

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-121

(a.k.a.) [REDACTED]
(former) SA/E-2

FINAL DECISION

This proceeding was conducted by the Board for Correction of Military Records of the Coast Guard (hereinafter “Board”) 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 July 3, 2024, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).¹

This final decision, dated May 1, 2025, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

INTRODUCTION

The applicant, a former Seaman Apprentice (SA/E-2), was separated from the Coast Guard due to physical disability (skin cancer) on January 28, 1972. He has requested that the Board make the following corrections to his military records: (1) increase the rating assigned for his disability at separation from 10 percent to 100 percent; and (2) change his rank to Seaman (SN/E-3) for purposes of calculating his disability severance pay.

SUMMARY OF THE RECORD

The applicant joined the Coast Guard as a Seaman Recruit (SR/E-1) on July 28, 1969, on a four-year enlistment contract. He was promoted to SA/E-2 on September 26, 1969, and SN (E-3) on April 30, 1970.

¹ The Board received the applicant’s DD Form 149 (Application for Correction of Military Record) on December 7, 2023. The application was not considered complete and reviewable, however, until the applicant’s military personnel files were received on July 3, 2024.

In July 1970, the applicant reported to the Public Health Service (PHS) Hospital in San Francisco with a one-year history of a lesion in the right eyebrow area, approximately one centimeter in length. Basal cell epithelioma (carcinoma) was diagnosed, and the lesion was excised on August 12, 1970. Approximately 10 months later, the applicant reported a recurrence of the same lesion. Basal cell epithelioma was again diagnosed, and the lesion was re-excised on June 29, 1971. The applicant returned to the PHS Hospital for follow-up on August 2, 1971, at which time the scar was well-healed and there was no clinical suggestion of recurrence.

The applicant received nonjudicial punishments (NJP) under Uniform Code of Military Justice (UCMJ) Article 15 in November 1970 and December 1970. Both incidents involved violations of UCMJ Article 92—Failure to Obey an Order. The applicant was sentenced to five days of extra duty on the first occasion and seven days of restriction to the unit on the second.

The applicant enrolled in Commissary “A” School on August 2, 1971, but records show he was disenrolled on September 17, 1971, for “disciplinary problems,” and did not graduate. A related Personnel Action Sheet shows the applicant received a NJP for a violation of UCMJ Article 86—Absent Without Leave (AWOL) due to a period of unexcused absence from the evening of September 11 to the early morning of September 12, 1971. The sentence imposed was a reduction to the next inferior pay grade (E-2). The applicant appealed, arguing that the punishment was too harsh. In an endorsement attached to the appeal, the applicant’s Commanding Officer (CO) noted the applicant had two prior “masts” for violations of UCMJ Article 92 and recommended keeping the sentence in place. The Commander, Coast Guard Twelfth District denied the applicant’s appeal on November 5, 1971.

Meanwhile, on October 4, 1971, a Medical Board (MB) found the applicant’s basal cell carcinoma rendered him unfit for duty and referred the case to a Central Physical Evaluation Board (CPEB). In a record dated November 12, 1971, the MB’s Senior Member, Dr. A.H., stated that the applicant’s prognosis was excellent. He opined, however, that further heavy sun exposure was likely to aggravate the applicant’s condition, and thus, the applicant’s ability to actively participate in the Coast Guard in various theaters of operations was limited. For this reason, Dr. A.H. recommended that the applicant be considered not fit for further Coast Guard duty.

On November 18, 1971, the applicant certified that he had been advised of the MB’s findings and declined to make a statement of rebuttal.

On December 1, 1971, a CPEB met to consider the applicant’s case. The applicant was not present. Ultimately, the CPEB found the applicant unfit by reason of physical disability, specifically “basal cell carcinoma of the face with resultant moderate disfiguring scar.” The condition was assessed as 10 percent disabling under the U.S. Department of

Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD), specifically Diagnostic Codes (DC) 7818 and 7800.

On December 17, 1971, the applicant certified that he accepted the CPEB's tentative findings and waived his right to submit a rebuttal or appear at a formal hearing.

