


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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2025-040


(former) BM3

FINAL DECISION

This proceeding was conducted by the Board for Correction of Military Records of the Coast Guard (hereinafter “Board” or “BCMR”) 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 January 31, 2025, 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 October 23, 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 Boatswain’s Mate Third Class (BM3/E-4) was administratively discharged from the Coast Guard in July 2009 with an honorable characterization of service. His discharge documents reflect “Unacceptable Conduct” as the narrative reason for separation, and “RE4” (ineligible) as the reentry code. The applicant has asked that the Board change those entries to “Secretarial Authority” and “RE1” (eligible), respectively.

SUMMARY OF THE RECORD

The applicant joined the Coast Guard on December 3, 2002.

Between November 2003 his July 2009 discharge, the applicant was issued more than 20 Administrative Remarks, CG-3307s (hereinafter “Page 7s”) and was subject to nonjudicial punishments (hereinafter “NJPs”) on two occasions. During the relevant period, the record indicates the applicant served primarily as a law enforcement officer, and that his duties included arranging and participating in boardings of private vessels. Relevant entries in the applicant’s personnel file include the following:

- *November 1, 2003* (Page 7). Counseled for failure to complete “or even begin” assignments, forcing peers and supervisors to step in at the last minute, and failure to complete required training by deadline. Applicant reassigned, recommendation for advancement withheld, and warned of potential placement on performance probation and reduction of rank and/or discharge.
- *May 3, 2004* (Page 7). Notice of candidacy for reduction in rank due to incompetence related to improper watch-standing practices and log keeping, unfinished tasks, and falling asleep on watch.
- *June 4, 2004* (Page 7). Some improvement noted in effort, competence, and training other members. However, quality of work and communication with supervisors remained below standard.
- *June 19, 2004* (Page 7). Counseled for failure to obey a direct order from Commanding Officer (CO) to verify identity of a specific individual, log information in visitor’s log, and communicate with supervisor.
- *July 4, 2004* (Page 7). Improvement noted in desire to learn and professional competence. However, continued to violate protocol by wearing cover in an unauthorized manner and eating on the bridge.
- *August 4, 2004* (Page 7). Noted significant improvement over prior month, resulting in removal from performance probation and recommendation for advancement.
- *February 7, 2005* (Page 7). Assigned extra military instruction for failing to request permission to leave cutter to retrieve items from home.
- *February 9, 2005* (Page 7). Counseled for departing ship without permission and failing to return as directed. Warned of potential charge under Uniform Code of Military Justice (UCMJ). Instructed to complete 30 minute training session on relevant procedures.
- *July 4, 2005* (Page 7). Counseled for arriving 25 minutes late for duty, causing operational delay.
- *July 28, 2005* (Page 7). Counseled for dereliction of duty and gross negligence for leaving bridge during watch. Applicant advised that recommendation for promotion would be withheld pending reevaluation during September 2005 Enlisted Employee Review.
- *April 7, 2006* (Page 7). Counseled for failure to comply with repeated orders to submit passport information before going on leave.
- *May 25, 2006* (Page 7). Counseled for neglect of duties on prior evening related to failure to energize ship’s navigation lights, plot ship’s position, or document route weather. Advised that any more incidents of this nature would result in further administrative and/or disciplinary action.
- *June 6, 2006* (Page 7). Counseled for entering profanity and inappropriate language in ship logs. Advised similar conduct in future would result in administrative and/or disciplinary action.

