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

Application for Correction of
the Coast Guard Record of:

**BCMR Docket No. 2014-134**

[redacted] SR/E-3 (former)

## FINAL DECISION

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. After receiving the applicant's completed application on April 23, 2014, the Chair docketed the case and assigned it to [redacted] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated February 12, 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, who received an uncharacterized discharge from basic training on December 2, 2011, after less than seven weeks in the Service, asked the Board to correct his discharge form DD 214 by upgrading his reenlistment code from RE-3G (eligible to reenlist with waiver) to RE-1 (eligible to reenlist) and to change his separation code from JFY, which denotes an involuntary discharge due to an adjustment disorder,[1] to one that reflects a discharge due to Secretarial Authority. The applicant alleged that the separation code and codes on his DD 214 are erroneous and unjust because he was denied due process in the proceedings of his Medical Board and in his discharge processing, as explained below.

The applicant alleged that while in training, the command of the training center convened a Medical Board to evaluate him and a psychiatrist prepared a report, but he was never given the opportunity to respond to or rebut the findings of the psychiatrist's report. In addition, at the time, he believed that his interview with the Coast Guard psychiatrist was confidential, but the information he provided to the psychiatrist was used to discharge him.

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[1] *ALCOAST 252/09. Article 4.D. Addition of the Adjustment Disorder Narrative Reason and Separation Program Designator (SPD) Codes to the Coast Guard Separation Program Designator Handbook.* SPD Code JFY, Narrative Reason Adjustment Disorder. Involuntary discharge directed by an established directive when an adjustment disorder exists, not amounting to a disability, which significantly impairs the members ability to function effectively in the military environment.

The applicant also alleged that he was not given any written notice that he was going to be discharged, contrary to Coast Guard policy. The applicant argued that under Article 1.B.15. of COMDTINST M1000.4, the separation authority shown on his original DD 214, he was legally entitled to written notice of his pending discharge and an opportunity to respond in writing to that notice. The applicant argued that the failure to provide him with the opportunity to rebut or respond to these findings was a violation of due process and therefore a constitutional "property right was taken from him without a chance to respond."

The applicant alleged that the separation code and codes on his DD 214 are erroneous and unjust due to the fact that he was not given the opportunity to respond or rebut the findings of the Medical Board or the determination to discharge him. He noted that his discharge processing was clearly rushed because it took just six days, which included the Thanksgiving weekend. The applicant stated, if his separation and reenlistment codes are not corrected because a "November 29, 2011 notification of discharge" does in fact exist and if there is proof that he did not object to the discharge and waived his right to make a statement, copies of this documentation should be provided to both him and his attorney.

The applicant alleged that while the Discharge Review Board (DRB) found that he had been notified of his pending discharge and of his choice to make a statement, he was never forwarded a copy of this "alleged notification." The applicant acknowledged, however, that as a result of the DRB's decision, the separation authority on his DD 214 was corrected to COMDTINST M1000.4, Art. 1.B.19.

In support of his application, the applicant provided various character reference letters that highly praise him and attest to his "outstanding character." The applicant also requested a hearing before the Board.

## SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on October 18, 2011, at age 23, and was discharged on December 2, 2011. On November 12, 2011, the applicant was referred to the medical clinic at TRACEN Cape May, for a medical evaluation for anxiety and depression. The applicant reported to a psychiatrist that he felt deceived because his recruiter had misled him about what it would be like. He felt that the military was not for him because "the military lifestyle does not appeal to what he wants to do for a career." The applicant stated that "he feels like he cannot adjust to the life of the Coast Guard because he will be away from home for many months, or even years." The psychiatrist noted that the applicant reported significant anxiety and depression about his situation and therefore recommended that the applicant be discharged.

On November 21, 2011, the psychiatrist and another doctor completed a Medical Board report form noting that the applicant had a pre-existing adjustment disorder and was "unsuitable for duty for reasons other than physical disability." In a narrative summary, the psychiatrist explained that the applicant was homesick, he recommended that the applicant be discharged, and he stated that the applicant should undergo "psychiatric clearance" if he tried to reenlist. Instead of having the applicant execute the form to show whether or not he wanted to rebut the findings, however, the psychiatrist had the applicant sign a Chronological Record of Medical

Care (SF-600), acknowledging that the purpose of the report was for discharge, that he was "fit for discharge," and that he had no other injury or illness. The form bears the signature of another member who served as a witness as well as the signature of the psychiatrist.

On November 22, 2011, a senior chief at the training center's health clinic sent the CO a memorandum recommending that the applicant be discharged for failing to meet the physical standards for accession due to his adjustment disorder, which was "incompatible with service." The senior chief forwarded copies of the psychiatrist's report with the applicant's acknowledgement and noted the further steps that would be taken if the CO opted to start a Medical Board evaluation, instead of discharging the applicant.

