

**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. 2024-065**

  
SR (E-1)

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**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 May 15, 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 February 20, 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**

The applicant is an honorably discharged Seaman Recruit (SR) who spent a total of seventeen (17) days on active duty in the Coast Guard before his discharge on January 24, 1979. He requests that his DD-214 be changed "to reflect a separation for medical reasons." Although the application is not styled as a request for reconsideration, applicant made a request for similar relief to this Board in docket 206-81 (August 7, 1982). His 1982 application requested a change to his reenlistment code and reason for separation – albeit on a different basis – and was granted in part. In his current application, the applicant makes no specific allegation of error or injustice and provides no evidence or information that was unavailable to the Board in 1982.

**SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard for four years, a period of service which began when he reported for recruit training to Training Center Cape May, New Jersey, on January 8, 1979. He reported to sick call on January 12, 1979 complaining of headaches, eye pain, and a sore throat. He was discharged on January 15 with a 48-hour restriction for no prolonged exposure to cold weather. He was readmitted that day complaining of dizziness and eye pain, and discharge again on January 17. He was again readmitted on January 18 after refusing to go into the swimming pool and becoming "psychotic." Applicant was recommended by a medical board for discharge on the basis of unsuitability, which was effected on January 22, 1979. He was given an honorable characterization of service with a reenlistment code of 4 (RE-4).

In his 1980 and 1982 applications to this Board, the applicant alleged error and injustice related to his RE code after attempting to enlist in the Army. Applicant had previously been ineligible to enlist in the Army due to low test scores on the entrance examination, but had been able to enlist in the Coast Guard. After his discharge from the Coast Guard, he subsequently passed the Army entrance examination but was unable to enlist due to his RE4 code. The applicant claimed – and this Board ultimately agreed – that the applicant was enlisted in the Coast Guard with an invalid test score. This Board ordered that applicant’s reason for separation be corrected to “convenience of the Government due to erroneous enlistment,” and that his RE code be changed to RE-3E. There is no evidence in the record indicating that the applicant claimed in his 1982 application that he should have received a medical discharge. There is also no substantive evidence in the record that was not available to this Board at the time of their decision in docket 206-81.

### **VIEWS OF THE COAST GUARD**

On November 7, 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.

The JA argued that the application is both untimely and incomplete. In particular, the JA alleged that the application did not include a specific allegation of error or injustice, accompanied by substantial evidence to support such allegation as required by 33 C.F.R. § 52.21(c). Additionally, the JA argued that the 42 year delay in filing this application prejudiced the Coast Guard because records have been lost to time.

### **APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD**

The applicant was provided the Coast Guard Advisory Opinion, but did not provide a response.

### **APPLICABLE LAW AND POLICY**

33 C.F.R. § 52.21 provides the general requirements for docketing applications to this Board:

(c) No application shall be docketed or processed until it is complete. An application for relief is complete when all of the following have been received by the Board:

- (1) A signed DD Form 149, providing all necessary responses, including a specific allegation of error or injustice, accompanied by substantial evidence or information in support of such allegation;

33 C.F.R. § 52.22 sets for the time limits for applying for correction of a record with this Board.

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. If an application is untimely, the applicant shall set forth reasons in the application why it is in the interest of justice for the Board to consider the application. An untimely application shall be denied unless the Board finds that sufficient evidence has been presented to warrant a finding that it would be in the interest of justice to excuse the failure to file timely.

33 C.F.R. § 52.67 establishes the requirements for reconsideration of a previous decision by this Board:

- (a) Reconsideration of an application for correction of a military record shall occur if an applicant requests it and the request meets the requirements set forth in paragraph (a)(1) or (a)(2) of this section.
  - (1) An applicant presents evidence or information that was not previously considered by the Board and that could result in a determination other than that originally made. Such new evidence or information may only be considered if it could not have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence; or
  - (2) An applicant presents evidence or information that the Board, or the Secretary as the case may be, committed legal or factual error in the original determination that could have resulted in a determination other than that originally made.

### 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. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice. The applicant received the original opinion of this board in 1982, yet did not apply to this Board until April 24, 2024. No explanation was given by the applicant for this delay, except that he didn't think of it at the time and lost his DD-214 while he was homeless.

3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so. 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>4</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.”<sup>5</sup>

4. The Board may correct any military record of the Coast Guard when necessary to correct an error or remove an injustice.<sup>1</sup> Error means either legal or factual error.<sup>2</sup> Injustice, when not also error, is treatment by the military authorities that shocks the sense of justice but is not technically illegal.<sup>3</sup> 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.<sup>4</sup> 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.”<sup>5</sup>

5. The Board does not need to venture deeply into the facts of this case to render a decision. The applicant applied to this Board more than forty years ago asking for a change to his discharge status to enlist in the Army. At the time, he alleged that his reenlistment code was erroneous because he had been enlisted with an invalid examination score. This Board agreed, and granted him partial relief. It is unknown whether the applicant ever attempted to enlist in the Army. Over 40 years later, he again asks this Board for a change to his narrative reason for separation, this time to reflect a medical separation. He offers no new evidence and makes no assertion of why it is in the interest of justice to consider this application.

6. Applicant’s request is deficient on its face for three reasons. First, he does not allege an error or injustice that demands a remedy. He simply says “I am requesting my DD-214 be changed to reflect separation for medical reasons.” Secondly, he does not provide the substantial evidence required by our regulations in support of such a claim. Third, in requesting reconsideration of a previous decision, an applicant must provide new evidence that could not have been located and provided the Board with reasonable diligence. The Board notes that the applicant did not refer to this as a request for reconsideration. But his current request is logically predicated on an assertion that the earlier decision of this Board was in error.

7. It may be that at this stage in his life, the applicant simply desires a medical separation more than the “convenience of the Government” separation he asked for and received from this Board in 1982. But such desire must be accompanied by an allegation of error or injustice and substantial evidence to support it. The applicant, of course, may reapply to this Board when he obtains such evidence and can articulate an error or injustice, accompanied by the reasons why it is in the interest of justice for this Board to revisit our decision of more than 40 years ago. But at this time, after a cursory review on the merits, this Board does not find that the interests of justice warrant a waiver of the three-year limit to timely file.

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<sup>1</sup> 10 U.S.C. § 1552(a); 33 C.F.R. § 52.2(a).

<sup>2</sup> *Sawyer v. United States*, 18 Cl.Ct. 860, 868 (1989), *rev'd on other grounds*, 930 F.2d 1577 (Fed.Cir.1991).

<sup>3</sup> *Id.*

<sup>4</sup> 33 C.F.R. § 52.24(b).

<sup>5</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

**ORDER**

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

February 20, 2024

