

**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. 2020-036**



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**FINAL DECISION**

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on November 19, 2019, 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 July 15, 2022, 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 Boatswain’s Mate second class (BM2/E-5) who received a general discharge under honorable conditions from the Coast Guard on September 26, 2019, asked the Board to upgrade his discharge to honorable.<sup>1</sup> He also asked the Board to correct his record by changing his narrative reason for separation from “misconduct” to “secretarial authority,” changing his separation code from GKQ (misconduct) to either JFF (secretarial authority) or JDM, which is not an approved separation code, and changing his reenlistment code from RE-4 (ineligible to reenlist) to RE-1 (eligible to reenlist). Finally, he asked the Board to refer him to the Physical Disability Evaluation System (PDES) for medical separation or retirement based on his major depressive disorder and alcohol use disorder.

The applicant, through counsel, stated that in 2016 he was serving as the Executive Petty Officer of a remote and isolated station. At the time, he was married. However, his wife did not move to his new duty station with him. Shortly after transferring to his new duty station, the applicant stated, he learned of his wife’s infidelity. He stated that he sought the assistance of a counselor in August 2016, who initially diagnosed him with an adjustment disorder with

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<sup>1</sup> 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.

depression. Around the same time, he stated, he began consuming alcohol to self-medicate. The applicant stated that alcohol only exacerbated his depression. He and his wife eventually divorced in August 2017.

The applicant stated that his divorce significantly affected his mental health. On August 14, 2018, he was diagnosed with major depressive disorder and was prescribed Wellbutrin. That same month, the applicant self-referred for alcohol screening and was diagnosed with mild substance use disorder. He stated that he downplayed his alcohol consumption at the time of his screening because he did not want to lose his job. The applicant also stated that it is not uncommon for substance abusers to downplay their use, even when seeking treatment. As a result, he stated, he did not receive the diagnosis or treatment that he needed.

The applicant stated that in late 2018, he tried to revive his relationship with his ex-wife but that she rebuffed his efforts. He stated that the rejection triggered his depression and he began to drink again. After several months of abstaining from alcohol, the applicant relapsed. On December 6, 2018, the applicant drank three bottles of wine. The next morning, with alcohol still in his system, he drove to work. He stated that upon arriving at work, his fellow petty officers believed that he was under the influence of alcohol. He was ordered to submit to a breathalyzer examination in which he tested positive for alcohol. Consequently, he received his first alcohol incident. The applicant acknowledged that it was very irresponsible for him to drive to work that day and expressed relief that no one was hurt.

The applicant stated that immediately upon receiving his alcohol incident, he began attending Alcoholics Anonymous (AA) meetings. He was soon diagnosed with alcohol use disorder. The applicant attended an inpatient alcohol treatment program from December 12, 2018, to January 28, 2019. After completing treatment, he continued attending AA meetings and found a sponsor.

The applicant stated that because he had received an alcohol incident involving the operation of a motor vehicle, he was processed for administrative separation, and with more than eight years of service, he was entitled to an Administrative Separation Board (ASB). On April 12, 2019, the applicant attended his ASB, which determined that the applicant had committed misconduct that could be characterized as a commission of a serious offense and recommended that he receive a general discharge.

The applicant argued his general discharge is unjust because one incident should not define his entire career. He argued that until his alcohol incident, he had a stellar military record. To support his argument, the applicant submitted copies of numerous awards and medals he had received throughout his career. He also submitted his Enlisted Performance Evaluations. From March 2011 to May 2018, the applicant consistently received above-average, excellent, and superior marks. Finally, the applicant submitted letters of recommendation from his AA sponsor, father, and more than a dozen fellow Coast Guard members. The letters described the applicant as compassionate, dependable, hard-working, loyal, positive, professional, selfless, and an exceptional instructor. Many of the letters noted the applicant's willingness to take responsibility for his misconduct and the immediate steps he took to seek treatment.

The applicant also argued that his general discharge is unjust because his major depressive disorder and alcohol use disorder contributed to his misconduct. The applicant argued that his major depressive disorder contributed his misconduct because he self-medicated with alcohol. The applicant stated that when he was rebuffed by his ex-wife, he went into a deep depression. He stated that he sought the only thing that had given him relief, which was alcohol. The applicant argued that it is common for people with depression to self-medicate with alcohol and stated that about a third of those who suffer from major depression have co-occurring alcohol use disorder. The applicant also argued that his alcohol use disorder caused his misconduct. He argued that in August 2018, his alcohol use disorder was underdiagnosed and he did not receive the necessary treatment. The applicant argued that the lack of proper treatment contributed to his misconduct. He acknowledged that he was not fully honest about his alcohol abuse with the medical officer. However, the applicant argued that trained professionals with an understanding of the propensity of alcoholics should have been able to see past his claims. He acknowledged his lack of forthrightness, but continued to argue that it was up to the professional to “wade through the turbulent waters of alcoholism to come to a proper conclusion.”

