DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2020-127

[redacted]
OS2/E-5

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 June 5, 2020, 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 June 2, 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 AND ALLEGATIONS

The applicant, a former Operations Specialist, Second Class (OS2/E-5), received a discharge "Under Other Than Honorable Conditions" (OTH)[1] for the Good of the Service on July 5, 2005, after he requested this discharge in lieu of trial by court-martial under Article 12.B.21.a. of the Personnel Manual,[2] COMDTINST M1000.6. The applicant asked the Board to correct his record by awarding him a medical separation or by upgrading his characterization of service to General—Under Honorable Conditions. The applicant stated that based upon his medical and

[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.

[2] Article 12.B.21.a. of the Personnel Manual, COMDTINST M1000.6A, states, "An enlisted member may request a discharge under other than honorable conditions for the good of the Service in two circumstances: in lieu of UCMJ [Uniform Code of Military Justice] action if punishment for alleged misconduct could result in a punitive discharge or at any time after court-martial charges have been preferred against him or her. This request does not preclude or suspend disciplinary proceedings in a case. The officer who exercises general court-martial jurisdiction over the member concerned determines whether such proceedings will be delayed pending final action on a request for discharge. Send requests for discharge under other than honorable conditions for the good of the Service through the officer exercising general court-martial jurisdiction for his or her personal review and comment."

psychiatric diagnosis, he should have been given a medical discharge because his Post-traumatic Stress Disorder (PTSD) is clearly service connected. The applicant alleged that in the fall of 2003, he began experiencing intrusive thoughts and dreams of his time at war and started self-medicating with alcohol. He explained that after this, in March of 2004, he visited the medical clinic about problems sleeping and was given a referral to see a civilian psychologist about a possible PTSD diagnosis. The applicant alleged that he also reported his difficulties moderating his alcohol consumption to his Senior Chief.

To support his application, the applicant submitted numerous medical records from his time in the Coast Guard and after. Only those records that are contemporaneous to the applicant's discharge will be summarized in the Summary of the Record.

SUMMARY OF THE RECORD

The applicant enlisted into the United States Coast Guard Reserve on July 2, 2001.

From December 31, 2002, through February 8, 2004, the applicant served in Operation Liberty Shield/Iraqi Freedom. He participated in anti-terror missions in the Middle East.

On February 15, 2004, after serving overseas, the applicant reported to an air station as his new duty station.

On April 9, 2004, the applicant was seen by a mental health specialist. The provider's notes are as follows:

> This is the first session for this U.S. Coast Guard active duty OS2, who came to [redacted] Coast Guard Station in February of this year, I believe.
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> Dr. [K] chart note of April 5, 2004, notes symptoms of PTSD and plans to rule out [assess for] PTSD.
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> The patient was activated and sent to [Middle East] while in the Reserves A-School. He grew up in [redacted], and most of his friends live there. He has family in [redacted], including a maternal aunt and uncle.
>
> Symptoms include flashbacks and nightmares, followed by physiological arousal and dissociation. His most recent episode was the evening prior to this appointment, and he notes a frequency of about once per week now, three to four times per week when symptoms began, toward the end of last August following his return from [Middle East]. In the beginning, his symptoms occurred just prior to falling asleep primarily, and since he was at home, his father calmed him down. His father is quite familiar with symptoms of PTSD, had similar symptoms following Vietnam service, and his symptoms remitted.
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> His father also had two brothers who were POW's who also had symptoms of PTSD that remitted. The symptom picture is improved, especially when he is awake. However, he still has symptoms when he is awake when he has been using alcohol, or is in stressful circumstances.
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> First flashback occurred after his return from [Middle East], triggered by lights passing by the automobile window in which he was traveling. He decompensated, was crying, was calmed by his father.
>
> The symptom process and resolution at this time starts with a flashback, he then decompensates and cries, then falls asleep, then feels refreshed.

He uses alcohol almost daily, always at bars, where he goes with his friends. He does not feel his alcohol use is out of control/but he is using more alcohol in the last two months than previously.

Medical background includes no health problems currently.

Resources include daily workouts, excellent social skills and sociability (he is making friends). He has been promiscuous here, and appears to be coping with the breakup of a serious relationship two months after he left for [Middle East]. Family in [redacted] may also be an important resource, though he has not been able to see them as of yet.

A: Posttraumatic Stress Disorder. Symptoms are remitting. Prognosis is excellent. His alcohol use and relationships with women are potential complications. He may be "partying" in order to cope with symptoms.

P: See in two weeks. Begin treatment for PTSD. Monitor alcohol use, parting, and relationships with women. Prognosis is good. He would benefit from trip to [redacted] to see his aunt and uncle instead of partying. Further explore causes of stress.

On May 4, 2004, the applicant was referred for a mental health evaluation with a military mental health provider. Dr. C, a military staff psychologist, evaluated the applicant. The relevant portions of Dr. C's notes are as follows:

CHIEF COMPLAINT AND HISTORY OF PRESENT ILLNESS: Evaluation for PTSD. Stress, a little depressed, panic attacks." The patient had been deployed to [Middle East] from DEC02 to AUG03, and while not in direct combat, stated that he was often in MOP suits, there were often sirens and incoming fire and SCUDS, and that he had occasion to see some dead bodies. The patient reported emotional and behavioral maladjustment over the past 9 months, since returning from a 9 month deployment to [Middle East], including often feeling irritated, agitated, anxious, dysphoric, increased tearfulness, disrupted and unrefreshing sleep, and dissociative-like episodes, especially while intoxicated. The patient stated that he has no recollection of these dissociative episodes, but [they] are described to him by friends as his eyes "going distant," sometimes speaking in Arabic, sometimes crying and punching walls, sometimes calling others "Chief" or acting like he's putting on MOP gear. His friend who accompanied him to the session verified these descriptions as having witnessed them, but acknowledged that they only happen to that extent while intoxicated; and apparently the more inebriated the patient, the longer and more severe the "spells." His friend stated that if one calls his name and asks him to look in their eyes, he may "come out of it," otherwise it lasts until he goes to sleep. The patient reported that he sometimes feels as if he's in an "altered state" when sober, and, while not acting out as obviously, will often "go distant" and sometimes wander. He stated that other situations make him "anxious" (what he called a "panic attack," though it didn't meet any of the clinical criteria), including hearing news on the TV or being in crowded and enclosed places. The patient reported that it helps to discuss his experiences, and has sought out and found specific people with whom he can discuss all of the events associated with his deployment and his experiences since returning. The patient could not identify specific triggers with regards to his PTSD-like symptoms. Drinking, stress, and TV seem to have some adverse effect. The patient has initiated mental health treatment with a civilian provider, given he's stationed in [redacted]. He has been to an initial appointment with a psychiatrist, and is considering psychotropic medication.

Additionally, the patient reported feeling "depressed" since returning from deployment. His "depression" was described as in the context of both residual and ongoing interpersonal stressors. The patient had been engaged prior to deployment, but their child had died during birth, which ultimately resulted in the breakup of their relationship. In addition to mourning the loss of the relationship and child, he also lost several friends during Operation Freedom. He stopped going to Church after his child died. The patient has established and maintained friendships since returning, though, and has dated frequently, and is looking for a more serious relationship currently, which is being interfered with by a female friend who is living with him. He stated that his self-esteem has been negatively impacted over the past couple years, and he does not feel as confident about himself as he had before. The patient reported wanting to sleep more often and not wanting to go out as much as usual, but still going out 1-3 times a week to drink. He stated he enjoys to go to Karaoke bars,

and is a "regular" at one. The patient drinks approximately 3 days a week, usually anywhere from 4 beers, or 3 rum and cokes, to 6 "shots" over the course of several hours.

CASE FORMULATION: The patient appeared to be experiencing significant emotional maladjustment since his return from deployment. Since the patient is seeking out discussing his experiences, is invested in engaging in and enhancing loving relationships, and is participating and enjoying extra-curricular activities, his symptoms of PTSD do not seem to meet full criteria for the disorder (maybe under the auspices of an Adjustment Disorder or Anxiety Disorder NOS). However, the patient has reported some very unusual dissociative episodes experiences, which are concerning. Adults, like the patient, with no history of trauma or abuse, no history of dissociative episodes as children in order to survive the abuse, and without fairly severe and extensive direct combat exposure, typically do not have these experiences. If the patient's complaints are accurate, he has an atypical presentation of PTSD. Confounding the picture is the patient's drinking pattern, which seems to elicit and exacerbate any emotional maladjustment he is currently experiencing, and it would be helpful to get a baseline while sober. It would also be helpful to discuss the patient's work performance with his chain of command, to gather more diagnostic data. Additionally, some of the patient's dysphoria may be characterologically based and interpersonally related, as he seems to have a history of reactivity to romantic relationships, as well as multiple bereavement issues, with which grief work would likely help.

DSM-IV DIAGNOSIS:

AXIS I:	Adjustment Disorder With Mixed Anxiety and Depressed Mood R/O Anxiety Disorder NOS R/O PTSD
AXIS II:	Deferred
AXIS Ill:	Non-contributory
AXIS IV:	Routine military stressors
AXIS V:	GAF 60-61 (mild to moderate symptoms and dysfunction)

On May 29, 2004, the applicant was arrested and charged with Driving Under the Influence (DUI) following an automobile accident. The local police department's incident report states that at 0248 hours, officers responded to reports of a vehicle accident. Upon arrival, the officers reported, the applicant was extremely unstable on his feet, had a very noticeable front to back sway, and had a "strong odor of alcoholic beverages coming from his person." According to the police, when the applicant attempted to retrieve his driver's license from his wallet, he dropped it on the ground and almost fell face first when he tried to pick it up. When the applicant was asked by officers "what happened," the applicant replied, "Just me driving." While being questioned by officers, the applicant's speech was slow, he attempted to enunciate everything he said, and would lose track of this thoughts and stop mid-sentence. Officers asked the applicant to participate in some field sobriety tests, and he consented to do so but failed them. The applicant was taken into custody for a DUI. At the police department, while officers attempted to read the applicant the "DMV Implied Consent" form, the applicant closed his eyes, began spraying spit at officers, and knocking his head against his shoulders. Officers felt as though the applicant was "pretending to have seizures," so they conducted a sternum rub on the applicant, at which point his eyes winced. When the applicant was told that a seizure would not get him out of his DUI arrest, the applicant continued knocking his head against his shoulders and then began banging his head against the wall behind him. When an officer told the applicant that he could be charged with criminal mischief if he damaged any property during his escapades, within seconds the applicant quit his "seizure" and opened his eyes. While at the police station, the applicant refused to take additional field sobriety tests, but at 0348, the applicant did consent to a breathalyzer, where he "blew" a 0.21 BAC (blood alcohol content).

