


**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. 2024-114**

  
(former) SR/E-1

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**FINAL DECISION**

This proceeding was conducted by the Board for Correction of Military Records of the Coast Guard (hereinafter “Board” or “BCMR”) according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the application on July 31, 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 July 10, 2025, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

**INTRODUCTION**

The applicant, a former Seaman Recruit (SR/E-1), was discharged from the Coast Guard on January 5, 1990, with an Other Than Honorable conditions (hereinafter “OTH”) characterization of service, after requesting an OTH discharge in lieu of his upcoming court-martial.<sup>1</sup>

In an application filed in February 1992, the applicant requested that the Board change his service characterization from OTH to Honorable. In a decision issued on July 23, 1993, the Board denied the application.<sup>2</sup> In the application now before the Board – filed in January 2024 – the applicant requests reconsideration of the 1993 decision, again asking the Board for an Honorable service characterization, in addition to “any backpay to which [he is] entitled.”

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<sup>1</sup> There are five types of service characterizations for enlisted members: three administrative and two punitive. The three administrative characterizations are Honorable, General—Under Honorable Conditions, and Other than Honorable (OTH). The two punitive characterizations – Bad Conduct and Dishonorable – may be awarded only as part of a court-martial sentence.

<sup>2</sup> See BCMR Docket No. 91-92.

## SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard as a SR/E-1 on October 7, 1985. He was promoted to Seaman Apprentice (SA/E-2) in December 1985 and his rating was changed to Fireman Apprentice (FA) in December 1986. He was later demoted to SR/E-1 as part of a nonjudicial punishment (NJP).

In early 1989, the applicant became the subject of an investigation concerning the theft of travel and payroll checks from a Coast Guard support center. The investigation's focus on the applicant was based, at least in part, on perceived similarities between his signature and those found on the stolen checks. The applicant provided "exemplars" of his handwriting to investigators in April 1989, which were submitted to the Federal Bureau of Investigation (FBI) for analysis.

On July 31, 1989, the applicant was charged with violations of the Uniform Code of Military Justice (UCMJ) related to the theft/forgery investigation.

In a laboratory report dated September 5, 1989, the FBI determined that the forged checks "may have been prepared" by the applicant, but that additional exemplars were needed to reach a more conclusive determination.

On September 21, 1989, the applicant was ordered by his command to complete additional exemplars for submission to the FBI. The order stated that the applicant's defense counsel had been notified and was authorized to accompany the applicant to complete the exemplars. The applicant refused to comply with the order.

The applicant's initial four-year enlistment was scheduled to end in early October 1989. Prior to the end of his enlistment, however, the applicant was involuntarily extended for three additional months of active duty due to the pending investigation.

On October 19, 1989, additional charges were brought against the applicant based on his failure to obey various orders, including the order to provide additional handwriting exemplars. Other charges were based on the applicant having thrown rocks at two private vehicles belonging to other service members two days prior, causing approximately \$3,000.00 in damage.

In a memorandum dated October 26, 1989, an "Article 32 Officer" referenced a letter dated October 20, 1989, which advised that charges against the applicant had been dismissed without prejudice. Accordingly, the memo stated, the Article 32 investigation

had been cancelled.<sup>34</sup> This memo was addressed to the applicant and his defense counsel was copied.

On November 20, 1989, additional UCMJ charges were brought against the applicant related to disobeying lawful orders, disrespectful conduct, and communicating threats to superior officers and other Coast Guard members. The applicant was placed in confinement pending trial at this time.

On December 13, 1989, the applicant requested an OTH discharge in lieu of trial by court-martial “under circumstances that could lead to a bad conduct or dishonorable discharge.” As part of his request, the applicant acknowledged that he had been fully advised of the implications of such a request by his legal counsel and was satisfied with that legal counsel.