- *June 22, 2006* (NJP). Awarded NJP for violation of UCMJ Article 86 (Absence Without Leave), Article 92 (Failure to Obey Lawful Order), Article 107 (False Statement), Article 108 (Destruction of Government Property), Article 110 (Improper Hazarding of Vessel), and Article 134 (General Article; good order and discipline). Reduced in rank to E-4, awarded 21 days restriction to vessel and 21 days extra duty, and placed on performance probation.¹
- *June 28, 2006* (Page 7). Counseled for poor attitude and disrespectful behavior toward Officer of the Deck (OOD) and failure to make needed entries in ship's position log and/or communicate with OOD.
- *May 15, 2008* (Page 7). Counseled for refusal to conduct vertical delivery boarding of vessel, as required by applicant's duties as law enforcement personnel, resulting in more work for other members.²
- *June 3, 2008* (Page 7). Counseled for failure to maintain adequate dependent-care arrangements on multiple prior occasions, resulting in other members being required to cover.
- *June 10, 2008* (Page 7). Formal counseling for failure to maintain logs in a timely manner and in accordance with policy.
- *January 14, 2009* (NJP). NJP awarded for violation of Article 108 (Destruction of Government Property) and Article 134 (General Article) relating to applicant's forcibly breaking locked office door to obtain law enforcement gear prior to conducting a boarding and failing to notify command of destruction of property. Pay grade reduced to E-4.³
- *March 3, 2009* (Page 7). Counseled for repeated refusals to comply with orders to move car out of a walkway next to sector's building, causing ice slipping hazard for other members who had to walk around car. On-base parking privileges revoked for 30 days.
- *March 19, 2009* (Page 7). Counseled on failure to execute responsibilities effectively relating to refusal to administer pepper spray as part of fellow servicemember's law enforcement training requirements. Failure to communicate refusal in timely manner caused others to have to scramble to meet division's responsibilities.

Unsuitability Probation

In an additional Page 7 issued on April 14, 2009, the applicant was informed that he was being placed on "unsuitability probation" for six months based on his record of misconduct and lack of responsibility over the prior five months, and that he would be discharged if his performance did not improve. Specifically, the applicant was advised that

¹ The record before the Board does not include a narrative summary of the conduct resulting in the June 2006 NJP.

² Although not specified in the Page 7, the Board infers "vertical delivery boarding" refers to the boarding of a vessel from a Coast Guard helicopter.

³ The record shows that while the NJP was not awarded until April 2009, the incident in question occurred on January 14, 2009.

he had consistently failed to follow the directions and orders of his supervisors, failed to meet his assigned duties responsibly and in good faith, failed to communicate responsibly with his supervisors, set a poor example for his peers and subordinates, and violated articles of the UCMJ. The applicant was informed that in order to demonstrate he had the aptitude for continued service, he must do the following: (1) not violate UCMJ articles; (2) follow directions and orders of supervisors “both in fact and in spirit”; (3) effectively and truthfully communicate with supervisors in a timely fashion; (4) display a positive attitude and set a positive example for others; and (5) perform departmental and operational duties in an effective manner.

Termination of Probation

On May 4, 2009, a Page 7 was issued by the applicant’s CO advising him that he had failed to meet the requirements of his probation and was being recommended for discharge. The Page 7 cited three particular incidents. First, on April 16, 2009, the applicant was ordered to develop a boarding plan for an arriving vessel and, contrary to an explicit order, contacted a subordinate unit to request support personnel. It was noted that this was not the first time the applicant had done so, even though he had been verbally counseled that such calls to subordinate units had caused unnecessary conflict. Second, on April 20, 2009, the applicant arrived more than 30 minutes late to work and failed to check in with supervisors, in violation of the department’s policy. This policy required members to arrive to work by 0745 each day, with the exception of Mondays and Fridays, when they could arrive by 0915 if they took the morning to “work out.” Because the applicant arrived to work at approximately 0830 and did not check in immediately with supervisors, he was considered late. Third, following a boarding of a private vessel on April 23, 2009, the applicant failed to complete entries into the Marine Information for Safety and Law Enforcement (MISLE) database to show that the boarding had been completed. The Page 7 concluded by advising the applicant that he had continually failed to conduct himself in a professional manner, with honor, respect, and devotion to duty, and would therefore be recommended for an unsuitability discharge.

Also on May 4, 2009, the applicant’s CO issued a memorandum advising him of the recommended unsuitability discharge. The CO specified that the reason for this action was the applicant’s continued lack of general adaptability and complete disregard for Coast Guard rules and regulations, in addition to his failure to comply with the requirements of his performance probation. With this correspondence, the applicant was also provided an Acknowledgement of Rights, in which he was advised of his options to submit a statement on his behalf, consult with legal counsel, and object to his discharge.

