DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2025-083

[redacted]
(former) OS1/E-6

FINAL DECISION ON REMAND

This proceeding was conducted by the Board for Correction of Military Records of the Coast Guard (hereinafter "Board" or "BCMR") under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case upon receipt of a Remand Order from the United States Court of Federal Claims 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 June 26, 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 Operations Specialist, First Class (OS1/E-6) was discharged from the Coast Guard on August 1, 2012, with a General—Under Honorable Conditions characterization of service.[1] The narrative reason for separation was "commission of a serious offense." The applicant's discharge followed an administrative investigation into allegations of poor treatment of junior personnel and other misconduct at the Operations Center where the applicant served.

In a decision dated August 5, 2016, the Board denied the applicant's requests for reinstatement, backpay, an Honorable characterization of service, and other relief.[2]

In July 2018, the applicant filed a complaint in the U.S. Court of Federal Claims (hereinafter "Court") challenging the Coast Guard's actions and the Board's decision. In a

[1] 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.
[2] *See* BCMR Docket No. 2015-173.

December 2024 Remand Order, the Court directed the Board to reconsider the application after review of evidence that was not before the Board at the time of its August 2016 decision.

SUMMARY OF THE RECORD[3]

The applicant enlisted in the Coast Guard on July 19, 2005. He was advanced to OS1/E-6 on July 1, 2010.

In a written statement dated April 3, 2012, a junior member stationed at the Operations Center where the applicant was a watch supervisor detailed potential misconduct by the applicant, Chief Operations Specialist X (the applicant's supervisor), and others. On April 9, 2012, Lieutenant Commander (LCDR) F was designated as a Preliminary Investigating Officer (PIO) to investigate the circumstances surrounding the junior member's written statement.

The PIO issued a Report of Investigation (ROI) on May 9, 2012. The ROI was based on interviews with 22 witnesses, including the applicant and OSC X, as well as supplemental written statements provided by six witnesses. The ROI's findings included the following examples of the applicant's conduct, among others:

- Yelling at a subordinate Operations Specialist, Third Class (OS3) "at the top of his lungs, calling him a 'shithead and asshole' in front of other ... personnel or [the applicant] would have [the OS3] come across the [center] to open a safe repeatedly (11 times) so [the applicant] could shut the safe to have it reopened again," which led the OS3 to beg to be switched to the night shift so he would not have to work under the applicant.
- Hazing subordinate watchstanders by throwing things at them, vindictively laughing at them, making them pick up messes he created, and calling them things like "fucking retards," "assholes," and "goddamn idiots," which led many of them to ask to switch schedules to avoid the applicant's watch.
- Causing subordinates to seek counseling, to dread coming to work, and/or to consider leaving the Coast Guard.
- Refusing to get qualified to stand watch so that he would not have to fill in when others got sick as he was supposed to.
- Arriving at the center at "whatever hour of his choosing" and "appear[ing] to be on base for a max of 3 hours a day, and there is a good ol' boy system with him."
- Showing up for work routinely at 10:00 a.m. and working just two hours before leaving.

[3] This section provides a concise summary of the circumstances surrounding the applicant's discharge. For a more detailed discussion of the evidence and the applicant's arguments, please refer to the prior decision – BCMR Docket No. 2015-173, which is incorporated herein in its entirety.

- Instilling "a harassing, hostile work environment by yelling/berating that occurs on continual basis," which caused subordinates to switch watches to try to avoid him.
- Having an "absenteeism issue," being a "shitty supervisor," and being at Starbucks when he should be at work (according to a Chief Warrant Officer, Second Class (CWO2)).
- Throwing sunflower seeds on the floor and making a watchstander pick them up.
- Calling subordinates "douchebag, fucker, idiot, etc."
- Amusing himself by having watchstanders do repetitive and/or menial tasks during busy watches when they were supposed to be monitoring radios.
- Being a bully and degrading everyone.
- Being a "piss poor leader and using his knee injury to be flagrantly gone."

The PIO made many findings of misconduct and concluded that there had been "a complete leadership breakdown." The PIO recommended various adverse actions against the applicant and his superiors. He found that the applicant had hazed subordinates and that his behavior had been cruel, abusive, humiliating, oppressive, and demeaning. The PIO also concluded that the applicant had been derelict in his duties, had been insubordinate, and had used provoking speech. On these bases, the PIO concluded the applicant had violated Uniform Code of Military Justice (UCMJ) Articles 91 (Insubordinate Conduct), 92 (Dereliction of Duty), 93 (Cruelty and Maltreatment), 117 (Provoking Speeches or Gestures), and 134 (general article encompassing indecent language and other conduct). The PIO recommended that the applicant be relieved of his duties and discharged from the Coast Guard for commission of a serious offense. In this regard, the PIO noted that the maximum punishment for violating UCMJ Article 92 and/or 93 included a punitive discharge. The PIO also recommended preparation of a CG Form 3307 (hereinafter "Page 7") detailing the applicant's offenses and a performance evaluation with an unsatisfactory conduct mark and no recommendation for advancement.

