

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-040

████████████████████
██████████ MK3 (former)

FINAL DECISION

This proceeding was conducted under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. After receiving the applicant’s completed application on November 30, 2018, the Chair docketed the case and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated December 20, 2019, 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, a former machinery technician, third class (MK3/E-4) who was discharged for misconduct due to commission of a serious offense in August 2015, asked the Board to upgrade her character of discharge from General, Under Honorable Conditions to Honorable. The applicant explained,

I regret taking advice given in Coast Guard Boarding Officer School to refuse a breathalyzer if arrested for Driving Under the Influence [DUI] since they “could be false.” When I decided to refuse the breathalyzer, excessive force was used by two male police officers to detain me. I was cooperative, yet a taser and pepper spray was still used while I was handcuffed in the police car. The department deleted all footage and audio from the event before my Commanding Officer could retrieve it the following day. I was found “Not Guilty” of Driving Under the Influence after I had already been discharged [from the Coast Guard].

The applicant also stated that she feels burdened by her General discharge every day and feels that her service “is tarnished by a bad decision that I made.” She stated that she has “dedicated my life after service to earning an honorable discharge” by volunteering her time to help veterans and her community. She stated that she sincerely apologizes for the dishonor she brought to the service and asked the Board to upgrade her discharge to “reflect my honorable conduct prior to and following the mistake that resulted in discharge.”

The applicant stated that after her discharge, she worked as a farm hand from May to December 2015 and has worked full time as a singer/songwriter since December 2015. She has

also, *inter alia*, served as a volunteer firefighter, been a mentor for veterans, donated song proceeds to veterans, sung the national anthem at two Coast Guard ceremonies, performed at numerous concerts for veterans, and volunteered as a case worker for homeless veterans.

To support her request, the applicant submitted the following documents:

- A State Abstract of Court Record states that she was charged with “TI DUI 1ST OFFENSE” on October 30, 2014. She was sentenced to a year of probation on February 5, 2015; met the terms of her probation; and so was found not guilty on March 31, 2016.
- In a memorandum dated June 2, 2016, a senior chief petty officer who had been the Officer in Charge (OIC) of the applicant’s unit from 2012 to 2014, recommended that her character of discharge be upgraded to Honorable. He stated that the applicant had been one of his “top performers” who “excelled in everything she did.” She set an example by showing up to work early, staying in great physical shape, taking the lead on work projects, and showing great compassion. She “was able to obtain every certification and qualification possible until her medical condition prevented her from getting underway,” and she was transferred to another unit. He noted that she now sings at shows for the United Service Organization (USO).
- In an undated memorandum, a chief warrant officer who was the applicant’s commanding officer (CO) from June 2014 through July 2015 stated that she was “an excellent performer and a trusted crew member [who] could be counted on to meet or exceed command expectations. Despite the fact that she was on limited duty while assigned to the unit, she refused to remain idle and consistently volunteered to take on new assignments no matter how unpleasant. ... Even after she was notified that she was being processed for discharge and facing a possible General Discharge, her performance and loyalty did not falter.” He stated that although the applicant made a “terrible mistake,” he does not think she deserved a General discharge.
- Undated photographs of her face, which show that both of her eyes are bloodshot and her right eye is partially closed. She claimed that they also show significant bruising and swelling.

SUMMARY OF THE RECORD

On October 25, 2010, the applicant enlisted for four years. She attended MK “A” School and earned the MK3/E-4 rating in 2012.

On February 5, 2013, the applicant was counseled on a CG-3307 Administrative Remarks form (“Page 7”) that she had not timely progressed toward qualifying as a boat crew member, which she was supposed to have done by December 26, 2012. Therefore, she was placed on a “port and starboard rotation” in the mornings on her off-duty days for a month until she successfully passed the Boat Crew Check Ride. She was told that if she did not pass the check ride within thirty days, she would be placed on performance probation.

