

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

---

Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2021-060**

  
SNBM (Former)

---

**FINAL DECISION**

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 April 7, 2021, 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 July 14, 2023, 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 Boatswain's Mate (SNBM/E-3), who was honorably discharged on April 22, 2002, for narcolepsy, asked the Board to change his separation code and narrative reason for separation. The applicant alleged that he did not suffer from narcolepsy prior to his enlistment in the Coast Guard, nor had he ever been diagnosed with narcolepsy prior to his enlistment. According to the applicant, he did not begin having narcoleptic symptoms until after he enlisted in the Coast Guard, which the applicant alleged is supported by his entry medical paperwork. The applicant alleged that the statement made by a doctor and included in his military record that he reported having suffered from narcoleptic symptoms while in middle school was false. The applicant stated that what he told the doctor was that he had issues staying awake while in middle school and high school due to irregular sleeping patterns just like any other teenager. The applicant explained that he would stay up late playing video games and then have to be up early for school.

The applicant further alleged that there were several other inaccuracies in the medical report. For instance, the applicant claimed that he only fell asleep once while underway and that he never fell asleep while in "A" school as alleged by the doctor. He also claimed that he only attempted suicide once, at the age of 13, not twice as reported by the doctor, and the Ritalin that he took was for ADHD, not sleep issues. The applicant claimed that during his time in the Coast

Guard, he was taking Ephedra and caffeine in the form of a drink called Ripped Force which, when taken in conjunction with his other medication Modafinil, caused headaches. In short, the applicant argued that he did not suffer from narcolepsy prior to his enlistment in the Coast Guard as alleged by the Coast Guard physician.

To support his application, the applicant submitted letters from his parents and his primary care physician attesting to the fact that the applicant did not suffer from narcolepsy prior to his enlistment in the Coast Guard.

### SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on May 29, 2001.

On May 30, 2001, the applicant was seen by Coast Guard medical staff. According to the Report of Medical History, the applicant reported, amongst other things, that he frequently experienced trouble with sleeping. The Physician's Assistant (PA) noted that the applicant reported suffering from occasional insomnia and explained that he would fall asleep and wake up frequently.

On November 15, 2001, the applicant was referred to a sleep study after he was found falling asleep underway. After a full night sleep study, the doctor found that the applicant's test result was consistent with a diagnosis of narcolepsy and either primary snoring or mild upper airway resistance syndrome. The doctor also noted that the applicant's Multiple Sleep Latency Test (MSLT) was consistent with severe sleepiness and severe Rapid Eye Movement (REM) pressure related to a clinical diagnosis of narcolepsy.

On December 13, 2001, the applicant was seen by a doctor with the United States Public Health Service (USPHS), for the purpose of an Initial Medical Board (IMB). The relevant portions of the doctor's medical opinion are summarized as follows:

SNBM [applicant] first noted sleep attacks in middle school, occurring a couple of times a day at least every other day. Increasing nighttime sleep or taking pills provided by his family doctor to stay awake did not help. Repeatedly falling asleep in class in Boot Camp was not cured by having to stand or doing extra physical exercise. On graduation he went directly to BM "A" School where he fell asleep when underway.

When this continued to happen at his first unit he was referred to a sleep clinic at [redacted] Medical Center. A diagnosis of narcolepsy was made from a sleep study, and he was started on Modafinil 200mg each morning. This medication keeps him awake until 5PM, when he "fast crashes," awakening about 7PM with a "bad headache." For about 18 months he has noted hypnagogic hallucinations, can have a sleep attack when feeling emotional, and can awaken feeling paralyzed. He can "feel some tension," "get angry in spurts" and "sometimes be kinda depressed." He has chums, works out with them whenever he can, "eats like a horse," sleeps OK at night, has "up and down[?]" concentration, and no current suicide thoughts.

As an early teen after a move to [redacted], he was tormented by bullies and got a shotgun to kill himself and later tried to die by "alcohol poisoning" at age 13. He saw a psychologist for two months, took some "nervous pills," and changed schools. There has been no further suicide thinking. He was also diagnosed as ADHD and was on Ritalin from age 11-14, which did not help his narcolepsy. He got average grades in high school. None of the above is documented in his entry physical.

Aside from the Modafinil associated headaches, the evaluatee has no other complaints of a physical nature.