The PIO found that OSC X had also violated UCMJ Articles 92 and 93, and that senior members of the command – another OSC, a Chief Warrant Officer, a Lieutenant, and a Lieutenant Commander – had violated Articled 92 on the basis that they knew or should have known about the applicant's and OSC X's conduct and failed to intervene.

The ROI included 31 enclosures, which consisted primarily of the PIO's summaries of witness interviews (Enclosures 2-23) and written witness statements (Enclosures 24-30).

On May 22, 2012, the applicant's Commanding Officer (CO), who was the Sector Commander, notified the applicant in writing that he was initiating the applicant's discharge with no higher than a General characterization of service "based on misconduct due to commission of serious offense(s), in that you demonstrated a pattern of dereliction of your duties, and maltreatment and cruelty towards your subordinates as discovered during the course of an administrative investigation of [the Sector's Operations Center]."

The CO advised the applicant that he had the right to consult with an attorney and to submit a statement objecting to the discharge.

Also on May 22, 2012, the applicant was counseled on a Page 7, which he refused to sign. The Page 7 addressed the applicant's "pattern of abdication of responsibility, [and] gross disrespect and cruelty towards your subordinates in the following ways":

> -You failed to maintain regular work hours, taking long lunches and breaks, and departing early, causing your shipmates to have to take on extra duties and work, and failing to fill in to keep the section running when a watch stander was ill or unable to stand watch.
> -You assigned watch standers tasking outside of their primary duty of listening to the radios, or running cases, such as shredding papers, causing the subordinate watch standers to be unable to effectively perform their primary duties.
> -You demeaned and verbally abused your subordinates by using profane language and insults towards them, calling them names including "assholes," "douche bags," "fucking retards," "shitheads" and "goddamn idiots."
> -You used a loud and derisive tone of voice, threats, and other unprofessional language when addressing subordinates, and insulted and derided them in front of others.
> -You made inappropriate jokes about women in the Coast Guard.
> -You failed to demonstrate appropriate leadership, often insulting or deriding members instead of providing guidance. For example, on one occasion when a new CG member submitted first-ever marks input, you failed to give the member feedback and guidance on the task. Instead, you gave the marks back and told the member "this is a pile of shit, do them again."
> -On at least one occasion, you threw papers and other items at your subordinates.
> -On several occasions, you ordered subordinates to pick up items from the deck such as papers, scraps, packing peanuts, sunflower seeds and other items, some of which you deliberately threw.
> -On at least one occasion, you called a subordinate a "trouble maker" and a "black cloud," and stated that the subordinate was not liked by the command as a result of the subordinate reporting crimes and misconduct carried out against the subordinate.
> -On several occasions, you hazed your subordinates by directing them to open a locked safe, then slamming the safe closed and ordering them to come back and open it again, repeating this unnecessary pattern up to 11 times while laughing at and insulting them.
> -[Y]ou ordered a subordinate to fill out a chit in order to get married.
>
> Your cruelty, mistreatment, and disrespectful behavior has caused serious damage to mission readiness, work performance, and to the health and well-being of your shipmates. Your behavior calls into serious question your ability to perform as a petty officer and a leader in the Coast Guard. Such instances of maltreatment, hazing, and otherwise disrespectful behaviors as outlined above are clearly in violation of law, Coast Guard policy, and general principles of good leadership and respect for others, and will not be tolerated.
>
> It is noted that as a result of your conduct, some personnel have had to seek out medical, EAP services (or both), due to their fear of facing such harassment at work. Some qualified, high- performing members are now contemplating getting out of the Coast Guard due to the mistreatment you subjected them to.
>
> In order to correct your behavior, you must immediately stop all cruel, degrading, and disrespectful behavior. This includes, but is not limited to, not using profanity at work, calling your subordinates and shipmates only by their given names or ranks/rates, directing your subordinates to do only those tasks necessary to the effective completion of the mission, and addressing concerns or making corrections of your subordinates only in private and only in the presence of and after prior discussion with [a CWO], who will ensure you use only appropriate and respectful leadership techniques. To further familiarize yourself with the Coast Guard's expectations for respecting others, you must review references (a) through (f). If you have any questions about what constitutes appropriate conduct or leadership techniques, you should discuss these with [the CWO].

> Additionally, you must maintain a 0700-1530 day-work schedule with reasonable breaks (unless standing watch).
>
> You are currently subject to administrative and/or disciplinary consequences as a result of your conduct. In addition, be advised that any further cruelty, maltreatment, disrespect, or hazing behaviors towards any person will result in punitive action under the Uniform Code of Military Justice, which could include prosecution for violation of UCMJ Article 91, insubordinate conduct towards petty officer(s), UCMJ Article 92, dereliction of duty, UCMJ Article 93, cruelty and maltreatment, UCMJ Article 117, provoking speeches or gestures, UCMJ Article 134, general article-conduct prejudicial to good order and discipline, and/or any other article applicable to the misconduct observed.

On May 30, 2012, the applicant acknowledged his CO's notification and indicated he had consulted with an attorney and was objecting to the discharge. In an appended written statement, the applicant denied the allegations, claimed he often worked outside the Operations Center, and justified his actions as necessary for mission effectiveness. He admitted to using inappropriate language but denied directing it at anyone. He also denied making jokes about women and stated he provided proper guidance to subordinates. The applicant stated further that he loved his job and never intended to mistreat anyone, but he acknowledged needing to adopt a different leadership style for some personnel.

