

**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. 2024-025**

  
E2 (former)

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**FINAL DECISION**

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552. The Chair docketed the case after receiving the completed application on January 10, 2024, and assigned it to an attorney to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision dated March 6, 2025, 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 is a former E2 and discharged on July 24, 1988, after serving for seven (7) years, eleven (11) months, and ten (10) days according to the applicant's DD214. The applicant, through counsel, asserts that his command administratively discharged him after he sought help for his drug addiction. The applicant struggled with cocaine addiction. The applicant states that he was demoted from an E5 to an E2 while being separated for misconduct. The applicant states he was an electrician's mate with a desire to remain in service.

The applicant stresses that he deserved support for his addiction and not separation. He claims the addiction was triggered by trauma he endured serving in the Coast Guard. He lost a close friend when the USCGC Blackthorn sank taking the life of his friend, he dealt with racism and needed to be transferred units, and he performed rescues to save people at sea that placed him in peril. To deal with the emotional stress of his life he turned to drinking and eventually cocaine. Shortly after the applicant was discharged his wife divorced him and he sought medical treatment multiple times through the VA for his cocaine addiction. He used the skills he learned in the Coast Guard to work as an electrician in civilian life. The applicant feels that the demotion of three ranks was excessive and his separation unjust. The applicant is seeking clemency and to have his DD214 upgraded to reflect a rank of E5, and a character of service as Honorable.

**SUMMARY OF THE RECORD**

In October 1979, the applicant joined the US Coast Guard and served over seven (7) years on active duty prior to his discharge on September 18, 1987. There are no other documents available regarding the applicant's separation or surrounding military history other than his

DD214 due to the over thirty (30) years that have passed since the applicant's discharge. The Board made reasonable efforts to obtain the applicants military personnel and medical records, but was unable to do so.

The applicant was discharged for misconduct under COMDINST M1000.6A, with a Reenlistment Code of RE-4, and a characterization of service as Under Honorable Conditions. Due to the lapse of time, there is no documentation of the applicant's military record or separation package for the Board to consider.

### VIEWS OF THE COAST GUARD

On November 27, 2024, a Judge Advocate (JA) 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 on June 11, 2024, prepared by the Coast Guard Personnel Service Center (PSC).

The JA concurred with the PSC evaluation of the applicant's request. PSC determined there was no error or injustice and the applicant's request should be denied.

The JA argued that the applicant failed to prove an error or injustice for his discharge for cocaine usage while on active duty. There was no error in command enforcing the zero-tolerance policy on drug usage by service members, which remains in effect for Coast Guard members to date.

The JA argues that the applicant's request is untimely, and review would be prejudicial to the Coast Guard due to lost files that could more accurately depict the process of separation than by the applicant's recollection alone. Additionally, the applicant seeks clemency however this is granted when an applicant has undergone a court-martial with a criminal sentence.<sup>1</sup> The applicant argues the Board should apply the Wilkie Memo to its review, however the memo is not binding to the Coast Guard or applicable in this fact pattern even as persuasive.<sup>2</sup>

The JA concludes that while it is unfortunate the applicant endured stressful circumstances during his time in the Coast Guard, it was the applicant's decision to turn to cocaine to manage stress that led to his ultimate discharge. The commands enforcement with Coast Guard policy does not constitute treatment by military authorities that "shocks the sense of justice" as required by *Sawyer v. United States*. For these reasons, the JA recommends relief be denied.

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<sup>1</sup> U.S. DEP'T OF DEFENSE, GUIDANCE TO MILITARY DISCHARGE REVIEW BOARDS AND BOARDS FOR CORRECTION OF MILITARY / NAVAL RECORDS REGARDING EQUITY, INJUSTICE, OR CLEMENCY DECISIONS (2018) (hereinafter "Wilkie Memo").

<sup>2</sup> 10 U.S.C. §101 defines "Military Departments" as "the Department of the Army, the Department of the Navy, and the Department of the Air Force," which excludes the U.S. Coast Guard. This memo is not legally binding on the Coast Guard and should not guide this board in its consideration of the Applicant's clemency request.

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

On December 20, 2024, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty (30) days. The applicant's response was received on February 4, 2025.

The applicant's response alleged that the advisory opinion was incorrect in three respects. First, that it was untimely; second, that clemency was not available for administrative separations; third, that a General discharge was appropriate in light of Coast Guard drug policies.

Without providing additional evidence in this regard, the response alleged that Mr. Betts had a "documented experience of racial discrimination," "voluntary self-referral for treatment" and trauma in losing a friend, which led to his cocaine addiction and ultimately to his discharge. The applicant re-asserts his request for clemency based on his character references and the improvements he has made to overcome his prior addiction. His time in service is a point of pride for the applicant and the reduction in rank from E5 to E2 is too harsh a penalty in his opinion.

