

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-211

████████████████████
████████████████████

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the applicant's completed application on September 23, 2015, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 9, 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, who received a general discharge under honorable conditions on March 21, 2012, asked the Board to upgrade his discharge from general to honorable. The applicant stated that after he received his first "alcohol incident"¹ in April 2011, he was screened for alcohol abuse or dependency. He alleged that he told the medical officer that he wanted to undergo alcohol rehabilitation. Because he was assigned to a cutter, he was reassigned to a shore unit under temporary orders while his cutter got underway. He was directed to attend meetings of Alcoholics Anonymous and not to drink alcohol. However, while awaiting treatment, he incurred a second alcohol incident. He then completed the Substance Abuse Rehabilitation Program (SARP) but was processed for discharge because he had received two alcohol incidents. He received a general discharge with a narrative reason for separation of "miscellaneous/general reasons."

¹ 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." Members are normally processed for discharge for unsuitability, pursuant to Article 1.B.15. of the Military Separations Manual if they incur two alcohol incidents. COMDTINST M1000.10, Article 2.B.8.b.

The applicant argued that his record is unjust because he was not promptly sent to SARP when he was first diagnosed as alcohol abusive. He alleged that had he received prompt, professional help, he “could have prevented himself from poor decision making that resulted in my [general] discharge.”

In support of his request, the applicant cited the Board’s decision in BCMR Docket No. 2000-127. In that case, the applicant had received three alcohol incidents. The first was for drinking while underage and the second for becoming belligerent after drinking alcohol in a night club. After the second, he underwent alcohol screening and was referred for anger management training but not for alcohol rehabilitation treatment. In addition, because his cutter got underway, he did not complete the anger management treatment. During a port call while underway, the applicant incurred a third alcohol incident for being drunk and disorderly. He was discharged due to his third alcohol incident and received an honorable discharge with a JPD separation code and the corresponding narrative reason for separation of “alcohol rehabilitation failure.” The Board upgraded the separation code and narrative reason for separation to JND and “miscellaneous/general reasons” because the Coast Guard had not actually sent the applicant for alcohol rehabilitation treatment and so he had not actually failed alcohol rehabilitation. Because the applicant had received an honorable discharge, the characterization of his discharge was not at issue.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on June 20, 2006. Upon enlisting, he acknowledged on a Page 7² having been advised about the Coast Guard’s drug and alcohol policies. After completing recruit training, he was assigned to “A” School to train as an [REDACTED]. On November 27, 2006, the applicant was counseled about failing to meet the minimum level of performance at “A” School because he was “unable to display proficiency at critical tasks during Advanced Communications (Course 7),” which he would therefore have to re-take. However, he completed “A” School and advanced from E-3 to [REDACTED] E-4 in 2007.

On December 17, 2007, while assigned to an air station, the applicant was counseled on a Page 7 about leaving a restricted area, the SIPRNET room, unlocked and unattended while he was on rounds. The applicant received mediocre performance marks and was not recommended for advancement on his semiannual performance evaluations dated September 30, 2007, March 31, 2008, and September 30, 2008. He received average marks and was recommended for advancement on his semiannual evaluations in 2009.

On January 28, 2010, while assigned to a Sector, the applicant’s CO entered a Page 7 in his record advising him that he was not recommended for advancement to OS2/E-5 due to “poor judgment, lack of maturity, and responsibility.” The Page 7 stated that the applicant had incurred an unexcused absence on December 2, 2009, when he got stranded outside of the command’s area of operations (AOR) and had not told his supervisor he was leaving the AOR; had failed to pay or inform TriCare or his command about a \$330 a hospital bill incurred while in [REDACTED] in

² A Page 7 (“Administrative Remarks” form CG-3307) is used to document counseling of a member about positive or negative performance or other significant information provided to the member. Page 7s are normally signed by the counselor and, to acknowledge receipt, by the member as well.

August 2009; had disobeyed an instruction by his supervisor to fill out the necessary TriCare form first thing Monday morning, January 25, 2010, and had stayed home to fix a light instead, which delayed the paperwork further because he fell off a step stool and was sick in quarters for two days.

