

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2020-128


SR (Former)

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 May 27, 2020 and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated December 5, 2024, 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, a former Seaman Recruit (SR/E-1), who was discharged on January 9, 1969, due to misconduct asked the Board to reconsider its previous decisions in Docket Nos 9-82 (dated May 27, 1982), 285-86R (dated August 5, 1986), and 234-88 (dated May 14, 1989), and correct his record by upgrading his reenlistment code from RE-4 to RE-1.¹ In addition to his request for reconsideration, the applicant has also requested that the Board correct his record by removing all disciplinary paperwork entered into his record under LT C, and to upgrade his narrative reason of separation from "Unsuitability" to "Under Honorable Conditions."² The applicant has further requested that the Board change his rank from E-1 to E-4 and his rate from SR to GM3. Finally, the applicant requested that he be awarded the Purple Heart. The applicant stated that his application for reconsideration and additional relief are the result of him winning his appeal with the VA.

¹ The applicant did not specify in his application to this Board what he wanted his reenlistment code changed to. The Board will therefore assume that he intended that his reenlistment code be upgraded to RE-1.

² The Board is uncertain as to what the applicant means by changing his narrative reason of separation from "Unsuitability" to "Under Honorable Conditions" because "Under Honorable Conditions" is not an applicable narrative reason for separation.

The applicant explained that he received a General Court-Martial that resulted in him receiving a General—Under Honorable Conditions discharge with a narrative reason of separation of “Unfitness,” but had it upgraded to Honorable with a narrative reason of separation of “Unsuitability” after he applied to the Discharge Review Board (DRB). He stated that he fought the Department of Veterans Affairs (VA) for benefits for 37-1/2 years, when he was finally approved for benefits after his attorney allegedly proved that he had head trauma, Post Traumatic Stress Disorder (PTSD), mental illness, and major depressive disorder as a result of an assault he suffered. The applicant claimed that the Coast Guard failed to provide him the necessary medical care he needed after he was severely assaulted such as MRIs, or x-rays. Instead, the applicant alleged that his command locked him up like a dog in the “brig”³ for 60 days, only letting him out for one day before locking him back up for another 90 days while they processed him for separation.

The applicant further alleged that his commander at the time, LT C, was aware of that he was severely assaulted because LT C was notified by shore patrol, who allegedly found the applicant on the street “bleeding all over the place and left for dead.” According to the applicant, he suffered a concussion after he was attacked by half the people on the street who used clubs, their fists, their feet, and anything else they could find, all because he was wearing a Coast Guard uniform. Despite knowing this, the applicant contended that LT C never ordered any kind of medical treatment.

The applicant claimed that because of the assault, he believed he was working while suffering from a concussion, PTSD, mental illness, and severe depression, which his attorney’s office proved after appealing the VA’s decisions. The applicant alleged that the records showed that he was suffering from head trauma and that he was drinking in excess because he was suffering from hallucinations, and he just wanted them to stop. He claimed that he drank to make the hallucinations go away. The applicant stated that he was very sick, but the Coast Guard did not do anything to help him. The applicant alleged that the assault was not his fault. He contended that he was only assigned to the unit for about seven months, and LT C gave him two Captain’s Masts, also known as Non-Judicial Punishment (NJP), and reduced him in rank twice. The applicant explained that prior to his arrival to LT C’s unit, he had almost three years of sea and foreign assignment duties on a Coast Guard cutter. He claimed that LT C separated him when he only had five months left to serve.

The applicant stated that he is applying for the Purple Heart because he was in the Coast Guard and served during Vietnam. He explained that he was in full dress uniform, bled a lot, and suffered an invisible wound similar to what Vice President Pence spoke of during a Veteran’s Day speech he gave.

To support his application for relief, the applicant submitted letters from the VA wherein he was originally awarded a disability rating of 100%, with 70% of that disability being the result of “Acquired psychiatric disorder, to include major depressive disorder and posttraumatic stress disorder.” The disability rating stated that the effective date of the rating was April 27, 2005.

³ A “brig” is a military confinement facility.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on June 15, 1965.

On August 13, 1965 the applicant advanced to the rank of Seaman's Apprentice (E-2).

On August 25, 1965 the applicant was assigned to a Coast Guard cutter.

On July 31, 1966 the applicant advanced to Seaman (E-3).

On September 1, 1967 the applicant underwent a screening physical pursuant to COMDTINST M6120.5, where he was found fully qualified to perform of rate or rank, ashore or afloat.

On November 11, 1967 the applicant reported to sick bay for a rash on his hands and arms. The applicant denied any change in diet or using drugs. He was given Benadryl to relieve the itching and hydrocortisone. The medical notes state the rash was spreading. He was referred to a United States Public Health Services (USPHS) physician. The applicant was ultimately diagnosed with Erythema Multiforme.⁴

On November 16, 1967 the applicant was seen by a USPHS physician for a slightly swollen right hand. The doctor noted no limitation of motion (followed by illegible writing). The x-rays were negative for any fractures.

On February 28, 1968, he was found guilty of Non-Judicial Punishment (NJP) for absence without leave of 1 day. He was awarded 2 weeks restriction and a forfeiture of \$32.00. The forfeiture was suspended for 3 months.

On April 29, 1968 the applicant went to the hospital with a chief complaint of pain in his right fist when clinching. The medical notes stated there was no discomfort while the fist was in position but stated he experienced some discomfort when the fist/hand was jarred. The medical notes stated that the applicant injured his hand after removal of his cast after a fight.

On April 29, 1968 the applicant went to the hospital for an evaluation of the index finger of his right hand because there was recent history of a contusion. The doctor noted that there had been extensive trauma to the applicant's right hand. This was the applicant's second visit to the hospital that day.

On April 30, 1968 the applicant was seen by a USPHS for anteroposterior and lateral trauma to the right hand. A hairline fracture was noticed, and the applicant was directed to return to the clinic.

On May 1, 1968, as directed by his physician, the applicant returned to the hospital with x-rays where a partial hairline fracture to his index finger. The physician wrapped the applicant's

⁴ Erythema Multiforme is a skin reaction usually due to an infection or medication.

hand in an ace bandage and deemed him Not Fit for Fully Duty (NFFD) for two days and directed the applicant to return in three days.

