

**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. 2024-073**

  
(former) LT/O-3E

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**FINAL DECISION**

This proceeding was conducted by the Board for Correction of Military Records of the Coast Guard (hereinafter “Board”) 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 28, 2024, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated May 30, 2025, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

**INTRODUCTION**

The applicant, a former Lieutenant in the Coast Guard Reserve, was released from a period of active duty (hereinafter “RELAD”) on May 16, 2016, with a General—Under Honorable Conditions<sup>1</sup> (hereinafter “General”) characterization of service, following his arrest by civil law enforcement for supplying alcohol to and having sexual relations with a person under 18. He was later discharged from the Coast Guard on September 14, 2018, again with a General characterization of service.<sup>2</sup>

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<sup>1</sup> There are five types of service characterizations: three administrative and two punitive. The three administrative characterizations are Honorable, General—Under Honorable Conditions, and Other than Honorable (OTH). The two punitive characterizations – Bad Conduct and Dishonorable – are awarded only as part of courts-martial sentences.

<sup>2</sup> A DD Form 214 (Certificate of Release or Discharge from Active Duty) (hereinafter “DD 214”), which includes a characterization of service entry, is issued to Coast Guard members to document each period of active service. Thus, Reserve members are issued a DD 214 when released from active duty, although they may remain in the Coast Guard Reserve component. See generally *Certificate of Release or Discharge from Active Duty, DD Form 214*, COMDTINST 1900.4E (April 2016).

The applicant has requested that the Board correct his records as follows:

1. Remove all negative Administrative Remarks, CG-3307s (hereinafter “Page 7s”).<sup>3</sup>
2. Upgrade his characterization of service from General to Honorable.<sup>4</sup>
3. Correct his record to reflect a medical discharge.
4. Grant any other appropriate relief.

In a decision dated February 15, 2019, the Board denied an April 2018 application in which the applicant requested that the Board remove the same Page 7s underlying the current application.<sup>5</sup> As such, and as will be discussed in more detail, the portion of the current application requesting the removal of Page 7s will be considered a request for reconsideration of the February 2019 decision. The requests for an Honorable characterization of service and a medical retirement will be treated as a new application.<sup>6</sup>

### SUMMARY OF THE RECORD

The record was summarized at great length in Board’s February 2019 decision, and that decision is incorporated herein in its entirety. The following serves as a supplemental record summary focused on the evidence most relevant to the current application.

The applicant joined the Coast Guard Reserve on November 12, 1991. He was steadily promoted and became a Boatswain’s Mate, First Class (BM1/E-6) on June 1, 2004. He then received a commission as an Ensign (ENS/O-1E) in the Reserve on August 6, 2004. He was promoted to Lieutenant, Junior Grade (LTJG/O-2E) on February 6, 2006, and Lieutenant (LT/O-3E) on August 6, 2008.

On October 19, 2011, the applicant was notified that having completed at least 20 years of federal service, he was eligible to receive retired pay when he reached age 60 in the year 2031.

The applicant served numerous periods of active duty while in the Reserve, including as a Reserve Program Administrator (RPA) beginning on June 1, 2013.<sup>7</sup>

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<sup>3</sup> An Administrative Remarks record entry, Form CG-3307, better known as a “Page 7,” is issued when important information is communicated to a Coast Guard member, including positive or negative aspects of the member’s performance or conduct.

<sup>4</sup> The applicant does not specify whether his request pertains to both the May 2016 and September 2018 characterizations, though he includes arguments about both. Accordingly, the Board addresses both in the Findings and Conclusions section below.

<sup>5</sup> See Board Docket No. 2018-138.

<sup>6</sup> Although the applicant filed an application requesting an Honorable characterization and medical retirement in September 2021, he withdrew the application in October 2022, before the Board had issued a decision.

<sup>7</sup> RPAs, authorized under 10 U.S.C. § 12310, are Coast Guard Reserve officers serving on active duty who organize, administer, recruit, instruct, or train members of the Reserve component. See *Reserve Policy*, COMDTINST M1001.28B § 1.A.4. (December 2013).

On December 22, 2014, the applicant, then 43, was arrested by civil authorities in Florida and charged with violations of state criminal statutes prohibiting (1) battery of a child, (2) sexual activity with a person 16 or 17 years old by a person 24 years of age or older, and (3) contributing to the delinquency of a child. According to law enforcement records, the applicant was accused of providing alcohol to the 17-year-old babysitter of his young children (hereinafter “victim”) and having sexual intercourse with her despite her inability to consent due to intoxication. The conduct in question occurred on November 16, 2014, on the applicant’s boat and at his home. Prior to his arrest, in controlled phone calls with the victim recorded by law enforcement, the applicant admitted to sharing six to seven bottles of wine with the victim and having sexual intercourse with her. The applicant also urged the victim not to report his conduct for fear of an investigation, and told her that if she did so, they would both be “in the news.”

On April 24, 2015, the applicant was issued a Page 7 documenting his arrest as an “alcohol incident,” based partly on findings that he had violated Florida state laws and Uniform Code of Military Justice (UCMJ) articles.

On April 27, 2015, the applicant was charged with UCMJ violations. Specifically, Article 86 (absence without authority for the six days he was incarcerated following his arrest), Article 133 (conduct unbecoming an officer), and Article 134 (wrongfully endeavoring to influence the victim not to report the incident). On June 1, 2015, a charge under Article 120 (committing a sexual act on a person incapable of consenting due to impairment by an intoxicant) was added.

In May 2015, the applicant was issued a derogatory Officer Evaluation Report (OER) which referred in general terms to the poor judgment and circumstances surrounding his alcohol incident. The OER also stated that the applicant’s operation of his boat and personal vehicle while intoxicated had endangered his children’s lives. It further stated that the applicant’s conduct had marred his professional accomplishments and brought discredit to the Coast Guard.

In a DD Form 2807-1 (Report of Medical History) (hereinafter “DD 2807”) dated May 18, 2015, the applicant indicated a history of numerous illnesses and conditions.<sup>8</sup> These included respiratory issues, spine and other musculoskeletal pain, dizziness or fainting spells, frequent headaches, a head injury with a period of unconsciousness, chest pain, and trouble sleeping. The applicant stated that mobility issues caused by these conditions had impaired his employability. A Coast Guard physician, Dr. E.S., signed the DD 2807 on May 21, 2015.

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<sup>8</sup> The DD 2807 is completed by Coast Guard members to document their own, self-reported medical history, though the form does include a section for a medical provider to elaborate on the member’s entries. See *Coast Guard Medical Manual*, COMDTINST M6000.1F, §§ 3.B.1.a., 4.B.11.a. (August 2014).

A July 2015 Coast Guard Investigative Service (CGIS) report shows that an investigation was initiated into Lieutenant Commander (LCDR/O-4) R.L. based on his testimony at the applicant's UCMJ Article 32 hearing to the effect that the applicant was on pre-approved leave at the time of his December 2014 arrest.<sup>9</sup>

On August 4, 2015, the UCMJ violations charged in April and June 2015 were referred for trial by general court-martial.

On September 14, 2015, the applicant was issued a second Page 7 documenting an accusation by a young enlisted female member that the applicant had placed a cold drink against her bare upper back, which was considered unwelcome and unprofessional.

On November 19, 2015, a memorandum titled "Proposed Special Board Action" advised the applicant that a Special Board (SB) would be convened under *Officers Accessions, Evaluations, and Promotions*, COMDTINST M1000.3A § 1.B.3.i. (September 2013) to recommend to the Commandant whether the applicant's RPA designation should be removed. The notice explained that the action was being initiated based on the Page 7s issued in April and September 2015. The applicant was also informed that he could submit written comments to the SB within 21 days.

On December 18, 2015, the applicant submitted a statement to the SB in which he objected to the SB, an administrative proceeding, being initiated while his criminal case was pending. The applicant argued that the action violated his right to counsel, his due process rights under the U.S. Constitution, his rights under the Constitution and UCMJ Article 31 against self-incrimination, and Coast Guard policy, since any statement he made to the SB could be used against him at his criminal trial. The applicant also asserted that the proceedings had been tainted by Unlawful Command Influence (UCI) under various theories.

On January 6, 2016, the applicant was notified that the SB would convene on January 13, 2016. On January 8, 2016, three senior officers (including a Reserve officer) were appointed to serve as the SB to consider whether the applicant's RPA designation should be removed. The SB was also directed to address whether the applicant should be removed from the promotion list for LCDR/O-4, which he had been placed on previously.

On January 13, 2016, the SB convened and issued its report. The report stated that it was the opinion of at least a majority of the SB's members that the Commandant should remove the applicant's RPA designation because he had "met the standards prescribed by

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<sup>9</sup> UCMJ Article 32 provides for a preliminary hearing at which an impartial hearing officer reviews evidence and witness testimony and determines, before criminal charges are referred, whether there is probable cause to believe the accused committed the offense(s). See 10 U.S.C. § 832. The CGIS investigation of LCDR R.L. appeared to be premised on potential perjury in an effort to shield the applicant's conduct from being subject to the UCMJ.

the Commandant in accordance with Military Separations, COMDTINST M1000.4, Article 1.A.14.c.”<sup>10</sup> The report explained those findings as follows:

[Art. 1.A.14.c.](2)(c) Mismanaging personal affairs to the discredit of the Service.

- As documented in CGIS investigation . . . [the applicant] was arrested, incarcerated, and charged with two felonies of raping a 17 year-old female and providing alcohol to an underage minor. This arrest violated public trust and was the subject of multiple news releases to the discredit of the Service.

(2)(e) Acts of personal misconduct prohibited by military or civilian authorities

- As documented in CGIS investigation . . . [the applicant] admitted to engaging in sexual acts with a female under the age of 18, in violation of Florida Statute 794.05(1), unlawful sexual activity with a minor.
- As documented in CGIS investigation . . . [the applicant] admitted to providing alcohol to a minor in violation of the UCMJ as well as Florida Statute 827.04(1)(a), contributing to the delinquency of a minor.

(2)(g) Conduct unbecoming an officer.

- As documented in CGIS investigation . . . [the applicant] admittedly split seven bottles of wine with a minor and endangered his two children, age seven and two, by operating a motor vehicle as well as a recreational vessel while the minors were in his custody.
- As documented in Form CG-5310B<sup>11</sup> with a period of report of 01 June 2014 to 31 May 2015, [the applicant]’s extremely poor personal actions, decision making and behaviors brought discredit to the Coast Guard and tarnished the Service reputation in the community.