## APPLICABLE LAW AND POLICY

1. 33 C.F.R. § 52.22. An application for correction of a record must be filed within three years after the Applicant discovered or reasonably should have discovered the alleged error or injustice.
2. The Doctrine of Laches can be raised as an affirmative defense before the BCMR. 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. *Allen v. Card*, 799 F. Supp. 158, 165 (D.D.C. 1992).

## FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's submissions, the Coast Guard's submission, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. This matter is untimely and due to its delay has adversely prejudiced the Coast Guard. While the Board may hear cases that are untimely if an injustice occurred, this case does not present that fact pattern.<sup>3</sup> The Coast Guard is to maintain its presumption of regularity in that it is presumed to have conducted the separation without error or injustice and the burden of proving the Coast Guard made an error or injustice rests on the applicant.<sup>4</sup> The Board cannot verify that the applicant was formerly an E5. There are no other documents provided other than two DD214, which state ranks of E2 and possibly E3 (though the copy is blackened making it hard to decipher). The

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<sup>3</sup> No correction may be made unless the applicant files a request for the correction within three years after discovering the error or injustice. However, a board may excuse a failure to file within three years after discovery if it finds it to be in the interest of justice. (10 USC 1552).

<sup>4</sup> 33 C.F.R. § 52.24 (b).

considerable length of time between the applicant's request and his discharge prejudices the Coast Guard due to the loss of records to time.

3. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.<sup>5</sup> The applicant was discharged in 1987. Therefore, the applicant knew of the alleged error in his record or perceived injustice of command action in 1987, 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.<sup>6</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>7</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."

5. Regarding the delay in applying to the Board, the applicant explained that he was undergoing continued drug addiction treatment, which was supported through the VA. He took time to focus on work and gaining sobriety. The Board finds that the applicant's explanation for the delay is not compelling because he continued to struggle with cocaine addiction, which was the reason for his discharge.

6. The disputed record is presumptively correct, and the record contains no persuasive evidence that substantiates his allegations of error or injustice in his official military record. Due to the length of time (over 30 years has passed) the loss of records to review the details surrounding the discharge have been lost. The applicant has not shared evidence that demonstrates the Coast Guard acted in a way against policy to create an error or in a manner unjust to the applicant. Accordingly, the Board does not have evidence before it showing how or if the applicant was reduced in grade from E-5. The burden is on the applicant to produce such evidence, and he has not done so. The applicant alleges racial discrimination and mental and emotional stress, but these would not remove the applicants decision to participate in drug use while on active duty. Should the applicant locate his separation packet to provide the missing information surrounding his discharge, the Board welcomes him to re-apply to the Board with new information.

7. The Coast Guard trained the applicant as an electrician's mate and ranked the applicant to E5 according to the applicant. This permitted the applicant to have a skill set upon his discharge and he gained employment as an electrician from the time he separated until this present day.<sup>8</sup> While the motivations of the command at the time are unknown, it appears that they discharged the applicant with a characterization of service that would permit the applicant to use VA medical benefits to assist him with drug rehabilitation, which the applicant did use these programs and achieved sobriety. This is noteworthy because the applicant, at the time of his discharge, had more than seven years of prior service. He was not a young new recruit still

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<sup>5</sup> 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

<sup>6</sup> 10 U.S.C. § 1552(b).

<sup>7</sup> *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

<sup>8</sup> Applicant's personal statement.

adjusting to Coast Guard life when he chose to use cocaine, and his chain of command appears to have taken into consideration his prior honorable service.

8. The Board considered the applicant's request for relief on clemency grounds. Although not controlling on this Board, the "Wilkie Memo" provided by the applicant was considered as a potential persuasive authority to consider relief. Although the applicant's counsel describes his drug use as "minor and unfounded," this Board disagrees. The applicant's punishment, given all the facts and circumstances available for review, appears consistent with that given to others in similar situations. He was an experienced Coast Guardsman who had successfully completed his first enlistment at the time of his cocaine use; his conduct cannot be described as a youthful indiscretion. While this Board applauds the apparent fact that the applicant has overcome his drug addiction, his character letters show only that he has become a successful, trustworthy, and contributing member of his community and a father attentive to his child in the years following his discharge. These statements are not so compelling as to make his discharge appear as an injustice in his record that this Board should remedy by way of clemency.

9. This Board may be persuaded differently if the applicant could obtain his records, or produce statements from people with knowledge of the facts and circumstances of his discharge, or his alleged three grade reduction. But without substantial evidence to support his claim of error and injustice, the Coast Guard's maintains their presumption of regularity.

10. Given the limited evidence to support the applicant's assertions and the review of Coast Guard policy on drug usage for service members, the Board finds that the interests of justice do not require the excusal of applicant's failure to file within three years of discovery of the alleged error or injustice. For this reason, relief is denied.

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

**ORDER**

The application of E2 [REDACTED], USCG, for an upgrade to his rank to E5 and characterization to honorable, under a claim of clemency, is denied.

March 6, 2025

