DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-163

[redacted]
SR/E-1 (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 after receiving the completed application on August 27, 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 January 30, 2026, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

INTRODUCTION

The applicant served for more than twenty years on active military duty, which included a continuous period of Coast Guard service from 1996 until 2018. He was adjudged a Dishonorable Discharge (DD) at a general court-martial on November 20, 2014. The applicant successfully appealed aspects of his conviction at the Court of Appeals for the Armed Forces (CAAF), which set aside and dismissed some charges and specifications and returned the case to the Judge Advocate General (TJAG) of the Coast Guard for remand to the Coast Guard Court of Criminal Appeals (CGCCA). CGCCA reassessed the applicant's sentence to include only a Bad Conduct Discharge (BCD), and the applicant was discharged with a BCD on June 4, 2018. The applicant requests upgrade of his discharge to General (Honorable Conditions).

SUMMARY OF THE RECORD

Prior to the applicant's Coast Guard service, he served in the Army from 1989 to 1993, during which time he served in the 1990-1991 Gulf War as an Army infantryman. He was honorably discharged.

The applicant subsequently enlisted in the Coast Guard on September 17, 1996. He submitted, as part of his application a number of enlisted performance evaluations dating from 1997-2014.

The applicant's record contains two incidents of misconduct that occurred before the events directly at issue in his court-martial. On October 17, 1998, applicant was arrested for Driving Under the Influence (DUI) with a blood alcohol content (BAC) of .20. The record is unclear as to how this incident was adjudicated, other than through documenting it on a CG Form 3307. The second was another DUI arrest in March 2002 where the applicant had a BAC of .22, also documented on a CG 3307. The applicant's failure to inform his chain of command of this incident and making false statements eventually resulted in him receiving nonjudicial punishment (NJP) in February 2004. The second DUI was adjudicated in state court resulting in applicant paying fines and serving five days in jail.

In June 2013, the applicant came under investigation for alleged sexual offenses in violation of Article 120b, Uniform Code of Military Justice (UCMJ). It was during this investigation that he wrongfully used, possessed and/or distributed marijuana and made the false official statements at issue in this case. Charges were preferred against him in February 2014 and included sexual offenses, communication of a threat, drug charges, service discrediting conduct, and false official statements.[1]

In November 2014, the applicant was convicted at a general court-martial, in accordance with his plea of guilty, of two specifications of making a false official statement in violation of Article 107, UCMJ; and four specifications of wrongfully using, possessing and/or distributing marijuana in violation of Article 112a, UCMJ. Contrary to his pleas, he was found guilty of an additional two specifications, one of conduct discrediting the armed forces (Article 134), and one of commission of a lewd act with a child (Article 120b). He was found not guilty of all other charges. Applicant was sentenced to confinement for five years, reduction to E-1, and a DD.

The applicant appealed to CGCCA, which affirmed his conviction. He then appealed to CAAF, which set aside and dismissed his convictions for the violations of Article 120b and 134. His case was remanded to the CGCCA for a reassessment of sentence based on the six remaining specifications (Articles 107 and 112a). The CGCCA reaffirmed the applicant's convictions and affirmed a reduced sentence of confinement for three months, reduction to E-1 and a BCD.

[1] The Board is being intentionally vague in its description of the record related to applicant's criminal investigation and trial. The applicant was ultimately convicted of no sexual offenses, and the underlying facts of those allegations are not relevant to our decision. As they are not relevant, we will not describe them in detail to protect the privacy of third parties.

APPLICATION

The applicant's original DD 149 was received by the Board on April 15, 2020. He asserted two bases for his request. First, he claims that the facts of his case mitigate the nature of his offenses. Second, the applicant claims that his exemplary duty performance and accomplishments during his lengthy service outweigh the "incidents resulting in his discharge."

Upon initial review, the Chair determined that applicant's medical records may be relevant to his request for relief. However, none were included in the supporting documentation provided by applicant or his counsel. The Chair noted this potential discrepancy to counsel in May 2020. The record shows that the applicant spent the next four years attempting to obtain medical records, and claims in an affidavit to have been largely unsuccessful. After some sporadic communication between applicant's counsel and the Chair during the intervening period, counsel submitted a supplemental brief in April 2024 asking us to take the case out of abeyance and docket it for decision. He also made a new contention that his case should be considered based on our liberal consideration guidance due to his alleged Post Traumatic Stress Disorder (PTSD) diagnosis.