(2)(h) Involvement in a drug or alcohol incident as defined in the Coast Guard Drug and Alcohol Abuse Program, COMDTINST M1000.10 (series)

- As documented in the Form CG-3307 of 24 April 2015, [the applicant] received an alcohol incident based on the officer’s admission for providing alcohol to a “hired babysitter,” who was under the legal drinking age, to the point where she could recall very little of the day and evening. Additionally, [the applicant] admitted to operating a boat and his personally owned vehicle with minor children present while consuming alcohol.

A Chronological Record of Medical Care dated January 15, 2016, documented a “new patient” visit with Coast Guard physician Dr. W.C. It was noted that the applicant presented with left leg numbness, tingling, and sharp pain starting in the back, which he reported was a “chronic injury” caused by a car accident in 2013. Dr. W.C. noted that the applicant “requested medical discharge.” On what appears to be a second page documenting the same visit, Dr. W.C. noted the applicant was involved in a motor vehicle accident in early January 2013 which caused injuries to his cervical, thoracic, and lumbar spine. The applicant reported a history of pain management and physical therapy and requested an MRI study of the lumbar spine. Dr. W.C. noted that the applicant would be referred to neurology for an opinion and recommendation. For the applicant’s Duty Status, Dr. W.C. selected “Limit Duty x 30 days.” He did not select “MEB” (referring to Medical Evaluation Board), though it was provided as an option on the form.

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<sup>10</sup> The SB issued a separate report documenting its recommendation to remove the applicant from the LCDR promotion list. This recommendation was later approved by the Secretary of the Department of Homeland Security.

<sup>11</sup> The CG-5310B form refers to the applicant OER issued in May 2015, summarized above.

In a letter dated January 27, 2016, psychologist B.B. stated that the applicant had been under her care for posttraumatic stress disorder (PTSD) and generalized anxiety disorder since July 2015 and had completed 27 outpatient therapy sessions. B.B. stated that the applicant was motivated and engaged, and that with continued progress, it was estimated he would successfully complete treatment near the end of June 2016.

In February 2016, the applicant underwent a lumbar fusion procedure and was put on convalescent leave to recover.

On April 15, 2016, the SB's recommendation to remove the applicant's RPA designation was approved by the Commandant. In a memorandum dated April 25, 2016, the Personnel Service Center (PSC) notified the applicant of the SB's recommendation and the Commandant's approval. The applicant was informed that his RPA designation would be removed no later than May 16, 2016, at which time he would be RELAD with a General characterization of service.

On April 26, 2016, separation orders were issued by Commander, Coast Guard PSC-Officer Personnel Management (CG PSC-OPM) for the applicant to be RELAD "Under Honorable Conditions" on May 16, 2016, due to "unsatisfactory performance." The resulting Separation Authorization indicated the applicant was being RELAD pursuant to 10 U.S.C. § 12312.<sup>12</sup>

On May 16, 2016, the applicant's neurosurgery provider, Dr. H.G., referred the applicant for six weeks of physical therapy. Dr. H.G. also indicated that the applicant could not return to work until at least June 27, 2016, when his next follow-up appointment was scheduled. Previously, the applicant had been granted multiple extensions of convalescent leave following his February 2016 back surgery, and he remained on convalescent leave as of May 16, 2016.

On the same day, May 16, 2016, the applicant was RELAD to inactive duty in the Individual Ready Reserve (IRR). He was issued a DD Form 214WS (DD 214 Worksheet) reflecting a period of service from July 30, 2013, to May 16, 2016. The characterization of service was entered as "Under Honorable Conditions," the narrative reason for separation was stated as "Unsatisfactory Performance," the separation code was "LHJ," and the separation authority was marked as "N/A."<sup>13</sup>

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<sup>12</sup> 10 U.S.C. § 12312(a)(1) provides that Reserve officers serving on active duty agreements may not be released from active duty without their consent except "in accordance with the recommendation of a board of officers appointed by an authority designated by the Secretary...."

<sup>13</sup> The Board notes that a DD 214 (as opposed to a DD 214WS) is also of record. The DD 214 documents a period of service from July 1, 2010, to May 16, 2016. While the Separation Authority on this DD 214 is listed as "COMDTINST M1000.4b" rather than "N/A," all other entries are identical to the DD 214WS detailed above.

On May 27, 2016, the criminal charge of a violation of UCMJ Article 86 was withdrawn and dismissed without prejudice. The other charges remained pending.

Throughout this period, on numerous occasions, the applicant requested processing for a medical retirement. He also requested transfer to “awaiting retirement pay” (RET-2) status but was repeatedly advised that his request could not be considered due to the pending UCMJ proceedings.

On June 16, 2016, the applicant pled guilty in Florida state court to the crime of Battery of a Child in violation of Florida Statute 784.085, which provided: “it is unlawful for any person . . . to knowingly cause or attempt to cause a child to come into contact with blood, seminal fluid, or urine or feces by throwing, tossing, projecting, or expelling such fluid or material.” As part of his plea, the applicant signed a waiver of rights, agreeing that “there is a factual basis for the charges to which I am pleading guilty.” In a video of the plea proceedings, the prosecutor states that the applicant stipulated that his act of battery had included an act of penetration. The judge found the applicant guilty of the charge, but withheld adjudication and required the applicant to complete a five-year period of felony probation, during which he would have to complete a sex offender treatment program and meet other conditions.

In December 2016, the PSC issued orders directing the applicant to report for duty on January 13, 2017, for disciplinary action.

On January 5, 2017, the remaining UCMJ charges pending against the applicant were withdrawn and dismissed without prejudice.

In a decision dated February 13, 2017, the U.S. Department of Veterans Affairs (VA) awarded the applicant disability benefits for the following conditions: migraines; asthma; PTSD; traumatic brain injury (TBI) residuals; bilateral knee, wrist, and shoulder conditions; cervical strain; lumbar spine intervertebral disc disease (IVDS); a facial scar; and temporomandibular joint dysfunction (TMJ). Based on the combined impact of these conditions, the applicant was awarded a 100 percent evaluation.

On April 4, 2017, new UCMJ charges were entered, namely two specifications under Article 133 (conduct unbecoming an officer) based on the applicant having provided alcohol to an underage person and engaged in a sexual act with a minor under the age of 18.

In July 2017, the violations charged in April 2017 were referred for trial by general court-martial.

The record includes documentation of a psychological evaluation completed in August 2017 as part of the applicant’s request for disability benefits from the U.S. Social

Security Administration (SSA). The provider completing the evaluation noted that the applicant complained of memory loss, loss of focus, his judgment being “off,” and depression. The applicant traced his psychiatric and cognitive impairment to the September 11, 2001, terrorist attacks, where he was exposed to the dead and injured, and worked alongside Coast Guard members and other first responders who lost their lives. The applicant reported that shortly afterward, he began to experience nightmares, profuse sweating, flashbacks, hypervigilance, insomnia, and depression. The applicant also reported that in 2003, he experienced blunt force trauma to the head when boarding a vessel of suspected drug users. Specifically, the applicant stated he was struck in the head with a six-foot solid steel rod and briefly lost consciousness but was not hospitalized. He reported that after this incident, although he continued his work with the Coast Guard, he had difficulty focusing his attention. It was also noted that in 2006, the applicant began receiving psychiatric treatment through the VA. The psychologist completing the evaluation for the SSA application stated that the applicant “carries a diagnosis of PTSD.”

On October 6, 2017, the UCMJ charges brought against the applicant in April 2017 and referred for trial in July 2017 were withdrawn and dismissed without prejudice at the direction of the Convening Authority.

Later in October 2017, the applicant’s counsel renewed the applicant’s request to be retired due to disability in an email to command, noting that the applicant was no longer subject to court-martial proceedings and had received a 100 percent rating from the VA.

On October 25, 2017, a Page 7 was issued to the applicant documenting his guilty plea in Florida.

Subsequently, a Determination Board (DB) was convened to consider whether the applicant should be required to show cause for retention in the Coast Guard Reserve, where he had been in the IRR since his RELAD in May 2016. On March 22, 2018, the DB issued a report in which it recommended that the applicant be required to show cause for retention. The DB found, like the January 2016 SB, that the applicant had met the requirements for separation contained in *Military Separations*, COMDTINST M1000.4, § 1.A.14.c.(2) (September 2011) (hereinafter “*Military Separations*”). The DB’s explanation for its recommendation tracked the January 2016 SB report (summarized above) precisely, with the sole addition being a summary of the applicant’s June 2016 guilty plea in Florida state court.

In April 2018, the applicant received notification of the results of the DB, and a proposed Board of Inquiry (BOI) action, at which time he would be required to show cause for retention in the Reserve.

In August 2018, the applicant requested retirement in lieu of the proposed BOI. In an August 30, 2018, memorandum, the applicant was informed that if his resignation was

accepted, or if he was not retained following a BOI, he would not be processed for a disability separation because he would be separated for misconduct.

On September 4, 2018, the applicant submitted a “Conditional Resignation in Lieu of Proposed Board of Inquiry Action.” The conditional resignation stipulated that the applicant would receive no lower than a General discharge for his Reserve service from May 17, 2016, to present and would not be processed for a physical disability retirement, but that his resignation would “not forfeit or waive any challenge concerning his separation from active duty on May 16, 2016.” The applicant also acknowledged that he had consulted with counsel and reviewed all of the evidence, had understood his rights regarding the BOI process and the implications of waiving the BOI, including the implications of a General discharge, and was completely satisfied with his counsel’s guidance and freely submitted his conditional resignation and waiver.

On September 11, 2018, the Coast Guard accepted the applicant’s conditional resignation and directed that he be discharged with a General characterization of service effective September 14, 2018.

On February 15, 2019, this Board denied the applicant’s request for expungement of the three Page 7s referenced above – issued in April 2015, September 2015, and October 2017 – along with the derogatory OER issued in May 2015 and additional, “continuity” OERs.<sup>14</sup>

On August 30, 2021, the Coast Guard Discharge Review Board (DRB) issued a decision denying the applicant’s request for a change of his characterization of service from General to Honorable for his period of active duty ending on May 16, 2016.<sup>15</sup>

In September 2021, the applicant submitted an application to this Board requesting a medical retirement and an upgrade of his characterization of service to Honorable for his service ending May 16, 2016. The Coast Guard provided its views in response to the application in March 2022. In October 2022, however, the applicant withdrew the application before any decision was issued by the Board.

In September 2023, the SSA issued a “fully favorable” decision finding the applicant was disabled for SSA purposes as of May 16, 2016. The decision noted that

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<sup>14</sup> The Board’s decision was in response to an application submitted in April 2018, while the applicant was still in the IRR.

