

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2003-119

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

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 July 21, 2003, upon the BCMR's receipt of the applicant's completed application, including his military record.

This final decision, dated February 18, 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 his 1944 discharge papers. He alleged that it was unjust for his papers to show that he was discharged under Article 588 of the regulations in effect at the time; to show the words "Character of service excellent" crossed out; and to have no entries for his final marks in conduct and proficiency in rating (PIR).

The applicant stated that in 1942, while working as a fireman in xxxxxxxxxx, he was approached by a Coast Guard recruiter, who said the service needed him to work on a fireboat and promised him the rank of second class petty officer. When the applicant enlisted, he was made a second class machinist mate without ever attending boot camp. For a short time, he was assigned to maintaining private boats that the Coast Guard had leased for the duration of the war, but then he was transferred to a cutter for convoy duty out of xxxxxxxx. On the cutter, he learned how to maintain the twin diesel engines and controls. When his commanding officer (CO) told him that he would be advanced from second to first class, he told his CO about the recruiter's promise that he would work on a fireboat. Thereafter, he was transferred for a short time to work on a fireboat in xxxxxxx and then performed shore patrols with a Marine

unit. When his wife became pregnant, he was made a port security specialist first class and transferred to xxxxxxxxxxxxxxxxxxxx.

The applicant further stated that in the middle of the night about two months after his son was born, he was suddenly told that he had been assigned to a cutter and would be shipping out the next day. On the cutter, the head of his detail was ill and could not tell him what his duties were, but the applicant familiarized himself with the equipment and drilled the crew on fire control. One night when the sea was rough, the applicant stated, he was told to take a deck watch on the rear of the ship. He stated that he does not remember what happened next except that he landed in sickbay in xxxxxxxxxxxxxxxxxxxx, where he was treated at length by a psychiatrist. He alleged that one day, after the psychiatrist "got [him] to cry," he was told he would be sent home.

The applicant stated that "I have lived with this experience all these years. I have been told that the middle of the night visit leaving a wife and a two-month son in a strange city was a traumatic experience that could cause problems. ... I can only say that I tried to do my best with a very hectic experience. I hope you can confirm these facts. I would like to know that I wasn't a failure to my country." Regarding why the Board should consider his case despite his delay in filing his application, he stated that it is in the interest of justice for the Board to consider his case because he has been "living with this since [his] discharge until now."

SUMMARY OF THE APPLICANT'S MILITARY RECORD

On May 26, 1942, at the age of 21, the applicant enlisted as a machinist mate second class in the Reserve at the Coast Guard recruiting office in xxxxxxxxxxxxxxxx. At the time, he was married and had been living and working as a fireman in xxxxxxxx. He served at xxxxxxxxxxxx until August 13, 1942, when he was transferred to a cutter. On November 1, 1942, his CO changed his rating to port security specialist second class. On November 17, 1942, he was transferred to xxxxxxxx, where he served for six months.

On June 29, 1943, the applicant was transferred to xxxxxxxxxxxxxxxx, where he was advanced to port security specialist first class on October 16, 1943. On March 9, 1944, he was transferred to xxxxxxxx.

On April 5, 1944, the applicant was transferred to another cutter. However, three weeks later, on April 28, 1944, he was transferred from the cutter to a Navy hospital in xxxxxxxxxxxxxxxx, where a psychiatrist diagnosed him with "psychoneurosis, hysteria." A medical history of his admittance to the hospital states that the applicant had suffered from seasickness during his prior tour on a cutter and, to avoid seasickness, had refrained from eating when he was assigned to his new cutter. He had twice fallen unconscious while on watch and reported having "bizarre symptoms" including twitching of his facial muscles and numbness in his arms.

On May 27, 1944, following further treatment, a psychiatrist noted that the applicant had "no disease" but a "maladjustment to [Coast Guard] service."

On June 1, 1944, the applicant was examined pursuant to a Medical Survey Board, which found him unfit for service due to a "psychoneurosis, mixed type, existing prior to service" and recommended that he be discharged. The board also noted that the applicant had recuperated and was "reacting at or near his preenlistment social and emotional level." The board held that the applicant's condition preexisted his enlistment, was not a result of misconduct, and was not aggravated by his service.

On June 19, 1944, the applicant signed a form #10, which informed him of the diagnosis of psychoneurosis and of the recommendation that he be discharged because of a disability that existed prior to his enlistment and that was not aggravated by his service. He was also informed of his right to submit a rebuttal. On this form, the applicant indicated that he did not desire to rebut the findings and recommendation of the Medical Survey Board.

On June 27, 1944, the District Commander forwarded the report of the Medical Survey Board to the Commandant, recommending approval. On July 1, 1944, the Commandant approved the applicant's discharge.

On July 12, 1944, the Commandant ordered that the applicant be honorably discharged "by reason of physical disability existing prior to service," under the authority of Article 588 of the Coast Guard's regulations. The Commandant further specified that the "[c]haracter of service, whether or not recommended for reenlistment, final average, or reason for discharge will not be shown on the discharge certificate. Spaces provided for these entries will be ruled in such a manner as to prevent subsequent entries." The Commandant also specified that Article 588 should be cited as both the cause and authority for discharge.

