

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2011-094

**XXXXXXXXXXXXXXXXXX
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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 application upon receipt of the applicant's completed application on February 3, 2011, and subsequently prepared the final decision as required by 33 CFR § 52.61(c).

This final decision, dated December 8, 2011, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

EVIDENCE CONSIDERED BY THE BOARD

The Board considered the applicant's application, his military and medical records, the advisory opinion, and the applicant's reply to the advisory opinion.

APPLICANT'S REQUEST AND ALLEGATION

The applicant asked the Board to correct his record to show that he was retired from the Coast Guard due to longevity of service instead of being involuntarily honorably discharged on September 9, 2009, with 19 years, 7 months, and 8 days of active duty. The applicant was discharged because of alcohol rehabilitation failure, with the corresponding GPD separation code, and an RE-4 (not eligible) reenlistment code. The applicant received half separation pay (approximately \$40,000).

The applicant stated that given the length of his service and "the good things [he] accomplished, he believes he should have been retired." The applicant stated, in addition, he suffered an injustice because the Coast Guard took until July 31, 2009 to approve the findings and recommendation of his administrative separation board (ASB) that convened and concluded on April 28, 2008, approximately five months before he would have become eligible for a 20-year active duty retirement. The applicant also alleged that his discharge was unjust because at the time he was suffering from and being treated for severe depression. The applicant stated the following:

I don't fully understand how the Admin Separation Board came to a decision in May of 2008 to discharge [me] and it was 1 year and 2 months later before I was separated. This period was devastating for me. I was going through a divorce and recommended for discharge, both occurring at the same time. Over the course of that year I was treated for depression. As per the Coast Guard doctors, I was prescribed many different depression medications and sleeping medications. The doctor also had me out on convalescent leave for roughly six months. I finally got back to work and thought I would be given the opportunity to complete my 20 years, when discharge papers were issued. It does not seem that I was afforded due process.

If you review my service record you will see even when I had disciplinary marks, my performance marks never suffered. I always got the job done at an above average level. I received numerous awards . . . and saved the government a lot of money. I know the Coast Guard's policies, but it is tough to have a great career marred by a few bad decisions. I hope the Board will reconsider the [Coast Guard's] decision. If [the Coast Guard] need[s] me to complete my final months, I will go anywhere and do anything for the Coast Guard.

In addition to his statement, the applicant submitted a copy of a temporary court order with respect to custody of and visitation with his minor children from the Probate and Family Court Department of the Trial Court of the Commonwealth of Massachusetts, copies from his ASB proceeding, and copies from his medical records that show he was under treatment for depression.

CONSIDERATION OF THE EVIDENCE

On November 28, 1989, the applicant enlisted in the Coast Guard. On June 7, 1991, he obtained the storekeeper rating (SK) and subsequently advanced in that rating to pay grade E-6 (SK1).

On January 25, 2008, the applicant's commanding officer (CO) informed the applicant that he was recommending that the applicant be discharged from the Coast Guard due to unsuitability because of alcohol abuse under Article 12.B.16. of the Personnel Manual. The CO informed the applicant that the discharge was initiated because of the applicant's third alcohol incident that occurred on October 17, 2007, as documented on an administrative remarks page (page 7) dated December 10, 2007.

On January 25, 2008, the applicant signed a statement in which he acknowledged notification of the proposed discharge, attached a statement in his behalf, objected to being discharged, and requested an ASB hearing.

On February 28, 2008, the Commanding Officer (CO) of the Military Personnel Command directed that an ASB be convened to a conduct hearing and to recommend whether

the applicant should be retained or separated from the Coast Guard, and the character of separation, if recommended.

On March 4, 2008, the applicant was assigned a military lawyer to represent him before the ASB.

The ASB Proceedings

The ASB was held on April 25, 2008. The recorder and the applicant (identified as the respondent in the ASB) had an opportunity to present evidence.

