DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-094

[redacted]

FINAL DECISION ON RECONSIDERATION

[redacted]

This is a proceeding for reconsideration of a final decision issued under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The decision to be reconsidered, BCMR No. 2003-058, was issued by the Board for Correction of Military Records on November 30, 2003.

The Board docketed the application for reconsideration on April 15, 2004, as BCMR No. 2004-094.

This final decision on reconsideration, dated December 16, 2004, is 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 reconsider its decision in BCMR No. 2003-058, denying his request for a correction to his DD Form 214 (discharge document). In that case he asked that the DD Form 214 be corrected to show his correct date of rank as an RM3/E-4 (radioman third class/pay grade E-4). He alleged then and now that instead of April 19, 1976, his DD 214 should reflect his date of rank as an RM3 in the Navy, which was in 1968, or his date of entry in the Coast Guard in 1974. The applicant further asked the Board to award him any back pay and allowances he might be due as a result of the correction.

The applicant also asked that Board to correct an Achievement Sheet, CG-3303, in his record. The form shows (a) his original date of rank in the Coast Guard as his date of enlistment, October 7, 1974; (b) a demotion to seaman-radioman (SNRM/E-3) on November 29, 1974, which is struck out; (c) a re-advancement to RM3 on December 16, 1974, which is also struck out; and (d) an entry dated April 19, 1976, showing his rank as RM3, with CG-311 cited as authority.

The disputed CG-3303 appears as follows.

Date	Rate	Authority	Signature	Unit
10-7-74	RM3	Date of Orig. Enlistment	/s/ Acting Officer in Charge	[redacted]
~~Nov 29, 74~~	~~SNRM~~	~~CO's NJP~~	~~/s/ CWO3, by direction~~	
~~Dec 18, 74~~	~~RM3~~	~~CO Mitigated NJP~~	~~[unsigned]~~	
76 Apr 19	RM3	CG311[1]	/s/ Executive Officer	

APPLICANT'S ORIGINAL APPLICATION BCMR NO. 2003-058

The applicant alleged that the CG-3303 is erroneous because he served continuously as an RM3 in the Coast Guard until his discharge and was never "busted a rank" for being AWOL for 19 days in November 1974. He alleged that he was punished at Non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), but his sentence was "mitigated" by his commanding officer (CO).[2]

The applicant claimed that the alleged incorrect date of rank on his DD Form 214 is hampering his employment opportunities and prevented him from joining the Army Reserve.

Summary of the Military Record Available in the Original Case

From June 14, 1965, to June 11, 1969, the applicant served on active duty in the Navy, attaining the rank of RM3 on April 16, 1968. After his release, he served in the Naval Reserve from June 12, 1969, through July 17, 1974.

On October 7, 1974, the applicant enlisted in the Coast Guard as an RM3. He was assigned to the Marine Safety Office (MSO) in [redacted]. From November 2 to 21, 1974, the applicant was absent without leave (AWOL) from his unit. Upon the

[1] This is the number of the Coast Guard's Enlisted Qualifications Manual in effect in the 1970s. The manual contained all of the qualifications that petty officers must meet to advance within their ratings.

[2] The applicant alleged that he was unaware of the errors in his record until February 2002, when someone at a Reserve recruiting office told him that he might have lost pay because of the alleged errors.

applicant's return to the MSO on November 21, 1974, he was taken to mast, which resulted in a sentence of reduction in rate from RM3/E-4 to SNRM/E-3 and restriction to the MSO for 30 days.

In a December 10, 1974, letter to the District Commander, the commanding officer (CO) requested a psychiatric evaluation for "SNRM [applicant's name]." Subsequent correspondence[3] in December 1974 and in January, February, March, and August 1975—concerning the applicant's mental health and his attempt to void his enlistment contract because of false promises allegedly made by his recruiter—refers to him as an RM3.

