

**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. 2021-099**

  
SKC (former)

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**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 July 12, 2021, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.6(c).

This final decision, dated December 2, 2022, 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 Chief Petty Officer (SKC/E-7), who received an honorable discharge after being administratively separated for misconduct on August 17, 2015, asked the Board to correct his record by granting him retirement benefits and updating the narrative reason for separation on his DD-214 from "misconduct" to "secretarial authority."

The applicant alleged that his misconduct was minor in nature and that he made a mistake of judgment by taking possession of a recently deceased moose out of season for the purposes of "salvaging for meat." The applicant claimed that he initially denied his involvement with the kill when he was questioned by civilian law enforcement officers, because he was concerned for his wife's mental state and did not want to cause her anxiety due to the presence of law enforcement at their front door. The applicant explained that after leaving, the civilian officers returned to his home to confiscate the meat and cite the applicant for unlawfully salvaging the moose.

The applicant explained that prior to this incident, his wife began to suffer from depression due to the location of his duty station. Specifically, he claimed that she was adversely affected by the extremely cold temperatures and small periods of daylight throughout the winter months. Her symptoms grew worse, and after not receiving treatment, she was ultimately placed in a civilian psychiatric hospital. According to the applicant, in order to be placed in a Coast Guard hospital for

psychiatric needs, her military doctor needed to sign the relevant paperwork, which he declined to do. The applicant alleged that this caused turmoil between him and his command, which ultimately led to his Command's recommendation for separation. The applicant alleged that he was released due to the minor disciplinary infraction of taking possession of a deceased moose out of season, but the ultimate reason his release was the turmoil created between the Coast Guard Recruiting Command and the medical providers who were tending to his wife's medical needs.

The applicant stated that he was performing his duties properly and had been doing so since entering the Coast Guard. He argued that, while his conduct was found to be in violation of state law, this offense should not preclude him from obtaining his retirement benefits he worked towards for 15 years.

The applicant further stated that it is an injustice to continue to characterize and punish him for this discharge, especially considering the circumstances surrounding his general discharge.<sup>1</sup> The applicant stated that he now owns and operates his own landscaping business and has developed himself as a model citizen of the United States. The applicant explained that since his discharge he has no criminal record, no involvement in drugs, no type of alcohol abuse, or any other legal infractions. that the applicant alleged that had he been given the opportunity to correct his mistakes, no punitive discharge would have been issued.

To support his allegations, the applicant submitted a package of supplemental documentation. This included his DD-214, a resume characterizing his service as honorable and outlining his work history since his discharge (which includes owning his own landscaping service), a series of military awards and newspaper articles demonstrating the applicant's achievements throughout his Coast Guard career, a family photo, and personal reference letters from a selection of friends, neighbors, and former co-workers. The personal references highlight the applicant's work ethic, strong character, and leadership abilities, including his commitment to the Coast Guard values of honor, respect, and devotion to duty.

### SUMMARY OF THE RECORD

The applicant entered Active Duty in the Coast Guard on May 8, 2000.

The applicant executed Permanent Change of Station (PCS) orders to the unit where his misconduct occurred on July 10, 2014.

On February 6, 2015, civilian law enforcement officials received reports of a moose poaching on the applicant's base a few days earlier, on February 1, 2015. An initial investigation, which included video footage, determined that a truck belonging to the applicant was in the vicinity of the poaching incident at the approximate time the moose was killed. On February 6, 2015, civilian authorities visually inspected the applicant's vehicle while it was on base and observed moose blood and hair in and around the truck's bed and tailgate.

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<sup>1</sup> The applicant erroneously states in his application that he received a general discharge; his DD-214 confirms that he received an honorable discharge.

On February 8, 2015, civilian authorities applied for, and were subsequently granted, a search warrant for the applicant's residence. When the search warrant was executed, civilian authorities discovered moose meat in a freezer located in the applicant's garage, but the meat found did not appear to account for the quantity of meat that was taken from the moose killed on February 1, 2015. The applicant was asked multiple times if there was any additional moose meat in his residence or on his property, which he denied each time. While executing the search warrant, civilian authorities located a padlocked white utility trailer on the applicant's property. When the applicant was asked what was in the trailer, he confirmed that the moose's legs were in the trailer. The applicant then informed the civilian authorities that he was going to obtain a lawyer, and that the officers "might have him on the possession of the moose, but that [the applicant] did not take the moose and he wasn't going to rat on anybody else."<sup>2</sup>

On April 10, 2015, the State filed charges against the applicant, which included three different counts: (1) 5 AAC 85.045(a)(12) (taking a moose during a closed season); (2) 5 AAC 92.140(a) (unlawful possession and transportation of moose meat that was taken illegally), and (3) 5 AAC 92.220(d) (failure to salvage moose meat).