The summarized record of the ASB was issued undated with the following enclosures: (1) Findings of fact, opinions, and recommendation; (2) Witness Testimony Summary; (3) Recorder's exhibits; (4) Respondent's Exhibits; and (5) Letter of Deficiency w/memorandum. The ASB made the following findings of fact:

1. On or about 17 [October] 2007, Respondent was involved in a third documented alcohol incident. Respondent failed to report to work . . . BMC [D], the XPO, phoned Respondent's home to locate Respondent. Respondent's wife stated that Respondent was home asleep, had been out all night and was drinking. Concerned that the combination of alcohol and anti-depression medication was going to cause an adverse reaction, the XPO and BM1 [C] went to Respondent's home to take him to Jordan Hospital. The XPO and BM1 smelled alcoholic beverages on Respondent when he entered the government vehicle to drive him to the emergency room. (Testimony of BMC [D], Testimony of BM1 [C], Testimony of CWO4 G; Statement of BMC [D] and Statement of BM1 [C]).
2. On May 30, 2001, [the applicant] was arrested by the Metro-Dade (Florida) Police Department for driving while intoxicated. Respondent was screened by NAS Key West, and successfully completed a three-week level II outpatient program at CAAS NAS Jacksonville, FL. An administrative remark dated 31 May 01, noted this was considered his first alcohol incident, and ordered him to participate in an aftercare program which included abstaining from alcohol . . .
3. Respondent was involved in a second alcohol incident [in 2002]. He was arrested a second time by Metro-Dade Police Department for driving while intoxicated. This incident went unreported to his superiors until a screening for his security clearance [update in 2004] . . .
4. In September 2004 Respondent completed an intensive substance abuse rehabilitation program . . . The discharge summary . . . stated Respondent's prognosis for an alcohol-incident free future was considered good provided he followed the recommended aftercare plan.
5. On 12 January 2005, Respondent was notified of discharge proceeding for his second alcohol-related incident. His command recommended retention after his second related

alcohol incident due to his superior work performance and the positive steps he had shown in his treatment and aftercare programs.

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7. Respondent was advised at his first and his second alcohol incidents that he would be processed for separation from the Coast Guard [if he was involved in any further alcohol incidents].

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9. Respondent was admitted in October 2007, and completed an inpatient rehabilitation program for alcohol and substance abuse for a 45-day period at Gosnold Treatment Center.

10. Respondent has asked for retention and stated that his current medical problems [are] due to his depression and medication, and his past problems at his unit [were] due to the fact that he is a recovering alcoholic. . . .

11. Respondent's Coast Guard career, by all accounts, has [been] for the most part marked by superior personal performance . . .

12. Respondent has failed on more than three occasions at his present command to either (1) return to his unit after he had [gone] out for a parts run, (2) report to work and lied about the reason he did not report i.e. his daughter was sick, and (3) failed to report to his unit

13. Any behavior, in which alcohol is determined, by the [CO] 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 Uniformed Code of Military Justice, Federal, State, or local laws is an alcohol incident for the purposes of administrative separation policy.

14. [The respondent's] continual abuse of alcohol has severely jeopardized the safety of the public and his shipmates and has brought discredit upon the service . . .

The ASB was of the opinion that the applicant was aware of the Coast Guard's alcohol abuse policy prior to his third alcohol incident; that he was treated several times for alcohol disease; and that he engaged in behaviors repeatedly that called into question his ability to lead and mentor junior personnel. The ASB stated that superlative personal performance alone did not justify the applicant's retention in the Coast Guard.

The ASB recommended that the applicant be administratively separated from the Coast Guard with an honorable discharge for unsuitability (alcohol abuse).

On June 25, 2008, the applicant's ASB lawyer wrote that he did not have any substantial issues with anything in the ASB report, "as everything generally reflects [his] recollections of the proceedings." The only thing added by the ASB lawyer was a "Letter of Deficiency," requesting that the execution of any discharge be suspended pursuant to section 12.B.34. of the Personnel Manual¹ to allow the applicant to earn a 20-year retirement.

On July 29, 2008, the CO of the Military Personnel Command agreed with the recommendation of the ASB to administratively separate the applicant from the Coast Guard. The CO noted that the applicant had been retained after his second alcohol incident based mainly on his stellar work performance and the understanding that his alcohol consumption would remain under control.

On August 7, 2008, the Commander, Coast Guard District One concurred with the recommendation of the ASB to separate the applicant because of alcohol abuse.

On July 31, 2009, the Chief of the Personnel Services Division took final action on the ASB and approved the ASB's findings of fact, opinions, and recommendation. The final reviewing authority stated the following in approving the applicant's separation:

The record submitted by the [ASB] includes proper documentation of two alcohol incidents and administrative remarks references to a third (sequentially, the second) documented alcohol incident. In addition to these alcohol incidents, [the applicant's] service record includes evidence of repeated counseling for being absent from work without authorization and at least two command-initiated substance abuse screenings not associated with the alcohol incidents. In September 2004, [the applicant] was deemed a "treatment failure" by the Substance Abuse Rehabilitation Program, and his command imposed a requirement to abstain from alcohol for the remainder of his Coast Guard career, a requirement that was not complied with. [The applicant] shall be separated from the Coast Guard in accordance with Article 12.B.16. of the Personnel Manual COMDTISNT M1000.6A, with an honorable discharge for unsuitability due to alcohol abuse.

