

**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. 2021-021**

██████ ██████ ██████  
BM2 (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 December 11, 2020, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated August 30, 2023, 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 Boatswain's Mate, Second Class (BM2/E-5), who was honorably discharged on June 1, 2010, asked the Board to correct his record by restoring his rank to BM1/E-6 and providing him with a medical retirement.

In support of his application, the applicant did not submit a memorandum or personal statement directed to the Board. However, the applicant did attach a letter he had previously sent to his United States Senator. The Board presumes that the allegations and grievances presented to his Senator are the same that he wants this Board to address. Therefore, the contents of this letter are summarized here as if he made those allegations directly to this Board.

The applicant explained that in 2007, while on active duty, he worked 2.5 hours away from home for over 2 years and it eventually put a strain on his marriage, so much so that he and his wife decided to divorce. The applicant alleged that at the time his wife was having an extra-marital affair which turned his world upside down. The applicant stated that despite this turmoil in his personal life, he continued to serve honorably and work his normal shifts.

The applicant explained that every year, Coast Guard crewmembers are required to recertify that they meet several qualifications such as area familiarization, man overboard drills,

navigation exercises, etc. The applicant stated that in December 2007, he was a Boatswain's Mate First Class (E-6) which meant he was the senior duty officer and surfman operating on 48-hour shifts. The applicant alleged that during this time he was suffering from pneumonia, but because he had upcoming leave, he could not afford to take any time off. The applicant stated that later that evening, several members of his crew notified him that they needed an area familiarization run. The applicant claimed that in the past, it was common for crews, who have traveled these routes several times throughout the year during other trainings and missions, to count the familiarization runs in the Abstract of Operations report. The applicant alleged that throughout his time in the Coast Guard, this method of certifying personnel was used by Officers in Charge, Senior Petty Officers, and subordinates, and it was therefore "normal" for training to be conducted in this manner.

The applicant claimed that during the familiarization runs in question, he and three of his crewmembers boarded a 25-foot small boat and proceeded upriver. The applicant stated that the weather that night was windy, cold and rainy, which exacerbated his pneumonia. The applicant alleged that while they were commuting up the river in dark stormy conditions, he began to notice a significant amount of debris (large logs, driftwoods, etc.) produced by the 6-knot ebb that they were contending with. At that time, the applicant stated, his station called him for a routine position and operations check. The applicant told his station that the operations were normal and provided them with a position that was based off the next visible buoy that was approximately one nautical mile ahead, which the applicant alleged was common practice. The applicant stated that once they reached an upcoming city, he and his crew decided to stop and get some dinner before continuing upriver. After eating, the applicant alleged, he and his crew did a cost/benefit analysis given the dangers due to low visibility and debris and decided that since the crew was a seasoned crew and already familiar with the area, he would give the crew credit toward their recertification for the trip. The applicant claimed that this was also due to the fact that he did not think it was fair to his crew that they were unable to obtain their recertifications because of his illness. According to the applicant, upon returning to the pier, they secured their boat, and he filled out the necessary paperwork for his crew's recertification.

The applicant explained that the following month he was home on leave when he received a phone call from one of his crewmembers, who informed him that the applicant was being brought up on charges for conspiracy and falsifying documentation. The applicant stated that he did not take the crewmember seriously, but he immediately called his Executive Petty Officer (XPO) who informed him the rumors were true and that he was being brought up on charges for conspiracy and falsifying documentation. The applicant alleged that the Commanding Officer (CO) at the time and the XPO both thought the conspiracy charge would be the primary charge because the applicant had conspired with his crewmates to falsify the information.

The applicant stated that upon his return from leave, the XPO pulled him into the office and read the charges that were brought up against him. The applicant alleged that when he asked how the charges came about, the XPO told him that another Petty Officer at the unit, who openly disliked the applicant, went through the Abstract Operations Report and highlighted everyone who had falsified their entries, including another Chief Petty Officer. The applicant stated that he does not remember how many members were brought up on charges, but he believes it was 6 members in total. The applicant alleged that during the investigative process, he was never asked any

questions regarding the night he allegedly falsified documents, and he was isolated from his unit as if he were a hardened criminal. The applicant explained that being kept in the dark regarding the investigation and the status of the investigation only added to his stress. In addition, the applicant reiterated that during this time he was going through a painful, life-changing divorce that required a lot of his attention. The applicant stated that as anyone can imagine, this was a very hard time for him. He stated that he felt as though the Coast Guard had simply pushed him aside and he was alone. In addition to his divorce, the applicant explained that he was living in a small travel trailer and his dog was severely ill and in a hospital 2.5 hours away from him. According to the applicant, he had hit rock bottom.

