

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-194

██████████
SA (former)

FINAL DECISION

This proceeding was conducted 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 September 6, 2018, and assigned it to staff member ██████████ to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated July 26, 2019, 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 Fireman's Apprentice who was given a General Discharge "Under Honorable Conditions" for unsuitability on November 15, 1983, asked the Board to correct his record by upgrading his discharge to Honorable.

The applicant stated that he requested a hardship discharge due to marital problems that started after his wife became pregnant shortly after his enlistment. He said that his Commanding Officer (CO) would not grant him a hardship release, and that after this, he sent a letter to his U.S. Senator requesting his assistance in obtaining the hardship discharge. The applicant stated that, after reviewing his submission and medical records to support his claim, the Senator began assisting him in obtaining the hardship discharge, and the Coast Guard eventually obliged and agreed to his release. He alleged that, upon receiving his discharge, his Executive Officer (XO) was "totally against" his release, did not agree with the hardship findings, and wanted to ensure that he did not receive Veterans Affairs (VA) benefits. The applicant added that he has honorably served in the National Guard and in the U.S. Civil Service before and after his discharge from the Coast Guard.

To support his claims, the applicant submitted a letter from a then-U.S. Senator expressing his pleasure at the applicant's expedited hardship discharge, since the Senator's office received a letter from the applicant describing his difficulties in obtaining the discharge. The applicant also enclosed a letter from a Captain addressed to the applicant's father informing him that his son

received his hardship discharge, as he had requested in his letter to President Ronald Reagan dated October 22, 1983.

The applicant also included two letters from his former supervisors at a Naval Aviation Depot, where he had served in the Civil Service as a machinist. These letters ask the U.S. Office of Personnel Management to reconsider the applicant's request for retirement due to disability and do not reference his Coast Guard service. He also included an award he received for good service in the U.S. Civil Service.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on May 23, 1983. In signing his enlistment contract, the applicant acknowledged that he was ready and available "to report to such station or vessel as I may be ordered to join" and that no promises had been made to him "concerning assignment to duty."

The applicant had previously enlisted in the Marine Corps Reserve on July 8, 1980, and was honorably discharged on December 18, 1980 due to the end of a special reserve enlistment program. The applicant had also apparently joined the Army National Guard at some point; though his Coast Guard file contains no record of this enlistment, it contains a letter of commendation from his Commanding Officer saying that he never refused to carry out orders and performed well in a stressful job in the Guard.

In his pre-training medical history report dated May 25, 1983, the applicant indicated that he was in good health and was not taking medication. The applicant signed this form confirming its accuracy.

Initial Reluctance to Report for Duty

On June 8, 1983, while still in basic training, the applicant wrote a letter to his Congressman asking for his assistance in getting a post in [REDACTED] or in obtaining an honorable discharge. In the letter, he said that, upon arriving at Basic Training, he was promised that he would be separated from his wife for a maximum of four to six weeks, but that his orders had him transferring to [REDACTED] for six months, to [REDACTED] for three months, to [REDACTED] for six months more, and to [REDACTED] after that. He wrote that he "does not feel this is fair" to have his family uprooted so many times in such a short period and that, while he understood that he had "obligations" to the Coast Guard, he "feels he is being wronged" by the Service. He requested expedited consideration of his request, since his graduation date from basic training was on June 16, 1983, and if he did not receive new orders by then, he would receive a general discharge for refusing to accept orders.

Notes from Coast Guard Congressional Affairs staff dated June 16, 1983, related to the request show that there were no promises made about locations in the applicant's enlistment contract but that the Coast Guard was looking into changing his orders. A commander responded to the Congressman's inquiry on October 4, 1983, indicating that the applicant had been transferred to a posting in [REDACTED] as he had requested.

