DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of
the Coast Guard Record of:

[redacted]

BCMR Docket No. 2015-174

FINAL DECISION

This proceeding was conducted under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case upon receiving the completed application on August 6, 2015, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated July 29, 2016, 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 asked the Board to remove non-judicial punishment (NJP) from his record and to upgrade his separation code and narrative reason for separation on his October 15, 2009, discharge form DD 214 from JKA and "Pattern of Misconduct" to ones that do not denote misconduct, such as JFF and "Secretarial Authority."

The applicant stated that he served on active duty from November 2005 through October 2009 and incurred only two NJPs, which unjustly led to his discharge for "Pattern of Misconduct." The applicant alleged that he received the first NJP because while making security rounds in a Bobcat, he was checking and looking at the fence line when his passenger told him to "watch out," and when he looked back at the road, he saw an opossum. He had to swerve sharply to avoid it, and the Bobcat turned on its side. He immediately called and informed his supervisor, and he and his passenger were able to right the vehicle. The applicant stated that no one said anything about the incident until a Bobcat representative came by to service the vehicle and claimed that he had never seen anyone overturn one before. This claim made the applicant's supervisor suspect that he had committed misconduct by driving the Bobcat too fast to control and he was awarded NJP at mast.

The applicant stated that his second NJP occurred because one day when he was on watch in November 2008, he was called to fix a video camera at the front gate. A surveillance camera showed that on his way to the front gate, his utility vehicle left the road. The applicant alleged that he drove off the road intentionally to check what appeared to be a dent in the fence near the back gate. After he repaired the camera, he again drove his vehicle off the asphalt and

down a dirt lane to check a lock on the long-term parking lot. Because driving on the dirt lane created a lot of dust, his command concluded that the applicant had been "making donuts in the dirt and driving recklessly." Later that evening, the applicant stated, he was severely injured in an accident, lost consciousness, and was hospitalized. He alleged that blood tests "came back negative for signs of drugs or alcohol." When he was finally found fit for duty after a few months, he was informed that he was going to be taken to mast for having driven recklessly, for insubordinate conduct, for failure to obey an order or regulation, and for damaging military property. The only evidence against him was a video showing that his vehicle had kicked up dust when he left the road to check the lock about seven hours before the actual accident.

The applicant alleged that at the mast, the Executive Officer calculated his speed to be under the speed limit, which was 20 miles per hour. He alleged that there was no evidence that he had driven drunk or recklessly. However, the Executive Petty Officer (XPO) made a statement at mast with multiple allegations against him and claimed that the applicant was a danger to himself and others. The applicant alleged that this prejudicial statement by the XPO, which had nothing to do with the charges at mast, adversely influenced his commanding officer (CO) to find him guilty on all of the charges even though there was no evidence to show that he had driven recklessly or drunk. As a result, the applicant was reduced in rate from ET3/E-4 to SNET/E-3.

Following the mast, his CO initiated the applicant's administrative discharge for an alleged pattern of misconduct. The applicant stated that this discharge was based on his second NJP for which there was insufficient evidence. He alleged that there was no evidence that he had driven recklessly or negligently or that recklessness or negligence had caused his accident. The applicant alleged that he received NJP and was discharged in 2009 based on mere speculation and conjecture. He alleged that because he had been in an accident and could not remember the cause of the accident, he was presumed guilty at mast.

The applicant alleged that in response to the notification of discharge, he requested another opportunity to prove himself under the Second Chance program. The applicant stated that during from April through October 2009, he "gave his absolute best," worked hard, and never took breaks. However, he alleged, when he discussed his progress with his CO in September 2009, the CO "told him he had not been informed of any of his progress." Whether this information had been intentionally or negligently withheld from the CO by the XPO, the applicant was separated for misconduct on October 15, 2009, just forty days before his enlistment would have ended.

The applicant alleged that his discharge was rushed and he did not receive all of the information that he was entitled to. He requested a delay of his discharge, which was denied. Both his CO and his XPO told him, however, that he would not be allowed to reenlist but that he would still be eligible for all of the veterans' benefits that he was entitled to by law. However, the applicant alleged, because of his RE-4 and JKA codes, neither he nor his family received six months of complimentary Tricare coverage, which is normally afforded to members transitioning to civilian life. He alleged that he quickly applied for veterans' benefits but has received no response from the Department of Veterans' Affairs (DVA). He was also denied unemployment benefits and struggled to find employment.