Finally, the applicant argued that his discharge was erroneous and unjust because he should have been medically separated or retired. The applicant argued that he should have been referred to the PDES process when he was initially diagnosed with major depressive disorder in August 2018. He argued that according to the Coast Guard Medical Manual, major depressive disorder is an unfitting condition. The applicant argued that if major depressive disorder is identified while a member is on active duty, the member must be processed in accordance with the PDES process. He argued that in his case, the Coast Guard was negligent in failing to process him accordingly. The applicant also argued that since he was not referred to the PDES in August 2018, he should have been referred to the PDES by the ASB. The applicant acknowledged that disciplinary action takes precedence over processing a member for disability. However, he argued that there is no prohibition against processing a member for disability once disciplinary actions have concluded. The applicant argued that given his mental health condition, the ASB should not have recommended that he be administratively separated. In that case, he could have continued to be processed in accordance with the PDES.

### **SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard on July 25, 2006.

On October 7, 2010, the applicant was informed that his performance for the past year had been considered unsatisfactory compared to that of his peers. He was placed on performance probation. The applicant was notified that he would be considered for discharge if his performance did not improve over the next six months.

On April 29, 2011, the applicant was involved in an alcohol-related situation. The CG-3307 documenting the alcohol-related situation shows that his CO did not consider his consumption of alcohol to have been a significant or causative factor in the matter, and so it was not documented as an alcohol incident.

On August 8, 2018, the applicant self-referred for alcohol screening.

On August 14, 2018, the applicant had a medical examination. In the medical report, the physician assistant (PA) wrote the following regarding the applicant: “member had a divorce one year ago and increased frequency and amount of alcohol consumption dealing with progressively worsening depressive symptoms; depression screening = 20(16), mod major depression; no previous h/o depression.” The applicant reported that he drank about 12-15 drinks about three times a week. He also stated that he consumed alcohol on the weekends until he fell asleep. The applicant was diagnosed with major depressive disorder and prescribed Wellbutrin. He was also diagnosed with mild substance use disorder. The PA administered a brief intervention and reviewed responsible drinking behavior with the applicant. The applicant was advised to complete an online training and abstain from alcohol for three months. He was found fit for duty.

On September 7, 2018, the applicant had another medical examination. According to the medical report, the applicant stated that he had maintained sobriety without any cravings or temptations. The PA recommended that the applicant continue to abstain from alcohol. The applicant also stated that he had attended three psychotherapy sessions and that they were going very well. He reported no side-effects of Wellbutrin and expressed a desire to continue taking the medication. The PA recommended that the applicant continue taking 300 mg of Wellbutrin and attending psychotherapy. The applicant was found fit for duty.

On October 5, 2018, the applicant had a medical examination. According to the medical report, the applicant stated that he had been sober for two months. The PA recommended that the applicant continue to abstain from alcohol. The applicant also stated he had been attending weekly psychotherapy sessions. He reported no side-effects of Wellbutrin and stated that he was feeling “great.” In fact, he stated that he had recently started taking college courses and felt hopeful for the future. The PA noted that the applicant was responding well to the plan and recommended that he continue attending psychotherapy sessions and taking Wellbutrin. The applicant was found fit for duty.

On October 30, 2018, the applicant received a modified health screening for an overseas assignment. The form indicated that the applicant had sought or required counseling or mental health care in the last year. The form also indicated that the applicant was taking Wellbutrin for depression. The applicant was found fit for deployment.

On December 7, 2018, the applicant received a documented “alcohol incident” when his abuse of alcohol was determined to be a significant and/or causative factor for driving under the influence. That day, the applicant had arrived more than an hour late to work and was displaying mannerisms consistent with having consumed alcohol. The Officer in Charge ordered a breathalyzer examination to be performed. More than three hours after reporting to work, three separate breathalyzer examinations were administered to the applicant. His Blood Alcohol Content<sup>2</sup> registered a .229, .218, and .211. The applicant was notified that his decision to drive while impaired had violated Coast Guard policy and state law and placed the public in harm’s way. He was further notified that although this was considered his first documented alcohol incident, administrative discharge proceedings would be initiated.

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<sup>2</sup> The legal limit in the state in which the applicant was arrested is .08.

On December 10, 2018, the applicant received a substance use screening. The applicant was diagnosed with severe alcohol use disorder. He was recommended to attend a residential treatment program. The notes of the screening were as follows:

Self-referred substance use screening dated 08/07/18; member had a divorce one year ago and increased frequency and amount of alcohol consumption dealing with progressively worsening depressive symptoms; depression screening = 20(116), mod major depression; no previous h/o depression—successfully treated with Wellbutrin XL 300mg qd and individual psychotherapy

Member had maintained sobriety for approximately two months; resumed consumption late October to prove that he could control his drinking; admits today to be dependent with loss of control, can never have leftover etoh, + withdrawal sxs, cravings and blackouts.

