

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-084

██████████
ME2 (former)

Formerly ██████████

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 March 12, 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 June 26, 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 E5, served on active duty in the Coast Guard for twelve (12) years with an administrative discharge occurring in December of 2012. The applicant claims this administrative discharge was not completed within Coast Guard policy. The applicant asserts he was denied counsel, which he requested, and the members of the Administrative Separation Board (ASB) were biased because of their connection to the applicant. At the time of the ASB, the applicant was facing civilian charges of “inappropriate interaction with a minor.” The applicant was being accused of an inappropriate relationship, to include sexual conduct, with his six (6) year old niece. The applicant denies these allegations and the civil case was ultimately dismissed. However, the Coast Guard pursued separating the applicant due to the allegations and their own Coast Guard Investigative Service (CGIS) department conducted an internal investigation. The applicant expresses that his perceived wrongful incarceration by CGIS inflicted psychological stress upon the applicant contributing to his Post Traumatic Stress Disorder (PTSD).

The applicant asserts that the investigation was without due process and the ASB failed to be complete with nonbiased members. Additionally, the charges brought against the applicant by civilian court were dropped and the applicant affirms this proves his innocence. For these reasons, the applicant is seeking correction to his military record to include: 1) The inclusion of his last set of enlisted evaluation marks that were not endorsed by applicant’s last command, 2) removal from public record the allegedly derogatory remarks by CGIS regarding applicant’s family, 3) upgrade to discharge characterization from Under Other than Honorable Conditions to

Honorable, 4) reinstatement in the Coast Guard or payment for the time the applicant would have served but for the unjust separation, and 5) Coast Guard commitment to new training procedures in handling these cases with greater respect and integrity.

SUMMARY OF THE RECORD

In July of 2011, the applicant was investigated for rape of a minor and molesting a minor. The applicant was accused by his six (6) year old niece for touching her “pee pee and buttohole” while she slept in her bed. The child received a medical examination which results were normal, however the physician’s overall assessment concluded that “based on the information available to this examiner at this time, this case is highly concerning for sexual abuse.” The child was continued to be questioned by various authorities with her story remaining consistent each time. She was questioned if she was certain it was the applicant who touched her and the child confirmed she knew it was him because she saw him but pretended to be asleep.

In January of 2012, CGIS was contacted by Washington state authorities attempting to investigate the case but were unable to reach the applicant by phone and he was stationed out of state in Alaska at this time. After receiving the case file from the state, CGIS began an investigation of the applicant for the alleged crimes.

On March 6, 2012, the applicant was charged by the State of Washington with Rape of a Child in the First Degree and Child Molestation in the First Degree.

On December 24, 2012, the applicant was administratively separated from the Coast Guard with a re-enlistment code of RE4 (not eligible) and separation code (GKQ) misconduct: “Involuntary discharge approved on recommendation of a board when a member has committed a serious military or civilian offense.”

VIEWS OF THE COAST GUARD

On March 26, 2025, a Judge Advocate (JA) for the Coast Guard submitted an advisory opinion in which it recommended that the Board deny relief in this case.

The JA argued that the case is not timely filed within the three (3) year statute of limitations for application to the BCMR and is without error or injustice for the Board to waive the timeliness. If the Board does not deny the applicant based on timeliness, the JA continued to review the applicant’s assertions.

First, the JA asserts that the Coast Guard conducted a valid investigation using CGIS to create an independent fact finding in addition to the ASB, which also includes an investigative arm to review the applicant’s conduct concern before it. This practice is within Coast Guard regulations and appropriate to determine the outcome for the applicant by the ASB. The investigation included steps such as conducting a phone call with the applicant’s then fiancé to inform her of the investigation and seek any information available. This is within Coast Guard practices for member investigations and does not constitute harassment of the applicant. CGIS worked with local officials to better understand the facts of the civilian case against the applicant

and to fully cooperate with the investigation. The term harassment requires specific legal triggers that do not exist for the applicant.

Additionally, the JA argues that the ASB was comprised of adequate and nonbiased members within Coast Guard policy. The applicant argues a senior enlisted member should have been one of the three (3) required members on the ASB, however the JA demonstrates that this was not a requirement in 2012 at the time of the applicant's separation.¹ Each member of the ASB did not have a personal contact or direct work relationship with the applicant allowing each member to hear the case free of bias.

