

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-010

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

This is a proceeding 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 October 23, 2008, upon receipt of the applicant's completed application, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated May 21, 2009, is approved and 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 seaman first class (S1c) who was discharged from active duty in the Coast Guard Reserve on June 8, 1946, asked the Board to upgrade the character of his discharge from "Under Honorable Conditions" to Honorable. He alleged that the character of his discharge "was unjust because it was based on one isolated incident in 1 year [and] 11 days [of] service with no other adverse action and also based upon the point system for an early separation, causing no chance during my 3-year enlistment to earn an Honorable Discharge."

The applicant alleged that he discovered the error in his record in July 2008 and argued that it is in the interest of justice for the Board to consider his application because the error was discovered more than 62 years after it occurred and should be corrected.

SUMMARY OF THE RECORD

On February 28, 1945, at the age of 17, the applicant enlisted in the Coast Guard Reserve for a term of three years and began serving on active duty as an apprentice seaman (AS). He was assigned to a shore unit, advanced to seaman second class (S2c) on June 16, 1945, and sent for training as a radioman in Atlantic City, New Jersey. However, on July 30, 1945, the applicant was disenrolled from radioman school and reassigned to a base near his hometown so that he could marry and attend the birth of a daughter in August 1945.

From November 21, 1945, to January 7, 1946, the applicant served aboard the USS CAMBRIA, which was transporting servicemembers back to the United States from across the Pacific Ocean because the war had ended.

On January 10, 1946, the Commandant issued Personnel Bulletin No. 4-46, which provided that a member who had been enlisted and discharged for the convenience of the Government after April 6, 1944, would receive an Honorable discharge if he was “never convicted by a General Court Marital or more than once by a Summary Court Martial” and had a final average PIR mark of at least 3.0 and a final average conduct mark of at least 3.25.¹ The bulletin did not mention captains’ masts or deck courts. Previously, members discharged for the convenience of the government could receive an Honorable discharge with a final average PIR mark of “not less than 2.75” and a final average conduct mark of at least 3.0 if they were “[n]ever 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.”²

On February 20, 1946, the applicant advanced to S1c. From April 5 to May 28, 1946, he served aboard the USS WAKEFIELD, which was transporting servicemembers home from Guam. On May 29, 1946, the applicant was transferred to a discharge-processing center. His “Termination of Service” form shows that he was discharged “Under Honorable Conditions” for the convenience of the Government on June 8, 1946. The authority cited for his discharge was noted as “PB 94-45 as amend. by AL 57-46.”

During his 1 year, 3 months, and 11 days of service, the applicant was never absent without leave, and he was taken to mast only once, about a month before his discharge. A chart of his evaluation marks in block 6 of his “Service Record” shows the following:

Date	Rate	Proficiency in Rating (PIR) Mark	Conduct Mark
28 FEB 1945	AS	Less than one month	4.0
31 MAR 1945	AS	3.0	4.0
23 MAY 1945	AS	3.0	4.0
30 JUL 1945	S2c	Under Instruction	4.0
03 AUG 1945	S2c	3.0	4.0
30 SEP 1945	S2c	3.0	4.0
31 DEC 1945	S2c	2.7	4.0
07 JAN 1946	S2c	Less than one month	[none]
31 MAR 1946	S1c	2.7	4.0
04 APR 1946	S1c	Less than one month	4.0
28 MAY 1946	S1c	2.5	2.5
(5-3-46 Capt. Mast – Failure to turn to and in bunk during working hours. Awarded: 12 hours EPD.)			

¹ UNITED STATES COAST GUARD, PERSONNEL BULLETIN NO. 4-46 (Jan. 10, 1946).

² UNITED STATES COAST GUARD, PERSONNEL INSTRUCTIONS, Art. 4592 (1934).

