

**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. 2021-043**

██████████ ██████████ ██████████  
SN (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 April 7, 2021, 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 18, 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 Seaman Recruit (SN/E-1), who was honorably discharged on September 5, 1984, for a previous knee injury that prevented the applicant from completing basic training, asked the Board to correct his record by changing his narrative reason for separation from "Enlisted in Error" to "Service-Connected Disability." The applicant alleged that he hurt his knee in high school, had orthopedic surgery to repair the damage in the knee, and then completed his rehabilitation. The applicant explained that after completing his rehabilitation he was accepted into the Coast Guard, but while in basic training, his knee gave out and began to swell, which resulted in his release from active duty. The applicant stated that he takes exception with the narrative reason for separation given to him and would like it changed to reflect the fact that he was injured while serving. The applicant alleged that after he was released from the Coast Guard it was discovered that he had a torn ACL that was not present before he enlisted in the Coast Guard. The applicant stated that the reason for the delay in applying for relief is because he applied for a VA home loan on September 1, 2018, and was denied because his DD-214 reflects a narrative reason for separation of "Enlisted in Error" despite having been injured while serving and having a service-connected injury.

### SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on August 13, 1984.

On August 15, 1984, the applicant received a pre-training physical examination, wherein it was noted that the applicant had incurred a right knee injury in 1982, which had recurred in 1983. The applicant had had arthroscopic surgery twice with ligamentous repair. The applicant was placed in basic training on a trial basis.

On August 22, 1984, the applicant was seen at sick call complaining of right knee pain and stiffening of the knee for the previous three days, with difficulty standing and walking.

On August 23, 1984, the applicant was referred to a medical board for evaluation.

On August 26, 1984, the medical board convened and found that the applicant did not meet the minimum standard for enlistment in the Coast Guard due to “derangement – cartilaginous injury or internal derangement in the joint, with a history of disability. This condition existed prior to enlistment. The disqualifying condition was not aggravated by, and has not caused a physical disability due to a period of active military service.” The medical board recommended the applicant be separated from the Coast Guard in accordance with Article 12.B.12 of the Personnel Manual, COMDTINST M1000.6, and that no waiver be granted.

On September 5, 1984, the applicant was separated from the Coast Guard with an Honorable character of service, a Separation Code of JFC, and a Narrative Reason for Separation of “Enlisted in Error.”

### VIEWS OF THE COAST GUARD

On October 26, 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. However, the JAG’s opinion differed from PSC’s in that PSC recommended that the Board grant alternate relief in this case by providing the applicant with an “uncharacterized” narrative reason for separation and a separation code of JFV, which under the DD-214 manual in effect in 1984 means an involuntary discharge due to a “condition, not a disability, interfering with performance of duty.”

The JAG further argued that even if the Board were to find good cause to waive the statute of limitations, the Doctrine of Laches applies and bars the applicant’s claims for relief. According to the JAG, the Doctrine of Laches can be raised as an affirmative defense. The JAG explained that in order for the government to prevail, the government must prove (1) that there was unreasonable and unexcused delay, and (2) that such delay prejudiced the government. Here, the JAG stated that the delay in this case is over 35 years after the applicant was discharged. The JAG explained that while the applicant claimed he did not discover the error until 2018, the applicant was discharged in 1984 and provided with a DD-214 listing his Narrative Reason for Separation as “Enlisted in Error.” Accordingly, the JAG argued that the applicant has been aware of this alleged error for approximately 35 years and only claims an error and/or injustice occurred. The JAG claimed that at any point the applicant could have taken his DD-214 to a VA office to see

how his discharge would have affected his entitlement to various veterans benefits, but apparently did not do so. The JAG stated that his delay prevents the Coast Guard from going back and trying to understand why the medical board made the determinations that it did.

The JAG then turned his arguments to the prejudice that the applicant's delay has caused to the Coast Guard. The JAG argued that "defense prejudice" which is a prejudice due to loss of records, destruction of evidence, fading memories, or unavailability of witnesses, applies in the applicant's case.<sup>1</sup> The JAG explained that because of the many years that have passed since the applicant's discharge from active duty in 1984, it is not possible for the Coast Guard to go back and reconstruct the decisions of the medical professionals regarding their diagnosis and findings. The JAG further explained that it is impossible to now go back and question the multiple medical professionals that assessed the applicant's medical records and concluded that his injury was not aggravated by the applicant's time in the Coast Guard, and was not caused by a physical disability incurred while serving in the Coast Guard. The JAG claimed that it is now impossible to go back and question the medical professionals that assessed the applicant's medical records and came to the conclusion that the applicant's knee issues existed prior to his enlistment. Therefore, the JAG argued that the Coast Guard is prejudiced in its inability to fully defend itself and properly assess the legitimacy of the applicant's claims.

