

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-122



FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the applicant's completed application on June 3, 2015, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated May 13, 2016, 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, who was honorably discharged for "miscellaneous/general reasons" on October 9, 2014, asked the Board to upgrade his reentry code from RE-4 (ineligible) and to remove the following documents from his record because, he alleged, they are products of bias, racism, gross oversight, mismanagement, insufficient investigation, and violation of his civil rights due to the inadequate investigation of incidents:

1. A Page 7 (form CG-3307, Administrative Remarks) dated June 25, 2010, and another dated April 26, 2011, notes that on June 22, 2010, the applicant had undergone alcohol screening at his own request and was sent to IMPACT training although his responses to the screening questions had resulted in no finding of an alcohol-related diagnosis. The Executive Officer of the applicant's cutter noted that the applicant had been counseled about the Coast Guard's alcohol policies. The second Page 7 notes that the applicant had successfully completed the out-patient treatment program about substance abuse following his self-referral.

The applicant alleged that the Page 7s should be removed and submitted a copy of Chapter 2.B.5.b. of COMDTINST M1000.10, which states that "[u]nless there is an associated alcohol incident, the member [who self-refers for screening] may request removal of the screening letter and treatment plan from his or her Personnel Data Record after successfully completing the prescribed aftercare. A permanent record of the screening and treatment will be kept only in the member's Health Record."

2. A Page 7 dated September 29, 2012, documenting counseling for failing to follow proper food storage procedures, which “could have caused dangerous food poisoning for the whole crew.” The Page 7 states that on the evening of September 28, 2012, the OIC of the applicant’s new cutter had found boxes of food in dry storage that were clearly labeled “Keep Frozen.” The OIC had also found in dry storage many items requiring refrigeration, which had to be thrown away, including precooked bacon, cooking sauces, and many loaves of bread. The OIC also noted that his investigation had “revealed very poor purchasing management” since the applicant had reported aboard three months earlier, with numerous unneeded duplicate items, including some that had gone stale and had to be thrown away. The OIC advised the applicant that he and the Executive Petty Officer (XPO) would be conducting frequent spot checks to ensure proper storage of food, and his grocery purchases would “be scrutinized against your existing inventory” until his purchasing performance improved.
3. A Page 7 dated October 2, 2012, documenting counseling for failing to carry out his duties as the cutter’s designated Master at Arms (MAA). The Page 7 states that on September 27, 2012, he had been ordered to ensure that the ship was properly stocked with MAA supplies for a patrol that was to start on September 29, 2012, before he went on leave for a family emergency. The applicant failed to follow this order and so the cutter had “to make an emergency port call back to homeport because you failed to do your job.” The cutter had gotten underway with no paper towels, paper plates, or dish washing detergent. The applicant’s failure had cost the Coast Guard mission patrol hours and over a thousand dollars in fuel and time because of the diversion to port. The OIC required the applicant to continue performing the MAA duties but under the supervision of the Operations Officer.

Regarding the Page 7s dated September 29 and October 2, 2012 (##2 and 3 above), the applicant stated that he was not aboard the cutter for this deployment because he had been granted leave due to his son requiring surgery. The applicant submitted a copy of an airline ticket receipt showing that he took a flight to another State that departed at 6:50 p.m. on September 28, 2012.

4. A Page 7 dated October 8, 2012, documenting counseling for failing to carry out his duties as the cutter’s Food Service Officer (FSO) by failing to make entries in a database for over a month when he was supposed to update it at least weekly; by failing to use a very simple paperwork system that he had been taught and instead keeping three months’ worth of paperwork in a couple of unlabeled folders; by failing to submit correct monthly galley reports; by not having submitted even a single weekly menu on time; and by failing to correct these errors despite repeated counseling. The OIC removed the applicant’s FSO designation and his entitlement to special duty assignment pay, required him to submit weekly galley reports and biweekly menus in advance, and advised him that he would be placed on performance probation for rate reduction and not recommended for reenlistment if his performance did not improve.

Regarding the Page 7s dated September 29 and October 2 and 8, 2012, the applicant stated these Page 7s are erroneously labeled “(P&D-02),” but the -02 designation is for Page 7s regarding placement on weight probation. He submitted a copy of a template for weight

probation Page 7s, which bears the (P&D-02) designation. He also submitted various forms related to his work as FSO and a memorandum titled "Relief of Food Service Officer," dated December 4, 2012. The memorandum shows that a BM1, who was relieving the applicant as FSO, and a chief had performed a "complete physical inventory" on November 30, 2012, and found no overages or shortages, all files organized, and a clean galley and food service area.

5. An Enlisted Employee Review (EER) dated October 31, 2012, which includes a satisfactory conduct mark but low marks for the performance categories "Professional, Specialty Knowledge," "Quality of Work," "Monitoring Work," "Communicating," "Responsibility," and "Initiative," and a mark of "N" meaning not recommended for advancement.

The applicant submitted copies of EER regulations with numerous words highlighted, suggesting that he believes that his EER marks and comments did not meet the written standards.

6. Non-judicial punishment (NJP) at mast on February 6, 2013, for violations of Article 92 of the UCMJ by failing to obey a lawful order or regulation by carrying undisclosed weapons onto an overseas military base; by carrying undisclosed weapons onto a military unit; by storing weapons aboard his cutter in an unsecure place with no weapons locks; and by showing contempt for a warrant or petty officer by saying to his superior XPO on January 25, 2013, "Are there going to be repercussions for this? This is fucking bullshit." In addition, he was found to have violated Article 134 by bringing discredit on the Coast Guard as a result of his actions on January 25, 2013. As NJP, he was awarded restriction to base with extra duties for a week and a potential second week of extra duties that was suspended for six months on condition of good behavior.