On a Page 7 dated October 9, 2013, the applicant was counseled by the senior chief petty officer who was the OIC of her Station as follows:

You are being counseled on your irresponsible use of alcohol and poor judgment. On 16 Sep 13 while assigned as a student to ... Academy, you and your fellow ... School classmates were at the all hands club, You admittedly consumed too much alcohol. So much so that when a fellow classmate was helping you back to your room you passed out in transit. While being escorted to your room you were witnessed by the base OOD [Officer of the Day] to be having a possible seizure. He immediately called local paramedics and [base] security. After initially agreeing to cooperate and let the paramedics take you to the ER for evaluation, you changed your mind and became confrontational. One of the paramedics attempted to subdue you by coming up from behind and gaining positive control of your head. Since you were still inebriated you were unaware of your surroundings and your response was to immediately spin around and push the paramedic down to the ground. This resulted in security having to place you in handcuffs in order to do their job. Your actions in this matter were unacceptable and reflected poorly on yourself and the Coast Guard. Any further recurrences of indiscriminate use of alcohol could result in further administrative and or disciplinary action.

In 2014, the applicant was transferred to another unit for medical reasons. A Page 7 dated October 20, 2014, states that she had tested positive for opiates at a local hospital on April 8, 2014. However, her CO “determined that the positive urinalysis does not meet the criteria for a drug incident based on substandard testing standards when compared to the Department of Defense testing procedures.” But he advised her that based on “suspicion of wrongful drug use,” she would undergo evaluation testing for six months, including not more than sixteen random urinalyses.

Sheriff's Reports

A county sheriff's report states that the applicant had been arrested at approximately 2:54 a.m. on October 30, 2014, for DUI, resisting arrest, disorderly conduct, destroying city property, and “no driver's license.” A deputy sheriff's narrative states that he had noticed a truck on the road “without a valid tag” and he saw that it was “drifting towards the middle of the roadway and driving on the double lines that separate the roadway” for at least five seconds. He activated his lights and siren to stop the vehicle. When he asked the applicant for her license and proof of insurance, she appeared disoriented, her speech was slurred, and he could smell alcohol on her breath. When he told her she had been driving carelessly, she told him that she had been looking for her glasses. She could not find her driver's license or proof of insurance and handed him her military ID instead. When he asked her if she had been drinking alcoholic beverages, she denied it, so he asked her to exit the vehicle and go to the rear of her truck. He asked her if she would take a field sobriety test, and she agreed. When he asked her if she had any physical or medical impairments or trouble with her eyes that would prevent her from performing the test, she told him that she was legally blind in her left eye. The deputy stated that he

conducted the HGN^[1] test and observed all three clues on her right eye. She stated she knew what I was looking for and advised that she should not have nystagmus. She stated the eyes do not lie.

¹ The Horizontal Gaze Nystagmus (HGN) test involves testing whether someone's eye jerks exaggeratedly and involuntarily or whether the eye's movement is smoother and controlled. The three clues are (1) whether the eye will follow an object smoothly from the center toward the side edge (near the ear); (2) whether the eye jerks before the object it's tracking is at 45 degrees (half the distance between the front and the side); and (3) whether the eye shows a jerking motion when held at the outer edge for four seconds. U.S. National Highway Transportation Safety Administration, “DWI Detection and Standardized Field Sobriety Testing (SFST) Refresher,” October 2015 (*avail-*

She continued to deny that she had any alcoholic beverages to drink. She stated she suffered from seizures and that she could not drink alcohol due to the fact that it triggers her seizures.

I asked [her] if she needed her glasses and if so I would help her find it. We walked to the passenger side of the vehicle and when she opened the door I could see two bottles of beer on the seat that appeared to be cold. I asked her if she didn't drink beer then why are there two bottles of beer laying on the seat. She stated it was old and I told her it looked cold to me due to the condensation around the bottle. She handed me the bottle and it was still cold. She managed to find her glasses and we walked back to the rear of her truck.

