

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-204

████████████████████
██████████

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 case after receiving the completed application and military records on September 26, 2014, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated May 22, 2015, 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—who received a general discharge under honorable conditions from the Coast Guard on February 21, 1992—asked the Board to upgrade his discharge so that he will become entitled to full veterans’ benefits. The applicant alleged that he was not a troublemaker and that terrible motion sickness caused the performance problems that resulted in his discharge. He explained that after starting “A” School to become a cook, he lost interest and dropped out because he wanted to become an electronics technician instead. However, he was required to perform a tour of duty before starting a new “A” School, and he was assigned to a cutter. At first, he was excited, but when the cutter passed the ██████████, he began vomiting. His shipmates said it would subside, and he needed to get used to it, “but once my sickness started adding weight to others’ shoulders, the standard boot hazing turned cruel and once again, just like in civilian school, I didn’t fit in.” He stated that he was unjustly denied advancement to SN/E-3 even though he had completed the requirements, and he was told that if he was not seaworthy, then he was not Coast Guard-worthy. The applicant stated that he tried all of the doctor’s recommendations for getting over his sea sickness to no avail. At one point, he was so sick, he could not move and was punished at mast for insubordination.

The applicant stated that once removed from the cutter and assigned to a shore unit, he was able to work well and was considered a team player. But because of his seasickness, which was totally out of his control, he “was made to feel worthless and weak,” he was “stripped of honor, and was told that I was not good enough.”

The applicant alleged that he discovered the error in his record on August 19, 2014, because he was unaware that he could have his discharge upgraded before he became a member of an incarcerated veterans' support group.¹ Regarding his incarceration, he noted that he has never killed anyone and never slept with anyone but his wife, but the "justice system would rather destroy than heal the wounded." He stated that he "spend[s] the most of [his] time reading the Bible and trying to become the man who YHWH created [him] to be. ... I would use the benefits of an Honorable Discharge in a godly way."

SUMMARY OF THE RECORD

On November 6, 1990, the applicant enlisted in the Coast Guard. Following recruit training, he was enrolled in "A" School to become a subsistence specialist. However, on April 3, 1991, he voluntarily disenrolled himself from "A" School and was transferred to a cutter.

On July 2, 1991, the applicant was counseled on a CG-3307 ("Page 7") for repeatedly failing to report for the watch on time, malingering, and a poor attitude. On July 11, 1991, he was again counseled on a Page 7 for failing to report for duty on time.

On August 10, 1991, the applicant was counseled on a Page 7 about his poor performance since reporting aboard the cutter. The Page 7 states that the applicant had blamed others when he failed to qualify as an inport messenger, failed to apply himself and to learn his duties, failed to wear a proper uniform, failed to communicate clearly, failed to qualify as a watchstander, and was "completely lackadaisical in the performance of all work assignments." The applicant was advised that if his performance did not improve, he might be discharged for unsatisfactory performance.

On August 12, 1991, the applicant was counseled on another Page 7 about defacing government property.

On August 13, 1991, the applicant was counseled on a Page 7 about failing to perform his assigned duties during a drill. He was "found huddled on a ladder complaining of seasickness instead of delivering a message as ordered to do. If this had not been a drill, you could have placed the entire ship in great danger."

On August 15, 1991, the applicant was punished at mast for failing to report for duty on time. He also received a performance evaluation with very low marks for grooming, uniform, customs and courtesies, team work, work habits, etc. The Executive Officer noted that the applicant either could not or would not speak loudly enough over the intercom to be understood, had a tendency to get side-tracked while on watch or work details, showed a lackadaisical attitude and sloppy appearance, repeatedly wore his cap backwards, and required constant supervision.

On October 7, 1991, the applicant was placed on performance probation for six months in accordance with Article 12-B-9 of the Personnel Manual. The applicant's commanding officer (CO) noted that the applicant had received eight Page 7s documenting poor performance during

¹ According to the applicant, he is currently serving a 25-year sentence.

the prior three months. The CO advised the applicant that if his performance did not improve, he would be processed for discharge.

