

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-015


SR (Former)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on October 1, 2018, and assigned the case to the Deputy Chair to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated February 14, 2020, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT’S REQUEST AND ALLEGATIONS

The applicant, a former Seaman Recruit who was discharged in 1990, asked the Board to correct his record by upgrading his character of service from under other than honorable (OTH) conditions to a general discharge under honorable conditions.¹

The applicant claimed that at the time he was discharged, he suffered from addiction. The applicant alleged that his addiction was responsible for his poor behavior that eventually led to his discharge from the Coast Guard. The applicant stated that he has now been sober for more than 15 years.

The applicant put forth two arguments in support of upgrading his character of service. First, the applicant alleged that the Coast Guard should have given him the option to attend rehabilitation for his addiction. Second, the applicant stated that his Captain entered the room during his court-martial and that this should constitute as an “automatic waiver”.

¹ There are five types of discharge: three administrative and two punitive. The three administrative discharges are honorable, general under honorable conditions, and under other than honorable (OTH) conditions. The two punitive discharges may be awarded only as part of the sentence of a conviction by a special or general court-martial. A special court-martial may award a bad conduct discharge (BCD), and a general court-martial may award a BCD or a dishonorable discharge.

In support of his application, the applicant submitted three character references. The first reference was from the applicant's father. He stated that he witnessed the applicant's addiction take over his life. However, he continued by stating that the applicant is now sober, attends church, and is living a productive life. The second reference was from the applicant's brother. He stated that his brother inspires and encourages him. He describes the applicant as "dependable, reliable and is especially a law-abiding citizen." The brother stated that the applicant has a lot of medical problems and any benefits would be greatly appreciated. The third reference was from the applicant's church leader. He stated that the applicant has been actively involved in their men's fellowship and that the applicant has been working hard to rebuild his future.

SUMMARY OF THE RECORD

On July 27, 1987, the applicant enlisted in the Coast Guard for four years. Following recruit training, he completed subsistence specialist school and advanced to subsistence specialist.

On a medical examination form for a pre-enlistment physical examination dated May 29, 1987, the physician indicated that the applicant's psychiatric evaluation was normal. On a medical questionnaire dated the same day, the applicant wrote: "I am presently in good health; and taking no medication." The applicant was cleared for duty.

On April 8, 1988, the applicant received nonjudicial punishment (NJP) for missing the movement of a ship. The applicant was sentenced to forfeiture of \$100.00 for two months and extra duty for 14 days.

On April 30, 1988, the applicant was counseled on a CG-3307 Administrative Remarks form ("Page 7") that he had received a poor mark of 2 (out of 7) in Conduct on a performance evaluation based on the NJP for missing ship's movement. The Page 7 also stated that charges for failing to show up for duty had been dismissed with a warning and that he had received another Page 7 for missing morning muster on two occasions.

On a Page 7 dated August 1, 1988, the applicant was counseled regarding being absent without leave for approximately 1 day. While the applicant had called in sick, he had ignored the ship's policy requiring him to report to duty and then go to sick call if necessary. The applicant was also counseled about having twice failed to pay his cab fare. He was encouraged to manage his finances more carefully.

On August 11, 1988, the applicant underwent a psychiatric evaluation at the request of his Commanding Officer (CO). The evaluating physician noted that the applicant was experiencing stress due to finances and having to depend on other people for transportation. The physician further noted that the applicant had no psychiatric history.

On a Page 7 dated January 4, 1989, the applicant was counseled that he was being placed on financial irresponsibility probation for six months for writing bad checks totaling \$1,672.00. Additionally, the applicant had borrowed \$590.00 from shipmates and the ship's morale and mutual assistance funds. The applicant was told that if he failed to make significant improvements, he would be administratively discharged.

On a Page 7 dated April 30, 1989, the applicant was counseled that he had received a mark of 3 in Conduct on his performance evaluation. The primary reason for this mark was the applicant's financial irresponsibility resulting in bad checks.

