

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1998-099

FINAL DECISION

Attorney-Advisor:

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was commenced upon the BCMR's receipt of the applicant's request for correction on July 31, 1998.

This final decision, dated August 5, 1999, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a former [REDACTED] pay grade E-6), asked the Board to correct his record by reinstating him in the Coast Guard and awarding him full pay and benefits retroactively since the date of his discharge on May 9, 1996. In the alternative, he asked for early retirement under the Coast Guard's Temporary Early Retirement Authority (TERA), Pub. L. 103-337 § 542(d), 108 Stat. 2091, 2769 (1994).

APPLICANT'S ALLEGATIONS

The applicant alleged that, while he was stationed at [REDACTED] in the early 1990s, the officer in charge (OIC) "lacked the ability to provide leadership and maintain good order and the respect of the crew." Moreover, the applicant alleged, the OIC "would not operate the boats" and would make excuses to avoid operating them. The applicant alleged that he tried to cover for the OIC but could no longer do so after an incident on October 12, 1992. On that day, he alleged, the OIC refused to come to the rescue of a fishing vessel and a Coast Guard boat under the applicant's command, which had lost its tow line and electronics while trying to save the fishing vessel in heavy weather.

The applicant alleged that, as a result of the OIC's behavior, he felt forced to speak to the group commander for the sake and safety of his crew. After an investigation, he alleged, the OIC was relieved of his command and transferred to a new station. While serving at his new station, the OIC was [REDACTED]

The applicant alleged that, upon learning of the OIC's death on [REDACTED] he felt responsible and "overwhelmed with guilt." As a result, he took leave, went to the beach, "consumed a large quantity of beer, and without being fully aware of his surroundings, engaged in an act that was to lead to his arrest for public indecency."

The applicant alleged that he pleaded guilty to the charges in December 1994 "to shield the service from adverse publicity." He was sentenced to undergo treatment in a sex offender program. (Likewise, the applicant alleged that, after his prior arrest for public indecency in 1987, which also followed his consumption of a large quantity of alcohol, he did not challenge the charges "[b]ecause he did not want to tarnish the reputation of the Coast Guard he honored.")

The applicant alleged that, when his command ordered him to undergo psychological evaluation, the psychologist conducted a 50-minute "hasty interview, and, without adhering to diagnostic protocols, found [the applicant] to be suffering from a personality disorder." The diagnosis was made, he alleged, without a thorough clinical evaluation, review of records, or projective tests. The applicant alleged that he did not have a personality disorder. Instead, he alleged, his arrest for public indecency was caused by post-traumatic stress disorder, adjustment disorder, and temporary intoxication, from all of which he has recovered.

The applicant alleged that an administrative discharge board (ADB) convened in June 1995 to consider his separation from the Service had unanimously recommended that he be retained if he completed the sex offender program. However, despite this recommendation and subsequent efforts by his superiors on his behalf, he was honorably discharged after more than 16 years of service by reason of unsuitability due to a personality disorder. The applicant alleged that he was discharged because of the incorrect psychological diagnosis and statement of prognosis. He alleged that he should not have been discharged or at least should have been retired under TERA. As a result of the discharge, he alleged, he has lost all his retirement benefits. He also alleged that his discharge prevents him from obtaining many kinds of employment.

VIEWS OF THE COAST GUARD

Advisory Opinion of the Chief Counsel

On February 25, 1999, the Chief Counsel of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny the applicant's request due to lack of proof.

The Chief Counsel alleged that the applicant's psychological diagnosis had been properly made by competent medical authorities who exercised due diligence in their evaluation. He argued that the applicant has not provided the necessary "clear, cogent, and convincing evidence" necessary to overcome the presumption of regularity. *Muse v. United States*, 21 Cl. Ct. 592, 601 (1990).

The Chief Counsel further alleged that the applicant's two arrests qualified him for a misconduct discharge pursuant to either Article 12.B.18.b.(1) of the Personnel Manual (moral turpitude) or Article 12.B.18.b.(6)(c) (indecent exposure). He also alleged that, because the applicant had admitted to drinking large amounts of alcohol prior to each arrest, the incidents qualified as "alcohol incidents" and would thus justify his discharge under Article 20.B.2.h.(2). Therefore, the Chief Counsel argued, "[a]ssuming, arguendo, that the psychological diagnosis was inaccurate, any error in the exact diagnosis was harmless because the Applicant would still have been discharged by reason of misconduct due to his two arrests for moral turpitude or, in the alternative, for his two documented alcohol incidents." He also pointed out that if the applicant had been discharged for misconduct, he would not have received the transition benefits available to those discharged for unsuitability.

