

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2022-079**

  
YN3 (former)

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**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 May 30, 2022, and prepared the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated July 21, 2023, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST**

The applicant is a former yeoman, third class (YN3/E-4) who enlisted in 2016 and received an “Uncharacterized” administrative discharge from the Coast Guard in 2019. His DD-214 states that he was discharged for “Fraudulent Enlistment on Active Duty, Drug Abuse,” with a JDT separation code<sup>1</sup> and an RE-4 reenlistment code (ineligible to reenlist).<sup>2</sup> The applicant<sup>3</sup> asked the Board to upgrade his narrative reason for separation to “Convenience of the Government”; his separation code to one denoting “Early Release—Other”; and his reenlistment code to RE-1 (eligible to reenlist). He also asked the Board to add 25 days of active duty to his record so that he will receive veterans’ benefits based on three full years of active duty. The applicant’s allegations and arguments appear below the Summary of the Record.

**SUMMARY OF THE RECORD**

On May 24, 2016, at age 22, the applicant enlisted on active duty in the Coast Guard for four years. On the Record of Military Processing signed by the applicant and his recruiter, the applicant initialed the “Yes” box in response to this question:

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<sup>1</sup> JDT denotes an involuntary discharge for “fraudulent enlistment on active duty, drug abuse.”

<sup>2</sup> The DD-214 also indicates that it was reissued due to corrective action taken by the Discharge Review Board (DRB).

<sup>3</sup> The applicant was represented by his father in this proceeding.

26. DRUG USE AND ABUSE (If “Yes,” explain in Section VI, Remarks) Have you ever tried, used, sold, supplied, or possessed any narcotic (to include heroin or cocaine), depressant (to include quaaludes), stimulant, hallucinogen (to include LSD or PCP), or cannabis (to include marijuana or hashish), or any mind altering substance (to include glue or paint) or anabolic steroid, except as prescribed by a licensed physician?

In Section VI, Remarks, of this form, the “Yes” answer is addressed with the following comment: “Used THC in 2008.” Section VI does not have its own signature block for certification by the enlistee.

The applicant also signed block 29 on this form, which states the following:

I certify that the information given by me in this document is true, complete, and correct to the best of my knowledge and belief. I understand that I am being accepted for enlistment based on the information provided by me in this document; that if any of the information is knowingly false or incorrect, I could be tried in a civilian or military court and could receive a less than honorable discharge which could affect my future employment opportunities.

In addition, block 13 of the applicant’s enlistment contract, which he signed, states the following:

My acceptance for enlistment is based on the information I have given in my application for enlistment. If any of that information is false or incorrect, this enlistment may be voided or terminated administratively by the Government or I may be tried by a Federal, civilian, or military court and, if found guilty, may be punished.

Finally, the applicant signed a CG-3307 (Page 7) on the day he enlisted in which he certified that “all information on my enlistment documents is current and accurate. I have not had any involvement with the police or had any changes in dependency unless noted on these documents. I understand withholding information is punishable under the Uniform Code of Military Justice (UCMJ) and may result in a less than honorable discharge for fraudulent enlistment.”

The applicant completed recruit training and served at a lifeboat school as a non-rate for 14 months. He received two semiannual performance evaluations at the school with good marks and recommendations for advancement. In the fall of 2017, the applicant attended YN “A” School to earn the Yeoman rating. He graduated from YN “A” School in December 2017 and reported for duty as a YN3 at a Servicing Personnel Office (SPO) at a large Coast Guard Base on December 29, 2017.

On his first semiannual Enlisted Evaluation Report (EER) as a YN3, dated March 31, 2018, the applicant received seven marks of 4, five marks of 5, and one mark of 6 (on a scale from 1 (worst) to 7 (best)) in the thirteen performance dimensions, a satisfactory conduct mark, and a mark of “not ready for advancement.”

### ***EER and Draft Appeal***

On his second semiannual EER as a YN3 at the SPO, dated September 30, 2018, the applicant received eleven marks of 4 and two marks of 5, a satisfactory conduct mark, and a

mark of “not ready for advancement.” On October 15, 2018, the applicant drafted an EER appeal but he did not submit it above his CO. In his draft appeal, he asked for higher marks in eight performance dimensions. He explained each request with claims about his performance during the marking period. For example, he stated that he—

- “consistently produced expert-quality work that rarely needs corrections”;
- “completed over 400 unique transactions”;
- “maintain[ed] just under 300 records and file[d] important paperwork in these daily as well as processing pay, disciplinary, and leave transactions for every member”;
- “flawlessly took on this extra responsibility [seven more units] and have not let it affect my performance”;
- “consistently ma[d]e pay corrections and locate discrepancies with little to no guidance”;
- “regularly volunteer[ed] my knowledge and ability to assist shipmates with problems they face, as well as tackling my own”;
- “use[d] resources located throughout the Coast Guard Portal and contact[ed] shipmates and other members for additional information to solve the problem at the lowest level”;
- “draft[ed] clear, well-written, and concise e-mails back and forth with the Admin and the XO aboard [a cutter] to solve the problem and keep my supervisor updated”;
- “[was] rarely prompted for task completion and consistently inform[ed] my supervisor of work status”;
- “complet[ed] most of my complex tasks early in the day, leaving me time to tackle maintenance-like tasks throughout the rest of the day such as PDR audits and filing”;
- “enthusiastically stepped up and volunteered to accept the additional responsibility as the shop’s Supply Officer”;
- “received zero training from my previous supervisor” between January 18 and August 18, 2018;
- “match[ed] or surpass[ed] my peers in technical proficiency and specialty knowledge”;
- “[was] always honest and upfront about mistakes I’ve made, and ... eager to correct and learn from these errors as they arise”;
- “consistently demonstrated a commitment to both good morals and ethics in and out of the workplace”;
- “[chose] my words carefully when talking with others, to avoid offending anyone unintentionally”;
- “always demonstrated strong ethical principles and convictions through personal action. I have consistently been honest about mistakes I have made, and made positive strides to correct those mistakes”;
- “always produce[d] great results from my work and have never been late to work or duty”;
- “drafted well-written and easy to understand e-mails between myself and the cutter to effectively solve the problem at the lowest level”;
- “consistently demonstrated professional knowledge that exceeds expectations in my working environment”; and
- “consistently produced work with no mistakes and [was] commended on my work by both my direct supervisor and other Petty Officers in the office.”

Although the applicant provided the Board a copy of this draft EER appeal, he stated that after repeatedly rewriting it to meet his supervisor's "exacting standards," he was discouraged when the CO returned it for further revision and decided not to continue with the appeal. The CO stated that he returned the applicant's EER appeal to him with a request for supporting documentation so that it could be forwarded to a Rear Admiral for review.

### *First Negative Page 7s*

On October 18, 2018, the applicant received a Page 7 (CG-3307) from the Base CO to counsel him about lying and leaving work without permission:

18 OCT 2018: On this date you were counseled in departing work early without prior approval on 17 OCT 2018. When asked about the event of you leaving early you lied to your Chief and stated you didn't leave early. Two supervisors in the SPO were witnesses to you departing without approval at 1545. Furthermore, you were counseled on 10 OCT 2018 by your auditor and Chief about your unacceptable behavior in the office and instructed to remain professional in the workplace. Instances like these will not be tolerated, any future matters like this will result in a stronger administrative action.

On November 21, 2018, the applicant received a second Page 7 from the Base CO to counsel him about negligent performance:

21 NOV 2018: You are being counseled for your lack of performance at a Third Class Yeoman level in the SPO. Your negligence, lack of organizational and communication skills have negatively impacted the customers you service as a SPO Technician as well as your fellow co-workers.

On 30 OCT 2018, it was discovered you had a delinquent DD214 which was waiting on a signature from a member in your possession for nearly two months. This delay caused unnecessary interruptions to the separation process.

On 6 NOV 2018, we received an email from the BASE NCR SPO looking for a PDR for a member previously stationed at MSD [redacted]. After a record review, it was discovered you were the technician assigned to MSD [redacted] at the time the member departed on 1 AUG 2018 for over 61 days of ADOS-AC orders. Per COMDTINST M11080.10, Military Personnel Data Records Systems, all SPO PDR'S are to be mailed out within five days of the members departure for ADOS orders greater than 60 days.

On 13 NOV 2018, it was brought to your YN1's attention that you had not responded to a TRACKS request for a reserve member. A request was submitted in TRACKS on 02 AUG 2018 concerning a deduction from pay on pay slip. You waited more than two weeks and responded on 21 AUG 18 saying you would submit a PPC trouble ticket and get back to them. You neither submitted a ticket nor did you seek assistance from anyone else in the SPO to identify what the deductions were for. Two more updates were requested on 17 OCT 2018 and 7 NOV 2018 respectively. Instead of taking appropriate action, you changed the TRACKS ID to another YN3 in the office and did not let them know you were transferring the issue to them.

Your actions listed above brought discredit to BASE [redacted] and the SPO Department. To be clear, the deadline to take appropriate action on all items in the SPO is five days, to include, filing documents in the respective PDR, responding to requests from Admins or Commands, entering pay entitlements, and mailing PDRs or other documents. It is wrong and inappropriate for you to make the decision to store pending documents in your desk; this will not happen again. Any

further instances of this nature will result in you being placed on performance probation and/or more stringent administrative action.

On December 7, 2018, the applicant's CO signed the following Page 7 to counsel him about missing a significant deadline and having a lackadaisical attitude:

07 DEC 2018: On 01 DEC 2018, you failed to meet the deadline given to the entire SPO on 18 OCT 2018 for auditing your PDR's. You were given significant time and received assistance by your shipmates and yet you still failed to meet this deadline. When the tasking was first given to you, you were overheard by your YN1 telling one of your fellow YN3's that you had time and that they needed to "chill out" when they suggested you start auditing. This YN3 also told you that you could audit 7 records a day to meet this deadline, in which you replied "no problem, I have time". At the time of the deadline, you had nearly 25% of your records left to be audited. You were the only YN3 in the SPO that failed to meet this deadline. This calls into question your commitment and desire to be a productive YN3 in the Coast Guard. Failure to meet deadlines is a reoccurring documented issue with you. This lackadaisical attitude you portrayed to your peers and supervisors will no longer be tolerated. The next failure of this magnitude will subject you to administrative action.

