

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2020-056



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 December 30, 2019, and assigned the case to the staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision dated February 17, 2023, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT’S REQUEST & ALLEGATIONS

The applicant, a former Boatswain’s Mate second class (BM2/E-5), who received a General – Under Honorable Conditions¹ discharge on October 25, 2019, pursuant to an administrative discharge for misconduct, asked the Board to upgrade his characterization of service from General to Honorable; to change his narrative reason of separation from “Condition, Not a Disability,” to the appropriate medical reason; and to provide him with separation pay. The applicant alleged that he was wrongfully separated and denied medical separation and benefits.

The applicant explained that while serving, he struggled through a brutal divorce, mental and physical health issues, and harsh working environments. The applicant alleged that his mental and physical health deteriorated to the point that he could hardly function, but he continued in his duties, worked hard every day, and served honorably for ten years. The applicant stated that he was a leader and a role model for those around him, and not a single person who had served with him could speak a negative word about him.

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.

The applicant further explained that he struggled with the disease of alcoholism, which was horrible at times, but he sought treatment, including a 28-day intensive in-patient program. The applicant stated that he has stopped using alcohol completely and that while on active duty, took every step possible to improve his quality of life and move forward in the right direction. The applicant also stated that he does not believe that an individual suffering from a disease such as alcoholism should be punished by receiving a General discharge. The applicant argued that it seems wrong to be punished for a few shortcomings and mistakes while fighting against a crippling disease that he will fight for the rest of his life. The applicant further argued that a Coast Guard member who had cancer, hepatitis, or diabetes would have received the help and care they needed, without being discarded like he was.

The applicant alleged that he was a true master of his trade and a once in a lifetime asset to the Coast Guard due to his skills as a Boatswain's Mate.

The applicant explained that he wants to go back to school and finish his degree, which he cannot do without the education benefits that he would have been entitled to had he received an Honorable discharge. The applicant stated that in addition to losing his education benefits, he also lost severance pay. The applicant argued that he deserves an Honorable discharge for his decorated service.

To support his application, the applicant submitted the following documents:

- A December 2, 2019, letter from the applicant's family physician. The physician stated that since August 2016, he has been treating the applicant, who has struggled with numerous medical diagnoses, including severe anxiety and post-traumatic stress syndrome, complicated by alcohol abuse, in addition to chronic back and knee pain. The physician further stated that the applicant was receiving ongoing counseling and treatment for depression. According to the physician, the applicant's inability to continue to perform his duties in the Coast Guard was related to his medical issues. The physician strongly recommended that the applicant be granted a medical review board to assess the applicant's status prior to discharge.
- A psychiatric evaluation report² wherein the applicant received a diagnostic impression³ of the following: alcohol use disorder, severe; persistent depressive disorder; generalized anxiety disorder; panic disorder without agoraphobia; post-traumatic stress disorder, chronic, with nightmares; bilateral knee pain; and back pain. The evaluation further noted that the applicant alleged that his depression, anxiety, and drinking did not occur until after he joined the Coast Guard.
- A November 27, 2019, Discharge Summary from a military substance abuse rehabilitation center Summary wherein the applicant was diagnosed with alcohol use disorder, severe, and ordered to abstain from substances and other mood altering substances not prescribed or monitored by a physician, in accordance with the Military Drug and Alcohol Policy Manual, COMDTINST M1000.10A.

² The applicant submitted only the last two pages, so no date was discernable in the text.

³ A diagnostic impression is not a diagnosis, but is a list of potential diagnosis.

- Various documents from his Personnel Data Record (PDR) including his multiple letters of commendation and service awards.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on September 1, 2009. He trained as a Boatswain's Mate, advancing to the rank of E-5.

On February 8, 2010, the applicant received his first "alcohol incident."⁴ The applicant also received his first Command referral to the Substance Abuse Rehabilitation Program (SARP), where he was found to be alcohol abusive.

On April 24, 2019, the applicant received a negative Page 7 (CG-3307) documenting his second alcohol incident after he failed to report for class while attending a course at a federal training facility. After failing to report for class, the class leader initiated the missing student procedures and tasked two instructors with locating the applicant. When the instructors initially went to the applicant's barracks and knocked, the applicant did not answer. As a result, the training center's Executive Officer was notified and he and the Chief Petty Officer returned to the applicant's barracks, knocked loudly, and identified themselves, at which point the applicant answered the door. The applicant was unable to identify the time of day or the fact that he was late to class. The applicant consented to a breathalyzer test, which produced a reading of .153BAC. The applicant was ordered to remain in his barracks for twenty-four hours to allow the alcohol to leave his system. The applicant was reminded that this was his second alcohol incident, and as a result, he would be processed for separation.

On June 10, 2019, the applicant received a third negative Page 7 wherein he received his third alcohol incident. The applicant was issued a citation by local law enforcement for running a red light and colliding with another vehicle that was turning. The police officer determined that the applicant was under the influence at the time⁵ and subsequently arrested the applicant for Driving While Intoxicated (DWI). The applicant was reminded of his previous counseling on Coast Guard policies concerning alcohol use and abuse, as well as the serious nature of alcohol incidents. The applicant was informed that he would be processed for separation in accordance with Article 4 of the Military Drug and Alcohol Abuse Manual, COMDTINST M1000.10A.⁶

⁴ Article 1.A.2.d. of COMDTINST M1000.10 defines an "alcohol incident" as "[a]ny behavior, in which alcohol is determined, by the commanding officer, to be a significant or causative factor that results in the member's loss of ability to perform assigned duties, brings discredit upon the Uniformed Services, or is a violation of the Uniform Code of Military Justice, Federal, State, or local laws. The member need not be found guilty at court-martial, in a civilian court, or be awarded non-judicial punishment for the behavior to be considered an alcohol incident."