Regarding his NJP on February 6, 2013, and Page 7 dated August 6, 2014 (#8 below), the applicant submitted an email dated July 16, 2014, to a chief at his prior unit, which was cc'ed to the XPO, in which he requested a "review of the logs for my personal records to show my compliance to station policy during my short time down there." He stated that a petty officer had advised him that his signature was on a log showing that he had checked his weapons into the station armory, which must be a forgery because his crewmates had accidentally discovered his weapons aboard the cutter and turned them over to the XPO. He stated that he had not had a chance to complete and submit the weapons declarations because he was busy with his FSO duties. The applicant stated that upon the cutter's return to homeport, he "immediately made way to the station where I declared my forms, removed my weapons from base and put them in storage. Shortly thereafter I was awarded NJP aside from the outside circumstances that led to this discipline." The applicant alleged that his NJP was not reasonable or appropriate under the circumstances.

The applicant also submitted a copy of a written statement he submitted for the mast in which he explained the "circumstances leading up to the weapons violations and to express my apologies for my mistake." The applicant stated that he had packed most of his belongings into his vehicle in anticipation of an upcoming humanitarian transfer to another unit based on his son's condition and had placed his weapons at the bottom of his pile of luggage in his vehicle and forgotten about them due to the demands of his job, paperwork, his son's

condition, and other distractions. He remembered that his weapons were in his car when someone mentioned that the base gate guards were making spot inspections, and so he moved his weapons. Unfortunately, he unpacked his car and put the weapons “in the connex box to secure proper storage for the weapons right away.” However, his crewmates discovered them in the box the next day, and his weapons were taken to the armory. When he admitted that the weapons were his, his XPO explained “the serious nature of the matter” and also gave him the proper forms to fill out so that he could have his weapons legally. The applicant stated that he was very upset that he could have been so stupid and so “blurted out a comment containing expletives in frustration. This comment was in no way directed at any individual and I have personally apologized for any misunderstanding of my respect toward senior leaders. I take full responsibility of the violations ...”

In addition, the applicant submitted an email dated July 16, 2014, in which he alleged that someone had told him that the armory log showed that he himself had signed his weapons into the armory sometime between January 25 and 30, 2014, and he alleged that his signature was a forgery.

7. A Page 7 dated February 7, 2013, noting that the applicant’s eligibility period for a Good Conduct Medal had restarted because he had received NJP the day before.
8. A Page 7 dated November 20, 2013, documenting the applicant’s first “alcohol incident.” It is signed by the applicant’s CO and the applicant and states that on November 11, 2013, the base police had been called to a disturbance in which the applicant was allegedly involved in a physical altercation with a neighbor (who was a reservist). The Page 7 states that when the police went to the applicant’s house he was non-compliant and refused to leave his residence for 45 minutes, at which point he was taken into custody on suspicion of disorderly conduct and drunkenness in violation of Article 134 of the UCMJ. The Page 7 states that the unit’s XPO was called at 2:00 a.m. to collect the applicant from the base holding cell and that he would be screened for alcohol abuse and would be processed for discharge if he incurred another alcohol incident.

Regarding the Page 7 dated November 20, 2013, the applicant alleged that it is erroneous and unjust because the reservist assaulted him and the Air Force police were biased and believed the story of the Air Force personnel involved instead of him and his wife. He submitted military police reports showing that at about 1:00 a.m. on November 11, 2013, a female staff sergeant had reported that the applicant was involved in an altercation with her husband, who was a reservist, and his own wife. When the police arrived, the applicant’s wife stated that the two men “had got into a physical altercation consisting of rolling around on the ground and that [the applicant] had departed” in his vehicle. The report states that neither the applicant’s wife nor the reservist appeared to have incurred a physical injury. One police officer heard a lot of noise coming from the back yard of the applicant’s house and was told that the applicant was kicking lawn chairs. When the police officer approached, the applicant backed into his house and refused to exit. Then he closed the windows and blinds and turned off all the lights in the house. The applicant’s wife told them “he was known to be violent.” After more than an hour and a few conversations with the police

through a window, the applicant exited his house and was arrested and charged with being drunk and disorderly. The police found the applicant's two children secure in the house.

According to the police reports, the staff sergeant and her husband told the police that he and the applicant had finished "a night of drinking" at a sports bar and found that while inside, the applicant's wife had taken the applicant's truck and left her own vehicle in its place outside the bar. When the applicant discovered this, he got upset and started walking home. The staff sergeant's husband (the reservist) called the applicant's wife to find out what had happened, and the applicant's wife came and picked him up in the applicant's truck. When they got to the reservist's house, they found the applicant there. The applicant started to get in his truck to drive home. The reservist tried to stop him from driving while intoxicated, and they got in a fight on the ground. When the applicant's wife tried to stop the fight, the applicant pulled her to the ground by her hair. After the staff sergeant called 911, the applicant got in his truck and almost hit another vehicle as he backed out of the driveway to go home.

