DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-087

[redacted] Seaman Recruit (Former)

FINAL DECISION ON RECONSIDERATION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case for reconsideration on February 6, 2018, and assigned it to staff attorney [redacted] to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated February 8, 2019, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

BACKGROUND: BCMR DOCKET NO. 2003-144

The applicant, who was discharged from the Coast Guard on July 19, 1968, under other than honorable conditions (OTH) after having been tried and convicted for possession of marijuana in a civilian state court, originally asked the Board to correct his record by upgrading his discharge to honorable. The applicant alleged that he would have made a career in the Coast Guard if he "hadn't been set up in the bust that caused [his] wrongful conviction."

The applicant alleged that two years after his conviction and discharge, he was proved innocent and exonerated on appeal and "all charges were dismissed." He alleged that the court issued an "Order Dismissing Accusation Against Probationer" that vacated his conviction, but when he previously tried to get his discharge upgraded, he could not find a copy of the court's order because he was unfamiliar with the microfiche system and there was no one to help him. However, when he returned to the courthouse, a clerk helped him find all of the records, including the order that dismissed the charges. He stated that he discovered the alleged errors in his record on May 22, 2003.

The applicant asserted that since his discharge, he had been an advocate against drug abuse by circulating a poster to educate children about the perils of social drug use. In addition, he stated that twice each year, he visited a veterans' hospital to cheer up patients with presents.

In support of his allegations, the applicant submitted a microfiche copy of an "Order Dismissing Accusation Against Probationer" dated June 18, 1970. The order indicates that on February 23, 1968, a state court placed the applicant on probation for three years after he was convicted of possessing marijuana. The order states that because the applicant had fulfilled the conditions of his probation, the conviction was "vacated and a plea of not guilty entered." The order further states that the "Accusation filed [in the case is] dismissed" and that the applicant should be "released from all penalties and disabilities resulting from the offense."

The applicant also submitted a letter from an attorney, who stated that he had known the applicant for twenty years and that the applicant was "loyal, selfless, and generous to a fault"; copies of posters in English and Spanish that bear the applicant's name and show "crystal meth" and a rat trap catching a person; several letters from various government offices acknowledging a letter from the applicant about his efforts to inform children about the dangers of substance abuse; a copy of a flier about a "Ride Against Terrorism to Salute America's Veterans" that also bears the applicant's name as a contact person; a letter stating that the applicant had done community service for the North County Interfaith Council for several years; a newspaper clipping stating that the applicant had led efforts to recruit the local fishing industry to provide fish to feed the homeless; and two letters to the applicant from relief agencies, thanking him for many donations of tons of fresh fish to feed the hungry and homeless.

On February 25, 2004, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion for 2003-144 recommending that the Board waive the statute of limitations and grant partial relief in this case by upgrading the applicant's discharge to a general discharge, under honorable conditions. This recommendation was based on a memorandum on the case prepared by the office that is now called the Personnel Service Center (PSC).

PSC stated that the "Order Dismissing Accusation Against Probationer" is not a legal action that negates the underlying facts of the case but a "routine legal process used in California to remove misdemeanor offenses from a person's criminal record." However, PSC argued that since the applicant's discharge was based on his civil conviction, "the presumption that the Coast Guard's original basis to separate the member remains valid is questionable."

PSC stated that the Coast Guard committed no errors in discharging the applicant under other than honorable conditions since his record documents "a chronic pattern of misconduct" and he was "afforded his due process rights." However, PSC stated, given the expungement of his civil conviction and the evidence he has submitted indicating that he has become a good citizen and "overcome the behavioral traits that led to his separation, it would be in the interest of justice to upgrade his discharge to General, Under Honorable Conditions. PSC argued that because of the applicant's "consistent record of misconduct and his documented illegal involvement with illegal drugs on at least two occasions," he is not entitled to an honorable discharge.

In the Final Decision for 2003-144, the Board waived the statute of limitations to consider the case on the merits based on the JAG's recommendation for partial relief but nevertheless denied relief. The Board noted that the "court's order on June 18, 1970, merely removed the conviction from his criminal record as a reward for the fact that he met the terms of his probation." The Board disagreed with the Coast Guard's claim that the court order rendered his OTH discharge

"questionable" because "a state's decision to expunge or pardon a conviction has no impact on a federal disability—such as an undesirable discharge—arising from the state conviction.[1] The Board noted that post-service conduct cannot *per se* justify upgrading a discharge[2] and found that the applicant's OTH discharge was not unduly harsh under then extant or current policy given the charges against him and the many instances of misconduct documented in his record.

