

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-127

FINAL DECISION

ANDREWS, Attorney-Advisor:

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 7, 1999, upon the Board's receipt of the applicant's completed application.

This final decision, dated February 10, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a xxxxxxx on active duty in the Coast Guard Reserve during World War II, asked the Board to upgrade the character of his discharge from "under honorable conditions" to honorable.

APPLICANT'S ALLEGATIONS

The applicant alleged that he should have received an honorable discharge, but his discharge was characterized as "under honorable conditions" without cause. He alleged that he served as the xxxxx on two ice breakers in the North Atlantic during World War II, was awarded a battle star for being in combat, and was never disciplined.

The applicant alleged that, upon his discharge in 194x, he filed his discharge form at his home county courthouse without noticing the negative character of his discharge. However, recently, while going through his papers, he

noticed that his Certificate of Discharge says "under honorable conditions" even though he was issued an honorable service lapel button and honorable discharge emblems.

SUMMARY OF THE EVIDENCE

The applicant was inducted into the Coast Guard Reserve on October 11, 194x, and began serving on active duty on October 18, 194x. His term of enlistment was "for the duration of the war and six months after the national emergency ceases to exist."

The applicant's Notice of Separation (form NAVCG-553) shows that he served on the Coast Guard cutters xxxxxx and xxxxxx during his time in service. It also shows that he was entitled to wear the "American Theater, European (1 star)" and Victory Ribbons.

On December 23, 194x, the applicant's commanding officer reported that he failed to return to the cutter xxxxx at the end of ten days' leave of absence and was declared absent without leave. The applicant returned to the cutter on December 25, 194x, at 8:40 a.m. As a result, he went to captain's mast on December 27, 194x, and his enlistment was extended for two days.

The applicant's Service Record indicates that he was awarded perfect marks for conduct (4.0) on 20 out of the 21 performance evaluations he received while in the service. He received one conduct mark of 2.0 for the three-month period ending December 31, 194x, which included the time he was absent without leave. The applicant's Termination of Service form (NAVCG 2500-C) indicates that his average proficiency mark was 2.86 and his average conduct mark was 3.8. However, the Board's calculations indicate that his average proficiency mark was 2.9 and his average conduct mark was 3.9.

On May 14, 194x, the applicant was discharged, having served two years, six months, and four days on active duty. His Termination of Service form indicates that he was issued an honorable service button but not an honorable discharge button. Initially, someone typed "HD" for honorable discharge on the Termination of Service form. However, this was struck out and substituted with "DUHC" for discharge under honorable conditions. The reason cited for his discharge is "COG," which means the convenience of the government, and the authority cited was Article 583 of the Coast Guard's regulations and "PB 94-45". The form is signed by the applicant. The applicant's Notice of Separation and a Certificate of Discharge also indicate that he was discharged "under honorable conditions."

VIEWS OF THE COAST GUARD

On October 28, 1999, the Chief Counsel of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant the applicant's request.

The Chief Counsel stated that the Board should waive the statute of limitations in this case because the applicant's discharge was improperly characterized. He alleged that under the 194x Personnel Manual, the applicant's record "satisfied the requirements for an honorable discharge." The Chief Counsel further alleged that "even if the characterization of the discharge was proper under the personnel regulations in 194x, such characterization is an injustice. The record shows no indication of other than honorable service by the Applicant" The Chief Counsel further stated that the applicant's record meets the criteria for an honorable discharge under all subsequent versions of the Personnel Manual.

The Chief Counsel stated that a discharge "under honorable conditions" was not actually authorized at the time the applicant was discharged. Such discharges were characterized as "general" discharges. The discharge "under honorable conditions," he stated, was not authorized until later.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 2, 1999, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond within 15 days. On November 15, 1999, the applicant responded. He stated that he agreed with the Coast Guard's recommendation.

APPLICABLE LAW

On July 8, 1976, the General Counsel of the Department of Transportation established the following policy concerning the upgrading of discharges:

[T]he Board should not upgrade discharges solely on the basis of post-service conduct. ... This emphatically does not mean that the justness of a discharge must be judged by the criteria prevalent at the time it was rendered. The Board is entirely free to take into account changes in community mores, civilian as well as military, since the time of discharge was rendered, and upgrade a discharge if it is judged to be unduly severe in light of contemporary standards. ...

During World War II, the Coast Guard functioned under the auspices of the Navy, pursuant to 14 U.S.C. §§ 1, 3. However, the applicant was discharged from the Coast Guard in 194x, after it had reverted to the Department of the Treasury and operated under its own rules. Executive Order No. 9666, December 28, 1945.