The JA reiterates that the applicant did not raise any objections to the members within the ASB when he had an opportunity to do so during pre-hearing matters on voir dire. The applicant claims to have been denied a right to counsel but the ASB documents signed by the applicant demonstrate he had the benefit of counsel throughout the duration of the ASB.

The JA continues, the applicant fails to articulate how the inclusion of his rejected final enlisted evaluation proves to be an error or injustice. Coast Guard policy allows the EER's to be returned to justify or support any marks given.² The JA argues that the applicant fails to explain what constituted harassment and how this alleged harassment created an error or injustice within his military records.

The JA concludes that the applicant is untimely and has failed to prove error or injustice within his military records, thus the JA recommends the Board deny relief to the applicant.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 10, 2025, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty (30) days. The applicant requested an extension.

On June 6, 2025, the applicant responded to the views of the advisory opinion offered by the Coast Guard. The applicant maintains the same points of contention: harassment, improper ASB members, lack of counsel, and the Coast Guard's failure to perform an unbiased investigation.

The applicant describes his harassment by command for failure to offer referrals or supportive programs such as counseling, Employee Assistance Program, or Command Drug and Alcohol Representative referral. The applicant claims that after his prank call to the emergency response line after he had one (1) beer should have triggered a mandatory CDAR referral, but it only resulted in a negative page seven (Form CG 3307). The applicant did not receive counseling upon exiting the service and the applicant felt this created a hostile work environment and constituted harassment by neglecting his well-being. The applicant states the rushed discharge

¹ The following manual was not enacted until 2014: Enlisted Personnel Administrative Boards Manual, PSCINST1910.1 (2014) at 5, stating "...*Significant aspects of this Manual include: ...Board Membership – Prescribes that one of three voting members of an administrative board must be a senior enlisted member (e-8 or above, and of a grade the same as or senior to the respondent).*"

² Enlisted Accessions, Evaluations and Advancements, COMDTINST 1000.2 at Ch. 5.D.3.a.(2).

process violated his rights and procedures. The applicant claims that this rushed dismissal denied the applicant of critical entitlements including his medical records, a discharge physical, and transition counseling. The applicant asserts he was entitled to what every separating member is entitled to regardless of the characterization of their discharge. Lastly, the applicant feels he was harassed because of the interaction between CGIS and the Alaska State Troopers. CGIS interviewed the applicant and his finance (now his wife) cautioning her to stay away from the applicant and keep her daughter away from the applicant. The applicant claims these were hostile statements that were unsupported by any provable wrongdoing.

The applicant reasserts that the members of the ASB were biased and failed to include a senior enlisted member, which the applicant feels prejudiced him. The applicant agrees that he did have counsel throughout the ASB process, however he contends that it was delayed and inadequate representation. He did not understand the issues he could raise at the time or question the membership of the board.

The applicant claims the Coast Guard failed to perform an independent and unbiased investigation. CGIS relied on statements from the applicant's chain of command and local law enforcement in the state of Washington investigating the offense. These sources painted the applicant in poor light and CGIS allegedly overstepped their authority by getting involved in a warrant generated by Washington State. The applicant has not been able to view the CGIS report and claims this prejudices him because there is not evidence of an independent investigation. The applicant claims CGIS should have interviewed his sister who notified police of the rape and his six (6) year old niece who told her mom of the rape incident. Without interviewing witnesses to the alleged crime, the applicant feels the investigation is flawed. The applicant cannot identify the specific finding for the ground of separation and believes he can't find one because a real reason for separation does not exist.

The applicant is requesting correction to his military record to reflect at least a general discharge, but honorable discharge is preferred. Additionally, the removal of derogatory remarks or evaluations for the applicant's military record is requested. Lastly, the applicant seeks reinstatement into the Coast Guard or compensation for lost benefits and costs.

