

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-010


SR (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 November 1, 2023 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 February 6, 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 received a General – Under Honorable Conditions¹ discharge on May 15, 1975 for unsuitability, asked the Board to correct his record by upgrading his characterization of service from General—Under Honorable Conditions to Honorable.

The applicant explained that he entered the Coast Guard in 1974 at the age of 17 shortly after graduating from high school and turned 18 while still in bootcamp. The applicant claimed that at the time the only reason he wanted to join the Coast Guard was to get away from home. He explained that he was a headstrong teenager who “didn’t like being told what to do,” but that was not the attitude to have during bootcamp, which he quickly learned. He stated that after taking short leave he reported to his first station late at night and was dropped off far away from the where his cutter was docked, with no one there to meet him. The applicant alleged that he did not even

¹ There are five types of discharge: three administrative and two punitive. The three administrative discharges are honorable, general—under honorable conditions, and under other than honorable (OTH) conditions. The two punitive discharges may be awarded only as part of the sentence of a conviction by a special or general court-martial.

know where he was until he flagged down a police officer who contacted his unit who sent someone to retrieve the applicant.

The applicant explained the next day he was mustered on deck with other crew members who had received their work assignments. He applicant stated that only two other crew members welcomed him aboard and a Chief Petty Officer immediately took a disliking to him for some reason. The applicant alleged that from that point on he was given “nothing but a hard time.” The applicant stated he was so disheartened that it started began causing medical problems and was eventually sent to a nearby hospital near his newly assigned unit for examination and treatment. The applicant alleged that although he was assigned to do buoy tending work, he was not allowed to participate in any of that. The applicant claimed that at his new unit a certain Chief Petty Officer again took a disliking to him and made his life miserable. The applicant related it to being in boot camp again. He alleged that he was restricted to the barracks building doing cleaning like mopping the floors and was not exactly what he had expected to be doing in the Coast Guard. He said that a long story short, his attitude about being in the Coast Guard continually got worse and he met an individual who introduced him to drugs, which is where everything started to go downhill fast.

The applicant alleged that everything he did was geared toward getting out of the Coast Guard. The applicant explained that he was eventually sent back to the ship and the Captain told him that he did not want him there anymore than he wanted to be there and was working to get him released and his discharge came soon after.

The applicant stated that at age 66, he has suffered with lifelong gastrointestinal problems and has trouble riding in a car for very long let alone on a boat. He contended that even if things had been different, a career in the Coast Guard would probably not have been in the cards for him, but he always thinks about what might have happened had some things been different. For instance, he stated that the first step would have been for him not to see his initial treatment as punishment necessarily but rather a learning experience. He stated that by doing some of things he did later on was wrong and never should have happened and punishment for those things was justified. He explained that once he started behaving that way things were not going to go well for him.

The applicant stated he watches television shows about the Coast Guard and that he “love[s] them” and wished that his service would have been something similar to the men and women he sees on television. He further stated that he regretted the things that happened and wished that he had made more of an effort. He speculated that perhaps, due to his medical issues, he would have been released anyway at some point, but at least he could say that he tried, that he gave it everything he had. The applicant explained that he would like to put his discharge out for display, but when he looks at what his Form DD-214 says he is reminded of the negative aspects of his service. He stated that yes, he is responsible for the things that he did and does not refute that, on the contrary, he fully accepts it, and oftentimes wishes that he could go back and do it all over again. Accordingly, he respectfully requested that his discharge be upgraded to Honorable.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on June 21, 1974.

A narrative summary, dated November 5, 1974, following the applicant's admission to the hospital notes that he had been admitted to the hospital from October 15 through October 30, 1974 and then readmitted on October 31, 1974 after being picked up by civilian police "who found him running down the middle of the [redacted] streets screaming that 'they're going to shoot me.'" Psychiatric consultations during the first admission found that the applicant had an explosive personality manifested by frequent anger episodes. During the course of the October 31, 1974 admission, another psychiatric consult noted the applicant continued to represent an explosive personality with many social characteristics and recommended the applicant's case be reviewed by a Medical Board with regard to recommending separation from the Coast Guard.