A record of the applicant's performance marks while stationed at the MSO shows that his rate was RM3 when he received performance evaluations on December 31, 1974; June 30, 1975; December 31, 1975; June 30, 1976; and December 31, 1976. On the December 31, 1974, evaluation, he received a mark of 3.5 (out of 4) for conduct, but thereafter, he received all marks of 4. On February 24, 1976, the applicant received a security clearance, and the certificate shows that he was an RM3 at the time.*

On March 31, 1977, while still stationed at the MSO, the applicant was honorably discharged. No reason for the discharge is shown on the DD 214. His date of rank as an RM3 is given as April 19, 1976.

On April 20, 1983, the applicant enlisted in the Coast Guard Reserve for two years as an RM3. He was discharged at the end of his enlistment on April 19, 1985.

Views of the Coast Guard in Original case

On August 7, 2003, the Chief Counsel of the Coast Guard submitted an advisory opinion in which recommended that the Board deny the applicant's request because of the untimeliness of his request in light of the Board's three-year statute of limitations.[4] He also argued that the doctrine of laches should bar the applicant's request.

The Chief Counsel submitted with his advisory opinion a memorandum on the case prepared by the Coast Guard Personnel Command (CGPC). CGPC stated that, although the applicant's official military record does not contain the disputed CG-3303 and other documentation submitted by the applicant, a thorough examination of the

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[3] The applicant submitted this document.

[4] The timeliness issue is rendered moot as the Board waived the statute of limitations in the original proceedings.

documents indicated that they are authentic. CGPC stated that evidence of the NJP would have been removed from his record when he enlisted in the Reserves in 1983.

CGPC stated that the record indicates that, following the applicant's 19-day period of being AWOL, he was taken to mast on November 29, 1974, and his punishment, in part, was reduction in rate to SNRM/E-3. However, his CO mitigated the reduction in rate on December 18, 1974, in accordance with Chapter 1.E.6.b. of the Military Justice Manual, which stated that a "[r]eduction in pay grade regardless of whether the reduction has been executed, may be mitigated to forfeiture." CGPC stated that it "is possible that the mitigation was not fully carried out administratively, i.e., the mitigation was approved locally, but never fully administratively processed at the time it took place, and that the final entry on his achievement sheet was an inappropriate attempt to rectify these administrative lapses."

CGPC stated that under the Pay and Personnel Procedures Manual, the date of rank entered on the applicant's March 31, 1977, discharge form DD 214, should have been "the date of latest advancement," or December 18, 1974, since his reduction in rate to SNRM was reversed on that date. CGPC stated that if the BCMR approved the applicant's request to change his date of rank on his DD 214, the Coast Guard "should determine, if the pay records still exist, whether the Applicant's pay for [the period from December 18, 1974, through April 18, 1976] was at pay grade E-4. If not, the Coast Guard should pay the Applicant the difference between pay grade E-3 and E-4."

The Chief Counsel disagreed with CGPC and argued that the applicant's request should be denied. He stated that the applicant's allegations are inconsistent and "present a puzzling picture," which is aggravated by the lack of documentation concerning his NJP and the mitigation.

The Chief Counsel alleged that the applicant's claim is moot because no harm was caused by the alleged error in his date of rank on the March 31, 1977, discharge form since his date of rank was reestablished as April 20, 1983, when he enlisted in the Reserve. The Chief Counsel also alleged that no harm was caused by the alleged error because the Pay and Personnel Center has investigated the matter and reported that the applicant was paid as an E-4 throughout the entire enlistment from October 7, 1974, until March 31, 1977. The Chief Counsel submitted an email from the Coast Guard Personnel Service Center and printouts of microfiche pay records supporting his statement about the applicant's pay grade. The microfiche records show that the applicant was paid as an RM3 throughout the enlistment and that the only adjustment made was for the 19 days he was AWOL.