The Chief Counsel alleged that the applicant was accorded his full procedural rights through the ADB, where he was represented by a military attorney and called witnesses on his own behalf. Article 12.B.31.d.(1) of the Personnel Manual, he alleged, authorizes the Commandant to discharge members despite a contrary recommendation by an ADB "so long as that action is supported by evidence of record and the specific reasons are set out in the final action." The Chief Counsel alleged that the Coast Guard Personnel Command (CGPC), to whom the Commandant has delegated this authority, properly set out the reasons for the applicant's discharge in its final action.

The Chief Counsel alleged that the TERA statutes give the Coast Guard "broad discretion to manage its active duty workforce by encouraging voluntary early retirement according to service needs." Furthermore, although the Coast Guard was authorized to use TERA in 1994, it did not do so until 1996. When TERA was implemented in 1996, "the sole criteria for granting retirements under TERA was the achievement of force reductions to meet the force structure needs of the Coast Guard." Therefore, he alleged, eligibility for TERA is "within the discretion of the Coast Guard," and the applicant had no statutory or regulatory right to TERA.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 24, 1999, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond within 15 days. The applicant requested two extensions and then responded to the Chief Counsel's advisory opinion on May 14, 1999.

The applicant argued that whether or not the Coast Guard had acted diligently and in good faith with regard to his psychiatric evaluation was irrelevant.

"Neither good faith nor due diligence guarantee accuracy of the outcome." The applicant alleged that he had proved that the Coast Guard's diagnosis was inaccurate with evidence from the Diagnostic and Statistical Manual IV and from his treating psychologist. Therefore, his discharge for unsuitability due to a personality disorder was in error. He alleged that his statement before the ADB that he acknowledged his personality disorder carries no weight because he was a layperson and patient and "in no position to determine the accuracy of a psychiatric diagnosis."

The applicant also rebutted the Chief Counsel's allegation that even if the applicant had been misdiagnosed, the error was harmless because he could have been discharged for misconduct. The applicant argued that "could have been" does not necessarily mean "would have been," especially in light of the ADB's recommendation. "Furthermore, it offends due process [for the Chief Counsel] to attempt, *post hoc*, to replace a flawed decision with what might have been." The applicant also argued that the BCMR, like federal courts, should reject *post hoc* rationalization and "adjudicate agency actions based solely on the grounds relied upon by the agency." *SBC Communications v. F.C.C.*, 138 F.3d 410, 418 (D.C. Cir. 1998).

The applicant argued that the Coast Guard's adherence to proper procedures in his case is irrelevant because those procedures could not and did not prevent the inaccurate diagnosis. He argued that, under the Administrative Procedure Act, agency decisions may be overturned not only if proper procedures are not followed, but also if the agency's decision is "unwarranted by the facts." 5 U.S.C. § 706(1)(D) and (F).

The applicant also stated that he had never alleged that he was entitled to retirement under TERA; he had merely suggested it as an alternative form of relief. The applicant alleged that on January 31, 1996, his group commander summoned him and told him that, if he applied for TERA within 24 hours, he would be permitted to retire. The applicant alleged that he did so and was being processed for retirement in February when CGPC informed his group commander that the offer had been withdrawn. The applicant further pointed out that a TERA retirement was identified as a possible outcome by the Chief Counsel in a memorandum to CGPC dated March 6, 1996. The applicant submitted copies of Coast Guard communications supporting these allegations.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on May 8, 1979. He was promoted to BM3 in 1981 and to BM2 in 1984. His record contains many awards and commendations for exceptional service. Apart from low marks assigned for his arrests, the applicant's evaluations are excellent. He received 12 marks of 7 (best member in grade) in various performance categories.

On June 11, 1987, he was issued a citation by the [REDACTED] State police for public indecency after drinking a large quantity of alcohol. The arrest report states the following, based on the statements of five witnesses:

They observed the suspect on the beach at [REDACTED] lying on his back. He was wearing a pair of blue bikini swim trunks, which he had pulled down in front. The suspect had his penis exposed out the top of his trunks, with an erection, fondling it, and appeared to be looking at a young girl. The suspect was with two children and after about 15 minutes, he left with them. . . . [The suspect] stated that he did not understand what people were getting excited about, however, did not deny, or admit, to the accusations.

