

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2002-032

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. The case was docketed on January 29, 2002, upon receipt of the applicant's completed application and military records.

This final decision, dated August 15, 2002, 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, a former seaman recruit who enlisted on August 18, 1952, and was discharged six weeks later, on October 1, 1952, asked the Board to upgrade the character of his discharge from "general under honorable conditions" to honorable.

The applicant alleged that during boot camp, he got headaches daily and was sent to a hospital for eye tests. As a result of the tests, a Board of Medical Survey recommended that he be discharged, and he was. He further alleged that during his six weeks in the Coast Guard, he "obeyed every command or request, was never on report, and performed the duties assigned with full cooperation."

The applicant alleged that he recently discovered a letter, which had been sent to his "original home" in 1956, stating that he might be eligible for an upgraded discharge. He alleged that in 1956, he was no longer living at the address to which it was sent.

SUMMARY OF THE EVIDENCE

The applicant enlisted in the Coast Guard on August 18, 1952, and was sent to boot camp. A Report of Medical Survey dated September 12, 1952, indicates that, after complaining of headaches, dizziness, tearing, "red vision," and blurring of vision during training, he was tested and found unfit for duty because of amblyopia ex anopsia in his left eye.¹ The Board of Medical Survey recommended that he be discharged. Also on September 12, 1952, the applicant signed a statement acknowledging that his amblyopia ex anopsia pre-existed his enlistment and was not incurred in or aggravated by his service and waiving his right to a hearing before a Physical Evaluation Board.

On September 17, 1952, the findings and recommendations in the Report of Medical Survey were approved. On October 23, 1952, the Commandant ordered the applicant's discharge. On September 30, 1952, he received a conduct mark of 4.0 (out of 4.0) and a proficiency in rating (PIR) mark of RUT, which meant "recruit undergoing training." However, the next day, October 1, 1952, he received a general discharge under honorable conditions with a conduct mark of 4.0 and a PIR of just 2.0. There are no other negative entries in his record.

On October 17, 1956, the Chief of the Enlisted Personnel Division sent a letter to the applicant's mother's address stating that a "review of your record at Coast Guard Headquarters indicates that you may be entitled to an honorable discharge in lieu of the general discharge issued to you. ... It is therefore requested that you forward your general discharge to the Commandant (PE-3) for review."

VIEWS OF THE COAST GUARD

On June 14, 2002, the Chief Counsel of the Coast Guard recommended that the Board waive the statute of limitations and grant the applicant's request.

The Chief Counsel stated that the applicant's discharge was improperly characterized. He stated that the applicant's military record contains no evidence of any misconduct. Moreover, he argued, under the provisions of the Personnel Manuals issued in 1940 and 1955,² the applicant met the criteria for an honorable discharge. Under Articles 10-C-6.A.(1)³ and 12-B-21⁴ of the latter manual, he explained, the applicant's

¹ Amblyopia ex anopsia is "impairment of vision without detectable organic lesion of the eye" that "results from disuse." DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, 29th Edition (2000). During his pre-enlistment physical examination in March 1952, the applicant was found to have 20/25 vision in his right eye and 20/40 in his left. The medical board found his vision to be 20/40 and 20/200, respectively.

² The Chief Counsel stated that he did not have the Personnel Manual in effect in 1952.

³ Article 10-C-6.A.(1) of the 1955 Personnel Manual provided that a proficiency rating was "required for all personnel except (a) recruits undergoing training (RUT) In such cases the reason for the omission of the PIR shall be noted in the PIR column, using appropriate abbreviations."

⁴ Article 12-B-21 of the 1955 Personnel Manual provided that "[i]n the case of enlisted personnel transferred for separation, no marks will be assigned by the activity effecting separation, except as the result of

PIR mark should have been RUT or, if a final mark was required, 3.5. If his PIR had been RUT or 3.5, he would have met the criteria for an honorable discharge under Article 12-B-9.g.1.⁵ of the Personnel Manual because he had never been court-martialed and his disability was not due to his own misconduct.

The Chief Counsel noted that the applicant's discharge papers refer to "Pers. Cir. 51-51," which may have contained regulations regarding such discharges, but the publication could not be found. He stated that, even assuming that publication did authorize a general discharge for a member in the applicant's circumstances, the character of his discharge would still be an injustice, if not an error. Under today's regulations, the applicant would have received either an "uncharacterized" or an honorable discharge. Moreover, the Chief Counsel stated, the 1956 letter sent to the applicant, a copy of which is in his military record, strongly suggests that the Coast Guard believed a mistake had been made with respect to the applicant's character of discharge.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 18, 2002, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond within 15 days. On June 24, 2002, the applicant responded, stating that he agreed with the Coast Guard's recommendation.

APPLICABLE REGULATIONS

Article 8-C-9 of the Personnel Manual issued in January 1952 provided that "[i]n instances where, because of the brief period of active duty service involved, no PIR marks have been assigned as in cases of discharge by reason of disability or minority shortly after enlistment, it will be assumed that the man received at least 2.75 in PIR for the purpose of calculating his final average."

Paragraph 9(e)(1) of Personnel Circular 19-48, which was issued in May 1948 and was not cancelled until October 1953, provided that "[a]n individual discharged as a result of disability whether or not incident to service, *provided not own misconduct*, shall be given an honorable discharge certificate (Form CG-2510) if, during his current enlistment or any extensions thereof, he has not been convicted by a General Court or more than once by a Summary Court and his minimum final average marks are [at least] 2.75 in proficiency in rating and 3.25 in conduct."

disciplinary action." It also provided that, if final marks were required and the record contained no derogatory marks, a final mark of 3.5 would be assigned.

⁵ Article 12-B-9.g.1. of the 1955 Personnel Manual provided that "[a]n individual discharged as a result of disability, whether or not incident to service, *provided not own misconduct*, shall be given an honorable discharge certificate (DD Form 256 CG) if, during his current enlistment or any extensions thereof, he has not been convicted by a General Courts-Martial or more than once by a Special Courts-Martial and his minimum final average marks are 2.75 in proficiency in rating (PIR) and 3.25 in conduct."

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 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 1952. Therefore, he knew or should have known of the alleged error in his record in 1952. 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 and consider the reasons for the delay. *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. Moreover, the applicant apparently never received the letter sent to his mother's address four years after his discharge. Therefore, the Board finds that it is in the interest of justice to waive the statute of limitations in this case.

4. Under Article 8-C-9 of the Personnel Manual in effect when the applicant was discharged on October 1, 1952, he should have been assigned a proficiency rating of at least 2.75 because he was being discharged from boot camp as result of a pre-existing disability. Therefore, the Coast Guard erred by assigning him a proficiency rating of 2.0.

5. Under Paragraph 9(e)(1) of Personnel Circular 19-48, the applicant was entitled to an honorable discharge because he was being discharged for a disability not caused by his own misconduct, he had not been convicted by any military court, and his minimum final average marks should have been 4.0 in conduct and, under Article 8-C-9 of the Personnel Manual, at least 2.75 in proficiency. Therefore, the Coast Guard erred by awarding him a general discharge under honorable conditions.

6. Accordingly, relief should be granted.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former SR xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx USCG, for correction of his military record is granted.

His record shall be corrected to show that he received an honorable discharge from the Coast Guard on October 1, 1952. The Coast Guard shall send him proper documentation of this correction, and a copy of this final decision shall be placed in his record.

Christopher A. Cook

Karen L. Petronis

Kathryn Sinniger