On January 17, 2019, an investigation was completed regarding the applicant's suspected violations of the Uniform Code of Military Justice (UCMJ). The investigation found that on December 7, 2018, the applicant had arrived at his unit about an hour and fifteen minutes late. That day, he had driven his personally owned vehicle to work. While interacting with several Coast Guard members, the applicant had exhibited behaviors and mannerisms consistent with those of someone who was under the influence of alcohol such as slurred speech, disheveled appearance, and being uneasy on his feet. When asked by members if he was intoxicated, the applicant had initially denied drinking any alcohol. He had then admitted to drinking one bottle of red wine the night before but denied drinking after 11:30 pm. Concerned members contacted the unit's Command Drug and Alcohol Representative. The applicant was informed that he was to remain at the station. At that point, the applicant had been observed by another member backing his truck out of his parking spot. The applicant was again informed that he could not leave. The applicant had stated that he was going to drive to the station shop to talk to the crew. A fellow Coast Guard member had driven his own truck behind the applicant's truck to ensure that he arrived at the station safely. Starting around 12:45, a Coast Guard member administered three breathalyzer examinations to the applicant. The results of those tests were .229, .218, and .211. Subsequently, the applicant was admitted to a drug rehabilitation center and underwent inpatient treatment.

On February 2, 2019, the applicant received non-judicial punishment (NJP) for dereliction in the performance of duties,<sup>3</sup> three counts of false official statements,<sup>4</sup> drunken or reckless operation of vehicle,<sup>5</sup> and being drunk on duty.<sup>6</sup> The applicant was reduced in rank to E-5 and awarded 45 days of restriction with extra duty.

On February 15, 2019, the applicant was notified of his permanent relief for cause. His CO stated that he had lost confidence in the applicant's performance and abilities as the Executive Petty Officer based on his NJP.

On April 4, 2019, the applicant was notified that his CO had initiated action to administratively discharge him from the Coast Guard for misconduct due to the commission of a serious offense. He was notified that the least favorable characterization of service he could receive

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<sup>3</sup> Article 92, UCMJ.

<sup>4</sup> Article 107, UCMJ.

<sup>5</sup> Article 111, UCMJ.

<sup>6</sup> Article 112, UCMJ.

was under other than honorable conditions (OTH). His CO did not recommend a characterization of his service at this time. The applicant was notified that he had the right to appear before an ASB or that he could waive that right.

That same day, the applicant acknowledged notification of his discharge. He indicated that he wanted to appear before an ASB, that he wanted a military lawyer to be detailed to represent him, and that he was providing a written statement. In his statement, the applicant stated that he respectfully disagreed with his CO's decision to initiate his separation from the Coast Guard. He stated that when he self-referred for alcohol treatment in August 2018, he was not completely honest with himself or others. Then, on December 6, 2018, he relapsed. After receiving the alcohol incident, he completed a 48-day in-patient treatment program. The applicant stated that he has learned a great deal from this experience. He stated that he knows that he needs to continue with sobriety for himself both personally and professionally. The applicant stated that despite his mistake, he can continue to be an important asset to the Coast Guard. He stated that what he experienced has made him a better leader because he can use his experience to help others.

On May 6, 2019, the ASB submitted a report regarding the applicant's involuntary separation. The ASB found several findings of fact. In addition to the facts already discussed in the record, the ASB made several other findings of fact that they considered in determining whether to retain or separate the applicant. First, the ASB found that the applicant sent "abusive and disrespectful" text messages to a fellow first class petty officer on several occasions. Second, the ASB found that the applicant did not fully disclose the details of his alcohol incident to many of his character witnesses. The ASB recommended that the applicant be involuntarily separated on the basis of misconduct for the commission of a serious offense with a general discharge. According to the ASB's report, the recommendation of a general discharge was based solely on the applicant's alcohol incident and NJP.

On May 14, 2019, the applicant submitted a rebuttal to the ASB's report. In his rebuttal, the applicant refuted several of the ASB's findings of fact. For example, the applicant denied having sent abusive or disrespectful text messages to a fellow first class petty officer. The applicant noted that no text messages were presented to the ASB as evidence. The applicant requested that the ASB's findings be set aside.

On June 26, 2019, the applicant's CO submitted an endorsement of the ASB's report. The CO stated that he concurred with the ASB's record and had no objection to the findings, opinions, or recommendations.

On July 22, 2019, Rear Admiral S submitted a second endorsement of the ASB's report. RADM S stated that he fully concurred with the ASB's recommendation to involuntarily separate the applicant on the basis of misconduct for the commission of a serious offense with a general discharge.

On August 20, 2019, the ASB's findings of fact, opinions, and recommendations regarding the applicant's separation was reviewed and approved. The ASB determined that the applicant should be separated from the Coast Guard in accordance with Article 1.B.17.b.(3) of the Military

Separations Manual with a general characterization of service for misconduct due to the commission of a serious offense.

On August 27, 2019, a Licensed Professional Counselor, Ms. B, wrote a letter for the applicant's disability application with the Department of Veterans Affairs (VA). Ms. B stated that the applicant had been in and out of counseling since August 2016. She stated that at first, the applicant was seen for marital/relationship problems. However, after his marriage ended in August 2017, he was seen for depression and anxiety. Ms. B stated that the applicant's initial diagnosis was an adjustment disorder with depression. She also stated that the applicant reported having a drinking problem. Ms. B stated that he had attended rehabilitation treatment for 48 days from December 12, 2018, to January 28, 2019. She also stated that the applicant had been attending AA meetings since December 2018.

