

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2006-006

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

FINAL DECISION

AUTHOR: Andrews, J.

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case on October 21, 2005, upon receipt of the applicant's completed application and military and medical records.

This final decision, dated August 9, 2006, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant, who was discharged on March 10, 2005, due to "Alcohol Rehabilitation Failure," asked the Board to reinstate him on active duty and order the Coast Guard to process him properly under the Physical Disability Evaluation System (PDES).¹ He also asked the Board to upgrade his reenlistment code from RE-4 (ineligible to reenlist).

The applicant alleged that at the time of his discharge he was not medical-ly fit for duty because he had recently undergone surgery on a bicep tear in his right shoulder and was still in pain. He was not allowed to remain on active duty until he could complete physical therapy. Just one week before his discharge, his physical therapist instructed him not to use his arm for at least six

¹ In the alternative, the applicant asked the Board to correct his record to show that a Notice of Eligibility (NOE) for incapacitation pay was issued upon his separation. However, only reservists can be eligible for incapacitation pay, and the applicant was not a reservist. Reserve Policy Manual, Art. 6.B.3.

weeks and told him that his recovery period would last from six to eight months. The applicant stated that he still has pain and limited motion in his right shoulder and cannot lift heavy objects. The applicant alleged that he has not been able to receive treatment from the Department of Veterans' Affairs (DVA) because his condition is low priority.

The applicant alleged that, despite his alcohol incidents, the Coast Guard was required to retain him on active duty until he was fit for full duty or process him under the PDES. The applicant alleged that when his XO told him he was going to be discharged in November 2004, he strenuously objected and did everything he could, including having his congressman intervene on his behalf, to be retained on active duty or get PDES processing. Although his discharge was delayed until after his surgery, he was still unable to use his right arm when his command discharged him.²

SUMMARY OF THE RECORD

On June 11, 2002, at the age of 17, the applicant enlisted in the Coast Guard. On March 17, 2003, the applicant was disenrolled from xxxxxxxxxxxxxx "A" School "due to failure to follow/comply with rules and regulations and failure to follow the FT 'A' school testing policy." An administrative entry ("Page 7") in his record states that there had been "two negative reports for showing disrespect to senior personnel" and that the applicant "was found to be untrustworthy by lying to his instructors about completing 16 lessons, 7 of which he did not attempt to start." In addition, a Student Evaluation Board had concluded that the applicant "cheated by repeatedly retaking four previously failed computer based exams and not reporting the exam failures to his instructor."

On November 3, 2003, the applicant and other members of his unit underwent S.A.F.E. Alcohol Awareness Training concerning the Coast Guard's policies about alcohol.

On November 13, 2003, the applicant was found in a "stuporous, confused state." He admitted to having consumed an unidentified drug offered by a friend, which he thought might alleviate some pain he had in his right shoulder. Investigation revealed that it was a prescribed drug, Zantac. The Officer in Charge decided that "[b]ased on unintentional use, this situation will not be con-

² The applicant also alleged that he should have had a hearing before an Administrative Discharge Board (ADB). However, only members with more than eight years of service are entitled to a hearing before an ADB, and the applicant had only two years and nine months of active duty on the date of his discharge. Personnel Manual, Art. 12.B.16.i.

sidered a drug incident, but will be revisited in the event of another occurrence of this type.”

On May 14, 2004, while attending xxxxxxxxxxxx “A” School, the applicant was stopped by military police and found to be driving under the influence (DUI) of alcohol. His command charged him with failing to obey an order for drinking alcohol while underage (19 years old). In addition, an inquiry revealed that he had used someone else’s identification to obtain alcohol on May 13, 2004, and on a prior occasion; that he had lied to the police about having been an MP (military police officer); and that contrary to orders, he did not have a valid Coast Guard decal on his vehicle. The investigating officer stated that the applicant had

a long history of disrespect for authority and lack of integrity. He is severely lacking in the Coast Guard’s core values of respect and honor. ... [H]is extensive lack of integrity and flagrant lying is a liability to his service in the Coast Guard, brings discredit to the Coast Guard. ... [He] was on several occasions disrespectful to his class leader, which created friction within the class. [He] was known for fabricating stories about himself. One example of his stories is he told people he was on the swim team at the University of xxxxxxxx. ... It is in the Coast Guard’s best interest to process him for unsuitability for service. [He] has already been given numerous chances to succeed. ... [The XPO at his prior unit stated that the applicant] had been a challenge to motivate and had a problem with being honest.