On April 30, 2015, DNA testing confirmed that the blood and hair taken from the applicant's vehicle matched the moose that had been illegally poached on February 1, 2015.

On June 10, 2015, an Administrative Board was held, and the applicant was found to have entered the Coast Guard base with his personal firearm that was not registered with the base, driven into a restricted access area without a permit, and subsequently shot and killed a pregnant moose out-of-season. After killing the moose, he removed its legs, hide, and part of its back strap, and left the remainder of the carcass at the kill site, including the meat from the neck, ribs, tenderloin, brisket, and part of the back strap. After his vehicle was determined to have been involved, the State Troopers questioned the applicant on at least two occasions, February 7 and 8, 2015, regarding the moose. During the first interview, the applicant denied knowing that a moose had been shot but stated that he had purchased some moose meat from an unknown individual at a Walmart. On the second occasion, February 8, 2015, civilian law enforcement arrived at the applicant's home with a search warrant. During this visit the applicant repeatedly told officials that all of the moose meat he possessed was located in a freezer. After showing troopers approximately 30 pieces of wrapped moose meat in a freezer and insisting he had no other moose meat or parts, the troopers located the four moose quarters (i.e., legs) in a shed on the applicant's property, with the hide attached. Forensic testing determined that the moose meat/parts found on the applicant's property was from the same moose that had been killed on base.

On June 10, 2015, the applicant was notified, via a memorandum, of his Command's intent to initiate action to involuntarily separate him from the service due to the commission of a serious offense.

On June 23, 2015, the applicant acknowledged the June 10<sup>th</sup> notification via endorsement memorandum, and elected to consult with an attorney and provide a written statement.

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<sup>2</sup> See [State Redacted] Dept. of Public Safety General Report, Incident AK15009188

On June 28, 2015, the applicant submitted a waiver of his right to a hearing before an Administrative Separation Board on the condition that he receive an honorable discharge. The applicant's waiver was approved.

On July 7, 2015, the Commander of PSC sent a memorandum, "Recommendation for Discharge..." wherein the Commander recommended that the applicant be honorably discharged for misconduct. Specifically, the Commander stated that the applicant had violated Article 134, clause 3 of the UCMJ. Under Article 134, clause 3, the applicable laws violated by the applicant were 18 U.S.C. §1382 (Entering any military installation for any purpose prohibited by law), 10 U.S.C. §2671 (Military reservations and facilities: hunting, fishing, and trapping), and 18 U.S.C. §1001 (Making false statements), as reasons for discharging the applicant.

On July 14, 2015, the applicant was authorized for separation.

On August 17, 2015, the applicant was honorably discharged from the Coast Guard for misconduct.

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

On February 23, 2022, 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 has failed to show why it is in the interest of justice to excuse the delay. In his application, the applicant acknowledged that the alleged injustice occurred "over five (5) years ago," yet no justification or reason was provided for the delay in filing. The three-year statutory timeline starts when the applicant discovered, or reasonably should have discovered, the alleged error or injustice. The applicant was discharged on August 17, 2015, and was provided a DD-214 on the same day, denoting his narrative reason for separation as misconduct. Therefore, the JAG argued that August 17, 2015, should stand as the beginning date of the three-year statute of limitations. As such, the application for relief is untimely.

The JAG further explained that, in addition to his application being untimely, the applicant failed to show that the Coast Guard committed an error or injustice. The applicant's primary argument is that he should not have been discharged for misconduct which he characterizes as minor. However, the misconduct was serious enough for state authorities to file charges against the applicant, in addition to multiple violations of the Uniform Code of Military Justice (UCMJ), Article 134. The applicant provided no evidence to rebut or disprove the misconduct and, further, admitted to misleading authorities with untrue statements during the course of the investigation. The Coast Guard followed policy, which permitted discharge for such misconduct.