### ***Performance Probation***

On December 12, 2018, the applicant was placed on performance probation and counseled on a Page 7 about the reasons for the probationary period and how to improve as follows:

12 DEC 2018: This is to inform you that your performance has been unsatisfactory when compared with that of your peers in your grade. Consequently, you are being placed on a six-month probationary period commencing this date. Your probation will run through 12 JUN 2019. During this probationary period, you will be observed, counseled and mentored to ensure you have the necessary tools available to successfully complete this probation. The reasons you are being placed in a Performance Probation Status are Unsuitability: Inaptitude. Specifically:

On 13 JUL 2018, you were out of the office on a last minute day of leave request. Before you were approved to take your leave, your Supervisor asked if your filing was completed and all of your current pay slips were verified, you stated that everything was up to date. While you were on leave, your Department Head requested an update on a PCS orders amendment request that was sent to you via email on 28 JUN 2018. While searching for this member's PDR to complete the amendment that was not finished, your Supervisor found a set of PCS orders for a member who was scheduled to depart on 13 JUL 2018 whose paperwork was received via TRACKS on 09 JUL 2018 and were not complete, along with pay slips and documents that had neither been verified nor filed. On 16 JUL 2018, when confronted about your incomplete work that was found the previous workday by your Supervisor, you stated, "Just give me the Page 7 and do what you have to do." Not only does your inaction confirm a lack of responsibility, your response also showed intolerable disrespect to your Supervisors.

On 10 OCT 2018, you received an informal counseling for your actions on 5 OCT 2018, where you were overheard making negative comments about updating your PDR cover sheets, after a YN1 in the office told you to update them. Instead of just filing and fixing your PDR's you spent 2 hours complaining about it. You were overheard saying it was "stupid" and that you were not going to do it.

On 18 OCT 2018, you received a negative 3307 for departing work early without approval on 17 OCT 2018. When your Chief asked if you had left early, you stated that you didn't leave early.

Two YN1s in the SPO were witnesses to you departing without approval. This is another example in which you lied to your Chief or a supervisor, and your integrity was questioned.

On 15 NOV 2018, you received a negative 3307 for not mailing out SPO PDRs for members who departed eight months prior.

On 19 NOV 2018, your supervisor received an email from one of your ADMIN POC's stating that you hadn't responded to a TRACKS item in over 5 days prior. When you did respond, all you wrote was "attachments are not in TRACKS". The attachments were sent to you via email on the same day as the original TRACKS by the YN3 from Sector because TRACKS wouldn't allow them to be attached. This is an example of you not checking your emails properly.

On 21 NOV 2018, you received another negative 3307 for a variety of negative instances, including holding onto a DD 214 for nearly two months, which caused a delay in this member's separation process. You were reminded of all SPO duties and what is expected of you as a YN3 in the SPO.

On 27 NOV 2018, you were counseled again because you failed to follow simple policy by taking a third smoke break during your workday. Not only did you take the unauthorized third break, but you knowingly deceived your YN1 when asking to take your "afternoon break" because you had already taken your afternoon break when they were not present in the office. Also on this date, you were told by your Chief that you were not wearing your watch cap correctly, something that has already been addressed to you by another Chief on the Base just a few weeks prior. You have demonstrated a pattern of being dishonest and disregarding Chiefs and Petty Officers in your Chain of Command.

Furthermore, you failed to meet the deadline given to the entire SPO on 18 OCT 2018 for auditing your PDR's. One of your peers completed almost half of your records audit for you after they had completed their own. You put in little to no effort to match their contribution. By failing to meet this deadline, it calls into question your commitment and desire to be a YN3.

Your current and past supervisors have observed your unwillingness to do all of the tasks required of you. You are not completing tasks in a timely manner; for instance you have five working days to file incoming transmittals from the Admin shops but have continued to allow your filing stacks to pile up and exceed the expected timelines. Your overall negative attitude and disrespect in the office has also been a distraction to your shipmates.

Your performance at Base [redacted] has been unacceptable. You failed to complete the most basic tasks and requirements expected of a Third Class Yeomen and ultimately, you proved to be incapable of effectively performing your duties.

In order to successfully complete this probation and be retained in the Coast guard, you must accomplish the following:

- a. Check Direct Access daily and update spreadsheets and TRACKS, also ensure that any completed transactions have been annotated in the spreadsheet.
- b. Consistently complete all pay transactions and other administrative actions within established deadlines. Transmittals (including filing) completed within five working days.
- c. Demonstrate proper maintenance PDR's by ensuring all incoming PDR's are reviewed and in compliance with Commandant Instruction. All incoming PDR's need to be logged immediately once received and if not received within five days after report contact previous SPO for status. All departing members PDRs must be mailed to the new SPO within five days of the member's departure date logging the tracking info in the mail log. Make use of all available down time in the office by reviewing PDR's routinely to ensure that they are in compliance with Commandant Instructions.

d. Prior to any extended time away from the office, ensure a proper pass down via email to your SPO Technician teammate and your auditor for any pending work. Ensure that you follow all procedures to include putting your leave in Direct Access, CGPAAS and the SPO calendar once approved by supervisor. When communicating with your supervisor and stating something is completed, double check so that your integrity is not in question if the task really wasn't completed. If you are unsure of the task, ask clarification, expectations and deadlines.

e. Ensure that separating member's orders and DD214s are completed prior to the member departing on Terminal Leave. Not having a signed final DD214 as a separating veteran is a huge inconvenience on the member and their family.

f. Comply with SPO Expectations and inform your supervisor immediately if you are unable to meet any deadlines.

g. Embody the core values (Honor, Respect and Devotion to Duty) of a Coast Guardsmen and follow all policies and regulations.

You must take ownership of your actions and take collective action. Your performance must improve over the next six months, or you will be considered for discharge.

I am authorized to recommend discharge at any time during this probation period if you are not attempting to overcome your deficiencies or fail to show progress. You will receive weekly written counseling throughout this period to document your performance. Should you fail to show significant improvement in overcoming the deficiencies, I shall recommend your separation from the Coast Guard. Should you fail to attempt to overcome deficiencies at any point during this probationary period, I shall immediately cancel the probation period and recommend you for immediate separation from the Coast Guard for Reason of Unsuitability.

### ***CGIS Investigation***

On December 27, 2018, a Special Agent (SA) for the Coast Guard Investigative Service (CGIS) closed an investigation concerning the applicant and referred the matter to the applicant's CO. The Report of Investigation (ROI) states that the case was opened on November 28, 2018, and includes the following synopsis in pertinent part:

This investigation was initiated upon notification by (PK)<sup>4</sup> [redacted name of Coast Guard Base Chief of Police], CG Police Department, CG Base [redacted], that (S) YN3 [applicant], CG Base [redacted], had been afforded his Article 31B rights for suspected wrongful use or possession of a controlled substance. According to (PK) [Chief of Police], (S) YN3 [applicant] waived his rights, denied using any controlled substances, and consented to a urinalysis examination; however, CG Base [redacted] command declined to administer the examination.

According to reports provided by (PK) [Chief of Police], on 11/7/2018, (PK) [Chief of Police] advised (S) YN3 [applicant] of his rights under Article 31b, UCMJ, after (PK) YNC [redacted], CG Base [redacted], and (PK) [redacted], Command Master Chief, CG Base [redacted], reported observing characteristics of (S) YN3 [applicant] with someone using narcotics. The reports also indicated that (PK) [Chief of Police] observed (S) YN3 [applicant] operating his vehicle on Base using his cellular telephone and when he discussed the incident with (S) YN3 [applicant], he observed his eyes were bloodshot.

Database queries by CGIS revealed (S) YN3 [applicant] had numerous contacts with civilian law enforcement between 2010 and 2014 in matters ranging from the underage purchase and possession of cigarettes, possession and use of marijuana, breaking and entering, and a nonviolent family dispute. The records reviewed disclosed no information indicating (S) YN3 [applicant] having ever been convicted of criminal offenses.

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<sup>4</sup> PK stands for "person with knowledge," and S stands for "subject."

Review of (S) YN3 [applicant's] enlistment paperwork and security questionnaire revealed admitted use of marijuana on two occasions in 2008.

Review of (S) YN3 [applicant's] CG communicator logs revealed his discussing the use of drugs prior to his enlistment in the CG, to include a comment that April 20, 2018, marked two years to the day he last smoked marijuana.

When interviewed by CGIS, (S) YN3 [applicant] stated that on a few occasions he has come to work with red eyes because he was tired or had hay fever. He recalled being questioned by the CG Police Department and his supervisor, YNC [redacted], about alleged drug use. (S) YN3 [applicant] said he initially agreed to provide a urine sample but that the command decided it was not necessary. (S) YN3 [applicant] advised that he joined the CG approximately two and half years ago, and initially stated he smoked marijuana once or twice while in high school in 2010/2011. (S) YN3 [applicant] denied being a regular user of marijuana. (S) YN3 [applicant] denied doing drugs while enlisted in the CG and denied ever being charged or convicted for offenses related to drugs prior to enlisting in the CG. (S) YN3 [applicant] subsequently admitted to smoking marijuana more than twice in high school and to falsifying his enlistment documents regarding his marijuana usage. He also admitted that approximately a year ago he was with non-military friends who were engaged in smoking marijuana.

This investigation is Closed—Referred to Commanding Officer, CG [redacted], and Legal Services Command, [redacted], for adjudication.