On May 29, 1968 the applicant was found guilty at NJP for disrespecting a chief petty officer. He was awarded a reduction in rate.

On June 10, 1968 the applicant was reassigned to a shore unit.

On August 5, 1968 the applicant was seen by a USPHS physician for an injured right hand. The medical notes stated that the applicant had a history of fist to cuffs and had been in a fight two weeks prior to arrival and presented with a knot on his right hand. Multiple x-rays were conducted. It is believed that the applicant was diagnosed with a fracture of his right hand.

On August 7, 1968 the applicant was seen by another USPHS physician who noted the applicant was presenting 4 days after “another bout of fist to cuffs” and reinjured his right hand. There was reported swelling and the applicant was given several medications to take. He was told to return to the clinic within 7-10 days. It is believed that the applicant’s hand was fractured.

On August 8, 1968 the applicant was found guilty at NJP for destruction of Government property and being drunk and disorderly. He was awarded 10 days restriction.

On August 15, 1968 the applicant was seen by a USPHS physician after having “kicked off” his cast while “wrestling around.”

On September 5, 1968 the applicant was reduced in rank from E-3 to E-2.

On September 8, 1968 the applicant was found guilty at NJP for being drunk and disorderly, destruction of government property and breaking restriction. He was awarded 30 days correctional custody and a reduction in rate.

On November 8, 1968 the applicant pled guilty at a Summary Court-Martial for destruction of government property after he, on October 31, 1968, punched his fist through windows in the Yard Maintenance Shop. He was sentenced to a reduction in rank, confinement, and hard labor for one month.

On November 8, 1968 the applicant was reduced in rank from E-2 to E-1.

On November 20, 1968 the applicant was counseled regarding his deficiencies and advised that if his conduct did not improve, he would be processed for separation for unfitness.

On December 19, 1968 the applicant was convicted at a Summary Court-Martial for being absent without leave for approximately 7 days. He was sentenced to 15 days of restriction and forfeiture of pay in the amount of \$97 for one month.

On December 23, 1968 the applicant was notified in writing that his commanding officer was recommending him for administrative separation by reason of unfitness. The applicant was given an opportunity to submit a statement on his own behalf, but he declined to do so.

On December 24, 1968 the applicant's commanding officer recommended to the Commandant (CG-PE) that the applicant be discharged by reason of unfitness. Specifically, the commanding officer stated:

Seaman [Applicant], as evidenced by his record, has demonstrated substandard personal behavior reflecting discredit upon the service. This together with history of repeated minor disciplinary infractions particularly when under the influence of alcoholic beverages has presented an administrative burden to this unit and the Coast Guard.

On December 31, 1968 the Commandant directed that the applicant be discharged with a general discharge by reason of unfitness, under authority of Article 12-B-10, Coast Guard Personnel Manual, Code 28B (Unfitness. Frequent involvement of a discreditable nature with civil or military authorities).

On January 6, 1969 the applicant was discharged from the Coast Guard as directed by the Commandant with a General—Under Honorable Conditions characterization and a reenlistment code of RE-4. His final trait average was 3.28 for proficiency, 3.2 for leadership and 3.51 for conduct.

On February 9, 1979 the applicant applied to the DRB to upgrade his characterization of service from General to Honorable.

On July 9, 1981 the DRB convened and unanimously agreed that the applicant's characterization of service should be upgraded from General—Under Honorable Conditions to Honorable. The DRB provided the following analysis:

1. EX-SR [Applicant's] sub-standard conduct was partially caused by alcohol abuse. The present policy of the Coast Guard concerning alcohol abuse is quite clear. Commanding Officers and other responsible persons must be alert to personal difficulties caused by alcohol and must attempt to obtain prompt treatment for affected persons. We believe that [Applicant], under present circumstances, would have had access to treatment programs, which even if unsuccessful would have entitled him to an Honorable Discharge by reason of unsuitability. Article 12-B-16(b)(5), CG PERSMAN (CG 207) states that inability to participate in a rehabilitation program for correction of alcohol problems constitutes unsuitability.

2. EX-SR [Applicant] was not accorded all of the rights he would receive under today's standards. Specifically, Article 12-B-16(d)(3), CG PERSMAN (CG 207), requires that any person being processed for a discharge by reason of unsuitability should "...be afforded an opportunity to consult with a lawyer within the meaning of Article 27(b)(1), UCMJ, if the member's character of service warrants a General Discharge..." EX-SR [Applicant's] record does not document that he was afforded this opportunity, and his application for discharge upgrade contends that he was unaware of the discharge code to be used and of the ramifications of such code.

...

On October 13, 1981, in response to the DRB's final decision, the applicant applied to this Board in Docket No. 9-82 and requested that his reenlistment code be upgraded from RE-4 to

RE-1. The applicant's position was that because the DRB upgraded his characterization of separation, he was likewise entitled to an upgraded reenlistment code. In Docket No. 9-82, the Chair of the Board denied the applicant's request pursuant to 33 C.F.R. 52.15(a)(1)⁵ on the grounds that there was insufficient evidence to demonstrate probable error or injustice in the applicant's record. The Chairman stated that the applicant's RE-4 reenlistment code was appropriate under the circumstances at the time and was still appropriate under the standards of the time.

On February 25, 1986 the applicant again applied to this Board in Docket No. 285-86R for an upgraded reenlistment code. In his request for relief, the applicant made the following contentions relevant to his allegations contained his current request for relief:

(2) I contend changes in my attitude and effectiveness as a Military person was directly related to personality conflict with Commanding Officer upon a change of duty.

(3) I contend personal problems and anxiety brought about constancy in my behavior and that extreme penalties for charges against me provoked a rebellious attitude.

(a) All charges and punishment from time when I was to be married. Not granted leave for that or to be with wife prompted many action.

(b) I was an alcoholic who wasn't given treatment.

(c) My service record from June 15, 1965 until June 10, 1968 was excellent.

...

In support of his application, the applicant submitted letters and documents attesting to his good character. The Board provided the following Findings and Conclusions:

Section 1552 of Title 10, U.S. Code requires that applications for the correction of military records be filed within 3 years after discovery of the alleged error or injustice. However, the law permits the Board to waive the time limitation in the interest of justice.

