


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

Application for the Correction
of the Coast Guard Record of:

BCMR Docket No. 2022-060


MEI (former)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on July 12, 2022, and assigned the case to an attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated October 31, 2024, is approved and signed by three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant, a former E-6, Maritime Law Enforcement Specialist, asked the Board to correct his record by changing his administrative separation for a Condition, Not a Disability (CND) with a General (Under Honorable Conditions) characterization of service to an Honorable characterization of service and retirement from the Coast Guard with a retirement date of May 1, 2020, the date he would have reached 20 years of active service.

The applicant, through counsel, claimed that the sole basis for his administrative separation from the Coast Guard on July 5, 2019 was a lie by his former partner, MG, with whom he shares a special needs child. The applicant stated that MG frequently fabricated lies that she told to his chain of command as retaliation when the two argued. The applicant alleged that on December 15, 2018, MG contacted his command and lied, stating that he had consumed alcohol and buried a water bottle containing alcohol nearby her residence and that, as a result, he was separated from the Coast Guard. The applicant stated that MG later admitted that she had lied to his command and Coast Guard Investigative Service (CGIS) on December 15, 2018.

The applicant alleged that his separation from service prior to his retirement date was erroneous and unjust because his command relied only on a lie told by MG as the basis for his separation. The applicant argued that at the time of his separation his command did not have evidence that he had actually consumed alcohol, which he argued was a requirement for the incident to be characterized an alcohol related incident. The applicant further argued that while

the Coast Guard took a urine sample from him on the day of the incident, that he was never provided with the results of the urine test, and that this was likely because the results of the urine test would have shown that there was no alcohol in his system and therefore the information would not have helped the command's position.

The applicant argued that, under Coast Guard policy, the military member must actually consume alcohol for an alcohol incident to have occurred and that simply being present where alcohol is consumed does not constitute an alcohol incident. The applicant alleged that his command did not have any proof that he actually consumed alcohol on December 15, 2018, and therefore the third alcohol incident should be expunged from his record and he should be able to honorably retire from the Coast Guard.

The applicant stated that, in December 2018, MG texted the Command CGIS and alleged that he had buried a water bottle of alcohol in their backyard, which she later recanted admitting that she had lied to both the command and to CGIS. Based on this false reporting, the applicant argued that he should not have been administratively separated and, instead, he should have been able to continue on course with his retirement in lieu of further administrative processing which was approved in August 2018, with a retirement date of 1 May 2020. Instead, the applicant stated that, on 19 March 2019, he was notified administrative separation action had been initiated by Captain (CAPT) W and a negative CG-3307 issued based on a third alcohol incident for consuming alcohol on November 18, 2018 and December 15, 2018.¹

The applicant discussed the circumstances surrounding the second alcohol incident on May 5, 2018 after civilian police responded to a call of an alleged domestic disturbance between the applicant and MG. The applicant claimed that, when the police pulled him over, administered field sobriety tests, and resulted in him being cited with an allegation of Driving While Impaired (DWI), it was raining and he was wearing flip flops, which made it difficult for him to complete the tests. The applicant argued that there were no breathalyzers or blood tests administered at the time, and thus it was unclear whether he had any alcohol in his system. Further, the applicant claimed that, at a February 18, 2019 hearing, all charges were voluntarily withdrawn and dismissed from court and have since been expunged from his record.

The applicant claimed that, prior to the alleged DWI being dismissed and "even though the allegations of a DWI had been unsubstantiated," the command notified him on May 31, 2018 that administrative separation proceedings had been initiated as a result of the alleged DWI. The applicant argued the command was preemptive in notifying him of administrative separation as the allegations had not yet been adjudicated in civilian court. Further, the applicant claimed that, when these allegations were adjudicated, they were dismissed and have since been expunged, meaning he was not guilty of a DWI.

The applicant asserted that, after being provided the notification of administrative separation on June 8, 2018, he submitted a Request for Retirement in Lieu of Administrative Discharge upon the advice of a member of his command, Lieutenant Commander (LCDR) N. The applicant claimed that, prior to making this decision, he was not afforded the opportunity to

¹ The first alcohol incident occurred on November 12, 2014 and the second alcohol incident occurred on May 5, 2018.

meet with legal counsel. The applicant argued that he was entitled to consult with both military defense counsel and civilian counsel, but was only able to discuss the option with a military defense counsel who did not provide him much information. The applicant asserted that, because he was going through the substance abuse and rehabilitation program (SARP) and had limited time to consult with a civilian counsel, he agreed to the retirement in lieu of further administrative processing based on the command informing him that this would be the only way to preserve his retirement. On August 30, 2018, the applicant was informed that the request had been approved and he would be retained in the Coast Guard and allowed to retire effective May 1, 2020.

The applicant argued that, when he was notified of administrative separation in March 2019, it was based on allegations made by MG that he consumed alcohol in violation of his treatment plan and CAPT W's order on November 18 and December 15, 2018, but MG has since recanted these allegations. The applicant claimed that, on both dates, he and MG got into a verbal argument, but on neither occasion did he consume alcohol. The applicant claimed that he had not consumed any alcohol since May 2018 and MG lied to the command because she was upset with him and wanted to get him in trouble and ruin his career. The applicant argued that the command did not take any steps to corroborate whether he had actually consumed alcohol, which is a requirement in order for an incident to be an alcohol related incident. Further, the applicant claimed that the command took a urinalysis, but never provided him with the results. The applicant argued that this was because there was no alcohol in his system and the results did not help the command.

The applicant argued that, when his counsel contacted the Sheriff's Office to request copies of any incident reports made in November and December 2018, he was advised that their system did not have any reports for either of the dates. The applicant asserted that there is absolutely nothing to substantiate that he consumed alcohol in either November or December 2018. The applicant argued that, while alcohol may have been present near him, there is nothing such as field sobriety tests, breathalyzers, or blood tests to support that he actually consumed alcohol on either occasion. The applicant claimed the only information the command relied on in making their decision were MG's continuous lies. The applicant noted that MG contacted CGIS and informed Special Agent G that she had lied to the command regarding his consumption of alcohol. The applicant asserted that, without any other corroboration, it was impossible to believe MG's veracity.

The applicant argued that while the notification of intent to discharge claimed that LCDR N observed him discarding a bag of alcohol in the woods by his residence, there was nothing to corroborate this claim such as a statement from LCDR N, videos of the purported incident, or an investigation into the allegation. The applicant claimed that if LCDR N had witnessed this, then MG would not have texted him making this allegation. Rather the applicant claimed it was based on a text message LCDR N received from MG, which she later recanted. Based on all these factors, the applicant argued that he was not a treatment failure and should have been able to continue service until his retirement in 2020.