Though there is no sign of it in the record, the applicant apparently wrote to one of his U.S. Senators, though not the one mentioned in his BCMR application, around the same time that he wrote to the Congressman. On June 28, 1983, the Senator received a letter from a commander related to his inquiry into the applicant's location assignments. The commander stressed that the applicant was initially assigned to areas with the greatest need for Fireman's Apprentices and that he could continue to seek a mutual change of station to get to an area closer to his home. The commander added that the applicant's enlistment contract did not promise any specific posting and that separation from family members is unfortunately a by-product of service in the Coast Guard.

The applicant's orders shortly after graduating from basic training show that he reported for duty at [REDACTED] on June 24, 1983, but that he later transferred to the Coast Guard station in [REDACTED], on August 18, 1983. This transfer was done as a mutual exchange of duty with another Seaman Apprentice previously assigned to [REDACTED].

Arrival in North Carolina

On August 25, 1983, the applicant was admitted to a civilian hospital for complications related to iron deficiency from a possible gastrointestinal bleed. The doctor on call wrote that while the applicant had no previous psychiatric history, he appeared to be having a "severe adjustment reaction to active duty in the Coast Guard." The doctor indicated that the applicant was "impulsive and has threatened suicide" and recommended a change in active duty assignment or discharge.

On August 29, 1983, the applicant went to the Coast Guard Medical Support Center near his post. The therapist on duty felt that he was in a "major depressive episode and might be suicidal or even homicidal." He was referred to psychiatric counseling the following day, and the psychiatrist felt that he was not suicidal or homicidal but was instead having an "adjustment reaction" to his new military lifestyle. The psychiatrist found the applicant fit for service but recommended that his command consider an administrative discharge.

On September 1, 1983, the Senior Medical Officer wrote a letter to the Officer in Charge of the Station concurring with the psychiatrist's evaluation of the applicant's condition. He stated that the applicant's marital problems would not improve unless the applicant was either transferred closer to his home [REDACTED] or discharged from the Coast Guard at the convenience of the government. He recommended that the applicant be "considered for separation from the Coast Guard" or a transfer closer to his home.

On September 2, 1983, the applicant wrote a letter to the U.S. Senator mentioned in the BCMR application. The applicant wrote that his prior command had told him that his work at the Station in [REDACTED] would be two-days-on and two-days-off but that when he got to the Station, he was informed that the post worked three-days-on and one-day-off, with every other weekend off. He claimed that this arrangement would put strain on his marriage since his wife could leave [REDACTED] because of stipulations on her scholarship and he would be away from his family for three straight days at a time. The applicant alleged that doctors had recommended that he transfer to another post with different hours or receive an honorable discharge. He added

that he had contacted his Congressman and a lawyer for more assistance in this matter. The applicant closed the letter by stating that his post in [REDACTED] had had a high rate of members transferring out and that he had been denied his right to see his CO after his XO did not comply with his request.

On September 13, 1983, the applicant again reported to the Medical Support Center with a rash attributed to stress and anxiety. He was prescribed a medication to deal with the condition.

The Senator receiving the letter on September 2, 1983, submitted an inquiry to the Coast Guard on behalf of the applicant on September 14, 1983, and received a response from the Coast Guard on October 3, 1983. The response, a letter from the Acting Commander of the Fifth Coast Guard District, explained that the applicant would have the normal 24 hours on duty/24 hours off duty schedule once he completed watchstander training, which he had failed to do because he was absent during his “indoctrination watch” training, which requires longer periods on duty. The Acting Commander also discussed the applicant’s situation with his wife, saying:

A review of [applicant’s] various medical consultations by commanding officer indicates no reason to recommend him for any type of administrative discharge at this time. His separation from his wife, who is attending college in another [REDACTED], is unfortunate but is a personal decision of the family and does not meet the requirements for reassignment or discharge.

