

The applicant stated that records show that the manager has filed eight civil cases on behalf of the realty company “with no prior notification” and seven of the eight were dismissed. In his case, on October 8, 2014, the court ruled in favor of the realty company for \$900.00. The applicant stated that after paying the rent, the realty company did not notify the court that he had satisfied the debt until April 7, 2015.

The applicant stated that in January 2015, he arranged to have his rent automatically deducted from his account on the first of each month. Even though his payment for March 2015 was made on March 3rd, the realty company filed two suits against him, and the company filed a third suit in April 2015 even though he used USAA web pay to pay his rent. These three cases were all dismissed.

The applicant stated that the realty company has been reviewed by other tenants as unprofessional, untrustworthy, and irresponsible. He has left messages asking the company owner to discuss issues with him and received no reply. He has also filed a complaint against the company for lack of professionalism, failing to disclose legal proceedings action, and not documenting legal action on the lease.

The applicant stated that because of these problems with the realty company, he received a negative Page 7 notifying him that his government travel credit card (GTCC) had been suspended. In addition, on April 9, 2015, he received NJP at mast for violating Article 92 of the UCMJ for failing to pay his GTCC balance by the due date and for making “excessive cash withdrawals.”

The applicant submitted a copy of travel claim [REDACTED], which he stated, was identified as the travel during which he was accused of withdrawing excessive cash. He noted that he had been on travel from July 14 through September 6, 2013, and his claim was \$8,596.10. The applicant stated that his claim was audited by the Personnel Service Center (PSC) on October 1, 2013, and on October 16, 2013, he was advised that his claim could not be completed because PSC did not have a copy of the signed authorization orders. However, on October 29, 2013, he received an email from a yeoman at his unit indicating that his orders had been faxed to PSC. PSC sent him an email the same day stating that his claim had been completed without any issue or discrepancy. Later, the applicant stated, he received an email from a chief warrant officer stating that the Page 7 was not in his unit record.

Regarding the NJP, the applicant stated that he was told that he would be taken to mast for failing to report the civil cases against him and failing to pay his rent on time. He told the preliminary investigating officer (PIO) that he had arranged with the management to pay his rent on the 15th of each month because he was temporarily supporting his father in law, who had lost his job. The applicant stated, “We were informed as stated in the lease that there would be a late fee associated with the payment after the due date. At no time did anyone from [the realty company] inform me that civil action was not being taken against us for making those arrangements [sic] nor was it stated in the lease my wife and I signed. I failed to report the civil cases because I didn’t know they were happening, I made all my pre-arranged payments and all the cases got dismissed. One of the civil cases against me from [the realty company] was found

in [the company's] favor and appears as judgment in the ... Court, but the court wasn't notified of the payment satisfaction until 6 months later."

The applicant stated that he was assigned a mast representative whom he had only met once. He had asked to be represented by a particular chief (ISC) but the ISC declined because he had previously received NJP at that command. The appointed mast representative was misinformed and thought that the second charge against the applicant resulted from old speeding tickets but in fact it concerned his GTCC use. At mast, the CO told him he was being charged with excessive cash withdrawals during his 2013 travel, even though no discrepancy had been identified when his claim was reviewed and audited. At mast, the applicant told his CO that he had never been flagged for excessive cash withdrawals. Moreover, even though he was never flagged for making excessive cash withdrawals, he was charged with making a false official statement because he properly denied having been flagged.

On May 28, 2015, the applicant stated, he was advised that he would not be allowed to reenlist because of the NJP and would not get a "reenlistment board." The applicant alleged that he was entitled to such a board because he had more than eight years of service. Instead of reenlisting him, PSC authorized a 90-day extension and then discharged him. The applicant stated that he was initially told that he could not reenlist because his GTCC had been revoked, but it had only been suspended. Then he was told that he could not reenlist pursuant to additional reenlistment criteria in ALCOAST 093/14 because of the Article 107 charges. The applicant alleged that those criteria were no longer authorized and could not be implemented because 12 months had passed.

In support of his claims, the applicant submitted many documents:

- 1) A copy of a lease dated October 15, 2013, stating that \$900 per month was due on the first day of each month, that the late fee is 10% of the monthly rent, and that the "late date" is "5 (five) days after due date." Paragraphs 2 and 3 of the lease state the following:
 2. RENT: ... thereafter, Rent shall be payable by check or money order monthly in advance on the first day of each month WITHOUT DEDUCTION, OFFSET or DEMAND at Agent's address If any Rent is not received by Agent by the Late Date. [sic] Tenant shall pay the Late Fee. Tenant further agrees to pay the Returned Check Charge for each check not honored by the bank. In the event of a dishonored check ...
 3. AGENT: By prior agreement, [the realty company] has been appointed as Agent for the Owner of the Premises, authorized to manage said Premises on behalf of the Owner. As such, Agent is authorized to perform any action in connection with the enforcement of the provisions of this Lease, including without limitation the giving and receiving of notices and demands, and the use of the legal system to enforce claims under this Lease. ...
- 2) A printout from a court database shows that pursuant to a suit filed on September 16, 2014, a default judgment including a \$900 principal and \$90 "other amount" (presumably the late fee) was entered against the applicant and his wife on October 8, 2014, and that the realty company filed satisfaction on April 7, 2015.

- 3) Other court database printouts show that the realty company filed suit against the applicant and his wife on November 19, 2014, December 18, 2014, and January 30, 2015, and these complaints were dismissed.
- 4) A statement faxed from the realty company to the applicant on June 2, 2015, shows that as of February 1, 2015, the applicant owed the company \$2,432.00. He paid \$2,200 on February 4, 2015; \$240.00 on February 12, 2015; and \$900.00 monthly on March 3, April 6, and May 8, 2015.
- 5) On-line reviews of the realty company accuse the company staff of being rude, unprofessional, and untrustworthy; state that the property has roaches, bedbugs, broken air conditioning, and loud residents and water pipes; and complain that security deposits are not returned even when the property is left in a cleaner state than received.
- 6) A CG-3307 (Page 7) dated April 15, 2015, states, "Your Government Travel Charge Card (GTCC) has been suspended in accordance with [COMDTINST M4600.18] for misuse. This action was taken following Non-Judicial Punishment (NJP) proceedings on 9 Apr 2015 for a violation of Article 92 of the Uniform Code of Military Justice for to failure [sic] to pay balances by the statement due date and for excessive cash withdrawals prohibited by section O.5.b. of [COMDTINST M4600.18]." The applicant acknowledged receipt of this Page 7 by signature on May 5, 2015.
- 7) An email to the applicant dated September 10, 2013, at 2:22 p.m., states that travel order [REDACTED] had been approved and released to the Personnel and Pay Center for processing.
- 8) Another email dated September 10, 2013, at 2:26 p.m. also states that the travel order had been approved and advises the applicant that it would be audited.
- 9) An email dated September 11, 2013, states that the travel voucher had been processed in the amount of \$8,596.10.
- 10) An email from PSC to the applicant dated October 1, 2013, regarding a TPAX audit for the travel orders, requests a signed copy of the orders authorization, receipts, and other documents. The applicant forwarded this email to a yeoman and asked the yeoman what was needed.
- 11) An email from PSC to the applicant dated October 16, 2013, states that his audit package could not be processed due to missing documentation and specifically requests a signed copy of the signed orders authorization.
- 12) An email from a yeoman to the applicant dated October 29, 2013, states that the yeoman had faxed a copy of the signed orders authorization to the Personnel and Pay Center of PSC. PSC sent the applicant an email later that day stating that his travel audit package had been completed and that if it was found to be "free of errors, no further action is required."
- 13) In an email to a chief warrant officer (CWO) dated May 28, 2015, the applicant asks if his personnel data record (PDR) maintained by his unit's Servicing Personnel Office (SPO) contains documentation pertaining to his GTCC other than the original credit card application. The CWO replied that he had reviewed the applicant's SPO PDR and "there are no negative Page 7s concerning your government charge card."