APPLICABLE LAW AND POLICY

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

- (1) Error can be defined as either legal and/or factual.
- (2) Injustice, when not also error, is treatment by the military authorities that "shocks the sense of justice."³ In addition, the Board has the authority to decide whether an injustice exists in an applicant's record on a case-by-case basis. The application must file within

³ *Sawyer v. United States*, 18 Cl. Ct. 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).

three years after discovery or reasonably should have discovered the alleged error or injustice for a correction or relief.⁴

33 C.F.R. § 52.24 (a)

Burden of Proof: “It is the responsibility of the Applicant to procure and submit with his or her application such evidence, including official records, as the Applicant desires to present in support of his or her case.”

33 C.F.R. § 52.24 (b)

Presumption of Regularity: “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 the preponderance of the evidence.”

Administrative Separation Board Manual COMTINST M1910.2 (1999) at Chapter 3

B. Composition of Board

1. Members. ASBs shall consist of at least three commissioned officers, and it is seldom, if ever, preferable to exceed this number. These officers need not be of the same command as the member or the Convening Authority. The senior member shall be at least a lieutenant commander.

Administrative Separation Board Manual COMTINST M1910.2 (1999) at Chapter 1

D. Effect of Prior Criminal Adjudications

Criminal courts, in protecting the rights of a person accused of a crime, apply a strong presumption of innocence which can only be overcome by proof of all elements of a crime beyond a reasonable doubt under strict evidentiary standards. In contrast, an administrative separation is not a punitive action, but an employment decision. An ASB is concerned with a member’s performance, traits of character, personality disorders, ethical behavior, honor, and other behavior in evaluating that member’s potential for effective continued service in the Coast Guard. The factual findings of an ASB are therefore based upon a “preponderance of the evidence” (i.e. “more likely than not”) standard.

Administrative Separation Board Manual COMTINST M1910.2 (1999) at Chapter 7

B.2. The Board’s findings shall consist of the following:

a. Findings of Fact. After deliberating on the evidence received at the hearing, the Board shall record the facts found regarding the matter investigated. The findings of fact shall include only those facts the evidence establishes, and nothing further. A fact need not be

⁴ 33 C.F.R. § 52.22

proved beyond a reasonable doubt to be listed as such; a preponderance of the evidence is adequate. Each finding of fact will clearly identify the supporting evidence in the record on which it is based.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and 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. The applicant brings this request beyond the required three years of its occurrence making the application untimely for review. However, the Board may review a case in the pursuit of justice. The applicant claims lack of awareness of the BCMR to pursue correction until now.
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” 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.”
4. The applicant alleged that his Other Than Honorable discharge for misconduct for the commission of a serious offense for inappropriate contact with a minor was mishandled creating error and injustice. The Board may correct any military record of the Coast Guard when necessary to correct an error or remove an injustice.⁵ Error means either legal or factual error.⁶ Injustice, when not also error, is treatment by the military authorities that shocks the sense of justice but is not technically illegal.⁷
5. 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.⁸ 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.”⁹

⁵ 10 U.S.C. § 1552(a); 33 C.F.R. § 52.2(a).

⁶ *Sawyer v. United States*, 18 Cl.Ct. 860, 868 (1989), *rev'd on other grounds*, 930 F.2d 1577 (Fed.Cir.1991).

⁷ *Id.*

⁸ 33 C.F.R. § 52.24(b).

⁹ *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. The applicant requests inclusion of his final evaluation marks into his military record. Command has authority to reject the marks provided and seek evidence to support the higher marks.¹⁰ The applicant received a negative page seven just months before his ASB for prank calling the Kodiak, Alaska police department emergency line. The applicant was noted for never being late to work and knowing his required rate knowledge but struggled to demonstrate the Coast Guard core values. Additionally, the lack of finalized markings is not prejudicial to the applicant because this document is not a public record. The inclusion of uncorroborated or unapproved evaluation marks during the applicant's last evaluation period into the applicant's military record would be counter to Coast Guard policy and should be denied.

