

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2023-055


Seaman – E3/SN (former)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on January 30, 2025, and assigned it to an attorney to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated January XX, 2025, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT’S REQUEST AND ALLEGATIONS

The applicant, a Seaman—E3/SN (former) who received a discharge under honorable conditions (general) on July 14, 2023, for wrongfully using social media and message applications to access and transmit discriminatory and sexually explicit content from a Coast Guard workstation has, through counsel,¹ asked the Board to correct his record by: upgrading his discharge to honorable and that the narrative reason for separation, the separation code, and the reentry codes be changed to reflect “Secretarial Authority” as the basis for separation; receiving a permanent medical retirement with at least 30% disability; and receiving back pay dating back to the appropriate effective date of this medical retirement. The applicant requests, in the alternative, that his case be inserted into the Disability Evaluation System for evaluation as to whether he should be medically retired and any other relief that is equitable and just.

The applicant, through counsel, asserts that he was medically unfit for duty based on, among diagnoses of lumbar radiculitis, lumbar pain, and acute thoracic back pain. In addition, the applicant provides that his medical records establish other conditions that demonstrate that he

¹ The applicant appears to have retained and used the services of counsel in responding to the Coast Guard’s advisory opinion on this application. There is no indication that the applicant retained or used the services of counsel in his initial application. The applicant’s response to the advisory opinion, in addition to responding to the Coast Guard’s opinion, clarifies the applicant’s request and relief sought.

was unfit for duty, to include post-traumatic stress disorder (PTSD) with traumatic brain injury (TBI), migraine headaches, obstructive sleep apnea, left shoulder strain, bilateral tinnitus, cervical strain, gastroesophageal reflux disease, left wrist strain, lumbosacral strain, left and right lower extremity radiculopathy, and temporomandibular disorder. The applicant provides that these conditions collectively caused him to be unfit for duty as they would have prevented him from reasonably performing his duties and would have continued to do so had he remained in the service, posed a medical risk to his health, and interfered with his work and social relationships. The applicant further states that these medical conditions would have imposed unreasonable requirements on the Coast Guard to maintain him as a member given the extent of the ongoing treatment and observation required to address his condition and he would not have been deployable in his condition. The applicant provides that on this basis he should have been medically retired. The applicant states that the medical evidence in his record establishes that he is entitled to at least a 30% disability rating for his unfitting medical conditions. He states that the Department of Veterans Affairs (VA) has rated him at 100% disabled.

The applicant states that he should have been medically retired notwithstanding that he was subject to an adverse separation action. The applicant provides the Coast Guard was aware that he was suffering from a behavioral health condition that contributed to the misconduct in this case. The applicant states that his military and medical records reflect that any misconduct on his part was caused and/or significantly mitigated by the severe and significant medical issues he sustained during his multiple combat deployments. The applicant provides that he should have been medically retired rather than involuntarily separated for misconduct and that the Coast Guard's actions to the contrary constitute an error and entitles Applicant to the requested relief. Alternatively, the applicant provides that, given the minor nature of the alleged misconduct at issue and the severity of the medical issues involved, the facts of this case weigh in favor of granting him a medical retirement as a matter of equity.

The applicant further argues that he was suffering from PTSD while in service at the time of this discharge and is thus entitled to liberal consideration in determining whether he should be granted relief. The applicant states that the record establishes that he was diagnosed with PTSD and experienced symptoms of PTSD while in service and that his VA records establish that his PTSD is service connected. The applicant posits that he was suffering from PTSD when the misconduct for which he was discharged took place and that the record provides evidence that his "traumatically-induced stress" caused or contributed to that misconduct. The applicant also provides that the totality of the evidence demonstrates that Applicant's mental health condition significantly outweighs his discharge because his mental health conditions entirely caused the misconduct and the misconduct itself was minor.

The applicant's Medical Evaluation Board (MEB), the first step in the Physical Disability Evaluation System (PDES), dated February 3, 2023, recommended that he be found not fit for duty and separated from the Coast Guard. The MEB states that at the time of the evaluation the applicant was serving in a limited capacity and was incapable of standing and sitting for extended periods of time. The MEB also states that the disqualifying condition is likely to be acute/grave.