The applicant wrote a statement saying that the reservist had texted him to go for a drink and he initially declined because he had already had drinks and had retired for the night. However, he reluctantly agreed and they went to a sports bar. While in the sports bar, his wife took his car so he would not drive home drunk. Therefore, he walked back. However, the reservist became angry at him for leaving him at the bar and pushed him. When the applicant tried to get into his truck to retrieve some gear, the reservist pulled him from the vehicle; shoved him against the passenger door, causing extensive damage to the paint; and tried to choke him. After several minutes of struggling, the reservist tired, and the applicant was able to get in his truck and drive home. After he got home, he was shocked when police surrounded his house with guns drawn even though his children were inside sleeping. He alleged that he initially refused to exit because he was very reluctant to leave the house to speak to armed police; the lights the police turned on his house were intensely disorienting; he could not quite hear everything the police were requesting; and he was befuddled about why his wife had not come home. According to the applicant's wife's report, when she picked the other man up at the bar, he was mad at the applicant and threatened to beat him up. When they arrived at his house, the man "got in [the applicant's] face," and pushed him, which started the physical altercation. She stated that she tried to stop the fight several times and fell. Then her husband got in his vehicle and drove home.

9. A Page 7 dated December 13, 2013, noting that the applicant had undergone screening for alcohol abuse on December 12, 2013, and received a diagnosis of "no diagnosis," based on his responses to questions.

The applicant submitted a photocopy of this Page 7 with notes alleging that it contained erroneous dates and information. He also submitted a memorandum from the Air Force to the Coast Guard dated July 15, 2014, which states *inter alia* that the applicant was screened on November 22, 2013.

10. A Page 7 dated June 26, 2014, documenting counseling about his "questionable absence following an emergency room visit on the evening of 23 JUN 2014," which was signed by

the applicant's CO. The Page 7 states that the applicant's wife had called the station on June 24, 2014, stating that the applicant had gone to the emergency room and been diagnosed with strep throat the night before, had been granted sick-in-quarters (SIQ) status by a civilian doctor, and would not be reporting for duty the rest of the week. In response, the XPO had emailed the applicant and directed him to go to a military treatment facility to get an endorsed SIQ status chit and update the command about his status. Over the next two days, the applicant failed to respond to multiple attempts to contact him, and so the security forces had gone to the applicant's home and told him to contact the XPO. When the applicant did so and was told to follow proper procedures to get SIQ status, he "got irritable and disrespectful with the XPO over the phone." The CO advised the applicant that "[a]ny continued acts of this nature will be documented and may result in further administrative or disciplinary action."

Regarding the Page 7 dated June 26, 2014, about his absence and lack of communication following an emergency room visit, the applicant submitted a signed statement from a BM2 saying that on June 24, 2014, he was serving as the OOD (Officer of the Deck) when a watchstander received a phone call saying that the applicant had gone to a local emergency room. When the OOD called back, the applicant's wife told him that the applicant had been diagnosed with strep throat and was told to stay home. The OOD advised the command cadre. The applicant stated that the cell phone number he had given his command was temporarily inoperable, and his XPO was angry about not being able to reach him. The XPO told him to see his primary care manager, which he did the same day. His primary care manager "reviewed the documentation [from the emergency room], did not endorse it, and provided her own additional signed medical documentation with the same date to return back to work as the original civilian doctor's note." He took this documentation to the office the same day, where he was presented with the disputed Page 7, which he signed because he felt intimidated although he did not agree with it. Then he ensured that the command had updated contact information, including his new mobile number and his wife's number.

The applicant submitted a copy of a regulation showing that certain actions must be taken when members are absent without leave for more than 24 hours and another showing that personnel may be granted sick leave by medical officers of the uniformed services or, in the absence of such an officer, by a practicing physician. He also submitted a Page 7 template showing that his command adjusted the language on the disputed Page 7 from "Petty Officer _____ was counseled for ..." to "On this date you were counseled on ..." In addition, he submitted a copy of his emergency room discharge instructions, printed at 2:39 a.m. on June 24, 2014, which show that he was diagnosed with acute tonsillitis and that he requested a work excuse and was told to return to work on June 27, 2014. His military SIQ chit shows that he received it during an appointment on June 26, 2014, and was told to return to work the next day. He also submitted an email that he sent to a chief yeoman at his unit on June 25, 2014, asking her to tell an FS1 to disinfect all surfaces because of his contagious condition.

11. A Page 7 dated August 6, 2014, documenting counseling for insubordinate conduct in violation of Article 91 of the UCMJ by willingly disobeying his CO's order on July 16, 2013, to cease and desist from contacting personnel at his prior unit to ask for copies of documenta-

tion relating to his NJP on February 6, 2013, without the command's knowledge because the five-day period for appealing the NJP had passed. The Page 7 states that the applicant had again contacted personnel at his old unit on July 30, 2014, without the command's knowledge, "with provoking verbiage putting the member in an uncomfortable position while seeking your documents." It also states that his "continued contempt towards the senior leadership of this unit will not be tolerated." The applicant refused to sign this Page 7 but its presentation was witnessed by three chiefs.

Regarding the Page 7 dated August 6, 2014, the applicant stated that on June 17, 2014, his XPO told him that he had to stop contacting personnel at his old unit requesting documents related to his NJP on February 6, 2014, because his window for appealing the NJP had passed. The applicant stated that he had been seeking documents to prove to the BCMR that his signature on a log regarding his weapons being checked in to the station armory was false. However, the XPO told him that the CO was ordering him to stop requesting the documents. The applicant alleged that this was wrongful intimidation and improper use of authority. He alleged that the email shows his XPO's "corrupt involvement to suppress and cover up the forgery inquiry and stifle my attempts to clear the mistakes in my military record, with knowledge that I aspired to join the U.S. Army specifically in a direct combat capacity."