Petitioner's application was not filed within 3 years after the assignment of his reenlistment code. Therefore, his application is untimely. Petitioner has not provided any excuse for his untimely filing.

Furthermore, we find that the Chairman was correct in denying petitioner's application for a change in his reenlistment code. The DRB changed petitioner's discharge to an honorable discharge by reason of unsuitability due to alcohol abuse because that is the type of discharge for which he could qualify under current regulations. Coast Guard regulations require that an RE-4 code be assigned to members receiving this type of discharge. COMDTNOTE 1900. Thus, petitioner's RE-4 reenlistment code is correct and appropriate.

Although current regulations provide for alcohol counselling and treatment, Chapter 20, Coast Guard Personnel Manual, continual intemperate use of alcohol is still grounds for disciplinary action and administrative separation from the Coast Guard. Article 20-E-1(a). In view of petitioner's extensive record of disciplinary offenses, we find that his RE-4 code is appropriate. The Coast Guard did not violate any of the regulations in effect at the time of petitioner's discharge. Although the changes in current regulations

⁵ The earliest version of 33 C.F.R. 52.15(a)(1) available on Westlaw was from 1984, however, the verbiage used by the Chair of the Board at the time indicates the regulation had not changed. 33 C.F.R. 52.15(a)(1)(1984) states, "The Chairman, without requirement of Secretarial approval, may deny relief to an applicant—

(a)(1) Where the information or relevant evidence presented is insufficient to demonstrate probable material error or injustice;

concerning treatment and counselling for alcohol abusers provided an equitable basis for an upgrade in petitioner's discharge, those changes do not excuse petitioner's numerous disciplinary offenses. Even under today's standards, a member with petitioner's record of offenses would not be assigned an RE-1 reenlistment code. Petitioner's marks for proficiency, leadership and conduct are also below the current minimum marks for reenlistment. Article I-G-5.

Current Article 12-B-16Cd) requires that a member be afforded an opportunity to consult with a lawyer only if the member's character of service warrants a general discharge. Since petitioner was not afforded an opportunity to consult with a lawyer, the DRB properly upgraded his general discharge to an honorable discharge. However, there is no requirement that a member be allowed to consult with a lawyer prior to a discharge by reason of unsuitability or prior to the assignment of an RE-4 code. Thus, petitioner's lack of opportunity to consult with a lawyer does not provide any basis for a change in the reason for his discharge or his reenlistment code.

For the foregoing reasons, we will deny petitioner's request for a change in his reenlistment code.

...

On July 8, 1988 the applicant again applied to this Board in Docket No. 324-88R and requested that his reenlistment code be upgraded from RE-4 to RE-1 or that the Coast Guard waive the reenlistment code all together. The applicant made the same arguments in his third application as he did in his second application for relief. He also contended that his good service record should have been taken into consideration prior to his discharge. In addition, the applicant claimed that when he was informed of his discharge, he was in the stockade and under duress. The applicant alleged that he was not aware of the reenlistment code or its adverse effect on employment of that it would prevent future enlistment. In the applicant's view, the assistance of a lawyer would have greatly affected the outcome of his situation. According to the applicant, the charges may have been dismissed or the charges may have been reduced to lesser offenses. The Board considered the applicant's request and found his allegations and evidence unpersuasive and arguments to be without merit. The Board found that none of the new information presented by the applicant persuasive and that most of the evidence presented in this third application for relief could have been presented to the Board prior to its original determination. The Board contended that it did not misinterpret the contents of his record when it considered his request on two previous occasions. Accordingly, the Board denied the applicant's request for relief.

On July 3, 1991 the VA issued a rating decision in response to the applicant's request for disability benefits. The following relevant analysis was provided by the VA:

D. SC for alcohol abuse, nervous condition and residuals of viral infection PT-NSC.

E. SMR's: summary of [redacted] Hospital hospitalization discharge 04-18-90: discharge summary 04-06-90 to 04-18-90, by Dr. [S]; statement by Dr. [R] dated 04-09-90; outpatient notes and statement by Dr. [A], Psychiatrist, dated 01-23-91 to 04-15-91.

F. At preinduction examination performed on 04-27-65, was within normal limits. On 01-14-68, the veteran was admitted to the USPHS Hospital in [redacted] for erythema multiforme and eruption on his palms and soles of feet. He was seen in consultation by a dermatologist who diagnosed the condition as erythema multiforme, probably the result of a viral infection. He was discharged after four days with marked improvement and complete disappearance of the eruption and there was no recurrence of said eruption throughout the remainder of the veteran's service years nor did it occur at the time of his discharge examination on 12-30-68.

The veteran was seen by Dr. [R], a psychiatrist on 04-06-90, for a psychiatric evaluation. The veteran stated at this time that even as a child he had never been able to accept routine activities or regimentation in any shape or form or he would become obstreperous and become violent and cause disturbance as a result. He was discharged from the Coast Guard on the basis of fighting, alcoholism and violence. Veteran seemed to take self-satisfaction in recounting the fact that his last such episode in the Coast Guard resulted in three or four people being hospitalized. After discharge from the Coast Guard he worked for 17 years for the Wire Company but was discharged at the end of this time because of his bad attitude. Thereafter he spent approximately 13 years as a part time police officer for the State of [redacted] Mental Department at [redacted]. He states that he quit for short periods of time on three different occasions because of his dislike of the mayor of [redacted]. During this period he was hospitalized at the [redacted] in [redacted] from 03-12 to 03-30-80, at which time the diagnosis was major depression. Thereafter he was hospitalized at the [redacted] Hospital by Dr. [S] from 04-06-90 to 04-18-90, and the diagnosis following this period of hospitalization were (1) major depression with psychotic features, (2) explosive personality disorder and (3) history of alcohol abuse. Finally, the veteran was seen by Dr. [A], a psychiatrist, for the first time on 03-19-91, who placed the veteran in total and permanent disability as due to his emotional problems which resulted from severe recurring depressive episodes also with psychotic episodes and an explosive behavior.