<sup>15</sup> The DRB is an internal Coast Guard administrative body authorized under 10 U.S.C. § 1553 to address applications for changes to a former Coast Guard member’s character of service, separation authority, separation code, reentry code, and/or narrative reason for separation appearing on his or her DD 214 and/or other discharge documents. 33 C.F.R. § 51.4; see also <https://www.uscg.mil/Resources/legal/DRB/>. The applicant’s DRB application had been submitted in October 2018 and both the application and decision were limited to the characterization of service for the active duty period ending May 16, 2016.

medical improvement was expected with appropriate treatment, and consequently, a continuing disability review was recommended in 12 months.

In May 2024, this Board received the application now under consideration.

### APPLICATION

The applicant argues, through counsel, that his multiple decades of service should not be outweighed by accusations which, despite a yearslong effort, the Coast Guard “failed to substantiate,” resulting in two separate dismissals of court-martial charges.

Among other arguments, the applicant contends that the Coast Guard improperly pursued both criminal and administrative proceedings simultaneously, based on the same conduct. He also contends that his command exerted UCI during his court-martial proceedings by pressuring witnesses not to testify on his behalf. Specifically, the applicant alleges that the military judge at his court-martial made a finding of UCI based on the Coast Guard’s investigation of LCDR R.L. for perjury following his favorable testimony at the applicant’s Article 32 hearing.

The applicant further contends that pursuant to Coast Guard policy – specifically *Military Separations* § 1.A.14.c.(1) – as well as 10 U.S.C. §§ 1181 and 1186, an Honorable characterization was the only available option based on the stated reason for his separation being “unsatisfactory performance.”

Regarding his request for medical retirement, the applicant asserts that the Coast Guard ignored his numerous requests for medical processing despite his diagnoses of PTSD, “traumatic brain disease,” asthma, various neurological disorders, and spinal injuries leading to extensive back surgery. The applicant also emphasizes that he has been recognized by the SSA as disabled, and by the VA as 100 percent “permanently and totally” disabled, both effective near the time of his May 2016 RELAD. In addition, the applicant references the DD 2807 signed by Dr. E.S. in May 2015, and states that a DD Form 2808-1 (Report of Medical Examination) (hereinafter “DD 2808”) was completed by Dr. W.C. in January 2016, on which Dr. W.C. detailed the applicant’s “disqualifying conditions” in “Box 77.” The applicant argues that under these circumstances, the Coast Guard’s policies required that he be processed for discipline and medical retirement concurrently.

The applicant further states that because his May 2016 RELAD should have been a medical retirement, his September 2018 discharge with a General characterization “should never have occurred.”

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

The Coast Guard provided its views in February 2025 via a memorandum prepared by a Coast Guard Judge Advocate (JA) who, in turn, incorporated an analysis prepared by the PSC.

Initially, the JA asserts that the applicant's submission should not have been docketed by the Board because it did not meet the standards required for the Board to reconsider its February 2019 decision. Specifically, the JA states that the applicant has not submitted new evidence that was unavailable when he submitted his first application in April 2018, nor has he alleged an error of material fact or law in the Board's prior decision. The JA states that although the current application is "cloaked in a new guise," the complaint remains the same in that the applicant is challenging the correctness of his discharge following his arrest and plea of guilty to the crime of Battery of a Child.

The JA goes on to argue that, even if the Board chooses to consider the new submission, the applicant's RELAD and discharge were properly executed. The JA states that the applicant was ineligible for medical retirement processing based on Coast Guard policy, which provided for concurrent processing of discipline and medical retirement/separation only in cases where there was an indication that a TBI or behavioral health condition was a substantial factor contributing to the misconduct underlying the disciplinary proceedings in question.

In its own memorandum, the PSC reiterates many of the JA's arguments. The PSC also adds that although the applicant's "predetermined medical conditions were entered into the physical disability evaluation system (PDES) in 2015," the Coast Guard later clarified in correspondence to the applicant in August 2018 that he was ineligible for PDES processing based on his misconduct separation.

### **APPLICANT'S RESPONSE**

In a submission to the Board dated March 30, 2025, the applicant provided a response to the Coast Guard's views. The applicant initially refuted what he interpreted as the Coast Guard's argument that his application is untimely. He asserts that the DRB decision issued in August 2021, his September 2021 application to this Board (along with the Coast Guard's views provided in March 2022 in response to that application before it was withdrawn), and the September 2023 SSA decision all constitute "new and material evidence sufficient to overcome timeliness concerns." The applicant also argues that reconsideration is warranted because the Coast Guard's failure to process him for medical retirement constituted a material legal error.

The applicant proceeds to argue that the SB that recommended his RPA designation be removed in January 2016 did not have the authority to recommend he be discharged or to dictate his characterization of service, since it was not convened for those purposes. Despite this, the applicant argues, the Coast Guard improperly used the SB's findings as a pretext to unilaterally discharge him and "brand" him with a General discharge.

The applicant reiterates that his requests for medical retirement were ignored despite documentation of serious, service-connected conditions, a 100 percent VA rating, and a fully favorable finding by the SSA. He also points to *Military Separations* § 1.A.14.g., which provides that officers being processed for administrative separation/discharge through the "three-board process" under § 1.A.14.c. should be sent for a medical examination, and "normally" should undergo concurrent discipline and medical processing, if entry into the PDES is warranted.

## APPLICABLE LAW AND POLICY

### *Board Proceedings*

The Board may "correct any military record . . . when [it] considers it necessary to correct an error or remove an injustice." 10 U.S.C. § 1552(a)(1). "Error" means a mistake of a significant fact or law and includes a violation by the Coast Guard of its own regulations. *See Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976) ("Error" means legal or factual error."); *Ft. Stewart Schools v. Federal Labor Relations Authority*, 495 U.S. 641, 654 (1990) ("It is a familiar rule of administrative law that an agency must abide by its own regulations."). "Injustice," when not also error, is treatment by the military authorities that "shocks the sense of justice." *Sawyer v. United States*, 18 Cl. Ct. 860, 868 (1989) citing *Reale v. United States*, 208 Ct. Cl. 1010, 1011, cert. denied, 429 U.S. 854, 50 L. Ed. 2d 129, 97 S. Ct. 148 (1976). The Board has authority to determine whether an injustice exists on a "case-by-case basis." Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002).

### *Coast Guard Policy*

During the relevant period, *Officer Accessions, Evaluations, and Promotions*, COMDTINST M1000.3A (September 2013) (hereinafter "*Officers Manual*") was in force. It included the following relevant provisions:

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#### CHAPTER 1 PROCUREMENTS AND APPOINTMENTS

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##### 1.B. Reserve Officers on Active Duty

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**1.B.3. Appointing Reserve Program Administrators (RPAs)**

**1.B.3.a. General**

- (1) Authority. Under authority of 10 U.S.C. § 10211 and § 12501, the service assigns certain Coast Guard Reserve officers as Reserve Program Administrators (RPAs) to active duty to organize, administer, recruit, instruct, or train Coast Guard Reserve components.

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**1.B.3.i. Removing RPA Designation**

Once an officer has been assigned an RPA or provisional RPA designation, the Commandant may remove it for any of these reasons and release an officer so serving to inactive duty:

- (1) A board of officers convened for that purpose so recommends and the Commandant approves.

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**1.B.4.c. Retirement or Release from Active Duty**

Refer to Article 1.C.7. of reference (c), Military Separations, COMDTINST M1000.4 (series), for the retirement or release from active duty of an RPA.

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During the relevant period, *Military Separations*, COMDTINST M1000.4 (September 2011) was in force. It included the following relevant provisions:

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**CHAPTER 1 SEPARATING ACTIVE DUTY PERSONNEL**

**1.A. Separating Active Duty Commissioned and Warrant Officers**

**1.A.1. General**

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**1.A.1.b. Methods of Separation**

Complete separation from the Coast Guard is accomplished by:

- (1) Acceptance of resignation;
- (2) Dismissal;
- (3) Revocation of commission or warrant;
- (4) Dropping from the rolls;

(5) Termination until it is legally terminated; or

(6) Discharge for cause.

**1.A.1.c. Terminating Active Duty**

Terminating active duty (without completely separating from the Coast Guard) includes retirement and a Reserve officer's release to inactive duty. Retirement procedures appear in Article 1.C. of this Manual.

**1.A.2. Types of Officer Discharges**

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**1.A.2.a. Honorable Discharge**

The service generally grants an Honorable Discharge to officers under circumstances which would warrant such a discharge for enlisted members. The following standards govern issuing honorable discharge certificates:

- (1) Acceptance of unqualified resignations as described in Article 1.A.5.a. of this Manual.
- (2) Discharge because of failure selection for promotion.
- (3) Administrative separation for cause for reasons specified in Article 1.A.14.c.(1) of this Manual.
- (4) Other conditions generally resulting in an honorable discharge for enlisted members.

**1.A.2.c. General Discharge**

The Service grants a General Discharge to officers administratively separated for cause if the cause for separation or an officer's previous record would preclude honorable discharge but is not of such a nature as to require discharge under conditions other than honorable; for example:

- (1) Acceptance of resignations submitted in the form described in Article 1.A.5.b. of this Manual.
- (2) Separation for cause for reasons specified in Article 1.A.14.c.(2) of this Manual.

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**1.A.2.f. Administrative Separation**

In all cases in which an officer is recommended for administrative separation from the Service, the recommending authority shall also recommend the type of discharge that should be granted under this Article.

**1.A.2.g. Issuing Authority**

Commander (CG PSC-OPM) will determine the type of discharge and direct the Servicing Personnel Office (SPO) to prepare the appropriate discharge certificate in the officer's separation order, either in writing or via message. Under no circumstances will

any ship or station ever issue any form of discharge certificate to an individual separated from the Service as a chief warrant or commissioned officer.

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**1.A.6. Releasing Reserve Officers to Inactive Duty**

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**1.A.6.d. Release of RPAs**

Officers whose RPA designation has been removed under Article 1.B.3.i. of reference (a), Officer Accessions, Evaluations, and Promotions, COMDTINST M1000.3 (series), will be released to inactive duty.

**1.A.7. Involuntary Release of Ready Reserve Officers**

- (a) At any time, the Commandant may release a Reserve officer involuntarily to inactive duty. Commanding officers or other officers in the chain of command may recommend an involuntary release from active duty of a Reserve officer in their command in the form of a CG Memorandum to Commander (CG PSC-OPM) containing the following information:
- (1) Officer's name,
  - (2) Length of service,
  - (3) Period of time officer was observed,
  - (4) Reason for recommendation,
  - (5) Specific facts or circumstances relating to performance in chronological order,
  - (6) Medical reports or opinions, if applicable,
  - (7) Nature of counseling and other steps taken to correct deficiencies, if applicable,
  - (8) Officer's response to counseling, if applicable, and
  - (9) Special Officer Evaluation Report, if applicable.
- (b) The recommending officer shall grant the officer concerned an opportunity to review the recommendation and permit him or her to comment as desired by memorandum endorsement. If Commander (CG PSC) initiates the action, the candidate shall be advised in writing of the contemplated actions and the reasons therefore and given the opportunity to communicate to the special panel in writing via the chain of command. Any comments made by members in the chain of command shall be furnished to subject officer and subject officer shall be given 10 calendar days to respond to those comments.
- (c) A panel of senior officers as described in Article 1.A.10.b.(3) of this Manual shall review the recommendation. After thoroughly reviewing the officer's record, the panel recommends to the Commandant either releasing the officer or closing the case.
- (d) Commander (CG PSC-OPM) sends the panel's recommendations to the Commandant for approval, modification, or disapproval (14 U.S.C. §281).