APPLICANT'S REQUEST FOR RECONSIDERATION

The applicant requested reconsideration with a new argument. He asserted that because he was born with sleep apnea he should not have been enlisted into the Coast Guard and he was therefore not responsible for anything that happened thereafter. He stated that he spoke with a U.S. Navy Veteran's Advocate who told him "as I was born with sleep apnea and enlisted into the service wrongfully I am not responsible for anything that happened after I raised my hand through the time of my discharge." He stated that he was born with "several deformities" which should have disqualified him from service: obstructive sleep apnea, deviated septum with post nasal drip, sinusitis, nasal polyps, and flat feet. The applicant claimed that he discovered the alleged error in May 2017 when he spoke to a U.S. Navy Veteran's Advocate.

With his application, the applicant included a fifteen-page letter to the Board and many documents. His letter details his upbringing, his family situation, and his post-service life. Many of the documents were provided by the applicant in his last submission to the Board. In addition, he provided various letters to and from political figures (not in reference to this matter), additional documentation on volunteer efforts, and various documents from the Department of Veterans' Affairs (VA) and the Social Security Administration (SSA). He provided several relevant documents which are described below in the Summary of the Record.

SUMMARY OF THE RECORD

On October 10, 1965, the applicant received an entrance medical examination for enlistment into the Coast Guard. He stated on the Report of Medical History, "I am in good health." The applicant indicated that his father had died at age 58 of a heart attack[3] and that blood relatives had had heart trouble, rheumatism, and asthma/hay fever/hives. He marked "Yes" to indicate that he had had the following: mumps; frequent or severe headache; ear, nose, or throat trouble; hay fever; boils; recent gain or loss of weight; and foot trouble. He indicated "No" to sinusitis and frequent trouble sleeping. He indicated that he had difficulty with math in high school and that he had previously had an operation on his deviated septum. The applicant was marked as "Qualified for Enlistment" and the form was signed by medical and dental physicians.

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[1] *Yacovone v. Bolger*, 645 F.2d 1028, 1034 (D.C. Cir. 1981); *United States v. Bergeman*, 592 F.2d 533 (9th Cir. 1979; *United States v. Potts*, 528 F.2d 883 (9th Cir. 1974)); *Thrall v. Wolfe*, 503 F.2d 313 (7th Cir. 1974).

[2] Memorandum from the General Counsel of the Department of Transportation to the BCMR (July 7, 1976) (stating that the Board should not upgrade a veteran's discharge unless, in light of today's standards, it was "disproportionately severe").

[3] In his letter to the Board and written on this document the applicant vehemently asserted that his father died of suicide. The applicant claimed that his father had killed himself because of the applicant and wrote a suicide note that emotionally scarred him for life.

On October 15, 1965, the applicant enlisted in the Coast Guard for four years. Upon completing boot camp on December 17, 1965, he was advanced from seaman recruit (SR) to seaman apprentice (SA). On January 2, 1966, he reported aboard a cutter. An entry in the applicant's record shows that the entire crew of his cutter was commended for their performance of search and rescue activities during a storm on January 23 and 24, 1966.

On November 1, 1966, the applicant was advanced to seaman (SN). However, on December 19, 1966, the applicant was reduced back to SA and restricted to base for six days with extra duties as non-judicial punishment he received at a captain's mast for violating Article 92 the Uniform Code of Military Justice (UCMJ) by being derelict in his duties. He never regained his rank.

On August 7, 1967, the applicant began "A" School to become a dental technician. On October 18, 1967, the Group Commander informed the Commandant that the applicant had been arrested by civil authorities on October 14, 1967, for possession and furnishing of marijuana, and was released on bail on October 17, 1967. The Group Commander stated that the applicant had been dis-enrolled from "A" School but would remain in the custody of the training center pending the results of his trial.

On November 3, 1967, the applicant was taken to captain's mast after he was found to have asked another SA to take some narcotics pills from him and plant them in a third SA's car. The sentence awarded was trial by a special court-martial for violating Article 134 of the UCMJ. However, the command never held the special court-martial because of the civil proceedings against the applicant.