On December 18, 1989, the applicant’s request was endorsed by the Commanding Officer (CO) of the support center where the applicant was stationed. The CO explained that following the applicant’s refusal to comply with the September 1989 order to provide additional handwriting exemplars, although strong circumstantial evidence suggested guilt, the matter was not pursued further, and charges were dismissed, based on the lack of confirmatory FBI laboratory tests. However, the CO stated, during the investigation, the applicant’s attitude toward superiors and others began to deteriorate and had devolved into direct and implied threats against specific individuals and the command in general. The CO explained that these threats were not taken lightly, and so the applicant was ordered into pre-trial confinement pending his court-martial, which had been scheduled for January 8, 1990. The CO asserted that given the applicant’s performance and demeanor, an OTH discharge was appropriate. In addition, he stated his belief that when compared to the time and resources required to complete a court-martial, approval of the applicant’s request for an OTH discharge was a more efficient means to bring the matter to an end.

The Commandant ultimately granted the applicant’s request, and the applicant was discharged on January 5, 1990, with an OTH characterization of service. He was assigned a separation code of KFS (for the good of the service) and a RE-4 (not eligible) reenlistment code.

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<sup>3</sup> Per UCMJ Article 32, evidence is reviewed at a preliminary hearing to determine probable cause before a case is referred to a general court-martial. It follows from a dismissal of charges that an Article 32 hearing/investigation would no longer be necessary.

<sup>4</sup> Based on the filing of additional charges on October 19, 1989, one day prior to the dismissal referenced in the October 26 memo, and the procedural history provided by the Coast Guard Chief Counsel in November 1991 (discussed below), the Board infers that the October 20 dismissal and October 26 cancellation of the Article 32 proceedings included only the original theft/forgery charges brought in July 1989, and not the October 19 charges related to the applicant’s refusal to provide additional handwriting exemplars, and other conduct.

On August 2, 1990, the applicant requested that his discharge be reviewed by the Coast Guard Discharge Review Board (DRB).<sup>5</sup> The request was based on the applicant's belief that: (1) it was unfair to give him a "bad discharge" when he was so close to the completion of his tour of duty; (2) his record of NJPs indicated only isolated and minor infractions; and (3) he faced extreme racial discrimination that impaired his ability to serve.

On August 15, 1991, a five-member DRB panel convened to review the applicant's discharge. The DRB voted unanimously to: (1) upgrade the applicant's service characterization to Honorable; (2) change his separation code from KFS to JMJ (indicating unsuitability-apathy, defective attitudes, and inability to expend effort effectively); and (3) retain the RE-4 reenlistment code. The DRB panel conceded that the applicant had "appropriately earned a reputation as a troublemaker." It found, however, that the applicant had been involuntarily held beyond his expiration of enlistment because he was under investigation for theft and forgery, but these allegations had not resulted in charges being referred. The panel found that the applicant was frustrated with the involuntary extension, and that he was placed in an "impossible situation," which led to confrontations with his command and resulted in his misconduct and court-martial charges. The panel further found that the applicant had completed four years of honorable service, and that for these reasons, an upgrade of the service characterization was warranted.<sup>6</sup>

On October 21, 1991, the president of the DRB, who was not a member of the panel that considered the case, sent a memorandum to the Commandant indicating that he disagreed with the DRB's findings. He initially stated that "[the applicant's] behavior throughout his enlistment was, at best, marginal," and he detailed nine separate negative CG Form 3307s (Administrative Remarks) (hereinafter "Page 7s") issued to the applicant beginning as early as December 1985, for conduct ranging from failure to pay child support to unauthorized absences. The DRB president further asserted that the applicant had improperly described his in-service infractions as "minor," given the number of incidents and their seriousness. In addition, the DRB president observed that the DRB panel had dismissed the applicant's claim of racial discrimination based on a lack of supporting evidence. The DRB president went on to assert that the applicant's proximity to the end of his enlistment was irrelevant, and that the applicant was only involuntarily extended because of criminal charges that warranted further investigation. The DRB president concluded by stating it was not clear to him why the panel had voted to upgrade the applicant's discharge at all, let alone to an Honorable characterization, as his record did

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<sup>5</sup> The DRB is an administrative adjudicative body within the Coast Guard established under 10 U.S.C. § 1553. The DRB is separate from the BCMR, and its jurisdiction is more limited, extending only to requests for discharge upgrades (including characterization of service, separation code, narrative reason for separation, and reenlistment code). Generally, the BCMR may consider discharge upgrade applications which have been denied by the DRB.