On November 6, 1974, a Medical Board convened and found the applicant's present condition was unsuitable for service and recommended discharge.

On February 25, 1975, the applicant received Captain's Mast, also known as Non-Judicial Punishment (NJP), for offenses on February 11, 1975. The applicant was found guilty of violating Article 121 of the Uniform Code of Military Justice (UCMJ),² Larceny and Wrongful Appropriation, after he stole a coin collection of a value of about \$56.02 that belonged to a fellow crewmember. He was also found guilty of violating Article 134, the General Provision, after he was found with marijuana on February 14, 1975. The applicant was sentenced to restriction for 60 days, extra duty for 45 days, and forfeiture of pay in the amount of \$191.70 per month for two months.

On April 2, 1975, the applicant went before a Summary Court-martial where he was found guilty of Article 92—Failure to Obey an Order or Regulation of the UCMJ, after the applicant failed to perform two hours of extra duty on or about March 13, 1975. The applicant was also charged for consuming alcohol while onboard his cutter and for violating Article 86—Absent Without Leave and Article 134—General Provision, for breaking restriction while onboard his cutter. He was sentenced to be reduced in rank to E-1, forfeiture of \$175 of pay for one month, restricted for 21 days, and hard labor for 14 days.

On April 2, 1975, the applicant was deemed an "Absentee" from his assigned base.

On April 16, 1975, the applicant surrendered to armed forces and was returned to his home base.

² Article 121 – Larceny and Wrongful Appropriation –

(a) Any person subject to this chapter who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind –

(1) with intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, steals that property and is guilty of larceny; or

(2) with intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, is guilty of wrongful appropriation.

(b) Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.

On April 24, 1975, the applicant was notified via a CG-3307 (“Page 7”) that he was being separated from the Coast Guard by reason of unsuitability due to an explosive personality and asocial characteristics.

On April 30, 1975, the applicant was found guilty at NJP for offenses committed on April 12 and 27. Specifically, the applicant was found guilty of violating Articles 86, 92, and 134 after he went absent without leave from restricted status, was derelict in his duties after he failed to perform mess cooking duties, and after he broke restriction. The applicant was sentenced to 45 days of restriction.

On May 15, 1975, the applicant was separated from the Coast Guard for unsuitability and was given a General—Under Honorable Conditions characterization of service. The Coast Guard issued a Page 7 wherein it informed the applicant that he was being separated for “unsuitability...due to an explosive personality and asocial characteristics.” The Page 7 also informed the applicant that he was issued a General discharge.

VIEWS OF THE COAST GUARD

On July 12, 2024, 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).

The JA argued that all matters of record indicated that the Coast Guard having acted within policy when it discharged the applicant for unsuitability. The JA argued that due to the nearly 50-year delay, the Coast Guard cannot obtain additional facts about this case or produce the relevant policy governing separation at the time these events occurred. The JA further argued that the nearly 50-year delay makes it prejudicially difficult to obtain further documentation demonstrating facts and policy that led to the applicant’s separation. The JA stated that anything not included in the applicant’s record have since been lost to time and due to the unnecessary delay in requesting relief, the applicant’s request for relief should be denied as untimely and barred by the Doctrine of Laches.

The JA argued that the Board should deny the applicant’s request for relief because the application is untimely by 45 years. The JA stated that an application to the BCMR is untimely if submitted more than 3 years after the applicant reasonably should have known about the error or injustice. Here, the JA argued that the applicant “reasonably should have discovered” the alleged error on his DD-214 when it was issued to him in 1975. The JA stated that the applicant’s signature in block 29 of the form indicates that he reviewed his discharge paperwork at that time and therefore the present action comes approximately 45 years beyond the statutory limit for application to the BCMR.