- 14) In an email to a chief yeoman dated May 28, 2015, the applicant asked for an email documenting the fact that he had “never been flagged by JP Morgan or PSC for excess cash.” In response, the chief yeoman stated on May 29, 2015, “I normally receive an email from PSC’s GTCC Program’s POC to review excess cash withdrawals. I have reviewed my emails and I never received one for you for excess cash. The only thing I found was for late payments.”
- 15) In an email and memorandum dated June 1, 2015, the applicant asked his command for a waiver of the restriction that prevented him from receiving review by a “reenlistment board.” The applicant argued that pursuant to paragraph 4 of ALCOAST 093/14 members with more than eight years of service are entitled to a reenlistment board. He noted that the FAQ section of the ALCOAST included criteria that prevented him from having a reenlistment board and noted that “FAQs are not designed to supersede policy.” He also noted that pursuant to COMDTINST M5215.6G, ALCOASTs are automatically canceled one year after issuance unless followed up by a Change Notice to the affected directive within the year. He argued that the criteria in the ALCOAST should not apply because more than a year had passed and no Change Notice had been issued to the directive. He also argued that he was entitled to a reenlistment board under Article 1.B.5.c. of the Military Separations Manual.
- 16) In an email dated June 8, 2015, the applicant sent a chief a copy of the Page 7 that he signed on May 5, 2015, regarding the suspension of his GTCC and noting that his card had not been revoked, but suspended. He attached to this email copies of the emails noted above, including the email from the chief yeoman stating that she had never received an email about the applicant making excess cash withdrawals and the email stating that the GTCC Page 7 was not in the applicant’s SPO PDR.
- 17) ALCOAST 093/14, issued on March 7, 2014, states that to “ensure the Coast Guard retains a disciplined, high-performing workforce, reenlistments and/or extensions should only be offered to those members ... who maintain high professional standards and adhere to the Coast Guard’s core values.” The ALCOAST states that to reenlist, a member must be recommended for reenlistment by his or her CO and, among other new eligibility criteria, have “no documented offense for which the maximum penalty for the offense, or closely related offense under the UCMJ and Manual for Courts-Martial, includes a punitive discharge” and “have not had their personal-use government travel charge card permanently revoked for misuse or delinquency.”
- 18) In an email dated June 10, 2015, the applicant contested his pending discharge, stating that his GTCC had been suspended, not revoked, and that the bank told him the account had been “voluntarily temporarily closed” when in fact, PSC told him that his “GTCC account had been closed [due] to notification from the command because of my conviction at NJP.” PSC told him that his GTCC account had not been permanently revoked but closed and that it could be re-opened in three years. He stated that the three circumstances under which a GTCC may be revoked are if the account “gets charged off”; if it gets more than 180 days past due; or if the bank, JP Morgan Chase, will not issue you a GTCC.

- 19) Separation orders issued on June 30, 2015, state that the applicant's last day on active duty would be June 30, 2015. In an email sent the same day, the applicant's command requested an extension of his enlistment to allow time for separation processing.
- 20) The applicant also submitted many documents showing superior performance:
 - A citation for an Achievement Medal he received for his service from January 12 to February 19, 2010, translating news reports and providing intelligence assessments to facilitate aid delivery following the earthquake in Haiti;
 - Two positive Page 7s regarding superior performance in 2010;
 - An announcement of his nomination for the 2010 Enlisted Person of the Year award;
 - An email dated March 16, 2011, announcing his selection as his unit's 2010 Enlisted Person of the Year and a citation for the award signed by his CO and commending him for exemplary performance;
 - A citation for a Meritorious Team Commendation awarded to a support team of thirteen members, including the applicant, for their service in intelligence collection operations from May 2011 through June 2011;
 - Emails sent in August 2012 concerning "an amazing job" the applicant had done in working with migrants and putting them at their ease during an operation;
 - An email dated July 27, 2012, with a draft command endorsement for the applicant's assignment as an instructor for non-rates entering the IS rating because of his "wealth of field intelligence not often seen in the Coast Guard" and because his "technical expertise in field intelligence operations is unmatched"; and
 - A citation for a second Achievement Medal covering the applicant's tour of duty at a unit from January 2009 to May 2013.

VIEWS OF THE COAST GUARD

On January 20, 2016, the Judge Advocate General of the Coast Guard (JAG) submitted an advisory opinion in which he recommended that the Board deny relief.

The JAG stated that, after enlisting on January 16, 2007, the applicant trained as and became an Intelligence Specialist and, as such, had a top secret security clearance and was required to report convictions for criminal offenses, including traffic tickets of \$150 or more, as well as unfavorable credit or overbearing financial commitments. An administrative investigation conducted in February and March 2015 found that the applicant had failed to report traffic tickets of \$150 or more three times and had failed to report unfavorable credit and/or overbearing financial commitments. The PIO found that ten civil cases for failing to pay rent had been filed against the applicant from August 2010 through December 2014 by three different landlords, including the realty management company discussed in the application. The PIO also reported that the applicant made false statements by claiming to have traveled for temporary duty in December 2014, when he had not traveled, and by telling the PIO that he was not overdue on his rental payments shortly before calling his Special Security Officer to report an outstanding rental balance. In addition, the PIO reported that the applicant claimed that he had never had any

issues paying rent. Regarding the GTCC, the PIO found that the applicant had been counseled on or about December 12, 2014, for financial irresponsibility for failing to pay his balance timely and that he had had a past due balance on his GTCC nine times since April 2013.

