

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2003-004

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

FINAL DECISION

ANDREWS, Deputy Chair:

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on October 28, 2002, upon receipt of the applicant's completed application and military records.

This final decision, dated May 29, 2003, 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 asked the Board to correct his discharge form DD 214 to show that he served in Greenland during World War II and was treated for frostbite. He alleged that after his tour in Greenland, when he was being processed for discharge, he was also treated for the "lingering aftereffects" of frostbite in the sick bay of the separation station in Boston. He alleged that a doctor told him that if he was willing to stay in the service for several weeks for testing in evaluation, he might receive disability benefits. However, he alleged, because of his "immaturity, lack of information as to the possible long-term effects from frostbite, and [his] eagerness to return to [his] family," he chose to be discharged as soon as possible. Now, however, the Department of Veterans' Affairs (DVA) has denied his claim because, he alleged, his medical records have been lost.

The applicant alleged that he discovered the errors in his record on August 28, 2001.

SUMMARY OF THE APPLICANT'S MILITARY RECORDS

On July 14, 1943, the applicant enlisted in the Coast Guard Reserve for three years. Upon completing training at Manhattan Beach, he was first assigned to Station Biddeford Pool in Maine, where he advanced to seaman first class. The applicant's Health Record shows that he was treated for reflex otalgia and tinea cruris in December 1943, while he was serving at Station Biddeford Pool.

On February 9, 1944, the applicant was transferred to the *U.S.S. Northland*, which carried supplies across the Atlantic Ocean. In July 1944, upon the applicant's request, he was sent to attend Radio School in Atlantic City for 24 weeks. In August 1944, his Health Record shows, he was hospitalized with complaints of pain of unknown etiology. He was discharged with a diagnosis of anxiety hysteria. Upon graduation from Radio School on December 30, 1944, the applicant became a radioman third class.

On January 20, 1945, the applicant was transferred to an airplane refueling base in Narsarsuaq, Greenland, which for security purposes was denoted on personnel documents as "Navy-1503." On February 14, 1945, he left Navy-1503 preparatory to being discharged. On the same day, the base surgeon at Navy-1503 signed a Medical Certificate Prior to Departure from Overseas Station. The certificate states that the applicant "has been found free from any communicable disease, free from vermin, and has been properly examined." The applicant's Health Record notes his assignment to Navy-1503, but there is no evidence of any medical treatment for frostbite.

On April 5, 1946, the applicant was examined and found to be medically fit for discharge by a surgeon in the U.S. Public Health Service in Boston. On a Termination of Health Record, the doctor noted that he had no diseases or physical conditions likely to result in disability or death and no other "defects." The applicant signed this report, agreeing with the doctor that he had no physical defects. On April 6, 1946, the applicant was honorably discharged. His Notice of Separation sites his service at all of his duty stations, including Navy-1503.

VIEWS OF THE COAST GUARD

On February 24, 2003, the Chief Counsel of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny the applicant's request for untimeliness or, in the alternative, failure of proof.

The Chief Counsel stated that the applicant "was aware, or should have been aware, of these alleged errors well before 2001." He argued that because

the applicant was discharged in 1946, his application is clearly untimely by more than fifty years.

Furthermore, the Chief Counsel stated, “[n]otwithstanding the substantial delay in submitting his petition for correction, the Coast Guard has carefully reviewed the Applicant’s record and cannot find any evidence that supports the corrections he seeks.” He pointed out that there are no entries in the applicant’s record indicating that he was ever treated for frostbite. He also stated that the applicant’s Notice of Separation clearly shows his assignment to Navy-1503, which for security reasons was the proper denotation of the base in Narsarsuaq, Greenland.

On February 28, 2003, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond. 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 section 1552 of title 10 of the United States Code.

2. An application to the Board must be filed within three years of the day the applicant discovers the alleged error in his record. 10 U.S.C. § 1552(b). The applicant alleged that he discovered the errors on August 28, 2001. However, he knew or should have known that his Notice of Separation did not mention Greenland on the date of his discharge in 1946, when he received the notice. Therefore, his request with respect to his Notice of Separation is untimely.

3. The Board may waive the three-year statute of limitations if it is in the interest of justice to do so. 10 U.S.C. § 1552(b). 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. Secretary of Defense*, 68 F.3d 1396, 1405 (D.C. Cir. 1995); *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992). The applicant provided no explanation for his delay in requesting the correction of the alleged error on his Notice of Separation. Moreover, a cursory review of the record indicates that his Notice of Separation is accurate in that it properly documents his service on Greenland with the denotation Navy-1503. Therefore, the Board finds no reason to waive the statute of limitations with respect to the applicant’s request that the Board correct his Notice of Separation to show that he served on Greenland.

4. It is possible, however, that the applicant did not discover that records of his alleged treatment for frostbite were missing from his record until 2001. Nevertheless, the Board finds that this claim must be barred under the doctrine of laches because, more than fifty years after the alleged treatment, whatever evidence or testimony there might have been to support or refute the applicant's allegation is not available.

5. The Board notes that both upon leaving Navy-1503 on February 14, 1946, and on the day prior to his discharge, April 5, 1946, the applicant was examined by doctors who did not report any disability or defect in the record. On April 5, 1946, the applicant concurred with the doctor's finding that he was free of defect. Moreover, he has not submitted any evidence to rebut the presumption of regularity accorded Coast Guard records under the Board's rules at 33 C.F.R. § 52.24(b).

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