Applicant’s Rebuttal

The applicant submitted a rebuttal statement on May 6, 2009. Therein, he initially emphasized that he had only been on probation for 21 days when he received notice of its

termination. The applicant then refuted the three violations cited in the May 4, 2009, Page 7, in turn.

Regarding the allegation that he had contacted a subordinate unit on April 16, 2009, to request support personnel, in violation of an explicit directive not to do so, the applicant asserted that he had simply followed instructions he received via email, which were consistent with boarding officer procedures established by his unit. In support of his position, the applicant submitted the following: (1) an email from his supervisor with tasking for April 16, 2009, which did not include an explicit directive not to contact subordinate units; (2) a May 2009 statement signed by four members of a subordinate unit to the effect that the applicant had been a key asset in organizing boardings and his work ethic and professionalism were greatly appreciated; (3) a statement signed by a former member of the applicant's unit to the effect that, when he left the unit in July 2008, boarding officers' duties included calling subordinate units to check on personnel availability; and (4) a document titled Law Enforcement Petty Officer (LEPO) Pre-Boarding Checklist, which outlined various actions to be taken once a vessel had been targeted for a random security boarding.

Regarding his arrival 30 minutes late to work on April 20, 2009, the applicant stated that he completed a workout that morning, then arrived at work some time before 0915. He stated he had never been informed that he would be considered late if he reported to work after completing his workout prior to 0915 and did not begin work immediately. In support of his position, he submitted the following: (1) April 2009 emails in which he requested clarification about the work schedule; and (2) written statements from fellow members S.L. and S.H. to the effect that they had never been told they were required to begin work immediately upon arrival if they finished a workout prior to 0915.

Regarding his alleged failure to properly and/or timely complete a MISLE entry on April 23, 2009, the applicant contended that he had completed the entries on April 27, 2009, well within the required seven days post-boarding. He contended that an entry within 24 hours of boarding would have been required only if the vessel had been detained, denied entry, or expelled, which had not been the case here. In support of his position, the applicant submitted: (1) an activity summary report showing that a MISLE activity was completed on April 27, 2009; and (2) portions of a policy titled "MISLE DATA ENTRY REQUIREMENTS FOR FOREIGN VESSEL ARRIVALS, EXAMINATIONS AND OPERATIONAL CONTROLS".

The applicant concluded by stating that during his probation, he took the initiative to improve the deficiencies he had been made aware of. The applicant asserted that he took responsibility for mistakes he had made in the past. He stated he had recently become a father and husband and was set to receive a bachelor's degree in 2010. He also noted he had received "great marks" in his last five marking periods. In support of these arguments, the applicant submitted the following: (1) an April 23, 2009, email from his supervisor in

which she thanked him for his good work that day; (2) an April 27, 2009, email to his supervisors in which the applicant requested to schedule monthly meetings to monitor his progress during probation; and (3) an April 27, 2009, email in which the applicant sought to schedule counseling sessions with the Coast Guard's Employee Assistance Program (EAP).

CO Endorsement and Discharge

In a First Endorsement dated June 17, 2009, submitted to the Chief of the Personnel Service Center's Enlisted Personnel Management Division (PSC-epm-1), the applicant's CO recommended approval of the applicant's discharge for unsuitability due to inaptitude. The CO stated that the request to separate the applicant was foreseeable based on his history of substandard performance at multiple units and receipt of more than 15 negative Page 7s over his six years of active duty on such topics as dereliction of duty, tardiness, absence without leave, failure to acquire adequate dependent care, and insubordination. The CO also noted that the applicant received two NJPs within 34 months for multiple UCMJ offenses, including damaging military property, false official statements, violation of general order, and improper hazarding of a vessel. The CO stated it was apparent the applicant had no intention of adhering to the Coast Guard's Core Values and would only continue to fail to conform to military standards if allowed to remain in service. The CO asserted that despite all formal and informal counseling efforts made by supervisors onboard his previous and current units, the applicant had been unable to follow the rules and spent more effort explaining why he did not follow the rules than he did in performing his job. The CO opined that the applicant liked the idea of being in the Coast Guard but was unwilling to perform the work or make the sacrifice necessary to serve. The CO further asserted that the applicant had become an administrative burden to his unit, and that his poor performance would continue. As such, the CO stated, it was in the best interest of the Coast Guard that the applicant be processed for separation in the most expeditious manner.