The JAG stated that based on the administrative investigation, charges were preferred and the applicant was offered NJP in lieu of trial by court-martial. After consulting an attorney, the applicant did not demand trial and accepted NJP instead. At mast, the applicant's CO found that he had committed two violations of Article 92¹ and one violation of Article 107² for making false official statements to the PIO in his interview and in his written statement. The CO reduced him in rank from E-5 to E-4 and awarded him 30 days of restriction. The applicant did not appeal the NJP.

The JAG stated that on May 20, 2015, the applicant was advised that he did not meet the reenlistment criteria in the Military Separations Manual and ALCOAST 093/14 and that his CO was not recommending him for reenlistment based on his misconduct. The applicant was also advised that he could not appeal his CO's non-recommendation and that he was not entitled to a reenlistment board.

Regarding the applicant's NJP for violating Article 92 of the UCMJ, the JAG stated that the applicant was found guilty at mast of dereliction of duty for failing to report his financial problems and failing to obey an order or regulation regarding his late GTCC payments, which are both violations of Article 92. The JAG stated that the applicant had been trained and received refresher training about his duty to report and had not done so. The JAG further argued that the terms of the applicant's lease are not relevant to whether he knew he had a duty to report his financial problems and failed to do so. In addition, he argued that whether the applicant was ever flagged for excessive cash withdrawals is irrelevant because the orders violation was for failing to pay off his GTCC balance in a timely manner nine times.

Regarding the NJP for making false official statements in violation of Article 107 of the UCMJ, the JAG stated that the PIO reported that the applicant had made several false statements for the investigation "in an effort to hide that he had violated his duty to report evidence of unfavorable credit or overbearing financial difficulties to his Special Security Officer." The JAG concluded that the applicant has not shown that his CO erred in awarding him NJP at mast for violating Articles 92 and 107 of the UCMJ.

The JAG argued that the applicant has not shown that he was entitled to a reenlistment board. The JAG stated that under Article 1.B.5.c.(2) of the Military Separations Manual, members with more than eight years of service and who are otherwise eligible to reenlist but are not recommended for reenlistment by their COs are entitled to a reenlistment board. However,

¹ Article 92 of the UCMJ (10 USC 892) prohibits knowingly violating a lawful order or regulation or being derelict in the performance of duties. The maximum punishment for violating a lawful general order or regulation includes a dishonorable discharge; for violating an other lawful order, bad conduct discharge; and for willful dereliction of duties, bad conduct discharge; but for dereliction through neglect or culpable inefficiency, there is no punitive discharge.

² Article 107 of the UCMJ (10 USC 907) prohibits knowingly signing a false official document or making any other false official statement with intent to deceive. The maximum punishment includes a dishonorable discharge.

the Enlisted Manual, COMDTINST M1000.2, issued in September 2011, was silent on the requirements for a reenlistment board. Therefore, the Commandant issued ALCOAST 093/14 to clarify the requirements for a reenlistment board. The Commandant amended the requirements on July 6, 2015, by issuing ALCOAST 274/15, which was in effect when the applicant was discharged, and incorporated the provisions of ALCOAST 093/14 in the new Enlisted Manual, COMDTINST M1000.2A, issued on December 17, 2015. The JAG stated that the Coast Guard has consistently enforced these policies. The JAG stated that pursuant to these provisions, members such as the applicant who are neither eligible for reenlistment nor recommended for reenlistment by their COs are not entitled to a reenlistment board or to appeal the non-recommendation. The JAG stated that reenlistment boards are designed to protect members with eight years of service who are otherwise eligible to reenlist but are not recommended by their COs. The applicant's NJP rendered him ineligible to reenlist, and he was not recommended by his CO.

The JAG concluded that the applicant has not shown that his NJP was erroneous or unjust or that he was entitled to a reenlistment board. He stated that the language in ALCOAST 093/14 was clarified in ALCOAST 274/15 to match the policy that was being consistently enforced. However, he argued, the clarification of the policy "should not warrant relief for an individual who as otherwise failed to meet the objective reenlistment criteria set forth in policy." The JAG noted that in BCMR Docket No. 2015-002,³ the Board found that on October 1, 2014, the staff judge advocate for the Personnel Service Center (PSC), which has separation authority, sent a staff judge advocate in the Coast Guard's General Law Division an email with the following information regarding how paragraph 4 of ALCOAST 093/14 was to be interpreted:

- 1) Eligible & recommended = reenlist
- 2) Eligible & not recommended = request a waiver/appeal from epm-1 (less than 8 years' service) or reenlistment board (over 8 years' service)
- 3) Not eligible & recommended = request a waiver/appeal from epm-1 regardless of years in service – no reenlistment board
- 4) Not eligible & not recommended = no reenlistment, no waiver/appeal

Therefore, the JAG concluded that the applicant in this case was not entitled to a reenlistment board because he was neither eligible nor recommended for reenlistment under ALCOAST 093/14. The JAG recommended that the Board deny relief.

The JAG attached to the advisory opinion a copy of the report of the administrative investigation, which is summarized below, and the following:

³ In 2015-002, the applicant alleged that he was being unjustly discharged under the new policy in ALCOAST 093/14 and asked the Board to remove NJP for making a false official statement in violation of Article 107 of the UCMJ from his record because it would prevent him from being reenlisted. In the Final Decision for 2015-002, the Board quoted the second and third sentences of paragraph 4 of ALCOAST 093/14 (see page 15 below) and found that read alone, the latter sentence "appears to give the applicant a right to a reenlistment board because he had more than eight years of active duty. Read in conjunction, however, these two sentences appear to mean that members with less than eight years who are eligible but not recommended to reenlist may appeal, while such members with more than eight years are entitled to a reenlistment board. According to the JAG's email dated October 1, 2014, the latter is the interpretation the Coast guard was applying in 2014." However, because the applicant had not complained about not receiving a reenlistment board, the Board decided the issue was not ripe for decision.

- A Report of Offense and Disposition dated March 18, 2015, shows that the applicant was charged with dereliction of duty for failing to report his financial problems and with failing to obey an order or regulation for routinely failing to pay his GTCC bills on time, both violations of Article 92 of the UCMJ, as well as with making false official statements during his interview with the PIO and in his written statement for the investigation, in violation of Article 107. The applicant asked that a particular chief petty officer serve as his representative but later changed his request to a first class petty officer.
- An Acceptance of NJP form CG-5810A shows that on March 26, 2015, the applicant consulted counsel, acknowledged understanding his rights, and accepted NJP instead of demanding trial by court-martial.
- A Court Memorandum dated April 9, 2015, documents the applicant's NJP on the charges of dereliction and false official statement. It shows that the applicant was reduced in pay grade to E-4 and restricted to base for 30 days.
- A Page 7 dated May 20, 2015, states that the applicant's CO was not recommending him for reenlistment because of his misconduct. The Page 7 also states that the applicant did not meet the eligibility criteria for reenlistment in Article 1.A.5. of the Enlisted Manual and ALCOAST 093/14 and that because he was both ineligible and not recommended for reenlistment, he was not entitled to a reenlistment board or to request a waiver of the reenlistment criteria. Therefore, the applicant would be separated when his enlistment expired.