Mental Status Exam: Presents in winter blue uniform as an average height and weight young man. Appropriate attention to grooming and hygiene and no unusual movements or mannerisms. Twenty minutes late, but otherwise responsive and cooperative. Affect was a little subdued and was matter of fact. Speech fluent and soft, and thoughts were responsive and coherent. No delusional thoughts expressed. S&C grossly intact. Denies SI.

It is the opinion of this board that the diagnoses of:

Axis I Narcolepsy (DSM-IV 347)  
H/O ADHD and probable H/O depression in childhood  
Axis II deferred  
Axis III clear

are correct and the evaluatee is unable to carry out duties of any CG billet in a safe and reliable manner due to narcolepsy. I do not expect any management regimen will sufficiently help him to be considered FFD.

There is no disciplinary action pending.

Personal appearance of the evaluatee before a FPEB would not be deleterious to his mental health.

Disclosure to the evaluatee of information relative to his physical or mental condition would not be deleterious to that condition. Based on current assessment, if discharged into one's own custody, the evaluatee will not constitute a danger to self or the public safety. I do not recommend he drive government vehicles or craft. The evaluatee is not likely to become a public charge.

On December 29, 2001, the applicant's Commanding Officer (CO) issued a "First Endorsement" of the IMB's recommendations. The contents of the CO's endorsement are as follows:

1. SNBM [applicant] is a highly motivated Coast Guard member, and if treatment of his condition is successful, will make a significant contribution to this unit and the Coast Guard.
2. Without successful treatment, SNBM [applicant] poses a threat to himself, and to others. SNBM [applicant] has been observed by this unit to fall asleep while standing up, underway on a 22' RHIB. SNBM [applicant] has also displayed an inability to remain awake during routine situations, such as Communications Watches, and morning muster.
3. SNBM [applicant] has not been a disciplinary problem at all, and has great pride in serving in the Coast Guard. SNBM [applicant] desires to remain on active duty in any capacity, even if he has to change rates. This is not an option without a successful treatment plan available.
4. Based upon [the doctor's] report, and my observations of SNBM [applicant], I believe that SNBM [applicant] is unable to safely perform the duties of any Coast Guard billet, and recommend discharge.

On January 3, 2002, the Convening Authority approved the IMB's recommendation, and the applicant acknowledged the IMB's recommendation and findings. The applicant elected to submit a personal statement, which reads as follows:

This statement is concerning my referral for medical discharge. I am proud to be in the Coast Guard, and it is an honor to serve here at [redacted]. Everyone has helped me out during this time while I have been going in and out of medical appointments. I understand that in my present condition I am not fit to perform certain duties that come with the Coast Guard life (Getting underway, Standing watch). Which is also stopping me from being able to make rate. I am also aware that this doesn't mean my Coast Guard career is over. There is one thing in life that I love to do more, than anything on this earth and that is work out. I love to help people

with fitness training and with diet planning. I plan on going to college to become a personal trainer so I can make this love of mine a profession. With that in mind I would like to request to be assigned to [redacted] as one of the trainers at the gym. I understand that I would not be able to advance or reenlist at the end of my current enlistment. Thank you for taking this into consideration.

On January 30, 2002, the Central Physical Evaluation Board (CPEB) met and found that the applicant suffered from Narcolepsy, that his condition had already existed when he enlisted, that it was not aggravated by his time in the Coast Guard, and that substantial evidence demonstrated that he could not perform his regularly assigned duties. As a result, the applicant was recommended for discharge without severance pay for physical unfitness, due to a condition that existed prior to enlisting.

On February 26, 2002, the applicant signed the CPEB's findings and recommendations, checking the box that states, "I accept the tentative findings of the CPEB..." and waived his rights to a formal hearing.

On April 22, 2002, the applicant was discharged from the United States Coast Guard by reason of "Physical Disability Prior to Entry – No Severance Pay," pursuant to Article 12.B.5. of the Personnel Manual, COMDTINST M1000.6A. The applicant was given a Separation Code of JFM and a reentry code of R-3.

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

On October 26, 2021, a judge advocate (JAG) 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).

The JAG argued that the applicant failed to submit a timely application and failed to show why it was in the interest of justice to excuse the delay. According to the JAG, the applicant alleged in his application that he only discovered the error in March 2019, but the JAG argued the applicant was discharged on April 22, 2002, and was provided discharge paperwork showing that the reason for his separation was a disability that existed prior to enlistment. The JAG stated that the applicant provides no justification for his delay in bringing the alleged errors and/or injustices to the attention of the Board. The JAG further stated that the applicant provided multiple letters to the Board that were written on his behalf, dated in 2020, but provides no justification why these were not obtained within the statutory filing deadline. Finally, the JAG stated that the evidence submitted by the applicant is not enough to overcome the presumption that the numerous Coast Guard medical professionals diagnosed the applicant's condition as preexisting correctly, lawfully, and in good faith. Accordingly, the JAG argued that the applicant's claims should be considered untimely.

