

**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. 2015-207**



**FINAL DECISION**

This is a proceeding under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case upon receipt of the applicant's completed application on September 17, 2015, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated August 26, 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, a former chief [REDACTED] (E-7), who received an honorable discharge on March 18, 2013, pursuant to the recommendation of an Administrative Separation Board (ASB), asked the Board to correct his record to show that he was retired "for good time served."<sup>1</sup> He alleged that he spent 17.5 years in the Coast Guard from October 3, 1995, through March 18, 2013; "was by all definitions an exemplary sailor"; and was recommended for discharge because the Coast Guard had been downsizing and not because of his conduct.

The applicant acknowledged that in July 2012, while assigned to Sector [REDACTED] he was arrested for criminal trespassing at a local bar. He stated that the State dismissed the charges against him and the police report did not mention alcohol, but his commanding officer (CO) gave him his second "alcohol incident."<sup>2</sup> He stated that he had gone on a cruise that day and had been at an outdoor bar, when the bartender called the police because he believed that the applicant had left the bar without paying his tab. However, he alleged, he was "in a lounge chair by the pool

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<sup>1</sup> Article 1.C.10.a.(1) of the Military Separations Manual, COMDTINST M1000.4, states that "[o]n application and at the Commandant's discretion, any enlisted member who has completed 20 years of service may retire from active service (14 U.S.C. §355)."

<sup>2</sup> Article 1.A.2.d. of COMDTINST M1000.10 defines an "alcohol incident" as "[a]ny behavior, in which alcohol is determined, by the commanding officer, to be a significant or causative factor that results in the member's loss of ability to perform assigned duties, brings discredit upon the Uniformed Services, or is a violation of the Uniform Code of Military Justice, Federal, State, or local laws. The member need not be found guilty at court-martial, in a civilian court, or be awarded non-judicial punishment for the behavior to be considered an alcohol incident."



and had started to fall asleep” and “refused to leave the premises until my wife and family members returned” because otherwise, he alleged, he had no way to let them know where he was. Because he would not leave, he was arrested and charged with criminal trespassing. The applicant stated that the investigation showed that he had drunk between six and seven alcoholic beverages “throughout the day and evening.” In addition, he told the investigator that “he had no recollection of the end of the evening” and that the last thing he could remember was getting a drink at a different bar with his wife and family. Because that was the last thing he could remember, the applicant alleged, he asked to be drug tested because he thought he might have been drugged and robbed, especially since two other members of his family also had no recollection of the end of the evening. But the Coast Guard did not test him and instead gave him an “alcohol incident” and relieved him of command.

The applicant noted that his first alcohol incident had been eleven years earlier, but his command convened an ASB and processed him for discharge before his case went to trial. He alleged that no one at this command read the police report.

The applicant stated that in 2012, the Coast Guard was downsizing, and both the Recorder presenting the evidence against him at the ASB hearing and the senior member of the ASB mentioned this fact during the proceedings. However, he alleged, his Coast Guard attorney never mentioned or tried to rectify this injustice. Therefore, he alleged, he was discharged because “a greater emphasis was placed on service downsizing than [on his] individual case.” As a result, he was discharged before completing a 20-year retirement and has lost retirement benefits and medical insurance benefits. The applicant argued that his lack of retired pay is erroneous and unjust. He noted that his DD 214 shows some of his accomplishments but does not fully reflect all of the faithful service and positions of responsibility he held, including coxswain, boarding officer, underway and inport officer of the deck, executive petty officer for two units, and officer in charge. The applicant alleged that he was never once derelict in his duties and was a finalist for a [REDACTED]

In support of his request, the applicant submitted a State court “Notice of Entry of Judgment and/or Order,” dated May 1, 2013, a little more than a year after his arrest, which shows that the charge against him was discharged because he had “complied.” (No other relevant information appears on this document.)

### SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on October 3, 1995, and became a [REDACTED]. He signed a Page 7 acknowledging have received a “full explanation of the drug and alcohol abuse program” during boot camp on November 15, 1995.

On April 5, 2002, the applicant was arrested for being drunk and disorderly at a bar and for punching a bouncer. He was charged with assault and resisting apprehension. On June 13, 2002, the applicant received non-judicial punishment (NJP) at mast for failing to obey an order or regulation; assault; and disorderly conduct, drunkenness. He was fined \$956 per month for two months and restricted to base for 45 days with extra duties. This incident constituted his first



“alcohol incident,” and he was advised that a second alcohol incident would result in processing for separation.

