

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-143

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

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 May 8, 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 February 25, 2010, 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, who was honorably discharged from active duty in the Coast Guard Reserve on May 13, 1946, asked the Board to correct his record by "add[ing] Lenord L. Wood (AKA 141) and (PF15) to USS Annapolis." The applicant alleged that he discovered the errors in 2000 and that the requested correction would help him to get the Department of Veterans Affairs (DVA) to reclassify his benefits. He alleged that his "troop train was close to the atom bomb test" and that he has had three malignant melanomas.

SUMMARY OF THE RECORD

On January 12, 1945, the applicant enlisted in the Coast Guard Reserve. Following training, he advanced to water tender third class (WT3c). An "Abstract of Service" and travel orders in his record list the following duty stations:

| SHIP OR STATION | DATE ATTACHED | DATE DETACHED |
|--|----------------------|----------------------|
| Sub-Recruiting Office (SRO), Chicago, IL | 1-12-45 | 1-12-45 |
| Manhattan Beach Training Station (MBTS) | 1-13-45 | 2-22-45 |
| USMH Ellis Island, NY (hospitalized for pneumonia) | 3-12-45 | 4-6-45 |
| Manhattan Beach Training Station (MBTS) | 4-11-45 | 6-23-45 |
| Training Station, Curtis Bay, MD | 1-23-45 | 8-10-45 |
| Training Station, Manning Section, Alameda, CA | 8-16-45 | 8-27-45 |
| ADM. C. F. HUGHES (AP-124) | 8-27-45 | 12-5-45 |

| | | |
|--|----------|---------|
| Training Station, Manning Section, Alameda, CA | 12-6-45 | 12-8-45 |
| USS ANNAPOLIS (PF-15) | 12-11-45 | 5-3-46 |
| Operation Base, Recruiting Unit, Seattle, WA | 5-3-46 | 5-6-46 |
| PSC #9, St. Louis, Missouri | 5-9-46 | 5-13-46 |

A Termination of Service form in the applicant's record shows that he was separated from the Reserve at Personnel Separation Center (PSC) #9 in St. Louis, Missouri on May 13, 1946, with one year, four months, and two days of service. His Notice of Separation includes the following information in block 24, which is entitled "Service Vessels and Stations Served On":

MBTS Brooklyn, N.Y.; TS Curtis Bay, Md.; TS Alameda, Calif.; ADM. C. F. HUGHES (AP-124); USS ANNAPOLIS, OB, Seattle, Wash.; PSC #9, St. Louis, Mo.

VIEWS OF THE COAST GUARD

On July 28, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request.

The JAG stated that the applicant is asking the Board to change block 24 of his Notice of Separation, in which a member's duty stations were listed, by adding a ship designation (PF 15) after the USS ANNAPOLIS and by adding the ship USS LEONARD L. WOOD (AKA 141). The JAG noted that the application was not timely submitted and may be denied on that basis. Moreover, the JAG stated that the applicant has not submitted any evidence of his allegations, and so the Board should deny relief.

The JAG attached to the advisory opinion a memorandum on the case prepared by the Coast Guard Personnel Service Center (CGPSC). CGPSC stated that the lack of the amplifier (PF 15) after the name of the USS ANNAPOLIS in block 24 of the applicant's Notice of Separation is not a substantive error requiring correction. In addition, CGPSC stated, there is no evidence in the applicant's record that he ever served on the USS LEONARD L. WOOD. Therefore, CGPSC recommended that the Board deny the applicant's request.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 29, 2009, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to submit a response within 30 days. No response was received.

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 over this matter under 10 U.S.C. § 1552(a).
2. The applicant asked the Board to correct allegedly inaccurate and incomplete information on his May 13, 1946, Notice of Separation from the Coast Guard Reserve. 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. The applicant was discharged in 1946 and presumably reviewed his Notice of Separation and knew what duty stations were listed in block 24 at that time. 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.”¹

4. Regarding the delay of his application, the applicant explained that he is trying to get the DVA to reclassify his benefits. The Board finds that the applicant’s explanation for his delay is not compelling because he failed to show that anything prevented him from seeking correction of the alleged errors more promptly.

5. A cursory review of the merits of this case indicates that the applicant’s allegations of error are not supported by substantial evidence. The record before the Board contains no evidence whatsoever supporting his claim that he served on the USS LEONARD WOOD (APA-12).² The applicant’s official military records show that he served on two ships while on active duty in the Coast Guard Reserve—the USS ADMIRAL C. F. HUGHES (AP-124) and the USS ANNAPOLIS (PF-15)—and these records are presumptively correct.³ On his Notice of Separation, the first ship is denoted as the “ADM. C. F. HUGHES (AP-124) and the second ship as the “USS ANNAPOLIS.” Neither of these entries is erroneous or incomplete as they both positively identify the vessels on which the applicant served. Although (PF-15) is not appended to the entry for the USS ANNAPOLIS, there was only one USS ANNAPOLIS in operation during World War II and the applicant’s enlistment from January 12, 1945, to May 13, 1946.⁴ Therefore, the designation (PF-15) is not necessary to identify the vessel on which the applicant served. Because the information in block 24 of the Notice of Separation is not erroneous, incomplete, or confusing, the Board finds that the applicant’s claim cannot prevail on the merits.

6. Accordingly, the Board will not excuse the application’s untimeliness or waive the statute of limitations. The applicant’s request should be denied.

¹ *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).

² The applicant stated that this ship was the “AKA [presumably he meant APA] 141.” However, (APA-141) was the designation of the USS BUCKINGHAM.

³ 33 C.F.R. § 52.24(b); *see Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties “correctly, lawfully, and in good faith.”).

⁴ There have been four vessels named the USS ANNAPOLIS. The first, designated (PG-10), was a gunboat commissioned in 1897, which was scrapped in 1940. The second, designated (PF-15), was a frigate commissioned in 1943, decommissioned on May 29, 1946, and sold to the Mexican government in 1947. The third, designated (AGMR-1), had previously been named the USS GILBERT ISLANDS, but was renamed the USS ANNAPOLIS in 1963, decommissioned in 1976, and scrapped in 1979. The fourth, designated (SSN-760), is a submarine that was commissioned in 1992 and is still in operation.

ORDER

The application of former xxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied.

Bruce D. Burkley

Francis H. Esposito

Erin McMunigal