The CPEB's findings were then reviewed and approved by the Physical Review Council (PRC), the Chief Counsel, and the Chief of the Office of Personnel. On January 20, 1972, the latter directed that the applicant be discharged with severance pay in accordance with Coast Guard policy and Chapter 61 of Title 10 of the United States Code.

On January 26, 1972, the applicant received NJP for a violation of UCMJ Article 86—AWOL for “failure to go to the appointed place of duty at the time prescribed.” The sentence imposed was forfeiture of \$20.00 from one paycheck.

The applicant separated from the Coast Guard on January 28, 1972, with an Honorable discharge. The narrative reason for separation was listed as “Physical Disability Incident to Service with Entitlement to Severance Pay.” Total creditable service for pay purposes was two years, six months, and one day, and the applicant received a severance payment in the amount of \$1,924.20.

In a memorandum dated January 3, 1973, the applicant was informed that his record had been administratively reviewed to determine the highest grade he had “held satisfactorily,” for purposes of his separation pay, and it had been determined that this was that of SA (E-2).²

APPLICATION

In his December 2023 submission to the Board, the applicant argued that based on his two in-service operations for skin cancer, he should have been assigned a 100 percent rating at the time of his separation. In support of this contention, the applicant cited to 38 C.F.R. § 4.118, the section of the VASRD applicable to skin conditions. The applicant also requested that his reduction in grade from SN to SA be “reevaluated and corrected.” In support of this request, the applicant stated: “I was given a Captain Mast just before

² The Board infers that this document, dated approximately 11 months after the applicant's discharge, was issued in response to some form of request for review submitted by the applicant, although no such request appears in the record before the Board.

separation due to being late to the discharge ceremony that day. They called it AWOL and lowered my military rate to SA just before separation.”

VIEWS OF THE COAST GUARD

On March 3, 2025, the Board received the Coast Guard’s views in the form of a memorandum from a Coast Guard Judge Advocate (JA), in which the JA recommended the Board deny relief in this case and adopted the analysis provided in an enclosed memorandum prepared by the Coast Guard Personnel Service Center (PSC). The PSC first noted that the applicant’s submission was not timely, as it was received more than 50 years after the applicant’s 1972 discharge. The PSC then argued that the Coast Guard had discharged the applicant in accordance with policy, and that he had provided no evidence to support his claim that his severance pay was incorrectly calculated.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

The Board provided the applicant with the Coast Guard’s views and invited him to submit a response. The applicant provided a response via email on March 13, 2025.³ Among other contentions, the applicant asserted that the Coast Guard failed to provide him a “six-month reevaluation” following his in-service skin cancer excisions. In support of his arguments, the applicant cited to various VASRD sections, specifically DC 5329 (addressing soft tissue sarcomas), DC 7123 (addressing blood vessel sarcomas), and DC 5327 (addressing other cancers affecting the muscles).

APPLICABLE LAW AND POLICY

Board Proceedings

The Board may correct errors or remove injustices in a service member’s records pursuant to 10 U.S.C. § 1552(a). “Error” means a mistake of a significant fact or law and includes a violation by the Coast Guard of its own regulations. *See Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976) (“‘Error’ means legal or factual error.”); *Ft. Stewart Schools v. Federal Labor Relations Authority*, 495 U.S. 641, 654 (1990) (“It is a familiar rule of administrative law that an agency must abide by its own regulations.”). Injustice, when not also error, is treatment by the military authorities that “shocks the sense of justice.” *Sawyer v. United States*, 18 Cl. Ct. 860, 868 (1989) citing *Reale v. United States*, 208 Ct. Cl. 1010, 1011, cert. denied, 429 U.S. 854, 50 L. Ed. 2d 129, 97 S. Ct. 148 (1976). The Board has authority to determine whether an injustice exists on a “case-by-case basis.” Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002).

³ The applicant’s typewritten response is dated April 17, 2025. As noted above, the response was received by the Board via email on March 13. The reason for this discrepancy is unclear, but ultimately harmless, as the Board considers the response to have been timely received.

Coast Guard Policy

The version of the Coast Guard Personnel Manual, CG-207, published in 1967 (hereinafter “PERSMAN”) was applicable at the time of the applicant’s separation.

