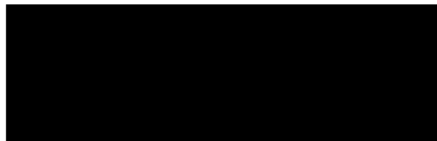


**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-143



FINAL DECISION

This proceeding was conducted according to 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 May 28, 2014, upon receipt of the completed application, and assigned it to staff member [REDACTED] as required by 33 C.F.R. § 52.61(c).

This final decision, dated February 27, 2015, 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 asked the Board to remove from his record a negative Page 7 (CG-3307) documenting performance counseling he received on October 10, 2013. He alleged that he was given the erroneous and unjust Page 7 for his performance in a section leader position, which he was unaware he had been assigned to, and to which he had never been designated to serve in writing. He stated that despite his repeated requests, he was never provided a job description for the section leader position. The applicant further alleged that during a meeting with his supervisor, he stated that he was unaware of the tasking for the position he was supposed to fulfill. He alleged that his supervisor responded that he did not have the time and would not create a written job description. The applicant stated that he did the best job he could do with the lack of support from the Command and lack of knowledge about the requirements for the position.

In support of his allegations, the applicant submitted copies of his military records and related documentation, which are summarized below.

SUMMARY OF THE RECORD

On February 2, 2006, at the age of 21, the applicant enlisted in the Coast Guard. He enlisted with a grade/rate of [REDACTED]/E-4. While on active duty, the applicant received numerous Page 7s documenting his performance, achievements, awards, and discipline.

On January 19, 2007, the applicant received a Page 7 that documents his qualification as Boatswain Mate of the Watch (BMOW).

In a memorandum dated October 21, 2008, the applicant was awarded a Coast Guard Special Operations Service Ribbon for his effort in support of Operation Caper Focus from March 2 to March 13, 2008. The efforts of all Coast Guard personnel who received this award were deemed highly commendable.

On November 13, 2008, the applicant's unit received the Coast Guard Meritorious Unit Commendation from the Commandant of the Coast Guard for meritorious service from August 24 to November 16, 2008, while executing counter-drug operations in the Eastern Pacific during a Joint Interagency Task Force South law enforcement patrol.

On April 1, 2009, the applicant reenlisted with the grade/rank of [REDACTED]

On January 1, 2010, the applicant received a Page 7 documenting his completion of the qualifications for the Boat Forces Operations Insignia. The Page 7 documents the applicant's authorization to wear the Silver Boat Forces Pin in a temporary status, to be removed upon the issuance of a boat coxswain pin or upon departure from the unit. The Page 7 also documents notification to the applicant of the authorization to wear the permanent Gold Boat Forces Insignia pending completion of the Boat Forces PQS guide and the accumulation of more than 5 years onboard an Operational Unit Ashore. The applicant received congratulations on a job well done.

On December 31, 2010, the applicant received a Page 7 that documents his commendable performance and devotion to duty during the 2010 calendar year. The applicant's performance is recognized as "a role model to others" and "a standard that [his] fellow shipmates should strive for." The applicant received congratulations for a job well done.

For the period of April 1 to July 1, 2012, the applicant received a Sailor of the Quarter award. The applicant was commended on a Page 7 for demonstrating excellent professionalism, knowledge, and dedication to his duties at his boat station and was congratulated on a job well done.

On September 24, 2012, the applicant received a Page 7 documenting his participation in Operation Eastern Boundary during the period August 31 to September 4, 2012. The applicant was commended for his hard work and dedication, which represented the Coast Guard's Core Values to the fullest extent and met overwhelming expectations.

On July 18, 2013, the applicant received a Page 7 documenting his exemplary performance of duties from June 28 to June 30, 2013, while engaged in Operation Dry Water, a nationally recognized operation to enforce Boating Under the Influence (BUI) laws.