The applicant received a performance evaluation dated May 31, 2012, with many low marks across performance categories, an unsatisfactory conduct mark, and a recommendation against advancement. The comments prepared by the applicant's rating chain stated that he had "demonstrated a pattern of abdication and gross disrespect and cruelty towards subordinates" and had "failed to maintain regular work hours."

On June 5, 2012, a Final Action Memorandum was issued finding that the applicant had failed to maintain regular work hours, assigned watchstanders duties other than listening to the radio or running cases, used demeaning and abusive language and insults towards subordinates instead of providing guidance, and made inappropriate jokes about women in the Coast Guard. The applicant's CO stated he would recommend the applicant for administrative discharge and that the applicant's supervisor, OSC X, would be punished at mast, counseled on a Page 7, reassigned, and have his security clearance eligibility reviewed. Other superior officers were to receive letters of censure and negative evaluations.

On July 11, 2012, the Sector Commander recommended a General discharge for misconduct due to commission of a serious offense. He stated the applicant had demonstrated a pattern of dereliction of duties, maltreatment, and cruelty towards subordinates. On July 19, 2012, the District Commander forwarded the discharge recommendation and recommended approval. On July 26, 2012, after reviewing the administrative investigation, the Coast Guard Personnel Service Center (PSC) issued orders for the applicant to receive a General discharge for misconduct due to his

commission of a serious offense with separation code "JKQ" and reentry code RE-4 (ineligible for reenlistment).[4] The applicant was then discharged on August 1, 2012.

BCMR DOCKET NO. 2015-173

In his initial application, dated August 5, 2015, the applicant contended that his discharge had been unjust and improper. He requested that the discharge be voided, and that he be reinstated as an OS1 with back pay and allowances. As alternative relief, the applicant asked that the Board upgrade the character of his discharge from General to Honorable, his separation code from JKQ to LGH (denoting involuntary release due to failure to meet minimum retention requirements), and his reentry code from RE-4 to RE-1 (eligible for reenlistment). In either case, the applicant requested that he be reimbursed selective reenlistment bonus (SRB) payments that were recouped from him.[5]

As previously noted, the Board denied the application in its entirety in a decision dated August 5, 2016. The Board initially rejected the applicant's argument that his conduct did not meet the criteria for cruelty and maltreatment under UCMJ Article 93, finding that a "great preponderance of the evidence" showed that the applicant had committed a serious offense and that he had been cruel to and maltreated subordinates. The Board noted that witness statements reflected "numerous instances of pointless, demeaning abuse." The Board also found that there was ample evidence to support the Coast Guard's finding that the applicant had violated Article 92, having determined that the applicant's contention that he had duties and medical appointments outside the Operations Center was insufficient to explain the extent of his absences reflected in the ROI.

The Board went on to reject the applicant's argument that he had been entitled to a period of probation prior to discharge under a Coast Guard policy addressing discharges based on "shirking." The Board explained that the applicant was not discharged for shirking, but under a separate policy for commission of a serious offense, which had no probation requirement.

The Board also rejected the applicant's contention that the memorandum issued by the applicant's CO in May 2012 failed to notify him of the "known facts" and reason for his discharge, as required by Coast Guard policy. The Board observed that the policy in question did not require such notification to be contained in a single document and found that the more detailed Page 7 issued on the same day as the notification memorandum had satisfied all notice requirements.

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[4] Pursuant to Coast Guard policy, the PSC acted as the Separation Authority in this case.

[5] The details regarding recoupment of the applicant's SRB are not clear from the record. The Board notes, however, that per Article 1.B.9.a. of Military Bonus Programs, COMDTINST M7220.2 (September 2011), members discharged prior to completion of a period of service for which they were paid an SRB shall have all paid, but unearned, portions of the bonus recouped.

In the same vein, the Board rejected the applicant's contention that his constitutional due process rights were violated because he was not able to participate in the investigation. The Board noted that the applicant was interviewed by the PIO and exercised his rights to consult an attorney and submit a written statement, which the Board found satisfied all due process requirements.

Finally, the Board found that the Coast Guard's imposition of less severe discipline on more senior members of the applicant's chain of command did not render his own administrative discharge an error or injustice. In this regard, the Board emphasized that the applicant had less than eight years of service, and Coast Guard policy afforded different disciplinary processes for different forms of misconduct committed by different members based on seniority.

The Board ultimately concluded that there were no grounds to void the applicant's discharge, to reinstate him, to upgrade his characterization of service, separation code, narrative reason for separation, or reentry code, or to reimburse him for recouped bonus payments or issue him any other pay or allowances.

COURT OF FEDERAL CLAIMS PROCEEDINGS

In July 2018, the applicant filed the action referenced above, arguing that the Board's August 2016 decision was arbitrary, capricious, unsupported by evidence, and contrary to law.[6] Subsequently, the parties filed opposing motions for judgment on the administrative record and the Court held oral argument on the motions in November 2020.

