DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-041

Xxxxxxxxxxxxxxxxxxxx
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FINAL DECISION

[redacted]

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on December 22, 2003, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated October 13, 2004, is 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 asked the Board to correct his Enlisted Employee Review (EER) for the period ending November 30, 2002 (EER-1), to show that he was recommended for advancement, or, if not, to expunge the evaluation entirely. He also asked the Board to expunge from his military records the EER he received for the period ending May 31, 2003 (EER-2).

With respect to the mark of "Not Recommended" that appears on EER-1, the applicant alleged that his rating chain[1] assigned him this mark simply because he had recently been advanced to E-6 and was therefore not qualified for advancement to E-7—not because they thought he was incapable of satisfactorily performing the duties and responsibilities of the next higher pay grade. He pointed out that, if his rating chain had found him incapable, they should have counseled him on that fact, and they should have prepared required administrative entries for his record to document his loss of his

[1] Enlisted members are evaluated by a rating chain, which consists of a Supervisor, who recommends evaluation marks; a Marking Official, who assigns the marks; and an Approving Official, who approves the EER. All three members of the rating chain also indicate on the EER whether they recommend the member for advancement to the next pay grade. A member cannot be advanced if his Approving Official does not recommend it. PM Article 10.B.4.c.

command's recommendation and to document counseling about the steps he would need to take to regain the recommendation. He alleged that they did not do so.

In support of this allegation, the applicant submitted a copy of the EER form, which has instructions that state that a member should not be recommended for advancement "if, in the view of the rating official, the individual is not capable of satisfactorily performing the duties and responsibilities of the next higher pay grade," and that a member should be recommended for advancement "if, in the view of the rating official, the individual is fully capable of satisfactorily performing the duties and responsibilities of the next higher pay grade. This block may be checked irrespective of the individual's qualification or eligibility for advancement."

With respect to EER-2, the applicant alleged that his rating chain "completely failed to meet its responsibilities outlined in [Personnel Manual Article] 10.B.4.d."[2] He alleged that he was never provided the original counseling sheet, he never signed it, and EER-2 was not completed within 21 days of the end of the evaluation period. Moreover, he alleged, his Supervisor failed to counsel him on the contents of the evaluation, and his Approving Official failed to ensure that he review EER-2 in the CGHRMS database. He also alleged that his rating chain "failed to afford [him] the opportunity to appeal" EER-2 because they did not inform him of his right to appeal and did not offer him an opportunity to speak with the Approving Official.

SUMMARY OF THE RECORDS

On August 20, 1996, the applicant enlisted in the Coast Guard. On the same day, he signed a document in acknowledgement of having been counseled about the Coast Guard's drug policies. On April 15, 1998, he was assigned to serve on a cutter as a telecommunications specialist third class (TC3/E-4). On October 1, 1999, he advanced to E-5. On April 1, 2002, he advanced to E-6.

On his EER for the six-month period ending November 30, 2002 (EER-1), the applicant for the first time was not recommended for advancement, although he received no below-average numerical marks in the various performance categories and received several high marks. The Coast Guard submitted a copy of EER-1, dated January 13, 2003, with the following explanation by the Approving Official:

> [The applicant] has never held a supervisory, or leadership type position[. T]herefore I do not feel he is ready for responsibility of the next higher pay grade. He needs to fill a billet that would expose him to the skills that are required to make leadership decisions. At this time, [he] has not completed the end of course test nor the practical factors for advancement to E-7. It should be noted that this is not a negative reflection on the member or the work ethic shown during this marking period. [He] has great potential, talents

[2] During the period in question, there was no Article 10.B.4.d. in the Personnel Manual. It appears that the applicant is referring to a prior version of the manual that was no longer in effect when the EERs were prepared. However, many of the provisions to which the applicant refers are still in effect, though revised and renumbered. The rating chain's duties are now elaborated in PM Article 10.B.4.c.