On a dental health questionnaire dated May 15, 1989, the applicant indicated that he did not have nor had ever had drug addiction or alcoholism. In response to a question that asked about alcohol consumption, the applicant wrote "moderate". Finally, in response to a question that asked whether he had any other disease, condition, or problem, the applicant wrote "no".

On December 14, 1989, the Coast Guard Pay and Personnel Center (PPC) sent a repayment of indebtedness notification to the applicant. In the notice, PPC attached copies of all dishonored checks written by the applicant which totaled \$542.00. PPC notified the applicant that collection would commence at the rate of \$108.40 a month until the debt was paid in full.

On March 10, 1990, the applicant was arrested for operating a vehicle without a license and for driving under the influence (DUI). A breathalyzer test determined that the applicant's blood alcohol level was 0.13 which exceeded the legal limit of 0.10. As detailed on a Page 7 dated May 15, 1990, this arrest was declared the applicant's first alcohol incident.

On March 30, 1990, the applicant was charged with the wrongful use of cocaine. The recommended disposition was to dispose of the case at mast. On April 18, 1990, the applicant was charged again with the wrongful use of cocaine on a different date.

On May 1, 1990, the applicant was absent without leave for approximately 7 days. He was apprehended on May 7, 1990.

On May 9, 1990, the applicant's CO sent a memorandum to the Commandant requesting that the applicant be discharged for misconduct and receive a less than honorable discharge. To support his request, the CO cited the following: 1) the applicant's wrongful use of cocaine; 2) the applicant's series of "bad checks," which had been written at four different military stations; 3) the applicant's average to below-average marks; 4) the applicant's arrest for driving while intoxicated; and 5) the applicant's absence without leave starting on May 1, 1990.

In a memorandum also dated May 9, 1990, the applicant acknowledged receipt of the notification for discharge and indicated that he waived his right to submit a statement on his own behalf, understood that he might encounter prejudice in civilian life if awarded a less than honorable discharge, had been provided the opportunity to consult with a lawyer, and did not object to being discharged.

On a Page 7 dated May 15, 1990, the applicant was counseled regarding writing bad checks. The applicant was notified that failure to show financial responsibility may be grounds for discharge.

On May 16, 1990, the applicant was absent without leave for approximately 4 hours. That same day, he was placed in pre-trial confinement by military authorities. He was confined pending a special court-martial.

On May 23, 1990, PPC sent a notice of indebtedness to the applicant. The letter states that the applicant owed a total of \$876.00 to two separate exchanges. On the same day, the applicant also received a Page 7 notifying him that he had written a total of seven insufficient checks totaling \$1,055.00.

On a Page 7 dated June 13, 1990, the applicant was notified that he had written four insufficient checks totaling \$520.00. The applicant was counseled that failure to resolve this matter would result in disciplinary action.

On a Page 7 dated June 20, 1990, the applicant was notified that he had written a total of six insufficient checks totaling \$710.00. The applicant was counseled that failure to resolve this matter would result in disciplinary action.

On July 16, 1990, the applicant sent a letter to his Commandant requesting to be discharged: "I hereby request a discharge under other than honorable [OTH] conditions for the good of the Service in lieu of trial by court-martial under circumstances which could lead to a bad conduct discharge." In his letter, the applicant acknowledged the following: 1) he had consulted with counsel; 2) an OTH discharge might deprive him of all veterans' benefits; 3) the request could only be withdrawn with the consent of the Commandant; 4) he could submit a statement on his own behalf; and 5) his request was voluntarily submitted.

On a medical form for a pre-discharge physical examination dated July 20, 1990, the evaluating physician indicated that the applicant's psychiatric evaluation was normal. The applicant also signed a document stating that he agreed with the physician's findings and did not want to rebut them. The applicant was medically approved for discharge.

On July 27, 1990, the CO endorsed the applicant's request for an OTH discharge for the good of the service. He conditioned his approval on the applicant accepting a summary court-martial² (SCM) prior to his discharge. The Commander stated that since the applicant had already been in confinement for 71 days awaiting trial, this would be an appropriate punishment and the best way to handle the case.

On August 10, 1990, the applicant returned from confinement to his permanent duty station. Three days later, on August 13, 1990, the applicant was absent without leave. The applicant returned to duty on August 18, 1990.