<sup>6</sup> The DRB's August 1991 decision has not been provided by the applicant or the Coast Guard, and it is not otherwise available to the Board. While the applicant labeled "Exhibit D" of his submission as "Decision from DRB," that section consisted, instead, of a copy of this Board's July 1993 decision. As such, the Board's summary of the DRB panel's decision derives from descriptions and quotations contained in memoranda prepared by the DRB president and the Coast Guard Chief Counsel in October and November 1991, respectively (both summarized below).

not reflect honorable service, and he had voluntarily requested an OTH discharge on advice of counsel in lieu of trial by court-martial.

In a November 20, 1991, memorandum, the Coast Guard's Chief Counsel summarized the DRB panel's decision and the DRB president's memo, and recommended that the Commandant overrule the decision to upgrade the applicant's discharge. The Chief Counsel emphasized that the reason the original theft and forgery allegations were not pursued was because the applicant committed additional misconduct (his refusal to comply with the lawful order to provide additional handwriting exemplars). Under these circumstances, the Chief Counsel stated, the decision not to pursue the original allegations could not be seen as favorable to the applicant. The Chief Counsel also noted that charges based on the applicant's refusal to provide handwriting exemplars were among those referred to court-martial. The Chief Counsel further emphasized that the conduct leading to charges against the applicant occurred while he was properly extended on active duty, and that the applicant's request for an OTH discharge was made in order to avoid a potentially worse outcome, such as a punitive discharge and/or confinement at hard labor.

In a memorandum dated November 21, 1991, the Commandant disapproved the decision of the DRB panel, finding that the OTH discharge awarded to the applicant was not inequitable.

On February 4, 1992, the Board received a request from the applicant to upgrade his characterization of service to Honorable.

On July 23, 1993, the Board issued its decision denying the applicant's request. The Board found that the applicant had failed to demonstrate that the Coast Guard committed an error or injustice, emphasizing that the applicant, following consultation with his legal counsel, requested the discharge that he ultimately received. The Board also rejected the applicant's contention that the Commandant had improperly overturned the DRB panel's decision, finding that the Commandant had acted under proper authority pursuant to 33 C.F.R. § 51.2(b)(4).

### **APPLICATION**

In his January 2024 submission, the applicant requested reconsideration of the Board's July 1993 decision. Specifically, he asked that his service characterization be upgraded to Honorable, and that he be compensated for any backpay to which he was entitled.

The applicant referred vaguely to a recent application he had filed for benefits. He stated that during the application process, he learned of the dismissal of the Article 32 proceedings and all charges, which he stated had been withheld from him. The applicant argued that he should have been discharged at that time, if not on his original separation

date of October 6, 1989, and questioned why he was not discharged immediately. The applicant also asserted that the DRB panel in 1990 had heard his testimony and determined that he served four years in the Coast Guard honorably. The applicant went on to recall that at his first unit, someone had tried to run him off the road while he was walking to the store, and that at his second unit, people called him a racial slur and assaulted him.

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

In an advisory opinion dated April 7, 2025, a Coast Guard Judge Advocate (JA) recommended that the Board deny the applicant's request. Initially, the JA contended that the application should never have been docketed because it did not meet the criteria for reconsideration of a prior Board decision. Specifically, the JA asserted that the applicant had not submitted any new evidence which would change the result of the prior decision, and which was not available in 1993.

