DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-096

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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 after receiving the applicant's completed application on March 4, 2009, 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 November 12, 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

The applicant asked the Board to upgrade his May 24, 1946, Dishonorable discharge to an Honorable discharge. He stated that his Dishonorable discharge was unjust because he willingly returned to his base after being absent without leave (AWOL). He further stated that he regrets having gone AWOL and "would like to have a clean slate."

The applicant alleged that while serving on a ship in February 1946, he fell and injured his back and lower body and was moved to a nearby hospital ship, which transported him to a military hospital. While in the hospital, he decided to go AWOL. He stated that he does not remember why he decided to go AWOL, but his decision might have stemmed from his mental condition resulting from his injuries or he might have "had enough with the Coast Guard." Several weeks later, he decided to return to his base. Upon his return, he was assigned to basic duties, such as cleaning. A few days later, his commanding officer (CO) told him he would be tried by court-martial. As a result of a summary court-martial (SCM), he was sentenced to a Dishonorable discharge. Although he appealed his discharge, his appeal was unsuccessful. The applicant stated that he sincerely apologizes for going AWOL, but believes that it was "the result of mental injuries temporarily sustained when I fell on the ship."

In support of his request, the applicant submitted various documents and letters. His wife of 61 years wrote that the applicant talks every day about his Dishonorable discharge for going AWOL with remorse. She stated that he "has been a very hard worker [and] model citizen all his

life," a wonderful husband, a good provider, and a father of four daughters. She implored the Board to remove "this black stain" from his records. Another letter shows that in 2003 the applicant's wife was informed through their congressman that the applicant could seek an upgrade of his discharge through the BCMR.

SUMMARY OF THE RECORD

On February 12, 1943, at the age of 20, the applicant was inducted into the Coast Guard Reserve for three years. After completing training, he was assigned to a destroyer escort, the USS PETTIT, for two months before being transferred to another unit, the Captain of the Port (COTP) in Charleston, SC. There is no documentation from the PETTIT regarding the applicant's performance while assigned to the ship.

On December 2, 1943, the applicant went AWOL from the COTP. He had forged a liberty pass or leave papers. He was apprehended by the Naval Shore Patrol at Union Station in Washington, DC, on December 3, 1943, and ordered to return to the COTP. However, he did not return to his unit and was declared a deserter 30 days later. The applicant surrendered himself to the Naval Shore Police in Detroit, Michigan, on April 27, 1944, almost four months later. He was returned to the COTP and tried by SCM on June 7, 1944, for this offense. He pled guilty to being AWOL, and his sentence was mitigated by the Reviewing Authority to forfeiture of $20 in pay per month for five months; to perform 20 hours of extra police duty; and to be restricted to the limits of the COTP for two months.

On January 18, 1945, the applicant was absent over leave (AOL) for a day when he failed to return to his unit following a 15-day period of authorized leave.

On January 27, 1945, the applicant failed to return from authorized liberty. He was declared a deserter 30 days later. On November 13, 1945, more than nine months later, he surrendered himself at the Coast Guard Operating Base in Detroit, MI, and was returned to the COTP under escort.

On December 13, 1945, the applicant was admitted to a naval hospital for psychiatric evaluation because of his disciplinary problems. He remained in the hospital until February 26, 1946. The following are excerpts of medical notes made while the applicant was hospitalized:

- "Patient's inability to adjust to military life on account of lifelong emotional instability and other personality traits is the cause of his admission. Since being in the service he has had 'all kinds of trouble,' mostly in taking orders, and has been 'miserable all the time.' … Because he has always been a disciplinary problem, he was referred to this hospital for observation."
- "Except for 2 months sea duty aboard DE 253, no action; all service was ashore. 'I was taken off the ship because I was always on restriction.' He has had numerous disciplinary infractions, several masts and one Summary Court Martial [for first AWOL]."
- "In January 1945 he deserted again … 'I was going nuts living like a hermit—just couldn't stand it.'"