On November 7, 1967, the applicant received a psychiatric evaluation. According to the psychiatrist's report, he refused to discuss his legal problems but admitted that he was "hoping to be found temporarily insane" to escape conviction. The psychiatrist found the applicant to be intelligent, with no delusions or hallucinations, but noted that his personality was passive-aggressive and manipulative. The psychiatrist reported that the applicant was "so far free from mental defect, disease or derangement" as to be able to distinguish right from wrong, adhere to the right, and understand the charges and proceedings.

On December 18, 1967, the applicant was arraigned in a state court. On December 19, 1968, his command was notified that on February 2, 1968, he would be tried for (a) possession of marijuana and (b) possession of marijuana for sale.

On January 8, 1968, the applicant received a scheduled septoplasty following several appointments regarding issues he had been having with his sinuses. The medical notes state that the applicant suffered from a "nasal deformity" that had existed before he enlisted and was not due to misconduct. He was released from medical care on January 15, 1968, after he was found fit for duty.

On February 8, 1968, the applicant was taken to captain's mast for having been absent without leave (AWOL) for two hours and ten minutes on January 29, 1968. He was awarded two days' restriction to base with extra duties.

On March 1, 1968, the applicant's CO notified the Commandant that on February 2, 1968, pursuant to a plea bargain, the charge of possession of marijuana for sale was dropped and the applicant pled guilty to possession of marijuana. The CO further stated that at a sentencing hearing on February 26, 1968, the applicant had been sentenced to 90 days' confinement and a suspended three-year sentence during which he would be on probation. The CO recommended that the applicant receive an undesirable (OTH) discharge.

On May 23, 1968, the applicant was arrested on suspicion of burglary and possession of marijuana, but the state dropped all of the charges because the homeowner had called the applicant and asked him to enter her home to feed her dog while she was in jail and because he claimed he did not know a friend who went with him was carrying marijuana.

On June 3, 1968, the applicant was taken to mast for having slept through his duties as mess cook on May 28 and 30, 1968. He was awarded seven days' restriction to base and fourteen hours of extra duties.

On June 6, 1968, the applicant's CO informed the Commandant that the applicant had been released from jail on May 2, 1968, and that an Administrative Discharge Board (ADB) convened on May 8, 1968, had recommended that he receive an undesirable discharge.

On June 27, 1968, the applicant failed to rise at reveille or report to muster, was found in bed at 9:05 a.m., and thereafter attempted to find breakfast instead of reporting for duty. He was taken to mast on July 2, 1968, and awarded two weeks' restriction to base with extra duties.

On July 7, 1968, the applicant failed to "get up and turn to on morning clean up" and was in his rack as late as 7:45 a.m. His division officer noted that his "performance [was] poor, his attitude [was] demoralizing to his shipmates." It was also noted that the applicant appeared to be "immune from criticism" and that he had a negative attitude with a lack of motivation. For this offense at captain's mast on July 15, 1968, the applicant was restricted to base with extra duties for seven days and he was reduced to Seaman Recruit (SR).

On July 16, 1968, the findings and recommendation of the ADB were approved by the Acting Chief of the Office of Personnel. On July 18, 1968, the Commandant ordered that the applicant be discharged for misconduct due to his conviction by civil authorities.

On July 18, 1968, the applicant received a medical examination for discharge. Nothing was noted as abnormal and the applicant was found to be physically qualified for discharge.

On July 19, 1968, the applicant received an undesirable discharge under other than honorable conditions by reason of "misconduct due to trial and conviction by civil authority" under Article 12-B-13 of the Personnel Manual then in effect.

In 1977, the applicant applied to a Special Discharge Review Board for an upgrade to his discharge. On December 31, 1977, his request was denied.

VIEWS OF THE COAST GUARD IN RESPONSE TO RECONSIDERATION REQUEST

On June 25, 2018, the Board received the Coast Guard's response to the applicant's request for reconsideration. The Coast Guard recommended denying relief. PSC stated that the applicant voluntarily enlisted in the Coast Guard and he disclosed all of his medical issues prior to enlisting on the Report of Medical History. PSC asserted that he was still found fit for duty and was authorized to enlist despite the medical issues the applicant had listed. PSC argued that his character of service "had no bearing on his initial enlistment or medical abnormalities as listed" on his entrance medical exam. Before his discharge, the applicant was also found to be medically qualified for discharge. PSC noted that a review of his record shows "a history of disciplinary issues as well as a court martial." The Coast Guard recommended that the Board deny relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 16, 2018, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. The applicant responded many times and asked for several extensions over the following months in order to provide additional documentation. He provided additional information and documents regarding the SSA and his work to ban aspartame.