On October 10, 2013, the applicant received the disputed Page 7, which documents his asserted poor performance as the Starboard Duty Section Leader (see attached), including the following assertions. The applicant was counseled about poor subordinate personnel manage-

ment, leadership, and willingness to perform at the Command's level of expectations and about the applicant's failure to maintain a training plan to assist unit members in receiving the necessary training to succeed at their watch stations. Several examples of the applicant's lackadaisical performance included failure to make proper rounds of the unit, waiting until the last minute to perform tasks simultaneously, which caused undue stress on unit members, and failure to prioritize Coast Guard responsibilities before personal priorities. The applicant was assigned a mentee in June 2013, and when OIC spoke to her in October 2013, she was unaware that the applicant had been assigned as her mentor. As a result of the applicant's failure to mentor her, she had fallen behind schedule in her qualifications.

The disputed Page 7 also states the following. After informal counseling in June 2013, the applicant was aware of what the Command expected from him, and to assist him in his duties, the OIC had assigned a Senior Petty Officer to mentor the applicant. After a couple of months, when the applicant's deficiencies appeared to be resolved, the [REDACTED] Petty Officer was taken out of the applicant's section. After a couple of weeks, however, the applicant had reverted back to the same substandard routines and habits for which he was initially counseled. The applicant was required to review the Leadership Competencies with the OIC and encouraged to ask for clarification on specific tasking and to take the initiative in asking his supervisors for help in fulfilling his duties, if he needed it.

When the applicant's enlistment ended on March 31, 2014, he chose not to reenlist on active duty and instead enlisted in the Coast Guard Reserve for a six-year term.

VIEWS OF THE COAST GUARD

On October 3, 2014, the Coast Guard submitted an advisory opinion recommending that the Board grant partial relief in this case. The advisory opinion includes memoranda from Commander, Personnel Service Center (PSC) and the Judge Advocate General (JAG).

PSC stated that the applicant was cited for lackadaisical attitude, improper uniform, poor rounds of the unit, lack of time management skills, and in need of more supervision. Additionally, as a qualified Officer of the Day (OOD) at the station, the applicant was obligated to perform specified duties delegated by the Officer-In-Charge (OINC) including daily training, cleanliness of the unit, and security rounds of the unit. However, the applicant failed to perform sufficient rounds of the unit as required. The applicant also failed to satisfactorily perform his duties as mentor; yet, he provided no evidence to suggest he was unaware of his role as a mentor. OINC Standing Order #33 confirms that there was a mentor system in place at the station while the applicant was assigned there. OINC Standing Order #5 also provided all personnel of the station with immediate access to the OINC if they felt that the Chain of Command was not appropriate or ineffective. The applicant provided no evidence to show that he utilized this opportunity. Furthermore, although the applicant alleges he was not aware of his responsibilities as Starboard Section Leader, because Command did not provide the duties in writing, the disputed Page 7 makes little reference to the position of section leader in relation to the applicant's deficiencies. The disputed Page 7 cites multiple failures in leadership and attitude unrelated to his specified role as Starboard Duty Section Leader that warrant documentation. Therefore, PSC recommended granting alternate relief to the applicant by removing the sentence

“having been entrusted by this Command to be in the critical leadership position as the Starboard Duty Section Leader,” due to the fact that the applicant was apparently unknowingly designated as such and thus not responsible. PSC recommended granting no further relief.

The JAG adopted the facts and analysis in PSC’s memorandum and submitted two emails to support the additional comments—one from the applicant and another from a senior chief petty officer (BMCS) dated September 29, 2014. The JAG argued that emails show that the applicant knew he had been qualified as an OOD, though it had not been documented. They also show that the applicant had both reason to know that he was an OOD and a Duty Section Leader, and that he had reason to know (through Station Standard Operating Procedure, which all members would have been responsible for) what the duties of the position entailed. The JAG concluded that although it would have been preferable and clearer if the applicant’s qualifications had been in writing, he should have been aware of his duties, and the negative Page 7 appropriately documented his performance of those duties. Therefore ██████████ recommended that the Board deny relief to the applicant.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

In a letter dated November 17, 2014, the applicant responded to the views of the Coast Guard. He alleged that the disputed Page 7 is erroneous in that it references “Section Leader,” “Starboard Duty Section Leader” and “Duty Section Leader,” but makes no reference to the OOD position. He claimed the foundation of the Coast Guard’s opinion focuses on the OOD position, and does not support the documented disciplinary action or justifications discussed in the Page 7. The applicant asserted that the Page 7 is unjustified because he was not made aware that he was holding the responsibility of “Section Leader,” and his command failed to provide him with performance measures for the Section Leader position.