The applicant stated that they were taken to mast and at the Captain's Mast, conducted by the Sector CO, after his Captain asked for any comments regarding the hearing, he felt as though he was obligated to take full responsibility for his actions. The applicant alleged that instead of asking for leniency for himself, he requested leniency for the crew because it was his decision, and he was the ranking officer. The applicant explained that his Captain gave him the punishment that he asked for, 30 days of restriction, reduction in rank from E-6 to E-5, and restriction to the unit. Although he was also ordered to forfeit his pay, his Captain, knowing that the applicant was going through a divorce and needed the money, suspended that portion of his sentence on condition of good behavior. The applicant alleged that during this 30-day restriction to his unit, he sat in the small engine compartment, cleaning the oil from the engine and the bilge. During this time, the applicant claimed, he was even more cutoff from everything that was happening and had no control over the outcome. Following his 30-day restriction, the applicant stated, he was reassigned to the Sector's maintenance unit, where he excelled and received exceptional reviews.

The applicant explained that after reporting to a new unit, he tried to regain his prior rank but was told that he would have to go through the process of redoing all of the practical factors needed for the next rank, despite having already completed them in the past. During this time, the applicant was in contact with his previous Captain, in addition to the Coast Guard's Personnel Service Center. According to the applicant, these individuals could not understand why he was unable to have his rank restored upon the completion of his punishment. The applicant alleged that he watched others who had committed more egregious misconduct get reduced in rank and have their ranks restored following the normal six-month probationary period. The applicant stated that he felt as though he was being made an example of and that it became apparent to him that the Coast Guard was trying to push him out.

The applicant stated that despite being closer to family at his new unit, he felt like the worst person on the planet and while driving to work, he wanted to just breakdown and cry. According to the applicant, while driving to work one day, his chest began hurting and he was having difficulty breathing. As a result, instead of reporting to work, he went to the emergency room. The applicant alleged he "broke" and that he could not do it anymore—fight to get his rank back and everything else he had accomplished during his years of service. The applicant alleged that every time he tried to get his rank back, he was knocked down with no explanation. Therefore, in June of 2010, he approached his CO, who had been an ally in his efforts to regain his previous rank and told him that he wanted to leave the Coast Guard under the Force Reduction Act and pursue a career in law enforcement. However, the applicant stated that he did not realize that the conspiracy charge brought against him would follow him outside of the military.

The applicant stated that upon his separation from the Coast Guard, he bought a home and began applying for law enforcement jobs, however, due to his offenses for which he had been punished at mast, he was denied employment for every position he applied for. In addition to the constant disappointments he faced, the applicant explained, he was also trying to learn how to live outside of the military, as a civilian. The applicant alleged that he was subsequently diagnosed with Post Traumatic Stress Disorder (PTSD) surrounding his time in the Coast Guard. The applicant further alleged that toward the end of his time in the Coast Guard he had begun calling suicide hotlines because he felt he had no other place to go. He stated that he was not sleeping, was drinking a lot, and needed professional help. The applicant claimed that the remnants of his time in the Coast Guard still weigh heavily on his mind, and he continues to receive mental health treatment through his local VA.

### SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on August 29, 1996, where he trained as a Boatswain's Mate and advanced to BM1/E-6.

On January 22, 2009, the applicant received Non-Judicial Punishment (NJP) at a Captain's Mast. The Court memorandum recorded the following:

Code Offenses:

00810 Conspiracy  
00921 Failure to Obey Lawful General Order or Regulation  
01071 False Official Statement

Offense Narrative:

ART 107, UCMJ: False Official Statements, BM1 [applicant] intentionally and knowingly entered false board movement and training information into AOPS/TMT for sorties on 21AUG2008, 05SEP2008, 23SEP2008, and 23DEC2008. BMQ [applicant] made false boat position reports on 23DEC2008. BM1 [applicant] falsely added MK2 [redacted] as a crewmember in AOPS/TMT on 23DEC2008 sortie. ART 92, UCMJ: Failure to obey order or regulation, BM1 [applicant] failed to obey order defining area familiarization runs for currency. ART 81, UCMJ: Conspiracy, in that BM1 [applicant] conspired with MK3 [redacted] and SN [redacted] and made false boat position reports on 23DEC2008. BM1 [applicant] conspired with MK2 [redacted], falsely adding MK2 [redacted] as a crewmember on 23DEC2008 sortie.

