

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-052

FINAL DECISION

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the applicant's completed application on March 11, 2015, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated December 31, 2015, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant, who was honorably released from active duty in the Coast Guard on March 31, 1958, asked the Board to remove from his record a remark on a form CG-3307 ("Page 7") stating, "NOT RECOMMENDED FOR REENLISTMENT by reason of suspected homosexual tendencies." The applicant stated that the Page 7 was never shown to him and was placed in his record without his knowledge.

The applicant stated that he was discharged because he got involved in an altercation and was going to be court-martialed, but the charges were dropped after he agreed to an honorable discharge since his enlistment was ending anyway. The applicant stated that he never knew about the remark on the disputed Page 7 until November 25, 2014, when he received upon request a complete copy of his military records and found it. He alleged that the remark on the Page 7 "is not and was not true" and asked the Board to remove it.

SUMMARY OF THE RECORD

On June 29, 1954, at age 17, the applicant enlisted in the Coast Guard for four years. For three years, he maintained good conduct and trained to earn the commissaryman (CS) rating. He advanced to CS3 in September 1956 and was transferred to a cutter. He received good marks and perfect 4.0 conduct marks aboard his first cutter.

On March 22, 1957, the applicant was transferred to another cutter. On April 23, 1957, he requested to transfer from the CS rating to the boatswain's mate (BM) rating, but his request was not approved based on the needs of the Service.

On June 3, 1957, the applicant's CO sent the Commandant a report of the applicant's arrest and brief confinement by civil authorities for intoxication while on liberty.

On July 18, 1957, the applicant's CO awarded him NJP for being absent over leave from 8:45 a.m. on July 13, 1957, to 2:30 a.m. on July 14, 1957. He was awarded two weeks of extra police duties.

On November 6, 1957, the CO again awarded him NJP because the applicant was absent over leave from 7:45 a.m. on November 4, 1957, to 12:25 a.m. on November 6, 1957. He was awarded two weeks' restriction to the vessel. This entry notes that the applicant's enlistment had been extended to June 30, 1958, because of his unauthorized absences.

On January 21, 1958, the applicant signed a statement for an investigation of his conduct and that of a crewmate. He wrote that the crewmate had first "started wrestling and grabbing his cock" on liberty one night, but the applicant thought he was "fooling around" and pushed him away. The next time, the other member lay down in the rack next to the applicant and "started jerking on my cock and I ask[ed] him if he had any money. Then he said, What do you think this is, New York? Then I told him to get away." The third time, the applicant wrote, he had gone to the head after getting drunk on liberty one night, and the other member came out of the shower and grabbed his penis. The fourth time, the applicant wrote, he came back drunk from liberty, went into the laundry room, undressed, and sat on the floor. The other member, who had been on watch, came in the laundry room, sat down beside him, and started "playing with [him]," but someone else came in the room, so the applicant left and went to bed.

On February 16, 1958, the applicant was transferred off the cutter to Coast Guard Base Boston "pending further disposition."

On a Page 7 in the applicant's record (but not signed by him) there are four sequential entries:

- An entry dated February 19, 1958, states that he had been charged with violating Article 125 of the Uniform Code of Military Justice with three specifications that were forwarded with a recommendation for trial by Special Court-Martial;
- An entry dated February 26, 1958, states that the charges against the applicant had been referred to trial by Special Court-Martial.
- An entry dated March 13, 1958, states that the Base command had recommended to the Commandant "that the best interests of justice would best be served by discharging [the applicant] without recommendation for reenlistment effective 30 March 1958. Recommendation further requests that pending charges and specifications be withdrawn."
- The disputed entry in this case, dated March 18, 1958, notes that the charges and specifications were being withdrawn and also states the following: "NOT

RECOMMENDED FOR REENLISTMENT by reason of suspected homosexual tendencies.”

On March 31, 1958, the applicant signed a Page 7 documenting the fact that he had had a “pre-discharge interview” and was not recommended for reenlistment. His DD 214 shows that he received an honorable separation upon the fulfillment of his obligated active service.

On April 1, 1958, the applicant was transferred to the Coast Guard Reserve to complete the remainder of his eight-year military service obligation. He was honorably discharged from the Reserve on October 13, 1961, after someone determined that he should have been discharged from active duty, rather than released into the Reserve.

VIEWS OF THE COAST GUARD

On August 18, 2015, the Judge Advocate General (JAG) submitted an advisory opinion recommending that the Board grant relief and adopting the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC stated that “[i]n light of today’s standards and the [re]peal of DADT [Don’t Ask, Don’t Tell] ..., it is recommended that the applicant be granted relief and that the portion of [the Page 7] referencing ‘homosexual tendencies’ be removed.” PSC stated that “the redaction of [the Page 7] is in the interest of equity for the applicant and aligns with the spirit of the [new] policy.” PSC noted that no correction of the applicant’s DD 214 is necessary because it does not contain any reference to homosexual tendencies or conduct.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 30, 2015, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to submit a written response within thirty days. The applicant’s response was received on September 10, 2015. He agreed with the Coast Guard’s recommendation.

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 submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. Although the applicant was released from active duty in 1958, his application is considered timely because it was filed within three years of his discovery of the alleged error or injustice in his record, as required by 10 U.S.C. § 1552(b). The Page 7 in question does not bear the applicant’s signature, and the Board knows of no way he could have become aware of it before he requested a complete copy of his military records in 2014.

2. The applicant alleged that entry on the Page 7 stating that he was not recommended for reenlistment due to homosexual tendencies is erroneous and unjust because he was never notified of the entry and the charges against him were dropped when he agreed to be

honorably discharged at the end of his enlistment. The Board begins its analysis in every case 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.¹ 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."²

3. The preponderance of the evidence in the record supports the applicant's claim that the charges against him were dropped and he received an honorable discharge in lieu of a trial by Special Court-Martial. His record contains two Page 7 entries regarding his non-recommendation for reenlistment. The first, dated March 18, 1958, states that the charges were being dropped but also that he was "NOT RECOMMENDED FOR REENLISTMENT by reason of suspected homosexual tendencies." This first Page 7 does not bear the applicant's signature. The second Page 7, dated March 31, 1958, bears his signature and advised him that he was not recommended for reenlistment but mentioned nothing about homosexual tendencies.

4. It may be true that the applicant's CO suspected he was homosexual and so did not recommend him for reenlistment. However, the applicant was never convicted, and the disputed comment dated March 18, 1958, appears gratuitous given that the charges against him had been withdrawn. The Board notes that his command documented his non-recommendation for reenlistment on a second Page 7, dated March 31, 1958, without the gratuitous comment about homosexual tendencies.

5. Accordingly, the Board finds that the applicant has proven by a preponderance of the evidence that the disputed comment is unjust and should be removed from the Page 7. Relief should be granted.

(ORDER AND SIGNATURES ON NEXT PAGE)

¹ 33 C.F.R. § 52.24(b).

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

ORDER

The application of former CS3 [REDACTED], USCG, for correction of his military record is granted. The comment "NOT RECOMMENDED FOR REENLISTMENT by reason of suspected homosexual tendencies" shall be removed from all copies of the Page 7 entry dated March 18, 1958, in his record.

December 31, 2015