The applicant stated that he now works as an instructor in an after-school program and is pursuing a bachelor's degree in electrical engineering. Despite his honorable discharge, however, he has been plagued by the harmful codes on his DD 214, which have prevented him from receiving support and assistance for his honorable service even though he was discharged only forty days shy of the end of his enlistment.

In support of his allegations, the applicant submitted documents from his military records, which are included in the Summary of the Record below, and the following:

- A signed letter from the applicant to his attorney dated March 3, 2010, in which the applicant states that his mast was "a complete mockery" that resulted unjustly in his discharge. He stated that his command had told him that he would receive veterans' benefits because of his honorable discharge but instead he had been ignored by both the Coast Guard and the DVA.
- An unsigned and undated letter from a petty officer second class (PO2) who wrote that the applicant was out of the office for about two months after his accident in November 2008 and told the PO2 that he could not remember how the accident had occurred. The day he returned to duty, the applicant was called to the senior chief's office and told that the command was filing charges against him because of the accident and that there would be an investigation, which shocked the PO2. The PO2 stated that the XPO began treating the applicant differently in that while others could "slip by on minor things," the applicant "would be called out on it and penalized if possible." The applicant "became an object of scrutiny" for the XPO.

  In April 2009, the PO2 stated, the command convened a public mast because the applicant had been "charged with a rather large and extensive list of alleged infractions." The CO, XO, and Command Master Chief conducted the mast. The applicant defended himself by stating that he had no recollection of what happened the night of his accident but that he was certain he had not been negligent. The PO2 stated the command showed a video of the applicant driving a utility vehicle towards the second gate of the base at about 1:00 p.m. The applicant's vehicle turned right off the road and out of the camera's view for several seconds before returning to the road and continuing to the gate. The applicant told the CO at mast that something had caught his attention and he had gone to investigate. The CO and XO responded by stating that he had been driving too fast and drifting and that the video showed that the back end of his vehicle was moving sideways. The PO2 claimed that everyone in the room was puzzled because the "vehicle was sideways because of the camera angle, not because of the motion caused by a drift" and "there is no way one can drift in the John Deere Gator utility vehicle," which "runs 22 MPH on a good day." The command also showed a video from the same camera taken at about 1:50 to 2:00 p.m. In this video, the applicant was seen driving outside the gate from the right side off the screen to the left. A few seconds later, "a cloud of dirt smoke enters the screen from the left side since there was nothing but dry dirt" on the left. When the applicant was asked what he was doing in the video, his supervisor stated that he was "being reckless and negligent" and the XPO stated that he was "off screen doing doughnuts on the dirt like you always do." The applicant claimed that he was actually checking the long-term parking lot gate and that driving on that road always created dust clouds. His supervisor accused him of driving too fast but the XO

calculated the applicant's speed while on screen at just 20 miles per hour. The CO found the applicant guilty on all the charges. The PO2 stated that he was shocked and found it hard to believe that he was found guilty based on some videos of his driving several hours before the accident in which he was injured. He alleged that the videos did not support the charges against the applicant.

The PO2 stated that after the mast, the applicant "made a huge change" and became a good coworker who was always working and kept on top of his responsibilities. When the PO2 asked him why, the applicant told him about the Second Chance program. The PO2 stated that for the next six months, the applicant was "the best member on that Base" until his discharge in October 2009. The PO2 stated that he thought the applicant got a raw deal and offered to write a statement on the applicant's behalf when the applicant told him he was applying to the BCMR.

SUMMARY OF THE RECORD

The applicant initially enlisted in the Coast Guard Reserve and served on active duty for training from August 1, 2003, to May 29, 2004, when he was honorably discharged for failing to complete his training course.

The applicant enlisted on active duty for four years on November 28, 2005. He attended "A" School to become an electronics technician (ET). While attending ET "A" School, he was counseled on a CG-3307 ("Page 7") for an unauthorized absence on July 13, 2006, when he failed to report for duty. However, he completed "A" School and advanced to ET3. He was assigned to a Communications Station.

On May 9, 2007, the applicant was placed on report for destruction of military property by overturning a Bobcat utility vehicle. On May 21, 2007, he awarded NJP at mast for damaging or destroying military property in violation of Article 108 of the Uniform Code of Military Justice (UCMJ). He received 14 days of extra duty and was fined three days' pay.