PSC-epm-1 issued a Separation Authorization effective July 22, 2009, and the applicant was administratively discharged on that date. His DD Form 214 (Certificate of Discharge or Release from Active Duty) (hereinafter "DD 214") reflects the following:

Type of Separation:	Discharge
Character of Service:	Honorable
Separation Authority:	COMDINST M1000.6A 12-B-16
Separation Code:	JNC
Reentry Code:	RE4
Narrative Reason for Separation:	Unacceptable Conduct

APPLICATION

In his January 2025 submission, the applicant requested that the Board direct the Coast Guard to change his narrative reason for separation from “Unacceptable Conduct” to “Secretarial Authority” and his reentry code from “RE4” to “RE1.” The applicant, through counsel, initially acknowledged that he had received “various counselings” and two NJPs during his Coast Guard career. He pointed out, however, that there were also positive entries, such as an entry in June 2004 detailing his willingness to work extra hours and potential to develop his peers. The applicant also highlighted his receipt of various commendations during his service. Specifically, the Coast Guard Good Conduct Medal, Coast Guard Pistol Marksman Ribbon, Coast Guard Pistol Sharpshooter Ribbon, Coast Guard Presidential Unit Citation, Coast Guard “E” Ribbon, and Global War on Terrorism Service Medal.

Regarding the lateness of his request, the applicant argued that his case should be decided on its merits because of the prejudicial nature of the narrative reason for separation he was assigned, and “in light of new guidance that had been issued since his separation.”

The applicant then apologized to the Board and the Coast Guard for his immature behavior during his early years of his Coast Guard service, noting that he had recognized his conduct fell below the Coast Guard’s standards, and that he had changed his behavior accordingly.

The applicant proceeded to emphasize that his two NJPs were remote from each other, and he had no other behavioral issues or negative remarks for approximately two years following his first NJP. He asserted that he had been excelling and proving himself a valuable asset to his command during this period. This all changed, he stated, when he made a complaint regarding safety concerns he had with helicopter boarding procedures in rough weather in March 2009. From that point on, he recalled, he became a target for his chain of command, who found any excuse to issue negative counseling remarks, and sought to separate him from the Coast Guard.

The applicant contended that he requested a transfer to a different unit after making a complaint about the safety of helicopter boarding procedures in March 2009, and that this was just before he was placed on unsuitability probation in April 2009. He stated that he had reported to his new unit on April 28, 2009, and on May 4, 2009, was informed by his former command that he was receiving a negative remark for supposed violations that occurred in his last 10 days at his former unit.⁴ In response to the violations alleged by his command, the applicant stated, he had submitted a rebuttal demonstrating that none of the

⁴ The record includes a career planning worksheet completed in early April 2009 in which the applicant expressed an interest in switching from a law enforcement rate to one in information technology. Although the record does not include specific documentation of the applicant’s transfer, the Board finds no reason in the record to doubt his account of the transfer or its timing for purposes of this decision.

allegations had merit. Because the reasons for his separation were invalid, the applicant argued, his command's decision to discharge him while ignoring his rebuttal arguments was an error.

The applicant also emphasized that during his short probation, he was actively working to address his perceived deficiencies. In this regard, he pointed to the emails he sent in late April 2009 requesting regular meetings with leadership to monitor his status and setting up EAP counseling sessions.

The applicant then referenced a July 2018 memorandum issued by Under Secretary of Defense for Personnel and Readiness Robert L. Wilkie providing guidance to the Department of Defense (DoD) BCMRs and Discharge Review Boards (hereinafter "Wilkie Memo"). The applicant asserted that the Wilkie Memo constituted "substantial clarifying guidance" and emphasized record correction boards' duty to "ensure fundamental fairness." The applicant further cited the Wilkie Memo's assertion that "[i]t is consistent with military custom and practice to honor sacrifices and achievements, to punish only to the extent necessary, to rehabilitate to the greatest extent possible, and to favor second chances in situations in which individuals have paid for their misdeeds." The applicant acknowledged that the Board, not being a part of DoD, was not bound by the Wilkie Memo, but argued that the Board should take it into consideration, nonetheless. In applying the guidance to his case, the applicant asserted that the punitive intent behind the "Unacceptable Conduct" and "RE4" entries on his DD 214 had served any legitimate purpose in correcting the applicant's behavior, and when considered with his honorable service for six years and seven months, those entries represented an injustice.