The Acting Commander apparently based his response to the Senator on a September 21, 1983, memorandum from the applicant’s Group Commander. This memorandum highlighted the short timeframe between the applicant’s arrival at his current station and his request to transfer or be discharged and noted that this was part of a pattern of behavior that had started in [REDACTED]. The Group Commander also noted that the applicant had been regularly counseled on the requirements for hardship discharge. The Group Commander wrote:

I believe that that Coast Guard has done a great deal for this person who has served only four months. I think it is time that [applicant] did his part. Our system is a fine one that has stood the test of time but it is not, nor should it be, geared to instant satisfaction. One of the things that has made this service endure for so long is that we all pay our dues. I feel that [applicant] should be subject to that same standard. The duty stood by [applicant] is very similar to that at most active SAR stations. When he wrote the letter to Senator [redacted] he was “breaking in” on the watches which required additional effort and duty. Once qualified on watch, he will stand port and starboard duty.

The Acting Commander also stated that the Group Executive Officer was qualified to deal with the applicant’s situation and going further up the chain of command was neither necessary nor a denial of his rights.

Hardship Discharge Application and Supporting Documentation

On October 4, 1983, the applicant submitted his request for a hardship discharge. After explaining his various transfers and his eventual arrival at [REDACTED], he stated that he was requesting hardship discharge because his “wife refuses to reside with me at any of my duty stations.” He explained that he made “every attempt possible” to get his wife, who was pregnant, to live with him, but she “flatly refuse[d],” and was seeking a divorce if he could not live with her. As a result of this, he described himself as “increasingly despondent [sic]” and included medical

reports indicating that he should be administratively discharged. He closed his argument by writing:

I sincerely believe I have a irreconcilable [sic] problem which will not be solved unless I am able to get out of the Coast Guard. My ability to cope with this situation is failing dramatically. I do not want my mental well being to suffer irripable [sic] damage.

Also on October 4, 1983, the applicant's wife's obstetrician sent a letter to the applicant's Congressman in response to his inquiry about whether the applicant should be discharged because of his wife's health. The obstetrician wrote:

[Applicant's wife] is an obstetrical patient of mine with an estimated date of confinement of April 17, 1984. She has had one visit here but has not had her complete obstetrical work-up. At the present time I am not aware of any problem she is having with this pregnancy. She states that her husband being in the Coast Guard is causing her emotional strain.

On October 9, 1983, the Officer in Charge of the applicant's Station submitted the first endorsement on the applicant's hardship discharge request. In a short memorandum, the Officer in Charge wrote:

2. [Applicant] does in fact have marital problems, however he isn't faced with problems that other coastguardsmen havn't [sic] encountered
3. [Applicant's] performance since his arrival has been marginal at best.

On October 11, 1983, the applicant sought mental health counseling. The therapist on duty diagnosed him with adjustment disorder with depressive, anxious, and immature qualities, along with passive-aggressive traits. This therapist also discussed the possibility of discharge with the applicant's command.

On October 14, 1983, the Deputy Group Commander wrote a memorandum describing a phone call with the applicant's mother the previous day. He stated that the mother had asked if the applicant would be out by October 19, 1983, so that he could attend job interviews and the Deputy Group Commander had replied that discharge recommendations take time. He added that she described the applicant's relationship with his wife, saying:

She said [applicant's wife] is very immature. A few of her examples/opinions:

- a. [Applicant's wife] wanted [applicant] to join the Coast Guard so that she could move out of their apartment back into the house with her mother...
- b. [Applicant] suggested divorce to his wife before he joined the Coast Guard and came after him and tore off his shirt.
- c. [Applicant's wife's mother] and her daughter are mean.
- d. [Applicant's wife] is a beautiful girl, but she's on the verge of a breakdown.

The applicant's mother added that she tried to get along with her son's wife but she "cannot understand her immaturity." She noted that even when the applicant was not in the Coast Guard, he was unsuccessful in convincing his wife to move out of their hometown. She stated that now that his wife was pregnant, her son was "having an impossible time coping with his wife and mother-in-law."