He pled guilty on February 1, 1988, and received a \$250 fine and a suspended sentence. His commanding officer gave him a poor evaluation for this period and ordered him to undergo a psychological evaluation. A naval reserve counselor reported the following:

. . . The evaluation was recommended following a citation for public indecency resulting in the removal of the patient from his home for the purpose of separating him from his children. The patient was seen in one session The patient denied the accusations alleged by the State Police and went on to explain that he had already contacted one witness who corroborated his own story. . . . He further explained that he was a victim of cultural harassment in that he came from a cosmopolitan environment where manner of dress was more lenient He further explained that he received no support from his command and, to the contrary, also felt harassed by a significant number of personnel at his command, essentially on the basis of envy

. . . His affect was angry and his mood suggested righteous indignation . . . he frequently returned to the topic of the injustices presented to him by his command. . . . [H]e explained his situation being the result of petty jealousy.

MMPI testing revealed a highly defended and possibly invalid profile suggesting high levels of repression and low levels of anxiety. Paranoid scale evaluation, while suggesting situational factors, also suggested a more pervasive tendency toward interpersonal and social conflict.

IMPRESSION: NO PSYCHIATRIC DIAGNOSIS

ASSESSMENT: There is no evidence of a psychiatric condition which would cause this service member to be unfit for duty

The applicant was promoted to [REDACTED] in 1991. On June 23, 1994, the applicant was arrested for public indecency on a beach after having consumed a large quantity of beer. The arresting officer reported that three witnesses told him they had seen the applicant standing between two vehicles in a parking lot. He had his pants down and was masturbating. When one of the witnesses yelled at him, the applicant ran into the public restroom and later walked over to a nearby trailer court. Upon arrest, the applicant told the officer he was just changing his shorts. The officer later heard him tell someone at the jail that he had been arrested for urinating in the parking lot.

The applicant's group commander became aware of the arrest in October 1994. On December 20, 1994, he was convicted and sentenced to report to the [REDACTED] Mental Health [REDACTED] Sex Offender Treatment Program as a sex offender. On January 11, 1995, his group commander relieved him of his position as executive petty officer of Station [REDACTED]

On February 2, 1995, the applicant met with a mental health specialist at [REDACTED]. The next day, the mental health specialist reported to the applicant's command that the applicant was in denial and should attend sex offender counseling. As a result of the specialist's assessment, the applicant's command ordered him to undergo evaluation at the [REDACTED] Naval Hospital.

On March 3, 1995, the applicant was screened for alcohol abuse at an addiction treatment clinic. The counselor reported that the applicant had indicated that his current situation was his "first major negative consequence from drinking." She stated that the applicant had explained that, on June 22, 1994, after drinking three beers from his six-pack, he needed to urinate and urinated into one of his empty beer cans. He told her that a man who had been standing three car lengths away saw him and called the police.

On April 20, 1995, a psychologist and a physician in the [REDACTED] Naval Hospital's Department of Psychiatry evaluated the applicant. He told the psychologist that he had urinated into a beer can instead of using a restroom. He denied having any sexual deviation. The applicant refused to sign a release so the doctors could see the results of the psychological evaluation he underwent after his arrest in 1987. He told them he wanted to read the evaluation before they saw it. The doctors diagnosed him as having an Axis II narcissistic personality disorder. Nevertheless, they found him to be "free of any unfitting psychiatric condition, thus fit for full duty."

On May 30 and 31, 1995, the [REDACTED] medical officers signed a narrative summary of their evaluation of the applicant. The summary states that the diagnosis of personality disorder was "based primarily on an overall psychiatric impression" and the presence of five or more of the diagnostic criteria for narcissistic personality disorder listed in the Diagnostic and Statistical Manual.¹ It

¹ According to the Diagnostic and Statistical Manual, "Many highly successful individuals display personality traits that might be considered narcissistic. Only when these traits are inflexible, maladaptive, and persisting and cause significant functional impairment or subjective distress do they constitute narcissistic personality disorder." The diagnostic criteria are the following:

A pervasive pattern of grandiosity (in fantasy or behavior), need for admiration, and lack of empathy, beginning by early childhood and present in a variety of contexts, as indicated by five (or more) of the following:

- (1) has a grandiose sense of self-importance (e.g., exaggerates achievements and talents, expects to be recognized as superior without commensurate achievements)
- (2) is preoccupied with fantasies of unlimited success, power, brilliance, beauty or ideal love
- (3) believes that he or she is "special" and unique and can only be understood by, or should associate with, other special or high-status people (or institutions)
- (4) requires excessive admiration
- (5) has a sense of entitlement, i.e., unreasonable expectations of especially favorable treatment or automatic compliance with his or her expectations
- (6) is interpersonally exploitative, i.e., takes advantage of others to achieve his or her own ends [continued on next page]

further states that the applicant "has given the impression of resisting evaluation and intervention. ... [it is] consistent with narcissistic behavior."