The JA's opinion was accompanied by a memorandum prepared by the Coast Guard Personnel Service Center (PSC), dated January 30, 2025. Therein, the PSC emphasized that the applicant had requested an OTH discharge, with advice of counsel, to avoid a court-martial and a potential bad conduct or dishonorable discharge. The PSC further argued that the applicant had not shown by a preponderance of the evidence that any error or injustice occurred.

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

On April 24, 2025, the Board provided the applicant with a copy of the Coast Guard's views and invited him to respond within 30 days. The applicant did not submit a response or request for extension.

### **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 Board may correct any Coast Guard record when such action is "necessary to correct an error or remove an injustice." 10 U.S.C. § 1552(a)(1).

2. The applicant requested 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>7</sup>

3. Pursuant to 10 U.S.C. § 1552(a)(3)(D), the Board shall reconsider a prior decision if an applicant's request is supported by materials not previously presented to or considered by the Board. A request for reconsideration must include either: (1) evidence that could result in a determination other than that originally made, and which the applicant could not have presented to the Board at the time of the prior decision had he/she exercised reasonable diligence; or (2) evidence or information that the Board committed legal or factual error in the original determination that could have resulted in a different outcome. 33 C.F.R. § 52.67(a).

4. In this case, the applicant has not presented evidence that was not previously considered by the Board, or that could not have been obtained with reasonable diligence prior to the Board's July 1993 decision. The applicant's submission is accompanied primarily by records created at the time of, or prior to, his discharge in January 1990. Although he submitted two undated handwritten statements from other Coast Guard members – one attesting to the applicant being called a racial slur at a bar in January 1989, and another about a shouting match between the applicant and a superior officer – there is no indication in the record, and the applicant does not contend, that either statement post-dates the Board's July 1993 decision.

5. While the applicant focuses on an October 1989 memorandum about the dismissal of charges and cancellation of an Article 32 investigation/hearing, this document was available to the Board at the time of its original decision. In addition, the document was addressed specifically to the applicant, and it makes clear that copies were provided to his defense counsel. The Board also observes that the DRB panel's August 1991 decision discussed the dismissal of the original charges filed against the applicant. As such, the record establishes that the applicant was aware of the dismissal and cancellation of the attendant hearing/investigation at the time of his initial application to the Board. Moreover, the October 1989 dismissal of the original charges and cancellation of the related Article 32 hearing have little bearing on the propriety of the Coast Guard's acceptance of the applicant's request for an OTH discharge in lieu of a court-martial on separate charges. That is, while the Article 32 hearing was cancelled for some charge(s), the applicant could not have simply been released, because other charges remained pending until the applicant requested an OTH discharge in December 1989 in lieu of facing a trial on those charges.

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<sup>7</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).

6. Under these circumstances, the applicant has not presented evidence that was not available previously or that could lead to a determination other than that made in the Board's July 1993 decision.

7. The applicant has also not presented evidence that the Board committed legal or factual error in its July 1993 decision that could have resulted in a different determination.

8. Reconsideration is available when an applicant has submitted new, material evidence. It is not a mechanism for rearguing matters that have previously been evaluated and decided. In this case, the Board fully evaluated the circumstances involved in the applicant's discharge in its July 1993 decision. The applicant has not submitted evidence with the current application that could not have been obtained previously, or that supports a different outcome. Instead, the applicant's submission reiterates his original contentions and expresses general dissatisfaction with the Board's decision, which are not sufficient bases for reconsideration under the applicable standard.

9. For the reasons discussed, the Board finds that the application does not meet the requirements to warrant the Board's reconsideration of BCMR Docket No. 91-92.

**[ORDER AND SIGNATURES ON NEXT PAGE]**

**ORDER**

The request by former Coast Guard member [REDACTED] for reconsideration of BCMR Docket No. 91-92 is denied.

July 10, 2025

