


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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2022-009**

  
BM3 (former)

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**FINAL DECISION**

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on October 5, 2021, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated December 16, 2022, 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 Boatswain’s Mate Third Class (BM3/E-4), asked the Board to correct his record by changing his separation authority, separation code, and reentry code. The applicant also asked the Board to change the narrative reason for his discharge from “Misconduct” to “Completion of Required Active Service.” The applicant did not specify what his separation authority, separation code, or reentry code should be changed to.

The applicant was involuntarily separated from the Coast Guard on September 25, 2017, and provided a DD 214 that shows the following entries: Character of Service – “Under Honorable Conditions”; Separation Authority – COMDTINST M1000.4 ART 1.B.17; Separation Code JKQ; Reentry Code – RE4; Narrative reason for separation – “Misconduct.” Prior to the separation, the applicant was brought before a General Court-Martial from March 20 to 23, 2017, for four offenses that met the requirement for separation pursuant to Article 1.B.17.b.(3) of the Coast Guard Military Separations Manual, PSCINST M1000.4. The applicant was found “Not Guilty” of the charges and specifications. However, the applicant’s Commanding Officer, Captain (CAPT) C, reviewed the investigation prepared by the Coast Guard Investigative Service (CGIS) and found, by a preponderance of the evidence, that the applicant had committed abusive sexual contact on two civilian females. CAPT C recommended that the applicant be separated from the Coast Guard with a General discharge by reason of misconduct for commission of a serious offense.

The applicant argued, through counsel, that the Assistant Commandant for Human Resources of the Coast Guard, who approved his separation, had not considered the totality of the circumstances involved in the decision to separate him from the Coast Guard.

The applicant also argued that CAPT C's recommendation that he be separated demonstrated a disregard for military authority. He noted that although the General Court-Martial had found him "Not Guilty" of the charges, CAPT C disregarded the acquittal and instead used it against him. The applicant argued that the "standard of innocent until proven guilty was certainly not applied by the Coast Guard in this case." He also argued that CAPT C had acknowledged that the applicant was acquitted but had made an independent decision to initiate an administrative separation of the applicant in order to punish the applicant for actions he was acquitted of. The applicant claimed that CAPT C's decision suggested that he believed the General Court-Martial's verdict was incorrect and took it upon himself to be the "judge, jury and executioner." For that reason, the applicant claimed that CAPT C had a personal vendetta against him.

The applicant also argued that CAPT C was influenced by racism against the applicant, who is Hispanic. The applicant relied on the fact that the other member who was involved in the incident, a Caucasian, was not punished even though that member had a prior infraction involving alcohol. He also argued that the language of CAPT C's memorandum recommending the applicant for separation inferred that CAPT C's decision was influenced by racism. He pointed to one statement in particular. "While the court-martial that reviewed the charges (the sexual misconduct) against you [redacted] did not come to the same conclusion, the court-marital [sic] was held to the higher standard of review of beyond a reasonable doubt."<sup>1</sup> The applicant claimed that CAPT C's statement "certainly" implied that his decision-making process included factors such as racism, "as his decision was not based on 'higher standards(s) [sic] of review."

Finally, the applicant appeared to argue that CAPT C's decision to recommend separation was unsubstantiated, questionable, and "unacceptable." The applicant stated that he requested to be placed in the Commandant's Second Chance Program, but CAPT C refused that request despite the fact that it was the applicant's first infraction of Coast Guard regulations. He also reiterated that the other member involved in the incident did not face any charges or personnel actions despite already having a "drinking incident" and that, under Coast Guard regulations, a second incident would have resulted in his discharge.

### SUMMARY OF THE RECORD

The applicant enlisted in the regular Coast Guard on January 6, 2014, for a period of eight years, four of which would be considered an Active Duty Obligation and the other four of which would be served in the Reserve.

On July 14, 2014, the applicant was counseled in a Chief Petty Officer Performance Hearing for his failure to responsibly arrive at work on time during the morning of July 9, 2014. The applicant was accused of "[p]oor decision making, lack of judgement, and lack of responsibility." The applicant was warned that if the deficiency happened again, he could receive

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<sup>1</sup> Parentheses in original.

the Commanding Officer's Non-Judicial Punishment. He was given extra military instruction for two weeks.

