


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2005-129

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION


This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed it on June 24, 2005, upon receipt of the completed application.

This final decision, dated April 5, 2006, is 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 asked the Board to remove from his military record his relief for cause as the Officer in Charge (OIC) of a Coast Guard station in 2003, as well as his performance evaluation dated September 30, 2003, and Administrative Remarks ("page 7s") related to his relief for cause.

The applicant alleged that when he was relieved for cause in 2003, he was unknowingly suffering from depression caused by his involvement in both the immediate and long-term disaster relief following the attacks on the World Trade Center on September 11, 2001. Prior to this period, he alleged, he had "advanced quickly, been recognized for [his] actions, leadership and conduct and had not one single derogatory entry in [his] service record." The applicant stated that he did not dispute his "un-toward behavior and actions" as OIC or that they warranted a loss of confidence and that he has taken full responsibility for them. He stated that during the period in question, he was "argumentative, detached, and apathetic," he gained weight at an alarming rate, his health declined, and he felt "fatigued to the point of not being able to work."

The applicant stated that since being relieved for cause, he has received counseling from a psychologist and from the Coast Guard's Employee Assistance Program (EAP) staff and now realizes that he was suffering from severe depression. The applicant stated that while working in New York Harbor, he did not receive any debriefing or counseling, and that "it is honestly debatable as to whether I actually needed it at that time." However, after he was assigned as OIC of a station on the West Coast and was "able to 'relax,'" he started "to reprocess the events of the tragedy, largely forced by having to relive the events through the nearly daily questions and interest of those around me, those who had not been there."

The applicant stated that since receiving counseling, he has "been not only able to recognize my condition, but to come to grips with it and ha[s] emerged fully engaged and back on track." The applicant argued that "by failing to recognize and address my condition, I have needlessly suffered a great injustice." He stated that the relief for cause "is severely debilitating to my career and stifles my chances for advancement, as well as the chance to once again assume the leadership and responsibility of a Command position." He stated that "due to reasons beyond my control, the behavior in question was truly not who I am and I simply want the chance to prove it."

In support of his allegations, the applicant submitted a statement from a Coast Guard EAP counselor. The counselor stated that he "cannot attest to [the applicant's] mental functioning at the time he was removed from his position as OIC ..., but after speaking with him it appears that [he] was displaying some signs of depression which apparently went unnoticed by his command." The EAP counselor stated that the applicant described becoming more isolated from other people, feeling less attached to his work, getting less work done, gaining forty pounds, and sleeping more. He stated that the applicant had also had brief suicidal ideation. The EAP counselor stated that these symptoms indicate that the applicant met the criteria for a diagnosis of Major Depressive Episode while he was OIC. He further stated that "[i]t cannot be stated or implied that if [the applicant] had received an earlier intervention with psychological treatment when his symptoms of depression first appeared things would have turned out different. It can be stated, however, that when treatment has been offered people have been able to make positive use of treatment to get back on track with their life sooner."

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard in 1991 as a seaman with prior service in the Army, Army Reserve, and National Guard. He became a xxxxxxxxxx and advanced to pay grade E-7/chief petty officer.

On September 11, 2001, the applicant was serving as the xxxxxxxxxxxxxxxx a Coast Guard station near Manhattan. In addition, he was the xxxxxxxxxxxxxx at the station. He had previously received very high marks on his performance evaluations,

including marks of 7 (out of a possible 7) in such performance categories as stamina, communicating, loyalty, setting an example, and adaptability. On his performance evaluation dated September 30, 2001, the applicant received two marks of 5, seventeen marks of 6, and five marks of 7 (for directing others, adaptability, professional knowledge, administrative ability, and stamina). His supervisor wrote that he “worked sixteen to twenty hour days during the WTC attack, first performing the duties as the senior person in charge of the physical security of the station and then as one of the OOD watchstanders who organized the crew and small boat rotation in support of Operation Guarding Liberty.” The applicant received an Achievement Medal for “superior performance of duty from 11 September 2001 to 22 October 2001.”

On June 4, 2002, the applicant reported for duty as the Officer in Charge of a station [REDACTED]. On his performance evaluation dated September 30, 2002, the applicant received one mark of 5, twenty-one marks of 6, and two marks of 7. He was recommended for promotion, as he had been on every one of his previous evaluations.

On May 29, 2003, the Group Commander counseled the applicant and the chief warrant officer who served as commanding officer (CO) of the parent command of the applicant’s station concerning problems of communication and cooperation between the station and the parent command, which had increased since the applicant became the station OIC. The Group Commander’s notes indicate that the Deputy Commander had already counseled them about the same concerns on January 31, 2003. The applicant’s improper purchase of two computers and continuing communications problems had convinced the Group Commander that another counseling session was necessary. The Group Commander noted that although it was not easy to distinguish who was causing the problems and communications problems were usually a “two-way street,” he suspected that the applicant was not listening to his CO, was not keeping the CO informed of his actions, and was bypassing the CO on many issues. The Group Commander wrote that he “use[d] the full force of my position to get their attention ... to ensure they both understood what I expected and that the communications issue must be resolved, or I would consider relief of one or both of them.”