Sentence Narrative:

Rest. to USCG STA [redacted] for 30 days. Forfeiture of ½ pay per mo for 1 mo, suspended for 6 months. Reduction in pay grade E-5. Extra duties for 30 days.

On June 26, 2009, the applicant submitted a memorandum to Coast Guard PSC wherein he requested that his previous rank of E-6 be reinstated.

On July 23, 2009, the applicant received an email from a Maintenance Augmentation Team (MAT) 2, wherein the MAT2 informed the applicant that in accordance with Article 5.C.33.b. of the Personnel Manual, COMDTINST M1000.6A, because the unit had insufficient time to properly evaluate the applicant, they would be unable to restore the applicant's E-6 rank. The

MAT2 explained that the applicant had arrived around the first week of March and had departed towards the end of May, giving his new unit only 3 months to observe the applicant's performance. The MAT2 informed the applicant that his new unit could submit the request to restore his rank after they had sufficient time to observe his performance in accordance with COMDTINST M1000.6A.

On July 28, 2009, the applicant submitted a memorandum to his station's Chief Boatswain's Mate (BMC), requesting that his previous rank of E-6 be reinstated. Specifically, the memorandum stated the following:

1. I respectfully request restoration in rank to E6. This request is based on my last six months of performance observation since my reduction in rank and my most recent employee review recommending me for advancement.
2. On January 22<sup>nd</sup>, 2009, I received nonjudicial punishment reducing my rank from E6 to E5. I was awarded this punishment by CAPT [redacted], Commander CG Group [redacted].
3. Since my imposed punishment, I have taken responsibility for my actions and maintained a positive attitude. Immediately after my punishment, I was transferred to CG Group [redacted]. While assigned to Group [redacted], I worked in the Public Works Department which enabled me to work many offsite projects. One project included the [redacted] renovation. I received a positive CG-3307 from the Deputy Group Commander for my role in this renovation.
4. I am currently stationed at CG STA [redacted] where I have successfully recertified as MLB heavy weather coxswain, RB-S coxswain, and as a boarding team member. I look forward to the challenges and experiences that my new unit will provide. This overall experience has humbled and matured my perspective on the responsibilities that a first class petty officer needs to possess. I am confident that I will meet these qualities.

On July 28, 2009, the applicant's BMC issued a memorandum to Coast Guard PSC and recommended that the applicant's E-6 rank be reinstated. The BMC stated that since the applicant's reduction in rank, his performance and attitude had dramatically increased, which was reflected in the applicant's most recent employee review. The BMC further stated that since the applicant had been stationed at his unit, he had regained all of his required certifications and completed all assigned tasks efficiently. Finally, the BMC stated that the applicant had exercised sound judgement when making recommendations to the Command for daily operations.

On July 30, 2009, the BMC issued a second memorandum to Coast Guard PSC once again recommending that the applicant's rank of E-6 be reinstated. The BMC restated his July 28, 2009, opinions regarding the applicant's conduct and performance.

Although the applicant and the Coast Guard submitted the memorandums wherein the applicant requested that his previous rank of E-6 be reinstated, neither the applicant or the Coast Guard submitted memorandums where those requests were denied by PSC. The record includes a September 3, 2009, email, however, which implies that a Captain H had disapproved the applicant's request to have his E-6 rank restored but does not cite reasons.

On April 13, 2010, the applicant submitted a memorandum wherein he requested early separation from the Coast Guard under the Force Reduction Act. This memorandum was followed

by the applicant's CO's recommendation that the applicant's request be approved. The applicant's request for discharge was approved and he was separated on June 1, 2010.

### VIEWS OF THE COAST GUARD

On May 27, 2021, a judge advocate (JAG) of the Coast Guard submitted a memorandum in which he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC). The JAG stated that the applicant's requests for the correction of his rate at the time of his voluntary separation in 2010, as well as a medical discharge, were administratively reviewed, and the Coast Guard recommended denying relief in this case.