On May 27, 2007, the applicant was advised on a Page 7 that his qualification as an Officer of the Day had been "revoked until further notice due to loss of confidence through his watch standing actions of failure to complete a proper round, not following command procedure by allowing a visitor to remain overnight without command approval and misrepresentation of a Communication Station … watch log from 27 MAY 2007."

On June 28, 2007, the applicant received a Page 7 for failing to report for duty on time and arriving ninety minutes late.

On June 10, 2008, the applicant was again counseled on a Page 7 for failing to report for work on time. The applicant had been late to work a second day in a row after verbal counseling. He was taken to mast on June 13, 2008, but the charges were dismissed with a verbal warning.

On October 22, 2008, the applicant was counseled on a Page 7 for "making unauthorized engine modifications to the OOD vehicle (a Bobcat 2200 4x4) …. He took the vehicle to a

secluded area of the station and used improper tools (a Gerber folding belt tool) resulting in several missing engine parts. He showed poor judgment by not informing the command that he believed the OOD vehicle had been modified to reduce the top speed without authorization and further compounded his error by taking it upon himself to make mechanical changes to the equipment. This modification to reduce the overall speed of the equipment had been directed by the station XPO for the safety of the operators and to minimize the abuse of the equipment."

On November 26, 2008, the applicant overturned a Station utility vehicle, causing "grievous bodily harm to himself" and so became not fit for duty for more than three months.[1] On December 9, 2008, his supervisor charged him with insubordinate conduct, failing to obey a regulation, damage to military property, and reckless operation of a vehicle.

On March 2, 2009, the applicant was counseled on a Page 7 that his qualification as an OOD watch-stander had again been rescinded due to a "loss of confidence in your ability to perform and a watchstander. On 26 NOV 2009 you were twice observed driving the OOD vehicle recklessly, you did not finish a complete OOD round and you did not maintain a proper OOD log. Later that evening you were involved in an accident with the OOD vehicle causing substantial physical harm to yourself and rendering yourself "Not Fit For Duty" (NFFD) for 95 continuous days. Your actions are in violation of station policy. You have also lost your qualifications for operating any station vehicle, utility or otherwise, until further notice."

On April 28, 2009, the charges against the applicant were disposed of at mast. He received NJP of reduction in rate for violating Articles 91, 92, 108, and 111, for insubordinate conduct, failing to obey an order, damaging or destroying military property, and drunken or reckless operation of a vehicle, respectively.

On May 8, 2009, the applicant's command notified him in writing that he was being considered for discharge for misconduct based on his receiving NJP twice in two years.

On May 8, 2009, the applicant signed a Second Chance Acknowledgment form to acknowledge notification of his proposed discharge for misconduct and to object to it and request a second chance under the Second Chance program. In his statement in support of his request, the applicant stated that the proposed discharge for misconduct was based on his receiving two NJPs in two years, "both instances I was deemed as operating [the Station's vehicles] recklessly thus causing damage to them. I have come to fully accept the consequences following these actions on both occasions as well as to take and hold myself accountable for them." The applicant stated that since his return to duty on March 1, 2009, he had held himself to a higher standard when operating the Station's vehicles and other vehicles. He alleged that his "performance and quality of work has been noted as unprecedented and somewhat remarkable by my coworkers as well as my supervisors." He stated that he was devoted to the mission and described two examples of recent work, one in which he had spent about 28 hours examining diagrams and the security system to correct a fault that other technicians had not been able to fix and another in which he had studied the security camera systems and reset them so that they would not become

[1] Pursuant to 33 C.F.R. § 52.43, Chair of the Board requested copies of the investigations of the applicant's misconduct/mishaps and was advised they are no longer available because pursuant to the Federal Records Act, reports of administrative investigations are retained by a unit for only three years.

fixed and their movement could be controlled. He stated that while on medical leave, he had realized the error of his ways and so he had changed his methods of handling assigned tasks since returning to duty. The applicant acknowledged that his actions had burdened his wife, his coworkers, his supervisor, the XPO, and the Officer in Charge (OIC) of the Station. The applicant acknowledged his previous lack of judgment but requested a second chance based on his diversity and academic performance.