Per PERSMAN § 5.C.38.(b)(1), a CO may reduce an enlisted member’s pay grade as part of a NJP sentence pursuant to UCMJ Article 15. PERSMAN Chapter 5 also includes references to the United States Manual for Courts-Martial (1969) (hereinafter “MCM”), which provides, in relevant part, that in determining the appropriate NJP sentence, the member’s age, experience, intelligence, and prior disciplinary and military record should be considered. MCM § 129.b.

Per PERSMAN § 12.B.15.(b), a discharge for physical disability may be directed by the Commandant through his final action on a physical evaluation board.

The Coast Guard’s Physical Disability Evaluation System Manual (hereinafter “PDES Manual”) explains that the goal of the PDES is to ensure equitable application of the provisions of Title 10, Chapter 61 of the U.S. Code, which relates to the separation or retirement of military personnel because of physical disability.⁴ The relevant portions of the PDES process for purposes of this case are as follows:

1. A Coast Guard member is introduced into the PDES process when his or her CO, or other higher authority, questions the member’s physical ability to continue performance of his or her duties and requests an initial MB.
2. The record of the MB is sent to the member and his or her CO. The CO prepares an endorsement stating whether the member is fit for duty. The member is given an opportunity to make a rebuttal statement.
3. If the MB and CO find the member not fit for duty, the case is referred to the CPEB at Coast Guard Headquarters, which reviews the full record. The CPEB’s findings must be unanimous. The CPEB issues its findings and recommendation(s).

⁴ PERSMAN Chapter 17 detailed the disability retirement and severance process applicable at the time of the applicant’s separation. Chapter 17 was replaced in 1981 by the first version of the PDES Manual, COMDTINST M1850.2 (April 1981). While the relevant sections of the 1969 version of PERSMAN Chapter 17 are not available to the Board, the PDES process under PERSMAN had the same general structure as described in the PDES Manual. There is no indication of any material difference between the relevant PERSMAN sections and the PDES Manual that would meaningfully impact the outcome of this case. Accordingly, the PDES outline provided herein derives from the 1981 PDES Manual.

4. The CPEB findings and recommendation are provided to the member and his or her counsel, and the member may accept or reject the findings. The member may also request a hearing before a Formal PEB.
5. If accepted by the member, the CPEB's findings and recommendation(s) are forwarded to the PRC, which reviews cases (including any rebuttal statement submitted by the member) to ensure conformity with all laws, regulations, and directives. The CPEB's findings are also reviewed by the Chief Counsel and Chief of the Office of Personnel.
6. The member is also afforded the opportunity to appeal any outcome to the Physical Disability Appeal Board (PDAB).

10 U.S.C. Chapter 61

Title 10, Chapter 61 (10 U.S.C. §§ 1201-1217) covers "Retirement or Separation for Physical Disability." Originally enacted in 1956, the provisions relevant to this case were unchanged at the time of the applicant's separation in January 1972 and have remained virtually unchanged to the present day.

Per 10 U.S.C. § 1201, the Secretary may retire with retired pay a member who is found unfit due to physical disability when certain requirements are met, including that the disability in question warrants at least a 30 percent rating under the VASRD. Per § 1203, when the rating is less than 30 percent, such a member may be separated with severance pay. The amount of severance pay is governed by § 1212, which provides, in relevant part, that the amount is computed by multiplying (1) the member's creditable years of service by (2) either twice the amount of monthly basic pay at the member's rank at separation, or, if higher, twice the amount of monthly basic pay in a higher rank in which the member "served satisfactorily as determined by the Secretary."

VA Rating Schedule

The VASRD as amended on January 1, 1971, was applicable at the time of the applicant's separation. The VASRD's DCs applicable to skin conditions are organized under 38 C.F.R. § 4.118. The DCs applied by the MB and CPEB to assess the applicant's basal cell epithelioma provided, at the time of applicant's separation, as follows:

7800 Scars, disfiguring, head, face or neck

Complete or exceptionally repugnant deformity
of one side of face or marked or repugnant bilateral
disfigurement..... 50

Severe, especially if producing a marked and unsightly deformity of eyelids, lips, or auricles.....	30
Moderate; disfiguring.....	10
Slight.....	0

NOTE. When in addition to tissue loss and cicatrization there is marked discoloration, color contrast, or the like, the 50 percent rating under Code 7800 may be increased to 80 percent, the 30 percent to 50 percent, and the 10 percent to 30 percent. The most repugnant disfiguring conditions, including scars and diseases of the skin, may be submitted for central office rating with several unretouched photographs.