I told her the fact that she is in the military I wanted to help her. I advised that I could not help her if she continued to lie to me. I asked her again if she had anything to drink tonight and she stated no. I then told her to turn around and that she was under arrest for driving under the influence and traffic infractions. She stated she did not do anything wrong. I grabbed her right wrist and she pulled away. I ordered her to stop resisting and she continued to fight and pulled away. She then pleaded to talk to me and give her a chance. The altercation ended, I advised her that I would contact my supervisor and if he also determines that she was intoxicated that I would arrest her.

[The lieutenant] arrived on scene and conducted the HGN test and found all three clues on her right eye. He stated while speaking to her he could smell an odor of intoxicant from her breath. He stated that she is definitely intoxicated and she was lying. He then asked her to submit to a PBT [breathalyzer test], which she agreed to, but refused to do it properly. We then advised her that she was under arrest for DUI and to get off the tailgate of the truck. We asked her several times and she refused. We then grabbed her arms and she became combative. After several minutes we assisted her down to the ground and managed to put her in handcuffs.

We then placed her inside my patrol unit and she continued to fight and refused to stay inside the car. After we managed to get her inside the vehicle she kicked my rear windows causing damages to both doors. We opened the door, ordered her to stop, and she kicked [the lieutenant]. [The lieutenant] then sprayed her with OC spray and then she complied. I then left to transport her to the Adult Detention Center. While en route she continued to kick the doors and windows to my patrol unit. She then started to bang her head on the window.

When I arrived to the ADC, [the applicant] continued to fight and Deputies had to assist to walk her inside the jail. She continued to be combative and belligerent. After Deputies took the handcuffs off of her she yelled, kicked, and screamed. Deputies then laid her on the ground and attempted to restrain her. At which point it appeared that she was suffering from seizures. Deputies rolled her over, allowed the seizure to pass, and made sure that she did not hit her head on the floor or other hard objects. [Paramedics] arrived on the scene. While on scene [she] appeared to be having another seizure. Paramedics advised that she was faking the seizures due to the fact that she was attempting to push them away when they tried to help her. Paramedics advised they could not transport her to the hospital without a legitimate reason and advised that she was just drunk. [She] continued to fight and was placed in a restraint chair for her safety and the safety of the Deputies.

A report written by the lieutenant states that he also noticed that the applicant's breath smelled of alcohol, that her speech was slurred, and that she was unsteady on her feet. Her right eye showed all three HGN clues. She refused to take a breathalyzer. When the deputy sheriff asked her to stand up from her truck's tail-gate so he could place her under arrest, she refused to get up and kept asking him why she was being arrested. Therefore, the lieutenant grabbed her by her right wrist while the deputy took her left wrist to try to handcuff her. When she started fighting with them, they took her to the ground and handcuffed her and then put her in the patrol car. The lieutenant stated that his hand was injured on the concrete during this struggle. Then the

applicant kicked him twice, “kicked the driver’s [side] rear window out of the frame,” and while they were looking at the damage, she got out of the patrol car and tried to flee. She refused to get back in the patrol car and screamed that she had not been read her rights. When the lieutenant pushed her inside the car again, she refused to pull her feet inside. When he asked her to do so, she said, “What are you going to do, tase me?” When he asked her to pull her feet in the car again, she refused and so he “delivered a half second burst of Oleoresin Capsicum” to her “facial area,” and she pulled her feet in the car. She continued to kick the inside of the car on her way to the detention center and “fought with the personnel at the jail during decontamination and was placed in a restraint chair.”

Coast Guard Investigation

On October 31, 2014, the CO of the applicant’s unit initiated an administrative investigation of her arrest. The investigator got copies of the sheriff’s reports and statements from two other MK3s at the applicant’s unit:

