


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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-019


SNEM/E-3 (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 and military records on October 19, 2018, and prepared the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated November 1, 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, who received an Honorable discharge for “Unacceptable Conduct” on February 9, 2001, with a JNC separation code and an RE-4 reentry code, asked the Board to upgrade his narrative reason for separation, separation code, and reentry code on his DD 214. He also asked the Board to add the Kosovo Campaign Medal to his DD 214. He stated that he earned it during a Mediterranean patrol but was discharged before the medal was awarded to the crew of his cutter for that patrol. The applicant noted that his DD 214 also shows that he received a NATO Medal for the same campaign, but he never received the physical medal to wear.

Regarding his discharge, the applicant provided only the following information:

There were a lot of things going on at my time of release that later led to my PTSD diagnosis with the VA. Things that were not of my control that led to the referenced statement on line 28 [“Unacceptable Conduct”] and codes on lines 26 and 27. It has cost me jobs in the past. I have no desire nor am I currently eligible to reenlist therefore one of the codes would not matter at this point.

The applicant stated that he was diagnosed with PTSD in 2017 and did not contest these matters earlier because he did not know how to do so. He submitted no evidence to support his allegations.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on February 3, 1998. He completed recruit training and was assigned to a cutter before attending “A” School for fifteen weeks to earn the electrician’s mate (EM) rating. Upon completing EM “A” School in 1999, he advanced to EM3/E-4 and reported for duty aboard another cutter on March 3, 1999.

On May 20, 1999, the applicant’s cutter deployed from Virginia to serve in the Adriatic Sea. According to the Coast Guard Historian’s Office, the cutter did not come under fire but was deployed

in support of Operation Allied Force and Operation Noble Anvil, NATO’s military campaign against the former Republic of Yugoslavia. [The cutter] provided surface surveillance and search and rescue response for the Sea Combat Commander and force protection for the Amphibious Ready Group operating near Albania. [The cutter] also served as combat escort for U.S. Army vessels transporting military cargo between Italy and Albania, a task that took her well within enemy missile range.

On June 6, 1999, the applicant was counseled on a Page 7 about failing to report for duty. He had been found asleep in his rack. He was told that any future incidents of missing muster might lead to disciplinary action.

On June 15, 1999, while the cutter was still overseas, the applicant was placed on report for violating Article 86 of the Uniform Code of Military Justice (UCMJ) by having been absent without leave on the afternoon of June 6, 1999, while the cutter was in port at an Italian port on the Adriatic. He was taken to mast, but his commanding officer (CO) dismissed the charge with a warning. The warning was documented on a second Page 7 dated June 6, 1999, which states that the applicant had failed to notify the Officer of the Deck, the Engineering Officer on Watch, or the Junior Officer of the Deck that he was leaving the cutter and had gotten a “standby” to perform his watch duty. He was advised that any further such incidents would result in disciplinary action.

Page 7s show that from June to September 1999, the applicant qualified to stand the Auxiliary Watch and the Gangway Watch, successfully completed the Basic Damage Control qualifications, and was designated a Damage Control Petty Officer.

On a Page 7 dated September 29, 1999, the applicant was counseled about failing to report for muster while the cutter was in port in Virginia. He claimed that he had overslept. The Page 7 notes that he had also been late for work on September 23, 25, and 27, 1999, and that any future incidents of missing muster might lead to disciplinary action. He was also placed on report for violating Article 86 of the UCMJ.

On November 11, 1999, the applicant was taken to mast for violating Article 86 of the UCMJ for failing to report for duty on September 29, 1999. The CO fined the applicant \$200 as non-judicial punishment (NJP).

On December 2, 1999, the applicant was placed on report for being insubordinate to a chief warrant officer and superior petty officer in violation of Article 91 of the UCMJ and for being

drunk and disorderly in violation of Article 134. The investigator noted that the applicant had been accused of spitting and throwing laundry detergent on the petty officer's bed. There was some contradictory evidence, however, and charges were dismissed with counseling.

On February 16, 2000, the applicant was placed on report for being absent without leave in violation of Article 86 of the UCMJ.

On March 6, 2000, the applicant was taken to mast and awarded for failing to report to his unit in a timely manner on February 16, 2000. He was fined \$500 and reduced in rank to E-3, but the reduction in rank was suspended for two months on condition of good behavior.

On a Page 7 dated March 12, 2000, the applicant was advised that he had received an Unsatisfactory conduct mark on his evaluation due to his NJP on March 6, 2000, and that his eligibility period for a Good Conduct Medal had ended.