Regarding the date of rank on the March 31, 1977, DD 214, the Chief Counsel stated that his review of the merits

> creates more questions than answers. Admittedly, Applicant's military pay records support his original assertion that he was never reduced in rank. However, [his CO's letter dated December 10, 1974] which refers to Applicant as [an SNRM] contradicts this conclusion. Additionally, subsequent correspondence provided by Applicant, addressing him as an RM3 clearly conflicts with the 19 April 76 date of rank at issue. The fact that all of these documents were dated after 18 Dec 74 supports CGPC's conclusion that Applicant's punishment was mitigated on that date. … However, this position does not explain why entries regarding the mitigation of Applicant's punishment were lined out and initialed on the CG-3303. It is simply impossible to determine the precise disposition of Applicant's NJP sentence, and resulting date of rank from the limited record available.

The Chief Counsel concluded, therefore, that even if the Board waives the statute of limitations for this case, it should find that the doctrine of laches bars the claim because many of the documents that would have clarified the matter were properly purged from the applicant's record when he enlisted in the Reserve. He also argued that the microfiche pay records counter the applicant's concern that he was not properly paid as an RM3 but "do not shed any light on the circumstances surrounding applicant's NJP proceedings. Thus the government is prejudiced by the delay in this case and should not be forced to solve the mystery surrounding Applicant's NJP when Applicant himself cannot present a clear and cogent explanation." The Chief Counsel argued that "any attempt by the Board to insert a substitute date of rank [on the applicant's March 31, 1977, DD 214] would border on the capricious rather than serve to correct any 'injustice.'"

Applicant's Reply to the Original Views of the Coast Guard

On August 11, 2003, the BCMR sent the applicant a copy of the Chief Counsel's advisory opinion and invited him to respond within 30 days. On November 3, 2003, the Board received a response from the applicant, who submitted nine additional copies of correspondence showing that his rank after December 18, 1974, was RM3.

Findings and Conclusions in Original Case

The Board found that the application was not timely but waived the statute of limitations in the interest of justice after a cursory review of the merits. However, the Board still denied the applicant's request. In this regard, the Board made the following pertinent findings:

> 5. Copies of official Coast Guard correspondence between the applicant's command and Coast Guard headquarters following the mitigation of his NJP on December 18, 1974, indicate that the applicant was considered to be an RM3 by his CO. A certificate for a security

clearance dated February 24, 1976, also refers to him as an RM3. In addition, Coast Guard records show that he was paid as an RM3 throughout the enlistment. There is no explanation in the record for the applicant's April 19, 1976, date of rank on the CG-3303 or on his DD 214. The authority for the entry cited on the CG-3303, which is CG-311—a reference to the Enlisted Qualifications Manual in effect at the time—does not elucidate the reason for the entry.

6. Unfortunately, however, most of the applicant's military records for his enlistment from 1974 to 1977 are not in the files sent to the Board by the NPRC. Some of the records may have been properly purged when he enlisted in the Reserve in 1983, but other records that would not have been purged, including his enlistment contract, his performance marks, and the CG-3303, are clearly missing from the official records provided by the NPRC.

7. The Chief Counsel has argued that the Board should deny the applicant's request under the doctrine of laches, which bars a claim if an applicant's undue delay in seeking relief has prejudiced the Coast Guard's ability to defend the record. In light of the fact that after the applicant's 25-year delay, most of the documentation of his 1974 to 1977 enlistment, including the mitigated NJP and the reason for the April 19, 1976, date of rank entry on the CG-3303, is missing, and the people at the MSO who were responsible for making the allegedly erroneous entries are no longer available to explain their actions, the Board finds that the applicant's request should be denied under the doctrine of laches. His DD 214 was prepared at the same MSO where he had served for the entire enlistment. Therefore, if the applicant had timely applied to the Board, the allegedly erroneous entries could have been investigated, elucidated, and corrected if they proved to be erroneous. However, 25 years after the fact and with many of the official records purged or missing, it is impossible for the Board to know exactly what did or did not occur in April 1976 that might have caused his date of rank to change.

