingly, the Board finds that the Coast Guard should mail the applicant copies of all pertinent Page 9s and DD-214s that document his total time in service. In addition, the Coast Guard should provide the applicant with a Letter of Creditable Service and Retirement Points Statement certifying the applicant’s total years of service.

³ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁴ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

ORDER

The application of former MK3 [REDACTED] [REDACTED] USCGR, for the correction of his military record is denied, but alternate relief is granted as follows:

- The Coast Guard shall mail the applicant copies of all Page 9s and DD-214s that cover the period of his service in the Coast Guard, and
- Provide the applicant with a Letter of Creditable Service and Retirement Points Statement.

February 16, 2024

[REDACTED] Digitally signed by [REDACTED]
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