⁵ The State's Dismissal, provided by the applicant in his response to the advisory opinion, shows that the applicant had a BAC of .16 at the time of the accident.

⁶ Article 1.B.17.b.3.b. of the Separations Manual, COMDTINST M1000.4, "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:

On July 2, 2019, the applicant's CO issued a memorandum, "Notification of Intent to Discharge," wherein the applicant was notified that his CO initiated discharge proceedings against the applicant in response to his alcohol incidents. The applicant was informed of his right to an attorney and his right to submit a statement on his own behalf.

On July 8, 2019, the applicant acknowledged receipt of the memorandum. The applicant attached his personal statement and objected to his discharge. The applicant submitted the following personal statement:

I am writing this letter on my behalf in regards to my Intent to Discharge memo. My name is BM2 [applicant] and I have served this country and the United States Coast Guard loyally and diligently for 10 years since my enlistment date on April 29, 2009. Since then, I have served on CGC [redacted], and [redacted]. I have sacrificed my family, time, and location to make sure that I was fulfilling all of my duties to the Coast Guard and needs of the service as we all swore an oath to do.

While serving aboard [redacted] WK I quickly became a boat Crewman, CMOW, Damage Control Team Member, Nozzle man, Boarding Team Member and small boat Coxswain as a Seaman, and was in charge of countless missions with fail, injury, or incident. I prevailed through several tropical storms, and hurricanes. I helped save lives and property, and was certified in every area that Non-Rated personnel could be and was even the ships navigator in low visibility. We even rescued hundreds of sea turtles from freezing to death, taking them back offshore to warm water to release the endangered species. I was also awarded sailor of the quarter twice while on board, which is not even touching the surface of the strong work that I did.

After transferring to STA [redacted]. Two weeks later, Hurricane Sandy hit hard and destroyed the northeast seaboard. I was a massive asset in the recovery and rehabilitation process. While on board I was certified on the 25RBS and 47MLB. I was involved in the search for [redacted], whom was recovered as part of my team effort with air support. It was one of the most national SAR cases in recent Coast Guard history. Following that rescue a man by the name of [redacted] floundered his vessel about 10 miles off [redacted]. As a third-class break in Coxswain, I took the helm. We recovered him and saved his life with first aid and knowledge we had learned. When I departed, I received the Coast Guard Achievement medal for saving his life amongst others while conducting 200 plus at sea boardings. There was not a certification I did not hold.

Upon Reporting to USCG STA [redacted], I quickly certified on all platforms, immensely helping a starving crew after transfers. I accumulated at least 100 boardings as BO, Coxswain, ABO, or other means. I had countless cases that were handled as OOD flawlessly. I achieved Boat Crew, Coxswain on all vessels, BO, Fisheries BO, RNS Petty Officer, Training Petty Officer, and trained countless people as they came and went to "A" school. There was not a certification I did not hold. We suffered through Hurricane Matthew first the more Devastating Hurricane Florence, for which I was integral in both.

I have never failed a board or check ride; nor a PFT test. There is not a Certification in my rate that I haven't held. If I have not held it, it was because I was not at the unit that had it. I have excelled at the Boatswain's mate position. I have also never had an incident in a crewmember getting hurt, or any other casualty or mishap aboard a Coast Guard Vessel. I took with my position with pride and honor. Most of all I took care of my crew whether it be breakins or fully qualified. I taught them everything I knew to be right by our service. I wanted our new members to be the best the country had to offer and to be excited and passionate about it.

I have been through crippling circumstances along the way that hindered me and hurt me. I lost 2 grandparents, and I went through a horrifying divorce which almost broke me completely. My parents are also in their 70's and not in good health, yet still, I carried forward with my life and missions.

(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 evidence, the member was drunk or impaired while operating a vehicle, aircraft, or vessel in violation of Federal, state, or local law.

My next point is what I have learned the U.S. Coast Guard in ten years of service. I've learned to be humble, and to teach others. I have learned to train the future of our service members to the best of my ability. Because of that, the Coast Guard will be the best maritime lifesaving and law enforcement service in the world forever.

In conclusion:

I could talk about awards and accomplishments all day. They are there. Some have been seen others have not. But it's not about me. However, if you talk to my shipmates, my Coast Guard family, because that's what we are...We are family, we are friends we are co-workers, and so much more. We are best friends, sometimes enemies for a short while, then it all comes down to the love we have for each other, and our dedication to the same purpose. We are United States Coast Guardsmen.

If I am to be discharged from the career that I love, and no longer allowed to do what I love and what my passion is, I will be very regretful in the recent poor decisions I have made. I will also be suffering severely financially and morally from the civilian side for my poor choices. I have made my few mistakes in my 10 years, but I always served loyally and faithfully. I always took care of my crews, and I always tried to do the right thing that I saw well and best for myself and mostly my people. I held every Certification a BM2 could hold and more. I strongly, strongly believe that I deserve an Honorable Discharge from this great service, as well as the right to an Administrative Separation Board. This is also a testimony to the last fact that which I have serve 10 strong years of my life. The U.S. Coast guard is my family and I have taken care of them to the best of my human ability. I am asking now that the U.S. Coast Guard give back the same, and take care of me with an Honorable Discharge, and take care of its family, so that I do not have to suffer the rest of my life for a few mistakes I made while serving my Country.

As I never received any treatment plan from my second incident, only a recommendation on a page 7. Therefore I did not violate any treatment plan nor refuse one. I am currently setting up psychologists and psychiatrists to help me. Along with various other treatments to make sure I am healthy and within standards.

