

**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. 2023-014**

  
SAGM/E2

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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 May 2, 2023, and assigned the case to the staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision dated July 11, 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 & ALLEGATIONS**

The applicant, a former Seaman Gunner's Mate (SAGM/E-2) asked the Board to change his character of service from "Under Honorable Conditions (General)" to "Honorable."

The applicant stated that a decision was made by the Discharge Review Board (DRB) not to change the character of discharge. According to the applicant, an appeal was filed within a year of the decision including all additional evidence as to why character of discharge should be change. The applicant stated that, during that time until currently, there has been no movement and the only correspondence received to inform the applicant that the case process takes time.

**SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard on August 7, 2007. He trained as a Gunner's Mate, advancing to the rank of E-4. After a series of incidents, he was reduced in rank to Seaman Gunner's Mate/E-2.

***Pattern of Misconduct***

On May 28, 2010, the applicant was issued a CG-3307 ("Page 7") for inability to pay his government travel card immediately and in full due to financial issues. The Page 7 discussed options for help and how financial irresponsibility can affect his career.

On October 18, 2010, the applicant was issued a Page 7 for multiple incidents calling into question his “integrity, ability to follow directions and accomplish required tasks.” The applicant was counseled for reporting to work without shaving multiple times and failing to complete mandatory trainings. The Page 7 also documented a conversation in which the applicant was counseled regarding his continued poor performance and lack of motivation and dedication. According to the Page 7, the applicant acted disrespectfully to his superiors during this conversation.

On October 21, 2010, the applicant was subject to a Non-Judicial Punishment (NJP) for failure obey lawful general order or regulation and false official statement. The applicant was suspected of using his government travel card while not on official travel. The applicant initially denied using his government travel card for personal use and, later, admitted to personal use of the government travel card. The NJP resulted in, among other punishments, a reduction in grade from Gunner’s Mate (E-4) to Seaman Gunner’s Mate (E-3).

On December 13, 2010, the applicant was issued a Page 7 due to an incident on November 22, 2010 in which the applicant was subject to a random vehicle check entering an Air Reserve Base. The applicant had expired vehicle registration and a 40 caliber handgun in the glove compartment. The applicant provided the registration the next day and that violation was dismissed. The applicant was counseled that bringing a firearm to a government installation is against the law and further incidents of such a nature would likely result in separation.

On March 1, 2011, the applicant was issued a Page 7 for inability to successfully pass the Boarding Officer Board on February 9, 2011. Initially, the applicant had been given until October 20, 2010, to qualify, but was given an extension due to personnel shortages. The applicant was told a failure of a second board may result in in performance probation or additional disciplinary actions.

On August 15, 2011, the applicant was issued a Page 7 as notification that he was not recommended for advancement. He was told he needed to ensure his supervisor has visibility on his duty status and his work on a daily basis, obey all orders, maintain a neat appearance, and work toward becoming a fully qualified member of the Maritime Law Enforcement and Force Protection Division.

On January 31, 2012, six months before he was due to reenlist, the applicant was issued a Page 7 that stated he would unlikely receive a positive command endorsement to reenlist. The Page 7 outlined his pattern of misconduct and told the applicant how he could appeal the notification.

On March 20, 2012, the applicant was issued an alcohol incident for being unable to conduct his operational duties as a result of consuming alcoholic beverages.

On March 21, 2012, the applicant was issued a Page 7 that he was not recommended for advancement for the second consecutive marking period due to a lack of improvement on his

appearance, recertification as a Boarding Team member, certification as a Boarding Officer, and execution of his assigned duties and responsibilities to the best of his ability.

On April 25, 2012, the applicant was subjected to NJP for the following offenses under the Uniform Code of Military Justice (UCMJ): selling or disposing of military property (Art. 108), failure to obey a lawful general order or regulation (Art. 92), false official statement (Art. 107), other offenses charged under Art. 134 not covered, and conspiracy with another to knowingly commit offense under the UCMJ (Art. 80). The applicant was suspected of consuming alcohol while in “go status,” consuming a quantity of alcohol that would prevent him from carrying out his duties less than two hours prior to him reporting, providing contradictory statements to a Coast Guard Investigative Service (CGIS) Special Agent regarding the type of EOTech gun sights sold on the applicant’s E-Bay site, the taking and selling of military property, and conspiring with another to sell seven EOTech holographic sights on E-Bay. The NJP resulted in, among other punishments, a reduction in grade from Seaman Gunner’s Mate (E-3) to Seaman Apprentice Gunner’s Mate (E-2).