From June 7, 2004, through June 10, 2004, the applicant was ordered to attend an intensive Outpatient Crisis Intervention Program (OCIP) for alcohol abuse. The applicant completed the program and his participation was determined to be a success. The applicant attended four out of the four OCIP courses. The applicant was ordered to do bi-monthly follow-ups on Wednesdays from 11:30 to 12:30.

On June 8, 2004, OSCS S submitted a "Report of Offense and Disposition" (CG-4910) form, wherein the applicant was charged with violating of Article 111 (Drunken or Reckless Driving) and Article 134 (General Article: Discredit Upon the Coast Guard). OSCS S recommended the case be disposed of at a Captain's Mast, and the applicant requested that LT J be appointed as his representative for the mast. The applicant was informed of his rights and the consequences that might occur as a result of his Captain's Mast.

On June 11, 2004, the applicant's command issued a memorandum, "Investigation into the Circumstances Surrounding the DUI Charges Against OS2 [applicant] that Occurred on 29 MAY 2004," wherein he appointed a single investigator to conduct an informal investigation under Chapter 4 of the Administrative Investigations Manual, COMDTINST M5820.1, and Chapter 20 of the Coast Guard Personnel Manual, COMDTINST M1000.6A. The investigation was to be completed by June 25, 2004.

On June 11, 2004, the applicant was once again evaluated by Dr. C, a military staff psychologist. The relevant portion of Dr. C's notes are as follows:

> **SUBJECTIVE/INTRIM HISTORY**: This 22-year old, single, OS2/USCG/AD man with 2 years 10 months of broken active duty, attached to Group/Air Station [redacted] was seen for his first follow-up session on 07JUN04. He completed psychodiagnostics testing on 11JUN04. The patient reported that he received a DUI at the end of JUN [*sic*]. It should be noted that, after his first psychiatric evaluation in MAY04, the patient was advised to abstain from alcohol. He stated that 4 hours after the accident, he "blew" a .21 (blood alcohol test). It appears that he meets the criteria for alcohol dependence, in that he has built a significant tolerance, has repeatedly engaged in hazardous behaviors while drinking, has continued drinking despite being told to abstain for diagnostic purposes, was repeatedly tardy to work due to drinking, and misused a government credit card for purposes of buying alcohol. He also stated that his symptoms of PTSD are exacerbated while drinking (either "blacking out" or having nightmares). He has already been referred to his Command DAPA for alcohol treatment. He stated he has been sober since his DUI.
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> The patient stated that he does not have his "spells" (intrusive thoughts and images of his service in [Middle East]) while at work, in a military environment. He stated that work is a "positive environment," and he doesn't think about his deployment at those times. He stated that he experiences intrusive thoughts and images, or feels as if he's back in the situation, mostly when he is alone, or when he's feeling down because of his past romantic relationships or his current lack of romantic relationship. He described these "spells" as, for example, laying down on the floor in his living room, feeling himself "start to slip," walking over to the TV, which he thought was the operational radio." Or, sleeping at work, waking up and "seeing" tents, smelling coffee, seeing his commander "like sleepwalking but I wasn't asleep." Or, he thought he was calling, check points in the desert while he was recently at work, asking if they needed their batteries replaced.
>
> The patient completed the Outpatient Crisis Intervention Program (OCIP). He was noted to have some significant signs of potential depression prior to going on deployment, including having moved 15 places over the course of 7 years, having lost a child with a fiancé, then having his fiancé break up with him by disclosing infidelity. He disclosed in OCIP that, while on deployment, he sometimes had wished that he

would get shot because he was in so much emotional pain. The patient is currently being treated by a civilian psychiatrist (Dr. [G])[3] in [redacted], who is communication with his medical officer (CAPT [K]).

PSYCHODIAGNOSTIC TESTING: The patient was administered the Minnesota Multiphasic Personality Inventory (MMPI-2) and the Millon Clinical Multiaxial Inventory (MCM-III) on 11JUN04. The patient produced an MMPI-2 with such marginal validity, that the profile is basically rendered useless. The patient produced a "floating" profile (all clinical scales elevated), which is generally associated with the response style of a person with Borderline Personality functioning.

The patient produced a valid MCM-III profile, the validity configurations of which indicated that the patient's response style was excessively open and revealing, suggestive of symptoms exaggeration for personal gain, a "cry for help," and/or acute emotional turmoil. The patient produced a profile similar to individuals who likely have multiple underlying. chronic personality defects, superimposed with acute symptoms of anxiety and problems with alcohol. The patient endorsed items consistent with symptoms of depression and anxiety, including items dealing with painful memories, nightmares, reports of trauma, and flashbacks (although it should be noted that if there is no trauma in the patient's history, high scores are suggestive of emotional turmoil of nontraumatic nature), symptoms of generalized anxiety, including nervous tension, crying indecisiveness, apprehension, and somatic complaints (reflecting psychic distress and maladjustment), and dysthymic symptoms such as feelings of apathy discouragement, guilt, energic, and self-deprecation. The patient also scored high on items pertaining to both alcohol abuse and traits often associated with problematic drinking, including impulsivity, rationalizations, selfishness, lack of adherence to social standards, and aggressiveness. The patient produced a profile similar to individuals with dysfunctional personalities manifested by a labile affect, erratic behavior, intense emotionality; they are often dissatisfied and depressed, often self-destructive or pathologically self-sacrificing; they can be rigid, have ideas of control or influence, hypervigilant sensitivity, defensiveness; they may be angry and mistrusting, but have problems with assertive communication and effectively expressing resentments; they may be "spacey," self-absorbed, idiosyncratic, cognitively confused; they may have fears of rejection and feelings of inadequacy.

The patient also filled out a PTSD symptom checklist. Upon follow-up with regards to having positively endorsed some items, it became clear that many were present prior to his deployment. For example, he stated that feeling emotionally numb was an extreme problem, yet he cited examples such as not feeling sad at funerals and feeling numb when his son died. He cited most of his problems as having begun when his fiancé broke up with him prior to deployment. He cited "trouble trusting others" within the same context (after breakup of relationship and prior to deployment). His severe headaches were premorbid, his mismanagement of money was in reference to when he was drunk or drinking etc.

CASE CONCEPTUALIZATION: The patient does appear to be experiencing multiple problems, many of them seem to be related to deficits in premorbid functioning, possibly due to significant personality defects, depressive reactions to failed romantic relationships and the loss of an infant prior, and a drinking problem, exacerbated by the stress of deployment. Much of the patient's descriptions of PTSD symptoms are unusual in that he was not directly in combat or have a life-threatening even take place (though he said he was traumatized by much of what happened, such as being in MOP gear), his "flashbacks" are of events that have nothing to do with the traumatic events that he did experience (rather, they are of speaking with translators or making calls on the radio to check for batteries, for example), and they are not elicited by "triggers" (being in a military environment daily for work), rather they often come when he feels sad, lonely, or depressed. Also, the patient reported he is generally performing well and enjoys work. With the level of dissociation that he is describing, his concentration should be adversely and objectively impacted. Some of his symptoms of PTSD and his distorted and invalid psychodiagnostic testing can be the result of a personality disorder (or malingering). His vulnerability to these experiences may also be familial, as he has a father and 2 uncles who experienced symptoms of PTSD, which eventually remitted, after serving in combat. The patient has likely had a premorbid emotional and psychiatric vulnerability that culminated in this crisis. Nonetheless, the patient is describing significant emotional and behavioral maladjustment currently. He would likely benefit from processing his relationship issues, grieving for the loss of his child, and treating his alcohol dependency

[3] The civilian mental health provider the applicant was seeing was not a medical doctor, or psychiatrist as stated here, but was a Ph.D.

in addition to treating his symptoms of anxiety, some of which are reflective of PTSD. He may benefit from pharmacotherapy to assist in his reduction of anxiety. The patient should continue to be closely monitored as he continues his sobriety and initiates pharmacotherapy. If his psychiatrist is unable to provide counseling services, he should receive those elsewhere, particularly if the person specializes in PTSD. Limited Duty will be considered, as necessary, for treatment purposes.

ASSESSMENT: Change in diagnosis? Yes – the patient's symptoms appear more severe than what might be expected in an adjustment disorder. It may be acute Axis I disorder overlying a chronic Axis II disorder.

Axis I:	Anxiety Disorder NOS (provisional)
	R/O PTSD
	Alcohol Dependence
Axis II:	Borderline Personality Traits
	R/O Personality Disorder
Axis III:	Non-contributory
Axis IV:	Routine Military Stressors
Axis V:	GAF – 61

On June 23, 2004, the Investigating Officer (IO) issued a memorandum, "Letter of Incident Report; Investigation into the Circumstances Surrounding the DUI Charges Against OS2 [applicant] that Occurred on May 29, 2004." The contents of the memorandum are as follows:

1. As per enclosure (1), I completed a one-officer informal investigation in accordance with reference (a)[4] to determine the applicability of the charges brought against Petty Officer [applicant]. I gathered statements from individuals involved in the events. I believe the following is an accurate account of the events as they occurred and I made a recommendation for disposal of this case.

2. OS2 [applicant] is accused of the following: (Article 111) Drunken or Reckless Driving and (Article 134) Bringing Discredit upon the Coast Guard.

3. At about 0300 on the morning of 29 May 2004, OS2 [applicant] was arrested and charged with Driving Under the Influence of Intoxicants following a single car accident in [redacted]. OS2 [applicant] failed one field sobriety test, refused to take further tests, and at 0348 failed a breathalyzer exam administered at the [redacted] Police Department with a Blood/ Alcohol Content of .21% which is over the [redacted] legal limit of .08%.

4. On the night of 28 May 2004, OS2 [applicant] participated in a night of heavy alcohol consumption commencing around 2000 at a local bar called [redacted]. Although the exact amount of consumption is unclear, OS2 [applicant] freely disclosed consuming several pitchers of beer and 4-5 shots of harder alcohol. He was driven to another bar, [redacted], consumed more alcohol and then returned to [redacted]. OS2 [applicant] departed [redacted] and struck a car driven by [redacted] (civilian) at the intersection of [redacted]. OS2 [applicant] failed to stop; and as a result, struck the rear-end of this car stopped at a red light. Both vehicles were considered total losses as determined by their respective auto insurance companies.

5. OS2 [applicant] violated state law by driving with a BAC of .21 which is well in excess of the state & federal limit of .08%. Due to his intoxication OS2 [applicant] caused a vehicular accident totaling two vehicles but causing no injuries.

