

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2003-083

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

ANDREWS, Deputy Chair:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on May 20, 2003, upon the BCMR's receipt of the applicant's completed application, including her military record.

This final decision, dated January 22, 2004, 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 her record to show that she received an honorable discharge, instead of a general discharge under honorable conditions, when she was separated on June 16, 1944. The applicant also asked the Board to issue her a DD form 214 reflecting her service on active duty.

The applicant alleged that she did not discover the errors in her military record until March 2002, when she applied to the Department of Veterans' Affairs (DVA) and was denied benefits. She stated that she was denied benefits because her record did not reflect her active service and because she had received a general discharge under honorable conditions.

The applicant alleged that her record was in error and unjust because she did serve on active duty during World War II and because she was discharged only because she became pregnant by her husband, who was also in the service, and not because of any misconduct on her part.

SUMMARY OF THE APPLICANT'S MILITARY RECORD

On April 12, 1943, the applicant enlisted in the women's part of the Coast Guard Reserve (SPARS). On June 14, 1943, she began active duty and underwent training to become a storekeeper.

On March 7, 1944, while serving on active duty as a storekeeper in the 7th Naval District, the applicant was married to a fellow Coast Guard reservist.

On June 13, 1944, a doctor of the Public Health Service certified that a test on June 10, 1944, revealed that the applicant was two months pregnant. The doctor recommended that she be discharged. His recommendation was approved on June 15, 1944.

On June 16, 1944, the applicant was discharged from the Reserve "under honorable conditions for the convenience of the Government," having served one year, two months, and five days in the service, including one year and two days on active duty. Her final average marks, on a 4.0 scale, were 4.0 in conduct and 3.190 in performance in rating (PIR).

VIEWS OF THE COAST GUARD

On October 14, 2003, the Chief Counsel of the Coast Guard submitted an advisory opinion in which he stated that the Coast Guard has already sent the applicant an honorable discharge certificate and Statement of Creditable Service. He recommended that the Board deny the remainder of the applicant's request, which was for a form DD 214.

The Chief Counsel stated that the Coast Guard had upgraded the applicant's discharge because "[a]pplying the equity standard of review contained in 33 CFR § 51.7 yields the decision that the characterization of Applicant's discharge should be changed to Honorable to more accurately reflect the nature of her service to our nation during the trying days of World War II."

The Chief Counsel argued, however, that it was inappropriate to prepare a DD 214 for the applicant because "DD 214's were not issued at the time of Applicant's service and are an inappropriate mechanism for recording her active duty time from that era." However, he stated, the Statement of Creditable Service "will serve as a DD 214's functional equivalent for any veterans' benefits to which Applicant may be entitled."

The Chief Counsel included in his advisory opinion photocopies of the honorable discharge certificate and Statement of Creditable Service that were sent to the applicant on October 7, 2003. However, copies of these documents are not in her military record.

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On October 20, 2003, the BCMR sent the applicant a copy of the Chief Counsel's advisory opinion and invited her to respond within 30 days. No response was received.

APPLICABLE REGULATIONS

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."

Article 584(4) of the 1940 Regulations for the United States Coast Guard provided that honorable discharges were awarded under any of five conditions: expiration of enlistment; convenience of the government; hardship; minority (age); and disability not the result of own misconduct. A general discharge under honorable conditions 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." Women who were discharged because of pregnancy commonly received general discharges under honorable conditions up until the 1960s.

On June 12, 1946, the Commandant issued ALCOAST (P) 101, which stated the following:

Effective immediately [PIR] mark for honorable discharge will be [2.75] instead of [3.0]. Make changes in PB No. 4-46 This change retroactive to 6 April 1944. Any individual discharged on or subsequent to 6 April 1944 with discharge under honorable conditions ... solely because [PIR] mark was below [3.0] but mark [2.75] or above may forward his certificate of discharge to [Headquarters] with request that he be issued an honorable discharge form The matter will be given the widest publicity.

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 her record. 10 U.S.C. § 1552. The applicant knew or should have known of the character of her discharge when she was discharged in 1944. Therefore, her application was untimely.

3. Pursuant to 10 U.S.C. § 1552(b), 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). The applicant explained that prior to March 2002, she did not know the impact of her discharge under honorable conditions and her lack of a DD 214 on her eligibility for veterans' benefits. A cursory review of the merits of this case indicates that the applicant received a general discharge under honorable conditions only because she was pregnant at the time of her discharge. Therefore, the Board finds that it is in the interest of justice to waive the statute of limitations in this case.

4. The applicant asked the Board to upgrade her discharge from general under honorable conditions to honorable. The record indicates that the applicant's conduct and PIR marks met the standards for an honorable discharge and that, but for her pregnancy, she would have received an honorable discharge. As there is nothing about pregnancy that would make a woman's military service "not sufficiently deserving or meritorious to warrant an honorable discharge," in accordance with the standard applied to members under Article 584(4) of the 1940 regulations, the Board finds that the applicant's general discharge under honorable conditions constitutes a clear, significant injustice in her record.

5. The applicant asked that her new honorable discharge be documented on a form DD 214. However, DD 214s were not issued until several years after the applicant was discharged. Therefore, it would be anomalous to include one in her military record.

6. The Chief Counsel stated that no further relief need be granted because the Coast Guard has already sent the applicant an honorable discharge certificate and a Statement of Creditable Service documenting her active duty service. He provided the Board with photocopies of those documents. However, the applicant's military record as received by the Board from the Chief Counsel has not yet been corrected. No copy of the honorable discharge certificate or the Statement of Creditable Service appears in her record. Instead, a photocopy of her old certificate reflecting her discharge under honorable conditions, which she submitted to the Board, has been placed in her record.

7. Accordingly, relief should be granted by correcting the applicant's military record to include her Statement of Creditable Service and her honorable discharge certificate and by removing the photocopy of the old certificate. Although discharge certificates are not normally included in a military record, in this case there is no other appropriate document in the military record to reflect the character of the applicant's discharge.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former SK3c xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCGR, SPARS, for correction of her military record is granted as follows:

The copy of her certificate of general discharge under honorable conditions shall be removed from her record.

A copy of her new honorable discharge certificate shall be added to her record.

A copy of the Statement of Creditable Service shall be added to her record.

Stephen H. Barber

Harold C. Davis, M.D.

Dorothy J. Ulmer