- "Mother is living but not well. [She has] had several 'nervous breakdowns' and has been in hospitals several times. … One brother recently discharged from Army because of 'nerves.' 'He was always queer.'"
- "As a child, patient was very easily excited, had a very bad temper and had very bad nightmares. Talked in his sleep. Was afraid of the dark.… He was always restless. 'I have never been able to stay in one place long, even a movie—I just can't stand the dark.'"
- "He completed the 11th grade with fair grades; then quit one semester before graduation 'because I couldn't stand it any longer.' He joined the CCC's but only remained for three weeks when he went AOL because he was 'pushed around.' … Work is very erratic; … could never hold one job for any length of time."
- "He is nervous and cannot eat. He has trouble sleeping and is awakened by dreams of falling. … Complains of anorexia, indigestion, insomnia, nightmares, and general nervousness, of at least 2 years duration."
- "'I want to get out of here. I just can't take it. Don't care any more – they ruined me!' Restlessness, nightmares, nervousness."
- "There is no evidence of mental abnormality (i.e., psychosis or psychoneurosis) in patient's general behavior, stream of talk, content or ideation. However, he shows signs of great emotional tension and irritability. … At night he is restless. Complains rather bitterly that he cannot sleep. In the interview situation he is pouty, petulant and rather childish, takes an abused attitude. Apparently takes no responsibility and feels no particular guilt. Has the attitude that he couldn't stand service conditions and it is not his fault that he went over the hill [AWOL]."
- "In spite of patient's tension and some initial complaint of smothering spells, he has shown no elevation of pulse or other sustained signs of anxiety neurosis. He is regarded as simply an emotionally immature, self-centered irritable psychopath. E.g., 'I've been stubborn all my life. … I was the guy that was always catching it … people bother me too much. I want to be left alone.'"

The applicant was diagnosed with "Personality Disorder #1561,"[1] and the psychiatrist wrote that the disorder was "EPTE"—i.e., it existed prior to entry on active duty. On January 11, 1946, a Board of Medical Survey reported that the applicant did not have a physical or mental disability warranting a medical separation but was unfit for duty because of his personality disorder. The board declared the applicant legally competent, responsible, and fit to stand trial. However, the board also noted that "he will not profit by disciplinary action and that long confinement will have a deleterious effect on his physical condition."

On February 27, 1946, the District Commander forwarded the report of the Medical Board of Survey to the Commandant with a recommendation that the disciplinary action against the applicant be dropped because the board had found that it would not profit the applicant and that a long confinement might cause harm. He noted that the applicant could be administratively discharged due to "unsuitability" or due to a medical condition that pre-existed his enlistment.

On April 3, 1946, the applicant was tried by SCM. The charge(s) against him are not listed in the record, but he pled guilty to having been AOL from January 27 to November 13,

[1] The coding of personality disorders has changed since 1946, and the exact meaning of #1561 is not in the record.

1945. He was sentenced to a Dishonorable discharge. Because the trial documents are not in the applicant's record, it is not clear whether this sentence was mitigated from something worse. However, a note dated April 18, 1946, states that "[i]t has not been the policy of the Navy department[[2]] to award DD's for AOL offenses regardless of their duration. In this case we are legally within the jurisdiction to award a DD but it would not conform to policy. He certainly deserves the DD."

On May 14, 1946, the Acting Secretary of the Treasury approved the applicant's sentence upon the recommendation of the Commandant. On May 24, 1946, the applicant was separated with a Dishonorable discharge.

On November 12, 1946, the applicant asked the Board of Review, Discharges and Dismissals (now known as the Discharge Review Board) to upgrade his discharge. The board decided that no correction of his discharge was warranted, and the Acting Secretary of the Treasury approved the decision. The board noted in its decision that prior to his second SCM, the applicant's mental condition had been evaluated by a Board of Medical Survey, which found that he was sane and fit for trial but had a personality disorder that had pre-existed his enlistment. Therefore, he could be discharged either for unsuitability or for a physical disability existing prior to enlistment. The board therefore concluded that the applicant was not entitled to a medical discharge, that he knew the probable consequences of being AWOL, and that his Dishonorable discharge "was equitable and just under existing standards of Naval law and discipline."

VIEWS OF THE COAST GUARD

On July 21, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief.

The JAG stated that the application should be denied because it is untimely since the applicant clearly knew the character of his discharge in 1946. The JAG stated that even if the applicant did not know about the BCMR in 1946,[3] he presumably knew about it in 2003 through his wife's correspondence with their congressman. The JAG stated that the applicant has provided "no rationale for his approximately 60+ year delay" and "has not provided a compelling reason based on the merits as to why the Board should waive the statute of limitations."

The JAG also adopted the findings and analysis provided in a memorandum on the case from the Coast Guard Personnel Service Center (PSC). The PSC stated that although the application is not timely, it "should be considered particularly because the Coast Guard advised [the applicant] to apply to the BCMR if he felt he had suffered an injustice."