On September 26, 2019, the applicant was discharged for misconduct in accordance with Article 1.B.17. of the Military Separations Manual. His DD-214 shows "under honorable conditions" as the character of discharge; "misconduct" as the narrative reason for separation; RE-4 (ineligible for reenlistment) as the reenlistment code; and GKQ (misconduct) as the separation code. In the remarks section, it stated that the applicant completed continuous honorable active service from July 25, 2006, to February 28, 2017. The DD-214 shows that the applicant received the following awards:

Coast Guard Coxswain Insignia; Global War on Terrorism Service Medal; Coast Guard Achievement Medal with a Gold Star in lieu of a second; Rifle Marksmanship Ribbon; Pistol Marksmanship Ribbon; Coast Guard Meritorious Team Commendation with a Gold Star in lieu of a third; Commandant's Letter of Commendation Ribbon; Coast Guard "E" Ribbon; National Defense Service Medal; Coast Guard Special Operations Service Ribbon with a Bronze Star in lieu of a second; Coast Guard Sea Service Ribbon; Forth Coast Guard Good Conduct Medal for Period ending 2018 07 05.

On April 10, 2020, LCDR R, a Lieutenant Commander for the U.S. Public Health Service, reviewed the BCMR application and medical records pursuant to 10 U.S.C. § 1552(g) and provided the following psychological opinions:

Q. Did the veteran have a mental health condition or experience a sexual assault or sexual harassment that may excuse the conduct or poor performance that adversely affected the discharge or may otherwise warrant modifying the discharge?

A. There was a diagnosis of major depression and Alcohol Use Disorder. There was no history of military sexual trauma.

Q. Did the mental health condition exist during military service?

A. The alcohol use disorder and major depression occurred during military service.

Q. Is there a correlation between the mental health condition and the conduct or poor performance that adversely affected the discharge? If so, please explain.

A. No. On a note dated 10 Dec 2018 (three days after his DUI), the following was noted: "Member had maintained sobriety for approximately two months; resume consumption late October to prove that he could control his drinking." This represents a willful, volitional choice to resume drinking alcohol and thus the consequences of such drinking given that the member knew he was diagnosed with an alcohol use disorder.

Q. Was applicant misdiagnosed (“under-diagnosed” in applicant’s words) with Alcohol Use Disorder, as he alleges? If so, how did that misdiagnosis affect his treatment?

A. No.

### VIEWS OF THE COAST GUARD

On June 10, 2020, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief in this case.

The JAG argued that the applicant’s character of discharge should not be upgraded. The JAG acknowledged that the applicant’s request must be considered under the DHS liberal consideration policy because he claims that his major depressive disorder and alcohol use disorder contributed to the misconduct that resulted in his general discharge. However, the JAG stated that the liberal consideration policy does not mandate an upgrade. The JAG argued that in this case, the serious nature of the applicant’s misconduct is not outweighed by his mental health condition.

The JAG first argued that the applicant’s diagnoses do not absolve him of responsibility for his actions. Nevertheless, the JAG argued that the Coast Guard took the applicant’s diagnoses into consideration when determining their response to his misconduct. In this case, the applicant avoided prosecution for drunken or reckless operation of vehicle. Instead, the applicant received NJP for several violations of the UCMJ. The JAG argued that given the alternative of court-martial, the applicant’s NJP and subsequent discharge did not shock the sense of justice.

The JAG also argued that changing social mores support denying relief. The JAG stated that the Board should consider changes to social mores in determining whether to modify a member’s discharge. The JAG argued that social and military mores have only viewed the offense of driving under the influence more harshly since the applicant’s discharge.

Next, the JAG stated that LCDR R’s psychological opinion of the applicant did not find a correlation between the applicant’s mental health condition and his misconduct. To support his determination, LCDR R pointed to a medical note from three days after the applicant’s alcohol incident. The medical note stated that the applicant had resumed drinking in late October 2018 to prove that he could control his drinking. LCDR stated that this represents a willful, volitional choice to resume the consumption of alcohol. The JAG argued that LCDR R’s opinion shows that the applicant’s misconduct was not caused by his mental health conditions. Instead, the JAG argued that the applicant’s misconduct was caused by his own poor judgment.

The JAG also contested the applicant’s argument that he was underdiagnosed with alcohol use disorder. The JAG stated that according to LCDR R, the applicant was not misdiagnosed or underdiagnosed with alcohol use disorder. The JAG argued that even if the Coast Guard underestimated the applicant’s alcohol abuse, it was the direct result of his failure to be honest at his initial alcohol screening. According to the ASB, the applicant’s untruthfulness with the Command Drug and Alcohol Representative at the time of his alcohol screening prevented his providers from accurately determining his dependency on alcohol. According to the JAG, the Coast Guard medical structure is based on the patient being honest with the medical provider. The JAG argued that the Board should not allow the applicant to lie about the extent of his alcohol



abuse and then benefit from the medical provider's failure to accurately characterize his condition as a result of such lies.

Finally, the JAG argued that the applicant is not entitled to PDES processing based on his diagnosis of major depressive disorder. The JAG argued that the Coast Guard Medical Manual states that major depressive disorder is disqualifying and requires PDES processing. However, according to the PDES Manual, disability evaluation proceedings are suspended if a proceeding to administratively separate the member for misconduct, disciplinary proceeding which could result in a punitive discharge of the member, is pending. The JAG argued that although the applicant would have otherwise been entitled to PDES processing for major depressive disorder, his own misconduct precluded that process. The JAG argued that the Coast Guard did not commit an error or injustice in proceeding with the applicant's administrative separation despite his otherwise eligibility for PDES processing.

