


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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-058


HS3/E-2 (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 June 4, 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 March 27, 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, a former Health Services Technician, Third Class (HS3/E-2), has requested that the Board correct his military records as follows:

- (1) Change his characterization of service from General to “Honorable”;¹
- (2) Change his narrative reason for separation from “Pattern of Misconduct” to “Secretarial Authority” with corresponding separation code;
- (3) Change his reentry/reenlistment code from RE-4 (ineligible) to RE-1 (eligible);
- (4) Expunge indexed investigative information maintained in the Defense Central Index of Investigations (hereinafter “DCII System”),² specifically portions of a

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.

² The DCII System is an automated central index maintained by the Defense Counterintelligence and Security Agency. It identifies investigations conducted by Department of Defense (DoD) investigative agencies, and personnel security determinations made by DoD adjudicative authorities. DCII access is limited to DoD and other federal agencies that have adjudicative, investigative and/or counterintelligence missions. *See* <https://www.dcsa.mil/Systems-Applications/Defense-Central-Index-of-Investigations-DCII/> (accessed March 25, 2025).

2010 Coast Guard Investigative Service (hereinafter “CGIS”) Report of Investigation (hereinafter “ROI”) and other information related to an unfounded charge of secretly recording another individual during a medical examination.

The applicant was working in a Coast Guard medical clinic in February 2010 when he was accused of video-recording a female patient while she changed into a medical gown during a physical examination. An investigation was completed by CGIS, and the applicant appeared at a Summary Court Martial, where he was found guilty of violating multiple Uniform Code of Military Justice (UCMJ) articles, and not guilty of violating others. The applicant was then administratively separated from the Coast Guard on January 5, 2011, with a General—Under Honorable Conditions discharge, a RE-4 reenlistment code, and “Pattern of Misconduct” as the narrative reason for separation.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on August 27, 2006. In approximately May 2009, he was assigned as the Labs and Physicals Petty Officer at a medical clinic located at a Coast Guard Air Station. The applicant’s duties included performing the first part of standard physical examinations, with the second part performed later by one of the clinic’s physicians. The applicant’s responsibilities included obtaining vital sign readings, conducting bloodwork, performing vision and hearing tests, and administering electrocardiograms (EKGs).

On February 24, 2010, a CGIS investigation was initiated at the request of the applicant’s Commanding Officer (CO). On that date, the applicant had conducted an examination of an 18-year-old civilian female patient (hereinafter “complainant”).³ For the EKG portion of the exam, the complainant was directed by the applicant to remove her clothes and put on a medical gown while the applicant stepped out of the room. The complainant alleged that sometime after the EKG was completed, she noticed a cell phone propped up on a nearby desk facing the exam table. She stated that when the applicant briefly left the room again, she picked up the phone and noticed it had been recording the room for the previous 20 minutes. The complainant returned the phone to the desk and finished the exam. She then called her father, who reported the complainant’s experience to the applicant’s chain of command.

The applicant was interviewed by CGIS investigators and initially denied that his cell phone had captured any video, but later admitted that a video was captured of the complainant in various states of undress, and that he had deleted it. He maintained, however, that the recording was not intentional, and that he must have activated the phone’s video recording feature when removing the phone from his pocket. The applicant’s phone

³ There was initially confusion as to whether the clinic was authorized to provide services to patients not affiliated with the military, but guidance was later obtained that allowed the clinic to perform examinations required as part of an individual’s application to a military academy, as was the case here.

was forensically examined but technicians were unable to access its data. The applicant's laptop also contained no relevant photos or videos, but it did show a history of Google searches relating to CGIS procedures and whether deleted cell phone videos could be recovered.

Eight of the applicant's previous patients, both male and female, were also interviewed. CGIS investigators ultimately determined that the applicant had treated the complainant, as well as another female patient in December 2009, differently than male patients and female patients at a higher pay grade, in ways that deviated from Coast Guard policy. Specifically, investigators determined that while the complainant and the other female patient had been instructed to remove all of their clothing for their EKGs, other patients had not been. They also determined that the way the applicant offered the complainant and other female patient a female chaperone for the EKG differed from other patients.