The ROI shows that although the Special Agent initiated the investigation upon receiving the police officer's tip that the applicant was suspected of illegal drug use, after reviewing the evidence, the Special Agent concluded that the only offenses supported by the evidence were Article 107 of the Uniform Code of Military Justice (UCMJ), False Official Statement, and Article 83, Fraudulent Enlistment.

The evidence gathered by the Special Agent included several reports from various police departments near the applicant's home of record dated from June 2008, when the applicant was 14 years old, to 2014, when he was 20 years old. The most significant state the following:

- On February 15, 2011, someone broke the rear sliding glass door of a home. On March 4, 2011, the homeowner notified the police that the applicant had "confessed to her that he broke the window to gain entry and stole a bong from her son's room." On March 10, 2011, the applicant admitted to the police that he had broken the sliding glass door, entered the house, and taken the bong. He was arrested for Breaking & Entering with intent to commit a felony.
- On February 19, 2011, the applicant "was observed inside a vehicle with 2 other occupants. Upon stopping the vehicle, the responding officer observed what appeared to be marijuana in their possession. The marijuana was recovered, and all three occupants were released to their parents with a warning."
- On May 10, 2011, the applicant was trespassed from a property where he was smoking marijuana. He was told that he was not allowed to be on the property.
- On June 13, 2011, the applicant was arrested for trespassing after the complainant received a phone call from a witness who told her that the applicant was on the back porch smoking marijuana after being told he was not allowed on the property.



- On June 26, 2011, a complainant reported that her “vehicle was egged overnight” and she suspected the applicant of vandalizing the vehicle “as retaliation for a court sentencing that occurred on 6/23/11.”
- On August 23, 2014, the applicant’s parents reported that he was “acting erratically with his father” and that his “mother had cleaned his room and found marijuana in his pants, which she flushed.” This report also included medical information about the applicant that his parents shared with the police.

The special agent also collected message logs from the applicant’s Coast Guard equipment and found the following:

- “On 3/14/2018, (S) YN3 [the applicant sent another YN3] messages stating ‘I smoked a lot of freaking weed before I joined the cg’ and ‘my memory isn’t very good’.”
- “On 4/20/2018, (S) YN3 [the applicant █████ sent a different YN] messages stating ‘today marks 2 years to the day that I last smoked weed’, ‘It’s a special special day’, ‘I left for boot camp 30 days later’.” ...
- “On 4/24/2018, (S) YN3 [the applicant sent a YN3] messages stating ‘so Im gonna try to finish my bachelors by the time my contract ends’, and then go ocs or get out’, ‘and get a job where I can smoke weed’.”
- “On 5/2/2018, (S) YN3 [the applicant sent a YN3 at the SPO] messages stating ‘if I get an AI I get a free pass to smoke weed every day?’, ‘can I have an AI now’, ‘I would 100% be high right now if I was her’, ‘especially on duty oh my god I would love duty if I was fried throughout’.”

The special agent also reported that on December 11, 2018, he had received and reviewed the Electronic Questionnaires for Investigations Processing form that the applicant had completed on March 8, 2016, before enlisting. The questionnaire showed that the applicant had admitted to having used illegal drugs and wrote that he had smoked marijuana twice in high school and that his most recent use had been in February 2008. The special agent interviewed the applicant’s recruiter. The recruiter remembered the applicant’s face from a photograph but had no specific memories of filling out the paperwork with him.

On the morning of December 12, 2018, two special agents interviewed the applicant. The applicant was informed that he was suspected of illegal drug use in violation of UCMJ Article 112a for the following reasons:

- (1) Your eyes on more than one occasion have been blood shot.
- (2) You have been late on multiple occasions.
- (3) You exhibited a lack in judgement by operating a motor vehicle while using a cell phone.
- (4) You were counseled for disregard of duty during hurricane [redacted].
- (5) On 11/07/18, your supervisor and Chief of Police noticed your eyes being glassy and dilated.

The applicant was read his rights, waived his right to counsel, and agreed to answer questions. After the applicant denied any current use of illegal drugs, the special agent asked him about his past use as shown in the police reports and his messages to other YN3s and the

discrepancy with what he told his recruiter. According to the special agent's notes, during the interview, the applicant made some admissions:

- “10:28 - (S) YN3 [applicant] admitted to smoking marijuana more than twice in high school and falsified enlistment documents regarding his marijuana usage. He did not believe anyone would ever question his marijuana usage because he had been a model Coast Guardsman.”
- “10:31 - (S) YN3 [applicant] denied thinking about doing drugs. He said he has talked about doing drugs but only as a joke.”
- “10:33 -Approximately a year ago, he was around non-military member friends from [redacted] that were engaged in smoking marijuana.”
- “10:35 - He acknowledged that he told someone on a government computer that he smoked a lot of marijuana and his memory was not the best. He started smoking marijuana sporadically in 2008. He further explained, he was approximately 20 years old when he last smoked marijuana; which was more frequent after High School.”
- “10:37 - (S) YN3 [applicant] had no intentions of telling the CG Recruiter the truth about his drug usage.”
- “10:39 - (S) YN3 [applicant] admitted to paying a fine for underage possession of tobacco.”
- “10:45 - (S) YN3 [applicant] was scared to admit how often he smoked marijuana on the enlistment paperwork. He denied ever asking anyone or being directed about how he should complete the paperwork.”

### *Additional Counseling on Page 7s*

On January 30, 2019, the CO signed another Page 7 to counsel the applicant about his poor performance and attitude:

30 JAN 2019: On 23 JAN 2019, it was discovered by one of your peers that you failed to mail out the SPO PDR's for two members who separated in April of 2018. A fellow YN3 was trying to help you get all of your advancement messages inside the PDR's, something you should have completed during your PDR audit two months ago, when they found this discrepancy.

On 25 JAN 2019, your YN1 auditor placed the PDRs in your pending drawer for you to take action on, you removed the PDR's and filed them back into the unit' records without taking the required action. When asked why you did this, you stated you didn't know what to do with them and that they were not your units when the members separated. After being told by your YN1 to mail them out, you continued to complain to your peers that they weren't your PDR's when they separated and you are always the one getting in trouble. This negative attitude continues to show your unwillingness to take accountability of your own actions or the records you are responsible to maintain.

You were placed on performance probation on 12 December 2018 to correct deficiencies in your performance and warned that you could be recommended for discharge at any point in time during your probationary period. This incident does not reflect someone who is working towards improvement to stay in the Coast Guard. Further instances of this nature will only continue to demonstrate poor performance by you and lead to a recommendation for discharge.

On January 31, 2019, the applicant's CO signed the following Page 7 for the applicant's record, but the applicant refused to acknowledge it with his signature:

31 JAN 2019: On this date, a Chiefs Performance Review Council (CPRC) was convened on my authority, to evaluate your performance. The BASE [redacted] Chiefs Mess met with you at 1300 to discuss your past and present performance and rating deficiencies. Since reporting aboard BASE after YN "A" School, your performance, as a YN and a 3rd Class Petty Officer has been sub-par. You have amassed 5 Negative CG-3307's in the last four (4) months and continue to perform poorly since being placed on Performance Probation on 12 DEC 2018. Your inability to adhere to the Coast Guard's Core Values of Honor, Respect, and Devotion to Duty was blatantly evident as you lied to the entire Chiefs Mess about having every YN in the SPO check your uniform before reporting to the CPRC. As provided in more than one previous CG 3307, this is not the first instance of dishonesty from you towards a senior Petty Officer. On 14 NOV 2018, a Chief Petty Officer from another command observed you "vaping" in a government vehicle (GV). When your Chief asked if you were vaping in the GV, you lied and said you were not. Furthermore, you made jokes about meeting with the Chiefs Mess because you were a "bad boy" to a junior YN3, showing further disrespect and the inability to fully grasp the seriousness of the situation.

You are currently on Performance Probation until 12 JUN 2019 and I emphasize that you must take ownership of your actions and make significant improvements or risk discharge from the Coast Guard. I further order that you shall not violate any Coast Guard Policies during the remainder of your tour on BASE [redacted] as the consequences of doing so will be most severe.

### ***Discharge Proceedings***

On February 19, 2019, the Base CO notified the applicant of his intent to discharge the applicant due to fraudulent enlistment:

1. This is to inform you that I have initiated action to discharge you from the Coast Guard pursuant to the provisions of reference (a) Art. 1.B.17.e. by reason of misconduct due to fraudulent enlistment.
2. The decision on your discharge and type of discharge you will receive rest with Commander (CG PSC-EPM-1). You have the following rights:
  - a. As you are being considered for an uncharacterized discharge, you have the right to consult with a lawyer as defined by Article 27(b){I} of the Uniform Code of Military Justice.
  - b. You will receive an "uncharacterized" discharge. Per reference (a) 1.B.19.c. you should not expect to receive a discharge certificate, but should expect to receive a DD-2 I 4.
  - c. You may submit a statement on your own behalf within (5) working days of today's date.
  - d. You may disagree with my recommendation; if so, your rebuttal will be forwarded with my recommendation.
3. You must submit any statement regarding your separation within five working days using the attached form. If you decline to consult with military counsel, the five-day period will run from the date you receive this notification. If you elect to consult with military counsel, we will arrange for a consultation appointment, and the five-day period will run from the date of that appointment. If you do not exercise these rights by completing the enclosed form and returning it to the Executive Officer within this five day period, your right to submit a statement will be considered to be waived.

On 22 February 2019, the applicant's counsel was informed that the CGIS ROI, which formed the basis for discharge, could be viewed at the Base or at the Legal Service Command. His counsel was also informed that the applicant's had five days to provide a statement on his behalf regarding discharge.