VIEWS OF THE COAST GUARD

The Coast Guard initially argued that the case should be administratively closed because the applicant had not exhausted administrative remedies as required by 33 C.F.R. § 52.32. Specifically, the Coast Guard noted, the applicant had not applied to the Coast Guard Discharge Review Board (DRB). As a result, the Board administratively closed the case. In response to applicant counsel's objection, the Coast Guard again reviewed the case and determined that it fell outside of the DRB's jurisdiction because the discharge was adjudged at a general court-martial. It then provided its views in a memoranda prepared by a Coast Guard Judge Advocate (JA) dated August 25, 2025.

The JA argued that the applicant's request for relief should be denied because he failed to show that his current characterization of discharge is unjust in relation to the crimes for which he was ultimately convicted. The JA disputed that the applicant's plea saved the government any time or expense, and points out that he was convicted of seven separate specifications under the UCMJ that independently may have warranted a bad-conduct discharge. Further The JA disputed the applicant's own description that his record was "impeccable" and that he possessed "unimpeachable character." The JA highlighted three incidents from the applicant's record. The first was counseling for poor performance in 1997. The second was an arrest for DUI in 1998, which resulted in non-judicial

punishment NJP for the DUI and a false official statement.[2] The third was another DUI arrest in 2002 which was adjudicated in state court resulting in fines and serving five days in jail. The JA noted that the applicant was retained, even though the second alcohol incident should have resulted in his separation.

The JA then disagreed with the applicant's arguments for clemency, namely that his guilty plea saved the government time and expense, that the nature of the offenses did not warrant a BCD, and that his service record outweighed the incidents leading to his discharge.

The JA finally argued that, even if the case was viewed with liberal consideration (as the applicant contended it should be), it does not require a grant of relief under the circumstances.

APPLICANT'S RESPONSE

The applicant, through counsel, was provided a copy of the advisory opinion on August 27, 2025 and invited to respond within thirty days. As of the date of this decision, the Board has not received a response.

APPLICABLE LAW AND POLICY

The Board may "correct any military record . . . when [it] considers it necessary to correct an error or remove an injustice." 10 U.S.C. § 1552(a)(1). "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).

[2] The JA improperly cites the record in describing the applicant's previous misconduct. The applicant's only documented NJP occurred in 2003 following the second incident. The record available for our review contained no evidence of how this first DUI incident was disposed of by the command through punitive action, if any.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction over under 10 U.S.C. § 1552(a), with the caveats detailed below, as the applicant is seeking corrections of alleged errors and/or injustices in his military records.

2. The applicant requested an in-person hearing before the Board. 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.[3]

3. The application was filed within three years after the applicant discovered the alleged error or injustice, as required by 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22, and is therefore timely. In particular, the CGCCA issued its opinion reaffirming his sentence on June 14, 2017, which rendered it administratively final. We received the initial application on April 15, 2020. While we acknowledge that it is the applicant's responsibility to provide the Board with the evidence required to support his claims of error, our regulations require only that an application for correction be filed within three years after the applicant discovered the alleged error or injustice. *See* 33 C.F.R. § 52.21. Our regulations do not contemplate an apparently incomplete application being properly submitted to toll the three-year statute of limitations, but then held in abeyance by the Chair for four years to allow an applicant to assemble supporting records. But this is apparently what occurred. We will not hold this delay against the applicant, and therefore will consider this application timely.

4. "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). In cases involving personnel decisions, "the military is entitled to substantial deference in the governance of its affairs." *Dodson v. United States*, 988 F.2d 1199, 1204 (Fed.Cir.1993).

5. Before turning to the substance of the applicant's claims for relief, the Board notes that this case – like others requesting upgrades of discharges adjudged by courts-martial – presents a strong justification for deference to the administrative regularity of the

[3] *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 current discharge. He had legal counsel at every step in his court-martial proceeding. At his trial, he was permitted to present presentencing evidence in accordance with RCM 1001. He was then afforded an opportunity to present additional matters to the court-martial convening authority in accordance with RCM 1105 and to again submit additional matters in response to the Staff Judge Advocate's (SJA) recommendation pursuant to RCM 1106. His case was heard on appeal by both CGCCA and CAAF, and was ultimately remanded for reassessment of his sentence by CGCCA. The applicant does not allege that there was legal error in his court-martial or subsequent appeals, other than that the sentence finally imposed by CGCCA was too harsh. It is with this in mind that the Board turns to the applicant's requests for relief.