Also on October 14, 1983, the applicant received a Page 7 reprimanding him for refusing to leave his room and report to work on October 12, 1983, even after medical staff had examined him and found that nothing was medically wrong with him. The Page 7 indicates that the applicant was counseled that further faking of illnesses to avoid work would be a violation of Article 115 of the Uniform Code of Military Justice (UCMJ) and the applicant signed the form to show that he received the counseling. The Page 7 noted, "He was informed that failure to pursue qualification as a communications watchstander with immediate enthusiasm daily will be cause for formal charges under Article 92, UCMJ." This same Page 7 also indicates that the applicant was counseled for his failure to qualify as a watchstander after seven weeks of duty at the Station, something that is "normally an achievable goal after 2-3 weeks at this unit." The applicant also acknowledged this entry with his signature.

On October 18, 1983, the applicant received a Page 7 indicating that he had received counseling by telephone of the requirement to submit "at least two affidavits substantiating the dependency or hardship claim, and that the dependency or hardship occurred after entrance into the Coast Guard." The Page 7 stated that one of these affidavits should be from his wife. The applicant signed the Page 7 indicating that he had received the counseling.

Also on October 18, 1983, the applicant's mother wrote a follow-up note to the Deputy Group Commander urging him to expedite her son's discharge. She reiterated the stress her son was under, which she witnessed when he came home on leave. The applicant's mother wrote:

You told me on the phone that it would take at least two months for [applicant] to get discharged. I beg you please to help him... As I'm sure you know, some people is [sic] able to cope with any branch of service and some people is [sic] not. [The applicant] is a young man who can't cope.

Also on October 18, 1983, the applicant's wife submitted a statement in support of her husband's hardship discharge application. She stated that she did not move to her husband's duty station because she was enrolled in college under a state-specific scholarship and that there are no colleges close to her husband's duty station. She added that after she became pregnant, the couple "need[s] to be together more than ever," and that the tension the separation was putting on their family was "practically unbearable." The applicant's wife noted that her doctors said that she "does not need to be under such emotional strain" during her pregnancy and that Coast Guard doctors were recommending that her husband be discharged from the Coast Guard. She stated that she felt "something drastic may take place" if her husband was not discharged from the Coast Guard soon and that she and his family were very worried about him. She closed by writing:

I will go to any lengths necessary to see that [applicant] is released from the Coast Guard. I would hate to know that the Coast Guard would be the cause of the break-up of our marriage, loss of our child, or mental breakdown of someone in our family because of the stress it has caused.

Also on October 18, 1983, the Group Commander forwarded the applicant's request for a hardship discharge with an endorsement stating that the applicant's situation did not merit a hardship discharge. In his memorandum, the Group Commander stated that in a meeting that day, the applicant had told him that "his marriage was deteriorating before he joined the Coast Guard and by enlisting he was hoping that a job in the Coast Guard would improve things." The Group Commander confirmed that, based on financial disclosures, the cause of the applicant's stress was

not financial but rather distance from his wife. The Group Commander highlighted the applicant's poor service record, including his Page 7 and pending Non-Judicial Punishment (NJP) for an incident on October 12. Further describing the applicant's performance record, the Group Commander wrote:

[Applicant] has deliberately avoided learning the responsibilities of a watchstander, thinking that he would be discharged within two weeks of reporting aboard at Station [REDACTED] on 22 August 1983. His work behavior indicates that he will be a candidate for misconduct discharge, unless a drastic improvement is made in his attitude and output.

On October 26, 1983, the Commander of the Fifth Coast Guard District forwarded the applicant's request for a hardship discharge with a third endorsement. The Commander also recommended denying the applicant's request for a hardship waiver, writing a short memo that read:

The separation of [applicant] and his wife is due to the personal choice of the wife's refusal to reside with the military member in the area of his duty station. The separation of this married couple is no more of a hardship than that of the many assignments in the Coast Guard and as such, deserves no special consideration.

Non-Judicial Punishment

On November 4, 1983, the applicant received non-judicial punishment (NJP) for his conduct:

On or about 0800 83Oct12, [the applicant] failed to go to his appointed place of duty; quarters. On or about 0800 83Oct12 [the applicant] failed to obey a lawful order when [supervisor] ordered him to go to work and he failed to obey the same.