At the VAE a psychiatric examination was performed by Dr. [B] on 05-13-91, and at which time the veteran stated that his personality had become more explosive in the past 6 to 8 months. He also admitted that in the past he had been accustomed to drinking at least two cases of beer on frequent occasions but in the past two years this has only happened on two occasions. He also admitted that his memory was badly disturbed and his judgment in practical situations was impulsive. Following this examination, the diagnosis by the doctor was of chronic alcoholism with explosive personality. No evidence of physical disabilities was noted on this VAE.

G. The claim by the veteran for residuals of a viral infection will be denied as there is no evidence of any residuals from this episode of erythema multiforme at the time of his discharge from service or at the time of his recent VA examination. Similarly claims for alcohol abuse is not a disability payable by law but is rather a personality disorder and it will be denied service connection on this basis. It is obvious that the explosive behavior had its beginning years before his entry into the service and had persisted throughout and subsequent thereto and therefore will not be subject to service connection. During his service years there is no evidence of a diagnosis of depression made or treated. These diagnoses and treatment therefore did not occur until following his discharge from service by some 10 or 15 years.

As a result of this evaluation, the applicant was given a disability rating of 10% for major depressive depression with psychotic features and 10% for explosive and borderline personality disorders with alcohol abuse.

On June 9, 2015 the applicant received a "Decision Review Officer Decision" final determination from the VA. Relevant to the applicant's case, the 2015 final determination stated that the applicant's claims of "brain disease due to head trauma," which the applicant alleged was from head trauma he suffered while in the service, was "Not service-connected/Not subject to compensation." However, the applicant was given a 70% disability rating for "acquired psychiatric disorder, to include major depressive disorder, and post traumatic stress disorder."

VIEWS OF THE COAST GUARD

On September 24, 2020 a judge advocate (JA) of the Coast Guard submitted an advisory opinion in which he 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 (PSC).

PSC argued that the applicant's allegation that his behavior was due to injuries obtained in a beating in the fall of 1968 are not documented in his service or medical record. Further, as detailed in the Board's August 5, 1986 BCMR Decision, the applicant was awarded four separate non-judicial punishments due to a variety of misconduct infractions: AWOL, disrespect to a Chief Petty Officer, destruction of government property, being drunk and disorderly and breaking restriction in a 6 month period from 28 February 1968 to 08 September 1968. PSC stated that according to the Certificate of Release or Discharge from Active Duty, DD Form 214, manual, CGPSCINST 1900.1, the relief the applicant seeks is not supported by policy. PSC argued that the final decisions determined by three previous BCMR Board are still correct, within policy, and accurate. PSC argued that the applicant failed to provide evidence to support his claims that he was treated erroneously or unfairly, further he does not provide any compelling reason to remove or expunge any documents in his official military records while serving with LT C. Accordingly, PSC contended that the applicant's request for relief should be denied.

Because the applicant's claim concerns mental health issues, the Coast Guard sought and received a medical opinion pursuant to 10 U.S.C. § 1552(h). The medical opinion, submitted on September 9, 2020, by a clinical psychiatrist for the United States Public Health Services, reads as follows:

1. I provide the following medical advisory opinion with regard to this case pursuant to 10 U.S.C. §1552(g) and/or §1552(h).

2. CG-LGL Case Summary. Applicant, E1 discharged in 1969, seeks liberal consideration in his request for correction of his DD214 Sep Code (289?), Reentry Code (RE4) and Narrative Reason (Unsuitability). Applicant alleges service-connected PTSD due to trauma from a physical assault/battery. Applicant requests DD214 upgrades and expungement of derogatory records.

3. *Does the Applicant have Post-Traumatic Stress Disorder/Traumatic Brain Injury/Other Mental Health Conditions, or experience a Sexual Assault or Sexual Harassment as documented in their medical/service record?*

a. No. Not applicable

4. *Did the Applicant have the above conditions/disorders/etc. while in military service (i.e.: during the misconduct or circumstances leading to separation)?*

a. No. Not applicable

5. *Could the conduct (or circumstances) that led to Applicant's [separation, discipline, discharge, etc.] be symptomatic of, or otherwise related to, their condition(s) identified above?*

a. No.

6. *In your medical opinion, does the mental health condition or experience of sexual assault or sexual harassment excuse the conduct or poor performance that adversely affected the discharge?*

a. No. The servicemember delineated on 1 June 1965 on his Application for Enlistment that he was rejected to be inducted into the armed services due to "failed mental exam."

b. There is no documentation of any psychiatric disorder, other than being rejected for induction into the armed services for a "failed mental exam", per Application for Enlistment dated 1 June 1965.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 5, 2020, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. The Chair received the applicant's response on October 26, 2020.

The applicant stated that he received the Coast Guard's response and after reviewing the information, disagreed with the advisory opinion's position that he had failed to meet his burden to show an injustice necessitating relief or that he failed to provide any new evidence of error or injustice. The applicant claimed that has been presenting evidence and proof to the Coast Guard and the VA for 38-1/2 years. He contended that he was successful in having his General discharge upgraded to Honorable and his narrative reason of separation from "unfitness" to "unsuitability." In addition, the applicant contended that he has submitted the VA with endless evidence to support his claims, yet despite this evidence he was continually denied disability benefits until 2015.⁶ The applicant stated that he was eventually given a 100% disability rating, 70% of which was for "acquired psychiatric disorder to include major depressive disorder and PTSD." He contended that he was considered totally and permanently mentally disabled due to his service-connected disabilities, which he alleged was for being "beaten up in 1968." The applicant again alleged that the Coast Guard and LT C did nothing at the time he incurred the injuries. The applicant explained that he could not present new evidence to the Coast Guard until he knew he had a case before the VA. He contended that his attorney and medical experts proved his case in court which is why he is making his request to the Board now.

The applicant stated that LT C was the acting commanding officer and was aware that the applicant had an alcohol problem and was assaulted but still did nothing to help.

To support his applicant and response to the advisory opinion the applicant submitted letters from the wherein he was awarded a 100% disability rating.