Further, the JAG argued the applicant has not demonstrated that his discharge was unjust. In order to meet this standard, when the action was not committed in error, the action needs to shock the sense of justice. According to the JAG, the applicant argued that the only reason he was separated was due to turmoil within his command because military doctors refused to endorse

paperwork related to psychiatric treatment for his wife. The applicant provided no evidence to support this claim. The JAG further argued that while the applicant argued that he should be granted retirement benefits, the applicant is not, nor has he ever been, eligible for retirement benefits. Therefore, retirement benefits cannot be granted as a remedy.

In light of the above, the JAG determined that the applicant failed to carry his burden of production and persuasion. The JAG argued that even if the Board determined that there was good cause to waive the statutory timeliness requirement, the applicant has not met his burden of proving error or injustice. According to the JAG, the Coast Guard followed its policy in separating the applicant, who voluntarily waived his due process rights to an administrative board on the condition that he receive an honorable discharge, which he did. The JAG noted that there was no conditional waiver relating to the applicant's narrative reason for separation, and the current narrative reason for separation is accurate. Thus, the JAG stated that the applicant has failed to prove that the Coast Guard committed error in separating him, or that the narrative reason for separation on his DD Form 214 should be denoted as anything other than "misconduct."

The JAG noted that the applicant alleged that the real reason he was separated was due to turmoil between his command and military doctors, who allegedly refused to endorse paperwork for his wife's medical treatment. However, the JAG argued that the applicant provided no support or evidence relating to this claim. Furthermore, the JAG stated that even if the applicant had provided evidence of the doctor's refusal to sign necessary paperwork, or that this had caused turmoil with his command, that would still not sufficiently prove any causal relationship on the decision to separate him, because the final separation authority does not rest with the applicant's command. The ultimate decision to discharge the applicant rests with the Coast Guard Office of Enlisted Personnel Management, and the command makes only a recommendation. Therefore, in light of the presumption of regularity afforded to the Coast Guard and its members, the applicant fails to prove error or injustice in his separation, or in the narrative reason for separation on his DD Form 214 being listed as "misconduct."

Finally, the JAG argued that the applicant's allegation that it was unjust to deny him retirement benefits because, except for the misconduct that led to his discharge, he served honorably during his Coast Guard career. The JAG argued that while the applicant requested reinstatement of his retirement benefits, the term "reinstatement" is improper, as the applicant never achieved eligibility for retirement benefits. The JAG noted that Coast Guard members must successfully serve 20 years to become eligible for retirement and retirement benefits. The applicant was involuntarily separated prior to completing 20 years of service and therefore was not, and is not currently, eligible for retirement benefits. Finally, the JAG argued that the applicant's contention that his retirement benefits should be reinstated because he has been a model citizen since his discharge, the applicant's alleged post-service actions do not demonstrate that the applicant's discharge was erroneous or unjust, nor do they entitle the applicant to retirement benefits. Therefore, the JAG argued that the applicant has failed to show that the Coast Guard erred or committed an injustice when the applicant was discharged, and the applicant has not proven entitlement to retirement benefits.

For the reasons articulated above, the JAG recommended that the Board deny the relief requested by the applicant.

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

On October 22, 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 was received.

### APPLICABLE LAW AND POLICY

Article 1.B. of the Military Separations Manual, COMDTINST M10004 provides the necessary guidance on discharging enlisted members due to misconduct. In relevant part:

#### 1.B.17.b. Reasons to Discharge for Misconduct.

Commander (CG PSC) may direct discharging a member for misconduct in any of these cases:

...

(3) Commission of a Serious Offense. Commission of a serious offense does not require adjudication by non-judicial or judicial proceedings. An acquittal or finding of not guilty at a judicial proceeding or not holding non-judicial punishment proceeding does not prohibit proceedings under this provision. However, the offense must be established by a preponderance of the evidence. Police reports, CGIS reports of investigation, etc. may be used to make the determination that a member committed a serious offense.

(a) Members may be separated based on commission of a serious military or civilian offense when:

(1) The specific circumstances of the offense warrant separation; and

(2) The maximum penalty for the offense or closely related offense under the UCMJ and Manual for Courts-Martial includes a punitive discharge. The escalator clause of Rule for Courts-Martial 103(d) shall not be used in making this determination.

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#### 1.B.17.d. Discharging Members with More than Eight Years Service for Misconduct.

Commanding officers shall process all cases in which they contemplate a discharge under other than honorable conditions for misconduct as Article 1.B.23. of this Manual prescribes.

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#### 1.B.23.b. Discharge Procedure.

