


**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. 2024-097**

  
FS2 (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 April 2, 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 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 is a former FS2 (E-5) and was separated for misconduct with a General (Honorable Conditions) discharge on December 11, 2006 after serving four (4) years, eight (8) months, and ten (10) days of active duty, according to the applicant's DD214. The applicant asks the Board to upgrade his discharge to Honorable on the basis of his post-discharge conduct. He does not allege error in his record, or provide evidence to support his request outside of what is written in blocks 13 and 14 of his DD149, namely that he has "conducted [him]self as a good person since [his] discharge," and that he has "been a good citizen since [he] got out."

**SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard on April 2, 2002.

On July 9, 2003, the applicant was involved in an incident where he consumed more than 15 alcoholic drinks and committed an indecent assault on a shipmate. As a result, he was referred to a two-week outpatient treatment program for alcohol abuse. His successful completion of the program was documented on September 10, 2003.

On May 1, 2005, the applicant reenlisted in the Coast Guard for four years.

On or about September 22, 2006, the applicant tested positive on a urinalysis for cocaine. He was recommended for and received an administrative separation for misconduct (involvement with drugs) and received a General (Honorable Conditions) Discharge on December 11, 2006.

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

On February 10, 2025, 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 November 4, 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 PSC noted that the applicant had been separated for a positive urinalysis test for illegal drugs, and had provided no evidence of error or injustice in his case. The PSC also noted that the applicant's request is untimely.

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

On February 13, 2025, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty (30) days. As of the date of this Board hearing, no response has been received from the applicant.

### **APPLICABLE LAW AND POLICY**

1. 33 C.F.R. § 52.21(c) sets forth the requirements for docketing and processing applications to the Board. In particular, applications are complete when they include a "specific allegation of error or injustice, accompanied by substantial evidence or information in support of such allegation." 33 C.F.R. § 52.21(c)(1).

2. 33 C.F.R. § 52.22 sets forth timeliness requirements for applications to 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.

3. Coast Guard Personnel Manual (COMDTINST M1000.6A) Chapter 12.B.18.b.4 (October 2005) was the authority for the applicant's separation. It identifies "Involvement with Illegal Drugs" as a basis for separation for misconduct, and states as follows:

Involvement with Drugs. Any member involved in a drug incident or the illegal, wrongful, or improper sale, transfer, manufacture, or introduction onto a military installation of any drug, as defined in Article 20.A.2.k., will be processed for separation from the Coast Guard with no higher than a general discharge.

## 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 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 his discharge on December 11, 2006, but did not make application to the Board until March 12, 2024. The applicant does not assert an alternate later date when the alleged error or injustice was discovered. As a result, this application is untimely.

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 first turns to the reasons for delay. The applicant does not provide any explanation as to why he waited more than 17 years to make application to this Board for an upgrade to his discharge. While he asserts that he has been a “good person” and “good citizen” since his discharge, he provides no evidence related to his post-discharge conduct that would explain or justify his delay in making this application.

5. The Board next turns to the potential merits of the applicant's claims. The applicant does not make an allegation of error or injustice, and provides no evidence to support such an allegation. His request appears to be based on clemency grounds, which is a permissible basis to consider relief. However, no evidence is included with the application to support this request. This Board is not an investigative body, and must decide cases based on the evidence presented by the applicant and contained within the applicant's Coast Guard record. The applicant has provided the Board no evidence that he has in fact been a good person or citizen since his discharge, and the Board is under no obligation to obtain such evidence on his behalf.

6. A cursory review of the applicant's record shows that he tested positive in a urinalysis for cocaine, for which he was recommended for discharge. He admitted that he used cocaine in his response to his proposed discharge. There were no apparent errors in the discharge process, and the characterization of service the applicant received was consistent with Coast Guard policy at the time. The applicant alleges no error. While he now claims that his subsequent conduct justifies a discharge upgrade, he has provided no evidence in support of that claim. Without

substantial evidence to support a claim of error or injustice, the Coast Guard maintains its presumption of regularity.

7. 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 the 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 FS2 [REDACTED], USCG, for an upgrade of his characterization of service to Honorable is denied.

March 27, 2025