On May 28, 1995, the applicant's group commander initiated an ADB to consider whether he should be discharged. On June 22, 1995, the ADB, composed of a lieutenant commander, a lieutenant, and a lieutenant junior grade, conducted an oral hearing. The applicant was represented by an attorney in the Naval Reserve JAG. The applicant admitted that he had been arrested for fondling his genitals in public in 1987 and 1994. He explained that the 1987 incident was due to intoxication and that the 1994 incident was due to intoxication and his distress over the death of the OIC who was transferred after the applicant reported his shortcomings. He admitted that he had a personality disorder but stated that he did not usually abuse alcohol and disliked the taste of alcohol. His attorney at the ADB described the 1994 incident as follows:

[A]fter the stress of relieving [the OIC] and being a high-strung, top performer, he cracked a little. He went to a park, drank a six-pack of beer, was peeing in a bottle, maybe he started to feel good, and he was kind of touching himself. Somebody looked at it. . . .

His attorney attributed the applicant's initial refusal to admit that he had a problem to the fact that he had not wanted to put himself in the same category as the sex offenders he had met in group therapy who had done heinous things.

Several witnesses appeared on the applicant's behalf. One former supervisor, a senior chief boatswain's mate, stated that he did not think the applicant had any personality traits that interfered with his job performance, that the applicant was a very valuable member of the unit, and that he trusted the applicant to run the station as executive petty officer, but that the applicant had not reported his arrest to his command.

Another witness, the applicant's deputy group commander, described the applicant as a "top-notch performer," but that he had been removed as executive petty officer because they had lost confidence in him after his second arrest. The deputy group commander stated he would "take him back immediately" as a surfman and would have him as an officer in charge if he were convinced that the applicant had successfully dealt with his problem.

The applicant's group commander, a captain, testified that he had spoken with the applicant several times regarding the OIC's relief for cause. He stated that the applicant was an excellent surfman and superb acting OIC. Regarding the applicant's future value to the Coast Guard, he stated, "there's a limitation on some of the billets that he could, he would not serve in at this point, like command and control type billets. But I'd take him in a heartbeat on my staff."

(7) lacks empathy: is unwilling to recognize or identify with the feelings and needs of others

(8) is often envious of others or believes that others are envious of him or her

(9) shows arrogant, haughty behaviors or attitudes

The group surface operations officer stated that she would look forward to working with the applicant again if the applicant had counseling and got a "clean bill of health." The group engineer testified that he would be happy to have the applicant serve under his command again and that he should be retained if he continued in therapy.

On August 30, 1995, the ADB unanimously recommended that the applicant be retained upon condition that he successfully complete the court-ordered sex offender program. Among other things, the ADB found that the applicant had a personality disorder of which he was aware; that he knew he needed counseling; and that his prognosis for successful completion of the treatment program was good. The ADB also found that the applicant had numerous marks of 7 (best) in his performance evaluations and that several officers had testified that his job performance was exceptional and that they would like to have him under their command again. The ADB concluded that the applicant's grief over the OIC's death had caused him to drink alcohol, which had "affected his ability to control his personality disorder." It recommended that he refrain from drinking alcohol and be retained in the Coast Guard if he successfully completed sex offender treatment.

On October 17, 1995, the applicant's group commander forwarded the ADB's report, concurring in the findings, opinions, and recommendations. The group commander stated that the applicant's therapist reported that he was making satisfactory progress. The group commander also asked that the applicant not be transferred from the group so that he would receive consistent treatment and support from those most familiar with his situation.

On December 7, 1995, after reviewing the report of the ADB and the record, the Commander of the Thirteenth Coast Guard District recommended to the Coast Guard Personnel Command (CGPC) that the applicant be discharged for misconduct. The Commander found that several of the endorsements offered at the ADB's hearing by the applicant's former supervisors were qualified. He also cited the applicant's previous alcohol incident and arrest for indecent exposure, "compulsive" personality disorder, and two page 7s for poor attitude (1984) and violations of visiting hours and location (1987). He further noted that the applicant had "said he had told his command about the arrest when he hadn't" and told conflicting stories about the 1994 incident. Moreover, he stated that children were among the witnesses to the 1987 incident. Furthermore, the applicant required two years of treatment and then one year of after-care. He concluded that the applicant's "contributions and value to the Coast Guard do not outweigh the seriousness of his offense, the damage done by his behavior or the risk of reoccurrences."

