

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2006-046

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

AUTHOR: Andrews, J.

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 Chair docketed the case on January 27, 2006, upon receipt of the applicant's completed application and military records.

This final decision, dated September 28, 2006, 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 fireman second class (FN2) 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. He alleged that during his years of service, he was punished for only one minor incident. After he had been in the brig for 20 minutes, he asked to see the officer in charge, who agreed to assign him to a ship that was about to sail from Norfolk into the North Atlantic. The applicant alleged that he has been a good citizen and father since his discharge.

SUMMARY OF THE RECORD

On March 10, 1945, at age 17, the applicant enlisted in the Coast Guard Reserve. Initially, the applicant was assigned to the Coast Guard Academy as a steward's mate third class. He advanced to steward's mate second class on June 11, 1945.

On June 22, 1945, the applicant reported for duty at a training station in Brooklyn, New York. On June 30, 1945, he received a conduct mark of 2.5 (out of 4.0) after he was taken to a captain's mast for "refusal to take orders and abusive language." On July 1, 1945, the applicant reported for duty aboard the *U.S.S. Gordon*, based in Norfolk, Virginia. The applicant served on this ship for 8 months and 11 days. Because he began performing the duties of a fireman, his rating was switched to fireman second class. In April 1946, the applicant was transferred to the *U.S.S. Casper*, based in San Francisco.

On May 17, 1946, the applicant was discharged "under honorable conditions" for the convenience of the Government. His average proficiency in rating (PIR) mark was 2.95, and his average conduct mark (not including marks for periods of less than one month, which are not to be counted) was 3.75. Except for the one conduct mark of 2.5 in June 1945, all of the applicant's other conduct marks were 4.0.

VIEWS OF THE COAST GUARD

On May 19, 2006, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant the applicant's request based on an attached memorandum on the case prepared by CGPC.

CGPC alleged that the applicant's record does not contain any material errors and is presumptively correct. Nevertheless, CGPC recommended that the Board waive the statute of limitations and upgrade the applicant's discharge "in the interest of fairness." CGPC stated that upgrading the applicant's discharge would "more accurately reflect[] his service" since his record contains only one infraction. CGPC noted that the applicant's final average marks were "well within the threshold for an honorable discharge by current standards." CGPC concluded that the applicant "served during the trying times of World War II and his record supports an honorable discharge."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 16, 2006, the applicant responded to the advisory opinion of the Coast Guard by stating that he had no objection to the recommendation therein.

APPLICABLE LAW

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 1946, after it had reverted to the Department of the Treasury and operated under its own rules. Executive Order No. 9666, December 28, 1945.

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]."

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.

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 received his discharge documents indicating that his discharge was characterized as "under honorable conditions" in 1946. Thus, his application was untimely.

3. Pursuant to 10 U.S.C. § 1552(b), the Board may excuse the untimeliness of an application if it is in the interest of justice to do so. In *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that to determine whether the interest of justice supports a waiver of the statute of limitations, the Board "should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review." The court further instructed that "the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review." *Id.* at 164, 165. A cursory review of the merits of this case indicates that the applicant was erroneously and unjustly awarded a discharge "under honorable conditions" instead of an honorable 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's military record shows that he was punished only once at captain's mast, that he was never tried by court martial, that he was discharged for the convenience of the Government, and that his final average marks calculated in accordance with policy (not including marks assigned for periods of less than one month)

were 2.95 for PIR and 3.75 for conduct. Therefore, the Board finds that the applicant has proved by a preponderance of the evidence that the Coast Guard erred in failing to issue him an honorable discharge because under regulations then in effect, Article 4592 of the Coast Guard's Personnel Instructions, the criteria for receiving an "honorable" character of discharge were the following: "(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]." Therefore, when he was discharged on May 17, 1946, the applicant clearly met the criteria for an honorable discharge. In addition, the Board notes that the applicant's service records meet the criteria for an honorable discharge under the current regulations in Article 12.B.2.(f) of the Personnel Manual.

5. Accordingly, relief should be granted by upgrading the applicant's discharge to honorable and sending him an honorable discharge certificate.

ORDER

The application of former FN2 xxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCGR, for correction of his military record is granted.

His records shall be corrected to show that he received an honorable discharge from the Coast Guard Reserve on May 17, 1946. The Coast Guard shall also send the applicant an honorable discharge certificate.

Julia Andrews

H. Lee Einsel, Jr.

Kathryn Sinniger