On November 24, 2014, the applicant was taken to Captain's Mast for Offense Code 00860 – Unauthorized absence – from unit, etc. The applicant was found to have been absent from his unit beginning at 0654 until 0823 on November 14, 2014. As a result of the mast, the applicant was awarded fourteen days of extra duty and his eligibility for the Coast Guard Good Conduct Award was terminated. His new period of eligibility was set to begin the following day, November 25, 2014.

The applicant was charged with multiple specifications of abusive sexual contact and multiple specifications of assault consummated by a battery on August 22, 2016.

On October 26, 2016, the Commander of the applicant's District, Rear Admiral (RDML) A, referred the charges to a General Court-Martial.

The General Court-Martial concluded on March 23, 2017. The applicant was found "Not Guilty" of the eight specifications.

On April 14, 2017, the applicant was notified via memorandum that CAPT C had initiated an action to discharge him from the Coast Guard due to the commission of a serious offense. The applicant was informed that the decision was based on his "actions against two civilian females on 8-9 April 2016, after [he] drank in excess." CAPT C informed the applicant that although the General Court Martial had resulted in an acquittal, the charges at the General Court Martial had to be proven by a higher standard than what is required for an administrative discharge and that CAPT C had found by a preponderance of evidence that the conduct had occurred. Finally, the applicant was informed that the decision on the discharge and the type of discharge was up to the Commander (CG PSC-epm-1), but that CAPT C was going to recommend a General discharge. The applicant acknowledged receipt of the memorandum, objected to the discharge, and opted to submit a statement on his behalf.

Also on April 14, 2017, the applicant received a CG-3307 ("Page 7") documenting his first Alcohol Incident because his use of alcohol was determined to have been a significant and/or causative factor in the incident for which he had been tried at court-martial. The applicant was advised that his actions while under the influence of alcohol had been unacceptable, even though he was found "Not Guilty" at the General Court Martial. He was informed that any further Alcohol Incidents might result in separation pursuant to Chapter 2 of the Coast Guard Drug and Alcohol Abuse Program, COMDTINST M1000.10.

### ***Personnel Records Review Board***

On May 31, 2017, the applicant asked the Personnel Records Review Board (PRRB) to remove from his record the April 14, 2014 CG-3307 documenting his first Alcohol Incident. The applicant argued that he was a victim of "an illegal, discriminatory, retaliatory, and revengeful action by the Service." He also argued that it was ironic that a CG-3307 was issued to him "a year

after the alleged misconduct and very coincidental” that he received the CG-3307 after being found “not guilty at General Court-Martial.”

The PRRB disagreed with the applicant’s claim that the disputed CG-3307 was issued in error or unjustly due to an alleged “illegal, discriminatory, retaliatory, and revengeful action by the Service.” The PRRB noted that the applicant did not need to be found guilty at court martial to be issued his first Alcohol Incident. The PRRB also found that CAPT C was justified in awarding the applicant his first Alcohol Incident. The PRRB concluded that CAPT C had sufficient reasoning to support the CG-3307, including the applicant’s own statement that he had drunk alcohol to excess on the night in question, to the point of memory loss and vomiting on himself, and that he had no memory of the conduct for which he was tried at court martial.

The PRRB did find that CAPT C’s decision to wait until after the outcome of the Court-Martial to administer the disputed CG-3307, approximately one year after the underlying conduct occurred, was ill-advised. However, the PRRB concluded that the applicant would likely still have received and disputed the CG-3307 had it been issued in a more timely manner.

The PRRB found that the applicant had not produced sufficient evidence to show that the disputed CG-3307 was issued in error, unjustly, or not in accordance with policy. The PRRB recommended that no relief be granted to the applicant and that the CG-3307 remain in his record. The decision was approved.