6. I recommend that OS2 [applicant] receive non-judicial punishment for violation of UCMJ Article 111 and Article 132. He exceeded legal limits for BAC and vehicle operation, caused a two car accident, and in the process brought discredit to the Coast Guard. Additionally, OS2 [applicant's] actions constitute an alcohol incident and his on base driving privileges should be revoked as per the requirements of reference (c).[5]

[4] Administrative Investigations Manual, COMDTINST M5830.1
[5] The Coast Guard Personnel Manual, COMDTINST M1000.6A.

7. Civil proceedings are pending for the charges against OS2 [applicant] for Driving Under the Influence of Intoxicants. In consultation with District [redacted] legal and in reference to 1.A.7.c. of the Military Justice Manual (COMDTINST M5810.1D), it is my recommendation that Captain's mast proceedings be held in abeyance until the conclusion of his civil trial.

The following personal statements were issued in conjunction with the administrative investigation:

- A June 22, 2004, personal statement submitted by the applicant which reads as follows:

The following statement is made freely, voluntarily, and without any promises or threats to me. On the morning of May 29, 2004, I, [applicant], was arrested for Driving Under the Influence. The night's activities started the previous evening at approximately 2000 hours. I met a friend at [redacted] Restaurant and Tavern, where we began with a couple of pitchers of beer while we played billiards. Shortly after, my friend and I went to socialize with some other friends that entered [redacted]. We carried on, drinking between 7-10 pitchers of beer and 4-5 rounds of shots, between the six of us. At 2400, the group of us went to [redacted] Bar. I rode with someone to [redacted]. The group of us had several more pitchers of beer and numerous shots. I do not remember how I got back to [redacted], though, once there I had a few more drinks. I do not remember getting in my vehicle or driving. The next thing I remember is waking up with my head on the steering wheel. I got out of the truck and someone asked me to come stand on the sidewalk. I remember being very shaken up and inebriated when the officer was trying to question me on the street. I was arrested and taken to [redacted] Jail. I was able to gather myself well enough to answer the officer's questions. After the questioning process an officer administered a breathalyzer test. My blood alcohol level registered a .21. The night in question is hazy and broken, so I will concede to the accuracy of the arresting officer's report, except on one point. During the booking process I was accused of faking a seizure. I have never, in my life, had seizures. I am currently attending counseling for PTSD, which I told the officer during questioning. My actions during the booking process are also symptoms that have been logged in previous counseling sessions. This statement is true and correct to the best of my knowledge. The statement was solicited in compliance with the Administrations Investigations Manual, COMDINST M5830. (Series).

- A June 23, 2004, statement from the IO who contacted the civilian the applicant rear ended. The summary of the IO's conversation with civilian is as follows:

I contacted Mr. [Civilian] to verify certain facts pertaining to the charges against OS2 [applicant] brought about by the events on the morning of 29 May 2004. The following is a summary of our phone conversation.

Mr. [Civilian] stated that he was stopped at a red light on Central Avenue at the intersection of [redacted]. He observed a car parked to his left and was watching the occupants of that car when his vehicle was struck from behind. He estimates his car was pushed at least 50' and possibly up to 80' from the impact of the collision. He exited his vehicle and saw that the occupants of the vehicle that were previously to his left were talking to the driver of the vehicle who struck him. Mr. [Civilian] stated that the driver (identified by police as [applicant]) was not making sense in his replies and claiming that he did not strike any car. The witness vehicle departed prior to police arrival and has not been identified. Mr. [Civilian] stated that his vehicle was pronounced a "total loss" by his insurance company (Progressive) and he was no longer in possession of it. Mr. [Civilian] also stated that he had no injuries as a result of the collision but the impact was significant, nonetheless.

This statement is true and correct to the best of my knowledge.

On June 24, 2004, the applicant visited with his civilian psychologist, Dr. G. The medical notes are summarized are as follows:

D: Mr. [applicant] returns at the request of the Coast Guard Health Department. He immediately discloses recent problems in connection with alcohol and relationships, consistent with the concerns I had following our last visit. He had an automobile accident May 29, while intoxicated, was arrested for driving while intoxicated. Dr. [K] evaluated him yesterday and determined that he was at Level 3, and it is planned that he will attend a treatment program near [redacted] for about six weeks. There will be a Captain's Mast. He has been relieved of his regular duties. He realizes he has harmed himself and hurt others. He did stop drinking the day of the automobile accident, and this is likely why he has been assessed at Level 3.

We also focused on his relationships with women. He understands that he has been reacting to being jilted while overseas, and that his relationships with women has [*sic*]also been complicated by partying in bars. I talked with him, and apparently others have also talked with him, about appropriate places to meet the kind of women that he wants to have a relationship with. He understands the problems that occur when sexual intimacy comes before getting to know someone. It appears that his alcohol use likely influenced his approach to relationships in recent months.

I understand he is not currently prescribed any medications. He continues to have problems with sleep, and continues to have symptoms of Posttraumatic Stress Disorder.

A: He has a productive attitude, is open and honest, not the least bit defensive or rationalizing of his behavior. He appears to appreciate the fact that the Coast Guard and other authorities have stopped him and set him back on a path that he would rather be on.

P: We will continue to work on Posttraumatic Stress Disorder, and it is also likely we will be working on intimate relationships.

On July 2, 2004, the applicant visited with his civilian psychologist, Dr. G. The medical notes are summarized as follows:

D: He updates me about recent developments. He has been ordered by the Coast Guard into AA meetings, twice a week. He also meets once per week with a Coast Guard representative for alcohol and drug issues. He reports that he continues not drinking alcohol at all since the motor vehicle accident. He was further interviewed over his past history of alcohol, to assess personal control and limit setting of alcohol use.

Relationships, including serious relationships and promiscuity, were discussed in detail. He admits that he was psychologically injured when he was jilted by [redacted], the four year relationship that ended while he was overseas, and that that experience then affected his next serious relationship. He also admits that he walled-off his feelings at that time, acted like nothing was wrong.

Current stressors were discussed and assessed. His current living arrangements are stressful, and he is hoping for a change in those living arrangements.

We spent some time today talking about his upbringing in [redacted], in a racially diverse city, in contrast to the considerable racial prejudice expressed by older generations in his family, particularly his maternal grandfather.

A: Open and honest, interested in gaining insight and understanding into his use of alcohol, and recent promiscuity, which is a contrast to his otherwise historically serious approach to relationships. He continues with walled-off affect concerning relationships, though he sees the value of self-control at this time, in connection with both alcohol and promiscuity. Reports he has historically been able to control alcohol once started.

P: See again in one to two weeks, continue with a focus on understanding recent history for the time being, then move into future plans and how to achieve a return to conventional lifestyle, premorbid functioning.

On July 8, 2004, the applicant once again visited his civilian psychologist, Dr. G. The medical notes are summarized as follows:

> D: Focus today is on alcohol use, including historical information, historic and recent relationships with women, and symptoms of PTSD.
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> He continues to abstain from alcohol use. He was tempted to use alcohol July 4th, is pleased with himself for not using, since, as a result of hearing fireworks, he experienced flashbacks. He understands that alcohol use exacerbates his PTSD symptoms. He continues to gain understanding that his past alcohol use was excessive, recalls that, at the time, he did not think so, and did not take seriously the comments of his father, mother, and even peers who partied with him, regarding his alcohol use.
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> Further discussion of the four-year relationship with [redacted].
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> A: Gaining psychological distance from the painful experience of the end of the relationship with [redacted], beginning to evaluate that relationship more objectively, shows understanding of the way that sexual intimacy complicates relationships and affects judgment, can be hurtful to both parties. His report that he continues to abstain from alcohol is believable. Periodic craving, alcohol addiction in early partial remission. Good understanding of PTSD symptoms, triggers, best approach, and good communication with his peers about best approach.
>
> P*:* Continue seeing weekly. He is becoming more comfortable with these discussions, more disclosing in ways that make constructive use of our time.

On July 15, 2004, a second "Report of Offense and Disposition" (CG-4910) form was issued by OSC A, wherein the applicant was charged with violating Article 86 (Absence Without Leave) of the UCMJ. According to the report, the applicant had been required to report for a scheduled medical appointment on July 15, 2004, but failed to report as scheduled. The applicant was also charged with violating Article 92 (Failure to Obey an Order or Regulation), because he was ordered to attend the medical appointment, but failed to attend as ordered. The applicant had been issued travel orders for a medical appointment on July 14, 2004, and was given the day off to travel to the appointment, but did not depart until July 15, 2004, the day of the scheduled appointment. Finally, the applicant was charged with violating Article 107 (Making False Official Statements), because he told his supervisor that he went to his appointment but was told by medical staff that the doctor was too busy and that he would need to reschedule his appointment for the following day, when in actuality the applicant never arrived for the scheduled appointment and instead contacted the doctor's office by phone to inform them that he would be late. His appointment was ultimately rescheduled for the following day. OSC A recommended that the charges be disposed of at a Captain's Mast. The following personal statements were submitted in conjunction with this report:

- A personal statement from the applicant, which reads as follows:

> The following statement is made freely, voluntarily, and without any promises or threats to me. At 0200 on July 15, 2004, I, [applicant], departed [redacted] with my driver, [R] (Last name unknown). I intended to depart on July 14, the previous day, but the driver was unable to depart until the previous time stated. We proceeded to [redacted] Naval Hospital, though traffic in [redacted] delayed us further. When I realized that I would be late to my appointment, I gave the Naval Hospital a call to let them know. I was then informed that Lt. [C] will be unable to see me if I was late. I proceeded to ask if I could reschedule for a later time. Lt. [C] was able to accommodate me for 1000 the next day. When OSI [N] called me, because he was informed that I had missed my scheduled appointment, I only let him know that I was late to my previously scheduled

appointment and was rescheduled. I avoided telling OS1 [N] the complete story, to cover myself from further repercussions. I should have been forth coming from the beginning. This statement is true and correct to the best of my knowledge. The statement was solicited in compliance with the Administrations Investigations Manual, COMDINST M5830.1 (Series).