In a status report filed on December 8, 2020, defense counsel (a U.S. Department of Justice attorney) stated that, in response to an inquiry from the Court, the Coast Guard had confirmed that redacted versions of Enclosures 24-30 of the May 2012 ROI (provided to the Board by the plaintiff with his August 2015 application) were the only witness statements that had been before the Board in this matter. Counsel stated further that Coast Guard counsel had reached out to the Separation Authority (hereinafter "SA") in this case, a retired Coast Guard member, who confirmed that the SA had reviewed and considered all 31 of the ROI enclosures.

In an Order issued on February 28, 2023, the Court concluded that a remand was in order to "allow the BCMR to review the separation decision in light of the evidence that was considered by the separation authority." The Court denied the pending cross-motions for judgment on the administrative record as moot. The parties were directed to confer on the remand instructions.

[6] *Sanson v. United States*, No. 1:18-cv-01117 (Fed. Cl. Filed July 31, 2018).

In a Remand Order dated March 27, 2023, the Court adopted the parties' proposed remand instructions and directed that the Board review all materials considered by the SA, including all enclosures to the ROI and reconsider its August 5, 2016, decision. The Board was to provide plaintiff's counsel a copy of the additional evidence to be considered, and the plaintiff was to submit a supplemental paper addressing the additional evidence. The Board was to issue a new decision by September 25, 2023.

In an April 11, 2023, letter to the Board, a Coast Guard lieutenant stated that the full witness interview summaries listed as Enclosures 2-23 of the investigation could not be retrieved. The lieutenant stated further that after consulting with the PSC, which was the SA, it was determined that Enclosures 2-23 were not part of the separation packet that was reviewed and considered by the SA.

In an April 25, 2023, email to the applicant's counsel, the Board attached the Coast Guard's letter and invited the applicant to submit any additional argument.

On June 2, 2023, the plaintiff notified the Court of the Board's "inability to fulfill the remand order." Plaintiff's counsel argued, in pertinent part, that if the April 2023 correspondence was accurate, the Coast Guard had violated its own policy requiring the SA to review and consider all witness statements.[7]

The government responded in a status report filed on June 26, 2023. Defense counsel acknowledged the confusion and stated that counsel was previously informed that all of the ROI enclosures had been viewed by the SA, and so made that representation to the Court. Counsel explained that pursuant to the Court's Remand Order, previous Coast Guard counsel had searched for the ROI enclosures "where one would expect to find them had they been viewed by the [SA]," but to no avail, thus resulting in the April 2023 correspondence between the Coast Guard and the Board, and the Board and the applicant. Counsel stated, however, that subsequently, the Coast Guard counsel who conducted the initial search received a new assignment and a different Coast Guard counsel conducted a "broader search" and located a copy of the ROI enclosures "in an archived folder about the broader investigation into the command, not solely [the applicant]."

According to a status report filed on September 22, 2023, the applicant's counsel was provided with an unredacted copy of all 31 ROI enclosures in August 2023, and again in September 2023.

On September 25, 2023, the plaintiff filed a motion requesting an extension of the remand period and leave to conduct limited discovery. Specifically, the applicant sought

[7] *See* Article 1.B.17.e.(4)(b)[5] of Military Separations, COMDTINST M1000.4 (September 2011) (requiring that when recommending misconduct discharge for a member with less than eight years of service, certain documents be sent to the SA, including "[o]ther pertinent documents such as psychiatric or medical evaluations, statements of any witnesses, police reports, etc.").

discovery relating to certain information about the contents of his "separation packet," and the Coast Guard counsels' searches for the ROI enclosures.

On December 31, 2024, the Court issued a new Remand Order in which it granted a six-month extension of the remand period. The Court then denied the plaintiff's request for limited discovery without prejudice, finding the request was premature. The Court commented that with respect to whether all 31 enclosures were reviewed by the SA, there was an "apparent discrepancy in views between the individual who was the [SA] and the office in which he worked…." Ultimately, the Court chose to alter the remand instructions, and stated that in addition to arguments about the contents of the 31 ROI enclosures, the plaintiff was permitted to submit arguments as to whether the Coast Guard had violated its own policy requiring the SA to review witness statements. The Court noted that the Board would have to reconcile the statements made in the government's December 2020 and June 2023 status report and may well find it cannot do so without answering the questions posed by the applicant in his request for limited discovery.

In an Order dated February 13, 2025, the Court extended the remand period to July 30, 2025.

APPLICANT'S MARCH 2025 SUBMISSION

As noted above, the Board received a copy of the 31 ROI enclosures in August 2023 and provided them to the applicant's counsel shortly thereafter.

On March 17, 2025, the applicant, through counsel, submitted a DD Form 149 (Application for Correction of Military Record), accompanied by a "Supplemental Petition." The Board docketed the submission under BCMR Docket No. 2025-083.

The applicant divided his arguments into two sections. The first section was titled "Leadership Failure and OSC [X]'s Acts and Omissions." Under this heading, the applicant drew from portions of Enclosures 7-10, 13-21, and 23-24. Specifically, he highlighted comments from witnesses to the effect that the chiefs (presumably referring to OSC X and another OSC) "run the show" at the Operations Center, and that OSC X fostered a poor command climate, was abrasive and demeaned subordinates, was often out of the office, and failed to counsel the applicant when the applicant's behavior was brought to his attention. The applicant argued that this evidence showed there had been a complete leadership breakdown, that his supervisors were "complicit with" his actions, and that OSC X was more of a focus of complaints than the applicant. He also noted that several members of senior leadership attested that they had not directly observed any problematic behavior.