The JAG argued that regarding the applicant's allegations that the Coast Guard was unjust for not restoring his previous rank following his 2009 NJP, guidance can be found in Article 5.C.33.b.2. of the Personnel Manual, COMDTINST M1000.6A, which states:

Commanding officers who consider enlisted members to be deserving of restoration to a formerly held rate...may **recommend** such restoration or advancement by letter to Commander (CGPC-epm). In making such a recommendation, the present commanding officer shall set forth in detail a full justification of the action recommended **based on at least 5, but not more than 36, months observation of performance of duty by the member concerned since reduction in rate. The observation time need not be totally at the present unit, but must take place within the same period of enlistment.** (Emphasis added).

Accordingly, the JAG stated that the applicant's first request was denied because the applicant's unit had not had the requisite time to observe his performance, while the second was denied by the advancement authority, PSC, due to the severity of the applicant's underlying misconduct. The JAG claimed that there was no evidence that the applicant submitted additional requests prior to his voluntary separation. Therefore, the JAG argued that the denial of the applicant's requests for restoration of his prior rank was either in accordance with stated policy or within the discretion of the advancement authority.

Regarding the applicant's medical discharge/retirement request based on alleged diagnosis of PTSD, the JAG argued that the applicant has failed to meet his burden of proving the existence of an error or injustice, by the preponderance of the evidence, regarding the manner of his discharge processing. The JAG further argued that the applicant's VA disability rating does not include a diagnosis of PTSD. In addition, the JAG stated that the mental health disorder listed by the VA, Adjustment Disorder with mixed anxiety and depressed mood, had it been discovered while the applicant was on active duty, it would have resulted in the applicant being administratively separated, not medically retired. Therefore, the JAG argued that the applicant voluntary separation, rather than a medical discharge, was neither erroneous or unjust.

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

On June 2, 2021, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. The Chair received the applicant's response on July 12, 2021.

Regarding the untimeliness of his application, the applicant argued that while on active duty, he attempted to regain his rank through contacting his congressional leaders, in addition to

contacting leadership in the Coast Guard, but was repeatedly denied. The applicant explained that at no time after his Captain's Mast was he questioned or read his rights, nor does his record show that he requested counsel. The applicant stated that he requested the restoration of his rank on several occasions and was told many different reasons, and 18 months after his Captain's Mast, he was still unable to return to his previous rank.

Regarding his service-connected disabilities, the applicant stated that he was not sure why or how the Coast Guard gained access to his medical records without his permission, because his records are privileged information pursuant to 38 U.S.C. § 7338 and required written consent, he stated that his PTSD is service-connected as outlined in the VA's benefit summary. The applicant alleged that he was diagnosed with "Adjustment Disorder, with Mixed Anxiety and Depressed Mood" on June 2, 2010, and PTSD on December 5, 2014.

The applicant argued that contrary to the Coast Guard's arguments, he has provided sufficient evidence to prove the Coast Guard committed an error and injustice. The applicant contested the JAG's claim that his Captain's Mast had nothing to do with the events that transpired on December 7, 2008. According to the applicant, that evening had everything to do with his Captain's Mast. The applicant once again requested a retirement because had he been given the opportunity to move forward, he would have attained his 20 years and received his retirement.

### APPLICABLE LAW AND POLICY

Article 5.C. of the Coast Guard Personnel Manual (2007) provides the following guidance on reduction in rate of an enlisted member:

#### 5.C.33. Advancement After Reduction.

...

##### b. After Reduction as Punishment.

1. Members who have been reduced in rate, except those who fall within the provisions of Articles 15(d) and 15(e) of the Uniform Code of Military Justice, are subject to the normal advancement system, unless they are considered by their commanding officers to be deserving of special advancement.

2. Commanding officers who consider enlisted members to be deserving of restoration to a formerly held rate, or deserving of advancement, but to a rate lower than formerly held, may recommend such restoration or advancement by letter to Commander (CGPC-epm). In making such a recommendation, the present commanding officer shall set forth in detail a full justification of the action recommended based on at least 5, but not more than 36, months observation of performance of duty by the member concerned since reduction in rate. The observation time need not be totally at the present unit, **but must take place within the same period of enlistment.** Enlisted members E-7 and above, who have been reduced to a rate E-5 or below, may be recommended for restoration of rate up to and including E-6. However, in order for enlisted members to be advanced to E-7 or above, they must re compete in a SWE when considered fully qualified in accordance with **Articles 5.C.4. and 5.C.11.a.**

...