The JAG argued that furthermore, the Board should not use its discretion to waive the timeliness requirement because a cursory review of the applicant’s application shows that the claim is meritless. According to the JAG, this Board’s inquiry into whether to waive the statutory timeliness requirement includes a cursory review of the submission to determine an applicant’s

likelihood of success based on the merits. The JAG noted that in his application, the applicant admitted to his misconduct such as drug use, and concedes that “Punishment for [those acts of misconduct] was justified.”

Additionally, the applicant’s request should be denied because it is barred by the Doctrine of Laches. The JAG explained that the Coast Guard made the decision to discharge the applicant nearly 50 years ago and any documentation necessary to solve the puzzle presented by the applicant which has not been included in his military record has been lost to time. Consequently, the government is forced to rely primarily on these select documents still available in the applicant’s record, which, as noted, point towards the Coast Guard having acted within policy. The Coast Guard claimed that it no longer has access to the investigations and correspondence that led to its decisions, including the manuals and policy that dictated them. Thus, the government is prejudiced by the delay in this case and should not be forced to solve the mystery surrounding the applicant’s awarded characterization of service. The JAG argued that absent strong evidence to the contrary, government officials are presumed to have carried out their duties correctly, lawfully, and in good faith. The JAG contended that here, the applicant has not submitted any evidence demonstrating error or injustice. According to the JAG, the applicant provided nothing other than his DD-214 and a statement, neither of which support any arguments or provide any evidence that the characterization he received constituted an error or injustice. On the contrary, the JAG stated that there is significant evidence that the applicant’s separation would have been in accordance with policy if he were separated today. The JAG argued that because the applicant failed to rebut the presumption of regularity, his application for relief should be denied.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 14, 2024, 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 July 31, 2024.

The applicant stated that he received the Coast Guard’s response and after reviewing the information, realized that there were indeed inaccuracies in his record. He claimed that he was unaware of these inaccuracies and believed that it was far too late to ask to have these inaccuracies to be corrected. He alleged that had he known that the inaccuracies were in his record, he would have done something about them years ago.

He stated that he is ashamed of his record and if he had the ability to do it over again, he would, but he cannot and must accept things as they are. He explained that all he has asked for was to have his discharge upgraded due to the length of time and change of circumstances from then to now. He further explained that he is 68 years old and does not have a lot of time left on this earth. He thanked the Board for its time and consideration.

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:

...

- 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.

...

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.³ The record shows that the applicant received his DD Form 214 on May 15, 1975. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in May 1975 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.⁴ 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"⁵ 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."⁶ In this instance, the Board finds that it is in the interest of justice to waive the statute of limitations and review the applicant's request for relief based on a full review of the record.

4. The Board's review of the record shows that the applicant enlisted in the Coast Guard on June 21, 1974. The record further shows that in his short time in the service, the applicant

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

⁴ 10 U.S.C. § 1552(b).

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

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

received NJP on February 25, 1975 for violating Article 121—Larceny, of the UCMJ, after he stole another crewmember’s coin collection and was found in possession of less than one ounce of marijuana. The applicant was also convicted at a Summary Court-Martial on April 2, 1975 for having violated Articles 92—Failure to Obey an Order or Regulation, 86—Absent without Leave, and Article 134—General Article, when he went AWOL from March 4, 1975 through March 7, 1975, failed to perform two hours of extra duty, consumed alcoholic beverages while onboard his cutter, and broke restriction. The record further shows that the applicant was convicted at his second Captain’s Mast on April 30, 1975 when he was found to have violated Articles 86, 92, and 134 when he broke restriction, went AWOL from April 12, 1975 through April 16, 1975, and failed to perform mess cooking duties. Finally, the Board’s review of the record shows that just prior to his final conviction on April 30, 1975, the applicant was notified that he was being separated from the Coast Guard by reason of unsuitability pursuant to Article 12.B.12 of the Personnel Manual in effect in 1975.