12. A Page 7 dated August 8, 2014, documenting counseling about unsatisfactory behavior and conduct for his pay grade during the prior six months and placing him on performance probation for six months. The Page 7 states that he had been consistently derelict in his duties, absent without reason on several occasions, and hostile toward his superiors. The Page 7 states that to successfully complete the probationary period, he had to report to work on time at 7:00 a.m. in the proper uniform and ready to perform his duties and to call before 7:00 a.m. if he could not be on time. In addition, his attitude "must take a turn for the better. You must take stock in your actions and be accountable for yourself. You cannot continue to blame others for your shortcomings. Any disrespectful actions towards a member of this command will violate the terms of this probation. If your demeanor towards your office mates creates a hostile or uncomfortable work environment, you will be in violation of this contract. If you show up late to work or other obligation without proper cause, you will be in violation of this contract." The Page 7 states that he would be observed, counseled, and mentored and that if his performance did not improve, the command would recommend his separation. The applicant refused to sign this Page 7 but its presentation was witnessed by three chief petty officers.

Regarding the Page 7 dated August 8, 2014, which placed him on performance probation, the applicant submitted a handwritten work log for the period June through September 2014 on which he listed what he did each day. He also submitted an email he sent on June 18, 2014, complaining to his superiors that his request for 34 new mattresses had been reduced to 19 without advising him and alleging that the change "potentially compromises the integrity of the FORCECOM Housing standards and regulations I strictly adhere to." Another email from the applicant dated August 27, 2014, asks for certain housing and purchasing policies to be clarified and complains that others were not following policies. He

noted the mattress issue and complained that he was being consistently ignored and dismissed, that he was not getting respect, and that he was being left out of the loop.

The applicant also submitted an undated chronology of the events that led to his disenrollment from housing training in August 2014. He stated that on August 6, 2014, the second day of training, he was 30 minutes late because he got a flat tire and had to change it and return to the hotel to retrieve his cell phone to call the station. On the third day of training, on August 7, 2014, he was an hour late because all of his identification and his GTCC had been stolen. He submitted a copy of the OOD's log which notes that at 4:21 p.m. on August 7, 2014, the applicant reported that his GTCC had been stolen at a steak house and had been "used by the unknown individual at [the steak house] and several other nearby establishments. The credit card company has been notified." The log also shows that at 4:50 p.m., the applicant notified the OOD that he had reported the theft to the police.

On the fourth day of training, Friday, August 8, 2014, the applicant stated, he did not arrive until 1:35 p.m. because, the night before, he had driven two hours north of the station in a vehicle but had insufficient funds to get back. GTCC Customer Service agreed to provide emergency funds for him at a Walmart on the morning of August 8, 2014, but after a petty officer sent him \$50, he was ordered by a chief to leave the Walmart and return to the center. Of the \$50, he spent \$10 on food and \$40 on gas, but he ran out of gas in front of his house, and so his wife drove him to the station in her vehicle because he had not slept for 44 hours. The applicant submitted a copy of the OOD's log, which shows that he called the OOD at 6:40 a.m. to report that he was at a Western Union awaiting a money transfer and that he arrived at the station at 1:30 p.m.

The applicant stated that when he arrived at the station at 1:35 p.m., he received disciplinary counseling from three chiefs and a first class petty officer and was shown three negative Page 7s and a CG-4910 charging him with unauthorized absence, willful neglect and destruction of Government property, and disobeying a direct order by asking someone to confirm that his signature had been forged in a log book. The applicant stated that he was placed on performance probation by a dismissive, arrogant, and intimidating chief; that the chief had refused to give him copies of documents that the applicant had refused to sign because he was tired and would not sign them without counsel; and that in telling him his Article 31 rights and instructing him about the form to acknowledge his rights, the chief's reading was insufficient and incomplete. The applicant stated that after the chief read him his rights and left the room, he said to himself, "I go above and beyond every day. I put in 110%. Bad things happen to good people." The applicant stated that two others present encouraged him to make a statement but he told them that he was extremely fatigued and not fit to recite the facts and that he had not reviewed the GTCC statements, which the chief had said showed fraudulent charges. After he refused to make a statement before consulting counsel, the XPO returned and said that he was going to recommend that the applicant be tried by summary court-martial. The counseling session ended at 2:20 p.m.

The applicant stated that on Monday, August 11, 2014, a first class petty officer was designated as the preliminary investigating officer (PIO) and met with the applicant. The PIO again informed him of his rights, and the applicant again refused to answer questions

without counsel. He was advised to consult counsel within ten days and provided with the telephone number of the District's legal office. He called the office three times and left numerous messages. He spoke to two lieutenants who said he would be contacted by an attorney, but she had not yet contacted him.

The applicant stated that on August 21, 2014, he requested a meeting (request mast) with the command chief. He was called to a meeting with the CO and the command chief. The CO told him that "he could do nothing for me with changing any of the documentation," even though the applicant pointed out the vagueness of the language on the Page 7 documenting his second alcohol incident. He stated that the CO showed cold disregard for his explanations of his first alcohol incident and being SIQ and told him to follow the instructions for having his record corrected if he disputed the Page 7s he had received from prior commands.

13. A Page 7 dated September 5, 2014, documenting the applicant's second alcohol incident. The Page 7 states that while attending training, the applicant was "involved in several instances that alcohol was or may have been the leading cause for your discharge from training and your misuse of your Government Travel Card." The Page 7 states that the applicant would be discharged as a result of the second alcohol incident.

The applicant submitted a template for a Page 7 documenting misuse of a Government travel credit card (GTCC), which is different from the template for documenting an alcohol incident, as well as regulations concerning the use of the card. The applicant alleged that his OIC refused to be reasonable and correctly apply policy regarding corrective actions when he misused his Government credit card because of a misunderstanding. He stated that his OIC issued him a letter of reprimand and suspended his card.