02 JUN 1946	S1c	Less than one month	2.5
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According to his “Termination of Service,” the applicant’s final average proficiency in rating (PIR) mark was 2.78, and his final average conduct mark was 3.72.³

On June 12, 1946, four days after the applicant’s discharge, the Commandant issued ALCOAST (P) 101,⁴ which cancelled the new, higher PIR mark requirement for an Honorable discharge in Personnel Bulletin No. 4-46. The ALCOAST stated the following:

Effective immediately [PIR] mark for Honorable discharge will be two point seven five [2.75] instead of three point zero [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 three point zero [3.0] but mark two point seven five [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.

VIEWS OF THE COAST GUARD

On February 10, 2008, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he adopted the findings and analysis in a memorandum on the case prepared by the Coast Guard Personnel Command (CGPC).

CGPC noted that the application was submitted untimely and argued that it “should be denied based upon untimeliness and lack of merit” since the applicant provided no justification for delaying his application for more than 60 years.

Regarding the merits of the case, CGPC stated that the applicant’s military records “does not reveal any significant infractions or nonconformance to military standards. CGPC stated that the applicant’s final average marks were 2.84 for PIR and 3.73 for conduct, but did not cite an

³ However, according to the rules for calculating final average marks in effect in 1946, the applicant’s final average PIR mark was 2.81 and his final average conduct mark was 3.77. Personnel Bulletin 72-45, issued on July 25, 1945, stated that final average marks should be calculated as follows:

3. (a) Efficiency marks assigned during the first year of active duty of enlisted personnel who are serving in an extension of an original enlistment ... and who have completed three years’ active duty shall be disregarded.

(b) Marks assigned during entire enlistment period shall be computed when the person concerned has not completed three years’ active duty or is serving in other than an original enlistment or extension thereof.

4. [Personnel attached to discharge centers and awaiting discharge receive only conduct marks.]

5. Final average marks need only be entered under “Proficiency in Rating” and “Conduct” and shall be determined by multiplying each mark by the number of months covered by the mark, adding the resulting figures and dividing the total by the total number of months in the periods for which marks have been assigned. When a mark covers less than a full month, the computation shall be on a fractional month basis; periods of less than 15 days shall be considered as half a month, and periods of 15 days or over shall be considered as a full month.

UNITED STATES COAST GUARD, PERSONNEL BULLETIN NO. 72-45 (July 25, 1945).

⁴ UNITED STATES COAST GUARD, OFFICIAL DISPATCH, ALCOAST NO. (P) 101 (June 12, 1945).

authority or explain these calculations. CGPC concluded that “[b]ased upon current standards, these evaluation averages meet the minimum to qualify for an Honorable discharge.” However, CGPC stated that the discharge “Under Honorable Conditions” is presumptively correct and that “there does not appear to be any error with the applicant’s record.” Because the applicant would likely have received an Honorable discharge if separated under current standards, CGPC stated that the Coast Guard would not object to upgrading his discharge if the applicant “was to substantiate to the BCMR that his post-discharge conduct and activities are not inconsistent with the standards applied to an Honorable discharge.”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 19, 2009, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. No response was received.

APPLICABLE LAW

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 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.”

Today’s standards for discharge appear in Article 12.B.2.(f) of the Personnel Manual (COMDTINST M100.6A), which states that an enlisted member discharged prior to 1983 was eligible for an Honorable discharge if his or her service was 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 was at least 2.7 (out of 4.0) for performance of duty and at least 3.0 for conduct.

PRIOR BCMR CASE

In BCMR Docket No. 2002-036, the applicant had received a discharge “Under Honorable Conditions” for the convenience of the Government after serving on active duty in the Reserve from January 24, 1945, to May 29, 1946. During his service, the applicant had been punished once at “deck court” for being absent without leave for several hours on October 18, 1945. He received PIR and conduct marks of 1.5 for this infraction, but of his other conduct marks were 4.0. His “Termination of Service” indicated that his final average marks were 2.85 for PIR and 3.79 for conduct. In the advisory opinion, the Chief Counsel of the Coast Guard recommended that the Board grant relief in light of the single disciplinary infraction in the applicant’s record. The Board found that the applicant’s discharge “Under Honorable Conditions” on

May 29, 1946, was both erroneous and unjust because he had retroactively qualified for an Honorable discharge under ALCOAST (P) 101. The Board upgraded his discharge to Honorable.