The applicant was again disenrolled from “A” school. On May 24, 2004, he underwent screening by a medical officer with the U.S. Public Health Service. Pursuant to the screening, the applicant completed both psychological and alcohol-use related questionnaires with hundreds of questions. In his responses, the applicant claimed that he never planned on drinking; he never drank enough to get drunk; he never drank more than he had intended to; he never drank until the alcohol was gone; he had drunk at most 4 or 5 beers at one time; he had never been criticized for drinking; he never felt guilty or bad about drinking; he had never felt hung over or shaky because of alcohol; he did not drink on a daily basis; he had previously not drunk alcohol for six to eight months; he never failed to remember events because of drinking; he never felt depressed when drinking; he never lost control while drinking; he never hurt himself or anyone else while drinking; he did not need to drink more than he used to in order to feel the same effects; and he never hid his alcohol use from others. The applicant admitted only to infrequent consumption of a few beers. The medical officer who scored the applicant’s written responses according to the test instructions concluded that the applicant did “not meet the diagnostic criteria for Substance Abuse or Substance Dependence” but still referred the applicant for IMPACT training.

On May 27, 2004, the Executive Officer (XO) of the applicant's unit prepared a Page 7 reporting the results of the screening. The XO also counseled the applicant about his poor judgment and about "policies concerning alcohol use/abuse and the serious nature of this incident." The XO ordered him to abstain from consuming alcohol until attaining the age of 21. In addition, the XO advised the applicant that the DUI constituted his first "alcohol incident"³ and that any further alcohol incidents might cause him to be discharged.

On June 9, 2004, having waived his right to confer with counsel about the charges against him, the applicant was taken to mast on and given a punishment of 14 days restriction to base, which was suspended for six months, and reduction in grade, which was not suspended.

On August 2, 2004, police were called to an address where the applicant was found to be intoxicated and non-cooperative. On August 12, 2004, he was referred to his unit's Command Drug and Alcohol Representative (CDAR) for evaluation. The CDAR referred him for further screening. Also on August 12, 2004, the XO advised the applicant in writing that the events of August 2 constituted his second alcohol incident and that he would be administratively discharged in accordance with Article 20 of the Personnel Manual.⁴

On August 25, 2004, the applicant underwent screening under the Army Substance Abuse Program (ASAP). He admitted to the medical officer that when he was 16 and 17 years old he drank six 12-ounce beers each Friday and Saturday night; that at age 18, he drank about twelve 12-ounce beers each week; and that at age 19, he drank between twelve and eighteen 12-ounce beers once or twice a week. On August 2, 2004, he had drunk eighteen 12-ounce beers. The applicant was found to be "alcohol dependent" and referred for rehabilitative treatment under the ADAPT program and Intensive Short Term Outpatient Program. On August 27, 2004, he was counseled about this matter and agreed to attend both programs.

On September 22, 2004, the applicant sought treatment for pain in his right shoulder. The doctor diagnosed it and prescribed treatment for it as a sprain, but also ordered x-rays and an MRI.

³ Article 20.A.2.d.1. of the Personnel Manual defines an "alcohol incident" as "[a]ny behavior, in which alcohol is determined, by the commanding officer, to be a significant or causative factor, that results in the member's loss of ability to perform assigned duties, brings discredit upon the Uniformed Services, or is a violation of the Uniform Code of Military Justice, Federal, State, or local laws. The member need not be found guilty at court-martial, in a civilian court, or be awarded non-judicial punishment for the behavior to be considered an alcohol incident." Underage drinking therefore constitutes an "alcohol incident" because it is illegal.