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[2] During World War II, the Coast Guard functioned under the auspices of the Navy, pursuant to 14 U.S.C. §§ 1, 3, until December 31, 1945. On January 1, 1946, the Coast Guard reverted to the Department of the Treasury and operated under its own rules. Executive Order No. 9666, December 28, 1945.

[3] The BCMRs were authorized on August 2, 1946. *See* Legislative Reorganization Act of 1946, Pub. L. No. 601, ch. 753, § 207, 60 Stat. 812, 837 (current version at 10 U.S.C. § 1552). The BCMR of the Coast Guard first convened on August 21, 1947. *See* Decision, BCMR Docket No. 1 (upgrading 1934 Dishonorable discharge to General discharge for a veteran who had been AWOL for 6 months because he had 9 years of service with 4 prior Honorable discharges and because his medical records showed that he was suffering from "neurasthenia, a disease of the nervous system, which causes a man to lose his perspective in determining the relative weight of his actions.").

The PSC argued that the applicant's request should be denied, however, because the Dishonorable discharge was just given his extensive periods of absence. The PSC noted that the Dishonorable discharge was the only punishment the applicant received for the second of his two long, unauthorized absences. The PSC stated that the applicant's diagnosed personality disorder does not alleviate his responsibility for his actions; that his Dishonorable discharge was not in error; and that it "is not shocking that someone who absented themselves for a period of 291 days would receive a Dishonorable discharge."

RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 22, 2009, the Chair sent a copy of the views of the Coast Guard to the applicant and invited him to respond within 30 days. No response was received.

APPLICABLE LAW

Article 459 of the Personnel Instructions in effect in 1946 provided that "[u]pon separation from the Coast Guard for any reason other than death, an enlisted man shall be entitled to receive a discharge, the character of which shall be determined by the reason for discharge and/or the character of service rendered during his period of enlistment." Under Article 4592, members could receive an Honorable discharge if

(a) they had a final average proficiency in rating mark of "not less than 2.75" and a final average conduct mark of at least 3.0 [out of 4.0];
(b) 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"; and
(c) they were being discharged for one of the following reasons: expiration of enlistment, convenience of the government, minority, hardship, or physical or mental disability not the result of own misconduct.

Members being discharged for the reasons listed in paragraph (c) above could receive a discharge "Under Honorable Conditions," which is now known as a General discharge, if their marks did not meet the minimums required for an Honorable discharge or if they had been convicted once by a General Court Martial, twice or more by a Summary Court-Martial, or at least three times by a deck court. Members could also receive an administrative Undesirable discharge for misconduct or unfitness, which was defined to include homosexuals, shirkers, alcoholics, and repeat petty offenders. Members could receive a Bad Conduct or Dishonorable discharge under Article 4592 if they were "[d]ischarged in accordance with the approved sentence of a general or summary Coast Guard court, as mitigated."

Under Article 86 of the Uniform Code of Military Justice today, the maximum punishment for a member's unauthorized absence from his unit for more than 30 days is a Dishonorable discharge following confinement for one year and forfeiture of all pay and allowances.

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.[4] The applicant received his Dishonorable discharge on May 24, 1946, and sought an upgrade from the Board of Review, Discharges and Dismissals on November 12, 1946. Thus, the application was untimely by about 59 years.

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]

4. The applicant provided no reason for or explanation of his long delay in seeking the requested relief. However, the Board notes that the applicant was discharged before the BCMRs were created by Congress on August 2, 1946. The record indicates, however, that the applicant learned of the BCMR six years ago through congressional correspondence.

5. The applicant asked the Board to upgrade his Dishonorable discharge to Honorable. He received his Dishonorable discharge as the sentence of a summary court-martial (SCM) in 1946. The record shows that although the applicant had been declared a deserter during his unauthorized nine-month absence, he pled guilty to the lesser offense of being "absent over leave" (AOL)[6]—i.e., not returning to duty after leave—and the Dishonorable discharge was his only punishment for this offense. This Board does not have the authority to overturn a conviction by court-martial, but it may grant clemency on the sentence of a court-martial.[7]

6. The applicant argued that his Dishonorable discharge was erroneous and unjust because he only went AWOL because of a mental injury he incurred when he fell and injured his back on a ship. He alleged that it was when he was hospitalized for these injuries that he went AWOL. However, his military records clearly contradict his claims. While his military record contains many medical records, there is no record of any injury aboard a ship or of any hospitalization for such an injury. Instead, his records show the following:

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[4] 10 U.S.C. § 1552(b).