On February 11, 2010, the applicant was counseled on a Page 7 about “continually and habitually miss[ing] medical appointments.” He had missed another one on February 4, 2010, even though he was in a not fit for duty status, which had wasted the doctor’s time and interfered with the updating of the applicant’s status.

On March 29, 2010, the applicant was advised on a Page 7 that he was 17 pounds overweight and was being placed on weight probation until October 29, 2010, by which time he was required to meet either the weight or the body fat standards or he would be discharged.

On his semiannual performance evaluation dated March 31, 2010, the applicant received an unsatisfactory conduct mark and was not recommended for advancement.

On August 2, 2010, the applicant was transferred from the Sector office to a cutter because of an ongoing criminal investigation regarding his conduct while assigned to the Sector. Because the charges were dismissed, the offenses he was charged with are not in his record.

On December 16, 2010, the applicant was counseled about being absent from duty without authorization for a day and missing a critical test that he was required to take, which “forced shipmates to report to work during their liberty hours to administer the test to you.”

On February 25, 2011, the applicant qualified as a Combat Information Center (CIC) watchstander.

On March 3, 2011, the applicant was charged with assault for “throwing punches and grappling with a shipmate” while under the influence of alcohol. The investigator recommended that the matter be disposed of with Page 7s instead of conducting a mast. The corresponding Page 7, dated March 2, 2011, states that the applicant was counseled about being “involved in a physical confrontation with a shipmate during a port call ... As Petty Officers you set a bad example in maintaining good order and discipline. Fighting is completely against our Command Philosophy and is strictly prohibited. Further administrative action will follow should another incident such as this arise from you in the future.”

On his semiannual performance evaluation dated March 31, 2011, the applicant received several low performance marks and was not recommended for advancement.

On April 19, 2011, the applicant was counseled on a Page 7 about having reported for duty at the CIC ten minutes late on April 7, 2011, when his duties included completing “accountability for the division.” Because of his lateness, someone else had had to do this job. The Page 7 states that the applicant had shown “a pattern of tardiness” while the cutter was on patrol and that further tardiness would result in further actions being taken.

On April 19, 2011, the applicant was counseled on a Page 7 about having been 40 minutes late for duty on April 17, 2011, when he was supposed to be on watch, and failing to notify the Officer of the Deck that he would be late. When he showed up, he had multiple scratches on his face and an injury to his tongue that made his speech difficult to understand. The applicant had claimed that according to his watch, he was not late, but he was not wearing a watch when he showed up. In addition, he had claimed that he was late because he had had a slow leak in his tire since April 14, 2011, which he had not fixed or accounted for and which required him to stop and fill it with air periodically. The CO advised him that his “actions are completely against the Coast Guard Core Value of Devotion to Duty” and would not be tolerated. Because the applicant had been late repeatedly, the CO awarded him 45 days of extra military instruction, during which he was required to report for duty 15 minutes early, submit a weekly calendar of assigned hours, meetings, and personal appointments each Monday, and if assigned to another unit on a temporary basis, report weekly to his immediate supervisor.

On May 19, 2011, the applicant’s command referred him for alcohol screening. Based on his answers, the applicant was diagnosed as “alcohol abusive” and recommended for intensive outpatient treatment. The applicant was ordered to abstain from consuming alcohol until he completed rehabilitation treatment, to meet with his CDAR once a week, and to attend a weekly support group. However, because of an open investigation, he was not sent for treatment.

On May 26, 2011, the applicant was counseled on a Page 7 that his behavior and conduct had been unsatisfactory during the prior eight months and that he was being placed on performance probation for six months, through October 26, 2011. The Page 7 stated that he had failed to obey direct orders from his supervisors and from the Officer of the Deck, failed to report for duty on time on numerous occasions while both in port and underway, failed to complete work on time, shown poor interpersonal skills and teamwork, “as reflected by several incidents of disruptive behavior in Combat [CIC],” failed to take care of his uniform and grooming properly, and led an unhealthy lifestyle that “led to careless accidents and poor decision making.” The applicant was advised of the steps he had to take to successfully complete his probationary period and avoid discharge.

