


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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-052


EM3/E-4 (former)

FINAL DECISION

This proceeding was conducted by the Board for Correction of Military Records of the Coast Guard (hereinafter “Board”) 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 February 23, 2024, 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 August 28, 2025, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

INTRODUCTION

The applicant, a former Electrician’s Mate, Third Class (EM3/E-4), was discharged from the Coast Guard on September 12, 2014, with an Under Honorable Conditions (General) characterization of service for misconduct based on the Coast Guard’s finding that he had assaulted his former girlfriend during a domestic dispute.

The applicant has requested that the Board correct his records by changing his service characterization to Honorable, his reenlistment code from RE-4 (ineligible) to RE-1 (eligible), and his narrative reason for separation from “Misconduct” to “Completion of term of service.” He has also asked that his separation date be changed to the date his term of service would have otherwise expired. In addition, he has asked for reimbursement for “back pay and allowances denied to him due to his wrongful separation ... the educational expenses he has been forced to incur thanks to the wrongful denial of the GI bill to him ... [and] out of pocket health care expenses....”

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard as a Seaman (SN/E-3) on May 27, 2008. He was promoted to EM3 (E-4) on January 27, 2012.

In July 2013, civilian police officers responded to a domestic incident involving the applicant and his ex-girlfriend (hereinafter “X”), who was the mother of his five-year-old son. The police learned that the applicant was stabbed twice by X – in the back and neck – during the incident. The applicant was hospitalized with a collapsed lung and other injuries, and X was arrested, though charges were later dropped. Police records show X told officers she had stabbed the applicant out of fear for her son’s, and her own, safety. An initial interview with the applicant was attempted by a civilian detective at the hospital, but was cut short when the applicant had difficulty breathing.

The record indicates that at the time of the incident, the applicant and X were no longer in a relationship but were sharing custody of their son. On the day in question, X and the applicant agreed that X would stay at the applicant’s home for a short period to provide childcare while the applicant was at work, due to an unforeseen delay in their son’s school enrollment. It was during the first evening of this arrangement that the incident in question occurred.

The Coast Guard Investigative Service (CGIS) conducted an investigation and issued a Report of Investigation (ROI) in January 2014. In relevant part, the ROI stated: “This investigation revealed through numerous interviews that ... after consuming alcoholic beverages, an altercation involving [the applicant] and [X] took place at [the applicant]’s residence.... The physical altercation resulted in [the applicant] causing skin discoloration (bruising) on [X]’s arms, neck, and legs; and wounds that appeared to be caused by a sharp edged instrument on the back of [the applicant]’s neck and left shoulder blade caused by [X].”¹

The ROI included 19 enclosures, including witness interview summaries. Most of these enclosures have not been made available to the Board, but a redacted summary of X’s August 2013 interview with CGIS agents was submitted by the applicant. In brief, the summary documented X’s report that the applicant had become intoxicated and began pushing her out of his home while she was on the phone with her then-boyfriend, but then prevented her from leaving and smashed her phone before pulling her to the floor, smashing her head against the ground, and placing his hand over her nose and mouth, resulting in her having difficulty breathing. X stated that she had stabbed the applicant in the back and neck only after he began moving towards their son (who witnessed at least part of the altercation)

¹ The ROI also stated that the investigation revealed that in late November 2012, the applicant had sexual intercourse with a separate individual after that individual consumed an unknown quantity of alcoholic beverages which resulted in her inability to recall details of the night in question. Because the Coast Guard did not reference this finding as part of its decision to discharge the applicant, however, the Board will not further discuss it herein.

out of fear for her son's, and her own, safety. During her interview, X also reported a history of domestic incidents between herself and the applicant, including some where civilian police were called. CGIS collected X's damaged phone as evidence.

The ROI enclosures submitted to the Board also included documentation of CGIS's request, to a civilian police department where the applicant and X previously lived together, for any/all reports related to the applicant. The reports received by CGIS documented police contact on several occasions with the applicant and/or X between 2011 and 2013. The information provided appears to have been limited to the nature of the alleged conduct, which included battery, property damage, disturbance, and rape.²

In July 2014, the Coast Guard notified the applicant of its intent to discharge him for misconduct based on commission of a serious offense, specifically a violation of Uniform Code of Military Justice (UCMJ) Article 128 (Assault). The notification stated that the applicant had assaulted his former girlfriend by "pulling her to the ground, holding her down, and putting your hand over her mouth to such an extent that she had difficulty breathing ... in the presence of your minor child."