In an undated statement in support of the applicant's discharge, the XPO of the Station wrote that the applicant "is a danger to himself and others" as he had "demonstrated a severe lack of safety awareness" by overturning a golf cart, which he failed to report; driving a tractor through a fence while mowing the grass; overturning the Bobcat "for which he was masted"; removing the "throttle limiter on the OOD vehicle that was installed at the direction of the command after severe driving caused repairs to the drive train to be necessary"; and "overturn[ing] a John Deere utility vehicle resulting in life threatening injuries to himself and damage to the vehicle," which required that he be airlifted to a trauma center. The XPO stated that the applicant could "not be trusted to follow orders when it comes to safety" and recommended that the applicant be separated as soon as possible.

On June 23, 2009, the applicant's OIC initiated his honorable discharge for misconduct, noting that he had been masted three times and awarded NJP twice in two years. The OIC noted that the applicant had requested a second chance but that he did not recommend that the applicant receive one. The OIC listed the applicant violations and stated that he "has had continual problems with following orders, particularly regarding vehicle safety" and failing to complete rounds. The OIC also noted that the applicant had been "a tremendous administrative burden to this command" and that his watch-stander qualification had been permanently suspended, so he was no longer able to perform the duties of his assigned billet. The OIC stated that despite "intensive leadership from all level of this command in an effort to correct behavioral choices … a clear pattern has emerged of an individual who is unable to comply with the Coast Guard's values."

On June 24, 2009, the applicant's CO forwarded the OIC's memorandum to the Area Commander agreeing with the proposed discharge and recommending against a second chance waiver for the applicant.

On September 8, 2009, Area Commander, a Vice Admiral, acknowledged having considered the applicant's request for a second chance waiver but directed the OIC to proceed with the applicant's discharge for misconduct.

On September 16, 2009, the Personnel Service Center issued orders for the applicant to be honorably discharged for a "Pattern of Misconduct" with separation code JKA because of his repeated involvement of a discreditable nature with civil or military authorities in accordance with Article 12-B-18 of the Personnel Manual.

The applicant's DD 214 shows that he received an honorable discharge for "Pattern of Misconduct" on October 15, 2009, with a JKA separation code and an RE-4 reentry code.

VIEWS OF THE COAST GUARD

On November 17, 2015, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he adopted the findings and analysis of the case in a memorandum prepared by the Personnel Service Center (PSC) and recommended that the Board deny relief.

PSC noted that the application was not timely filed. PSC further stated that the record shows that the applicant acknowledged and/or was punished at mast for making unauthorized engine modifications to a Station vehicle, driving Station vehicles recklessly, and overturning them twice. PSC stated that there is no evidence that the applicant appealed his NJPs, and Article 12.B.18.b.2. of the Personnel Manual authorized discharges for a pattern of misconduct for members who had received at least two NJPs within a two-year period.

Regarding the applicant's transition benefits, PSC stated that under the Transition Assistance Program (TAP), medical and dental care may be authorized for 60 days for members who are discharged with less than six years of service, but under COMDTINST M19000.2A, these benefits are not authorized for members discharged due to misconduct. PSC noted that members who receive an honorable discharge are entitled to benefits from the DVA, such as education benefits.

PSC stated that the Board should deny relief because the applicant has not submitted sufficient evidence to overcome the presumption that his command acted correctly, lawfully, and in good faith in awarding him NJP in May 2007 and April 2009 and that, because he had received NJP twice within two years, he was discharged for a pattern of misconduct in accordance with policy.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 11, 2015, the Chair sent the applicant a copy of the views of the Coast Guard and invited a response within thirty days. The applicant submitted an initial response on January 6, 2016, and a supplemental response on February 5, 2016, for which the Chair granted an extension.

The applicant acknowledged that his application was not submitted within three years of his separation but asked the Board to consider his petition in the interest of justice because he has suffered severe financial setbacks due to unemployment and lack of separation benefits and was unable to hire an attorney until recently.

The applicant alleged that the advisory opinion fails to consider "the mitigating circumstances of each NJP situation." He alleged that the second NJP was received for an accident that greatly injured him and that the alleged offense was supported by video footage of him driving many hours earlier the same day. He alleged that the applicant was found to have driven recklessly at the time of his accident even though there was no video footage, and he was driving quite slowly in the video footage that was available. He alleged that there was absolutely no evidence to show that he had driven recklessly or drunk.