APPLICABLE LAW AND POLICY

Article 12.B. of the Personnel Manual, in effect in 1970, provides the following guidance on separating a service member due to drug usage:

Article 12.B.3. Standards of Discharge. The type and character of discharge or separation and the reasons therefor will be determined in accordance with the following:

- a. Honorable Discharge (DD Form 256 CG). A separation with an honorable discharge may be effected by the individual's commanding officer or higher authority when the individual is eligible for or subject to discharge and it has been determined that he merits an honorable discharge under the standards prescribed in this paragraph. Issuance of an honorable discharge is conditioned upon:

- (l) Eligibility for discharge for one of the following reasons:

⁶ The applicant made several arguments regarding his denial of VA benefits. However, the VA's denial of benefits is not relevant to the applicant's claims of error or injustice on the part of the Coast Guard. The VA's application for benefits and its burden of proof are separate and distinct from the BCMR's application for relief and burden of proof. Therefore, only those arguments pertaining to the Coast Guard's errors and injustices will be summarized here.

...

- g. Unsuitability.
- h. Unfitness.
- i. Misconduct.

...

b. General Discharge (DD Form 257 CG). A separation with a general discharge may be effected by the individual's commanding officer or higher authority when the individual is eligible for or subject to discharge and it has been determined that a general discharge is warranted under the standards prescribed in this paragraph. A general discharge will be issued to an individual (also refer to paragraph (a)(3) hereof):

- (1) Who is eligible for discharge for one of the reasons listed in paragraph (a) (1), and
- (2) Whose final average marks are less than 2.7 in proficiency or 3.0 in conduct, or
- (3) When, based on the individual's overall military record, the Commandant directs the issuance of a general discharge.

NOTE: When a general discharge is issued for one of the reasons listed in paragraph (a)(1) a. through f hereof, the specific basis therefor shall be included in an entry on page 7 of the service record.

...

Article 12.B.10. Unsuitability.

(a) Discharge of enlisted personnel by reason of unsuitability shall be directed only by the Commandant except as provided in paragraph (c) hereof. Discharge by reason of unsuitability will not be issued in lieu of disciplinary action except upon determination by the Commandant that the interests of the Service as well as the individual will best be served by administrative discharge.

(b) Discharges by reason of unsuitability are effected to free the Service of persons considered unsuitable for further service because of:

- (1) Inaptitude. Applicable to those persons who are best described as inapt due to lack of general adaptability, want or readiness of skill, unhandiness [*sic*], or inability to learn. (See NOTE.)
- (2) Character and behavior disorders. As determined by medical authority, character and behavior disorders and disorders of intelligence listed in Chapter 5, CG Medical Manual (CG-294).
- (3) Apathy, defective attitudes, and inability to expend effort constructively. A significant observable defect, apparently beyond the control of the individual, elsewhere not readily describable. (See NOTE.)

NOTE: Administrative discharge action under the provisions of (1), (3), (5), and (7) above will not normally be initiated until a member has been counseled concerning his deficiencies and afforded a reasonable opportunity to overcome them. Appropriate entries shall be made on page 7 of the service record to indicate time and nature of counseling, recruit training company personnel evaluations, progress reports, personal knowledge of training officer of subjects, and any other facts which may be pertinent.

...

Enclosure 2 of the Report of Separation from Active Duty, DD Form 214CG Manual (1975), COMDTINST 1900.4A, which outlines the instructions and distributions of the DD Form 214CG, provides that for members being separated for “Unsuitability – Alcohol Abuse” shall be given a reenlistment code of RE-4 and a SPD code of GMG pursuant to Article 12-B-10 of the Personnel Manual.

Article 2 of the Coast Guard Medals and Awards Manual, COMDTINST M1650.25B, establishes Coast Guard policy and provides detailed instructions for the administration of the military decorations and awards programs of the Coast Guard. Specifically, Article 2.B.11.b. of the manual states that the Commandant is authorized to award the Purple Heart Medal in the name of the President to any member of the Coast Guard or to any member of an Armed Force under the Jurisdiction of the Department of Transportation or to any civilian national of the United States who, while serving under competent authority in any capacity with the Coast Guard, has been, or may hereafter be wounded or killed:

- (1) In any action against an enemy of the United States;
- 2) In any action with an opposing Armed Force of a foreign country in which the Armed Forces of the United States are or have been engaged;
- (3) While serving with friendly foreign forces engaged in an armed conflict against an opposing Armed Force in which the United States is not a belligerent party;
- (4) As the result of an act of any such enemy or opposing Armed Force;
- (5) The result of an act of any hostile foreign force;
- (6) As the indirect result of enemy action, as for example injuries resulting from parachuting from a plane brought down by enemy or hostile fire; or
- (7) As the result of maltreatment inflicted by captors while a prisoner of war.

The manual further states that a “wound” is defined as an injury to any part of the body from an outside force or agent, sustained while in action as described in the criteria. Finally, the manual states that except in the case of a prisoner of war, the wound for which the award is made must have required treatment by a medical officer. Only one award is authorized for more than one wound or injury received at the same instant from the same missile, force, explosion, or agent. Awards will be made by reason of frostbite, malnutrition, dysentery, and exhaustion.

DHS Liberal Consideration

On June 20, 2018 the Principal Delegate of the Secretary for the Department of Homeland Security issued guidance to the Board on how to apply “liberal consideration” to cases involving allegations that a service member suffered from a mental health condition, including Post

Traumatic Stress Disorder and Traumatic Brain Injury, or experienced a sexual assault, or sexual harassment while in the service. The pertinent portions of the 2018 guidance are recorded below:

Did the veteran have a mental health condition or experience a sexual assault or sexual harassment that may excuse the conduct or poor performance that adversely affected the discharge or may otherwise warrant modifying the discharge?

13. Absent clear evidence to the contrary, a diagnosis rendered by a licensed psychiatrist or psychologist is evidence that the veteran has or had the diagnosed mental health condition.

...

Did the mental health condition exist or did the experience of sexual assault or sexual harassment occur during military service?

19. A diagnosis made by a licensed psychiatrist or psychologist indicating that a mental health condition existed during military service shall be liberally considered along with other evidence.

20. A determination made by the Department of Veterans Affairs that a veteran's mental health condition, sexual assault, or sexual harassment is "service connected" is not binding on the Board but shall be considered persuasive evidence that the condition existed or the experience occurred during military service.