The applicant was assigned eleven days of restriction and eleven extra duty days as NJP.

As part this NJP, the applicant received a disciplinary Enlisted Performance Evaluation Form with very low marks. To justify a lowest possible mark of one (out of seven) in "Working as a Team Member," the applicant's supervisor wrote:

The crew would do better without [applicant] as a team member, he isn't qualified as a watch stander or as a member of a boat crew and doesn't appear to be trying to get qualified. He doesn't work as a team member so the rest of the "team" see him as a man who is allways [sic] grouchy, never does his share of the work and is often in the way.

To justify a mark of one in "Work Habits," the applicant's supervisor wrote, "[applicant] spends more time trying to get out of the CG than actually working for to CG [sic], he can do the work if he wants to but seldom wants to." To justify a mark of one in "Loyalty," the applicant's supervisor wrote, "[applicant] has no pride in this unit or the CG, he is constantly complaining and in general is a negative moral factor." To justify a mark of one in "Conduct," the applicant's supervisor wrote, "[applicant] does not conform to rules or military standards, he has been and it appears will continue to be a disciplinary [sic] problem."

Discharge from the Coast Guard

On November 10, 1983, Commander, Personnel Command determined that the applicant should receive a general discharge for unsuitability. The memorandum reads:

... [Applicant's] steady, poor performance and violations of the UCMJ indicate general discharge under honorable conditions. During his entire assignment to duty at [REDACTED] [applicant] has refused to learn any of the responsibilities normally expected of an E-2. He has caused a phenomenal [sic] administrative burden upon his command. Time spent attempting to correct his behavior has been in the realm of diminishing returns since his arrival on 22 Aug...

His presence causes negative morale at his unit for peers and supervisors. He has focused so much on his own problems, that he no longer performs any constructive work for the Coast Guard...

The Group Commander sent a letter of notification to the applicant regarding his general, unsuitability discharge on November 10, 1983. The Group Commander noted that the Coast Guard took all of his documentation for a hardship discharge into account when making this decision, but ultimately:

Your steady, poor performance and violations of the Uniform Code of Military Justice indicate a general discharge under honorable conditions. During your 12 weeks at [REDACTED] you have still failed to qualify as a watchstander, a training period that normally requires less than 2 weeks for qualification.

The rest of the letter notified the applicant of his rights to consult with a military lawyer or civilian counsel, submit a statement on his own behalf, and/or disagree with the recommendation.

On the same day, the applicant acknowledged receipt of the letter explaining the general, unsuitability discharge. He waived his right to submit a statement on his behalf and did not object to discharge from the Coast Guard under these conditions. The applicant signed the letter and initialed his decisions to waive specific rights. He also acknowledged that a general discharge might adversely affect him in civilian life.

On November 15, 1983, the applicant was discharged under honorable conditions for unsuitability reasons. He was given a reenlistment code of RE-4.

On November 18, 1983, the Coast Guard replied to another inquiry from a Senator, dated October 24, 1983, in which the Senator had forwarded an undated letter from the applicant, requesting the Senator's assistance in obtaining a hardship discharge. The Coast Guard advised the Senator that the applicant had received a general discharge on November 14, 1983, and that the applicant had not objected to the discharge classification.

On November 23, 1983, the Coast Guard responded to a letter from the applicant's father to the President dated October 22, 1983, in which the father asked for the President's assistance in obtaining a hardship discharge for his son. The father described the situation with the applicant's wife and claimed that the stress his son was under had made the situation "practically unbearable" for the family at large. He noted that medical advisors had indicated that his son qualified for an administrative discharge, but the Commanding Officer "insisted" on the applicant going through

the procedures to obtain a hardship discharge. He closed the letter by saying that he had nowhere to turn “except to you, his top commander in chief [emphasis included, sic]” to expedite his discharge. The Coast Guard advised the applicant’s father that his son had been authorized a general discharge and would be separated from the Coast Guard within 30 days.