### *Discharge*

On April 14, 2017, CAPT C submitted a memorandum to the Commander (CG PSC-epm-1), recommending that the applicant receive a General discharge due to commission of a serious offense. CAPT C noted that, “[a]fter reviewing the government’s evidence, [CAPT C] found, by a preponderance of the evidence, that [the applicant had] groped two civilian females, resulting in the abusive sexual contact of the women.” The memorandum reiterated that, although the General Court Martial did not find the applicant guilty, the General Court Martial was held to a higher standard of proof than what is required for a recommendation for discharge.

On April 28, 2017, the applicant submitted a statement on his behalf. In that statement, the applicant argued that the decision to separate him was an “illegal, discriminatory, retaliatory, and revengeful action.” He also argued that he was being discharged because he had “adamantly maintained [his] innocence and exercised [his] constitutional rights to a fair trial, as [he] was falsely accused of sexual misconduct on the word of two women with absolutely no supporting evidence.” The applicant claimed that CAPT C’s notification of administrative separation had entirely disregarded the verdict of the General Court Martial and declared that he was guilty. He strongly disagreed with CAPT C’s decision to separate him but requested an Honorable discharge so that he could go about his life as best as possible.

In support of his statement, the applicant attached letters from fellow members. They described the applicant as hard working, dedicated, and high performing. They also described him as supportive of his shipmates and possessing a high level of personal integrity.

On June 1, 2017, RDML A endorsed CAPT C's recommendation to discharge the applicant, but recommended that the applicant receive an Honorable discharge. The separation package was forwarded to Commander, Personnel Service Center at Coast Guard Headquarters for approval.

The applicant was involuntarily discharged on September 25, 2017, and provided a DD 214 with the following information: Character of Service – "Under Honorable Conditions"; Separation Authority – COMDTINST M1000.4 ART i.B.17; Separation Code JKQ; Reentry Code – RE4; Narrative reason for separation – "Misconduct".

### ***Coast Guard Discharge Review Board***

Following his discharge, the applicant requested relief from a Coast Guard Discharge Review Board (DRB). The applicant specifically asked that his discharge be upgraded from "Under Honorable Conditions" to "Honorable" and that the DRB upgrade his reentry code and change the narrative reason for his discharge. The applicant argued to the DRB that his discharge was inequitable based on his acquittal of the charges at court martial and was retaliatory in nature. The applicant also argued that he was a high performer who had one isolated incident and that he should not have been discharged under those circumstances. The applicant also submitted character letters to the DRB in support of his performance prior to the underlying conduct.

On March 19, 2020, a DRB convened to review the propriety and equity of the applicant's discharge from active duty. The applicant was provided notice of the DRB but elected not to appear before the DRB. The DRB thoroughly reviewed the applicant's record, including the court martial acquittal and the transcript that was provided by the applicant. The DRB also reviewed the Separation Authorization, Notice of Intent to Discharge, and DD 214 for accuracy and to ensure that all proper discharge procedures were followed. The DRB concluded that contrary to the applicant's argument, his discharge was based on the contributing factor being a consumption of alcohol use to the point of memory loss and vomiting and not from the court martial charges. Therefore, the DRB concluded that the applicant was discharged properly under policy in effect at the time of his discharge. The DRB found that the applicant had not demonstrated any error or inequity and that the applicant's character of service, reason for separation, and reenlistment code were appropriate based on the available evidence and should not be changed. The DRB voted 3-0 to recommend no relief.

On May 20, 2020, the Assistant Commandant for Human Resources reviewed and rendered a final decision on the recommendations of the DRB. The Assistant Commandant adopted the DRB's recommendations and directed that no changes be made to the applicant's DD 214.

On July 8, 2020, the President of the DRB notified the applicant of the Assistant Commandant's final decision by letter. The letter also notified the applicant that if he desired to seek further redress, the applicant should seek review by the Board for Correction of Military Records.

### VIEWS OF THE COAST GUARD

On January 21, 2022, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which they recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC opined that the applicant's requests for relief were untimely because he filed his application more than three years after the date of discovery of the alleged error or injustice. However, if the Board considered the applicant's request for the sake of justice, PSC recommended that no relief be granted because the applicant failed to provide any evidence that his discharge resulted from an error or injustice. PSC concluded that the applicant's discharge was based on his former Commanding Officer finding by a preponderance of the evidence that the applicant committed offenses that met the requirement for separation by reason of "Misconduct" for commission of a serious offense.