On March 1, 2019, the applicant acknowledged receipt of the discharge notification, acknowledged that he had had an opportunity to consult a military lawyer about the proposed Uncharacterized discharge, objected to being discharged, and submitted the following statement, in pertinent part:

3. I disagree with the intention to discharge me and I wish to explain the series of events that led to two investigations and ultimately to your letter dated 19 Feb 2019, reference (a).
4. On or about 03 October 2018, when I walked into my office spaces, [the YNC] told me that I had red-eyes. (As an aside, this is a long-standing family issue suffered currently by both my mother and her father, both ethnically [redacted].)
5. On or about 23 October 2018, I was called in to a meeting with [the YNC] where there were two CGPD [police department] members waiting with a video recorder. They read me my Article 31B rights, which I waived, and told me I was suspected of marijuana use while in the Coast Guard and that I did not have to consent to a drug test. They then asked me if I would be willing to take a urinalysis. I immediately agreed. [The YNC] then left the room to organize a urinalysis, returning approximately a half-hour later, stating that "they no longer thought it necessary to test me."
6. On or about 23 November 2018, I was contacted by a CGIS investigator, Special Agent [redacted], to come to his office for a talk. At that time, I thought the discussion was to be about ongoing harassment of junior office personnel by [the YNC] that I and other members of the office had reported through the chain-of-command. Thus, I was surprised when I was told that I was under investigation for "fraudulent enlistment", and the use and possession of illegal drugs while in the Coast Guard. The "talk" included reading me my Article 31B rights - which I waived - and recording the audio of the interrogation. SA [redacted] was present but did not participate in conducting the interview.
7. SA [redacted] asked if I was using drugs or if I had used drugs since I enlisted, to which I replied I had not. He then asked me if I would be willing to take an urinalysis, a hair test, and a polygraph. I agreed to all three. However, no test was ever administered. (To this day, I have not been drug-tested since joining the Coast Guard.)
8. SA [redacted] asked about my admitted drug use before joining the Coast Guard, and what I put on my enlistment paperwork regarding prior drug-use. I told him that I had told my recruiter that I had previously used marijuana. SA [redacted] brought up several police response incidents involving me when I was a minor. I admitted to the incidents that I could remember and was completely forthright and truthful throughout the interrogation. Several days after the interview, at others' behest, I went to their on-base office to ask how they had gathered this information. SA [redacted] told me I was not allowed to know nor see any documentation.
9. As I was under extreme stress at the time of the CGIS interrogation, I am unsure what I told them next regarding their "fraudulent enlistment" accusation. I do believe I was coerced, intimidated, and scared into admitting to a fraudulent enlistment when I did not fully understand the terms of their accusation. It is important to note that on my enlistment paperwork, I answered "Yes" to the question regarding prior drug use, detailing my marijuana use with the recruiter.

10. After the interview, I heard nothing more about it for months, but continued to experience both harassment and bullying from [the YNC]. [The YNC] coerced me into signing several "Page 7" reports (a negative CG-3307) that I did not feel were valid. I also signed others that I believed were legitimate and refused to sign another. Additionally, [the YNC] gave me performance marks far below what were recommended by my immediate supervisor, YN1 [redacted]. She demanded that YN1 lower my marks from the excellent marks he originally recommended. She also coerced another office supervisor, YN I [redacted], into doing the same for several of her subordinates. Both YN1s were extremely upset at this situation and complained vehemently and loudly to [the YNC].

11. In response to my lower-than-average marks, and with YN1 [redacted]'s encouragement and assistance, I drafted an official memo to appeal my employee review marks, Enclosure (2). When I finished this review and brought it to the command, I was discouraged from submitting it and told to re-write it by both the Commanding Officer and [the YNC]. Discouraged, I eventually decided not to turn in the appeal.

12. Nevertheless, I and several other junior enlisted members of my office responded to [the YNC]'s harassment by reporting her through the chain-of-command to several higher-ranking members. Nothing came of these reports, but eventually I was put on performance probation by [the YNC], as she created a paper-trail of negative documentation as to my comportment and performance.

13. On 08 February 2019, with encouragement from multiple senior enlisted leaders who were present at my Chiefs Council, I filed for an official investigation of [the YNC] for harassment and bullying. To date, I have not been provided with any feedback on the investigation into [her] leadership style.

14. Although the CGIS investigation was closed in early December 2018, on 09 February 2019, less than two weeks after initiating the official investigation of [the YNC], I was called in to the Commanding Officer's office and told I was being discharged for Fraudulent Enlistment. To date, I have not been provided with a copy of my fraudulent enlistment investigation and I was only allowed to review the results of the investigation once inside the XO's office, Enclosure (1).

15. Based on notes taken when reviewing the investigation, and follow-up phone calls to the [city redacted] Police Department Internal Affairs Division, FOIA Branch; the [county redacted] Police Department; and the [city] Juvenile and Domestic Relations District Court, I was able to determine that the source of the CGIS accusations were police response reports taken from the Naval Criminal Investigate [sic] Service (NCIS) Law Enforcement Information Exchange database. Although access to [State redacted] juvenile records for legal purposes is only available in response to a Judge's subpoena, military LEO-to-LEO access is permitted for background purposes only. I have explained each police response incident to the best of my ability in Enclosure (3).

16. It is important to note that none of the germane incidents delineated in Enclosure (3) resulted in an arrest, charge, or court proceedings. Rather, they are no more than poor judgment exercised by me as a juvenile and young adult. Additionally, by themselves, the incident reports present a warped view of my youth - a childhood in which I was in academically gifted classes from the 2nd through 12th grade; played elite travel soccer; and was selected for all-district high school band two years in a row, when I was still in middle school.

17. As to my performance as a Coastguardsman, only [the YNC] has found fault. To date, I am not aware of anyone from the command contacting my previous supervisors at either YN "A" School, the [lifeboat school], or USCG boot camp. I would welcome that inquiry. At [the lifeboat school], I was a Boat Crewman on the 47' Motor Lifeboat, the Lead Seaman in the Deck Department, and was instrumental in both the maintenance and operation of these boats during heavy weather surf conditions. During "A" School, I had no problems of any kind, and continued to excel in the

USCG Base [redacted] SPO until [the YNC's] arrival. For my prior performance evaluations, see Enclosure (4).

18. Although some would like to do so, there is no separating the investigation into [the YNC's] leadership style that I instigated from the investigation into my youth that [the YNC] directly or indirectly initiated that resulted in my being processed to be discharged for fraudulent enlistment.

19. Discharging me from the USCG robs me of my livelihood. Any discharge other than honorable robs me of my future. I sincerely do not believe my performance in the USCG nor my enlistment paperwork justify any discharge prior to the end of my enlistment. I wish to continue to serve proudly and honorably in the United States Coast Guard.

20. To conclude, after reviewing reference (b) and (c), it is clear that I did not intend to deceive in my enlistment application and, more importantly, there is no evidence that this information would have prevented me from enlisting in the U.S. Coast Guard. Therefore, I am respectfully requesting to complete my time in the service by fulfilling my contractual obligations, and/or to receive an Honorable Discharge.

The applicant attached to his rebuttal a copy of his draft EER appeal and a list of brief statements about the police reports gathered by CGIS.

On March 5, 2019, the applicant's CO recommended to the Enlisted Personnel Management Division (EPM) of the Personnel Service Center (PSC) that the applicant be discharged for misconduct due to fraudulent enlistment. The CO stated that his recommendation was based on the applicant's having procured an enlistment "though a material misrepresentation, omission or concealment which, if known at the time, might have resulted in rejection," and he referenced and attached the CGIS report. He also attached a copy of the applicant's rebuttal to the discharge notification and addressed the rebuttal as follows:

I will provide the following information on a few of his statements in his rebuttal. His Equal Employment Opportunity (EEO) complaint has been resolved and was found to be unsubstantiated. YN3 [applicant] was informed of the results on 5 March 2019. His Enlisted Evaluation Appeal was not discouraged by this command. His appeal was initially missing adequate documentation to support his appeal for higher marks to a CG Flag Officer. YN3 [applicant] was advised to go back and rework his appeal to include the documentation and later he chose not to follow through. His placement on performance probation was not an attempt to "create a paper trail" as he states but rather a response to his extremely subpar performance in the Servicing Personnel Office. His performance during his probationary period was extremely poor and if it were to continue would have most certainly led to a discharge package for inaptitude. In regard to YN3 [applicant's] statement, "it is clear I did not intend to deceive in my enlistment application," his remark on page 14 of 73 in the CGIS ROI states otherwise. He told CGIS, "he had no intentions of telling the CG Recruiter the truth about bis drug usage."

PSC approved the discharge, and on April 29, 2019, the applicant received an Uncharacterized discharge. The DD-214 in his record states that he was discharged for "Fraudulent Entry into Military Service, Drug Abuse," with a JDT separation code and RE-4 reenlistment code. The DD-214 also states that action to correct his discharge had been taken by the DRB. He had served on active duty for 2 years, 11 months, and 6 days.

On July 2, 2021, the Whistleblower Protection Unit of the Office of the Inspector General informed the applicant that they had reviewed his claim that he had received Page 7s and an

Uncharacterized discharge in retaliation for making a protected communication and that because his complaint was filed on April 28, 2020, more than a year after his discharge, his complaint would be passed to the IG's Office of Investigations.

### APPLICANT'S ALLEGATIONS

The applicant initially summarized his complaint as follows:

Although the Coast Guard was within its rights to administratively discharge me, they broke both Federal and State laws to falsely justify my discharge, discharged me counter to written USCG regulations (improper), and after 35 months of honorable active duty service awarded me an Entry-Level Uncharacterized Discharge with punitive affects equivalent to a Dishonorable Discharge, given for only the most serious offenses including desertion, pedophilia, rape, murder, et cetera. My discharge was improper, inequitable and like unconstitutional. ...