The applicant alleged that the OOD position and Section Leader position are not equivalent positions, as the OOD position supersedes the chain of Command of the Section Leader by being the direct representative of the OIC with authority and responsibility that is independent of rank or seniority, and that every person on board who is subject to the orders of the OIC is subordinate to the OOD. The applicant explained that the OOD is responsible for ensuring execution of the assigned training tasks and operational activities during the duty period. In contrast, he argued, the Duty Section Leader should be responsible only for administrative issues within the duty section on a long term basis, such as leave scheduling and individual development planning. He further explained the differences between the two positions with the following statement:

During the remaining months while at Station ..., a newly reported member of the unit who was not qualified OOD was placed as Section Leader. Furthermore, BMCS states “I guess if he doesn’t like the words “Duty Section Leader” I could replace them with OOD,” and states in the Page 7, “ I have chosen to rescind your responsibilities as the Starboard Section Leader.” Based upon the two statements, I should not have had responsibility as an OOD. However, up until my departure from the unit on December 25, 2013, I maintained the position of OOD.

In response to a LT's statement that the applicant had reason to know he was a Duty Section Leader, his only communication in knowing he was to be a Duty Section Leader was through the title being placed by his name on the telephone roster kept by the unit phones. He was never given verbal or written direction during quarters or in meetings with the Command. He approached the Command numerous times to ask what was required of the Section Leader. With no responses provided, he "self-directed" in making sure training was completed and administrative items were handled. The applicant stated he continued to work with no direction for a year and a half without any negative critique of his job performance. Contrary to the LT's statement that all members should have known the duties of the positions as detailed in the Station Standard Operation Procedures (SOP), the station SOP does not include a job description for the position of Duty Section Leader. The applicant stated that, furthermore, the contents of the SOP did not exist when he was present at the unit. The applicant claimed while he has at the station, the SOP being used was from a previous edition, and that the SOP referenced by the Coast Guard was created after his departure from the unit. [REDACTED]

The applicant stated that the Page 7 is unsupported by the lack of clear and direct documentation showing that he was underperforming as a supervisor or Section Leader. During his four-year tenure at the station, the applicant conducted himself without any negative feedback up until the final months prior to his separation from active duty. The applicant achieved outstanding results by achieving high marks on multiple standardization inspections, awarded Sailor of the Quarter honors and other positive recognition for exceeding metric expectations. During the semi-annual performance evaluations, the applicant did not receive any derogatory scoring and was recommended for advancement each time. He stated that the Coast Guard supports his claim in its opinion by stating, "MOR B makes limited reference to the position of Section Leader in relation to the applicant's deficiencies."

In response to a BMCS's statement that the highest ranking person is accountable for those beneath him/her in the chain of Command, the applicant stated he took self-initiative to ensure duty section training was completed, held members accountable for meeting General Mandated Training requirements, and ensured members did not lapse in meeting their semi-annual currency requirements to maintain their qualifications. He stated that no member went over due in recurrent training. The applicant stated he oversaw performance evaluations, coordinated leave, and addressed administrative issues with junior members. For members working towards their initial qualification, he coordinated the necessary training, so they could demonstrate the skills for PQS sign off. The applicant alleged he took on these responsibilities without a job performance standard, after being told explicitly by the Command Cadre that none would be provided as it would take too much time.