Letter Incident Report

On July 23, 2003, the Group Commander ordered LCDR D to investigate the leadership, competency, and conduct of the applicant and the relationship between the station and the parent command. On August 6, 2003, LCDR D reported to the Group Commander that he had completed his investigation and that eight of ten allegations that were made against the applicant during the course of his investigation had been substantiated but that he did not believe they warranted the applicant’s removal. He

recommended that the applicant receive leadership training and more support from the parent command.

LCDR D stated that interviews with the applicant's subordinates indicated that his "normal workday consists of coming in some time around 0800 and leaving at 1100, sometimes returning after 1600 to go into his office and get on the Internet. Additionally, [the applicant] never wears an appropriate uniform; he wears sweats and a T-shirt or coveralls as his uniform of the day." In addition, the applicant and a subordinate had worn outfits resembling police SWAT team uniforms when providing security during a 4th of July event at the port. LCDR D noted that "because of other issues surrounding the material condition and cleanliness of the unit, [the applicant's] presence and direction are obviously needed." He stated that the "overall material condition of the unit is marginal at best" and that the applicant had not communicated the station's needs to the parent command.

LCDR D stated that the applicant's CO reported that on one occasion the applicant had refused to come to the parent command for a meeting with his CO, which reflected a "lack of respect and borderline insubordination." LCDR D stated that the applicant's lack of respect toward his CO was "a major contributing factor to the poor relationship between [the parent station and the applicant's station]."

LCDR D reported that the applicant appeared to be "running a business out of his Coast Guard office selling guns." He had been seen handling guns for sale during normal work hours and an investigation of the applicant's office computer use showed that he had visited numerous gun information and gun manufacturer websites. LCDR D recommended that the applicant be ordered to review and sign the Coast Guard's "limited use" policy and to stop conducting his private business from the station's office.

LCDR D reported that the applicant had "lost credibility with the crew" as he had made many promises but rarely followed through. One crewmember reported catching the applicant in several lies. Others reported that the applicant had told different stories of how he had obtained a poster of "ground zero" in Manhattan, which he kept on his office wall.

LCDR D reported that on April 18, 2003, the applicant had purchased one laptop and one desktop computer with funds for a Learning Center without the approval of his CO, and neither computer had ever been used for educational purposes at the Learning Center. The applicant kept the laptop at his house, and the desktop was not hooked up to the Internet but was used by a first class petty officer to play games. After LCDR D asked the applicant to return the laptop to determine how it had been used, it was returned with all information erased even though it had obviously been well used.

LCDR D reported that during a visit by the District Command (a rear admiral) and the Group Commander in July 2003, the applicant had criticized the parent command for not timely processing five alcohol incidents when only one of the five was actually delayed and the applicant himself had not pursued a timely resolution of the case. In addition, LCDR R reported that the applicant's story about the circumstances of the repainting and remodeling of his office differed from that of the members who did the work and that the applicant "appears to be shading the truth in order not to appear to have made someone at the unit work late into the night to complete a project simply for the Admiral's visit."

LCDR D stated that several factors contributed to the poor working relationship between the parent command and the applicant's station. He reported that station personnel sometimes received different information from the parent command and the applicant and were "caught in the middle," not knowing which superior's order to follow. In addition, the applicant's subordinates reported that he had "openly ridiculed and challenged the [parent] command." LCDR D noted that some of the applicant's subordinates supported him and reported that they were better trained and ready for operations than they had been before the applicant's arrival. The station had received excellent performance marks during a recent visit by a Training Team. LCDR D concluded that the applicant "had great expectations when he first arrived [H]owever, when he ran into difficulties accomplishing those goals he became frustrated and disengaged from his parent command."

Request for Temporary Relief for Cause

On August 11, 2003, the Group Commander forwarded the Letter Incident Report to the District Commander with a request that the applicant be temporarily relieved for cause pending a formal, permanent relief for cause. The Group Commander stated that he had lost confidence in the applicant's leadership. He noted that the applicant had previously been counseled by the Deputy Group Commander on January 31, 2003, about communications with his CO and following the chain of command and then again by himself on May 29, 2003, on similar issues. On both occasions, the applicant "failed to make the required corrections in his attitude and leadership." He noted that he had temporarily reassigned the applicant to the parent command.

The Group Commander also wrote that when he first visited the station in June 2002, the applicant made him "feel that I had imposed on him and his personnel" by being one hour late due to his visits to other units and traffic. Three of the applicant's priorities seemed odd to him: turning a tennis court into a paintball course, clearing shrubs off a hill behind the station, and switching the main entrance to the back of the building. He decided that the applicant "was different and had a different way of looking at things and setting priorities."

Shortly thereafter, the Group Commander wrote, communications problems between the applicant and his CO began to surface. He trusted the CO, but the applicant "always had an answer for everything." By May 2003, he suspected that the applicant "was driving a wedge between his unit and his parent unit" and trying to prove that "his unit should be a stand alone unit." He stated that the applicant originally claimed to have received his CO's approval to purchase two computers for the Learning Center but then admitted he did not. The CO had only authorized him to research the matter and any research would have revealed that the District would be buying computers for the Learning Center.