> and abilities that will be of great use to this organization. However, just having knowledge of a position does not make someone ready to lead. [He] needs to gain leadership maturity and responsibility that can only be gained by having a supervisory or management position within his field of training. This recommendation should not have a negative impact on the member's career but should have the opposite effect. By holding [him] back now, he will be better prepared and this will allow him to become an even more effective resource for the Coast Guard in the future.

The record before the Board contains no copy of this written counseling with the applicant's signature to show that his Supervisor, a chief warrant officer, actually counseled him about the non-recommendation for advancement

On May 27, 2003, while still assigned to the cutter, the applicant underwent urinalysis for the use of illegal drugs. On June 3, 2003, he signed a sworn affidavit in which he admitted to having smoked marijuana on several occasions. Because of the allegations against him, the applicant lost his security clearance and was assigned to different work. On August 8, 2003, the applicant was charged with violating the Uniform Code of Military Justice by having smoked marijuana "on multiple and diverse occasions."

On June 17, 2003, the applicant's rating chain prepared EER-2 for the six-month period that ended on May 31, 2003. In EER-2, the applicant received several high marks, but he also received poor marks of 2 (on a scale of 1 to 7, with 7 being best) in the performance categories of "Responsibility," "Setting an Example," and "Integrity"; a mark of 3 for "Loyalty"; an unsatisfactory conduct mark; and a mark of "Not Recommended for Advancement." His Approving Official wrote in explanation of the conduct mark that "[a]llegations arose during the marking period indicating that [the applicant] was involved in illegal drug use. While the investigation continued past the end of the marking period, all indications are that the member did indeed use illegal drugs during this marking period." The Approving Official also wrote an explanation for each mark of 2 and the non-recommendation for advancement, in accordance with Article 10.B.2.a.1. of the Personnel Manual. He indicated that the poor marks were based on "credible eyewitness accounts" of the applicant's drug use. The Approving Official noted that he was not recommending the applicant for advancement because of the allegations of drug use under investigation.

As with EER-1, however, the record before the Board contains no copy of this written counseling with the applicant's signature indicating that his Supervisor actually counseled him about the non-recommendation for advancement, unsatisfactory conduct marks, and low performance marks.

On November 14, 2003, the applicant was discharged under "other than honorable conditions" because of his drug abuse. "For the Good of the Service" is the narrative reason for separation on his discharge form (DD 214).[3] His reenlistment code is RE-

[3] Under the Separation Designator Code Handbook, the narrative reason for separation of a member discharged with a KFS separation code should be "Triable by Court Martial."

4 (ineligible). His separation code is KFS, which denotes a voluntary discharge when the member is separated "for conduct triable by court martial for which the member may voluntarily separate in lieu of going to trial."

On January 29, 2004, the Discharge Review Board reviewed the applicant's request for an upgraded discharge and unanimously recommended that his request be denied. The Commandant approved the recommendation.[4]

[4] The applicant has not asked the BCMR for any relief with respect to his discharge.

VIEWS OF THE COAST GUARD

On May 4, 2004, the Judge Advocate General (TJAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request.

TJAG argued that the applicant "is estopped from alleging error or injustice regarding his disputed EERs where he has failed to perfect an appeal of those marks." He alleged that although members may not appeal an Approving Official's lack of recommendation for advancement, the applicant could have appealed his low numerical marks in the second disputed evaluation but "made a conscious decision not to appeal his second set of marks."

TJAG argued that the applicant's "assertion that he was prevented from appealing this set of marks is simply not credible. As a first class petty officer arguing that he was ready to be promoted to chief, Applicant was, or should have been, well versed in the marks appeals process. By reviewing the application of one who has failed to make use of an established appeals process, the Board would effectively eviscerate the regulatory scheme implemented by Article 10 [of the Personnel Manual]." TJAG also alleged that, "in the absence of a completed appeal, it is submitted that the Board is without proper jurisdiction to consider this application." In addition, he alleged that the Board "should deem any issue not raised through this process to be waived, absent proof of compelling circumstances that prevented Applicant from raising such issues within the service's EER appeal system."

