


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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-155


SA/E2 (former)

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 21, 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 August 28, 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, a former Coast Guard Seaman Apprentice (SA/E-2), was discharged in April 1963 for unfitness with an under other than honorable conditions (OTH) discharge. He claims that he was accused of having “homosexual tendencies” and has had this “over [him] his entire life.” He requests that his discharge be upgrade to general, under honorable conditions.

SUMMARY OF THE RECORD

The applicant joined the Coast Guard on January 3, 1961.

While in service, the applicant was disciplined through non-judicial punishment on seven separate occasions between June 1, 1961 and January 25, 1963. In addition, he received a summary court-martial on October 3, 1962. These were for a range of relatively minor military criminal offenses such as AWOL, failure to report, violation of orders, assault, and larceny.

On March 4, 1963, the applicant's commanding officer informed the applicant that he was being considered for an undesirable discharge due to unfitness as a result of participating in homosexual acts.

While direct evidence of this is not in the record, the legal review of the separation action dated March 27, 1963 references a statement given by the applicant to a Coast Guard investigator wherein he "admits engaging in 10 to 12 homosexual acts since his enlistment in the Coast Guard; he stated that he submitted to these acts in return for money, but denies that any acts involved military personnel."

The applicant replied to his notification of separation on March 6, 1963 by waiving his right to a hearing before an investigative body. The discharge was subsequently approved on March 29, 1963.

The applicant was separated from the Coast Guard on April 4, 1963 with an under other than honorable conditions (OTH) discharge, on the basis of "Unfitness" with a citation to Article 12-B-12 of the Personnel Manual (CG-207). His separation code was listed as 253.

VIEWS OF THE COAST GUARD

In a Advisory Opinion dated May 8, 2025, a Coast Guard Judge Advocate (JA) concurred with a memorandum issued by the Coast Guard Personnel Service Center (PSC) recommending that the Board grant relief.

The PSC memo summarizes the applicant's record, and makes a recommendation to upgrade the applicant's discharge to general, under honorable conditions. The PSC recommends granting this relief "in the interest of equity due to the repeal of Don't Ask Don't Tell policy in 2011," while acknowledging that the request was submitted outside of the statutory three-year window. There is no analysis as to why such an upgrade is required or warranted by the repeal of the Don't Ask, Don't Tell (DADT) policy; most of the PSC's discussion is focused on why an upgrade to an honorable discharge was not warranted by the record. The PSC acknowledges that the applicant's misconduct and "negative behavior" during service are indicative of "the presence of aggravating factors," presumably a reference to the September 20, 2011 memo from the Undersecretary of Defense for Personnel and Readiness, referenced below, which provided policy direction for the correction of military records related to the repeal of DADT.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

Upon receipt of the Coast Guard's advisory opinion, the Board provided it to the applicant on May 27, 2025 and invited him to submit a response within thirty days. As of the date of this decision, the applicant has not submitted a response.

APPLICABLE LAW AND POLICY

The Personnel Manual (CG-207) incorporating Change 54 was in effect at the time of the applicant's discharge. It allowed for separation on the basis of "unfitness" (Article 12-B-12) for a number of bases, including:

(1) Frequent involvement of a discreditable nature with civil or military authorities.

...

(4) An established pattern of shirking.

...

(6) For other good and sufficient reasons.

...

The version of the Personnel Manual in effect in 1963 also included homosexuality as a basis for an unfitness discharge. Unlike later versions of the Personnel Manual, it did not contain a separate, stand-alone Article for homosexuality-based discharges. Unfitness discharges could be undesirable (other than honorable), general, or honorable, as determined by the Commandant. In all cases except homosexuality, commanders could recommend a general discharge if the circumstances appeared to warrant one.

All services generally prohibited homosexuals from serving prior to the Don't Ask, Don't Tell (DADT) policy. 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 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

The memorandum further notes that “broad, retroactive corrections of records” beyond those specifically identified were not warranted. It further stated that “[a]lthough DADT is repealed effective September 20, 2011, it was the law and reflected the view of Congress during the period it was the law.”

For applicants who had previously requested and been denied relief, this memorandum also directed to be a “sufficient basis to support reconsideration of such requests for applicants who have previously filed with either their Service DRB or BCM/NR.” The memorandum did not direct excusal of the three-year statute of limitations for such applications.

While a review of records could not locate the Coast Guard issuance applicable to preparation of the DD 214 in 1963, a review of the subsequently issued Commandant Instruction (COMDTINST) 1900.4 references Separation Program Number 253 as related specifically to discharges for homosexuality.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

¹ Numerical Separation Program Numbers (SPN) were replaced by the modern Separation Program Designators (SPD) in 1975 with the issuance of COMDTINST 1900.A.