7818 New growths, malignant, skin

Rate scars, disfigurement, etc., on the extent of constitutional symptoms, physical impairment.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on the applicant's military record, his submission, the Coast Guard's submission, and applicable law and policy:

1. The Board has jurisdiction under 10 U.S.C. § 1552(a), as the applicant is seeking correction of an alleged error or injustice in his military records. The applicant has exhausted all other 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 applicant declined a hearing before the Board and requested that his application be considered based on the records and evidence.

3. "The Board begins its consideration of each case presuming administrative regularity on the part of the Coast Guard and other Government officials. The Applicant has the burden of proving the existence of an error or injustice by a preponderance of the evidence." 33 C.F.R. § 52.24(b). Absent evidence to the contrary, the Board presumes that Coast Guard officials have carried out their duties "correctly, lawfully, and in good faith." *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

4. The application is untimely, as it was not filed within three years of the applicant's discovery of the alleged error or injustice, as required by 10 U.S.C. § 1552(b). The applicant separated from the Coast Guard in January 1972. His application was received by the Board approximately 52 years later, on December 7, 2023.

5. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so. In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that in determining whether the interest of justice supports a waiver of the limitations period, the Board should "analyze both the reasons for the delay and the potential merits of the claim based on a cursory review." 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." With these considerations in mind, the Board makes the following findings:

- a. The applicant has provided no explanation for the almost 52-year delay between his discharge and his application to this Board. The Board's own review of the record does not suggest any compelling reason for the delay.
- b. Upon cursory review, the application lacks potential merit.

The Board first observes that per the VASRD in effect at the time of the applicant's discharge, skin cancers were assessed under DC 7818, which, in turn, provided that symptoms should be rated under DCs applicable to scars, disfigurement, and/or other physical impairment. Accordingly, the applicant's MB and CPEB assessed his condition under DC 7800, which addressed disfiguring scars of the face, head, or neck. Under DC 7800, a 10 percent rating was warranted for a moderate, disfiguring scar. Because the MB's and CPEB's reviews of the medical evidence indicated that the applicant's scar resulting from his basal cell epithelioma excisions was moderately disfiguring, a 10 percent rating was assigned.

There was no medical evidence that would have supported a finding of a severe or completely repugnant scar, as would have been required for a 30 percent or 50 percent rating, respectively, under DC 7800. There is likewise no evidence of tissue loss, cicatrization, and discoloration as would have been required to increase the 10 percent rating to 30 percent pursuant to DC 7800, Note 1. The Board has also reviewed the other DCs applicable to skin conditions under 38 C.F.R. § 4.118, and observes that the only other symptoms for which a rating higher than 10 percent could have been assigned were burn scars covering an area exceeding 12 square inches (DC 7801), eczema causing exudation or constant itching, extensive lesions, or marked disfigurement (DC 7806), or lupus vulgaris

(DC 7811).⁵ There is no evidence that the applicant's basal cell epithelioma resulted in any of these symptoms at the time of his separation.

In his response to the Coast Guard's views, the applicant suggests that he was entitled to a "six-month reevaluation." The Board infers that the applicant is referencing the current version of 38 C.F.R. § 4.118, which directs that a 100 percent rating be assigned for a period of six months for active skin cancers requiring certain kinds of treatment, such as chemotherapy, followed by assignment of a rating based on residual symptoms. This provision, however, was not included in DC 7818 in January 1972. Even if it had been, the applicant's excision procedures are not a form of treatment warranting the temporary 100 percent rating. In addition, the Board observes that clinical records show that as of August 1971, the applicant had no recurrence of skin cancer, and there is no evidence suggesting any recurrence between the applicant's final in-service lesion excision in June 1971 and his separation in late January 1972, more than six months later. For these reasons, the applicant would not have been entitled to a 100 percent rating under any version of DC 7818.