6. The applicant first alleges that the facts mitigate the nature of his criminal offenses, specifically because he pled guilty to the false statement and drug related offenses for which he was convicted, and that he did so without the benefit of a pretrial agreement limiting his potential sentence. Applicant further alleges that the nature of the offenses for which he was convicted "does not warrant a bad-conduct discharge." The Board disagrees.

a. The Board acknowledges that the applicant pled guilty without a pretrial agreement. While his counsel highlights the rights the applicant gave up and argues that this saved the government "considerable time and expense," this was presumably considered by the trial judge, convening authority, and the CGCCA when determining his sentence. Pleading in this manner is a common and legitimate trial strategy when facing prosecution for multiple charges and specifications. As the applicant's statement said, he pled guilty "in hopes of showing my truthfulness and good character," presumably by admitting to the charges for which he was factually guilty in hopes of gaining credibility with the fact finder to secure an acquittal on the remaining charges or a reduction of his sentence. But without an allegation or specific evidence of error or injustice related to how his guilty plea was considered, the Board is left only to superimpose its judgment over that of the convening authority and the courts which were better positioned to consider the totality of the record, including the applicant's plea. There is no basis for us to do so here.

b. The applicant alleges that the nature of the offenses for which he was convicted does not warrant a BCD. As the Coast Guard's advisory opinion correctly points out, a quick perusal of the MCM's Maximum Punishment Chart in Appendix 12 shows that each of the applicant's two violations of Article 107 carry a maximum punishment of five years confinement, total forfeitures, and a DD. The record before the Board is unclear as to which specific offenses under Article 112a were charged in the applicant's case. However, each of the four specifications applicant was convicted of carried the possibility of at least two years confinement, total forfeitures, and a DD. In short, the applicant was convicted of six offenses, any one of which could have resulted in a DD from the Coast Guard. Clearly, a BCD is not an inappropriate sentence based solely on the charges and specifications.

c. It appears the applicant's counsel is resting his argument that the offenses do not warrant a BCD on the assertion that, had the applicant's other alleged offenses that were ultimately overturned on appeal not been considered, the convening authority likely would not have referred this case to court martial at all. Had the offenses been handled administratively or at a summary court-martial, the BCD would therefore have been unavailable. While counsel asserts that it is "plausible" that the applicant would not have been referred to court martial on these charges alone, he presents no evidence to support this conclusion. Furthermore, there in fact were other more serious charges against the applicant that would have been inappropriate to dispose of through administrative means. While the Board acknowledges that the applicant was ultimately determined to be not guilty of those charges, that does not retroactively make the convening authority's decision to refer them to a general court-martial erroneous or unjust. Furthermore, the applicant has not alleged that the charges against him were so baseless that their mere investigation and referral to command for action was erroneous or unjust.

7. The applicant next claims that his exemplary duty performance and accomplishments during his lengthy service outweigh the "incidents resulting in his discharge." The Board again disagrees.

a. Applicant's counsel argues that the applicant's "exemplary duty performance, his leadership, and character" make his bad conduct discharge unwarranted. Counsel further argues that the applicant is "a consummate professional and the epitome of the Coast Guard values, and prior to that, the Army values." In support of this, he asks the Board to consider his positive evaluations for many years prior to the actions leading to his court-martial, and that he had received thirty letters of support in his request for clemency. However, the applicant's military record presents a different picture. Applicant was disciplined through NJP for DUI and making a false official statement in 1998. He was arrested again for DUI in 2003, for which he was sentenced and served five days in jail. While this would normally have resulted in his involuntary discharge from the Coast Guard, applicant's command requested his retention and afforded him a "rare opportunity to redeem [himself] and continue" his Coast Guard career following two alcohol incidents. The applicant makes no attempt to explain or distinguish his previous significant alcohol related misconduct, or argue why the pattern of misconduct that they (along with his marijuana use) present are not reflective of his character.