- A personal statement from OS1 N, which reads as follows:

I, OS1 [N], do state that the following statement be true and accurate to the best of my knowledge. On 15July04, at 1140 AM, I was notified by OSC [A] that he had just received notification from the CG GRP [redacted] Medical Clinic that OS2 [applicant] had not arrived at his scheduled appointment at the [redacted] Naval Hospital as ordered. The medical clinic was inquiring into the whereabouts of OS2 [applicant]. At 11:55 AM, I had the communications watchstander attempt to contact OS2 [applicant] on his cell phone that is posted in our recall list. The watchstander received OS2 [applicant's] voice mail and left a message requesting he contact the Group immediately. At approximately 11:58 AM, OS2 [applicant] called back on the SAR Line and the phone was given to me. I promptly and directly asked OS2 [applicant] "what happened?" He stated in the following conversation that once he arrived at his appointment that he was told that the Doctor was too busy to see him and that he would have to reschedule his appointment. I advised him to contact the medical clinic here and see why they were reporting that he had not shown up for the appointment. I also advised him he should contact the doctor's office that he was scheduled to see and get this straightened out.

Later in the afternoon OSC [A] and myself did some more inquiries into the incident and found out that he in fact did not show up but had called at the time of his appointment to advise them that he was going to be 30-45 mins late because he was stuck in traffic. His appointment was for 10:00 AM. The only reason that he was seen on the following day was because the doctor had a patient cancel their appointment and he could be slipped in before his return to GRP [redacted]. By missing his scheduled appointment in [redacted] on that day, he subsequently missed his scheduled appointment here in [redacted] with the local psychiatrist his third such time to miss an appointment here in town.

On July 16, 2004, the applicant was evaluated by Dr. C, the same military staff psychologist who had conducted his May 4, 2004, and June 11, 2004, mental health evaluations. The relevant portions of Dr. C's notes from this evaluation are as follows:

ID: This 22-year old, single, OS2/USN/AD[6] with 3 years of broken active duty attached to Group/Air Station [redacted] participated in 3 contiguous psychiatric evaluations at Naval Hospital [redacted] since MAY 04.

HPI: The service member was referred for psychiatric evaluation in APR 04 and presented to Mental Health in MAY 04 for evaluation of symptoms of PTSD, treatment recommendations, and fitness for duty. The patient concurrently initiated treatment in APR 04 with a civilian psychologist in [redacted] given his restrictions with access to military mental health care in his area.

The service member had been called up from reservist status and deployed to [redacted] from DEC 02 to AUG 03. While not in direct combat, the service member had occasion to perceive that he was in life threatening situations (apparently spending a combined total of 3 to 4 months in MOP suits due to sirens for incoming SCUDS: often hearing gunfire), witnessed events involving death or serious injury (seeing dead bodies), and learned about deaths of friends (3 friends died, including a close friend in the first 2 months of deployment). the service member returned home between AUG 03 and FEB 04, when he requested to be re-activated on extended active duty status for 2 years. when he arrived home between Aug 03 and Feb 04, the service member said he experienced his first symptoms when he was in the car. He apparently saw flashing headlights, which reminded him of gunfire, and he began to shake and cry. He also said he felt somewhat

[6] This is erroneous. The applicant was not a member of the United States Navy, as recorded by Dr. C, but was a member of the United States Coast Guard.

depressed when he was at home (sleeping up to 12 hours per day), had difficulty maintaining relationships (breaking up with his girlfriend before moving to [redacted]), and sometimes "going distant" and acting like he was back in the Gulf (having to be "brought back" by his father, who called his name). since that time, the service member has experienced an increase in frequency and severity of symptoms, including dissociative episodes wherein the patient reenacts scenes from his time on deployment (speaking with a translator in Arabic, making phone calls to watch stations, "seeing and smelling" the encampments, putting on MPO gear, etc.). the service member also acknowledged that these dissociative episodes are most severe when he has been drinking alcohol, and that he does not remember them, and they are more emotionally laden (crying, punching walls, etc.). However, he has also experienced milder forms of the "flashbacks" when sober, manifested mostly by wandering, "spacing out," and speaking to others as if they are the people with whom he served in the Gulf. both these types of episodes have been witnessed by friends, who, during his psychiatric evaluation, confirmed his engagement in these behaviors. other than drinking alcohol, other triggers intermittently include crowded spaces news programs, and flashing lights or loud noises. The service member still participated in social activities, but noticed a marked change in his personality, and that he was more callous, more promiscuous, drank more, needed more prompting from friends to go out, slept more, experience decreased self-esteem and personal uncertainty, and was more "moody and emotional."

The service member experienced some emotionally traumatic situations apart from deployment related issues. His high school girlfriend became pregnant prior to deployment, and they lost their child at birth. The service member stated that he "stopped going to church… and became emotionally numb" beginning at that time. This same girlfriend later became his fiancé, who subsequently broke off her engagement with him while he was deployed by disclosing her infidelity. The service member acknowledged at times feeling like he wanted to die while in the Gulf due to this failure of a romantic relationship. The service member also had a difficult time being alone after returning from deployment, and appears to be fairly emotionally reactive to relationships, and the absence of them, and acknowledged "girl related" suicidal ideation while in high school.

The service member also drank in a problematic manner after returning from deployment. He reported having been a social drinker, going out and drinking several nights a week with friends. At the time of his evaluation in MAY 04, he reported "going out" approximately 3 times per week and drinking either approximately 4 beers, 3 rum-and-cokes, or 6 "shots" of hard alcohol per occasion. he was advised to abstain from alcohol due to his increase in dissociative episodes while drinking, and to obtain an accurate baseline for diagnostic purposes. He continued to drink in an abusive manner (tardiness to work due to drinking, using a government credit card to buy alcohol, and finally receiving a DUI with a test of 0.21 4 hours after the accident). he was diagnosed as alcohol dependent, and is awaiting a 30 day substance abuse treatment program. He stated that he has abstained from alcohol since the DUI, and has been attending AA meetings.

FORMULATION: [Applicant] is a 22-year old, USCG reservist on extended active duty assignment. As of this date, the service member meets the criteria for Post-traumatic Stress Disorder, which has apparently impaired the service member's social functioning since AUG 03, and occupational functioning since FEB 04. It should be noted, however, that there are a lot of confounding variables with regards to this diagnosis: the service member demonstrates an atypical presentation of PTSD, and that it is fairly unusual to disassociate so severely without extensive combat exposure and they childhood history of trauma, he often does not have triggers to these dissociative episodes, he enjoys his military work environment (which reportedly is not a trigger for him), and his "flashbacks" are often of non-traumatic events; the service member likely has a personality defect, as uncovered by the psychodiagnostic testing, most likely within the context of Borderline Personality Functioning; the service member has marked emotional reactivity to interpersonal relationships, especially with regards to his failed engagement; the service member likely has unresolved grief and bereavement issues related to the death of his infant prior to deployment; and the service member has a comorbid diagnosis of alcohol dependence, which is exasperating his symptoms of PTSD and significantly contributing to his emotional maladjustment. At this time, it is unclear what is a result of his personality defects, what is the result of his abusive drinking, and what is a result of his stress related to deployment. It may be that the service member also has a personality disorder, but it would be best to treat his acute symptoms first to assess his baseline functioning.

> Ultimately, although the service member does have many different problems, many of his complaints do seem to meet the threshold and fit best within the context of the framework of PTSD; Unless the patient is malingering, which is unlikely because these "spells" have been witnessed by friends and family members (and it is unlikely that the service member could maintain such a high caliber of acting on such a consistent basis over such a long period of time). With regards to the service member's fitness for duty, he reported that he continues to have dissociative episodes, the most recently on 04JUL04. He stated that he took a Xanax to assist in getting to sleep because he was anxious due to the fireworks, and when his friend came home and woke him up, he was lying on the floor with his MOP gear on (all of which he does not remember). While the service member is motivated for retention, he can currently be considered unreliable and a safety risk to others, especially in an operational environment, due to his immobilization and apparent lack of control as a result of his psychiatric symptoms.
>
> **DIAGNOSTIC ASSESSMENT**:
>
> | | | |
> |---|---|---|
> | Axis I: | 309.81 | Posttraumatic Stress Disorder, Chronic
DNEPTL
Military Impairment: Moderate to Severe
Social/Civilian Adaptability: Fair to Good |
> | | 303.90 | Alcohol Dependence |
> | Axis II: | | Borderline Personality Features (R/O Borderline Personality Disorder) |
> | Axis III: | | No Diagnosis |
> | Axis IV: | | Routine Military Stressors |
> | Axis V: | | Current GAF 51-60 (moderate symptoms); Highest in last year GAF 70-71 (mild) |

Dr. C stated that even with an adequate course of treatment, the applicant's prognosis for reliably returning to a Fit for Full Duty (FFD) status in a deployable capacity was unlikely. Dr. C further stated that the medical board agreed with his findings and it was their opinion that the applicant would be unable to perform further military service as a result of a disability. According to Dr. C, the applicant's disability did not exist prior to entry into the service, and, while there is evidence of premorbid vulnerabilities, it was considered to have been aggravated by military service and to have been incurred during the current period of active duty military service. The medical board recommended that the applicant be referred to the Central Physical Disability Evaluation Board. Dr. C's noted that there were no known disciplinary actions, investigations, or administrative discharges pending against the applicant.

From August 2, 2004, through September 3, 2004, the applicant took part in a 30-day outpatient Substance Abuse Rehabilitation Program (SARP). During his stay at the Naval Hospital's SARP, the applicant stated that his substance abuse history contained the following:

Substance:	Onset:	Amounts & Frequency:			
		Initial	Current	Max	Times Per Week
Beer	Age 14	4 Beers	12 Beers	18 Beers	5-7 x's per week
Liquor	Age 14	2 Mixed Drinks	8-9 Mixed Drinks	10+ Mixed Drinks	5-7 x's per week
Cigarettes	Age 16	½ pack per day			

The following medical notes were recorded:

> His last alcohol use was to 3 beers on 27 Jul 04. The patient has had recurrent drug/alcohol use causing a failure to fulfill obligations at work, school or home. The patient has had recurrent alcohol use in hazardous situations. He has had recurrent alcohol related legal problems. The patient described an increased tolerance

> to alcohol. Initial tolerance was to 4 beers. Maximum tolerance has been to 18 beers. He reported that he has consumed alcohol in large amounts or over longer periods than intended. He has had a persistent desire or unsuccessful efforts to cut down or control his alcohol use. He has spent a great deal of time obtaining, using, or recovering from the effects of alcohol. He has given up or reduced social, work or leisure activities due to his addiction. He has continued to use alcohol in spite of his awareness that it aggravated physical or psychological problems as evidenced by: aggravated Post Traumatic Stress Disorder type symptoms.
>
> Family history revealed alcoholism in his father. Mental status examination revealed a well-developed, well-nourished male. His mood was euthymic with a congruent affect. Content of thought centered on his belief that he is an alcoholic and his desire for treatment. He denied suicidal or homicidal ideations.