On September 7, 2011, the applicant was counseled on a Page 7 about incurring an “alcohol incident” on August 21, 2011, when his consumption of alcohol had caused him to miss an assigned flight. When the pilot called his home, the applicant’s roommate stated that he was unable to wake the appl[REDACTED] due to i[REDACTED]ation. About four hours later, the applicant had called the unit and claimed that he had missed the flight due to car trouble. However, the following day, he had admitted that he had overslept following a night of drinking. The Page 7 required him to abstain from alcohol until his screening and assessment were completed and warned him that he would be processed for discharge if he incurred a second alcohol incident.

On his semiannual performance evaluation dated September 30, 2011, the applicant received very low marks and an unsatisfactory conduct mark and he was not recommended for advancement.

On a Page 7 dated October 19, 2011, the applicant’s command noted that the applicant had been screened for alcohol abuse or dependency on September 9, 2011; that he met the crite-

ria for a diagnosis of “alcohol abusive”; and that he was being referred for intensive outpatient SARP treatment at a naval hospital—

at a time to be determined. Until you begin treatment, you shall adhere to a pre-treatment plan, which will consist of the following:

- a. Abstaining from consuming alcohol. Any further use of alcohol until you complete treatment and your support plan will lead to further disciplinary actions.
- b. You will meet with your CDAR [Command Drug and Alcohol Representative] once a week, at a time to be agreed on by both of you, for monitoring and support.
- c. You will attend at least 2 support group meetings (e.g., Alcoholics Anonymous or other HSWL approved support group) each week. ...

On November 1, 2011, the applicant was advised on a Page 7 that an incident that had occurred on April 18, 2011, was considered a “second documented alcohol incident.” The Page 7 states that his abuse of alcohol had caused him to commit misconduct on April 18, 2011, as described in a report of the Coast Guard Investigative Service (CGIS). The Page 7 noted that the applicant was already undergoing alcohol rehabilitation treatment. He was directed to abstain from alcohol until he completed treatment. The Page 7 states that he would be processed for separation because he had incurred two alcohol incidents.

On November 15, 2011, the applicant was advised on a Page 7 that he had not completed his six-month probationary period satisfactorily, as required by the Page 7 dated May 26, 2011, because he had received two alcohol incidents during the probationary period. Therefore, he would be processed for separation. He also received a performance evaluation documenting the end of his probation. He received very low marks, an unsatisfactory conduct mark, and a recommendation against advancement.

On December 12, 2011, the applicant was advised on a Page 7 that he had successfully completed intensive outpatient treatment at SARP. The Page 7 requires him to abstain from alcohol and meet weekly with the CDAR and biweekly with a support group for at least 90 days.

On December 20, 2011, the applicant was punished at mast. His punishment included forfeiture of \$875 in pay for two months, restriction to base with extra duties for 45 days, and reduction in rate from [REDACTED]/E-4 to [REDACTED]/E-3 based on charges of assault, failing to obey an order, and making a false official statement. The specification states that he had engaged in a prohibited romantic relationship with a subordinate female seaman (E-3) and had lied about the nature of their relationship and the cause of the injuries to his face in April 2011 to the command and to a criminal investigator for the Coast Guard Investigative Service (CGIS). He was also charged with assaulting the female seaman “on diverse occasions on or about 17 APR 2011.” The applicant received a disciplinary performance evaluation on which he received very low marks, an unsatisfactory conduct mark, and a recommendation against advancement.

On January 4, 2012, the applicant’s CO notified the applicant that he was recommending him for a general discharge because of his conduct and two alcohol incidents and that he was entitled to consult counsel. The applicant acknowledged the notification and submitted a

response on January 9, 2012, in which he indicated that he did not object to being discharged and understood that if he received a general discharge, he could expect to encounter prejudice in civilian life. He also acknowledged having been provided an opportunity to consult counsel but declined the opportunity. The applicant attributed his misconduct and poor judgment while assigned to the cutter to his consumption of alcohol. He stated that he had been harassed aboard the cutter because of a “prior offense of which I was acquitted from all charges,” which caused him to withdraw and become an alcoholic. He stated that he had “spun a web of bad character around my name” and was deeply sorry.