Applicant's Statement to ASB

On January 31, 2008, the applicant submitted a request for retention in the Coast Guard. He acknowledged that he was a recovering alcoholic, which had caused problems in the past. He also stated that his depression and medication, which are documented in his medical record, created his recent problems. The applicant denied that he drank alcohol on October 17, 2007, and stated that he could not explain why members of his unit stated that they smelled alcohol that morning. He stated that he had called in to work on the morning of the 17th and informed the unit that he needed more time to look for a place to live since he and his wife were separating. He stated that after he returned home around 11 a.m., BMC D and BM1 C came to his house and

¹ Article 12.B.34. of the Personnel Manual allows the Commander, Personnel Service Center (PSC) to suspend executing an approved discharge for a specified period, if the circumstances of a case indicate a reasonable prospect for rehabilitation.

stated that the command wanted the applicant to go to the hospital, which the applicant assumed was for issues related to his latest bout of depression. He stated hospital personnel refused to conduct a blood test on him, as requested by the BMC, because they did not see a need for it. He stated that if there was concern by unit personnel that alcohol was involved a blood test, urinalysis, or breathalyzer should have been administered. In oral testimony before the ASB, the applicant stated again that “the root of all his lateness and absences [from work] was due to depression.” He also restated that he did not consume alcohol on the morning of October 17th and that he did not know why witnesses at the ASB stated that he smelled like alcohol on that morning.

The applicant’s wife submitted a statement to the ASB in which she wrote the following in pertinent part:

I had received several phone calls from [BMC D] who was looking for the applicant to return to work. When [BMC D] called back, I told him that [the applicant] had just come home. He said he would come to our house to bring him to the base. When he got to our house, he spoke to [the applicant] and told him he was going to take him to [the] hospital. When I asked him why they would go to [the] hospital, I believe his reply was to make sure [the applicant] was alright. Later that night, the hospital social worker called me at home. She was very concerned about the pressure [the applicant] felt he was under. She conveyed to me that [the applicant] seemed extremely overwhelmed and was having trouble coping with family and work issues. I do remember her telling me that [the applicant] had requested a blood test be taken. She stated that a blood test was unnecessary since this was obviously an emotional issue and she strongly urged me to have him continue with therapy and medication for his depression.

Medical Evidence before the ASB:

According to the list of exhibits attached to the ASB summarized report, the applicant’s “Record of Medical Primary Care Boston” was submitted to the ASB. The medical evidence shows that on July 25, 2007, the applicant was seen at a primary care clinic for an evaluation of depression. The medical note indicated that he had a history of depression since 2000; that he was taking Effexor for depression; that he had marital problems; and that a friend had committed suicide by hanging a couple of months earlier. The applicant was released from this medical appointment with work limitations of no boat/sea duty, climbing, hazardous tools, or weapons. He was treated with Atenolol for his high blood pressure and referred to the psychiatry department.

On September 10, 2007, the applicant was seen by Dr. R who noted the applicant’s history of depression and his treatment with Effexor. The medical note stated that the applicant was brought into the clinic by his CO and XO who stated that sometimes the applicant disappears from work and tells his command that his medication is “screwing him up.” The medical note stated that the applicant had missed appointments with his psychologist, but he denied that he was drinking. The medical note indicated that the command wanted a fitness for duty determination on the applicant.

On September 26, 2007, the applicant was evaluated to determine whether he should be referred to a military psychiatrist for a fitness for duty determination. The medical note indicated that the applicant was taking Effexor and that he was under increased stress due to marital and financial problems, job stress, and a pending PCS move. The medical note stated that the applicant was seeing a psychologist for talk therapy and that he was scheduled for a military psychological evaluation.

On October 10, 2007, the applicant had a follow-up medical appointment. The physician noted the applicant's alcohol dependence, depression, and uncontrolled high blood pressure, and that he was treated for these conditions with Antinol (high blood pressure) and Effexor. The applicant was released with work limitations that included no climbing, boat/ sea duty, hazardous tools, or weapons.

On October 18, 2007, the applicant underwent his military psychiatric evaluation. He was diagnosed with major depression recurrent moderate, alcohol dependence in remission, and partner relational problem. He was released with work/duty limitations and continued treatment with Effexor. The psychiatrist recommended continued treatment and retention on active duty.