The applicant argued that, while he was recommended for separation with an Honorable characterization of service, he was ultimately awarded a General (Under Honorable Conditions)

characterization of service. The applicant argued that the recommendation of an Honorable discharge is contradictory to the notion that he had committed misconduct, which resulted in an alcohol related incident and failure of treatment. The applicant asserted that deeming his service up until the point of the notification as honorable means he did not commit misconduct, should not have been separated, and should have instead been able to retire the following year. At a bare minimum, the applicant argued that he should have been awarded an honorable characterization of service.

The applicant claimed that, as evident by those who have continued to support him, he dedicated his entire life to the Coast Guard and served honorably for almost two decades. The applicant argued, as evidenced by a statement from JJ, his direct supervisor at the time separation proceedings were initiated, his discharged was taken personally by the command and not handled in a professional manner. The applicant argued that the command had absolutely nothing to support that he actually consumed alcohol, but still moved forward with separation, which gives the appearance of being vindictive and personal, especially in light of MG's admission that she had lied to the command.

In support of his application, the applicant provided a personal statement, statements from six others, and various supporting documents. Only those documents relevant to his application will be summarized in this opinion.

In a June 2022 statement to the Board, the applicant reiterates much of what is already detailed above. The applicant stated that his problems with MG went back to when she was arrested and charged with assaulting him in public in 2015, which resulted in her losing her job and apartment and made the mistake of letting her move in with him temporarily. The applicant claimed that, in December 2017, MG returned from Christmas shopping and attacked him. The applicant claimed that MG then lied to the police, and he was arrested for assault on a female, charges which was later dismissed and expunged.

The applicant claimed that, after that incident he was living in the barracks and occasionally spending the weekends at his apartment when MG was not there. During that period, the applicant claimed MG texted LCDR N who was acting Executive Officer (XO) a picture of his truck in the parking lot of his apartment complex and accused him of stalking her because he refused to give her money. The applicant claimed that, on May 5, 2018, MG returned to the apartment without informing him and became belligerent and confrontational. He attempted to leave the premises to stay at a nearby hotel but was pulled over and arrested on suspension of DWI after a neighbor called the police about all the noise MG was making. The applicant claimed that, after he was released, he was restricted to base and stayed at the barracks. He was informed that he was looking at discharge and would be enrolled in SARP along with the STOP program he was already attending because of the assault on a female charge that had not yet been resolved in civil court.

The applicant claimed that this led to his decision to request retirement in lieu of separation and waive his right to a future administrative separation board. The applicant claimed he was counseled by LCDR N on a Friday afternoon after returning from the second week of SARP despite the command being aware he had five more days until graduation and had limited

time to schedule appointments before the paperwork had to be signed. The applicant asserted that he spoke with a judge advocate who was unable to provide much assistance and was unable to contact Coast Guard legal for any other guidance. The applicant asserted that he felt pressure by the command to sign away any future rights to be retained by the service and that in hindsight this was a mistake. The applicant claimed that, after agreeing to the retirement in lieu of separation, he spoke with an attorney and discussed other possible options in greater detail that could have been addressed if he had the time to retain proper legal counsel.

The applicant argued that, from that point, he was set up for failure by the command. The applicant claimed he was given tasks like cutting the grass, weed whacking, using the blower, and edging the sidewalks that civilian contractors routinely completed in order to embarrass him in front of his friends and peers. The applicant asserted that, while the assault on a female charges had been dismissed and the DWI charges were pending, he was guilty in the eyes of the command and stripped of all of his specialized certifications. The applicant claimed that it was personally and professionally humiliating to have been one of the original 50 Close Quarters Combat Instructors and certified High Risk Training Instructor and then to be demoted to making sure the barracks were supplied with toiletries and bedding. The applicant argued that he was being publicly disciplined for actions he was not guilty of, and this was not conducive to a positive state of mind when factoring in the stress of his personal life and being ostracized from a community in which he was once a respected member.

The applicant argued that the final incident involving MG resulted because she had grown vindictive and was intent on getting him discharged because of personal differences. The applicant claimed that MG had already displayed a history of contacting the command and lying to them in order to suit her purposes, but was continuously given the benefit of the doubt. The applicant claimed MG asked him to purchase her alcohol on his way home from work. The applicant claimed that he was still participating in the post SARP, seeking meetings, and had abstained from alcohol since the DWI charge. The applicant asserted that they had an argument and he left for the night to stay at a nearby motel.

The applicant claimed that, when he returned to his apartment the next day, he received a message from his supervisor informing him members of the command were on their way to escort him back to the barracks on base. The applicant claimed MG had texted LCDR N that he had been consuming alcohol. The applicant asserted that he took the alcohol MG had asked him to purchase and threw it away outside. The applicant claimed he observed LCDR N observing his apartment until Senior Chief B and another LCDR arrived to remove him from his residence and confine him to the barracks over the Christmas holidays. The applicant reported that, when he arrived on base, LCDR N ordered him to submit a urinalysis, but he was never told the results, and believed they were negative.

The applicant stated that the next morning, which was a Sunday, CGIS came to interview him and presented him with a bottle of alcohol in a trash bag and a receipt with his name on it. The applicant claimed the command scheduled this on a Sunday so that he would be unable to contact his lawyer prior to being interviewed. The applicant claimed that he told the CGIS agent he did not wish to speak without consulting his lawyer, but was never given another opportunity to speak with CGIS. The applicant argued that MG set him up when she texted LCDR N where

he had disposed of the alcohol.

The applicant claimed that, when he was given the intent to discharge paperwork nearly five months later, he was scheduled for hernia surgery the following day leaving him little time to present any facts on his behalf. The applicant claimed he was never counseled by anyone in the command besides the Command Master Chief who was aware of the situation involving MG, but was unable to assist him because he was due to retire shortly. The applicant argued that he never consumed alcohol and should not have been separated based on the suspicion that he did.

The applicant asserted that he was betrayed by the Commanding Officer, XO, and Chief's mess and, after over nineteen years and two months of service, he was not even granted an exit interview with the XO. The applicant claimed the separation process was expedited so the Command could grant a 96-hour liberty, which did not give him the time to provide the documentation to correct the inaccuracies regarding some of the awards on his DD Form 214. The applicant claimed that, when he went to retrieve his Troops uniform and personal gear and equipment, he discovered that his uniform had been thrown away and many of his belongings had been stolen by a Chief who was under investigation for selling government property on eBay and had been transferred pending the outcome. The applicant argued that, despite the CO recommending him for an Honorable Discharge, OPM gave him a General Under Honorable Conditions with only what he could provide them in a short amount of time and the Command's biased appraisal of his situation.