On October 29, 1991, the applicant was counseled on a Page 7, which notes that the applicant had “had numerous instances of not being able to stand your duty because of seasickness. Upon our return to Alameda you will be examined to determine whether or not you are chronically seasick. If the doctor determines that you are, you will be discharged in accordance with the Personnel Manual.”

On a Page 7 dated December 7, 1991, the applicant was counseled about locking himself in the scullery without telling his supervisor where he would be, ignoring pipes trying to locate him, ignoring knocks on the scullery door, requiring constant supervision, repeatedly being found sleeping or standing around when he should have been working, having “constant problems accomplishing simple tasks, such as raising/lowering jack and prep flags,” wasting time, failing to inform his supervisor when he had completed a task or encountered a difficulty, failing to complete tasks properly, repeating mistakes often, and doing less than what was required and “as little as he can get away with.”

On December 18, 1991, the applicant was punished at mast again for failing to report for the watch on time. On his performance evaluation, he received very low marks in numerous categories of performance, including Integrity, Motivation, Work Habits, Following Direction, Workmanship, Keeping Supervisor Informed, Requiring Supervision, Communicating, Grooming, Uniform, Conduct, Respecting Others, and Working as a Team Member. On a Page 7 dated December 20, 1991, the Executive Officer stated that the applicant had repeatedly disobeyed orders to get his hair cut, failed to obey the uniform rules, repeatedly disappeared from work assignments, did shoddy work, and lied about completing work that he had not completed and about being given authorization to make a phone call that had not been authorized. The Executive Officer noted that the applicant’s performance had not improved while on probation.

On December 30, 1991, the applicant’s commanding officer (CO) advised him in writing that he had initiated the applicant’s general discharge for unsatisfactory performance based on his numerous Page 7s and NJPs and his lack of improvement while on performance probation. The CO advised him that with a general discharge, he “may expect to encounter prejudice in civilian life” and that he had a right to object and to submit a statement on his own behalf.

On December 31, 1991, the applicant acknowledged the CO’s notification, acknowledged having been provided an opportunity to consult a lawyer, and objected to the proposed discharge. In his statement, dated January 3, 1992, the applicant stated that he quit SS “A” School knowing that he would have to wait to attend another but would have been miserable as a cook. The applicant stated that aboard the cutter, he “got a name for always being seasick. Then I got booked for not showing up to watch on time because (No Excuse), but from there my attitude got worse.” The applicant complained that his superiors had nagged him about qualifying for the watch, which he did on his second attempt “with flying colors.” However, he stated, he did not get a fair second chance. He asked for another chance at a shore unit and in a rating he could “make a career out of.”

On January 7, 1992, the applicant's CO submitted a recommendation that the applicant be discharged due to unsatisfactory performance. He summarized the record of Page 7s and punishment and recommended that the applicant receive a general discharge.

On January 17, 1992, Commander, Maintenance & Logistics Command recommended that the Commandant approve a general discharge for unsatisfactory performance for the applicant.

On January 22, 1992, the Commandant directed that the applicant receive a general discharge pursuant to Article 12-B-9 of the Personnel Manual within thirty days.

On February 21, 1992, the applicant received a general discharge under honorable conditions for the convenience of the government. He had served 1 year, 3 months, and 15 days on active duty. His final average factor performance marks were 14.5 for military factors,² 11.3 for team factors,³ 16.3 for work factors,⁴ 15.3 for "representing the Coast Guard" factors,⁵ and 25.3 for human factors.⁶ His DD 214 shows that he was issued a form DD 257CG, which is a decorative General Discharge certificate.

VIEWS OF THE COAST GUARD

On March 20, 2015, the Coast Guard submitted an advisory opinion recommending that the Board deny relief in this case. The Coast Guard stated that the application was not timely filed and should be denied on that basis. The Coast Guard also stated that the records show that when the applicant's performance failed to improve during his probationary period, his CO properly exercised his discretion in cutting the probation short after three months and initiating the applicant's discharge. Regarding the applicant's claim that seasickness caused his performance problems, the Coast Guard stated that there is insufficient evidence to conclude that the applicant's supervisors were prejudiced against him because of his seasickness or that his performance evaluations are inaccurate. The Coast Guard alleged that because of the applicant's low performance marks, he was not eligible for an honorable discharge.