On December 7, 2007, the applicant had a follow-up appointment, and the medical note indicated that the applicant was discharged from a 30-day alcohol program. He was continued on Effexor.

A January 7, 2008 medical note indicated that the applicant was doing well and fit for duty status with no boat, sea, or weapons duty.

A February 6, 2008 medical note indicated that the applicant was released without limitations.

A November 12, 2008 medical note indicated that the applicant was treated for depression due to his divorce proceedings and pending separation from the Coast Guard. The applicant was prescribed Fluoxetine and Clonazepam to treat his depression. He was referred to psychology with work limitations of no boat/sea duty.

On February 6, 2009, the applicant was placed in sick-at-home status. On April 29, 2009, he was diagnosed with a dysthmic disorder and his sick-at-home status was continued.

On June 12, 2009 the applicant was seen for a follow-up appointment. His diagnosis was depression, alcohol dependence, and essential hypertension. Sick-at-home status was continued.

On June 24, 2009, the applicant was diagnosed with alcohol dependence and his status changed to work/duty with limitations. The medical note indicated that because the applicant had missed several psychiatric appointments, his command decided that he should return to work, to which the medical officer agreed. The applicant denied that he was drinking alcohol, although the medical officer was unsure that was the case.

On August 31, 2009, the applicant underwent an abbreviated physical in which he was released from that appointment without limitations. The medical note indicated that he was taking Celexa for depression and Midodardis for high blood pressure.

Applicant's Alcohol Treatment Record

On July 1, 1999, the applicant's command referred him to the Counseling and Assistance Center (CAAC) for evaluation because the applicant was suspected of abusing alcohol. The applicant denied having any problems with alcohol and the assessment was terminated because of the applicant's lack of cooperation.

On August 9, 2001, the applicant completed a three-week level II outpatient treatment program. He was diagnosed as alcohol dependent. The applicant was advised in a letter that members diagnosed as alcohol-dependent must abstain from alcohol to maintain sobriety. His aftercare plan (provided on an administrative remarks page (page 7)) included abstaining from alcohol for 12 months, making quarterly aftercare reports for two years, attending weekly meetings with the CDAR (command drug and alcohol representative), and attending two AA meeting per week. The applicant was warned that failure to comply with his aftercare plan or involvement in a second alcohol-related incident could result in his separation from the U.S. Coast Guard. The applicant acknowledged the page 7 entry.

On May 21, 2003, at his command's direction, the Substance Abuse Rehabilitation Program (SARP) screened the applicant for suspected alcohol abuse. The screening report states that the applicant did not meet any of the criteria for alcohol abuse listed in the DSM IV, although the report noted that the applicant was diagnosed as alcohol dependent in 2001. The screening report noted that the applicant's earlier aftercare plan instructed him to abstain from alcohol for only one year. The SARP counselor recommended that the applicant attend a residential treatment program at the earliest convenience.

On September 13, 2004, the applicant was again screened by the SARP at the request of his command because of his alcohol history and a recently discovered 2002 unreported arrest for driving while intoxicated. The Commanding Officer (CO), Naval Health Care New England, noted that the applicant received treatment for alcohol abuse at a residential facility in 2001. The CO of the health care facility recommended that the applicant be processed for separation as a treatment failure. In this regard, the CO of that facility wrote:

Based on this screening and reevaluation, a review of his records, his stated amount and pattern of usage, and criteria under the [DSM-IV] [the applicant's] 2001 alcohol dependency diagnosis was and is appropriate. His disclosures suggest that specific psychopathologies of alcoholism persist and will be recurrent as long as he remains in denial. It is felt that his failure to follow a recovery plan, his continued use of alcohol, his manipulation and rationalization is evidence of [the applicant's disregard] for the Coast Guard's policy concerning alcohol abuse. It is felt that [the applicant] will resist treatment unless it is the program of his choice and that his potential for further useful service and prognosis for avoiding further use of alcohol is not encouraging at this time.

In view of the above, it is recommended that [the applicant] be processed for separation as a treatment failure . . . Please notify the SARP for a treatment quota . . . In the interim it is recommended that [the applicant] immediately commence individual counseling and group therapy as designated by the SARP. It is further recommended that he abstain from alcohol, attend a minimum of five [AA] meetings weekly, and meet at least once a week with your CDAR.