- An MK3 stated that he and his wife had hosted the applicant and a third MK3 at their house for dinner on October 29, 2014. The applicant had shown up between 7:30 and 8:00 p.m., and they all ate dinner between 8:30 and 9:00 p.m. The applicant and the third MK3 drank a couple of beers, but he did not know how many. They watched television and at 2:00 a.m., he offered to let them stay, but “both said they were fine.” They left at about 2:30 a.m. The next morning, he saw that he had received a text message from the third MK3 at 3:30 a.m., who said that “he made it home but [the applicant] had been pulled over.”
- The third MK3 wrote a statement saying that he had seen the applicant drink only two or three beers on October 29, 2014, but that he and the host MK3 were not always with the applicant that evening, as she spent time talking to their host’s wife. He and the applicant left at about 2:30 a.m. after declining their hosts’ offer to stay overnight. He claimed that he also offered to let the applicant stay at his apartment overnight, but she “said that she was fine, and her physical state also seemed to be fine.” As they each drove off, the applicant followed him because she did not know the area very well. He saw her “swerve a little, and before I could pull over somewhere to check on her, the police had turned on his lights to pull her over.”

As a result of her arrest for DUI, the applicant’s CO determined that she had incurred an “alcohol incident,”² and she received a disciplinary EER³ with low marks for Safety, Responsi-

² Article 1.A.2.d. of the Coast Guard Drug and Alcohol Abuse Program Manual, COMDTINST M1000.10, 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.” Article 2.B.7. requires alcohol incidents to be documented on Page 7s. Under Article 2.B.8.b., “[e]nlisted members involved in a second alcohol incident will normally be processed for separation.”

³ COMDTINST M1000.2A, Article 4.C.2.c.7. (requiring preparation of a disciplinary EER when a member incurs an “alcohol incident”).

bility, Setting an Example, and Judgment; an Unsatisfactory Conduct mark; and a mark of Not Recommended for Advancement. The supporting comments state that although she was “still awaiting civil adjudication,” her CO had determined that the preponderance of the evidence showed that she had committed one or more of the offenses and incurred an “alcohol incident.”

A Page 7 dated November 13, 2014, states that the applicant had incurred her first “alcohol incident” when she was arrested at 2:54 a.m. on October 30, 2014, by local sheriffs for DUI, disorderly conduct, destroying city property, careless driving, and driving without a driver’s license or auto insurance. The Page 7 states that her consumption of alcohol had been a “significant or causative factor” in her arrest. She had been counseled on Coast Guard alcohol policies and, pursuant to ALCOAST 146/14, which was issued on April 4, 2014, discharge proceedings would be initiated as required for any member convicted of or awarded non-judicial punishment for DUI; any member who refuses to take a blood alcohol test or breathalyzer; or any member whose CO makes a written finding that the preponderance of the evidence shows that the member “was drunk or impaired while operating a vehicle, aircraft, or vessel in violation of Federal, state, or local law.”

A Page 7 dated November 13, 2014, states that the applicant had been screened for alcohol abuse or dependence and was required to report the results of that screening to all future commands.

On November 18, 2014, the investigator reported that under the Uniform Code of Military Justice, the applicant had violated Article 95 by resisting apprehension, Article 109 by destroying or damaging non-military property, and Article 111 by drunkenly or recklessly operating a vehicle, aircraft, or vessel.

A Page 7 dated December 5, 2014, states that the applicant’s aftercare program consisted of refraining from drinking alcohol while serving in the Coast Guard; attending group support meetings at least twice a week for a year; and attending weekly meetings with the Command Drug and Alcohol Representative for monitoring and support for six months.

Discharge Processing

On March 16, 2015, the applicant’s CO notified her by memorandum that he was initiating her discharge for misconduct due to her commission of a serious offense. The CO stated that he was recommending that she receive an Honorable discharge but that Commander, Personnel Service Center (PSC) would determine the characterization of her discharge. The CO noted that if she did not receive an Honorable discharge, she might encounter prejudice in civilian life. He advised her that she had a right to consult an attorney and to submit a statement objecting to the discharge.

On March 27, 2015, the CO sent PSC a memorandum recommending that the applicant receive an Honorable discharge for “commission of a serious offense.” He claimed that all of the charges against her had been dismissed by the county court but that the preponderance of the evidence showed that she had committed a serious offense. He stated that the applicant was a

“solid performer who consistently meets or exceeds command expectations” but that it had become apparent that “she has a problem with alcohol.”