The second section of the applicant's submission was titled "[The applicant] was Salvageable and Would Have Benefited From Formal Performance Counseling." Therein, the applicant drew from Enclosures 4-5, 7-8, 10-14, 17-18, and 20. The applicant

highlighted portions of these witness statements to the effect that the applicant was "good about personal matters," was "just trying to do his job," was easy to talk to, and had stuck up for a junior member with OSC X before. The applicant also pointed to several comments by witnesses to the effect that they had not been the subject of, or observed hazing, yelling, or other similar behavior. The applicant also highlighted OSC X's interview in which OSC X expressed his regret at not providing better leadership for the applicant.

The applicant concluded by stating that he recognized his "behavior could have been better." He argued, however, that it could not be overlooked that he, too, suffered from poor leadership, and in another environment, would have thrived.

VIEWS OF THE COAST GUARD

In an advisory opinion dated April 29, 2025, a Coast Guard Judge Advocate (JA) recommended that the Board deny the applicant's requested relief.[8] The JA argued that the applicant had failed to show any error or injustice based on the ROI enclosures that was not previously considered by the Board. The JA stated that the Coast Guard's initial assessment of applicant's separation contained in a January 2016 advisory opinion provided to the Board had not changed.

The JA went on to state that the Coast Guard had used the May 2012 ROI in arriving at its conclusion that a serious offense was committed. He stated that regardless of whether the SA considered every witness statement in his decision, the separation had been proper and in accordance with policy, and thus had not constituted an error or injustice.

The JA also noted the that the Court had afforded the applicant an opportunity to argue that the SA had failed to review the ROI enclosures, in violation of Coast Guard policy, but the applicant had not done so. As such, the JA argued, the applicant had failed to provide sufficient evidence to overcome the presumption of regularity to which the Coast Guard's actions are entitled.

The JA further stated that the applicant's contention that he would have benefited from formal performance counseling did not demonstrate error or injustice. In this regard, the JA stated that the applicant had attempted to shift the onus of his behavior to his leadership. However, the JA noted, there was no requirement under Coast Guard policy that a member receive formal counseling to prevent their commission of a serious offense. Instead, he stated, Coast Guard members are required to conform to the highest standards

[8] The Court's remand only directed that the applicant be permitted to submit additional argument. Pursuant to 33 C.F.R. § 52.42, however, the Board's procedures dictate that all applications – whether initial or for reconsideration of a prior decision – be provided to the Coast Guard for an optional advisory opinion, and the applicant afforded an opportunity to respond. Because the Court directed that the Board reconsider its August 2016 decision, the Board treated the applicant's March 2025 submission as an application for reconsideration, and followed the procedures just described.

and abide by the UCMJ, and inherent in the Coast Guard's cores values – Honor, Respect, and Devotion to Duty – is an expectation that members will not commit violations of the UCMJ, particularly violations serious enough that their maximum penalties include a punitive discharge.

APPLICANT'S RESPONSE TO COAST GUARD'S VIEWS

In a response dated June 1, 2025, the applicant argued, through counsel, that the SA's failure to consider the ROI enclosures had been erroneous and contrary to Coast Guard policy. He also argued that ROI was selective in the evidence it presented, and did not include certain favorable evidence contained in the enclosures, as was discussed in the applicant's March 2025 submission. The applicant argued further that his service was "salvageable," and that instead of investing in a young non-commissioned officer (NCO) with career potential, his command "made a knee-jerk reaction to separate him based on an inflammatory and biased report."

The applicant described himself as a young, impressionable NCO who took his cue from senior enlisted personnel, in particular OSC X, who was responsible for the tone and breakdown in discipline within Operation Center. The applicant stated that after years of reflection, he acknowledged that he could have communicated better. He emphasized that he never meant any harm, and only sought the best possible performance from his subordinates. He also contended that the Coast Guard's failure to provide him the ROI and enclosures or to allow him to interview coworkers prior to his discharge greatly hampered his ability to respond to the allegations.

APPLICABLE LAW AND POLICY

Military Separations, COMDTINST M1000.4 (September 2011) (hereinafter "Separations Manual") was in effect at the time of the applicant's discharge in May 2012. Article 1.B.17. detailed procedures for misconduct discharges of enlisted members. It provided, in relevant part:

1.B.17.a. Policy

Except as specifically provided here, only Commander (CG PSC) may direct a discharge for misconduct and the type of discharge (under other than honorable, general, or honorable) as warranted by the particular circumstances of a given case. (See Article 1.B.2. of this Manual.)….

1.B.17.b. Reasons to Discharge for Misconduct

Commander (CG PSC) may direct discharging a member for misconduct in any of these cases:

(1) Civilian or Foreign Conviction. Conviction by foreign or domestic civil authorities….

(2) Pattern of Misconduct. Members may be separated when they have:

(a) …

(b) …

(c) …

(d) …

(e) …

(f) A pattern of shirking.