- a. Unconstitutional - as my Uncharacterized Discharge amounts to extrajudicial punishment and is counter to both the Bill of Rights and U.S. Code governing the Veterans' Administration;
- b. Improper - as Commander, Personnel Service Center did not authorize my separation with an Entry-level Uncharacterized Discharge for Misconduct as required, and
- c. Inequitable - as it removed all VA and other Veterans' benefits, which is comparable only to criminals convicted in Courts Martial of the most serious crimes and given a punitive Dishonorable Discharge.

The applicant stated that after a biased YNC was assigned to oversee the SPO in August 2017, she harassed and bullied him and lowered his EER marks. Then, when he drafted an appeal of his EER marks, she retaliated by accusing him, and getting others to accuse him, of drug use. He stated that without reasonable suspicion or probable cause, his command then initiated a CGIS investigation and the CGIS agent illegally acquired his juvenile police records and passed them to his CO. Based on those records, the CGIS agent and his CO baselessly concluded that he had lied to his recruiter and fraudulently enlisted.

Furthermore, the applicant claimed, his CO "convicted" him of fraudulent enlistment without any UCMJ-sanctioned procedure or due process and based on his intuition alone. And then PSC discharged him "counter to written regulations published in the USCG Military Separations manual and punished him with an Uncharacterized discharge counter to the UCMJ and guidance published in the USCG Military Justice Manual." The applicant claimed that "[e]veryone from [his] Commanding Officer to Human Resources to the Discharge Review Board<sup>5</sup>] simply assumed that [he] was guilty as accused" because of an "unbalanced E-7 [the YNC] with a problematic history as a supervisor." He stated that after he was accused by his temporary division chief, the YNC/E-7, his CO pronounced him guilty and then conspired with the Chief of Enlisted Personnel Management (EPM) at the Personnel Service Center (PSC) and a Staff Judge Advocate (SJA) to punitively discharge him without any convincing evidence of

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<sup>5</sup> In 2020, the applicant was denied relief by the Discharge Review Board (DRB), and he included in his BCMR application many allegations about the DRB, its members, and its decision-making. He did not ask the Board to remove the DRB's decision from his record, however. The BCMR is not an appellate board that remands decisions to the DRB for reconsideration but instead reviews the evidence submitted and makes its own findings of fact and law. Therefore, his allegations about the DRB and its decision-making are omitted here as they are not pertinent to the merits of his request for relief regarding his discharge.

misconduct or UCMJ-sanctioned proceeding. The applicant's more specific allegations and argument are summarized below.

*Allegations about the YNC/E-7, Command Master Chief, Chief of Police, and CO*

The applicant stated that in August 2018, the Base SPO had been without an E-8 Division Officer for several months, which left two female YN1/E-6s jointly supervising the remaining yeomen. But there was "near constant bickering" between the two YN1s, which was "exacerbated by the presence of other E-6s/YN1s in the office who didn't respect their authority," and "the SPO's efficiency and overall production deteriorated." In response, on 14 August 2018, the Base CO temporarily detailed the Base Administration Chief, a YNC/E-7, to the SPO to fix the problems, "but her methods were heavy-handed, and did not reflect modern management or leadership principles. Due to her other duties, she spent less than 25-hours a week in the SPO." This YNC named the junior of the two YN1s to act as the Leading Petty Officer (LPO) at the SPO. The applicant alleged that the LPO was the YNC's "longtime friend and confidant."

The applicant stated that he quickly became aware that the YNC disliked him for no known reason. He later learned that the YNC was determined to maintain the prevalence of females in the YN rate and so targeted male YNs. The applicant named four female YNs and five male YNs whose careers he accused the YNC of ending or significantly shortened. He complained that the Coast Guard had "turned a blind eye" to her abusiveness even though she has several negative Page 7s and an NJP in her record.

The applicant stated that the YNC began to berate him at least once a week. Then the applicant's direct supervisor, a recently arrived male YN1, lowered the applicant's performance marks on his September 30, 2018, Enlisted Evaluation Review (EER) far below what the applicant felt was fair. Therefore, in mid-October 2018, the applicant drafted an official EER appeal with the assistance of another YN1 and repeatedly revised it to her exacting standards, but after reviewing it, the CO said he should revise it again and resubmit it. The applicant felt discouraged and opted not to resubmit it. Then, just four days later, on October 19, 2018, the YNC presented him with his first ever negative "Page 7" (CG-3307) entry for his personnel file, based ostensibly on his having departed work 15 minutes early. The applicant stated that this Page 7 was retaliatory for his having questioned and appealed her decision to lower his EER marks.

In response to this and other abusive behavior by the YNC, the applicant stated, he and several other junior members of the SPO complained about her through the chain-of-command to several senior enlisted members, including the Command Master Chief (CMC), who was a master chief petty officer (E-9), but they simply ignored the complaints. Then, the YNC retaliated again by falsely accusing him of drug abuse when she said that he had "red eyes" upon reporting to work one morning.

The applicant alleged that on the morning of November 7, 2018, the YNC and the CMC, who were "like-minded," together walked into the Base Police Station and told the Chief of Police—who was "the very best of friends" with the YNC—that the applicant's eyes were



bloodshot and glassy, “consistent with someone using narcotics.” According to the CGIS report, the police officer then spoke to the applicant—which the applicant does not remember—to try to observe his appearance and demeanor. The police officer told CGIS that the applicant had “exhibited the signs of someone who used narcotics,” because he had bloodshot eyes and constricted pupils. (The applicant explained that “[b]loodshot eyes are an indicator of marijuana/THC use, or lack of sleep; constricted pupils are an indicator of narcotics use, or of being outside on a sunny day.”) Therefore, that afternoon, the applicant was called into a room at the SPO where the police officer, his deputy, and the YNC waited with an audio/video recorder, and he was almost immediately read his Article 31b rights for “wrongful use or possession of a controlled substance.” Because he was innocent, the applicant stated, he waived his rights and consented to a urinalysis. When the YNC left the room to arrange for the urinalysis, the police officer told him that he knew the applicant was “not guilty by [his] demeanor and [his] willingness to voluntarily submit to a urinalysis.” No urinalysis was conducted that day because the CO did not approve it. However, much later it became clear that the YNC, CMC, and police officer “conspired to generate ‘witness testimony’ sufficient to accuse [him] of the illegal use of narcotics.”

Thereafter, the applicant alleged, the YNC entered two more retaliatory Page 7s in his record on November 15 and 21, 2018, and also provided abusive informal counseling, which other members of the SPO described as “dressing down” and “bitch sessions.” Because of the YNC’s “incessant badgering,” the applicant stated, he started attending weekly counseling sessions and went to sick call, where the doctor found that he had high blood pressure and a racing heart and diagnosed him with “acute chronic stress/anxiety.” The doctor also wrote that “the patient’s reported work environment should be looked into by his command” and gave the applicant two days of sick-in-quarters status and two weeks of limited duty, which his CO arbitrarily cut in half. When the applicant returned to sick call on December 7, 2018, for a follow-up consultation, the doctor returned him to duty with no restrictions.

### *Allegations About CGIS Investigation*

On November 27, 2018, the applicant alleged, without probable cause or even reasonable suspicion, the YNC and CMC convinced the CO to ask CGIS to investigate his alleged drug use.

On December 3, 2018, the applicant stated, CGIS legally seized computer logs of his activity on the Coast Guard-administered software, and on December 4, 2019, the CGIS agent interviewed by phone the applicant’s Coast Guard recruiter. However, the applicant stated, the CGIS agent did not report any discussion of the applicant’s admission of pre-enlistment drug use with the recruiter, “a significant omission.” When the CGIS agent reviewed the computer logs, he noted several digital texts in which the applicant had discussed his pre-enlistment drug use with another member.

The applicant stated that after legally acquiring and reviewing his juvenile criminal records, the CGIS agent then illegally disseminated those records to whoever reviewed the CGIS ROI, including the CO and those who reviewed the discharge package. He stated that pursuant to State law, his juvenile records should have been expunged. The applicant stated, “None of the inconsequential juvenile incidents [the CGIS agent] accessed and illegally disseminated [had]

resulted in [the applicant's] detention, charges, an arrest, or a court date; and only one involved a single marijuana cigarette that was found in the possession of a companion.”

On the morning of December 12, 2018, the applicant stated, he was interviewed by two CGIS agents, who recorded the interview. After reading the applicant his Article 31b rights for wrongful use and/or possession of a controlled substance, the CGIS agent spent two hours grilling the applicant “with aggressive interrogation tactics” and tried to coerce him into admitting to ongoing illegal drug use. The applicant alleged that his Article 31b rights were violated because he was never informed that he was suspected of fraudulent enlistment.

The applicant stated that his FOIA request for the recording or transcript of this interview has been denied and so the only available documentation of the interview is the CGIS agent's inaccurately paraphrased description of the interview. He stated that the CGIS report “inaccurately paraphrased both the Police Response Reports and his verbal exchanges with [the applicant] during [the] 12 December interrogation.”

### ***Allegations About Probation, Chiefs' Council, and Page 7s, and EEO Complaint***

The applicant noted that, on the day of the CGIS interview, December 12, 2018, he received another negative Page 7 entry and verbal counseling from the YNC. Then a week later, he was placed on performance probation documented on another Page 7. The applicant noted that performance probation is a prerequisite to discharging or demoting a member, and he alleged that the YNC wanted to discharge him “for inaptitude or any reason she could get [the CO] to agree to.”

On January 31, 2019, the applicant stated, he was required to appear before the Base Chiefs (E-7s and above) for a Chiefs' Performance Review Council organized by the YNC. He stated that the YNC and “other Chiefs involved in [his] persecution” participated in this council, which was inappropriate and prevented him from raising the issue of the YNC's “leadership, failings and proclivities.” The applicant stated that he was loudly berated by the YNC and others at this council, and then he received two more negative Page 7s, one of which threatened him with discharge and the other “solely not[ed] [his] five prior negative Page 7 entries.”