The applicant provides a letter dated May 31, 2023, a clinical neuropsychologist (Dr. A) treating the applicant explained that he had been referred for evaluation and treatment on September 13, 2022, by his USCG clinical provider with an initial diagnosis of adjustment disorder with anxiety, a history of multiple falls, and chronic pain. Dr. A provides that she saw the applicant for a diagnostic interview in October 2022, but his treatment was disrupted because he was scheduled to have lumbar surgery. Dr. A provides in her letter that during the diagnostic interview the applicant told her that he had been having significant problems with anxiety that had been building over his two years with the Coast Guard, to include nightmares of dead people, being pursued or pursuing others and an inability fall asleep in less than one to two hours.

Dr. A states that she saw the applicant for a second therapy session on May 11, 2023, and that the applicant was given neuropsychological testing from May 19, 2023, through May 26, 2023. Dr. A provides that during his third therapy session on May 30, 2023 the applicant divulged that he had just found out that he was getting a general discharge for the misconduct that had been the basis for his seeking treatment. Dr. A states that after performing a full neuropsychological evaluation she learned that the applicant has PTSD and generalized anxiety disorder (GAD). Dr. A states her conclusion that the applicant's misconduct resulted from his seeking a to release the traumatically induced stress that was building from the part of his service that brought him into contact with dead people and other difficult situations.

The applicant submits emails with the Coast Guard regarding his attempt to have his separation order cancelled and his MEB continued. This includes an email dated June 1, 2023, from a Coast Guard disability attorney that represented the applicant providing the Coast Guard with the letter from Dr. A to support his request to have his separation orders cancelled and allow his MEB to be completed and an email from the applicant dated June 1, 2023, to Rear Admiral T making the same request. By email dated June 13, 2023, the Personnel Service Center (PSC) notified the applicant's disability attorney that the applicant would be separated for misconduct as previously scheduled. By email dated June 14, 2023, the Coast Guard informed the applicant that the PSC had re-issued his separation authorization with the original effective date of June 23, 2023. (as noted above the applicant's actual separation date would be July 14, 2023).

The applicant provides medical records in his application. The medical records he submits includes a DD Form 2807-2 dated May 2020, documenting his enlistment examination in which the applicant stated that at that time he did not have, and did not have any history of, among other conditions, trouble sleeping, considering suicide, PTSD, nor any other psychiatric problems. The medical record he submits also includes a DD Form 2808 dated May 11, 2021, documenting his commissioning physical in which the applicant stated at that time that he did not have and had never had, among other conditions, anxiety, trouble sleeping, nor depression and had not previously sought counseling nor attempted suicide. The medical records he submits also includes his record from a behavioral health facility that he was admitted to on June 13, 2023, and discharged from on June 30, 2023. The reason for the applicant's hospitalization was his professed suicidal ideation, PTSD, anxiety, flashbacks poor sleep, nightmares, memory lapses, and avoidance of military things and water. He also stated that he had seen a team member hang themselves. The applicant was discharged after some improvement (no suicidal ideation) and was diagnosed with unspecified depressive disorder, unspecified anxiety disorder, PTSD, and a

medical diagnosis of chronic pain. His follow up care included mental health/intake therapy with Dr. A.

The applicant also provides a Report of Medical History, DD Form 2807-01, signed by the examiner on July 11, 2023, that includes references, among other conditions, to head injury, memory loss, panic attacks, trouble falling and staying asleep, nightmares, depression, excessive worry, PTSD, and GAD. He also submits a Report of Medical Examination, DD Form 2808, date stamped July 11, 2023, that includes diagnoses of anxiety, panic attacks, and PTSD.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on August 10, 2020. The applicant was discharged effective July 14, 2023, under honorable conditions (general) for misconduct (separation code JKQ). His reentry code is RE4, indicating that he is not recommended for reenlistment.

The applicant's military personnel file includes a CG-3307 with negative remarks signed November 24, 2020 (acknowledgment signature by applicant dated November 30, 2020), for failing to adhere to student barracks policies. In this CG-3307, the Commanding Officer provides the following remarks to the applicant:

Your inability to adhere to policies and procedures to follow general orders is lacking. Your blatant disregard for basic rules and unit regulations highlight a lack of maturity, judgment and integrity. I am particularly concerned that your actions were extremely irresponsible and selfish given the very real threat of COVID-19, and that your actions put the health of ...staff and students, as well as the success of our training mission, at risk. Your action is unbecoming of a potential Petty Officer and is not in alignment with the Coast Guards Core Values.

The applicant's military personnel file also includes a letter of commendation dated January 31, 2022, for performance of duty while serving August 28, 2021, to September 10, 2021, in response to the devastation caused by Hurricane Ida.