On July 27, 1944, the applicant received an honorable discharge from the Reserve under the authority of Article 588. He had served two years, two months, and two days on active duty. His final average marks, on a 4.0 scale, were 4.0 in conduct and 3.0 in proficiency in rating (PIR). However, the spaces for these marks and the character of service on his discharge form were ruled out in accordance with the Commandant's order.

VIEWS OF THE COAST GUARD

On December 3, 2003, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny the applicant's request. He specified that the recommendation "is in no way meant to denigrate the good and faithful service" rendered by the applicant, who "served the Coast Guard and our nation honorably during a time of tremendous stress and danger. Far from being a

failure to his country, [the applicant] answered his country's call when it needed him most." The Judge Advocate General thanked the applicant for his selfless service.

The Judge Advocate General stated that the Board should deny the application because of its untimeliness since the applicant has failed to show why it would be in the interest of justice to excuse the delay. He argued that the applicant had not shown good cause for the delay.

The Judge Advocate General also argued that a review of the record indicates that the allegations of error and injustice lack merit. He stated that his review "shows that the Coast Guard acted completely properly in this case and there is no error or injustice to be corrected." He stated that the record indicates that the applicant's discharge form "was completed in accordance with the Commandant's specific instructions in accordance with regulations in effect at that time." He stated that at the time, there were no reenlistment codes, and striking out certain information on the discharge form was how members were made ineligible for reenlistment. He stated that despite the stricken lines, the applicant should be assured that his service was honorable and good, as proved by his honorable discharge. The Judge Advocate General pointed out that the applicant had submitted no evidence to support his allegation of injustice.

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On December 9, 2003, the BCMR sent the applicant a copy of the Judge Advocate General's advisory opinion and invited him to respond within 30 days. On January 28, 2004, the applicant responded, stating that he took exception to the statement that he suffered from a psychoneurosis that pre-existed his enlistment. He pointed out that prior to his enlistment, he had worked for the xxxxxxxx Fire Department Rescue Squad, which was "a test of my endurance treating all types of injuries and rescue work." He also pointed out that he had overcome growing up during the Great Depression. He alleged that at one point during his service, he had been asked to consider attending Officer Candidate School.

The applicant also objected to the Judge Advocate General's statement that he had acknowledged that the alleged psychoneurosis pre-existed his enlistment and was not aggravated by his service. He stated that, in the hospital, the psychiatrist harassed him and the other patients on a daily basis and was intent on wearing them down until they broke down. He stated that only he and the other patients who were there would understand what the psychiatrist really did. The applicant stated that he could not accept the psychiatrist's interpretation of his condition.

APPLICABLE REGULATIONS

Article 588 of the 1940 Regulations for the United States Coast Guard states that "[t]he Commandant, upon recommendation of a medical board of survey, may direct

the discharge of an enlisted man for physical or mental disability. The character of the discharge to be issued shall depend upon whether or not the physical or mental disease was due to the man's own misconduct, and also upon the record of the man during his current enlistment. A man discharged by authority of his article shall be not recommended for reenlistment."

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."

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. 10 U.S.C. § 1552. The applicant knew about the nature of his discharge and the stricken information on his discharge form when he was discharged in 1944. Therefore, his 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. *Dickson v. Sec'y of Defense*, 68 F.3d 1396 (D.D.C. 1995); *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992). The applicant did not explain why he had delayed applying to the Board, but he argued that it would be in the interest of justice to waive the statute of limitations because he has been "living with" the injustice for so long.
4. The applicant alleged that it was unjust for his discharge form to show that he was discharged under Article 588 of the regulations in effect in 1944. However, a review of the record indicates that the applicant was hospitalized for several weeks prior to his discharge, was evaluated by a Medical Survey Board, and was discharged by the Commandant based on the recommendation of that board, in accordance with his authority under Article 588. Although the applicant now states that he never had a

psychoneurosis, he did not object to his pending medical discharge when given the opportunity on June 19, 1944.

5. The applicant alleged that it was unjust for his discharge form to show the words "Character of service excellent" crossed out and to have no entries for his final marks in conduct and proficiency in rating (PIR). However, the record shows that his discharge form was completed properly in accordance with the order of the Commandant. The Judge Advocate General has explained that, during World War II, the discharge forms of all members separated because of medical disabilities that would prohibit further military service were completed in this way merely to show that they were not eligible for reenlistment—not to indicate that the members' service had been unmeritorious. Although it was an unfortunate means for denoting ineligibility for further military service, the Board finds that the applicant's discharge form was completed properly in accordance with the rules in effect at the time, and the applicant has not proved that his discharge form or the rules themselves were unjust.

6. The applicant apparently believes that his discharge form somehow indicates that he "failed [his] country." However, his record clearly indicates that he received an honorable discharge in accordance with the strict standards of Article 584(4) of the 1940 regulations. If his conduct and performance of duty had been merely satisfactory but not particularly deserving or meritorious, he would have received a general discharge under honorable conditions, instead of an honorable discharge. Although the psychiatrist's diagnosis cut short his military service, his commanding officer clearly believed his service to have been sufficiently meritorious to earn an honorable discharge.

7. Accordingly, the Board finds insufficient evidence of error or injustice on the applicant's discharge form, and it will not waive the statute of limitations in this case.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

Julia Andrews

Nancy Lynn Friedman

Donald A. Pedersen