

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-135

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

Author: Hale D.

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The case was docketed on June 4, 2004, upon the Board's receipt of the applicant's completed application and military records.

This final decision, dated February 24, 2005, is 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 served on active duty in the Coast Guard Reserve during World War II, asked the Board to change his rating from electrician's mate, third class (EM3) to electrician's mate, first class (EM1).

The applicant alleged that he should have been promoted to EM1 because he was the only electrician's mate on his ship, and an EM1 normally held that billet. He also alleged that his ship's Commanding Officer refused to advance anyone aboard during his [the applicant's] service on the ship.

The applicant did not provide an explanation of why he waited over 54 years to submit his application for correction. On his application to the Board, he merely noted that the Board should consider his application "in the interest of justice."

SUMMARY OF THE EVIDENCE

The applicant enlisted into the Coast Guard Reserve on December 3, 1942, and began serving on active duty on March 17, 1943. His term of enlistment was 3 years. In December 1943, the applicant completed electrician's mate school and was advanced to EM3. After serving at various shore units, he was assigned to permanent duty afloat on LST¹ 784 on September 1, 1944. He served on the ship until December 22, 1945, and was honorably discharged from the Coast Guard on January 8, 1946. The applicant received good proficiency ratings and perfect conduct marks throughout his career, but was never advanced beyond EM3.

The applicant's service record shows that he served on the U.S.S. LST 784 and was awarded the American Area Campaign Medal, World War II Victory Medal, and the Philippine Liberation Medal. He was also awarded the Asiatic-Pacific Campaign Medal with two bronze stars for participation in the invasions of Iwo Jima and Okinawa.

VIEWS OF THE COAST GUARD

On October 14, 2004, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he adopted the findings of the Coast Guard Personnel Command (CGPC) and recommended that the Board deny the applicant's request.

The JAG argued that the Board should deny relief because the application was submitted approximately 54 years after the expiration of the Board's 3-year statute of limitations under 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22. In addition, JAG stated that the applicant failed to present any evidence that he is entitled to the promotion he claims was denied him.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 19, 2004, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. A response was not 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 Landing Ship, Tank.

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 3 years of the day the applicant discovers the alleged error in his record. 10 U.S.C. § 1552(b). The applicant was discharged in 1946 and knew or should have known that he had not been discharged as an EM1. In this case, the applicant admitted that he was aware of the alleged injustice in 1945, and he knew that he was an EM3 upon his discharge on January 8, 1946. Therefore, the Board finds that the application was filed more than 54 years after the statute of limitations expired. Thus, it was untimely.

3. Under 10 U.S.C. § 1552(b), the Board may waive the 3-year statute of limitations if it is in the interest of justice to do so. To determine whether it is in the interest of justice to waive the statute of limitations, the Board should consider the reasons for the delay and conduct a cursory review of the merits of the case. *Dickson v. Sec'y of Defense*, 68 F.3d 1396 (D.D.C. 1995); *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

4. As the JAG and CGPC stated, the applicant has provided no explanation for his failure to request the correction of the alleged error in his record within 3 years of his discharge, nor has he presented any evidence that he is entitled to the promotion he claims was denied him. The applicant's mere assertion that he was entitled to a promotion because he was serving in an EM1 billet is insufficient to overcome the presumption that the Coast Guard carried out its duties correctly, lawfully, and in good faith. *Arens v. United States*, 969 F.2d 1034, 1037 (1993); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

5. Given the long delay and the consequent loss of potential evidence that would illuminate the CO's reasoning for not promoting the applicant, the Board finds insufficient reason to waive the statute of limitations.

6. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application for correction of the military record of former
XXXXXXXXXXXXXXXXXXXXXXXXXXXXX USCGR, is hereby denied.

Harold C. Davis, MD

Audrey Roh

Marc J. Weinberger