The applicant also submitted an email from a yeoman to the applicant dated Saturday, August 9, 2014, asking the applicant to call him because his GTCC "has high charges over the last 3 days totaling 341.00 at 'restaurants,' with 219.00 dollars charged yesterday." The applicant's reply email to the yeoman, dated August 11, 2014, at 3:46 p.m., stating that the card had been stolen and that he had reported the theft to the bank and the police. However, he noted, "there was a mis-communicated error that there were charges on my card that were disputable due to the fact it was stolen." The applicant stated that he had receipts for all of the reported charges except for one and that he did not have any disputes with the GTCC statements about his charges. He noted that he had never before had any issues with the Government credit cards he had been issued as a Jack of the Dust, Food Service Officer, and traveler. He stated that he hoped "this will all be resolved in a sound, reasonable, prudent manner and I will resolve any issues should they arise." The applicant sent the yeoman another email a couple of hours later saying that he had been unfamiliar with the meal and incidental (M&I) rate entitlement and had thought that he just had to avoid exceeding the total amount allotted for the entire period of travel overall and not the actual daily rate each day. In addition, a print-out of the applicant's GTCC charges shows that from 11:04 p.m. on August 6, 2014, to 3:14 a.m. on August 7, 2014, the applicant made four charges totaling \$238.02 at a Miami night club. The print-out also shows a charge of \$250—presumably the money order—at 7:45 a.m. on the morning of Friday, August 8, 2014.

In support of his allegations, the applicant submitted copies of many documents, including the following:

- In memoranda dated October 12, 2012, and November 6, 2012, the applicant requested a humanitarian assignment to Kansas City, where his family lived. He stated that his son had recently undergone surgery for a tumor on his spinal cord. He attached documents including a memorandum from the Children's Hospital in Kansas City regarding his son's condition; a memorandum from his son's oncologist regarding his son's condition; and a memorandum from the Recruiter-in-Charge in Kansas City noting that the office was closing in April 2013 and that he was short-staffed and could use the applicant's help.
- A memorandum from a manager at the Coast Guard Civil Rights Directorate dated January 4, 2013, regarding the applicant's complaint of harassment by his unit leaders on December 29, 2012. He had complained that although he had been granted leave for the period September 27 through December 26, 2012, to care for his son, who had undergone surgery, his command had seen fit to give him three negative Page 7s and a poor performance evaluation while he was on leave. He also complained that his unit leaders had not adequately supported his request for a humanitarian transfer to Kansas City and so it was denied by Coast Guard Headquarters. The memorandum states that after being advised of the procedures, the applicant had informed the directorate on January 4, 2013, that he did not intend to file a discrimination complaint at the time, but that his decision did not interfere with his right to file one at any point in the future.
- An email from the manager at Civil Rights Directorate forwarding the January 4, 2013, memorandum and noting that the applicant's wife had called her that day and told her that your chain of command was angry about his EEO action. The manager stated that if his chain of command retaliated against him, he should contact her within 45 days of the reprisal.
- A statement from a second class petty officer (PO2) who served aboard the applicant's cutter from June 2012 through February 2013. The PO2 stated that the applicant told him that a Chief Engineer aboard the cutter made racist comments to the applicant when no one else was around. The PO2 stated that the applicant was a very quiet and dedicated professional, who focused on his job and treated everyone with respect. They became friends and eventually the applicant told him that he was quiet because "he didn't feel that there was many people that he could trust." The PO2 stated that because of the Chief Engineer's racist comments, the applicant began to spend as much time away from the cutter as possible, and his positive attitude began to change. The applicant advised the entire crew that he did not like to be called by the traditional term "Cookie," but the Chief Engineer "took the longest to let those comments go," especially when he and the applicant were alone. The PO2 stated that he never heard any racist comments, but he believed the applicant's complaints although nothing could be proved.

The PO2 further stated that after the applicant's son was diagnosed with cancer in September 2012, the applicant was allowed to transfer to an area where his son could get good care. Before he transferred, however, their cutter was homeported at a Navy base.

Instead of immediately checking his weapons into the Navy armory, he temporarily stored them in the cutter's connex box. The PO2 stated that the applicant would never have made this mistake if he had not been overwhelmed by his family's suffering and "the constant oppression of a hostile work environment. As his representative at his Captain's Mast, I tried my best to express this."

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on November 5, 2008. He was initially assigned to a cutter and received a Page 7 dated March 1, 2009, highly praising his work as a duty cook in the absence of the cutter's Food Service Officer, as well as two Letters of Commendation from the Sector Commander for his performance aboard the cutter. The applicant then attended FS "A" School to become a food service specialist (FS3/E-4) and was selected to be his class's Honor Graduate. Following FS "A" School, the applicant was assigned to another cutter. In addition to the disputed Page 7s listed at #1, above, the applicant's record contains the following performance entries from the command of this cutter:

A Page 7 dated March 19, 2010, states that, while assigned as a duty cook, the applicant had left the galley dirty and the trash cans full and had not checked out with the Officer of the Deck (OOD) before leaving the cutter. He had to be recalled to complete this work but left again without removing the trash bags, despite being directed to do so, and had to be recalled a second time. In addition, he had repeatedly lied to the OOD, claiming that he had never stood the inport duty cook watch before and had not known that he had to check out with the OOD.

A Page 7 dated May 21, 2010, states that the applicant had failed to report for duty on time and had to be piped to the bridge; failed to follow instructions, which "caused the first fix to be missed during a Piloting Drill"; and had to be directed to leave the Mess Deck to report to his duty station on another occasion.

A Page 7 dated June 16, 2011, states that the applicant was being counseled about failing to report to work on time and that further occurrences would result in administrative discipline.