There are so many other things I could write about as far as my service and contributions and what I have done for the service. However, I know it's not about me. It's about the greater, bigger, picture. I know that I have trained others well, done the right things, and always tried my hardest to be the best. We all make mistakes as I have, every single one of us day in and day out.

We are humans and imperfect. That is how we grow and learn. But when a shipmate is down, we always help them in any way we can.

On December 18, 2019, the applicant was discharged from the Coast Guard pursuant to Article 1.B.12 of the Military Separations Manual, COMDTINST M1000.4. He was given a narrative reason of "Convenience of the Government—Condition, Not a Disability," and a General—Under Honorable Conditions characterization of service.

On June 18, 2020, a Coast Guard psychiatrist provided an analysis of the applicant's mental health condition at the time of his separation and while serving in the military based on his review of the applicant's records as required by 10 U.S.C. § 1552(g). The Coast Guard physician stated that the applicant suffered from a mental health condition at the time of his separation. The physician found that, based on the letter from the applicant's family physician, he suffered from the following: persistent depressive disorder; alcohol abuse disorder; generalized anxiety disorder; panic disorder; and post-traumatic stress disorder. The Coast Guard psychiatrist further stated that the applicant's mental health condition could have contributed to his misconduct, but the applicant was still responsible for his actions given that he had one prior alcohol incident, which provided the necessary insight into his alcohol abuse and the consequences of subsequent alcohol incidents.

VIEWS OF THE COAST GUARD

On April 7, 2020, a Judge Advocate (JAG) for the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center.

The JAG argued that the applicant provided minimal documentation with his application for relief. The JAG stated that the records the applicant provided to support his claims of PTSD were brief, incomplete, and possibly redacted and/or altered, in addition to one being undated. According to the JAG, the one paragraph letter written by the applicant's family physician is conclusory at best and only notes the applicant's diagnosed conditions but does not go into detail about the applicant's condition, and is completely silent as to the nature, origin, and the service connection of the PTSD. The JAG claimed that the applicant's physician "strongly recommended" the applicant be granted a medical review board, but the physician does not indicate which of the applicant's conditions, or combination of conditions, the medical board would be convened for. The physician also does not indicate which duties the applicant is no longer able to perform, or in what way the applicant is prevented from performing his duties.

The JAG explained that the applicant's physician stated the applicant had been receiving treatment since 2016, but the applicant supplied no additional medical records or evidence in that four-year timeframe regarding pertinent diagnosis. Specifically, the JAG stated that the Board was not provided medical records or progress notes from his physician in order to determine the applicant's unfitness to perform his duties as they relate to PTSD. As a result, the JAG claimed there is no way to establish that the applicant's Command or a Coast Guard medical provider would have been aware of the applicant's diagnosis and determine if a medical board was appropriate. The JAG argued that the applicant himself claimed he was a good performer, making it more difficult for any external insight into his inability to perform his duties of office, grade, rate, or rank. Lastly, the JAG argued that the applicant provided the Board with limited duty chits, shipmate, or command statements to support a finding that the applicant was unfit to perform his duties. The JAG argued that this further indicates that the Coast Guard was unaware of the applicant's alleged PTSD, and thus acted with regularity in processing him for discharge based upon alcohol abuse.

The JAG claimed that the psychiatric evaluation provided by the applicant is incomplete at best and has the appearance of being redacted or altered. The JAG explained that the record begins on Page 2, mid-sentence with the words, "military service." On page 3, the JAG claimed that it is apparent that under "Diagnostic Impression, 5," there is an indentation before "post-traumatic stress disorder, chronic, with nightmares." The JAG explained that the indentation itself does not become noteworthy until it is viewed in context of the numbers one through seven. For example, the JAG highlighted that each number's subsequent text is followed by a capitalized letter, unlike number 5 which appears to have been altered. The JAG claimed that upon further examination of number 5, the typeface of the letter "p" of the word "posttraumatic" appears to be cut short on the left side of the letter, consistent with a bead of whiteout or another print redacting medium. The JAG argued that it is not clear what information has been redacted and/or its significance in the context of evaluating the import and impetus of the applicant's PTSD. The JAG explained that in addition to the concerning redactions, this evaluation is undated and of limited

value to the BCMR in considering whether the applicant has carried his burden in demonstrating that he was entitled to PTSD processing. Similar to the applicant's physician, the JAG argued that the psychiatric evaluation does not discuss the origin of the applicant's alleged PTSD, its service-connection, or how it relates to the applicant's alleged unfitness for duty. The JAG further argued that presumably because the behavioral health facility is known for treating active duty service members and veterans, the information missing from the applicant's evaluation would be a matter of course and included in the applicant's psychiatric evaluation. Accordingly, the JAG argued that the applicant's medical evidence fails to establish, by a preponderance of the evidence, that he was entitled to be considered by PDES.

The JAG explained that in preparation of drafting its opinion, the Coast Guard sought a psychological opinion from a military mental health physician, a LCDR with the USPHS. The JAG stated that while the LCDR affirmed the applicant's in-service mental health conditions in the analysis dated June 18, 2020, the LCDR also stated that there is no evidence in the record as to the origin, service-connection, or the adverse impact these conditions had on the applicant's job performance.

