

**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. 2022-031**

██████████ ██████████ ██████████  
GMC (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 February 18, 2022, and assigned the case to the staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision dated April 5, 2024, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST**

The applicant, a former Chief Gunner's Mate (GMC/E-7), who received an Honorable discharge on March 23, 2020, after being administratively separated for misconduct, asked the Board to correct his record by making the following changes:

- Reinstatement him into the Coast Guard with the same rank and grade that he held prior to his administrative separation and award him all backpay and allowances due as a result of his reinstatement.
- Change the narrative reason for separation on his form DD214 from "Misconduct" to "Secretarial Authority" and his reenlistment code from RE-4 (ineligible to reenlist) to RE-1 (eligible to reenlist).
- Remove all documentation relating to his August 22, 2018, Non-Judicial Punishment, including all references to violations of Article 92(1)—Violating a General Order of the Uniform Code of Military Justice (UCMJ), Article 92(2)—Failure to Obey an Order, and Article 107—Making False Official Statements.
- Remove a June 28, 2017, CG-3307 ("Page 7") documenting a June 7, 2017, incident at the applicant's residence as an "alcohol incident" because a coworker became inebriated, fell backwards, and hit his head on a table, resulting in paramedics being called.

A summary of the applicant's allegations follows the Summary of the Record.

### **SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard on January 7, 2003. He trained as a Gunner's Mate, where he continued to advance, becoming a Chief Gunner's Mate on June 1, 2017.

On June 27, 2013, the applicant executed Permanent Change of Station (PCS) orders to a Coast Guard cutter where he met LTJG S. Between 2015 and 2016 LTJG S was the applicant's supervisor.

On November 27, 2016, the applicant executed Permanent Change of Station (PCS) orders to a Detached Duty (DD) Maintenance Augmentation Team (MAT) with a Maintenance and Weapons Activity (MWA) unit in another state. The applicant was assigned to work on a Fast Response Cutter (FRC).

#### ***Alleged Alcohol Incident***

On June 26, 2017, the applicant received an Alcohol Incident (AI) via a negative "Page 7" wherein he was counseled for alcohol consumption after it was determined that his abuse of alcohol on June 7, 2017, was a significant or causative factor resulting in the injury and subsequent hospitalization of a coworker. According to the Page 7, the applicant was excessively inebriated at his residence and that his behavior set a poor example and was prejudicial to good order and discipline.

On June 7, 2017, the applicant received a Discipline EER from CDR H for his role in the June 7, 2017, AI that resulted in a coworker being hospitalized after a fall and injury to his head. The applicant received one mark of 2 (Poor), four marks of 4 (Average), eighteen marks of 5 (Above Average), and two marks of 6 (Excellent) on the various performance dimensions. However, the applicant received a mark of "Unsatisfactory" conduct mark and a mark of "Not Recommended for Promotion" from CDR H, who served as the EER's approving official.

On September 30, 2017, the applicant received his Regular (Annual) EER wherein he received three marks of 4, sixteen marks of 5, three marks of 6, and three marks of 7 (Superior). The applicant received a mark of "Ready" for "Recommendation for Advancement" and a mark of "S" (Satisfactory) for the "Conduct" performance dimension.

#### ***Extramarital Affair with Supervisor LTJG S***

On April 16, 2018, a Coast Guard Captain, CAPT C, received an email from a LCDR B informing him that he had received information on April 13, 2018, that the applicant was engaged in an inappropriate relationship with a junior officer that the applicant had served with in 2015 and 2016. LCDR B stated that the applicant was alleged to have continued the inappropriate relationship and that the junior officer was LTJG S. LCDR B stated that the information was reported by the applicant's wife at the time, MST1 S, who had moved from the applicant's previous location to a different state. LCDR B explained to CAPT C that in his attempt to see if there was

any previous documentation of an inappropriate relationship, he came across the applicant's life insurance and death benefits paperwork, which reflected LTJG S as the primary beneficiary of the applicant's life insurance and death benefits and as his emergency point of contact during the applicant's PCS move.