On April 13, 2015, the applicant acknowledged that she had been notified that she was being processed for an involuntary administrative discharge for commission of a serious offense. She acknowledged that she might receive an Honorable, General, or Other Than Honorable (OTH) discharge and face prejudice in civilian life with a General or OTH discharge. She was notified of her right to consult an attorney and exercised it. She also exercised her right to submit a statement on her own behalf and wrote one asking to be medically separated or to receive an Honorable administrative separation. She stated that she “was never convicted due to irregular—if not dubious—conduct by the civilian police officers.” She apologized for “her role in this unfortunate incident” on October 30, 2014. She claimed that the officers’ account of her arrest was

significantly one-sided, and omits a number of inappropriate actions that they took, as well as mitigating factors that explain some of my behaviors. For example, after refusing a breathalyzer I was placed in handcuffs in the squad car. When one officer began to say my Miranda rights from memory, he could not remember more than the first sentence. Admittedly, I chuckled at this because it was actually somewhat comical at the moment, but when I chuckled he became frustrated and actually put his Taser to my chest. In the report, he only states that I made an inquiry about a Taser and says nothing about actually putting the device to my chest while I was sitting in handcuffs in the back of the patrol car. I then asked him if he was going to tase me while handcuffed in the squad car, and he became angrier, put the Taser away and used Oleoresin Capsicum spray on my face at close range. I do not believe my behavior warranted this use of force. The officers then shut the door with the spray fumes trapped inside and walked away. ... My throat began to close and I panicked. I kicked the window of the lower ranking officer’s patrol car in which I was detained to breathe and get their attention. Once I was at the station I was still panicking, blinded and having trouble breathing.

On May 13, 2015, the Sector Command endorsed the CO’s memorandum. He noted that the morning after her arrest, the applicant had been “deemed not fit to see the local judge and had to be rescheduled for a later time.” He noted that she was also “under an instruction from a Coast Guard medical authority to not operate motorized vehicles and also not to consume alcohol based on existing medical conditions. She chose to ignore those instructions and not only put her own life at risk, but the life of those around her as well.” Based on the applicant’s “total disregard for authority,” he recommended that she receive a General discharge.

On June 15, 2015, the District Command forwarded the discharge recommendation to PSC and recommended that she receive a General discharge.

On August 10, 2015, the applicant received a General, Under Honorable Conditions discharge for misconduct.

Discharge Review Board

On June 22, 2016, the applicant applied to the Discharge Review Board (DRB) and requested an Honorable discharge. She told the DRB that she feels that her four years and ten months of service had been “tarnished by a bad decision she made.” When the DRB convened on February 23, 2017, they found that the applicant’s discharge had been properly processed.

The majority of the DRB (three of five members) recommended that her General discharge stand as issued because she had committed a serious offense. But they noted that with a General, Under Honorable Conditions discharge, block 24 of her DD 214 should say “Under Honorable Conditions” instead of just “General” and recommended that that administrative correction be made to her DD 214. The minority claimed that the “circumstances surrounding the arrest were brought into question and with subsequent dismissal of the charges, there exists doubt that the overall severity of the incident exists.” Therefore and given her “strong record of performance,” the minority recommended upgrading her discharge to Honorable. On behalf of the Commandant, a Rear Admiral approved the majority’s recommendation to deny the applicant’s request for an Honorable discharge but to correct block 24 of her DD 214 to say “Under Honorable Conditions,” instead of “General.”

VIEWS OF THE COAST GUARD

On June 4, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in this case.

The JAG noted that the application is timely because the DRB denied the applicant’s request for an Honorable discharge in February 2017.

The JAG argued that the applicant had submitted no evidence showing that her General discharge was erroneous or unjust. The JAG noted that she was found to have committed a serious offense and that, although the CWO who was the applicant’s CO recommended that she receive an Honorable discharge, the Sector and District Commanders recommended a General discharge; Commander, PSC approved a General discharge; and the DRB upheld the General discharge. The JAG stated that these decisions were reached after thorough reviews of the applicant’s records and argued that there is no reason for the BCMR to overturn these prior determinations.