While off duty in 2011, the applicant risked his own life to save someone in danger of drowning and was subsequently awarded a Silver Lifesaving Medal. The applicant also received awards from two other organizations because of this incident. The Coast Guard later used the applicant's image and heroism on a postcard used by recruiters.

A Page 7 dated April 18, 2012, states that the applicant had failed to return to the cutter on time following liberty on March 30, 2012. He was more than 3 hours late. In addition, while on liberty, the applicant had violated the cutter's liberty policy by leaving the city limits, traveling without a crewmate, and failing to call and notify the cutter when he knew he would be late.

A Page 7 dated May 2, 2012, states that the applicant had earned an award for Dining Facility of the Year and had "consistently [gone] above and beyond in your food preparation and Jack of the Dust responsibilities throughout your time onboard" the cutter.

In June 2012, the applicant transferred to another cutter. The disputed documents listed #2 through #7 above were received while assigned to this cutter.

On February 20, 2013, following the NJP, the applicant transferred to a shore unit, a Sector Command. The disputed documents listed #8 through #13, above, were received while assigned to this shore unit.

On September 19, 2014, the applicant's CO notified the applicant in a memorandum that he was initiating the applicant's discharge for unsuitability because of his two alcohol incidents. The memorandum advised the applicant of his right to object and to submit a statement. The applicant acknowledged this notification, objected to the discharge and submitted a statement in which he discussed some of his accomplishments in the Coast Guard but stated that he had suffered due to the "high level of unilateral authority" in a military chain of command. He stated that many of his Page 7s and disciplinary actions "under closer observation show corruption, subtle hints of emotional peevish, hastily submitted administrative disciplinary documentation containing false official statements, forgery of my signatures, generalities, errors, and lack of clear and concise facts [and] supportive documentation prepared reference and submitted according to current CG policy." The applicant alleged that "[m]any of my commands did not operate inside the guidelines of CG policy. And had on multiple occasions incorrectly and hastily documented my performance [and] conduct negatively so much so. It destroyed my trust in the valued insight, advice, and mentoring senior leaders could provide, and affected me so much I could no longer trust my career in the hands of individuals like these charged to lead me 'correctly [and] in good faith.'"

After receiving the applicant's statement, the CO forwarded a package to the Personnel Service Center (PSC) in which he recommended the applicant's discharge due to his involvement in a second alcohol incident. On October 1, 2014, PSC issued discharge orders directing that the applicant be discharged for unsuitability due to alcohol abuse but with the narrative reason for separation "miscellaneous/general reasons" and an RE-4 reentry code.

The applicant claimed that his review of his records has revealed ten false official statements made by command members; one forgery of his signature, which was used to support his NJP; and three violations of his Article 31 right not to incriminate himself;

The applicant alleged that his Coast Guard commands had intentionally failed to act, misguided him about his duties, verbally abused him on documented occasions, and demoralized him. He stated that he had worked in hostile work places where he avoided members of the command for fear that "any assertion of my concerns regarding my duties will unintentionally be perceived as disrespectful or taken in a hostile manner." He alleged that his commands had imposed many undue hardships and intense burdens on his family, including the two members of his family who have special medical needs. The applicant stated that his wife has severe anxiety, a heart condition, and upcoming surgery, and that his son has cancer.

The applicant stated that the stress of his career had taken a toll on his marriage and made his wife suffer emotionally every day and have a mental breakdown. He stated that he worried and consoled her but could not control the life events that destroyed the cohesion and stability of

his family, so he had lost his wife, displaced his children, and sacrificed his career, educational opportunities, savings, pets, friends, and family due to “the effects of abuse in my job that I suppressed.” The applicant stated that he had reported this abuse, corruption, and mismanagement to the Inspector General, to his congressman, and to the Office of Civil Rights. The applicant stated that before he joins the Army, he needs to get treatment for his wife, stability for his kids, her “hero son back” for his mother, and a lot of other things, but his command’s decisions have jeopardized his family.

The applicant admitted that he had “made mistakes, always shouldered the blame, and never contested the discipline. Unforeseen circumstantial events out of my control that led to break downs in communication and very small lapses in situational awareness that wouldn’t have allowed enough opportunity to have executed better judgement in a more acceptable way.” However, he alleged, he led by example, prided himself on his high performance, and always put the needs of others ahead of his own.

On September 23, 2014, the Sector Commander referred the applicant for an emergency mental health evaluation based on the recommendation of a medical officer. He noted that the applicant was being processed for separation due to a second alcohol incident. That day, he had “made disturbing comments along the lines of ‘no wonder people kill themselves’ and ‘no wonder people kill other people and go off’ and other rants.” The Sector Commander that the applicant had “previously been involved in several domestic disputes, documented by police reports” in which his wife had said the applicant was suicidal.” In addition, several members of the command had reported the applicant exhibiting “strange behavior and often times incoherent thoughts and speech. Furthermore, the member has expressed to his Supervisor that he has a large amount of weapons.” The Sector Commander noted that he would advise the applicant of his rights and the reasons for the referral and have the applicant escorted to the hospital.

On October 9, 2014, the applicant received an honorable discharge for “miscellaneous/general reasons” and an RE-4 reentry code.

VIEWS OF THE COAST GUARD

On November 5, 2015, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion and recommended granting partial relief. The JAG adopted the findings and analysis provided in a memorandum prepared by PSC.

PSC recommended that the Page 7s (see #1 on page 1) documenting the results of the applicant’s self-referral for alcohol abuse screening be removed from his record pursuant to Chapter 2.B.5.b. of COMDTINST M1000.10, as he alleged.