On June 11, 2018, before he received the views of the Coast Guard, the applicant complained that the SSA was demanding that he provide proof that he was not eligible for VA benefits. He provided numerous emails and documents regarding this complaint. He requested a copy of his entire military record, which the Board copied and sent to him on August 8, 2018.

In multiple letters to the Board, the applicant reasserted that the "marijuana bust" had been a setup and that he had been dragged into the situation to tie up loose ends. He claimed that he had been at a bar and that he was ready to go to bed, but a friend who turned out to be a police officer forcefully made him go to a house where everyone was asleep. The applicant asserted that the officer woke everyone up to "party," got out the marijuana, and then got everyone to start smoking. The applicant stated that he again tried to leave but the officer would not let him. Soon thereafter, uniformed officers arrived at the home and the applicant was arrested.

The applicant claimed that seven years after the incident, he hired an attorney who had the possession of marijuana conviction "expunged" from his record. He stated that he was licensed as a civilian by the Coast Guard District Maritime Safety Office, which he vehemently asserted shows that he must not have any drug-related transgressions on his record. He claimed that he has proved he is "worthy of an upgrade based on the basis that [he] passed The USCG Licensing Division 14 month background check with flying colors." The applicant stated that this, as well as other documentation he has provided regarding community service, shows how he turned out as a member of his community and this country.

On August 6, 2018, the Board received a letter from the applicant in which he added a request that the Board amend certain "typos." He did not specify on which document, but from context it appears he is requesting that his Report of Medical History from his entrance examination be corrected. He requested that "I am in good health" be corrected to "I am in

restricted health." He gave numerous reasons for this request, including that he presently "cannot sleep right," has obstructive sleep apnea, and has problems associated with nasal drip. He also requested that the form be changed to indicate that he does suffer from sinusitis or frequent trouble sleeping. The applicant also rebutted the notion that he volunteered for enlistment with the Coast Guard. He asserted that he was "shanghaied" by his mother after his adamant pleas to join the Navy. He also argued that his application was not untimely. He asserted that in his "five previous BCMRs" he had never been informed his applications were untimely.

On August 16, 2018, the applicant sent in an eleven-page letter. He stated that he learned on the History Channel that Frank Sinatra had tried to enlist in the military but was denied due to a perforated ear drum. He asserted that if Frank Sinatra was denied enlistment due to one physical defect, then he should have been rejected due to his eight nasal defects, flat feet, and no high school diploma. The applicant stated that Bruce Lee was also rejected from the military before he became a martial artist due to a sinus disorder. The applicant stated that he suffered from post-traumatic stress disorder (PTSD) as a result of the night when he was arrested for possession of marijuana (which ultimately led to his discharge from the Coast Guard). He asserted that he has been suffering from PTSD "24/7 ever since." He claimed that as a result of this incident he has been unable to cope with society, find love, accomplish day-to-day tasks and that society has developed a repugnant attitude towards him.

On August 28, 2018, the applicant stated via email that he was searching his military record and attempting to locate investigation records in order to find where it states "we've got to get rid of these 6 offending, California born DT [Dental Technician] Students that shared the apartment but what do we do with the innocent DT student from Virginia? Answer: We have to include him in the action and get rid of him too in order to avoid embarrassing questions. We have to sacrifice him in the form of collateral damage." The applicant stated that once he found this in the investigation records he would be able to prove that he was set up in the marijuana bust. He added that he felt that the proof he provided that his charge had been expunged was enough for the Board to grant him relief. He stated that his Federal Bureau of Investigations (FBI) charge sheet, which he had sent in the mail, proved that he had "been a good citizen and [had not] been arrested for any trouble or crimes in over 40 years."