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

[6] The difference between a simple absence offense (AWOL or AOL) and desertion is that desertion requires the member to have had, at least once during the period of absence, the intention of staying absent permanently. 10 U.S.C. §§ 885, 886. The length of the absence is considered probative of whether the member ever intended to stay away permanently. MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008), page IV-11. The voluntariness of the return—i.e., whether the member surrendered himself or was apprehended—is also considered probative. *Id.* An unauthorized absence is a "lesser included offense" under desertion in the UCMJ. *Id.* at IV-12.

[7] 10 U.S.C. § 1552(f)(2).

- Because of numerous disciplinary infractions, the applicant was transferred off the USS PETTIT to the COTP in Charleston, SC, in November 1943, after serving just two months aboard the ship, at his first duty station.
- On December 2, 1943, the applicant went AWOL from the COTP by forging leave papers or a liberty pass. Even after being apprehended by the Naval Shore Patrol in Washington, DC, on December 3, 1943, he did not return to duty and so was declared a deserter 30 days later. He did not surrender until April 27, 1944, about four months later.
- The applicant was tried at an SCM for this first AWOL period and sentenced to forfeiture of $20 in pay per month for five months, to perform 20 hours of extra police duty, and to be restricted to the limits of the COTP for two months.
- On January 27, 1945, the applicant failed to return from liberty and was therefore AOL. He was again declared a deserter and did not surrender until November 13, 1945, more than nine months later.
- The applicant was hospitalized for psychiatric evaluation on December 13, 1945, because of his frequent disciplinary infractions. During the evaluation, the applicant admitted that his long absences were due to his inability to take orders and to adapt to military life, just as he had quit the CCC after just three weeks because he felt "pushed around."
- The applicant was not diagnosed with any mental disease, injury, or disability, but with a personality disorder,[8] and he was found to be mentally responsible for his misconduct. A psychiatrist recommended against confinement.
- Pleading guilty at SCM to having been AOL for more than nine months, the applicant was sentenced to a Dishonorable discharge with no confinement.

In light of these records, which are presumptively correct,[9] the Board is not persuaded that the applicant's allegations about the cause of his unauthorized absence are accurate.

7. In 1945, during the applicant's second long unauthorized absence, the Coast Guard was still operating as a part of the Navy, but when the applicant was tried and sentenced in 1946, the Coast Guard had returned to the Treasury Department.[10] Under Article 39 of Coast Guard Courts and Boards, 1935, crimes committed by Coast Guard members under the Navy in 1945 could be prosecuted and punished by the Coast Guard under the Treasury in 1946, but the punishment could "not exceed that to which the offender was liable at the time of the commission of his offense."[11] A note dated April 18, 1946, in the applicant's record indicates that his

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[8] A "personality disorder" is "an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment." American Psychiatric Association, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, FOURTH EDITION, TEXT REVISION (2000) (DSM-IV-TR), p. 685. Types of personality disorders include paranoid, schizoid, schizotypal, antisocial, borderline, histrionic, narcissistic, avoidant, dependent, and obsessive-compulsive. *Id.*

[9] 33 C.F.R. § 52.24(b).

[10] Executive Order No. 9666, December 28, 1945 (returning the Coast Guard to the Treasury Department as of January 1, 1946).

[11] U.S. TREASURY DEPARTMENT, U.S. COAST GUARD, COAST GUARD COURTS AND BOARDS, 1935, Chap. II, Art. 39 (G.P.O., 1935):

> Whenever, in time of war, the Coast Guard operates as a part of the Navy in accordance with law, the personnel of that service shall be subject to the laws prescribed for the government of the

sentence—the Dishonorable discharge—fell within the punishment allowed by law for absence offenses but was more severe than what the Navy was awarding for most absence offenses. However, the record of trial is not before the Board, and it is possible that the applicant's guilty plea on the AOL charge and the Dishonorable discharge without confinement were part of a plea bargain, since he clearly could have been charged with desertion.