PSC also recommended removing the Page 7 dated August 6, 2014 (#11) documenting the applicant’s violation of the order not to contact his prior unit to try to gather evidence relating to his February 6, 2013, mast because, although the time for appeal had passed, a member may appeal after the 5-day deadline for appeal if good cause is shown. PSC stated that the applicant’s command should not have prohibited him from communicating with members who might have had information related to his NJP.

PSC did not support removing the applicant's NJP or any of the other Page 7s, arguing that, except for some erroneous nomenclature (P&D-02 instead of P&D-07), the applicant has not proven that these Page 7s contain substantive or prejudicial errors or are unjust. PSC stated that such Page 7s are completed in accordance with policy to document substandard performance.

PSC also did not support upgrading the applicant's reentry code. PSC stated that the RE-4 is appropriate for members who are discharged with the JND code who have committed misconduct, and both of the applicant's alcohol incidents involved misconduct (DUI and misuse of his GTCC) and brought discredit upon the uniformed services. PSC noted that the applicant's second alcohol incident also caused his disenrollment from training and so resulted in his inability to perform assigned duties. PSC stated that the applicant's RE-4 was issued because of his record of misconduct and should not be upgraded.

In support of these allegations, PSC submitted copies of regulations and the applicant's records and the following:

- An email from the applicant's OIC in 2014, who wrote that the applicant "earned these PG-7s" and that he stood behind them.
- An email from the applicant's CO aboard the cutter from June 2012 to February 2013, who wrote that the Page 7s "are correct and accurate as well as the NJP. The NJP was for the member bringing personal weapons onto a Navy base/CG Station and then hiding them in the cutter storage locker vice declaring them and storing them properly with either the Navy or CG. I do not recommend removing any of these documents." Regarding the contested EER, he noted that the version the applicant submitted was erroneous because he had appealed his marks and the CO had raised several of them.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

In response to the views of the Coast Guard, the applicant disagreed with them and submitted emails in which he discussed racism and repeated many of his allegations and arguments and made many new ones. He stated that in the Coast Guard he was scrutinized because of his race and had been subject to many micro-aggressions, but he refused to be shamed, silenced, or stereotyped. In support of his allegations, the applicant submitted the following:

- His October 31, 2013, EER shows that he received high marks of 5, 6, and 7 in the various performance categories and was recommended for advancement. He alleged that this strong EER casts doubt on the content of the Page 7 dated November 20, 2013.
- A copy of the Board's final decision in BCMR Docket No. 2008-065, a case in which the Board denied that applicant's request to remove documentation of an alcohol incident.
- An email from a Coast Guard employee confirming that the topics covered during the housing training in 2014 included "BAH Data collection, UPH, CG Owned and Leased Housing Management, and Lease Negotiation."

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 over this matter under 10 U.S.C. § 1552. The application was timely filed within three years of the applicant's discharge.¹

2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.²

3. The applicant alleged that his RE-4 reentry code and numerous documents in his record are erroneous and unjust. In considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed documents in an applicant's military record are correct and fair, and the applicant bears the burden of proving by a preponderance of the evidence that the documents are erroneous or unjust.³ Absent specific evidence to the contrary, the Board presumes that Coast Guard officers and other Government officials have carried out their duties "correctly, lawfully, and in good faith."⁴

4. The Board agrees with the applicant and PSC that the two Page 7s documenting his self-referral for alcohol screening dated June 25, 2010, and April 26, 2011 (#1 above) should be removed from his record pursuant to Chapter 2.B.5.b. of COMDTINST M1000.10.

5. The Board agrees with the applicant and PSC that the Page 7 dated August 6, 2014 (#11 above), should be removed from his record because it documents his disobeying an order that apparently should not have been given. Although a member does not have the right to harass other members, a member does have the right to seek copies of documents to gather evidence to support an appeal of an NJP or an application to the BCMR. There is no evidence that the applicant was harassing anyone to gather evidence. His CO apparently ordered him not to seek evidence after he sent a single email to his prior command. Accordingly, the Board agrees that this Page 7 should be removed from the applicant's record.

6. The applicant has not shown that any of the other Page 7s in his record are erroneous or unjust. While the Page 7s on page 2, above (##2, 3, and 4), were mischaracterized as (P&D-02) instead of (P&D-07), these typographical errors are not prejudicial to the applicant and do not warrant correction or removal of the Page 7s. The applicant has not submitted sufficient evidence to cast doubt on the substantive content of these Page 7s. He has shown that he was granted three months of leave because of his son's condition and took a flight home on the evening of September 28, 2012, but his being on leave for three months starting on the evening

¹ 10 U.S.C. § 1552(b).

² See *Steen v. United States*, No. 436-74, 1977 U.S. Ct. Cl. LEXIS 585, at *21 (Dec. 7, 1977) (holding that "whether to grant such a hearing is a decision entirely within the discretion of the Board").

³ 33 C.F.R. § 52.24(b).

⁴ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

of September 28, 2012, does not show that the Page 7s, which criticize his performance during the period before he went on leave, are erroneous or unjust. Nor does the December 4, 2012, memorandum reporting the applicant's formal relief as FSO prove that he left the galley and food stores in good condition on September 28, 2012. By December 4, 2012, the applicant had not been aboard the cutter serving as FSO for more than two months and so the fact that the inventory showed no overages or shortages, all files organized, and a clean galley and food service area on November 30, 2012, is not attributable to the applicant. The Board finds that the applicant has not proven by a preponderance of the evidence that the Page 7s summarized on page 2, above (##2, 3, and 4), are unjust or substantively erroneous.