VIEWS OF THE COAST GUARD

On January 23, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC focused on the applicant’s low average marks in his Enlisted Performance Evaluation, saying that Article 12.B.2.f.1.c. of the Personnel Manual in force at the time indicates that an enlisted member must receive above a 2.5 average in each category to qualify for an honorable discharge. According to PSC’s math, the applicant received averages of 3 for Military Factor, 1.5 in Team Factor, 1.4 in Work Factor, 2 in Representing the Coast Guard Factor, and 1.75 in Human Factor.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 4, 2019, the Chair sent the applicant a copy of the Coast Guard’s views and invited him to respond within thirty days. The applicant responded on March 7, 2019, saying that he had received the letter on March 1, 2019, and hoped that his response would be considered for inclusion into the record.

The applicant claimed in his response that “a lot that was said about me wasn’t true.” He began by discussing his treatment at [REDACTED], saying that they were accommodating in his request for transfer. He stated that this changed once he arrived in [REDACTED], since his Commanding Officer “was hell bent on making my life miserable as possible [sic],” and “he told me point blank that no Congressman or Senators could help me.” The applicant hoped that the Board would reach out to his Commanding Officer from [REDACTED] to get a more objective assessment of his condition and performance. He alleged that the Commanding Officer in [REDACTED] misrepresented his description of his marital problems from their meeting, saying that the description of his marriage as “rapidly deteriorating before” he had enlisted in the Coast Guard was not true. He contested the assertions that he had not qualified as a watchstander, saying “I was never informed as watchstander that I was unsatisfactory.” He added that while serving as a watchstander, he had caught Petty Officers having sex but was too scared to report it. The applicant wrote that he did not understand what he was signing when he received his papers for the general discharge, but said, “I know the second in command made the comment to the clerk doing the paperwork to make sure code me [sic] so I would never be able to get any of my benefit for serving in the Army National Guard honorably.” He highlighted his honorable service in the Army National Guard and Civil Service, his disappointment that his time in the Coast Guard did not work out, and his hope that the Board would consider his prior and subsequent good service as part of his application.

APPLICABLE LAW AND POLICY

Personnel Manual

Article 12.B.13.c.(3) of the Personnel Manual in force at the time (COMDINST M1000.6A) discusses conditions under which hardship discharge can and cannot be granted. According to (b) of this section, hardship will be granted in the following situation:

The member's family is undergoing hardship more severe than the normal hardships encountered by dependents or families of members of the Coast Guard; that this hardship is not of a temporary nature and the release of the member will result in the elimination of, or will materially alleviate, the condition, and that there are no means of alleviation readily available other than by release from active duty. Pregnancy of an enlisted man's wife is not in itself a circumstance for which release from active duty will be authorized.

Article 12.B.13.c.(4) details the circumstances under which a hardship discharge can be denied:

Undue hardship does not necessarily exist solely because of altered present or expected income or because the member is separated from the family or must suffer the inconveniences normally incident to a seagoing military service.

Article 12.B.13.d. discusses how enlisted members may request a hardship discharge. In relevant part:

... Such requests must be accompanied by at least two affidavits substantiating the dependency or hardship claim and establishing that the dependency or hardship occurred after entrance into the Service...

Article 12.B.13.e. discusses how the Coast Guard should respond to a complete request for hardship discharge:

Before forwarding the request, the commanding officer shall interview the member in order to elicit any further information and will insure that the required information is supplied. The forwarding endorsement shall include a statement. A transcript of performance marks, and a definite recommendation.

Article 12.B.13.h. allows members discharged for hardship or dependency to be given an honorable or general discharge, as appropriate under Article 12.B.2.f.

Article 12.B.2.f.(1) allows members to receive an honorable discharge only if they average marks of 2.5 or better in each evaluation category over the period of enlistment.

Article 12.B.16.b. lists possible reasons for an unsuitability discharge, including:

- (1) Inaptitude. Applicable to those persons who are best described as inapt due to lack of general ability, want or readiness of skill, unhandiness, or inability to learn
- (2) Personality disorders. As determined by medical authority, personality behavior disorders and disorders of intelligence listed in Chapter 5, CG Medical Manual, COMDINST M6000.1 (series)) [sic].