REPORT OF ADMINISTRATIVE INVESTIGATION

The report of the administrative investigation, which was initiated on January 30, 2015, is dated March 16, 2015, and states that as a trained IS2 with a top secret security clearance, the applicant knew that he had a duty to report criminal convictions, including traffic tickets of at least \$150, and unfavorable credit or overbearing financial commitments, and that he had completed refresher training on these requirements in December 2014. The PIO found the following problems that the applicant had failed to report:

- A \$200 ticket for a tinted windshield on August 6, 2010;
- A \$150 ticket for driving 68 mph in a 45 mph zone on November 16, 2011;
- A \$150 ticket for driving 50 mph in a 35 mph zone on December 7, 2011;
- A civil case for failure to pay rent on August 10, 2010, with a judgment for the landlord;
- Two civil cases for failure to pay rent to a different landlord, dated November 14, 2012, and October 17, 2013, which were dismissed;
- Four civil cases for failure to pay rent to the realty company, dated January 23, July 1, August 28, and October 30, which were dismissed;
- A civil case for failure to pay rent to the realty company, dated September 16, 2014, with a judgment for the realty company; and
- Two civil cases for failure to pay rent to the realty company, dated November 19 and December 18, 2014, which were pending.

The PIO stated that the applicant told him in the interview and in his sworn statement that before leaving the area on temporary duty orders in December 2014, he had given the realty company two personal checks to pay his rent for the months of December 2014 and January 2015, but the company denied that he had done so, and the applicant did not execute any such orders in December 2014. The PIO stated that the applicant did travel on orders from January 5 to 16, 2015, and while away, his wife called him about a notification from the realty company that their rent had not been paid. On January 30, 2015, a coworker found a printout from the court database about the realty company's civil case against the applicant on a printer and placed it on the applicant's desk. On February 4, 2015, the applicant paid the realty company \$2,200, but still owed the realty company another \$232, and agreed to pay that amount a week later. On February 5, 2015, the applicant was advised that he was under investigation, advised of his rights, and stated that he was not delinquent on any payments and specifically attested that he was fully caught up on his rental payments. However, shortly after that conversation with the PIO, the applicant reported to his SSO that he had an outstanding rental balance. The PIO stated that the applicant paid the remaining \$232 on February 12, 2015, and established an automatic bill pay.

The PIO also reported that the applicant had made the following "inconsistent statements" during the investigation:

- The applicant claimed that the realty company would not accept personal checks even though he was paying his balance with personal checks.
- The applicant claimed to know that his rent was due on the first day of each month and that a late fee would apply to payments received after the fifth of the month, but also stated that he did not know that he would be charged a late fee if he paid half his rent on the first and half on the fifteenth of each month.
- The applicant claimed that it was not possible to coordinate automatic payments through his bank but did so after speaking to the PIO.
- The applicant claimed in his written statement that he had never had any issues paying his rent in the past seven years. The PIO noted the numerous civil cases against the applicant.

Regarding the GTCC, the PIO reported that the applicant had paid his balance late nine times since April 2013 and had been counseled about his late payments on or about December 12, 2014, even though policy requires payment on or before the statement due date and expressly states that untimely payment is prohibited, punishable under Article 92, and may result in other administrative or disciplinary action. The PIO stated that the GTCC itemized report showed "numerous and potentially excessive cash withdrawals inconsistent with [the GTCC policy manual], which outlines that travel card holders are authorized 'cash from ATM's only to cover expenses that are directly related to official travel, which cannot be paid for using the travel card.'" He noted that the applicant could not explain instances in which he had withdrawn cash from an ATM but then also used his GTCC to pay for the costs of his travel, such as food and gas.

The PIO concluded that the applicant had violated Article 92 by failing to report his unfavorable credit and/or overbearing financial commitments to his SSO and by failing to pay his GTCC timely. He also noted that the applicant's "use and numerous cash advances increase the perception of misuse and are not consistent with authorized use." He also concluded that the applicant had made false official statements, in violation of Article 107, by claiming that he had been away on temporary travel orders in December 2014, by stating that he was fully paid up on his rent when he knew that he owed \$232, and by claiming that he had never had any issues paying his rent during the prior seven years when he had had ten civil cases filed against him since August 2010. The PIO recommended that the applicant be punished at mast and that he should not receive a favorable recommendation for reenlistment due to his violation of Article 107, which made him ineligible to reenlist. The PIO included with his report many supporting documents, including the following:

- A memorandum the applicant signed in 2009 acknowledging training for his security clearance and the fact that he was required to report to his SSO, *inter alia*, any criminal offense except for traffic tickets of less than \$150 and "unfavorable credit, bankruptcy, or overbearing financial commitments."
- A printout showing that the applicant received speeding tickets in amounts in excess of \$150 on October 5, October 6, and December 21, 2011.
- On a Page 7 dated March 11, 2014, the applicant was counseled at length for "continual substandard performance and displaying inability to adhere to the expectations previously provided to you." The Page 7 states that he was given a clear and concise list of expectations on September 8, 2013, which were reiterated on February 11, 2014, and had not yet been met. The Page 7 states that the applicant had shown "poor judgment and consistent, less than desirable attitude towards external partners and USCG members with whom you have interacted since undertaking this assignment." The initial and reiterated counseling memoranda dated September 8, 2013, and February 11, 2014, were also included.
- Court database printouts show the numerous civil cases filed against the applicant by the realty company and two prior landlords.
- A GTCC itemized report of the applicant's charges from February 2010 through January 2015 shows increasingly frequent ATM withdrawals in addition to regular charges for meals, gas, and hotel rooms.
- A GTCC Statement Summary showing nine past due balances and nine zero balances on eighteen statements issued from March 2013 to January 2015.
- A form showing that the applicant was advised of his "Article 31(B), UCMJ, and Miranda/Tempia Rights" on February 5, 2015, by the PIO.
- A summary of the PIO's interview with the applicant on February 5, 2015, states that the applicant claimed to have paid his rent in full for the months of December 2014 and January and February 2015; that the realty company would not accept personal checks but he had submitted post-dated checks for December and January before leaving on temporary duty in December; that if the rent was not paid by the sixth day of the month, the realty company automatically filed suit; that he had made late payments in the past

but only because the realty company would not accept personal checks and sometimes he could not go to the bank to get a cashier's check by the fifth day of the month; that he did not know that the company had been filing suit against him for late payments; and that he had never notified the SSO or his command of the summonses because he was unaware of them. According to the PIO, the applicant also stated that he thought the cutoff for reporting traffic tickets was \$250, not \$150, and that he had always paid his GTCC in full and had not had any issues, outstanding balances, or negative Page 7s.