**1.A.8. Discharging Ready Reserve Officers on Active Duty**

When it is necessary to recommend a Reserve officer serving on active duty for discharge from the U.S. Coast Guard Reserve, the following guidance applies:

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- c. All Reserve officers with at least five years commissioned service being considered for discharge will be processed using the three-board process described in Article 1.A.14. of this Manual. A Reserve officer shall serve as a member of each board if possible.
- d. Reserve officers discharged due to board action or at their request in lieu of board action receive an honorable discharge if Article 1.A.14.c.(1) of this Manual applies and a general discharge if Articles 1.A.14.c.(2) or 1.A.14.c.(3) of this Manual applies. Determine the amount of separation pay, if entitled, by computing years of service and basic pay as defined in reference (b), Coast Guard Pay Manual, COMDTINST M7220.29 (series).

**1.A.9. Physical Examination****1.A.9.a. Terminology**

The term “unfit for continued service” is used in this Article rather than “not fit for duty.” “Not fit for duty” is a local medical term meaning the member is unable to perform the immediate duties to which assigned for a short period of time. A finding of “not fit for duty” does not qualify the member for processing in the Physical Disability Evaluation System (PDES), and does not mean the member is not qualified for separation. A member could be “not fit for duty” and still be separated if the existing impairment does not lead to a physical disability as defined in reference (c), Physical Disability Evaluation System, COMDTINST M1850.2 (series), unless Commander (CG PSC-OPM) or (CG PSC-EPM) with the advice of Commander (CG PSC-PSD-mr) considers it necessary to correct a physical defect. “Unfit for continued service” means a physical disability exists which renders the member unfit to perform the duties of his or her office, grade, rank, or rating. This determination can be made only through the PDES and could lead to the member’s separation, except as provided in Article 2.A.2. of this Manual.

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**1.A.9.c. Exemption**

If an officer has had a physical examination within one year of separation or release, a physical examination is not required before separation (e.g., retirement, resignation, or discharge) or release to inactive duty.

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**1.A.14. Separating Regular Coast Guard Officers for Cause****1.A.14.a. Authority**

Pursuant to authority contained in 14 U.S.C. §321-§327, this Article contains regulations to separate commissioned Regular Coast Guard officers with greater than five years commissioned service for cause. While chief warrant officers are not subject to the same provisions, all cases involving those officers are processed under Article 1.A.19. or

1.A.20. of this Manual. Officers with less than five years commissioned service are processed under Article 1.A.10. of this Manual.

**1.A.14.b. Discussion**

- (1) No person has an inherent right to continue to serve as an officer. An officer retains the privilege of service only so long as he or she performs satisfactorily. Responsibility for leadership and example requires an officer to accomplish his or her duty effectively and conduct him or herself properly at all times. Retaining officers substandard in performance of duty or conduct, deficient in character, or otherwise unsuited for military service cannot be justified. There is no place for these individuals in the Coast Guard.

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**1.A.14.c. Causes for Separation**

- (1) The existence of one or more of these or similar conditions may require removing an officer for substandard performance of duty or failure to meet standards prescribed by the Commandant:
  - (a) Downward trend in overall performance resulting in unacceptable service or a consistent record of substandard service.
  - (b) Failure to keep pace or progress with contemporaries; e.g. consistent below-average performance when compared to other officers of the same grade and length of service or failure of physician assistants to maintain certification from the National Commission on Certification of Physician Assistants.
  - (c) Failure to exercise necessary leadership or command expected of an officer of the same grade.
  - (d) Failure to assimilate the technical proficiency required of his or her grade.
  - (e) Failure to properly discharge assignments commensurate with his or her grade and experience.
  - (f) Apathy, a pattern of conduct showing the development of a defective attitude, or other character and behavior disorders including inability or unwillingness to expend effort.
  - (g) Failure to meet established weight standards.
- (2) Existence of one or more of these or similar conditions may require removing an officer for moral or professional dereliction:
  - (a) Discreditable intentional failure to meet personal financial obligations.
  - (b) Mismanaging personal affairs detrimentally affecting the officer's performance of duty.
  - (c) Mismanaging personal affairs to the discredit of the Service.
  - (d) Intentionally omitting or misstating facts in official statements or records for the purpose of misrepresentation.

- (e) Acts of personal misconduct prohibited by military or civilian authorities.
  - (f) Intentional or negligent failure to perform duties or negligence in performing duties.
  - (g) Conduct unbecoming an officer.
  - (h) Involvement in a drug or alcohol incident as defined in reference (h), Coast Guard Drug and Alcohol Abuse Program, COMDTINST M1000.10 (series).
  - (i) One act of sexual harassment by assault or coercion, or conduct demonstrating an established pattern of sexual harassment by crude or offensive behavior, sexist behavior, and/or unwanted sexual attention. See Article 2.B. of reference (e), Discipline and Conduct, COMDTINST M1600.2 (series), and reference (f), Coast Guard Civil Rights Manual, COMDTINST M5350.4 (series), for definitions and guidelines on sexual harassment.
  - (j) Involvement in a prohibited relationship. See Article 2.A. of reference (e), Discipline and Conduct, COMDTINST M1600.2 (series), for policy guidance.
  - (k) An act, either committed or omitted, or other behavior clearly not consistent with the interests of national security requires removing an officer.
  - (l) An unreasonable refusal to submit to necessary and proper medical or dental treatment considered by competent medical or dental officers to be necessary to render member fit for duty (as determined by a medical board convened in accordance with the provisions of reference (c), Physical Disability Evaluation System, COMDTINST M1850.2 (series)).
  - (m) A repeated refusal to receive an immunization ordered by competent authority.
- (3) Any one of these or similar reasons causes serious doubt as to the advisability of permitting the officer concerned to retain a commission and normally prompts a review of his or her overall record. This review will determine if this derogatory information, when viewed in conjunction with other aspects of his or her record, warrants a recommendation for separation. Standing alone any one of these conditions may not support separation. However, any one of them when combined with other known deficiencies could form a pattern which, when viewed in relation to an officer's overall record, requires separation
- (a) Punishment under the Uniform Code of Military Justice, Article 15.
  - (b) Conviction by court-martial or a civil court.
  - (c) Denial of security clearance.
  - (d) Derogatory evaluation report.
  - (e) Failure to be recommended for promotions by a selection board selecting officers for promotion on a fully qualified basis.
  - (f) Failure by a Regular Coast Guard officer of any required course of training, instruction, or indoctrination at a service school.
  - (g) An approved finding of misconduct by a board of investigation.

- (4) Officers with less than five years of commissioned service will normally be processed under Article 1.A.8. or 1.A.10. of this Manual depending on their status.

**1.A.14.d. Relationship of Separation to Discipline**

A commanding officer shall not use separation in lieu of disciplinary action under the UCMJ, but if he or she believes the Service's and officer's interests will be served better by separation proceedings rather than disciplinary action, he or she may so refer any charges. The fact a court-martial has occurred shall not prohibit subsequent proceedings under this Article; however, separation proceedings may not be initiated until a prior UCMJ proceeding is complete.

**1.A.14.e. Initiating Action**

Commander (CG PSC-OPM) shall review an officer's PDR and weigh all facts and circumstances to determine whether an officer should be considered for action under this Article. If Commander (CG PSC-OPM) decides further processing is warranted, Commander (CG PSC) will refer the case to a determination board. At any time, an Area Commander, District Commander, Logistics/Service Center Commander, or unit commanding officer may request Commander (CG PSC-OPM) to review an officer's PDR to determine whether the officer should be considered for separation.

**1.A.14.f. Requiring Officers to Show Cause for Retention**

- (1) At any time and place Commander (CG PSC) may convene a board of officers to review any Regular Coast Guard officer's record to decide whether the officer should be required to show cause for retention on active duty because:
  - (a) The officer's performance of duty has declined below the prescribed standards; or
  - (b) The has demonstrated moral or professional dereliction; or
  - (c) Retention is clearly inconsistent with the interests of national security.
- (2) A board of officers convened to review an officer's records (a "determination board") shall consist of at least three officers in the grade of commander or above who all are serving in a grade senior to the grade of any officer they consider.
- (3) The determination board will impartially review the officer's PDR, the initiating officer's recommendation, and all other available information relevant to the reasons for separation to determine whether it should require the officer to show cause for retention.
- (4) The determination board does not examine witnesses. It is limited to considering the documents presented to it.
- (5) Commander (CG PSC-OPM) sends the determination board's findings to Commander (CG PSC), who will notify the officer concerned the determination board has found either:
  - (a) The officer should not be required to show cause for retention and the case is closed; or
  - (b) The officer should be required to show cause for retention.
- (6) If a determination board decides an officer is required to show cause for retention on

active duty, Commander (CG PSC-OPM) will:

- (a) Give the officer a copy of the determination board's findings and all documents pertinent to the case except those the Commandant determines should be withheld in the interest of national security;
  - (b) Notify the officer in writing of the reasons for which he or she is being required to show cause for retention (notification shall be sent through the officer's commanding officer, who in turn shall state by endorsement the date of delivery to the officer concerned);
  - (c) Notify the officer that Commander (CG PSC) will convene a board of inquiry to hear the case at least 30 days after the date of notification of the determination board's findings;
  - (d) Inform the officer his or her appearance before a board of inquiry is the only opportunity to appear in person on his or her own behalf before final action in the case;
  - (e) Notify the officer if separated from the Service after action by a board of review or at his or her own request after a determination board's finding he or she is required to show cause for his or her retention on active duty, the officer will receive an honorable discharge if the reason for separation is one contained in Article 1.A.14.c.(1) of this Manual, and a general discharge if the reason is contained in Article 1.A.14.c.(2) or 1.A.14.c.(3) of this Manual;
  - (f) Notify the officer of his or her entitlement to separation pay;
  - (g) Notify the officer that if retired after action by a board of review or at his or her own request after a determination board's finding, the officer will be subject to evaluation under the provisions of Article 1.C.12. of this Manual as to satisfactory service in a temporary grade;
  - (h) Allow the officer reasonable time, at least 30 days, to prepare his or her defense;
  - (i) Allow the officer to appear in person and to be represented by counsel at proceedings before a board of inquiry; and
  - (j) Allow the officer full access to and furnishes copies of records relevant to the case at all stages of the proceedings, except a board shall withhold any records the Commandant determines should be withheld in the interests of national security. If any records are withheld under this clause, the officer whose case is under consideration shall, to the extent national security permits, be given the actual records or copies of them with the classified portions deleted.
- (7) The officer concerned must acknowledge receipt of the determination board's findings within five days of receipt. The officer returns the receipt to Commander (CG PSC-OPM-1) through the chain of command.
  - (8) An officer who has been notified a determination board has found he or she should be required to show cause for retention on active duty may apply for voluntary retirement or request early discharge from the Service. If the officer takes neither action, he or she shall be ordered to appear before a board of inquiry.