### ***Discharge***

On May 3, 2012, the applicant was notified of his command’s intent to discharge him. The applicant elected to waive his right to submit a statement and did not object to his discharge. Additionally, the applicant acknowledged that a General under honorable conditions discharge could lead to prejudice in civilian life. The applicant was also advised of his right to military legal counsel. The applicant was recommended for Honorable discharge by the Lieutenant Commander (LCDR). On June 6, 2012, the Commander (CDR) recommended a General discharge. On July 19, 2012, the applicant was separated for pattern of misconduct with a General discharge.

### ***Appeal to the DRB***

On November 30, 2017, the applicant appealed his discharge to the DRB. The applicant argued:

My General Under Honorable Conditions discharge was improper due to error of procedure and fact as per COMDTINST M100.4 Article 1.B.17.b. I was not given the opportunity to make a written statement or consult a lawyer as defined by Article 27(b)(1). My character of service, Narrative of service and re-enlistment code was not known by myself until 19JUL12 when [the] DD214 was provided on [the] date of separation. During my assignment to [redacted], I developed medical issues that still follow with me to this day, the information that was recorded in administrative remarks fails to mention any type of medical treatment that I was going through at that time. There is substantial doubt that I would have gotten the same discharge if the command would had not made these errors. My discharge status should therefore be upgraded to Honorable.

On October 17, 2018, the DRB convened to review the applicant’s discharge and granted no change in the applicant’s discharge for the “Character of Service,” “Separation Authority,” “Separation Code,” “Reentry Code,” and “Narrative Reason.” The discussion and conclusion of the DRB are below:

DISCUSSION: The applicant was separated in the Summer of 2012 due to Pattern of Misconduct.

The applicant received non-judicial punishment two times over a 19-month period. He was found guilty of failing to obey a direct order and regulation through the misuse of his government travel charge card and knowingly made a false statement pertaining to the charge. The applicant was again found guilty when he conspired with another to obtain and sell government property. In addition to the non-judicial punishments, the applicant received an alcohol incident in early 2012.

The Board finds no issues with propriety or equity in this case.

The applicant's service record displays the [sic] he was notified of the intent to discharge, he waived his right to submit a statement and did not object to the discharge.

RECOMMENDATION: The Board members thoroughly reviewed the applicant's records of service and all available documentation. The Board deemed that the applicant's character of service, reason for separation and reenlistment code are appropriate and should not be changed. The applicant has not substantiated any error or inequity.

### ***Proof of Delivery***

In the application to the BCMR, the applicant included a United States Postal Service (USPS) proof of delivery of two items. One was delivered December 5, 2017 and the other was delivered May 1, 2020.

### ***Email from DRB***

On September 11, 2023, the DRB responded to a request from the Coast Guard Office of General Law regarding the status of applicant's appeal to the DRB. The relevant portions are below:

Attached you will find where a complete and final letter that was sent to the applicant regarding the deliberation on his case. The applicant was provided a BCMR application and contact information in conjunction with that letter.

The application that was sent to your office with the case number 2023-014 was not received by our office (Could be a BCMR Case number). The applicant is allowed to appeal the board's decision, however no other evidence has been provided that was related to this case in order for this case to be reopened. This applicant was sent to BCMR due to DRB concluding that no relief was decided upon on May 2, 2019. They may appeal but only if further evidence is provided.

The letter showed that the applicant was notified of the DRB's final decision and that the BCMR is the path for further redress.

## **VIEWS OF THE COAST GUARD**

On September 14, 2023, a Judge Advocate (JAG) for 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 has failed to submit a timely application and that it is not in the interest of justice to excuse the delay. The JAG noted that the applicant was discharged from the Coast Guard in July 2012, appealed to the DRB, and a decision was final on May 2, 2019. The JAG observed that the applicant did not submit the BCMR application until January 2023,

which is about 10 years from the date of the alleged error or injustice on the DD Form 149 and more than three years from DRB decision. In response to the applicant's assertion that there is a pending appeal with the DRB, the JAG argues that the applicant has not provided any evidence of the appeal other than proof of delivery to the Coast Guard and the DRB has confirmed that there is no pending appeal. The JAG also notes that the DRB may only hear an appeal if there are changes to the discharge policy that would affect the discharge decision, but there are no such applicable changes in policy. The JAG argues that the applicant submitted the BCMR application more than three years after the DRB final decision, and has not demonstrated that it is in the interest of justice to excuse such a delay.