The JAG argued that the applicant has failed to carry his burden of presumption and persuasion. The JAG stated that while the applicant offers some evidence to support his claim, the evidence is insufficient to overcome the strong presumption that the Coast Guard and its members carried out their duties correctly in determining that the applicant's condition existed prior to his enlistment. Here, the JAG argued that the applicant provided no evidence to support his claim that the Coast Guard acted erroneously and unjustly by determining that his narrative reason for separation should be "Enlisted in Error" other than his assertions contained in his application. Regarding the applicant's claim that the Coast Guard allowed him to enlist with full knowledge of the applicant's previous knee injuries, the JAG explained that while the applicant was evaluated prior to starting basic training, and the Coast Guard was aware of the applicant's previous injuries, the applicant was placed in training on a "trial basis." The JAG further explained that the applicant's medical records show that his initial knee injury was in 1982, recurring in 1983 with two surgeries, and within three days of basic training, the applicant began complaining of knee pain. The JAG reiterated that a medical board evaluated the applicant's injuries and determined that his condition existed prior to his Coast Guard service. The JAG claimed that Coast Guard policy at the time stated that a member undergoing recruit training with less than 60 days, who had a physical disability not incurred or aggravated by a period of active military service may be separated for convenience of the government due to erroneous enlistment.

The JAG argued that the applicant provided no evidence that his injury was a service-connected disability, but even if he had, the JAG claimed the applicant's argument is without merit in this case. According to the JAG, the applicant's mere assertion that some other agency categorized his injury was service connected does not substantiate error or injustice with respect to the Coast Guard's finding that the applicant's injury existed prior to his enlistment. The JAG stated that assuming *arguendo*, there was a finding of a service-connected injury by some other

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<sup>1</sup> *Roberts v. United States*, 98 Fed. Cl. 130, 142 (2011), quoting *Cornetta v. United States*, 851 F.2d 1371, 1378 (Fed. Cir. 1988).

agency, that subsequent finding would not be binding on the Coast Guard nor indicative of an error or injustice. The JAG argued that the procedures and presumptions applicable to other agencies' evaluation processes are fundamentally different from and often more favorable to a veteran than those applied and used in the Coast Guard when evaluating members medically for retention or separation. The JAG stated that while the applicant may take exception to the particular language in the narrative reason for separation, and may have been denied a VA home loan based on that narrative reason, the applicant has not sufficiently met this burden to prove that the findings and opinions of his 1984 medical board were erroneous or unjust. Accordingly, the JAG argued that the applicant's request for relief should be denied.

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

On May 24, 2022, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. As of the date of this decision, no response has been received.

**APPLICABLE LAW AND POLICY**

Under Article 12.B.12 of the Personnel Manual, COMDTINST M1000.6 provides the following guidance on separating a service member separated due to an erroneous enlistment:

Article 12.B.12.a. Reasons for Discharge.

...

5. 5. Erroneous enlistment, reenlistment, extension, or induction including among others:

- a. A member enlisted or reenlisted, but erroneously was given a higher grade than that to which entitled. Recruiting Manual, COMDTINST M1100.2 (series).
- b. A member enlisted or reenlisted, but is determined to have more than the maximum number of dependents authorized. Recruiting Manual, COMDTINST M1100.2 (series).
- c. A member undergoing recruit training in an original enlistment who has fewer than 60 days' active service has a physical disability not incurred in or aggravated by a period of active military service; i.e., the defect existed before the member entered the Service.

**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 filed by the applicant was not timely. 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 or should have been discovered.<sup>2</sup> The record shows that the applicant received his DD-214 on September 5, 1984, which provided a Narrative Reason for Separation of “Enlisted in Error.” Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record as early as September 5, 1984, 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>3</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>4</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>5</sup> Although the applicant in this case did delay filing the application and has not justified his delay, the Coast Guard has recommended that the Board grant alternate relief in this case. Therefore, the Board finds that it is in the interest of justice to excuse the untimeliness of the application and consider the merits of the request and the Coast Guard’s recommendation.

4. The Board’s review of the record shows that the applicant had a preexisting knee injury prior to his enlistment and that this knee injury required two surgeries. The record further shows that the applicant was placed into basic training on a trial basis to ensure that his knee injury was sufficiently healed as claimed by the applicant prior to his enlistment. The record also shows that more than a week into basic training, the applicant began to experience swelling and pain in his previously injured knee, which ultimately led to the applicant being discharged from the Coast Guard. The applicant admitted to his previous knee injuries and stated that these injuries had already required two surgeries before he enlisted. Finally, the record shows that the applicant was evaluated by a medical board that found that the applicant did not meet the minimum standard for reenlistment, that his condition had existed prior to enlistment, and that his disqualifying condition was not aggravated by and did not cause a physical disability due to his period of active duty military service. The findings of the doctors on the medical board in 1984 are presumptively correct, and the applicant has submitted insufficient evidence to refute them and delayed his complaint for so long that the doctors are unavailable to explain or defend them. Coast Guard policy at the time allowed for Coast Guard recruits with less than 60 days of service and a pre-existing physical condition that interfered with recruit training to be discharged for “erroneous enlistment.” The preponderance of the evidence shows that the Coast Guard committed no error or injustice in discharging the applicant in accordance with this policy.

5. As the JAG noted, changes in the Coast Guard manuals now allow for recruits who are discharged under similar circumstances as the applicant to be discharged with an “uncharacterized” characterization of service and a separation code of JFV, which means “condition, not a

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<sup>2</sup> 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

<sup>3</sup> 10 U.S.C. § 1552(b).

<sup>4</sup> *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

<sup>5</sup> *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

disability.” However, veterans receiving “uncharacterized” discharges are entitled to many fewer VA benefits than veterans with Honorable discharges, and so it is not clear how the proposed change would help the applicant.

6. Accordingly, the applicant’s request should be denied.

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

ORDER

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

August 18, 2023

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