On August 1, 2012, the applicant’s CO at Sector [REDACTED] entered a Page 7 documenting the applicant’s second “alcohol incident” in his record. The Page 7 states that while on liberty on the evening of Sunday, July 22, 2012, he had consumed alcohol and at about 9:00 p.m. he was arrested for criminal trespassing after he refused to leave private property. The Page 7 notes that the applicant had previously been counseled about the serious nature of an alcohol incident on April 10, 2002, and that because this was his second alcohol incident, he would be processed for separation.<sup>3</sup> Page 7s in the applicant’s record also show that he was referred for alcohol screening and treatment and successfully completed a treatment program on August 30, 2012.

Because the applicant had more than eight years of service, he was entitled to a hearing before an ASB.<sup>4</sup> According to the ASB’s report, the applicant was notified of the pending ASB on August 14, 2012, and assigned counsel. On October 3, 2012, the senior member of the ASB informed the applicant that the hearing would be held on October 23, 2012, to consider whether to separate or retain the applicant in the Coast Guard. The senior member noted that the applicant or his representative “must assert your rights in a timely manner. If you believe that the Board or any person involved is not properly observing your rights or is otherwise not acting in accordance with Coast Guard policy, you should notify me, or [the Sector Commander], the Convening Authority, immediately so that the situation can be corrected.”

The ASB report, dated November 6, 2012, states that the ASB convened on October 23, 2012, and reviewed the applicant’s evidence and records, including the Page 7s documenting his alcohol incidents in 2002 and 2012 and a report of an administrative investigation of the second alcohol incident.<sup>5</sup> The applicant’s attorney called as witnesses a retired chief warrant officer

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<sup>3</sup> Article 2.B.8.b. of COMDTINST M1000.10 states that “[e]nlisted members involved in a second alcohol incident will normally be processed for separation in accordance with Article 1.B.15. of [the Military Separations Manual], COMDTINST M1000.4 (series).” Article 1.B.15.b.(5) of COMDTINST M1000.4 authorizes Commander, PSC, to discharge members for “unsuitability” due to alcohol abuse pursuant to the provisions of COMDTINST M1000.10. Article 1.B.15.i. notes that a member with more than eight years of military service who is being considered for discharge for unsuitability is entitled to an ASB.

<sup>4</sup> Article 1.B.1. of the ASB Manual, COMDTINST M1910.2, states the following regarding the purpose of an ASB:

Coast Guard discharge and retention decisions are driven by the needs of the Coast Guard overall, not by the needs of individual members or individual commands. Members do not have a right to remain on active duty in the Coast Guard, regardless of the length of their service or the hardship their separation might cause. Nevertheless, a member’s military career often represents a considerable investment, both by the member and by the service. In addition, when a member is discharged, the Coast Guard’s characterization of that service – as honorable, general under honorable conditions, or other than honorable – and occasionally other determinations surrounding that decision, can have a profound impact on the member’s future. Sound personnel management, as well as fairness, dictate that the decision to separate such a member be carefully considered, and that the member be provided an opportunity to be heard and to present and challenge evidence to be considered by the separation authority.

<sup>5</sup> Article 1.C.1. of the ASB Manual states the following regarding the scope of an ASB’s inquiry:

An ASB documents the facts relating to the Respondent’s conduct, competency, background, character and attitudes, so that the separation authority may properly determine whether the member should be retained or separated, the reason for separation, and the proper characterization

who had been helping the applicant with his recovery and who testified that the applicant was capable of making a full recovery; the Command Drug and Alcohol Representative (CDAR), who stated that the applicant was taking measures to overcome alcohol abuse and commit to an alcohol-free lifestyle; and four chief or senior chiefs and two lieutenant commanders, who testified that due to his performance, leadership, expertise, and professionalism, the Coast Guard should not discharge the applicant. Several others submitted statements supporting the applicant.