On August 1, 2000, the applicant was placed on report for having been absent without leave in violation of Article 86 of the UCMJ on July 31, 2000.

On August 8, 2000, the applicant was placed on performance probation because his performance had been unsatisfactory for the previous fourteen months. He was advised that if his performance did not improve, he would be considered for discharge. The memorandum notes that the applicant had again reported to work late on July 12, 2000.

On August 18, 2000, the applicant was taken to mast for having been absent without leave on July 31, 2000. His CO reduced him in rate to E-3 and assigned him extra duties for fourteen days as NJP.

On December 13, 2000, the applicant's CO notified him that he had initiated action to discharge him pursuant to Article 12.B.16. of the Personnel Manual due to

apathy, poor attitude, and the inability to expend effort constructively. Since reporting to [the cutter] on 3 March 1999 you have been placed on report for being late for work or being absent without leave on four separate occasions (06JUN99, 29SEP99, 16FEB00, and 01AUG00). On 2 December 1999 you were placed on report for insubordinate conduct towards a Chief Warrant Officer and a Petty Officer. On 2 December 1999 you were also placed on report for drunkenness and disorderly conduct.

The CO advised him that he was recommending an Honorable discharge but that the type of discharge he received would be determined by the Personnel Command. He also advised him that he had a right to object to the CO's recommendation and to submit a written rebuttal to be forwarded with the CO's recommendation for discharge.

The applicant acknowledged the CO's notification and indicated that he waived his right to rebut the recommendation and did not object to being discharged from the Coast Guard.

On December 13, 2000, the CO recommended to Commander, Personnel Command that the applicant be discharge for unsuitability due to apathy, defective attitudes, and inability to

expend effort constructively. He stated that the applicant had been counseled many times about being late to work and showing disrespect but had shown an inability to abide by the tenets of honor, respect, and devotion to duty. He also stated that the applicant had been placed on report and taken to mast five times and was placed on performance probation on August 8, 2000. The CO stated that the applicant was unwilling to make the necessary changes to become a productive member of the Coast Guard.

On January 11, 2001, the Personnel Commander issued orders for the applicant to be honorably discharged by February 9, 2001, with the JNC separation code, denoting an involuntary discharged due to “Unacceptable Conduct.”

On February 9, 2001, the applicant was honorably discharged. His DD 214 shows a discharge for “Unacceptable Conduct” pursuant to Article 12.B.16. of the Personnel Manual with a JNC separation code and RE-4 reentry code. His DD 214 also lists the following medals and awards:

- Coast Guard Unit Commendation
- Navy Unit Commendation
- Coast Guard Special Operations Ribbon
- NATO Medal
- Coast Guard Rifle Marksman Ribbon
- Coast Guard Pistol Marksman Ribbon

VIEWS OF THE COAST GUARD

On May 30, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board grant partial relief in this case by correcting his record to show that he is entitled to the Kosovo Campaign Medal.

The JAG noted that the Board’s “liberal consideration” guidance applies to the case because the applicant claims to have been diagnosed with PTSD in 2017. Therefore, the Board’s three-year statute of limitations is waived.

The JAG stated that the applicant had offered no evidence to overcome the presumption of regularity or prove by a preponderance of the evidence that his narrative reason for separation and separation and reentry codes are erroneous or unjust. Regarding the applicant’s claim that he was recently diagnosed with PTSD, the JAG noted that he had submitted no medical records showing this diagnosis and “no evidence to establish the when, where, why, and how the PTSD manifested itself, nor is there information to establish if the PTSD, in fact, contributed to Applicant’s misbehavior.”

The JAG also pointed out that when the applicant was notified of his pending discharge, he had an opportunity to submit a statement on his own behalf to explain his misconduct but did not do so. The JAG noted that the applicant nonetheless received an Honorable discharge.

The JAG also adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC). PSC stated that the applicant was serving aboard the cutter when the crew earned both the Kosovo Campaign Medal and the NATO Kosovo Medal. PSC recommended denying the applicant's request with regard to his narrative reason for discharge and codes, however. PSC stated that the applicant's "pattern of insubordination and being absent without leave within a two-year time period is grounds for discharge by reason of unsuitability" as stated by the applicant's CO in his discharge memoranda. PSC noted that the applicant provided no evidence to support his claims.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 22, 2019, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. No response was received.

APPLICABLE LAW AND POLICY

Personnel Manual, COMDTINST M1000.6A

Article 12.B.16.b. of the Personnel Manual in effect in 2001 lists possible reasons for an unsuitability discharge, including "(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."