The applicant appeared before a Summary Court Martial in October 2010, where he was charged with violations of UCMJ Articles 92 (Dereliction of Duty), 107 (False Official Statement), 120 (Indecent Conduct), and 134 (General Article). The applicant was found guilty under Article 92 of negligently or willfully failing to properly inform both the December 2009 female patient, and the complainant in February 2010, to disrobe only from the waist up for their EKGs. He was also found guilty under Article 92 for failing to properly inform either patient of their rights to a chaperone for their EKGs. The applicant was found not guilty under Article 92 for failing to actually obtain a chaperone in either case. Under Article 107, the applicant was found guilty of making three false statements to CGIS investigators regarding whether a video of the complainant had been captured on his cell phone, and whether he had viewed it. Under Article 120, the applicant was found not guilty of indecent conduct, specifically of secretly videotaping the complainant in various states of undress. Under Article 134, the applicant was found guilty of prejudicial and discrediting conduct in that he had wrongfully instructed the December 2009 female patient to remove all of her clothing except her bra and underwear. He was found not guilty under Article 134 of deleting a video recording of the complainant with the intent to prevent its seizure by the Coast Guard.

The applicant was sentenced to 25 days confinement and reduction in rank to E-2.

In a memorandum to the Coast Guard Personnel Service Center (PSC), the Commander of the Air Station where the applicant was assigned recommended the applicant be discharged by reason of misconduct based on the commission of a serious offense.

On the same date, a memorandum was issued to the applicant informing him of the initiation of an action to discharge him with a General discharge. On the First Endorsement

page of this memorandum, the applicant affixed his signature and indicated he was waiving his right to submit a statement on his behalf and did not object to being discharged.

The applicant was subsequently separated from the Coast Guard on January 5, 2011, with a General—Under Honorable Conditions discharge, a RE-4 reenlistment code, and “Pattern of Misconduct” as the narrative reason for separation.

APPLICATION TO THE BOARD

The applicant has contended that the CGIS investigation and actions taken by his chain of command were unduly influenced by personal relationships they and members of their families had with the complainant’s father, a prominent local businessman. The applicant has also alleged the Coast Guard committed errors and injustices. In particular, he has claimed that he was interviewed by CGIS investigators despite being intoxicated, and that he was not afforded adequate opportunities to prepare for his court martial or confer with counsel.

For these reasons, the applicant has requested upgrades to his character of service, reenlistment code, and narrative reason for separation. In addition, he has requested that certain records in the DCII System be expunged pursuant to the procedures detailed in DoD Issuance (DoDI) 5505.07 by which persons titled or indexed in the DCII System may request correction or expungement of records. Specifically, the applicant has requested expungement of portions of the CGIS ROI and other documents that relate to the allegation that he intentionally recorded the complainant during her examination. This conduct was charged at the court martial under Article 120. While the applicant characterizes this charge as encompassing sexual assault and harassment, as discussed below, the Article 120 charge was for “indecent conduct,” not sexual assault or harassment. In any case, because he was found not guilty of violating Article 120, the applicant has requested that information related to that charge be expunged. He has explained that the presence of this information has impaired his ability to obtain gainful employment, particularly with respect to positions that include a pre-employment background check.

The applicant has acknowledged that his application is untimely, but he requests the Board waive its three-year limitations period based on the stigma his discharge has caused, his chain of command’s impropriety, and his present-day character.

With his submission, the applicant included a personal statement, as well as statements authored by three friends, his ex-wife, and his mother. In summary, these statements discuss the applicant’s significant post-service achievements and positive character traits and describe how the authors believe the applicant was treated unfairly and disproportionately punished by the Coast Guard.

VIEW OF THE COAST GUARD

In an advisory opinion dated January 14, 2025, a Coast Guard Judge Advocate (JA) recommended that the Board deny the applicant's request for relief. The JA adopted the facts and analysis provided by the Coast Guard Personnel Service Center (PSC) in an accompanying memorandum. The JA and PSC argued that the applicant was properly discharged under the relevant policies and no error or injustice had occurred. They also observed that the applicant had not exhausted other available administrative remedies because he had not followed the process for requesting that CGIS expunge his criminal records from the DCII System, and he had not applied for a discharge upgrade from the Coast Guard's Discharge Review Board (hereinafter "DRB").

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

The Board provided the applicant with the Coast Guard's views and invited him to submit a response. As of the date of this decision, the applicant has not submitted a response.

APPLICABLE LAW AND POLICY

The Board may correct errors or remove injustices in a service member's Coast Guard records pursuant to 10 U.S.C. § 1552(a).

An application to the Board must be filed within three years from the date on which the applicant discovers the alleged error or injustice underlying his or her claim. 10 U.S.C. § 1552(b); 33 C.F.R. § 52.22. The Board may excuse the untimeliness of an application if it is in the interests of justice to do so. *Id.*

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. 33 C.F.R. § 52.13(b). 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).

