


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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2021-038**

  
SNSK (former)

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**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 March 18, 2021, and assigned the case to the Deputy Chair to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated December 17, 2021, 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 Seaman Storekeeper (SNSK/E-3) who received a general discharge under honorable conditions on June 4, 2009, for misconduct due to involvement with drugs, asked the Board to correct his record by upgrading his discharge to honorable.<sup>1</sup>

The applicant stated that he would like an honorable discharge so that he could reenlist in the military. He stated that he would like to be a role model to his young daughter and show her that he finished what he started.

The applicant stated that he is not asking for an error or injustice to be corrected. In fact, he conceded that he deserved a general discharge at the time of his separation from the Coast Guard. The applicant acknowledged that he made a selfish decision to dishonor the laws and oath he affirmed to uphold. Instead, his request to upgrade his characterization of service is based on his post-service conduct. To support his request, the applicant stated that he is employed in a management position at the United Parcel Service.

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<sup>1</sup> There are five types of discharge: three administrative and two punitive. The three administrative discharges are honorable, general under honorable conditions, and under other than honorable (OTH) conditions. The two punitive discharges may be awarded only as part of the sentence of a conviction by a special or general court-martial. A special court-martial may award a bad conduct discharge (BCD), and a general court-martial may award a BCD or a dishonorable discharge

### SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on September 19, 2006. Following recruit training, the applicant attended SK “A” School.

On April 9, 2009, the applicant received non-judicial punishment for wrongful use of a controlled substance<sup>2</sup> and other offenses charged under Article 134 not covered.<sup>3</sup> Specifically, the applicant wrongfully used marijuana and wrongfully endeavored to influence and impede an ongoing criminal investigation by disclosing information to the subject of the investigation.

On June 4, 2009, the applicant was discharged from active duty in accordance with Article 12.B.18. of the Coast Guard Personnel Manual. His DD-214 shows “under honorable conditions” as the characterization of discharge; “misconduct” as the narrative reason for separation; JKK (misconduct) as his separation code; and RE-4 (not eligible to reenlist) as his reenlistment code. The applicant signed his DD-214.

On October 23, 2009, the applicant submitted an application to the Discharge Review Board (DRB) in which he requested that his discharge be upgraded from general to honorable.

On October 28, 2010, the DRB convened to review the propriety and equity of the applicant’s discharge. The DRB stated that in his application, the applicant argued that he lied to the Coast Guard about using a controlled substance so that he would be discharged. To support his assertion, the applicant alleged that he was never given a urinalysis test. However, the DRB stated that a positive urinalysis result is not required to determine that a drug incident occurred. In fact, the DRB stated that a drug incident could be based on a member’s admission. Further, the DRB stated that according to the Coast Guard Personnel Manual, a member who is discharged for illegal drug use shall receive no higher than a general discharge. As such, the DRB voted unanimously to deny the applicant’s request.

On February 18, 2011, the president of the DRB approved the proceedings and recommendation of the DRB.

### VIEWS OF THE COAST GUARD

On August 10, 2021, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which he 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 argued that the application is not timely. Regarding the merits of the case, PSC argued that there is no policy that allows for a former service member’s discharge to be upgraded based on the passage of time or their post-service conduct.

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<sup>2</sup> Art. 112A, UCMJ.

<sup>3</sup> Art 134, UCMJ.

The JAG argued that the applicant failed to provide evidence that the Coast Guard committed an error or injustice. In fact, the JAG stated that the applicant did not allege that the Coast Guard committed an error or injustice.

### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On October 4, 2021, 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**

Article 12.B.18.b. of the Coast Guard Personnel Manual, COMDTINST M1000.6A, discusses reasons to discharge a member for misconduct in relevant part:

4. Drugs.

a. Involvement with Drugs. Any member involved in a drug incident or the illegal, wrongful, or improper sale, transfer, manufacture, or introduction onto a military installation of any drug, as defined in Article 20.A.2.k., will be processed for separation from the Coast Guard with no higher than a general discharge. Commanding Officer, Training Center Cape May is delegated final discharge authority for members assigned to recruit training or prior service training program under this Article in specific cases of drug use before enlistment (as evidenced by a positive urinalysis shortly after entering training). New inductees shall sign an Administrative Remarks; CG-3307 entry acknowledging the presence of drugs in their bodies is grounds for a general discharge for misconduct.

On July 7, 1976, the General Counsel for the Department of Transportation issued a memorandum setting the policy of the Board regarding the effect of post-service conduct on records corrections. The memorandum states that "the Board should not upgrade discharges solely on the basis of post-service conduct." This policy has not been reversed and remains binding on the Board.

### **FINDINGS AND CONCLUSIONS**

The Board makes the following findings and conclusions based on 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. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.<sup>4</sup>
3. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.<sup>5</sup> The record shows that the applicant signed and received his DD-214 upon his discharge on June 4, 2009. Shortly thereafter, on October 23, 2009, the

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<sup>4</sup> *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

<sup>5</sup> 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

applicant submitted an application to the DRB. Then, on February 18, 2011, the president of the DRB approved the proceedings and recommendation of the DRB. Therefore, the preponderance of the evidence shows that the applicant did not file his application within three years of the decision of the DRB, and his application is untimely.

3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.<sup>6</sup> In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board should not deny an application for untimeliness without “analyz[ing] both the reasons for the delay and the potential merits of the claim based on a cursory review”<sup>7</sup> to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted that “the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review.”<sup>8</sup> Pursuant to these requirements, the Board finds the following:

a. The applicant waited more than ten years after receiving a decision from the DRB to submit an application to the Board. The applicant provided no explanation for his delay in seeking correction of his DD-214 and no compelling argument that it is in the interest of justice for the Board to excuse his delay.

b. A cursory review of the merits of this case shows that the applicant’s claim lacks potential merit. In his application, the applicant acknowledged that his request to upgrade his characterization of service is not a request to correct an error or injustice. Instead, the applicant’s request is based on his post-service conduct. The Board notes that the applicant has had a successful career since his discharge. However, the delegate of the Secretary informed the Board on July 7, 1976, by memorandum that “the Board should not upgrade discharges solely on the basis of post-service conduct.”<sup>9</sup> The disputed record is presumptively correct,<sup>10</sup> and the record contains no evidence that substantiates his allegations of error or injustice in his official military record.

4. Accordingly, the Board will not excuse the application’s untimeliness or waive the statute of limitations to conduct a thorough review of the merits. The applicant’s request should be denied.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

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<sup>6</sup> 10 U.S.C. § 1552(b).

<sup>7</sup> *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

<sup>8</sup> *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

<sup>9</sup> Memorandum of the General Counsel to J. Warner Mills, et al., Board for Correction of Military Records (July 7, 1976).

<sup>10</sup> 33 C.F.R. § 52.24(b); *see Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties “correctly, lawfully, and in good faith.”).

**ORDER**

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

December 17, 2021

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