² A summary court-martial (SCM) is a judicial proceeding intended to provide prompt adjudication of minor offenses by a simple procedure. It is designed to inquire thoroughly and impartially into both sides of a matter to ensure the interests of both the government and the accused are safeguarded. Unlike a special court-martial, a summary court-martial cannot impose a punishment of a bad conduct discharge.

On August 21, 1990, the Personnel Command issued orders to discharge the applicant under other than honorable (OTH) conditions for the good of the service with a KFS separation code pursuant to Article 12.B.21. of the Personnel Manual.

On August 22, 1990, a SCM convened, and the applicant was found guilty of being absent without leave,³ wrongful use of a controlled substance,⁴ and making checks without sufficient funds.⁵ The applicant was sentenced to a reduction to pay grade E-1, confinement for 30 days, and a fine of \$450.00.

On August 29, 1990, the applicant was discharged for the good of the service in accordance with Article 12.B.21. of the Coast Guard Personnel Manual. His DD-214 shows “under other than honorable conditions” as the character of discharge; “for the good of the service” as the narrative reason for separation; RE-4 (ineligible for reenlistment) as his reenlistment code; and KFS (triable by court-martial) as his separation code. The applicant signed his DD-214.

On September 10, 1990, a Law Specialist reported that the SCM had jurisdiction over the applicant and the charges and that the applicant’s sentence was legal.

Approximately 5 years after he was discharged from the Coast Guard, the applicant was diagnosed and received treatment for bipolar disorder and substance dependence. On October 11, 1995, the applicant received a certificate for the successful completion of a 21-day in-patient drug and alcohol treatment program. The applicant was prescribed Prozac and Lithium Carbonate.

On September 21, 1995, the applicant submitted an application to the Discharge Review Board (DRB) in which he requested that his discharge be upgraded to a general discharge. The applicant stated that prior to joining the Coast Guard, he did not have any problems with drugs or alcohol. However, while in the Coast Guard, the applicant began drinking more heavily and was also introduced to cocaine. The applicant stated that he had been diagnosed with bipolar disorder and addiction, and that these diseases were responsible for his behavior while in the Coast Guard. Particularly, the applicant stated that due to his bipolar disorder and addiction, he would blackout, which caused his repeated absences and tardiness.

On September 9, 1996, the DRB sent a letter to the applicant notifying him that they would review his case on October 8, 1996. The letter stated that while the hearing was not the end of the DRB process, the applicant could expect to receive the final decision within 8-12 weeks of the hearing. The DRB’s decision is not in the record, but the applicant’s discharge was not upgraded.

VIEWS OF THE COAST GUARD

On May 16, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief. In recommending denial, the JAG adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC) in addition to providing their own findings and analysis.

³ Article 86, UCMJ.

⁴ Article 112(a), UCMJ.

⁵ Article 123(a), UCMJ.

PSC stated that the application is not timely. PSC also stated that no error or injustice occurred in processing the applicant for discharge under other than honorable conditions. According to PSC, due to the applicant's record, he could have received a bad conduct discharge at a court-martial. To avoid a bad conduct discharge, the applicant requested and was recommended for a discharge under other than honorable conditions. PSC alleged that although the applicant did not receive a medical referral for addiction or dependency, this does not affect the validity of his discharge.

The JAG reiterated that there is no evidence of error or injustice on the part of the Coast Guard that warrants an upgrade in the applicant's characterization of service. First, the JAG alleged that the Coast Guard took all appropriate steps to investigate the applicant's crimes. Second, the JAG argued that there is no evidence that the applicant was involuntary intoxicated. Even if there was evidence of involuntary intoxication, the applicant should have raised this as a defense at trial. Third, the JAG alleged that the applicant's medical records are insufficient to determine whether he was provided an offer of drug rehabilitation.

The JAG also argued that the captain's presence at the applicant's SCM does not negate the court's ruling. The JAG referenced Rule 806(a) of the Manual for Courts-Martial that was in effect at the time of the applicant's discharge. Rule 806(a) holds that courts-martial are open to both the military and civilian communities. Further, there is no law, regulation, or policy prohibiting a defendant's CO from being present at a court-martial.