(3) Commission of a Serious Offense. Commission of a serious offense does not require adjudication by non-judicial or judicial proceedings. An acquittal or finding of not guilty at a judicial proceeding or not holding non-judicial punishment proceedings does not prohibit proceedings under this provision. However, the offense must be established by a preponderance of the evidence. Police reports, CGIS reports of investigation, etc. may be used to make the determination that a member committed a serious offense.

(a) Members may be separated based on commission of a serious military or civilian offense when:

(1) The specific circumstances of the offense warrant separation; and

(2) The maximum penalty for the offense or closely related offense under the UCMJ and Manual for Courts-Martial includes a punitive discharge….

(4) Drugs. …

(5) Fraudulent Enlistment. …

1.B.17.c. Probation

Commanding officers must afford a member a reasonable probationary period to overcome deficiencies before initiating administrative discharge action in cases of a pattern of failure to contribute adequate support to dependents (See Article 2.E. of reference (e), Discipline and Conduct, COMDTINST M1600.2 (series).), a pattern of failure to pay just debts, or shirking….

1.B.17.d. Discharging Members with More than Eight Years Service for Misconduct

…

1.B.17.e. Discharging Members with Fewer than Eight Years Service for Misconduct

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

(1) Inform the member in writing of the reason(s) for being considered for discharge

(specifically state one or more of the reasons listed in Article 1.B.17.b. of this Manual supported by known facts).

(2) Afford the member an opportunity to make a written statement. If the member does not desire to do so, the commanding officer sets forth that fact in writing over the member's signature. If the member refuses to sign a statement his or her commanding officer will so state in writing.

(3) Afford the member an opportunity to consult with a lawyer as defined by Article 27(b)(1), UCMJ, if contemplating a general discharge. If the member requests counsel and one is not available, the commanding officer must delay discharge proceedings until such time as counsel is available.

(4) Send the case containing a recommendation and these documents to Commander (CG PSC-EPM-1) for action:

(a) The reason(s) for processing (include reason such as repeated military offenses, drug abuse, indebtedness, etc.)

(b) …

(c) …

(d) These enclosures:

[1] The copy of the letter notifying the member of the reason(s) for the processing and information on the member's rights and privileges.

[2] The member's signed statement of awareness of rights and privileges and request to exercise or waiver of these rights.

[3] The member's signed statement, or member's written, signed statement declining to make a statement.

[4] …

[5] Other pertinent documents such as psychiatric or medical evaluations, statements of any witnesses, police reports, etc.

[6] …

Article 92 of the UCMJ addresses dereliction in the performance of duties, and the elements of a violation are: (a) that the accused had certain duties; (b) that the accused knew or reasonably should have known of the duties; and (c) that the accused was (willfully or through neglect or culpable inefficiency) derelict in the performance of those duties. Only for willful dereliction does the maximum punishment include a punitive discharge.

Article 93 of the UCMJ prohibits "cruelty toward, or oppression or maltreatment of, any person subject to [a member's] orders." The elements of a violation are: (1) that a certain person was subject to the orders of the accused; and (2) that the accused was cruel toward, or oppressed, or maltreated that person. The maximum punishment for a violation

includes a punitive discharge.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction over this matter pursuant to 10 U.S.C. § 1552. Because the case was remanded to the Board by the Court, the statute of limitations will be waived.[9]

2. The bases for the Board's previous denial of the application are detailed in BCMR Docket No. 2015-173 and need not be restated at length here. The primary question now before the Board is whether its review of the ROI enclosures, not available at the time of the prior decision, changes its assessment of the case.

Whether the SA Reviewed the ROI Enclosures

3. As an initial matter, and as noted in the December 2024 Remand Order, the Board must reconcile the Coast Guard's conflicting statements regarding whether the SA reviewed the ROI enclosures prior to the applicant's discharge. The Coast Guard did not provide further clarity on this issue in the April 2025 advisory opinion summarized above.

4. On the one hand, in an April 11, 2023, letter to the Board, a Coast Guard lieutenant asserted that Enclosures 2-23 could not be retrieved, and that after consultation with the PSC, it was determined that those enclosures were not part of the applicant's separation packet reviewed by the SA.[10] As explained in the June 2023 status report filed with the Court, the Coast Guard's conclusion that the enclosures could not be retrieved was based on a search that failed to turn them up "where one would expect them to be."

5. On the other hand, in the December 2020 status report, defense counsel explained that the specific Coast Guard member who acted as the SA in the applicant's case had confirmed that he reviewed and considered all of the witness statements and interview summaries attached to the ROI. That individual's account is consistent with the June 2023 status report, which explained that the documents were eventually located following a "broader search" in an archived folder related to the investigation.

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[9] *See* 10 U.S.C. § 1552(b) (requiring applications to be submitted within three years of the discovery of the alleged error or injustice).

[10] The Coast Guard's letter focused on Enclosures 2-23 because, again, redacted versions of Enclosures 24-30 were submitted by the applicant with his initial application, and Enclosure 1 was the April 2012 memorandum ordering the investigation. Enclosure 31 was an email relating to medical treatment of members other than the applicant that is not disputed by the parties.