The JAG further argued that even if the Board were to find good cause to waive the statute of limitations, the Doctrine of Laches applies and bars the applicant's claims for relief. According to the JAG, the Doctrine of Laches can be raised as an affirmative defense. The JAG explained that in order for the government to prevail, the government must prove (1) that there was unreasonable and unexcused delay, and (2) that such delay prejudiced the government. Here, the JAG argued the applicant's delay has been shown in his previous arguments to be unreasonable and unexcused, therefore, he turned his attention to the prejudice the Coast Guard has encountered

as a result of the applicant's delay. The JAG argued that "defense prejudice" which is a prejudice due to loss of records, destruction of evidence, fading memories, or unavailability of witnesses, applies in the applicant's case.<sup>1</sup> The JAG explained that because of the many years that have passed since the applicant's discharge from active duty, it is not possible for the Coast Guard to go back and reconstruct the decisions of the medical professionals regarding their diagnosis and findings. The JAG further explained that it is impossible to now go back and question the multiple medical professionals that assessed the applicant's medical records and concluded that the applicant's narcolepsy existed prior to his enlistment. Therefore, the JAG argued that the Coast Guard is prejudiced in its inability to fully defend itself and properly assess the legitimacy of the applicant's claims.

The JAG argued that the applicant has failed to carry his burden of presumption and persuasion. The JAG stated that while the applicant offers some evidence to support his claim, the evidence is insufficient to overcome the strong presumption that the Coast Guard and its members carried out their duties correctly in determining that the applicant's condition existed prior to his enlistment. Regarding the applicant's doctor's statement that stated, "[u]pon reviewing the [applicant's] medical records, he has no medical history of a sleep disorder predating his enlistment in the Coast Guard," the JAG argued that this statement is not conclusive that the applicant's disorder did not exist prior to the applicant's enlistment. The JAG stated that it is unknown what records the applicant's doctor reviewed in preparing his statement. In addition, the JAG argued that the three letters provided by the applicant predominantly stated the applicant had not been "diagnosed" with narcolepsy prior to his enlistment, but that does not mean that the applicant did not have the condition or the symptoms prior to his enlistment. All those statements can prove is that the applicant was not diagnosed, which are two very different things.

Regarding the applicant's personal statement submitted in support of his application for relief, the JAG argued that although the applicant attempts to clarify certain statements made by the Coast Guard physicians regarding the applicant's diagnosis, the applicant never denies that he suffered from sleep attacks, he only attempts to provide an alternate explanation for why he suffered from them—irregular sleeping patterns. The JAG also noted that the applicant never refuted the doctor's statements that for about 18 months, which would have predated his enlistment, the applicant stated that he had suffered from hypnogogic hallucinations, sleep attacks when feeling emotional, and feeling paralyzed after waking, all of which are symptoms of narcolepsy.

Finally, the JAG argued that the applicant had accepted the findings of the IMB and CPEB and waived his right to any further boards. According to the JAG, the applicant's acceptance of the Board findings is further evidence in favor of the accuracy of the boards' determinations at the time. While the letters from his doctor, mother, father, and the applicant himself are some evidence to support the applicant's argument, they are not strong enough to overcome the presumption of regularity afforded to the multiple medical professionals that determined that the applicant's condition existed prior to his enlistment. The JAG stated that the Coast Guard never made a finding that the applicant was "diagnosed" with narcolepsy prior to his enlistment, just that the condition existed prior to his enlistment. Accordingly, the JAG argued that the applicant failed to meet his

---

<sup>1</sup> *Roberts v. United States*, 98 Fed. Cl. 130, 142 (2011), quoting *Cornetta v. United States*, 851 F.2d 1371, 1378 (Fed. Cir. 1988).

burden to show that the Coast Guard erred or committed an injustice when issuing the applicant his separation code and narrative reason for separation.

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

On May 24, 2022, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. As of the date of this decision, no response has been received.