b. Applicant does not present any evidence to the Board of his duty performance that was not considered, or could not have been considered, during the sentencing phase of his court-martial. While the applicant did not provide us with the complete record of trial for the Board's consideration, the applicant certainly had the right to present his evaluations, letters of recommendation, and any other evidence in support of his sentencing case at his trial and in subsequent clemency requests. As with his decision to plead guilty to some charges without a pretrial agreement, whether or how he presented those materials in his sentencing case was a tactical decision made between applicant and

his trial defense counsel. As the Board has observed previously, this application appears to be a simple request by the applicant for the Board to superimpose its judgment over that of multiple Coast Guard officials with no specific allegation that any of those officials committed error (other than disagreement with his discharge he ultimately received), and without any new evidence to support his claims of error.

8. Finally, the Board addresses the applicant's request that we review his case with liberal consideration. In accordance with the DHS Liberal Consideration Guidance, this is required only in cases where PTSD or related mental health conditions are "related to combat or military sexual trauma." The applicant claims that he witnessed a "fire mission" on enemy tanks, which included watching men crawl out of tanks on fire and dying during the Gulf War in 1991, and that this was a cause of his diagnosed PTSD. He provides no evidence beyond his personal account in an affidavit to support this assertion.

9. In his affidavit, the applicant asserts that he returned from the Gulf War, discharged from the Army in 1993, reenlisted in the Coast Guard in 1996, and served for more than ten years before the experience of two close friends dying in aviation accidents in 2008-2009 and his subsequent return to the Air Station where they had served together triggered his need for mental health treatment in 2011. It is not insignificant that the applicant apparently spent four years attempting to locate supporting records that would show his PTSD was in any way related to his combat experience, but claims to have been unable to do so. He provides an almost unbelievable account of his attempts to obtain his own recent medical treatment records from multiple government agencies, but to no avail. All he provides is a VA letter stating that his PTSD was service-connected. In determining how much credible weight to give the applicant's affidavit, the Board notes that he was previously convicted at both NJP and court-martial for making false official statements.

10. If we take applicant's statement at face value, then any relevant medical treatment records of his PTSD and mental health treatment are unavailable for our review, making counsel's assertion that the applicant suffers from combat-related PTSD unsupported by medical evidence and impossible to evaluate. But even the minimal record provided by the applicant casts doubt on his claims. In particular, the applicant was twice referred for evaluation, alcohol screening and counseling following his DUIs. He apparently offered no indication of his alleged mental health struggles at that time and was almost immediately cleared to return to duty, despite intoxication levels far beyond the legal limit for driving at the time of his arrests. The Board finds it much more likely that the applicant's mental health condition, presumably later diagnosed as PTSD, was related to the later non-combat related events and not to those he allegedly witnessed twenty years prior without any claimed adverse effects.

11. Even if liberal consideration did apply, the applicant's case would not merit relief. The Board takes the applicant's assertion at face value, supported by his VA rating decision, that he had a mental health condition that occurred during his military service,

and that it was of a nature that may potentially mitigate misconduct in line with our liberal consideration guidance. However, our guidance requires that we assess whether the mental health condition *excuses* or *outweighs* the conduct that adversely affected the applicant's discharge. In this case, the applicant claims to have been obtaining mental health treatment and medication for some period of time before his misconduct occurred. However, he claims that the stress of being under criminal investigation starting in July 2013 is what precipitated his illegal drug use, not the diagnosed mental health condition he had been seeking treatment for. While criminal investigations are no doubt stressful, the mental health challenges that may result from that stress – even if magnified by the applicant's existing and unrelated mental health condition for which he was receiving treatment – do not excuse or outweigh his misconduct. The applicant's counsel makes several arguments asking the Board to draw inferences that would connect the dots between the applicant's PTSD and his misconduct. But we are concerned primarily with the evidentiary record, not counsel's arguments. Even giving the applicant's personal statement considerable weight in the absence of medical records, we find it persuasive that he does not even allege that his PTSD was a causative factor in his wrongful use and distribution of marijuana.

12. The applicant's request for relief is denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former SR/E1 [redacted] is denied.

January 30, 2026

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