On February 1, 1996, the applicant submitted a rebuttal to the Commander's recommendation to CGPC with a signed statement from his therapist, who is a licensed psychologist, and the therapist's supervisor, a doctor of psychology. They stated that the therapist had met with the applicant 11 times and that the applicant was making "satisfactory" progress on the issue of denial and "very good" progress overall. They also stated that the prescribed duration of the

applicant's treatment was typical. Regarding the applicant's diagnosis, they said that the applicant did not have a mental disorder other than Axis I diagnoses of "adjustment disorder with mixed disturbance of emotions and conduct" and "alcohol abuse" (or "alcohol intoxication").²

The applicant's therapists further stated that personality testing did not support a diagnosis of narcissistic personality disorder, impulse control disorder, or exhibitionism. The applicant did not meet the criteria of "an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture . . . manifested in two or more of the following areas: (1) cognition, (2) affectivity, (3) interpersonal functioning, (4) impulse control." They defined "an enduring pattern [as] inflexible and pervasive across a broad range of personal and social situations." The psychologists further stated that the applicant's "history of meritorious service in the Coast Guard would rule out a personality disorder."

In his rebuttal, the applicant also included three affidavits from former superiors in which those officers restated their respect for the applicant's job performance and their willingness to work with him again. He also stated that there were no alcohol incidents in his record.

On February 1 and 12, 1996, the applicant's group commander sent messages concerning the applicant's possible retirement under TERA to CGPC.

On February 29, 1996, the then Chief Counsel of the Coast Guard reported the following to CGPC concerning the police reports on the applicant's two arrests:

The report of June 13, 1987, says that five witnesses, two men and three women, observed respondent on the beach at a state park lying on his back with his bikini swim trunks pulled down in front so that his erect penis was exposed and that he was fondling it while appearing to be looking at a young girl. The Sheriff's Office custody report of July 23, 1994, says that three witnesses, two men and a woman, observed respondent in a trailer court parking lot standing between two cars with his penis in his hand masturbating. When one of the men yelled at him he stopped and ran into the public restroom.

The Chief Counsel advised CGPC that recommendations of both the ADB and the Thirteenth District Commander had "an adequate basis in the record." Therefore, CGPC could either approve the ADB's recommendation, discharge the applicant for misconduct, or place the applicant on probation. The Chief Counsel later amended this list to include the option of retirement under TERA although the applicant's rating, [REDACTED] was not one of those listed as eligible for TERA in ALCOAST 007/96.

² The psychologists stated in one place that the diagnosis was "alcohol abuse," but in another that it was merely "alcohol intoxication." They ruled out "alcohol dependency."

On March 12, 1996, the Chief of the Administrative Division recommended that the applicant be honorably discharged by reason of unsuitability. On March 29, 1996, the Commander of CGPC ordered that the applicant be honorably discharged "by reason of unsuitability due to having a diagnosed personality disorder," pursuant to Article 12.B.16. of the Personnel Manual.

On April 15, 1996, and again a year later, the applicant's therapist signed statements indicating that he found "no support for a diagnosis of a narcissistic personality disorder." The applicant had shown no enduring pattern of behavior or substantial impairment of functioning, and he met none of the criteria for a personality disorder. The therapist strongly criticized the diagnosis made by the doctors at ██████████ Naval Hospital and the ADB's inexpert analysis. He said that the applicant's conduct could "be interpreted much more sensibly as an adjustment disorder with mixed disturbance of emotions and conduct, and alcohol abuse." He had referred the applicant for treatment for post-traumatic stress disorder. He stated "categorically that [the applicant] does not have and never has had narcissistic personality disorder, or any other personality disorder, by any plausible reading of the criteria." He opined that discharging the applicant "based on the diagnosis of narcissistic personality disorder is a misuse of psychology."

On May 9, 1996, the applicant was honorably discharged under Article 12.B.16. of the Personnel Manual. He had served 16 years, 11 months, and 11 days on active duty. The narrative reason for discharge given on his DD214 is "unsuitability"; the separation code is GFX ("involuntary discharge approved by recommendation of a board when a personality disorder exists, not amounting to a disability, which potentially interferes with assignment to or performance of duty");³ and a reenlistment code of RE-3G ("eligible for reenlistment except for disqualifying factor: condition (not physical disability) interfering with performance of duty").