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

On June 18, 2020, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. In his response, the applicant stated.

The applicant argued that his discharge is unjust because the JAG failed to consider the connection between his major depressive disorder and his misconduct. The applicant argued that he committed the misconduct due to his mental health condition. First, the applicant contested the JAG's conclusion that he was sober for two months and made a willful decision to consume alcohol. He argued that he often used alcohol to treat his depression despite having medication. The applicant also argued that his major depressive disorder significantly impaired his ability to make rational decisions.

The applicant also argued that his discharge is unjust because he was not properly diagnosed with severe alcohol use disorder before he committed the misconduct. He argued that it is common for an alcoholic to fail to fully disclose the extent of their addiction. The applicant argued that a trained professional should have been able to sift through the tactics of an alcoholic and provide a proper diagnosis. Instead, he argued, the trained professional failed to properly diagnose him and provide him with the necessary treatment. The applicant argued that this misdiagnosis resulted in his relapse and misconduct. He argued that it was only after his alcohol incident that he received proper treatment and was able to better understand his disease.

Finally, the applicant argued that his discharge is unjust because he should have received a medical separation or retirement. The applicant argued that it is unjust to discharge a member who is suffering from major depressive disorder and alcohol use disorder. The applicant argued that he should have been referred to the PDES process to determine the extent of his disability. Instead, the applicant argued that the Coast Guard chose to discharge an injured service member. To support his argument, the applicant cited a letter from the VA that he received on January 31, 2020. In the letter, the VA rated his major depressive disorder with generalized anxiety disorder and alcohol use disorder at 70%. The applicant argued that the VA's rating is proof that his disability interfered with his ability to do his job. Specifically, he argued that his major depressive disorder affected his ability to make sound decisions and execute good judgment.

## APPLICABLE LAW AND POLICY

Chapter 1.B.2.f. of the Coast Guard Military Separations Manual, COMDTINST M1000.4, discusses the standards for discharge in relevant part:

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

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

- [1] Enlistment expires.
- [2] Service obligation fulfilled.
- [3] Convenience of the Government.
- [4] Dependency or hardship.
- [5] Minority (age).
- [6] Unsuitability.
- [7] Misconduct (except involvement with illegal drugs or obstructing drug urinalysis testing by tampering).
- [8] The Commandant so directs.

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

(c) Through 30 June 1983, the member must have made a minimum final average of 2.7 in proficiency and 3.0 in conduct.

(d) After 30 June 1983, the member must have a minimum characteristic average of 2.5 in each factor over the period of the enlistment. Article 12.B.48.b. of this Manual contains directions for determining the final characteristic average.

(e) If a member meets the prescribed final minimum average for an honorable discharge in only one of the two marking systems (i.e., averages only 2.5 in proficiency and 2.8 in conduct through 30 June 1983, but is clearly above the prescribed final minimum averages for service after 30 June 1983, or vice versa), the commanding officer shall notify Commander (CG PSC-EPM-1) by memorandum of the situation at the earliest possible date. The memorandum must include, as a minimum, the final averages for the individual's marks under both marking systems, and the commanding officer's definite recommendation of the type of discharge proposed in the case.

(f) Special Consideration. In any case in which a general discharge or a discharge under other than honorable conditions is warranted for one of the reasons set forth above, the Service may award the member an honorable or general discharge, as appropriate, under these conditions if the member:

- [1] During the current or previous enlistment, period of obligated service, or any voluntary or involuntary extensions he or she has earned a Medal of Honor, Distinguished Service Medal, Legion of Merit, Distinguished Flying Cross, Coast Guard Medal, Bronze Star Medal, Air Medal, Coast Guard Commendation Medal, Gold Life Saving Medal, Silver Life Saving Medal or any other Armed Forces

award equivalent to any of these decorations. In each case, the member's military record shall be fully considered in connection with any action taken.

[2] Is discharged for a disability incurred in the line of duty and resulting from action against an enemy.

[3] Is discharged while undergoing recruit training; the proficiency mark required by Article 1.B.2.f. of this Manual shall be disregarded.

[4] Received favorable action from Commander (CG PSC-EPM-1) on a recommendation submitted under Article 1.B.2.b. of this Manual.

[5] If the particular circumstances in a given case warrant, the Commandant may directly issue an honorable or general discharge in lieu of discharge under other than honorable conditions.

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

(a) The member either:

[1] Has been identified as a user, possessor, or distributor of illegal drugs or paraphernalia; or

[2] Has tampered with drug urinalysis samples, supplies, or documentation; However, the commanding officer may recommend a discharge under other than honorable conditions in severe circumstances, including among others, tampering with evidence in drug seizure cases or distributing drugs for profit, to other Coast Guard members or to minors. See Articles 1.B.2.f.(3) and 1.B.23. of this Manual for guidance and procedures.