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). The applicant separated from the Coast Guard in 1963. He previously filed a substantially similar application with the Board (Docket Number 186-88) in 1988, which was denied on the basis of untimeliness. The DADT policy was repealed in 2011, and this repeal was directed to be a “sufficient basis to support reconsideration of such requests for applicants who have previously filed with either their Service DRB or BCM/NR.” The applicant offers no explanation of why he waited more than ten years following the repeal of DADT to request reconsideration of his case before this Board. As a result, his application is untimely.

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 Board first turns to the reasons for delay. The applicant claims the delay was due to “sheer embarrassment and fear of loved ones learning of my discharge now and after death.” As the applicant clearly understood how to apply to this Board and had previously done so, his explanation offers no logical justification for his delay. In fact,

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).

applicant's explanation appears to be the reason he is asking for the correction, not the reason he waited more than ten years following the repeal of DADT to request it.

7. The Board next turns to the potential merits of the applicant's claim. The applicant's DD 214 contains no explicit reference to homosexuality as the basis of his discharge. The discharge type used was "Unfitness" in accordance with paragraph 12-B-12 of the Personnel Manual. This discharge type covered several potential reasons for separation, including "frequent involvement of a discreditable nature with civil or military authorities," or "for other good and sufficient reasons," in addition to homosexual acts or tendencies. However, Separation Program Number (SPN) 253 was, until 1975, used to specifically reference discharges for homosexuality.

8. Based on this, the applicant's claim has potential merit. The Coast Guard has recommended correcting the basis for separation and upgrading the applicant's discharge. While some relief is appropriate, the Board disagrees. We will first address the applicant's request for a discharge upgrade. The applicant requests an upgrade of his characterization of service to General (Honorable Conditions). This request does not fall squarely within the 2011 DoD memo, since the applicant has significant "aggravating factors" in his record. The applicant's record shows that, during his two-year Coast Guard career, he was given non-judicial punishment on seven separate occasions. Additionally, he was convicted at a summary court-martial. However, the record is clear that the command in 1963 based their decision to separate the applicant solely upon his apparent admission that he engaged in homosexual acts. We give great deference to the discretion rightfully exercised by commanders when selecting between various administrative or disciplinary pathways to address misconduct in their organizations. With that in mind, it is far from insignificant that the multiple acts of misconduct engaged in by the applicant were not considered a sufficient predicate to initiate a discharge action. Even though the applicant had received a conviction at a summary court-martial nearly six months before, his separation was only pursued in immediate response to his apparent homosexual admission. As a result, it would be unjust to allow the applicant's OTH discharge to remain in his record when that admission was clearly the sole basis for his discharge.

9. The Board therefore concurs with the recommendation that the applicant's discharge be upgraded to General (Honorable Conditions). Significantly, this is also what the applicant asks for; to his credit, he does not claim that his brief record of military service marked by significant misconduct should entitle him to an Honorable discharge. We agree.

10. The Board does not agree with the Coast Guard's recommendation to correct the reason for separation to "Secretarial Authority." Discharges for Unfitness were appropriate in cases of "frequent involvement of a discreditable nature with civil or military authorities," or "for other good and sufficient reasons." His record clearly establishes that an Unfitness discharge was not inappropriate, and therefore maintaining it in his record would not constitute an injustice. However, the SPN code of "253," although no longer in

use, is associated with homosexuality and should be corrected. We will not attempt to determine what SPN code, available in 1963, might be more appropriate for the applicant's discharge. Removal of SPN 253 is sufficient relief.

11. The Board will not venture further into assessing the veracity of the applicant's claims. For our purposes, it is unnecessary to address whether the applicant's admissions of homosexuality forming the basis of his discharge were truthful or untruthful. In either event, his discharge – in light of current law and policy – was unjust and merits relief by this board.

12. This Board finds that the interests of justice merit excusal of the applicant's untimely application. The Coast Guard will issue the applicant a DD 214 – not a DD 215 – reflecting an upgrade of his discharge to General (Honorable Conditions) with the reason for separation as “Unfitness,” but without any reference to SPN 253.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of SA (former) [REDACTED] for upgrade of his discharge is granted. The Coast Guard will issue him a DD 214 (not DD 215) with a General (Honorable Conditions) discharge and retaining Unfitness as his reason for separation, but removing the reference to SPN 253.

August 28, 2025