The applicant exercised his right to submit a statement objecting to the discharge. He provided a lengthy history of his relationship with X, including her history of bipolar disorder and criminal conduct. He detailed X's history of erratic behavior and emotional and physical abuse, including a 2013 arrest for damaging his car with a baseball bat. The applicant detailed a complicated history of attempts to come to a custody arrangement, including court proceedings. He then discussed the physical altercation that occurred in July 2013, during which he contended that he had acted only in self-defense to restrain X after she had attacked him, though he admitted to breaking her cellphone.

Following consideration of the applicant's statement, chain of command recommendations, and other pertinent information, the Coast Guard issued orders to separate the applicant effective in September 2014. The applicant's DD Form 214 (Certificate of Release from Active Duty or Discharge) (hereinafter "DD 214") reflects a General characterization of service, RE-4 reenlistment code, and "Misconduct" as the narrative reason for separation.

APPLICATION

The applicant requested an upgrade to his service characterization, reenlistment code, and narrative reason for separation, along with "any back pay or allowances." With respect to the latter, he specified that he was requesting reimbursement for expenses he incurred due to his ineligibility for education benefits based on his characterization of

² The CGIS records' description of the civilian police records do not make clear whether the applicant was a suspect, victim, or witness to each incident in question.

service, as well as out-of-pocket medical expenses. He also requested that his separation date be changed to reflect the date his term of service would have otherwise expired.

The applicant contended that a preponderance of the evidence showed that he had acted in self-defense during the July 2013 incident. He further noted that X had provided inconsistent statements about the incident to responding police officers and later to CGIS. He also noted that subsequent counseling records concluded that while the applicant's son's account of the physical altercation provided to civilian police aligned with X's version of events, it appeared that X had pressured her son to lie to police, and his recollection of events, in fact, aligned with the applicant's version.

The applicant further contended that the Coast Guard had approached the case with an antiquated view that only women could be victims of domestic abuse and had relied almost exclusively on untruthful statements provided by X, the perpetrator of the incident.

In support of his requests, the applicant submitted the following, among other evidence:

- May 2013 correspondence from a state prosecutor informing him that X had been sentenced to 45 days incarceration and approximately \$500.00 in restitution following her arrest for damaging his property.
- An August 2013 preliminary finding from a state social services agency to the effect that X had stabbed the applicant despite the applicant not being a threat of any kind to X at the time. The finding noted that the applicant's son had been interviewed and provided information consistent with that provided by the applicant.
- A December 2013 progress report from a professional counselor following assessment of the applicant's son. The counselor stated that it appeared the applicant's son felt pressure to lie for X when he told police he saw his father hit his mother's head on the ground during the July 2013 incident. The counselor recommended that the applicant's son not have any visits with X until she had completed a psychological evaluation and begun counseling.
- A December 2013 Child Protective Services report documenting difficulty contacting X regarding scheduling and following up on her court-ordered therapy.
- An adult abuse/stalking Order of Protection obtained by the applicant against X.

VIEWS OF THE COAST GUARD

The Coast Guard provided its views in memoranda prepared by a Coast Guard Judge Advocate (JA) and the Personnel Service Center (PSC) in August and November 2024, respectively. The Coast Guard initially argued that the case should be administratively closed because the applicant had not exhausted administrative remedies as required by 33 C.F.R. § 52.32. Specifically, the Coast Guard noted, the applicant had not applied to the Coast Guard Discharge Review Board (DRB).

In the alternative, the Coast Guard argued that the applicant's requests should be denied because he was discharged in accordance with policy. Specifically, the Coast Guard contended that the applicant was found to have engaged in misconduct based on commission of a serious offense (violation of UCMJ Article 128), by a preponderance of the evidence, following a thorough CGIS investigation supported by testimonial and physical evidence.