The applicant alleged that the mast was flawed because the XPO made multiple allegations against the applicant that were unrelated to the charges. He alleged that his own statements during the mast were disregarded. He noted that the only evidence in the record before the Board regarding what evidence was presented at mast is the PO2's recollection.

The applicant alleged that he was warned by his command not to appeal or contest the NJP because if he did, "any chance he had at the second chance program would be nil. He understood that his chain of command clearly wanted him punished." He thought that any attempt to seek help would be futile and so he focused on the second chance program, but his CO was unaware of his efforts.

The applicant alleged that he was not continuously in trouble and that he made only two mistakes and then tried to get back on track to no avail. The applicant alleged that he has learned from his mistakes and asked the Board to upgrade his separation code and narrative reason for separation in the interest of equity and fairness so that he can move on with his life and obtain more veterans' benefits.

In his supplemental response, the applicant submitted two statements from former members:

- In the first statement, a former second class petty officer, Mr. R, stated that in October 2011 (sic), he went on security rounds with the applicant and the OOD vehicle "was moving at a ridiculously slow pace." Another member and a civilian employee pointed and laughed, so he and the applicant thought the vehicle had been modified as a joke. Therefore, while on rounds, they discussed returning the speed governor to its normal operating condition and he allowed the applicant to do so. Mr. R alleged that this was a common procedure. When the XPO counseled him about it on a Page 7, Mr. R stated that he took responsibility and thought the applicant would not be held accountable since Mr. R was senior. Mr. R attached a copy of the Page 7, which contains text similar to that on the applicant's Page 7 dated October 22, 2008.
- In the second statement, a former petty officer, Mr. W, stated that he was the passenger in the Bobcat that overturned when the applicant was driving it while making rounds in May 2007. He stated that while in an area that was "vast and open" beside the perimeter fence, the applicant was driving and they were looking for holes in the fence. When he noticed an opossum in their path, which was a dirt road, he said "watch out for that," and the applicant reacted by making a sharp turn to avoid the opossum followed by another sharp turn to return to the path, which caused the vehicle to turn on its side. After the applicant called to report the incident, they righted the vehicle and proceeded to complete the round.

  Mr. W stated that the command treated it as an unfortunate accident until the Bobcat was picked up for repair and the serviceman commented that he had never known one to overturn before. Then the command changed their attitude and placed the applicant on report. Mr. W stated that at mast, the applicant was asked if he was driving too fast to control the vehicle, and the applicant nervously responded "I guess so" at which point the OIC found him guilty of damaging military property and awarded him two weeks of extra duty and three days' pay. Mr. W alleged, however, that the applicant had been in complete con-

trol of the vehicle up until the sharp turns made because of the opossum and he "didn't drive any faster than the rest of the crew. The vehicle can only go 16 – 18 MPH after all." Mr. W alleged that the OIC punished the applicant only to make an example of the applicant to try to get the crew from tearing up the grass in a spot where a hairpin turn was required in front of the Station's sign.

Regarding the applicant's second NJP, Mr. W stated that no one knew why the accident happened but the applicant was punished anyway and "no justice was served." Mr. W stated that the only evidence presented was a video showing the applicant driving several hours before the accident. The video showed the applicant turning off the road to the right, which created a lot of dust, before the vehicle came back into view and exited the gate. Mr. W stated that the video lasted about 30 to 45 minutes and then the applicant drove back into view and headed to the long-term parking lot, which kicked up more dust and dirt. The applicant stated that he could not clearly recall what happened that day because of his brain trauma but that he thought something on the fence had caught his attention and that he had checked the lock on the gate of the long-term parking lot. However, his supervisor and the XPO claimed that he had been doing doughnuts and "drifting" when the vehicle was off camera and noted the amount of dirt and dust in the air. The applicant denied it and claimed that the vehicle could not go fast enough to do doughnuts or drift. The applicant pointed out that the video only showed the dust his tires were kicking up. The XO stated that the vehicle was traveling at less than 20 miles per hour when it crossed through the camera's view, and the applicant replied that there was no way that he could drift or do doughnuts at that speed. Finally, the CO said he had heard enough and found the applicant guilty on all of the charges. Mr. W alleged that the charges were based on the accident later the same day rather than on the applicant's conduct at the time of the video. He argued that "there was no justice served" at the mast.