On September 24, 2004, the applicant's command placed an administrative remarks page (page 7) in his record noting his earlier screening on September 13 2004. He was informed that he was a treatment failure and that he was required to adhere to a new aftercare plan that included abstaining from alcohol for the remainder of his Coast Guard career, attending AA meetings 3 times per week, attending individual and group therapy sessions at SARP once per week, completing an intensive outpatient treatment program, and meeting twice per month with a CDAR or a member of his command cadre. The page 7 also informed the applicant that failure to adhere to the aftercare plan would result in his immediate discharge from the Coast Guard.

On November 16, 2004, the applicant successfully completed the SARP New London Intensive Outpatient Treatment Program, with a good prognosis for an alcohol-incident free future. He was diagnosed as alcohol-dependent and given the following aftercare plan: abstain from alcohol, meet weekly with command CDAR, continue outpatient treatment in weekly continuing care group at SARP Newport for 24 sessions, and attend two AA meetings weekly for six months.

On January 12, 2005, the applicant's CO began administrative separation proceedings against the applicant because of a second alcohol incident that occurred on November 26, 2002. However, the CO recommended the applicant's retention because of his superior work performance. On March 29, 2005, the Commander, Coast Guard Personnel Command (CGPC) ordered that the applicant be retained in the service, provided that he successfully completed his aftercare program. CGPC directed that the applicant be advised that any further incidents would result in a recommendation for his separation from the Coast Guard.

On October 2, 2007, the applicant was screened and assessed at SARP New London as a result of a command referral to determine if he had a substance abuse problem and if education or treatment was required. He was diagnosed as alcohol-dependent and recommended for an inpatient treatment program. He was told to abstain from alcohol from the date of the screening assessment through the date of successful completion of treatment.

A November 30, 2007 letter indicates that the applicant attended a 30-day treatment for alcohol abuse where he was exposed to psycho-education groups, attended one-on-one therapy, attended outside AA meetings, and developed recovery management strategies.

Applicant's Performance Record

Documents from the applicant's military record show that he earned marks of 7 out of a high of 7 in the following performance categories for the performance periods identified below:

- Performance period ending October 31, 1998, marks of 7 in “quality of work,” “customs and courtesies,” and “adaptability” categories.
- Performance period ending April 30, 1999, marks of 7 in “quality of work,” “customs and courtesies,” and “adaptability.”
- Performance period ending October 31, 1999, marks of 7 in “quality of work,” and “respecting others.”
- Performance evaluation dated April 15, 2000, marks of 7 in “quality of work,” and “respecting others.”
- Performance period ending November 30, 2000, marks of 7 in “adaptability.”

The applicant received the Coast Guard Commendation Medal for “outstanding achievement while serving as independent storekeeper and Assistant Property Officer at First Coast Guard District, Boston, Massachusetts . . .” from November 1995 to May 2000. He has also received 4 Good Conduct Medals, among several other awards that are listed on his DD 214.

The applicant’s record also includes periods when he was absent from work without permission or did not report to work as scheduled. On April 10, 2006, he was placed on performance probation for 6 months because he had been late to work on several occasions. He also had two non-judicial punishments: one for not reporting an arrest for DUI in 2002 and one for not reporting to work on time.

VIEWS OF THE COAST GUARD

On September 1, 2010, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief. The JAG argued that the applicant had failed to substantiate an error or injustice regarding the ASB and subsequent discharge. The ASB was conducted in substantial compliance with the Coast Guard Personnel Manual. He stated that the applicant had at least two properly documented alcohol incidents and a third that triggered the ASB. Article 20.B.2.h.2. of the Personnel Manual states that “Enlisted members involved in a second alcohol incident will normally be processed for separation” pursuant to Article 12.B.16. of the Personnel Manual.

Regarding the applicant’s contention that he suffered an injustice because of the delay of the reviewing authority in acting on his ASB, the JAG stated the following:

[T]he Final Reviewing Authority took action on the applicant’s [ASB] on 31 July 2009, roughly 1 year and 2 months since the ASB Board’s recommendation. It is not uncommon for the ASB Board review process to involve delays based on document review and record corrections. [Chapter 1.G. of the Coast Guard Administration Separation Manual] state: “Failure to process administrative separation within the prescribed time goals (expressed in calendar days) does not

affect the validity of a separation decision.” . . . [T]he Final Reviewing Authority took into account all information provided regarding the applicant’s record and decided to separate the applicant with an honorable discharge for unsuitability due to alcohol abuse.

Therefore, it is the [Coast Guard’s] opinion that the applicant’s request should be denied. The applicant’s continued abuse of alcohol was the cause of his discharge [in accordance with Article] 12.B.16. of the [Personnel Manual]. The applicant was afforded multiple command-initiated substance abuse screenings and was deemed a “treatment failure” by the Substance Abuse Rehabilitation Program. The applicant was ordered to abstain from alcohol for the remainder of his CG career, which the applicant failed to comply with. It is truly unfortunate that the applicant was discharged with 19+ years of service; however, the applicant’s continued abuse of alcohol is contrary to CG policy. The applicant was extremely fortunate to have a delay in the final processing of his discharge to afford him the required time to get his affairs in order before discharge. Also, although the applicant engaged in numerous undesirable behaviors regarding his alcohol use, the applicant was still honorably discharged and received a substantial amount of severance pay for his services . . .

Commander, Personnel Service Center (PSC) Memorandum

The JAG attached comments from the PSC and asked that they be accepted as a part of the advisory opinion. PSC stated that according to Article 1.B.1. of the Coast Guard Separation Manual,

[d]ischarge and retention decisions are driven by the needs of the Coast Guard and not by the needs of individual members or individual commands. Members do not have a right to remain on active duty in the Coast Guard regardless of the length of their service or the hardship their separation might cause . . . Sound personnel management, as well as fairness, dictates that the decision to separate such a member be carefully considered, and that the member be provided an opportunity to be heard and to present and challenge evidence to be considered by the separation authority.

PSC concurred fully with the final action of the reviewing authority and adopted the findings of the investigation as the justification for discharging the applicant.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 19, 2011, the Board received the applicant’s response to the advisory opinion. He stated that he disagreed with the advisory opinion and believed that he has suffered an injustice. The applicant stated the following:

The [advisory opinion] states that although it took 1 year and 2 months to process my discharge, it has no bearing. They claim this is due to the [ASB] having

delays based on document review and record corrections. I think the Board can see this injustice and I do believe this would not be considered due process in any civilian court. I know the military has different standards, but this seems above and beyond. I believe the manual also states that discharge should occur within 60 days.

The [advisory opinion] also states that I was fortunate to have had time to get my affairs in order. I was going through a divorce and was losing my career. I had no idea what was happening day to day. I woke up every morning with intense anxiety. I was being treated for severe depression, as was supported in my medical record. I don't believe [that] it takes more than 1 month to get someone's affairs in order. This was a living hell. I believe it just continued to give me false hope that maybe they would let me retire. I was less than 5 months away from 20 years of service.

I realize I have had a few problems in my Coast Guard career, but I hope you will also consider the positives and the accolades I received during my career. I have numerous medals. My service jacket shows all the positive documentation. I would also like you to consider that throughout my whole career, even the bumps, my performance marks never suffered. I always got the job done.

I understand that the Coast Guard did allow me a second chance after the second alcohol incident. The [advisory opinion] stated that I should not consume alcohol again. The [advisory opinion] states there was two properly documented alcohol incidents, with a third alcohol incident referenced. The reference that they are referring to include my being brought to the hospital and them refusing to take a blood test because they did not believe it was alcohol related. They believed it was the heavy depression medication I was taking.

I loved serving my country. I love the Coast Guard. It was the one thing that fulfilled me in life. The money I finally received as severance pay only pays for about 4 to 5 years of health care for my children. I believe I deserved more. I would do more for the service and complete anything if allowed. I have been out of work since my discharge and find it hard with the "unsuitability" title on my DD 214. I hope you will see in my favor.

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 section 1552 of title 10 of the United States Code. The application was timely.
2. The applicant was discharged from the Coast Guard due to alcohol abuse because of his third alcohol incident that occurred on October 17, 2007, when he did not report to work

allegedly due to alcohol consumption. Article 20.A.2.d. 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 [law] . . .” Article 20.B.2.i. of the Coast Guard Personnel Manual required that enlisted members involved in a third alcohol incident be processed for separation. Because the applicant had more than 8 years of service, he was entitled to a hearing before an ASB, which occurred on April 28, 2008. The ASB recommended the applicant’s separation from the Coast Guard with an honorable discharge. The ASB was approved on July 31, 2009 and the applicant was discharged on September 1, 2009.

