DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-011

[redacted]
SN (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 January 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 November 19, 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 Apprentice (SA/E-2) who received a General – Under Honorable Conditions[1] discharge on November 4, 1966 for Unsuitability, asked the Board to correct his record by upgrading his characterization of service from General to Honorable.

The applicant contended that he was separated due to chronic motion sickness. The applicant stated that he was told by those around him that he would get over the seasickness in a few days. He alleged that instead, his first time on a ship, the crew went out for an approximately one-month cruise, during which time he was extremely sick, throwing up from the time the cutter departed until the cutter returned to port approximately a month later. The applicant claimed that the vomiting caused damage to his stomach and a weight loss of 35 pounds. According to the applicant, his motion sickness did not abate from the time the cutter left port until it returned over a month later. He claimed that he became emaciated, down to a "concentration camp" weight and

[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. A special court-martial may award a bad conduct discharge (BCD), and a general court-martial may award a BCD or a dishonorable discharge.

was bleeding from his stomach. The applicant contended that he would have died had the voyage lasted longer than it did.

The applicant alleged that he became ill every time the cutter left the harbor and although he does not remember the number of times the cutter was out to sea, as soon as the cutter got to sea, he became sick. The applicant claimed that he applied for every transfer he could after his first cruise, including going on an overseas tour and isolated duty but his requests were denied. He alleged that the transfers were denied because new arrivals could not transfer until they had been on the cutter for at least for six months, including a three-month voyage/weather station duty in the middle of the ocean.

The applicant alleged that at the time he was around 130 pounds when he was due to go out for the weather station duty, but thankfully his Captain (CAPT), CAPT P, assigned him to shore duty the same day the cutter was set to depart. The applicant contended that CAPT P saved his life because had he been forced to go on the cruise, he would have died from either stomach bleeding or massive weight loss due to severe motion sickness. The applicant claimed that he gets motion sickness while on airplanes, boats, cars, anything that moves erratically. He explained that the motion sickness never improves until the motion stops. He stated that there was nothing he could do to stop the motion sickness. He explained that he wanted to stay at sea, because other than the sea sickness, he enjoyed being on the ocean. The applicant contended that because he had no control over the motion sickness, his discharge should be changed to reflect Honorable.

The applicant claimed that he obeyed every rule, helped others in basic training as the recruit educational assistant for those having trouble with exams, knot tying, etc., and after his time in the Coast Guard, he graduated with a bachelor's in mathematics, chemistry and physics. He stated that he has five living children, who he wants to be proud of their father's service, including his Military Service.[2]

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on February 11, 1966.

On September 6, 1966 a United Public Health Services (USPHS) submitted a Neuropsychiatric Examination Certificate wherein he provided the following assessment of the applicant:

> PERTINENT HISTORY: This man's psychiatric evaluation came about as a result of repeated patterns of behavior as described in general in the attached report. Review of this individual's past history reveals sufficient evidence of maladaptive behavior and defective character traits to substantiate the impression of a chronic confirmed disorder of character and personality.
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> MENTAL STATUS: This individual is not a mentally defective individual. His behavior is not due to emotional problems of a neurotic or psychotic nature, but rather is the result of deeply ingrained [unreadable]

[2] The applicant gave an extensive outline of his resume after his time in the Coast Guard, however, the applicant's career progression after his time in the Coast Guard is irrelevant to his discharge from the Coast Guard. Accordingly, for efficiency and clarity, those arguments will not be summarized here.

in the development of his personality, attitudes, and traits of character. There is no evidence of neurosis, psychosis, or organic brain disease.

FINDINGS:

1. In the opinion of undersigned, this man is so far free from mental disease, defect and derangement so as to be able to distinguish right from wrong, adhere to the right, refrain from the wrong, and has sufficient mental capacity to understand and participate in his own behalf.

2. This condition is not amenable to hospitalization or treatment in a military setting, disciplinary action, training, transfer to another station or organization, or reclassification to another type of duty.

3. There are no disqualifying mental or physical defects which are ratable as a disability under the standard schedule for rating disabilities in current use by the Veterans Administration.

RECOMMENDATIONS:

1. That no further attempt at rehabilitation of this made be made, since it is believed that he is of no value to the service and cannot be rehabilitated to the extent where it may be expected that he may become a satisfactory Coast Guardsman.

2. That he be administratively separated from the U.S. Coast Guard in accordance with Article 12-B-10, Coast Guard Personnel Manual, CG-207.

On September 12, 1966 a doctor with the USPHS found the applicant Unfit for Sea Duty or Not Fit For Duty (NFFD) and requested that the applicant's commanding officer issue order directing the applicant's transfer.