The applicant continued by asserting that he had thrived since separating from the Coast Guard. He submitted transcripts showing he received a bachelor's degree in 2010, a master's degree in 2011, and a Master of Business Administration degree in 2021. He also provided a copy of his resume showing he had held various information technology-related positions with private entities since leaving the Coast Guard. The applicant also submitted a character letter from an individual who had known him for more than seven years in a professional and personal capacity. The letter's author, S.A., attested to the applicant's leadership, integrity, reliability, and unwavering commitment to his work, and stated that he was "well-suited to re-enter the military," would "undoubtedly benefit any military unit," and was an "ideal candidate for serving his country once again."⁵

In conclusion, the applicant stated that he had been haunted by his separation from the Coast Guard, and did not believe that "Unacceptable Conduct" accurately portrayed the overall quality of his service. He further stated that he had displayed tremendous courage

⁵ Although referenced by S.A., none of the arguments or other material submitted by the applicant suggest he desires to rejoin the Coast Guard or to join another military service. Because the Board believes such an intention would have been made clear by the applicant in the materials submitted, the Board concludes that a desire to provide additional military service is not a basis for the applicant's request.

and integrity by coming forward about the deficiencies with his former unit's safety protocols, but rather than address these issues, his command targeted him and destroyed his Coast Guard career.

COAST GUARD'S VIEWS

In a March 2025 memorandum, the Coast Guard Personnel Service Center (PSC) recommended that the Board deny relief in this case. The PSC initially noted that the applicant had provided little to no explanation as to the reason for his failure to submit his request to the Board within the three-year period required. The PSC then argued that the applicant had failed to demonstrate an error or injustice. In this regard, the PSC stated that the applicant's service record reflected a continued lack of general adaptability and disregard for Coast Guard rules and regulations. Specifically, the PSC noted that the applicant amassed over 15 negative Page 7s over his six years of service documenting repeated instances of dereliction of duties, tardiness, absence without leave, failure to arrange adequate dependent care, and insubordination. Furthermore, the PSC noted, the applicant received two NJPs within 34 months for multiple UCMJ offenses including damaging military property, false official statements, violation of a general order or regulation, and improper hazarding of a vessel. The PSC concluded by stating that the applicant's reason for separation and reentry code were consistent with Coast Guard policy in cases of similar behavior, conduct, and performance of duties. Based on these circumstances, the PSC argued, the applicant had not demonstrated that the Coast Guard failed to act correctly, lawfully, and in good faith.

In a July 2025 memorandum, a Coast Guard Judge Advocate (JA) adopted the facts and analysis provided by the PSC and recommended that the Board deny the relief requested by the applicant.

APPLICANT'S RESPONSE

The applicant, through counsel, submitted a response to the Coast Guard's views on May 5, 2025. Therein, the applicant initially acknowledged that his application was untimely. Nevertheless, he argued, the Board should waive untimeliness in the interests of justice and decide the application on its merits. In this regard, the applicant stated that he had faced years of undue prejudice and scrutiny because of his adverse discharge from the Coast Guard. He further stated that he had not applied to the Board immediately after his discharge because he wanted to take time to establish his career and to establish himself in his community. The applicant again emphasized the degrees he had obtained between 2010 and 2021, and his steady employment since discharge to provide for his loved ones. Because he had been focused on bettering himself, he argued, the Board should not punish him for submitting an untimely application.

The applicant then argued that the Coast Guard’s views had ignored the “language and unambiguous intent of the Wilkie memorandum in relation to the applicant’s request.” In light of the Wilkie Memo, he stated, there was no legitimate reason to continue to impugn his character and stigmatize his good name by maintaining his adverse discharge. He had been punished enough for his minor instances of misconduct, he stated, and any continuing punishment at this point was unduly harsh and clearly inequitable.

