


**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. 2024-103**

  
OS2/E-5 (former)

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**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 May 28, 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 April 10, 2025, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICATION AND RECORD SUMMARY**

The applicant, a former Coast Guard Operations Specialist, Second Class (OS2/E-5) was administratively separated from the Coast Guard in November 2006 after being accused of forging another servicemember’s signature on a loan application. His DD Form 214 reflects an “Other Than Honorable” (hereinafter “OTH”) characterization of service, a RE-4 (ineligible) reenlistment code, and “Triable by court martial” as the narrative reason for separation, with corresponding separation code “KFS.” The separation authority is listed as “COMDINST M1000.6A, ART 12.B.21.”

In his May 2024 submission to the Board, the applicant stated: “I want to change my characterization of discharge, re-enlistment code, separation code and/or narrative reason for discharge.” The application does not detail what specific characterization of service or other changes are being requested.<sup>1</sup>

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<sup>1</sup> 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 conditions. The two punitive discharges may be awarded only as part of the sentence of a conviction by a special or general court-martial.

As will be discussed further, the Coast Guard has been unable to locate the applicant's "separation package" due to the passage of time since his 2006 discharge. Consequently, the record summary that follows in this section derives primarily from the limited materials submitted by the applicant. These materials included the DD 149 application form, a short personal statement, an administrative investigation report (IR) including copies of the loan documents relevant to the forgery allegations, and some of the other evidence compiled by the investigator. With this context established, the Board will proceed to summarize the record.

On February 8, 2006, the applicant faxed an application for a \$2,500.00 loan to a lender. In relevant part, the application included a "Unit Commander/1<sup>st</sup> Sergeant Verification" page. The top portion of the page contained a consent provision allowing the lender to contact the applicant's Commanding Officer (CO) to obtain the applicant's address and other collection-related information if the loan went into default. The applicant signed this top portion of the verification page on the appropriate signature line on February 8, 2006. The bottom portion of the page included a signature line for the applicant's "Commander/1SG" and a line for that individual's printed name and rank/grade. On these lines appeared the name and signature of F.G., an E-7 who worked with the applicant.

The lender proceeded to fax a copy of the loan documents to F.G. for verification, and F.G. noticed that the printed name was not in his handwriting, nor was the signature his. F.G. then initiated a "Report of Offense and Disposition, and Record of Non-Judicial Punishment" (CG-4910) against the applicant.

The applicant's command requested a Preliminary Inquiry Officer (PIO) conduct an investigation. According to the IR, dated March 17, 2006, upon questioning, the applicant admitted to faxing the loan application to the lender but maintained he had filled out only the top portion of the "Unit Commander/1<sup>st</sup> Sergeant Verification" page before faxing it and had not written or signed F.G.'s name. The IR noted that the CG-4910 initiated by F.G. included several charges of violations of the Uniform Code of Military Justice (UCMJ), including Article 123—Forgery. With respect to this charge, the investigator stated it was very hard to determine whether the applicant had signed F.G.'s name because no witness had seen him do it. As such, the PIO stated that he believed forgery could not be proven. With respect to other charges listed on the CG-4910, the PIO found that their descriptions were so vague that they could not be substantiated. The PIO ultimately recommended against pursuing further disciplinary action for forgery or the other charges on the basis that who signed F.G.'s name could not be determined by the investigation. The PIO further stated that in his opinion, the incident "needed to be handled at a much lower level," and that he believed the applicant "to be honest and forthright."

The IR listed six enclosures: (1) Original Miranda/Tempia rights and statement signed by the applicant; (2) signed statement by F.G.; (3) signed statement by N.K., another OS2 who worked with the applicant; (4) signed statement by the applicant's CO, D.D.; (5)

the Unit Commander/1<sup>st</sup> Sergeant Verification page provided by the lender; and (6) the online loan application provided by the lender.