Coast Guard's Insider Threat Division sent a referral to the applicant's Command on March 22, 2022, outlining conversations the applicant engaged in on a Coast Guard workstation. By memorandum dated April 13, 2022, a Preliminary Inquiry Officer was designated to investigate an allegation of inappropriate and unauthorized conversations on a Coast Guard workstation during a 90-day period starting in January of 2022 by the applicant.

On April 19, 2022, the applicant signed a document acknowledging that he had been informed of his Uniform Code of Military Justice (UCMJ) and Miranda/Tempia Rights. The applicant also acknowledged that he had been advised that he was being investigated for a potential violation of Art. 92, UCMJ (Failure to obey an order or regulation), specifically, unauthorized use of a Coast Guard workstation. The applicant further acknowledged that he was suspected of

inappropriate and unauthorized conversations on a Coast Guard workstation during a 90-day period starting in January of 2022.

By memorandum dated April 15, 2022, the Preliminary Inquiry Officer produced a report of investigation summarizing that after receiving an email from his Command on March 31, 2022, outlining Coast Guard's computer use policy, the applicant continued to use Coast Guard systems to view social media containing extremist content and expresses viewpoints based on race and sexual orientation. The report stated that the applicant continues to view material related to and discusses topics involving weapons each time he logs into Coast Guard systems and has viewed violent content. The report then details the unauthorized content. The record includes a summary of interview with the applicant on April 19, 2022, in which the applicant admits to the Preliminary Inquiry Officer in which he admits to the unauthorized use of Coast Guard systems and that he knew that what he was doing was unauthorized. He indicated that he was having difficulty managing stress and was recently diagnosed with erectile dysfunction and that social media use was a stress relieving outlet.

The applicant had an initial evaluation at a physical therapist dated May 12, 2022. The applicant reported at that time that he had some back pain with some radiation into his leg, numbness/tingling into the thighs as well as some wrist pain. He stated that this pain started about six months prior when he suffered a fall from a flight of stairs. The applicant provided that he could tolerate sitting for one hour without pain. The applicant described his health as very good and denied having any other health issues. However, by May 24, 2022, the applicant reported to a medical provider that he was having worsening symptoms of back pain. The applicant had an MRI on his spine on June 3, 2022. The applicant had multiple visits with medical providers in June to August of 2022 continuing to complain of lower back pain.

The applicant's medical records provide that by September 6, 2022, any time the applicant was instructed to physically show up to work he endorsed extreme pain to the point that he had to be transported to the emergency room. Medical notes from the applicant's medical provider dated September 12, 2022, describe that the applicant had fallen at least three times in the last year. Those medical notes also provide that the applicant reported being feeling "a lot of fear about what is going on with his command" and that he overall felt very anxious. However, at this time he denied a history of trauma or depression and also denied a depressed mood or excessive anxiety and reported that he was sleeping well.

A CG-5684 (05/20), Medical Evaluation Board Cover Sheet, provides that an MEB was held for the applicant on September 15, 2022, which diagnosed the applicant with lumbar radiculitis, lumbar pain, and acute thoracic back pain. The MEB cover sheet stated that the applicant did not have any misconduct pending. The narrative summary (NARSUM) of the MEB provides that the applicant initially presented at a Coast Guard medical office on May 24, 2022, with worsening back pain. The NARSUM continues that on June 3, 2022, the applicant had an MRI that indicated that he had a large annular fissure and left intraforaminal disc herniation and bilateral facet arthrosis at L5-S I with severe spinal stenosis and also demonstrated central disc herniation at T6-T7. The NARSUM provides concurrence with the diagnosis of lumbar radiculitis, lumbar pain, and acute thoracic back pain. The NARSUM provides that the applicant's prognosis for continued service is poor and that he is not fit for full duty. The NARSUM notes that there is

disciplinary action pending against the applicant. The applicant submitted a rebuttal to the MEB dated November 4, 2022, explaining his refusal of epidural injections and stating that he has sought alternative therapies. There was an update to the NARSUM dated February 16, 2023, which stated that the applicant was confined to a wheelchair and reports chronic pain. The update also stated that the applicant was unable to stand unassisted and reported significant pain with any motion of lumbar spine and was also unable to perform straight leg raises and reported significant pain with passive range of motion of lower extremities.