The JAG opined that the applicant's petition to the Board was timely based on the July 8, 2020 letter from the President of the DRB. The JAG also added that although the General Court Martial did find the applicant "Not Guilty," the applicant failed to prove that it was erroneous to separate him administratively after the acquittal. The JAG pointed to Coast Guard policy that explicitly provides that an acquittal does not preclude administrative discharge, so long as the misconduct is found by a preponderance of the evidence. The JAG noted that CAPT C repeatedly indicated that he had found misconduct by a preponderance of the evidence after independently reviewing the evidence. Therefore, the JAG argued that the applicant's command followed Coast Guard policy to initiate his discharge and as a result, the applicant has failed to prove that his discharge was erroneous or unjust.

The JAG also argued that the applicant's narrative reason for separation – "Misconduct" – is factually correct and consistent with Coast Guard policy. The JAG asserted that the narrative reasons accurately characterizes why the applicant was discharged and that it matches the separation code, JKQ,<sup>2</sup> assigned to the applicant as required by Coast Guard policy. Therefore, the JAG argued that the applicant has failed to prove error or injustice in the current narrative reason for separation.

The JAG also argued that the applicant provided no evidence to support his allegation that his Commanding Officer, CAPT C, demonstrated racial bias in the action to initiate the applicant's discharge. The JAG noted that the applicant's allegation relied entirely on the fact that the other member who participated in the underlying conduct with the applicant was not separated from the Service and that member is a different race than the applicant. The JAG asserted that the applicant's allegation ignores or minimizes the aggravating factor in his case of abusive sexual contact against two women, which significantly differentiates his case from that of the other member. As a result, the JAG argued that the applicant could not compare the two cases to prove error or injustice as they are not equivalent.

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<sup>2</sup> According to the Separation Program Designator Handbook, the separation code JKQ denotes an involuntary discharge due to the commission of a serious military or civilian offense.



The JAG also argued that the applicant's characterization of his service as unblemished is disingenuous because the applicant had prior Non-Judicial Punishment for unauthorized absence from his unit, as well as documented counseling for another infraction. The JAG concluded that "[i]n light of the presumption of regularity afforded [the applicant's] command, coupled with the explicit non-discriminatory reason for separation provided in the discharge package (commission of a serious offense), [the applicant] fails to prove that his discharge was racially motivated."

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

On October 22, 2022, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. The Board received the applicant's response to the JAG's advisory opinion on November 22, 2022. In his response, the applicant acknowledged that he was not disputing that his CAPT C had the right to decide to separate him. However, he reiterated that the decision itself was flawed because he had been found "Not Guilty" at court martial. The applicant also acknowledged that he did not have "written or other conclusive proof that racism played any part in the decision," but that the totality of the circumstances surrounding his separation did not pass the "smell test."

The applicant's only new argument in his response to the advisory opinion is that the Board should recognize that RDML A endorsed CAPT C's recommendation to discharge the applicant but recommended an "Honorable" discharge. The applicant argued that the "lack of a unified decision" suggested that not all of the applicant's command agreed on the administration of punishment. However, the applicant stated that he is not asking the Board to upgrade his discharge to "Honorable." He is only requesting that the narrative reason for separation be changed from "Misconduct" to "Completion of Required Active Service."

### **APPLICABLE LAW AND POLICY**

Article 1.B.2.f. of the Coast Guard Military Separations Manual, COMDTINST M1000.4 proscribes the standards for discharge of active duty enlisted members. Article 1.B.2.f.(1)(a) states that a member is eligible for discharge for one of the following reasons:

- [1] Enlistment expires.
- [2] Service obligation fulfilled.
- [3] Convenience of the Government.
- [4] Dependency or hardship.
- [5] Minority (age).
- [6] Unsuitability.
- [7] Misconduct (except involvement with illegal drugs or obstructing drug urinalysis testing by tampering).
- [8] The Commandant so directs.

Article 1.B.2.f.(2) of the Military Separations Manual states that a general discharge applies in the following situations:

- (b) The member is eligible for discharge for one of the reasons listed in Article 1.B.2.f.(1)(a) of this Manual and:

...