On December 2, 2011, the applicant signed a Page 7 that advised him in the first paragraph that he was being discharged pursuant to Article 1.B.19. of the Military Separations Manual, COMDTINST M1000.4, due to his adjustment disorder with an "uncharacterized" discharge for an entry level separation. The second paragraph on the Page 7, however, cites Article 1.B.15., instead of Article 1.B.19. The yeoman who prepared the applicant's DD 214, also cited Article 1.B.15, and noted that it was an "Uncharacterized (Cape May only)" discharge with reentry code RE-3G, separation code JFY, and "Adjustment Disorder" as the narrative reason for separation.

On April 25, 2013, and August 23, 2013, the DRB convened to review the applicant's discharge. The DRB claimed that the applicant was notified of his pending discharge on November 29, 2011, but did not object to it and declined to make a statement on his behalf.[2] The DRB found that the applicant's discharge was proper and that the applicant was properly notified of the intent to discharge him and he did not object to the discharge and declined to make a statement on his behalf. The Board did recommended that the applicant's DD 214 be corrected to show that he was discharged pursuant to the separation authority in Article 1.B.19. of COMDTINST M1000.4, instead of Article 1.B.15. The DRB stated that the "[t]he command's discharge recommendation and admin remarks do accurately list 1.B.19, the 214 does not. Ch. 1.B.19 allows for the mechanism to separate the member without the probation and 'due process' that are required under 1.B.15.c., 1.B.15.d. after members are in service for greater than 180 days."

On December 16, 2013, the Coast Guard amended the applicant's DD 214, pursuant to the DRB's decision, by issuing a DD-215 that corrected the separation authority citation from Article 1.B.15. to Article 1.B.19. of COMDTINST M1000.4.

## VIEWS OF THE COAST GUARD

On October 16, 2014, the Judge Advocate General (JAG) submitted an advisory opinion recommending that the Board deny relief in this case in accordance with the findings and analysis provided in a memorandum submitted by the Commanding Officer, Coast Guard Personnel Service Center (PSC). In addition, the JAG provided the following additional comments:

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[2] No copy of such a notification or acknowledgement appears in the copy of the applicant's military personnel record provided to the BCMR by the Coast Guard.

> At the time the applicant was separated, there appears to have been confusion regarding whether the separation was pursuant to Section 1.B.15 or 1.B.19 of COMDINST M1000.4 Military Separations. Nonetheless, any reference to 1.B.15 is *harmless* error because at all times TRACEN Cape May had the authority to separate him pursuant to section 1.B.19, which carried no right to notice or respond.
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> Additionally, the fact that the HSWL clinic at Cape May initiated a Medical Board is irrelevant. It was the beginning of a process to which the applicant had no right. (See COMDINST M6000.1F Medical Manual Section 5.A.2, which provides that separation due to adjustment disorders should be processed in accordance with Military Separations Manual, vice the Physical Disability Evaluation System). Any steps that the clinic took in completing a disability evaluation were completely optional, and did not create any additional right on the part of the applicant.

PSC contended that the applicant was aware that he was being recommended for discharge and chose not to provide a statement or rebuttal. The applicant signed a SF-600, which was also witnessed and signed by another member, acknowledging the purpose of the form was for discharge and that the applicant was "fit for discharge," and his signature was witnessed by another member. PSC and the JAG also concurred with the findings of the DRB that the applicant received the correct separation code and reenlistment code and therefore the applicant's request to change them should be denied.

PSC also noted that the applicant's allegation that he was not afforded the opportunity to rebut the findings of his discharge/medical board were without merit. The applicant was not discharged via a medical board, but rather in accordance with COMDTINST M1000.4, Article 1.B.19.a.1. and 1.B.19.a.2. Under this authority, the CO of Training Center Cape May has the sole authority to discharge a member under an "entry level separation." The applicant was not entitled to any additional notice further than what he had already received.

## APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 3, 2014, the Chair of the BCMR sent the applicant a copy of the Coast Guard's views and invited him to submit a written response within thirty days. The BCMR did not receive a response.

## APPLICABLE LAW AND POLICY

### *Coast Guard Medical Manual, COMDTINST M6000.1E*

Chapter 5.B.3. of the Medical Manual provides that when a member is diagnosed with an adjustment disorder, such as "inability to adjust to military life/sea duty, separation from family/friends," the member may be processed for separation under Article 12 of the Personnel Manual, which is now Article 1 of the Military Separations Manual.