- In the applicant's written statement for the investigation, dated February 11, 2015, he explained that because he had been "away at training and out of the state it didn't allow for me to make my payment to my rent on-time. I had left personal USAA checks with the realty company but subsequently they only accepted cashier checks not personal ones. Furthermore, they don't have a website to make payments to directly or have an account they can provide to have the funds transferred to. The only method of payment is money order or a cashier check. Due to that situation the rent was due and late fees were attached and I received a letter from the court for nonpayment. All rent is current and up to date."
- A summary of an interview with the bookkeeper of the realty management company on February 11, 2015, states that the company accepts personal checks up to the fifth day of the month but requires money orders or cashier's checks for late payments. In addition, personal checks were not accepted from those who had previously bounced checks, but the applicant's checks for rent had not bounced although his payments had been arriving late. The bookkeeper denied that the applicant had sent personal checks on time for his December 2014 or January 2015 payments. The applicant had paid \$2,200 on February 4, 2015, and still owed \$232 but had agreed to pay that amount by February 13, 2015. The bookkeeper stated that the 10% late fee was applicable if the rent was not paid by the fifth day of the month and that on the sixth day, if the rent was not paid, a five-day notice was sent to the tenant requiring a money order or cashier's check for the rent plus the late fee. On the thirteenth day of the month, if the rent was not paid, the company would file a complaint, a warrant would be issued, and a court date would be scheduled.
- In a second written statement, dated February 23, 2015, the applicant explained that the realty management company does not allow online payment or have an account for receiving direct money transfers. Because of training he attended in the "December, January time frame, he dropped off post-dated checks for the rent for those months before he left. However, his wife called him while he was away to tell him that they had received a letter about overdue rent from the realty management company, and when he called the office, he was told they did not accept personal checks, only cashier's checks. The agent did not address his complaint that he had previously "purposely called her and requested a method of payment that would ensure this exact situation would not occur" but insisted that he pay the rent and the late fees with a cashier's check. When he returned home, he called the company to learn the full amount he owed and paid that amount with a cashier's check. However, when he asked for a letter stating that he did not owe them anything, he was given "a bill for 232.00 for charges they stated were on my account that were not added to my previous balance. I immediately paid the \$232.00 with [a] seven eleven money order and received a payment receipt." The applicant stated that he had been unaware that the company was filing claims against him in court; that he

had never appeared in court; and that he had always paid his rent. He stated that he had “never had any type of issue with paying my rent in the last 7 years I lived in ... or any other state. I was not informed by [the company] that if I paid my rent half on the 1st and half on the 15th it would not be in issue and I might get a \$40.00 late fee but it could be deducted as long as I called in advance. What was not conveyed to me was that every time I did that a civil case was opened and closed against me.” He noted that he had set up automatic check payments to the company through his bank and he had applied for military family housing.

- The applicant’s supervisor stated that he learned on December 9, 2014, that the applicant’s GTCC account was 27 days overdue with a balance of \$997. Therefore, he counseled the applicant on a Page 7. Then in late January, the applicant’s landlady called the command and claimed he was two or three months behind in paying his rent and that “this had been a pattern since July 2014.” After speaking with her, the supervisor checked the court’s online information system and found that the realty management company had filed suit against the applicant each month since July 2014 and that a judgment had been entered against them in October. Then he asked and learned that the applicant had never reported having any financial issues or pending court cases to the SSO.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 8, 2016, the Chair sent the applicant a copy of the views of the Coast Guard and invited a response within thirty days. The applicant requested and was granted an extension and submitted his reply on April 21, 2016.

The applicant repeated his claim that ALCOAST 093/14 was automatically canceled after a year and so the policy was not in effect and should not have been cited to deny him a reenlistment board in May 2015.

Regarding the ten civil cases against him, the applicant stated that all but two were dismissed. In addition, he stated that in 2010, a court notified his command of the first judgment against him, which was for cleaning and damages to his prior apartment. The applicant alleged that he had returned to this property a few weeks after he left and paid all remaining fees, but the property had been bought by another company, his paperwork was lost, and the new company had filed suit for cleaning and damages to his prior apartment. The applicant showed his command his receipt for payment, dated six months before the court date; the command notified the SSO; and no action was taken. This judgment was reported in his 2013 background investigation for his security clearance.

The applicant stated that from 2010 to 2014, he was attached to the [REDACTED], [REDACTED], and he was deployed for more than 300 days during those four years. His wife was dealing with mental health issues, and so his financial obligations suffered when he was deployed. He coordinated with his bank to have cashier’s checks sent, but “sometimes it took longer than five to seven days, and the properties would have to file against me and once payment arrived dismissed the claim.” He stated that he was not neglecting his fiscal duties, but he was deployed, his wife was suffering from mental illness after their daughter

was born in 2008, and he did the best he could. The applicant alleged that he “notified my command, the security center and no action was ever taken against me prior to this NJP proceeding.”

The applicant denied telling the PIO that he was deployed in December 2014. Instead, he stated, the PIO told him that the rental property agent told the PIO that the applicant had deployed in December, but the applicant did not say that to the PIO. The applicant explained that he had told the property agent that he would be out of town and she assumed he was deploying but in fact he was visiting family. Before leaving town, he delivered his rent with a money order. The applicant stated that he was unaware of the civil suit filings because after the company filed suit on the sixth day but before he was notified of the suit, he would pay the rent and the case would be dismissed.

The applicant stated that the judgment against him for September 2014 happened because of a miscommunication between him and the realty management company bookkeeper. He sent a personal check but the bookkeeper did not cash it because it was not a cashier’s check. The applicant stated that he paid the balance with a cashier’s check when he was notified, and he reported the judgment against him to the SSO before he was interviewed by the PIO. During the interview, he honestly told the PIO that the rent had been paid in full to the best of his knowledge. However, he called the company to verify that shortly after the interview and was told that he still owed at 10% late fee and court costs. The applicant alleged that he “paid the fines that day and sent an email to the PIO reporting the error and providing documentation that the balance was paid and that it was zero. I provided a balance statement from the property manager.”

