DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-196

[redacted]
(former) SA/E-2

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 28, 2024, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).[1]

This final decision, dated May 8, 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 Apprentice (SA/E-2), was administratively separated from the Coast Guard on January 28, 1988, following arrests for public intoxication and driving under the influence of alcohol (hereinafter "DUI") in November 1986 and July 1987, respectively. The applicant has requested that the Board correct his records by upgrading his characterization of service to Honorable and his reenlistment code to RE-1 (eligible to reenlist).[2]

SUMMARY OF THE RECORD

The applicant joined the Coast Guard as a Seaman Recruit (SR/E-1) on January 28, 1985, and was later promoted to SA/E-2.

[1] The Board received the applicant's DD Form 149 (Application for Correction of Military Record) (hereinafter "DD 149") on October 23, 2019. The application was not considered complete and reviewable, however, until the applicant's Coast Guard personnel records were received on August 28, 2024.

[2] As will be addressed further, the applicant did receive an Honorable discharge. Thus, the request for an Honorable characterization of service is moot, and the Board's decision will focus primarily on the reenlistment code assigned at separation.

In a Form CG-3307, Administrative Remarks (hereinafter "Page 7") dated March 5, 1987, Lieutenant Junior Grade (LTJG/O-3) R.S. counseled the applicant regarding his arrest by civil law enforcement on November 13, 1986, on "drinking/drunk in public charges." R.S. noted that the judge in the case had offered to dismiss the charges if the applicant saw an alcohol abuse counselor within six months. As such, it was noted that the applicant had scheduled an appointment for later in March 1987 with a counselor at an alcohol treatment facility. The Page 7 stated that the applicant had been counseled by LTJG P.J. following his arrest, at which time the applicant was informed that his conduct was considered an Alcohol Incident (hereinafter "AI") under Coast Guard policy. R.S. then "reemphasized" that he considered the incident to be an AI. The Page 7 also documented R.S.'s warning to the applicant that any subsequent AI would be grounds for separation pursuant to Coast Guard policy, and that similar behavior in the future would not be tolerated.

In a Page 7 dated November 23, 1987, the applicant's Commanding Officer (CO), P.P., counseled the applicant regarding his being convicted of a DUI offense in October 1987. P.P. first summarized the March 1987 Page 7 issued by R.S., including the warning that any subsequent AI would be grounds for separation. P.P. also noted that, as directed by the judge, the applicant had received alcohol abuse counseling, which he successfully completed, resulting in dismissal of the public intoxication charge(s).[3] P.P. stated that this counseling served as alcohol abuse "screening" required by Coast Guard policy, and was intended to prevent further alcohol abuse. However, P.P. noted, he had been made aware that the applicant had been arrested for DUI on July 29, 1987, and had pled guilty on October 29, 1987, resulting in his driving privileges being suspended for six months. P.P. stated that he considered this episode to be another AI, and that since it was the applicant's second, P.P. was recommending separation from the Coast Guard based on unsuitability due to alcohol abuse in accordance with the relevant policy. P.P. last noted that he planned to recommend an Honorable discharge.

In a memorandum dated November 24, 1987, P.P. advised Commandant (G-PE) that due to the applicant's DUI, which was his second AI, P.P. was recommending the applicant be separated from the Coast Guard for unsuitability due to alcohol abuse, with an Honorable discharge. In a November 26, 1987, letter to the applicant, P.P. informed the applicant of the discharge recommendation and advised him of his right to make a statement on his own behalf.

In an undated typewritten statement, the applicant responded to P.P.'s November 26, 1987, letter. The applicant first argued that his "drunk in public" charge should not have been considered an AI because, he believed, the police were "giving [him] a hard

[3] The record does not make clear whether the treatment facility where the applicant received alcohol abuse counseling was state-run, or was a private institution, but there is no indication that it had any affiliation with the Coast Guard.

time." The applicant stated that he did not have a problem with alcohol, and that he had been a responsible member of his unit with a good attitude. The applicant went on to assert that he wished to finish the fourth and final year of his enlistment contract. He also emphasized the potential negative impact of an unfavorable discharge on his desired post-service career as a police officer or firefighter.

In an Administrative Message dated January 5, 1988, Commandant (G-PE) directed that the applicant be discharged by reason of unsuitability under Article 12-B-16 of the Coast Guard's Personnel Manual.

The applicant was separated from the Coast Guard effective January 28, 1988. His DD Form 214 (Certificate of Release or Discharge from Active Duty) (hereinafter "DD 214") shows that his character of service was designated as Honorable, and the reenlistment code as RE-4 (ineligible). The separation authority was listed as "COMDTINST M1000.6, ART 12-B-16," the narrative reason for separation was "Unsuitability," and the separation code was "JMG."