The applicant claimed it was devastating to be released from service under those circumstances after all the sacrifices that he made over the years, the way he was treated after almost twenty years of service was unwarranted, and he was misled by the Command regarding what would get him to retirement. The applicant asserted that, if not for the unfortunate series of events, he would still be serving the Deployable Specialized Forces (DSF) community in some capacity as it was the most rewarding period of his professional life. The applicant reported that, since being discharged he has worked for the State in the Department of Public Safety with one of his collateral duties being a member of their Emergency Response Team to which he credits all his prior Coast Guard training and experience. The applicant claimed that he is still dealing with long term physical injuries incurred while in the Coast Guard that would have been resolved if given time. He requested that he be honorably retired from the Coast Guard so he could continue with his life knowing he served his country and the Coast Guard to the best of his ability.

In a March 2019 statement, MG stated that everything she had said happened on December 15 was a lie because she and the applicant had gotten in a bad argument over bills. MG claimed LCDR N never saw the bag being tossed in the woods. MG claimed she had asked the applicant to buy the alcohol for her for a party and the water bottle in the picture she texted to LCDR N was hers and not the applicant's. MG claimed the applicant had not drunk alcohol and she was driving him to and from his classes and group counseling.

MG claimed that, on May 5, 2018, she and the applicant got into an argument while he was trying to leave the apartment and a neighbor called the cops because of a misunderstanding. MG stated, on November 18, 2018, they had an argument because she needed to go to the

emergency room, but denied there was any alcohol or domestic disturbance. MG claimed that the text messages she sent to the applicant's command were lies because she was upset and that "[they] are one of those couples that says [sic] mean things and does mean things when we are mad." MG claimed she has texted the applicant's supervisor and other people she knew were in his command and made things up when she was angry with him and that she has also called the police because she knew they would make the applicant leave their apartment.

MG provided a January 22, 2019 email she sent to the CGIS agent recanting her allegations and stating she was "upset about [the applicant not paying the bills] so [she] made up things. [The applicant] has[] not been driving or drinking."

In an April 19, 2022 statement, LCDR L stated that he met the applicant in February 2007 and they deployed together six separate times. LCDR L stated he was of the opinion the statement made by the other individual involved was pivotal in the final determination to separate the applicant just short of 20 years of service. LCDR L stated that, given his insight to the applicant's performance, initiative, professionalism, and credibility, he believed the truth was much nearer to the applicant's recollection of events. LCDR L stated the applicant served with honor, respect, and devotion to duty, even in the face of the mounting pressure associated with the administrative separation process.

The applicant's former supervisor, JJ, submitted a statement that he did not agree with the applicant's administrative separation, but as a civilian supervisor, he had no say in the matter. JJ claimed that, throughout the process, it was apparent that the command was going to give this discharge no matter what he said as the applicant's supervisor. JJ asserted that, in his opinion, the command did not act in the best interest of the Coast Guardsman when determining the outcome of this situation. He believed the applicant should have been put in a 30-day program, but when he asked the XO, the request was denied. JJ stated that, in his opinion, the applicant should be given an Honorable discharge and the command made a grievous error by not getting the applicant the proper help that he needed. JJ claimed that the "Command was never going to let [the applicant] get his full twenty years and retire – it was a deliberate and calculated vendetta. This discharge was taken very personally by the Command and was not handled in a professional manner in any way."

In an April 1, 2022 statement, RLG (MG's father) stated that he felt discharge six months prior to reaching 20 years is a very harsh punishment for three incidents with alcohol. RLG stated that, as a firsthand observer, the applicant and MG were both at fault, contributing to poor decision-making and behavior. RLG stated that the applicant made mistakes including the alcohol incidents cited in his discharge, but since being discharged, he has continued to support MG and their son.

In a June 8, 2022 statement, AB stated that the applicant was assigned to his housing and barracks department while pending his discharge from service. AB stated that, while he was not aware of the particulars pertaining to the applicant's separation from service, understanding the sacrifice one makes to choose a lengthy career path from any branch of service is within itself a true sign of dedication and patriotism; and should be taken into consideration once the final decision is rendered.

In a June 13, 2022 statement, MC, who served with the applicant from 2007 through 2013, stated he was aware of the applicant's administrative separation from service due to his lack of judgment and alleged alcohol related incidents. MC stated he did not believe this type of behavior was a defining characteristic of the applicant.

In a statement provided by CA, she stated she was best friends with the applicant's youngest sister and had known the applicant for 20 years. CA stated that she understood there were some questions regarding his general discharge to issues in his personal life with the mother of his child. CA stated it was hard to imagine someone serving for almost 20 years would face the possibility of not being honorably discharged.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on April 25, 2000, and rose to the rank of E-6. The applicant received numerous commendations and awards for his service.

On November 12, 2014, the applicant received the first alcohol incident.

On December 24, 2017, the applicant acknowledged receipt of a Military Protective Order issued by his Commanding Officer, which stated:

This order is used based on your arrest at approximately 0015 on 23DEC2017 by the [] Sheriff's Office [] for assault on a female, the alleged victim [MG] named above at the above listed address. This order is effective immediately and will remain in effect until 2400, 29 DEC 2017, unless sooner lifted by the Commanding Officer of Special Missions Training Center or by higher authority. Furthermore, while this order can be more restrictive than an order provided civilian authority, it cannot be less so. When in conflict, you shall follow whichever of the orders, this one or any civilian authority, is more restrictive in nature.

...
On December 26, 2017, the applicant signed a CG-3307, which stated:

You are advised that as the subject of a Military Protective Order issued on 26DEC2017, you are prohibited from accessing or possessing firearms or ammunition as explained in the Coast Guard Policy on Possession of Firearms and/or Ammunition by Coast Guard Military personnel, COMDTINST 10100.1, for the duration of the order. You are advised that this prohibition is a federal law and applies to personally owned firearms and ammunition as well as government owned firearms and ammunition. Possession of any firearm or ammunition, including those previously privately owned, for the duration of the order, is a violation of the law as contained in 18 U.S.C. Section 922 and if you are found to be in possession of a firearm or ammunition, you may be prosecuted by the civilian authorities or punished under the Uniform Code of Military Justice.

On May 5, 2018, the applicant received a second alcohol incident.