Turning to the merits, the JAG argued that the Coast Guard did not err by assigning a General (Under Honorable Conditions) character of service for the applicant's Pattern of Misconduct. The JAG points to COMDTINST M1000.4, which permits the Coast Guard to discharge a member for misconduct in cases where there is a Pattern of Misconduct consisting of two or more NJPs, courts-martial, or civilian convictions or a combination thereof within a 2-year period. The JAG pointed to the two NJPs the applicant received in the 2-year period preceding his discharge and the applicant's General (Under Honorable Conditions) discharge. Because the applicant provided no evidence to overcome the presumption of administrative regularity, the JAG argued that the applicant failed to meet his burden of establishing by a preponderance of evidence that there is an error or injustice in his record that would warrant the relief sought.

The JAG argued that the applicant has not provided evidence to support the allegations in his DRB application of procedural violations that would justify a change in the characterization of his service. The JAG responded to the applicant's allegations that were in his DRB application, but not in his BCMR application.

In response to the applicant's allegation that he was not provided an opportunity to make a written statement or consult with legal counsel prior to discharge, the JAG stated that these assertions are not supported by the record. The JAG pointed to the applicant's signature on a Notification of Intent to Discharge prior to his discharge in which the applicant elected to waive his right to submit a statement and elected to not object. Further, the JAG noted that the notification encourages the applicant to contact the Navy Legal Service Office. Because the applicant provides no evidence that he was not provided an opportunity to provide a written statement or given an opportunity to obtain counsel, the JAG argued that the applicant failed to meet his burden of proving an error or injustice by a preponderance of the evidence.

In response to the applicant's allegation that medical evidence was disregarded when he was discharged, the JAG noted that the DRB reviewed all medical and Veterans Administration<sup>1</sup> documentation and deemed the characterization of service as appropriate. The JAG stated that the applicant failed to provide any medical records or documentation for the BCMR to consider. Because the applicant does not provide any of the additional evidence that he claims he provided to the DRB as part of the appeal or any record of it being provided to the DRB, the JAG argues that the applicant has failed to meet his burden of proving an error or injustice by a preponderance of the evidence.

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<sup>1</sup> In 1989, the Veterans' Administrative became the Department of Veterans Affairs, a cabinet-level agency.

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

The Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited him to respond within thirty days. As of the date of this decision, the Chair has not received a response from the applicant.

### APPLICABLE LAW AND POLICY

Article 1 of the Coast Guard Military Separations Manual, COMDTINST M1000.4, provides the necessary guidance on the procedures for misconduct separations. 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:

...

(2) Pattern of Misconduct. Members may be separated when they have:

- (a) Two or more non-judicial punishments, courts-martial, or civilian convictions or a combination thereof within a 2-year period[.]

...

#### 1.B.17.e. Discharging Members with Fewer than Eight Years Service for Misconduct

Commanding officers shall process members with fewer than eight years of total active and inactive military service recommended for honorable or general discharge for misconduct as follows:

- (1) Inform the member in writing of the reason(s) for being considered for discharge (specifically state one or more of the reasons listed in Article 1.B.17.b. of this Manual supported by known facts).
- (2) Afford the member an opportunity to make a written statement. If the member does not desire to do so, the commanding officer sets forth that fact in writing over the member's signature. If the member refuses to sign a statement his or her commanding officer will so state in writing.
- (3) Afford the member an opportunity to consult with a lawyer as defined by Article 27(b)(1), UCMJ, if contemplating a general discharge. If the member requests counsel and one is not available, the commanding officer must delay discharge proceedings until such time as counsel is available.
- (4) Send the case containing a recommendation and these documents to Commander (CG PSC-EPM-1) for action:
  - (a) The reason(s) for processing (include reason such as repeated military offenses, drug abuse, indebtedness, etc.)
  - (b) If the reason(s) is (are) civil conviction(s), include:

[1] The report Article 1.B.2. of reference (e), Discipline and Conduct, COMDTINST M1600.2 (series) requires.

- [2] An official statement from the judge, prosecuting attorney, clerk or other court official reciting the civil statute(s) violated, charges on which tried and convicted, and sentence of the court.
- [3] Witnesses' statements, arrest reports, copies of court records and probation orders, if obtainable, and all other pertinent documents.
- [4] The maximum punishment which could have been imposed for such conviction under the UCMJ, if determinable. Based on the information furnished, Commander (CG PSC-EPM-1) will determine the maximum punishment imposed under 18 U.S.C. or the District of Columbia Code.