During the District Commander's visit, the Group Commander stated, the applicant's station was not ready and he "walked around amazed at the disorganized appearance of the unit." In addition, the applicant "essentially placed [his CO] on report for not acting promptly on a prior alcohol incident," which he had only raised with his CO once before, and then "made it sound like there were a total of 5 unresolved incidents pending at his unit when these [other] incidents had [recently] taken place at the parent command." The applicant further complained to the District Commander that the unit did not have enough money to operate—a complaint which the Group Commander had not heard before.

The Group Commander stated that because he detected that "something was going on with the crew that seemed abnormal," he asked LCDR D and the Command Master Chief to investigate. Their reports alarmed him sufficiently to cause him to lose confidence in the applicant's leadership. The applicant was usually at work for only three hours a day and would surf the Internet for up to two hours on his personal business. The Group Commander discussed the report of the investigation with the applicant, who seemed to believe he had done nothing wrong and blamed everything on a lack of support from the parent command. However, the Group Commander knew that the parent command was "making an extraordinary effort to correct some deficiencies that [the applicant] allowed to develop and should have taken care of on his own." After this meeting he determined that many members in the chain of command "doubted [the applicant's] sincerity and felt that he had been arrogant and was not willing to admit he had made mistakes." In addition, "everyone agreed that they did not think he actually could change," as he "would require an extensive amount of direct supervision." The Group Commander concluded that although the applicant was a very good trainer, "[h]e was also their friend ... he was not their leader and he was not aligned with the desires of his parent command or the Group."

On August 14, 2003, LCDR D submitted a supplement to his report. He stated that all personnel at the station reported that the applicant "never wore the prescribed uniform of the day ... and that he would generally wear either coveralls with no name tag or rank insignia or he would wear sweats/shorts and a T-shirt on days that the unit

had scheduled sports ... generally Tuesdays and Thursdays of each week." Two members stated that they could not remember ever seeing the applicant in uniform. LCDR D further stated that nine petty officers at the station had corroborated the applicant's habit of working from 8:00 a.m. to 11:00 a.m. and sometimes returning after 4:00 p.m. He noted that the applicant stated that he had been leaving work early for three months to care for his wife or take her to medical appointments.

Temporary Relief for Cause

On August 14, 2003, the District Commander notified the applicant that he was temporarily relieved for cause, that he had been assigned legal counsel, and that he had a right to submit a statement on his own behalf. On August 18, 2003, the applicant acknowledged the notification.

On August 20, 2003, Ensign S submitted another Letter Incident Report on his investigation into an encounter between the applicant and a station crewmember, BM2 X. Ensign S stated that on the night in question, the applicant had been filing the grip on a Colt 45 pistol in his garage when he showed it to MK2 M, who lived nearby. The magazine was not in the gun. When BM2 X drove into the parking lot, the applicant told MK2 M that he wanted to show the pistol to BM2 X, as they had discussed guns in the past. The applicant walked over to BM2 X, showed him the pistol, and told him that he had been working on it and that it was not loaded. He handed the gun to BM2 X briefly and asked him if he liked the new grip. The applicant accused BM2 X of making negative comments about him to LCDR D during the prior investigation. Ensign S wrote that the "conversation ended shortly thereafter with [the applicant] stating that he was going to go shoot something." BM2 X reported to the new, acting OIC that he had not felt threatened during the encounter with the applicant but that the applicant's statement made him feel "very uneasy." Ensign S recommended that the applicant be counseled with a page 7.

Applicant's Statement Concerning His Temporary Relief for Cause

On August 22, 2003, the applicant submitted a statement to the District Commander concerning his temporary relief for cause. He stated that there were communications problems between the station and the parent command but that "these problems cannot be laid at the feet of just [my CO] and myself but rather stem from much larger problems that existed between the two units from way back." He stated that when he first arrived at the station, the CO and XPO had told him that they "were counting on me to 'save the crew'—I was told that my only concern was to fix their battered morale and get them ready to perform the Coast Guard's missions." He claimed that communications had been improving.

The applicant stated that early on during his tour as OIC, he was frequently working away from the station but that his normal workday was 8:00 a.m. to 4:00 p.m. However, after his wife fell ill and became bed ridden in January 2003, he started to leave the station once or twice a day to check on her. Then one day she fell down the stairs, and his visits home "did increase in frequency and duration." He stated that at a meeting with his chain of command on August 8, 2003, he learned that they had considered replacing him "during this trying time for me and my wife" and that he wished that they had done so "as I was doing 20-hour days for three months, between my wife, the home, and the USCG." After his wife recovered, he returned to his normal routine and took two weeks of leave before the District Commander's visit to get rejuvenated.