The JAG argued that a diagnosis of PTSD, or any other mental or physical condition alone, does not warrant or entitle a member to processing under PDES.⁷ The JAG further argued that the applicant provided no evidence to support a finding of unfitness or an inability to perform the duties of his office, grade, rank, or rate.⁸ The JAG explained that it is possible for a member to have PTSD (or any of the other conditions alleged by the applicant) and still be fit for fully duty. The JAG argued that the applicant's failure to provide any evidence that his claimed conditions were unfitting at the time of discharge means that he has not carried his burden to sufficiently establish an error. The JAG argued that the Coast Guard enjoys the presumption of regularity in service records. According to the JAG, had the applicant been unfit for his duties, due to PTSD or any of his other claimed conditions, a medical board would have been initiated somewhere between 2009 and 2019, to determine the applicant's continued fitness for duty. The JAG further argued that by all appearances, the applicant was effectively managing his alleged PTSD as evidenced by his multiple letters in this process. The JAG argued that the applicant's own words

⁷ Article 2.C.2.c.i. of the Physical Disability Evaluation System Manual, COMDTINST M1850.2D, "The existence of a physical defect or condition that is ratable under the standard schedule for rating disabilities in use by the Department of Veterans Affairs (DVA) does not of itself provide justification for, or entitlement to, separation or retirement from military service because of physical disability. Although a member may have physical impairments ratable in accordance with the VASRD, such impairments do not necessarily render him or her unfit for military duty. A member may have physical impairments that are not unfitting at the time of separation, but which could affect potential civilian employment. The effect on some civilian pursuits may be significant. Such a member should apply to the DVA for disability compensation after release from active duty."

⁸ Article 2.C.2.a. of the Physical Disability Evaluation System Manual, COMDTINST M1850.2D, "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.

in his July 8, 2019, response to discharge memorandum, support a finding of the applicant's fitness for duty. Specifically, the applicant stated, "[T]here was not a certification I did not hold. We suffered through Hurricane [redacted] first the more Devastating Hurricane Florence, for which I was integral in both. I have never failed a board or check ride; nor a PFT test. There is not a certification in my rate that I haven't held." Similarly, the applicant stated in block 8 of his application, "I served for over ten years honorably at 3 duty stations and received multiple awards while doing so. I have been fully certified in every position I have ever held including Officer of the Day, Coxswain on almost every Coast Guard Platform, Boarding Officer, Fisheries Officer, Training Officer, Rescue and Survival systems officer and many more...I was involved with the training and qualification of hundreds of people...I was a leader, and a role model for those around me. There are just too many things that I have accomplished and done in 10 years to name. There is also not a single person I served with that could speak a bad word about me."

The JAG argued that the only evidence of unfitness was derivative of the applicant's alcohol abuse. The JAG further argued that under Article 5.A.5.b. of the Coast Guard Medical Manual, COMDTINST M6000.1, psychoactive substance use disorders, which includes alcohol dependence, if identified on active duty, shall be addressed in accordance with the Substance Abuse Manual, COMDTINST 1000.10. The JAG stated that the Substance Abuse Manual, which is now the Military Drug and Alcohol Policy Manual, COMDTINST M1000.10A, states that enlisted members involved in a second alcohol incident must be processed for separation in accordance with the Military Separations Manual, COMDTINST M1000.4. Finally, the JAG explained that Article 1.B.12.a.12. of the Military Separations Manual, that the Commander of Coast Guard Personnel Service Center (CG-PSC) may authorize or direct enlisted members to separate for the convenience of the government for any of the reasons enumerated in that article, which includes a condition that, though not a physical disability, interferes with performance of duty.⁹ According to the JAG, alcoholism is listed in the Coast Guard Medical Manual as disqualifying for appointment, enlistment or induction, but does not qualify the member for processing under PDES.¹⁰

The JAG explained that the applicant completed no less than three separate alcohol screenings/treatment programs over the course of his ten year career. The JAG explained that in accordance with Article 1.B.12.a.12. the Military Separations Manual, COMDTINST M1000.4, evidence of unsuccessful treatment, treatment failure, refusal to participate in treatment, or a relapse or recurrence of the medical condition after treatment, should be considered, and sway heavily in favor of separation.¹¹ The JAG argued that the applicant was properly separated because

⁹ Article 1.B.12.a.12 of the Military Separations Manual, COMDTINST M1000.4, "A condition that, though not a physical disability, interferes with performance of duty. This basis for separation includes any medical condition identified in reference (d), Coast Guard Medical Manual, COMDTINST M6000.1 (series), which is disqualifying for appointment, enlistment or induction, but does not qualify the member for processing under reference (c), Physical Disability Evaluation System, COMDTINST M1850.2 (series). Before ordering separation, Commander (CG PSC-EPM-1) should consider evidence of the likelihood that medical treatment will resolve the condition in a reasonable amount of time, particularly in cases involving alcohol dependence or inadvertent misuse of controlled substances that results in drug dependence. However, evidence of unsuccessful treatment, treatment failure, refusal to participate in treatment, or a relapse or recurrence of the medical condition after treatment, shall also be considered, and sway heavily in favor of separation."

¹⁰ *Id.*

¹¹ *Id.*

he demonstrated an escalation in detrimental impacts of alcohol use. The JAG further argued that the applicant's escalation is further demonstrated by his May 8, 2019, negative Page 7, wherein the applicant was counseled for missing class and being found in his barracks intoxicated, with a BAC of .153. This was the applicant's second alcohol incident, and the applicant was highly recommended to abstain from the use of alcohol until his screening and assessment was completed. The JAG stated that in spite of this admonishment, the applicant, less than two months later, ran a red light and collided with another vehicle. The responding police officer determined that the applicant was under the influence at the time of the accident, resulting in the applicant receiving third alcohol incident. Whether treatment failures, relapses or an escalation of behaviors, the JAG argued that the applicant's chronic alcohol use had not resolved nor could it be expected to in a reasonable amount of time. Because the applicant had a history of treatment dating back to 2010, the JAG argued that his separation does not shock the sense of justice.

