

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2020-030**



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**FINAL DECISION ON RECONSIDERATION**

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on November 15, 2019, and assigned the case to the staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision dated April 22, 2022, is approved and signed by three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST AND ALLEGATIONS**

The applicant, a former Boatswain's Mate Third Class (BM3/E-4) who received an honorable discharge on March 11, 2005, asked the Board to reconsider its previous decision in docket 2007-028 dated August 30, 2007, and correct his military record by upgrading his reenlistment code from RE-4 to RE-3, or any other reenlistment code that would allow him to reenlist in the Armed Forces. In support of his application, the applicant submitted a personal statement addressed to the Board, a copy of his resume, and two letters of reference from previous supervisors.

In his letter to the Board, the applicant explained that his request has not changed since his original application to the Board. He only wishes to be granted an opportunity for reenlistment. He has taken quite a long time to file an appeal of the Board's original decision issued in docket 2007-028, to ensure enough time has passed to adequately show he is on a stable track of life. The applicant also emphasized that he is older and so his chances of returning to active duty are diminishing. He stated that he wants to enlist in the Reserves or the National Guard.

The applicant stated that since his discharge he has continued to work for the United States military in a civilian capacity. He stated that he has continued to serve as a soldier, only without the uniform or rank on his collar. The applicant argued that his continued service to the United States military during the years since his separation answers the questions as to his suitability for

reenlistment. He argued that his ability and desire to serve were never compromised, but he will not reraise that issue since it was adequately argued and addressed in his first application to the Board. He also stated that he swore the events that led to his separation in 2005 would not happen again, and according to the applicant, “they haven’t and never will.” The applicant alleged that every board his case has been presented to has voted for relief, but someone in the chain of command vetoed the boards’ recommendations, despite having no personal knowledge of the applicant’s case or service history.

The applicant concluded his letter to the Board by stating that his time overseas produced many positive learning experiences, such as getting married. He asked the Board to review his case one more time and allow him the opportunity to return to service and be free of the unjust issue that has haunted him half his life. He acknowledged that reenlisting would be a significant pay cut, but stated he does not care. The applicant claimed he is focused on the bigger picture and stands ready to serve, and with the board’s help, he will continue to do so.

The applicant submitted the following documents in support of his application to the Board:

- The applicant provided a copy of his resume, which highlighted his continued service as a civilian to the United States by working with the U.S. Army, U.S. Department of State, and as a military trainer and an interpreter at a Joint Training Center overseas.
- The applicant also included a letter of reference from his supervisor at the Department of State, dated May 25, 2011. In the letter the applicant’s supervisor highlighted the important role the applicant played in assisting the United States military in accomplishing its goals in helping the Iraqi government provide essential services to their citizens. According to the supervisor, the applicant earned his place as a trusted member of the State Department team. The supervisor claimed the applicant “...displayed a natural affinity as a humanitarian and a genuine concern for the Iraqi people,” which served the State Department well because of the high value placed on personal relationships in the Iraqi culture. The applicant’s ability to quickly build a rapport with the Iraqi people made the State Department team more productive. The supervisor stated he believed the applicant’s “people skills” are his greatest asset. He also stated that the applicant’s ability to easily engage their Iraqi counterparts, while remaining cognizant of the requisite customs and courtesies allowed the State Department to move their diplomatic effort forward where their predecessors had failed. According to the supervisor, the applicant played a key role in the State Department’s mission during the Iraq’s national election in March of 2010. The applicant was tasked with developing an extensive list of community contacts and third-party interlocutors that the applicant continuously communicated with during, in the middle, and after the elections.<sup>1</sup> The supervisor claimed that the applicant has proven that he is no stranger to living, coping, and successfully managing the mission, while living in austere and non-permissive environments. While at a Combat Outpost (COP), the supervisor claimed, the applicant was quartered in a windowless, non-insulated steel

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<sup>1</sup> Throughout this letter different names are found that are not the applicant’s name. It can be reasonably assumed that this letter of reference was a template used by the supervisor wherein the supervisor would simply substitute names to adapt the letter for whoever was currently requesting the letter of reference. Any sentences that referred to the applicant by the wrong name were not included in this final decision.