21. Liberal consideration is not required for cases involving mental health conditions that were not incurred while the veteran was on active or inactive duty or experiences of sexual assault or sexual harassment that did not occur while the veteran was on active or inactive duty unless the Board finds that the condition or experience was aggravated by or causally related to the veteran's military service.

Does the mental health condition or experience of sexual assault or sexual harassment excuse the conduct or poor performance that adversely affected the discharge?

22. The Board shall liberally consider whether the conduct or poor performance that adversely affected a veteran's discharge should be considered excused by a mental health condition or experience of sexual assault or sexual harassment that the Board believes to have existed at the time of that conduct or poor performance.

23. A veteran's mental health condition or experience of sexual assault or sexual harassment does not generally excuse premeditated misconduct. The Board shall exercise caution in assessing the causal relationship between any asserted mental health condition, sexual assault, or sexual harassment and a veteran's premeditated misconduct.

Does the mental health condition or sexual assault or sexual harassment outweigh the conduct or poor performance that adversely affected the veteran's discharge or otherwise warrant modifying the discharge?

24. The Board shall liberally consider whether a mental health condition *or* experience of sexual assault or sexual harassment that the Board finds to have existed at the time of separation outweighs the conduct or poor performance that adversely affected the veteran's discharge or otherwise warrants modifying the discharge.

25. The Board may find that a veteran's misconduct is so severe that it should not be excused because of a mental health condition, sexual assault, *or* sexual harassment.

26. When a veteran's narrative reason for separation is a mental health diagnosis, such as "Personality Disorder," the Board shall liberally consider whether the circumstances of the case warrant changing the narrative reason to "Secretarial Authority," "Condition Not a Disability," or another authorized narrative reason for separation.

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. Erroneous Reenlistment Code. The applicant has requested that the Board reconsider its previous decisions issued in Docket Nos. 9-82, 285-86R, and 324-88R wherein the Board denied the applicant's request to have his reenlistment code upgraded from an RE-4 to an RE-1. At the time, the basis for the applicant's request for relief was his belief that he was entitled to the upgrade based off the DRB's finding that the applicant's characterization of discharge should be upgraded from General—Under Honorable Conditions to Honorable and his narrative reason of separation from "Unfitness" to "Unsuitability." In its first decision, the Board concluded that the applicant was not entitled to an upgraded reenlistment code on the grounds that there was insufficient evidence to demonstrate probable error or injustice in the applicant's record. In addition, the first Board found that the reenlistment code was appropriate under the circumstances at the time and was still appropriate under the standards at the time of the applicant's separation.

In its second decision, Docket No. 285-86R, the Board found that the Chair was correct in denying the applicant's request. The Board reasoned that the DRB upgraded the applicant's discharge from General to Honorable by reason of unsuitability due to alcohol abuse because that is the type of discharge he would have qualified for under regulations in effect at the time. However, regarding the RE code, the Board found that Coast Guard regulations in effect at the time of the applicant's separation and under regulations in effect in 1986, required that an RE-4 code be assigned to members receiving a discharge for unsuitability due to alcohol abuse. Accordingly, the second Board found that the applicant's reenlistment code was correct and appropriate. The Board further concluded:

Although current regulations provide for alcohol counselling and treatment, Chapter 20, Coast Guard Personnel Manual, continual intemperate use of alcohol is still grounds for disciplinary action and administrative separation from the Coast Guard. Article 20-E-1(a). In view of petitioner's extensive record of disciplinary offenses, we find that his RE-4 code is appropriate. The Coast Guard did not violate any of the regulations in effect at the time of petitioner's discharge. Although the changes in current regulations concerning treatment and counselling for alcohol abusers provided an equitable basis for an upgrade in

petitioner's discharge, those changes do not excuse petitioner's numerous disciplinary offenses. Even under today's standards, a member with petitioner's record of offenses would not be assigned an RE-1 reenlistment code. Petitioner's marks for proficiency, leadership and conduct are also below the current minimum marks for reenlistment. Article 1-G-5.

Current Article 12-B-16(d) requires that a member be afforded an opportunity to consult with a lawyer only if the member's character of service warrants a general discharge. Since petitioner was not afforded an opportunity to consult with a lawyer, the DRB properly upgraded his general discharge to an honorable discharge. However, there is no requirement that a member be allowed to consult with a lawyer prior to a discharge by reason of unsuitability or prior to the assignment of an RE-4 code. Thus, petitioner's lack of opportunity to consult with a lawyer does not provide any basis for a change in the reason for his discharge or his reenlistment code.

Finally, in its third reconsideration, Docket No. 324-88R, wherein the applicant made the same allegations as he did in his second request for relief, the Board concluded that the applicant's allegations and evidence were unpersuasive, and his arguments were without merit. The Board found that none of the new information presented by the applicant was persuasive and that most of the evidence presented in his third application for relief could have been presented to the Board prior to its original determination. The Board contended that it did not misinterpret the contents of his record when it considered his request on two previous occasions. Accordingly, the Board denied the applicant's request for relief for a third time.

Here, as in his first three applications for relief, the applicant relies solely on an outside agency's adjudication as evidence of error. Specifically, the applicant contends that he is entitled to an upgraded reenlistment code because he won his VA appeal and was issued a 100% disability rating, 70% of which is due to "acquired psychiatric disorder to include major depressive disorder and PTSD." However, the applicant's reliance on the VA's letter of evidence of error is misplaced because a VA determination on its own does not establish that an error or injustice took place. As explained by the Board in its previous decisions, although the applicant's upgrade to his character of service was upgraded because modern regulations entitled him to notice and consultation with an attorney, the same is not true for his reenlistment code. Similarly, the VA's disability rating is not evidence that the applicant was entitled to a reenlistment code of RE-1. Like the three Boards convened before, this Board's review of the record shows that the applicant had multiple UCMJ violations that resulted in the applicant receiving NJPs and Summary Court-Martials. Specifically, the applicant was found guilty of being absent without leave, being drunk and disorderly, destruction of government property, and disrespectful to a chief petty officer. The evidence suggests that the applicant's misconduct was the result of alcohol abuse that led to his separation. Coast Guard policy at the time required that the applicant receive a reenlistment code of RE-4 and the applicant's most recent VA disability rating does not make his reenlistment code erroneous or unjust. Therefore, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that his reenlistment code of RE-4 was erroneous.