**5.C.38. Reduction in Rate.**

a. General Provisions.

1. Reduction in a permanent rate may result from any one of five reasons:

a. Punishment in accordance with Uniform Code of Military Justice

...

**5.C.38.b. Reduction in Rate as a Punishment.**

1. Any enlisted person may be reduced in pay grade by sentence of court-martial in accordance with the provisions of the Uniform Code of Military Justice as set forth in the MCM. Refer to Military Justice Manual, COMDTINST M5810.1 (series).

2. Under the authority of Article 15 of the Uniform Code of Military Justice, a commanding officer may reduce an enlisted person in pay grades E-2 through E-6 to the next inferior pay grade as a NJP, if the individual concerned had previously been advanced or promoted to the pay grade from which demoted by the commanding officer concerned or by an equivalent or lower command. Commanding officers of all commands in the Coast Guard have equivalent authority to effect the authorized advancement of enlisted personnel, and are considered to exercise promotion authority within the meaning of Article 15(b)(2)(D), Uniform Code of Military Justice. Accordingly, commanding officers who have authority to impose NJP under the provision of Article 15, may reduce an enlisted person, except a chief petty officer under their command, to the next inferior pay grade for disciplinary purposes.

The Physical Disability Evaluation System (PDES) Manual, COMDTINST M1850.2D, Article 2.A.38. defines “physical disability” as “[a]ny manifest or latent physical impairment or impairments due to disease, injury, or aggravation by service of an existing condition, regardless of the degree, that separately makes or in combination make a member unfit for continued duty.”

Article 2.C.2. states the following:

***Fit for Duty/Unfit for Continued Duty. The following policies relate to fitness for duty:***

a. The sole standard in making determinations of physical disability as a basis for retirement or separation shall be unfitness to perform the duties of office, grade, rank or rating because of disease or injury incurred or aggravated through military service. Each case is to be considered by relating the nature and degree of physical disability of the evaluatee concerned to the requirements and duties that a member may reasonably be expected to perform in his or her office, grade, rank or rating. In addition, before separation or permanent retirement may be ordered:

(1) There must be findings that the disability:

(a) is of a permanent nature and stable, and

(b) was not the result of intentional misconduct or willful neglect and was not incurred during a period of unauthorized absence.

...

b. The law that provides for disability retirement or separation (10 U.S.C. 61) is designed to compensate a member whose military service is terminated due to a physical disability that has rendered him or her unfit for continued duty. That law and this disability evaluation system are not to be misused to bestow compensation benefits on those who are voluntarily or mandatorily retiring or separating and have theretofore drawn pay and allowances, received promotions, and continued on unlimited active-duty status while tolerating physical impairments that have not actually precluded Coast Guard service. The following policies apply:

(1) Continued performance of duty until a member is scheduled for separation or retirement for reasons other than physical disability creates a presumption of fitness for duty. This presumption may be overcome if it is established by a preponderance of the evidence that:

(a) the member, because of disability, was physically unable to perform adequately in his or her assigned duties; or

(b) acute, grave illness or injury, or other significant deterioration of the member's physical condition occurred immediately prior to or coincident with processing for separation or retirement for reasons other than physical disability which rendered him or her unfit for further duty.

(2) A member being processed for separation or retirement for reasons other than physical disability shall not be referred for disability evaluation unless the conditions in articles 2.C.2.b.(1)(a) or (b) are met.

(3) The determination of a grave or serious condition or significant deterioration must be made by a competent Coast Guard medical officer. Such medical authority will consult with the CGPC senior medical officer, as necessary, to ensure proper execution of this policy in light of the member's condition. The member's command may concurrently submit comment to the CGPC senior medical officer.

c. If a member being processed for separation or retirement for reasons other than physical disability adequately performed the duties of his or her office, grade, rank or rating, the member is deemed fit for duty even though medical evidence indicates he or she has impairments.

...

i. The existence of a physical defect or condition that is ratable under the standard schedule for rating disabilities in use by the Department of Veterans Affairs (DVA) does not of itself provide justification for, or entitlement to, separation or retirement from military service because of physical disability. Although a member may have physical impairments ratable in accordance with the VASRD, such impairments do not necessarily render him or her unfit for military duty. A member may have physical impairments that are not unfitting at the time of separation, but which could affect potential civilian employment. The effect on some civilian pursuits may be significant. Such a member should apply to the DVA for disability compensation after release from active duty.