**1.A.14.g. Physical Qualifications for Separation**

If a determination board notifies an officer he or she must show cause for retention in the Service under Article 1.A.14.f.(6) of this Manual, the command concerned shall ensure the officer reports immediately to the nearest medical facility for a standard physical examination as described in reference (d), Coast Guard Medical Manual, COMDTINST M6000.1 (series), if the officer has not completed one within the preceding three months. If travel is necessary in connection with the physical examination, the district commander or commanding officer of the Headquarters unit concerned will issue the travel orders. If the officer has a condition which requires him or her to enter the physical disability evaluation system or a serious disease or injury intervenes, Commander (CG PSC-OPM) and (CG PSC-PSD) shall be notified expeditiously by message. In these cases, the officer concerned is normally processed concurrently for cause under this Article and in the physical disability evaluation system. A final determination on the officer's status normally will not be made until both processes are completed.

**1.A.14.h. Board of Inquiry**

- (1) Purpose. The board of inquiry affords officers a fair, impartial hearing at which they have an opportunity to establish their retention in the Coast Guard is warranted. The officers concerned may present evidence to refute matters of record offered against them or otherwise establish they should be retained. The board of inquiry will consider all relevant evidence presented at the hearing and make findings and a recommendation based on a preponderance of evidence.

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**1.A.14.i. Board of Review**

- (1) On receiving the proceedings record of the board of inquiry which recommends separating an officer for cause, Commander (CG PSC) convenes a board of review.
- (2) The board of review consists of three officers senior to the members of the board of inquiry which considered the case. An officer may not be a member of the final review board if he or she was a member of the determination board or board of inquiry which considered the case or is ineligible to be a member of the board of inquiry for any reason listed in Article 1.A.14.h.(2) of this Manual.
- (3) The board of review reviews the records and documented evidence the board of inquiry considered and made a part of its proceedings and any additional information the officer concerned or the recorder submitted under Article 1.A.14.h.(8) of this Manual, to determine whether the officer concerned has or has not established he or she should be retained in the Coast Guard.

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**1.B. Separating Active Duty Enlisted Members**

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**1.B.1.f. Definitions**

As used in this Article, these definitions apply:

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- (2) Discharge. Complete severance from all military status.

- (3) Release from Active Duty. Termination of active duty status and transfer or reversion to a Reserve component not on active duty.
- (4) Separation. A general term including discharge and release from active duty.
- (5) Administrative Separation. Discharge or release from active duty when enlistment or required period of service expires or before then in the manner prescribed in this Article or by law but specifically excluding separation by sentence of general or special court-martial.

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- (9) Discharge Authority. As established here and implemented by regulations issued by an Armed Force, an official authorized to make a final decision on specified types of discharges.

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- (13) Characterization of Service for Administrative Separation. A determination reflecting a member’s military behavior and performance of duty during a specific period of service. The three characterizations are honorable, under honorable conditions, and under other than honorable conditions.

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**1.C.7. Retirement or Release to Inactive Duty of Reserve Program Administrators**

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**1.C.7.h. Separation for Cause**

An RPA may be separated for cause in the same manner as a regular Coast Guard officer under Article 1.A.14. of this Manual. Reserve membership on boards convened for this purpose shall comply with 33 CFR 8.1110.

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*Physical Disability Evaluation System, COMDTINST M1850.2D (May 2006)* (hereinafter “*PDES Manual*”) was applicable during the relevant period. It included the following relevant provisions:

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CHAPTER 1. OVERVIEW OF PHYSICAL DISABILITY EVALUATION SYSTEM (PDES)

- A. Purpose of the System. The PDES exists to ... provide benefits for eligible members whose military service is terminated due to a service-connected disability, and they prevent the arbitrary separation from the service of those members who incur a disabling injury or disease, yet remain fit for duty.
- B. System Components. These components and levels of review represent a system of counterbalances, each playing an important role in protecting the rights and interests of both the evaluatee and the government.

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1. Medical Evaluation Board (MEB). This is the first step in the PDES. A MEB is convened to conduct a thorough and expeditious evaluation of a member whose fitness for duty is questionable.

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D. System Process.

1. Medical Evaluation Board (MEB). A member is introduced into the PDES when a commanding officer (or medical officer or higher authority as described in chapter 3) questions the member's fitness for continued duty due to apparent physical and/or mental impairment(s) and directs that an MEB be convened to conduct a thorough examination of the member's physical and/or mental impairment(s). The results of this examination, prepared in MEB format, should be as detailed as possible so as to provide a complete portrait of the member's physical and mental impairments for subsequent review.

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CHAPTER 2. DEFINITIONS, PRESUMPTIONS, AND POLICIES

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C. Policies.

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2. Fit For Duty (FFD) and Not Fit for Duty (NFFD). The following policies relate to fitness for duty.
  - a. The sole standard in making determinations of physical disability as a basis for retirement or separation shall be unfitness to perform the duties of office, grade, rank, or rating because of disease or injury incurred or aggravated through military service. Each case is to be considered by relating the nature and degree of physical disability of the evaluatee concerned to the requirements and duties that a member may reasonably be expected to perform in his or her office, grade, rank, or rating. In addition, before separation or permanent retirement may be ordered:
    - (1) There must be findings that the disability
      - (a) is of a permanent nature and stable; and

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- b. The law that provides for disability retirement or separation (10 U.S.C. 61) is designed to compensate a member whose military service is terminated due to a physical disability that has rendered him or her unfit for continued duty. That law and this disability evaluation system are not to be misused to bestow compensation benefits on those who are voluntarily or mandatorily retiring or separating and have theretofore drawn pay and allowances, received promotions, and continued on unlimited active duty status while tolerating physical impairments that have not actually precluded Coast Guard service. The following policies apply.
  - (1) Continued performance of duty until a member is scheduled for separation

or retirement for reasons other than physical disability creates a presumption of fitness for duty. This presumption may be overcome if it is established by a preponderance of the evidence that

- (a) the member, because of disability, was physically unable to perform adequately in his or her assigned duties; or
  - (b) acute, grave illness or injury, or other significant deterioration of the member's physical condition occurred immediately prior to or coincident with processing for separation or retirement for reasons other than physical disability which rendered him or her unfit for further duty.
- (2) A member being processed for separation or retirement for reasons other than physical disability shall not be referred for disability evaluation unless the conditions in articles 2.C.2.b.(1)(a) or (b) are met.
- (3) The determination of a grave or serious condition or significant deterioration must be made by a competent Coast Guard medical officer. Such medical authority will consult with the CGPC senior medical officer, as necessary, to ensure proper execution of this policy in light of the member's condition. The member's command may concurrently submit comment to the CGPC senior medical officer.
- c. If a member being processed for separation or retirement for reasons other than physical disability adequately performed the duties of his or her office, grade, rank or rating, the member is deemed fit for duty even though medical evidence indicates he or she has impairments.
- d. Inadequate performance of duty, by itself, does not constitute physical unfitness. The evidence must establish a cause and effect relationship between the inadequate performance and the evaluatee's physical impairments.
- e. ... [A]n evaluatee convalescing from a disease or injury that reasonably may be expected to improve so that he or she will be able to perform the duties of his or her office, grade, rank, or rating in the near future may be found fit for duty. In this instance, the evaluatee will continue in an interim duty status until convalescence is complete, at which time he or she will be returned to a full duty status.

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- i. The existence of a physical defect or condition that is ratable under the standard schedule for rating disabilities in use by the Department of Veterans Affairs (DVA) does not of itself provide justification for, or entitlement to, separation or retirement from military service because of physical disability. Although a member may have physical impairments ratable in accordance with the VASRD, such impairments do not necessarily render him or her unfit for military duty. A member may have physical impairments that are not unfitting at the time of separation but which could affect potential civilian employment. The effect on some civilian pursuits may be significant. Such a member should apply to the DVA for disability compensation after release from active duty.

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11. Cases Involving Disability Evaluation and Disciplinary Action Concurrently.

- a. Disability statutes do not preclude disciplinary or administrative separation under applicable portions of the Personnel Manual, COMDTINST M1000.6 (series). If a member is being processed for a disability retirement or separation, and proceedings to administratively separate the member for misconduct, disciplinary proceedings which could result in a punitive discharge of the member, or an unsuspended punitive discharge of the member is pending, final action on the disability evaluation proceedings will be suspended, and the non-disability action monitored by Commander, Coast Guard Personnel Command.
- b. If the court martial or administrative process does not result in the execution of a punitive or an administrative discharge, the disability evaluation process will resume. If a punitive or administrative discharge is executed, the disability evaluation case will be closed and the proceedings filed in the member's official medical record.

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CHAPTER 3. MEDICAL EVALUATION BOARD

- A. Purpose. The purpose of a Medical Evaluation Board (MEB) is to evaluate and report upon the present state of health of any member who may be referred to the MEB by an authorized convening authority and provide a recommendation as to whether the member is medically fit for the duties of his or her office, grade, rank, or rating.
- B. Convening of Medical Evaluation Board.
  1. An MEB may be convened by the following:
    - a. Commandant.
    - b. Area Commanders.
    - c. District Commanders.
    - d. Maintenance and Logistics Commanders.
    - e. Sector Commanders.
    - f. Commanding officers.
    - g. Medical officers of the Uniformed Services.

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## FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction under 10 U.S.C. § 1552(a), with the caveats detailed below, as the applicant is seeking corrections of alleged errors and/or injustices in his military records.

2. The applicant requested a hearing before the Board via video or telephone. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.<sup>16</sup>

3. "The Board begins its consideration of each case presuming administrative regularity on the part of the Coast Guard and other Government officials. The Applicant has the burden of proving the existence of an error or injustice by a preponderance of the evidence." 33 C.F.R. § 52.24(b). Absent evidence to the contrary, the Board presumes that Coast Guard officials have carried out their duties "correctly, lawfully, and in good faith." *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979). In cases involving personnel decisions, "the military is entitled to substantial deference in the governance of its affairs." *Dodson v. United States*, 988 F.2d 1199, 1204 (Fed.Cir.1993).