Regarding the traffic tickets, the applicant stated that he told the SSO about them at the time and was told that the limit had been raised to \$300 and so they did not meet the reporting threshold. The applicant reiterated that these civil and credit matters were addressed during his 2013 background investigation for his security clearance, which he retained.

Regarding his GTCC, the applicant stated that he was counseled in December 2014 because after a 2.5-month deployment, a balance of \$9,000 was already due when he returned home. He informed his supervisor about the account being already due upon his return, and he quickly filed his claim and paid the balance as soon as the funds became available. He noted that his payment was delayed by five days because his bank froze his account “due to an identity theft matter,” which he also reported to his supervisor. The applicant further stated that he was not being irresponsible with his GTCC, as the Coast Guard claimed, but he was frequently deployed and so filed his travel claims and paid the balances as soon as he could. His supervisors and command knew about his deployments and never took any action against him regarding his GTCC use. In addition he stated, “All my payments were made before the 30-day mark as required by COMDT policy. NO administrative action has ever been taken against me for late payments. My travel claim regarding this matter was audited, reviewed and closed by the Coast Guard in 2012 [sic] without incident.”

The applicant repeated his allegation that he was punished at mast for excessive cash withdrawals but that his withdrawals were within the limits set by the Coast Guard and the bank

and his GTCC account manager, the chief yeoman, has stated that his account was never flagged for excessive cash withdrawals.

The applicant stated that he did not appeal the NJP because a command chief told him that his appeal was unlikely to prevail because he had a commander and three lieutenant commanders against him. The applicant again complained that his command had assigned him an inexperienced E-6 to represent him at mast because the chief the applicant had chosen was advised by someone that it was not in the applicant's interest for the chief to represent him since the chief had received NJP for an alcohol incident just a few weeks earlier. He complained that during the mast, his name was "dragged through the dirt" and the "proceeding took everything I worked extremely hard for and twisted it around in very undesirable light." He asked the Board to review and correct the NJP and the denial of reenlistment.

APPLICABLE REGULATIONS

Article 1.A.5. of COMDTINST M1000.2, the Enlisted Manual, lists the requirements for eligibility for reenlistment in the regular Coast Guard, including having certain minimum average performance evaluation marks, being physically qualified, and being recommended for reenlistment by one's CO.

Article 1.B.5.c. of COMDTINST M1000.4, the Military Separations Manual, states that COs must notify members with eight or more years of service of their ineligibility to reenlist on a Page 7 stating the basis for the determination, the right to consult counsel, and the right to appear in person before a reenlistment board represented by counsel.

ALCOAST 093/14, issued on March 7, 2014, states the following:

SUBJ: IMPLEMENTATION OF ADDITIONAL REENLISTMENT CRITERIA

A. Enlisted Accessions, Evaluations, and Advancements, COMDTINST M1000.2 (series)

B. Military Separations, COMDTINST M1000.4 (series)

1. To ensure the Coast Guard retains a disciplined, high-performing workforce, reenlistments and/or extensions should only be offered to those members (active and reserve) who maintain high professional standards and adhere to the Coast Guards core values. Therefore, to be eligible for reenlistment or extension of (re)enlistment, a member must meet two basic criteria: receive a positive recommendation from their commanding officer and meet the eligibility criteria listed in REF A and paragraph 2 below.

2. In addition to the eligibility requirements listed in Articles 1.A.5. and 1.A.7. of REF A, all active and reserve members, regardless of duty status, must meet the following eligibility requirements during their current period of enlistment (to include any extensions):

- a. Achieve a minimum factor average of 3.5 on their enlisted performance evaluations,
- b. Have no more than one unsatisfactory conduct mark,
- c. Have no special or general courts-martial conviction,
- d. Have no conviction by a civil court equivalent to a felony-type offense,
- e. Have no documented offense for operating a vehicle, or any other motorized mode of transportation, under the influence of alcohol or controlled substances,
- f. Have no documented offense for which the maximum penalty for the offense, or closely related offense under the UCMJ and Manual for Courts-Martial, includes a punitive discharge,
- g. Have not had their personal-use government travel charge card permanently revoked for misuse or delinquency, ...

3. The commanding officers recommendation remains an integral part of the reenlistment process and provides commands an opportunity to clearly articulate a member's suitability for continued service. ...
4. Members must meet all eligibility requirements to reenlist/extend. Members who meet the eligibility criteria but are not recommended for reenlistment by their commanding officer who have less than eight years total active and/or reserve military service may submit an appeal to CG PSC-EPM-1 for active duty members or CG PSC-RPM-1 for reserve members. Members who have eight or more years of total active and/or reserve military service are entitled to a reenlistment board. Additionally, members who do not meet the eligibility criteria, but are recommended for reenlistment/extension by their commanding officer, may also submit an appeal to CG PSC-EPM-1 for active duty members or CG PSC-RPM-1 for reserve members, regardless of total years of service.
5. These updated reenlistment eligibility criteria are effective 17 March 2014. Article 1.B.4.b. of REF B requires commands to conduct a pre-discharge interview approximately six months prior to a member's expiration of enlistment (EOE) to notify a member whether they are eligible to reenlist. To accommodate this provision, members whose EOE is within six months of the 17 March 2014 effective date (17 September 2014) will not be screened against these updated reenlistment criteria. Members whose EOE is after 17 September 2014 who desire to reenlist or extend their enlistment must be screened against these updated reenlistment criteria within the timeframe of Article 1.B.4.b. of REF B. Commanding officers should coordinate with their servicing personnel office for electronic and paper records reviews prior to effecting enlistments/extensions. The updated reenlistment eligibility criteria shall not be used as a tool to separate members that would otherwise be eligible under Article 1.B. of REF B.
6. Members not eligible for reenlistment/extension of enlistment will be discharged from the active or reserve component, as applicable, upon the expiration of their enlistment in accordance with the provisions of Article 1.B.11. of REF B with an RE-3 reenlistment code.
7. This change will be incorporated in the next update to REF A. A list of frequently asked questions is posted online at ...
8. Policy questions should be directed to the Policy and Standards Division (CG-1331) ...

On July 6, 2015, before the applicant's discharge but after he was told he was not entitled to a reenlistment board, the Coast Guard released ALCOAST 274/15, which stated that ALCOAST 093/14 "remains valid" but added the following:

SUBJ: AMENDMENT TO ALCOAST 093/14 REENLISTMENT CRITERIA

A. COMDT COGARD WASHINGTON DC 072054Z MAR 14/ALCOAST 093/14

B. Enlisted Accessions, Evaluations, and Advancements, COMDTINST M1000.2 (series)

1. REF A remains valid.

2. Effective immediately, paragraph 4 of REF A is amended to include the following: Members who do not meet the reenlistment eligibility criteria are not entitled to a reenlistment board, even if they have eight or more years of total active and/or reserve military service.