[2] When based on the individual's overall military record or the severity of the incident(s) which results in discharge, Commander (CG-PSC-EPM-1) directs issuing a general discharge.

Article 1.B.2.g. of the Military Separations Manual describes the possible reentry codes that may be assigned to a member who has been discharged and their meaning:

- (1) RE-1 Eligible for reenlistment.
- (2) RE-2 Ineligible for reenlistment due to retirement.
- (3) RE-3 Eligible for reenlistment except for a disqualifying factor.
- (4) RE-4 Not eligible for reenlistment.

Under the Separation Program Designator Handbook, enlisted members discharged due to misconduct for commission of a serious offense may only be assigned an RE-4 reentry code.

Article 1.B.17. of the Military Separations Manual authorizes the Commander (CG PSC) to direct a discharge for misconduct and the type of discharge ("other than honorable," general, or honorable) as warranted by the particular circumstances of a given case. Article 1.B.17.b.(3) states the following about discharge for commission of a serious offense (emphasis added):

Commander (CG PSC) may direct discharging a member for misconduct [for the] ... 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 a 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 or investigation, etc. may be used to make the determination that a member committed a serious offense.

Article 1.B.17.b.(3)(a) states that "[m]embers 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."

## FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice. Although the applicant in this case filed the application more than three years after he knew of the alleged errors on his discharge form, DD 214, he filed it within three years of the decision of the DRB, which has a fifteen-year statute of limitations. Therefore, the application is considered timely.<sup>3</sup>
3. The applicant alleged that his involuntary separation from the Coast Guard was erroneous and unjust. When considering allegations of error and injustice, the Board begins its

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



analysis by presuming that the disputed evaluation in an applicant's military record is correct and fair, and the applicant bears the burden of proving by a preponderance of the evidence that it is erroneous or unjust.<sup>4</sup> Absent specific 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."<sup>5</sup>

4. The applicant argued that the Assistant Commandant for Human Resources did not consider all of the facts that were involved in the applicant's separation when deciding that the applicant's DD 214 should remain unchanged. However, the July 8, 2020 letter from the President of the DRB noted that the Assistant Commandant had reviewed the DRB's recommendation which was based on a thorough review of the applicant's record of service and all available documentation. Furthermore, the DRB's recommendation notes that the applicant was provided with notice of when the DRB would convene. His failure to appear before the DRB suggests that he believed the DRB already had all of the evidence needed to make its recommendation to the Assistant Commandant for Human Resources. Therefore, the applicant has failed to prove by a preponderance of the evidence that there was additional information that the Assistant Commandant failed to consider in adopting the DRB's recommendations.

5. The applicant argued that his discharge resulted from CAPT C's "disregard for military authority." The applicant's argument is based entirely on the fact that he was acquitted by the General Court Martial and he argued that CAPT C had inferred that the verdict was incorrect and "took it upon himself to become the judge, jury and executioner." However, the applicant misunderstands the difference in the standard (burden of proof) applicable to a military separation, which is administrative in nature, and the higher standard applicable to criminal proceedings such as a General Court Martial. An administrative discharge for misconduct requires that a preponderance of the evidence support the member's commission of the serious offense,<sup>6</sup> whereas a conviction at a General Court Martial requires proof of the alleged offense(s) "beyond a reasonable doubt."<sup>7</sup> Coast Guard policy expressly states that an acquittal or finding of not guilty at a judicial proceeding or not holding a non-judicial punishment proceeding *does not* prohibit administrative discharge proceedings for misconduct.<sup>8</sup> Instead, the offense must be established by a preponderance of the evidence and CGIS investigations may be used to make the determination that a member committed a serious offense.<sup>9</sup> CAPT C expressly stated in the Recommendation for Discharge that having reviewed the entire CGIS investigation, he found by a preponderance of the evidence that the applicant had committed the offense against the women in question. Accordingly, CAPT C complied with Coast Guard policy in recommending that the applicant should receive a general discharge for misconduct.