### Request for Removal of Page 7s

4. "Any request for reconsideration of a determination of [the Board] . . . shall be reconsidered by [the Board] if supported by materials not previously presented to or considered by the board in making such determination." 10 U.S.C. § 1552(a)(3)(D). For reconsideration, an applicant must present "evidence or information that was not previously considered . . . [and] could not have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence," or evidence that the Board "committed legal or factual error in the original determination that could have resulted in a determination other than that originally made." 33 C.F.R. § 52.67(a).

5. In his April 2018 submission to the Board, the applicant requested that the Page 7s issued in April 2015, September 2015, and October 2017 be expunged, along with other records.<sup>17</sup>

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<sup>16</sup> *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

<sup>17</sup> The April 2018 application initially requested, in addition, a change of the characterization of the applicant's service ending in May 2016 to Honorable, and a reversal of the January 2016 SB's recommendation and the Coast Guard's related actions. These requests, however, were later withdrawn.

6. In its February 2019 decision, the Board denied all requested relief after meticulously addressing all of the evidence and arguments submitted by the applicant. Ultimately, the Board found that the applicant had not met his burden to show by a preponderance of the evidence that any of the Page 7s or other documents were erroneous or unjust.

7. In support of his current request, the applicant has submitted virtually the same evidence, including statements by LCDR R.L. and another officer, F.J., and documentation relating to the January 2016 SB, the applicant's May 2016 RELAD, the March 2018 DB report, the applicant's September 2018 resignation in lieu of BOI action, and various medical records. He has presented, again, almost all of the same arguments addressed in the Board's February 2019 decision, including that the Coast Guard's actions were tainted by UCI, and that he was denied opportunities to refute the allegations detailed in the Page 7s at issue.

8. Upon review, none of the evidence submitted in connection with the applicant's current request to expunge all of the Page 7s from his record constitutes information that is new and/or could not have been presented to the Board with the April 2018 application upon the exercise of reasonable diligence. While the applicant argues that the August 2021 DRB decision, his September 2021 later-withdrawn application to this Board, the Coast Guard's March 2022 advisory opinion, and the September 2023 SSA decision constitute new and material evidence, none of these items pertain to the applicant's request for expungement of Page 7s from his records. While the applicant has also argued that the Coast Guard's failure to process him for medical retirement constituted a legal error sufficient to warrant reconsideration, this argument also does not pertain to the matters previously adjudicated by the Board.

9. Under these circumstances, the Board finds that the portion of the current application requesting expungement of Page 7s from the applicant's record does not meet the criteria warranting reconsideration of the Board's February 2019 decision. Accordingly, the Page 7-related requests are denied.<sup>18</sup>

#### Characterization of Service – September 2018 Discharge from the Coast Guard Reserve

10. It is unclear whether the applicant intended his request for an Honorable characterization of service to encompass both his May 2016 RELAD and his September 2018 discharge from the Coast Guard Reserve, or only the former. For example, while the application appears primarily focused on the 2016 RELAD, the applicant includes arguments touching on the 2018 discharge (i.e., that the 2018 discharge should not have occurred because the 2016 RELAD should have been a medical retirement).

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<sup>18</sup> See 33 C.F.R. § 52.67(a).

11. To the extent that the applicant intends to challenge the discharge characterization for his service ending September 14, 2018, the Board first notes that an application must be filed with the Board within three years after the applicant discovers the alleged error or injustice.<sup>19</sup> The applicant became aware of his General characterization for this service period in September 2018. The current application, then, received in May 2024, is untimely.

12. More importantly, perhaps, the record does not suggest that the applicant has applied to the DRB with respect to the September 2018 discharge. The DRB's decision was specifically limited to addressing the characterization of the applicant's active duty service ending in May 2016. Unlike the Board, the DRB accepts requests for discharge upgrades from former members up to 15 years from the date of discharge.

13. The Board also notes that when a final decision has been issued by the DRB, an applicant may apply to this Board for review within three years of that decision, even if the Board receives the application more than three years after the alleged error or injustice occurred.<sup>20</sup>

14. The Board may not consider any application until the applicant has exhausted all effective administrative remedies afforded under existing law or regulations, and such legal remedies as the Board may determine are practical, appropriate, and available to the applicant.<sup>21</sup> The Board may administratively close a case after it has been docketed and at any time if it determines that the applicant has not exhausted an available administrative remedy, as required under § 52.13(b).<sup>22</sup>

15. Based on his discharge date in September 2018, the applicant may apply to the DRB before September 2033. Consequently, the Board finds that the applicant has not exhausted all appropriate, available administrative remedies. The Board also observes that an application to the DRB would provide more due process for the applicant by permitting both the DRB, and then this Board (if the DRB does not grant relief), to address the applicant's claims.

16. Under these circumstances, to the extent the applicant has requested that the Board address the characterization of his service between May 17, 2016, and September 14, 2018, that request will be administratively closed due to the Board's lack of jurisdiction.

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<sup>19</sup> 10 U.S.C. § 1552(b); 33 C.F.R. § 52.22.

<sup>20</sup> See 10 U.S.C. § 1553(b)(2).

<sup>21</sup> 33 C.F.R. § 52.13(b).

<sup>22</sup> 33 C.F.R. § 52.32(a)(3).

Characterization of Service – May 2016 Release from Active Duty

17. The applicant's request for an Honorable characterization for his period of active duty service ending May 16, 2016, was initially filed with the DRB, which denied it on August 30, 2021. A decision by the DRB constitutes final agency action and is reviewable by this Board if requested within three years of the DRB decision.<sup>23</sup> Because the applicant's submission was received within three years of the DRB's decision, the request pertaining to the characterization of the applicant's service ending on May 16, 2016, is timely.

18. The applicant contends that his administrative RELAD on May 16, 2016, violated Coast Guard policy because it was initiated while UCMJ charges against him were pending. He also argues that the SB that recommended the removal of his RPA designation lacked the authority to discharge him or assign a characterization of service. The applicant argues further that the Coast Guard's actions violated his rights to due process and against self-incrimination.

19. The Board initially notes that *Military Separations* defines "discharge" as "complete severance from all military status," and separation as a "general term including discharge and release from active duty."<sup>24</sup> The Coast Guard's use of these overlapping terms in various contexts makes interpretation of the policies applicable in this case somewhat challenging. What is clear, however, is that the policies in place as of May 16, 2016, generally contemplated a three-board process for fully discharging officers from the Coast Guard, and an abbreviated one-board/panel process for involuntary RELAD.

20. During the relevant period, Reserve officer involuntary RELAD procedures were detailed in *Military Separations* § 1.A.7. This process generally began with a recommendation from a member of the officer's chain of command to the Commandant for RELAD. The officer would then be notified of the reason for the recommendation and given an opportunity to respond in writing. If the action was initiated, the officer would be advised in writing and given an opportunity to comment in writing to a panel of senior officers who would then review the record and provide a recommendation to the Commandant.

21. *Military Separations* § 1.A.14. laid out the procedures for discharging Regular component officers from the Coast Guard "for cause." This process involved a sequence of three boards: a DB to recommend whether the officer should be required to show cause for retention; a BOI to determine whether the officer should be retained; and a

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<sup>23</sup> 10 U.S.C. § 1553(b)(2).

<sup>24</sup> These definitions appear in *Military Separations* § 1.B.1.f., in the section applicable to separation of enlisted personnel. No definitions appear in § 1.A., applicable to separation of officers. Based on the Board's review, however, there is no indication that these terms are intended to apply differently in the context of officer separations.

Board of Review (BoR).<sup>25</sup> Per § 1.A.8.c., when it was “necessary to recommend a Reserve officer [with at least five years of commissioned service] serving on active duty for discharge from the U.S. Coast Guard Reserve,” the three-board process described in § 1.A.14. applied. Section 1.C.7.h. also stated that an RPA “may be separated for cause in the same manner as a regular Coast Guard officer under Article 1.A.14.” This section, however, did not specify whether “separation” in this context was intended to include both discharge and RELAD, or only discharge.

22. In this case, the Commandant utilized *Officers Manual* § 1.B.3.i. to convene a SB to recommend whether to remove the applicant’s RPA designation. That section stated that such action should be recommended by a “board of officers,” but did not specify whether that board was required to operate according to *Military Separations* § 1.A.14. The SB recommended revocation of the applicant’s RPA status, and the Commandant approved. Per *Military Separations* § 1.A.6.d., removal of an officer’s RPA designation triggered RELAD, without any additional action required.

23. Assessing these provisions together, it was arguably unclear whether the Coast Guard intended for removal of RPA designations to be treated as akin to involuntary RELAD under *Military Separations* § 1.A.7. (the one-board/panel process), or in the same manner as a full discharge from the Coast Guard under § 1.A.14. (the three-board process).

24. In April 2017, approximately 11 months after the applicant’s RELAD, a Change Notice was published to amend *Military Separations*. Changes included, in relevant part, replacement of § 1.C.7. (providing that RPAs may be separated for cause under § 1.A.14. without specifying the meaning of “separated”) with a new Chapter Five, which included the following: “A permanent RPA with at least five years of commissioned service . . . being considered for discharge *or release from active duty* must be processed using the three-board process described in Article 1.A.14. of this Manual.”<sup>26</sup> There is no question, therefore, that the three-board process would have been required if the applicant had been RELAD on or after April 21, 2017. But he was not.

25. Based on its actions in this case, the Board infers that the Coast Guard interpreted then-existing *Military Separations* § 1.C.7.h. to encompass only full discharge from the Coast Guard, and thus, not to require a three-board process for RELAD of an RPA to the IRR. Based on this interpretation, and the non-specific requirement in *Officers Manual* § 1.B.i.3. that a “board of officers” recommend revocation of RPA status, the Coast Guard afforded the applicant a process in line with that provided for involuntary RELAD under *Military Separations* § 1.A.7. Specifically, the applicant was notified of the SB proceeding and its basis and afforded the opportunity to communicate with the SB in writing.

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<sup>25</sup> This was the process initiated in March 2018 to discharge the applicant from the IRR. The applicant resigned in lieu of facing a BOI.

<sup>26</sup> See *Military Separations* Art. 5.D.2., COMDTCHANGENOTE 1000 (April 21, 2017) (emphasis added).