On August 16, 2004, the applicant was seen in the local emergency department for superficial lacerations on his arms due to the applicant cutting himself. As a result of the applicant's self-cutting, he was sent for a psychiatric evaluation.

On September 3, 2004, the applicant completed his SARP for alcohol dependence. The medical notes from his treatment are as follows:

> While in partial hospitalization, the patient was given individual, group and milieu therapy. He attended recovery program meetings on a regular basis. He participated in a focused physical exercise program. The patient initially appeared to be strongly motivated for treatment. As treatment progressed, the patient spoke freely and spontaneously about his drinking, and related problems. In group therapy and discussions, the patient was actively involved, active in assuming a leadership role, an asset to the group, and grew in self-awareness. He gained insight and grew emotionally. However, on 14 August 04, the patient was seen by our medical staff with cutting hash marks; on both right and left forearms. He had inscribed the words "trust" and the #1 on both arms. His primary counselor was contacted for guidance who in turn instructed the medical staff to assess the situation, monitor him for 24 hours and have the patient contact for safety.
>
> On 16 August 2004, the patient was referred to our Mental Health Unit for a full psychological evaluation. Upon 24 hours of observation by our Mental Health Unit the patient was re-integrated back into our treatment facility without further complications. As the patient's time in treatment drew to a close, he indicated that he planned to attend twelve-step recovery program meetings regularly after treatment. He completed treatment.
>
> Exit Diagnoses:
> Axis I: Alcohol Dependence
> Axis II: Deferred
> Axis III: Tinea Pedis
> Axis IV: Routine Military Service
> Axis V: GAF 75-80
>
> Pain Assessment at Discharge: No pain present
>
> Exit Medication: None
>
> Disposition: The patient is returned to duty (regular diet and no physical activity limitations) to be placed in a formal one year recovery program in accordance with current USCG Instructions. This should include abstinence, command monitored attendance at a minimum of three AA meetings weekly with court card documentation, and weekly follow-up with his command drug and alcohol representative.
>
> A formal recovery plan was provided to the patient with a copy forwarded to his command.

On November 22, 2004, a third "Report of Offense and Disposition" (CG-4910) form was issued. LTJG W charged the applicant with violating Article 89 (Disrespect Toward a Superior Commissioned Officer), Article 90 (Willfully Disobeying a Superior Commissioned Officer), and Article 134 (General Article), because the applicant had been absent without leave (AWOL). On

November 19, 2004, the applicant was instructed to report at 0730 on November 22, 2004, for his new work assignment. The applicant failed to report, and subsequent searches of the base, the applicant's residence, hospitals, police stations, and other possible locations were unsuccessful. The applicant was warned that his behavior was unacceptable from any member of the Armed Forces, because it showed a disrespect for authority, was contrary to good order and discipline, and illustrated a pattern of contempt for military protocols and procedures.

On December 22, 2004, after not returning to his unit for more than 30 days, the applicant was declared a deserter pursuant to Article 86 (Unauthorized Absence) of the Uniform Code of Military Justice (UCMJ).

On March 14, 2005, the applicant was returned to government custody.

On March 18, 2005, the applicant's Commander (CO) referred the applicant for a Special Court-Martial. The applicant was appointed defense counsel to represent him.

On April 19, 2005, official charges were brought against the applicant for violations of Article 86 (Unauthorized Absence) and Article 107 (False Official Statements) of the UCMJ, stemming from his unauthorized absence from November 22, 2004, to March 14, 2005, and the July 15, 2004, false statements the applicant made to his Command.

On April 28, 2005, the applicant was referred by Dr. [K] to a Dr. [H] at a Coast Guard medical clinic for treatment of PTSD. Medical notes state that the applicant's chief complaint was "sleeping problems." Dr. [H]'s medical notes are summarized as follows:

> PO2 [applicant] enlisted in the CG Reserve in 2001 and was activated and sent to [middle east] in December 2002 to assistance in operation of the harbors. He therefore was exposed to much of the destruction of property, as well as death and injuries to civilians. He was sleep deprived during much of his time in the combat zone, but doesn't recall nightmares until he returned.
>
> Shortly after returning home to [redacted] he began having insomnia and nightmares. He self-medicated with alcohol and never sought assistance for his problems. He was able to transition to active duty in Feb 2004 and was assigned to [redacted]. He continued excessive alcohol use and was referred for counseling because of alcohol related incidents (late to work, alcohol on breath, etc). He was referred for a formal evaluation at [redacted] in May 2004 and after consultation, he started on paroxetine by Captain [K]. This medication along with trazodone was slightly beneficial, but caused excessive lethargy. He stopped drinking after a DUI in early June 2004 and attended the inpatient SARD, [redacted] in August 2004.
>
> His symptoms continued despite weekly counseling, medication and sobriety and he went AWOL because of a hostile work environment, legal problems and concerns for his wife's medical condition (threatened spontaneous abortion during her first trimester.) He remained UA until 15 March 05 when he presented to Naval Medical Center, [redacted]. He was psychiatrically evaluated and then transferred to [redacted].
>
> He is now seeing a civilian counselor in [redacted]. No medications.
>
> He continues to have intrusive thoughts of the trauma, nightmares, avoidance of cues, hypervigilance, exaggerated startle response, depressive, sense of foreshortened future, and episodes of reliving the traumatic experiences.
>
> **ASSESSMENT:**

Axis I:	Posttraumatic Stress Disorder 309.81 Alcohol Dependence 303.9
Axis II:	No Diagnosis
Axis III:	No Diagnosis
Axis IV:	Stressors: Legal concern about wife and infants
Axis V:	Global assessment of functioning (GAF): Current: 51-60 Moderate impairment of functioning Maximum. functioning in past 12 months 51-60 Moderate impairment of functioning

PLAN:

1. Start prazosin 1-3 mg po HS
2. Instructions to patient on the diagnosis, expected course of the disorder, prognosis, and treatment plan.
3. Instructions to patient on prescribed medications with expected results and common side effects- also advised to read information provided by the pharmacy. Pt advised to stop the medication if there is any significant or troublesome side effect.
4. Laboratory evaluation: No testing required at this time
5. Return for medication re-evaluation in 4 weeks
6. Continue counseling with civilian counselor
7. Other/Administrative Issues: NIA

On May 2, 2005, the applicant was issued his Miranda/Tempia Rights for a second alcohol incident that occurred on April 15, 2005, when the applicant failed to open the gym facilities as assigned. The applicant was charged with Article 86 (Unauthorized Absence), and Article 92 (Violation of a Lawful Order). The applicant acknowledged these rights and elected to consult with an attorney before making a statement or answering any questions. The following personal statements were submitted in response to these charges.

- A May 2, 2005, personal statement from the applicant:

  During working hours on the 15APR05 Seaman [J] (in passing) informed me I was to work SAT the 16 for [GW]. Given that PO [O] and Mr. [G] were not available before I got off of work, I was not able to confirm that date.

  After getting off work, I walked into town to send my wife a Western Union. While walking back to the base (feeling lonely and depressed) I entered an establishment called [redacted] an American saloon. I sat alone and drank. I returned to the base at 2100. I checked in with the CDO and she told me that my wife had called several times. The ACDO got on the phone with someone and when she got off informed me and the CDO that I would be put on suicide watch. I then went to my rack to change for sleep the CDO checked on me every hour waking me from an already troubled sleep from the PTSD, "post-traumatic stress disorder."

  The next morning, I was woke by Mr. [G] pounding on the door. I went to answer and he informed me that I was supposed to open that morning. So, I [indiscernible] my uniform and arrived at work 25 min after 0900.

  I admit that I had lapsed by drinking on the 15APR05. I realized that I could no longer be abstinent on my own and decided to go back to AA.

- A personal statement from SK2 J:

  On the evening of April 15th 2005 I was the Command Duty Officer standing watch at the BEQ. At approx. 2000 I received the first of 4 calls in regards to a family dispute between OS2 [applicant] and his wife. The caller identified herself as a legal advocate for his wife and claimed that OS2 [applicant] was not cooperating in a legal matter involving his wife and children. She explained to me that his wife wished to take the children

out of the country to [redacted] immediately. She asked to speak directly with the Command Master Chief [CMC] and explained she wished to serve him with the legal documents that she was unable to serve OS2 [applicant]. I explained to her that I would attempt to contact the Master Chief and make him aware of the situation but that it was after hours and I would not know when I would hear back from him. She continued to press me for further cooperation and I repeatedly explained there was little I could do for her. OS2 [applicant] was not onboard ISC [redacted] at this time.

The second call I received was from the wife of OS2 [applicant]. She was distraught and difficult to speak with so I put her in touch with Mr. [R]. After that conversation Mr. [R] informed me OS2 [applicant's] wife mentioned OS2 [applicant] threatened to kill himself. Mr. [R] was able to calm her down some and I didn't think I would be getting any more calls from her that evening. I then asked the gate guard to inform me when he returned and informed the duty section of the situation.

OS2 [applicant] returned to base at approx. 2100 and appeared to be intoxicated. I informed him that his wife had been attempting to contact him to serve him legal documents and that she had said he was suicidal. I explained to him that the duty section would be checking up on him throughout the night and that he would need to speak with Doctor [W] in the morning. He was polite and cooperative and went to his room to sleep.

Shortly after OS2 [applicant] went to bed I received the 3rd phone call from bis wife requesting to speak with OS2 [applicant]. I explained to her that he had gone to bed and that he had appeared to have been drinking so any attempt at waking him for the call would probably fail. She became distraught claiming she had access to his bank account information and stated he'd spent $200 at [redacted] that evening. She stated he was on restriction and was not allowed to drink. Furthermore, she claimed he was prone to violent outbursts when he was drunk and warned me that I was in danger. I explained to OS2 [applicant's] wife that I was not aware of his restriction and she immediately hung up the phone with me to call Group [redacted] and inform them that OS2 [applicant] was violating his restriction letter.

This was the first indication I had that he was on restriction. It had not been passed down by the previous watch and his restriction letter from Group [redacted] appeared to be missing from the COO binder. I later found the letter which verified he was on restriction and that he was not allowed to drink. His restriction letter allowed him to remain within 5 miles of ISC [redacted] and permitted him to travel off base in civilian clothing.

The final call I received was from Group [redacted] at approx. 2330 and they were extremely upset that OS2 [applicant] had returned to base appearing to be intoxicated. I explained to them that the duty section was not initially aware of his restriction and furthermore allowing the member to travel off base while on restriction makes it difficult to monitor whether the member has consumed alcohol or drugs. I put Group [redacted] in touch with Mr. [R] and that was the end of my involvement in the situation.