The JAG noted that the applicant was correctly discharged for commission of a serious offense under Article 1.B.17.b.3. of the Military Separations Manual, COMDTINST M1000.4, which does not require that a member be convicted or receive NJP to be discharged for commission of a serious offense. Under that article, police reports and Coast Guard investigations may be relied on to determine that the member has committed a serious offense by a preponderance of the evidence.

The JAG also noted that the Sector Commander reported in his endorsement that the applicant’s misconduct had embarrassed the Coast Guard within the local community and that the applicant herself admitted that she had brought dishonor to the service. The JAG submitted numerous documents that are included in the Summary of the Record above and concluded that the applicant’s General discharge does not constitute an error or injustice.

SUMMARY OF APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 3, 2019, the applicant responded to the views of the Coast Guard. She stated that while she “believed in doing things by the book” and loved her job in the Coast Guard she “was

in constant torment.” She explained that during an underwater swimming exercise in 2011, when she was training to be an aviation survival technician (AST), she became weak and could feel her consciousness slipping away. She pulled herself out of the pool but passed out and awakened in the hospital, where she was being evaluated for a “possible seizure and shallow water blackout.” She stated that the experience “was the first of many hospitalizations from seizures and migraines while I was enlisted.” Therefore, instead of attending AST “A” School, she attended MK “A” School. She stated that at the time of her discharge for misconduct, she had been placed on limited duty—desk work only—and was being processed for a medical discharge. But she was fighting to stay in the Coast Guard because she loved and took pride in her job and refused to do desk work and went to work in the engineering bay instead. The MK1 there asked her who she was and after she explained that she “wanted to earn my paycheck,” instead of doing desk work, the command let her work in the engineering bay but did not let her get underway.

The applicant stated that “[s]ome of the many hospitalizations that occurred after my transfer to my next units did happen while drinking alcohol.” She denied drinking alcohol alone or drinking more than other members while on liberty. But she “was suddenly prone to seizures due to the event at the pool during training.” The applicant alleged that her superiors prodded her to blame her hospitalizations on her shipmates, but she never did. And when she was arrested for DUI, she again refused to “throw anyone else under the bus.” She “always took full responsibility.”

The applicant alleged that the officers who recommended that she receive a General discharge did not know her character. But her CO, who knew her, did not want her to be discharged at all and recommended an Honorable discharge. She stated that her CO and others saw her after her arrest, when her

eyes were black and swollen shut. I had bruises all over. My jaw was swollen. It was clear what had happened. At the time, I was a 120 pound, 5’ 2” female who was arrested by two large male officers. Excessive force was most certainly used. ... The night of the arrest, my face was slammed into a curb as I stood in front of two officers, complying. When I was cuffed and detained in the back of the police car, I asked for my rights to be read. The supervising officer started to say the first line of the Miranda Rights, and could not remember the rest. His face turned red with anger and he put his taser to my chest. I pleaded with him to not tase me while I was detained. I knew that was excessive force because I have been to Board Officer “C” School. He put the taser in its holster, and proceeded to use OC spray at close range. He then slammed the car door, trapping me inside to breathe the spray. I had a panic attack and was having trouble breathing. I began to kick the patrol car window to try to get the officer’s attention. I was in a full panic and did not intend to damage the patrol car. I later learned that even though I was initially charged with destruction, the window was not actually damaged. I did indeed deny a breathalyzer because I learned in Boarding Officer school that they were sometimes faulty. Knowing what I know of [that county sheriff’s department, where she grew up], I did not trust the test. So, yes, I denied it. After I was back at Station ... , I asked my commanding officer if he could acquire the surveillance video or audio. He tried to acquire it, and was informed that it was deleted. I would like to note that the previous Sheriff had been relieved of his position due to deleting evidence (video of an excessive force arrest). This department is known for excessive force. I believe that I was not charged with a DUI before ever speaking to the judge because they did not want my case to come to light.