A Court Memorandum dated October 4, 2022, for the applicant's non-judicial punishment (NJP) documents the applicant's offense—failure to obey a general order or regulation. The narrative of the offense provides that the applicant violated Article 92(1) (Violation of failure to obey lawful general order or regulation). The narrative further states while on active duty, on various occasions from January 2022-April 2022, the applicant violated a lawful general order, which was his duty to obey, specifically, Coast Guard Commandant Instruction 5375.1D at paragraph 6.a., by wrongfully using social media and message applications to access and transmit discriminatory and sexually-explicit content while on a Coast Guard workstation. The applicant was sentenced to a reduction in pay grade.

The applicant's medical records from October 2022 provide that he continued to report back pain. In medical notes from October 17, 2022, the applicant provided that he was having nightmares related to his NJP.

A Report of Operation dated November 29, 2022, describes that the patient had five operative procedures performed on the applicant for diagnosed back pain. The applicant's medical records from December – January 2022, provide that the applicant was reporting significant back pain in his left foot and after his surgery. Medical notes from December 29, 2022, provide that applicant was having difficulty standing due to pain in his left foot. Medical notes from January 30, 2022, provide that the applicant was unable to move his left foot and that he needed to be put back into a wheelchair.

By memorandum dated December 9, 2022, the applicant was notified that his command had initiated action to discharge him from the Coast Guard. The basis for the discharge was violation of Command Instruction 5375.1D paragraph 6.a by wrongfully using social media and message applications to access and transmit discriminatory and sexually explicit content while on a Coast Guard workstation.

By memorandum dated February 23, 2023, the Coast Guard Personnel Service Center (PSC) recommended that, in accordance with Physical Disability Evaluation System, COMDTINST M1850.2(series), that the applicant be found not fit for duty and separated from the Coast Guard. The memorandum provides that the applicant is currently incapable of standing and sitting for extended periods of time, lifting, walking, and driving. The memorandum further provides that current medical condition was incurred in the line of duty and not as a result of the member's own misconduct. The memorandum also provides that the disqualifying condition is likely to be acute/grave.

By letter dated May 31, 2023, a clinical neuropsychologist, Dr. A, provided additional information regarding the applicant. She provides that she had a diagnostic interview with the applicant on October 11, 2023. In that interview the applicant told Dr. A that he had:

been having significant problems with anxiety, including nightmares 3 out of 7 nights a week in which he sees dead people in various states or he is being pursued to be killed or he is killing something. His sleep is further disrupted by a significant inability to fall asleep in less than 1 to 2 hours each night. [The applicant] said that these symptoms have been building up over the two years he has been in the Coast Guard as he has seen a lot of dead people and horrible things that he cannot get out of his mind.

Dr. A states in this letter that she has concluded based on a full neuropsychological evaluation of the applicant that he has PTSD and GAD. She further states her belief that the applicant's misconduct (which is not expressly described in the letter) was the result of him searching for a way to release "the traumatically-induced stress was building up from the part of his job that brought him into contact with dead people and other difficult situations."

The PDES process was closed on May 24, 2023, because the applicant was being recommended for separation for misconduct. A separation authorization for the applicant was issued on June 13, 2023, for misconduct—commission of a serious offense. His separation on was characterized as being under honorable conditions and effective July 14, 2023.

A VA decision letter dated June 4, 2024, evaluating the applicant as having a 100% disability rating. This includes service-connected PTSD (claimed as panic attacks, insomnia claimed as secondary to PTSD. GAD) and TBI (claimed as head injury, memory issue, dizziness) was granted with an evaluation of 70 percent effective July 15, 2023.

VIEWS OF THE COAST GUARD

On April 19, 2024, the Coast Guard submitted an advisory opinion in which it recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the PSC.

The PSC, through its findings and analysis, provides that according to his Separation Authorization, dated May 24, 2023, the applicant was recommended for discharge by reason of misconduct for commission of a serious offense. The PSC states that the preliminary investigation package for the applicant's NJP, initiated by the designation of a preliminary inquiry officer dated April 13, 2022, revealed that the applicant on various occasions from January 2022 through April of 2022 violated COMDTINST 5375.1E Limited Personal Use of Government Desktop Equipment, Wifi, and Mobile Devices by wrongfully using social media and message applications to access and transmit discriminatory and sexually explicit content from a Coast Guard Workstation. The PSC provides that this constitutes a violation of Article 92 of the UCMJ, which holds a punitive discharge. The PSC next states that pursuant to Physical Disability Evaluation System, COMDTINST M1850.2D, Article 2.C.11 (2006) and Military Separations COMDTINST M1000.4A, Article 2.A.5 (March 2023), separation due to misconduct takes precedence over disability determination processes. The PSC notes, in addition, as evidenced by the applicant's

Service Treatment Record, his PTSD and other mental health diagnoses originated after being notified by his Command's intent to proceed with the misconduct investigation and his NJP hearing. For these reasons the PSC recommended denying relief to the applicant.