The applicant again stated that he had displayed tremendous courage and integrity by coming forward about his former unit’s unsafe practices, and rather than address these issues, his leadership had targeted him and destroyed his career. As such, the applicant stated, he was now seeking to rectify these errors so he could reflect on his Coast Guard service without lingering remorse and shame.

APPLICABLE LAW AND POLICY

The Coast Guard’s Personnel Manual, COMDTINST M1000.6A (January 1988), including changes made up to July 2009 (hereinafter “PERSMAN”) was in effect at the time of the applicant’s discharge. Separation of enlisted members from the service was addressed in PERSMAN Chapter 12.B., which included the following relevant provisions:

12.B.1. General

12.B.1.a. Discharge Authority

1. Commander, Coast Guard Personnel Command is the Discharge Authority in all cases of administrative separation except in [specific, limited circumstances]....

12.B.16. Unsuitability

12.B.16.a. By Commandant’s Direction

Commander, CGPC shall direct the discharge of enlisted members for unsuitability except as provided in Article 12.B.16.e. A discharge for unsuitability in lieu of disciplinary action will not be issued unless Commander, CGPC determines the Service’s and the member’s interests will best be served by administrative discharge. See Article 12.B.1 when recommending the discharge of a first-term performer for unsuitability.

12.B.16.b. Causes for Discharge for Unsuitability

The purpose of discharges for unsuitability is to free the Service of members considered unsuitable for further service because of:

1. Inaptitude. Applies to members best described as unfit due to lack of general adaptability, want or readiness of skill, clumsiness, or inability to learn.
2. Personality Disorders. As determined by medical authority, personality behavior disorders and disorders of intelligence listed in the Medical Manual, COMDTINST M6000.1 (series), Chapter 5.

3. **Apathy, defective attitudes, adjustment disorders** as listed in the Medical Manual, COMDTINST M6000.1 (series), Chapter 5, inability to expend effort constructively, or other observable defect for which a separation designator code (SPD code) exists that renders a member unsuitable for further military service.
4. Unsanitary Habits.
5. Alcohol Abuse. See Article 20.B.2. for guidelines on alcohol abuse cases.
6. Financial Irresponsibility.

12.B.16.c. Probation

Commanding officers will not initiate administrative discharge action for inaptitude, apathy, defective attitudes, unsanitary habits, or financial irresponsibility until they have afforded a member a reasonable probationary period to overcome these deficiencies. When commands contemplate discharging a member for these reasons, they shall counsel the member that a formal probationary period of at least six months has begun and make an appropriate Administrative Remarks, CG-3307, entry in the member's PDR that administrative discharge processing will be initiated unless the member shows significant improvement in overcoming the deficiency during the probationary period. The member must acknowledge this entry in writing. Commanding officers are authorized to recommend discharge at any time during probation if the member is not attempting to overcome the deficiency. Submit copies of all CG-3307 entries as an enclosure to the discharge recommendation submitted to Commander (CGPC-epm-1).

12.B.16.d. Member's Rights

In each case processed in accordance with this Article, commanding officers shall:

1. Advise the member in writing, using the letter and endorsement described in Article 12.B.9. to inform the member of the reason(s) he or she is being considered for discharge. Specifically state one or more of the reasons listed in Article 12.B.16.b.
2. Afford the member the opportunity to make a written statement on his or her own behalf. If the member does not desire to make a statement, commanding officers shall state such fact in writing over the member's signature and that shall constitute his or her statement. If the member refuses to execute any statement whatsoever, the commanding officer will so state.
3. Afford the member an opportunity to consult with a lawyer as defined in Article 27 (b) (1), UCMJ, if the member's character of service warrants a general discharge. If the member is entitled to and requests counsel and one is not available, a commanding officer must delay discharge proceedings until one is available.

12.B.16.j. Documentation

In every case of discharge for unsuitability, the documents listed below are required [to be included] with the recommendation submitted to Commander (CGPC-epm-1)

for decision....