Regarding the merits of the case with respect to the lack of recommendation for advancement on EER-1, TJAG argued that the evidence of record shows that the applicant's command "made a reasoned decision that Applicant lacked sufficient experience in leadership to assume the duties of a chief petty officer." Regarding EER-2, TJAG argued that "[a]lthough the Coast Guard expects full compliance with administrative guidelines [concerning performance evaluations], failure to meet those guidelines does not create an entitlement on the part of Applicant to have an otherwise valid EER expunged. To do so would be to exalt form over substance." TJAG argued that the marks in the EER-2 were appropriate and that the applicant has submitted no evidence to prove that they were inappropriate. TJAG argued that the applicant's evidence is "insufficient to overcome the strong presumption of regularity afforded his military superiors." *Arens v. United States*, 969 F.2d 1034, 1037 (1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

TJAG based his recommendation in part on a memorandum on the case prepared by the Coast Guard Personnel Command (CGPC). CGPC pointed out that the applicant was voluntarily discharged at his own request in lieu of standing trial by court-martial. CGPC also submitted an email message dated April 21, 2004, from the applicant's Approving Official, a commander who was the Executive Officer of the cutter:

> Regarding [EER-1], my recollection on why he was not recommended was due to his lack of leadership experience and supervisory skills. While his performance overall was average to above-average at the E-6 level, he had not yet demonstrated the ability to lead/mentor others at the E-7 level. Prior to being assigned a NOT RECOMMENDED mark, [the applicant] and another NOT RECOMMENDED petty officer met with the Division's CPO mess to ascertain the E-6s' understanding of the role of a CPO within the Coast Guard. My recollection of the feedback on [the applicant] was that he was still young and needed time to gain leadership/supervisory experience so he would have a foundation upon which to lead as a future CPO. … It should be noted that [he] was not, at this period, "Otherwise eligible for advancement". Thus, the requirement to prepare a CG3307 (ART 10.B.7.3) was not applicable. …
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> As for [EER-2], allegations arose about illegal drug using during the evaluation period. An ongoing CGIS investigation continued past the end of the evaluation period but all indications at the end of the evaluation period were that the member had used illegal drugs. Based upon the serious allegations and the informal finding of CGIS at that stage in their investigation (while not completed), I decided that [the applicant] was NOT RECOMMENDED for advancement.

CGPC also submitted an email conversation between CGPC, the Approving Official, and the applicant's Supervisor, a chief warrant officer. In an email dated April 29, 2004, CGPC asked the Approving Official if the applicant was ever counseled about the disputed evaluations. The Approving Official responded the same day and stated that his "recollection was that [the Supervisor] did go over the marks with [the applicant] and the reason it sticks in my mind is because at the time, [the applicant] no longer had access to our classified space and [the Supervisor] had to trek across base to the other bldg where [the applicant] temporarily worked in order to complete the marks process (i.e. counseling)." On May 3, 2004, the Supervisor responded to CGPC as follows: "If my memory serves me correctly, I found [the applicant] over in the admin building (bldg xx). As with every other time I did marks with him, he reviewed them, and then I counseled him on them. Then he signed them. [The Approving Official's] recollection is correct."

CGPC stated that the record shows that the Approving Official did not recommend the applicant for advancement on EER-1 for appropriate reasons "within the spirit of the purpose of the advancement recommendation process" and that the Approving Official exercised proper authority and discretion in making this decision. With respect to EER-2, CGPC admitted that "some deadlines established for the process were not met" but argued that a missed deadline does not make an evaluation erroneous or unjust. CGPC argued that the applicant has not proved that the missed deadlines cause him any harm.

CGPC stated that the emails of the Approving Official and Supervisor contradict the applicant's claim that he was not counseled about EER-2 but that "even if we accept the Applicant's assertion that he was never counseled, his claim of ignorance of the appeal process in the absence of counseling for this specific EER is not credible. During his career, he was evaluated numerous times, and presumably counseled numerous times, concerning his long-standing right to appeal an EER." Furthermore, CGPC

argued that any appeal would have been unsuccessful given the charges of misconduct against the applicant.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

Both on May 6 and on August 17, 2004, the BCMR sent copies of TJAG's advisory opinion and CGPC's memorandum to the applicant and invited him to respond within 30 days. No response was received.