⁴ Article 20.B.2.h.2. of the Personnel Manual states that "[e]nlisted members involved in a second alcohol incident will normally be processed for separation in accordance with Article 12.B.16."

On October 25, 2004, the Director of ASAP reported the following concerning the applicant's failure to complete rehabilitative treatment:

On September 21, 2004, [the applicant] attended the first 6 hours of the 12-hour Alcohol and Drug Abuse Prevention Treatment (ADAPT) equivalent to Alcohol and Drug Information School (ADIS). He provided a fax to confirm having received medical treatment on September 22, 2004, for an injured shoulder. He is rescheduled to attend the second six hours of ADAPT on November 24, 2004, but ADIS is also available through civilian programs if he is discharged prior to attending the second day of ADAPT. [He] also attended 9 days of the 12-day Intensive Short-Term Outpatient Program (ISTOP) from October 12-22, 2004. He was released from ISTOP and ASAP at 1100 hours on October 25, 2004, and directed to return immediately to his unit due to his having exceeded by three-and-one-half hours the two-hour excused absence policy of ISTOP (4 hours on October 18, 2004, due to mechanical breakdown and 1 1/4 hours on October 25, 2004, due to late departure to return to [ADAPT]) and due to lack of focused motivation while in treatment. Extenuating personal emotional issues were considered during the decision process to release him from the ISTOP, and on October 22, 2004, Dr. [T] had advised [the applicant] that further tardiness would result in dismissal from the program. [The applicant's] progress in treatment was fair with maximum benefit gained at this time. Prognosis is considered guarded.

On October 27, 2004, the Coast Guard Personnel Command (CGPC) ordered that the applicant be discharged by November 24, 2004, by reason of alcohol rehabilitation failure. The orders stated that in "accordance with COMDTINST M1900.4D, block 28 [on the applicant's DD 214] shall only indicate the narrative reason unsuitability."

On October 28, 2004, the applicant was again screened and found to be alcohol dependent. He was referred for additional treatment.

On October 29, 2004, the applicant's physician, Dr. R, noted that he complained of having had pain in his right shoulder for about one year. Dr. R diagnosed a suspected biceps tear and referred the applicant to an orthopedic surgeon.

On November 2, 2004, the XO entered a Page 7 in the applicant's record documenting the screening and referral on October 28, 2004, and the applicant's refusal to complete the prescribed rehabilitative treatment. The XO advised the applicant that he would be processed for discharge.

On November 22, 2004, the applicant wrote to his congressman about the Coast Guard's intention to discharge him. The applicant argued that he was

entitled to remain on active duty until he was fit for duty under Articles 12.B.6.d. and 12.B.11.f. of the Personnel Manual.

On November 23, 2004, the applicant's physician noted that the applicant was scheduled to undergo surgery on a torn biceps tendon in his right arm.

On November 24, 2004, the applicant underwent a physical examination pursuant to his pending administrative discharge. Dr. R measured the range of motion in the applicant's right shoulder as "abduction to 110 degrees; ext[ernal] rot[ation] at 90 degrees; ABD - 100 degrees." In his notes, Dr. R noted that because of the injury to his right shoulder, the applicant was fit for limited duty (FFLD). However, on a handwritten Report of Medical Examination, Dr. R indicated that the applicant found "fit for service per EPM," meaning the Enlisted Personnel Management Division of CGPC.

On November 28, 2004, Dr. O, an orthopedic surgeon, reported the results of his examination of the applicant on November 22, 2004, in a letter to Dr. R. He reported that the applicant had "symmetric range of shoulder motion of 150 degrees elevation, 50 degrees external rotation, and internal rotation to T10." Dr. O diagnosed him with a "superior labral anterior posterior lesion of the right shoulder." Dr. O recommended surgery.

On November 30, 2004, after the report was typed up, Dr. R indicated that the applicant was "fit for discharge." The applicant objected to that finding.