shipping container with no indoor plumbing and poor ventilation. In addition, the applicant endured rudimentary dietary subsistence, in lieu of the typical KBR operated dining facilities found on larger US military installations. The supervisor stated that even in these tough working conditions, the applicant never complained. The supervisor also mentioned an unfortunate event where the applicant endured an Improvised Explosive Device (IED) strike that disabled the armored vehicle the applicant was a passenger in. Although the applicant was uninjured, the supervisor highlighted that such an encounter certainly adds to the stressors of daily life. The supervisor concluded his letter of reference by emphasizing how grateful the Department of State is for the applicant's contributions to their successes in Iraq.

- Finally, the applicant provided another letter of reference dated November 8, 2008, from a supervisor, who thanked the applicant for his work as a linguist/interpreter while working on reconstruction in Western Iraq for seven months. This same supervisor stated that he trusted the applicant in one the most complex regions, with a great deal of political risks and history of insurgency.

### SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on December 10, 2002, spending his enlisted career as a Boatswain's Mate Third Class.

On December 31, 2003, the applicant was taken to the hospital emergency room by civilian authorities and was treated for alcohol poisoning, which was documented as an "alcohol incident." During his visit to the hospital, the applicant was screened for alcohol abuse and dependency but was found not to meet the criteria.

On a January 31, 2004, performance evaluation, the applicant received good marks in all areas except Health and Well-Being, Responsibility, and Setting an Example for which he received low marks due to his alcohol incident.

On April 6, 2004, the applicant completed all sessions of the Alcohol and Drug IMPACT Program.

On July 3, 2004, the applicant was counseled for installing history-destroying software on a government computer and using the computer to visit sexually oriented websites.

On a July 31, 2004, performance evaluation, the applicant received mostly average marks, but lower than average marks for the areas of Monitoring Work, Safety, Integrity, Responsibility, and Setting an Example. The applicant's supervisor did not recommend him for advancement stating:

The applicant is a fairly competent and intelligent individual who at times has difficulty taking his job seriously, and has great difficulty in being responsible for his actions. During this evaluation period he was involved in an auto accident while racing, was issued a reckless driving ticket, had an alcohol related incident, and was counseled and documented on the improper use of government computers. When counseled about these matters, [his] conception was that it was wrong because he got caught. He flatly refuses to take responsibility for the alcohol related incident, blaming it on an unknown reason, even though blood tests

reveal there were no other chemicals in his blood. He is unsafe on the roads, as attested by his driving record, which if continued will most definitely harm himself and others. [The applicant] is unresponsive at times when reminded of basic safety precautions on the boat deck. [He] is a qualified BMOW and as such I expect him to show a greater level of responsibility. While he can work very hard on individual projects, he does not consistently present a positive example for junior sailors to follow. [He] has not shown the maturity or professionalism to perform the duties of a Petty Officer in the Coast Guard, and is not recommended for advancement.

On December 1, 2004, the applicant was promoted to BM3.

On December 15, 2004, the applicant was hospitalized at Madigan Army Medical Center after attempting to commit suicide by overdosing on Vicodin. The applicant claimed he tried to end his life because of an argument he had with his girlfriend, occupational dissatisfaction, and his sister's attempted suicide three days prior. The applicant was released the next day with an Axis I diagnosis of "adjustment disorder with mixed disturbance of emotions and conduct." An Axis II diagnosis was "deferred," but a doctor noted that the applicant had narcissistic and obsessive-compulsive traits. Upon his release, the applicant agreed to a "contract of safety," promising to seek help if he found himself considering suicide again.

On December 17, 2004, a physician's assistant noted that the applicant was not fit for sea duty and was a candidate for administrative separation.