APPLICABLE REGULATIONS

Personnel Manual (PM) Article 5.C.f.b. requires members competing for advancement to pay grade E-7 to have "served on continuous active duty in the Coast Guard in pay grade E-6 during the entire two years immediately preceding the terminal eligibility date."

PM Article 10.B.7.2.a. states that a member should be marked as recommended for advancement on an EER when "[t]he member is fully capable of satisfactorily performing the duties and responsibilities of the next higher pay grade. The rating chain should choose this entry regardless of the member's qualification or eligibility for advancement." PM Article 10.B.7.2.b. provides that a member should be marked as not recommended for advancement on an EER when he "is not capable of satisfactorily performing the duties and responsibilities of the next higher pay grade."

PM Article 10.B.2.a.1. provides that "[s]upporting remarks are required to be submitted along with the employee review, up through the marking chain to address the future leadership potential of all enlisted personnel, E-6 and above, and for any recommended marks of 1, 2, or 7, unsatisfactory conduct mark, or loss of recommendation for advancement."

PM Article 10.B.4.a.4. states that the unit must ensure that EERs "are completed, including the signed counseling sheet, not later than 21 days after the end of the employee review period ending date. If an evaluee refuses to sign the counseling sheet, a unit representative should so state in the evaluee's signature block and sign the statement prior to transmitting the completed EER to HRSIC. The unit provides the evaluee the original counseling sheet."

Previously, the signed documentation of counseling was retained in the member's record. For example, PM Article 5-C-16.a. used to state that "[w]hen a member otherwise eligible for advancement is not recommended by his/her commanding officer, that action shall be supported by a [page 7] entry in the enlisted Personal Data Record." However, on July 15, 2002, the Commandant issued ALCOAST 354/02, which amended the Personnel Manual to have such written comments included in the EER, instead of being prepared on page 7s as administrative entries for the members' Personal Data Records.

PM Article 10.B.4.c.3.f. states that the Supervisor must "counsel[] the evaluee on the employee review after the Approving Official's action. … The Supervisor is required to ensure the evaluee is provided with a printed counseling sheet and acknowledges receipt by obtaining their [sic] signature." The BCMR staff asked the Coast Guard if copies of signed counseling sheets are supposed to be retained by the rating chain when the originals are given to the member pursuant to Article 10.B.4.a.4. and was told that they are not. The Coast Guard referred the BCMR to its on-line EER instructions, which discuss the recent policy change as follows:

> The member should be given the original counseling receipt. He/she will use this as the basis for an appeal. The appeal period begins on the date the member signs the form. Commands are not required to keep a copy of the counseling receipt since the appeal process is driven by the member and the marks will be captured in the system. … If the member reviews the receipt, signs off, and then notices that the marks entered in the system are not the same as [those on] the counseling receipt, he/she should approach the command so the data can be corrected.

PM Article 10.B.4.c.5.g. states that the Approving Official ensures that complete EERs are processed "in sufficient time to permit them to be reviewed by the evaluee[s] through CGHRMS self service not later than 30 days following the employee review period ending date."

PM Article 10.B.9.a. permits a member to appeal the numerical marks on an EER but not the recommendation for advancement. Article 10.B.9.b.2. provides that a unit's commanding officer "must ensure all enlisted persons are aware of their right to appeal under this Article." Article 10.B.9.b.1. provides that before submitting a written appeal, a member should request an audience with the rating chain, including the Approving Official, to see if the objection to the EER may be resolved, and that a written appeal must be submitted within 15 days of the date the member signs the completed EER.

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 application was timely filed.