The JAG continued, arguing that even if the applicant had been referred to PDES, under Article 2.C.11.a. of the Physical Disability Evaluation System Manual, COMDTINST M18502D, his administrative separation for misconduct would have put his PDES processing on hold.¹² The JAG further argued that under Article 1.B.17.b.4. of the Military Separations Manual, COMDTINST M1000.4, the applicant's third alcohol incident qualified as misconduct—commission of a serious offense, because the applicant operated a vehicle while intoxicated.

Finally, the JAG argued that the applicant's contentions that the Coast Guard committed an injustice by separating him because he suffers from the disease of alcoholism are unsupported by policy. The JAG stated that the applicant ignores that his conduct was directly related to his alcoholism which is specifically proscribed in the policy and the law, and is grounds for immediate separation. Therefore, based on the applicant's lack of evidence and the foregoing analysis, the applicant's request for relief should be denied.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 6, 2020, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited him to respond within thirty days. The Chair received the applicant's response on September 24, 2020.

The applicant alleged that his DUI case was dismissed by the civil court, and because it was dismissed, he should never have received a third alcohol incident without due process. The applicant further alleged that by issuing an alcohol incident, his CO denied him due process. The applicant claimed that he was discharged before he was proven guilty. According to the applicant, he was not drinking and driving and was discharged based on a false accusation.

¹² Article 2.C.11.A of the Physical Disability Evaluation System Manual (PDES), COMDTINST M1850.2D, "Disability statutes do not preclude disciplinary or administrative separation under applicable portions of the Personnel Manual, COMDTINST M 1000.6 (series). If a member is being processed for a disability retirement or separation, and proceedings to administratively separate the member for misconduct, disciplinary proceedings which could result in a punitive discharge of the member, or an unsuspended punitive discharge of the member is pending, final action on the disability evaluation proceedings will be suspended, and the non-disability action monitored by Commander, Coast Guard Personnel Command.

Regarding his fitness for duty, the applicant alleged that the reason his mental and physical health issues did not affect his performance was because he tried to hide his struggles for fear of losing his job and other ramifications. The applicant claimed he went to work every day terrified and hid his shame, in addition to dealing with his symptoms and the side effects of those symptoms. The applicant explained that he did not want to lose his qualifications.

The applicant stated that between the mental diseases, the divorce, and his chronic pain, he suffered immensely. The applicant alleged that no one saw it because, in his opinion, he was surrounded by poor leadership that simply needed warm bodies to fill posts.

The applicant acknowledged that he made two mistakes, but in no way shape or form did his mistakes warrant a General discharge. The applicant alleged that his records, marks, awards, and achievements all speak for themselves. The applicant stated that he was intensely involved in some of the largest natural disasters and countless rescue missions, all of which saved lives, and were accomplished under his command.

The applicant asked the Board to take his awards, references, and marks into consideration before making a crucial decision that will affect him for the rest of his life. The applicant explained that due to his current characterization of service, he lost severance pay, education benefits, loss of respect, and most of all, loss of confidence in himself.

To support his response, the applicant submitted the following documentation:

- Excerpts from what appears to be some form of medical form listing PTSD, unspecified; anxiety disorder, unspecified; major depressive disorder, single episode, unspecified; and emotional lability.¹³
- An unofficial, undated, document that appears to be a screen shot of the applicant's name, DOB, address, a date he reported to the facility, and a description of possible ailments that the applicant was possibly being treated for.¹⁴
- A November 27, 2012, medical document that seems to indicate the applicant was treated for anxiety and prescribed Clonazepam and Paxil.
- A September 13, 2019, mental health provider notes wherein the mental health provider recorded the following:

Has been seeing Ms. [redacted] for therapy for the past 4-5 months. He has recently been in a residential tx program for dual diagnosis - alcohol abuse and PTSD/depression in [location redacted]. He was there 28 day. He reported it went well. He said the main thing he got out of it was sobriety. He also got some therapy - individual and group, for his PTSD and alcohol abuse. His

¹³ Similar to the documents the applicant presented in his initial application to the Board, the applicant provided only pieces of his medical records, with pages that appear to be intentionally removed, with no dates, making it difficult to discern what kind of record he has submitted. This form does not have the applicant's name nor does it state that the applicant actually suffered from these issues. In addition, the short form states that there was no historical diagnosis.

¹⁴ The Board was unable to discern what kind of medical form or document this was.

meds were changed to prozac 1mg for nightmares, propranolol 1mg four times a day. He also takes Ativan 1mg as needed, hydroxyzine as needed, and Lexapro 20 mg.

[Applicant] is active duty in the US Coast Guard. He has been in for 10 years. He reported some trauma from childhood. He reported his parents fought a lot and his father may have been drinking. [Applicant] said his drinking started on a regular basis in his early 20s, mostly "partying." In 2009 he joined the Coast Guard and when traumatic events occurred he started drinking more. He was self-medicating and slatting drinking every day. He got up to drinking a fifth of liquor every day. It never interfered with his work, although sometimes he was hungover. He did get a DUI this past summer and once showed up late to a class. "It started to go downhill really quick," and he realized it was a problem.

His drinking got worse after he separated from his wife (October 2017). He'd been married five years. No children. He is doing a 5-week intensive outpatient program and he is attending AA meetings. He also realizes it was a "symptom" of his depression and anxiety, and he was self-medicating. He was treated with TMS while an inpatient. He received 20 treatments.

The trauma consisted of "gruesome injuries" and "death." There were multiple incidents and he has nightmares about them. They occurred at different stations in [redacted], [redacted], and [redacted]. He also felt like his life was in danger. He reported he has had SI, he reported they were vague thoughts with no plans. He denied current thoughts.

He plans to get out of the Coast Guard within a year. He hopes to run his own business doing fishing or boat charters.

He has flashbacks sometimes he cannot tell it's a flashback and he really feels like he is there. He gets sweaty and tingly. It has happened when he is out on his own boat. He is triggered by large crowds, kids screaming, thunderstorms, and gory movies.