On January 1, 2005, the applicant was once again hospitalized at Madigan Army Medical Center after over-dosing on 30 tablets of Motrin. He stated he was trying to make his heartache go away because his girlfriend refused to reconcile with him. At this point, the applicant denied symptoms of a major depressive disorder but "expressed interest in a trial of anti-depressants to target symptoms of irritability and low frustration tolerance. He was prescribed 50 milligrams of Zoloft a day. The applicant received an Axis I diagnosis of adjustment disorder with mixed emotions and conduct and an Axis II diagnosis of narcissistic and histrionic traits. The doctor also noted that the applicant may have a "personality disorder NOS" (not otherwise specified).

On January 4, 2005, the doctor reported that he told the applicant's chain of command "there is no requirement for immediate discharge and the applicant was recommended for a trial of duty. However, final administrative disposition is a decision for command, and he should be discharged from active-duty if he continues to struggle with suicidality and poor frustration tolerance." The applicant was then ordered not to attempt further contact with his ex-girlfriend.

On January 6, 2005, the applicant's commanding officer notified him that he was initiating an honorable discharge for him "based on [his] diagnosed personality disorder." He advised the applicant that he had a right to submit a statement on his own behalf.

On January 12, 2005, a staff psychiatrist at Madigan Army Medical Center examined the applicant after he complained of feeling depressed and anxious for about a month due to a failed relationship. The psychiatrist also noted that the applicant had been seen briefly on January 7, 2005, "for evaluation of his fitness of duty," because his command had questions about the applicant's emotional stability and because the applicant was frustrated he was not being allowed to get underway with his cutter, which was being deployed to the Middle East. The applicant was being evaluated again due to his "increased anxiety and desire to clarify his situation as he was worried after the discussion on 07 January that he would be discharged."

After reviewing the applicant's records, the psychiatrist reported that there was "no evidence of a mood disturbance, but some long-standing coping mechanism that limits flexibility in decision making. He has above average intelligence and thus has the ability to master new information and skills quickly. He has extremely high standards for himself and others." The psychiatrist also reported that the applicant's "recent behavior has been impulsive as [he] has difficulty with situations he is unable to influence." The army psychiatrist reported that the applicant's prognosis was poor due to a pre-existing personality disorder that prevented adaptation to the military lifestyle and recommended that he be administratively separated. The psychiatrist also recommended the applicant continue taking Zoloft and provided the following diagnosis:

Axis I: Adjustment Disorder – Mixed 309.3  
Axis II: Personality Disorder – Mixed Type  
Axis III: No Medical Conditions  
Axis IV: Stressors – Occupational and lack of adequate social support system  
Axis V: Global Assessment of Functioning:  
    Current: 51-60 Moderate Impairment of Functionality  
    Suicidal Ideation: Not Present  
    Homicidal Ideation: Not Present  
    Physical/Mental Capabilities and Limitations: None

On January 13, 2005, the applicant submitted a written statement on his own behalf objecting to his discharge. The applicant admitted that his situation was "pretty serious" but denied having a problem other than having gone "through tremendous emotional pain like nobody could ever imagine." The applicant stated his discharge "would literally destroy [his] life financially, professionally, and family-wise," and that he "would be left on the streets." He stated he understood why no one trusted him, even though he had learned and matured from his experience. At this point, the applicant asked for one last chance to make a career in the Coast Guard.

On February 11, 2005, the applicant asked to see the Army psychiatrist again and told him he was seeking a second opinion since he was unhappy about being discharged. The applicant insisted he was "now capable of handling stress and would never have a problem with his personal concerns leading him to consider suicide. He wanted to remain in the Coast Guard or enter the law enforcement field." The army Psychiatrist reported that the applicant's reaction was "appropriate" when he learned the psychiatrist would not be altering his diagnosis or recommendation.

On February 17, 2005, the applicant consulted a Navy Clinical Psychologist at a different hospital for a second opinion.

On March 8, 2005, the psychologist noted that the applicant had an adjustment disorder with a depressed mood, which was resolving, and that he was referring the applicant for psychological testing to assess the previous Axis II diagnosis of personality disorder NOS (not otherwise specified).

On February 24, 2005, the applicant's case was reviewed by the area commander under the "second chance" waiver program, but the applicant was not granted a waiver.