26. The Board finds the Coast Guard's interpretation was reasonable, and that its actions were consistent with the policies in place during the relevant period. At that time, no policy specifically required a full three-board process for revocation of RPA status. When read together, *Military Separations* and the *Officers Manual* suggested an intent to afford different levels of process for full discharge and RELAD cases. Because the applicant was a Reserve officer serving on active duty, the Coast Guard reasonably elected to afford him a process applicable to that status, namely a single board/panel. Importantly, this process also satisfied the baseline statutory process requirements for involuntary RELAD of Reserve officers serving on active duty agreements.<sup>27</sup>

27. Having determined that the SB convened in January 2016 was a proper vehicle for recommending whether to remove the applicant's RPA designation, the Board moves to the applicant's other arguments. First, the applicant contends that the SB, having been convened only for the limited purpose of recommending whether to revoke his RPA designation, lacked the authority to discharge him or assign a characterization of service. Upon review, however, the SB did neither of those things. Pursuant to *Officers Manual* § 1.B.3.i. and *Military Separations* § 1.A.6.d., the applicant was to be automatically RELAD upon the removal of his RPA designation. So, the SB did not discharge the applicant. Instead, this was accomplished through the Commandant's approval of the SB's recommendation, in accordance with policy.

28. Nor did the SB assign the applicant's characterization of service. In its January 2016 report, as the basis for its recommendation to remove the RPA designation, the SB explained the ways in which the applicant's conduct had constituted "moral or professional dereliction" under *Military Separations* § 1.A.14.c.(2). Specifically, the SB discussed the ways in which the applicant's provision of alcohol to and sexual intercourse with a minor amounted to mismanagement of personal affairs to the discredit of the Coast Guard, acts of personal misconduct prohibited by military or civilian authorities, conduct unbecoming an officer, and involvement in an alcohol incident.

29. The SB did not specifically recommend a General characterization. Per *Military Separations* § 1.A.2.c., however, the categories of conduct identified by the SB under § 1.A.14.c.(2) corresponded in most circumstances to a General characterization. Under § 1.A.2.g., the ultimate authority to determine a characterization rested with CG PSC-OPM. CG PSC-OPM exercised that authority in separation orders issued in April 2016. The SB's findings were not binding, and it is unclear whether they were taken into account. Whether CG PSC-OPM assigned the General characterization based on the SB's recommendations or his own assessment of the applicant's conduct, however, the Board finds the characterization was reasonable and consistent with policy.

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<sup>27</sup> See 10 U.S.C. § 12312 (requiring only "an opportunity to be heard by a board of officers before the release" to inactive duty).

30. *Military Separations* § 1.A.2.c. provided significant discretion to CG PSC-OPM, stating that a General characterization was warranted when an officer's record "would preclude honorable discharge but is not of such a nature as to require discharge under conditions other than honorable." Examples, including conduct listed under § 1.A.14.c.(1) (for an Honorable characterization) and 1.A.14.c.(2) and (3) (for a General characterization), were listed, but there is no indication they were intended to be exclusive. CG PSC-OPM, therefore, was free to consider the enumerated categories of conduct or other factors in reaching a characterization decision.

31. In this case, the applicant was arrested and charged with crimes involving provision of alcohol to and sexual intercourse with a person under 18 years old despite her intoxication. This conduct violated Florida state law and the UCMJ, and the applicant's arrest was reported by local media. Under these circumstances, there was ample information to support a determination that the applicant had mismanaged his personal affairs to the discredit of the Coast Guard, engaged in misconduct prohibited by military or civilian authorities, and committed conduct unbecoming an officer.

32. The applicant maintains that because the narrative reason for his separation as stated on his DD 214 was "unsatisfactory performance," he should have received an Honorable characterization. This is because, he argues, *Military Separations* § 1.A.14.c.(1) provides for an Honorable characterization when removal is required due to "substandard performance of duty or failure to meet standards prescribed by the Commandant." The applicant contends that unsatisfactory performance is synonymous with substandard performance. In this regard, the Board notes that in an advisory opinion dated March 2022, in response to the applicant's later-withdrawn September 2021 application, the Coast Guard averred that the narrative reason for separation and corresponding separation code indicated on the applicant's DD 214 were in error. The Coast Guard explained that the DD 214 should have reflected RELAD for misconduct.

33. Upon review, the Board finds the record supports the Coast Guard's position that the applicant's narrative reason for separation and corresponding separation code were assigned in error. Specifically, the SB which recommended removal of the applicant's RPA designation found his conduct fell under *Military Separations* § 1.A.14.c.(2), not (1). It appears that CG PSC-OPM agreed, or found a General characterization was warranted based on his own analysis of the applicant's conduct. Although the applicant received some low marks on his derogatory OER issued in May 2015 for reasons related to his November 2014 arrest, there is no indication of low marks or other performance issues in earlier OERs, and no other indication that substandard performance played any significant role in the applicant's RELAD.

34. Although the applicant's narrative reason and corresponding code appear to have been assigned in error, correction of these errors would result in prejudice to the

applicant, as there is currently no indication of misconduct on the applicant's DD 214. An unsatisfactory performance separation is generally viewed as more favorable than a separation for misconduct. Because the Board's authority does not extend to correcting records to the prejudice of applicants, the Board declines to order any correction to the applicant's narrative reason for separation or separation code.

35. Relatedly, the applicant argues that he was entitled to an Honorable characterization, based on the notation of "unsatisfactory performance," under 10 U.S.C. §§ 1181 and 1186. Again, the Board has determined that the applicant was not RELAD based on unsatisfactory performance. In any event, these statutes apply only to Regular component officers in the Department of Defense military departments, not to Reserve component officers in the Coast Guard.

36. The applicant argues that the proceedings leading to his RELAD violated his due process rights and right to counsel. However, "due process rights are typically fulfilled by notice of the government act and an opportunity to respond before or after the act."<sup>28</sup> For due process challenges in the military context, deference to the service's determined level of process is at its greatest.<sup>29</sup> In this case, the applicant was properly notified of the initiation of the SB and afforded a full opportunity to respond. This process, again, was consistent with the baseline established by Congress for involuntary RELAD of Reserve officers serving on active duty agreements in 10 U.S.C. § 12312. The applicant has not pointed to any authority for the proposition that the level of process provided in his case was unconstitutional. In addition, as discussed more below, he has provided no persuasive argument as to what information he was prepared to present under a different process, or what services from counsel that he was deprived, that would have resulted in an Honorable characterization. Under these circumstances, the Board finds the applicant has not met the high burden of establishing a violation of his constitutional due process rights.

37. The applicant also argues that the initiation of his administrative RELAD while UCMJ charges remained pending violated Coast Guard policy and his right against self-incrimination under the Constitution and UCMJ Article 31. The applicant first points to *Military Separations* § 1.A.14.d., which provided that "separation proceedings may not be initiated until a prior UCMJ proceeding is complete." As discussed above, however, the applicant was not processed under § 1.A.14. There was no regulation or policy in effect at the relevant time which required postponement of a proceeding under *Officers Manual* § 1.B.3.i. to revoke an RPA designation due to a pending court-martial. The Board, therefore, finds no violation of Coast Guard policy in initiating the applicant's RELAD.

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<sup>28</sup> *Canonica v. United States*, 41 Fed. Cl. 516, 524 (1998).

<sup>29</sup> See *Weiss v. United States*, 510 U.S. 163, 164 (1994) (holding that the "due process analysis that is appropriate to the military context" is whether the factors "militating in favor" of a different process than that which is in place "are so extraordinarily weighty as to overcome the balance struck by Congress.")

38. The applicant also points to UCMJ Article 31, which provides that “[n]o person . . . may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.”<sup>30</sup> While the applicant was afforded the opportunity to communicate with the SB convened in January 2016, he was not compelled to, and he did not. The applicant cites no authority for the proposition that Article 31 or the Constitution are violated when an individual is presented a difficult choice as to whether or not to invoke his right to silence. On the contrary, “[n]ot only is it permissible to conduct a civil [administrative] proceeding at the same time as a related criminal proceeding, even if that necessitates invocation of the Fifth Amendment privilege, but it is even permissible for the trier of fact to draw adverse inferences from the invocation of the Fifth Amendment in a civil [administrative] proceeding.”<sup>31</sup> Accordingly, under the circumstances present in this case, the Board finds no violence was done to the applicant’s right against self-incrimination under the UCMJ or Constitution due to the timing of his RELAD proceedings.<sup>32</sup>

39. The Board next notes that as a general matter, the occurrence of an error or injustice is not sufficient, on its own, to warrant the Board granting whatever relief is requested in any given case. The Board is authorized to grant relief when it “considers it necessary to correct an error or remove an injustice.” 10 U.S.C. 1552(a)(1). This authority has been explained as a “twofold duty to properly evaluate the nature of any error or injustice and, in addition, to take such corrective action as will appropriately and fully erase such error or compensate such injustice.”<sup>33</sup> In other words, when the Board determines an error or injustice occurred, the Board’s objective is to determine what remedy will most effectively place the applicant in the position he or she would have been in had the error or injustice not occurred.

40. With this context in mind, the Board notes that even if it were assumed, *arguendo*, that the applicant’s May 2016 RELAD involved an error or technical inconsistency with Coast Guard policy, granting of an Honorable characterization as requested by the applicant would not necessarily be warranted. In this regard, the Board is also mindful that in the context of reviewing military personnel actions and decisions of civilian record correction boards, it has long been established that “strict compliance with procedural requirements is not required where the error is deemed harmless.”<sup>34</sup>

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<sup>30</sup> 10 U.S.C. § 831(a).

<sup>31</sup> *MacKay v. DEA*, 664 F.3d 808, 820 (10th Cir. 2011) (quoting *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 326 (9th Cir.1995)).

<sup>32</sup> See also *Parker v. Levy*, 417 U.S. 733, 758 (1974) (recognizing that “[t]he fundamental necessity for obedience, and the consequent necessity for imposition of discipline, may render permissible within the military that which would be constitutionally impermissible outside it.”).

<sup>33</sup> *Caddington v. United States*, 178 F. Supp. 604, 606 (Ct. Cl. 1959).

<sup>34</sup> *Wagner v. United States*, 365 F.3d 1358, 1362 (Fed. Cir. 2004); see also *United States v. Chatman*, 46 M.J. 321, 323 (C.A.A.F. 1997) (requiring Air Force member seeking relief based on prosecution’s improper post-trial introduction of a new matter to “demonstrate prejudice by stating what, if anything, would have been submitted to deny, counter, or explain the new matter.”).