The DRB is separate from this Board.⁴ The DRB is authorized under 10 U.S.C. § 1553 and implemented by 32 C.F.R. § 51. The DRB accepts requests for review of a discharge or dismissal from any former Coast Guard member when received 15 years after the date of discharge or dismissal. 10 U.S.C. § 1553(a); 33 C.F.R. §§ 51.3, 51.9(b). If the DRB does not grant an applicant's request, that declination may be considered by this

⁴ The Board briefly notes that there appears to be some confusion on the applicant's part between this Board and the DRB. Specifically, the applicant referred to this Board as the DRB on multiple occasions in his application materials.

Board. 10 U.S.C. § 1553(b)(2). The DRB has authority to make changes to a former member's character of service, separation authority, separation code, reentry code, and/or narrative reason for separation. 33 C.F.R. § 51.4; see also <https://www.uscg.mil/Resources/legal/DRB/>.

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 and policy:

1. The applicant declined a hearing before the Board and requested that his case be decided based on the records and evidence submitted.

2. The Board will initially address the applicant's request that his characterization of service be upgraded from General—Under Honorable Conditions to Honorable, his reenlistment code be changed from RE-4 to RE-1, and his narrative reason for separation be changed from "Pattern of Misconduct" to "Secretarial Authority."

3. As noted above, applications to the Board must be filed within three years of discovery of the error or injustice alleged by an applicant. In this case, the applicant's submission was received by the Board in June 2024, more than 13 years after the applicant's January 2011 separation from the Coast Guard. The applicant has requested that the Board waive his application's untimeliness based on the stigma involved with his discharge.

4. The applicant has not submitted a request to the Coast Guard's DRB. Unlike the Board, the DRB accepts requests for discharge upgrades from former members up to 15 years from the date of discharge. The DRB is authorized to make changes to an applicant's character of service, separation authority, reentry code, and narrative reason for separation. The Board also notes that when a final decision has been issued by the DRB, an applicant may apply to this Board within three years of that decision, even if the Board receives the application more than three years after the alleged error or injustice occurred.

5. Based on his discharge date in January 2011, the applicant may still apply to the DRB before January 2026. The DRB is authorized to address the applicant's request for changes to his character of service, reenlistment code, and narrative reason for separation. In addition, the controlling regulations permit the applicant to apply to this Board in the event that his DRB application is denied, but not vice versa. That is, if this Board were to address the application and deny it, requesting relief from the DRB would be foreclosed for the applicant.

6. Based on the foregoing, the Board finds that the applicant has not exhausted all appropriate, available administrative remedies. Moreover, an application to the DRB would provide more due process to the applicant by leaving open the possibility of applying to this Board in the future if the DRB does not grant relief. Under these circumstances, the Board will not address the applicant's request for changes to his character of service, reenlistment code, or narrative reason for separation. The portion of the application covering these requests will be administratively closed.

7. The Board turns next to the applicant's request for expungement of all records maintained in the DCII System.⁵ Importantly, the Board's authority extends only to correction of Coast Guard military records. *See* 10 U.S.C. § 1552(a)(1) (providing that the Secretary "may correct any military record of the Secretary's department"). The DCII System is maintained by DoD. As described in the applicant's submission to the Board, in DoDI 5505.07, DoD has established procedures by which persons titled or indexed in the DCII System may request correction or expungement of records in the DCII System and related records systems. In the January 2025 Advisory Opinion referenced above, the Coast Guard explained that requests for expungement by Coast Guard members or veterans pursuant to DoDI 5505.07 should be submitted to CGIS.

8. There is no indication that the applicant has made an application to CGIS or DoD to expunge his records in the DCII System. Under these circumstances, the Board lacks authority to grant the applicant's request to expunge his DCII System records. In addition, other administrative remedies remain available to the applicant. Consequently, the portion of the application requesting expungement of DCII System records must be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁵ The Board acknowledges that the applicant has also requested expungement of portions of the CGIS ROI and other information related to the charge that he violated UCMJ Article 120. A review of the application, however, makes clear that the applicant is requesting expungement of those records only to the extent they are maintained in the DCII System. For example, in requesting that the ROI be expunged, the applicant cites to the expungement standard contained in DoDI 5505.07, which covers DCII System expungement requests. Moreover, this understanding of the application is consistent with the applicant's stated purpose of preventing the information in question from appearing during pre-employment background checks, as any copies of records maintained in the applicant's military personnel file would be unlikely to impact a civilian background check.

ORDER

The application of former HS3 [REDACTED] with respect to upgrades to service characterization, reenlistment code, and narrative reason for separation, will be administratively closed. The remaining portions of the application are denied.

March 27, 2025