The Coast Guard, in its advisory opinion, which incorporates the PSC's findings and analysis, first concludes that application was submitted timely, noting that the applicant's MEB was submitted on March 29, 2023, and PDES processing was suspended, closed, and archived on May 24, 2023.

The Coast Guard states that the applicant entered disability evaluation proceedings in order to determine eligibility for a medical retirement. The Coast Guard next states that in accordance with COMDTINST M1850.2D at Art. 2.C.11, and COMDTINST M1000.4A at Ch. 2.A.5 and Ch. 2.Q.1, disability evaluation processing will be terminated for members being discharged for misconduct, or members in proceedings to administratively separate said member for misconduct. The Coast then provides that per COMDTINST M1850.2D at Art. 2.C.11.B, if a punitive discharge or administrative discharge is executed, the disability evaluation case will be closed. The Coast Guard finds that the applicant was discharged for misconduct, and that disciplinary proceedings for misconduct faced by the applicant could have resulted in a punitive discharge. As a result, the Coast Guard concludes that termination of disability evaluation proceedings was proper.

The Coast Guard also finds that the applicant's separation for the commission of a serious military offense was proper under Coast Guard policy, as was the characterization awarded. The Coast Guard provides that under COMDTINST M1000.4 at Ch. 2.Q.2.c., "members may be separated based on commission of a serious military or civilian offense if the maximum penalty for the offense or closely related offense under the UCMJ and Manual for Courts-Martial includes a punitive discharge." Per the Court Memorandum documenting the applicant's NJP, the applicant was found in violation of Art. 92(1) (10 U.S.C. § 892) of the UCMJ, for which the Manual for Courts-Martial (2019) includes punitive discharge as a maximum penalty, which qualifies as a serious offense. The Coast Guard then states that the preliminary investigation package for the applicant's NJP and associated court memorandum show that the violation of UCMJ Art. 92 (1) was established by a preponderance of the evidence, as required by COMDTINST M1000.4A at Ch. 2.Q.2.c.

The Coast Guard then provides that COMDTINST M1000.4A at Ch.2.B.6.b.(1).(a), a General (Under Honorable Conditions) Discharge applies where a member "has committed an offense that has been established by a preponderance of the evidence." As a result, the Coast Guard concludes that applicant has failed to prove an error or injustice with his separation. The Coast Guard further concludes that the physical disability evaluation proceedings were properly halted in accordance with Coast Guard policy due to the applicant's separation for misconduct, which was itself also in accordance with Coast Guard policy.

The Coast Guard recommends the Board deny relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 21, 2024, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. In his response, the applicant, through counsel, provided a supplemental statement dated July 10, 2024.

The applicant provides that he suffered a variety of health issues connected to his military service including PTSD with TBI, Migraine Headaches with Light Sensitivity, Cervical Spine Strain, Right Upper Extremity Radiculopathy, and others. The applicant provides that, in accord with DoDI 1332.18, he was medically unfit for duty and that MEB found him to be so based on diagnoses of "Lumbar Radiculitis," "Lumbar Pain," and "Acute Thoracic Back Pain." The applicant further provides that the Department of Veterans Affairs (VA) has diagnosed the applicant with a number of conditions, to include a 70% rating for PTSD with TBI, 50% rating for migraine headaches, 30% for obstructive sleep apnea, 20% for left shoulder strain, 10% for bilateral tinnitus, 10% for cervical strain, 10% for gastroesophageal reflux disease, 10% for left wrist strain, 10% for lumbosacral strain, 20% for left lower extremity radiculopathy, 10% for right lower extremity radiculopathy, and 10% for temporomandibular disorder. The applicant asserts that the medical evidence indicates that he is entitled to at least a 30% rating for his unfitting medical conditions. The applicant provides in support of this conclusion that the VA has rated him at 100%.