APPLICATION

In the section of the DD 149 provided to describe the nature of the relief being requested, the applicant stated the following: "Honorable, conditions revised to Honorable, reenlistment code revised to being able to reenlist."

In a statement included with his submission, the applicant asserted that in 1988, he was arrested for DUI and plead guilty, which was considered an AI by the Coast Guard. The applicant stated that months later, he was arrested for public intoxication after "looking at a police officer," but the charges were dropped, and the officer was "reprimanded for harassment." The applicant explained that this incident took place in Norfolk, Virginia, where many unwarranted actions by police were known to occur because of the "large military presence in the area." The applicant recalled that the Coast Guard considered this to be a second AI and discharged him.

The applicant argued that the Coast Guard never offered him therapy or other treatment, nor was he given the right to appeal. He stated that he was young and naive at the time and did not realize how these events would impact him later on. For these reasons, the applicant stated, he was requesting "revision to the conditions under [his] discharge and the code for reenlistment." Regarding the reenlistment code, the applicant stated that he did not plan to reenter the Coast Guard, given his age, but wanted to be able to "use" and "show" his DD 214 without having to explain the embarrassing circumstances involved in his discharge.

Near the end of his statement, the applicant added that he believed his discharge was "done due to a reduction in force at the time," and that the discharge "appear[ed] improper due to not having two official alcohol related incidents."[4]

VIEWS OF THE COAST GUARD

On March 28, 2025, the Board received the Coast Guard's views in the form of a memorandum from a Coast Guard Judge Advocate (JA), in which the JA recommended the Board deny relief in this case. The JA adopted the analysis provided by the Coast Guard Personnel Service Center (PSC) in an enclosed memorandum. The PSC first argued that the application was untimely, for which the applicant offered no justification. The PSC then argued that the applicant's public intoxication and DUI incidents were both properly considered to be AIs, and that the applicant's discharge was processed in accordance with Coast Guard policy. In addition, the PSC noted that the applicant received an Honorable discharge, so there was nothing to revise with respect to his characterization of service.

APPLICANT'S RESPONSE

The Board provided the applicant with the Coast Guard's views on March 5, 2025 and invited him to submit a response within thirty (30) days. As of the date of this decision, the applicant has not submitted a response.

APPLICABLE LAW AND POLICY

Board Proceedings

The Board may correct errors and/or remove injustices in an applicant's military records pursuant to 10 U.S.C. § 1552(a). "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).

[4] As previously noted, the request for an Honorable discharge is moot. Because the narrative statement provided with the application is somewhat unclear, and in an abundance of caution, the Board has interpreted the applicant's request to encompass his separation authority, narrative reason for separation, and separation code, in addition to the reenlistment code.

Coast Guard Policy

The version of the Coast Guard Personnel Manual (hereinafter "PERSMAN") – COMDTINST M1000.6 – published in May 1982 was applicable when the applicant was issued AIs in March and November 1987.

In relevant part, it provided that discharge by reason of unsuitability "shall be directed" in various circumstances, including for "alcohol abuse." PERSMAN § 12.B.16.b.(5) (May 1982). Alcohol abuse was defined as "[t]he use of alcohol to the extent that it has an adverse effect on performance, conduct, discipline, or mission effectiveness, and/or on the user's health, behavior, family, or community. *Id*., § 20.A.2.b. The policy defined an AI as follows: "Anytime an individual receives a serious injury or violates the Uniform Code of Military Justice, Federal or State law in which intemperate use of alcohol is a contributing factor." *Id*., § 20.A.2.c.

The policy also addressed the need to identify drug and alcohol abuse and provide treatment for members, when warranted. Specifically, it provided that a CO "may refer a member, whether or not the member has been identified as being involved in a drug or alcohol incident, for screening under article 20-C-2 when it is deemed appropriate." *Id*., § 20.B.1.d. Following a member's first AI, "education or treatment would normally be sought for the member involved." *Id*., § 20.B.4.b.

When a Coast Guard member self-referred or was referred by command for drug or alcohol abuse screening, the policy provided for various Coast Guard personnel to facilitate and document the screening. *Id*., § 20.C.2.b. Upon a determination that treatment was warranted, the member was to be advised that successful treatment would allow the member to continue his or her service. *Id*., § 20.C.2.b.(2). Treatment options included both inpatient and outpatient. *Id*., § 20.C.3. Outpatient treatment could include "counseling, education programs, or local community sponsored programs." *Id*., § 20.C.3.a.(1).

The policy provided, however, under the heading "Disposition of Alcohol Abusers," that following a second AI, "the command will ordinarily commence discharge procedures" absent a request for a waiver from the member's CO based on exceptional circumstances. *Id*., § 20.B.4.c. Several weeks before the applicant was discharged, a new version of PERSMAN was issued. This version similarly provided that "enlisted members involved in a second alcohol incident will normally be processed for separation in accordance with Article 12.B.16." PERSMAN § 20.B.2.h. (January 1988).

