


**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. 2024-140**

  
MK3 (former)

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**FINAL DECISION**

This proceeding is conducted according to the provisions of 10 U.S.C. § 1552. The Chair docketed the case after receiving the completed application on August 6, 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 April 24, 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 submitted an application with limited evidence to support his allegation of being falsely accused of sexual misconduct. The applicant submitted his application and a letter from his current wife stating she overheard his accuser crying that she regrets coming forward and she made up the allegations. The applicant is seeking correction to his DD214 to be upgraded to Honorable discharge type and with improved narrative reason and retention code.

**SUMMARY OF THE RECORD**

The applicant was charged with several violations of Articles 107 and 120, Uniform Code of Military Justice (UCMJ). These were related to the alleged sexual assault of a fellow Coast Guard member.

On January 9, 2015, the applicant submitted an offer to plead guilty to the violations of Article 107. He also agreed to plead guilty to a single violation of Article 128. In exchange, the convening authority referred his case to a special court-martial, dismissed the charged violations of Article 120, and provided some limitations on sentence. In addition, the applicant agreed to waive his right to an administrative separation board and be separated with an other-than-honorable characterization of service.

On February 13, 2015, the applicant pled guilty, pursuant to his agreement, at a special court-martial. He was sentenced to reduction to E-3 and 60 days confinement. This sentence was not limited by the applicant's pretrial agreement and could be approved by the convening authority as adjudged.

On February 24, 2015, the applicant submitted a memo of the Member's Acknowledgement & Exercise of Rights requesting discharge in lieu of a court martial and waiving his right to a separation board. This document specifically indicated that it was submitted pursuant to the applicant's pretrial agreement.

On May 19, 2015, the applicant was discharged with an other-than-honorable discharge, in accordance with his request and pretrial agreement.

On July 26, 2023, the applicant applies to this Board and asserts that the sexual misconduct allegations were false and his delay in rebutting the allegations was he recently learned of the BCMR as an avenue to remove the alleged defamation he endured. With the support of a statement by his current wife, the applicant alleges that the accuser in his case was found crying, stating that she was "upset because of a investigation that she started," and that "she wish she never said anything, and felt guilty."

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

On February 13, 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 prepared by the Coast Guard Personnel Service Center (PSC).

The JA concurred with the PSC evaluation of the applicant's request lacking necessary information to support any request for change to his DD214. PSC acknowledged the applicant failed to assert an error or injustice for the Board to review. The lack of additional information to support request leads PSC and the JA to recommend denial of the applicant's request for relief.

The JA does provide the applicant's military record including the plea deal the applicant took in lieu of a court martial for the accusation of sexual misconduct. The applicant does not provide any reliable evidence to refute the past documents the applicant signed under the guidance of counsel and the understanding of loss of benefits that can come from pursuing a plea deal versus going to trial.

The JA recommends the Board deny relief.

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

On February 25, 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 has not responded since the date of this decision.

### **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.”<sup>1</sup> 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 three years after discovery or reasonably should have discovered the alleged error or injustice for a correction or relief.<sup>2</sup>

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.”

### 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(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. The applicant brings this request beyond the required three years of its occurrence making the application untimely for review. 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>3</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>4</sup>

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<sup>1</sup> *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).

<sup>2</sup> 33 C.F.R. § 52.22

<sup>3</sup> *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

<sup>4</sup> *Id.*

3. The Board first turns to the reasons for delay. The applicant does not provide any explanation as to why he waited more than eight (8) years to make his application for relief. claims that he didn't know of the BCMR as an "avenue to restore the defimation [sic] of character" he endured until recently. But the applicant clearly knew of the alleged error at the time of his discharge, and he provides no evidence or explanation to justify his delay in making this application.

4. The Board next turns to the merits of the applicant's claim. After a cursory review of the facts and related policy, we find the applicant's discharge to have occurred without error or injustice. The applicant makes no assertion that his discharge was improper or occurred in error, and he provides no evidence to support such an assertion. While it appears he believes the Coast Guardsman who accused him on criminal misconduct were lying, the record shows that he plead guilty to the offenses against him.

5. The applicant is requesting changes to his DD214 but does not provide reliable evidence to refute the executed plea deal he accepted while in service. The applicant desires to have an Honorable discharge and upgraded narrative reasoning and retention code because he claims he was falsely accused. His current wife provided a signed statement that she overheard the accuser crying and regretting turning the applicant in making the appearance that she had lied. There is no other evidence surrounding this claim and the applicant had the opportunity to defend himself had he accepted going to trial, but instead agreed to a plea deal. The applicant was guided by counsel and thoroughly understood, evidenced by signed statements, that his military benefits would be impacted by the plea deal and his future job prospects. The applicant desired the plea deal anyway and accepted that alternative to a full court martial trial. It is on the applicant to overcome the Coast Guard's presumption of regularity and there does not appear to be an error in treatment of the applicant through his plea deal or discharge.

6. The Board, in full view of all facts, assertions, and applicable laws, finds that it is not in the interests of justice to excuse the applicant's failure to timely file his application. Therefore, his request for relief is denied

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

**ORDER**

The application of former MK3 [REDACTED] USCG, for correction of his military record is denied.

April 24, 2025