With the copy of the IR included with his submission to the Board, the applicant provided only enclosure number four, the statement from D.D., his CO. D.D. stated that F.G. had provided a copy of the loan document and alleged that his name and signature were forged. D.D. proceeded to perform a cursory investigation, during which it was determined that the unit's fax machine showed the lender had been faxed four times on three days, including February 8, 2006. Radio logs showed the applicant was on watch all three days during the relevant times. D.D. also obtained from the lender the original loan application it received by fax, and noted it was identical to the document provided by F.G., with his name and signature on the verification page. D.D. stated she had questioned the applicant multiple times, and although he admitted to faxing the application, he denied filling out F.G.'s name or signature. D.D. concluded by stating that she had known the applicant for more than three years, that he had always been truthful with her, and that she did not feel he was being untruthful now.

Again, the applicant did not provide copies of the statements obtained by the investigator from F.G. or N.K., or a copy of the online application provided by the lender.

In his submission to the Board, the applicant stated that in reviewing his military records, he realized how unjust it was for the Executive Officer at the time to proceed with Non-Judicial Punishment (NJP) even after the IR recommended against further action. Because he did not commit the offenses he was accused of, the applicant explained, he decided to take his case to court martial. He stated that he was assigned a Judge Advocate General (JAG) lawyer who told him he was going to lose the case and go to jail and pressured him to accept an OTH discharge. The applicant reiterated that he had never filled out F.G.'s name on the loan application's verification page, and he requested that the Board carefully review his case.

In a separate statement submitted with his application, the applicant asserted that he had pursued his college degree and other certifications in Information Technology since being discharged from the Coast Guard and was currently working for a city government agency.

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

In the Coast Guard's views dated February 6, 2025, a Judge Advocate (JA) recommended the Board deny the applicant's request for relief. Initially, the JA noted that the application was filed 18 years after separation, well beyond the three-year limitation period contained in 10 U.S.C. § 1552. In addition to the statute of limitations, the JA asserted "laches," an equitable defense, on the basis that the applicant's delay had significantly prejudiced the Coast Guard. Specifically, the JA noted that the Coast Guard

had been unable to locate relevant documents from 2006, including the applicant's "separation package." As such, the JA argued, the Coast Guard was forced to rely exclusively on the applicant's narrative of events. The JA went on to argue that even were the Board to address the merits of the applicant's case, the applicant had failed to present sufficient evidence to overcome the presumption of administrative regularity to which the Coast Guard was entitled.

Enclosed with the JA's submission was a memorandum from the Coast Guard Personnel Service Center (PSC) dated January 15, 2025. The PSC presented the same arguments as the JA with respect to the application's untimeliness, and noted the applicant had offered no reason for his delay in filing. The PSC also argued that the applicant had failed to present any information suggesting that the Coast Guard failed to act correctly, lawfully, and in good faith. Finally, while acknowledging the IR's recommendation against further action, the PSC emphasized that the IR acted only as a recommendation and was not binding on Coast Guard authorities.

### **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**

#### ***Board Proceedings***

"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 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). 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).

"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 (a). "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." 33 C.F.R. § 52.24 (b). 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.” *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

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.* In determining whether to waive the time bar, the Board should consider both the reasons for the delay and the potential merit of the claim based on a cursory review. *Allen v. Card*, 799 F.Supp. 158 (D.D.C. 1992).

The equitable doctrine of laches may be asserted before the Board. *Allen*, 799 F.Supp at 165. The government bears the burden of proving the affirmative defense of laches by demonstrating it has been prejudiced by the applicant’s delay. *Id.*

### ***Coast Guard Policy***

#### ***Military Justice Manual***

The Coast Guard’s Military Justice Manual, COMDTINST M5810.1D (August 2000) was in effect at the time of the applicant’s separation. It provided the following, in relevant part:

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#### **CHAPTER 1 NONJUDICIAL PUNISHMENT [NJP]**

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##### **1.A. GENERAL**

###### **1.A.1. Authority**

Article 15, Uniform Code of Military Justice [UCMJ], provides commanding officers with the authority to impose punishment without resort to the judicial forum of a court-martial....

###### **1.A.2. Purpose**

###### **1.A.2.a. Maintenance of Discipline**

Each commanding officer is responsible for the maintenance of discipline within his or her command.... [The]. . . decision [whether to invoke NJP] . . . rests within the sound discretion of the commanding officer....

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**1.B. PRELIMINARY ACTIONS**

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**1.B.3. Initial Action**

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**1.B.3.c. Designation of a Preliminary Inquiry Officer [PIO]**

The executive officer normally designates a member of the command to conduct a preliminary inquiry. The designation may be made orally or in writing.