Regarding the Coast Guard's claim that the applicant failed to mentor FN and, therefore, caused her to fall behind schedule in meeting her qualification, and that FN had no knowledge that the applicant was assigned as her mentor, the applicant stated that FN was in fact aware that he was responsible for overseeing her training, as every newly reporting member is required to sign a memo notifying them that they are assigned a training instructor and of the deadline for when they are to be qualified in their watch stations. The applicant stated that he provided training to FN and other members of the duty section on the materials and knowledge needed to become competent for PQS sign off. He asserted that the training petty officer failed to follow

up on the development of FN's training program and progress until shortly before her qualification deadline. The applicant further stated that FN lacked motivation and often stated she did not want to get qualified and was not interested in the job assigned to her. He stated that when FN's deadline was coming closer, he verified the training he provided and voiced his concerns about her continued resistance. The applicant does not deny being FN's mentor as defined in the Merriam-Webster dictionary as "someone who teaches or gives help and advice to a less experienced or younger person." He claimed he supported the Station's Standing Order #33 by providing training and the time needed for FN to achieve her qualification. The applicant does not believe that as the mentor he should be held accountable, if the mentee fails to meet her qualification deadline when she chose not to study or practice the material provided.

During the June 2013 meeting with the Command, the applicant alleged, he voiced his concerns about the lack of substantial performance measures and asked for clarification of Command's expectations of him. The applicant stated that Command failed [REDACTED] him with any specifics to prove he was underperforming. Command also informed him that the unit's low morale and negative attitude were the result of his poor leadership. In response to the Coast Guard's claim that a Senior Petty Officer (SPO) was placed in the applicant's unit in an effort to help him improve, to provide the applicant with feedback for development, and to assume all executive decisions as Section Leader, the applicant stated that on three occasions throughout the three to four-week duration of the SPO's time in the duty station, he proactively asked for feedback. At each evaluation, the applicant's performance was deemed to be consistent with the level it should have been and there were no areas for improvement identified. Upon the SPO's departure, the applicant alleged, he was not debriefed on his performance or informed that he would be reassigned as Section Leader, except for his name appearing on the phone roster with the Section Leader designation.

In response to the referenced security round on October 8, 2013, mentioned in the Page 7, the applicant stated that established times for security rounds were not set by the unit's SOP. At the time BMCS approached him regarding the rounds, he had not made his rounds as it was not customary to make the rounds within that time period. Without direction, the applicant developed his own schedule to ensure rounds were made. With regard to the trash can being placed in the middle of the Command head, he does not have an explanation for that, as the trash receptacle is fastened to the unit wall.

The applicant stated he performed all OOD duties as required without direction or clear expectations. He counters the Coast Guard's claim that his lackadaisical attitude and poor leadership caused undue stress on subordinates. When he asked Command for specifics as to where he was failing, none were provided. He stated that he has remained friends with many of those he worked with during the period of time referenced in the Page 7. When BMCS asked subordinates about the applicant's role as a supervisor, they supported him. The applicant stated that he believes any concerns raised by the junior members involved the conduct of the Command and the Command placed the blame on him, rather than taking responsibility for its failures.

The applicant admitted to placing his personal priorities before the Coast Guard responsibilities as he was separating from active duty in three months and needed to prepare for life as a

civilian. However, the majority of the supervisory responsibilities had been shifted over to his relief.

The applicant stated that he finds the Page 7 to be discriminatory and prejudicial, by seeking to hold him accountable for duties he was not aware he was responsible for, and without appropriate training and performance measures. He also finds the formal disciplinary action to be unjust.

APPLICABLE POLICY

Section E.1. of the station's Standard Operating Procedures, in effect in 2013, entitled "Introduction," under Section E Watch Organization, stated the following:

...Station OOD's shall organize duty sections to:

- a. Ensure successful execution of assigned missions.
- b. Protect the integrity of response boat duty crews.
- c. Minimize the unproductive time members spend on the Station, for work life and crew rest considerations.

Chapter 4 of the station's Organization Manual¹ entitled "Watch Organization Unit and Bills" defines the Officer of the Day and details the duties of the position.

Chapter 5 of the station's Organization Manual entitled "Descriptions of Collateral Duty Assignments" provides descriptions of and specific duties for collateral duty positions, including but not limited to Training Petty Officer.

Chapter 7 of the station's Organization Manual entitled "Officer in Charge Orders, Standing Order 5 Request and Complaint Mast" establishes procedures for consultation with the Officer in Charge. The Order states that it is the policy of the Command to encourage and support open communications throughout all levels of the Chain of Command. There may be times when communicating through the Chain of Command is not appropriate or is ineffective and, therefore, the Command will maintain an open door policy to allow personnel direct and immediate access to the Officer in Charge.