On December 3, 2004, the applicant was counseled on a Page 7 about "discreditable involvement with civil or military authorities" and his involvement in an assault on another Coast Guard member and harboring a 14-year-old runaway girl at his home.

On December 6, 2004, CGPC ordered that the applicant be discharged by February 24, 2005, by reason of alcohol rehabilitation failure. The orders stated that in "accordance with COMDTINST M1900.4D, block 28 [on the applicant's DD 214] shall only indicate the narrative reason unsuitability."

On December 14, 2004, the applicant sought help for shoulder pain and sleeplessness. Dr. R prescribed Ambien and Percocet.

On January 25, 2005, the applicant underwent arthroscopic surgery on his right shoulder for an "anterior labral repair and ... debridement." Following surgery, he was prescribed Percocet and Vicodin for pain control.

At a follow-up appointment on February 8, 2005, the applicant reported that he was doing well and wanted to stop taking Percocet and decrease his dosage of Vicodin.

On February 10, 2005, Dr. R saw the applicant and reported that he was fit for limited duty for one month, could return to desk work, and would have a follow-up with the surgeon, Dr. O, in a month. The applicant's command asked CGPC to delay the applicant's discharge until March 16, 2005. The command reported that the surgery was complete but that he had a follow-up appointment in March to determine his fitness for duty.

On February 11, 2005, the Coast Guard issued orders to discharge the applicant by March 16, 2005. The orders again stated that in "accordance with COMDTINST M1900.4D, block 28 [on his DD 214] shall only indicate the narrative reason unsuitability."

On February 23, 2005, Dr. O, the surgeon, noted that the applicant's "postop, rehab time is approx. 3-6 months from surgery."

On February 25, 2005, the applicant was referred for a mental health evaluation because a Coast Guard Employee Assistance counselor thought he might harm himself. A psychologist noted that the applicant was under a great deal of stress and diagnosed him with an adjustment disorder.

On March 3, 2005, the applicant had a follow-up appointment with an orthopedic specialist who worked with Dr. O. The specialist wrote that the applicant

states that he is doing very well. He has no pain in his shoulder. He is using no pain medications. He has been doing his pendulum dangles for the last 4 weeks with good results. ... His surgical incisions are all well healed. On passive range of motion, he has forward raise to 140 degrees, has internal rotation to about L1, and external rotation about 30 degrees. All in all, his passive range of motion seems to be very good. He is nontender ... [He] is progressing well status post right shoulder arthroscopic anterior labral repair.

The orthopedic specialist stated that the applicant could return to desk work but should continue with more passive range of motion exercises and would be reassessed in four weeks, when he would start active range of motion exercises and general strengthening. She wrote that in the meantime, he "is not to use his right shoulder and no overhead activities and basically, no active use of his arm for another six weeks. His estimated time to recovery is somewhere around 6 to 8 months for healing."

On March 7, 2005, the applicant sought pain medication from his psychologist, who wrote that the applicant "described [the pain] as a constant nagging pain, rated at a 7 on 1-10 scale. [He] denies any numbness or decreased sens/strength in right arm." The doctor prescribed Vicodin, Motrin, and Flexeril.

On March 10, 2005, the applicant received an honorable discharge from the Coast Guard with a JPD separation code, an RE-4 reenlistment code, and "Alcohol Rehabilitation Failure" as the narrative reason for discharge in block 28 on his DD 214.

VIEWS OF THE COAST GUARD

On March 9, 2006, the Judge Advocate General (JAG) submitted an advisory opinion in which he recommended that the Board deny relief in this case. In so doing, he adopted the facts and analysis provided in a memorandum on the case by CGPC.