41. In this case, the circumstances surrounding the applicant's December 2014 arrest and subsequent court proceedings are well-documented. The record at the time of the May 2016 RELAD showed that after being arrested, the applicant admitted to most or all of the underlying conduct in phone calls with the victim recorded by law enforcement. He later plead guilty to Battery of a Child under Florida law and stipulated that his violation included an act of penetration. While the applicant has argued that the accusations against him were "not substantiated" by the Coast Guard and has professed his innocence in general terms in various statements of record, he has not offered any plausible or, in the Board's opinion, credible denial or explanation of the conduct underlying his arrest. The conduct in question plainly met the criteria for a General discharge pursuant to *Military Separations* § 1.A.14.c.(2), as explained in the SB's report. The applicant has provided no explanation as to what information, if any, he was prepared to present to a DB, BOI, or BoR, if the three-board process had been employed. In the end, even though no UCMJ charges remained pending when the applicant was summoned before a BOI in April 2018, he resigned his commission in lieu of facing that BOI. Neither during his 2018 discharge processing, nor to this day in his submissions to the Board, has the applicant credibly contended that the conduct for which he received a General characterization for his service ending in May 2016 did not occur. In short, the record does not suggest the applicant was prevented from presenting any set of facts to Coast Guard that would have, realistically, led to an Honorable characterization of service under any circumstances.

42. The Board is mindful of the applicant's long service in the Coast Guard, and his argument that his career should not be outweighed by a single accusation. The Board notes, however, that the characterization in question applies only to the period of service ending May 16, 2016. In fact, the record shows the applicant received Honorable characterizations for active duty periods ending in February 1992, November 2001, September 2003, November 2003, March 2005, February 2006, September 2007, and June 2010. While the applicant's service record is commendable in many respects, characterizations are applied to periods of active duty service independently. As such, the Coast Guard's characterization of two periods of service as General does not indict other Honorable service periods or the applicant's record of service as a whole.

43. In summary, after careful review, the Board finds the applicant has not met his burden to overcome the presumption of regularity owed to the Coast Guard's actions, or to establish an error or injustice by a preponderance of the evidence. Furthermore, even assuming, *arguendo*, that an error or injustice occurred, the relief requested by the applicant is not warranted.

44. For the reasons discussed, the request for an Honorable characterization of service for the active duty period ending May 16, 2016, will be denied.

Request for Medical Retirement

45. As noted above, an application to the Board must be filed within three years of discovery of the alleged error or injustice.<sup>35</sup> In this case, the applicant was aware that he did not receive a medical retirement at the time of his RELAD in May 2016 or, at the latest, at the time of his discharge in September 2018. Thus, the applicant's request for a medical retirement, received by the Board in May 2024, is not timely.

46. The applicant argues that the August 2021 DRB decision, his September 2021 application, and/or the March 2022 advisory opinion provided by the Coast Guard in response to the 2021 application, acted in some way to toll the limitations period. The DRB decision, however, addressed only the characterization of the applicant's service period ending on May 16, 2016. In addition, the applicant has cited no authority, and the Board has found none, for the proposition that the Board's statute of limitations is tolled under these circumstances.

47. The applicant also argues that the September 2023 SSA decision constitutes "new and material evidence" sufficient to allay any timing concerns. While new and material evidence permits the Board to reconsider a prior decision, however, there has been no prior Board decision on the applicant's request for a medical retirement.

48. In sum, no persuasive argument has been presented to support the applicant's contentions that the Board's statute of limitations is obviated by the prior submission of a later-withdrawn application, or by the accumulation of additional evidence relevant to an issue that has never been adjudicated by the Board. The relevant question before the Board is whether the current application is timely, and the Board finds that it is not.

49. While the application is untimely, the Board may excuse the untimeliness if it is in the interests of justice to do so. In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that in determining whether the interests of justice support a waiver of the limitations period, the Board should "analyze both the reasons for the delay and the potential merits of the claim based on a cursory review." The court noted that "the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review." With these considerations in mind, the Board makes the following findings:

- a. As stated above, the Board finds the applicant's arguments regarding the tolling of the applicable statute of limitations to be without merit. In addition, after its own review of the record, the Board finds no compelling reason for the applicant's delay in filing his request for medical retirement.

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<sup>35</sup> 10 U.S.C. § 1552(b); 33 C.F.R. § 52.22.

- b. Upon cursory review, the application lacks potential merit.

The applicant contends that he should have been medically retired prior to his May 2016 RELAD based on his diagnosed PTSD, TBI residuals, lumbar spine fusion surgery, and other conditions. He points to *Military Separations* § 1.A.14.g., which provides that officers processed for discharge under § 1.A.14. must be referred for a physical examination and, if they have a condition which requires PDES processing, will “normally” be processed concurrently for administrative separation and in the PDES. The applicant also protests that his numerous requests to command for medical retirement were ignored.

The Board initially notes that for the reasons discussed above, the applicant’s May 2016 RELAD did not proceed under *Military Separations* § 1.A.14. and was not required to. In addition, the Board notes that the *PDES Manual* was clear that a MEB – the first step of the PDES – could be convened only by a Commanding Officer, a Medical Officer, or another specifically identified official.<sup>36</sup> A member’s own desire to receive a medical retirement was not contemplated as a method for initiating a MEB.

The policy was also clear that any PDES processing was to be suspended while a member was subject to administrative separation or other disciplinary action.<sup>37</sup> If a punitive or administrative discharge was executed, any pending PDES processing was to be closed.<sup>38</sup> In this case, the record shows that UCMJ charges were filed in April 2015 and remained pending through the applicant’s RELAD in May 2016. That RELAD process was initiated in November 2015. As such, per the relevant policy, initiation and/or processing for medical retirement would have been suspended throughout the period leading up to the RELAD.

Moreover, there is no evidence to suggest that any Medical Officer or other authorized official saw fit to convene a MEB during the relevant period.<sup>39</sup> The available medical records show that while the applicant was receiving care for PTSD and physical conditions, and underwent lumbar

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<sup>36</sup> *PDES Manual* § 3.B.1.

<sup>37</sup> *Id.*, § 2.C.11.a.

<sup>38</sup> *Id.*, § 2.C.11.b.

<sup>39</sup> The Board briefly notes that in its views provided to the applicant and the Board in February 2025, the Coast Guard stated that the applicant’s “predetermined medical conditions were entered into the physical disability evaluation system (PDES) in 2015.” The Coast Guard did not provide additional context, and it is unclear whether such action initiated PDES processing. Whether the applicant began PDES processing, however, such processing would have been appropriately paused due to the applicant’s ongoing administrative and disciplinary actions.

fusion surgery, these conditions appeared to be improving, and no provider found he was permanently unfit to continue his duties in the Coast Guard. A January 2016 letter from the applicant's psychologist, B.B., for example, stated that the applicant was expected to successfully complete treatment in June 2016. While Coast Guard physicians, Dr. E.S. and Dr. C.W., noted the applicant's various conditions in May 2015 and January 2016, respectively, neither referred the applicant to a MEB, despite the option to do so. In this regard, while the applicant refers in his application to a DD 2808 form on which Dr. C.W. indicated the applicant's "disqualifying conditions" in "Box 77" no DD 2808 or Box 77 is among the records before the Board. The Board also notes that Dr. H.G., from the neurosurgery office which performed the applicant's spinal fusion, continued to extend the applicant's light duty and convalescence for 30- and 45-day periods, and referred him to physical therapy, but never indicated that the applicant was unable to continue his duties in the future. Thus, while the applicant underwent a major surgery shortly before his RELAD, the record does not suggest this caused a permanent worsening of his condition from which he would not recover.

There is also no indication in the record prior to his arrest in December 2014 that the applicant's medical conditions impacted his fitness for duty or that he requested a medical retirement. This is in spite of the applicant's PTSD dating from 2001, his TBI from 2003, and his spinal injuries from early 2013. The Board finds this timeline to be notable given that according to Coast Guard policy, disability retirement was designed to compensate a member whose service was terminated due to disability, and was not to be misused to bestow benefits on those who are voluntarily or mandatorily separating and had continued on active duty while tolerating physical impairments that have not precluded Coast Guard service.<sup>40</sup>

In this case, while the applicant had a number of medical conditions, the record suggests that he tolerated them and was able to continue his duties. It was not until the applicant faced potential punitive separation and/or discharge that he began to request processing for a medical retirement. These circumstances appear to the Board to fall squarely within the potential misuse of the PDES process which the Coast Guard's policy was designed to prevent.

Regarding the applicant's receipt of VA and SSA benefits, the Board notes that VA and SSA standards differ in important ways from those

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<sup>40</sup> PDES Manual § 2.C.2.b.

underlying military disability retirement. As explained in the *PDES Manual*, a VA rating does not itself provide entitlement to disability retirement benefits because impairments under VA's regulations do not necessarily make an individual unfit for military duty.<sup>41</sup> The Board also observes that there is no law, regulation, or VA policy which prevents a veteran with a 100 percent "permanent and total" rating from maintaining gainful, full-time employment.<sup>42</sup> In this case, while the applicant's receipt of SSA and VA benefits dates back to May 2016, again, the evidence before the Board does not suggest the applicant was permanently unfit for his Coast Guard duties during the relevant time. Moreover, even had he been determined to be unfit by appropriate medical authorities, ongoing disciplinary and administrative processes would have barred PDES processing.

Lastly, the Board observes that the applicant appears to be attempting to circumvent the terms of his conditional resignation in September 2018 in lieu of BOI action. The terms of that resignation included stipulations that the applicant would be discharged with a General characterization due to misconduct, and that based on his discharge for misconduct, would not be eligible for medical retirement. Whether before or after the May 2016 RELAD, however, the Board emphasizes that the record does not suggest that any authorized official referred the applicant to a MEB or that permanent, stable conditions rendered him unfit for continued duty.

In summary, the evidence does not suggest that the Coast Guard's failure to initiate PDES processing constituted error or injustice, and even had such processing been initiated, suspension and ultimately termination of that processing was proper and consistent with policy.

Based on the foregoing, the Board finds after cursory review that the applicant's request for a medical retirement is unlikely to succeed on the merits.

50. Based on the lack of a compelling justification for the delay in filing the request for a medical retirement, and the unlikeliness of the request succeeding on the merits, the Board finds that the interests of justice do not support a waiver of the time bar

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<sup>41</sup> *PDES Manual* § 2.C.2.i.

<sup>42</sup> An exception to this proposition exists only when a veteran is in receipt of individual unemployability (referred to as "IU" or "TDIU") benefits, based specifically on his or her inability to maintain employment. Veterans in receipt of IU benefits are required to submit documentation annually showing they remain unemployed and/or have an income below established limits. See <https://www.va.gov/disability/eligibility/special-claims/unemployability/>. The record in this case does not indicate the applicant receives IU benefits.

specified in 10 U.S.C. § 1552(b) in this case. Accordingly, the request for a medical discharge will be denied as untimely.

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

**ORDER**

The application of former LT/O-3E [REDACTED] is denied.

May 30, 2025