On May 31, 2018, the applicant signed a negative CG-3307, which was signed by the applicant and his CO, CAPT W, and stated:

You received an alcohol incident on 5 May 2018 when your abuse of alcohol was determined to be a significant and/or causative factor of criminal misconduct bringing discredit upon the Uniformed Services. Specifically, at or about 2330 hours, the [] Sheriff's Office [] responded to a report of domestic disturbance

at your domestic partner's residence. [] Deputies observed you leaving her apartment complex in a [] truck. You were [later] stopped [and] Deputies approached your vehicle and observed that you had glassy eyes, slurred speech, and smelled of alcohol. [] Deputies asked you to exit your vehicle and complete a Standardized Field Sobriety Test (SFST), you failed the Horizontal Gaze Nystagmus test by not being able to follow the Deputy's fingertip without moving your head. You also failed the walk and turn test. Deputies stated that you interrupted instruction numerous times during both tests, and ultimately failed the test on all phases. [] arrested you for Driving While Intoxicated and transported you to [] County Jail where you refused to provide a breathalyzer sample stating, 'I am not taking that test.' While in [] custody, police offered you (and you refused) several; additional chances to provide a breath sample. I determine by a preponderance of the evidence that you were drunk or impaired while operating your vehicle in violation of [] State law, and also that you refused to provide a breathalyzer sample.

You were previously counseled on Coast Guard policies concerning alcohol use/abuse as well as the serious nature of an alcohol incident. . .

This is considered your SECOND documented alcohol incident. Your first documented alcohol incident occurred on 12 Nov 2014. [Pursuant to] COMDTINST M1000.4, chapter 1.B.17.b.(3), administrative discharge proceedings shall be initiated for:

- (1) Any member who is convicted by domestic or civil authorities, convicted by court-martial, or on whom non-judicial punishment is imposed, for drunken or impaired operation of a vehicle, aircraft or vessel;
- (2) Any member who refuses to take a blood alcohol test or breathalyzer by a recognized authority for suspicion of drunken or impaired operation of a vehicle, aircraft, or vessel; or
- (3) A situation where the member's commanding officer has made a written finding (in a negative Administrative Remarks, Form CG-3307 entry) setting forth the facts of the matter, and that based on a preponderance of the evidence, the member was drunk or impaired while operating a vehicle, aircraft, or vessel in violation of Federal, state, or local law.

You will be processed for separation, in accordance with Chapter 2 of the Coast Guard Drug and Alcohol Abuse Program, COMDTINST M1000.10.

On June 8, 2018, CAPT W, Convening Authority, sent the applicant a memorandum in which the applicant was provided notice of involuntary separation for Unsuitability, citing Alcohol Abuse (1.B.15.b.(5)) and Misconduct, citing Commission of a Serious Offense (1.B.17.b.(3)). The least favorable characterization of service that may be approved was Under Other Than Honorable Conditions (OTH). Three independent bases for involuntary separation were listed: (1) The applicant received a second documented alcohol incident on May 5, 2018 when his abuse of alcohol was determined to be a significant and/or causative factor of criminal misconduct bringing discredit upon the Uniformed Services; (2) he operated a motor vehicle while drunk or impaired in violation of State law on May 5, 2018; and (3) he refused to provide a breathalyzer sample to State Sheriff's Office on May 5, 2018.

On June 25, 2018, the applicant sent a memorandum to CG-PSC-EPM-1 in which he requested to retire in lieu of administrative discharge, which was approved:

1. The request ... and retirement in lieu of discharge is approved provided the member acknowledges [a Page 7] entry [stating]: "To be retained in the Coast Guard you waive your rights to any future Administrative Separation Board for unsuitability and/or misconduct, where alcohol or drugs is a causative factor. You are reminded that you must adhere to your treatment plan. Any future violation involving alcohol or drugs will result in you being processed for separation from the Coast Guard with no entitlement to an Administrative Separation Board."

...

On August 30, 2018, the applicant signed a CG-3307 acknowledging that he agreed to waive his rights to any future Administrative Separation Board for unsuitability and/or misconduct where alcohol or drugs is a causative factor. The applicant acknowledged that “[a]ny future violation involving alcohol or drugs will result in [him] being processed for separation from the Coast Guard with no entitlement to an Administrative Separation Board.”

On March 15, 2019, the applicant received a negative CG-3307 for a third alcohol incident, which he signed on March 26, 2019. The record reflects that at that time the applicant had been provided the opportunity to consult with a military lawyer.

You received an alcohol incident for actions on 18 November 2018 and 15 December 2018 when your abuse of alcohol was determined to be a significant and causative factor of misconduct bringing discredit upon the Uniformed Services. On 30 August 2018, you were given a direct order by me to adhere to your treatment plan for the remainder of your Coast Guard career. As part of your treatment program, you were required to abstain from the use of alcohol. The [] Sheriff’s Department [] responded to two separate domestic disturbances between you and [MG] on 18 November 2019 and 15 December 2018. On both occasions, [the Sherriff’s Office] documented that you were under the influence of alcohol. On 16 December 2018, after the second domestic disturbance, LCDR [N] went to your place of residence to escort you back to [] to submit to a command directed fitness for duty urinalysis. While waiting for you to return home and for LCDR [L] and MECS [B] to arrive, LCDR [N] witnessed you arrive at your residence in your vehicle, exit the vehicle with a black bag in your possession, and abandon the bag in a wooded area near your residence. LCDR [N], along with LCDR [L] and MECS [B], retrieved the bag, which contained a 750ml bottle of Sailor Jerry rum, a 1.75ml bottle of Sailor Jerry rum with approximately one quarter of the contents remaining, and cash register receipts for two separate purchases of alcohol made with your credit card. I determine by a preponderance of the evidence, that on 18 November 2018 and 15 December 2018, you consumed alcohol in violation of your treatment plan and my order given to you on 20 August 2018 and that your actions, while under the influence of alcohol, brought discredit upon the Coast Guard.

This is considered your third documented alcohol incident. Your first documented alcohol incident occurred on 12 November 2014. Your second documented alcohol incident occurred on 05 May 2018. As a result of the second documented alcohol incident, an administrative discharge proceeding was initiated. On 30 August 2018, your request for retirement in lieu of discharge was approved in which you waived your rights to any future Administrative Separation Board for unsuitability and/or misconduct, where alcohol or drugs is a causative factor. You will be processed for separation, in accordance with the Military Drug and Alcohol Policy, COMDTINST M1000.10 (series).