### ***Allegations About EEO Investigation***

Therefore, the applicant stated, on February 5, 2019,<sup>6</sup> he submitted a short, concise EEO complaint against the YNC for “harassment and bullying, highlighting the hostile work environment, favoritism, and selective targeting” he had experienced. However, he alleged, his claims were improperly investigated by a chief warrant officer (CWO) with no training even though the Coast Guard Civil Rights Manual (COMDTINST M5350.4D) states, “Investigators/fact-finders assigned to conduct inquiries must have received Civil Rights and Civil Liberties approved training in investigating, interviewing, report writing, and investigating harassment allegations, including the legal requirements for claims of harassment.” But in a November 22, 2019, “letter to the U.S. House of Representatives Committees on both Oversight and Reform, and Homeland Security, the Coast Guard Congressional Affairs office stated that no approved

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<sup>6</sup> In another place, the applicant stated that he filed it on February 17, 2019.

training existed, no individuals had received such training, and the individuals conducting inquiries were not trained to do so.”

In addition, the applicant alleged, the CWO simply interviewed ten other members of the SPO and issued a report based on only eight of the ten, paraphrasing their statements and finding that his complaints were not substantiated. The applicant stated that the two yeomen who supported his claims, a female YN1 and the only other male YN3 at the SPO, were subsequently targeted by the YNC for separation. He alleged that the YN1 was later involuntarily discharged and the YN3 “was ejected from the Yeoman rate, demoted to E-3, and [would] soon be separated from the Coast Guard based on his high tenure status.” The applicant further alleged that the CWO completed his report improperly by failing to make specific findings of fact and including only one opinion: “There was no instance of harassment or discrimination against YN3 [applicant] by [the YNC] based on race, sex, age or any other basis protected by law.”

### *Allegations About Discharge Proceedings and Right to Consult Counsel*

On February 19, 2019, the applicant stated, after he filed his EEO complaint, his CO gave him a “Notification of Intent to Discharge” stating that the CO was initiating his discharge due to “fraudulent enlistment,” which was the first time the applicant had heard this accusation. He argued that there is no evidence of “fraudulent enlistment” because he did not sign Section VI of his Record of Military Processing, where it says he used THC in 2008. (Section VI has no signature block.) He alleged that the recruiter entered that comment on his Record of Military Processing and he never saw it.

The applicant further stated that the right to consult counsel, which he acknowledged having exercised, was grossly insufficient. He explained that the right to consult counsel pursuant to an administrative discharge “is the military version of an unpaid consultation with a civilian lawyer” though they “may do more depending on availability and desire.” In his case, the applicant stated, his counsel was a JAG from the Defense Service Office who did not even go with him to review the CGIS ROI when he was given the opportunity to do so and he is not sure that she ever did. She did not respond to his phone calls but would reply to emails, typically after days of delay. He alleged that she told him that the Coast Guard could not prove fraudulent enlistment, that he should contact the Inspector General and his Senator, and that it would take the Coast Guard about two months to discharge him. She gave him feedback on his rebuttal statement, which was unsuccessful in stopping his discharge. And instead of two months, he was discharged in about three weeks. “Most importantly, she did not advise [the applicant] of other avenues [he] might have, such as filing a UCMJ Article 138 Complaint against [his] Commanding Officer, filing a whistleblower complaint with the DHS Whistleblower Protection Unit, or hiring a civilian lawyer.” Therefore, he was allowed to consult counsel but met her in-person only once, received no real legal assistance, and “was unable to defend [him]self against patently false accusations affirmed without substantive evidence.”

Regarding his Uncharacterized discharge, the applicant stated that it is improper since it is an entry-level discharge for members who have served for less than six months, while he served on active duty for more than over 35 months and received several performance evaluations documenting his service. The applicant stated that because an Uncharacterized

discharge is for members with less than six months of service, it comes with no VA benefits. Thus, his right to VA benefits was denied without any disciplinary proceeding under the UCMJ even though the forfeiture of all VA benefits is surely punitive in affect. He argued that the Uncharacterized discharge therefore constitutes extrajudicial punishment.

The applicant further argued that in causing his illegal discharge, his CO and the chief of PSC-OPM violated the UCMJ. Although he cited Article 84, which is about breaking medical quarantine, the Board presumes he mean Article 104b of the UCMJ, which states that any member who ‘effects ... a separation from the armed forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.’”

### *Allegations About a Cover-Up with “Obfuscation and Mendacity”*

The applicant complained that when he requested copies of the CGIS ROI and evidence and EEO complaints against the YNC and CO, he faced stonewalling and improper withholding. He was denied a copy of the recording of his CGIS interrogation to protect CGIS interview “techniques and procedures.” He called this denial “disingenuous and certainly obfuscation” as it leaves the CGIS agent’s notes of the interview as the only available evidence of his alleged admissions. He stated that interview techniques are only protected when they are not well known to the public, and because CGIS used readily available software to record his interview, the recording of his interview should have been released to him under FOIA.

The applicant further stated that in response to his FOIA request for records related to his February 5, 2019, EEO complaint, he received only the CWO’s five-page report of his investigation, without any of the witness statements, and his CO’s one-page cover letter purportedly forwarding the matter to the Coast Guard Civil Rights Directorate, which denied having received it. Moreover, he alleged, the Base Command did not respond to 95% of the focused, specific requests he submitted and withheld 105 of 140 pages considered germane and redacted 24 others, citing FOIA Exemption 5, “deliberative process privilege.” He alleged that the withheld pages would demonstrate that the Base CO, the chief of PSC-EPM, and the Staff Judge Advocate who conducted the legal review conspired to find a way to punish him without any legal proceeding that would provide due process. Ultimately, the applicant alleged, the Coast Guard refused to release 224 pages of documents they deemed germane and thus covered up their guilt.

The applicant also alleged that the Coast Guard was misleading and dishonest in its responses to two inquiries on his behalf by his congressional representatives. He concluded that his discharge proceedings were riddled with “accusations, lies, a conspiracy, investigative illegalities, faux legal processes, excessive punishment, more lies, and limitless obfuscation (that continue to date).”

As noted above, the applicant also made many allegations about the DRB. Because the BCMR reviews matters *de novo* and is not an appeals board that remands cases to the DRB, his allegations about the DRB will not be included or considered here.

## VIEWS OF THE COAST GUARD

On March 8, 2023, a judge advocate (JAG) submitted the advisory opinion of the Coast Guard, in which he recommended granting partial relief and adopted the analysis and findings in a memorandum submitted by the Personnel Service Center (PSC).

The JAG stated that the applicant had made many claims and submitted a lot of documents but did not actually support his claims that his narrative reason for separation, separation code, and reenlistment code are erroneous or unjust. The JAG reviewed the evidence, including the applicant's enlistment documents,<sup>7</sup> his messages about his prior drug use to fellow YN3s, and his statements to the CGIS agent about not admitting the extent of his prior drug use to his recruiter and concluded that the applicant has not submitted sufficient evidence to prove by a preponderance of the evidence "that the Coast Guard erred when relying on the information about his pre-service drug use for a finding of fraudulent enlistment."

Regarding the applicant's complaints about his Uncharacterized discharge, the JAG stated that the applicant's request for an Honorable discharge should be granted:

As discussed in Enclosure (I), CG-PSC has the authority to award uncharacterized discharges to any member, with any amount of total active service, when compelling circumstances exist. However, the applicant's circumstances also met the criteria for an honorable discharge. Honorable discharges can be awarded even for misconduct such as fraudulent enlistment, so long as certain other criteria are met. The applicant met those additional criteria. Due to lack of evidence of compelling circumstances warranting an uncharacterized discharge, the Coast Guard agrees that the applicant should have block 24 of his DD Form 214 amended to reflect an honorable discharge instead of an uncharacterized discharge.

PSC recommended granting partial relief and provided the following analysis in its memorandum. PSC stated, "It is not clear why a member with 35 months of service was awarded an Entry-Level Uncharacterized Discharge when no compelling circumstances appeared to exist, therefore, due to the lack of evidence, I recommend granting partial relief." PSC did not recommend granting relief with respect to the request to change the narrative reason for discharge, separation code, or reenlistment code or to the request to credit the applicant with 25 additional days of active service. PSC stated that the request concerning his discharge for "fraudulent enlistment" should be denied because the information about his prior drug use in his 2018 messages to other YN3s contradicts his claims on his enlistment documents.

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

On May 17, 2023, the applicant responded to the views of the Coast Guard. He repeated and highlighted several of the arguments and allegations made in his application. He also pointed out how the JAG repeatedly claimed that the applicant had signed Section VI of the Record of Military Processing even though the form clearly shows that he did not and Section VI has no

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<sup>7</sup> The JAG inexplicably insisted twice that Section VI on the applicant's Record of Military Processing was signed by the applicant but did not produce a copy showing his signature. In addition, Section VI does not even have its own signature block. The only signature block on that page of the form is for Section VII, which applies to recruits who have changed their legal names, and that section is inapplicable to the applicant.

signature block. He alleged that his “Recruiter, in [his] absence, separately and personally characterized my pre-USCG marijuana use as: ‘Used THC In 2008’.”

### APPLICABLE LAW AND POLICY

According to the Manual for Courts-Martial, United States (2019), the elements of the UCMJ offense of “fraudulent enlistment,” a violation of Article 104a, are the following:

- (a) That the accused was enlisted or appointed in an armed force;
- (b) That the accused knowingly misrepresented or deliberately concealed a certain material fact or facts regarding qualifications of the accused for enlistment or appointment;
- (c) That the accused’s enlistment or appointment was obtained or procured by that knowingly false representation or deliberate concealment; and
- (d) That under this enlistment or appointment that accused received pay or allowances or both.