[Applicant] is single, but he has a girlfriend. He said she is supportive. He also has good relationships with his parents.

He reported he wonders if he might be bipolar. He reponed he has "high" states since the age of 24. They last a few days and he feels the need for less sleep and he feels he can do things he cannot...¹⁵

- A September 27, 2019, narrative from a mental health provider wherein he made the following impressions:

[Applicant] was seen for 45 minutes therapy to review his MMPI-2 testing and to continue discussing diagnoses. We discussed that [applicant's] MMPI-2 was not valid due to an extremely elevated F-scale.

Typically, this means the person over-exaggerated their symptoms. Sometimes this is viewed as a "call for help," but when the F scale is very high it deems the clinical profile to be uninterpretable. [Applicant] did not really give an explanation as to why he may have overexaggerated. His mood and affect appeared quite depressed today. He noted he has felt very down and he has not been able "to do anything." He gets annoyed when he goes to work because he feels he can't get anything done and he does not want to be there. He is staying sober, but he has not been attending meetings. He is doing an outpatient program on base but it does not start until the end of October. [Applicant] said his girlfriend (who lives with him) is supportive and she does not drink. The clinician still encouraged [Applicant] to attend meetings and we discussed how the urge to drink, especially when newly sober, can sneak up on a person. We again discussed [applicant's] symptoms and his mood pattern. He meets the criteria for Bipolar II disorder. There is a strong family history of Bipolar Disorder. [Applicant] definitely has major depressive episodes. He also has hypomanic episodes.

¹⁵ The document ends here and the rest of the document was not provided by the applicant.

He does not have psychosis, but he does do impulsive, risky things such as spend money he does not have. He has distinct periods of abnormally and persistently elevated, expansive mood where he needs less sleep and he feels more productive. Sometimes he has “mixed” episodes. [Applicant] said the hypomanic episodes are almost always followed by a “crash” of depression. When he feels good he “forgets” how bad the depression feels. The depressive episodes tend to last longer than the hypomanic episodes. [Applicant] said his “cycles” can last days or weeks. Mike is to schedule an appointment with his psychiatric provider and he signed a release so this clinician's records can be shared documenting this change in diagnosis. [Applicant] denied any SI today.

DSM 5 Diagnosis: Alcohol use disorder, severe; Bipolar II disorder; PTSD.

- A January 7, 2020, Prosecutor’s Dismissal (“Dismissal”), wherein the prosecutor entered a voluntary dismissal. The Dismissal states that the prosecutor dismissed the case only because the judge denied the state’s request for a continuance and that the prosecutor believes in good faith that all of the elements of Driving While Intoxicated (DWI) could be proven. Finally, the Dismissal states that a Corporal would re-charge the applicant.

APPLICABLE LAW AND POLICY

Article 1 of the Coast Guard Drug and Alcohol Abuse Program Manual, COMDTINST M1000.10, provides the necessary guidance on the procedures for alcohol incidents. In relevant part:

1.A.2.d. Alcohol Incident

(1) Alcohol is the Significant or Causative Factor. Any behavior, in which alcohol is determined, by the commanding officer, to be a significant or causative factor that results in the member's loss of ability to perform assigned duties, brings discredit upon the Uniformed Services, or is a violation of the Uniform Code of Military Justice, Federal, State, or local laws. The member need not be found guilty at court-martial, in a civilian court, or be awarded non-judicial punishment for the behavior to be considered an alcohol incident.

(2) Alcohol Must be Consumed. The member must actually consume alcohol for an alcohol incident to have occurred. Simply being present where alcohol is consumed does not constitute an alcohol incident. The member may be counseled on appropriate behavior or may be held jointly responsible for any damage or untoward behavior associated with the group. Purchasing alcohol for use by minors is not an alcohol incident, but does represent a serious breach of discipline and subjects the member to civil or military (UCMJ) penalties.

...

2.B.2. Alcohol Incident. The definition of an alcohol incident (See Article 1.A.2.d. of this Manual.) gives commands broad latitude in curbing intemperate alcohol use. A key fact to keep in mind is that the member must actually consume alcohol for an alcohol incident to have occurred.

...

2.B.8.b. Second Alcohol Incident. Enlisted. Enlisted members involved in a second alcohol incident will normally be processed for separation in accordance with Article 1.B.15. of reference (c), Military Separations, COMDTINST M1000.4 (series).

...

Article 5 of the Coast Guard Medical Manual, COMDTINST M6000.1F, provides the following guidance on “Psychoactive Substance Abuse Disorders:”

Article 5.A.5.b. These disorders are disqualifying for appointment, enlistment, or induction under Chapter 3-D-32 of the Manual or if identified on active duty shall be addressed in accordance with Substance Abuse Manual, COMDTINST 1000.10 (series).

1. 303.90 Alcohol dependence (alcoholism).

...

Chapter 2.C.11. of the Physical Disability Evaluation System Manual states the following:

Cases Involving Disability Evaluation and Disciplinary Action Concurrently.

a. Disability statutes do not preclude disciplinary or administrative separation under applicable portions of the Personnel Manual, COMDTINST M1000.6 (series). If a member is being processed for a disability retirement or separation, and proceedings to administratively separate the member for misconduct, disciplinary proceedings which could result in a punitive discharge of the member, or an unsuspended punitive discharge of the member is pending, final action on the disability evaluation proceedings will be suspended, and the non-disability action monitored by the Commander, Coast Guard Personnel Command. (see Article 12-B-1.e., Personnel Manual, COMDTINST M1000.6 (series)).

b. If the court martial or administrative process does not result in the execution of a punitive or an administrative discharge, the disability evaluation process will resume. If a punitive or administrative discharge is executed, the disability evaluation case will be closed and the proceedings filed in the member's official medical record.