The applicant did not testify or answer questions but made and submitted an unsworn statement in which he did not deny the facts but stated that he had been “dealing with alcoholism and drug abuse in his family his entire life, and did not believe he had a problem prior to the second incident. Now that he understands the severity of alcohol disease, he firmly attests that he can recover and remain abstinent from alcohol.” The applicant also told the ASB that he had not been honest about his alcohol use when he was screened after his alcohol incident in 2002. After his 2012 screening, he was diagnosed as alcohol abusive but not dependent.

The ASB’s report noted that in the applicant’s first alcohol incident, he was arrested for battery after getting into a physical altercation with security personnel at a bar. In addition, the ASB noted the applicant’s involvement in an “alcohol-related situation” (rather than an alcohol incident) in 2005 for failing to intervene when an underage member was consuming alcohol and his citation for possessing alcohol on a beach where it was prohibited in 2008. The ASB also noted that the applicant had been unable to report for duty on July 23, 2012, due to his arrest and detention on July 22, 2012. However, except for the punishments and poor marks related to his alcohol abuse, the ASB reported that the remainder of the applicant’s record reflected “extremely high performance across all rating categories during his 17 years of Coast Guard service,” as well as “numerous meaningful personal and unit awards.” The ASB also noted that the applicant had been assigned as an executive petty officer and officer in charge based on his performance and leadership.

The ASB noted that pursuant to COMDTINST M1910.2, Chapter 1.B., its decision had to be “driven by the needs of the Coast Guard overall, not by the needs of the individual members or individual commands.” In addition, the ASB noted that pursuant to Chapter 2.B.8.2.b. of the Drug and Alcohol Abuse Program Manual, COMDTINST M1000.10, members who incur a second alcohol incident are normally processed for separation in accordance with Article 1.B.15. of the Military Separations Manual, COMDTINST M1000.4. The ASB noted that a CO may request retention of a member after two alcohol incidents but that the applicant’s CO had recommended that he be processed for separation.

The ASB found that “[n]otwithstanding the Board’s high opinion of [the applicant’s] past and potential future contributions to the Coast Guard, given the serious nature of both of these alcohol incidents, we do not find a compelling reason for the Coast Guard to make an exception to [the] general rule and policy of discharging enlisted members following a second alcohol

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of the member’s service that should be reflected in any separation documents. In its deliberations regarding separation, the Board’s foremost consideration is whether separation or retention is in the best interest of the Coast Guard. Available statements from superiors and peers, and available records bearing upon Respondent’s suitability for retention, are among the types of evidence to be considered by the Board.

incident. Although the loss of [the applicant] will be a loss to the service, we believe the Coast Guard has other high performing personnel that can fill these assignments. Accordingly, we find that it is not in the best interest of the Coast Guard to retain a member who has demonstrated repeated lapses in judgment and violated the special trust and confidence vested upon an Officer in Charge.” The ASB recommended that the applicant receive an honorable discharge based on his past performance.

On November 27, 2012, the District Commander concurred with the recommendation of the ASB that the applicant be separated with an honorable discharge.

On February 13, 2013, the Final Reviewing Authority (FRA) on the applicant’s ASB approved the recommendation of the ASB and directed that the applicant be honorably discharged for unsuitability due to alcohol abuse in accordance with Article 1.B.15. of the Military Separations Manual. The FRA denied the applicant’s request to be placed on probation and recommended that the applicant receive an RE-4 reentry code, making him ineligible to reenlist.

On February 15, 2013, the Personnel Service Center (PSC) issued orders for the applicant to be honorably discharged on March 18, 2013, for alcohol abuse pursuant to Article 1.B.15. of the Military Separations Manual. He received half separation pay. PSC provided that his DD 214 should reflect a discharge for “miscellaneous/general reasons.”

### **VIEWS OF THE COAST GUARD**

On January 28, 2016, the Judge Advocate General (JAG) submitted an advisory opinion in which he adopted the findings and analysis of the case provided in an attached memorandum prepared by PSC and recommended that the Board deny relief.