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

[1] The member's final average marks are less than those shown in Article 1.B.2.f.(1)(c). and Article 1.B.2.f.(1)(d) of this Manual for the respective periods, or

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

Article 1.B.17. of the Military Separations Manual states the following regarding discharging a member for misconduct in relevant part:

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.). Disability evaluation processing will be terminated as described in Article 1.B.1.e. of this Manual for members discharged for misconduct. See Article 1.B.29. of this Manual when recommending the discharge of a term-term performer for misconduct.

b. Reasons to Discharge for Misconduct

...

(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 proceeding 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. The escalator clause of Rule for Courts-Martial 103(d) shall not be used in making this determination.

(b) Mandatory administrative discharge processing is required for members who engage in drunken or impaired operation of a vehicle, aircraft, or vessel. Prior to initiating administrative discharge processing, a commanding officer may submit a memorandum to CG PSC-EPM-1 with a recommendation that the member should be retained, in spite of evidence that the member engaged in drunken or impaired operation of a vehicle, aircraft, or vessel, if mitigating circumstances or an exceptional situation warrants consideration for retention. Absent such a request, or if the request is denied, administrative discharge processing shall be initiated for:

(1) Any member who is convicted by domestic or civil authorities, convicted by court-martial, or on whom non-judicial punishment is imposed for drunken or impaired operation of a vehicle, aircraft, or vessel;

(2) Any member who refuses to take a blood alcohol test by a recognized authority for suspicion of drunken or impaired operation of a vehicle, aircraft, or vessel; or

(3) A situation where the member's commanding officer has made a written finding (in a negative Administrative Remarks, Form CG-3307 entry) setting forth the facts of the matter, and that based on a preponderance of the 1-103 CH-3 evidence, the member was drunk or impaired while operating a vehicle, aircraft, or vessel in violation of Federal, state, or local law.”

(c) Voluntary alcohol consumption is not an excuse for misconduct and does not mitigate the impact of misconduct. This basis for separation, not unsuitability under Article 1.B.15 of this Manual, shall be used for all alcohol incidents that involve serious misconduct (including, but not limited to: domestic violence; hazing; drunken or impaired operation of a vehicle, aircraft, or vessel; or other misconduct that meets the definition of a serious offense in this Article). With the exception of cases involving a second or third alcohol incident, or drunken or impaired operation of a vehicle, aircraft, or vessel, commanding officers have discretion to determine whether or not to initiate administrative discharge processing for commission of a serious offense, after a careful review of the circumstances of the case. However, commanding officers and administrative boards are prohibited from designating unsuitability as the basis for separation if administrative separation processing is required by this Manual or reference (h), Coast Guard Drug and Alcohol Abuse Program, COMDTINST M1000.10 (series), and the evidence supporting separation includes any misconduct addressed in this Article. Unsuitability shall only be designated as the basis for separation in alcohol incident cases involving minor misconduct (including but not limited

to: underage drinking that does not involve the commission of a serious offense, and short periods of unauthorized absences of several hours or less).

Article 3.F.1.c. of the Coast Guard Medical Manual, COMDTINST M6000.1F, discusses fitness for duty as follows:

c. Fitness for Duty. Members are ordinarily considered fit for duty unless they have a physical impairment (or impairments) that interferes with the performance of the duties of their grade or rating. A determination of fitness or unfitness depends upon the individual's ability to reasonably perform those duties. Active duty or reserves on extended active duty considered permanently unfit for duty shall be referred to a Medical Evaluation Board (MEB) for appropriate disposition. Reservists in any status not found 'fit for duty' six months after incurring/aggravating an injury or illness, or reservists who are unlikely to be found 'fit for duty' within six months after incurring/aggravating an injury or illness shall be referred to a Medical Evaluation Board. See Reserve Policy Manual, COMDTINST M1001.28 (series), Chapter 6, "Reserve Incapacitation System".

Article 3.F.16.C. of the Coast Guard Medical Manual discusses the disqualifying conditions of mood disorders as follows:

Mood disorders. Bipolar disorders or recurrent major depression do not require a six (6) month evaluation period prior to initiating a medical board. All other mood disorders associated with suicide attempt, untreated substance abuse, requiring hospitalization, or requiring treatment (including medication, counseling, psychological or psychiatric therapy) for more than twelve (12) months. Prophylactic treatment associated with significant side effects such as sedation, dizziness, or cognitive changes, or frequent follow-up that limit duty options is disqualifying. Prophylactic treatment with medication(s) may continue indefinitely as long as the member remains asymptomatic following initial therapy. Any member requiring medication for any of the above disorders must be removed from aviation duty. (Incapacity of motivation or underlying personality traits or disorders will be processed administratively. See Military Separations, COMDTINST M1000.4 (series) for further guidance.)

Article 5.A. of the Coast Guard Medical Manual discusses psychiatric conditions as follows:

1. General

- a. Initial assessment. The following diagnostic categories conform to Diagnostic and Statistical Manual (DSM) IV-TR and indicate the appropriate reference for disposition. In determining qualification for appointment, enlistment, and induction, or appropriate disposition (when the condition has been determined to be disqualifying for retention in accordance with Paragraph 3-F-16 of this Manual), the diagnosis appears under DISM IV Axis I or Axis II. Conditions generally considered treatable and not grounds for immediate separation, mental health treatment may be authorized for members when medically necessary to relieve suffering and/or maintain fitness for unrestricted duty. The decision to provide treatment for mental health conditions will be based on a review of all factors, including the opinion of experts, probability of a successful outcome, and the presence of other physical or mental conditions. If a successful outcome (availability for worldwide assignment) is not realized within six months of the initiation of therapy, the patient's condition must be reassessed. If the reassessment indicates that the prognosis for a successful outcome is poor, the member shall be processed for discharge pursuant to Military Separations, COMDTINST M1000.4 (series) or through the Physical Disability Evaluations System, COMDTINST M1850.2 (series).