BCMR NO. 2004-094 (CURRENT CASE)

On January 28, 2004, the Board received the applicant's request for reconsideration of BCMR No. 2003-058. The Chair denied that request informing the applicant that he had not met the requirements for reconsideration under the Board's rules.[5] He was further told the following:

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[5] Section 52.67(a) of title 33 of the Code of Federal Regulations states that reconsideration of an application shall occur if:

> [T]he Board denied your request because there was nothing in the record that shed light on the April 19, 1976, date of rank entry on the CG-3303. By law, the Board must presume that such entries are correct unless the applicant submits sufficient evidence to prove that they are incorrect. While the record contained substantial evidence about the temporary reduction in rank in 1974, there was no evidence in the record regarding the April 19, 1976, date of rank. The Board could not assume that your date or rank was erroneous without substantial evidence about the 1976 entry.

On February 4, 2004, the Board received another letter from the applicant requesting that the Board reconsider his case. He submitted as new evidence the second page of a February 11, 1977 letter from his CO regarding the applicant's request for a hardship discharge. Paragraph 6 on this page stated as follows:

> [The applicant] has had one (1) CO's NJP, 29 November 1974 - Violation of Article 86, UCMJ: AWOL from 1600, 2 November 1974, to 1400, 21 November 1974; Sentence Awarded: 30 days restriction and reduction to pay Grade E-3 (Sentence mitigated and punishment reduced to 10 days restriction and reduction to E-3 suspended for 6 months).

On March 1, 2004, the Chair sent the applicant a letter requesting that he provide the first page of the CO's February 11, 1977 letter.

On March 5, 2004, the applicant forwarded the entire February 11, 1977 letter from his CO to the Board.

On April 2, 2004, the Board advised the applicant that his case would be reconsidered because the letter dated February 11, 1977, constituted new evidence that "no captain's masts occurred in 1975 or 1976 that could have resulted in your demotion to pay grade E-3 and a new date of rank on April 19, 1976." The letter to the applicant further stated that the February 11, 1977 letter was not in his military record.

> (1) An applicant presents evidence or information that was not previously considered by the Board that could result in a determination other than that originally made. Evidence or information may only be considered if it could not have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence; or
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> (2) An applicant presents evidence or information that the Board, or the Secretary as the case may be, committed legal or factual error in the original determination that could have resulted in a determination other than that originally made.

On April 15, 2004, the application for reconsideration was given Docket No. 2004-094 and placed on the Board's docket.

VIEWS OF THE COAST GUARD

On August 23, 2004, the Judge Advocate General (TJAG) of the Coast Guard submitted an advisory opinion objecting to the Chair's determination that the case should be reconsidered and recommending that the Board deny relief. He stated that even if the documents submitted by the applicant in support of his request for reconsideration were able to meet the first prong of 33 CFR 52.67(a)(1), they could not meet the second. He argued that the applicant should have known these documents were relevant to his case and he should have produced them in the original proceeding. The TJAG also stated the following:

> Applicant's request for reconsideration . . . failed to meet the criteria established by 33 CFR 52.67(a)(2). Applicant submitted no evidence that the Board committed legal or factual error. The Board properly considered Applicant's package, the Coast Guard's advisory opinion, and Applicant's response before rendering its decision. The Board decided that although it would excuse Applicant's untimely filing and consider the merits of the case, the Coast Guard was entitled to raise the equitable doctrine of laches. The Board appropriately ruled that Applicant's claim was barred by laches. BCMR Final Decision Docket No. 2003-058. In deciding that Applicant's claim was barred by laches, the Board committed no legal or factual error. In fact, the additional documents submitted by Applicant that resulted in the Chair docketing this case for reconsideration highlight the selective nature of the documents submitted by Applicant, the prejudice to the Coast Guard resulting from Applicant's delay in filing his application, and the validity of the Board's decision that Applicant's claim should be denied under the doctrine of laches. Because the Board committed no legal or factual error in BCMR Final Decision Docket No. 2003-058, Applicant's request for reconsideration fails to meet the criteria established by 33 CFR 52.67(a)(2).