The Separation Program Designator (SPD) Handbook, which is Enclosure 2 to the DD 214 Manual, COMDTINST M1900.D, states that one of the authorized narrative reasons for separation for members being discharged under Article 12.B.16. of the Personnel Manual is "Unacceptable Conduct." The corresponding separation code is JNC, and it means that the member is being involuntarily discharged "when member performs acts of unacceptable conduct (i.e., moral and/or professional dereliction) not otherwise listed." The only authorized reentry code for this type of discharge is RE-4.

Medals and Awards Manual, COMDTINST M1650.25E

Chapter 5.A.8. of the Medals and Awards Manual states the following with regard to the Kosovo Campaign Medal:

- a. ... The Kosovo Defense Campaign began on 11 June 1999, and ended on 31 December 2013. The area of eligibility is the total land area and air space of Serbia (including Kosovo), Montenegro, Albania, Macedonia, and the waters and air space of the Adriatic Sea within 12 nautical miles of the Montenegro, Albania, and Croatia coastlines south of 42 degrees and 52 minutes North latitude.
- b. Eligibility Requirements. Awarded to military personnel under the criteria below:
 - (1) Must have participated in or served in direct support of one or more of the following Kosovo operations: ALLIED FORCE, JOINT GUARDIAN, ALLIED HARBOR, SUSTAIN HOPE/SHINING HOPE, NOBLE ANVIL, or Kosovo Task Force Hawk, Task Force Saber, or Task Force Hunter within the Kosovo Air Campaign or Kosovo Defense Campaign area of eligibility.

(2) Must be bona fide members of a unit participating in or directly supporting the operation for 30 consecutive days in the of area of eligibility (AOE) or for 60 non-consecutive days, provided this support involves entering the operations AOE or meet one or more of the following specific criteria:

(a) Be engaged in actual combat, or duty that is equally as hazardous as combat duty, during the operation with armed opposition, regardless of time in the area of eligibility.

(b) While participating in the operation, regardless of time, is wounded or injured and requires medical evacuation from the area of eligibility. ...

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 2001 and received and signed his DD 214 at the time. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged errors in 2001, and the application is untimely.
3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so,² however, 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 implicitly claimed in his application to the Board that his discharge should be upgraded because of his PTSD. Therefore, the Board finds that the "liberal consideration" guidance should apply in this case and waives the statute of limitations. Because the record shows that the applicant is also entitled to correction of his DD 214 to show that he was awarded the Kosovo Campaign Medal, the Board will also excuse the untimeliness of his request for the medal.
4. The applicant alleged that his discharge for "Unacceptable Conduct," JNC separation code, and RE-4 reentry code are erroneous and unjust and that his DD 214 is erroneously missing a medal he is entitled to wear. 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

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).

“liberal consideration” guidance, when deciding whether to upgrade the discharge of a veteran based on an alleged mental health condition, the Board must 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

5. The applicant has proven by a preponderance of the evidence that he was a member of the crew of a Coast Guard cutter that was awarded the Kosovo Campaign Medal. His record shows that he was a member of the crew and aboard the cutter at the time, and the Coast Guard has admitted that the crew was awarded the medal for that period. Therefore, his DD 214 should be corrected to show that he was awarded this medal.

6. The applicant has submitted no evidence to support his claim that his discharge for “Unacceptable Conduct,” JNC separation code, and RE-4 reentry code are erroneous and unjust. He alleged that he had no control over his conduct and that he was diagnosed with PTSD in 2017—sixteen years after his discharge. But the applicant did not submit his Coast Guard or VA medical records to the Board. Nor did he even attempt to show that he had PTSD in 1999 and 2000 or explain why PTSD would have caused his repeated misconduct, apathy, insubordination, and poor attitude. Given the absence of any evidence supporting the applicant’s claims and the extremely brief and vague nature of those claims, the Board finds that the preponderance of the evidence does not show that the veteran had a mental health condition while in the Service that could excuse his misconduct.⁷

7. Because the applicant has not overcome the presumption of regularity or proven by a preponderance of the evidence that he had a mental health condition while in the Coast Guard that caused, contributed to, or excused his misconduct, his request for an upgraded narrative reason for separation, separation code, and reentry code should be denied. But his record should be corrected to show that he was awarded the Kosovo Campaign Medal.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁶ 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).

⁷ *Id.*

ORDER

The application of former SNEM [REDACTED] USCG, for correction of his military record is granted in part: The Coast Guard shall issue him a DD 215 to correct his DD 214 to show that he is entitled to wear the Kosovo Campaign Medal. The Coast Guard shall also mail him the physical Kosovo Campaign Medal and the NATO Medal he is entitled to wear if available.

All other requests for relief are denied.

November 1, 2019