Mood Disorders. These disorders are disqualifying for enlistment under Chapter 3-D of this Manual or if identified on active duty shall be processed in accordance with Physical Disability Evaluation System, COMDTINST M1850.2 (series). These disorders may be disqualifying for retention under Chapter 3-F of this Manual.

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b. Depressive Disorders.

- (1) 296.XX Major depressive disorder (various sub-types).
- (2) 300.4 Dysthymic disorder (or depressive neurosis).
- (3) 311 Depressive disorder NOS.

Article 2.C.2.a. of the Physical Disability Evaluation System, COMDTINST M1850.2D, discusses cases the policies related to fitness for duty as follows:

- 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
    - (b) Was not the result of intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence.

### 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.<sup>7</sup>
3. The application is timely because it was filed within three years of the applicant's discovery of the alleged error or injustice in the record, as required by 10 U.S.C. § 1552(b).
4. The applicant alleged that his characterization of service, narrative reason for separation, separation code, and reenlistment code are erroneous and unjust. 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 military record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed

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<sup>7</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).

information is erroneous or unjust.<sup>8</sup> Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”<sup>9</sup>

5. Under 10 U.S.C. § 1552(a), the Board may “remove an injustice” from a veteran’s record, as well as correct an error in the record. The Board has authority to determine whether an injustice has been committed on a case by case basis.<sup>10</sup> Therefore, the Board must consider whether the applicant’s general discharge constitutes an injustice. With respect to upgrading discharges, the General Counsel of the Department of Transportation informed the BCMR on July 7, 1976, that it “should not upgrade a discharge unless it is convinced, after having considered all the evidence ... that in light of today’s standards the discharge was disproportionately severe vis-à-vis the conduct in response to which it was imposed.”

6. The applicant argued that his general discharge is unjust based on his Coast Guard record. According to Chapter 1.B.17. of the Military Separations Manual, a member who is discharged for misconduct can receive an OTH, general, or honorable discharge. The manual states that the characterization of service is based on the particular circumstances of a given case. According to Article 1.B.2.f.2. of the manual, a general discharge is appropriate if the member’s final average marks are below 2.5 in each factor over the period of enlistment, or a general discharge may be directed based on the individual’s overall military record or the severity of the incident which results in the discharge.

In this case, the applicant’s general discharge was based on the severity of his misconduct. According to the ASB, the applicant’s general discharge was based on his NJP and alcohol incident. Dereliction in the performance of duties, making false official statements, drunken or reckless operation of a vehicle, and being drunk on duty constitute significant misconduct. While the applicant committed several serious violations of the UCMJ, all of the violations stemmed from a single incident. The JAG argued that the applicant’s discharge should not be upgraded because social and military mores regarding driving under the influence of alcohol support denying relief. However, there is nothing in Coast Guard manuals that require a member to receive a less than an honorable discharge for driving under the influence of alcohol. In fact, the Board has reviewed several cases in which members received honorable discharges after driving under the influence of alcohol.<sup>11</sup> In this case, the applicant received punishment for his misconduct in which he was reduced in rank to E-5 and awarded 45 days of restriction with extra duty. Further, the

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<sup>8</sup> 33 C.F.R. § 52.24(b).

<sup>9</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

<sup>10</sup> Decision of the Deputy General Counsel, BCMR Docket No. 2001-043. According to *Sawyer v. United States*, 18 Ct. Cl. 860, 868 (1989), *rev’d on other grounds*, 930 F.2d 1577, and *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976), purposes of the BCMRs under 10 U.S.C. § 1552, “injustice” is “treatment by military authorities that shocks the sense of justice.”

<sup>11</sup> For example, in BCMR 2017-268, the applicant received an honorable discharge after driving under the influence of alcohol. In that case, the applicant collided with a median barrier and damaged another vehicle. In BCMR 2020-064, the applicant received an honorable discharge after being arrested for driving under the influence of alcohol. In that case, the Board determined that the applicant had driven members of the Coast Guard while intoxicated and lied to the police.

applicant took responsibility for his misconduct by acknowledging his wrongdoing and completing an in-patient rehabilitation program.

The Board is not convinced that one incident should necessarily negate the honor accorded to the totality of the applicant's military service for the rest of his life. Over the course of the applicant's thirteen year career, he earned the rank of first class petty officer. He also consistently received above-average marks on his performance evaluations. Notably, the applicant's record does not contain any other evidence of disciplinary action. Instead, the applicant's military record is highly decorated with many honors and awards. Therefore, although the ASB did not commit an error by assigning the applicant a general discharge, the Board finds that at this point in time, it would be in the interest of justice to upgrade the characterization of his discharge to honorable.