However, although the reason for the applicant’s separation is clear, the reason for his characterization is not. Articles 12.B.3.a.1.g and 12.B.3.a.1.i. of the Personnel Manual (1970) state that an Honorable discharge is permitted for members being separated for unsuitability or misconduct. The Note to Article 12.B.3.b. of the Personnel Manual (1970) states, “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.” The Board was unable to find a Page 7 in the applicant’s record wherein prior to his discharge the Coast Guard clearly outlined why the applicant was receiving a General discharge as opposed to an Honorable discharge required by policy. The Board was able to find a Page 7 wherein the applicant was informed that he was being discharged for unsuitability due to an explosive personality and asocial characteristics, but this Page 7 did not inform the applicant as to why he would be receiving a General characterization of service in lieu of an Honorable characterization. The only Page 7 that mentioned the applicant’s General discharge was the Page 7 issued on the day of the applicant’s separation giving the applicant no time to appeal the characterization of separation.

While the records available in the record may not have documented the complete rationale for his General discharge, the records did indicate a “specific basis,” namely “explosive personality disorder and asocial characteristics.” In that vein, this Board cannot ignore the lengthy record of misconduct that the applicant amassed over his extremely short Coast Guard career that resulted in a Summary Court-Martial and two NJP hearings. 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.” *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979). Given the applicant’s extensive record of misconduct, this Board simply cannot find that he has overcome this presumption and shown that his discharge was in error.

Injustice. 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.”⁷ The Board has authority to determine whether an injustice

⁷ *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

exists on a “case-by-case basis.”⁸ Indeed, “when a correction board fails to correct an injustice clearly presented in the record before it, it is acting in violation of its mandate,”⁹ and “[w]hen a board does not act to redress clear injustice, its decision is arbitrary and capricious.”¹⁰

The evidence before the Board indicates that at the time of the applicant’s separation from the Coast Guard he may have been struggling with mental health issues that could possibly have been triggered and exacerbated by his recent entry into the Coast Guard; mental health issues that in today’s Coast Guard would have been managed differently and provided different treatment to the applicant. The Board considered whether, if the applicant been in the Coast Guard today, he would have received the benefit of the advancement of mental health treatment that could have prevented his continued acts misconduct. The applicant made multiple visits to the Coast Guard medical for varied reasons but was deemed fit for duty despite evidence that his mental health was a cause for concern. This is supported by the fact that the applicant was separated not for misconduct, but for unsuitability due to an explosive personality and asocial characteristics. Had the applicant received the benefit of today’s medical advancements, it is certainly possible that he may have had a different outcome.

However, the applicant has presented no evidence of a subsequent diagnosis or treatment that would support the conclusion that a mental health condition was the root cause of his misconduct. This Board can only speculate as to his mental health condition at the time of his discharge. Additionally – and to the applicant’s credit – he shows remorse and acknowledgement that he was to blame for his poor choices, and never claims that a mental health condition was the reason for his misconduct.

The applicant, in his response to the Coast Guard, claims that there are mistakes in his service records that he believes it has been too long to correct. The Board invites the applicant, now that he has been provided these records, to make application again to correct any errors he has found in his review. This Board may decide this case differently on reconsideration if the applicant could show the inaccuracies in his record – especially that related to his misconduct - or present evidence of extenuating or mitigating circumstances. But given the limited evidence provided by the applicant, the Board cannot conclude that in his case, the stigma of a general discharge shocks the sense of justice.

(ORDER AND SIGNATURES ON NEXT PAGE)

and, to be made the basis for remedial action, the ‘error’ or ‘injustice’ need not have been caused by the service involved.”).

⁸ Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002).

⁹ *Roth v. United States*, 378 F.3d 1371, 1381 (Fed. Cir. 2004) (quoting *Yee v. United States*, 206 Ct. Cl. 388, 397 (1975)).

¹⁰ *Boyer v. United States*, 81 Fed. Cl. 188, 194 (2008).

ORDER

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

February 6, 2025