### *Administrative Investigations*

On April 18, 2018, a Preliminary Investigating Officer (PIO) and an Assistant PIO were assigned to investigate the applicant's alleged violations of UCMJ Article 92—Failure to Obey an Order or Regulation: Prohibited Relationship, and Article 134—General, Conduct Detrimental to Good Order and Discipline of the Armed Forces.

On May 7, 2018, the applicant was informed of his Article 31(B) Miranda/Tempia Rights, wherein he was advised of his rights by LT V and informed that he was being investigated and questioned about an inappropriate relationship with LTJG S. The applicant acknowledged his rights and elected not to consult with a lawyer but to provide a statement and/or answer questions.

On May 30, 2018, the PIO submitted his Report on Investigation (ROI) which is summarized below:

#### FINDINGS OF FACT

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4. LTJG [S] was the Weapons Officer onboard CGC [redacted] from 2015 to 2016 and GMC [Applicant] was her subordinate during this time (Exhibits (5) and (6)).
5. The marks written by LTJG [S] for GMC [Applicant] while she was his supervisor matched his performance onboard CGC [redacted] (Exhibit (5)).
6. LTJG [S] and GMC [Applicant] spent an excessive amount of time together (Exhibit (5)).
7. Rumors existed among the crew surrounding the nature of LTJG [S] and GMC [Applicant's] relationship and was addressed multiple times by the Chiefs Mess onboard Exhibits (5) and (6)).
8. LTJG S and GMC [Applicant] drank excessively together on multiple occasions during the time period of the incident (Exhibits (1) and (9)).
9. LTJG [S] and GMC [Applicant] discussed staying in a hotel together (Exhibit (2)).
10. LTJG [S] states she wants "to sleep next to [Applicant]" (Exhibit (2)).
11. LTJG [S] and GMC [Applicant] have spoken on multiple occasions via phone from 25 April 2018 [through] 29 April 2018 (Exhibit (4)).
12. LTJG [S] and GMC [Applicant] are very flirty together while hanging out on multiple occasions in front of GMC [Applicant's] wife and LTJG [S's] husband and friends (Exhibit (1)).
13. GMC [Applicant] stays behind from a work trip to northern [redacted] with his wife that they had planned to complete an ammo offload. GMC [Applicant] ends up drinking with LTJG [S] and staying at her house. GMC [Applicant] wakes up and he and LTJG [S] were holding hands on the couch (Exhibit (1)).

14. GMC [Applicant] and LTJG [S] met up with LTJG [S's] family during a port call in [redacted]. They stayed in a hotel but unconfirmed if in the same room (Exhibit (1)).
15. GMC [Applicant] admits to his wife that he and LTJG [S] kissed twice during a port call in [redacted] (Exhibit (1)).
16. GMS [Applicant's] wife sees a bank statement for a hotel room in [redacted] that was purchased. GMC [Applicant] claimed he purchased it for LTJG [S] and her roommate LTJG [KS] and never stayed there (Exhibit (1)).
17. GMC [Applicant], his wife, LTJG [S] and their friends go camping. GMC [Applicant's] wife leaves after an altercation. GMC [Applicant] stays another night with LTJG [S] and their friends (Exhibit (1)).
18. LTJG [KS] and ET1 [C], the friends present during the camping trip, did not stay a second night with LTJG [S] and GMC [Applicant] (Exhibits (10) and (11)).
19. GMC [Applicant] chooses to say good bye to the CGC [redacted] before they depart for a shake-down cruise, where he spends time with LTJG [S], instead of seeing his newborn children who were being transferred to another NICU capable hospital closer to their home (Exhibit (1)).
20. GMC [Applicant] admits to driving to a hotel in [redacted] to meet with L TJG [S] to end things with her though he continues to keep in touch with her via text and phone calls (Exhibit (1)).
21. GMC [Applicant] admits to being in love with LTJG [S] and they talked about being in love (Exhibits (1) and (9)).
22. GMC [Applicant] apologizes "about [LTJG [S]]" and that he "was completely wrong about the entire situation" (Exhibit (3)).
23. GMC [Applicant] claims to have taken leave to visit his friends, OMCS [OK] and GMC [RB], in [redacted] for a week. GMC [RB] confirms they met in [redacted] where they spent time with LTJG [S] (Exhibits (1) and (8)).
24. GMC [B] only spent time with LTJG [S] and GMC [Applicant] over the weekend due to work. He states he "believes [GMC [Applicant]] slept on the couch." (Exhibit (8)).
25. LTJG [S] visited GMC [Applicant] in [redacted] in January of 2018 (Exhibits (1) and (9)).
26. GMC [Applicant] named LTJG [S] as his beneficiary for his Life Insurance and Pay in Case of Death paperwork and as his emergency contact during his PCS move to [redacted] (Exhibit (7)).
27. GMC [Applicant] is due to PCS to CGC [redacted] in [redacted] in May 2018 (Exhibit (7)).
28. GMC [Applicant] states in an apology letter to his wife that he loves those boys more than anything and there is nothing [he wants] more than to be a part of their lives" and that he "knows that because of how life is [he will not] be able to be around as much as [he wants] to, but that doesn't mean [he] can't be around as much as [he] can" (Exhibit (3)).
29. LTJG [S] declined to give a statement regarding this investigation (Enclosure (2)).