Mr. W wrote that the applicant has told him that he did not appeal the mast because he did not want to upset the command and lessen his chances under the Second Chance program. However, on May 15, 2009, the XPO told the applicant not to sign up for classes because he was going to be separated. The applicant also told Mr. W that the XPO told him if he did sign up, the Coast Guard might bill him, which Mr. W later learned was false.

The applicant alleged that Mr. R's statement absolves him of any wrongdoing with regard to his removal of the speed governor on the OOD vehicle because Mr. R took responsibility and admitted allowing him to do it. Therefore, he argued, the incident was unjustly raised against him at mast. He also argued that Mr. W's statement also supports his claim about the nature of the evidence against him at the mast.

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 regulations:

1. The Board has jurisdiction over the applicant's request for removal of his NJP and an upgraded separation code and narrative reason for separation pursuant to 10 U.S.C. § 1552.

2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.[2]

3. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.[3] The applicant received his second NJP and was discharged due to a pattern of misconduct in 2009. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 2009, and his application is untimely.

4. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.[4] 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 "analyz[ing] both the reasons for the delay and the potential merits of the claim based on a cursory review"[5] 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."[6]

5. The applicant waited more than more than six years to challenge his NJP and more than five to challenge his separation code and the narrative reason for his discharge. He alleged that he had to wait because he could not afford an attorney, but no attorney is required to apply to this Board. During the applicant's delay, the reports of the investigations of his misconduct and mishaps and any evidence gathered in 2007 and 2008 have been destroyed pursuant to the Federal Records Act. As a result of the applicant's delay, only the statements he has recently gathered from three colleagues years after the events in question are available to the Board to review. Therefore, the Board finds that the doctrine of laches should bar the applicant's claim because his delay in applying to the Board has resulted in the loss of the reports of the investigations of his misconduct and mishaps and so prejudiced the Coast Guard's ability to present evidence to show that the applicant's NJPs were proper and just.[7]

6. A cursory review of the merits of this case indicates that the applicant's request could not prevail even if his claim were not barred by the doctrine of laches. Under Article 12.B.18.b.2. of the Personnel Manual in effect in 2009, Commander, Personnel Command was authorized to discharge members for a "pattern of misconduct" under several different circumstances, including "two or more non-judicial punishments, courts-martial, or civilian convictions or a combination thereof within a 2-year period." The applicant received NJP twice within two years and did not appeal his punishments, which is strong evidence that he considered the NJPs fair at the time. His record also reveals counseling for other instances of misconduct during the

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[2] *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

[3] 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

[4] 10 U.S.C. § 1552(b).

[5] *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

[6] *Id*. at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396, 1405 n14, 1407 n19 (D.C. Cir. 1995).

[7] *See Lebrun v. England*, 212 F. Supp. 2d 5, 13 (D.D.C. 2002).

two-year period. In addition, his record shows that he received due process under Article 12.B.18. of the Personnel Manual in that he was notified of the reason for discharge, allowed to submit a statement, and allowed to request a waiver of the discharge under the Second Chance program, although his request was denied. And under the Separation Program Designator Handbook, the JKA separation code is the correct code for members discharged involuntarily due to a pattern of misconduct.

7. The record shows that the applicant was discharged because he repeatedly committed misconduct by driving recklessly, as he twice overturned Station utility vehicles. He also intentionally modified one without authorization so that he could drive faster. The record also shows that at his second mast, the command played a video showing clouds of dirt and dust arising from areas where the applicant was driving the utility vehicle out of view of the camera a few hours before the accident, although he drove it reasonably slowly while on the road within the camera's view. The applicant's three colleagues support some of his claims about the circumstances of his mishaps and masts but do not disprove the alleged charges that he was driving recklessly while off camera. The reports of the investigations of the incidents are no longer available, and the NJPs are presumptively correct.[8] Therefore, the Board is not persuaded that the applicant's command acted unreasonably or unjustly in concluding that he had been driving recklessly when he overturned the utility vehicles in 2007 and 2008; in awarding him NJP in 2007 and 2009; or in processing him for discharge due to his repeated misconduct with Government vehicles.

8. The Board finds that the applicant's claim cannot prevail on the merits and should be barred by the doctrine of laches. Accordingly, the Board will not excuse the application's untimeliness or waive the statute of limitations. The applicant's request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

[8] 33 C.F.R. § 52.24(b); *see Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties "correctly, lawfully, and in good faith.").

ORDER

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

July 29, 2016

[redacted]