### *Military Separations Manual, COMDTINST M1000.4*

Article 1.B.19. of the Military Separations Manual provides the rules for "uncharacterized" discharges that the CO of Training Center Cape May had final authority to effect without

consulting Headquarters. Article 1.B.19.a.1. states that the CO of the training center may award an uncharacterized discharge to recruits who:

> (a) Have fewer than 180 days of active service on discharge, and
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> (b) Demonstrate poor proficiency, conduct, aptitude or unsuitability for further service during the period from enlistment through recruit training, or
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> (c) Exhibit minor pre-existing medical issues not of a disabling nature which do not meet the medical/physical procurement standards in place for entry into the Service.

Article 1.B.19.a.2 of the manual states that "[a]n uncharacterized discharge is used for most recruit separations," except for prior service members, recruits who incur a disability, or those who commit "serious infractions."

Under Article 1.B.15. of the Military Separations Manual, Commander, PSC may direct the discharge of members for unsuitability because of inaptitude, personality disorders, apathy, adjustment disorders, alcohol abuse, etc. The member is entitled to written notification of the reason for discharge and the opportunity to submit a statement on his own behalf. Article 1.B.15. does not authorize the CO of the training center to effect this type of discharge without authority from PSC.

***Separation Program Designator (SPD) Handbook***

The SPD Handbook, an enclosure to the manual for preparing DD 214s, COMDTINST M1900.4D, provides the combinations of codes and separation authorities that may be entered on a DD 214. The handbook has not recently been updated and so still cites articles of the Personnel Manual, which was cancelled in September 2011. The handbook states that recruits who receive "uncharacterized discharges" pursuant to Article 12.B.20. of the old Personnel Manual (now Article 1.B.19. of the Military Separations Manual) when they have "inability, lack of effort, failure to adapt to military or minor disciplinary infractions during the first 180 days of active military service" receive a JGA separation code and RE-3L reentry code for "Entry Level Performance and Conduct."

Under the SPD Handbook, members discharged for unsuitability pursuant to Article 12.B.16. of the old Personnel Manual (now Article 1.B.15. of the Military Separations Manual) may be discharged for "Personality Disorder" with an RE-3G or RE-4 reentry code or for "Unacceptable Conduct," "Personal Alcohol Abuse," or "Alcohol Rehabilitation Failure" with an RE-4 reentry code. In 2009, the Commandant issued ALCOAST 252/09, revising the SPD handbook by adding a new reason for separation: "Adjustment Disorder." The ALCOAST states that members involuntarily discharged due to a diagnosed adjustment disorder pursuant to Article 12.B.16. of the Personnel Manual (now Article 1.B.15. of the Military Separations Manual) would receive a JFY separation code and either an RE-3G or RE-4 reentry code, as prescribed by PSC.

Under the SPD Handbook, members may also be discharged for the convenience of the Government pursuant to Article 12.B.12. of the Personnel Manual (now Article 1.B.12. of the

Military Separations Manual) with "Secretarial Authority" as the narrative reason for separation, a JFF separation code, and an RE-1 or RE-4 reentry code

On March 18, 2010, the Commandant further revised the SPD Handbook by eliminating the letter modifiers, such as the G on an RE-3G, for all RE-3 codes.

Under COMDTINST M1900.4D, the instruction for preparing DD 214s, block 24 of a DD 214 should show only the word "uncharacterized" when a member receives an uncharacterized separation.

## 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 submission, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely filed within three years of the applicant's separation.[3]

2. The applicant requested an oral hearing before the Board. Pursuant to 33 C.F.R. § 52.31, "[t]he Chair shall decide in appropriate cases whether to grant a hearing or to recommend disposition on the merits without a hearing," and § 52.51 states that "[i]n each case in which the Chair determines that a hearing is warranted, the applicant will be entitled to be heard orally in person, by counsel, or in person with counsel."[4] The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.[5]

3. The applicant asked the Board to upgrade his reenlistment code from RE-3G to RE-1 and to change his separation code of JFY on his DD 214 to reflect that the discharge was due to "Secretarial Authority." The applicant stated that he was not given the opportunity to rebut the findings of a Medical Board, ultimately resulting in a separation and reenlistment code he deems erroneous and unjust. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.[6] 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."[7]

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[3] 10 U.S.C. § 1552(b).

[4] *See Steen v. United States*, No. 436-74, 1977 U.S. Ct. Cl. LEXIS 585, at *21 (Dec. 7, 1977) (holding that "whether to grant such a hearing is a decision entirely within the discretion of the Board"); *Flute v. United States*, 210 Ct. Cl. 34, 40 (1976) ("The denial of a hearing before the BCMR does not *per se* deprive plaintiff of due process.); *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

[5] *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

[6] 33 C.F.R. § 52.24(b).