TJAG stated that even if the applicant's request for reconsideration were properly docketed, Applicant's request should be denied for the same reasons his initial application was denied in BCMR No. 2003-058.

> Applicant's request for reconsideration underscores the importance of laches as an affirmative defense in cases such as this. Applicant waited more than a quarter of a century to bring his claim before the Board. Even when he did so, Applicant chose to submit the support for his position in

dribs and drabs - concealing what he refers to as "conclusive evidence" until after the Board already decided his case. Laches is designed to deal with such behavior. In seeking an equitable remedy - Applicant should have clean hands. Applicant should not be allowed to benefit from having hidden from the Coast Guard and the Board the "conclusive evidence" he now attempts to offer as ground for "reconsideration." Applicant has demonstrated through his conduct in this matter that he cannot be trusted to freely disclose the information required to properly adjudicate this case. Laches was a valid ground for denying his initial claim and laches remains a valid ground for denying applicant's request for reconsideration.

APPLICANT'S REPLY TO THE VIEWS OF THE COAST GUARD

On September 9, 2004, the Board received the applicant's reply to the views of the Coast Guard in Docket No. 2004-094. He strongly objected to the recommendation that his case should be denied. He stated that he did not discover the alleged error until a few years ago when he signed up for Reserve duty in the Army. He stated that the recruiter told him that the date of rank on his DD Form 214 was incorrect if had been advanced to RM3 in the Navy as he claimed. The applicant stated that after being advised by the Army recruiter, he wrote to the Board for a correction to his record. The applicant further stated as follows:

> Time passes by for people getting medals and other mistakes they find. As mentioned before, World War II people get medals after a lot more time has passed. So, it is "favoritism" how you run your cases? However, because one day or twenty-five years has passed, should make no difference whatsoever. A mistake was made and I showed you factual letters from my Coast Guard material, and still you folks have your blinders on.

The applicant denied that he sent in information in dribs and drabs. In this regard he commented as follows:

> Unlike the Military Records Center, I tried to keep all my records, but as mentioned over time some records were out in my garage and filed away due to moving and not unpacking everything. No, Sir, I did not intentionally send in my supporting information "in dribs and drabs concealing" evidence. I just did not find them until after I did a complete search of my files.

THE APPLICANT'S MILITARY RECORD

In BCMR No 2003-058, the Coast Guard and the Board indicated that many of the documents from the applicant's time on active duty in the Coast Guard were not included in the military record they received. The indication was that the applicant's military record provided by the National Personnel Records Center (NPRC) only covered his time in the Coast Guard Reserve from1983 to 1985, plus his DD Form 214.

After the Board decided the applicant's original application, the military record was returned to NPRC. Upon accepting the applicant's request for reconsideration, a new order for the applicant's military record was placed with NPRC. In response to this request, the Board received the applicant's complete military record, including the portion of his record covering his active duty Coast Guard service. The applicant's military record shows the following pertinent information.

On October 7, 1974, the applicant enlisted in the regular Coast Guard with the rank of RM3.

On November 29, 1974, the applicant was taken to NJP for an unauthorized absence of approximately 19 days. His punishment included restriction to the limits of the Marine Safety Office, [redacted] and reduction to pay grade E-3 (SNRM).

On December 3, 1974, a Personnel Action Form (Coast Guard document CG-3312A), known as a page 12, was prepared and placed in the applicant's record, showing that he had been reduced in rate to pay grade E-3 as a result of the captain's mast. (This page also contained a hand written note, which stated: "This form deleted Sentence of NJP was changed to a suspended reduction for 6 [months] . . .).

On December 18, 1974, a court memorandum was placed in the applicant's record documenting that the CO mitigated and amended the punishment given to the applicant on November 29, 1974, as follows: "Reduction in rate from RM3 [E-4] to SNRM [E-3] suspended for a period of six months, and ten [10] of thirty [30] days restriction to limits of U.S. Coast Guard Marine Safety Office, [redacted] [are] suspended for a period of six [6] months."