2. TJAG argued that the applicant's failure to appeal his EER left the Board without jurisdiction over his request. TJAG offered no authority to support his position, except for his interpretation of the Board's rule at 33 C.F.R. § 52.13(b), which states that "[n]o application shall be considered by the Board until the applicant has exhausted all *effective* administrative remedies afforded under existing law or regulations, and such legal remedies as the Board may determine are practical, appropriate and *available* to the applicant." (Emphasis added.) In *Avocados Plus v.*

Veneman, 370 F.3d 1243, 1248 (D.C.C. 2004), the court stated "[w]hile the existence of an administrative remedy automatically triggers a non-jurisdictional exhaustion inquiry, jurisdictional exhaustion requires much more. In order to mandate exhaustion, a statute must contain '"sweeping and direct" statutory language indicating that there is no federal jurisdiction prior to exhaustion.'"[5] The Board's rule does not contain "sweeping and direct" statutory language divesting it of jurisdiction due to a failure to exhaust administrative remedies. Therefore, the Board finds that even if the applicant did not exhaust an effective administrative remedy, the Board still has jurisdiction over his case under 10 U.S.C. § 1552.

3. TJAG argued that the Board should deny relief because the applicant did not appeal his EERs. Under PM Article 10.B.9.a., the applicant was not allowed to appeal the non-recommendations for advancement in EER-1 and EER-2. Therefore, the provisions for appealing EER numerical marks in Article 10.B.9. do not constitute an administrative remedy for the allegedly erroneous non-recommendations for advancement.

4. Under PM Article 10.B.9.a., the applicant could have appealed the disputed numerical marks in EER-2 within 15 days of the day he signed the counseling sheet. However, there is no signed counseling sheet in the record, and the applicant alleges that he was never counseled. Morever, many more than 15 days have now passed, and the chance to appeal the marks in EER-2 under Article 10.B.9.a. is no longer available or practical. The Board's policy is that exhaustion of administrative remedies has occurred in situations where a remedy existed but is no longer available or practical. The Board's policy is consistent with its rule at 33 C.F.R. § 52.13(b) and with congressional intent. The Board believes a blanket denial of applications in the absence of an appeal under Article 10.B.9.a., as suggested by TJAG, would be a violation of its responsibility under 10 U.S.C. § 1552. The Board notes that the only limitation Congress placed on filing an application with the BCMR is the three-year statute of limitations, and it even allowed that to be waived in the interest of justice. Can an agency completely divest an active duty or former service member of review by the BCMR when Congress did not do so? We think not. As the Supreme Court stated in *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992), "Of 'paramount importance' to any exhaustion inquiry is congressional intent."[6]

5. In light of the above considerations, the Board finds that the applicant has exhausted all practical and effective administrative remedies now available to him. The Board will therefore consider his request on the merits.

6. The applicant alleged that he received a mark of not recommended for advancement on EER-1 only because he had recently advanced to E-6 and so was not

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[5] *Avocados Plus v. Veneman*, 370 F.3d 1243, 1248 (D.C.C. 2004) (citing *Weinberger v. Salfi*, 422 U.S. 749, 757 (1975)).

[6] *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992) (citing *Patsy v. Board of Regents of Florida*, 457 U.S. 496, 501 (1982)).

yet qualified for advancement to E-7 under PM Article 5.C.f.b. However, in EER-1, the applicant's Approving Official wrote a reasonable explanation for his decision not to recommend the applicant for advancement. Moreover, his explanation indicates that he found that the applicant was not "fully capable of satisfactorily performing the duties and responsibilities of the next higher pay grade," as required by PM Article 10.A.7.2.a. Therefore, although there is not a signed counseling sheet with the Approving Official's comments in the record, the preponderance of the evidence in the record indicates that the Approving Official assigned the mark of not recommended in accordance with Article 10.A.7.2.a. and not merely because the applicant was not qualified for advancement under Article 5.C.f.b. The applicant has not proved that the mark is erroneous or unfair.