The CO forwarded his notification to the applicant and the applicant’s written response with his memorandum initiating the applicant’s discharge because of his two documented alcohol incidents and recommending a general discharge pursuant to Article 1.B.2.f(2)(b) of the Military Separations Manual based on the “totality of the circumstances” regarding the applicant’s conduct while assigned to the cutter. The CO stated that while undergoing SARP rehabilitation treatment following his first known alcohol incident, the command had received a CGIS Report of Investigation, which stated that on or about April 17, 2011, after a night of heavy drinking, the applicant had “physically assaulted a female crewmember on numerous occasions that evening” and that they had been involved in a prohibited relationship for about three months. The incident revealed in the report was documented as the applicant’s second alcohol incident. The CO noted that the applicant had been on performance probation when he incurred both alcohol incidents. The CO noted that the applicant was not eligible for the Second Chance program and was not entitled to an Administrative Separation Board because he had less than eight years of service. The CO attached to this memorandum his The CO also attached a written statement from the applicant, who On January 20, 2012, the applicant was counseled on a Page 7 about reporting 48 minutes late for muster on January 18, 2012. The Page 7 states that he had been required to report on time pursuant to his restriction and that any further incidents of tardiness would result in further administrative and disciplinary action.

On February 18, 2012, the Commander of the Atlantic Area concurred with the CO’s recommendation, noted that the applicant was not eligible for a second chance, and recommended that he receive a general discharge.

On March 1, 2012, PSC issued orders directing the applicant’s command to discharge him with a general discharge for alcohol abuse with an RE-4 reenlistment code (ineligible), a JND separation code, [REDACTED] “separat[REDACTED]r miscellaneous/general reasons” on his DD 214 in accordance with Article 1.B.15. of the Military Separations Manual. Discharge paperwork shows that he received the “miscellaneous/general reasons” narrative reason for separation because he had not completed treatment before his second alcohol incident occurred.

A Page 7 dated March 21, 2012, notes that the applicant had been discharged for unsuitability due to alcohol abuse and had been given his DD 214 and counseled about his rights and benefits. The applicant’s DD 214 shows that he received a general discharge for “miscellaneous/general reasons” with a JND separation code and an RE-4 reenlistment code.

Following his discharge, the applicant applied to the Discharge Review Board (DRB) and requested an honorable discharge. On July 5, 2013, the DRB issued a decision finding that the

applicant's general discharge was proper and equitable and denying relief. The DRB noted that in "his 5-plus years in the CG, the applicant received eight separate non-recommended evaluations and four unsatisfactory conduct entries" and that in 2011, he incurred two alcohol incidents and received nonjudicial punishment (NJP) for violating Article 192, 107, and 128, of the UCMJ. The DRB stated that the applicant was afforded due process and that his "consistently poor track record of performance and conduct" justified his general discharge for unsuitability with an RE-4.

VIEWS OF THE COAST GUARD

On February 19, 2016, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request and adopting the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC).

PSC summarized the events leading to the applicant's discharge and concluded that he "has not shown that his discharge was unjust." PSC stated that the applicant should have been afforded counseling and treatment after his first alcohol incident in April 2011, but that alcohol incident was not discovered until his command received the CGIS report in November 2011. PSC noted that the Level II intensive outpatient/partial hospitalization treatment that the applicant needed consists of daily classroom instruction and group and individual counseling sessions and that the length of treatment depends on the member's need. PSC argued that the timing of the alcohol incidents and the applicant's referral to SARP does not justify upgrading his discharge because his "record merits discharge with a general characterization of service through Article 1.B.17, Misconduct ... due to commission of a serious offense." PSC argued that the applicant's general discharge was justified and equitable.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 7, 2016, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to submit a response 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 over this matter under 10 U.S.C. § 1552. The application was timely filed within three years of the DRB's denial of the applicant's request to that board.³

2. The applicant alleged that his general discharge was erroneous and unjust because he did not receive alcohol rehabilitation treatment when he was diagnosed as alcohol abusive in May 2011 and therefore incurred his second alcohol incident. In considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed documents in an appli-

