

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-015

FINAL DECISION

ULMER, Chair:

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The application was docketed on November 3, 2003, upon receipt of the applicant's completed application and military records.

This final decision, dated June 30, 2004, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant asked that his military record be corrected by removing conscientious objector as the reason for his discharge. The applicant was honorably discharged from the Coast Guard on August 21, 1981, for convenience of the government under Article 12.B.12 of the Personnel Manual, with a KCM (conscientious objector¹) separation code and an RE-4 (not eligible for reenlistment) reenlistment code.

The applicant stated that he was persuaded to "throw away my military career in support of [certain] religious convictions, which views are not biblically correct." He stated that he was wrong in pursuing a conscientious objector discharge and that he wanted to fulfill his enlistment by serving in the military as a chaplain. He stated that since his discharge he has continued to study the Bible, that his eyes have been opened, and that he does not want to leave this earth as a conscientious objector.

¹ Article 4.a.(1) of Commandant Instruction 1900.8, dated November 30, 1990 and currently in effect, defines conscientious objection as "[a] firm, fixed and sincere objection, by reason of religious training and belief, to participation in war in any form or the bearing of arms."

The applicant stated on his application that the statute of limitations should be waived in his case because he wants to finish his enlistment and because he loves America and the United States military.

SUMMARY OF THE RECORD AND SUBMISSIONS

The applicant enlisted in the Coast Guard on August 23, 1971, and was released into the Reserve on August 22, 1975. He reenlisted in the regular Coast Guard for four years on October 10, 1979.

On March 16, 1981, the applicant submitted a letter to his officer-in-charge (OIC) requesting to be discharged as a conscientious objector to military service.² He stated that he was conscientiously opposed to participation in combatant or noncombatant military service. The applicant's church acknowledged that he was an active participating member of their denomination.

On March 19, 1981, an Air Force psychiatrist evaluated the applicant. The psychiatrist found that the applicant suffered from "no significant psychiatric disorder."

On March 23, 1981, a chaplain interviewed the applicant. The chaplain stated that the applicant's beliefs were clearly, firmly, and sincerely held, which qualified the applicant as a conscientious objector.

On April 9, 1981, the applicant submitted another request to his OIC requesting to be discharged and stating that he "refused to mix military . . . and religion to follow the example of Jesus Christ. By doing this I demonstrate my faith in God's Kingdom, the only solution to all the problems the politicians cannot solve." He also stated that he could no longer serve in the Coast Guard or any other branch of the military service.

On April 13, 1981, the applicant's OIC forwarded the applicant's request to the OIC's supervisor stating that a discharge may be in the greater interest of the service. The OIC's supervisor forwarded the applicant's request to the next officer in the chain of command, who requested that a hearing officer be appointed to review the applicant's conscientious objector request.

² Commandant Instruction 1900.2B (Conscientious Objectors and the Requirement to Bear Arms), dated July 14, 1976, was in effect when the applicant was discharged in 1981. It contained the procedure for evaluating and processing a member who claimed to be a conscientious objector. The Board has been unable to locate this earlier instruction. However, the applicant has not alleged that any violations of that instruction occurred in the processing of his conscientious objector request.

On June 3, 1981, a hearing officer recommended that the applicant's conscientious objector application be approved. He concluded that the applicant was conscientiously opposed to participation in any war, in any form; that his opposition was founded on religious training and belief; and that his beliefs were sincere and became crystallized following his enlistment in the Coast Guard. The hearing officer further reported:

[The applicant's] sincerity is best evidenced by his willingness to endure the sneers and disrespect of his shipmates because of his beliefs. The applicant's testimony, his performance of duty, and his peers' reactions attest to the fact that his beliefs are strongly and sincerely held. There is literally no evidence to the contrary.

On June 19, 1981, the district legal officer favorably endorsed the applicant's request for a conscientious objector discharge, finding the record to be legally sufficient and complete. He further stated that the applicant's beliefs were formed subsequent to his enlistment in the Coast Guard.

On July 13, 1981, the Chief of the General Law Division of the Chief Counsel's Office of the Coast Guard determined that the evidence of record supported the findings and recommendation made by the hearing officer and the district commander.

On August 13, 1981, the Commandant directed that the applicant be discharged. On August 21, 1981, the applicant was honorably discharged from the Coast Guard for the convenience of the government, with a KCM (conscientious objector) separation code and an RE-4 reenlistment code.

The applicant's military record contains only one captain's mast, under Article 15 of the Uniform Code of Military Justice (UCMJ), for disobeying an order directing him to read an operations order and pass it to the next watch. He was punished by being restricted to the base for 7 days and by forfeiting \$50 of his pay for one month.

VIEWS OF THE COAST GUARD

On March 22, 2004, the Judge Advocate General (TJAG) of the Coast Guard submitted an advisory opinion adopting the facts and analysis provided by the Commander, Coast Guard Personnel Command (CGPC), which was attached to the advisory opinion as Enclosure (1). TJAG noted that the applicant's application was untimely, but he stated that granting partial relief as recommended below will allow the applicant the opportunity to once again offer his services to the nation's armed forces.