The JAG noted that due to the age of the applicant's record, certain documents are no longer available for review. In particular, the applicant's final DRB ruling is not in his file and DRB records beyond 1999 are irretrievable. Additionally, the applicant's SCM ruling is not in his file and the Coast Guard does not keep trial records for SCMs beyond three years. The JAG again stated that there is no available documentation to show whether or not the Coast Guard offered the applicant rehabilitative services.

Lastly, the JAG argued that even if the Coast Guard did not offer rehabilitative services to the applicant prior to his discharge, the error is harmless. The JAG maintained that there is no nexus between the Coast Guard offering rehabilitative services and the award of an OTH discharge. Had the applicant been convicted at a court-martial, he might have been offered the opportunity to go to rehabilitation while incarcerated, but he still would have received a punitive discharge. Further, the JAG noted that the applicant did in fact complete a drug and alcohol treatment program through the VA once he was discharged from the Coast Guard.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 22, 2019, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. The applicant requested and was granted an extension to respond in accordance with 33 C.F.R. § 52.26 and submitted his response on September 9, 2019.

In his response, the applicant admitted that he committed military infractions, however he attributed his poor behavior to his drug addiction. The applicant stated that he had the best

intentions when he entered the Coast Guard, but that addiction overtook his life. The applicant asked the Board to consider what is currently going on in his life. The applicant stated that he has been sober for over 15 years, and that he is working every day on improving himself. Although he is recovering from a stroke, the applicant recently moved out of his father's house, purchased a new vehicle, and has great aspirations for his future.

APPLICABLE LAW AND POLICY

Article 12.B.21. of the Coast Guard Personnel Manual in effect in 1990 discusses discharge for the good of the service:

a. An enlisted member may request a discharge under other than honorable conditions for the good of the Service in lieu of action under the UCMJ if punishment for alleged misconduct could result in a punitive discharge. A request for a discharge under other than honorable conditions for the good of the Service may be submitted by the member at any time after court-martial charges have been preferred against him/her.

b. A request for a discharge under other than honorable conditions for the good of the Service does not preclude or suspend disciplinary proceedings in a case. Whether such proceedings will be held in abeyance pending final action on a request for discharge is a matter to be determined by the officer exercising general court-martial jurisdiction over the member concerned. Requests for discharge under other than honorable conditions for the good of the Service shall be forwarded through the officer exercising general court-martial jurisdiction for personal review and comment.

c. A member who indicates a desire to submit a request for a discharge under other than honorable conditions for the good of the Service will be assigned a lawyer counsel. If the member elects to have civilian counsel at his/her own expense the record shall indicate the name, address, and qualifications of the civilian counsel.

d. A member who persists in the desire to request a discharge under other than honorable conditions in accordance with this article after consultation with counsel shall personally sign the following request in proper letter format:

From: (Rate, name social security number)

To: Commandant (G-PE)

Via: (Chain of command)

Subj: Request for Discharge Under Other Than Honorable Conditions for the Good of the Service

Ref: (a) Article 12-B-21, personnel Manual, COMDTINST M1000.6, (series).

1. Under the provisions of reference (a), I hereby request a discharge under other than honorable conditions for the good of the Service in lieu of trial by court-martial under circumstances which could lead to a bad conduct or dishonorable discharge.
2. I have consulted with (counsel's grade, name, or if civilian, name and title) a member of the Bar in the State of (fill in) who has fully advised me of the implications of such a request. The basis for my request for a discharge under other than honorable conditions for the good of the Service stems from my misconduct contained in the court-martial charges preferred against me as indicated in enclosure (1). I elect to be administratively discharged rather than be tried by court-martial. I am completely satisfied with the counsel I have received.
3. I understand that if this request is approved I will receive a discharge under other than honorable conditions, which may deprive me of virtually all veterans' benefits based on my current period of active service, and I may expect to encounter substantial prejudice in

civilian life in situations in which the type of service rendered in any Armed Forces branch or the character of discharge received therefrom may have a bearing.