Also applicable at the time of the applicant's separation was the Coast Guard's Instructions for the Preparation and Distribution of the Certificate of Release or Discharge from Active Duty, DD Form 214, COMDTINST M1900.4B (1979) (hereinafter "DD 214 Manual"). In relevant part, the policy provided that when an involuntary discharge was

affected under PERSMAN § 12.B.16 for unsuitability due to alcohol abuse, the reenlistment code assigned should be "RE-4," the separation authority should be "12-B-16," the narrative reason should be "Unsuitability-- Alcohol abuse," and the separation code should be "JMG." DD 214 Manual § 2.D.3 (1979).

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 declined a hearing before the Board and requested that his application be considered based on the records and evidence.

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 on January 28, 1988. His initial submission to the Board was received more than 31 years later, on October 23, 2019.

5. The Board may excuse the untimeliness of an application if it is in the interests 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 interests of justice support 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." With these considerations in mind, the Board makes the following findings:

a. The applicant has provided no explanation for the more than 31-year delay between his discharge and his application to this Board. The Board's own review does not suggest any compelling reason for the delay.

b. Upon cursory review, the application lacks potential merit.

The applicant has contended that his AIs were "improper," or "not official," but both the public intoxication and DUI incidents plainly met the requirements to be considered AIs, as they involved violations of state law and the UCMJ. The applicant does not argue otherwise or offer any detailed support for his allegation of error. The Board also notes that Coast Guard policy did not require that an incident result in a conviction under federal or state law, or the UCMJ, to be considered an AI.

Both AIs were properly documented in Page 7s, the first of which advised the applicant that an additional AI would likely result in his discharge. The applicant asserted that his DUI occurred prior to his public intoxication arrest, and he argued that the latter arrest was not justified and resulted in the arresting officer being reprimanded for harassment. The applicant offers no evidence to support the latter allegation. In addition, the Board's review suggests that the arrests actually occurred in the reverse order, and this tends to undermine the applicant's case. That is, even assuming the applicant's public intoxication arrest was in some way improper (which the record does not suggest), the applicant was permitted to remain in service so long as did not receive another AI. Instead, the applicant was arrested for DUI only months later, and he has not questioned the basis for that arrest or his subsequent conviction.

The applicant argued that he was not offered treatment. The record shows, however, that the applicant was referred for alcohol abuse counseling as a prerequisite to the dismissal of his public intoxication charges. In this regard, the Coast Guard policy in place at the time directed that a member be referred for drug or alcohol abuse screening when "deemed appropriate" by his or her CO. PERSMAN § 20.B.1.d. (May 1982). The sequence of events directed by the policy made clear that the purpose of screening was to determine whether treatment was warranted. In this case, civil authorities referred the applicant directly to alcohol abuse treatment, which he completed. Under these circumstances, to the extent the applicant's command determined that such treatment satisfied the relevant policy's requirements with respect to alcohol abuse screening and treatment, the Board finds that such determination was reasonable and did not constitute error or injustice. Moreover, even if the Coast

Guard had failed to provide screening exactly as detailed in PERSMAN, the Board finds no policy or other basis to suggest that such failure would act to retroactively undo the designation of the incident in question as an AI.

The applicant has also argued that he was not afforded appeal rights. In fact, the applicant was afforded the opportunity to submit a written response to his CO's discharge recommendation, which he did. The applicant has not pointed to, nor has the Board found any Coast Guard policy suggesting the applicant was entitled to additional due process.

Finally, the applicant has argued that his discharge was part of a reduction in force, but he provides no evidence, nor any explanation as to why, if true, this would render any aspect of his discharge improper.

In summary, Coast Guard policy in effect at the time of the applicant's separation generally mandated discharge for members following two AIs. The record shows the applicant was arrested in a short period for both public intoxication and DUI, both of which his command reasonably determined were AIs. Accordingly, he was separated with an Honorable discharge and the separation authority, narrative reason for separation, separation code, and reenlistment code listed on his DD 214 were assigned in accordance with Coast Guard policy.

While Board notes the applicant's contention that his post-service conduct has been admirable, he has provided no evidence to support this claim. While we will consider applications on clemency grounds in appropriate cases, the applicant has given us no reason to do so here. As with all claims, these must also be supported by substantial evidence showing that the record, under the circumstances, amounts to an injustice. Many former members were discharged under regrettable circumstances that may be embarrassing in later life. This alone does not amount to error or injustice.

Based on the foregoing, the Board finds after cursory review that the applicant's requests lack potential merit.

6. For all the reasons discussed, the Board finds that the interests of justice do not support a waiver of the time bar specified in 10 U.S.C. § 1552(b) in this case. Accordingly, the application will be denied as untimely.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former SA/E-2 [redacted] is denied.

May 8, 2025

[redacted]