PSC stated that pursuant to Article 1.B.15. of the Military Separations Manual, when a member is eligible and recommended for discharge based on two alcohol incidents and has more than eight years of service, the member is entitled to a hearing before an ASB. However, under the ASB Manual, COMDTINST M1910.2, the decisions of an ASB “are driven by the needs of the Coast Guard overall, not by the needs of the individual members or individual commands.” PSC stated that the ASB report shows that the ASB found no compelling reason to make an exception to the policy of discharging members following a second alcohol incident and found that it was not in the best interest of the Coast Guard to retain the applicant based on his repeated lapses in judgment and violation of the trust placed in him as an officer in charge of a [REDACTED]

PSC argued that the applicant has not provided sufficient evidence to show that the ASB proceedings were erroneous or unjust. PSC noted that the applicant had been advised in writing to report any conduct during the proceedings that he felt was not in accordance with policy and apparently made no complaint. PSC stated that there is no evidence that the Service’s downsizing affected the ASB’s decision, and the ASB’s report cited the nature of the applicant’s alcohol incidents and his lapses in judgment, not the downsizing. PSC stated that “[t]he discharge of an enlisted member upon receipt of a second alcohol incident is the normal course of action as stated in [COMDTINST M1000.10],” and the ASB found that the applicant’s

performance did not warrant an exception to this rule. Therefore, PSC recommended that the Board deny relief.

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

On February 2, 2016, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond in writing within thirty days. No response was received.

### **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. The application was timely filed within three years of the applicant's discharge.

2. The applicant alleged that his honorable discharge for alcohol abuse after about 17.5 years of military service was erroneous and unjust and that he should be retired instead. In considering allegations of error and injustice, the Board begins its analysis 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.<sup>6</sup> 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."<sup>7</sup>

3. The applicant has not proven by a preponderance of the evidence that his honorable discharge due to alcohol abuse after about 17.5 years of service was erroneous or unjust. As the ASB report shows, after the applicant incurred his first alcohol incident in 2002 he was advised on a Page 7 that if he incurred another alcohol incident he would be processed for discharge. The record shows that the applicant was properly processed for discharge through an ASB and received all due process after he incurred a second alcohol incident in 2012. Although the applicant alleged that the ASB impermissibly considered the fact that the Coast Guard was downsizing, he submitted no evidence to support this claim, and the ASB's report cites other factors as its reasons for recommending discharge. Moreover, even if one or more of the ASB members did consider the fact that the Coast Guard was downsizing in their deliberations, such consideration would not be erroneous or unjust under the regulations. Under Article 1.B.1. of COMDTINST 1910.1, once a member's conduct has made him eligible for discharge, the decision of the ASB is supposed to be "driven by the needs of the Coast Guard overall, not by the needs of individual members or individual commands." And under Article 1.C.1., the ASB's "foremost consideration is whether separation or retention is in the best interest of the Coast Guard." Therefore, it would not have been erroneous or unjust for the ASB members to consider the Coast Guard's lack of need for the applicant's service in making their recommendation.

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<sup>6</sup> 33 C.F.R. § 52.24(b).

<sup>7</sup> *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 applicant argued that his arrest in 2012 should not have been considered an alcohol incident because the police report did not mention alcohol and the charge against him was dismissed. By his own admission, however, he was arrested after drinking several alcoholic drinks and failing to timely pay a bar tab. In addition, the fact that the criminal trespass charge against him was dismissed a year later—after he had complied with whatever requirements the court imposed—is not evidence that his conduct did not meet the definition of an alcohol incident pursuant to Article 1.A.2.d. of COMDTINST M1000.10. As the ASB noted, his arrest brought discredit on the Coast Guard and he was unable to report for duty the morning after his arrest due to his detention by civil authorities. Although the applicant alleged that he might have been drugged and robbed that night, the Board finds that this claim is not convincing because there is no evidence of a police report of robbery or drugging in the record and, although he claimed that his last memory was of having a drink with family members at a different bar, he also alleged that he refused to leave the property because his family would not know where to find him if he left. The Board finds that the applicant has not shown that his CO committed error or injustice in determining that the applicant’s consumption of alcohol was a significant or causative factor in his behavior, arrest, and failure to report for duty the next day or, therefore, in determining that the applicant had incurred his second alcohol incident.

5. The applicant has not proven by a preponderance of the evidence that his honorable discharge with half separation pay and lack of retirement are erroneous or unjust. By law, retirement is a privilege, not a right, and it requires 20 years of service,<sup>8</sup> which the applicant did not complete. The Board finds no grounds in the record for awarding him retired pay. Accordingly, his request should be denied.

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

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<sup>8</sup> COMDTINST M1000.4, Article 1.C.10.a.

**ORDER**

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

August 26, 2016