4. Liberal Consideration and PTSD. Because the applicant is alleging that a mental health condition caused or contributed to the misconduct that resulted in his discharge, the Board's

liberal consideration guidance applies to his request for an upgraded discharge.⁷ Under this guidance, when deciding whether to upgrade the discharge of a veteran based on an alleged mental health condition, the Board must liberally consider the evidence, including the applicant's claims, and decide (a) whether the preponderance of the evidence shows that the veteran had a mental health condition while in the Service that could excuse the veteran's misconduct; (b) whether the mental health condition excused the misconduct that adversely affected the discharge; and, if not, (c) whether the mental health condition outweighs the misconduct or otherwise warrants upgrading the veteran's discharge. Regarding these prongs, the Board finds the following:

- a. Pursuant to Paragraph 20 of the June 20, 2018 Principal Delegate's liberal consideration guidance, although a determination made by the VA that a veteran's mental health condition is "service connected" is not binding on the Board, the Board shall consider the VA's determination to be persuasive evidence that the condition existed or the experience occurred during military service. Here, the applicant has submitted a VA rating determination wherein he was given a 70% disability rating for "acquired psychiatric disorder, to include major depressive disorder, and post-traumatic stress disorder." Accordingly, the Board will consider this VA's determination that the applicant's mental health condition was service connected as persuasive evidence that the applicant's mental health condition existed during his military service. However, regarding the applicant's claims that his misconduct was the result of an assault that he experienced and was denied medical treatment for by the Coast Guard, the Board notes that the VA's determination letter specifically stated that the applicant's claims of "brain disease due to head trauma," was "Not service-connected/Not subject to compensation."
- b. The next question before the Board, whether the mental health condition excused the misconduct, the Board finds the following:
 - i. First, the applicant's claim is that his misconduct was the result of brain trauma caused by being severely assaulted and having been denied medical treatment by the Coast Guard, not by a mental health condition such as major depressive disorder, for which he was diagnosed, or PTSD. According to the applicant, medical records show that at the time of his misconduct he was suffering from a severe head trauma that caused him to drink in excess because he was suffering from hallucinations. However, the applicant's contentions that records prove he was suffering from brain trauma is unsupported by the record. To support its position, the Board reviewed the applicant's VA disability rating determination wherein the VA specifically denied the applicant's claims that he suffered brain trauma or brain disease while serving. Other than the VA's rating determination letter, the applicant failed to submit any additional mental health records that elaborated on the source of his "acquired psychiatric disorder." The records available to the Board show that the applicant was diagnosed with major depressive

⁷ U.S. Department of Homeland Security, Office of the General Counsel, "Guidance to the Board for Correction of Military Records of the Coast Guard Regarding Requests by Veterans for Modification of their Discharges Based on Claims of Post-Traumatic Stress Disorder, Traumatic Brain Injury, Other Mental Health Conditions, Sexual Assault, or Sexual Harassment" (June 20, 2018).

disorder and alcohol dependence. There is no actual diagnosis of PTSD in the records before the Board.

- ii. The Board's review of records more contemporaneous with the applicant's separation, such as medical notes from mental health providers from 1991, indicate that the applicant's multiple misconduct violations were the result of violent behavior due to the applicant's distaste for regimented routines, not because of brain trauma that resulted from being assaulted. The applicant told mental health professionals that even as a child he was never able to accept routine activities or regimentation in any shape or form and would become disorderly and violent, causing disturbances as a result of regimentation. The Board finds the applicant's admission to mental health professionals persuasive evidence that his anger management issues that resulted in his multiple misconduct violations were present prior to his entry into the service.
 - iii. The applicant further claimed that his misconduct was also the result of untreated head trauma. According to the applicant, the Coast Guard, including his commander LT C, refused the applicant access to treatments such as x-rays and MRIs. However, the applicant's medical records from his time in the Coast Guard cast substantial doubt on the applicant's claims that he was denied necessary medical treatment. The Board's review of the record shows that applicant was seen by medical staff on numerous occasions—more than 7 times in less than a year—for injuries he sustained to his right hand after multiple physical altercations. Medical records show the applicant repeatedly injured his right hand after multiple “fist to cuffs” altercations, at times having “kicked off” his cast due to wrestling around. There is no evidence that the applicant was ever denied x-rays, as claimed by the applicant, after he sustained injuries, or that he was ever in an altercation that left him bloodied and left for dead. In fact, the only evidence that the applicant was ever in an altercation with multiple individuals is medical notes from his visit with a mental health provider in 1991 wherein the applicant took self-satisfaction in admitting that during his last altercation he sent three or four people to the hospital. Given the extensive medical records showing that the applicant received medical treatment after his numerous physical altercations and the lack of evidence that he was ever assaulted and left for dead, the Board is not persuaded that the Coast Guard refused to provide him treatment that resulted in him suffering significant brain trauma which further resulted in his misconduct. Accordingly, for the reasons outlined here and in Findings 5.b.i and ii, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that his mental health condition excused his misconduct.
- c. Finally, regarding the third prong, whether the mental health condition outweighs the misconduct or otherwise warrants upgrading the veteran's discharge, the Board finds that the applicant has failed to prove that his mental health condition outweighs his misconduct. As already noted, the applicant has alleged that his misconduct was the result of brain trauma he incurred, and that brain trauma was the cause of his mental health conditions while serving. This brain trauma was allegedly suffered after he transferred to a new unit

in 1968 under the leadership of LT C. However, the applicant's misconduct and physical altercations began prior to his transfer in June of 1968. The applicant's first NJP was on February 28, 1968 for being AWOL, four months before he transferred. His second NJP took place on May 29, 1968 for disrespecting a senior petty officer. In addition, prior to his transfer, the applicant had been seen by medical at least 5 times for injuries to his right hand after engaging in multiple fist fights. Furthermore, a personal statement that he submitted in connection with his February 25, 1986 (Docket No. 285-86R) application for reconsideration, the applicant contended that his misconduct was not the result of brain trauma or mental health condition. Specifically, the applicant contended the following:

(2) I contend changes in my attitude and effectiveness as a Military person was directly related to personality conflict with Commanding Officer upon a change of duty.

