

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 2001-015

FINAL DECISION

JOOST, Chairman:

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 December 29, 2000, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated October 25, 2001, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant, according to his military record, enlisted as a Seaman Recruit in the Coast Guard Reserve ("Treasury-USCGR-SR") on _____, 1960. He applied for correction of his DD-214 (discharge document) on the ground that it was in error or unjust. The applicant claimed that he was erroneously discharged from the Coast Guard Reserve because they put an "R" after USCG.

The applicant was honorably discharged from the Coast Guard Reserve on 1960, after serving one month and 23 days on active duty.

VIEWS OF THE COAST GUARD

On April 6, 2001, the Chief Counsel of the Coast Guard recommended to the Board that it accept his comments and the February 1, 2001 comments of the Coast Guard Personnel Command (CGPC) as the advisory opinion of the Coast Guard. Both sets of comments recommended that relief be denied to the applicant.

CGPC said that the applicant was enlisted in the Coast Guard Reserves. It noted that he might have confused his active duty in basic training with his reserve status.

The Chief Counsel found that the applicant had failed to prove error in his status. He said that "the record . . . clearly documents that Applicant enlisted in the Coast Guard Reserve."

On _____, 1960, the applicant was discharged from the Coast Guard by reason of unsuitability. On that date, he was issued a Form DD-214 (discharge document) and signed a Form CG-3309 (record of discharge). According to the Form 3309, the "Discharge certificate [was] mailed to the above address..". On November 25, 1991, the applicant requested a copy of his Form DD 214 because the original "Document was stolen." On December 17, 1991, he received a copy of his DD-214. This document gave him actual notice of his 1960 discharge.

The applicant did not file an application for correction until December 29, 2000, approximately 40 years after he was discharged and approximately eight years after he received the replacement DD-214.

Under 10 U.S.C. § 1552(b) and 33 CFR § 52.22, an application must be filed within three years of the date the alleged error or injustice was, or should have been, discovered. The Chief Counsel stated that the applicant did not set forth any reason why the timeliness requirement should be waived in the interest of justice.

The Chief Counsel recommended that the current application be dismissed for untimeliness. He also stated that the applicant did not meet his burden of proof. He said that the applicant has the burden of producing sufficient substantial evidence to establish prima facie proof of the alleged errors and injustices. In fact, according to the Chief Counsel, the applicant produced no evidence to rebut the presumption of regularity afforded by the enlistment documents in his record, i.e. Enlistment Contract and Certificate of Obligated Service dated _____, 1960.

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. The application for correction was not timely. To be timely, an application must be submitted within three years after the alleged error or injustice is discovered, or reasonably should have been discovered, unless the Board waives delay in the interest of justice. 10 U.S.C.. 1552(b).

3. The applicant was discharged from the Coast Guard approximately 40 years before he filed this application with the Board and for approximately nine years after he received a copy of the DD-214 issued to him in 1960 to replace the one that he reported stolen.

4. Untimeliness can be waived if the Board finds that it is in the interest of justice to do so. The standard for determining whether waiver is in the interest of justice is set forth in Allen v. Card, 799 F. Supp. 158, 164 (D.D.C. 1992). In that case the court said "the BCMR in assessing whether the interest of justice supports a waiver of the statute of limitations should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review."

5. The applicant has not provided the Board with any reasons rfor his failure to apply for relief within the three-year limitations period, and the Board cannot find a reason in the record.

6. The Board has conducted a cursory review of the potential merits of this application and has concluded that the applicant has not proved that the Coast Guard committed any error or injustice. All of his enlistment and discharge documents clearly show that he enlisted and served in the Coast Guard Reserve.

7. Accordingly, it is not in the interest of justice to waive the untimeliness of the application. The application should therefore be denied.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The application of
denied.

, USCGR, for correction of his military record, is

Stephen H. Barber

Robert H. Joost

Mark A. Tomicich