8. Under the Articles for the Government of the United States Navy, which (along with the Articles of War for the Army) preceded the 1948 Uniform Code of Military Justice (UCMJ), the punishment for being "absent from his station or duty without leave or after his leave has expired" was "[s]uch punishment as a court-martial may adjudge."[12] Under Article 21 of Coast Guard Courts and Boards, 1935, an SCM could impose the following as punishment:

> Dishonorable discharge; forfeiture of not to exceed two months' pay; imprisonment on land for a period not to exceed one year; confinement aboard ship not to exceed one month; confinement in single irons, on bread and water, or on diminished rations, not exceeding thirty days, but a full ration shall in all cases be given at least every third day; confinement in single irons; reduction to next inferior rating; deprivation of liberty for a period not to exceed three months; extra duties …The proceedings, findings, and sentences of Coast Guard courts shall be subject to review by the Secretary of the Treasury, as the convening authority …

The record shows that on May 14, 1946, the Acting Secretary of the Treasury reviewed and approved the applicant's Dishonorable discharge in accordance with this requirement. The Board finds no evidence that the Coast Guard committed any error with regard to the applicant's Dishonorable discharge.

9. Although the applicant was technically a member of the Coast Guard Reserve from February 12, 1943, to May 24, 1946, he was AWOL, AOL, in the brig, or under psychiatric observation for almost half of that time, and he apparently committed so many disciplinary infractions that the commands of both the USS PETTIT and the COTP found him to be an administrative and disciplinary burden. The psychiatrist found that the applicant was not suffering from any mental disability and was responsible for his misconduct. In light of the applicant's two long unauthorized absences during war time and the laws then in effect, the Board is not per-

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> Navy: *Provided*, That in the initiation, prosecution, and completion of disciplinary action, including remission and mitigation of punishments for any offense committed by any officer or enlisted man of the Coast Guard, the jurisdiction shall depend upon and be in accordance with the laws and regulations of the department having jurisdiction of the person of such offender at the various stages of such action: *Provided further*, That any punishment imposed and executed in accordance with the provisions of this section shall not exceed that to which the offender was liable at the time of the commission of his offense (U.S.C., title 14, sec. 3).

[12] U.S. NAVY, ARTICLES FOR THE GOVERNMENT OF THE UNITED STATES NAVY, 1930, Arts. 8 (G.P.O., 1932). Under Articles 4 and 18, "[t]he punishment of death, or such other punishment as a court martial may adjudge, may be inflicted on any person in the naval service—[who] … in time of war, deserts," and the deserter also "forfeited his rights of citizenship."

suaded that his Dishonorable discharge was erroneous or unjust.[13] In this regard, the Board notes that some servicemembers received Dishonorable discharges for much shorter absences.[14]

10. The applicant argued that his discharge should be upgraded in the interest of justice because he has suffered the burden of it for more than 60 years while being a good citizen, husband, and father. Aside from a letter from his wife, he submitted nothing to show that he has been a "model citizen" since his discharge from the Coast Guard. Moreover, with respect to upgrading discharges, the delegate of the Secretary informed the Board on July 7, 1976, by memorandum that it "should not upgrade a discharge unless it is convinced, after having considered all the evidence … that in light of today's standards the discharge was disproportionately severe vis-à-vis the conduct in response to which it was imposed."[15] Under today's Uniform Code of Military Justice and the Manual for Courts-Martial, the maximum punishment allowed for a member who is absent without leave for more than 30 days is (a) Dishonorable discharge; (b) forfeiture of all pay and allowances; and (c) confinement for one year. Also, under Article 12.B.21. of the current Personnel Manual, it is possible that a member today who had, like the applicant, been AOL for more than nine months after previously having been AWOL for about four months, might have requested and been awarded an administrative Other Than Honorable (OTH) discharge to avoid trial by court-martial and a Dishonorable or Bad Conduct discharge. OTH discharges did not exist during World War II, however, and in light of his two long unauthorized absences during war time, the Board is not persuaded that his Dishonorable discharge was disproportionately severe in light of today's standards.

11. The Board does not, however, construe the delegate's guidance as prohibiting it from exercising clemency in court-martial cases under 10 U.S.C. § 1552(f), even if the discharge was neither disproportionately severe compared to the misconduct, nor clearly inconsistent with today's Coast Guard standards. Such a construction would be inconsistent with the very nature of "clemency," which means "mercy or leniency."[16] Clemency does not require that a sentence have been unjust or overly harsh; on the contrary, it can be (and often is) forgiveness of punishment that was otherwise appropriate. An analysis under the 1976 guidance[17] primarily considers whether the past discharge was unjust at the time or would be unjust if applied to a similarly situated member today; a clemency analysis considers whether it is appropriate today to forgive the past offense that led to the punishment and to mitigate the punishment accordingly.