The applicant also stated that the Sector command who recommended that she receive a General discharge had earlier thrown “out a military restraining order that my chief had acquired for me against an HS3 assigned to [the Sector].” She stated that the HS3 had stalked her at her home and prior Station, harassed her, and told her that he was very good friends with the Sector command and could ruin her career. She alleged that the Coast Guard Investigative Service (CGIS) investigated the HS3’s stalking and harassment. She stated that this situation “is relevant as to why my discharge was categorized as ‘General,’ while a BM [boatswain’s mate] from my unit was shortly after discharged with an Honorable even though he was actually convicted of the DUI he was arrested for. It is my hope that all of this evidence will put my discharge into perspective.” She asked the Board to get the CGIS records for her.

The applicant stated that the only evidence of her work in her record is the Page 7 noting that she had not completed a qualification on time. She alleged that she did not complete it because her supervisor, an MK2 who was in charge of her “sign offs,” was sexually harassing her. She alleged that her CO knew that the MK2 was sexually harassing her but nonetheless put her “on a port and report status until my sign offs were complete,” which left her feeling punished, and the MK2 was only not recommended for advancement on his evaluation. Therefore, the applicant stated that before her discharge, she

was constantly uneasy because I knew how the Coast Guard handled sexual harassment cases. ... It is very difficult to offend me, but when cornered, sexually harassed, stalked, and threatened, I was uncomfortable. I did not even report some of the cases. Shipmates who witnessed the harassment did instead. Though some of these cases were reported to CGIS, nothing was done. Those people did not have their careers taken away. I was constantly on edge to the point of anxiety and depression because of this. I did not feel that the Coast Guard would ever actually protect me or anyone else. ...

By the end of my career, I was being forced to take a seizure medication that altered my judgment and mood though I reported these symptoms to the neurologist who was treating me. It furthered the depression, caused migraines, and even caused a seizure while I was on duty once. This also made me feel helpless. I felt as though I had no control over what happened to me.

Yes, I did go out with shipmates. Yes, I did drink socially. I wanted to be in the company of the shipmates who valued me as I did them because I did not want to be alone. When I was alone, my mind replayed the scenarios that made me feel weak and helpless over and over. I felt weak because I had been harassed, and not treated with respect due to my gender. I felt helpless because I was in the process of medical discharge when I did not want it. ... [After the arrest] I felt as though my service meant nothing to those who were higher up than the commands who knew my character and work ethic. Even though I was extremely depressed, anxious, and stressed from all of the above mentioned situations, my work ethic did not diminish. ...

My service was honorable. My dedication to the Coast Guard and the military as a whole has remained honorable even after discharge.

APPLICABLE LAW AND POLICY

Article 1.B.17.a. of the Military Separations Manual, COMDTINST M1000.4, authorizes Commander, PSC to administratively discharge a member for misconduct with an Honorable, General, or OTH type of discharge “as warranted by the particular circumstances of a given case.” Article 1.B.17.b.(3) states that one of the authorized reasons for such a discharge is commission of a serious offense:

Commission of a Serious Offense. Commission of a serious offense does not require adjudication by non-judicial or judicial proceedings. An acquittal or finding of not guilty at a judicial proceeding or not holding non-judicial punishment proceeding does not prohibit proceedings under this provision. However, the offense must be established by a preponderance of the evidence. Police reports, CGIS reports of investigation, etc. may be used to make the determination that a member committed a serious offense.

(a) Members may be separated based on commission of a serious military or civilian offense when:

- (1) The specific circumstances of the offense warrant separation; and
- (2) The maximum penalty for the offense or closely related offense under the UCMJ and Manual for Courts-Martial includes a punitive discharge. The escalator clause of Rule for Courts-Martial 103(d) shall not be used in making this determination.