Article 583 of the 1940 Regulations for the United States Coast Guard states that “[t]he Commandant, without recourse to a board, may direct the discharge of an enlisted man under honorable conditions for the convenience of the government.”

Under Article 4592 of the Coast Guard’s 1934 Personnel Instructions, the following were the criteria for receiving an “honorable” character of discharge: “(1) Discharge at expiration of enlistment, or for extended enlistment, or for the convenience of the government. (2) Average of marks for enlistment, or enlistment as extended, not less than 2.75 in proficiency in rating and 3 in conduct. (3) Never convicted by general Coast Guard court or more than once by a summary Coast Guard court, or more than twice by a Coast Guard deck court [captain’s mast].” Members who did not meet these standards could receive service characterizations of “good,” “indifferent,” “undesirable,” “dishonorable,” or “bad conduct.”

After World War II, the Coast Guard’s regulations regarding discharges were revised to reflect those of the other Armed Forces. A new Personnel Manual was issued in 1949 in which the criteria for an honorable discharge were essentially unchanged. However, a general discharge could be awarded “for the same [five] reasons as an honorable discharge and issued to individuals whose conduct and performance of duty have been satisfactory but not sufficiently deserving or meritorious to warrant an honorable discharge.” Undesirable discharges could be awarded for unfitness (shirkers, alcoholics, repeat petty offenders, bad debts, etc.) or for misconduct, which included “[t]rial and conviction by a civil court when he has been sentenced to confinement in a jail or penitentiary for any period, regardless of the fact that such sentence may have been suspended or that he may have been placed on probation.” Dishonorable and bad conduct discharges were awarded pursuant to a court-martial only.

Today’s standards for discharge appear in Article 12.B.2.(f) of the Personnel Manual (COMDTINST M100.6A). An enlisted member may receive an honorable discharge if his or her service is characterized by “[p]roper military behavior and proficient performance of duty with due consideration for the member’s age, length of service, grade, and general aptitude”; and if the member’s final average evaluation mark is at least 2.7 [out of 4.0] for performance of duty and at least 3.0 for conduct. A member may receive a general discharge if he has been

involved with illegal drugs or if his evaluation marks for job performance or conduct have not met the standards for an honorable discharge. A member may receive a discharge under other than honorable conditions (OTH) for misconduct or security concerns or upon the approval of the recommendation of an administrative discharge board or in lieu of trial by court-martial. A bad conduct discharge is the equivalent of an OTH discharge but is directed by an approved sentence of a court-martial. A member may receive a dishonorable discharge only by an approved sentence of a court-martial.

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 section 1552 of title 10 of the United States Code.

2. An application to the Board must be filed within three years after the applicant discovers the alleged error in his record. 10 U.S.C. § 1552. The applicant signed and received his discharge documents indicating that his discharge was characterized as "under honorable conditions" in 194x, but alleged that he did not notice the character of service until March 1999. However, the Board finds that the applicant knew or should have known the character of his discharge in 194x, when he signed his Termination of Service and received his Certificate of Discharge. Thus, his application was untimely.

3. Pursuant to 10 U.S.C. § 1552, the Board may waive the three-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 conduct a cursory review of the merits of the case. Allen v. Card, 799 F. Supp. 158, 164 (D.D.C. 1992). A cursory review of the merits of this case indicates that the applicant's character of discharge was unjust. Therefore, the Board finds that it is in the interest of justice to waive the statute of limitations in this case.

4. The applicant's Service Record supports his allegation that his service in the Coast Guard Reserve during and after World War II met the criteria for receiving an honorable discharge. He was discharged for the convenience of the government, his proficiency and conduct marks were above the prescribed minimums, and he was taken to captain's mast only once, for being absent without leave from midnight on December 23, 194x, until the morning of December 25, 194x.

5. Although discharges characterized as “under honorable conditions” were authorized under Article 583 of the 1940 Regulations for the United States Coast Guard for the convenience of the government, the applicant’s record does not support his receipt of this less than fully honorable characterization of discharge. Therefore, the Board concludes that it is unjust for the applicant’s discharge forms to reflect that he was discharged “under honorable conditions.”

6. Accordingly, relief should be granted.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application for correction of the military record of former seaman second class, XXXXXXXXXXXXXXXX, USCGR, is hereby granted.

His records shall be corrected to show that he received an honorable discharge from the Coast Guard Reserve on May 14, 194x. The Coast Guard shall send the applicant a corrected copy of his Certificate of Discharge and his discharge form.

Barbara Betsock

Terence W. Carlson

Charles Medalen