Later on August 28, 2018, the applicant sent another email stating that he received a "Security Guard Registration Card" from the "California DOJ." He asserted that he would not have been able to obtain this security card if he had drug convictions on his record. He provided photocopies of several cards. One is from the Bureau of Security and Investigative Services for "Guard Registration" and states that an additional permit is required to carry a firearm. There were two other cards included in the scan but both were cutoff halfway.

On September 7, 2018, the Board received a copy of the applicant's FBI charge sheet from the applicant. It states the following:

- October 14, 1967: Furnishing marijuana Charge: dismissed
- January 5, 1971: Possession of restricted dangerous drugs Charge: dismissed
- July 8, 1971: Concealed weapon Charge: dismissed
- September 26, 1974: Misdemeanor theft Charge: convicted

- January 30, 1975: Possession of marijuana for sale, receiving stolen property
  Charge: rejected
- December 14, 1976: Petty theft Charge: sentence suspended

The applicant included a letter from his Coast Guard command to the Commandant dated February 5, 1968. The letter states that the charge of furnishing marijuana had been dropped but the applicant was to appear in court on February 23, 1968, for possession of marijuana.

On September 10, 2018, the applicant sent an email stating that he believed he had provided more than enough evidence to prove by a preponderance of the evidence that he was entitled to relief. He stated that although three months before he had received a letter recommending denial, he asserted that that had been before he sent in much more additional documentation (some of the documentation he listed he had provided in his initial application, some he had provided since the Coast Guard's advisory opinion). He stated he is too old to work, so the only purpose for his upgrade request is for the "restoration of [his] Honor" and so that he can die peacefully.

The applicant submitted several emails with similar information and arguments to those summarized in this decision.

APPLICABLE REGULATIONS

The Medical Manual in effect when the applicant enlisted in the Coast Guard, Article 3-D-1(a), which governs the physical requirements for original enlistment in the Coast Guard, states that Section C is applicable "for all physical examinations for original enlistment." Section C is entitled "Physical Standards and Examinations." Article 3-C-2(d)(1)c. states that hay fever "if more than mild or if likely to cause more than minimal loss of time from duty or if associated with nasal polyps or hyper-plastic sinusitis" is a disqualifying condition. Article 3-C-4(a) states that a "complete examination by reflected light shall be made of the anterior and posterior nares, the nasopharynx, and the pharynx, and when necessary, the larynx." Subsection (b)(6) lists chronic sinusitis as a disqualifying condition "if more than mild, and if not amendable to therapy; for example, if evidenced by chronic purulent nasal discharge, large nasal polyps, hyperplastic changes of the nasal tissues and other signs and symptoms."

Article 3-C-14(a)(4) states the following regarding examination of feet:

> The feet shall be especially examined for flatfoot … When any degree of flatfoot is found, the strength of the feet should be ascertained by requiring the examinee to hop on the toes of each foot for a sufficient time and by requiring him to alight on the toes after jumping up several times. To distinguish between disqualifying and nondisqualifying degrees of flatfoot, the examiner shall consider the extent, impairment of function, progressive or stationary nature, appearance in uniform, and presence or absence of symptoms. In that it is usually not the flatfoot condition itself which causes symptoms but an earlier state in which the arches are collapsing and the various structures are undergoing readjustment of their angles of excursion, or limitation, and comparative measurements should be stated, and X-rays forwarded when made.

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. The applicant's request for reconsideration was timely filed.[4]

2. The applicant alleged that his OTH discharge is erroneous and unjust. 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 his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.[5] 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."[6]

3. The applicant argued upon reconsideration that his discharge should be upgraded because he was wrongfully enlisted despite medical abnormalities. The applicant has not proven by a preponderance of the evidence that he was physically disqualified for enlistment in 1965,[7] but even if he had, being physically disqualified for enlistment based on obstructive sleep apnea, deviated septum with post nasal drip, sinusitis, nasal polyps, and flat feet—as he alleged—would not excuse his misconduct or justify upgrading his character of discharge to Honorable. Only a medical condition that rendered the applicant unable to control his conduct or unable to know right from wrong would excuse the misconduct for which he was discharged, and on November 7, 1967, a psychiatrist found the applicant to be intelligent, with no delusions or hallucinations, and able to distinguish right from wrong, adhere to the right, and understand the charges and proceedings against him. Therefore, the applicant has not proven by a preponderance of the evidence that his discharge should be upgraded based on his medical conditions.