1. A copy of the letter notifying the member of the reason(s) for administrative processing and of his or her rights.
2. If applicable, the member’s declaration or waiver of opportunity to consult with Counsel.
3. The member’s signed statement of awareness, statement on his or her own behalf, or refusal to make a statement.
4. Report of medical board or SF-502 as applicable.
5. A copy of the closed out form CG-3306 dated 30 June 1983 showing average Proficiency, Leadership, and Conduct marks and a copy of the current **Enlisted Employee Review** showing factor marks.
6. Summary of military offenses.
7. Any other pertinent comments or recommendations over the commanding officer’s signature.

The Coast Guard’s Separation Program Designator (SPD) Handbook in effect during the relevant period included the following entry on page The following entry appears on page 64 of the version of the SPD Handbook published in January 1994, which was applicable at the time of the applicant’s discharge:

<u>SPD Code</u>	<u>Narrative Reason</u>	<u>RE Code/Authority</u>	<u>Explanation</u>
JNC	UNACCEPTABLE CONDUCT	RE-4 12-B-16 (ENL)	Involuntary discharge directed by established directive (no Board entitlement) when member performs acts of unacceptable conduct (i.e., moral and/or professional dereliction) not otherwise listed.

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 under 10 U.S.C. § 1552(a), as the applicant is seeking a correction of an alleged error and/or injustice in his military records.
2. The applicant has exhausted all available 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.

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

4. 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).

5. “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).

6. The application is not timely because 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) and 33 C.F.R. § 52.22. The applicant was made aware of his narrative reason for separation and reentry code at the time of his discharge in July 2009. The Board did not receive the application until January 2025, more than 15 years later.

7. The Board may excuse the untimeliness of an application if it is in the interests of justice to do so. 10 U.S.C. § 1552(b). In determining whether the interests of justice require waiver of the limitations period, the Board “analyz[es] both the reasons for the delay and the potential merits of the claim based on a cursory review.” *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992). “[T]he 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.” *Id.* Having applied this framework to the present case, the Board finds the following:

- a. *Reasons for delay.* The applicant has contended that he neglected to file a timely application because after his discharge, he was focused on his education (obtaining a bachelor’s and two master’s degrees), on establishing his career and his place in his community, and on supporting his family.

While the applicant’s post-service achievements are commendable, the 15-year period between the applicant’s discharge and the filing of his application amount to a significant delay. Moreover, the applicant’s focus on personal and financial goals after his retirement from the Coast Guard represent ordinary life circumstances common to many applicants and do not constitute extraordinary barriers to filing a timely application.

The applicant also appears to suggest that the July 2018 issuance of the Wilkie Memo should act to mitigate his delay. Initially, the Board notes that, as acknowledged by the applicant, the Wilkie Memo was issued as guidance to DoD correction boards, and therefore does not directly impact the Board. In addition, upon review, the Board observes that the memo's reference to "substantive clarifying guidance," as cited by the applicant, referred to previous guidance provided to correction boards with respect to cases involving "mental health conditions and sexual assault or sexual harassment experiences." The Wilkie Memo goes on to emphasize various factors which should be considered in cases requesting clemency from court-martial sentences, in addition to other adverse discharge determinations. The Board does not find, however, that such guidance gave rise to any right or theory of relief that was not available to the applicant prior to July 2018. Finally, the applicant provided no explanation of the more than six-year delay between the memo's issuance and his application.

Under these circumstances, the Board does not find the justifications provided by the applicant for his delay in filing an application with the Board to weigh in favor of waiving the statute of limitations.

- b. *Cursory review of merits.* Upon cursory review, the Board finds that the application lacks potential merit.

The applicant does not challenge the propriety of most of his more than 20 Page 7s or his NJPs, and acknowledges that his conduct fell below the Coast Guard's high standards.

Nonetheless, the applicant contends that the Coast Guard's reasons for terminating his six-month probation period were "invalid." He asserts that the statement he submitted in 2009 objecting to his discharge demonstrated that the command's reasons for discharging him were without merit. He further contends that his discharge was retaliatory, having stemmed from his report of concerns about the safety of his unit's use of helicopters for boardings in adverse weather.