Regarding the allegations about his uniform, the applicant stated that the coveralls he wore had been approved and purchased by the parent command "as a replacement for the Working Blue uniform ... due to the deteriorating condition and non-availability of uniform items during the transition to the ODU." Furthermore, he stated that an ALDIST bulletin issued in 1999 had authorized printed T-shirts to be worn "for recognition during special training or law enforcement events."

Regarding his refusal to attend a meeting at the parent command, the applicant stated that a BM3 at his unit had jumped the chain of command and called the CO directly to complain about a missing piece of mail. The CO had called the station and sarcastically "ripped into" a chief petty officer about their station's alleged inability to process the mail even though the chief petty officer was able to find the BM3's letter in less than a minute. The applicant was upset about the CO's attitude and about the fact that the CO had allowed the BM3 to jump the chain of command. After a few telephone calls between the chief petty officer, the CO, and the parent command's XPO, the XPO called the applicant and said that the CO wanted to see him "right now." Therefore, the applicant replied, "Not if all he is going to do is call me an asshole because of where I am stationed." Later that day, after "things cool[ed] down a little," the applicant called the CO and arranged to meet for breakfast the next day.

Regarding his alleged gun-dealing business, the applicant stated that although he did not have a dealer's license, his firearms license entitled him to make individual sales. Therefore, he "would make and receive transfers of firearms for members of the crew, for firearms that they were buying or selling on Internet auctions." However, he stopped doing it when members from other units began asking him to do the same for them. He stated that two members had seen him and a chief petty officer opening a package that contained a rifle that the chief petty officer had sold on the Internet, but that the applicant had done so only to put the proper paperwork inside. Furthermore, he noted that of the 150 websites the investigator had listed, only "a little over 50 are firearm specific sites" and that only 4 of his 35 "favorites" were firearm websites. Moreover, he alleged that he did not pursue this interest "all that often" and that he "spen[t]

far more time downloading manuals and educational material for the crew than I do on firearms-related websites.”

Regarding the computer purchases, the applicant stated that his CO knew about the purchases and that the Administrative Officer had authorized them. His crew felt that they could sit on old furniture to use new computers but “no one was too keen on sitting at new desks with nothing to do.” He stated that he had set up the members’ accounts on the computers, but a few weeks later was told not to use them because they had not been purchased properly. He stated that he kept the laptop in his office and that some of the petty officers used it occasionally. He stated that the laptop was likely “scrubbed” because one week before LCDR D’s investigation, the XPO “told me that the Group was planning on taking both of the computers from us and to clean and back them up.”

Regarding his comments to the District Commander, the applicant stated that at the time of the visit, processing of two alcohol incidents had been pending since February and that he had made multiple phone calls about them to his parent command and to the Command Master Chief. One of the February incidents was the member’s second alcohol incident and so involved a long delayed discharge package. He stated that he mentioned one of the June incidents because it was the second alcohol incident of one of the members who had had his first alcohol incident in February, which had never been processed. The applicant stated that some members had developed a cavalier attitude, and that he had grown very frustrated with the parent command’s lack of response.

Regarding the painting of his office prior to the District Commander’s visit, the applicant claimed that he had “a whole room full of people that heard me tell the MAA, before he even got started, that he did not have time to finish my office and that there was more important work to do. He just seemed hell-bent on finishing.”

Regarding the poor relationship and communications between the station and the parent command, the applicant stated that the station had made many requests for assistance and support to no avail and that he had been told he was a “pain in the butt” when he had asked for help. He stated that he had “tried very hard to keep things behind closed doors,” when he felt that the parent command was acting unreasonably but that he had “no cadre to make an ‘inner circle’” and so sometimes “confided in a mix of duty personnel and the most senior PO onboard. Ultimately, I realize, that none of this is an excuse and I have made some inexcusable mistakes out of frustration.” However, the applicant stated, he had developed his crew to “a level equal to or better than any other ... Station in the District, ... [and] made this Station much better than I found it.”

On August 28, 2003, the Group Commander forwarded the applicant’s statement to the District Commander with his “strongest recommendation for relief for cause

based on my loss of confidence in [the applicant]. ... My issues with [him] have become a long and continuous saga of multiple illustrations of his lack of competence as a leader, his lack of willingness to work with his chain of command to solve issues, and his apparent disregard for establishing a command presence at his unit, or adhering to our core values. Every member of my staff who has been or will be involved with [the applicant] in the operation of his unit is convinced he will continue to be a leadership challenge as long as he remains in the OIC position.”

In response to the applicant’s statement concerning his wife’s illness, the Group Commander stated the following:

If the chain of command had been advised of the severity of the undocumented condition of [the applicant’s] wife, the command would have asked for assistance to ensure the Chief received the support he and his wife required, and the unit continued to receive the support and leadership it required. Although it is true [the CO] gave [the applicant] permission to tend to his wife’s needs during her sickness, [the applicant] never made his command or the Group aware of the extensive amount of time he was going to be away from his unit. During the investigation, [the applicant] made contradictory statements about the amount of time he was away from work. In his 30 July statement, he says he went home 2 or 3 times a day to check on his wife, and that he did this for several weeks. In his 22 August statement, he states he was away a lot in January-March, and after his wife had a fall in April, he went home more often and for longer periods of time. In his verbal statement to me, the Chief indicated the period of sickness lasted for about 3 months. Depending on which statement is accurate, there still is no accountability for the months of May, June or July and these are the months the unit personnel most likely would have focused on during the investigation, when asked about the Chief’s work habits. No one knows for sure just how much time the Chief was away from work, but the appearance is that he was only there for 3 hours at a time. ... There never was a discussion ... [of] bringing someone in to run the station during his wife’s sickness. No one in his chain of command was aware of the amount of time the Chief was taking off.