The Coast Guard Military Separations Manual, COMDTINST M1000.4, provides the following guidance:

Article 1.B.17.a. states that PSC may discharge a member for misconduct with an Honorable, General, or Other Than Honorable character of service “as warranted by the particular circumstances.”

Article 1.B.17.b., “Reasons to Discharge for Misconduct,” includes the following in the list of reasons a member may be discharged for misconduct:

- (5) Fraudulent enlistment. A member may be discharged for procuring a fraudulent enlistment, induction, or period of active service through any material misrepresentation, omission, or concealment which, if known at the time, might have resulted in rejection. The enlistment of a minor with false representation of his or her age or without proper consent will not in itself be considered a fraudulent enlistment.

Article 1.B.17.e. of the Military Separations Manual provides the following procedures for discharging a member for misconduct if they have fewer than eight years of service:

Commanding officers shall process members with fewer than eight years of total active and inactive military service recommended for honorable or general discharge for misconduct as follows:

- 1) Inform the member in writing of the reason(s) for being considered for discharge (specifically state one or more of the reasons listed in Article 1.B.17.b. of this Manual supported by known facts).
- 2) Afford the member an opportunity to make a written statement. If the member does not desire to do so, the commanding officer sets forth that fact in writing over the member’s signature. If the member refuses to sign a statement his or her commanding officer will so state in writing.
- 3) Afford the member an opportunity to consult with a lawyer as defined by Article 27(b)(1), UCMJ, if contemplating a general discharge. If the member requests counsel and one is not available, the commanding officer must delay discharge COMDTINST M1000.4 1-105 CH-6 proceedings until such time as counsel is available.
- 4) Send the case containing a recommendation and these documents to Commander (CG

PSCEPM-1) for action.

Article 1.B.19.b.(2) of the manual states the following about Uncharacterized discharges:

Commander (CG PSC-EPM-1) has the authority, when compelling circumstances exist, to award an uncharacterized discharge to any member with any amount of total active service. This may be determined to be appropriate when additional administrative processing solely for the purpose of characterizing the member's service is unnecessarily burdensome, costly, or inefficient, and is not in the Coast Guard's best interest.

The SPD Handbook states that a JDT separation code and the narrative reason for separation "Fraudulent Entry into Military Service, Drug Abuse" are assigned when a member is being involuntarily discharged for "procuring a fraudulent enlistment, induction, or period of active service through deliberate material misrepresentation, omission, or concealment of drug use/abuse."

### 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 submission, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The record shows that he has exhausted his administrative remedies by applying to the DRB, and his application was timely filed within three years of the DRB's decision.<sup>8</sup>

2. The applicant alleged that his receipt of an Uncharacterized discharge for misconduct due to fraudulent enlistment with an RE-4 code just 25 days shy of having completed three full years of service is erroneous and unjust. When considering allegations of error and injustice, the Board begins its analysis by presuming that Coast Guard officials acted properly and the applicant bears the burden of proving by a preponderance of evidence that Coast Guard actions were erroneous or unjust.<sup>9</sup> Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."<sup>10</sup>

3. The applicant has not proven by a preponderance of the evidence that his discharge for misconduct due to fraudulent enlistment was erroneous or unjust. Under Article 1.B.17. of the Military Separations Manual, a CO should initiate a member's administrative discharge for misconduct and PSC may approve the recommended discharge if a preponderance of the evidence shows that the member procured his enlistment through fraud. For the following reasons, the Board finds that the record does not support the applicant's claims that his discharge for fraudulent enlistment was retaliatory or based on false information or otherwise erroneous or unjust:

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<sup>8</sup> *Ortiz v. Secretary of Defense*, 41 F.3d 738, 743 (D.C. Cir. 1994).

<sup>9</sup> 33 C.F.R. § 52.24(b).

<sup>10</sup> *Arens v. United States*, 969 F.2d. 1034, 1037 (Fed. Cir. 1992); *Saunders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

- a. Fraudulent Enlistment. Under 10 U.S.C. § 1169, “No regular enlisted member of an armed force may be discharged before his term of service expires, except—(1) as prescribed by the Secretary concerned; (2) by sentence of a general or special court martial; or (3) as otherwise provided by law.” Article 1.B.17. of the Military Separations Manual authorizes Commander, PSC to administratively discharge members for certain types of misconduct if the preponderance of the evidence shows that they committed that misconduct even without convening a court-martial or captain’s mast, and one of those types of misconduct is fraudulent enlistment, a violation of Article 104a of the UCMJ. An administrative discharge for fraudulent enlistment therefore requires that the preponderance of the evidence show that the member enlisted in the Coast Guard after “knowingly misrepresent[ing] or deliberately conceal[ing] a certain material fact or facts regarding qualifications of the accused for enlistment.”<sup>11</sup> Also pursuant to Article 1.B.17., a member being administratively discharged due to fraudulent enlistment who has less than eight years of service is entitled to (i) notification of the reason(s) for discharge; (ii) an opportunity to consult an attorney unless an Honorable is being awarded; and (iii) an opportunity to submit a statement about the discharge.
  
- b. Applicant’s Misrepresentation of Prior Illegal Drug Use. The applicant’s Record of Military Processing, completed on May 24, 2016—the day he enlisted on active duty—shows that he admitted to prior drug use in block 26, and the required remark in Section VI states only “Used THC in 2008.” The applicant noted that his signature is not on Section VI, which actually has no signature block, and he alleged that the phrase “Used THC in 2008” was a fabrication of his recruiter that the applicant never saw. However, according to the CGIS ROI, on an electronic enlistment questionnaire that the applicant completed on March 8, 2016, the applicant answered the question about prior drug use by saying that he had smoked marijuana only a couple of times in 2008, when he was 14 years old. This evidence supports the validity of the entry in Section VI as being an accurate representation of the applicant’s admission to the recruiter. Therefore, the Board finds that the lack of a signature or initials on Section VI—where the form requires none<sup>12</sup>—does not prove that the applicant did not misrepresent his prior drug use to his recruiter. As noted above, the recruiter and the entry in Section VI of the Record of Military Processing Board are entitled to a presumption of regularity, and the Board is not persuaded that the recruiter misrepresented the totality of the applicant’s admission of prior drug use by entering “Used THC in 2008” in Section VI of the Record of Military Processing.

The applicant’s police records and messages to other YN3s show that his illegal drug use was more extensive and recent than he admitted on his enlistment documents. The police records show that he smoked marijuana a few times in 2011 and that his

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<sup>11</sup> Manual for Courts-Martial.

<sup>12</sup> On a Record of Military Processing, some sections have signature blocks and some do not. Section VI does not have a signature block. Page 4 of the Record of Military Processing includes both Section VI and Section VII, and Section VII does have a signature block but Section VII is empty because it is only for recruits who have changed their legal names.



mother found marijuana in his pocket in 2014. And according to the applicant's message to a YN3 on April 20, 2018, the applicant had smoked marijuana on April 20, 2016. This evidence contradicts the applicant's claims upon enlistment on May 24, 2016, that he had only used marijuana a couple of times in 2008. The applicant's significant misrepresentation of the extent of his prior drug use upon enlistment is also supported by the CGIS agent's report stating that during the applicant's interview with CGIS agents, the applicant admitted that he had had no intention of telling the recruiter the truth about his drug usage and "was scared to admit how often he smoked marijuana on the enlistment paperwork."

Therefore, the Board finds that the applicant has failed to prove by a preponderance of the evidence that his CO and PSC erroneously concluded that, upon enlistment, he had "knowingly misrepresented or deliberately concealed a certain material fact or facts regarding qualifications of the accused for enlistment."<sup>13</sup> Specifically, the preponderance of the evidence shows that the applicant knowingly misrepresented the extent of his prior illegal drug use.

4. The applicant alleged that his discharge for misconduct was erroneous and unjust because he was a target of the YNC's bias, harassment, and bullying and because the YNC and CO retaliated against him by initiating the investigation and his discharge. The Board finds, however, that the applicant has not proven by a preponderance of the evidence that his discharge resulted from bias, harassment, bullying, or retaliation, as explained below:

- a. Harassment and Bullying: The applicant alleged that his September 30, 2018, EER and the negative Page 7s resulted from harassment and bullying by a biased female YNC who wanted the YN rating to be dominated by women and so was biased against male YNs. The applicant referenced statements from colleagues claiming that the YNC participated in "bitch sessions" and dressed him down. The applicant also admitted, however, that in February 2019, a CWO interviewed the members of the SPO and found insufficient evidence of the alleged harassment and bullying.<sup>14</sup> The applicant also alleged that he and others had complained to senior enlisted members about the YNC but he did not submit evidence of that complaint. Some of the marks on his EER are slightly lower than those he received on his prior OER, but the applicant admitted that they were assigned by his male supervisor YN1, and the applicant has not shown that the YN1 was coerced into lowering his marks by the YNC. The Board finds that the applicant has not proven by a preponderance of the evidence that he was subject to harassment or bullying.
- b. Retaliatory Page 7s: The applicant did submit evidence showing that he drafted an appeal of his EER on or about October 15, 2018 (but did not follow through), and

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<sup>13</sup> Manual for Courts-Martial.

<sup>14</sup> The applicant claimed that the CWO was untrained in EEO investigation and failed to make proper findings in his report. Under the Civil Rights Manual, however, when a member makes a civil rights complaint, the command has 15 days to investigate and attempt to resolve the complaint informally at the command level. There is no requirement for the command to employ a specially trained EEO investigator to do this. Nor did the CWO's report cause or contribute to the applicant's separation since he was discharged for fraudulent enlistment.