² The five military factors are grooming, uniform, personal hygiene, conduct, and customs & courtesies.

³ The four team factors are respecting others, communicating with others, working as a team member, and contributing to team effort.

⁴ The seven work factors are knowledge, work habits, workmanship, following directions, requiring supervision, keeping supervisor informed, and stamina.

⁵ The five "representing the Coast Guard" factors are courtesy, appearance, communicating, professionalism, and even-handedness.

⁶ The eight human factors are accepting change, accepting criticism, motivation towards advancement, motivation towards job, loyalty, human relations, integrity, and sobriety.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 20, 2015, 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.

APPLICABLE LAW

Article 12-B-9.c. of the Personnel Manual in effect in February 1992, COMDTINST M1000.6A (Change 14), authorized discharges for unsatisfactory performance if it has been “clearly shown that a member has been given the proper direction to improve his/her performance and has been provided adequate time to demonstrate that he/she could become a productive service member.” Article 12-B-9.d.(1) states that the member “must be notified in writing that a discharge by reason of unsatisfactory performance may result if the unsatisfactory performance trend continues for the next six months.” Article 12-B-9.e.(1) states, “After notification of unsatisfactory performance and after further close observation of the member (in most cases for 6 months), if there has not been a substantial improvement in the member’s performance he/she will be notified in writing of the proposed discharge action.” Subparagraph (2) provides that the member must acknowledge the notification and may submit a statement on his own behalf. Subparagraph (3) states that a member who is being recommended for a general discharge must be given an opportunity to consult a lawyer.

Article 12-B-2.f.(1)(b)1. states that, to receive an honorable discharge, a non-rate member must have minimum factor averages of at least 12.5 in the five military factors; 10.0 in the four team factors; 17.5 in the seven work factors, which the applicant did not meet; 12.5 in the five “representing the Coast Guard” factors; and 20.0 in the eight human factors.

Article 12-B-2.f.(2) provides that a member discharged for unsatisfactory performance under Article 12-B-9 whose marks do not meet or exceed the minimum factor averages prescribed for an honorable discharge will be issued a general discharge.

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. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.⁷ Although the applicant claimed that he discovered the alleged error in 2014, the preponderance of the evidence shows that the applicant knew he had received a general discharge in 1992. Therefore, 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.⁸ In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the

⁷ 10 U.S.C. § 1552(b); 33 C.F.R. § 52.22.

⁸ 10 U.S.C. § 1552(b).

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”⁹ 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.”¹⁰

4. The applicant provided no explanation for his delay in seeking correction of his discharge and no argument about whether it is in the interest of justice for the Board to excuse his delay except to note that he would be eligible for veterans’ benefits if the Board upgraded his discharge.

5. A cursory review of the merits of this case shows that the applicant’s general discharge is neither erroneous nor unjust. Although the record supports the applicant’s claim that he frequently suffered from seasickness, the record also shows that the applicant’s general discharge was based on poor conduct and performance unrelated to seasickness. For example, seasickness does not cause members to be lackadaisical, to deface government property, to hide in a locked scullery, to lie about completing work, to make unauthorized phone calls, or to fail to obey orders to get a haircut, to wear a proper uniform, and to communicate clearly. The record shows that the applicant’s command was well aware of his seasickness and considered discharging him based on his seasickness, instead of for unsatisfactory performance, but did not. His command’s decision in this regard is presumptively correct and supported by ample evidence.¹¹ The applicant’s final average marks did not qualify him for an honorable discharge, and his desire for veterans’ benefits does not convince the Board that his general discharge is unjust. 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.

⁹ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

¹⁰ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396, 1405 n14, 1407 n19 (D.C. Cir. 1995).

¹¹ 33 C.F.R. § 52.24(b).

ORDER

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

May 22, 2015