6. Upon review of the applicant's personnel file, the Board also observes that in an undated email – presumably sent after the ROI was issued in May 2012 but before the applicant was discharged – the Assistant Branch Chief of the Enlisted Advancement & Separations Branch at the PSC stated: "We are reviewing the package and there is no supporting documentation other than the page-7 to document the charges. Can you provide a copy of the admin investigation?" The record does not include any follow-up to this request, or any other indication that the PSC did not receive the ROI in response. Because the witness statements and interview summaries were part of the ROI, insomuch as they were "enclosed" with it, the Board finds no reason to conclude that the response to the PSC's request for a copy of the investigation would not have included the enclosures. Moreover, the Board observes that appearing in the applicant's personnel file along with the Separation Authorization (the PSC's separation orders) is a worksheet documenting the office's review of the separation. This document includes a check mark next to "General—Under Honorable Conditions" with the following handwritten notation: "Based on Serious Nature of Offense Recommend General. See Attached Investigations."

7. The evidence supporting a finding that the SA did not review the ROI enclosures, then, consists of a single, unsuccessful search for the documents in their expected location, and the opinion of unnamed PSC staff, more than 10 years after the applicant's discharge, that the enclosures were not part of the separation packet reviewed by the SA. After careful consideration, the Board finds that this evidence is outweighed by the account of the individual who served as the SA in the applicant's case in 2012, along with the documents described above indicating that the PSC requested and did receive and consider the full ROI with enclosures. For these reasons, the Board concludes that a preponderance of the evidence shows that the SA did review the ROI enclosures.

Review of the ROI Enclosures

8. In compliance with the Court's remand, the Board has thoroughly reviewed all of the unredacted ROI enclosures. The applicant has contended that the investigation was biased, and that the ROI consisted of "cherry-picked quotations." Upon close comparison of the witness statements and interviews with the ROI's findings of fact, however, the Board does not find this to be the case. Instead, the Board's review shows that the ROI's 247 findings comprehensively reported the most relevant statements provided by each witness.

9. The applicant suggests that his separation was erroneous and unjust because the witness interviews and statements reveal a breakdown in officer and senior leadership, and the absence of meaningful counseling for the applicant, as well as the complicity of his immediate supervisors. He emphasizes that OSC X is the main subject of many of the witness statements regarding cruel treatment and poor leadership. The applicant also points to statements by witnesses to the effect that they never personally received offensive

treatment from the applicant, and statements from members of senior leadership indicating they never witnessed, and were unaware of, the applicant's alleged conduct.

10. Upon review, the Board initially observes that a vast majority of the sections of the witness interviews and statements emphasized by the applicant appear within the ROI findings. The ROI thoroughly documented the many witness reports of cruel treatment and poor leadership on the part of OSC X. Accordingly, the PIO opined that OSC X had violated UCMJ Articles 92 and 93 and recommended that he be relieved of his duties, permanently transferred, not recommended for advancement, given an unsatisfactory conduct mark, and issued administrative remarks detailing the investigation. The ROI also thoroughly documented witness statements about the inability or unwillingness of the chain of command above OSC X to effectively intervene or even supervise the Operations Center. The ROI findings also document reports from senior leadership that they never witnessed or were not aware of the applicant's conduct. Indeed, it was this very lack of awareness that formed a large part of the PIO's discussion about a "complete leadership breakdown" involving senior leadership at the Operations Center. The PIO ultimately concluded that five individuals – a Lieutenant, Lieutenant Commander, Chief Warrant Officer, OSC X, and another OSC – had violated Article 92 of the UCMJ because they knew or should have known about the applicant's and OSC X's abusive conduct and failed to intervene. The PIO recommended various actions against these members.

11. The significance of OSC X's misconduct, and complete leadership breakdown at the Operations Center are plain from a review of the ROI. In fact, they are central to it. This information was reviewed by the SA, and it was reviewed by the Board in August 2016. Furthermore, as noted previously in this decision, the Board has thoroughly reviewed all of the unredacted ROI enclosures and finds that the ROI comprehensively reported the most relevant statements by each witness, to include the information related to OSC X's misconduct. As such, the Board struggles to understand the applicant's position that the information relating to OSC X's misconduct constitutes new evidence warranting reconsideration of the Board's prior decision.

12. The applicant's position that the evidence of misconduct by OSC X and others rendered his own discharge unjust is, likewise, somewhat confusing. Both the ROI and its enclosures show that the applicant was needlessly cruel, using foul language to demean and intimidate his subordinates on many occasions, while also throwing physical objects at them and creating messes for them to clean up. He also assigned them menial and repetitive tasks to perform when they were busy with their official duties, seemingly for his own amusement or gratification. The evidence shows there was a leadership breakdown, yes, but that it was premised largely on senior leaders' failure to control the applicant's odious conduct.

13. Perhaps the applicant would have benefited from better leaders, or more hands-on direction, but as noted in the Coast Guard's advisory opinion, there is no

requirement in law or policy that a member be counseled not to commit UCMJ violations. Nor is there any requirement that members be specifically instructed to comport themselves with the basic professionalism and decency expected of all members. Whatever the work atmosphere may have been, the Board finds the applicant's contention that other members were responsible for his own decisions to work less hours than required, and to continuously demean his subordinates, to be unpersuasive.