The applicant states that he was demonstrably suffering from a behavioral health condition that was induced by a specific stressor event. The applicant argues that Dr. A's medical opinion that his misconduct was a result of PTSD and GAD support this conclusion. The applicant further argues, notwithstanding that the MEB did not discuss the applicant's PTSD or GAD, that in accord with COMDTINST 1000.4B at Ch. 2.A.5.b(1), because the Coast Guard was aware of Dr. A's opinion, it should have continued his MEB because the PTSD and GAD contributed to the misconduct that resulted in the applicant's administrative separation. The applicant states that the decision to separate Applicant for misconduct instead of via a medical retirement was unfair, unjust, and inequitable.

The applicant next argues that he is entitled to liberal consideration for his application because his application for relief is based on a mental health condition. The applicant argues that he has been diagnosed with PTSD and experienced symptoms of PTSD while in the Coast Guard. The applicant further argues that the VA decision and diagnosis of Dr. A establish that he was suffering from the effects and symptoms of PTSD during his military service. The applicant next argues that Dr. A's opinion establishes that the applicant's misconduct was excused or mitigated by his mental health condition. Finally, the applicant argues that the misconduct was minor and caused entirely by his mental health condition and thus his mental health condition outweighs the misconduct.

The applicant concludes that for all of the aforementioned reasons, he has carried his burden of demonstrating that his military record contains both an error and an injustice. Accordingly, the principles of justice, fairness, and equity require that he be granted all of the requested relief.

For additional support of his application, the applicant provides a personal statement dated December 16, 2022, in which he expresses regret for his actions. He explains that he taken actions to improve himself, to include sensitivity training and pursuing activities outside of social media. He also explains his dedication to the Coast Guard mission and his willingness for continued self-improvement. The applicant also provides a letter from his spouse dated December 14, 2022, which focuses on his support for others.

APPLICABLE LAW AND POLICY

Pursuant to 10 U.S.C. § 1552(h), as implemented by DHS Office of the General Counsel, "Guidance to the Board for Correction of Military Records of the Coast Guard Regarding Requests by Veterans for Modification of their Discharge Based on Claims of Post-Traumatic Stress Disorder, Traumatic Brain Injury, Other Mental Health Conditions, Sexual Assault, or Sexual Harassment" (June 20, 2018), the Board must give "liberal consideration" to a claim that either post-traumatic stress disorder (PTSD) or traumatic brain injury (TBI) contributed to the circumstances resulting in the member's separation if the PTSD or TBI is related to combat or military sexual trauma.

Pursuant to Physical Disability Evaluation System COMDTINST M1850.2D (May 2006), Art. 2.C.2.11, which governs cases involving disability evaluation and disciplinary action concurrently, disability statutes do not preclude disciplinary or administrative separation. If a member is being processed for a disability retirement or separation, and proceedings to administratively separate the member for misconduct, disciplinary proceedings which could result in a punitive discharge of the member, or an unsuspended punitive discharge of the member is pending, final action on the disability evaluation proceedings will be suspended, and the non-disability action monitored by PSC. If the court martial or administrative process does not result in the execution of a punitive or an administrative discharge, the disability evaluation process will resume. If a punitive or administrative discharge is executed, the disability evaluation case will be closed and the proceedings filed in the member's official medical record.

Pursuant to Military Separations, COMDTINST M1000.4A, Art. 2.A.5 (March 2023), disability statutes do not preclude disciplinary separation unless the case has been referred to a medical board for PTSD or TBI due to specific stressors (i.e., overseas contingency deployment or a sexual assault), or if Commander (CG PSC) or the Commandant (CG 00) determines that other circumstances of the individual case warrant disability processing instead of further processing for administrative separation. In cases where the Narrative Summary (NARSUM) indicates that referral of the case to an Informal Physical Evaluation Board (IPEB) is warranted for disability processing under the provisions of COMDTINST M6000.1 (series) for TBI or a Behavioral Health condition (including, but not limited to PTSD) induced by a specific stressor event (see e.g. 10 U.S.C. § 1177), then a Coast Guard medical officer will furnish copies of the NARSUM to the command and Commander (CG PSC-PSD-DE), respectively. When the Coast Guard has not initiated the involuntary separation process for the member, Commander (CG PSC-EPM-1) will determine if the member's medical condition directly or substantially contributed to the conduct that may potentially result in administrative separation. If so, the member will be processed