On December 26, 1974, another page 12 was prepared and place in the record. It stated that "[p]age 12 of Transmittal 031 deleted [completely wiped out submission] because reduction in rate was incorrect, with an effective date of November 29, 1974.

On April 19, 1976, a page 12 was placed in the applicant's record documenting a change in the applicant's qualification codes. The effective date for this change in qualification codes was April 19, 1976. This document lists the applicant's rate as an RM3. This information from this personnel action document was also recorded on the CG 3303, as required by COMDINST M1080.9 (PMSI/JUMPS Manual).

Also included in the military record was the CO's original February 11, 1977 letter.

FINDINGS AND CONCLUSIONS

The Board, upon reconsideration, 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. The request for reconsideration was timely.

2. For the reasons discussed below, the Board finds that the applicant has met the requirements for reconsideration of Docket No. 2003-058, in accordance with the Board's rules at 33 CFR 52.67(a)(1).[6] The CO's letter addressed to the Commandant dated February 11, 1977, was new evidence that could result in a different determination than in the earlier case. The CO's letter supported the applicant's request for a hardship discharge. The CO clearly stated in the letter that the applicant was an RM3 and that he had had only one NJP, which included punishment of a reduction in rate to SNRM [E-3] that was suspended for six months. There is no indication in the letter that the suspension had been vacated or that the applicant had suffered a subsequent reduction in rank for any reason. The Coast Guard asserted that even if the letter from the CO was relevant new evidence, reconsideration should still be denied because the applicant could have submitted the letter in the original proceeding, if he had acted with reasonable due diligence.

3. However, the Board finds that the applicant made a serious effort to prove his case by submitting copies of eleven documents from his active duty service during the 1970's that showed his rate as RM3 with his original application. In response to the advisory opinion he submitted several other pieces of evidence showing his rate to be RM3. It was only after the Board rejected what reasonably could have been interpreted as persuasive evidence, did the applicant seek further evidence to show his record was in error. The applicant is not a lawyer and could have reasonably believed that he had submitted sufficient evidence to prove his case in the original application. Therefore, the Board finds the applicant's actions since filing his original case with the BCMR to be that of an individual doing all he could to prove his case and that he acted with reasonable due diligence as required under 33 CFR 52.67(a)(1).

4. The Coast Guard argued that the applicant did not act in good faith by intentionally submitting his evidence in "dribs and drabs." However, the Board notes

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[6] An applicant is only required to satisfy one of the grounds for reconsideration under 33 CFR 52.67(a), not both as suggested by the Coast Guard.

that the lack of all available evidence during its deliberation of BCMR No. 2003-058 resulted, in part, from the failure of NPRC to provide the Board with the applicant's complete military record. The Board in BCMR No. 2003-058 had only the applicant's DD Form 214 and records pertaining to his Coast Guard Reserve service from 1983 to 1985. If the Board had received the applicant's complete military record, as requested, during its earlier deliberation, it would have reached a different outcome in BCMR 2003-058 because the CO's letter, as well as other documents explaining the action taken by the CO with respect to the reduction in rate and explaining the April 19, 1976 entry on the CG-3303, would have been available to that Board. Justice and equity require that the Board reconsider this case.

4. Upon reconsideration of all of the evidence, including the applicant's complete military record, this Board finds that the applicant's DD Form 214 is in error by listing the applicant's RM3 date of rank as April 19, 1976. Therefore, the applicant is entitled to relief. The Board is persuaded in this finding by the CO's February 11, 1977 letter, in which he referred to the applicant as an RM3. The CO told the Commandant, in that letter, that the applicant had had only one NJP and that the reduction in rate that was imposed as punishment was suspended for six months. The CO did not indicate that the suspension had ever been vacated. Therefore, the Board concludes that the applicant successfully served his suspension and was never reduced.