(3) I contend personal problems and anxiety brought about constancy in my behavior and that extreme penalties for charges against me provoked a rebellious attitude.

Finally, in his 1991 medical notes, which were completed approximately 5 years after his second request for reconsideration and 23 years after his separation, the applicant claimed his misconduct was the result of over regimentation and expressed a sense of self-satisfaction for having caused multiple individuals to be hospitalized. He has shown no remorse for his actions or taken any accountability for his multiple physical altercations that spanned two different units and began prior to the start of his mental health condition. Accordingly, based on the applicant's own claims of when his injuries occurred and when his mental health conditions began, in addition to his lack of remorse, the Board finds the applicant's mental health condition did not outweigh his misconduct.

5. Change in Narrative Reason of Separation. The applicant has alleged that he is entitled to have his narrative reason of separation changed from "Unsuitability" to "Under Honorable Conditions." However, "Under Honorable Conditions" is not an option for a narrative reason for separation. Furthermore, the applicant has failed to prove that his narrative reason of separation was erroneous or unjust. Accordingly, the applicant's request to have his narrative reason of separation changed from "Unsuitability" to "Under Honorable Conditions" should be denied.

6. Records Expungement. The applicant has alleged that he is entitled to have all of his disciplinary records expunged from his record because the treatment he endured by his commanding officer, LT C, was unjust. 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."⁸ The Board has authority to determine whether an injustice exists on a "case-by-case basis."⁹ Indeed, "when a correction board fails to correct an injustice clearly presented in the record before it, it is acting in violation of its

⁸ *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 a 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.").

⁹ Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002).

mandate,”¹⁰ and “[w]hen a board does not act to redress clear injustice, its decision is arbitrary and capricious.”¹¹ Therefore, the Board must determine if the applicant’s disciplinary records were unjust pursuant to the standards outlined.

According to the applicant, LT C specifically denied him treatment for his assault which led to his excessive drinking and misconduct. The applicant claimed that if he would have received treatment for his injuries his misconduct could have been avoided. However, as already noted multiple times throughout this decision, there is no evidence that the applicant endured a physical assault that caused significant brain trauma. Not even the applicant’s VA disability rating found the applicant’s claims persuasive and denied his claims of brain trauma. The applicant alleged that LT C denied him medical treatment, but the applicant was seen by medical staff on multiple occasions under LT C’s command for injuries to his hand sustained in physical altercations. In addition, the applicant’s misconduct began before he was transferred to LT C’s unit. Accordingly, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that his disciplinary records shock the sense of justice and warrant expungement.

7. Upgraded Rank. The applicant claimed that he is entitled to an upgraded rank from E-1 to E-4 and his rate from SR to GM3. Unlike the applicant’s other requests, such as his request for an upgraded reenlistment code and narrative reason for separation, the applicant’s request for an upgraded rank and rate do not fall under the Board’s liberal consideration policy, which only applies to upgrades to a service member’s discharge. The Delegate of the Secretary’s June 2018 liberal consideration guidance defines discharge as “a veteran’s character of service, narrative reason for separation, separation code, and reenlistment code. Accordingly, the Board’s liberal consideration of evidence or the lack of evidence does not apply here.

Although the applicant has claimed that he is entitled to an upgrade in his rank from E-1 to E-4 he has failed to show, through tangible evidence, that his discharge at the rank of E-1 was erroneous or unjust. The Board has reviewed the applicant’s record and has found that the applicant never achieved the rank of E-4. The applicant’s records show that he began his service on August 13, 1965 as a Seaman Apprentice (E-2). He was advanced to Seaman (E-3) on January 31, 1966, but after persistent disciplinary infractions resulting in NJPs and court-martials, the applicant was subsequently demoted back to an E-2 on September 5, 1968, and then to a Seaman Recruit (E-1) on November 8, 1968. The record shows that the applicant never advanced to the rank of Gunner’s Mate or E-4. Other than his own claims, the applicant has failed to submit any evidence to support a finding that he is entitled to an advancement to E-4. Accordingly, the Board finds that the applicant’s reductions in rank were supported by the record and the applicant has failed to prove, by a preponderance of the evidence, that his separation as an E-1 was erroneous or unjust.

8. Purple Heart. The applicant has argued that he is entitled to the Purple Heart. Article 2.B.11.b. of the Coast Guard Medals and Awards Manual, COMDTINST M1650.25B, provides the following criteria for Purple Heart recipients. To receive the Purple Heart, any member of an Armed Force under the Jurisdiction of the Department of Transportation or to any civilian national of the United States who, while serving under competent authority in any capacity with the Coast

¹⁰ *Roth v. United States*, 378 F.3d 1371, 1381 (Fed. Cir. 2004) (quoting *Yee v. United States*, 206 Ct. Cl. 388, 397 (1975)).

¹¹ *Boyer v. United States*, 81 Fed. Cl. 188, 194 (2008).

Guard, has been, or may hereafter be wounded or killed: 1) been involved in any action against an enemy of the United States; 2) in any action with an opposing Armed Force of a foreign country in which the Armed Forces of the United States are or have been engaged; 3) while serving with friendly foreign forces engaged in an armed conflict against an opposing Armed Force in which the United States is not a belligerent party; 4) was the result of an act of any such enemy or opposing Armed Force; 5) the result of an act of any hostile foreign force; 6) as the indirect result of enemy action, as for example injuries resulting from parachuting from a plane brought down by enemy or hostile fire; or 7) as the result of maltreatment inflicted by captors while a prisoner of war. The manual further states that a “wound” is defined as an injury to any part of the body from an outside force or agent, sustained while in action as described in the criteria and that except in the case of a prisoner of war, the wound for which the award is made must have required treatment by a medical officer. The applicant’s claim seems to be that because he served during the Vietnam era he is entitled to a Purple Heart, but as outlined, simply serving during the Vietnam era does not by itself entitle a service member to a Purple Heart. The service member must have incurred an injury while in combat with an enemy that was treated by a medical officer. The applicant has failed to show, and his record is absent of any proof, that he was wounded as a direct or indirect result of action against the enemy of the United States. Accordingly, his request to be awarded the Purple Heart should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former SR [REDACTED], USCG, for the correction of his military record is denied.

December 5, 2024