**1.B.4. Preliminary Inquiry Officer [PIO]**

**1.B.4.a. PIO Duties**

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(6) At the conclusion of the preliminary inquiry, the PIO shall . . . [state] what, in his or her opinion, actually occurred along with a recommendation as to the appropriate disposition of the matter....

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**1.B.4.h. PIO Recommended Disposition**

.... The PIO report shall include a recommendation for one of four possible dispositions: [Dismissal, NJP, Court-Martial, or Other Administrative Measures].

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**1.B.5.e. Right to Demand Trial by Court-Martial In Lieu of NJP By Member Not Attached To or Embarked in a Vessel**

If the matter will be forwarded for NJP, a member who is not attached to or embarked in a vessel . . . must be informed that he or she has a right to demand trial by court-martial in lieu of non-judicial punishment. He or she must also be informed of the right to consult with an attorney before accepting or rejecting NJP....

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*Coast Guard Personnel Manual*

The Coast Guard Personnel Manual, COMDTINST M1000.6A (January 1988), including all updates incorporated up through October 2005 (hereinafter “PERSMAN”), was the controlling policy at the time of the applicant’s separation.<sup>2</sup> It provided the following, in relevant part:

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<sup>2</sup> In September 2011, sections of PERSMAN were eliminated and reissued as issue-specific manuals. For example, Military Separations, COMDTINST M1000.4 replaced Chapters 12 and 17 of PERSMAN. Pre-2011, however, including during the applicant’s service, PERSMAN was the relevant policy.

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**CHAPTER 12 SEPARATIONS FROM THE SERVICE**

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**12.B.21. Discharge for the Good of the Service**

**12.B.21.a. Request for Discharge**

An enlisted member may request a discharge under other than honorable conditions for the good of the Service in two circumstances: in lieu of UCMJ action if punishment for alleged misconduct could result in a punitive discharge or at any time after court-martial charges have been preferred against him or her....

**12.B.21.b. Legal Counsel**

A member who indicates a desire to submit a request for a discharge under other than honorable conditions for the good of the Service will be assigned a lawyer counsel....

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*DD 214 Manual*

Certificate of Release or Discharge from Active Duty, DD Form 214, COMDTINST M1900.4D (September 1993) (hereinafter “DD 214 Manual”) was in effect at the time of the applicant’s separation. It provided that its application was to be in conjunction with the Separation Program Designator (SPD) Code Handbook. Regarding boxes 24 through 28 on the DD 214 (which are relevant for this case), the DD 214 Manual essentially deferred to the appropriate entries in the SPD Handbook.

*Separation Program Designator Handbook*

The SPD Handbook referenced in the DD 214 Manual provided the following during the relevant time period with respect to separations under PERSMAN Article 12.B.21.:

<u>SPD Code</u>	<u>Narrative Reason</u>	<u>RE Code / Authority</u>	<u>Explanation</u>
KFS	TRIABLE BY COURT MARTIAL	RE4 12-B-21 (ENL)	Voluntary discharge allowed by established directive when separated for conduct triable by court martial for which the member may voluntarily separate in lieu of going to trial.

## FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction under 10 U.S.C. § 1552(a), as the applicant is seeking correction of an alleged error or injustice in his military records. The applicant has exhausted all other 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. The applicant requested to appear at a hearing before the Board via video or telephone. 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.<sup>3</sup>

3. The application is not timely. Under 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22, applications must be filed within three years of when the applicant discovered, or reasonably should have discovered, the error or injustice being alleged. In this case, the applicant was separated from the Coast Guard in November 2006, and his application was received by the Board in May 2024, more than 17 years later.

4. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.<sup>4</sup> 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. Regarding his delay in applying to the Board, the applicant provided no explanation. On his application, he did reference having reviewed his Coast Guard records in June 2022, at which point he realized how unjust his treatment had been. But again, the events giving rise to the application occurred in 2006. The applicant offered no explanation as to why it took him more than 15 years, to June 2022, to recognize the alleged injustice, or why it took two additional years to file an application with the Board. Under these circumstances, the Board does not find the reasons offered for the applicant's delay to be compelling, to the extent any reasons were offered.