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

4. The applicant alleged that he was denied due process because he was not afforded an opportunity to rebut a Medical Board report. The record shows that on November 12, 2011, after less than a month of recruit training, the applicant was referred to a psychiatrist for an evaluation of symptoms of anxiety and depression. He advised the psychiatrist that he was homesick, that he could not adjust to life in the military and being away from home, and that he did not want to stay in the Coast Guard. The psychiatrist diagnosed the applicant with an adjustment disorder and recommended that the applicant be discharged administratively ("for reasons other than physical disability"). Instead of having the applicant execute the section on the form about whether he wanted to rebut the report, however, the psychiatrist had him acknowledge by signature that the purpose of the form was for his discharge and that he had no other illness or injury except the adjustment disorder. The JAG argued that the unusual execution of the Medical Board report is irrelevant because the applicant had no right to processing under the Physical Disability Evaluation System (PDES). Under Chapter 5.B.3. of the Coast Guard Medical Manual, COMDTINST M6000.1E, which was in effect in 2011, members diagnosed with adjustment disorders, such as "inability to adjust to military life/sea duty, separation from family friends," are processed for administrative separations, instead of being processed through medical boards and the PDES. Accordingly, the Board agrees with the JAG that the applicant's adjustment disorder did not entitle him to a Medical Board evaluation or PDES processing. Instead, the rules require an administrative discharge for recruits who, like the applicant, are unable to adjust to military life. Therefore, the applicant has not proven by a preponderance of the evidence that he was denied due process when the Medical Board report was not completely executed.

5. On November 22, 2011, the senior chief at the training center's clinic asked the CO of Training Center Cape May to discharge the applicant "for failing to meet the physical standards for accession" because of the diagnosed adjustment disorder. The CO of the training center has final authority under either Article 1.B.15.e. or Article 1.B.19. of the Military Separations Manual to discharge recruits who are unsuitable for service or who prove not to meet the Coast Guard's medical accession/procurement standards. It is clear that the CO authorized the applicant's discharge under one of these articles, but the applicant's DD 214 appears to conflate the provisions of Articles 1.B.19. and 1.B.15. of the manual by reflecting both an "Uncharacterized Discharge (Cape May only)" under Article 1.B.19. and a discharge due to "Adjustment Disorder" under Article 1.B.15.

6. The CO of the training center has authority to discharge members with less than four months of service due to a diagnosed "Adjustment Disorder" under Article 1.B.15.e. of the Military Separations Manual, but if so, the member is entitled to notice and an opportunity to make a written statement on his own behalf, pursuant to Article 1.B.15.d., and the member may receive an honorable or general discharge depending upon how much effort they made to succeed. In this case, the CO exercised his authority under Article 1.B.19., however, because he apparently did not give the applicant an opportunity to submit a written statement and awarded the applicant an "Uncharacterized Discharge (Cape May only)," as shown on the DD 214. (Although the DRB reported that the applicant acknowledged receiving notification of such a discharge on November 29, 2011, there is no such documentation in the record before the BCMR.) Under Article 1.B.19., the CO had final authority to award the applicant an unchar-

acterized discharge because of his inability to adjust to military life, and he could do so without giving the applicant written notification or an opportunity to respond.

7. The applicant alleged that he was denied due process and a constitutional property interest because he received no notice of his pending discharge or opportunity to respond. Enlisted members do not have a constitutional property interest in their military employment,[8] but they do have a constitutionally protected liberty interest if the type of discharge or reason for discharge shown on their DD 214s is stigmatizing.[9] If the discharge is stigmatizing, the Coast Guard may not discharge the member without due process, but such due process is "fulfilled by notice of the government act and an opportunity to respond before or after the act."[10] In accordance with these principles, Article 1.B.19. of the Military Separations Manual authorizes the CO of the training center to award "uncharacterized"—unstigmatizing—discharges without giving the recruit written notice or an opportunity to respond beforehand.[11] The senior chief's memorandum to the CO shows that this was the type of discharge intended for the applicant, but his DD 214 was erroneously prepared.

