


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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-129


(former) SN/E-3

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 on August 1, 2024, following receipt of the completed application, and the case was assigned to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated June 5, 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 Coast Guard Seaman (SN/E-3), was discharged in July 1992 for unsuitability due to homosexuality. He has requested that the Board upgrade his discharge.

SUMMARY OF THE RECORD

The applicant joined the Coast Guard on May 21, 1991.

The applicant was discharged from the Coast Guard on July 2, 1992. His DD Form 214 (Certificate of Release or Discharge from Active Duty) (hereinafter “DD 214”) included the following entries:

Block 23. Type of Separation: Discharge.

Block 24. Character of Service: Honorable.

Block 25. Separation Authority: COMDTINST M1000.6A, ARTICLE 12-B-16.

Block 26. Separation Code: JML.

Block 27. Reentry Code: RE-4.

Block 28. Narrative Reason for Separation: Unsuitability.

APPLICATION

In his submission to the Board, the applicant stated: “I would like my Other Than Honorable Discharge due to my homosexuality changed to an Honorable Discharge.” The applicant explained that he admitted his homosexuality during service due to constant harassment and questions from other enlisted men and officers that were impacting his mental health. He recalled that his personal life was placed under investigation and that he was often threatened with violence.

Regarding the delay in filing his application, the applicant stated that he had recently seen a news report about discharge classifications being changed for men who were kicked out due to their sexuality, and he was not aware this was an option previously.

VIEWS OF THE COAST GUARD

In a memorandum dated April 3, 2025, a Coast Guard Judge Advocate (JA) initially noted that the applicant had, in fact, received an Honorable characterization of service for his discharge in 1992. As such, the JA stated, the request for an Honorable discharge should be denied. The JA recommended, however, that alternative relief be granted.

The JA stated that while efforts to locate a “JML” Separation Code in Coast Guard directives had been unsuccessful, there was some indication that this code was associated with separating members for homosexuality in the past. Thus, the JA recommended that the Board direct the Coast Guard to change the applicant’s Separation Code entry from “JML” to “JFF,” his Narrative Reason for Separation from “Unsuitability” to “Secretarial Authority,” and his Separation Authority from “Art. 12-B-16” to “Art. 12-B-12.”

In a separate memorandum dated February 6, 2025, the Coast Guard Personnel Service Center (PSC) recommended that the Board deny relief. The PSC stated that although it obtained a copy of the applicant’s DD 214 from the archives, it had been unable to locate any other documentation related to the applicant’s 1992 discharge and its underlying cause. The record, the PSC stated, did not contain any support for the applicant’s contention that his discharge was due to homosexuality. The PSC stated further that although Art. 12.B.16. of the old Personnel Manual applied to unsuitability discharges, other provisions controlled the separation procedures for homosexual conduct.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

Upon receipt of the Coast Guard’s submission, the Board provided it to the applicant and invited him to submit a response. As of the date of this decision, the applicant has not submitted any response.

APPLICABLE LAW AND POLICY

Prior to enactment of the military's "Don't Ask, Don't Tell" (DADT) policy in 1993, the Coast Guard Personnel Manual provided in Art. 12.B.16.b.(6) that "Homosexual (Class III) ... cases are processed under Article 12-B-33 and when an enlisted person is determined to be a Class III homosexual, discharge will be by reason of unsuitability under authority of this article."

COMDTINST M1900.4C (March 1990), containing the Coast Guard's instructions for preparation of the DD 214, was in effect at the time of the applicant's discharge. These instructions specifically provided that a member receiving a separation code of "JML" be assigned "Unsuitability – Homosexual tendencies" as the Narrative Reason for Separation, "RE-4" as the Reenlistment Code, and "12-B-16" as the Separation Authority.¹

DADT was enacted in 1993, allowing homosexual individuals to serve in the armed forces only if they did not disclose their sexual orientation. The policy was formally repealed in 2011, permitting openly gay, lesbian, and bisexual members to serve without restriction.

On September 20, 2011, the Under Secretary of Defense for Personnel and Readiness issued a memorandum, Subject: Correction of Military Records Following Repeal of Section 654 of Title 10, United States Code, announcing the repeal of the law commonly known as "Don't Ask, Don't Tell." The memorandum stated, *inter alia*, that effective immediately, sexual orientation must not be a factor in accession, promotion, separation, or other personnel decision-making.