through the physical disability system. When the Coast Guard has initiated involuntary separation of the member for misconduct, the resulting proceeding will be conducted concurrently with the disability evaluation system proceeding. Upon resolution of both proceedings, Commander (CG PSC-EPM-1) will review the final disposition of both proceedings to determine whether the TBI or a Behavioral Health condition, induced by a specific stressor event, was a direct or substantial contributing factor in the misconduct. If so, the member's disability processing will supersede any pending administrative separation. Disability evaluation in a member's case may proceed if Commander (CG PSC) or the Commandant (CG 00) determines that other circumstances of the individual case warrant disability processing instead of further processing for administrative separation. In such a case, the Commandant (CG PSC) decides the ultimate disposition.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. The applicant is timely because it was filed within three years of the applicant's discovery of the alleged error or injustice in his record, as required by 10 U.S.C. § 1552(b).
3. The applicant is requesting that the Board correct his record by: upgrading his discharge to honorable; changing the narrative reason for separation, the separation code, and the reentry codes to reflect "Secretarial Authority" as the basis for separation; receiving a permanent medical retirement with at least 30% disability; and back dating to the appropriate effective date of this medical retirement. The applicant requests, in the alternative, that his case be inserted into the PDES for evaluation as to whether he should be medically retired and any other relief that is equitable and just.
4. The Board may correct any military record of the Coast Guard when necessary to correct an error or remove an injustice.² Error means either legal or factual error.³ Injustice, when not also error, is treatment by the military authorities that shocks the sense of justice but is not technically illegal.⁴ When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in the record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁵ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."⁶
5. The applicant, through counsel, asserts that he was medically unfit for duty based on, among diagnoses of lumbar radiculitis, lumbar pain, and acute thoracic back pain. In addition,

² 10 U.S.C. § 1552(a); 33 C.F.R. § 52.2(a).

³ *Sawyer v. United States*, 18 Cl.Ct. 860, 868 (1989), *rev'd on other grounds*, 930 F.2d 1577 (Fed.Cir.1991).

⁴ *Id.*

⁵ 33 C.F.R. § 52.24(b).

⁶ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanden v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

the applicant provides that his medical records establish other conditions that demonstrate that he was unfit for duty, to include PTSD with TBI, migraine headaches, obstructive sleep apnea, left shoulder strain, bilateral tinnitus, cervical strain, gastroesophageal reflux disease, left wrist strain, lumbosacral strain, left and right lower extremity radiculopathy, and temporomandibular disorder. The applicant provides that these conditions collectively caused him to be unfit for duty as they would have prevented him from reasonably performing his duties and would have continued to do so had he remained in the service, posed a medical risk to his health and interfered with his work and social relationships. The applicant further states that these medical conditions would have imposed unreasonable requirements on the military to maintain him as a member given the extent of the ongoing treatment and observation required to address his condition and he would not have been deployable in his condition. While this Board considers the subsequent rating decisions by the VA to be relevant, the applicant was evaluated prior to his departure from the Coast Guard for conditions which made him unfit for duty, and therefore does not have to speculate based solely on subsequent VA ratings. The Board notes that applicant had opportunity to respond to his NARSUM and chose to do so on November 4, 2022. While he had already sought and received mental health treatment at that time, he made no allegation in his NARSUM response that (for example) additional diagnoses of PTSD or other mental health conditions should be evaluated or did not meet medical retention standards.

6. The applicant states that he should have been medically retired notwithstanding that he was subject to an adverse separation action for misconduct. The applicant provides the Coast Guard was aware that he was suffering from a behavioral health condition that contributed to the misconduct in this case. The applicant states that his military and medical records reflect that any misconduct on his part was caused and/or significantly mitigated by the severe and significant medical issues he sustained during his multiple combat deployments.

7. The applicant further argues that he was suffering from PTSD while in service at the time of this discharge and is thus entitled to liberal consideration in determining whether he should be granted relief. The applicant states that the record establishes that he was diagnosed with PTSD and experienced symptoms of PTSD while in service and that his VA records establish that his PTSD is service connected. The applicant posits that he was suffering from PTSD when the misconduct for which he was discharged took place and that the record provides evidence that his “traumatically-induced stress” caused or contributed to that misconduct. The applicant also provides that the totality of the evidence demonstrates that Applicant’s mental health conditions significantly outweighs his discharge because his mental health conditions entirely caused the misconduct and the misconduct itself was minor.

8. The applicant was found by the Coast Guard to have committed misconduct for which he was discharged. Specifically, from January 2022-April 2022, the applicant was found to have violated a lawful general order, Coast Guard Commandant Instruction 5375.1D, by wrongfully using social media and message applications to access and transmit discriminatory and sexually-explicit content while on a Coast Guard workstation. This misconduct was a violation of Art. 92(1) (10 U.S.C. § 892) of the UCMJ, for which the Manual for Courts-Martial (2019) includes punitive discharge as a maximum penalty. The applicant does not dispute that he committed the misconduct for which he was discharged.