10 U.S.C. § 1552 provides the necessary guidance for reconsideration. In relevant part:

(a)(3)(D) Any request for reconsideration of a determination of a board under this section, no matter when filed, shall be reconsidered by a board under this section if supported by materials not previously presented to or considered by the board in making such determination.

FINDINGS AND CONCLUSIONS

1. The Board has jurisdiction over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record. The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

2. 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).

3. The applicant alleged that the Coast Guard committed an error and injustice when it administratively separated him for misconduct with a General, Under Honorable Conditions discharge, when it should have medically separated him. 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 information is

erroneous or unjust.¹⁶ 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.”¹⁷

Alcohol Incidents. The record shows that the applicant incurred his first alcohol incident on February 8, 2010, that resulted in a Command referral to the Substance Abuse Rehabilitation Program (SARP). The record further shows that the applicant incurred his second alcohol incident on April 24, 2019, after the applicant failed to report to class due to extreme intoxication, supported by the applicant’s 0.153BAC. The applicant was issued a negative Page 7 for this incident wherein he was notified that due to the event being his second alcohol incident, he would be processed for separation in accordance with the Military Drug and Alcohol Manual, COMDTINST M1000.10.¹⁸ Finally, the applicant incurred a third alcohol incident when he was arrested for DWI on June 10, 2019. In light of the definition of an alcohol incident, the Board finds that the applicant has not proven by a preponderance of the evidence that he did not incur three alcohol incidents while on active duty: Article 1.A.2.d. of the Coast Guard Drug and Alcohol Abuse Program Manual, COMDTINST M1000.10, defines an alcohol incident as:

Any behavior, in which alcohol is determined, by the commanding officer, to be a significant or causative factor that results in the member's loss of ability to perform assigned duties, brings discredit upon the Uniformed Services, or is a violation of the Uniform Code of Military Justice, Federal, State, or local laws. The member need not be found guilty at court-martial, in a civilian court, or be awarded non-judicial punishment for the behavior to be considered an alcohol incident. [Emphasis added.]

5. **Dismissal of DWI Charge.** Regarding the applicant’s third alcohol incident, the record shows that on June 10, 2019, the applicant ran a red light and collided with another vehicle. The responding officer determined that the applicant was under the influence of alcohol at the time of the accident, with a BAC of 0.16 and was arrested for a DWI. In his response to the advisory opinion, the applicant alleged that the charges against him were dropped and that he was not driving under the influence at the time of his June 10, 2019, accident, and therefore should never have been given an alcohol incident. However, the Board finds the applicant’s argument are unpersuasive. Although the applicant is correct that the charges against him in the DWI case were dropped, his arguments that the DWI charge was dismissed because he was not intoxicated at the time is without merit. The documents submitted by the applicant show that the only reason DWI charge was dropped is because the judge denied the State’s request for a continuance. This dismissal was not because the State lacked evidence or found that the applicant was not intoxicated at the time of the accident. The State’s Dismissal shows that at the time of the accident, the applicant had a BAC of 0.16. The prosecutor in her dismissal of the charges, specifically states that the applicant would be re-charged and that “The undersigned prosecutor believes in good faith that the following elements of the charge can be proven: ALL ELEMENTS OF A DWI.” Article 1.A.2.d. of the Coast Guard Drug and Alcohol Abuse Program Manual states, “The member need

¹⁶ 33 C.F.R. § 52.24(b).

¹⁷ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

¹⁸ COMDTINST M1000.10, Article 2.B.8.b., states, “Enlisted members involved in a second alcohol incident will normally be processed for separation in accordance with Article 1.B.15. of reference (c), Military Separations, COMDTINST M1000.4 (series).

not be found guilty at court-martial, in a civilian court, or be awarded non-judicial punishment for the behavior to be considered an alcohol incident.”

Moreover, the record shows that even without the applicant’s third alcohol incident, the applicant would still have been processed for separation due to having received a second alcohol incident on April 24, 2019, when he failed to show up for class and had a .153 BAC. The applicant cannot claim surprise by his separation because prior to his third alcohol incident, he was notified that he would be administratively separated via a Page 7 on May 8, 2019. Article 2.B.8.b. of the Coast Guard Drug and Alcohol Abuse Program Manual, COMDTINST M1000.10 states “Enlisted members involved in a second alcohol incident will normally be processed for separation in accordance with Article 1.B.15. of reference (c), Military Separations, COMDTINST M1000.4. Therefore, the preponderance of the evidence shows that the applicant incurred three alcohol incidents and was separated in accordance with Coast Guard policy. The record is presumptively correct, and the applicant has failed to overcome the presumption of regularity. His request for relief should therefore be denied.

6. **Alcohol Abuse as Basis for Administrative Separation.** The applicant does not dispute his first and second alcohol incidents, only that he should not have had to face separation or a General discharge because his alcohol incidents were the result of his struggle with the disease of alcoholism. However, Article 1.B.12.a.12 of the Military Separations Manual, COMDTINST M1000.4, provides that an authorized reason for discharge is having “[a] condition that, though not a physical disability, interferes with performance of duty. This basis for separation includes any medical condition identified in reference (d), Coast Guard Medical Manual, COMDTINST M6000.1 (series), which is disqualifying for appointment, enlistment or induction, but does not qualify the member for processing under reference (c), Physical Disability Evaluation System, COMDTINST M1850.2 (series). Article 5.A.5.b. provides that alcoholism, is “[d]isqualifying for appointment, enlistment, or induction under Chapter 3-D-32 of the Manual or if identified on active duty shall be addressed in accordance with Substance Abuse Manual, COMDTINST M1000.10 (series).” Therefore, the applicant’s alcoholism was a disqualifying condition warranting an administrative separation for “Condition, Not a Disability” under Coast Guard policy.