The memorandum also stated that upon repeal of DADT, some former service members discharged under DADT or prior policies could request a correction of their military records from either their Discharge Review Board (DRB) or their Board for Correction of Military/Naval Records (BCM/NR). The memorandum noted that effective September 20, 2011, DRBs and BCMRs should normally grant requests to change entries on a former member's DD Form 214, including the narrative reason for discharge, separation program designator (SPD) Code, character of discharge, and/or the reenlistment code, when both of the following conditions are met:

¹ The Board acknowledges the PSC's contention that the Coast Guard's Personnel Manual then in effect did not categorize homosexuality-related discharges under that manual's Article 12.B.16. It is sometimes difficult to determine which version of a Coast Guard policy was in effect during an applicant's service many years prior, given the frequent changes and updates. As discussed below, however, it appears clear to the Board that the Coast Guard employed COMDTINST M1900.4C – published in March 1990 – in determining the applicant's DD 214 entries, including "Unsuitability" as the narrative reason for separation and "12-B-16" as the Separation Authority.

- (1) The original discharge was based solely on DADT or a similar policy in place prior to enactment of DADT; and
- (2) There are no aggravating factors in the record, such as misconduct.

The memorandum stated that when correcting the information on a former member's DD 214, the following should be used, assuming the above conditions have been met:

Narrative reason for discharge – change to Secretarial Authority
SPD Code – change to JFF
Character of discharge – change to Honorable
Reentry code – change to RE-1

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 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.²

3. “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 a preponderance of the evidence.” 33 C.F.R. § 52.24(b). Absent evidence to the contrary, the Board presumes that Coast Guard officials 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).

4. The application is untimely, as it was not filed within three years of the applicant's discovery of the alleged error or injustice, as required by 10 U.S.C. § 1552(b).

² *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).

The applicant separated from the Coast Guard in July 1992 and filed his application with the Board approximately 32 years later.

5. 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 in determining whether the interest of justice supports a waiver of the limitations period, the Board should “analyze both the reasons for the delay and the potential merits of the claim based on a cursory review.” 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.”

6. The applicant has explained that he was not aware of the option to request a correction of his records until recently. This, alone, is not a compelling reason for delay. The Board notes, however, that it was not until 2011 that DoD issued the guidance referenced above regarding the end of DADT. As such, any application filed within three years of the applicant’s discharge would have been unlikely to succeed (under then current policy and guidance). In addition, upon cursory review of the record, the Board has determined that alternative relief is warranted, for the reasons discussed below. Thus, after careful consideration, under the facts of this particular case, the Board finds that the interests of justice warrant a waiver of the statute of limitations.

7. Initially, as pointed out by the Coast Guard, the Board notes that the applicant received an Honorable characterization of service when he was discharged in 1992. Thus, his request for an upgrade from an Other Than Honorable (OTH) discharge – which he did not receive – to an Honorable discharge, is moot.

8. The Board concurs with the Coast Guard that alternative relief is warranted. The applicant provides a credible account of his in-service experiences and the causal relationship between his sexuality and discharge. The entries on the applicant’s DD 214 are consistent with the Coast Guard’s pre-DADT policy to issue unsuitability discharges for homosexuality. The record before the Board is limited, and as explained by the PSC, most documents related to the applicant’s separation appear to be unavailable. The records that are available, however, are devoid of any indication of misconduct or other disciplinary issues during the applicant’s service. In addition, the applicant’s receipt of an Honorable characterization further dispels any concern that his discharge was related to misconduct of some kind.

9. Under these circumstances, the Board finds that the applicant’s receipt of an unsuitability discharge for homosexuality constituted an injustice. Accordingly, the Coast Guard will be directed to make appropriate changes to the applicant’s DD 214.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former Coast Guard member [REDACTED] is granted in part. The Coast Guard shall issue the applicant a new DD 214 with the following entries:

Block 23. Type of Separation: Discharge.

Block 24. Character of Service: Honorable.

Block 25. Separation Authority: 12-B-12.

Block 26. Separation Code: JFF.

Block 27. Reentry Code: RE-1.

Block 28. Narrative Reason for Separation: Secretarial Authority.

June 5, 2025