The statement of LCDR N regarding the incident concerning the applicant on December 15, 2018 is set out below:

On 15 Dec 2018, I was contacted by [MG] who informed me that there was a domestic issue with [the applicant] on 14 Dec 2018. She passed that [the applicant] had been drinking that night and became violent and loud. The police were called recently for the same issues a few weeks prior. I contacted [Sherriff Deputy] who is also a BM1 in the USCGR [who] informed me that he was one of the responding officers that night and he is very familiar with that residence as they have had to make multiple calls out to that location due to similar situations. Officer [] informed me that on or about 0100 15 Dec 2018, he responded to the apartment complex [] the residence of [the applicant] and [MG]. Upon arriving at the residence, he was informed that [the applicant] had left the apartment and the officers discovered him hiding in the back of the apartment. Officer [] found [the applicant] under the influence of alcohol and based on his professional opinion, experience and highly strong smell of alcohol in [the applicant], found him to be under the influence of alcohol and intoxicated. Since there were no signs of physical abuse but only material destruction, they recommended that the couple separate for the night to allow a cool down period. Both agreed, and the officers provided a ride for [the applicant] to a local hotel. [MG] informed me that

[the applicant] did not stay gone but walked back to the apartment, where he went to sleep.

After discussing the situation with the SMTC executive officer, CDR [], I went to the [] Sheriff Department to retrieve the police report, only to discover it was documented as a 'event report' from the officer's notes since no arrest was made. Due to other circumstances, the command made the decision that we would make arrangements to bring [the applicant] back to the base. Since [the applicant] did not have a driver[*s] license anymore due to being charged with a DUI, he would need transportation back to the base. I was driving my personal vehicle, so it was decided that MECS [] and LCDR [] would drive the government vehicle to meet me at ME1 Crosbys apartment complex. I arrived at [the applicant's] apartment complex to await the government vehicle. I was also informed by LCDR [] that [the applicant] was informed of the situation and that the government vehicle was on its way to pick him up. As I was sitting there waiting, I witnessed [the applicant] arrive at the apartment complex driving his personnel vehicle. He exited the vehicle and began to clean his truck out. He specifically took a plastic bag out of the truck and went into the woods near by the apartment complex and returned to his truck without the bag. Upon arrival of the government vehicle, MECS [] and I went into the same location in the woods and discovered the bag that contained two bottles of alcohol that were individually wrapped in paper bags. One of the bottles were almost empty and contained a receipt dated 14 December 2019, with [the applicant's] name and credit card numbers listed and the other bottle of alcohol completely full, with a receipt dated 15 December 2019 containing the same information listed for [the applicant] as the other bag.

Upon securing this bag, we approached [the applicant's] apartment door and escorted [the applicant] to the government vehicle. As they departed, I spoke to [MG] and encouraged her to seek assistance. I also made sure she had the contact information for CGIS and reminded her that they had been trying to get a hold of her on the previous incidents and that it was up to her if she was going to cooperate with answering their questions. As we were discussing this, her neighbor approached and informed me she was the one who called the polic[e] and would help in any way.

...

A memorandum, dated March 19, 2019, from CAPT W to the applicant stated in relevant part:

1. This is to inform you that I have initiated action to discharge you from the U.S. Coast Guard by reason of convenience of the government for condition, not a disability. On November 18, 2018 and December 15, 2018, the [] County [] Sheriff's Department [] responded to two separate domestic disturbances between you and [MG] and [the Sheriff's Department] documented that you were under the influence of alcohol each time. While waiting to be escorted [] for a fitness for duty urinalysis test, LCDR [N] observed you discarding a bag of alcohol in the woods by [the applicant's] residence that you had purchased and partially consumed. This is considered your third alcohol incident and a treatment failure which interferes with your performance of duty. Due to your waiving your rights to an Administrative Separation Board (ASB) on a CG-3307 dated August 30, 2018, you are not entitled to request an ASB for this discharge.
 2. I am recommending an Honorable discharge; however, the decision on your discharge and the character of discharge you receive rests with Commander, Coast Guard Personnel Service Center (CG PSC-EPM-1).
- ...
5. You have the right to submit a statement on your behalf. If you choose to submit a statement, I shall include your statement in the discharge recommendation I forward through the chain of command. Should you desire to submit a statement, you must do so within five (5) working days from the date you receive this notification. If you do submit a statement, I will include it as part of the discharge recommendation package I submit to CG PSC-EPM-1.

The applicant acknowledged notification of the proposed discharge, that a statement was attached on his behalf, and that he objected to being discharged.

The applicant's Separation Authorization dated July 5, 2019, provided that he was to be administratively separated from the Coast Guard at the Convenience of the Government for a Condition, not a disability, that interferes with performance of duties; Character of Service: Under Honorable Conditions. The applicant had 19 years, 2 months, and 11 days of service.

VIEWS OF THE COAST GUARD

On December 29, 2022, a judge advocate (JA) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case. In doing so, he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC) with additional comments.

The Coast Guard argued that the applicant received two alcohol incidents (AI) and was processed for separation in 2018. The applicant requested to be retired in lieu of discharge which the Coast Guard approved with the condition that he would waive any future administrative separation board or misconduct or unsuitability where alcohol or drugs were a causative factor. Following this agreement, the applicant then received a third AI after police responded to his residence for a domestic disturbance. After the third AI, the applicant was then separated from the Coast Guard for "condition not a disability: with an "under honorable conditions" characterization of service. The applicant now claims that the basis for the third AI was never substantiated or corroborated, and that the accusations that he consumed alcohol were fabricated. The applicant alleges that the only evidence to substantiate he consumed alcohol for the third AI came from a witness who recanted their statement. The applicant argues that because the witness recanted their statement about him consuming alcohol there is no evidence that he consumed alcohol as required for an AI. However, the command had independent evidence of the applicant's intoxication from the responding police officer to substantiate and meet the basis for the third alcohol incident.

The Coast Guard argued that the applicant failed to prove error or injustice and that the facts supported an alcohol incident, noting, contrary to the applicant's claims, the record shows that the command had sufficient evidence, outside the statement from MG, to substantiate an alcohol incident. The command had supplemental evidence to substantiate that the applicant was intoxicated through independent observations and testimony of a responding police officer, who was also a Coast Guard reservist. As noted in the XO's statement, one of the responding police officers, who responded to the domestic disturbance on December 15, 2018 and previous incidents with the applicant, determined that the applicant was under the influence of alcohol on December 15, 2018. The applicant has provided no evidence to undercut the testimony of the XO nor to refute observations of the responding officer. As such, the Coast Guard argued that the command had sufficient evidence to meet the elements of an alcohol incident, including that the applicant had consumed alcohol and was under the affects of alcohol at the time of the domestic disturbance on December 15, 2018 which resulted in the police being called. The Coast Guard argued that the applicant's actions met the standard for an Alcohol Incident and were supported by sufficient evidence.