5. Documents in the applicant's complete military record received by the Board on April 13, 2004, corroborated the CO's letter that although the applicant had been reduced in rate as a result of NJP, the reduction was suspended (held in abeyance) by the CO for six months on December 18, 2004, as permitted under Para. 6 of Part V of the Manual for Courts-Martial (MCM). According to Para. 6.a. of Part V, "[u]nless the suspension is sooner vacated, suspended portions of the punishment are remitted, without further action, upon the termination of the period of suspension." Since the applicant committed no violations during the period of suspension, the reduction in rate was canceled automatically at the end of the sixth month.

6. The advisory opinion in Docket No. 2003-058 led to some confusion in this regard by stating that the CO had mitigated the reduction in rate to forfeitures. However, the Court Memorandum dated December 18, 1974 made it clear that the reduction in rate was suspended for six months not mitigated to forfeitures. (Mitigation is a reduction in either the quantity or quality of a punishment, its general nature remaining the same.) In addition, the December 26, 1974 page 12 stated that November 29, 1974 (date of the NJP) was the effective date of the suspension. Accordingly, the CO's letter, the lack of evidence of other NJP's or reductions in rate in the applicant's record, and the fact that the applicant was always paid as an RM3 persuades the Board that the applicant was never reduced in rate to SNRM (E-3).

7. In denying relief in BCMR No. 2003-058, the Board expressed some concern about what was then an unexplained April 19, 1976 entry on a CG-3303 showing the applicant as an RM3. That Board found the evidence insufficient to establish that this entry did not result from some further punishment of the applicant by the CO. The applicant's recently obtained complete military record contained a page 12 (Personnel Action Form) that explained on April 19, 1976 there was a change in the applicant's qualification codes. The information on the Personnel Action Sheet was repeated on the CG-3303 as required by regulation. Therefore, this Board concludes that the April 19, 1976 entry on the CG-3303 was made to document a change in the applicant's qualification codes and not to document a subsequent advancement to RM3 from a reduction in rate. Moreover, the CO's February 11, 1977 letter corroborates the fact that the applicant suffered no reductions in rate.

8. The question now is what date of rank should have been listed on the applicant's DD Form 214. In contrast to CGPC, the Board finds that the DD Form 214 should have listed the applicant's date of rank as October 7, 1974, the date he entered the regular Coast Guard. As discussed above, the applicant's suspended reduction in rate, which was effective from the date of his NJP, was never vacated, and therefore, he was never reduced in rate. Moreover, there is no evidence in the record that he was ever reduced in rate subsequent to the 1974 punishment. Accordingly, he maintained his RM3 rate uninterrupted from the point of his enlistment in the regular Coast Guard until his discharge from active duty.

9. The Board in BMCR No. 2003-058 relied in part on laches to deny this application because it determined that the Coast Guard's ability to defend against the allegations was prejudiced because documents from the applicant's military record had been destroyed and witnesses were either deceased or otherwise unavailable. However, we now know that the military record was at NPRC. Had the Board been in possession of this information when it deliberated in BCMR No. 2003-058, we are certain that it would have reached a different conclusion because the preponderance of the evidence would have shown that the applicant's DD Form 214 was in error. In addition, had NPRC acted to send a complete military record to the Board in BCMR No. 2003-058, the Coast Guard would have had sufficient evidence on which to defend against the applicant's allegation of error. It is interesting to note, that the Coast Guard's advisory opinion in the current case does not address the newly discovered information contained in the applicant's complete military record.

10. The Board will not order a correction to the CG-3303 because it is essentially correct. Entries were made and updated as circumstances required. Nor will the Board order any back pay and allowances because the Coast Guard has stated that the applicant was always paid as an RM3, which the applicant acknowledged in his August 28, 2004 letter to the Board.

11. Accordingly, the applicant is entitled to partial relief.

ORDER

The application of former [redacted] for correction of his military record upon reconsideration is granted, in part. His DD Form 214 shall be corrected to show his date of rank as October 7, 1974.

All other requests for relief are denied.