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[13] According to *Sawyer v. United States*, 18 Cl. Ct. 860, 868 (1989), *rev'd on other grounds*, 930 F.2d 1577, and *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976), purposes of the BCMRs under 10 U.S.C. § 1552, "injustice" is "treatment by military authorities that shocks the sense of justice."

[14] *See, e.g.*, BCMR Dockets No. 2 (desertion, apprehended after 2 days), 6 (AWOL 6 days), 27 (desertion, surrendered after 18 days), 37 (desertion, forged liberty pass, apprehended after 6 days), 48 (desertion, surrendered after 181 days), 72 (AWOL 14 days), 73 (desertion, apprehended after 26 days), 78 (desertion, apprehended after 103 days), 82 (desertion, surrendered after 112 days), 87 (desertion, apprehended after 131 days), 95 (desertion, apprehended after 41 days), 117 (desertion surrendered after 145 days), 120 (AWOL 174 days), 163 (AWOL 81 days), 174 (AOL 38 days), 211 (desertion, surrendered after 84 days), 246 (AWOL 23 days), 260 (AOL 11 days), 413 (AOL 23 days).

[15] Memorandum of the General Counsel to J. Warner Mills, et al., Board for Correction of Military Records (July 8, 1976).

[16] BLACK'S LAW DICTIONARY 288 (9th ed., 2009)

[17] Memorandum of the General Counsel to J. Warner Mills, et al., Board for Correction of Military Records (July 8, 1976).

12. This Board has sometimes granted clemency by upgrading Dishonorable discharges to Bad Conduct discharges or even General discharges under honorable conditions based upon such factors as the applicants being teenagers at the time of their offenses or having limited education;[18] having committed comparatively short absence offenses;[19] having performed long, arduous sea duty in combat or having served honorably during prior enlistments;[20] having compelling reasons for their unauthorized absences;[21] being mentally ill;[22] having conducted themselves well in post-discharge civilian or military life;[23] and having endured the punitive discharge for a very long time.[24] More recently, Boards have considered the fact that during World War II, members being tried at SCMs were subject to abbreviated procedures and were not entitled to representation by an attorney.[25]

13. In this case, the applicant was not a teenager, as he was inducted at age 20; his offenses were very long absence offenses; he performed little sea duty and has no other, honorable military service; he was found to be responsible for his conduct despite his personality disorder; and aside from his own wife's letter, there is no evidence to show that he has spent the intervening 63 years as a "model citizen." The only factors favoring clemency that are known to the Board at this time are the extremely long time that the applicant has suffered the burden of the Dishonorable discharge and the fact that his crimes did not involve violence. There is insufficient evidence in the record regarding the applicant's post-discharge conduct—such as documentation of how he has made his living since 1946 and whether he has committed any more crimes—for the Board to conclude that clemency is warranted. Given the paucity of evidence in the record concerning how the applicant has lived his life since 1946, the Board is not persuaded that clemency is justified in this case.

14. Accordingly, the Board finds that it is not in the interest of justice to excuse the untimeliness of the application and that the applicant's request should be denied because his claim that his Dishonorable discharge was erroneous and unjust cannot prevail and because there are insufficient grounds on which the Board could grant clemency.

ORDER

The application of former S1c xxxxxxxxxxxxxxxxxx, USCGR, for correction of his military record is denied.

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[18] *See, e.g.*, BCMR Docket Nos. 78, 89, 125, and 210.
[19] *See, e.g.*, BCMR Docket Nos. 2, 6, 27, 72, 73, and 246.
[20] *See, e.g.*, BCMR Docket Nos. 65, 66, 73, 78, 82, 89, 83, 91, 174, 260, and 268.
[21] *See, e.g.*, BCMR Docket Nos. 78, 91, 117, and 174.
[22] *See, e.g.*, BCMR Docket Nos. 1, 120, 126, 158, and 222.
[23] *See, e.g.*, BCMR Docket Nos. 5, 77, 87, 115, 192, and 459
[24] *See, e.g.*, BCMR Docket Nos. 2, 27, 72, 89, 130, 174, and 210.
[25] *See, e.g.*, BCMR Docket Nos. 322-91 and 2005-107.

Vicki J. Ray

Adrian Sevier

Kathryn Sinniger