Regarding the applicant’s dress, the Group Commander stated that the CO had purchased the coveralls and laid out clear guidelines that they were to be worn over the working blue uniforms in certain work situations “to help prolong their life.” He stated that the applicant had “freely admitted to routinely violating these guidelines,” which set a poor example. In addition, he stated that the applicant had told one member of the Group Commander’s staff that “he felt wearing his tropical uniform created a separation between him and his crew; therefore he chose to wear the coveralls ... [and] wore sweats and a T-shirt at least twice a week, and never bothered to put on any type of uniform.” The Group Commander further stated that the 1999 ALDIST that the applicant cited regarding his use of SWAT-style clothing provided that a *program manager* could authorize special uniforms in situations where a Coast Guard uniform was not sufficient for mission requirements. The Group Commander noted that the ALDIST did not authorize printed T-shirts and included “five passages ... urging pre-purchase verification of the appropriateness of the intended organizational clothing,” as well as “an

admonishment that failure to follow proper procedures may result in the individual being held personally liable.”

Regarding the applicant’s alleged gun-dealing business, the Group Commander stated that the applicant had admitted to him spending up to two hours at a time researching guns on the Internet while at work. Regarding the two computers, the Group Commander stated that the CO told the applicant only that he could research the matter and that any such research would have revealed that the purchase was illegal and not in line with the Group’s and District’s plans. The Group Commander further stated that the laptop had cat hair imbedded between the keys and in the cooling fan inlet and that the applicant had explained that his wife had thrown a blanket covered with cat hair on top of the computer when it was in his closet at home.

Regarding preparations for the District Commander’s visit, the Group Commander stated that his concern was not so much about when and how the applicant’s office got painted but about “the lack of cleanliness and order I observed throughout the unit during the visit. It started with the Chief’s office being disorganized and ended with the messy and disorganized garage storage area.”

The Group Commander stated that the applicant’s CO had “made very attempt to support the unit and its personnel. In many cases, [the applicant] advised [the CO] that he would take care of the issues at his unit and he did not require any assistance. Throughout [the applicant’s] tenure as OIC, there have been conflicting stories between what he says took place and what others say took place. [The applicant] consistently provided different versions of what happened, what others said or what others meant. ... These conflicting stories do not stop at his unit or with his subordinates; they run right up through his entire chain of command.”

Request for Permanent Relief for Cause

On September 8, 2003, the District Commander asked the Commandant to permanently relieve the applicant from his duties as OIC for cause, noting that despite repeated counseling, the applicant had failed to establish command presence, was unwilling to align his priorities with those of his parent command, and was unable to communicate effectively with his chain of command.

Also on September 8, 2003, the Group Commander entered a negative page 7 in the applicant’s record stating the following:

[A]t approximately 2230 on the evening of 11 Aug 2003, you initiated an encounter with a subordinate member of your unit in the housing area at Station In that encounter, you approached the member while carrying a firearm that you had been working on, and began to question the member concerning statements contained in a recently completed investigation regarding the good order and discipline at Station Even though the

firearm was neither operable nor loaded, its presence combined with the lateness of hour and the subject and tone of your conversation created an intimidating and coercive environment.

Your conduct in this encounter was completely inappropriate, especially for a Chief Petty Officer ... and an Officer in Charge of a Coast Guard unit. Your actions demonstrated a lack of appreciation for your rank and command position, a lack of judgment, and a lack of respect for your subordinates.

Further incidents of this nature will not be tolerated. I urge you to take this matter to heart and to make the changes necessary to align your personal conduct with that expected of Coast Guard leaders.

On September 9, 2003, the applicant acknowledged notification of the District Commander's recommendation that he be permanently relieved for cause. He indicated that he desired counsel and would submit a statement.

Applicant's Statement Concerning Permanent Relief for Cause

On September 16, 2003, the applicant submitted a statement concerning the District Commander's recommendation that he be relieved for cause. The applicant stated that he realized "the inevitable outcome of this matter and do not dispute that I have made some grievous mistakes, mostly by way of inaction on my part—I assure you that I not only recognize, but accept my personal mistakes and shortcomings. ... I am making this statement of my own mind and volition, with the sole purpose of preserving my integrity and reputation, in areas where I feel I have fell victim to innuendo, coincidence or simple fallacies." The applicant stated that both his CO and XPO were aware of the severity of his wife's condition and that he always advised them when he was leaving the station for medical appointments. He noted that he had also reported his wife's condition to the command's Work-Life Staff.