APPLICABLE REGULATIONS

Article 12-B-16 of the Personnel Manual (COMDTINST M1000.6A) authorizes enlisted personnel to be discharged by reason of unsuitability by direction of the Commandant. Article 12-B-16.a. states that "Discharge by reason of unsuitability will not be issued in lieu of disciplinary action except upon determination by the Commandant that the interests of the Service as well as the individual will best be served by administrative discharge."

Article 12-B-16.b. of the Personnel Manual authorizes unsuitability discharges for alcohol abuse, pursuant to Article 20-B-2, or for personality disorders "[a]s determined by medical authority."

³ The Board notes that, because the ADB's recommendation was not approved, the applicant possibly should have been assigned a separation code of JFX: "involuntary discharge directed by established directive when a personality order exists . . ." However, the applicant did not request that his separation code be corrected.

Article 12-B-18.b. of the Personnel Manual authorizes the Commander of the Military Personnel Command to discharge an enlisted member for misconduct upon civilian conviction for an offense involving moral turpitude; for frequent involvement of a discreditable nature with civil authorities; or for sexual perversion, including indecent exposure.

Article 20.A.2.d. of the Personnel Manual defines an alcohol incident as follows:

Any behavior in which the use or abuse of alcohol is determined to be a significant or causative factor and which results in the member's loss of ability to perform assigned duties, brings discredit upon the Uniformed Services, or is a violation of the Uniform Code of Military Justice (UCMJ) of federal, state, or local laws. The member need not be found guilty at court martial, in a civilian court, or be awarded non-judicial punishment (NJP) for the behavior to be considered an alcohol incident. However, the member must actually consume alcohol for an alcohol incident to have occurred.

According to Article 20.B.2.h.2. of the Personnel Manual, "[e]nlisted members involved in a second alcohol incident will normally be processed for separation in accordance with Article 12.B.16:"

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely.
2. The applicant requested an oral hearing before the Board. The Chairman, acting pursuant to 33 C.F.R. § 52.31, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.
3. The applicant twice pled guilty to charges of indecent exposure. He admitted that he had drunk large quantities of alcohol at the time of each incident.
4. Despite the recommendation of the ADB, the Commandant apparently determined that the applicant was a liability for the Coast Guard and should be discharged. Given his record, the Board finds that the Commandant committed no error or injustice in deciding that the applicant should be discharged.
5. The applicant's conduct qualified him for discharge on several bases: Both incidents constituted alcohol incidents under Article 20.A.2.d. of the

Personnel Manual. Under Article 12-B-18.b., both incidents qualified the applicant for a misconduct discharge because the incidents involved "moral turpitude" and because indecent exposure is evidence of sexual perversion. Finally, the applicant's diagnosed narcissistic personality disorder qualified him for discharge under Article 12-B-16.b.

6. The applicant alleged that he should be reinstated or granted a TERA retirement because his therapist has contradicted the diagnosis made by the doctors at [REDACTED] Naval Hospital. He alleged that the diagnosis of his therapist, made after many counseling sessions, must be more credible than a diagnosis made after one session at the hospital. However, the medical officers at [REDACTED] Naval Hospital found that the applicant met at least five of the diagnostic criteria for a narcissistic personality disorder and that he was resistant to evaluation and treatment. Although the applicant apparently became more amenable to treatment after his evaluation at [REDACTED] Naval Hospital, the Board is not convinced the medical officers were wrong. In light of their findings and the applicant's conduct, the Board finds that the applicant has not proved by a preponderance of the evidence that the Coast Guard erred in diagnosing the applicant with a narcissistic personality disorder.

7. No member of the Coast Guard has a right to a TERA retirement. TERA is a discretionary authority granted by Congress to the Commandant to reduce forces by retiring members who would not otherwise be eligible for retirement for a few years. The Coast Guard did not err when it withdrew its alleged offer to grant the applicant a TERA retirement.

8. The applicant has not proved by a preponderance of the evidence that the Coast Guard erred or committed injustice by discharging him by reason of unsuitability due to a personality disorder.

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

[ORDER AND SIGNATURES APPEAR ON THE NEXT PAGE]

ORDER

The application for correction of the military record of [REDACTED]
[REDACTED] JSCG, is hereby denied.