- (3) Apathy, defective attitudes, and inability to expend effort constructively. A significant observable defect, apparently beyond the control of the individual, elsewhere not readily describable.

Article 4.A.1.a.1. discusses the rationale for assigning members to posts in the Coast Guard, “In distributing and assigning members, Service needs come first.”

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant’s military record and submissions, the Coast Guard’s submission and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.¹ The applicant was discharged in 1983 and received and signed his DD 214 showing a General discharge at the time. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in 1983, and the application is untimely. However, the Board may excuse the untimeliness of an application if it is in the interest of justice to do so,² and under the Board’s “liberal consideration” guidance, the Board must excuse the untimeliness of a request for an upgraded character of discharge if the request is based at least in part on an alleged mental health problem.³ The applicant did not claim in his application to the Board that his discharge should be upgraded because of his mental health, but the record shows that while he was in the service, he was diagnosed with depression and stress because of his marital separation, requested a hardship discharge based on his marital separation, and submitted his medical records with his request for a hardship discharge to his chain of command. Therefore, the Board finds that the “liberal consideration” guidance should apply in this case and waives the statute of limitations.
3. The applicant alleged that his general discharge for unsuitability is erroneous and unjust because he should have received an honorable discharge for hardship based on the stress and the strain on his marriage that his separation from his wife was causing. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant’s military record is correct as it appears in the record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁴ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”⁵ And under the “liberal consideration” guidance, when deciding whether to upgrade the discharge of a veteran based on an alleged mental health condition, the Board must

¹ 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

² 10 U.S.C. § 1552(b).

³ DHS Office of the General Counsel, “Guidance to the Board for Correction of Military Records of the Coast Guard Regarding Requests by Veterans for Modification of their Discharges Based on Claims of Post-Traumatic Stress Disorder, Traumatic Brain Injury, Other Mental Health Conditions, Sexual Assault, or Sexual Harassment” (signed by the Principal Deputy General Counsel as the delegate of the Secretary, June 20, 2018).

⁴ 33 C.F.R. § 52.24(b).

⁵ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

liberally consider the evidence, including the applicant's claims, and decide whether the preponderance of the evidence shows that the veteran had a mental health condition while in the Service that could excuse the veteran's misconduct or poor performance; whether the mental health condition actually excused the misconduct or poor performance that adversely affected the discharge; and, if not, whether the mental health condition outweighs the misconduct or poor performance otherwise warrants upgrading the veteran's discharge.⁶

4. The applicant alleged that the circumstances surrounding his discharge led to an erroneous and unjust general discharge because his command was "totally against" his release and unfairly gave him a general discharge to preclude him from obtaining veteran's benefits. In signing his enlistment contract, however, the applicant acknowledged that he was ready and available "to report to such station or vessel as I may be ordered to join" and that no promises had been made to him "concerning assignment to duty." However, his record, compiled over less than six months of active duty in the Coast Guard, contains one violation of the UCMJ disposed of at NJP, one remarkably poor Enlisted Performance Evaluation, and multiple memoranda from the Group Commanding Officer, Group Executive Officer, and the Acting District Commander showing that he was generally apathetic, was unwilling to work, and lacked commitment to his unit. There is little if anything in the record to suggest that the applicant positively contributed to the Coast Guard at any point during his very short time in the service. Instead, the record shows that, as the applicant admitted in his application to the Board, he focused his efforts on quitting the Coast Guard.