On September 13, 1966 the applicant's commanding officer notified the applicant that pursuant to a USPHS doctor's medical evaluation, he was proceeding with notifying the Commandant of his intent to separate the applicant for reasons of unsuitability with an Honorable characterization of service because, "you are of no value to the Coast Guard and cannot be rehabilitated to the extent that I may expect you to become a satisfactory Coast Guardsman."

On September 13, 1966 the applicant submitted a signed statement wherein he acknowledged the Coast Guard's action to separate him, including "the type of discharge recommended, and the reason therefore." The applicant elected not to make a statement regarding his separation.

On September 13, 1966 the applicant's commanding officer submitted a memorandum to the Commandant wherein he recommended that the applicant be separated from the Coast Guard with an Honorable characterization of service. The contents of the memorandum are as follows:

1. [Applicant] , USCG reported on board on 3 June 1966. Except for an obvious affliction of motion sickness there has been no evidence of a problem worthy of action under reference (a) [Personnel Manual].

2. Because our periods at sea have been brief since [Applicant] reported aboard, I have done nothing about evaluating the motion sickness. I intended to observe him during the forthcoming patrol for which the ship sails on 23 September 1966.

> 3. [Applicant] reported to the [cutter] from recruit training and on 31 July 1966 was assigned a proficiency mark of 3.1. The same mark is intended upon change of command on 16 September 1966. He has committed no military offenses.
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> 4. [Applicant] requested a medical appointment and the enclosed SF-502 in which the doctor recommends separation is the result. The possibilities the doctor speaks of have been completely latent, but if the potential for trouble exists then I must defer to his recommendation.
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> 5. I recommend that [Applicant] be separated with an Honorable discharge by reason of unsuitability and that he be permitted to retain his uniforms.
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> 6. [Applicant's] signed statement in connection with this action is enclosed.

On October 5, 1966 the applicant's District Commander issued a First Endorsement Memorandum to the Commandant wherein he recommended that the applicant be immediately separated pursuant to Article 12-B-10 of the Coast Guard Personnel Manual. The memorandum stated that since being recommended for administrative separation, the applicant attempted suicide on September 21, 1966. The applicant was then referred to a hospital on September 22, 1966 as a result of threatening suicide with a knife. The applicant did not sustain any injuries as a result of his attempts. The District Commander made no recommendation as to the type of discharge the applicant should receive.

On October 16, 1966 the Commandant issued a memorandum wherein he approved the applicant's commanding officer's September 13, 1966 memorandum recommending the applicant be separated. In the September 13, 1966 memorandum, the applicant's commanding officer recommended that the applicant receive an Honorable characterization of service. However, although the Commandant referenced the commanding officer's September 13, 1966 memorandum as reasons for the separation, the Commandant recommended that the applicant receive a General—Under Honorable Conditions characterization of service instead of Honorable. The applicant was permitted to keep his uniforms.

On November 4, 1966 the applicant signed a CG-3307 ("Page 7") Administrative Remarks Page wherein he acknowledged the following:

> Discharged by reason of UNSUITABILITY, Art. 12-B-10 USCG Personnel Manual. Not entitled to MOP.[3] Total creditable service this period 00 years 08 months and 24 days. AFID [redacted] surrendered and destroyed. NOT RECOMMENDED FOR REENLISTMENT.
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> In compliance with Medical Manual Chapter 1, part 7, sections D and F, I herby certify that I have no dependents receiving medical care in either a uniformed service or civilian medical facility on date of discharge.

On November 4, 1966 the applicant was separated from the Coast Guard with a General—Under Honorable Conditions pursuant to Article 12.B.10 of the Personnel Manual, Unsuitability. The applicant was given a Separation Code of 264 which denotes, "Character and behavior disorder – board entitlement." At the time of his separation, the applicant had a mark of 3.10 in Proficiency and a mark of 4.0 in Conduct.

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[3] MOP refers to the Mustering-out Act, which was established to provide men coming home from World War II with payments to veterans while they looked for work or underwent training. MOP stands for Mustering-out Payments.

On July 17, 1972 the applicant requested a copy of his military records. Specifically, the applicant requested a complete copy of his medical records.

On December 12, 1972 the applicant applied for disability to the Department of Veteran's Affair. It is unclear if he was approved or the status of that claim.