3. Members meeting criteria in REF A, but who are not recommended for reenlistment, and who have eight or more years' total active and/or reserve military service, are entitled to a reenlistment board.

4. Final authority regarding the decision to approve reenlistments for members who do not meet the eligibility criteria in REF A rests with CG PSC (epm) or CG PSC (rpm). Commands may recommend members for reenlistment even if they do not meet the criteria in REF A. Specifically, commands should identify how the member has overcome the circumstances that made them ineligible. CG PSC reviews every case in which a member fails to meet criteria in REF A while considering the commands recommendation for reenlistment.

5. REF A and this amendment will be incorporated in the next revision of REF B, scheduled for release summer 2015.

6. Policy questions should be directed to the Policy and Standards Division (CG-1331) ...

In December 2015, the Coast Guard reissued the Enlisted Manual as COMDTINST M1000.2A. Article 1.A.5. now incorporates the provisions of the ALCOASTs as follows:

The Coast Guard offers reenlistments and/or extensions only to those members who consistently demonstrate the capability and willingness to maintain high professional standards, moral character, and an adherence to the Coast Guard's core values. To be eligible for reenlistment, or extension of enlistment, a member must receive a positive recommendation from their commanding officer in accordance with Article 1.A.5.a. of this Manual, and meet the eligibility criteria listed in Article 1.A.5.b. of this Manual. In addition, SELRES members, and IRR members on active duty, or approved to drill for points, must also meet the eligibility criteria listed in Article 1.A.5.c. of this Manual. Members who have eight or more years of total active duty and/or reserve military service that meet the eligibility criteria, but are not recommended for reenlistment by their commanding officer, are entitled to a reenlistment board, as outlined in reference (c), Military Separations, COMDTINST M1000.4 (series). However, members who do not meet the eligibility criteria are not entitled to a reenlistment board, even if they have eight or more years of total active and/or reserve military service. The procedures in Article 1.A.5.d of this Manual shall be followed for members who do not meet the eligibility criteria.

Chapter 1.D.7. of COMDTINST M5215.6G states the following regarding ALCOASTs:

After release of the ALCOAST, it must be followed up with either a Commandant Change Notice or revision to the affected directive (see Appendix A, Paragraph C.1.c). An ALCOAST is self cancelling after one year and cannot be referenced after that year has ended.

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 regulations:

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

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.⁴

3. The applicant asked the Board to expunge the NJP he received on April 9, 2015, and argued that he was erroneously and unjustly denied a reenlistment board before his discharge. In 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 her 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

⁴ *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

⁵ 33 C.F.R. § 52.24(b).

presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”⁶

4. GTCC: The applicant alleged that his NJP for violating Article 92 based on his GTCC use was erroneous and unjust. The specifications attached to the Court Memorandum show that his CO found that he had violated Article 92 by routinely failing to timely pay his GTCC balance in violation of a regulation. The applicant alleged that he was punished for making excessive cash withdrawals, but that is not the offense described in the specification. He also alleged that he timely paid off his balance except once when he was away for more than two months and the account became due before he returned to his unit. However, a GTCC Statement Summary included in the PIO’s report shows nine “past due” balances on eighteen statements issued from March 2013 to January 2015. Therefore, although the applicant deployed frequently, the Board is not persuaded that his CO erred in finding that he had routinely failed to timely pay his GTCC balance.

5. Civil Actions and Traffic Tickets: The applicant alleged that his NJP for failing to report the traffic tickets and civil actions against him to his SSO was erroneous and unjust. The specifications attached to the Court Memorandum show that his CO found that he had violated Article 92 by failing to report “unfavorable credit, bankruptcy, or overbearing financial commitments” to his SSO as required for his security clearance. The applicant alleged that he believed that the minimum reportable traffic ticket was \$250 or \$300. He provided no evidence showing that such a mistaken belief was reasonable given his training on the issue. He also alleged that he was unaware of the civil suits filed against him by his landlord in 2014 and 2015. The record shows, however, that two prior landlords had also filed suit against him repeatedly since 2010. The applicant alleged that he was unaware of the lawsuits because when he paid his rent after the 5th day of the month, the suits were dismissed. Even assuming *arguendo* that he somehow did not receive the summonses for most or all of the suits, he presumably learned about them during his background investigation for his clearance in 2013. His landlord’s bookkeeper apparently testified for the investigation and stated that in 2014 and 2015 the realty management company habitually sent tenants notices about nonpayment and late fees on the sixth day of the month and filed suit on the thirteenth day if the rent was not paid. The filing dates in the court records support this claim. Based on the evidence of record, the Board cannot conclude that the applicant’s CO erred by finding that the applicant knew about the civil actions and judgment against him and should have reported his financial problems to his SSO before he actually did report them. The applicant has not proven by a preponderance of the evidence that this NJP was erroneous or unjust.

6. False Official Statements: The applicant alleged that he made no false official statements during the administrative investigation. The PIO’s report shows that the PIO concluded that the applicant had made false official statements, in violation of Article 107 of the UCMJ, by (a) claiming that he had been away on temporary travel orders in December 2014, (b) stating that he was fully paid up on his rent when he knew that he owed \$232, and (c) claiming that he had never had any issues paying his rent during the prior seven years when he had had ten civil cases filed against him since August 2010:

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

- a) The applicant alleged that he never told the PIO that he was traveling on temporary duty orders in December 2014 and that the PIO heard it instead from someone at the realty management office. The applicant alleged that this person wrongly assumed he was being deployed when he only said he was going out of town and did not mention that the reason for his departure was to visit family. The PIO's summary of the interview with the applicant states that the applicant "noted that the pay office would not accept personal checks, but prior to departing TAD in December he provided pre-dates [sic] checks to cover December 2014 and January 2015." The applicant's own written statement states more vaguely, "Due to me being away at training and out of the state it didn't allow for me to make my payment to my rent on-time. I had left personal USAA checks with the realty company" Although the applicant's explanation is plausible and his motivation for making such a false statement is unclear, the Board cannot conclude based on the evidence in the record that the PIO erred in reporting that the applicant had made false official statement by telling the PIO that he had been traveling on official business in December.
- b) The applicant stated that he told the PIO that he was fully paid up during the interview on December 5, 2015, because at that moment he believed he was fully paid up. He alleged that he did not find out that he still owed \$232 until later the same day, when he called the realty management company to be sure, at which point he notified the PIO by email. Statements from the realty management company show that the applicant paid \$2,200 on February 4, 2015, and \$240 on February 12, 2015. According to the PIO's summary of his interview with the bookkeeper on February 11, 2015, when the applicant paid the \$2,200 on February 4, 2015, he agreed to pay the remaining balance on February 13, 2015. In his letter dated February 23, 2015, the applicant stated that upon learning about the \$232 balance, he "immediately paid the \$232.00 with seven eleven money order." Based on the evidence of record, the Board cannot conclude that the applicant's PIO erred in reporting that the applicant had knowingly falsely informed the PIO that he was fully paid up.
- c) The applicant argued that his claim that he had "never had any type of issue with paying my rent in the last 7 years" in his February 23, 2015, letter for the investigation is not false because he always paid his rent, because he received no notice of most of the lawsuits, because all but two were dismissed, and because the two that were not dismissed resulted from miscommunications and other circumstances. Because the record shows that the applicant had been sued a total of ten times by three different landlords since 2010 and had paid his rent consistently late since July 2014, the Board finds that he has not proven by a preponderance of the evidence that the PIO erred in reporting that his claim that he had "never had any type of issue with paying my rent in the last 7 years" in his February 23, 2015, letter was false.