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. Under 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22, an application to the Board must be filed within three years after the applicant discovers, or reasonably should have discovered, the alleged error or injustice. Although the applicant alleged that he discovered his discharge “Under Honorable Conditions” in July 2008, the Board finds that he knew or should have known the character of his discharge in June 1946, when he did not receive an Honorable discharge button. Therefore, his application is 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.”⁵ Although the applicant long delayed seeking the correction of his character of discharge, the Board finds that it is in the interest of justice to excuse the untimeliness of the application because a cursory review of the record has revealed that he qualified for an Honorable discharge.

4. The applicant’s “Termination of Service” form shows that he was discharged “Under Honorable Conditions” for the convenience of the Government on June 8, 1946. His “Service Record” form shows that he was punished only once at captain’s mast during his enlistment and that he was never tried by court martial. Up until April 6, 1944, a member apparently qualified for an Honorable discharge if, like the applicant, he was discharged for the convenience of the Government; he had “[n]ever 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”; and his final average marks were at least 2.75 for PIR and 3.0 for conduct.⁶ However, the marks criteria for an Honorable discharge were raised for several months, as Personnel Bulletin 4-46, issued on January 10, 1946, shows that a final average PIR mark of at least 3.0 and a final average conduct mark of at least 3.25 were required.⁷ The applicant was discharged during this

⁵ *Allen v. Card*, 799 F. Supp. 158, 164-65 (D.D.C. 1992); see *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

⁶ UNITED STATES COAST GUARD, PERSONNEL INSTRUCTIONS, Art. 4592 (1934); UNITED STATES COAST GUARD, REGULATIONS, Art. 584 (1940); UNITED STATES COAST GUARD, PERSONNEL BULLETIN NO. 4-46 (Jan. 10, 1946).

⁷ UNITED STATES COAST GUARD, PERSONNEL BULLETIN NO. 4-46 (Jan. 10, 1946).

period, on June 8, 1946, and his records show that the only way in which he did not qualify for an Honorable discharge was that his final average PIR mark was below 3.0.

5. On June 12, 1946, just four days after the applicant's discharge "Under Honorable Conditions," the Commandant issued ALCOAST (P) 101, which returned the marks criteria for an Honorable discharge to their prior levels of at least 2.75 for PIR and at least 3.0 for conduct.⁸ Moreover, under ALCOAST (P) 101, the change was made effective retroactively back to April 6, 1944; the retroactive change was to "be given the widest publicity"; and members discharged "Under Honorable Conditions" since that date were invited to submit their discharge papers to Coast Guard Headquarters so that their discharges could be upgraded. Therefore, the Board finds that, pursuant to ALCOAST (P) 101, the applicant qualified for an Honorable discharge in 1946 because his final average PIR mark was above 2.75. It is a significant injustice that he has suffered a less than fully Honorable discharge for almost 63 years.

6. CGPC argued that the applicant's discharge should only be upgraded if he "was to substantiate to the BCMR that his post-discharge conduct and activities are not inconsistent with the standards applied to an Honorable discharge." However, the record shows that the applicant actually qualified for an Honorable discharge in June 1946. Therefore, his post-discharge conduct should not affect his entitlement to relief.

7. Accordingly, relief should be granted by correcting the character of the applicant's discharge to "Honorable" and by sending him an Honorable discharge certificate.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

⁸ UNITED STATES COAST GUARD, OFFICIAL DISPATCH, ALCOAST No. (P) 101 (June 12, 1945).

ORDER

The application of former S1c xxxxxxxxxxxxxxxxxxxxxxxx, USCGR, for correction of his military record is granted. His Coast Guard military record shall be corrected to show that he received an Honorable discharge from active duty in the Coast Guard Reserve on June 8, 1946. The Coast Guard shall also send him an Honorable discharge certificate.

Patrick B. Kernan

Erin McMunigal

Jeff M. Neurauter