CGPC stated that the Coast Guard "followed established procedures when discharging the Applicant for alcohol rehabilitation failure and there was no injustice or procedural error." The applicant "was processed for separation ... due to alcohol rehabilitation failure resulting from two alcohol incidents and additionally supported by the Applicant's failure to complete a required alcohol rehabilitation program." Because the applicant incurred a shoulder injury and objected to the findings of his separation physical, his discharge was delayed from November 24, 2004, to March 10, 2005, "to allow for medical treatment and recovery of [his] right shoulder injury indicated in his separation physical ... even though at the time of his physical examination, his impairment was not disqualifying for retention/separation." CGPC alleged the range of motion in the applicant's shoulder on November 24, 2004, was "within the established retention standards of the Medical Manual."

Moreover, CGPC argued, the "concept of fitness for separation is based on a member's projected return to fit for full duty status. If a member can be reasonably expected to return to fit for full duty status, then the member is considered fit for separation. The member is not required to be fit for full duty." CGPC alleged that "[t]here is no requirement within Coast Guard policy to keep a service member on active duty for post-operative recuperation and/or rehabilitation. Members who are discharged are referred to the Department of Veterans Affairs for follow-on medical care."

Regarding the applicant's request for an upgraded reenlistment code, CGPC stated that the applicant failed to submit any evidence to show that the assigned RE-4 was unjust. CGPC stated that the applicant's record "clearly

reveals patterns that could have lead to discharge form misconduct and a lesser character of service.” CGPC stated that RE-4 is the only reenlistment code authorized for members discharged because of alcohol rehabilitation failure.

CGPC stated that if the DVA has actually denied the applicant’s request for medical care, the applicant should appeal the determination with the DVA.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 6, 2006, the applicant responded to the views of the Coast Guard. The applicant alleged that the Coast Guard’s advisory opinion did not address his three main points: (1) The Coast Guard failed to “afford [him] a proper environment in order to ensure the success of [his] alcohol rehabilitation treatment.”⁵ (2) He was entitled to an Administrative Discharge Board.⁶ (3) He was entitled to be retained until he was fit for full duty or to be processed under the PDES.

The applicant alleged that he was “dropped” from rehabilitation treatment “[b]ecause of the pain [he] was in and the amount of drugs [he] was given.” He alleged that at the time of his separation physical examination, his shoulder condition was disqualifying because it required surgery and, just the day before, Dr. O measured his range of motion to be significantly less than did Dr. R. He repeated his allegation that he was in pain and unfit for duty when he was discharged.

The applicant also argued that block 28 on his DD 214 should not say “Alcohol Rehabilitation Failure” because all of CGPC’s orders clearly stated that block 28 should only say “Unsuitability.”

APPLICABLE LAW

Article 12.B.16.b. of the Personnel Manual (PM) authorizes the Commander of CGPC to discharge members for unsuitability by reason of alcohol abuse in accordance with Article 20.B. PM Article 12.B.16.d. states that when a member is being discharged for unsuitability, “commanding officers shall: 1. Advise the member in writing, using the letter and endorsement described in

⁵ This point/allegation does not actually appear in the applicant’s original application. Moreover, following the applicant’s second alcohol incident, the Coast Guard was entitled to discharge him almost immediately, without waiting to provide him rehabilitation treatment. Under Articles 20.B.2.h.2. and 12.B.16.d. of the Personnel Manual, following a second alcohol incident, a command is required only to notify the member of the pending discharge and to give him an opportunity to object in writing before awarding the member an honorable discharge.

⁶ See footnote 2, above.

Article 12.B.9., to inform the member of the reason(s) he or she is being considered for discharge. Specifically state one or more of the reasons listed in Article 12.B.16.b. 2. Afford the member the opportunity to make a written statement on his or her own behalf. ... 3. Afford the member an opportunity to consult with a lawyer ... if the member's character of service warrants a general discharge."

PM Article 12.B.16.h. states that a "member under consideration for discharge for unsuitability must have a physical examination performed by a Public Health Service or Armed Forces medical officer in order to identify and record any physical or mental impairments that the member may have. If one is not available locally, a contract physician may perform the exam. ... [T]he medical officer will submit a narrative summary on DD-2808 and DD-2807-1 describing the essential points of the member's mental and physical condition." Paragraph 3. of this provision states that "[I]f it appears a mental or physical disability causes the unsuitability, a medical board will be requested."

PM Article 12.B.6.a. states that "[b]efore retirement, involuntary separation, or release from active duty ..., every enlisted member, except those discharged or retired for physical or mental disability, shall be given a complete physical examination in accordance with the Medical Manual, COMDTINST M6000.1 (series). ... All physical examinations for separations are good for 12 months." PM Article 12.B.6.d. states the following:

When the examination for separation finds disqualifying physical or mental impairments, use the following procedures:

1. If the member desires to reenlist and the physical or mental impairment is permanent, send Standard Form 88 directly to Commander, (CGPC-epm-1), with a request for waiver or such other recommendations as are indicated.
2. If the member desires to reenlist and the physical or mental impairment is temporary, the necessary treatment shall be provided and the member remains in service under Article 12.B.11.f.
3. If the member ... is being discharged for reasons other than enlistment expiration and the physical or mental impairment is permanent, a medical board is convened under Chapter 17 and the member remains in service under Article 12.B.11.i.
4. If the member ... is being discharged for other than enlistment expiration and the disability is temporary, the member may consent to remain in service under Article 12.B.11.f. so necessary treatment may be given and a medical board convened if indicated.

Article 12.B.6.c. states that, if a member is found physically qualified for separation and objects to that finding, "Form 88 together with the member's written objections shall be sent immediately to Commander, (CGPC-epm-1) for review. If necessary the member may remain in service beyond the enlistment expiration date under Article 12.B.11.i. authority."

PM Article 12.B.11.f.1.a. states that

[a]n active duty member whose enlistment expires while he or she suffers from a disease or injury ... and who needs medical care or hospitalization may remain in the Service after the normal enlistment expiration date with his or her consent. ... He or she may remain until recovered to the point he or she meets the physical requirements for separation or reenlistment or a medical board ascertains the disease or injury is of a character that prevents recovery to such an extent. [Emphasis added.]

PM Article 12.B.1.e.1., “Cases Involving Concurrent Disability Evaluation and Disciplinary Action,” states the following:

Disability statutes do not preclude disciplinary separation. The separations described here supersede disability separation or retirement. If Commander, (CGPC-adm) is processing a member for disability while simultaneously Commander, (CGPC-epm-1) is evaluating him or her for an involuntary administrative separation for misconduct ... , Commander, (CGPC-adm) suspends the disability evaluation and Commander, (CGPC-epm-1) considers the disciplinary action. If the action taken does not include punitive or administrative discharge for misconduct, Commander, (CGPC-adm) sends or returns the case to Commander, (CGPC-adm) for processing. If the action includes either a punitive or administrative discharge for misconduct, the medical board report shall be filed in the terminated member's medical personnel data record (MED PDR).

Article 3.F. of the Coast Guard Medical Manual provides that members with medical conditions that “are normally disqualifying” for retention in the Service shall be referred to an IMB by their commands.

Article 3.F.12.a.(2) provides that a range of motion in the shoulder that does not meet or exceed the following standards when measured with a goniometer is normally disqualifying for retention or separation. For forward elevation (when the arm is held straight down and raised forward in front of the body), the range of motion must be at least 90 degrees (parallel to the floor). For abduction (when the arm is held straight down and raised out to the side), the range of motion must be at least 90 degrees (parallel to the floor).

Article 2.C.2.e. of the PDES Manual states that “an evaluatee convalescing from a disease or injury which reasonably may be expected to improve so that he or she will be able to perform the duties of his or her office, grade, rank, or rating in the near future may be found ‘Fit for Duty.’”

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 section 1552 of title 10 of the United States Code. The application was timely.

2. Under Articles 20.B.2.h.2. and 12.B.16.d. of the Personnel Manual, following his second alcohol incident, the applicant could have been discharged expeditiously with an honorable discharge as long as his command notified him of the pending discharge and gave him an opportunity to object in writing. The applicant has admitted, and the record indicates, that he was notified of his command's intent to discharge him and that he in fact objected in writing to being discharged.⁷ Under the regulations, the applicant was not entitled to counsel or even to complete rehabilitative treatment prior to being discharged as a result of his second alcohol incident. Nor was he entitled to an Administrative Discharge Board since he had not completed eight years of military service. Personnel Manual, Art. 12.B.16.i.

3. The record indicates the applicant's command did not rush his pending discharge but instead provided rehabilitative treatment at ASAP. However, the applicant was dropped from the program due to unsatisfactory participation and on November 2, 2004, refused to return for further treatment.⁸ Although the applicant alleged that his unsatisfactory participation was due to his pain and medications, this allegation is not supported by the written explanation provided by the Director of ASAP on October 25, 2004. CGPC issued orders to discharge the applicant on November 24, 2004.

4. While still enrolled at ASAP in September 2004, the applicant suffered increased pain in his right shoulder. The cause was eventually diagnosed as a biceps tear and Dr. O, an orthopedic surgeon, recommended surgery. On November 24, 2004, at the applicant's separation physical examination, Dr. R found the applicant fit for separation based in part on his measurements of the range of motion in the applicant's right shoulder. Article 3.F.12.a.(2) of the Medical Manual requires only that a member be able to raise his extended arm parallel to the floor to the front and the side. Although the applicant argued that Dr. O's measurements disproved those of Dr. R, the Board finds Dr. R's measure-

⁷ Although the command's written notification and the applicant's response are not in his record, the applicant admitted to being notified of the pending discharge, and at least one written objection was received by CGPC through the applicant's congressman.

⁸ Under Article 12.B.18.b.13. of the Personnel Manual, the applicant's refusal to accept recommended medical treatment constituted misconduct and was therefore an additional potential basis for discharging him.

ments on November 24, 2004, to be unequivocal: on the day of the separation physical, the applicant could raise his right arm at least parallel to the floor to the front and to the side. Neither Dr. O's measurements on November 22, 2004, nor the fact that the applicant needed surgery disproves this finding by Dr. R.

5. Although the applicant was found fit for duty/discharge, the Coast Guard retained him on active duty beyond November 24, 2004—despite his second alcohol incident, alcohol rehabilitation failure, and refusal to undergo more rehabilitative treatment—so that he could undergo surgery on his right shoulder. Two weeks later, the applicant was counseled about further misconduct, or “discreditable involvement with civil or military authorities,” due to his involvement in an assault on a fellow member and in harboring a 14-year-old runaway girl at his residence.

6. The applicant alleged that, despite his two alcohol incidents—illegal consumption while underage and DUI—and other misconduct, he was entitled to be retained on active duty following his surgery until he was fit for duty or until he was evaluated by a medical board and processed under the PDES. Under Article 12.B.1.e.1. of the Personnel Manual, however, a member who has committed misconduct may be administratively discharged despite any disability and is not entitled to PDES processing. The articles of the Personnel Manual cited by the applicant refer primarily to members who are scheduled for discharge because their enlistments are ending, which was not the applicant's situation. In addition, Article 12.B.16.h.3. of the Personality Manual suggests that for those members being separated due to unsuitability, a medical board is convened if it appears that a mental or physical disability causes the unsuitability. There is no evidence in this case that a mental or physical disability caused the applicant's unsuitability (alcohol abuse) for which he was discharged.

7. CGPC extended the applicant's discharge date several times to allow for treatment of his shoulder condition at Government expense. Dr. O reported no problems following the applicant's surgery on January 25, 2005, and on February 23, 2005, predicted that his rehabilitation would take three to six months from the date of surgery. On February 8, 2005, the applicant voluntarily decreased his prescriptions for pain medication. On March 3, 2005, the applicant reported to an orthopedic specialist working at the same hospital as Dr. O that he was doing very well and had no pain in his shoulder. The orthopedic specialist wrote that the applicant could return to work but should not use his right arm actively for six more weeks. She predicted his rehabilitation would take from six to eight months. Although on March 10, 2005, the applicant asked the doctor treating his adjustment disorder for pain medication, the Board finds that the

preponderance of the evidence in the record indicates that in March 2005 the applicant was recovering very well from surgery and had little or no pain.

8. The applicant has not proved by a preponderance of the evidence that he was entitled to PDES processing and a disability rating with retirement or severance pay. Under 10 U.S.C. § 1203, members may only receive severance pay if they have a disability that “based upon accepted medical principles, ... is or may be of a permanent nature.” All of the evidence in the record indicates that the condition of the applicant’s shoulder at the time of his discharge was not considered permanent by Dr. O, his orthopedic surgeon; Dr. R, his physician; or the orthopedic specialist who examined him on March 3, 2005. Dr. O expected him to be completely healed and fit within a three to six months of the date of surgery. Therefore, the Board finds that the applicant has not proved by a preponderance of the evidence that he was entitled PDES processing and a disability rating with retirement or severance pay under 10 U.S.C. § 1203 or its implementing regulations.

9. The applicant has not proved by a preponderance of the evidence that the Coast Guard erred in finding him fit for duty and thus qualified for an administrative discharge. Under Article 2.C.2.e. of the PDES Manual, members who are convalescing from surgery but are expected to make a full recovery in the near future may properly be found fit for duty. The Board finds that the reports made by the applicant’s physicians and orthopedic specialist in February and March 2005 prove that, though still needing months of physical therapy, he was expected to make a full recovery and was already sufficiently well to return to desk work. Moreover, the applicant has not proved that the doctors’ expectations were false.

10. The reports of Dr. O and the orthopedic specialist show that they were confident that the applicant would fully recuperate. Therefore, the Board finds that the applicant has not proved that his convalescent condition rendered him unfit for continued duty or that it legally prevented the Coast Guard from taking action on his alcohol incidents and repeated acts of misconduct by administratively discharging him on March 10, 2005. The applicant alleged that the Coast Guard should have retained him on active duty until he had completed rehabilitation, but there is no statute or regulation requiring the retention of members undergoing physical therapy following surgery when their full recovery is confidently expected. Although Article 12.B.6.d.4. states that a member being discharged for a reason other than the expiration of the enlistment has a temporary disability, the member may consent to remain in service, it does not state that the Coast Guard is required to retain the member in service despite any misconduct he has committed.

11. The medical treatment of members who have service-connected injuries but who are discharged for reasons other than physical disability is the responsibility of the DVA, not the military. The record indicates that the applicant was properly advised by the Coast Guard to seek further medical treatment from the DVA. Although the DVA allegedly refused to treat him, that does not mean that the Coast Guard erred or committed any injustice in discharging him before he had completed rehabilitation.

12. The applicant objected to the narrative reason "Alcohol Rehabilitation Failure" in block 28 of his DD 214. Every separation order that CGPC issued for the applicant stated that block 28 should show only the more general reason of "Unsuitability" rather than the more specific reason. Therefore, the Board finds that block 28 of the applicant's DD 214 should be changed to "Unsuitability."

13. The applicant asked the Board to upgrade his reenlistment code. Although the Board agrees that block 28 should contain the more general reason for discharge of "Unsuitability," he was in fact discharged because of his second alcohol incident and alcohol rehabilitation failure and his separation code, JPD, denotes that fact. The only reenlistment code authorized for anyone discharged due to alcohol abuse or alcohol rehabilitation failure is RE-4. The Board finds no basis whatsoever in the record for upgrading the applicant's reenlistment code.

14. Accordingly, block 28 of the applicant's DD 214 should be corrected to show "Unsuitability" as his narrative reason for discharge, but all other requested relief should be denied.

ORDER

The application of former SA xxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted in part as follows:

The Coast Guard shall issue him a new DD 214 with "Unsuitability" in block 28, instead of "Alcohol Rehabilitation Failure." In addition, the following notation may be made in block 18: "Action taken pursuant to order of BCMR."

No other relief is granted.

Stephen H. Barber

Dorothy J. Ulmer

Eric J. Young