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<sup>3</sup> *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).

<sup>4</sup> 10 U.S.C. § 1552(b); 33 C.F.R. § 52.22.

b. A cursory review shows that the application lacks potential merit. Based on the record, it appears that following F.G.'s report that his signature had been forged, the applicant's command requested a preliminary inquiry into the accusation. Despite the PIO's recommendation against further action, the applicant's command informed him that NJP proceedings would be initiated. At this time, the applicant exercised his right to demand a trial by court martial. Leading up to the court martial, however, the applicant requested an OTH discharge in lieu of the court martial, on advice of counsel, which was granted. This series of events was consistent with the Coast Guard policies in force at the time, as cited in the section above, and the applicant has not argued otherwise.

The applicant *has* alleged that it was unjust for his command to proceed with NJP, contrary to the PIO's recommendations. In this regard, the Board notes that the relevant policies made clear that discretion as to whether to invoke NJP rested with a member's CO, based on consideration of all relevant information. There is no indication that a PIO's recommendations were to be considered binding on commands. In addition, the Board observes that the PIO's recommendations appear to have been based primarily on the absence of any direct witness to the applicant signing F.G.'s name. Yet, the applicant admitted to faxing the verification form to the lender, and the lender confirmed that the form it received via fax included F.G.'s signature. Given these circumstances, and the wide discretion granted to commands to pursue NJP, the Board's cursory review does not suggest an error or injustice with respect to the decision to initiate NJP despite the PIO's recommendations.

The applicant has also alleged that after exercising his right to demand a court martial in lieu of NJP, he was pressured by his JAG attorney to accept an OTH discharge to avoid a conviction and jail time. Per PERSMAN Article 12.B.21., however, the Board notes that an OTH discharge request would have had to originate from the applicant. This decision was made with the advice of legal counsel, and there is no indication that the procedures detailed in Article 12.B.21. were not followed. Upon cursory review, the Board does not find that the applicant's report of feeling pressured during his court martial proceeding, 17 years later, is sufficient to overcome the presumption of administrative regularity to which the Coast Guard is entitled.

The applicant requested that his character of service, reenlistment code, and narrative reason for separation and corresponding separation code be "changed," but he has not specified what changes he is requesting, nor has he explained why he believes the relevant designations on his DD 214 were assigned erroneously, or unjustly. A review of Coast Guard policies in effect during the relevant time shows that they were not. Specifically, the DD 214 Manual in effect referred to the SPD Handbook. The Handbook, in turn, provided that for members discharged pursuant to PERSMAN Article 12.B.21., characterization of service should be OTH, the reenlistment code should be RE-4, the

narrative reason for separation should be “Triable by court martial,” and the separation code should be “KFS.” Thus, the record shows that pursuant to the applicant’s voluntary decision to separate from the Coast Guard pursuant to PERSMAN Article 12.B.21., his discharge was carried out in accordance with policy.

The Board’s role is not to substitute its own judgment for that of Coast Guard authorities with respect to discretionary matters. Fundamental to the Board’s analysis is the presumption that Coast Guard officials have acted lawfully, correctly, and in good faith. It is the applicant’s burden to overcome this presumption by a preponderance of the evidence, and mere allegations, personal beliefs, and disagreements with outcomes are not sufficient for this purpose. For the reasons discussed above, the Board finds on cursory review that the applicant has not carried his burden to overcome the presumption of regularity.

In addition to the statutory time bar, the Coast Guard has also raised the equitable defense of laches. The Coast Guard argued that the lengthy filing delay has significantly prejudiced its ability to respond to the applicant’s claims because relevant documents detailing the proceedings surrounding the applicant’s separation are no longer available. Because the Board finds based on the available evidence on cursory review that the applicant has not met his burden and is consequently denying the application, the Coast Guard has not been prejudiced by the delay such that the Board needs further to consider whether the affirmative defense of laches applies to this case.

5. Based on the foregoing, the Board finds that the interests of justice do not require waiving the three-year statute of limitations in this case. Accordingly, the application will be denied as untimely.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

**ORDER**

The application of former OS2/E-5 [REDACTED] is denied.

April 10, 2025