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3. If a member submits a conditional waiver request, on approving it Commander (CG PSC-EPM-1) shall direct separation, specifying either an honorable or general (under honorable conditions) discharge. If disapproving a conditional waiver, Commander (CG PSC-EPM-1) will return the case for further processing under this Article.

Article 134 of the Manual for Courts-Martial provides the necessary guidance on criminal violations committed by service members not specifically addressed in other articles of the UCMJ. The relevant sections are as follows:



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**134.c.1. Explanation.** *In general.* Article 134 makes punishable acts in three categories of offenses not specifically covered in any other article of the code...Clause 3 offenses involve noncapital crimes or offenses which violate Federal law including law made applicable through the Federal Assimilative Crimes Act, *see* subsection (4) below. If any conduct of this nature is specifically made punishable by another article of the code, it must be charged as a violation of that article. *See* subparagraph (5)(a) below. However, *see* paragraph 59c for offenses committed by commissioned officers, cadets, and midshipmen.

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**134.c.4. Crimes and Offenses Not Capital.**

*a. In general.* State and foreign laws are not included within the crimes and offenses not capital referred to in this clause of Article 134 and violations thereof may not be prosecuted as such except when State law becomes Federal law of local application under section 13 of title 18 of the United States Code (Federal Assimilative Crimes Act— *see* subparagraph (4)(c) below). For the purpose of court-martial jurisdiction, the laws which may be applied under clause 3 of Article 134 are divided into two groups: crimes and offenses of unlimited application (crimes which are punishable regardless where they may be committed), and crimes and offenses of local application (crimes which are punishable only if committed in areas of federal jurisdiction).

*b. (b) Crimes and offenses of unlimited application.* Certain noncapital crimes and offenses prohibited by the United States Code are made applicable under clause 3 of Article 134 to all persons subject to the code regardless where the wrongful act or omission occurred. Examples include: counterfeiting (18 U.S.C. § 471), and various frauds against the Government not covered by Article 132.

## 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>3</sup> The record shows that the applicant received and signed his DD-214 showing his separation and reenlistment codes and discharge for Misconduct on August 17, 2015. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in August 2015, and his application is untimely.

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<sup>3</sup> 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.<sup>4</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>5</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>6</sup> Pursuant to these requirements, the Board finds the following:

- a. Regarding his delay in filing, the applicant recognized in his application that the alleged error/injustice took place “over five years ago,” but provided no explanation or justification for the delay in filing his application 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 claims lack potential merit. The applicant argued that his discharge was unjust because his unlawful acts were minor. However, his actions led to state authorities filing charges against him. The record shows that the applicant illegally shot and killed a moose for the purpose of obtaining its meat. The record also shows that when approached by civilian authorities regarding his involvement with the killing, the applicant lied. Evidence submitted by the Coast Guard further shows that the applicant was found in possession of the moose’s legs and meat, and DNA and hair evidence from the applicant’s car indicated that the applicant had transported the moose’s meat in his personal vehicle. Finally, the record shows that the applicant was afforded the opportunity to appear before an ASB and present his case, but the applicant waived those rights in order to obtain a more favorable characterization of discharge. According to the applicant’s military records, the applicant received the full benefit of that waiver when he was given an Honorable discharge in lieu of a General discharge.

In regard to the applicant’s claim that he should receive full retirement benefits, it is a well-known fact that service members are not entitled to retirement benefits until they have successfully completed at least 20 years of service. At the time of the applicant’s discharge, he had served only 15 of the 20 years of service needed to qualify for retirement benefits. Therefore, the applicant’s claim lacks potential merit and is unlikely to prevail.

The applicant argued that his request should be granted because since he was discharged, he has been a model citizen, even starting his own business. However, the applicant’s post-service actions do not excuse the applicant’s misconduct while

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<sup>4</sup> 10 U.S.C. § 1552(b).

<sup>5</sup> *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

<sup>6</sup> *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).



serving in the Coast Guard. The applicant alleged that his misconduct discharge was a smokescreen for the real reason his Command wanted him discharged. According to the applicant, he was not discharged for his misconduct, but because he had a disagreement with his Command over the Coast Guard's handling of his wife's medical issues. However, the applicant has not provided any evidence to support this allegation. The disputed record is presumptively correct,<sup>7</sup> and the record contains no evidence that substantiates the applicant's allegations of error or injustice in his official military record.

4. 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)**

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<sup>7</sup> 33 C.F.R. § 52.24(b); *see Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties "correctly, lawfully, and in good faith.").

ORDER

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

December 2, 2022

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