- A personal statement from MWR Director G:

On Saturday, 16 April 05, I came to the [redacted] fitness center to accomplish a few duty tasks and workout. I arrived at 0825 hours. Since the gym opens at 0900 on Saturdays and Sundays, the doors were locked and the lights to the facility were off, as expected they would be. I did not tum on any lights as I proceeded to conduct my business because I knew the watchstander would be coming in shortly and they would perform that task. As I was in my workout zone and unaware of the time, I happened to glance at my watch and noticed that it was 0903 hours. Still, the watchstander had not reported to work. I thought it odd so I immediately went to the front door, unlocked it and turned on the lights to the facility. There were two people outside waiting to come in.

I came to my desk and ascertained from my watchstander's schedule that OS2 [applicant] had duty. Knowing that he lived in at the BEQ, I went to determine if he was in his room. I asked the two watchstanding individuals at the BEQ which room OS2 [applicant] was in and they informed me [redacted]. I went to his room and knocked. He answered me from within his room. I told him who I was and that he was scheduled to work that day. I asked him the reason why he wasn't at work and he told me his alarm clock didn't go off.

> I sternly reiterated that he was due to be at work minutes before 0900 hours to open the facility at 0900 for our customers. He said OK, that he would be right there. I came back to my office and in approximately 5 minutes (I actually was surprised he got there so quickly) he showed in uniform, came into my office and reported in. He apologized for being late and mentioned that it wouldn't happen again. I told him fine and he went to the front checkout counter.
>
> This is the first time that OS2 has been late in reporting for duty. It was brought to my attention to address whether or not I thought he was intoxicated when he reported to work. As mentioned previously, he came in my office when he reported in, I looked him in his face as he spoke to me and as I recall, he didn't show signs of intoxication.

On May 2, 2005, the applicant signed a memorandum wherein he requested to be discharged Under Other Than Honorable Conditions for the Good of the Service, in lieu of a trial by court-martial, which could have led to a bad conduct or dishonorable discharge. The applicant's request was in accordance with Article 12.B.21. of the Personnel Manual, COMDTINST M1000.6A.[7] The content of the memorandum are as follows:

> 2. I have consulted with LT [attorney], a member of the Bar in the State of [redacted], who has fully advised me of the implications of such a request. The basis for my request for a discharge under other than honorable conditions for the good of the service stems from my misconduct contained in the court-martial charges pending against me. The pending charges are currently in enclosure (1). I elect to be administratively discharged rather than tried by court-martial. I am completely satisfied with the counsel I have received.
>
> 3. I understand if this request is approved I will receive a discharge under other than honorable conditions, which may deprive me of virtually all veterans' benefits based upon my current period of active service, and that I may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any Armed Forces branch or the charge of discharge received therefrom may have a bearing.
>
> 4. I understand once I submit this request, I may withdraw it only with the consent of CG-PSC(epm-1).
>
> 5. I understand that I may submit a sworn or unsworn statement on my behalf. I desire to submit a sworn statement. My sworn statement is submitted herewith as enclosure (2). I also understand that statements submitted by myself or by my counsel in connection with this request are not admissible against me in a court-martial except as provided by Military Rules of Evidence 410.
>
> 6. I make this request voluntarily, free from any duress or promised of any kind. I have asked my counsel who has fully explained to me the implications of my request, to witness my signature.
>
> SWORN STATEMENT
>
> Dear Sir or Ma'am:
>
> I am writing this statement respectfully requesting a discharge under other than honorable conditions for the good of the service. This is in lieu of trial by court-martial under circumstances which could lead to a bad conduct or dishonorable discharge.

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[7] Article 12.B.21.a. of the Personnel Manual, COMDTINST M1000.6A, states, "An enlisted member may request a discharge under other than honorable conditions for the good of the Service in two circumstances: in lieu of UCMJ action if punishment for alleged misconduct could result in a punitive discharge or at any time after court-martial charges have been preferred against him or her. This request does not preclude or suspend disciplinary proceedings in a case. The officer who exercises general court-martial jurisdiction over the member concerned determines whether such proceedings will be delayed pending final action on a request for discharge. Send requests for discharge under other than honorable conditions for the good of the Service through the officer exercising general court-martial jurisdiction for his or her personal review and comment.

> I have been having a difficult time managing many aspects of my current personal obligations. My marriage issues are threatening divorce under the current stress. I am having difficulty getting any support from my extended family due to my current issues. I also have many mental health issues that have been ongoing for an extended period of time.
>
> At this point in time, I would like to move to the next step and get my life in order. I do not feel that I can move forward without first rectifying the current legal situation. I believe, with continued counseling and support I will be able to function in civilian life.
>
> I make this request voluntarily, free from any duress or promises of any kind. I have asked my counsel who has fully explained to me the implications of my request to witness my signature.
>
> [APPLICANT SIGNED MAY 2, 2005]

On May 3, 2005, the applicant's defense counsel submitted a memorandum, "Request for Discharge Under Other Than Honorable Conditions for the Good of the Service," wherein he endorsed the applicant's request for an Under Other Than Honorable Conditions for the Good of the Service discharge in lieu of trial by court-martial. The memorandum stated the following:

> 2. Defense submits the following matters to demonstrate that a separation in lieu of trial by court-martial will be in the best interest of both the United States Coast Guard and OS2 [applicant]:
>
> > a. OS2 [applicant's] mental health issues, substance abuse issues, discipline problems, and family struggles have been detrimental to his performance in the Coast Guard. I believe that the present court-martial proceeding against him has had a significant impact on OS2 [applicant's] attitude. I know he now realizes how good and easy his life had been at CG GP [redacted]. OS2 [applicant] has asked me to express his apologies to the entire crew of CG GP [applicant]. OS2 [applicant] is truly remorseful for his actions. If his request for discharge under other than honorable conditions for the good of the Service should be approved, he would leave the Coast Guard with not only the stigma of an Other Than Honorable discharge, but he would also be prevented from receiving veteran's benefits which may make it difficult for him to provide for his dependents. This loss in benefits and the shame he feels in himself for letting down not only his country and his shipmates, but also his family, has proven to be sufficient punishment for OS2 [applicant].
> >
> > b. Furthermore, granting OS2 [applicant's] request will save United States Coast Guard the time and money of a court-martial. This request will expedite his exit from the Coast Guard and will provide a sufficient deterrent to other personnel.
>
> 3. Justice will be best served by granting OS2 [applicant's] request for discharge under other than honorable conditions for the good of the Service in lieu of trial by court-martial. He realizes the consequences of his actions and he has taken responsibility for them. I thank CG PC (epm-1), CG GP [redacted], CGD [redacted], and CGD [redacted] for their consideration in this matter.

On May 3, 2005, the Acting Staff Judge Advocate, submitted a second endorsement, wherein he forwarded the applicant's request and recommended the applicant's request for an administrative discharge in lieu of court-martial be approved.

On May 19, 2005, the applicant's commanding officer submitted a third endorsement, wherein he endorsed the applicant's request for an administrative discharge in lieu of court-martial. The Captain stated the following:

> 1. Forwarded, recommending approval.

> 2. Since shortly after arriving at Group-Air Station [redacted] in February 2004, OS2 [applicant] has been the source of a nearly constant stream of performance and conduct issues culminating with a three and a half month long Unauthorized Absence lasting from 22 November 2004 to 14 March 2005. Additionally, since returning and while temporarily assigned to ISC [redacted] he was observed to be intoxicated and admitted to consuming alcohol while on liberty even though he has been diagnosed as alcohol dependent and must abstain from its use. It is clear that OS2 [applicant] does not live by the Coast Guard's core values. Further, he has been a drain on those around him as they provide increased attention and supervision, and deal with the aftermath of his misconduct. A discharge under other than honorable conditions for the good of the Service serves justice, provides sufficient deterrent effect, and is in the best interest of the Coast Guard.

On May 25, 2005, the District Commander submitted a fourth endorsement, wherein he forwarded the applicant's request for an administrative discharge in lieu of court-martial, and strongly recommended the applicant's request be approved.

On July 3, 2005, the applicant was administratively discharged with an Under Other than Honorable Conditions (OTH) characterization of service.

On August 12, 2015, the applicant received a 50% disability rating from the Department of Veterans Affairs (DVA) for PTSD. His claim for alcohol abuse was denied.

VIEWS OF THE COAST GUARD

On December 17, 2020, a Judge Advocate (JAG) for the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by PSC.

The JAG argued that the applicant is eligible for liberal consideration under 10 U.S.C. §1552(h) and as such, should be applied to his case and request for an upgraded discharge. The JAG explained that the applicant was contemporaneously diagnosed with PTSD subsequent to his deployment overseas in support of combat operations. The JAG stated that these diagnoses and treatment notes describe a possible link between his condition and his duties. The JAG argued that the August 12, 2015, Department of Veterans Affairs (DVA) rating determination that found a service connection for the applicant's disorder further supports this assertion. Accordingly, in accordance with the DHS OGC Liberal Consideration Guidance,[8] liberal consideration may be factored into deliberations to upgrade the applicant's character of service, narrative reason for separation, separation code, and reenlistment code. However, the applicant's request for a medical discharge and disability retirement benefits, fall outside the scope of the liberal consideration policy.

The JAG argued that the applicant has failed to provide insufficient evidence to establish an error or injustice in the manner of his discharge or otherwise overcome his voluntary, knowing, and intelligent waiver of consideration of his disorder during misconduct and separation proceedings. The JAG further argued that with regard to administrative procedures, the Coast

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

Guard enjoys the presumption of regularity that all of its administrators acted correctly, lawfully, and in good faith. As a result, the JAG argued that it is therefore presumed that once a firm diagnosis of a disabling condition was established, a Medical Evaluation Board (MEB) would have been initiated in order to determine the applicant's continued fitness for duty. However, according to the JAG, in this case, the applicant complicated the process by his various acts of misconduct, which occurred prior to and following his diagnoses. The JAG stated that pursuant to Article 12.B.1.e.1. of the Coast Guard Personnel Manual, a disability evaluation will be suspended to allow consideration of disciplinary actions. Accordingly, the JAG stated that the applicant's arrest for a DUI on May 29, 2004, was of sufficient severity to trigger a suspension of any medical board process that may have begun. The JAG also stated that the applicant's unauthorized absence meant that the avenue of medical separation was further sidelined by the prospect of a punitive discharge and incarceration.