The preponderance of the evidence shows that the applicant’s alcohol abuse was interfering with the performance of his duties. Due to the applicant’s alcohol consumption, he failed to attend class and was found in his barracks room intoxicated and unaware of the time or his lateness for class. Accordingly, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that the Coast Guard erred when they found that his alcohol use was a disqualifying factor that interfered with the applicant’s ability to perform his duties under Article 1.B.12.a.12 of the Military Separations Manual, COMDTINST M1000.4.

7. **Request for Medical Board.** The applicant alleged that he should have been granted a medical discharge for his documented PTSD which, according to the applicant, was further supported by medical evidence. The Physical Disability Evaluation System (PDES) Manual, COMDTINST M1850.2D, Article 2.C.2.a. states, “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.” Chapter 3.F.1.c. of the Medical Manual, COMDTINST M6000.1F, states, “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.”

The record shows that on July 8, 2019, the applicant submitted a personal statement wherein he contested his separation and requested the separation authority reconsider his separation. The Board found the following excerpt from the applicant’s personal statement instructive:

I have never failed a board or check ride; nor a PFT test. There is not a Certification in my rate that I haven't held. If I have not held it, it was because I was not at the unit that had it. I have excelled at the Boatswain's mate position. I have also never had an incident in a crewmember getting hurt, or any other casualty or mishap aboard a Coast Guard Vessel. I took with my position with pride and honor. Most of all I took care of my crew whether it be breakins or fully qualified. I taught them everything I knew to be right by our service. I wanted our new members to be the best the country had to offer and to be excited and passionate about it.

This excerpt, in addition to others provided in his July 8, 2019, personal statement, refutes the applicant’s claim that he was unfit for duty at the time of his separation due to PTSD or any other medical condition, thus, he was not entitled to PDES processing. The applicant himself argued that he was performing his duties at a high level, evidenced by his numerous awards and accommodations. Article 2.C.2.c., COMDTINST M1850.2D, states, “If a member being processed for separation or retirement for reasons other than physical disability adequately performed the duties of his or her office, grade, rank or rating, the member is deemed fit for duty even though medical evidence indicates he or she has impairments.”

The applicant now contends that he was unfit for duty because he was suffering from PTSD and should have been granted a medical evaluation board. The applicant submitted various documents that he argues support his claims. However, the documents submitted by the applicant in both his application and his response to the advisory opinion are either incomplete or appear to be redacted as argued by the JAG. In addition to the concerns laid out by the JAG, page 4 of the applicant’s response is an undiscernible medical document that provides no clear support of his allegations. The applicant also did not provide the second page of his mental health provider’s notes from their September 13, 2019, session. The applicant was made aware of his troubling document redactions and abbreviated records upon his receipt of the Coast Guard’s advisory opinion but continued this practice of submitting partial documents in his response to the advisory opinion. The Board therefore finds that the evidence submitted by the applicant, in support of his application, is insufficient to overcome the presumption of regularity afforded to the Coast Guard and its officials.

Furthermore, even if the applicant had been sent through the PDES system due to a mental health disability, under Article 2.C.11. of the (PDES) Manual, COMDTINST M1850.2C, his administrative discharge for misconduct would have superseded and suspended the disability evaluation process. Under Coast Guard policy, disability statutes do not preclude disciplinary or administrative separation. If a member is subjected to “disciplinary proceedings to administratively separate the member for misconduct,” disability evaluation proceedings are

suspended. If a punitive or administrative discharge is executed—which it was in the applicant’s case—the disability evaluation case is closed, and the disability proceedings are filed in the member’s official medical record. Accordingly, under Coast Guard policy, any disability proceedings that might have been initiated on behalf of the applicant would have been suspended and ultimately closed as a result of the applicant’s administrative discharge proceedings. Therefore, the Board finds that the applicant has failed to prove by a preponderance of the evidence that the Coast Guard committed an error or an injustice when it failed to process him through PDES. As such, his request for PDES processing for a disability retirement should be denied.

8. The applicant requested an Honorable discharge and argued that alcoholism and PTSD caused or contributed to his receipt of a General discharge. The Board’s liberal consideration guidance applies to requests for upgraded characterizations of discharge based on an allegation that a mental health condition caused or contributed to the characterization of discharge.¹⁹ In this case, the preponderance of the evidence shows that the applicant had received diagnoses of alcohol addiction, PTSD, and other mental health conditions before he was discharged. While many members receive Honorable discharges following two alcohol incidents, in this case, the record shows that the applicant received a third alcohol incident and General discharge because of his arrest for DWI.²⁰ However, as the military psychiatrist noted on June 18, 2020, the applicant was still responsible for his conduct when he chose to drive while intoxicated. The Board finds that the applicant’s diagnoses do not excuse or justify his decision to drive while intoxicated and so the Board is not persuaded that the applicant’s General, Under Honorable Conditions discharge is erroneous or unjust.

9. For the reasons outlined above, the applicant has not met his burden, as required by 33 C.F.R. § 52.24(b), to overcome the presumption of regularity afforded the Coast Guard that its administrators acted correctly, lawfully, and in good faith.²¹ He has not proven, by a preponderance of the evidence, that his General discharge for “Condition, Not a Disability” with an RE-4 reenlistment code is erroneous or unjust. Accordingly, the applicant’s request should be denied.

¹⁹ 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).

²⁰ Article 1.B.2.f.2.(b)(2), Military Separations Manual.

²¹ *Muse v. United States*, 21 Cl. Ct. 592, 600 (1990) (internal citations omitted).