On March 4, 2005, the Commander, Coast Guard Personnel Command (CGPC) ordered that the applicant be discharged no later than April 1, 2005, with a JFX separation code and an RE-4 reenlistment code (ineligible to reenlist).

On March 11, 2005, the applicant received an honorable discharge with an RE-4 reenlistment code, a JFX separation code, and “personality disorder” as the narrative reason for separation on his DD-214.

On April 25, 2005, the applicant sought mental health testing to prove he does not have a personality disorder. The applicant was interviewed by a clinical psychologist for an out-patient psychosocial assessment and gave him an initial diagnosis of an Axis I: Adjustment Disorder and an Axis II: Personality Disorder with Traits Deferred.

On May 5, 2005, a different clinical psychologist interviewed the applicant for an additional mental health examination and reported that the applicant had no mental health disorders on either Axis I or II.

On June 1, 2005, a staff psychiatrist at the mental health clinic for the Department of Veterans’ Affairs (DVA) wrote that he had met with the applicant on May 17, 2005, and again on May 31, 2005, to discuss the results of his Minnesota Multiphasic Personality Inventory (MMPI-2) and Millon Clinical Multiaxial Inventory (MCMI-III) tests. The tests showed the applicant is “a high energy individual with some impulsivity, and some narcissistic traits, but he does not have a personality disorder or any other psychiatric disorder. The DVA psychiatrist gave the applicant a “deferred” Axis II diagnosis and an Axis I diagnosis of “adjustment disorder with disturbance of mood and conduct.” He also wrote the following:

At present, [the applicant] does not exhibit [symptoms] consistent with a diagnosis of personality disorder. The recent severity of his response to separation from his girlfriend does, however, needs to be clearly explained. At present adjustment [disorder] seems to be the most likely diagnosis, and I would question the simultaneous diagnosis of adjustment [disorder] and personality disorder, as the former diagnosis would make the latter quite difficult to assess.

On May 9, 2006, the DVA staff psychiatrist reported that the applicant’s psychiatric symptoms “had resolved completely” and that he had recently interviewed the applicant and his family and found “no evidence of any psychiatric illness or symptoms since my evaluation.”

On June 9, 2006, after reviewing the applicant’s evidence, the Discharge Review Board (DRB) recommended that the Commandant correct his record only by upgrading his reenlistment code from RE-4 to RE-3G, which would make him eligible for reenlistment except for a disqualifying factor—the diagnosis of a personality disorder. The DRB noted that the applicant had appeared in person and was:

...sincere, articulate, and accepted responsibility for his past actions. In addition, the applicant had extensive documentation to refute the military psychiatrist’s diagnosis of personality disorder. These recent psychiatric evaluations indicate he no longer has a personality disorder, is not a threat to self or others, and does not possess suicidal tendencies. While the Board is not qualified to validate these medical diagnoses, the Board recommends upgrading his existing reentry code from RE-4 with RE-3G, which would allow his record to be reviewed by competent medical authorities to determine his suitability for future military service.

On September 5, 2006, the Commandant disapproved the DRB's recommendation but ordered that the applicant's narrative reason for separation be changed from "personality disorder" to "unsuitability." This ordered correction was completed by the issuance of the DD-215.

On November 24, 2006, the applicant applied to this Board to correct his military record by upgrading his reenlistment code from RE-4 to RE-1 and changing his narrative reason for separation to "appropriately."

On August 30, 2007, in its decision for BCMR Docket No. 2007-208, the Board denied the applicant's request to have his reenlistment code upgraded from RE-4 to RE-1. However, he was invited to reapply for relief under 33 C.F.R. § 52.67, if and when he was able to submit substantial evidence of five full years of continuous good mental health, emotional stability, and mature and appropriate conduct.

On November 15, 2019, the applicant reapplied to this Board to reconsider its previous decision and upgrade his reenlistment code from RE-4 to RE-3, or any reenlistment code that would allow for possible reenlistment.

### **VIEWS OF THE COAST GUARD**

On April 21, 2020 a Judge Advocate (JAG) for the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center.