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 the Coast Guard legal concurs with PSC's assessment that a near 60-year delay makes it significantly difficult to determine the exact facts and circumstances that led to the applicant's separation. According to the JA, documentation and policy surrounding the decisions leading to the applicant's separation have since been lost to time. The JA argued that 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 contended that the Board's inquiry into whether to waive the statutory timeliness requirement includes a cursory review of a submission to determine an applicant's likelihood of success on the merits.[4] The JA contended that any review here, cursory or otherwise, is made difficult due to passage of time and is simply impossible to determine the precise reasoning for the awarded characterization of the applicant's separation utilizing the limited record available. The JA stated that furthermore, the applicant "reasonably should have discovered" the alleged error on his DD-214 when it was issued to him in 1966. Accordingly, the present action comes approximately 54 years beyond the statutory limit for application to the BCMR.

The JA further 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 JA claimed that here, the applicant failed to submit any evidence demonstrating error or injustice and provided nothing other than his DD-214 and a statement. The JA argued that neither document submitted by the applicant supports any arguments or provides evidence that the characterization he was awarded constitutes an error or injustice. The JA argued, moreover, the Doctrine of Laches can be raised as an affirmative defense before the BCMR.[5] The JA explained that in order to prevail on this issue, the government must prove (1) that there was a delay and (2) that such delay prejudiced the government.[6] In that regard, the JA stated that the documentation necessary to solve the puzzle presented by the applicant has been lost to time. Consequently, the government is forced to rely primarily on the select documents still available in the applicant's record obtained from the National Personnel Records Center (NPRC). The JA claimed that the Coast Guard no longer has access to the investigations and correspondence that led to its decisions, including the manuals and

[4] *Allen v. Card*, 799 F. Supp. 158, 166 (D.D.C. 1992).
[5] *Allen*, at 165.
[6] *Id*.

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 applicant's awarded characterization.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 24, 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 August 13, 2024.

The applicant submitted an 18-page statement to the Board in response to the Coast Guard's advisory opinion. In this statement the applicant spent a great deal of time repeating his claims of motion sickness, how much weight he lost, his one-month tour, his requests for isolated/land duty, etc. Many of these arguments were already adequately addressed in the applicant's initial statement to the Board. The applicant also included information that is not relevant to his claims of error or injustice, such as his shooting skills, alleged stroke at birth, his hearing difficulties, family history, difficulties with foreign languages, cerebral palsy, and classes he failed or did well in while in school. Accordingly, for efficiency and clarity the Board will only record those allegations that are relevant to the applicant's claims of error and injustice and have not already been summarized previously.

Regarding the delay in filing his case, the applicant claimed that the delay was the result of not knowing why he suffered from such severe motion sickness. The applicant alleged that he did not discover the reason for his extreme motion sickness until 2006 after an MRI was completed and he discovered that he had damage to those areas of the brain.

The applicant alleged that he has told as the time of his service that the Coast Guard did not believe in chronic sea sickness and did not permit discharges for members suffering from chronic sea sickness. The applicant claimed that when he asked why he was being discharged he was told it was because of his constant requests for land duty assignments. According to the applicant, the yeoman who was handling his discharge told the applicant that he could either accept the discharge and never go out to sea again or reject the discharge and immediately be placed back out to sea. The applicant stated that it was his choice, either die from unending sea sickness or accept a negative, unrelated discharge and go home. The applicant alleged that at the time of his discharge, only those individuals accused of homosexuality were given a discharge of unsuitability, so he has spent his life dealing with the negative connotation that resulted from his discharge. The applicant alleged that his General discharge for unsuitability has prevented him from obtaining jobs and even going to medical school.

Regarding his attempted suicide, the applicant stated that two days before his ship left for a three-month sea duty cruise, because he knew he was going to die at sea and did not want to die that way, so he tried to kill himself. He claimed that if he had to die, he did not want it to be from horrible pain, with bleeding in his stomach that would ultimately cause him to bleed out. The applicant claimed that had he been allowed to go on isolated duty, which would have lasted for one year, it would have given him less than two years before being discharged. He contended that he would have been allowed to have his choice of districts after coming back from isolated duty. He stated he would have chosen the second district which is land locked and would not have

required sea duty. This would have allowed him to complete his four years of service working hard and honorably without difficulty.

The applicant explained that he is now 78 years old and will not be working again. He stated he wants to die knowing that he is respected for the work he did. He contended that he worked hard while in the Coast Guard and continued to work hard after his separation and deserves to be recognized for that. He wants to be able to hang it his discharge certificate on his living room wall with pride for the first time since he was discharged, even though it is likely that no one who knows how much it means to him will ever see it. The applicant explained that having been identified by an undesirable discharge with a 12.B.10 classification because he had chronic, incurable sea sickness damaged his life. He stated that he was not drafted, but volunteered for service because he loved America and would like for this final chapter of his life, that the symbol describing my service to reflect an Honorable service.

APPLICABLE LAW AND POLICY

Chapter 12-B-10 of Coast Guard Personnel Manual of 1955 (CG-207), as amended by Amendment 54, sets forth Coast Guard policy on administrative discharge of enlisted personnel by reason of unsuitability.