The applicant further stated that he himself had set the guidelines for wearing coveralls at the station and the CO had not complained even though he had visited the station and seen the crew wearing them. He further stated that the SWAT-style uniform he and another member had donned for patrolling the dock during a July 4th biker rally had been issued at other units and he "did not believe the decision to authorized them for one hour, during this special security event, was out of line." He wrote that while he may have made a mistake, "the decision was made largely to facilitate the recognition of the mandated shore side security personnel and in the interest of public safety."

Regarding the allegation that he was conducting a gun-dealing business from his office, the applicant stated that he had made only three private transfers; received two firearms for members who purchased them online; shipped two firearms; and received one repair part. The applicant explained his Internet use by saying that he was not conducting a business but studying firearm and toolmark examination for forensic purposes as he wanted "to complete my online courses from American Institute of Applied Science and ultimately become recognized by the Firearm and Toolmark Examiners Guild."

Regarding the computers, the applicant stated that the parent command knew of the purchases since the Administrative Officer had authorized them. He further stated that he had a personal computer at home and no need for the laptop. He stated that he had taken it home only "to prepare the script and Power Point show for the Chiefs Call To Initiation" and had not used it otherwise. He further stated that before he donated a DVD player to the station, the crew had used the laptop to watch movies in the evening. In addition, a BM1 had "set up purchasing suppliers and information on it and people had used it for their distance learning studies among other things. I do not own a cat; perhaps someone else that used it does? Use of the laptop was terminated shortly after

it was purchased, at the direction of my Command, purportedly from the Group, due to the purchase being in question.”

Regarding the orderliness of the station during the District Commander’s visit, the applicant admitted that it was “poor and showed a general lack of effort. I did let the crew and my Command down on this.” He stated that he had intended to return to work from leave two days before the visit but that, at the urging of his senior crew-members who knew his wife’s situation, had stayed on leave until the morning of the visit. They had assured him that “they would have everything in line for the visit.” He was very upset when he arrived and saw that so little had been done, although “the overall condition and appearance of the facility [had] improved drastically” since he took over as OIC.

Regarding the night of August 11, 2003, the applicant stated that the item he was carrying was not really a gun but a pistol grip that was not capable of chambering or firing a round. He stated that he spoke to BM2 X about the investigation because he had been told that he could solicit statements on his own behalf as long as he did not do so on station grounds or while on duty, which meant that he could only speak to them in the evenings in or near their housing. He advised BM2 X that another member had been “grossly misquoted” by the investigator. When BM2 X pursued the topic, the applicant “told him that this was neither the time nor the place to discuss it and that if he was really concerned, [he] would talk to him about it later.” Afterwards, the incident “became more and more inflamed ... largely due to [BM2 X] lampooning the situation and using it to draw attention ... saying things about ‘not standing by windows,’ barricading his house and zigzagging while crossing the parking lot.”

The applicant stated that he tried to keep the lines of communication open between the station and the parent command. Following his meeting with the Deputy Group Commander in January 2003, he sent out a weekly “sitrep” by email each Monday, but stopped when the XPO told him that the CO was not happy with them. He then invited the parent command department heads to visit twice a month, but they soon stopped doing so. Thereafter, he and BMC L tried to visit the parent command every Tuesday, but on their fourth visit they were told not to continue driving down.

On the applicant’s performance evaluation dated September 30, 2003, he received three marks of 3, fifteen marks of 4, five marks of 5, and one mark of 6. He was not recommended for promotion.

Permanent Relief for Cause

On October 9, 2003, the Acting Commandant approved the District Commander’s request to permanently relieve the applicant from his position as OIC for cause based on the District Commander’s “loss of confidence in his judgment and ability to

effectively perform his assigned duties.” He noted that the applicant would remain at the parent command on a temporary basis until he received transfer orders, which would arrive no later than October 31, 2003.

On December 3, 2003, the Group Commander formally advised the applicant that his relief for cause was permanent in that his certification as OIC had been removed.

On his performance evaluations dated September 30, 2004 and 2005, the applicant received high marks and was recommended for advancement.

VIEWS OF THE COAST GUARD

On November 29, 2005, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief.

The JAG pointed out that the applicant did not argue that his relief for cause was unjustified but that he has suffered an injustice because neither he nor his command recognized that he was suffering from depression at the time and that his depression caused the behavior that led to his relief for cause. The JAG stated that for purposes of the BCMRs, “injustice” is “treatment by military authorities that ‘shocks the sense of justice.’” *Sawyer v. United States*, 18 Cl. Ct. 860, 868 (Cl. Ct. 1989) (citing *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (Ct. Cl. 1976), *cert. denied*, 429 U.S. 854 (1976)). The JAG argued that the applicant’s relief for cause does not meet this standard as his superiors had lost confidence in his judgment and ability to lead and the applicant was afforded all due process.