7. The applicant alleged that he was never counseled about the mark of not recommended for advancement on EER-1. Absent evidence to the contrary, the Board presumes that the applicant's rating officials acted correctly, lawfully, and in good faith in making their evaluations.[7] No signed copy of the counseling sheet appears in the applicant's military record, but this is to be expected since the Coast Guard has amended the Personnel Manual to require the Supervisor, under Article 10.B.4.a.4., to give the original signed counseling sheet to the member, rather than retaining it for the military record, as was previously done. Therefore, the lack of a signed counseling sheet in a military record is no longer probative of whether the member was properly counseled. However, the record contains an email from the applicant's Supervisor, a chief warrant officer, dated May 3, 2004, in which he states that he always counseled the applicant whenever he "did marks" for him. Moreover, even assuming, *arguendo*, that the applicant was not counseled about the not recommended mark in EER-1, he has not proved that he was harmed by the (alleged) failure to counsel him. The Approving Official has stated that the mark of not recommended in EER-2 was based not on the same reasons as the mark in EER-1, but upon the illegal drug use to which the applicant admitted. Therefore, assuming the applicant was not counseled, the Board is not persuaded that proper counseling about the not recommended mark in EER-1 could have resulted in better marks in EER-2.

8. The Board notes that EER-1 was apparently completed on January 13, 2003, more than 21 days after the end of the reporting period. Although PM Article 10.B.4.a.4 requires that EERs be completed within 21 days of the end of the period, the Board finds that lateness, *per se*, is insufficient to justify removal of an otherwise valid EER, and the applicant has not proved that he was harmed by the apparent untimeliness of EER-1.

9. The applicant alleged that he was not counseled about the negative marks in EER-2. As stated in finding 7, pursuant to PM Article 10.B.4.a.4., the lack of a signed counseling sheet in a military record is no longer probative of whether the member was properly counseled. However, the rating chain clearly prepared the required counsel-

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

ing sheets, as they were included in the copy of EER-2 that was apparently completed on June 17, 2003. Moreover, both the Approving Official and the Supervisor have stated in emails that the applicant was counseled about this EER. Though not signed, their emails include common details concerning the Supervisor having to cross the base to another building to counsel the applicant because he had been moved due to the loss of his security clearance. Therefore, despite the applicant's allegation and the lack of signed counseling sheets, the Board finds that the preponderance of the evidence in the record indicates that the applicant was properly counseled about the negative marks in EER-2.

10. The applicant alleged that EER-2 was not completed within 21 days of the end of the reporting period, as required under PM Article 10.B.4.a.4. The only copy of EER-2 in the record before the Board is dated June 17, 2003, which was within 21 days of May 31, 2003—the end of the reporting period for EER-2. Therefore, the applicant has not proved that EER-2 was prepared untimely. Moreover, assuming *arguendo* that the applicant could produce evidence of untimeliness, as stated in finding 8, the Board finds that lateness, *per se*, is insufficient to justify removal of an otherwise valid EER, and the applicant has not proved that he was harmed by the alleged untimeliness of EER-2.

11. The applicant complained that his Approving Official failed to ensure that he review EER-2 in CGHRMS. Under PM Article 10.B.4.c.5.g., the Approving Official must ensure that complete EERs are processed in sufficient time to permit members to review them in CGHRMS within 30 days of the end of the reporting period. The Approving Official is not required to ensure that the member actually reviews each EER in CGHRMS. Furthermore, as with the 21-days deadline, the Board finds that lateness, *per se*, is insufficient to justify removal of an otherwise valid EER, especially when that lateness has caused no harm to the member.

12. The applicant alleged that his rating chain failed to inform him of his right to speak to his Approving Official regarding EER-2 and to appeal it in accordance with PM Article 10.B.9. Article 10.B.9.b.2. provides that a unit's commanding officer "must ensure all enlisted persons are aware of their right to appeal under this Article." Absent evidence to the contrary, the Board presumes that the applicant's commanding officer acted correctly, lawfully, and in good faith.[8] Moreover, the applicant was an E-6 with almost seven years of experience in the Coast Guard. The Board does not believe that he could have been unaware of his right to speak to his Approving Official and appeal the numerical marks in EER-2. Assuming, *arguendo*, that he was unaware of his rights under Article 10.B.9., he has not proved how he was harmed; he has not shown that any appeal he might have made could have resulted in better marks in EER-2, given the illegal acts to which he had admitted on June 3, 2003.

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

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

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former xxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied.