

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

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Application for Correction of  
the Coast Guard Record of:



**BCMR Docket No. 2016-171**

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**FINAL DECISION**

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the completed application on July 14, 2016, and assigned it to staff attorney [REDACTED] to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated May 26, 2017, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST AND ALLEGATIONS**

The applicant asked the Board to correct his record by granting him a retirement after over twenty years of combined active and inactive service in the U.S. Military. He stated that he was "unjustly released from a[n] indefinite active duty contract with a 30 day notice." He claimed that he was not offered a service package or retirement and that his unit would not submit his retirement request. The applicant stated that he believed the Enlisted Personnel Management (EPM) branch of the Personnel Service Center (PSC) was not "given the facts to make proper decisions." He added that when he left his last duty station in August 2015, he departed with letters of recommendation, a Sailor of the Quarter award, a letter of commendation, and various insignia and awards, and he was eligible for advancement. He complained that he was not given a discharge form DD 214 until January 2016 and that he was not provided with a means to transport himself, his family, or his household goods back to his home of record.

The applicant provided documents to support his allegations, which are discussed below in the Summary of the Record. He also submitted what appears to be a self-prepared Excel Spreadsheet of his service career. It contains the following three charts:

Service Branch	Start	End	Years	Months	Days
██████████	1-Aug-91	27-Jul-93	1	11	27
██████████	28-Jul-93	26-Jun-94		11	5
██████████	27-Jun-94	20-Mar-02	7	8	24
██████████	21-Mar-02	22-Apr-03	1	0	16
USCG/R	23-Apr-03	30-Jun-05	2	3	8
USCG/AD	1-Jul-05	1-Sep-15	10	3	3
<b>TOTAL</b>			24	2	23

**Active Duty Total**

Service Branch	Years	Months	Days
██████████	7	8	24
USCG	10	3	3
<b>TOTAL</b>	17	11	27

**Reserve Duty Total**

Service Branch	Years	Months	Days
██████████	1	11	27
██████████		11	5
██████████	1	0	16
USCG	2	3	8
<b>TOTAL</b>	6	2	26

**SUMMARY OF THE RECORD*****Events Prior to the Convening of an Administrative Separation Board***

The applicant was released from active duty in the ██████████ on March 20, 2002. A copy of his DD-214 for his time in the ██████████ states that he entered active duty on June 27, 1994, and completed 7 years, 8 months, and 24 days of active duty for this period. He was released from active duty with an Honorable discharge with a narrative reason of "Completion of Required Active Service." His DD 214 states the applicant had no prior active duty, and 10 months and 29 days of prior inactive service.

After serving in the ██████████, the applicant entered the Coast Guard Reserve on May 4, 2003. A Statement of Creditable Service in his record shows that he served short periods of active duty training while in the Reserve, totaling 6 months and 29 days. A Statement of Creditable Service in his record shows the following periods of active duty while the applicant served in the Coast Guard Reserve:

<b>Entered</b>	<b>Released</b>	<b>Time on AD</b>	<b>Total Time on AD</b>
May 4, 2003	May 16, 2003	13 days	13 days
June 7, 2003	June 15, 2003	9 days	22 days
March 15, 2004	March 26, 2004	12 days	1 month, 4 days
April 12, 2004	April 23, 2004	12 days	1 month, 16 days
June 1, 2004	July 30, 2004	2 months	3 months, 16 days
August 6, 2004	August 20, 2004	15 days	4 months, 1 day
September 3, 2004	September 30, 2004	28 days	4 months, 29 days
April 11, 2005	April 25, 2005	15 days	5 months, 14 days
May 1, 2005	June 16, 2015	1 month, 15 days	6 months, 29 days

On July 12, 2005, the applicant enlisted in the regular, active duty Coast Guard for a period of 4 years, with a beginning pay grade of E-5. On December 20, 2005, he received Non-Judicial Punishment (NJP) at mast for failure to obey a lawful order or regulation. The narrative specification states that the applicant “knowingly misused his government travel card by making unauthorized ATM cash withdrawals on 27 & 31 October, 1, 7, and 11 November 2005.” The applicant’s paygrade was reduced from E-5 to E-4, but this punishment was suspended for 6 months on condition of good conduct. He was awarded 15 days of extra duty. On the same date he received a negative Page 7 documenting the termination of his eligibility period for the Coast Guard Good Conduct Award as a result of his NJP.

On November 6, 2008, the applicant reenlisted with the Coast Guard for an indefinite number of years.

The applicant was counseled on July 5, 2009, as a newly reported member at his unit on Coast Guard policy regarding interpersonal relationships, alcohol, drug abuse, and responsibilities regarding government travel cards.

The applicant received NJP at mast on November 29, 2010, for failure to obey a lawful order or regulation for knowingly misusing his government travel card on 16 separate occasions at gas stations, along with 4 cash advances of \$700 each. As of this date, there was a balance of \$1,446.16 on the government travel card. The applicant was reduced from pay grade E-6 to E-5, which was suspended for 6 months on condition of good conduct, and he also forfeited \$1,743 in pay for 2 months.

On March 18, 2011, the applicant was arrested by civil authorities and charged with second degree assault of a police officer, second degree assault, failure to obey a lawful order, resisting arrest, public intoxication, and trespassing. On June 7, 2011, the charges were dropped.



As a result of his arrest, the applicant received a negative Page 7 for his first documented “alcohol incident”<sup>1</sup> on March 28, 2011. The applicant acknowledged and signed the Page 7 the same day. It states:

On 18MAR11 you received an alcohol incident when your abuse of alcohol was determined to be a significant and/or causative factor in your arrest by the...Police Department...for public intoxication, failure to obey a lawful order, trespassing, resisting arrest and second degree assault on a Police Officer.

You are hereby counseled on USCG policies concerning alcohol use and abuse as well as the serious nature of this incident. The unit CDAR will arrange an appointment with a provider who will determine the nature of your relationship with alcohol. It is recommended that you abstain from the use of alcohol until your screening and assessment is completed. This is considered your first documented alcohol incident. Any further incidents will result in you being processed for separation as per Chapter 20, Personnel Manual COMDTINST M1000.6 (series).

The applicant was recommended for the Substance Abuse Rehabilitation Program on April 25, 2011, after it was determined that he met the criteria for a diagnosis of alcohol abuse. He was counseled that he would receive outpatient treatment at a Substance Abuse Rehabilitation Program. The applicant was instructed to meet with his Command Drug and Alcohol Representative (CDAR) once a week and to attend at least two support group meetings per week.

On May 27, 2011, the applicant received a positive Page 7 for completing the outpatient Substance Abuse Rehabilitation Program. His aftercare program consisted of having no more than three “standard drinks in a 24 hour period” for a year and meeting weekly with his CDAR for one year.

On August 7, 2013, a Report of Offense and Disposition was prepared regarding the events of August 2, 2013. The report states that the applicant violated Article 134 of the UCMJ, Disorderly Conduct, Drunkenness and that he had been “discovered in a drunken state outside the [REDACTED] on 02AUG13. His level of intoxication was in excess of what the duty HS [health specialist] felt comfortable with treating and transported [the applicant] to the VA Hospital. While under the influence, [the applicant] behaved in such a manner as to bring discredit upon the armed forces by resisting necessary medical treatment at VA...Health Care System as evidenced by two tickets he received during his stay there.”

The applicant received a negative Page 7 on September 3, 2013, documenting his second documented alcohol incident. The applicant acknowledged and signed the Page 7 the same day. The Page 7 states:

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<sup>1</sup> According to Article 1.A.2.d. of the Coast Guard Drug and Alcohol Abuse Program Manual, COMDTINST M1000.10, an alcohol incident occurs when alcohol is a significant or causative factor in a member’s ability to perform his duties, bringing discredit on the Uniformed Services, or a violation of the UCMJ or other laws. Alcohol must have been consumed for an alcohol incident to have occurred.



On 02AUG13 you were involved in an alcohol incident when your abuse of alcohol was determined to be a significant and/or causative factor. You were discovered outside a local restaurant in an inebriated state by a shipmate and brought back to [your unit]. You resisted the efforts of the base OOD and the gate security guard to get you proper medical attention, and upon your arrival at the VA Hospital, you had to be restrained by hospital staff to enable them to properly administer medical care. Through a blood test at the VA Hospital taken at 0758 the next morning, your Blood Alcohol Content (BAC) was determined to be .334.

You were previously counseled on 28MAR11 on USCG policies concerning alcohol use and abuse as well as the serious nature of this incident. The unit CDAR will arrange an appointment with a provider who will determine the nature of your relationship with alcohol. You are prohibited from the use of alcohol until your screening and assessment is completed. This is considered your second documented alcohol incident. You will be processed for separation from the U.S. Coast Guard, as per Chapter 2 of the Coast Guard Drug and Alcohol Abuse Program Manual COMDTINST M1000.10 (series).

On September 11, 2013, the applicant received a negative Page 7 regarding the revocation of his right to purchase, possess, or consume alcohol at Coast Guard facilities. The Page 7 notes that “[t]his action is independent of any and all administrative and judicial actions that may be taken by your command regarding this incident. Failure to comply with this order will result in administrative and/or disciplinary actions in accordance with the Uniform Code of Military Justice.”

The applicant’s record contains an undated statement he prepared in regards to the events of August 2, 2013. The statement included the following:<sup>2</sup>

I was invited by BM1...along with one of his Non-rated personnel to walk around old town... I excepted the invitation. We departed the base around 1700 and headed to town on foot. We walk down the harbor front once down there we stopped at the Casino and played a couple hours receiving 2-3 complimentary drinks, in about 2hrs. upon leaving we headed toward the fort. Enroute BM1 pointed out areas not to enter as well as where cg members resided in the area. By this time we were starting to talk about dinner and could not decide where to get dinner, due to the water advisory issues by the base so we opted not to eat from a street vendor. While continuing on the tour we stopped at a couple local favorites, we consumed a beer the proceeded to another area.

After several hrs we decided we would start heading back to the harbor area, working our way back to the base. BM1 suggested a local bar restaurant for a bite to eat, called the [REDACTED]... Upon arrive BM1 decided he need to head back to the Base and I decided I was going to listen to the vocalist and finish the beer I

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<sup>2</sup> The statement is quoted verbatim. All errors are contained in the original.

had then would return to the base. While listening to the music I tipped the vocalist... When the music finished the vocalist approached the table said thank you for coming and proceeded to the bar and and got mixed drinks and brought them back to the table. Reluctantly I accepted the drink since I am not a hard liquor drinker. I said thank you and drank the drink. Within a short amount of time I was subdued to the drink. I do not remember anything following the drink. The next morning I woke up under the care of emergency room. I requested lab work to be completed. I felt as though I had been given some other form of altering substance, I did not have a hangover but I did feel as though something was really wrong I was unable to focus.

The XO picked me up from the hospital and delivered me to my barracks room where I stayed for the rest of the day. Upon returning from a underway period I requested a appointment with base medical service to review hospital report. The report did not so a bah level, just stated slightly higher than normal level, and the drug screening was negative. I received two tickets from the xo from the va hospital one for 225.00 and another for 275.00 which I reluctantly paid since I do not remember the events which occurred.

On September 13, 2013, the applicant received NJP at mast and was awarded 14 days restricted for disorderly conduct and drunkenness. The narrative states that he “was discovered in a drunken state and was transported to the VA hospital. While under the influence, [the applicant] behaved in such a manner as to bring discredit upon the Armed Forces by resisting medical treatment at the VA.” On the same day, he received a negative Page 7 documenting the termination of his eligibility period for the Coast Guard Good Conduct Award.

On January 13, 2014, a Notification of Recommendation for Discharge was prepared for the applicant. It informed him that his commanding officer (CO) was initiating actions to separate the applicant from the Coast Guard. The notification included the foll [REDACTED]

The reasons for [this] action are:

a. 18 Mar 2011 – You were awarded your first alcohol incident when you were arrested by the...Police Department for public intoxication, failure to obey a lawful order, trespassing, resisting arrest, and second degree assault on a Police Officer.

[REDACTED] Aug 2013 – You received your second alcohol incident when you were found outside of a bar...in an inebriated state and brought back to the base by a shipmate. You subsequently resisted attempts by the Sector OOD [Officer of the Day] and gate security to get you to the hospital and had to be restrained in the emergency room in order for hospital staff to be able to administer proper medical care. You received non-judicial punishment stemming from this alcohol incident.

The least favorable characterization of service that may be approved is honorable. The decision to provide you with an honorable or general discharge rests solely with the Coast Guard’s separation authority. If a general discharge is issued, you

may be deprived of some rights and privileges available to honorably discharged veterans.

The Notification also described the applicant's rights, including his right to submit a statement on his behalf and his right to speak with an attorney. On January 15, 2014, the applicant signed an "Acknowledgment and Election" page, acknowledging the notification and confirming that he understood that the Separation Authority determines the type of discharge he will receive. He circled that he requested the opportunity to consult with military counsel regarding his decision to request an Administrative Separation Board (ASB). Attached to this Notification and Acknowledgment is also an Exercise of Rights form, signed by the applicant on January 31, 2014. On this form, the applicant stated that he had consulted with an attorney on January 27, 2014, that he had attached a statement regarding his discharge, and that he was requesting an ASB.

### *Events Surrounding the Administrative Separation Board*

On April 8, 2014, an ASB Convening Order was created designating three members of the board for the applicant's separation recommendation. The convening order states that the ASB was required to conduct a hearing, with witnesses testifying under oath or affirmation, and produce a summarized report. It also states that the applicant was the respondent and that he was to be afforded the rights of a party in accordance with Article 1.B. of the Administrative Separation Board Manual. The ASB was directed to render findings, identify any reason for separation supported by evidence, recommend retention or separation, and recommend a characterization of service.

On June 10, 2014, the applicant's commanding officer (CO) received the Summarized Record of the ASB for the applicant. The 14-page document summarized many of the facts discussed here, as well as the testimony of witnesses. The ASB stated that the applicant was represented by a lawyer throughout the proceedings and that he was given a [REDACTED] to him.

Eight witnesses testified under oath or affirmation before the board. The first was Sergeant M, the police officer who was called to respond on the night of the applicant's first documented alcohol incident on March 19, 2011. The applicant had caused a bar disturbance, and when Sergeant M. arrived, the applicant had just torn down a temporary street sign. The officer stated that he gave the applicant two chances to walk away, but the applicant failed to [REDACTED] tions and he instead threatened the bar's security personnel and yelled profanities at the police. The police arrested the applicant, and when they arrived at the station Sergeant M stated that the applicant hit an officer in the bicep "causing discoloration and pain." Sergeant M listed the six offenses with which the applicant was charged.

Sergeant M also testified that he was in court the day the applicant's case was before a judge on June 7, 2011. Sergeant M. [REDACTED] was unaware that the applicant was already on probation with the Coast Guard when he was arrested in March, and he stated that he did not recall the applicant or his attorney telling the judge that the applicant was on probation with the Coast Guard. The judge asked Sergeant M what consequences the applicant should receive, and

Sergeant M stated that he thought the applicant should receive some leniency because the applicant's attorney stated that the applicant had already been reduced in rank and pay as a result of the alcohol incident. Sergeant M testified that had he known that the reduction in rate and pay was the result of a prior incident, he would not have recommended such leniency. The applicant's attorney cross-examined Sergeant M and asked if the applicant had been given a breathalyzer the night of March 18, 2011. Sergeant M stated that he had not because that was not the protocol.

The next witness was lieutenant commander (LCDR) B, who was the applicant's executive officer (XO) at the time of his first alcohol incident on March 18, 2011. LCDR B testified that the applicant did not go to mast for his first alcohol incident because he was already on probation following NJP for misusing his government travel card around November 29, 2010. LCDR B stated that the CO decided not to impose NJP for the alcohol incident because the CO wanted to avoid double jeopardy issues, as he was under the impression that the police department had charged the applicant and that he would be punished by the civil authorities.

LCDR B also provided details regarding the applicant's misuse of the government travel card. LCDR B stated that the applicant had misused the card on twenty separate occasions for non-travel order expenses, despite the fact that the applicant had been counseled on travel card policies upon reporting to the unit. LCDR B added that he was disappointed by the applicant's first alcohol incident because he had given the applicant a "second chance."

The third witness was PR, a security guard who was stationed at the main security gate to the applicant's unit during his second alcohol incident on August 2, 2013. PR stated that he remembered the applicant being dropped off by a taxi that night and that the applicant's behavior was confrontational and disrespectful. He stated that the applicant continually disobeyed PR's orders to remain seated to wait for the Officer of the Day (OOD). PR testified that the applicant pushed on the gate's security bar and physically shoved three people, including PR and two Coast Guard members. PR stated that the applicant repeatedly asked the OOD "I want to fight." At one point, the applicant lost his balance and ripped PR's jacket while trying to regain his balance.

The fourth witness was YNC A, the OOD on the night of August 2, 2013. YNC A stated that he received a call from the main gate on the night in question and was told that the Brickhaus bar needed a drunk Coast Guard member to be picked up. YNC A testified that he was about to send two people to look for the applicant when the applicant arrived at the front gate with another Coast Guard member. YNC A stated that when he saw the applicant, he recommended that the applicant be taken to the hospital due to his inebriated state. While waiting on transportation to the hospital, YNC A stated, the applicant was confrontational and combative and did not want to wait at the gate. The applicant reportedly became angrier as time went on and was asking if PR wanted to fight and shoved several people. YNC A stated that he was told that the applicant was noncompliant and combative at the hospital as well and that the applicant had to be restrained by four Coast Guards at the hospital.



The next witness was BMCS R who testified to various policies and procedures of the Coast Guard. He discussed the Coast Guard's alcohol policy, the Enlisted Employee Review (EER) process, and Coast Guard's core values.

The applicant called three witnesses. His first witness was LTJG C, who was the applicant's direct supervisor at the time of the second alcohol incident. LTJG C testified that aside from the alcohol incident on August 2, 2013, the applicant "has been an invaluable asset" to the unit and provided a positive endorsement of the applicant's skills and contributions. He added that he had not seen the applicant drink alcohol since the alcohol incident, but upon cross-examination admitted that he did not spend time with the applicant outside of work.

The second witness the applicant called was MKC R, who was the Engineering Chief at the applicant's unit. MKC R testified that the applicant was a hard worker, and that he was very knowledgeable in his rate.

The third witness the applicant called was CWO H, who was stationed with the applicant for one year at a different unit. CWO H testified that the applicant was a knowledgeable and a "good, average sailor" with a positive attitude.

Lastly, according to the ASB summary, the applicant made an unsworn statement and allowed the board members to ask him questions. The applicant discussed medical difficulties he had had throughout his time in the Coast Guard and attributed his weight problem to them. He expressed remorse for his bad judgment at various times throughout his career and accepted responsibilities for his actions. One of the board members asked the applicant to explain the government travel card violations. The applicant stated that the first violation was due to not getting reimbursed quickly enough for his travel claims and needing to pay for fuel to arrive at his mission location in time. The second violation occurred after the applicant learned his mother was in the hospital, so he went on emergency leave. He stated that he used poor judgment and used the card to pay for various expenses to get to his mother. [REDACTED]

Also on June 10, 2014, the applicant's CO received a report on the findings, opinions, and recommendations of the ASB for the applicant. The ASB made 17 findings, including information on the procedures the board followed, next steps that may be taken next per Coast Guard policy, applicable documents, and relevant information from the applicant's personnel file (all of which has been discussed above). The findings noted that according to a Statement of Creditable Service as of February 20, 2014, the applicant had served in the Coast Guard and [REDACTED] for a combined total of 18 years, 6 months, and 2 days.

The ASB also provided two opinions. The first opinion states that the board found by a preponderance of the evidence and per COMDTINST M1000.10, Article 2.B.8., that "the basis for separation, based on unsuitability stemming from alcohol abuse has been established." The second opinion states that, by a preponderance of the evidence, the applicant's discharge should be characterized as honorable. This finding [REDACTED] justification, which states the following:

The Board considered [the applicant's] acts of resisting arrest and medical care, and the overall physical nature of both alcohol incidents when characterizing the

member's service. The Board determined that while the incidents brought discredit to the Service, they did not significantly threaten the safety of responders or bystanders. In reviewing the member's service record and listening to witness testimony, the Board did not find any additional evidence of belligerence or misconduct. The Board's opinion does not believe that [the applicant's] behavior while under the influence of significant amounts of alcohol reflected his conduct under normal circumstances or while on duty. The Board's opinion is that the member's overall service record outweighs the discredit generated by these two incidents.

The Board considered [the applicant's] two instances of NJP for misuse of a Government travel card... When asked about the incidents, the member took responsibility and described poor judgment on his part, confusion during the establishment of [the program], and personal financial issues. The Board's opinion is that the member did not intend to steal funds from the US Government, and that these incidents are outweighed by the member's extensive military record when considering discharge type.

The board then provided three recommendations:

1. The Board recommends that CG PSC (epm) find that there is a basis for separation by reason of unsuitability based on alcohol abuse.
2. The Board recommends the [applicant] be separated from the Coast Guard.
3. The Board recommends the [applicant's] discharge be characterized as honorable.

On July 8, 2014, the applicant's counsel submitted a Letter of Deficiency regarding the board's findings and recommendations. The applicant, through counsel, requested that the CO recommend that the board's findings be disapproved due to the board's "failure to offer any opinion to support a recommendation for separation." The applicant argued that the two opinions provided by the ASB did not speak to whether the applicant *should* be discharged. The board allegedly failed to provide any opinion as to *why* the applicant should be separated. The applicant therefore argued that it is clear that the board members based their recommendations solely on the opinion that the basis to meet an "alcohol incident" was met and did not consider the applicant's over 18 years of service. The applicant claimed that the board members did not consider the applicant's service record and instead only found that two alcohol incidents occurred. The board failed to consider, the applicant argued, his "service record, potential for further service, the seriousness of the offense, and the likelihood of recurrence." Therefore, the applicant requested that the board's recommendations be disapproved or that a new board be convened to "properly analyze the question of retention."

On August 5, 2014, the applicant forwarded the ASB's summarized record and findings to PSC EPM to process the applicant for separation. The CO stated that he agreed with the board's recommendation to separate the applicant and added that the applicant's continued service would be prejudicial to good order and discipline in the Coast Guard. The CO noted that the applicant's counsel requested that the CO disapprove the board's findings because of an

alleged failure to support a recommendation for separation. The CO stated that he disagreed with the contention, as the board clearly supported their recommendation with facts and findings. The CO added that he also recommended that the applicant received an Other than Honorable (OTH) discharge “due to the consistent lack of adherence to Coast Guard core values throughout his career. To formally characterize his service as Honorable demeans all those who have served Honorable careers.” The CO lastly stated that he recommended that the applicant be processed for discharge from unsuitability due to alcohol abuse.

### *Events Following the Administrative Separation Board*

On August 22, 2014, the BCMR decided Docket Number 2014-018, regarding a request from the applicant to remove the Page 7 dated March 28, 2011, documenting his first alcohol incident from March 19, 2011, and to restore his rate. The Board found that there were no grounds for removing the Page 7, because the fact that the State declined to prosecute the applicant did not prove that the Coast Guard erred in finding that he had incurred an alcohol incident per the Coast Guard Drug and Alcohol Abuse Program Manual.<sup>3</sup> The Board further found that the applicant’s reduction in rate had occurred following his punishment at mast in 2010 after misusing his government travel card, which he had also misused in 2005. The Board therefore found no reason to reinstate his rate. The Board ultimately held that in “light of the applicant’s misconduct in 2010 and 2011... he has not proven by a preponderance of the evidence that the Coast Guard committed an error or injustice by not restoring his rate” or by documenting his alcohol incident on a Page 7.

On July 30, 2015, the Action of the Final Reviewing Authority was prepared regarding the ASB for the applicant, which included the following:

The record, Findings of Fact, Opinions, and Recommendations of the Administrative Separation Board for [the applicant] held on 13 May 2014 have been reviewed and are approved with the exception of Recommendation #3. [The applicant] requested, through his counsel, the Board’s Findings of Fact, Opinions, and Recommendations be disapproved and that he be retained...or alternatively convene a second Board to properly analyze the question of retention or separation... My review of the record does not indicate the Board failed to properly consider the recommendation of retention or separation. Additionally, I do not find there was legal prejudice to the substantial rights of [the applicant] which would cause me to refer this case to a new Board... I have decided to approve the discharge and disapprove referring the case to a new Board.

The Board recommended [the applicant] receive an Honorable Discharge and the Convening Authority recommended an Other Than Honorable Discharge. [The applicant’s] conduct surrounding his alcohol incidents involved resisting arrest, second degree assault on a Police officer, and having to be restrained by medical personnel. Additionally, after being previously counseled on misuse of the Government Tra [REDACTED] Card (GTCC), [the applicant] again misused his GTCC on 16 separate occasions of purchases at vehicle fueling stations along

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<sup>3</sup> COMDTINST M1000.10, Article 1.A.2.d.1.



with four separate cash advances of \$700.00. All these actions are serious offenses, actionable under the Uniform Code of Military Justice, and form a basis for separation under misconduct, however, Article 1.B.22.e.(3) of the Military Separations Manual...specifically prohibits separation for misconduct based on the Board's recommendations as presented. Nonetheless, [the applicant's] actions and conduct during his current enlistment are severe incidents and cannot be overlooked. Therefore, the Board's recommendation #3 for [the applicant] to receive an Honorable Discharge is not approved.

Although [the applicant's] notification of recommendation for discharge memorandum indicated the least favorable characterization that may be approved is an Honorable, the same memorandum also stated the decision rests solely with the Coast Guard's Separation Authority. [The applicant] signed the acknowledgment stating he understood... Although [the] notification of recommendation for discharge memorandum didn't properly indicate the least favorable characterization that can be given, I find [the applicant] was properly counseled on the Separation Authority determining the type of discharge to be issued... [The applicant] shall be separated from the Coast Guard...with a General Discharge for Unsuitability due to Alcohol Abuse. I am hereby recommending that [EPM]... assign [the applicant] a reenlistment code of RE-4 [ineligible to reenlist].

Also on July 30, 2015, PSC issued a Separation Authorization for the applicant, which states that the applicant's last day on active duty would be August 31, 2015. It states that he would be separated under Article 1.B.15. of the Military Separation Manual for unsuitability due to Alcohol Abuse and Under Honorable Conditions (a general discharge). The authorization further states that the applicant would receive a reenlistment code of RE-4.

On August 12, 2015, the applicant prepared a Service Retirement Request to be submitted to PSC-EPM. The document is signed only by the applicant. It states [REDACTED] g:

1. I request retirement on the first day of SEPT/2015, or as soon thereafter as possible.
2. I understand if this request is approved, I will no longer be eligible for advancement and Servicewide competition, or my name will be removed from present eligibility lists, as appropriate.
3. I understand if I request to cancel this retirement, Commander (PSC-epm) will consider this request based solely on Service needs. If such cancellation is approved, it will not entitle me to reinstatement in the current Servicewide competition or on the existing eligibility list. Further advancement would require re-competition.
4. I further understand that if I am being processed under the Physical Disability Evaluation System, my request for retirement could be terminated.
5. The zip code of my intended home of selection is [xxxxx].

The applicant was discharged from the Coast Guard on August 31, 2015. His DD-214 states that he entered active duty this period on July 12, 2005, and served for 10 years and 20 days on active duty this period. It states that he had 9 years, 11 months, and 13 days of prior active duty service. The DD-214 denotes a "Discharge" type of separation, with an "Under Honorable Conditions" (i.e., General) character of discharge. The narrative reason for separation is "Separation for Miscellaneous/General Reasons" with the separation code denoting unsuitability due to alcohol abuse. The DD 214 lists the following medals and awards: Armed Forces Service Medals; Coast Guard Cutterman Insignia; Global War Terrorism Service Medal; Coast Guard Achievement Medal; Coast Guard Unit Commendation Ribbon; Navy Unit Commendation; Navy Meritorious Unit Commendation; Coast Guard Rifle Marksman Ribbon; Coast Guard Pistol Sharpshooter Ribbon; Coast Guard Pistol Marksman Ribbon; Coast Guard Meritorious Team Commendation Ribbon with 3 Gold Stars; National Defense Service Medal; Armed Forces Expeditionary Medal; Coast Guard Special Operations Service Ribbon; Coast Guard Overseas Service Ribbon; Coast Guard Rifle Expert Medal; Coast Guard Presidential Unit Citation; Marine Corps Good Conduct Medal; Navy Sea Service Deployment Ribbon; Coast Guard Sea Service Ribbon; Navy Expert Rifleman; Navy Expert Pistol Shot Medal; First Coast Guard Good Conduct Medal for period ending January 20, 2008; Coast Guard Port Security Insignia; Department of Transportation 9-11 Ribbon; NATO Medal; and Coast Guard Commandant's Letter of Commendation Ribbon. The applicant's signature appears on the DD-214 with a date of January 10, 2016.

The applicant submitted a copy of a DD-214 nearly identical to the one described above, except that it states that the date he entered active duty as March 19, 1997, and states his net active duty for this period as 18 years, 5 months, and 12 days. It also states that the applicant had 7 years, 8 months, and 24 days of prior active duty service. This DD-214 is not signed by the applicant or an authorized official. It is not in his official record.

In early December 2015, the applicant emailed an administrative member of the Coast Guard requesting his DD-214 and a "Signed Retirement Memo." The applicant stated that corrections needed to be made on his DD-214, and that he had not received the proper counseling prior to being separated. He also stated that he had not received payment for him and his family to return to his home of record, or assistance with flight arrangements back to the United States from his unit. He further claimed that he had 108 days of leave that he lost because he was not allowed to take leave while at his last unit. The applicant received a response, which states the following:

██████████ aff and I have reviewed your service record and all applicable documents.

The fact is that you were discharged when you were retirement eligible (20 years, 01 month, 03 days). Apparently your retirement request was not received by EPM prior to the issuance of your Separation Authorization. The DD214 drafted by your previous SPO indicated that you only had 18 y 5m 12d of service. If I were to make changes to that DD214 it would still reflect a discharge, not a retirement. I have put together ██████████ ge showing all of the data we have collected. I will be working with...EPM to get this reviewed.

### VIEWS OF THE COAST GUARD

On December 5, 2016, a Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion and recommended that the Board deny the applicant's request in accordance with a memorandum prepared by the Personnel Service Center (PSC).

As an initial matter, PSC stated that the Administrative Separation Board Manual, COMDTINST M1910.2, was in effect when the ASB for the applicant was convened. That manual was replaced by the Enlisted Personnel Administrative Boards Manual, PSCINST M1910.1, for all Boards that were not completed before September 1, 2014. To the extent that PSC referenced PSCINST M1910.1, PSC stated that the new manual "summarizes and refers to policy in other policy documents...that were not changed by the publication of PSCINST M1910.1...The bases for separation, the procedures for retirement requests, and the authorized actions of the Final Action Authority are outlined in COMDTINST M1000.4 and are unchanged by PSCINST M1910.1."

PSC stated that the applicant submitted a request to retire to PSC on August 12, 2015, which was after the Final Reviewing Authority recommended separation on July 30, 2015. PSC argued that the request to voluntarily retire is a right afforded to members before the convening of an ASB.<sup>4</sup> In addition, PSC stated, the applicant had no right to voluntarily retirement in lieu of administrative discharge; he only had a right to request retirement for having over 18 years of creditable service. PSC further noted that EPM had no record of receiving or processing the applicant's request to retire.

According to Appendix 2-1 of PSCINST M1910.1, Article E, when the final action of an ASB is to approve discharge of a member, discharge orders are usually prepared to direct the separation within 30 days. PSC stated that a unit is therefore encouraged to allow a member to take advantage of transition assistance offerings, even when the outcome of a board process may be in doubt. PSC noted that the applicant claimed his release with 30 days' notice was unjust. However, PSC argued that the applicant had sufficient time during the ASB process to make arrangements regarding his separation.

PSC therefore argued that the applicant did not prove by a preponderance of the evidence that his discharge was erroneous or unjust. PSC stated that the discharge was appropriately conducted per Coast Guard policy contained in the Military Separations Manual, COMDTINST M1000.4, and the Administrative Separation Board Manual, COMDTINST 1910.2. PSC claimed that the applicant's contention that he was deprived of his right to retire is incorrect, because PSCINST M1910.1 clearly states that a member may request to voluntarily separate after reaching 18 years of active duty service *prior* to the convening of a separation board. Therefore, PSC recommended that the applicant's requests be denied.

PSC noted, moreover, that the applicant's DD-214 contains incorrect information. The DD-214 states that the applicant had 10 years, 0 months, and 20 days of active duty service. However, PSC contended [REDACTED] had 10 years, 1 month, and 19 days of active duty service in the Coast Guard. In addition, PSC stated that while the DD-214 states that the applicant had 9

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<sup>4</sup> PSCINST M1910.1, Article 1.C.1.e.(1).



years, 11 months, and 13 days of prior active duty service, he only had 8 years, 3 months, and 23 days. PSC therefore recommended that the applicant's DD-214 be corrected in regards to these two entries.

### APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 9, 2017, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond in writing within thirty days. On January 17, 2017, the Chair received the applicant's response, in which he disagreed with the views of the Coast Guard. In his 17-page written response, he states "I signed an indefinite Contract and I was living up to it, and I was being miss-lead by the Unit Command and the Base Command to believe they agreed with retaining me till the end of my indefinite Contract completion as illustrated by my evidence. My records are argumentative [sic]."<sup>5</sup> The applicant argued that he should have been retained on his contract until 2027, or have received a retirement based on serving over 20 years of active duty.

The applicant reiterated that he was involuntarily separated from the Coast Guard with 30 days' notice, without a way to transport himself or his family, household items, and vehicles back to his home of record, and that his wages were garnished and his tax returns were levied. He stated that his requests were to be reinstated on his indefinite contract to reach 30 years of service, a retirement package following 20 years of active duty service, correction to his record "following 20 years of Honorable Active Service," and an involuntary separation severance package to compensate him for the remaining time on his indefinite contract.

The applicant disagreed with the Coast Guard's calculation of his total active duty service. He argued that Statements of Creditable Service are "subjective to the person completing" them. The applicant stated that at one point, his unit was deployed overseas, but he remained behind to attend to logistical needs, and that this time was not properly accounted for. The only specific he provides for this argument is Title 10 orders dated October 5, 2004.<sup>6</sup> The applicant stated that when he entered active duty on July 11, 2005,<sup>7</sup> he was transferred over from Title 10 orders.

The applicant argued that his government travel card violations were not properly recorded. He stated that in 2005, the travel card system was new and did not have a timely repayment plan in the rules. The applicant claimed that his unit was not preparing orders within 30 days as required, but instead was taking 6 to 12 months to prepare orders, which would slow down the repayment process. He stated that members were to be reimbursed for various travel expenses from the government card, but because this often did not occur he paid for many charges out of his own pocket "to prevent repayment problems." The applicant stated that his CO at the time said the applicant should have reported this sooner to avoid being punished at mast.

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<sup>5</sup> The applicant is quoted verbatim in this decision.

<sup>6</sup> Title 10 orders were not located in his record.

<sup>7</sup> He entered the Coast Guard on July 12, 2005.

The applicant stated that he did use his government travel card in an unauthorized manner in 2011 under the direction of his Operations Officer. The applicant learned that his mother was having health difficulties, so he requested emergency leave. He stated that the Operations Officer told the applicant that he could use the travel card if he paid it off by the time he returned to his unit. The applicant stated that the card was not paid off by the time he returned, and the Operations Officer denied authorizing his use of the card for personal travel. The applicant stated he was therefore punished again, despite the CO reportedly stating that he would have done the same thing in the applicant's situation.

In reference to the applicant's weight probations, he stated that "the Coast Guard Advisory Council" (presumably he is referencing the ASB) was not provided with the proper medical documentation to review. He argued that the ASB Manual states that "medical records" must be provided to the board, but that his Report of Medical History was withheld. The applicant stated that he had been "injured in the line of duty multiple times while doing my job Honorable [sic]." He claimed that the documentation of his injuries was not requested by the board when considering his separation.<sup>8</sup>

The applicant claimed that he was wrongfully arrested in 2011, which led to his first alcohol incident. Despite the fact that the charges were dropped, the applicant stated that the Coast Guard would not acknowledge the findings of the court and issued him an alcohol incident without a blood test. He added that the city Police Department was under investigation for falsifying statements, false arrests, unlawful use of force, and misconduct. The applicant argued that the fact that the city Police Department was under investigation should have been added to his Page 7, and because it was not, it led to a "misleading evaluation marks and performance History." The applicant also claimed that the two officers involved in the arrest went on administrative leave after the city Police Department investigations. He argued that he did not bring discredit to the Coast Guard, and that his attorney proved that he was innocent.

As the applicant argued in his application Docket Number 2014-018, he stated that the punishment he received for the first alcohol incident was unjust and disproportionate. He claimed that the Coast Guard issued him a Page 7 without knowing the facts of the case. Once the charges were dismissed in June 2011, the applicant stated, the command did not update his Page 7. However, the applicant also stated that within four months (presumably of the court disposition), his command requested with EPM that the applicant's special advancement be restored. The applicant stated that the restoration was denied by EPM and he remained an E-5 as opposed to an E-6.

The applicant stated that he reluctantly accepted his orders to the last unit he was assigned to. He stated that upon arrival, no sponsor was provided against Coast Guard policy, "not to mention the communication problem." He stated that after he made his way to the barracks, he went to see the downtown area with a few other Coast Guard members, and that they each consumed 4 eight-ounce beers over a six-hour period while walking around. The applicant stated that they decided to get food at [REDACTED], where there was live music. He claimed that the musician purchased the applicant a mixed drink for tipping him. The applicant

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<sup>8</sup> The applicant's record contains several Page 7s showing that he had been placed on weight probation on October 9, 2007, May 20, 2008, August 23, 2013, and March 4, 2014.



stated that he drank it and “immediately [he] was subdued and confused.” He stated that another Coast Guard member assisted the applicant back to base in a cab. The applicant stated that the next thing he remembered was waking up at the hospital. He stated that he requested to go to medical for evaluation once back at his command because he believed that he had been drugged.

The applicant claimed that the urinalysis was incorrectly reported as 0.334 without being converted to a blood alcohol content (BAC) measurement, which is 0.14. He also complained that no tests were done to search for drugs, which should have been done because “the area was reported to have an unreported suspicion of drug use and dislike for Coast Guard Members.” The applicant was then told that he was being reported for his second alcohol incident. He claimed that statements were withheld from the report that stated the applicant was not belligerent or combative.

The applicant stated that the same YNC who was on duty the night of his second alcohol incident administered multiple unscheduled weigh-ins, and when the applicant asked why, the YNC said “in hopes to catch [the applicant] out of regulations.” The applicant added that he continued to receive positive evaluations following the second alcohol incident.

The applicant stated that the Final Reviewing Authority for the ASB ignored the Letter of Deficiency his attorney sent requesting that a new ASB be convened. He stated that there was missed evidence, and he was therefore “processed for discharge without consideration for retention or retirement.” He also claimed that his cutter was deliberately placed in an underway status when his ASB convened to ensure that his witnesses would be unable to testify. He reiterated that he has served over 20 years of active duty service and that he should have received retirement instead of being involuntarily separated.

With his response, the applicant provided many additional documents. Many of which were documents available in his military record or already provided. He also submitted documents showing his Permanent Change of Station orders throughout his [REDACTED] and Coast Guard career. The documents included a letter of recommendation from 2004, which speaks highly of the applicant’s work ethic and his ability to remain organized in hectic working environments. The applicant provided a list of medals he has received and many medical documents to verify the injuries he has had.

The applicant provided an email from June 30, 2011, requesting a meeting between several members of the applicant’s command to discuss the applicant’s request to set aside his [REDACTED] first alcohol incident and to be restored in rank. He also provided an email from December 19, 2011, from a captain at EPM which states that he did not intend to approve the restoration in rank request for the applicant. The email states that the captain did not believe the applicant was “deserving of special advancement,” given that the applicant had misused his travel card on more than one occasion, showing the applicant was not rehabilitated and had not learned from his mistakes.

[REDACTED]

The applicant provided a copy of a report from an Independent Review Board concerning an investigation into a police-involved shooting from the city Police Department which was involved in his first alcohol incident.



The applicant submitted a statement he had prepared to provide mitigating factors when he was punished at mast for his second misuse of his government travel card. The statement discusses how the applicant found out his mother was in poor health and what he had to do to help get her settled into her home again and to ensure she would be cared for. He accepted responsibility for misusing the card and apologized for “not involving the Command in the personal affairs, and finances of [his] family.”

The applicant provided two letters of recommendation prepared in April 2016. They both state that the applicant is a hard worker and very knowledgeable in his grade. They state that he always showed great leadership and organization, and that he was an excellent problem-solver. He provided several questionnaires that were prepared for the ASB.

The applicant provided an email dated September 10, 2015, sent to him by the Engineering Officer (EO) aboard the last cutter on which the applicant served. The EO stated that the applicant was not eligible to retire because he “did not complete twenty years of active service.” She also informed the applicant that the ASB and the Final Authority considered his eligibility for retirement in their deliberations and that his retirement request, which was only signed by him and not his CO, was not submitted to EPM. She stated that neither she nor his CO had heard of the applicant’s retirement request, and such requests must be routed through the CO to get to EPM. She also reminded the applicant that he had been informed that he did not meet the criteria for retirement because he did not have 20 years of active duty, which had been confirmed by EPM. The applicant was also reminded that EPM had informed him that no request for retirement would be considered while awaiting a decision from the Final Reviewing Authority for an ASB.

### APPLICABLE REGULATIONS

The Enlisted Personnel Administrative Boards Manual, PSCINST M19 [REDACTED] 1.E., states that ASBs will be guided by the following principles in making recommendations to PSC:

- i. Coast Guard members do not have a right to remain in the Coast Guard, or retain their current rate, regardless of their length of service or the personal hardships the administrative action might cause.
- ii. A board’s primary consideration is “*What is in the best interests of the Coast Guard?*” Boards should focus on the respondent’s fitness to serve and be a [REDACTED] valuable asset to the Coast Guard. Boards should not be guided by consideration of the needs of individual commands or of the respondent.

According to Article 1.A.2.d. of the Coast Guard Drug and Alcohol Abuse Program Manual, COMDTINST M1000.10, an alcohol incident occurs when alcohol is a significant or causative factor in a member’s ability to perform his duties, bringing discredit on the Uniformed Services, or a violation of the UCMJ or other laws. Alcohol must have been consumed for an alcohol incident to have occurred.

Article 2.B.8.b. of the Drug and Alcohol Abuse Program Manual states that an enlisted member will normally be processed for separation after a second alcohol incident. The manual notes that retention after a second alcohol incident is not a routine action, and is only considered when mitigating circumstances are present. A member being a top performer does not qualify as a mitigating circumstance.

Article 1.B.15 of the Military Separations Manual, COMDTINST M1000.4, discusses separating active duty personnel for reason of unsuitability. Article 1.B.15.b.(5) lists one of the causes for discharge for unsuitability as alcohol abuse.

Article 1.B.22. of the Military Separations Manual discusses Administrative Discharge Board and Final Action of Discharge Authority. Article 1.B.22.a. states the definition as:

An administrative discharge board is a body appointed to provide findings of fact, opinions, and recommendations to assist the discharge authority in making informed decisions. In all cases, the board identifies any bases for discharge, recommends either retention in the Service or discharge, and recommends the type of discharge certificate to be issued in the event the final action of the discharge authority is to direct separation of the member.

Article 1.B.22.e. of the Military Separations Manual states that the Commander of PSC may make one of an enumerated list of final actions, including approving “the board’s recommendation for discharge, but change its type either to one more favorable than recommended...or to one less favorable than recommended based on a determination the type of discharge recommended does not fall within the guidelines of Article 1.B.2. of this Manual.”

According to Article 1.B.2.e. of the Military Separations Manual the “sole criterion on which the Coast Guard characterizes service in the current enlistment or period of service is the member’s military record during that enlistment.” Article 1.B.2.f.(3) state [REDACTED]arge under Other Than Honorable Conditions may be issued for “misconduct, security reasons or good of the Service if an administrative discharge board approves a recommendation for such a discharge or the member waives his or her right to board action.”

Article 2.A.1.a. of the Military Separations Manual states that this section of the manual “prescribes procedures under which certain active duty members...who are eligible for retirement or separation because of physical disability may remain on active duty in a limited [REDACTED]atus.” Article 2.A.2.b. discusses the criteria for keeping such a member on active duty if they have reached 18 years of service, but not yet 20 years.