The JAG adopted the findings of a memorandum on this case prepared by the Coast Guard Personnel Command (CGPC). CGPC stated that under Article 4.F.2. of the Personnel Manual, the District Commander had authority to relieve the applicant for cause temporarily pending approval of a permanent relief for cause by the Commandant. CGPC stated that under Article 4.F.3., loss of confidence on the part of one’s superiors is a proper basis for a removal for cause. CGPC stated that the applicant received all due process during his relief for cause in accordance with Article 4.F.4. in that he was notified by the District Commander of both the temporary relief for cause and the recommendation for permanent relief for cause and he was allowed to submit statement on his own behalf on each occasion.

CGPC stated that “[r]egardless of any underlying medical diagnosis, the position of Officer in Charge requires the trust and confidence of superiors. ... While the Applicant may have come to a realization that his actions were not proper and that he possibly suffered from an undiagnosed mental health condition, he was afforded due process and his Relief for Cause was consistent with his performance. ... His belief that

he 'fell through the cracks' regarding medical treatment does not substantiate this [requested] record correction."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 20, 2005, the applicant responded to the views of the Coast Guard. The applicant stated that, although he "do[es] not dispute the conduct or events in general," the allegation that he was conducting a private business from his office "is patently false." In addition, on August 11, 2003, he was merely showing a pistol grip, rather than a complete firearm, to a crewmember, BM2 X, who shared his interest in gun collecting. Moreover, BM2 X himself was holding the pistol grip "for most of our conversation."

The applicant argued that even if his relief for cause while suffering from depression does not shock the Board's sense of justice, the Board should consider the interest of equity as well. He noted that while attending Chief Petty Officer's Academy, a Rear Admiral had noted that "two things the Coast Guard does not do very well" were coping with alcohol problems and suicides. He alleged that he himself had contemplated suicide and that "many believe that my Relief process was largely precipitated by my outspoken disdain towards my Command's passive handling of alcohol incidents within the Group."

The applicant stated that he applied to the BCMR because fellow members who knew him well were shocked by his relief for cause because it was not in keeping with his prior documented level of performance. He and others believe that because of the obvious change in the quality of his performance, someone should have realized that something was not right with him. He alleged that his Group Commander, who had signed an excellent performance evaluation for him in September 2002, noticed the change in him and yet took no action to help him. The applicant argued that it was not the relief for cause that was the original injustice but the fact that his chain of command did not recognize the underlying cause of the decline in his behavior and get help for him. He argued that he has suffered a personal injustice because his depression went unrecognized and untreated. He stated that he continues to suffer from the stigma of the event and the debilitating effect it has had on his career.

APPLICABLE REGULATIONS

Article 4.F.1.a. of the Personnel Manual states that "relief for cause" (RFC) is "the administrative removal of a commanding officer (CO) or officer in charge (OIC) from his or her current duty assignment before the planned rotation date." It "normally consists of a two-step process: 1. The flag officer in the unit's chain of command orders a temporary RFC; and 2. Commandant ... orders a permanent RFC after reviewing the case."

Article 4.F.1.b.1. states that “[t]he need to Relieve for Cause may arise when a CO’s or OIC’s performance or conduct adversely affects his or her unit’s morale, good order and discipline, and/or mission performance. One of the most severe administrative measures taken against a member in command, RFC usually has a significant adverse impact on the member’s future Coast Guard career, particularly on his or her promotion, advancement, duty and special assignments, and selection for schools. Therefore, the relieving officer must carefully consider the circumstances’ gravity and the potential outcome’s total implications before initiating the process.”

Article 4.F.2.a. states that “[d]irector chiefs (for Headquarters units under their program), area commanders, district commanders, and commanders of maintenance and logistics commands have the authority to temporarily relieve a CO or OIC in their chain of command for cause.” Article 4.F.2.b. provides that “[o]nly Commandant ... can order permanent Relief for Cause.”

Article 4.F.3. provides that the bases for relief for cause may be misconduct, unsatisfactory performance, unacceptable relationships, or loss of confidence. Article 4.F.3.c. states the following with regard to loss of confidence:

It is imperative his or her immediate superiors have full confidence in a member’s judgment and ability to command due to the unique position of trust and responsibility he or she occupies; his or her role in shaping morale, good order, and discipline in the command; and his or her influence on mission requirements and command readiness. An articulated, fact-supported loss of confidence is a sufficient basis for RFC.

Article 4.F.4. states that “[a]fter deciding to institute the temporary RFC process, the relieving authority must “[n]otify the member in writing of the “action being taken and the reason for it” and of “[h]is or her right to submit a statement in writing on his or her behalf within five working days.” If grounds for a permanent relief for cause are substantiated, the relieving authority should “recommend the CO’s or OIC’s permanent RFC and send appropriate documentation to the Commandant.” Article 4.F.6. provides that when being recommended for a permanent RFC, the member must have “the opportunity to make a statement on his or her behalf (normally five working days).” In addition, “[t]he command must afford the member the advice of counsel within the meaning of UCMJ Article 27(b)(1) during the temporary RFC process and in preparing any statement he or she submits about the permanent RFC request.”