7. The applicant has not shown that his EER dated October 31, 2012 (#5), is erroneous or unjust. He apparently submitted the copy of the EER he received prior to an informal appeal that resulted in some raised marks, and he has not shown that the final version of his EER is erroneous or unjust. In particular, he has not shown that the negative marks and comments in this EER are inaccurate.

8. The applicant has not shown that his NJP on February 6, 2013, and the consequent termination of his eligibility period for a Good Conduct Medal (##6 and 7) are erroneous or unjust. The record shows that the applicant admitted to the offenses and offered his explanations for his violations at mast. The applicant has shown that there were mitigating circumstances—the stress and distraction caused by his family's illnesses and his upcoming transfer—but there is no evidence that the CO did not consider the mitigating circumstances before awarding the applicant very little punishment as NJP for his very serious weapons offenses: only one week's restriction with extra duties, plus a week of extra duties that was suspended. The applicant alleged that someone forged his signature on an armory log entry indicating that he had checked his weapons into the armory during the last week of January 2013, but even if proven, such a forgery would not cast doubt on his NJP because he admitted to the violations at mast. The Board finds no basis for removing the NJP (#6) from his record, and the termination of his eligibility period for a Good Conduct Medal—documented by the Page 7 dated February 7, 2013—was an automatic consequence of being found guilty of the offenses at mast. Therefore, there is no basis for removing this Page 7 (#7) from his record.

9. The applicant has not shown that the documentation of his first alcohol incident (##8 and 9) is erroneous or unjust. He has not submitted substantial evidence to prove that his arrest for being drunk and disorderly by military police was erroneous or unjust, and it certainly meets the definition of an "alcohol incident."⁵ The Board finds that the Page 7s properly document the applicant's alcohol incident and screening,⁶ and there are no grounds for removing them from his record.

⁵ Article 1.A.2.d. of COMDTINST M1000.10 defines an "alcohol incident" as "[a]ny behavior, in which alcohol is determined, by the commanding officer, to be a significant or causative factor, that results in the member's loss of ability to perform assigned duties, brings discredit upon the Uniformed Services, or is a violation of the Uniform Code of Military Justice, Federal, State, or local laws. The member need not be found guilty at court-martial, in a civilian court, or be awarded non-judicial punishment for the behavior to be considered an alcohol incident." Under Article 2.B.8.b., members who receive a second alcohol incident are normally processed for separation.

⁶ Articles 2.B.5.a. and 2.B.7. of COMDTINST M1000.10 require an "alcohol incident" and alcohol screening results to be documented on Page 7s in the member's record.

10. The applicant has not shown that the Page 7 dated June 26, 2014 (#10) is erroneous or unjust. Although he submitted evidence showing that early in the morning on June 24, 2014, a civilian emergency room doctor diagnosed him with tonsillitis and advised him to stay home for three days, he has not shown that he was not supposed to seek an SIQ chit from a military medical authority before staying home and not communicating with his chain of command. The rules that he submitted show that a civilian physician's advice is sufficient only when there is no military medical officer available, and the applicant was assigned to a region with a military medical facility where he could have received a valid SIQ chit, as his command required. He has submitted no evidence to show that a military medical facility was not reasonably available to him or that he was so ill that he could not properly communicate with his chain of command. His email to a yeoman regarding the sterilization of surfaces in the galley shows that he was not too sick to communicate, and it does not persuade the Board that he followed policy for receiving a proper SIQ chit or that he properly communicated with his chain of command.

11. The applicant has not proven by a preponderance of the evidence that his command committed error or injustice in placing him on performance probation, as documented on the Page 7 dated August 8, 2014 (#12). He has not shown that the Page 7 is erroneous or that his disenrollment from housing training after he was repeatedly late and misused his GTCC at a night club and then erroneously claimed that the charges were those of a thief was erroneous or unjust. He submitted work logs and an email in which he claimed that he was ignored and disrespected, but his evidence does not show that his command's judgment with regard to his performance was erroneous, prejudiced, or unjust.

12. The applicant has not proven by a preponderance of the evidence that the Page 7 documenting his second alcohol incident (#13) is erroneous or unjust. The wording on the Page 7 is unusual in that it notes "several instances that alcohol was *or may* have been the leading cause for your discharge from training and your misuse of your Government Travel Card." (Emphasis added.) The definition of an alcohol incident requires a member's CO to determine that the member's consumption of alcohol *was* a "causative factor" (not necessarily a leading factor) in the member's disreputable conduct.⁷ In awarding the applicant an "alcohol incident," the CO was apparently persuaded by a preponderance of the evidence that at least some of the applicant's misconduct in missing training and misusing his GTCC at a night club was attributable to alcohol consumption. Although the wording of the Page 7 is not a model of clarity, the Board finds that the applicant has submitted insufficient evidence to cast doubt on his CO's conclusion that his consumption of alcohol at the night club was a leading or causative factor in at least some of his late arrivals for training and misuse of his GTCC at the night club.

13. Although the applicant asked the Board to upgrade his RE-4 reentry code, the Board finds that his record contains sufficient evidence of misconduct to justify the RE-4. The record strongly supports the Coast Guard's decision to discharge him, and he has not submitted sufficient evidence to show that his ineligibility to reenlist is erroneous or unjust.

14. Accordingly, relief should be granted by removing from the applicant's record the disputed Page 7s dated June 25, 2010; April 26, 2011; and August 6, 2014, but no other relief is warranted.

⁷ See footnote 5.

ORDER

The application of former [REDACTED] [REDACTED] USCG, for correction of his military record is granted in part. The Coast Guard shall remove from his record the Page 7s (CG-3307) dated June 25, 2010; April 26, 2011; and August 6, 2014. All other requests for relief are denied.

May 13, 2016