## 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 over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record. The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by

the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

2. The application was not timely filed. To be timely, an application for the correction of a military record must be submitted to the Board within three years after the alleged error or injustice was discovered.<sup>1</sup> The applicant stated in his application to the Board that he discovered the error January 13, 2009. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 2009 but did not submit his application to the Board until December 11, 2020, making 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>2</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 “analyzing both the reasons for the delay and the potential merits of the claim based on a cursory review”<sup>3</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>4</sup> Pursuant to these requirements, the Board finds the following:

- a. Regarding his delay in filing his application to this Board, the applicant failed to explain what caused his delay in applying to the Board for relief. The applicant only alleged that he did attempt to correct his record with both his congressional representatives and his commanding officers prior to his separation from active duty. However, those attempts do not constitute applying for relief to this Board. Accordingly, the Board finds that the applicant’s explanation is unpersuasive because he has failed to show that anything prevented him from seeking correction of the alleged error or injustice more promptly.
- b. A cursory review of the merits of this case shows that the applicant’s claims lack potential merit. First, regarding the applicant’s restoration of rank, the applicant has failed to provide any policy, and the Board could find none, that required Coast Guard officials to restore his rank after six months, as alleged by the applicant. Article 5.C.33.b.2. of the Personnel Manual, COMDTINST M1000.6A, states that commanding officers who believe an enlisted member is deserving of rate restoration may recommend that the applicant’s rate be restored. However, nothing in this policy required Coast Guard PSC to approve the recommendation or restore a member’s previous rate within a specific time period. The only requirement was that, if the restoration was approved, it had to take place within the same enlistment period. Although the applicant’s subjective belief was that he was entitled to have his rate restored, there is no policy that supports his belief. Here, the applicant admitted to the charges against him, and he has failed to show that the reduction in his rate was contrary to policy or unjust and the record is presumptively correct.

Regarding the applicant’s request for a medical retirement, again the Board finds that the applicant’s request lacks merit. Although the applicant has claimed that he suffered from

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

<sup>2</sup> 10 U.S.C. § 1552(b).

<sup>3</sup> *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

<sup>4</sup> *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

PTSD, nothing in the record shows that the applicant was unable to perform his duties because of a disability in 2010, and the applicant himself has admitted that had he was more than adequately performing the duties of his grade, rank, and/or rate at the time of his voluntary separation. Thus, the applicant's claim that he was suffering from a disability that warranted a medical retirement in 2010 is in conflict with his own statements and performance record.

Article 2.C.2.b.1. of the PTSD manual, COMDTINST 1850.2D, states that continued performance of duty until a member is scheduled for separation or retirement for reasons other than physical disability creates a presumption of fitness for duty. Article 2.C.2.c. of the same manual states, "If a member being processed for separation or retirement for reasons other than physical disability adequately performed the duties of his or her office, grade, rank or rating, the member is deemed fit for duty even though medical evidence indicates he or she has impairments." Here, the record shows that prior to the applicant voluntarily leaving the Coast Guard, he was performing his duties at a high level, and would have remained in the Coast Guard had they restored his rate as he requested. The only evidence submitted by the applicant to support his request for a medical retirement was a VA disability rating letter. However, Article 2.C.2.i of COMDTINST M1850.2D states, "The existence of a physical defect or condition that is ratable under the standard schedule for rating disabilities in use by the Department of Veterans Affairs (DVA) does not of itself provide justification for, or entitlement to, separation or retirement from military service because of physical disability." The fact that the applicant received a subsequent disability rating from the VA is not dispositive, nor does it persuade the Board that the applicant was unfit for military service because of a disability at the time of his voluntary separation in 2010.

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

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

**ORDER**

The application of former BM2 [REDACTED] [REDACTED] [REDACTED] USCG, for the correction of his military record is denied.

August 30, 2023

[REDACTED] Digitally signed by [REDACTED]  
Date: 2023.09.29 17:06:40 -04'00'

[REDACTED]

[REDACTED] Digitally signed by [REDACTED]  
Date: 2023.09.29 17:29:45 -04'00'

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Date: 2023.10.01 13:22:31 -06'00'

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