4. I understand once I submit this request, I may withdraw it only with the consent of Commander, (CGPC-epm-1).
5. I understand I may submit a sworn or unsworn statement on my behalf. [I do not desire to submit a statement.] [My sworn/unsworn statement is submitted herewith as enclosure (2.)]
6. I make this request voluntarily, free from any duress or promises of any kind. I have asked my counsel, who has fully explained to me the implications of my request, to witness my signature.
7. I have retained a copy of this request for a discharge under other than honorable conditions for the good of the Service in lieu of trial by court-martial and all enclosures related thereto.

Article 20.C.2. of the Coast Guard Personnel Manual in effect in 1990 discusses the Guidelines Concerning Drug Abuse in relevant part:

- a. Intentional drug abuse is misconduct which will not be tolerated in the Coast Guard.
- ...
- d. Members who commit drug offenses are subject to disciplinary action under the Uniform Code of Military Justice in addition to any required administrative discharge action.
- e. Members who have been diagnosed drug dependent and are later discharged shall be advised of their eligibility for treatment under Veterans Administration programs.

The June 2018 Military Drug and Alcohol Policy defines drug dependence as follow:

This term is interchangeable with Substance Use Disorder-Severe. A chronic disease characterized by repetitive, compulsive drug use, which interferes with the user's health, safety, job performance, family life, or other require social adaptation. This disease process may involve the increasing need for drugs. A drug-dependent individual may experience withdrawal symptoms when they stop taking drugs. Drug dependence also applies to a medical diagnosis made by a physician, physician assistant, or clinical psychologist.

Rule 806 of the Manual for Courts-Martial in effect in 1990 discusses the public nature of courts-martial:

- (a) *In general.* Except as otherwise provided in this rule, courts-martial shall be open to the public. For purposes of this rule, "public" includes members of both the military and civilian communities.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.

2. The applicant requested an oral hearing before the Board. 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.⁶

3. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.⁷ The applicant was discharged in 1990 and received and signed his DD-214 showing a discharge with a character of service of under other than honorable conditions. The applicant submitted an application to the DRB on September 21, 1995. The application was received and docketed on November 1, 1995. While the DRB's final decision is unavailable, the preponderance of the evidence shows that the applicant did not file his application within three years of the decision of the DRB, and his application is untimely. However, the Board will waive the statute of limitations because the applicant's request falls under its "liberal consideration" guidance as the applicant is claiming that a mental health condition led to his OTH discharge.⁸

4. The applicant alleged that his OTH discharge is erroneous and unjust because a mental health condition caused or contributed to the behavior that resulted in the discharge. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in the record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁹ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."¹⁰ And under the "liberal consideration" guidance, when deciding whether to upgrade the discharge of a veteran based on an alleged mental health condition, the Board must liberally consider the evidence, including the applicant's claims, and decide whether the preponderance of the evidence shows that the veteran had a mental health condition while in the Service that could excuse the veteran's misconduct; whether the mental health condition actually excused the misconduct that adversely affected the discharge; and, if not, whether the mental health conditions outweigh the misconduct or otherwise warrant upgrading the veteran's discharge.¹¹

5. In his application to the DRB, the applicant alleged that his character of service should be upgraded because he suffered from bipolar disorder and substance dependence while in the Coast Guard and they caused the misconduct that led to his OTH discharge. A diagnosis of

⁶ *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).

⁷ 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

⁸ DHS Office of the General Counsel, "Guidance to the Board for Correction of Military Records of the Coast Guard Regarding Requests by Veterans for Modification of their Discharges Based on Claims of Post-Traumatic Stress Disorder, Traumatic Brain Injury, Other Mental Health Conditions, Sexual Assault, or Sexual Harassment" (signed by the Principal Deputy General Counsel as the delegate of the Secretary, June 20, 2018).

⁹ 33 C.F.R. § 52.24(b).