- soon thereafter began receiving negative Page 7s signed by the CO. The timing of the Page 7s so soon after the applicant initiated an EER appeal presents a *prima facie* case that they were retaliatory. However, the applicant has not refuted, much less disproved, the content of the disputed Page 7s, which describe numerous incidents of poor performance. Therefore, the Board finds that the applicant has not proven by a preponderance of the evidence that the negative Page 7s in his record are retaliatory. The poor performance reflected in those Page 7s, which are presumptively correct,<sup>15</sup> persuades the Board that the Page 7s would have been entered in his record even if he had not drafted an appeal of his EER or complained about the YNC—that is, assuming, without finding, that he did complain about her, as he alleged.
- c. Retaliatory Investigation: The applicant claimed that the CGIS investigation into his alleged drug use, which ultimately uncovered the fraudulent enlistment, was also retaliatory. The record shows that the YNC was one of three members who reported concern that the applicant might be using illegal drugs based on encounters with the applicant and the appearance of his eyes. The record shows that the CMC and Chief of Police shared the YNC's concern based on their own encounters with the applicant, and it was the Chief of Police who informed CGIS—not the YNC, the CMC, or the CO. Although the YNC could theoretically have acted in retaliation for the draft EER appeal, by the time of her visit to the Base police station—November 7, 2018—the applicant's opportunity to appeal the EER had expired<sup>16</sup> and he had not followed through with the appeal. In addition, there is no evidence that the CMC or the Chief of Police had any reason to retaliate against the applicant. The record further shows that a CGIS agent, who also had no known reason to retaliate against the applicant, initiated the investigation based on the tip from the Chief of Police. Therefore, the Board finds that the applicant has not proven by a preponderance of the evidence that the CGIS ROI with the evidence of his fraudulent enlistment was a product of retaliation.
- d. Retaliatory Discharge. The applicant stated that he filed an EEO complaint against the YNC shortly before his CO notified him of the proposed discharge on February 19, 2019. The applicant's complaint is not in the record before the Board, but assuming that he did file an EEO complaint shortly before the CO notified him of the pending discharge and assuming that the CO knew he had done so, the timing presents a *prima facie* case of retaliation. The record shows, however, that when the applicant filed his EEO complaint, the CO had recently received the CGIS ROI with the evidence that the applicant had procured a fraudulent enlistment by significantly misrepresenting the extent of his pre-enlistment drug use. The record further shows that because of repeated poor performance, lack of forthrightness, and lack of progress while on performance probation, the applicant had appeared before the Chiefs Performance Review Council about three weeks earlier after disrespectfully telling a junior yeoman that he had to appear before the Chiefs Mess because he had been a "bad boy," and then he "lied to the entire Chiefs Mess about having every YN

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<sup>15</sup> 33 C.F.R. § 52.24(b).

<sup>16</sup> Article 4.F.2.a.(5) of COMDTISNT M1000.2B states that an EER appeal must be submitted within 15 days of the member's receipt of the EER.

in the SPO check your uniform before reporting to the CPRC.” Therefore, the Board finds that the applicant has not proven by a preponderance of the evidence that his discharge for fraudulent enlistment was initiated in retaliation for his EEO complaint because the preponderance of the evidence shows that the CO would have initiated the discharge even if the applicant had not made an EEO complaint against the YNC.<sup>17</sup>

5. Legality of Investigation. The applicant alleged that the investigation was also conducted illegally. The record shows that a CGIS agent initiated the investigation upon receiving a tip from the Base Chief of Police that the applicant appeared to be using illegal drugs. There is no evidence in the record that the Base CO initiated the investigation, and the applicant has not shown that CGIS is not authorized to initiate investigations based on tips from Coast Guard members or law enforcement. In fact, paragraph 10.b. of the CGIS instruction, COMDTINST 5520.5F, authorizes CGIS agents to initiate preliminary inquiries and gather information upon receiving allegations of misconduct to assess the validity of the allegations before determining whether a formal criminal investigation is warranted. Although the applicant alleged that CGIS’s acquisition of his juvenile criminal records was illegal under 18 U.S.C. § 5038(3), that statute applies to juvenile records from federal proceedings, not state proceedings. There are many relevant laws regarding this issue, but briefly, pursuant to 28 U.S.C. § 534 and 28 C.F.R. § 20.33, the FBI maintains state criminal records, including juvenile records, in the NCIC database and may release them to “criminal justice agencies for criminal justice purposes,” which includes NCIS and CGIS. Here, the CGIS agent was investigating allegations that the applicant was using illegal drugs about two and one-half years after he enlisted, and his text conversations with other junior yeomen had included discussions about drug usage. The Board cannot conclude that evidence of the applicant’s pre-enlistment drug use was irrelevant to whether he might be using illegal drugs while on active duty, which would determine whether a fuller investigation was warranted. The Board is not persuaded that the CGIS agent obtained the applicant’s prior criminal records from the NCIC and NCIS illegally.

The applicant also complained that his Article 31b rights were violated because he was warned only that he was suspected of illegal drug use, not that he was suspected of fraudulent enlistment. The record shows that by the time of the interview on December 12, 2018, the CGIS agent had received both the applicant’s police records and his messages to other yeomen, which contradicted each other regarding the extent of the applicant’s pre-enlistment drug use. Therefore, assuming the agent had read the evidence before the interview, the CGIS agent either did suspect or should have suspected that the applicant had fraudulently enlisted and provided an Article 31b warning on that charge. At what point the CGIS agent began to suspect that the applicant had fraudulently enlisted is unclear, but assuming *arguendo* that he suspected the applicant of fraudulent enlistment before the interview began or before he asked the applicant about his admissions to the recruiter, that would not prohibit the Coast Guard from lawfully administratively discharging the applicant for fraudulent enlistment under Article 1.B.17. of the Military Separations Manual. A violation of Article 31b rights prevents a member from being

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<sup>17</sup> Because the applicant has not proven that his discharge was illegal, his argument that his CO and the chief of PSC-EPM violated Article 104b of the UCMJ by effecting his discharge fails.

convicted of the un-warned offense at court-martial; it does not prevent the member from receiving NJP or an administrative discharge due to the offense.<sup>18</sup>

6. Due Process. As noted above, under Article 1.B.17. of the Military Separations Manual, a member being administratively discharged due to fraudulent enlistment who has less than eight years of service is entitled to (i) notification of the reason(s) for discharge; (ii) an opportunity to consult an attorney unless an Honorable is being awarded; and (iii) an opportunity to submit a statement about the proposed discharge. The record shows that the applicant was properly notified of the reason for the proposed discharge in his CO's memorandum dated February 19, 2019. The record further shows that he acknowledged having consulted counsel and having received her assistance with his rebuttal statement, and he submitted a rebuttal statement about the proposed discharge. Although the applicant argued that his counsel should have advised him to take other actions to prevent his discharge, such as filing an Article 138 complaint against his CO or a whistleblower complaint, neither of those actions actually prevents the Coast Guard from discharging a member. The Board is not persuaded that the applicant received ineffective assistance of counsel, and the preponderance of the evidence shows that the applicant received the due process provided in Article 1.B.17. during his discharge proceedings.

7. Uncharacterized Discharge. The applicant has proven by a preponderance of the evidence that his Uncharacterized character of service on his DD-214 is erroneous and unjust because he had served on active duty for more than two years and received four EERs evaluating his service when he was discharged. Article 1.B.2.f.(6) states that an Uncharacterized discharge "may be issued only if the provisions of Article 1.B.19. of this Manual apply." Article 1.B.19.a. of the Military Separations Manual clearly states, "Uncharacterized discharges are authorized for all members separated while in an entry-level status," and Article 1.B.19.b. grants the authority to effect Uncharacterized discharges to the CO of the recruit training center. Article 1.B.19.b.2. provides the following exception to this rule:

Commander (CG PSC-EPM-1) has the authority, when compelling circumstances exist, to award an uncharacterized discharge to any member with any amount of total active service. This may be determined to be appropriate when additional administrative processing solely for the purpose of characterizing the member's service is unnecessarily burdensome, costly, or inefficient, and is not in the Coast Guard's best interest.

The Board agrees with the applicant and the Coast Guard that no compelling circumstances existed to justify awarding the applicant an Uncharacterized discharge since he had four EERs in his record. Therefore, the Board finds that the applicant's character of service should be upgraded to Honorable.

8. Request for 25 More Days of Active Duty. Although the applicant also asked the Board to add 25 days of active duty to his record so that his DD-214 would reflect three full years of active duty, the Board finds no grounds for doing so because he has not proven by a preponderance of the evidence that his discharge for fraudulent enlistment was neither erroneous nor unjust.

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<sup>18</sup> Manual for Courts-Martial, United States, M.R.E. 1101 and Part V, paragraph 4.c.3.

9. Narrative Reason for Separation, Separation Code, RE code: The applicant's DD-214 currently shows a narrative reason for separation of "Fraudulent Enlistment on Active Duty, Drug Abuse," with the corresponding JDT separation code and RE-4 reenlistment code. This combination of narrative reason for separation, separation code, and RE code are authorized under the SPD handbook for members who misrepresent their prior drug use when enlisting, as the preponderance of the evidence shows that the applicant did. The Board finds no grounds for changing them in light of the applicant's fraudulent enlistment and poor performance.

10. The applicant made numerous allegations with respect to the actions and attitudes of various officers at his command and others involved in his discharge. Those allegations not specifically addressed above are considered to be either not dispositive of the issues in the case or unsupported by substantial evidence sufficient to overcome the presumption or regularity.

11. Accordingly, the Coast Guard partial relief should be granted by upgrading the applicant's characterization of service to Honorable and issuing him a new DD 214 reflecting an Honorable discharge. In addition, the following notation should be made in Block 18 of the DD 214: "Action taken pursuant to order of BCMR."

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

**ORDER**

The application of former YN3 [REDACTED] [REDACTED] [REDACTED] USCG, for correction of his military record is granted in part. The Coast Guard shall correct the characterization of his service from Uncharacterized to Honorable and shall issue him a new DD-214 showing an Honorable discharge. The following notation shall be made in Block 18 of the DD 214: "Action taken pursuant to order of BCMR."

July 21, 2023

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