The Coast Guard believes relief should be denied because the applicant failed to provide substantial evidence of five full years of continuous good mental health, emotional stability, and mature and appropriate conduct. The Coast Guard argued that the letters of references provided by the applicant, though good, were outdated, and pointed out that one was from 2008 and the other from 2011.

In addition, the Coast Guard noted that the applicant was involved in an IED explosion as a civilian and may have suffered psychological impacts from this experience, but the applicant has not submitted any medical documentation or records to establish good mental health for the past five years. Therefore, the Coast Guard advised, his request should be denied.

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

On May 7, 2020, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited him to respond within thirty days. The Board did not receive a response from the applicant.

### **APPLICABLE LAW AND POLICY**

33 C.F.R. § 52.67 provides the necessary guidance on requests for reconsideration in relevant part:

(a) Reconsideration of an application for correction of a military record shall occur if an applicant requests it and the request meets the requirements set forth in paragraph (a)(1) or (a)(2) of this section.

(1) An applicant presents evidence or information that was not previously considered by the Board and that could result in a determination other than that originally made. Such new 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;

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## FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on the applicant's military record and submissions, the Coast Guard's submission and applicable law:

1. The Board has jurisdiction over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record. The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

2. Under 10 U.S.C. § 1552(a)(3)(D), "[a]ny request for reconsideration of a determination of a board under this section, no matter when filed, shall be reconsidered by a board under this section if supported by materials not previously presented to or considered by the board in making such determination." Because the applicant has submitted new evidence and made new requests concerning his mental health that were not in the record when the decision in BCMR Docket No. 2007-028 was issued, the Board finds that his request meets the statutory requirements for reconsideration. Therefore, the Board will review his case on the merits.

3. Under 10 U.S.C. § 1552(a), the Board may "remove an injustice" from a member's record, as well as correct an error in the record. The Board has authority to determine whether an injustice has been committed on a case-by-case basis.<sup>2</sup> Therefore, the Board must consider whether the applicant's RE-4 reenlistment code constitutes an injustice.

4. The applicant alleged that he was incorrectly given a reenlistment code of RE-4 upon his separation from service and that he does not have a personality disorder that prevents him from serving in the armed forces. He has asked this Board to reconsider its earlier decision, docket 2007-028, where it denied him an upgraded reenlistment code due to his previous suicide attempts. The Board believed that the evidence presented was insufficient to establish that the Coast Guard had made an error when discharging the applicant due to a personality disorder. The Board believed the applicant was unable to prove, by a preponderance of the evidence, that he could effectively handle certain stressors innate in the life of an active-duty service member. To support his newest request, the applicant submitted a personal statement and two letters of reference from previous supervisors. However, the newly submitted evidence does not address the applicant's recent mental health status, which was the core concern in the Board's previous decision. In fact,

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<sup>2</sup> Decision of the Deputy General Counsel, BCMR Docket No. 2001-043. According to *Sawyer v. United States*, 18 Ct. Cl. 860, 868 (1989), *rev'd on other grounds*, 930 F.2d 1577, and *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976), purposes of the BCMRs under 10 U.S.C. § 1552, "injustice" is "treatment by military authorities that shocks the sense of justice."



the applicant did not submit any new medical evidence to support his application or arguments that he deserves an upgraded reenlistment code. The Board's continued concern is whether or not the applicant is able to handle the everyday stresses inflicted on active-duty service members. These letters, one thirteen years old and the other ten, do very little to reassure the Board or ease these concerns. In addition, the applicant did not submit any evidence from the past five years that would lead the Board to believe that the applicant's mental health has significantly changed since the Board's previous decision was issued. In addition, it is difficult to consider two letters of reference, each over ten years old, absent any corroborating medical documentation, as substantial proof that the applicant's ability to handle the mental stresses associated with military life has changed enough to warrant an upgraded reenlistment code. As such, the applicant has failed to prove, by a preponderance of the evidence, that the reenlistment code given to him upon his separation from the Coast Guard was erroneous or unjust. Therefore, the applicant's request should be denied.

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