Further, the Coast Guard argued that the applicant has failed to sufficiently prove that there is any erroneous or unjust information contained within the CG-3307 dated March 15, 2019 which would entitle the applicant to its correction or removal. Nor has the applicant proven that

the CG-3307 was completed contrary to policy. Consequently, the applicant fails to meet the burden of proving an error or injustice with the issuance of the March 15, 2019 CG-3307.

The Coast Guard argued that, assuming *arguendo*, that the board upholds the issuance of the third alcohol incident, the applicant fails to prove the command was erroneous in separating him. The applicant acknowledged on August 30, 2018 by signed CG-3307, that any future misconduct where alcohol was a factor would result in separation. As such, upon issuance of the third alcohol incident it was not erroneous for the command to immediately separate the applicant. Because the applicant did not reach twenty years of service, he is not entitled to be retired from the Coast Guard. The Coast Guard argued that the applicant also failed to provide sufficient evidence to support an upgrade to his characterization of service to Honorable. Consequently, the applicant was not erroneously or unjustly separated and is not entitled to retirement or an upgrade in his characterization of service.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 17, 2023, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited him to respond. The applicant's attorney provided a response on his behalf, which was received by the Chair on March 1, 2023.

The applicant, through counsel, argued that the advisory opinion omits a relevant portion of the Military Drug and Alcohol Policy, COMDTINST M1000.10 (series), that "the military member must actually consume alcohol for an alcohol incident to have occurred. Simply being present where alcohol is consumed does not constitute an AI." In this case, the applicant argued that nothing has been provided to substantiate that he "actually consumed alcohol." The advisory relies only on the statement of MG and LCDR N as the basis for the applicant being awarded the third alcohol incident.

Regarding the statement of LCDR N, where he states that the responding officer "found [the applicant] under the influence of alcohol and based on his professional opinion, experience and highly strong smell of alcohol on the applicant, found him to be under the influence of alcohol and intoxicated," the applicant asserted that the police report was never provided nor was there any clarification on how or why the responding officer believed he was intoxicated. There were no field sobriety tests completed, no breathalyzers, and no admission of guilt. The applicant argued that responding officer even noted that this was simply considered an "event," and no action was taken against him, other than suggesting that he and his girlfriend at the time separate for the night. The applicant claimed that an officer simply being inside of an apartment where MG was also located is not enough to assume that he was intoxicated. There were no amplifying details provided in LCDR N's statement whatsoever that support the claim that the applicant was intoxicated.

The applicant also argued that LCDR N's claims lack merit regarding his characterization of the chain of events that occurred on December 15, 2018, including the applicant taking a plastic bag out of his truck, bringing the bag to the woods nearby the apartment complex, and MECS later going to that same area and finding two bottles of alcohol, one partially consumed, and a receipt dated December 14, 2019 charged to the applicant's credit card.

The applicant argued there are several issues with this claim of events. The applicant submitted a string of text messages between LCDR N and MG on December 15, 2018. In these text messages, it shows MG text LCDR N a photo inside of an apartment of a water bottle with a dark brown liquid inside. The string of text messages is as follows:

MG: He just hid a bag in the woods
N: Ok
MG: Probably booze
N: ok
N: What color was the bag
MG: Gray
N: Apt number
N: 125
MG: 206
N: I'm at your door
N: Our LE investigator is [JG] at [phone]

...

N: Do you know what he was drinking and the last time he stop drinking
MG: [sends photo of water bottle with dark liquid]
MG: It's whiskey
MG: Or rum
MG: I usually find the bottle

The applicant argued that, contrary to what LCDR N wrote in his statement, based on these text messages, it appears he was untruthful. The applicant claimed LCDR N did not see him exit his vehicle and throw a bag into the woods that he later discovered to contain alcohol. Instead, this was based on text messages from MG. Furthermore, the applicant argued that the bottle of alcohol with the receipt that LCDR N claims had been partially consumed is also not supported. Rather the text messages show a photo of a water bottle with dark liquid inside of it and MG assuming that it was either whiskey or rum.

The applicant contested the timeline provided by LCDR N. While he claims that after he allegedly saw the applicant throw a bag into the woods, he then discovered had two bottles of alcohol with receipts that depicted the applicant's personal information on them. Instead, MG reached out to LCDR N to tell him of the alleged bag with alcohol she found in the woods, and sent him a photo of the alcohol. The applicant argued that, other than LCDR N's statement, there is nothing else to support LCDR N's version of events. There are no statements from either of the other two service members who were there to pick him up. There are no photos of the bag or bottles of alcohol with receipts allegedly found in the woods.

The applicant argued that, if LCDR N had reason to believe that he was consuming alcohol or had consumed alcohol either that day or the night prior, he made no attempts to treat the situation or confirm that he had actually consumed alcohol. There is nothing to show that any field sobriety tests or breathalyzer were conducted, no fitness for duty evaluation, no referral to a screening by a medical provider, no referral to the substance abuse counselor, and no referral to a hospital. The applicant argued that even though LCDR N stated he was driving his personal vehicle while on a suspended license, no action taken as a result.

The applicant argued that these discrepancies and contradictions within LCDR N's statement and the lack of any corroboration raised serious concerns with his credibility and the veracity of which was relied on when making the decision to separate him based on an alleged third alcohol related incident. Simply being near alcohol is not enough to substantiate an alcohol related incident; there must be proof that the alcohol was actually consumed. The applicant argued that there could have been a breathalyzer, field sobriety tests, steps taken towards alcohol treatment and a diagnosis thereafter. The applicant argued that the Board should not rely on LCDR N's statement, which originates from MG, who later recanted her claims. The applicant argued that, without anything additional to corroborate that he consumed alcohol on December 14, 2018, which is a requirement in order to establish an alcohol related incident, the command simply did not have enough to support a third alcohol related incident.

The applicant argued that it is clear there are issues that need to be strongly considered when determining LCDR N's credibility and impartiality. The applicant claimed the evidence reflects there was a personal vendetta against him and this was personal for the command. The applicant argued that the differences between LCDR N's statement, the text message conversation between him and MG, and the lack of corroboration to support an alcohol related incident raises serious concerns to the "evidence" that was relied on in this case. The applicant argued that LCDR N "personally made it a point to destroy [the applicant's] credibility at the unit and make it as difficult as possible to make it to retirement." The applicant claimed LCDR N's statement was untrue and instead communicated to him via text by MG.

The applicant further argued that, even if the Board believes there was a third alcohol related incident, the Board should grant him an honorable discharge based on his overall career in the Coast Guard. The applicant noted that, at the time of his separation, he had served over 19 years. A member is eligible for an honorable characterization if the basis for separation is convenience of the government, which it was in this case. The applicant argued that, when considering his overall career, a general (under honorable conditions) discharge is simply not appropriate. Throughout his career, he deployed multiple times and earned numerous awards. The applicant argued this is further reinforced by the character statements he has provided.

