

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-201

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FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case on August 30, 2007, upon receipt of the applicant's completed application, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated May 29, 2008, 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 correct his DD 214 to show that he was retired from the Coast Guard in [REDACTED] as a chief quartermaster (QMC) in pay grade E-7, rather than a quartermaster first class (QM1) in pay grade E-6. He alleged that his record shows his rank upon retirement incorrectly as E-6. In support of this allegation, he submitted a copy of a United States Uniformed Services Identification Card with the notations "Coast Guard Retired," "CPO/E7," his name, and his Social Security number. In addition, he submitted a copy of his address on an envelope sent to him from the Coast Guard Personnel Services Center, which addresses him as "QMC [name]." He stated that he first noticed the error on his DD 214 in May 2007.

SUMMARY OF THE RECORD

On June 5, 1967, the applicant enlisted in the Coast Guard as a seaman recruit. He was discharged on May 10, 1977, as a QM2 and served in the Reserve until he reenlisted in the regular Coast Guard on January 8, 1982. He continued to serve on active duty and by 1991 had advanced to the rate of chief quartermaster (QMC).

On [REDACTED] the applicant was tried by general court-martial for numerous violations of the Uniform Code of Military Justice (UCMJ). He was convicted of (1) twenty-six specifications of forgery, in violation of UCMJ Article 123, by issuing fraudulent checks; (2) four specifications of theft, in violation of Article 121, including the theft of \$400 from the Chief

Petty Officer's Association; (3) eleven specifications of violating general orders and dereliction of duty, in violation of Article 92, by having inappropriate relationships with subordinates in his command, by directing subordinates to work on his personal vehicle during their work day, by failing to report complaints of sexual harassment, by failing to take action against members using racial epithets in his presence, by using racial epithets himself, etc.; (4) one specification of using indecent language on divers occasions, in violation of Article 134; (5) one specification of making a false official statement with intent to deceive, in violation of Article 107; and (6) one specification of submitting a false claim for reimbursement, in violation of Article 132.

On [REDACTED] the applicant was sentenced to reduction to pay grade E-6; to pay a fine of \$1,200.00; and to be confined for one year. On [REDACTED] the District Commander, who was the Convening Authority, ordered the sentence executed except for the fine, which he ordered remitted. As a result of the sentence, the applicant was imprisoned from April 2, 1996, through January 18, 1997.

On January 7, 1997, the applicant submitted a request to retire from the Service. On January 15, 1997, the Coast Guard Personnel Command (CGPC) sent the applicant his active duty retirement orders, authorizing his retirement as of [REDACTED]. The letter addresses the applicant as a QM1.

The applicant's DD 214 shows that he was honorably retired from the Coast Guard on [REDACTED], as a QM1/E-6.

VIEWS OF THE COAST GUARD

On January 15, 2008, the Judge Advocate General (JAG) submitted an advisory opinion in which he adopted the findings and analysis provided in a memorandum on the case prepared by CGPC. CGPC recommended that the Board deny the requested relief because of the application's untimeliness and lack of merit. Regarding the merits of the case, CGPC noted that Article 12.C.15.e. of the Personnel Manual states the following:

Any enlisted member who retires under any provision of 14 U.S.C. retires from active service with the highest grade or rate he or she held while on active duty in which, as Commander, (CGPC-epm-1) or the Commandant, as appropriate, determines he or she performed duty satisfactorily, but not lower than his or her permanent grade or rate with retired pay of the grade or rate at which retired (14 U.S.C. 362).

In cases where a member has been reduced in grade by a court-martial, the highest grade satisfactorily held shall be no higher than the grade to which the member has been reduced by the court-martial, unless the member subsequently advances or is again reduced. Where a member subsequently advances or is again reduced following a reduction by a court-martial, the highest grade satisfactorily held shall be no higher than the pay grade to which the member advanced or was reduced to following the court-martial.

CGPC stated that the applicant's pay grade was reduced from E-7 to E-6 by a general court-martial on [REDACTED], and there is no evidence that he was ever re-advanced to QMC/E-7 prior to his retirement from the Service. CGPC noted that it is also highly unlikely that the applicant would have been advanced while in confinement. CGPC stated that the appli-

cant was still an E-6 on the date of his retirement and so his final DD 214 correctly reflects his pay grade. CGPC stated that since a retiree's identification card is supposed to be issued based on the DD 214, the applicant's identification card is erroneous.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 17, 2008, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within thirty 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 submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. Under 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22, an application to the Board must be filed within three years after the applicant discovers or reasonably should have discovered the alleged error in his record. The applicant's DD 214 was issued on [REDACTED], and he knew or should have known his pay grade at that time. Thus, the application was untimely.
3. Pursuant to 10 U.S.C. § 1552(b), the Board may excuse the untimeliness of an application if it is in the interest of justice to do so. In *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that to determine 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."
4. The applicant did not explain his long delay in applying for the requested relief except to allege that he did not discover the purported error on his DD 214 until May 2007.
5. Article 12.C.15.e. of the Personnel Manual in effect in [REDACTED] stated that when "a member has been reduced in grade by a court-martial, the highest grade satisfactorily held [for retirement purposes] shall be no higher than the grade to which the member has been reduced by the court-martial, unless the member subsequently advances or is again reduced." The record shows that in [REDACTED] the applicant was reduced from QMC/E-7 to QM1/E-6 pursuant to the sentence of a general court-martial following his conviction for numerous offenses against the UCMJ. The applicant was also imprisoned pursuant to that sentence from April 2, 1996, to January 18, 1997, and there is no evidence that he was ever re-advanced to E-7 prior to his retirement on [REDACTED]. Therefore, the applicant's DD 214 appears to correctly reflect his pay grade upon retirement as E-6, and the identification card and envelope address he submitted are insufficient to prove that the DD 214 is erroneous. The Board's review reveals no merit whatsoever to his claim.
6. Accordingly, the Board finds that it is not in the interest of justice to waive the statute of limitations and the applicant's request should be denied.

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG (retired), for correction of his military record is denied.