³ *Ortiz v. Secretary of Defense*, 41 F.3d 738, 743 (D.C. Cir. 1994).

cant's military record are correct and fair, and the applicant bears the burden of proving by a preponderance of the evidence that the documents are erroneous or unjust.⁴ Absent specific evidence to the contrary, the Board presumes that Coast Guard officers and other Government officials have carried out their duties "correctly, lawfully, and in good faith."⁵

3. The record shows that in April 2011, while under the influence of alcohol, the applicant assaulted a female seaman with whom he had been having a prohibited relationship contrary to regulation. He ended up with multiple scratches on his face and an injured tongue. The command initiated an investigation and sent the applicant for alcohol screening. The screener diagnosed the applicant as alcohol abusive and recommended that he undergo Level II intensive outpatient/partial hospitalization treatment. However, because of his misconduct, the applicant was the subject of a criminal investigation and so he could not promptly start the intensive treatment. In addition, the applicant did not admit to his misconduct and instead lied about the nature of his relationship with the seaman and about the incident on April 17 and 18 to his command and to the CGIS agent. Had the applicant promptly admitted his misconduct, instead of lying, the investigation would presumably have ended sooner, and his treatment might have started sooner. Therefore, the applicant's claim that his general discharge is unjust because the Coast Guard could have prevented his alcohol incident in August 2011 by providing him with rehabilitation treatment faster is meritless. The record indicates that he delayed his own treatment by lying about his misconduct on April 18, 2011, to his command and the CGIS investigator.

4. While the investigation was underway, the applicant was under a direct order to abstain from alcohol until he completed rehabilitation treatment, as shown on the Page 7 dated May 19, 2011. The applicant violated this order in August 2011 by drinking alcohol and becoming so intoxicated that he showed up for duty four hours late. He lied about this incident too, but his command learned the truth from his roommate and documented an alcohol incident in his record on a Page 7 dated September 7, 2011. Following this incident, the applicant was again screened and referred for treatment. While he was in treatment, CGIS provided a copy of its report about what the applicant did on April 18, 2011, to the command. The Page 7 dated November 1, 2011, shows that based on what the CGIS report revealed about the applicant's conduct on April 18, 2011, the applicant's CO found that he had incurred an alcohol incident on that date. Although he incurred this alcohol incident first in time—in April 2011—it was documented second—after his August 2011 alcohol incident—because he had not admitted to the misconduct, which then had to be investigated.

5. Because he had incurred two alcohol incidents, the applicant was subject to discharge for unsuitability due to alcohol abuse pursuant to Article 1.B.15. of COMDTINST M1000.4, the Military Separations Manual.⁶ He received due process pursuant to Article 1.B.15. because he was notified in writing of the reason he was being discharged; afforded the opportunity to submit a statement, which he did; and afforded an opportunity to consult a lawyer, which he waived.

⁴ 33 C.F.R. § 52.24(b).

⁵ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁶ COMDTINST M1000.10, Article 2.B.8.b.

6. Members being discharged for unsuitability due to alcohol abuse may receive general or honorable discharges.⁷ Article 1.B.2.f.(2) of COMDTINST M1000.4 provides that a member discharged for unsuitability due to alcohol abuse may receive a general discharge when Commander, PSC directs a general discharge based on the individual's overall military record or the severity of the incidents that cause the discharge. In this case, in recommending a general discharge, the CO cited the applicant's repeated misconduct while assigned to the cutter, which he called the "totality of the circumstances," and the fact that during one of his alcohol incidents, the applicant had repeatedly physically assaulted a female seaman. Based on these records, the Board finds that the applicant has not shown that his general discharge is erroneous or unjust. The fact that other members have received honorable discharges for alcohol abuse under substantially different circumstances, such as the applicant in BCMR Docket No. 2000-127, does not persuade the Board that Commander, PSC committed error or injustice in awarding the applicant a general discharge given the extensive documentation of misconduct and poor performance in his record.

7. Accordingly, the applicant's request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁷ COMDTINST M1000.4, Article 1.B.2 f.

ORDER

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

September 9, 2016