The applicant asserted that, if the command believed he had committed misconduct, then they could have initiated separation based on misconduct, but they did not. The applicant argued that to characterize his overall service as general (under honorable conditions) is not appropriate and his separation short of retirement was unfair and unjust.

The applicant claimed that the Coast Guard's depiction on the character of his service was a mere snapshot that occurred at the tail end of his career during one of the lowest points of his life. He accepted orders to move knowing the financial stress it would impose on him because his now deceased ex-wife had returned to school and their decision to not relocate their teenage children. This move resulted in the end of his marriage. He became involved with MG after his divorce and who repeatedly tried to harm his career.

The applicant claimed he was under mental duress at the time of the alleged incidents having gone from an elite esteemed high risk training instructor to a groundskeeper. The applicant claimed he sacrificed a marriage, personal and professional relationships, his mental

health, and his body in order to meet the Coast Guard's requirements for retirement.

APPLICABLE LAW AND REGULATIONS

The Military Drug and Alcohol Policy (COMDTINST M1000.10A) (June 2018), states at Chapter 4.D.:

D. Alcohol Incident (AI).

1. Except as set forth in Paragraph 4.D.3. below, any behavior, in which the CO/OIC determines by a preponderance of evidence after considering the relevant facts (i.e., police reports, eyewitness statements, and member's statement if provided) that alcohol was a significant or causative factor that resulted in the member's loss of ability to perform assigned duties or is a violation of the UCMJ, Federal, State, or local laws. The military member need not be found guilty at court-martial, in civilian court, or be awarded non-judicial punishment for a behavior to be considered an alcohol incident.

2. Except as set forth in Paragraph 4.D.3. below, the military member must actually consume alcohol for an alcohol incident to have occurred. Simply being present where alcohol is consumed does not constitute an AI.D. Alcohol Incident (AI).

COMDTINST M1000.4, Military Separations (August 2018), establishes policy and procedures concerning separations and retirements for all military personnel.

Art. 1.B.2.f. Standards for Discharge

(1) Honorable Discharge. A member's commanding officer or higher authority can effect a separation with an honorable discharge if the member is eligible for or subject to discharge and the member merits an honorable discharge under the standards prescribed here.

(a) The member is eligible for discharge for one of these reasons:

...
[3] Convenience of the Government.

...
(b) Proper military behavior and proficient performance of duty with due consideration for the member's age, length of service, grade, and general aptitude. The Service will not necessarily deny a member a discharge solely for a specific number of courts-martial convictions or actions under Article 15, UCMJ during his or her current enlistment or obligated service.

...
(2) General Discharge. The member's commanding officer or higher authority may effect a separation with a general discharge if the member is subject to discharge and a general discharge is warranted under the standards prescribed in this Paragraph. When a general discharge is issued for one of the reasons listed in Article 1.B.2.f. (1)(a) of this Manual, the specific reason shall be stated in an entry on an Administrative Remarks, Form CG-3307, entry in the member's PDR. A general discharge applies in these situations:

...
(b) The member is eligible for discharge for one of the reasons listed in Article 1.B.2.f.(1)(a) of this Manual and:

...
[2] When based on the individual's overall military record or the severity of the incident(s) which results in discharge, Commander (CG PSC-EPM-1) directs issuing a general discharge.

Art. 1.B.12. Convenience of the Government

a. Reasons for Discharge. Commander (CG PSC) may authorize or direct enlisted members to separate for the convenience of the Government for any of these reasons. Except as otherwise indicated below, members separated for the convenience of the Government are not entitled to an administrative discharge board.

...

(12) A condition that, though not a physical disability, interferes with performance of duty. This basis for separation includes any medical condition identified in Reference (d), Coast Guard Medical Manual, COMDTINST M6000.1 (series), which is disqualifying for appointment, enlistment or induction, but does not qualify the member for processing under Reference (c), Physical Disability Evaluation System, COMDTINST M1850.2 (series). Before ordering separation, Commander (CG PSC-EPM-1) should consider evidence of the likelihood that medical treatment will resolve the condition in a reasonable amount of time, particularly in cases involving alcohol **substance use disorder** or inadvertent misuse of controlled substances that results in a **substance use disorder**. However, evidence of unsuccessful treatment, treatment failure, refusal to participate in treatment, or a relapse or recurrence of the medical condition after treatment, shall also be considered, and sway heavily in favor of separation. (Emphasis in original.)

...

c. Character of Discharge. A member being discharged for the Government's convenience shall be given an honorable or general discharge, as appropriate, under Article 1.B.2. of this Manual.

...

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record. The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

2. The applicant asserts he discovered the error or injustice on or about July 4, 2019, and his signature on the application to the Board is dated June 28, 2022. Therefore, the application is timely.²

3. The applicant alleged that his administrative separation from the Coast Guard was erroneous and unjust because it was based on erroneous information and the actions taken by his command at the time of the alleged third alcohol incident were not in accordance with Coast Guard policy. The applicant further alleged that the characterization of his discharge as under honorable conditions instead of honorable was unjust.

4. The Board may correct any military record of the Coast Guard when necessary to correct an error or remove an injustice.³ Error means either legal or factual error.⁴ Injustice, when not also error, is treatment by the military authorities that shocks the sense of justice but is

² 10 U.S.C. § 1552(b).

³ 10 U.S.C. § 1552(a); 33 C.F.R. § 52.2(a).

⁴ *Sawyer v. United States*, 18 Cl.Ct. 860, 868 (1989), *rev'd on other grounds*, 930 F.2d 1577 (Fed.Cir.1991).

not technically illegal.⁵ When 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 military record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁶ 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."⁷

5. The applicant claimed that the May 5, 2018 charges which formed the basis of the second documented alcohol incident were voluntarily withdrawn and expunged from his record following a February 2019 hearing. The applicant provided proof that his record had been expunged with his application and response to the AO. The applicant argued that his command was preemptive when it notified him of administrative separation in May 2018 as the allegations had not yet been adjudicated and have since been dismissed and expunged. However, the Board noted that, per Coast Guard policy, a member need not be found guilty in court for a behavior to be considered an alcohol incident.⁸ The evidence reflects that, when stopped by police on May 5, 2018, the applicant failed several standardized field sobriety tests. While the applicant attributes this to the rain and his wearing of flipflops, that does not explain his inability to complete the horizontal gaze nystagmus test, which involves being able to follow a fingertip without moving the individual's head. Nor does it explain why the applicant refused to submit to breathalyzer once transported to jail. In accordance with COMDTINST M1000.4, Article 1.B.17.b.(3) refusing to take a blood alcohol test or breathalyzer by a recognized authority for suspicion of drunken or impaired operation of a vehicle is a basis for initiating administrative separation proceedings. Further, the Board noted that while the applicant argued there was no medical evidence of intoxication after his arrest, this was because he refused the breathalyzer test. As such, the Board finds that the applicant has failed to demonstrate by a preponderance of the evidence the existence of an error or injustice in the command documenting the second May 5, 2018 alcohol incident.