> Chapter 12-B-10(a) Discharge of enlisted personnel by reason of unsuitability shall be directed only by the Commandant except as provide in paragraph (c) hereof . . . .
>
> (b) Discharges by reason of unsuitability are effected to free the service of persons considered unsuitable for further service because of:
>
> . . .
>
> (7) Motion sickness. Chronic Seasickness.

Chapter 12-B-3 of CG-207, as amended by Amendment 33, sets forth Coast Guard policy on standards for type and character of discharge. In cases of discharge for unsuitability, an honorable or general discharge may be appropriate. Subparagraphs (a)(2)-(3) list guidelines under which enlisted personnel would normally be granted an honorable discharge. However, subparagraph (b)(3) states that "A General Discharge will be issued to an individual who is eligible for discharge [for unsuitability] . . . [w]hen, based on the individual's over-all [sic] military record, the Commandant directs the issuance of a General Discharge."

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 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.[7]

3. 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.[8] The record shows that the applicant received his DD-214 on November 4, 1966. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in November 1966 and his application is untimely.

4. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.[9] 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"[10] 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."[11] 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.

5. The Board may correct any military record of the Coast Guard when necessary to correct an error or remove an injustice.[12] Error means either legal or factual error.[13] Injustice, when not also error, is treatment by the military authorities that shocks the sense of justice but is not technically illegal.[14] 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 record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.[15] 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."[16]

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[7] *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).
[8] 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.
[9] 10 U.S.C. § 1552(b).
[10] *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).
[11] *Id*. at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).
[12] 10 U.S.C. § 1552(a); 33 C.F.R. § 52.2(a).
[13] *Sawyer v. United States,* 18 Cl.Ct. 860, 868 (1989), *rev'd on other grounds,* 930 F.2d 1577 (Fed.Cir.1991).
[14] *Id.*
[15] 33 C.F.R. § 52.24(b).
[16] *Arens v. United States,* 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanden* v. *United States,* 594 F.2d 804, 813 (Ct. Cl. 1979).

6. Chapter 12-B-10 of CG-207, as amended, identifies "Motion Sickness: Chronic Seasickness" as basis for separation for Unsuitability. Therefore, the Coast Guard's decision to separate him on that basis was not error.

7. There is also nothing presented by the applicant or available in the record to show that the General discharge was issued in error. The applicant's military record appears to have met the eligibility requirements for issuance of an Honorable discharge. His proficiency and conduct scores were above minimums established in CG-207, and he had no documented misconduct. However, CG-207, as amended, clearly permits the Commandant to issue General discharges to enlisted personnel separated for Unsuitability when warranted by their overall military record, notwithstanding whether their performance and conduct may have made them otherwise eligible for an Honorable discharge.

8. Although not error, the issuance of a General discharge in this case was unjust. Applicant's record showed no duty performance or conduct issues. His early discharge was related only to his sea sickness, a condition over which he had no control. While members of his chain of command uniformly recommended him for honorable discharge prior to his suicide attempt, the Commandant issued him a General discharge. Without any other documentation in the record, the Board finds that the Commandant's decision to not follow the command's recommendations and instead issue a General discharge must have been substantially based on the applicant's suicide attempt, and the Commandant's view that this alone was a negative conduct or performance issue. While this rationale may have reflected prevailing attitudes and biases concerning suicide and mental health in 1966, it is clearly inconsistent with our modern understanding and the current policy of the Coast Guard.

9. Discharge on the basis of unsuitability was not unjust. The applicant claims he has suffered from the negative connotations of this type of discharge because of its use in other cases to separate on the basis of homosexuality. However, the personnel manual at the time made clear that this was but one of several potential bases for discharge for unsuitability. While the applicant apparently perceives that "unsuitability" to some may denote "homosexuality," any perceived stigma does not rise to the level of an injustice which warrants relief by this Board.

10. The Coast Guard has argued that the applicant's request for relief should be denied due to the long delay and the prejudice the long delay has had on the Coast Guard to adequately retrieve records for the applicant's case. However, the Coast Guard was able to provide the Board with the applicant's personnel data file from the applicant's time in service which included 196 pages of enlistment documents, mental health visits, medical visits, and Page 7s. Therefore, the Board finds that the Coast Guard was not prejudiced in this case because it had before it a significant portion of the applicant's service record.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former SA [redacted], USCG, for the correction of his military record is granted in part. The Coast Guard shall upgrade the applicant's characterization of service from General—Under Honorable Conditions to Honorable. All other requested relief is denied.

November 21, 2024

[redacted]