Chapter 7 of the station's Organization Manual entitled "Officer in Charge Orders, Standing Order 33 Request and Complaint Mast" specifies Command policy concerning the duty/training rotation upon reporting on board. The Order states that in order for the station to effectively operate, all personnel must be fully qualified productive members of the unit. In order to do that, new personnel will be placed into training status upon reporting to the unit.

Chapter 8 of the station's Organization Manual entitled "Effective Unit Instructions," under Appendix (1) to the station's Instruction 1221.1 Assignment of Collateral Duties, provides the assigned personnel to the corresponding collateral duties. The instructions stated that all requirements of collateral duties will be performed in accordance with established practices.

¹ The station's Organization Manual is published in accordance with United States Coast Guard regulations and states the basic guidelines for the organization of the Command. The SOP specifically defines the functions and relationships of the personnel assigned to the unit.

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. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice in his record.² The applicant filed his application with the Board on May 23, 2014, within two months of his discharge date of March 31, 2014. Therefore, his application to the BCMR is timely.

3. The applicant alleged that the disputed Page 7 is erroneous and unjust because he was unaware of his assignment as Duty Section Leader and not provided a written list of those duties when he asked for one. The Board begins its analysis in every case by presuming that the disputed information is correct as it appears in the applicant's record. The applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.³ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."⁴

4. The applicant alleged that references in the Page 7 to Starboard Duty Section Leader, Duty Section Leader, and Section Leader are erroneous because he was never officially assigned the duties of Section Leader. However, the Page 7 states that he was informally counseled about his duties in June 2013 and assigned a mentor to help him learn how to perform the duties before the Page 7 was prepared to document his formal counseling in October 2013. The applicant has not submitted any evidence that contradicts these statements in the Page 7 and admitted that he knew he was listed as the Section Leader on the unit's telephone roster. Therefore, whether or not his designation as a Duty Section Leader was made formally in writing, the Board is persuaded that the applicant was aware that his command expected him to lead his duty section as its highest ranking member. In this regard, the Board notes that the applicant has not named any other member of his duty section who was serving as the leader in August, September, and October 2013. Nor has the applicant cited any regulation that required his designation as a Duty Section Leader to be made in writing. The Board is also persuaded that the applicant was aware of his responsibilities as a Duty Section Leader long before he received the disputed Page 7 because as a member of the section, he would have observed the prior section leader perform the duties and because he was assigned a mentor for several weeks to show him how to perform those duties. Therefore, although the Coast Guard does not object to the removal of these references, the Board finds insufficient grounds for concluding that they are erroneous or unjust.

² 10 U.S.C. § 1552(b); 33 C.F.R. § 52.22.

³ 33 C.F.R. § 52.24(b).

⁴ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

5. The disputed Page 7 states that the applicant failed to successfully meet his assigned duties as Duty Section Leader and/or OOD by failing to make sufficient rounds of the unit as required; failing to mentor an FN as assigned; and reverting back to the same substandard routines and habits he had previously been informally counseled about after his mentor was reassigned. These statements are presumptively correct, and the applicant has not rebutted them with substantial evidence. The applicant argued, however, that the disputed Page 7 is unjustified because he was not provided written notification of the duties or standards of performance for the position. However, the applicant has not provided any policy, nor is the Board aware of any policy, that requires the Coast Guard to provide an experienced unit member designated as the leader of his duty section with a written list of his duties or performance standards. The Coast Guard stated that as with any military organization, the most senior and highest ranking person is held accountable for leading subordinate members. Although the applicant was apparently not designated in writing as the Duty Section Leader, as the most senior, highest ranking petty officer in his duty section, he was given the position. He was counseled informally about his duties in June 2013 and then provided a temporary mentor to show him how to lead the duty section. Although the applicant alleged that the mentor did not criticize his performance, he has not shown that the mentor failed to explain and demonstrate the duties of a section leader so that the applicant could learn them. Moreover, according to the record, the applicant had qualified and served as an OOD at the station. The station's SOP details the duties of an OOD, which are fairly similar to those of Duty Section Leader. Although the applicant argued that some of the duties are different, the Board is not persuaded that his responsibilities as Duty Section Leader were indiscernible under the circumstances or that his Command's expectations for his performance were unreasonably high. Concerning the evidence in the record, the applicant has submitted no affidavits or other written statements from anyone other than himself. The record therefore lacks evidence which might corroborate the applicant's statements concerning his communications with his mentor or concerning other disputed factual issues in this case.