5. The record indicates that the Coast Guard followed proper procedure with regard to enlisted members seeking a hardship discharge. The applicant signed a Page 7 indicating he had received counseling on how to apply for the discharge and met with his CO to discuss his application and to make sure no evidence was left out. However, the applicant's reasons for requesting a hardship discharge—being separated from his wife, her unhappiness with that separation, and her pregnancy—did not meet the standard for a hardship discharge under Article 12.B.13. of the Personnel Manual, COMDTINST M1000.6A—a "hardship more severe than the normal hardships encountered by dependents or families of members of the Coast Guard"—as noted in his chain of command's endorsements forwarding his request to the Commandant. The applicant, who had agreed in his enlistment contract that he would "report to such station or vessel as I may be ordered to join" and had not been promised any particular duty assignment, was nevertheless allowed to transfer to a unit in the same state where his wife was living and yet still complained about relatively short periods of family separation even though in assignment policy, the needs of the Coast Guard come first,⁷ and extended periods of separation are normal and expected in the military.

6. In his BCMR application, the applicant alleged that his chain of command was biased against him and denied him an honorable hardship discharge because he successfully sought assistance from a U.S. Senator's office. Although the applicant's congressional representatives simply forwarded his complaints for response, as they normally do for all constituents, such

⁶ *Id.*

⁷ COMDINST M1000.6A, Article 4.A.1.a.1.

retaliation would have been impermissible under the law in effect in 1983.⁸ The preponderance of the evidence shows, however, that the applicant is mistaken: He was properly denied an honorable hardship discharge because he clearly did not qualify for one under the rules in Article 12.B.13. of the Personnel Manual. But he obviously wanted out of the Coast Guard and, based on his apathy toward completing his qualifications and other work, he did qualify for an unsuitability discharge under Article 12.B.16. of the Personnel Manual.

7. Likewise, given the marks in his Enlisted Performance Evaluation Form, the applicant was ineligible to receive anything better than a general discharge because, on his only Enlisted Performance Evaluation Form, the applicant received marks above 2.5 in only one category. His low marks did not allow for him to receive an honorable discharge under Article 12.B.2.f.(1) of the Personnel Manual, which requires an average of 2.5 or higher in each category of evaluation for the duration of an enlistment for a member to receive an honorable discharge. The applicant did not appeal the marks on his Enlisted Performance Evaluation Form at the time, as he could have,⁹ or dispute them in his BCMR application, and he signed it in keeping with standard evaluation procedure. Nor did he submit anything to show that his performance was any better than as described in that evaluation.

8. The record does not support the applicant's claims that he was unfairly coerced into signing his general discharge paperwork and that he did not understand what he was doing in signing it, as he alleged in his response to the views of the Coast Guard. He received prior notice of the pending general discharge for unsuitability, and he signed and initialed his discharge papers showing that he was waiving his rights to object to the discharge, to submit a statement on his behalf, and to consult with an attorney. He also acknowledged that he understood that a general discharge might negatively impact him in civilian life.

9. The applicant's prior service in the Army National Guard and Marine Corps Reserves and his ensuing career in the U.S. Civil Service should not affect his character of service and discharge from the Coast Guard. His Coast Guard discharge should continue to reflect the cause of his discharge from, and the quality of service he provided to, the Coast Guard—not any other branch of government, military or civil. Nor does the fact that the applicant felt stressed and depressed during his short period of active duty because he was separated from his wife persuade the Board that his discharge should be upgraded since the applicant agreed on his enlistment contract with the Coast Guard that he would report for duty wherever he was assigned and that he had not been promised any particular assignment. His stress and depression because of his separation from his wife do not excuse his extremely poor performance and unwillingness to work.

10. The preponderance of the evidence does not show that the applicant's general discharge "under honorable conditions" for unsuitability is erroneous or unjust or that his failure

⁸ 10 U.S.C. § 1034 (1956) ("No person may restrict any member of an armed force in communicating with a member of Congress, unless the communication is unlawful or violates a regulation necessary to the security of the United States.").

⁹ COMDINST M1000.6a, Article 10.B.10.b.1.b. ("If this meeting does not lead to an agreement between the Approving Official and the member, the member can appeal in writing and submit the appeal to the Appeal Authority indicated in Figure 10.B.3.1., via the commanding officer.").

to serve out his enlistment honorably should be excused because of his mental health or family circumstances. Therefore, the applicant's request for relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

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

July 26, 2019