According to the Enlisted Personnel Administrative Boards Manual, PSCINST M1910.1, Article 1.C.1.e.(1), an enlisted member may submit a request for voluntary 20-year retirement once the member has completed 18 or more years of creditable active duty service. The right to request a voluntary retirement is aff [REDACTED] a separation board is convened. The right to request does not create a safe harbor for a member; members with any amount of time in service are still subject to administrative processing. A member also has no right to be voluntarily retired in lieu of administrative discharge, even if he had been approved for voluntary retirement.

Article 4.B.4. of the Enlisted Personnel Administrative Boards Manual lists the factors in considering requests for witnesses. It states the following:

Requests for witnesses should provide sufficient information to permit the convening authority to make an informed decision. When considering requests for witnesses made by the respondent...the convening authority may consider whether the significance of the personal appearance of the witness, when balanced against the costs and difficulties in producing the witness, favors production of the witness. The following is an illustrative, but not exhaustive, list of factors that may be helpful when preparing or considering requests for witnesses.

- a. The potential evidentiary value of the testimony,
- b. The cost of producing the witness,
- c. The timing of the request for production of the witness,
- d. The potential delay in the proceeding that may be caused by producing the witness, and
- e. The likelihood of significant interference with military operational deployment, mission accomplishment, or essential training.

### FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely filed within three years of the applicant's discharge.

2. The applicant alleged that his general discharge under honorable conditions for alcohol abuse after over twenty years of total military service was erroneous and unjust and that he should be retired or reinstated on active duty instead. 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 his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust. Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."

3. As a preliminary matter, the Board notes that the applicant is ineligible for a 20-year retirement from the regular Coast Guard because he did not perform more than 20 years of total active duty. The Board finds that the applicant had a total of 18 years, 5 months, and 12 days of active duty when he was discharged on August 31, 2015. This total includes the applicant's active duty time with the [REDACTED] (7 years, 8 months, and 24 days, as shown on his DD 214 dated March 20, 2002), all of his active duty service while in the Coast Guard Reserve (6 months and 29 days, as shown on his Statement of Creditable Service), and his active duty time in the regular Coast Guard from July 12, 2005, to August 31, 2015 (which amounts to



10 years, 1 month and 19 days). Because the applicant was discharged for alcohol abuse before attaining 20 years of active duty, he is ineligible for a regular Coast Guard retirement.<sup>9</sup>

4. The Board further notes that PSC is correct in stating that the applicant's DD 214 erroneously reports his active duty for "this period" in block 12.c. and his total prior active duty in block 12.d. The Board finds that the applicant's active duty service "this period" (during his regular Coast Guard enlistment from July 12, 2005, through August 31, 2015) was 10 years, 1 month, and 19 days; not 10 years, 0 months, and 20 days. PSC was also correct in stating that the applicant's prior active service in the Marine Corps (7 years, 8 months, and 24 days) and Coast Guard Reserve (6 months and 29 days) totaled 8 years, 3 months, and 23 days; not 9 years, 11 months, and 13 days. However, the Board is not authorized to make corrections that are not in the applicant's favor, such as reducing the amount of active duty time shown on his DD-214.<sup>10</sup> Therefore, the Board declines to make any changes to the applicant's DD-214. The Board notes, however, that the Coast Guard has the authority to make corrections to the applicant's DD-214 on its own, without a BCMR order.

5. The applicant alleged that his discharge proceedings were erroneous and unjust because the ASB would not allow several of his witnesses to testify, but he submitted no evidence to support this claim. If the applicant believed that the ASB was blocking important witnesses from testifying, the applicant's attorney would presumably have raised this issue in his Letter of Deficiency requesting that the findings of the ASB be disapproved. However, the attorney did not raise any problems with the calling of witnesses, which is strong evidence that the applicant had no issue with the witnesses he was allowed to present at the time. Furthermore, under Article 4.B.4. of the Enlisted Personnel Administrative Boards Manual, the ASB has the authority to determine whether or not a witness should be called.<sup>11</sup> The Board finds that there is insufficient evidence to conclude that the applicant was improperly or unfairly denied the chance to present important witnesses. The applicant has not overcome the presumption of regularity accorded the ASB in determining whose testimony to hear.

6. The applicant claimed that the Coast Guard erred in not allowing him to retire because he requested to retire, but his request was not routed properly to PSC. The Board finds that this argument has no merit. The Enlisted Personnel Administrative Boards Manual allows a member to request retirement *prior* to the convening of an ASB.<sup>12</sup> Not only did the applicant not request retirement prior to the ASB convening, but he waited until after he had received notice of his discharge to prepare his request for retirement. Second, even if the applicant had timely requested retirement after reaching 18 years and his request had been approved, such approval is not a safe harbor from an administrative separation for alcohol abuse with associated misconduct. Therefore, the Board finds that the applicant has not proven by a preponderance of the evidence that he was improperly denied retirement after submitting his request to retire.

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<sup>9</sup> The applicant's eligibility for a Reserve retirement upon attaining age 60 is not addressed in this decision because the applicant did not raise this issue and so it is not properly before the Board.

<sup>10</sup> *Friedman v. United States*, 141 Ct. C. 239, 252-53 (1958).

<sup>11</sup> PSCINST 1910.1, Article 4.B.4.

<sup>12</sup> PSCINST M1910.1, Article 1.C.1.e.(1).

7. The Board further finds that the applicant has not proven by a preponderance of the evidence that his general discharge due to alcohol abuse was erroneous or unjust. As the ASB report shows, after the applicant incurred his first alcohol incident in 2011 he was advised on a Page 7 that if he incurred another alcohol incident he would be processed for discharge. The record shows that the applicant was properly processed for discharge through an ASB and received all due process after he incurred a second alcohol incident in 2013. The Board can find no grounds for removing either alcohol incident from the applicant's record. Both alcohol incidents involved substantial misconduct by the applicant and he was also counseled twice for repeatedly misusing his government travel card for personal expenses.

8. The applicant has not proven by a preponderance of the evidence that his general, under honorable conditions, discharge and lack of retirement are erroneous or unjust. By law, a regular retirement is a privilege, not a right, and it requires 20 years of active duty, which the applicant did not complete. The Board finds no grounds in the record for awarding him a regular retirement from active duty or for reinstating him on active duty. Accordingly, his request should be denied. However, the Coast Guard may correct the errors in block 12 of the applicant's DD-214 on its own authority if it so chooses.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

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**ORDER**

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

May 26, 2017