7. The applicant alleged that his narrative reason for separation, separation code, and reenlistment code are erroneous and unjust because a mental health condition—major depressive disorder and alcohol use disorder—caused or contributed to the behavior that resulted in the discharge. 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 mental health condition(s) while in the Service that could excuse the veteran's misconduct; whether the mental health condition(s) 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.<sup>12</sup>

8. The applicant argued that he suffered from major depressive disorder and alcohol use disorder at the time of his misconduct. On August 14, 2018, the applicant was first diagnosed with major depressive disorder and mild alcohol use disorder. In September and October of that year, the applicant continued to receive treatment for both major depressive disorder and mild alcohol use disorder. Specifically, he attended psychotherapy and was prescribed Wellbutrin. Then, on December 7, 2018, the applicant committed the misconduct for which he was discharged. Therefore, the applicant has proved by a preponderance of the evidence that he suffered from a mental health disorder at the time of his misconduct.

9. The applicant argued that his major depressive disorder and alcohol use disorder caused or contributed to his misconduct. First, he argued that major depressive disorder contributed to his misconduct because he self-medicated with alcohol. The applicant argued that after his ex-wife rebuffed his efforts to reconcile, he turned to alcohol. However, by December 2018, the applicant had been receiving treatment for major depressive disorder for four months. Specifically, he was attending psychotherapy and taking prescription medication. In his most recent medical examination before committing misconduct, the applicant reported that he was feeling “great” and that he was hopeful for the future. The applicant failed to provide evidence that he was consuming alcohol to cope with major depressive disorder. The applicant also argued that his alcohol use disorder contributed to his misconduct because he was underdiagnosed. The applicant argued that the lack of proper treatment caused his misconduct. However, in the psychological opinion submitted pursuant to 10 U.S.C. § 1552(g), LCDR R stated that the applicant was not misdiagnosed. Further, the applicant acknowledged that if he were misdiagnosed, it was due to his

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<sup>12</sup> *Id.*



own omission. The applicant's argument that a mental health professional should have been able to properly diagnose him despite his failure to disclose the extent of his addiction is unpersuasive. Regardless of the degree of the applicant's alcohol use disorder diagnosis, he was repeatedly advised to abstain from alcohol. On a medical record dated December 10, 2018, the provider noted that the applicant resumed consuming alcohol to try to prove that he could control his drinking. LCDR R stated that the applicant's alcohol consumption represents a volitional choice to resume drinking alcohol. LCDR R stated that since the applicant knew he was diagnosed with an alcohol use disorder, he accepted the consequences of drinking. According to Article 1.B.17.b.3.c. of the Military Separations Manual, voluntary alcohol consumption is not an excuse for misconduct. Therefore, the Board finds that the applicant failed to show by a preponderance of the evidence that his mental health disorder caused or contributed to his misconduct.

10. The applicant argued that the Coast Guard committed an error in failing to refer him to the PDES for medical separation or retirement. The applicant argued that when his major depressive disorder was first diagnosed in August 2018, the Coast Guard was required to refer him to the PDES process. The Board disagrees. The applicant was diagnosed with major depressive disorder on August 14, 2018.<sup>13</sup> Contrary to the applicant's assertion, major depressive disorder is not per se a disqualifying condition. According to Chapter 5.A.1.a. of the Coast Guard Medical Manual, treatable mental health conditions may be grounds for separation "if a successful outcome (availability for worldwide assignment) is not realized within six months of the initiation of therapy." In this case, the applicant started psychotherapy and medication shortly after his initial diagnosis. According to the notes from his medical examinations, the applicant was responding well to his treatment plan. In fact, the applicant reported that he was feeling "great." To support his argument that he should have been processed through the PDES, the applicant cited his disability rating from the VA. However, pursuant to Article 2.C.2.a. of the PDES Manual, "[t]he 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." In this case, the record shows that the applicant was ably performing his duties. While his medical records and the VA's disability rating clearly show that the applicant had impairments, there is no evidence that he was unable to perform his duties. In fact, the applicant's medical records show that he was consistently found fit for duty. Because the applicant was fit for duty, there were no grounds for processing him for a disability separation under the PDES process.<sup>14</sup> Therefore, the applicant has not proven by a preponderance of the evidence that the Coast Guard erred in failing to refer him to the PDES for medical separation or retirement.

11. Accordingly, the applicant request for an honorable discharge should be granted. All other requests should be denied.

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<sup>13</sup> Major depressive disorder is distinct from recurrent major depression. According to the Coast Guard Medical Manual, recurrent major depression is a disqualifying condition that does not require a six month evaluation period before initiating a medical board. While not included in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (5<sup>th</sup> edition; DSM-M), recurrent depressive disorder is listed in the World Health Organization's International Classification of Diseases (11<sup>th</sup> edition; ICD-11). According to the ICD-11, recurrent depressive disorder is characterized by a history of at least two depressive episodes separated by at least several months without mood disturbance.

<sup>14</sup> 10 U.S.C. § 1203.

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

**ORDER**

The application of [REDACTED] [REDACTED] [REDACTED] for correction of his military record is granted in part. His request to upgrade his characterization of discharge is granted. The Coast Guard shall correct his record to reflect an honorable discharge and issue him a new DD 214 showing that he received an honorable characterization of service. All other requests are denied.

July 15, 2022

[REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]