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

¹¹ DHS Office of the General Counsel, "Guidance to the Board for Correction of Military Records of the Coast Guard Regarding Requests by Veterans for Modification of their Discharges Based on Claims of Post-Traumatic Stress Disorder, Traumatic Brain Injury, Other Mental Health Conditions, Sexual Assault, or Sexual Harassment" (signed by the Principal Deputy General Counsel as the delegate of the Secretary, June 20, 2018).

drug dependence cannot, by itself, excuse a member's misconduct because illegal drug use is always prohibited, but a diagnosis of bipolar disorder could, in theory, excuse certain types of misconduct. The applicant submitted evidence showing that he was diagnosed with bipolar disorder in 1995, five years after his discharge from the Coast Guard. His evidence is insufficient to demonstrate that he suffered from bipolar disorder while he was in the Coast Guard. According to the applicant's medical records from the Coast Guard, the applicant was never diagnosed with a psychiatric condition. In fact, the applicant underwent a psychiatric evaluation because of his repeated misconduct on August 11, 1988, and the only mental health issue noted by the psychiatrist was the applicant's stress. On both the applicant's pre-enlistment physical and pre-discharge physical, the physician noted that the applicant's psychiatric condition was normal. The Board finds that there is insufficient evidence to demonstrate that the applicant suffered from bipolar disorder while serving in the Coast Guard. Therefore, he has not shown that he suffered from a mental health condition while on active duty that could excuse his misconduct.

6. The applicant alleged that his discharge should be upgraded because he was not given the option of attending rehabilitation. According to Article 20.C.2. of the Coast Guard Personnel Manual in effect at the time of the applicant's discharge: "members who have been diagnosed drug dependent and are later discharged shall be advised of their eligibility for treatment under Veterans Administration programs." There is nothing in the applicant's record to show that the applicant was deemed drug-dependent at the time of his discharge. The June 2018 Military Drug and Alcohol Policy defines drug dependence as the "repetitive, compulsive use of drugs which interferes with the user's health, safety, job performance, family life, or other required social adaptation... Drug dependence also applies to a medical diagnosis made by a physician, physician assistant, or clinical psychologist." The applicant's record does show that he wrongfully used cocaine on two occasions, but this does not prove that he was drug-dependent. Further, even if the applicant had been diagnosed as drug dependent prior to discharge, that would not justify upgrading his discharge. The Board agrees with the Coast Guard that the alleged failure to offer rehabilitation services would have no bearing on the applicant's character of service.

7. The applicant alleged that his discharge should be upgraded because his "captain entered the room where the hearing was commencing." The applicant believed this should constitute as an "automatic waiver". Assuming that the applicant was referring to his captain attending his SCM, there is no rule that prohibits COs from attending subordinates' courts-martial. In fact, Rule 806 of the Manual for Courts-Martial explicitly authorizes members of both the military and civilian communities to attend courts-martial. In the discussion of the rule, the manual states: "although not required, servicemembers should be encouraged to attend courts-martial." The Board agrees with the Coast Guard that the Captain's presence at the applicant's SCM does not invalidate the court's ruling, and further, does not have any bearing on the applicant's character of service. Even if the applicant had been acquitted at his SCM, the applicant would still have been discharged under other than honorable conditions.

8. The kind of discharge given to the applicant, under other than honorable conditions, while not as desirable as a general discharge, is still different in kind from a bad conduct discharge which the applicant could have received from a special court-martial. An OTH discharge is an administrative discharge while a bad conduct discharge is punitive. After consulting with legal counsel, the applicant, voluntarily and in writing, requested separation from the Coast Guard in

lieu of trial by special court-martial. The applicant has not shown that his chain of command abused their discretion by discharging the applicant in accordance with his request to avoid a potential bad conduct discharge. The Board therefore finds no grounds for upgrading the characterization of his discharge.

9. The applicant's request should be denied, but the Board will reconsider his case if he is able to submit evidence demonstrating that he suffered from bipolar disorder while in the Coast Guard and that his mental health condition caused or contributed to his misconduct which led to his discharge under other than honorable conditions. Additional medical records regarding the applicant's bipolar disorder diagnosis and treatment may assist in this determination of whether the applicant suffered from bipolar disorder while in the Coast Guard.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

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

February 14, 2020