3. The applicant alleged that he suffered an injustice because of the Coast Guard’s delay in approving the findings and recommendation of his ASB. In this regard, the applicant stated that the ASB concluded on April 28, 2008 and it was not approved until July 31, 2009, approximately five months before he would have qualified for a 20-year active duty retirement. He stated that the long delay was an injustice because it led him to believe that he would be allowed to retire. Although Article 1.G. of the Administrative Separation Board Manual states that the ASB record with endorsements should be received at Commander CGPC (PSC in this case) no more than 30 days after the commencement of the ASB and that the final action should be taken by CGPC no more than 45 days after receipt of the ASB record, the provision clearly states that “[f]ailure to process an administrative separation within the prescribed time goals does not affect the validity of a separation board.” The Delegate of the Secretary of the Department of Transportation stated in Docket No. 328-86(P) that a simple time delay in submission of an OER does not of itself constitute error that would require the relief sought by an applicant in the absence of some demonstrated resultant prejudice. While the Board notes that the applicant may have been hopeful that the CGPC would have allowed him to remain on active duty, he has not shown how he was prejudiced by the fact that it took over a year for CGPC to approve his ASB. There is no evidence in the record that if CGPC had approved the ASB sooner the applicant would have been allowed to remain on active duty.

4. The applicant argued that it was an injustice for the Coast Guard to separate him because his severe depression and treatment caused or contributed to his “problems.” However, the ASB was aware of the fact that the applicant was undergoing treatment for depression. The ASB summary report listed the medical record of the applicant’s treatment for depression as an exhibit and the applicant mentioned his depression and treatments in his written and oral statements to the ASB. Therefore, the Board presumes that the ASB considered the applicant’s depression and treatment during its deliberation. The applicant indicated in a statement to the ASB that the medication that he was taking for his depression caused his behavior and not the intake of alcohol. However, the applicant has submitted insufficient evidence before this Board to prove that he was, in fact, suffering from the effects of his depression medication instead of the effects of alcohol at the time he failed to report to work on October 17, 2007. The Board notes that the XPO and a BM1 stated that on the morning of October 17th on the ride to the hospital with the applicant, they smelled alcohol on the applicant. The Board also notes that the applicant’s military lawyer reviewed the ASB report summary and did not raise any objections to the manner in which the ASB treated the evidence related to the applicant’s depression or any other objection to the ASB proceedings.

5. The applicant argued that it was an injustice to separate him from the Coast Guard because the quality of his work performance never suffered. In this regard, he stated that ‘I always got the job done at an above-average level. I received numerous awards . . . and saved the government a lot of money. I know the Coast Guard’s policies, but it is tough to have a great career marred by a few bad decisions.’ However, the Board notes that Article 20.B.2.i. of the Coast Guard Personnel Manual which states that “[e]nlisted members involved in a third alcohol incident shall be processed for separation from the Service.” Because the applicant had over 8 years of military service, he was entitled to an ASB hearing and representation by a military lawyer. The ASB reviewed all of the evidence, including medical evidence of the applicant’s depression and his work history and still voted to recommend his separation for the good of the Service. The Board will not substitute its judgment for that of the ASB or CGPC in the absence of evidence that the ASB committed a prejudicial substantive or procedural error. The applicant has failed to prove such an error in this case.

6. The Board notes, as the applicant argued, that discharging him five months short of him earning a 20-year retirement seems particularly harsh, especially since the Coast Guard suspected that the applicant was abusing alcohol as early as 1999 and was aware that he was alcohol-dependent as early as 2001. Yet, the Coast Guard tolerated his ups and downs with alcohol-related issues until 2008, when it began separation proceedings. In this regard, the applicant had his first alcohol incident in 2001 for driving under the influence, and as a result of that incident he was screened and diagnosed as being alcohol dependent, for which he received treatment. In 2003, as a result of a command directed screening, the applicant was diagnosed as not being alcohol-abusive, although his 2001 alcohol-dependency was noted. In 2004, the applicant’s command discovered that he had a DUI in 2002, which was treated as the applicant’s second alcohol incident. As a result of this incident, the applicant was screened at the Naval Health Care New England facility. In a September 14, 2004 letter, the CO of that facility advised the Coast Guard to process the applicant for separation as a treatment failure because the applicant had little regard for the Coast Guard’s alcohol policy, because he would resist treatment that was not of his choosing, and because his potential for further useful service and prognosis for avoiding further use of alcohol was not encouraging. However, the Coast Guard decided to retain the applicant citing his then-subsequently-successful alcohol treatment and good work performance. Moreover, the applicant was screened for alcohol abuse on October 2, 2007, before the third alcohol incident. The CO of the facility where the applicant was screened informed the applicant’s CO that the applicant met the criteria for placement in an inpatient treatment program due to high risk of relapse and that he was to abstain from alcohol from that point through the completion of the treatment program. Prior to receiving treatment, the applicant committed his third alcohol incident on October 17, 2007, by not reporting to work apparently due to alcohol consumption. During this period from 2001 to 2008, the Coast Guard was also aware, as early as 2001 that the applicant had problems reporting to work on time presumably because of alcohol consumption. Two page 7s dated March 21, 2001 and November 5, 2002 document that the applicant was absent from work without permission on at least 3 days on one occasion. On April 10, 2006, he was placed on performance probation because of his failure to report to work on time on several occasions. There was testimony before the ASB and in a medical note that the applicant was not reporting to work or to his medical appointments when he was scheduled to do so. In light of the applicant’s history of alcohol abuse, as