6. The applicant also alleged that CAPT C's decision to separate the applicant was racially motivated because the applicant is Hispanic. However, the applicant did not put forward

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<sup>4</sup> 33 C.F.R. § 52.24(b).

<sup>5</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

<sup>6</sup> Article 1.B.17.b. of the Coast Guard Military Separations Manual, COMDTINST M1000.4.

<sup>7</sup> Manual for Courts-Martial United States, RCM 916(b).

<sup>8</sup> Article 1.B.17.b.(3) of the Coast Guard Military Separations Manual.

<sup>9</sup> *Id.*

any evidence of any statements made by CAPT C that might suggest any bias, or even malice, against the applicant. Instead, his argument rests solely on his assertion that another member involved in the underlying incident, who was Caucasian and had a prior Alcohol Incident, was not discharged. However, the applicant's reliance on what happened to another member of the Coast Guard does not prove that the applicant's discharge resulted from racial bias. There is no indication in the record or in the applicant's application that the other member was involved in any sexual abuse against the civilian women, which was clearly a significant factor in CAPT C's decision to discharge the applicant. The applicant's argument also suggests that the other member reported to a different commanding officer.<sup>10</sup> Finally, the applicant's commanding officer, CAPT C, provided specific, non-biased reasons for discharging the applicant in both the Notice of Intent to Discharge and the Recommendation for Discharge. Those reasons demonstrate that CAPT C determined that the applicant had committed a serious offense and so he did not believe the applicant should remain in the Coast Guard. Dislike based on misconduct is not illegal bias. The applicant has submitted no evidence to show that CAPT C's decision was unwarranted or abusive. Accordingly, the applicant has not proven by a preponderance of the evidence that CAPT C's decision to discharge him was based on racial bias.

7. The applicant also appeared to argue that CAPT C's decision to recommend separation was unsubstantiated, questionable, and "unacceptable." He appeared to argue that CAPT C had relied on unsubstantiated and questionable reasoning for his discharge because, he alleged, he had been wrongfully accused of sexual abuse and acquitted by the General Court Martial. The applicant also disputed the allegation that he had drunk alcohol to the point of memory loss. However, CAPT C's Notification of Intent to Discharge expressly states that the reasons for his decision were "[the applicant's] actions against two civilian females on 8-9 April 2016, after [the applicant] drank to excess." Additionally, CAPT C's Recommendation for Discharge clearly acknowledges the outcome of the General Court Martial and indicates that CAPT C had reviewed the CGIS investigation in its entirety and determined by a preponderance of the evidence that the applicant did in fact commit a serious offense against the women in question. Furthermore, the applicant himself admitted in his application that he had drunk to excess on the night in question. The degree to which he drank to excess does not negate or mitigate the totality of his misconduct. Accordingly, the applicant has failed to demonstrate by a preponderance of the evidence that CAPT C acted unreasonably in deciding that the applicant should be separated for misconduct or that CAPT C based his decision on unsubstantiated information.

8. Finally, the applicant argued that RDML A's recommendation for a better characterization of discharge than what CAPT C recommended suggests that there was disagreement in the applicant's command about the administrative "punishment." However, the applicant also stated that he is not asking the Board to upgrade his discharge to "Honorable." Regardless, Coast Guard policy provides CAPT C and RDML A the discretion to recommend either an "Honorable" or "Under Honorable Conditions" (General) discharge, and there is no requirement that they agree on what type of discharge he should receive. The Commander (CG-PSC-EPM-1) has the ultimate decision-making authority in determining when to issue a General discharge,<sup>11</sup> and the applicant has not shown by a preponderance of the evidence that the Commander did not

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<sup>10</sup> "It is noted that [the other member] had already had a drinking incident brought to the attention of *his commanding officer*..."

<sup>11</sup> Article 1.B.2.f.(2) of the Coast Guard Military Separations Manual.

follow Coast Guard policy or abused his discretion or that the different recommendations were the result of anything other than a difference of opinion.

9. The applicant has not proven by preponderance of the evidence that his discharge was erroneous or unjust. Accordingly, the applicant's requests should be denied.

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

**ORDER**

The application of former BM3 [REDACTED] [REDACTED] USCG, for correction of his military record is denied.

December 16, 2022

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