Regarding the applicant's request for an upgrade to his character of service, the JAG argued that the DHS OGC's liberal consideration guidance describes the purpose of the liberal consideration policy generally as one necessary to offset a lack of diagnosis or a misunderstanding of the PTSD disorder and its potential impact on behavior at the time. According to the JAG, in this case, there was no such ignorance at either the command or medical levels. Here, the JAG claimed the applicant was diagnosed with PTSD starting on or about May 2004, and as a result, the applicant's command was duly informed and, in fact, included the applicant's PTSD diagnosis with his separation package.

Furthermore, the JAG argued that in the applicant's request for an administrative separation in lieu of court-martial, for which he was represented by counsel, the applicant not only mentions his mental health diagnosis, but he demonstrated a clear understanding of the accepted impact of his characterization on his future benefits. The JAG stated that the applicant's request shows that he voluntarily, knowingly, and intelligently—with the full advice of counsel—waived his right to court-martial proceedings in exchange for a prompt separation. According to the JAG, by waiving these rights, the applicant elected to forego testimony or diagnosis linking his condition with his acts of misconduct. The JAG argued that the applicant's diagnosis could have been given significant weight in both the court-martial proceedings and a possible MEB.

Lastly, the JAG argued that the applicant's misconduct was neither minor nor unpremeditated. The JAG stated that the applicant was absent from his place of duty for approximately 112 days, an offense which carries a maximum punishment of Dishonorable Discharge, confinement for one year, and total forfeitures. The JAG stated that by current standards, this was a commission of a serious offense. The JAG further stated that notably, the applicant has offered no evidence to argue that this duration was anything but voluntary. Regarding the applicant's disorder, the JAG argued that the Hagel memorandum, submitted by the applicant, provides that, "PTSD is not a likely cause of premeditated misconduct." Accordingly, the JAG argued that while liberal consideration is a factor to be weighed as a point in mitigation, it is neither dispositive evidence or an affirmative defense. Here, the JAG stated that liberal consideration of the applicant's service-connected disorder does not outweigh the gravity and intentionality of his misconduct. According to the JAG, contemporaneous with the applicant's mental health struggles and diagnoses, the applicant knowingly waived further consideration of his disorder and requested discharge with an Other Than Honorable characterization, in lieu of trial by court-martial. The

JAG argued because of the applicant's waiver, his DD-214 accurately depicts the manner of the applicant's discharge and does not "shock the sense of justice" and his request for relief should be denied.

Because the applicant alleged that mental health issues contributed to his misconduct and the OTH discharge that followed, pursuant to 10 U.S.C. §1552(g)(1), the Coast Guard was required to obtain and include a medical opinion from a clinical psychologist or psychiatrist with its advisory opinion. That medical opinion, submitted on September 8, 2020, by a Lieutenant Commander of the United States Public Health Services (USPHS) is summarized as follows:

> 1. I provide the following medical advisory opinion with regard to this case pursuant to 10 U.S.C. §1552(g) and/or §1552(h).
>
> 2. CG-LGL Case Summary. Applicant, E5 discharged in 2005, seeks liberal consideration in his request for correction of his OD214 Character of Service (OTH), Sep Code(?), Reentry Code (RE4) and Narrative Reason (Triable by Court Martial). Applicant alleges service-connected PTSD led to behavioral issues and his separation. Applicant requests medical discharge or upgraded characterization.
>
> *3. Does the Applicant have Post-Traumatic Stress Disorder/Traumatic Brain Injury/Other Mental Health Conditions, or experience a Sexual Assault or Sexual Harassment as documented in their medical/service record?*
>
> a. Yes. Post-Traumatic Stress Disorder, alcohol dependence.
>
> *Did the applicant have the above conditions/disorders/etc. while in military service (i.e., during the misconduct or circumstances leading to separation)?*
>
> a. Yes, see: Psychiatric assessment dated 25 April 2005 at [redacted] Army Medical Center by COL (ret) [redacted]. Also psychiatric assessment 14 March 2005 at Naval Medical Center [redacted] Command Directed Evaluation by [redacted] LCDR MC USNR Psychiatry resident (noted history of sexual abuse by babysitter age 6-9yo and emotional abuse by father as a child). In addition, ER psychiatry consult dated 16 Aug 2004, member diagnosed with PTSD and alcohol dependance and referred to alcohol rehabilitation at Camp Pendleton, completing a 30 day inpatient alcohol rehabilitation program on 13 Sept 2004. The member first was referred for mental health evaluation at Naval Hospital [redacted] on 04 May 2004 and initially given a diagnosis of adjustment disorder r/o PTSD and anxiety. On 11 June 2004, borderline personality traits (r/o borderline personality disorder) was also given to service member.
>
> *Could the conduct (or circumstances) that led to the applicant's [separation, discipline, discharge, etc.] be symptomatic of, or otherwise related to, their condition(s) identified above?*
>
> a. Service member appears not to have any formal mental health diagnoses prior to 04 May 2004, at which point member was referred for additional evaluation, treatment, decompensation and given PTSD diagnosis as stated above.
>
> b. The PTSD symptoms were repeatedly and consistently noted by various military mental health professionals to be due to his deployment from December 2002 to November 2003 to [redacted] in participation of Operation Liberty Shield. Member consistently stated he was constantly in full MOP gear 2-3 months of the deployment due to constant SCUD missile attacks, as well as body detail at times recovering deceased service members.
>
> *In your medical opinion, does the mental health condition or experience of sexual assault or sexual harassment excuse the conduct or poor performance that adversely affected the discharge?*
>
> a. Yes. Please see above.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 18, 2020, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited him to respond within thirty days. As of the date of this decision, no response was received.

APPLICABLE LAW AND POLICY

Article 8.B. of the Reserve Personnel Manual provides the following guidance on which manuals govern the separation of reserve members on active duty as in the case of the applicant:

> **Article 8.B.1. General.** The provisions of article 12.B concerning separation of enlisted members in the Personnel Manual, COMDTINST M1000.6 (series), also apply to enlisted members in the Ready Reserve except as specifically modified in this section. The modifications in this section apply to enlisted reservists not serving on extended active duty (EAD). For enlisted reservists not serving on EAD, the Headquarters point of contact is CGPC-rpm (vice CGPCepm as listed in the Personnel Manual).

Article 12 of the Coast Guard Personnel Manual, COMDTINST M1000.6 (November 2002), provides the following guidance on discharging active duty reserve members:

> **12.B.1.b. Scope.** The Service separates all Regular Coast Guard and Coast Guard Reserve active duty enlisted members according to the instructions contained in this Article. Article 12.B.54. contains a summary of various entitlements as they pertain to the different types of discharge. Reserve Policy Manual, COMDTINST M1001.28 (series) for processing Selected Reserve (SELRES) and Individual Ready Reserve (IRR) members.
>
> . . .
>
> **12.B.1.e. Cases Involving Concurrent Disability Evaluation and Disciplinary Action.**
>
> 1. Disability statutes do not preclude disciplinary separation. The separations described here supersede disability separation or retirement. If Commander, (CGPC-adm) is processing a member for disability while simultaneously Commander, (CGPC-epm-1) is evaluating him or her for an involuntary administrative separation for misconduct or disciplinary proceedings which could result in a punitive discharge or an unsuspended punitive discharge is pending, Commander, (CGPC-adm) suspends the disability evaluation and Commander, (CGPC-epm-1) considers the disciplinary action. If the action taken does not include punitive or administrative discharge for misconduct, Commander, (CGPC-adm) sends or returns the case to Commander, (CGPC-adm) for processing. If the action includes either a punitive or administrative discharge for misconduct, the medical board report shall be filed in the terminated member's medical personnel data record (MED PDR).
>
> 2. Notwithstanding subparagraph e.1. above, disability evaluation in a member's case may proceed if Commander, (CGPC-c) or the Commandant (G-C) so direct. In such a case, the Commandant decides the ultimate disposition.
>
> . . .
>
> **12.B.21. Discharge for the Good of the Service.**
>
> a. Request for a Discharge. An enlisted member may request a discharge under other than honorable conditions for the good of the Service in two circumstances: in lieu of UCMJ action if punishment

for alleged misconduct could result in a punitive discharge or at any time after court-martial charges have been preferred against him or her. This request does not preclude or suspend disciplinary proceedings in a case. The officer who exercises general court-martial jurisdiction over the member concerned determines whether such proceedings will be delayed pending final action on a request for discharge. Send requests for discharge under other than honorable conditions for the good of the- Service through the officer exercising general court-martial jurisdiction for his or her personal review and comment.

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

. . .

d. Processing the Request. The member sends the request for discharge through the chain of command to Commander, (CGPC-epm-1). The member's commanding officer shall recommend approval or disapproval of the member's request with appropriate justification for his or her recommendation, certify accuracy of the court-martial charges, and enclose the following documents in the forwarding endorsement:

1. A report of medical examination and either a medical officer's opinion a psychiatric evaluation is not warranted as part of the evaluation processing or a copy of the psychiatric evaluation. The member shall be referred to a psychiatrist only after a medical officer's evaluation. Such referrals are generally limited to those cases in which evidence reveals the member may not have been able to distinguish right from wrong or adhere to the right at the time of the alleged offense or is not capable of understanding the nature of the proceedings against him or her due to mental incompetence.

2. A complete copy of all investigation reports.

3. Any other pertinent information, reports, statements, etc., the commanding officer considered in arriving at his or her recommendation.

e. Coast Guard Personnel Command's Review. The reason for discharge shall be for the good of the Service, and commanding officers shall not recommend the member for reenlistment. If Commander, (CGPC-epm-1) believes the member warrants a more favorable discharge type than under other than honorable conditions based on the facts of the case, Commander, (CGPC-epm-1) may direct issuing an honorable or general discharge.

Article 20 of the Coast Guard Personnel Manual, COMDTINST M1000.6 (November 2002), provides the following guidance on alcohol incidents:

20.A.2.c. Alcohol Dependence. A chronic disease, sometimes referred to as alcoholism, characterized by repetitive, compulsive ingestion of alcohol which interferes with the user's health, safety, job performance, family life, or other required social adaptation. This disease process may involve increasing tolerance for alcohol. An alcohol-dependent person may experience withdrawal symptoms when he or she stops drinking. The term alcohol dependence also applies to a medical diagnosis made by a physician or clinical psychologist. The Health Promotions Manual, COMDTINST M6200.1 (series), Ch 2, or DSM-IV contains the criteria to establish a diagnosis of Alcohol Dependence (303.9). The medical diagnosis is primarily used to determine the appropriate level of treatment.

20.A.2.d. Alcohol Incident.

> 1. 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.