6. The applicant claimed that the basis for the third alcohol incident was never substantiated or corroborated and that the accusations that he consumed alcohol were fabricated. The applicant argued that the only evidence to substantiate he consumed alcohol for the third alcohol incident came from a witness, MG, who recanted their statement. The applicant provided statements from MG recanting her testimony. The applicant also argued that LCDR N's statement that he witnessed the applicant exit his vehicle and throw a bag into the woods was not based on his personal observation, but rather text messages from MG. The applicant questioned the credibility of LCDR N's statement and argued that he, and the command, had a personal vendetta against him.

7. The Board finds that the applicant has failed to demonstrate by a preponderance of the evidence an error or injustice with respect to the decision to document the third alcohol incident which resulted in his separation short of retirement. Contrary to the applicant's

⁵ *Id.*

⁶ 33 C.F.R. §52.24(b).

⁷ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁸ COMDTINST M1000.10A, Art. 4.D.1.

assertions, the evidence is not limited to MG's recanted statement or even LCDR N's observations of the applicant throwing alcohol bottles away in the woods. Rather as noted in LCDR N's statement, dated the same day as the third alcohol incident, one of the responding police officers to the December 15, 2018 domestic disturbance, who was also a Coast Guard reservist, determined that the applicant was under the influence of alcohol. The officer stated that based on his professional opinion, experience, and strong smell of alcohol on the applicant, he found him to be under the influence of alcohol and intoxicated. While the applicant points to the lack of breathalyzer, blood alcohol content, or urinalysis to support this finding, such is not required for the command to find a preponderance of the evidence that the event constituted an alcohol incident. Further, the Board notes that while Coast Guard policy requires that a member "must actually consume alcohol," that does not mean that the command must directly witness the member drinking in order for the behavior to be considered an alcohol incident.⁹

8. Further, while the applicant questioned the credibility of LCDR N and claimed LCDR N did not actually witness him throw alcohol in the woods based on the text messages between him and MG, per his own admission in his application to this Board, the applicant admits to throwing the alcohol he allegedly purchased for MG outside and noticed LCDR N observing his apartment prior to removing him from his residence. While MG may also have told LCDR N about the applicant's actions, the Board finds it reasonable that LCDR N also observed this behavior while waiting for other members of the command to arrive. Regardless the Board finds the command had sufficient evidence to determine an alcohol incident occurred based on the statements made by the police officers who responded to the November 18, 2018 and December 15, 2018 domestic disturbances to LCDR N that the applicant was intoxicated.

9. The Board further finds that the applicant's allegation that LCDR N and the command had a personal vendetta against him and were never going to let him retire unsupported by the greater weight of the evidence. While the applicant submitted a statement from his then-supervisor, JJ, that the command was never going to allow the applicant to retire and JJ's opinion that the applicant should have been put in a 30-day program, the Board notes that the applicant was already given a second chance to reach retirement eligibility. The Coast Guard could have separated him in 2018 following the second alcohol incident, but choose to allow him to continue to serve and seek treatment. The applicant acknowledged on August 30, 2018 that any future misconduct in which alcohol was a factor would result in his removal from service. The Board finds the applicant has failed demonstrate that his command or particularly LCDR N acted improperly with respect to the third alcohol incident and his subsequent separation from service.

10. Additionally, and for the reasons articulated above, the Board finds that the applicant has failed to demonstrate by a preponderance of the evidence that there is any erroneous or unjust information contained with the March 15, 2019 CG-3307. The CG-3307 was completed as required by Coast Guard policy and includes the statements by the responding police officers regarding the applicant's intoxication when responding to the November 18 and December 15, 2018 domestic disturbances. Further, the applicant does not contest that he threw alcohol away in the woods, just whether it belonged to himself or MG.

⁹ *Id.*, Art. 4.D.1 and 2.

11. Based on the third alcohol incident, the Board finds that the applicant has failed to demonstrate by a preponderance of evidence that the command's decision to separate him short of retirement was erroneous or unjust. When he was allowed to continue serving in the Coast Guard following the second alcohol incident in 2018, the applicant explicitly acknowledged that "[a]ny future violation involving alcohol ...will result in [his]" separation from the Coast Guard. The Board finds the applicant was fully aware of the consequences of a third alcohol incident. He was also already provided a second chance after the second alcohol incident. As such, the Board finds nothing erroneous or unjust with the command's decision to separate the applicant in 2019.

12. Finally, regarding the applicant's characterization of service, while the Board finds nothing erroneous with respect to the Coast Guard's decision to separate the applicant with an under honorable conditions (general) discharge,¹⁰ the Board finds that the applicant has demonstrated by a preponderance of the evidence the existence of an injustice warranting relief. While the commanding officer's recommendation that the applicant be issued an honorable discharge was not binding on PSC, the Board finds it persuasive evidence that the individuals who had directly observed his performance deemed his overall service to have been honorable. The Board notes that the applicant had over 19 years of service and numerous decorations, awards, and deployments and found that his personnel records reflect that his performance had been highly proficient through at least 2017. The Board further finds that the Coast Guard's decision to separate the applicant for a condition, not a disability instead of misconduct weighs in favor of granting relief. Considering the applicant's overall record, including the alcohol incidents that resulted in his discharge short of retirement, the Board finds that the issuance of an under honorable conditions (general) discharge was unjust. As such, the Board finds the applicant's record should be corrected to reflect that he was discharged with an honorable characterization of service.

(ORDER AND SIGNATURES ON NEXT PAGE)

¹⁰ COMDTINST M1000.4, Art. 1.B.2.f.2(b)[2] (providing that a member may be issued a general discharge based on convenience of the government "based on the individual's overall military record or the severity of the incident(s) ...").

ORDER

The application of former Maritime Law Enforcement Specialist, [REDACTED], USCG, for correction of his military record is partially granted. The Coast Guard shall upgrade the applicant's discharge characterization to Honorable and issue him a new DD Form 214 reflecting this correction. All other relief is denied.

October 31, 2024