discussed, and the Coast Guard's knowledge of it for approximately 8 years, it is arguable that the Coast Guard should have acted sooner to separate the applicant instead of waiting until he was only 5 months away from earning a 20-year retirement.

On the other hand, as the Coast Guard argued, despite its forbearance, the applicant continued to abuse alcohol. He was treated for alcohol-dependence on at least two occasions prior to his October 17, 2007 incident. Unfortunately, the applicant committed his third alcohol incident in his 18th year of service and the Personnel Manual requires processing for discharge upon committing a third alcohol incident. The ASB found that it was in the best interest of the service to separate the applicant, while noting his above-average work history. Apparently, the Coast Guard determined that the applicant's problems with alcohol and the impact his behavior had on his unit outweighed the services he could provide as a SK. Even if the Coast Guard had acted earlier to approve the ASB, there is no indication that the applicant would have been retained after committing his third alcohol incident. The applicant has not submitted sufficient evidence to persuade the Board that the Coast Guard committed an injustice in discharging him with over 19 years of active duty.

7. In light of the above findings, the Board concludes that the applicant has failed to prove an error or injustice with regard to his discharge from the Coast Guard.

8. While the Board finds the applicant's discharge was proper, certain entries on his DD 214 should be modified as a matter of equity. The applicant's DD 214 shows that he was discharged from the Coast Guard under Article 12.B.12 (convenience of the Government) of the Personnel Manual, with an honorable discharge due to "Alcohol Rehabilitation Failure," with a GPD separation code (which corresponds with an involuntary discharge under Article 12.B.16. that was an approved recommendation of a board when a member failed through inability or refusal to participate in, cooperate in, or successfully complete a treatment program for alcohol rehabilitation), and a RE-4 (not eligible to reenlist) reenlistment code. The applicant has stated that having the "unsuitability title on [his] DD 214" has made it hard for him to find a job. There is an inconsistency on the DD 214. Although the applicant was processed and discharged under Article 12.B.16. (unsuitability) of the Personnel Manual, the separation authority listed on the DD 214 is 12.B.12 (convenience of the government) a more favorable separation authority. Instead of changing the separation authority to Article 12.B.16. on the DD 214, the Board finds that the narrative reason should be changed to "condition, not a disability" under Article 12.B.12. Alcoholism is a disease "characterized by repetitive, compulsive ingestion of alcohol which interferes with the user's health, safety, and job performance . . ." Article 20.A.2.c. of the Personnel Manual. This definition recognizes the difficulty of remaining sober for some alcoholics. Since the applicant struggled from alcoholism for almost 8 years while still providing average to above average work performance to the Coast Guard, the Board finds that as a matter of equity under this particular set of circumstances, the narrative reason for discharge on the applicant's DD 214 should be changed from "alcohol rehabilitation failure" to "condition, not a disability" under Article 12.B.12 of the Personnel Manual, and the separation code should be changed to GFV ("condition, not a disability"). The change may ease the applicant's problem with finding civilian employment. The Board will not change the RE-4 reenlistment code because the applicant has a long history of problems with alcohol, which interfered with the readiness of his unit and set a poor example for junior personnel.

9. Accordingly, the applicant's request for retirement from the Coast Guard should be denied. However, the Board will direct that the applicant's DD 214 be corrected as discussed in Finding 8.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former XXXXXXXXXXXXXXXX, USCG, for correction of his military record is denied, except that the Coast Guard shall issue him a new DD 214 with the following corrections made (not by hand and not by issuing a DD 215):

- Block 26 shall be changed to GFV; and
- Block 28 shall be changed to “condition, not a disability.”
- The following sentence shall be added to block 18: “Action taken pursuant to order of BCMR.”

No other relief is granted.

Donna M. Bivona

Reid Alan Cox

Adrian Sevier