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[4] 10 U.S.C. § 1552(a)(3)(D).
[5] 33 C.F.R. § 52.24(b).
[6] *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).
[7] Regarding his alleged medical conditions, the Board notes the following:

- There is no evidence in the record that the applicant suffered from obstructive sleep apnea before his enlistment or while he served in the Coast Guard. His medical records show that he was treated for this condition in the years following his discharge.
- The applicant properly noted on his Report of Medical History that he had suffered from ear, nose, or throat trouble and that he had previously had an operation on his deviated septum. The medical examiner was therefore aware of these issues when the applicant was determined to be physically qualified for enlistment.
- According to the Medical Manual in effect at the time, Article 3-C-4(b)(6), chronic sinusitis was a disqualifying condition, but the applicant stated on his Report of Medical History that he did not suffer from sinusitis, and apparently the medical examiner did not find any evidence of this condition during the examination.
- Regarding nasal polyps, the applicant had indicated that he had suffered from hay fever during his entrance examination. According to Article 3-C-2(d)(1)c., hay fever was a disqualifying condition "if more than mild or if likely to cause more than minimal loss of time from duty or if associated with nasal polyps or hyper-plastic sinusitis." Because the applicant marked that he had suffered from hay fever on Report of Medical History, the medical examiner presumably checked for signs of nasal polyps and found none. There is no evidence in the record that the applicant suffered from nasal polyps before his enlistment or during his service in the Coast Guard.
- The applicant indicated that he had foot trouble on his Report of Medical History. The Medical Manual in effect had a detailed section on how to clear a person with flat feet for enlistment and there is no evidence that the condition of the applicant's feet was disqualifying for enlistment at the time.

4. The applicant asked in one of his responses to the Coast Guard's advisory opinion that his Report of Medical History be corrected. He requested that that "I am in good health" be corrected to "I am in restricted health" and that the form be changed to indicate that he does suffer from sinusitis or frequent trouble sleeping. The applicant himself completed the Report of Medical History in 1965, however, and he has not proven by a preponderance of the evidence that any of his entries were false at that time. The fact that he later developed certain medical conditions is not evidence that he completed the form erroneously.

5. In his later submissions, the applicant alleged that he was set up in a drug bust, the charge was removed from his record years later, and his characterization of discharge should therefore be upgraded. In Docket No. 2003-144, the Coast Guard had recommended upgrading his discharge to a general, under honorable conditions because the state court had removed the conviction from his record. However, the Board found that "the Board should not upgrade a discharge unless it is convinced, after having considered all the evidence … , that in light of today's standards the discharge was disproportionately severe vis-à-vis the conduct in response to which it was imposed." The Board has reviewed his record, which includes six NJPs as well as the civil conviction, and finds that his character of discharge was not disproportionately severe in light of current policies and that it is not in the interest of justice to upgrade his discharge.

6. The applicant provided his FBI charge sheet to support his request for reconsideration. He repeatedly asserted that his charge sheet shows that he had no further criminal issues following his discharge. However, the charge sheet shows that on January 5, 1971, he was arrested for possessing restricted dangerous drugs and on January 30, 1975, he was arrested for possessing marijuana for sale in addition to receiving stolen property. The charge sheet shows that both of these charges were "dismissed," as was the original crime which led to his discharge from the Coast Guard. It is therefore impossible to say whether any of the charges were dismissed due to a lack of evidence or, like the crime at issue here, were later removed from his record for other reasons. These two arrests are in addition to the three arrests noted on the charge sheet. The applicant asserted that the sheet shows that he has been crime-free for over forty years. However, as noted by the Board in 2003-144, post-service conduct cannot *per se* justify upgrading a discharge,[8] which must be based on the member's military service. The additional evidence provided by the applicant does not persuade the Board that his discharge was disproportionately severe given his misconduct or otherwise erroneous or unjust. As the Board found in 2003-144, the applicant has not proven by a preponderance of the evidence that his characterization of discharge should be upgraded.

7. Accordingly, the applicant's request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

[8] Memorandum from the General Counsel of the Department of Transportation to the BCMR (July 7, 1976) (stating that the Board should not upgrade a veteran's discharge unless, in light of today's standards, it was "disproportionately severe").

ORDER

The application of former SR [redacted], USCG, for correction of his military record is denied.

February 8, 2019

[redacted]