6. Under 10 U.S.C. § 1552, the Board is authorized not only to correct errors but to remove injustices from any Coast Guard military record. For the purposes of the BCMRs, "injustice" is sometimes defined as "treatment by the military authorities that shocks the sense of justice but is not technically illegal."⁵ The Coast Guard provided specific examples of the applicant's failures in his designated leadership role. During their meeting on June 2013, the record shows that the BMCS counseled the applicant about his shortcomings and discussed ways the applicant could improve his performance. He assigned an SPO to the applicant's unit to mentor him and evaluate his performance to help address his deficiencies. Although the Coast Guard did not provide the applicant with a list of his duties in writing, the SPO's hands-on supervision provided the applicant with sufficient opportunity to obtain firsthand knowledge of his assigned duties, to address his deficiencies, and to ask any questions or for any assistance he needed to improve his performance. Additionally, the Coast Guard acknowledged that the applicant did address his deficiencies and improve his performance while the SPO was assigned to the applicant's unit. After the SPO departed the unit, the applicant's deficiencies returned. The applicant

⁵ *Reale v. United States*, 208 Ct. Cl 1010, 1011 (1976); *but see* 41 Op. Att'y Gen. 94 (1952), 1952 WL 2907 (finding that "[t]he words 'error' and 'injustice' as used in this section do not have limited or technical meaning and, to be made the basis for remedial action, the 'error' or 'injustice' need not have been caused by the service involved.").

has not proven that his Command's expectation that he be aware of and able to perform the required duties following the SPO's departure was unjust. Therefore, the Board finds that the applicant has not proved that the Coast Guard committed an injustice in issuing the Page 7 documenting the applicant's performance failures.

7. The applicant complained that the Coast Guard's advisory opinion focuses on the OOD position and does not support the action taken against him or justify the Page 7. However, in a BCMR case, the Coast Guard is not required to produce evidence supporting statements in a Page 7, which is presumptively correct.⁶ Instead, the applicant bears the burden of submitting evidence sufficient to overcome the presumption of regularity and to prove by a preponderance of the evidence that a Page 7 is erroneous or unjust. While the Coast Guard appears to use the terms Duty Section Leader and OOD interchangeably in the advisory opinion, the advisory opinion prepared in response to his BCMR application is not itself evidence of any confusion in the applicant's duties in 2013. Additionally, the Coast Guard provided specific examples of the applicant's failures with respect to his performance in a leadership role during the period addressed in the Page 7.

8. The applicant included allegations that the Page 7 is discriminatory and prejudicial because his Command did not provide him with the designation of the Duty Section Leader, details of the position's duties, and performance measures in writing. However, the applicant failed to allege or submit any evidence of racial, ethnic, religious, or any other type of discrimination or prejudice. Therefore, the Board finds that these allegations are unsupported by substantial evidence sufficient to overcome the presumption of regularity and are not dispositive of the case.⁷

9. Accordingly, the applicant has not proven by a preponderance of the evidence that the disputed Page 7 is erroneous, unjust, or discriminatory. Therefore, his request for relief must be denied.

(ORDER AND SIGNATURES APPEAR ON PAGE)

⁶ 33 C.F.R. § 52.24(b).

⁷ 33 C.F.R. § 52.24(b); *see Frizelle v. Slater*, 111 F.3d 172, 177 (D.C. Cir. 1997) (noting that the Board need not address arguments that "appear frivolous on their face and could [not] affect the Board's ultimate disposition.").

ORDER

The application of [REDACTED] 2 [REDACTED] USCGR, for correction of his military record is denied.

February 27, 2015