CGPC recommended that the Board grant partial relief by upgrading the applicant's reenlistment code from RE-4 to RE-3C (eligible for reenlistment except for

disqualifying factor: conscientious objector). In recommending that no other relief be granted, CGPC stated the following:

The DD-214 instruction states that the information contained thereon is a concise record of a period of service in the Armed Forces . . . The record clearly demonstrates the painstaking process that the Applicant underwent and the Coast Guard followed to confirm his deeply held religious beliefs at that time against military service . . . [D]espite the Applicant's current feeling about his discharge, the words "conscientious objector" do not appear on his DD-214 . . . The Coast Guard and the other armed services invest a great deal of time and effort to ensure that discharges for religious reasons are based on sincerely held beliefs, and not motivated by other reasons to leave the service. It would be strongly against the Services' interest to change the records of any other member in these circumstances, as it could possibly encourage insincere efforts to obtain a discharge for this reason.

CONDINST 1900.2B (Conscientious Objector and the Requirement to Bear Arms) dated July 1976 was not available for our review, but after examining the current policy for processing conscientious objectors . . . it appears from the Applicant's record that a careful, deliberative process very similar to the current process was in place at the time of his separation. I am satisfied that all the proper steps were taken to ensure the applicant received full due process.

Current policy only authorizes reenlistment code RE-3C (ineligible to reenlist, except with a waiver) for SPD code KCM.³ Based on the Equity Standard of Review . . . the Applicant's reenlistment code may be changed from RE-4 to RE-3C.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 27, 2004, the Board received the applicant's reply to the views of the Coast Guard and stated that he was "in full accord with the recommendation granting partial relief to change my reenlistment code, thusly allowing me to approach the United States Armed Forces." He stated that his approach in 1980 to the discharge was

³ Commandant Instruction M1900.4B (Instruction for the Preparation and Distribution of the DD Form 214), dated September 25, 1979, was in effect at the time of the applicant's discharge. Chapter 2 of this instruction contained the Separation Program Designators for enlisted personnel. For the KCM separation code, either an RE-3C or an RE-4 reenlistment code was authorized.

very improper and "seemed to bring all sort of reproach upon God, my Country and my family."

In a later submission, the applicant questioned why he was not referred to a chaplain in the Coast Guard and he wondered whether the Coast Guard had any officers or Bible knowledgeable personnel within their ranks. He stated that he wished that he had not been given such an easy or early discharge from the Coast Guard.

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. The applicant requested an oral hearing before the Board. The Chairman, acting pursuant to 33 C.F.R. § 52.31, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.

3. The application was not timely. To be timely, an application for correction of a military record must be submitted within three years after the applicant discovered or should have discovered the alleged error or injustice. See 33 CFR 52.22. This application was submitted approximately 19 years beyond the statute of limitations.

4. The Board may still consider the application on the merits, however, if it finds it is in the interest of justice to do so. The interest of justice is determined by taking into consideration the reasons for and the length of the delay and the likelihood of success on the merits of the claim. See, Dickson v. Secretary of Defense, 68 F.3d 1396 (D.D.C. 1995); Allen v. Card, 799 F. Supp. 158, 164 (D.D.C. 1992). While the applicant's reasons for not filing his case sooner are not persuasive, the fact that TJAG has recommended limited relief indicates to the Board that the applicant's claim may have some merit. Therefore, the Board will waive the statute of limitations and review the merits in this case.

5. The applicant has not presented any evidence showing that his discharge by reason of conscientious objection in 1981 was either in error or unjust. In fact, the applicant originated the 1981 request and the Coast Guard spent a considerable amount of time ensuring that the applicant's religious beliefs were genuine. The fact that the applicant now believes that his current religious beliefs are compatible with military service does not establish an error with respect to his 1981 conscientious objector discharge. The record accurately reflects the reason for the applicant's 1981 discharge.

6. However, the Board agrees with TJAG that the applicant's RE-4 reenlistment code should be upgraded. Although COMDTINST M1900.4B authorized either an RE-3C or an RE-4 reenlistment code for a conscientious objector discharge in 1981, the Board finds that the assignment of the RE-4 was inconsistent with the applicant's favorable performance record and with the lack of any disciplinary problems, except for one minor infraction. Moreover, the Board notes that today only an RE-3C is authorized for a discharge by reason of conscientious objection. Therefore, under the circumstances of this case, RE-3C is the more appropriate reenlistment code and the Board will direct this correction. The RE-3C will allow the applicant to reenlist should any branch of the armed forces choose to grant him a waiver.

5. Accordingly, the applicant should be granted limited relief.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application of former XXXXXXXXXXXXXXXX, USCG, for correction of his military record is granted in part. His record, including his DD Form 214, shall be corrected to show that he received an RE-3C reenlistment code upon his discharge in 1981.

No other relief is granted.

Philip B. Busch

Richard Walter

Suzanne L. Wilson