The applicant cites to other VASRD sections in an effort to support his arguments. Specifically, DC 5329 (soft tissue sarcomas including muscle, fat, ligaments, and fibrous tissues), DC 7123 (cancer of the blood vessels), and DC 5327 (other cancers affecting the muscles). The Board notes that none of these DCs fall under 38 C.F.R. § 4.118, because they do not apply to skin cancers, such as basal cell epithelioma. Further, there is no evidence suggesting that the applicant had any muscle, fat, ligament, fibrous tissue, or blood vessel cancer during his service. Thus, the cited DCs are inapplicable to this case.

The applicant does not point to any error with respect to the procedural steps taken during the PDES, and the evidence does not suggest any. The record indicates the applicant was afforded all required due process at each stage of the PDES, and he accepted the findings of the MB and CPEB without objection or rebuttal. For all the reasons discussed above, the record does not suggest that a rating higher than 10 percent was warranted for the applicant's skin cancer at the time of separation.

⁵ It should also be noted that pursuant to 38 C.F.R. § 4.14, the same symptoms may not be assigned ratings under multiple DCs.

Regarding the applicant's designation as a SA (E-2) for purposes of calculating his severance pay, the applicant has asserted that he was reduced from SN (E-3) just before separation as part of a NJP for being late to his discharge ceremony, but this is not accurate. The record shows the applicant's grade was reduced as part of the sentence for a September 1971 NJP for a violation of UCMJ Article 86 related to being AWOL between the evening of September 11 and the early morning of September 12, 1971. Although the applicant also received a NJP based on an Article 86 violation two days prior to his separation, the sentence for this violation was only withholding of \$20.00 from a single paycheck.

As noted above, grade reductions are among the NJP sentences available to commands, based on consideration of all relevant circumstances, including prior disciplinary history. While considered a severe form of NJP, in this case, the applicant had two prior NJPs in the year preceding the September 1971 AWOL incident. The applicant has put forth no argument regarding any procedural irregularity with respect to the September 1971 NJP. NJP sentences are committed to the discretion of commands, who are in a position to directly assess a member's conduct. Overall, the evidence does not suggest any error or injustice with respect to the applicant's grade reduction, which appears to have been reasonable and consistent with policy.

Pursuant to 10 U.S.C. § 1212, the applicant's severance pay was calculated by multiplying (1) his years of service by (2) two months of base pay as a SA (E-2). To have based the calculation instead on two months of base pay as a SN (E-3), the designated Coast Guard authority would have had to determine that the applicant had "served satisfactorily" as a SN. Based on the amount of severance, the Board infers that such a determination was not made, and this is confirmed by the January 1973 memorandum summarized above. Section 1212 does not elaborate on the process by which the Secretary should determine "satisfactory" service in this context, and the Board finds little authoritative guidance. Accordingly, it appears that the determination is left largely to the discretion of the Secretary.⁶

In this case, the applicant was promoted to SN on April 30, 1970, and received NJPs on three separate occasions before being demoted to SA on September 17, 1971. Under these circumstances, the record suggests that the determination that the applicant had not "served satisfactorily" as

⁶ At the time, the relevant Secretary would have been the Secretary of the U.S. Department of Transportation, which housed the Coast Guard prior to creation of the Department of Homeland Security.

a SN (E-3) was reasonable and supportable, and the evidence does not otherwise suggest that the determination constituted an error or injustice.

In summary, upon cursory review, the applicant's arguments and supporting evidence appear to be insufficient to overcome the presumption of administrative regularity to which the Coast Guard's actions are entitled.

6. No compelling reason for the applicant's 52-year delay in filing his application has been offered. In addition, a cursory review indicates the application is unlikely to succeed on its merits. For these reasons, the Board finds that the interests of justice do not support a waiver of the time bar specified in 10 U.S.C. § 1552(b). Consequently, the application will be denied as untimely.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The application of former Coast Guard member [REDACTED]
[REDACTED] is denied.

May 1, 2025