14. The Board also emphasizes the significant negative impacts the applicant's conduct had on unit cohesion and morale. The ROI and its enclosures show that well-performing Coast Guard members dreaded coming to work, sought medical attention, switched to night shifts, and contemplated leaving the Coast Guard as a result of the applicant's conduct.

15. Regarding portions of the enclosures emphasized by the applicant showing that a small number of witnesses were not personally mistreated by the applicant or did not view him as offensive, the Board finds these statements are substantially outweighed by the evidence discussed above, which was derived from a careful and full consideration of the ROI and ROI attachments in the totality.

16. The Board also finds the applicant's allegation of bias on the part of the PIO, based on the PIO's written comment in his notes on his interview with the applicant to the effect that the applicant had been promoted too fast and had too much authority for an OS1, to be without merit. The notes in question were created by the PIO for use in drafting the ROI, and there is no policy or regulation barring a PIO from forming judgments about an investigation subject's or witness's statements and/or conduct. In fact, to fulfill his or her assigned duties, it is necessary for a PIO to form and document such judgments and to convey them to the authority who requested the investigation.

Harmless Error Discussion

17. 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's granting of the relief requested by an applicant. The Board is authorized to grant relief that it "considers … 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."[11] In other words, when the Board finds that an error or injustice occurred, its 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.

[11] *Caddington v. United States*, 178 F. Supp. 604, 606 (Ct. Cl. 1959).

18. The Board is also mindful that it has been long established in the context of judicial review of military personnel actions and decisions of civilian record correction boards that "strict compliance with procedural requirements is not required where the error is deemed harmless."[12]

19. With this context in mind, the Board finds that even if it were assumed, *arguendo*, that the SA did not receive and consider the ROI enclosures, potentially resulting in a technical violation of Military Separations Art. 1.B.17.e.(4)(d)[5], granting of reinstatement with 11 years of back pay and an Honorable characterization of service, in addition to the other relief requested by the applicant, would not be warranted.

20. In this case, as noted above, numerous instances of the applicant's unnecessarily cruel and toxic behavior, and his being absent from work without authorization, were well-documented in the ROI, which consisted largely of excerpts copied directly from the witness interview summaries and statements. While the applicant has pointed to certain statements in the enclosures which were not present in the ROI showing that a small number of witnesses did not personally experience offensive conduct or consider the applicant offensive, such evidence was substantially outweighed by evidence of the applicant's misconduct and would not have altered the conclusion that the applicant's inappropriate conduct towards numerous others violated Article 93 of the UCMJ (in addition to Article 92). In short, even if it is assumed that the enclosures were not reviewed by the SA, the Board finds no plausible basis in the record to suggest that such review would have altered any aspect of the applicant's discharge. Again, however, the Board finds that the evidence shows the ROI and its enclosures *were* reviewed by the SA.

Conclusion

21. In its August 2016 denial of the application in this case, the Board determined that ample evidence supported the Coast Guard's decision to process the applicant for a misconduct discharge based on commission of a serious offense. The Board also determined that the applicant was not entitled to a period of probation, and that the two documents issued on May 22, 2012 – the notification of discharge and the Page 7 further detailing the alleged conduct – satisfied the notice requirements under Coast Guard policy and provided adequate due process to the applicant.[13] The Board considered the applicant's

[12] *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 introduction of a new matter post-trial to "demonstrate prejudice by stating what, if anything, would have been submitted to deny, counter, or explain the new matter.").

[13] The Board also notes that the Separations Manual includes no requirement that a member with less than eight years of service be provided a copy of a ROI or be permitted to interview witnesses. Instead, "due process rights are typically fulfilled by notice of the government act and an opportunity to respond before or after the act." *Canonica v. United States*, 41 Fed. Cl. 516, 524 (1998). The applicant was afforded this level of process, in addition to right to consult counsel, consistent with the relevant policy.

various other arguments but determined that his General discharge for misconduct had not constituted an error or injustice.

22. Having reconsidered the application following review of the ROI enclosures and the applicant's supplemental arguments, this Board reaffirms the August 2016 decision. The Board finds that a preponderance of the evidence shows that the SA reviewed the ROI and all of its enclosures in the first instance. Even if this were not the case, however, the Board finds that such failure would have ultimately been harmless, given the ROI's thorough accounting of the witness interviews and statements.

23. For all the reasons discussed in the August 2016 decision and herein, the Board finds that the applicant has failed to establish by a preponderance of the evidence that his discharge constituted an error or injustice, or that reinstatement, an Honorable service characterization, or the other requested relief are warranted.

24. To the extent the Board has not explicitly addressed any of the arguments presented by the applicant, such contentions are considered to be unsupported by the record and/or are not dispositive of the case.[14]

[ORDER AND SIGNATURES ON NEXT PAGE]

[14] 33 C.F.R. § 52.24(b); *see Frizelle v. Slater*, 111 F.3d 172, 177 (D.C. Cir. 1997) (noting that the Board need not address arguments that "appear frivolous on their face and could [not] affect the Board's ultimate disposition").

ORDER

The application of former OS1/E-6 [redacted] is denied.

June 26, 2025

[redacted]