7. The applicant states he was denied counsel however several documents within the applicant's military record demonstrate representation by counsel including a memo written on behalf of the applicant by counsel providing, "Respondent's Comments Regarding Draft Record of Administrative Separation board for ME2 Clinton D. Moore." The applicant later responds that while he acknowledges receipt of counsel, he finds it to be inadequate. The Board does not take this position from the evidence provided in the applicant's military record, which includes the applicant's legal counsel providing zealous representation in a rebuttal memo. The applicant did not speak to the Coast Guard or civilian authorities until he was represented by counsel. The applicant chose to move forward with his legal counsel in both the Coast Guard and the civilian courts. While the outcome of his Coast Guard ASB is not what the applicant desired, he was well represented and given an opportunity for due process.

8. The applicant claims harassment by the CGIS investigation because of their coordination with local officials and contacting his then fiancé. However, the applicant was uncooperative with the State of Washington by refusing to answer or return phone calls. This led the state officials to reach out to the Coast Guard for help communicating with the applicant regarding the charges being brought. The applicant was aware of these accusations because he received a phone call from his mother within days of the initial allegation, but then refused to answer his mother's phone calls. The applicant acted in a way to avoid any contact with the charges being brought against him and the only way to reach the applicant appeared to be with the assistance from the Coast Guard. The investigation by CGIS was completed in line with Coast Guard policy. Investigators spoke to those sharing a home with the applicant, as is responsible given the charges of Rape and Molestation being brought against the applicant. There was a duty of safety to ensure the fiancé and her daughter were aware of the charges being brought against the applicant. They remained capable of making their own determinations on what to do with this information. The investigation could then ensure if any additional information could be shared to aid in their investigation of the applicant. The applicant claims that CGIS should have interviewed his six (6) year old niece and his sister who were making the allegations. The Board does not find this to be appropriate or within the Coast Guards requirements given the volumes of interviews provided to CGIS by officials who had already taken the child's statement on multiple occasions. The information provided by officials was satisfactory for CGIS to complete their investigation.

¹⁰ Enlisted Accessions, Evaluations, and Advancements COMDTINST M1000.2 at Chapter 5.F. The Enlisted Employee Review Process.

9. The applicant contends that the ASB membership was biased and created a detriment to the outcome of a fair review. The ASB followed the guidelines of the Coast Guard with each member. While this Board acknowledges the location of Kodiak, Alaska being remote the daily interactions were not among the officers on the Board and the applicant. Those present on the ASB were without reason to be biased towards the applicant. They did not work alongside the applicant to form any positive or negative interaction towards the applicant. The lack of a senior enlisted member was appropriate as enlisted representation in the ASB membership was not a requirement during the applicants ASB in 2012. Though this requirement has been changed to require a senior enlisted member, it does not meet the requirement at the time of the applicant's ASB. The applicant, through counsel, had every opportunity to speak on his behalf and showcase character witnesses to the ASB.

10. The applicant claims he does not know why he was removed from service by the ASB. However the cause for removal appears clearly in his military record. By a preponderance of evidence, the ASB determined more likely than not the applicant had committed the civilian offense being charged against him. The Coast Guard does not need to wait for civil court decisions to be made to come to their own conclusion; nor does a failure to convict in civil court require the Coast Guard to maintain a member. The ASB is administrative in nature, meaning it focuses on the employment future of the member in the Coast Guard. The ASB used the information gathered by CGIS, the applicant's past military record, and character/witness statements to determine that the applicant was not a member holding of the Coast Guard core values and should be separated.

11. The Board, in full view of the facts and assertions made, does not find an error or injustice occurred during the applicant's separation proceedings. The applicant's requests for upgrade in discharge type should be denied. The applicant's request for reinstatement into the Coast Guard or repayment for wages lost for forced separation should be denied. The applicant's request for inclusion of incomplete markings for his last performance period in 2011 should be denied. The applicant's request for removal of fact-finding documents conducted by CGIS should be denied. The Board is not of an authority to place training requirements upon the Coast Guard and therefore the applicant's request for new training procedures to produce "respect and integrity" when dealing with an ASB for misconduct should be denied.

12. As the applicant's claim is without potential merit, the Board will not excuse his untimeliness in filing his application.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The application of former E5, [REDACTED] USCG, for correction of his military record, request for reinstatement or repayment, and removal of CGIS fact finding records is denied. All requests presented by the applicant are denied.

June 26, 2025