In light of the above, the Board finds that the applicant has not proven by a preponderance of the evidence that his CO erred in awarding him NJP for making one or more false official statements.

7. The applicant complained that he did not have his first choice of representative at mast because someone advised the chief petty officer he chose that it would not be in the applicant's interest for the chief to represent him because the chief had incurred an alcohol incident a few weeks before. The Report of Offense indicates that the applicant was not represented by the person he originally asked to have represent him. He has not shown, however, that the decision not to have the chief petty officer serve as his mast representative was not a voluntary decision on the part of the chief or himself. Nor has he shown that he was disadvantaged by the choice of the petty officer who served as his representative.

8. The applicant alleged that he was erroneously and unjustly denied a reenlistment board. He argued that pursuant to Chapter 1.D.7. of COMDTINST M5215.6G, ALCOAST 093/14 was automatically canceled one year after its issuance on March 7, 2014. That chapter states the following in pertinent part: "After release of the ALCOAST, it must be followed up with either a Commandant Change Notice or revision to the affected directive (see Appendix A, Paragraph C.1.c). An ALCOAST is self-cancelling after one year and cannot be referenced after that year has ended." Paragraph 5 of ALCOAST 093/14 states that "[t]his change will be incorporated in the next update to REF A [COMDTINST M1000.2]." Therefore, the Board concludes that PSC clearly intended the new reenlistment eligibility rules to be permanent. The record shows that instead of revising the Enlisted Manual by March 2015, to incorporate the policy changes made in ALCOAST 093/14 (as well as other changes), it took PSC until December 2015 to update and reissue the manual. However, the Board is not persuaded that the policies in ALCOAST 093/14 had to be abandoned under the "self-cancelling" clause just because it took PSC more than a year to reissue the manual. In this regard, the Board notes that the same Chapter 1.D.7. of COMDTINST M5215.6G that makes ALCOASTs self-cancelling also provides that the affected directives must be revised to reflect any policy changes. Chapter 1.D.7. does not require the revisions to be made within a year and it does not state that if the affected directives are not revised within a year the new policy announced in the ALCOAST is void and cannot be applied. Moreover, the fact that the policy in ALCOAST 093/14 remained in effect was affirmed in ALCOAST 274/15, issued on July 6, 2015. ALCOAST 274/15 was in effect on the date of the applicant's discharge without a reenlistment board, and it expressly states that ALCOAST 093/14 remained valid and would be incorporated, along with ALCOAST 274/15, in the next edition of COMDTINST M1000.2. The policy in ALCOAST 093/14, as clarified in ALCOAST 274/15, was incorporated when COMDTINST M1000.2A was issued in December 2015. Therefore, the Board finds that the Coast Guard did not commit error or injustice when it discharged the applicant pursuant to the eligibility criteria in ALCOASTs 093/14 and 274/15.

9. The applicant alleged that he was entitled to a reenlistment board even under ALCOAST 093/14 because he had more than eight years of service and his GTCC card had been suspended but not revoked. As the Board noted in 2015-002, language in paragraph 4 of the ALCOAST could be interpreted in two different ways:

Members who meet the eligibility criteria but are not recommended for reenlistment by their commanding officer who have less than eight years total active and/or reserve military service may submit an appeal to CG PSC-EPM-1 for active duty members or CG PSC-RPM-1 for reserve members. Members who have eight or more years of total active and/or reserve military service are entitled to a reenlistment board.

Read alone, the second sentence above appears to give the applicant a right to a reenlistment board because he had more than eight years of active duty. Read in conjunction, however, these two sentences appear to mean that members with less than eight years who are eligible but not recommended to reenlist may appeal, while such members (eligible but not recommended) with more than eight years are entitled to a reenlistment board. As the JAG noted in the advisory opinion, on October 1, 2014, PSC's attorney reported to the JAG's office that PSC's interpretation of paragraph 4 of ALCOAST 093/14 is as follows:

- 1) Eligible & recommended = reenlist
- 2) Eligible & not recommended = request a waiver/appeal from epm-1 (less than 8 years' service) or reenlistment board (over 8 years' service)
- 3) Not eligible & recommended = request a waiver/appeal from epm-1 regardless of years in service – no reenlistment board
- 4) Not eligible & not recommended = no reenlistment, no waiver/appeal

This interpretation of paragraph 4 of ALCOAST 093/14 was incorporated in ALCOAST 274/15, which was in effect when the applicant was discharged and which provides that members who do not meet the reenlistment eligibility criteria in ALCOAST 093/14 are not entitled to a reenlistment board. Therefore, although the applicant had more than eight years of active duty, the Board finds that he was not entitled to a reenlistment board prior to his discharge at the end of his enlistment under the applicable policy announced in ALCOAST 093/14, as clarified in PSC's email to the JAG's office dated October 1, 2014, and in ALCOAST 274/15. He was not entitled to a reenlistment board because he was not recommended for reenlistment by his CO and he did not meet the eligibility requirements because of his conviction at mast for offenses for which the maximum punishment under the UCMJ includes a punitive discharge.

10. The applicant made numerous allegations with respect to the actions and attitudes of various officers involved in his NJP and discharge proceedings. Those allegations not specifically addressed above are considered to be unsupported by substantial evidence sufficient to overcome the presumption of regularity and/or are not dispositive of the case.⁷

11. Accordingly, the applicant's request should be denied because he has not shown by a preponderance of the evidence that his NJP was unjust or that he could not legally be discharged without a reenlistment board when his enlistment ended.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁷ 33 C.F.R. § 52.24(b); see *Frizelle v. Slater*, 111 F.3d 172, 177 (D.C. Cir. 1997) (noting that the Board need not address arguments that "appear frivolous on their face and could [not] affect the Board's ultimate disposition").

ORDER

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

July 8, 2016