(c) Summary of Military Offenses. List in chronological order all disciplinary action during current enlistment, including:

- [1] Dates of non-judicial punishment or court-martial by type.
- [2] Description of offense(s).
- [3] Non-judicial punishment or sentence as approved and approval date.
- [4] All violations of regulations during current confinement with action taken.
- [5] The commanding officer's comments, including information on the counseling requirement for cases processed for a pattern of failure to contribute adequate support to dependents (See Article 2.E. of reference (e), Discipline and Conduct, COMDTINST M1600.2 (series).), a pattern of failure to pay just debts, or shirking.
- [6] The commanding officer's recommendation.

(d) These enclosures:

- [1] The copy of the letter notifying the member of the reason(s) for the processing and information on the member's rights and privileges.
- [2] The member's signed statement of awareness of rights and privileges and request to exercise or waiver of these rights.
- [3] The member's signed statement, or member's written, signed statement declining to make a statement.
- [4] A copy of the Employee Review Summary printed from Direct Access and a copy of the current Enlisted Employee Review Member Counseling Receipt with all applicable signatures.
- [5] Other pertinent documents such as psychiatric or medical evaluations, statements of any witnesses, police reports, etc.
- [6] A copy of the chain of custody test results form and the appropriate page from unit's drug urinalysis sampling ledger (applicable in cases of recommendations for discharge resulting from a urinalysis indicating drug abuse).



## FINDINGS AND CONCLUSIONS

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. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.<sup>2</sup> The applicant was discharged from the Coast Guard in July 2012 and, after an appeal, the DRB issued a decision on May 2, 2019. A timely application to the DRB, which has a 15-year statute of limitations, tolls the BCMR's statute of limitations until the DRB issues its decision. The applicant filed the current application more than three years after the DRB decision was issued; therefore, 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 “analyz[ing] 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> Although the applicant in this case did delay filing the application, in this instance the Board believes it is in the interest of justice to waive the statute of limitations and do a full review based on the merits of the case.

4. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.<sup>6</sup>

5. The applicant alleged that the Coast Guard committed an error and injustice when he was discharged. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in the military record, and the applicant bears the burden of proving, by a preponderance of the evidence, that the disputed information is erroneous or unjust.<sup>7</sup> Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”<sup>8</sup>

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<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).

<sup>6</sup> *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

<sup>7</sup> 33 C.F.R. § 52.24(b).

<sup>8</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).



6. The applicant alleged the Coast Guard committed an error and injustice when he was discharged with a General (Under Honorable Conditions) characterization of service. COMDTINST M1000.4 permits the Coast Guard to discharge a member for misconduct in cases where there is a Pattern of Misconduct consisting of two or more NJPs, courts-martial, or civilian convictions or a combination thereof within a 2-year period. The applicant was subject to the two NJPs the applicant received in the 2-year period preceding his discharge and the General (Under Honorable Conditions) discharge. In his application to the Board, the applicant provided a timeline of his attempt to make an appeal to the DRB. The applicant has provided no arguments to the Board and therefore, failed to overcome the presumption of regularity afforded to the Coast Guard officials.<sup>9</sup>

7. In his application to the DRB, the applicant made allegations he did not make to the Board. As his application to the Board stems directly from the DRB denial, the Board has decided to address these arguments. The applicant alleged the Coast Guard erred when it discharged him because his medical issues were disregarded and he was not given an opportunity to provide a written statement or consult with a lawyer.

- a. The applicant alleged the Coast Guard erred when it discharged him because his medical issues were disregarded. According to the applicant, he developed medical issues that necessitated the need for treatment, which he was undergoing during the period of his pattern of misconduct. The DRB was provided medical records when reviewing his application, but those records were not provided to the Board. In the absence of evidence to the Board of the applicant's medical condition and treatment, the applicant has failed to meet his burden of proving an error or injustice by a preponderance of the evidence.
- b. The applicant alleged the Coast Guard erred by failing to give him the opportunity to provide a written statement or consult with an attorney. The Board finds that this is not supported by the record. The applicant signed the Notification of Intent to Discharge and elected to waive his right to submit a statement. The notification advised the applicant to his right to counsel surrounding his discharge and encourages contacting counsel and even provides two forms of contact information. Thus, the Board finds the applicant has failed to meet his burden of proving that the Coast Guard did not give him the opportunity to provide a written statement or consult counsel by a preponderance of the evidence.

8. In the absence of arguments or evidence proffered to the Board, it finds that the applicant has failed to prove by a preponderance of the evidence that his discharge and character of service was erroneous or unjust and his request for relief should be denied.

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

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<sup>9</sup> *Id.*

**ORDER**

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

July 11, 2024

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