9. The applicant's response to the Coast Guard's advisory opinion refers to his having "severe and significant medical issues he sustained during his multiple combat deployments," however, the only "contingency operation" that the applicant identifies that his claim relates to is Hurricane Ida. Hurricane Ida was not a combat operation. There is nothing in the record to indicate that service-related PTSD and TBI that the applicant has been diagnosed with are combat-related, nor related to military sexual trauma. Therefore, the applicant's request is not eligible for liberal consideration pursuant to 10 U.S.C. § 1552(h), as implemented by DHS Office of the General Counsel, "Guidance to the Board for Correction of Military Records of the Coast Guard Regarding Requests by Veterans for Modification of their Discharge Based on Claims of Post-Traumatic Stress Disorder, Traumatic Brain Injury, Other Mental Health Conditions, Sexual Assault, or Sexual Harassment" (June 20, 2018). However, the Board notes that even if it applied liberal consideration to this case, his claimed conditions did not excuse or outweigh the misconduct in the applicant's case. Applicant's misconduct was intentional and occurred frequently over an extended time period. The Board notes that the applicant received a commendation for his duty performance on January 31, 2022, contemporaneous with his misconduct. Clearly, the applicant was able to perform his duties to a high standard, but chose not follow Coast Guard policies on government computer use. The Board notes that he appeared very forthcoming when confronted with his misconduct and cited marital problems, long hours, and managing stress as contributing factors. The applicant only asserted that mental health conditions were the cause of his misconduct much later, presumably when he realized that misconduct could impact his disability separation. In any event, his conditions do not excuse or outweigh his misconduct.

10. The applicant argues that because he had a mental health condition the Coast Guard was required by COMDTINST M1000.4A, Art. 2.A.5 to continue his MEB concurrently with the proceedings for involuntary discharge and upon resolution of both proceedings, the PSC should have reviewed the final disposition of both proceedings to determine whether the applicant's mental health condition, induced by a specific stressor event, was a direct or substantial contributing factor in the misconduct. If so determined, the applicant argues that his disability processing should supersede any pending administrative separation. However, the applicant's response misinterprets the Coast Guard's controlling regulatory provisions. As a general rule, "separations described here [i.e., involuntary administrative separations] supersede disability separation or retirement." As an exception to this general rule, in disability cases where the NARSUM "indicates that referral of the case to [the IPEB] is warranted for TBI or a Behavioral Health Condition (including, but not limited to PTSD) induced by a specific stressor event . . .," the command must determine whether the TBI or Behavior Health condition was "a direct or substantial contributing factor in the misconduct." If so, disability separation or retirement will then supersede the administrative separation. In the applicant's case, the NARSUM did not indicate that his claimed mental health conditions warranted disability proceedings. As the applicant concedes in his response to the Coast Guard, his separation was briefly paused upon receipt of the May 23, 2023 provider letter to determine if disability processing was warranted for his mental health condition. While that letter clearly established his mental health challenges as causal factors in his misconduct, it did not establish that those conditions warranted disability processing; neither did the Coast Guard's subsequent review. As a result, his administrative discharge continued to take precedence over his disability processing.

11. The Board finds that the applicant's PDES was properly suspended and terminated in accord with COMDTINST M1850.2D at Art. 2.C.11, and COMDTINST M1000.4A at Ch. 2.A.5 and Ch. 2.Q.1, because the applicant was administratively discharged for misconduct that constituted a serious offense for which he was subject to punitive discharge under the UCMJ. There is nothing in the record that shows that a convening authority ever referred a diagnosis of a mental health condition of the applicant to the MEB. There is no basis to conclude the Coast Guard committed error. While the applicant may believe the overall result is unfair, this situation (i.e., an administrative discharge occurring concurrently with a non-mental health related disability separation/retirement) is exactly what is contemplated by the COMDINST. The outcome is unfortunate for the applicant, but does not shock the sense of justice.

12. The applicant has not proven by a preponderance of the evidence that the termination of his PDES process, nor his administrative discharge for misconduct, was the result of an error or injustice. Accordingly, his request for relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former Seaman [REDACTED], USCG, for correction of his military record is denied.

February 6, 2025