8. Although the applicant's constitutional arguments fail, the Coast Guard is required to follow its own regulations in the Medical Manual, Military Separations Manual, the SPD Handbook, ALCOASTs 252/09 and 125/10, and COMDTINST M1900.4D.[12] Under these authorities, the CO of the training center properly and fairly exercised his authority to award the applicant an uncharacterized discharge based on his confessed inability to adapt to military life pursuant to Chapter 5.B.3. of the Medical Manual and Article 1.B.19. of the Military Separations Manual. However, under COMDTINST M1900.4D, block 24 of the applicant's DD 214 should show only "uncharacterized" for the character of service, not "uncharacterized (Cape May only)." And under the SPD Handbook, ALCOAST 252/09, and Article 1.B.19.g. of the Military Separations Manual, the JFY separation code is *not* an authorized code and "Adjustment Disorder" is *not* an authorized narrative reason for separation for a recruit receiving an uncharacterized discharge under Article 1.B.19. The Board has found no authority that authorizes the CO of the training center to assign the JFY separation code to a recruit being discharged under Article 1.B.19., and the JAG cited none. Nor is a JFY/Adjustment Disorder discharge unstigmatizing as the Constitution and the case law require when the member is not given notice and an opportunity to be heard.[13] Therefore, the Board finds that the applicant's DD 214 is erroneous, and the DD 215 issued upon the DRB's recommendation did not fix the error.

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[8] *Flowers v. United States*, 80 Fed. Cl. 201, 223 (2008) (citing *Canonica v. United States*, 41 Fed. Cl. 516, 524 (1998)).

[9] *Casey v. United States*, 8 Cl. Ct. 234, 241 (1985); *Rogers v. United States*, 24 Cl. Ct. 676, 683-84 (1991); *Vierrether v. United States*, 27 Fed. Cl. 357, 364-65 (1992); *Canonica*, 41 Fed. Cl. at 524; *Weaver v. United States*, 46 Fed. Cl. 69, 77-78 (2000); *Flowers*, 80 Fed. Cl. at 224.

[10] *Canonica*, 41 Fed. Cl. at 524*; see Board of Regents v. Roth*, 408 U.S. 564, 573 (1972); *Lee v. United States*, 32 Fed. Cl. 530, 546 n.17 (1995).

[11] The Board notes that the record shows that the applicant was notified of his pending discharge at least by his doctor and has exercised his right to contest his discharge after the fact through the DRB and the BCMR.

[12] *Service v. Dulles*, 365 U.S. 363, 388 (1957); *see also Carmichael v. United States*, 298 F.3d 1367, 1373-74 (Fed. Cir. 2002); *Voge v. United States*, 844 F.2d 776, 779 (Fed. Cir. 1988) (noting that "[i]t has long been established that government officials must follow their own regulations, even if they were not compelled to have them at all").

[13] *See* note 9 above.

9. Under the SPD Handbook, active duty recruits who receive uncharacterized discharges under Article 1.B.19. of the Military Separations Manual (or Article 1.B.20. of the old Personnel Manual) for "failure to adapt to military" may receive the JGA separation code and "Entry Level Performance and Conduct" narrative reason for separation. This narrative reason for separation does show that the applicant was discharged because of his performance or conduct as a recruit, but it does not stigmatize the applicant as having a psychological disorder. In addition, under ALCOAST 125/10, there should be no letter modifier on the applicant's RE-3 reentry code.

10. The applicant requested a "Secretarial Authority" narrative reason for separation, but "Entry Level Performance and Conduct" is the only authorized reason under Article 1.B.19. of the Military Separations Manual given the circumstances of the applicant's discharge and it is not unduly stigmatizing in this case. In addition, although the applicant requested an RE-1 reentry code, the psychiatrist clearly stated that he should not be reenlisted in the military without "psychiatric clearance." Therefore, the RE-3 code, which makes a veteran eligible to reenlist if he receives a waiver for the problem that caused his discharge is correct and appropriate.

11. Accordingly, partial relief should be granted by correcting the applicant's DD 214 to show that he received an "uncharacterized" discharge pursuant to Article 1.B.19. of the Military Separations Manual, COMDTINST M1000.4, with an RE-3 reentry code, a JGA separation code, and "Entry Level Performance and Conduct" as his narrative reason for separation. Moreover, the corrections should be made on a new DD 214 and his incorrect DD 214 and DD 215 should be voided.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

## ORDER

The application of former SR [redacted] USCG, for correction of his military record is granted in part. The Coast Guard shall issue him a new DD 214 with the following entries:

- Block 24 shall state "UNCHARACTERIZED" only;
- Block 25 shall cite COMDTINST M1000.4, ART. 1.B.19.;
- Block 26 shall show separation code JGA;
- Block 27 shall show reentry code RE-3 with no letter modifier;
- Block 28 shall state "ENTRY LEVEL PERFORMANCE AND CONDUCT"; and
- This note shall be added to block 18: "ACTION TAKEN PURSUANT TO ORDER OF BCMR."

The Coast Guard shall void his previously issued DD 214 and DD 215.

February 12, 2015

[redacted]