The Board initially notes that Coast Guard policy in effect at the time of the applicant's discharge contemplated significant discretion to be exercised by the chain of command. Specifically, PERSMAN Art. 12.B.16.b.1. provided for unsuitability discharges for "inaptitude," which it described as "unfit[ness] due to lack of general adaptability, want or readiness of skill, clumsiness, or inability to learn." With respect to probationary periods, while PERSMAN Art. 12.B.16.c. required

probation prior to discharge in the applicant's circumstances, it also permitted a CO to recommend discharge "at any time during probation if the member is not attempting to overcome the deficiency."

In ending his probation, the applicant's command referenced three specific infractions. The applicant submitted detailed arguments addressing each of these – supported by the statements of other members and portions of relevant policies – and they were rejected by both the applicant's CO and PSC-epm-1 (the ultimate discharge authority). The Board need not re-adjudicate each of the command's reasons in detail but will note briefly that the terms of the applicant's probation included a requirement that he follow supervisors' orders and directives "in fact and in spirit." The applicant supplied an April 16, 2009, email from his supervisors directing him to create a boarding plan. He contends that because this communication did not include an explicit order not to contact subordinate units, the command's reference to his failure to comply with such an order was "invalid." The Board observes, however, that the Page 7 terminating the applicant's termination stated that the applicant had been verbally counseled not to make such calls on multiple prior occasions.

More importantly, PERSMAN contained no requirement that a command specify each infraction committed during probation, or that a probationary period's termination be reversed upon a member's plausible refutation of individual instances of alleged infraction. Instead, the policy assigned discretion to the CO of a member serving probation to determine whether the member was, or was not, "attempting to overcome the deficiency" which led to probation. In this case, the command made clear in its May 2009 and June 2009 issuances that the applicant displayed a "continued lack of general adaptability and complete disregard for Coast Guard rules and regulations," "had continually failed to conduct himself in a professional manner, with honor, respect, and devotion to duty," had become an administrative burden," and "despite all formal and informal counseling efforts ... had been unable to follow the rules and spent more effort explaining why he did not follow the rules than he did in performing his job." Pursuant to the policy, such determinations were left to the judgment of commands and were sufficient to terminate probation.

The Board also finds the applicant's allegation of retaliation unconvincing. Initially, the applicant has provided little to no detail about the nature of the safety concerns in question, when they were raised, or to who. In addition, despite his drafting a thorough and detailed rebuttal to his proposed discharge, the applicant did not include alleged retaliation

in that statement, and there is otherwise no evidence in the record that he raised these issues contemporaneously. Instead, given the applicant's long history of similar conduct as detailed in his numerous Page 7s and NJPs, the record indicates the termination of his probation and discharge were the result of a continuation of that pattern of conduct, rather than an inappropriate response to safety concerns.

Lastly, the Board observes that the applicant received an honorable characterization of his Coast Guard service. Aside from subjective regret, the applicant has not detailed any injustice he has faced as a result of the narrative reason for separation and reentry code assigned by the Coast Guard.

In short, the record indicates that the Coast Guard's actions fell within its authority under the relevant policies, and that the narrative reason and reentry code appearing on the applicant's DD 214 do not amount to an injustice.

For the foregoing reasons, the Board's cursory review of the case's merits weighs against a waiver of the statute of limitations.

8. The limitations period applicable to Board applications, like other statutes of limitation, serves to promote finality, encourage the prompt presentation of claims, and protect the defendant (here, the Coast Guard) from the prejudice inherent in having to defend stale claims. In the case of record correction applications, Congress has determined that a three-year limitations period represented an appropriate balance of these and other relevant interests. 10 U.S.C. § 1552(b).

9. In this case, based on its cursory review, the Board finds the application is unlikely to succeed on its merits. Furthermore, the reasons for the filing delay provided by the applicant, though credible, do not outweigh a delay of more than 15 years. Accordingly, the Board finds that the interests of justice do not warrant waiver of the statute of limitations in this case. Therefore, the application will be denied as untimely

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former BM3  is denied.

October 23, 2025