APPLICANT'S RESPONSE

The applicant, through counsel, submitted a response to the Coast Guard's views on May 19, 2025. Therein, the applicant initially responded to the Coast Guard's argument that the applicant had not exhausted administrative remedies by applying to the DRB. The applicant argued that the Board should address the case because in addition to a "discharge upgrade," he was asking for backpay and allowances as well as medical bill reimbursements, which fell outside the DRB's authority to address. The applicant then reiterated his arguments that he had acted in self-defense during the July 2013 incident, and that a state social services agency subsequently found X to be at fault.

APPLICABLE LAW AND POLICY

The Board may "correct any military record . . . when [it] considers it necessary to correct an error or remove an injustice." 10 U.S.C. § 1552(a)(1). "Error" means a mistake of a significant fact or law and includes a violation by the Coast Guard of its own regulations. *See Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976) ("'Error' means legal or factual error."); *Ft. Stewart Schools v. Federal Labor Relations Authority*, 495 U.S. 641, 654 (1990) ("It is a familiar rule of administrative law that an agency must abide by its own regulations."). "Injustice," when not also error, is treatment by the military authorities that "shocks the sense of justice." *Sawyer v. United States*, 18 Ct. Cl. 860, 868 (1989) citing *Reale v. United States*, 208 Ct. Cl. 1010, 1011, cert. denied, 429 U.S. 854, 50 L. Ed. 2d 129, 97 S. Ct. 148 (1976). The Board has authority to determine whether an injustice exists on a "case-by-case basis." Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002).

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on the applicant's military record, his submissions, the Coast Guard's submission, and applicable law and policy:

1. The Board has jurisdiction over under 10 U.S.C. § 1552(a), with the caveats detailed below, as the applicant is seeking corrections of alleged errors and/or injustices in his military records.

2. The applicant requested an in-person 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.³

3. “The Board begins its consideration of each case presuming administrative regularity on the part of the Coast Guard and other Government officials. The Applicant has the burden of proving the existence of an error or injustice by a preponderance of the evidence.” 33 C.F.R. § 52.24(b). Absent evidence to the contrary, the Board presumes that Coast Guard officials 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). In cases involving personnel decisions, “the military is entitled to substantial deference in the governance of its affairs.” *Dodson v. United States*, 988 F.2d 1199, 1204 (Fed.Cir.1993).

4. The application is untimely because it was not filed within three years after the applicant discovered the alleged error or injustice, as required by 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22. The applicant was discharged in September 2014 and did not apply to the Board until February 2024.

5. The Board also notes that pursuant to 33 C.F.R. § 52.13(b), “no application shall be considered by the Board until the applicant has exhausted all effective administrative remedies afforded under existing law or regulations, and such legal remedies as the Board may determine are practical, appropriate, and available to the applicant.” The Board may administratively close a case after it has been docketed and at any time if it determines that the applicant has not exhausted an available administrative remedy, as required under § 52.13(b). 33 C.F.R. § 52.32(a)(3).

6. The Coast Guard DRB has authority to recommend “discharge upgrades,” which include changes to Blocks 24-28 of the DD 214, i.e., the Character of Service, Separation Authority, Separation Code, Reentry code, Narrative Reason for Separation.⁴ Unlike this Board, the DRB accepts requests for discharge upgrades from former members up to 15 years from the date of discharge. 10 U.S.C. § 1553(a). In addition, if the DRB denies an upgrade request, this Board may review the case, even if received more than three years after the alleged error or injustice occurred. 10 U.S.C. § 1553(b)(2).

7. In this case, the record does not suggest the applicant has applied to the DRB. Based on his discharge date in September 2014, the applicant may apply to the DRB before September 2029. Consequently, the Board finds that the applicant has not exhausted all appropriate, available administrative remedies and thus, the Board lacks jurisdiction to

³ *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).

⁴ See <https://www.uscg.mil/Resources/Legal/DRB/>.

address his request for changes to his characterization of service, reenlistment code, and/or narrative reason for separation. The Board also observes that an application to the DRB will provide more due process for the applicant by permitting both the DRB, and then this Board (if the DRB does not grant relief), to address the applicant's claims.

8. The Board acknowledges that the applicant has requested relief that is outside the DRB's authority to grant. Specifically, he has requested "backpay and allowances," including reimbursement for educational expenses and out-of-pocket medical expenses. He has also requested that his separation date be changed to the date his service term "otherwise would have expired."