### **APPLICABLE LAW AND POLICY**

Under Article 12.B.15. of the Personnel Manual, COMDTINST M1000.6A (September 2000), provides the following guidance on separating a service member separated due to a disability:

**12.b.15.a. Medical Board.** A medical board shall be held in the case of an enlisted member when any condition listed in Article 17.B.4. exists or competent authority directs. Chapter 17.B. contains procedures for the medical board's report. If a member has remained in the Service with his or her written consent beyond the enlistment expiration under Article 12.B.11.f., the report shall clearly indicate the following:

1. Patient's status (held beyond normal enlistment expiration date or not).
2. Date of admission to sick list.
3. Whether the member concerned is physically qualified for discharge.

**12.B.15.b. Discharge for Physical Disability.** Commander, (CGPC-epm-1) may direct or authorize a discharge for physical disability not incurred in or aggravated by a period of active military service through final action on a physical evaluation board under the following conditions:

Article 12.B.15.c.

1. A medical board has expressed the opinion that:
  - a. The member does not meet the minimum standards for retention on active duty,
  - b. The member is unfit for further Coast Guard service by reason of physical disability, and
  - c. The physical disability was neither incurred in nor aggravated by a period of active military service.
2. The member's commanding officer and district commander concur in the board's opinion.
3. The member has been fully informed of his or her right to a full, fair hearing and the member states in writing he or she does not demand such a hearing.

With regard to the correct separation code to be entered in Block 26 (Separation Code) of members' DD 214, the Coast Guard Separation Program Designator (SPD) Handbook states that the separation code "JFM"—Disability, Existed Prior to Service—is assigned to members who are involuntarily discharged directed by established directive (no board entitlement) for physical disability which existed prior to entry on active duty and was established by a physical evaluation



board. In addition, the only reenlistment code authorized for members discharged to physical disability that existed prior to service is RE-3.

### 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. The application filed by the applicant was not timely. To be timely, an application for the correction of a military record must be submitted to the Board within three years after the alleged error or injustice was discovered or should have been discovered.<sup>2</sup> The record shows that the applicant received and signed the CPEB's findings on February 26, 2002. The record further shows that the applicant signed and received his DD-214 on April 22, 2002, and it states that his disability had pre-existed his enlistment. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record as early as February 26, 2002, and no later than April 22, 2002, and his application is untimely.

3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.<sup>3</sup> In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board should not deny an application for untimeliness without "analyzing both the reasons for the delay and the potential merits of the claim based on a cursory review"<sup>4</sup> to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted that "the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review."<sup>5</sup> Pursuant to these requirements, the Board finds the following:

a. Regarding his delay in filing his application, the applicant failed to explain what caused his delay in applying to the Board for relief. The Board finds that the applicant's request for consideration is not persuasive because he has failed to show that anything prevented him from seeking correction of the alleged error or injustice more promptly.

b. A cursory review of the merits of this case shows that the applicant's claim lacks potential merit. Not only has the applicant failed to submit evidence sufficient to overcome the presumption of regularity afforded to the Coast Guard's records and its officials, but the record shows that the applicant accepted the CPEB's findings on February

---

<sup>2</sup> 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

<sup>3</sup> 10 U.S.C. § 1552(b).

<sup>4</sup> *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

<sup>5</sup> *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

26, 2002, and waived his rights to a formal hearing. Furthermore, the applicant submitted a personal statement in conjunction with the CPEB's findings wherein he acknowledged that his medical conditions were causing him to be unable to adequately perform the duties of his grade, rank, or rate. Specifically, the applicant stated that his medical conditions were making it impossible for him to make rate. The Board also notes that most of the medical information that resulted in the applicant's discharge was reported by the applicant himself to his doctors, and at no time during the applicant's medical evaluations or medical boards did he object to or contest the information that was recorded by the medical professionals. Moreover, once the applicant accepted the CPEB's findings that his condition existed prior to his enlistment, Coast Guard policy required that he receive a separation code of "JFM."

5. Accordingly, the Board will not excuse the applicant's untimeliness or waive the statute of limitations to conduct a more thorough review of the merits. The applicant's request should therefore be denied.

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



ORDER

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

July 14, 2023

[REDACTED] [REDACTED] Digitally signed by [REDACTED] [REDACTED]  
[REDACTED] 2023.07.17 10:22:20 -04'00'

[REDACTED] [REDACTED]

[REDACTED] Digitally signed by [REDACTED]  
[REDACTED] Date: 2023.07.17 10:34:59 -04'00'

[REDACTED] [REDACTED]

[REDACTED] Digitally signed by [REDACTED]  
[REDACTED] Date: 2023.07.17 12:54:10  
-04'00'

[REDACTED] [REDACTED]