Appendix 12 of the Manual for Courts-Martial United States shows in the Maximum Punishment Chart that the maximum penalty for the drunk or reckless operation of a vehicle, aircraft, or vessel is a punitive discharge: a Bad Conduct Discharge if no one is injured in an accident, but a Dishonorable Discharge or Bad Conduct Discharge if someone is injured.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.⁴ Although the applicant in this case filed the application more than three years after she knew of the alleged error on her discharge form, DD 214, she filed it within three years of the decision of the Discharge Review Board. Therefore, the application is considered timely.⁵
3. The applicant alleged that her General discharge for misconduct is erroneous and unjust. When 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 the military record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁶ 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."⁷
4. In her application to the Board, the applicant based her request for an Honorable discharge on claims that the civilian authorities who arrested her for DUI used excessive force when doing so; that she was found "not guilty" by the State; and that she has worked for the

⁴ 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

⁵ *Ortiz v. Secretary of Defense*, 41 F.3d 738, 743 (D.C. Cir. 1994).

⁶ 33 C.F.R. § 52.24(b).

⁷ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

USO and volunteered on behalf of veterans in other ways since her discharge in 2015. These claims do not constitute grounds for upgrading her discharge from the Coast Guard either separately or in combination:

a. The applicant submitted no evidence showing that the police used excessive force in arresting her on October 30, 2014. The photographs she submitted are undated and do not show substantial bruising or swelling, as she alleged. The sheriffs' reports confirm her claim that they used pepper spray on her when she was in the patrol car, but they state that pepper spray was used only after she had kicked the lieutenant and then refused to pull her feet into the car even after being asked to do so three times. Given that the applicant had previously been counseled in writing on October 9, 2013, about having to be physically subdued when she was drunk and pushed a paramedic who was trying to help her to the ground, the Board finds that she has not proven by a preponderance of the evidence that the amount of the force used to get her into the patrol car on October 30, 2014, was excessive or disproportional to her own conduct. And even if they had used excessive force in arresting her, that would not have excused her DUI.

b. The DUI charge against the applicant was dismissed only after she met the terms of her probation for a year.

c. A member's character of service and discharge is based on her performance and conduct while in the military, not on what she does post-discharge. Although the applicant's CO and prior OIC recommended that she receive an Honorable discharge, there were three significant negative Page 7s placed in her record even before she was arrested for DUI, disorderly conduct, destroying city property, careless driving, and driving without a driver's license or auto insurance on October 30, 2014, after she drank alcohol in violation of medical orders. And on July 7, 1976, the delegate of the Secretary informed the BCMR of the following determination, which has not been countermanded:

[T]he Board should not upgrade discharges solely on the basis of post-service conduct. ...
[T]he Board should not upgrade [a] discharge unless it is convinced, after having considered all the evidence [in the record], that in light of today's standards the discharge was disproportionately severe vis-à-vis the conduct in response to which it was imposed.

The applicant has not proven by a preponderance of the evidence that her General discharge was disproportionately severe given the negative Page 7s in her record, her continuing consumption of alcohol contrary to orders, and her commission of a serious offense on October 30, 2014.

5. After reviewing the Coast Guard's advisory opinion and all the documentation included with it, the applicant submitted a response in which she admitted that a Taser had not actually been used on her during her arrest—as she had claimed in her original application to the Board. She also included new allegations of sexual harassment, stalking, and mental illness. She did not include these allegations in her original application, she did not submit any evidence supporting these allegations, and the Coast Guard did not have the opportunity to address these allegation in its advisory opinion. As noted in finding 3, above, the applicant bears the burden of proof and persuasion, and she did not submit her Coast Guard medical records. She stated that the sexual harassment and stalking were known to and reported by other members and that CGIS

investigated some of these allegations, but she did not submit any supporting documentation, which she might obtain, for example, through a Freedom of Information Act request to the Coast Guard for all CGIS investigations in which she was named as a victim.

6. Accordingly, the applicant's request for an Honorable discharge should be denied, but the Board will reconsider her request if she submits evidence supporting her claims of sexual harassment and mental illness, such as her Coast Guard medical records and CGIS records.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former MK3 [REDACTED], USCG, for correction of her military record is denied.

December 20, 2019