9. The Board notes initially that the "GI Bill" benefits referenced in the application are administered by the U.S. Department of Veterans Affairs (VA), not the Coast Guard, and the Board is without authority to grant entitlement to VA benefits. The Board acknowledges, however, that upgrading the applicant's characterization to Honorable would likely result in eligibility for VA benefits, to include under the GI Bill. As such, the Board interprets the applicant's request for reimbursement for education expenses to be part of his request for an Honorable characterization. To the extent the applicant requests a monetary compensation award not tied to a specific record correction, such relief is beyond the Board's authority to grant.

10. Regarding the requested relief described in paragraph 8, above, the Board next notes, again, that the application is untimely. 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" 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." Pursuant to these requirements, the Board finds the following:

- a. The applicant has contended that it is in the interests of justice for the Board to waive the statute of limitations in this case because he went through a physically and emotionally painful event for which he needed time to heal before reliving his trauma, and because he was a victim of egregious treatment by the Coast Guard.
- b. Upon a cursory review, the Board finds the requests for back pay, allowances, reimbursement, and other relief lack potential merit. To the extent these requests can be considered independently from the primary relief requested (DD 214 changes), the Board notes that the applicant has not detailed the expenses he is requesting reimbursement for. In the arguments attached to his application, the applicant's counsel states that the applicant is "due backpay for the X months spent outside of the Coast

Guard while wrongfully separated until his end of service date.” Counsel goes on to state that the applicant “was forced to spend \$X in educational expenses” and the Board should “direct payment to [the applicant] in the amount of \$X.” Although the applicant references medical expenses, he does not detail those expenses, or explain when they were incurred or why they should be reimbursed.

The applicant carries the burden to overcome the presumption of regularity to which the Coast Guard is entitled, and to prove his entitlement to relief by a preponderance of the evidence. In this case, it appears the applicant’s counsel failed to specify the amounts requested and instead left placeholders in the submission received by the Board. The applicant has not otherwise specified the nature of the expenses or the dates they were incurred, or provided an explanation directly tying them to his discharge. With respect to backpay, the applicant argues that he is entitled to “months” of back pay, but the records reviewed by the Board indicate that his term of active duty service was scheduled to end in September 2014, the same month he was discharged for misconduct.

With respect to the Coast Guard’s processing of the applicant’s discharge, the Board acknowledges the applicant’s compelling accounts of the July 2013 incident and prior troubling behavior by X, along with the social service and counseling records completed following the July 2013 incident, all of which appear to have been provided to and considered by Coast Guard authorities. The record also includes X’s detailed account of the incident provided to CGIS investigators, which differs significantly from the applicant’s account.

The Board also notes that the CGIS ROI lists numerous other witness interview summaries and other enclosures not made available to the Board, which may shed more light on the Coast Guard’s decision-making. In this regard, the Board’s function is not to determine the best course of action in hindsight by applying its own judgment to each item of evidence considered by CGIS and Coast Guard authorities. Instead, the Board must determine whether the Coast Guard’s actions constituted error or amounted to treatment that shocks the conscience. In this case, based on detailed, but conflicting accounts provided by the applicant and X, and other evidence not reviewed by the Board, Coast Guard authorities determined that a preponderance of the evidence established the applicant’s violation of UCMJ Article 128, warranting discharge.

11. The Board has carefully considered the foregoing and has weighed the reasons provided by the applicant for his filing delay, along with a cursory review of the

merits. Based on its review, the Board declines to waive the statute of limitations in this case with respect to the applicant's requests for back pay, reimbursement for educational and medical expenses, and a change to his separation date. As such, the relief requested will be denied as untimely.

12. The Board wishes to emphasize that because the application is untimely, the Board has not conducted a full review of the merits. In addition, the Board wishes to make clear that nothing in this decision should be interpreted to deprive the DRB or other appropriate administrative body of jurisdiction to review the applicant's case. Again, the Board will be able to review the case following a DRB decision, assuming the applicant requests that the Board do so within three years of the DRB decision. Moreover, the Board will consider any DRB decision to constitute new information sufficient under 33 C.F.R. § 52.67 to warrant reconsideration by the Board of the requests for back pay, expense reimbursement, and other relief requested in the current application.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former EM3/E-4 [REDACTED] is denied.

August 28, 2025