Title 10 U.S.C. § 1552 states the following with regard to liberal consideration of claims involving PTSD:

> (g)(l) Any medical advisory opinion issued to a board established under subsection (a)(l) with respect to a member or former member of the armed forces who was diagnosed while serving in the armed forces as experiencing a mental health disorder shall include the opinion of a clinical psychologist or psychiatrist if the request for correction of records concerned relates to a mental health disorder.
>
> (h)(l) This subsection applies to a former member of the armed forces whose claim under this section for review of a discharge or dismissal is based in whole or in part on matters relating to post-traumatic stress disorder or traumatic brain injury as supporting rationale, or as justification for priority consideration, and whose post-traumatic stress disorder or traumatic brain injury is ***related to combat or military sexual trauma,*** as determined by the Secretary concerned. (Emphasis added.)
>
> (2) In the case of a claimant described in paragraph (1), a board established under subsection (a)(l) shall--
>
> (A) review medical evidence of the Secretary of Veterans Affairs or a civilian health care provider that is presented by the claimant; and
>
> (B) review the claim with liberal consideration to the claimant that post-traumatic stress disorder or traumatic brain injury potentially contributed to the circumstances resulting in the discharge or dismissal or to the original characterization of the claimant's discharge or dismissal.

On June 20, 2018, the Principal Deputy General Counsel of DHS, as the delegate of the Secretary, signed the "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." Under this guidance, when deciding whether to upgrade the discharge of a veteran based on an alleged mental health condition, the Board must liberally consider the evidence, including the applicant's claims, and decide whether the preponderance of the evidence shows that the veteran had a mental health condition while in the Service that could excuse the veteran's misconduct; whether the mental health condition actually excused the misconduct that adversely affected the discharge; and, if not, whether the mental health condition outweighs the misconduct or otherwise warrants upgrading the veteran's discharge. It also states that "[t]he term 'discharge,' as used in this guidance, means a veteran's character of service, narrative reason for separation, separation code, and reenlistment code."

FINDINGS AND CONCLUSIONS

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

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 filed by the applicant was not timely. To be timely, an application for the correction of a military record must be submitted to the Board within three years after the alleged error or injustice was discovered.[9] The applicant alleged in his application to the Board that he did not discover the error until July 15, 2013. However, the medical records submitted by the applicant show that the applicant received his PTSD diagnosis in August 2004. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record—that he had been administratively discharged for the good of the service instead of medically retired due to a diagnosed mental health condition—in August 2004. Because he did not submit his application to the Board until June 18, 2020, his application is untimely. However, the Board may excuse the untimeliness of an application if it is in the interest of justice to do so,[10] and the Board will excuse the untimeliness in this case because the record shows that the applicant has been suffering from significant mental health issues, which may have delayed his application, and because the applicant's request for a general discharge, instead of an OTH discharge, falls under the Board's "liberal consideration" guidance since the applicant is challenging, in part, his characterization of discharge based primarily on an alleged mental health problem.[11] Therefore, the Board waives the statute of limitations in this case.

3. The applicant alleged that the Coast Guard erred when it separated him with an Under Other Than Honorable Conditions for the Good of the Service, instead of granting him a medical retirement for his service-related PTSD. 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.[12] 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."[13]

4. **Diagnosis**: The Board's review of the records shows that before his discharge in 2005, the applicant was being seen and treated for flashbacks, nightmares, with a possible PTSD diagnosis. Medical notes from the applicant's April 9, 2004, visit stated that the applicant's prognosis was excellent, but the applicant's PTSD symptoms were complicated by his alcohol use and relationships with women. On May 4, 2004, the same opinions were expressed by a separate mental health provider, who stated, "Confounding the picture is the patient's drinking pattern,

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[9] 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.
[10] 10 U.S.C. § 1552(b).
[11] DHS Office of the General Counsel, "Guidance to the Board for Correction of Military Records of the Coast Guard Regarding Requests by Veterans for Modification of their Discharges Based on Claims of Post-Traumatic Stress Disorder, Traumatic Brain Injury, Other Mental Health Conditions, Sexual Assault, or Sexual Harassment" (signed by the Principal Deputy General Counsel as the delegate of the Secretary, June 20, 2018).
[12] 33 C.F.R. § 52.24(b).
[13] *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

which seems to elicit and exacerbate any emotional maladjustment he is currently experiencing…" and "Additionally, some of the patient's dysphoria may be characterologically based and interpersonally related, as he seems to have a history of reactivity to romantic relationships, as well as multiple bereavement issues, with which grief work would likely help." In the June 11, 2004, mental health provider's notes, the applicant admitted to his provider that his PTSD symptoms were exacerbated by his drinking. The applicant was also diagnosed as alcohol dependent and ordered by the Coast Guard to abstain and to attend an SARP and AA meetings. On July 16, 2004, the applicant's mental health provider stated that the applicant met the criteria for PTSD, but also stated the following:

> It should be noted, however, that there are a lot of confounding variables with regards to this diagnosis: The service member demonstrates an atypical presentation of PTSD, in that, it is fairly unusual to dissociate so severely without extensive combat exposure and a childhood history of trauma, he often does not have triggers to these dissociative episodes, he enjoys his military work environment (which reportedly is not a trigger for him), and his "flashbacks" are often of non-traumatic events.

Therefore, the preponderance of the evidence shows that the applicant was suffering from PTSD, but his symptoms were further compounded by his abuse of alcohol and emotional traumas that took place prior to the applicant's military service. The record also shows that despite continued warnings and recommendations from medical professionals and Coast Guard orders, the applicant failed to mitigate the conditions of his PTSD by refraining from alcohol.

5. **Alcohol Incidents/Misconduct**: The record shows that on May 29, 2004, after a night of heavy drinking, the applicant knowingly and willfully operated a motor vehicle and crashed into another vehicle so severely that both vehicles were deemed total losses by insurance companies. After the collision, the applicant was charged with violating articles 111 (Drunken or Reckless Driving) and 134 (General – Bringing Discredit Upon the Coast Guard). The applicant also had his license suspended by civilian authorities for 90 days.

The record further shows that in July 2004, the applicant failed to arrive at a required medical appointment and when questioned by his superiors, the applicant lied to his superiors about the circumstances of his failure to arrive at the meeting on time. The record also shows that from November 22, 2004, through March 14, 2005, the applicant went AWOL and could not be located by Coast Guard officials. Finally, the record shows that the applicant incurred a second alcohol incident on April 15, 2005, when he became intoxicated despite being on restriction and failed to show up for work on time the following morning. As a result of the applicant's numerous offenses, the applicant was repeatedly recommended for Non-Judicial Punishment (NJP). However, due to the applicant's numerous misconduct violations and mental health and alcohol-related issues, NJP proceedings were delayed until after the applicant returned from being AWOL in March 2005, when trial by court-martial was deemed appropriate.

6. **PDES Processing**: With respect to the applicant's claim that he was entitled to PDES processing and a medical retirement, the Board notes that under Article 2.C.2.b.2. of the Physical Disability Evaluation System (PDES) Manual, COMDTINST M1850.2C, "A member being processed for separation or retirement for reasons other than physical disability shall not be referred for disability evaluation unless the conditions in articles 2.C.2.b.(1)(a) or (b) are met." Article 2.C.2.c. 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." 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 medical separation proceedings that were initiated on behalf of the applicant would have been suspended and ultimately closed as a result of the applicant's administrative discharge. 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.

7. **Upgraded Characterization of Service**. The applicant argued that because of his PTSD diagnosis, he should have received at least a General discharge Under Honorable Conditions. But the record shows that in requesting the OTH discharge, the applicant received all due process under the Personnel Manual. The applicant received proper notice of his misconduct violations, was provided counsel, and was informed of and exercised his Miranda/Tempia rights. Moreover, the record shows that instead of being tried by court-martial, the applicant requested his administrative discharge under Article 12.B.21.a. of the Personnel Manual and received legal counsel about taking this step, as required by Article 12.B.21.b. of the same manual. As stated previously, the record shows the applicant, along with his Command, was aware of his mental health issues at the time his Article 12.B.21.a. request was submitted, but the applicant still knowingly and voluntarily chose the path of a discharge for the good of the service in lieu of trial by court-martial. In conjunction with his request, the applicant submitted a sworn personal statement wherein he acknowledged the consequences that would flow from his request and that he was making the request based not only on his mental health issues, but personal issues as well. In addition, the applicant received the benefit of his request because he was granted an OTH characterization of service, instead of receiving a bad conduct or dishonorable discharge that could have resulted from his court-martial. Finally, Article 12.B.21.e. of the Personnel Manual states that if a Commander believes that a member warrants a more favorable discharge type than OTH based on the facts of the case, the Commander may direct issuing an honorable or general discharge. The record shows that the applicant's Commanders were aware of his PTSD diagnosis at the time of his discharge request and of the possibility that the applicant's PTSD had contributed to his misconduct. Article 12.B.21.e. permitted the applicant's Commanders to recommend the applicant receive a more favorable characterization of discharge based on his record, but the evidence shows they elected not do so. Therefore, the Board finds that the applicant's administrative discharge, as requested by the applicant, for the good of the service, was not erroneous or unjust.

8. **Medical Retirement**. Regarding his request for a medical retirement, in his application, the applicant submitted DoD guidance on liberal consideration and argued that his requests and allegations fall under the DoD's liberal consideration policy. However, the Coast Guard BCMR is not bound by the DoD's guidance and instead has its own liberal consideration guidance issued by the delegate of the Secretary of the Department of Homeland Security.[14] Under

[14] *Id*.

this guidance, liberal consideration applies to those applicants who are requesting upgrades to their discharges. This guidance defines the term "discharge" to mean "a veteran's character of service, narrative reason for separation, separation code, and reenlistment code." And a request for a medical retirement falls well outside the scope of upgrading a discharge. Awarding the applicant a medical retirement requires the Board to correct his record either by trying to assess his condition at the time of his discharge and assigning him a disability rating or by directing the Coast Guard to convene medical boards to do so. Therefore, his request for a medical retirement does not fall under DHS's liberal consideration guidance and for the reasons explained above, his lack of a medical retirement from the Coast Guard is neither erroneous nor unjust. Accordingly, his request to receive a medical retirement should be denied.

9. The applicant has not proven, by a preponderance of the evidence, that his administrative discharge for the good of the service was erroneous or unjust or that he should have been processed under the PDES for a medical retirement. Accordingly, his request for relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former OS2, [redacted] USCGR, for correction of his military record is denied.

June 2, 2023

[redacted]
Digitally signed by [redacted]
Date: 2023.06.07 17:02:58 -04'00'

[redacted]

[redacted]
Digitally signed by J[redacted]
Date: 2023.06.08 08:34:12 -04'00'

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Date: 2023.06.08 09:20:10 -06'00'

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