Article 10.B.6.a.3. of the Personnel Manual provides the following guidelines for evaluating the performance of “members with a limited opportunity to perform for reasons such as illness, injuries, [and] pregnancy”:

a. Occasionally, circumstances resulting from a temporary condition may limit a member’s opportunity to perform. These circumstances may cause specific performance

restrictions; e.g., those imposed by a medical authority, and may even require restructuring or reassigning duties. While rating chains shall not give preferential treatment, commanding officers shall ensure these individuals do not receive adverse employee reviews solely for these circumstances.

b. In consultation with the health care provider, the commanding officer must establish a "reasonable expectation of performance" in the member's current circumstances. In particular, the commanding officer must determine whether a member requires reassignment to a different work environment, restrictions on performing specific types of tasks, or reduced work hours. When considering reassigning or restructuring duties, commanding officers should strive to identify service needs, which compliment the member's temporary limited abilities.

FINDINGS AND CONCLUSIONS

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

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

2. Absent specific evidence to the contrary, the Board presumes that a member's military records are correct and that Coast Guard officers have acted correctly, lawfully, and in good faith in performing their duties. 33 C.F.R. § 52.24(b); *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979). The applicant bears the burden of proving by a preponderance of the evidence that the relief for cause, the page 7s related to his relief for cause, and his performance evaluation dated September 30, 2003, are erroneous or unjust and that it is in the interest of justice that they be removed.

3. Although the applicant disputed some of his command's conclusions about his behavior, he has admitted that his command justifiably lost confidence in his ability to serve as OIC of the station. Rather than arguing that his relief for cause was *per se* erroneous or unjust, the applicant argued that evidence of his poor performance during the period in question should be removed from his record because he was suffering from depression and the depression caused his poor performance. He argued in essence that because his depression caused his poor performance and he is now being treated, he should be given a "clean slate" so that he will have another chance to assume a position of command. The applicant is, in effect, seeking clemency so that his career will not continue to be hampered by the documentation of his poor performance as an OIC.

4. The applicant admitted that he did not seek psychological or psychiatric help prior to his removal for cause as OIC. Although the applicant has not proved that

he was suffering from depression prior to his removal for cause, it is possible that he was, given the evidence in the record. Moreover, the applicant has not proved that his alleged depression caused the instances of poor performance that resulted in his chain of command losing confidence in his leadership.

5. The Group Commander indicated in his reports to the District Commander that one of his most significant concerns was the applicant's tendency to relate events and interpret conversations differently than both his subordinates and superiors. LCDR D had reported that crewmembers complained about the applicant telling lies. The Group Commander noted that the applicant (a) originally claimed that the CO had approved the purchase of two computers but then admitted that the CO did not; (b) when speaking to the District Commander, made it sound like his own station personnel had five alcohol incidents for which processing had been long delayed by the parent command; and (c) made contradictory statements about how much time he spent away from the office. The Group Commander advised the District Commander that "[t]hroughout [the applicant's] tenure as OIC, there have been conflicting stories between what he says took place and what others say took place. [The applicant] consistently provided different versions of what happened, what others said or what others meant. ... These conflicting stories do not stop at his unit or with his subordinates; they run right up through his entire chain of command." As an apparent lack of credibility on the applicant's part was clearly a primary cause of his chain of command's loss of confidence, the Board is not persuaded that his relief for cause was attributable primarily to his alleged depression.

6. The applicant argued that when his performance declined, his superiors should have guessed that he was ill and made sure that he got psychological or psychiatric help. The facts do not support this conclusion. Because he was the OIC of a station geographically removed from the parent command, his chain of command had little opportunity to observe his day-to-day conduct. Furthermore, the applicant's own conduct masked some of the poor performance that he claims was an outward sign of the alleged depression. The Board is not persuaded that, under the circumstances of this case, the applicant's command was remiss in not sending him for a mental health evaluation.

7. The record indicates that the applicant received all due process in accordance with Article 4.F. of the Personnel Manual during his relief for cause. He was allowed to consult counsel and submit a statement in his own behalf when the Group Commander recommended temporary relief for cause and again when the District Commander recommended his permanent relief for cause.

8. If the applicant had sought mental health treatment while he was OIC of the station and if he had been diagnosed with depression, his physician might have recommended to the applicant's chain of command that his duties be adjusted. Under

Article 10.B.6.a.3. of the Personnel Manual, his command would have been required to ensure that he did not receive an adverse performance evaluation solely because of his condition. However, whether the applicant suffered from depression while he was OIC, the extent to which the alleged depression affected his performance, and the extent to which his chain of command's disapproval resulted specifically from depression-influenced performance are entirely speculative at this point. The Board will not remove a performance evaluation from a member's record based on speculative suppositions.

9. The record contains numerous allegations by the applicant concerning the actions and attitudes of various personnel in his chain of command and at his station. Those allegations not specifically addressed above are considered to be not dispositive of the case.

10. In light of the above, the Board finds that the applicant has not proved by a preponderance of the evidence that the continued existence of his removal for cause, the page 7s, and the poor performance evaluation in his record constitutes an error or injustice or that those documents should be removed from his record in the interest of justice.

11. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied.