#### OPINIONS

1. There is not enough evidence to support the elements required for Article 134, UCMJ. Adultery (Findings (1)-(28)).

2. There is enough evidence to support the elements required for Article 134, UCMJ, Fraternization (Findings (1)-(28)).
3. There is enough evidence to support the alleged inappropriate relationship and the elements required for Article 92, UCMJ, Failure to obey a lawful general order or regulation (Findings (1) – (28)).
4. LTJG [S] violated Article 92, UCMJ, prohibited relationship because each of the elements has been met (Findings (1), (4), (7) – (10), (13), (15), (18), and (21)).
5. LTJG [S] violated Article 134, UCMJ, Fraternization because each of the elements has been met (Findings (4), (6)-(10), (13)-(15), (23) – (25)).
6. Based upon all of the evidence as a whole, it can be inferred and therefore I believe that there was and still is a romantic relationship between LTJG [S] and GMC [Applicant] that started while both were attached to CGC [redacted]. GMC [Applicant] admitted to the [redacted] PIO and to his wife that he and LTJG [S] kissed twice and talked about being in love and in a relationship. LTJG [S] and GMC [Applicant] still speak daily and have taken leave to spend time with each other on multiple occasions. LTJG [S] and GMC [Applicant] discuss getting a hotel room together via text message during a port call, LTJG [S] states she wants to sleep next to GMC [Applicant] and there is a high probability they stayed in a hotel room during a port call in [redacted]. The continued excessive contact, GMC [Applicant's] beneficiary paperwork having LTJG [S's] name on it and the fact that GMC [Applicant] is PCSing back to [redacted] instead of closer to his children when he states he wants to be a large part of their lives, leads me to believe that there must be a romantic relationship that began while they were both attached to CGC [redacted] (Findings (9) – (11), (21), (23), (25), (26), (28)).

#### RECOMMENDATIONS

1. That no action be taken in regard to Article 134, UCMJ, Adultery due to lack of evidence (Opinion (1)).
2. That a Punitive Letter of Censure be issued following NJP to document the prohibited relationship that has continued is an appropriate measure in regard to Article 92, UCMJ, Failure to obey a lawful general order or regulation and Article 134, UCMJ, Fraternization (Opinions (2) – (6)).

This investigation is closed, unless otherwise ordered. If additional information is required, please contact me.

On June 29, 2018, the applicant received a negative Page 7 wherein he was counseled for his inappropriate relationship with LTJG S and ordered to cease all contact with LTJG S. The content of the Page 7 reads as follows:

On 16 April the Executive Officer of Base [redacted] received a report that you were in an unacceptable romantic relationship with a junior officer (LTJG [S]) that you had previously served with onboard the CGC [redacted]. Upon reviewing your PDR it was determined that on 5 March 2018 you changed your life insurance and other benefits in case of death from your wife and two children to a friend by the name of [LTJG S] and your mother. You also listed [LTJG S] as your emergency point of contact during your PCS move to the CGC [redacted]. LTJG [S] is currently serving as a member of CG District One staff and had previously been your division officer aboard CGC [redacted] from 2015-2016. Further investigation revealed that while onboard CGC [redacted] you were counseled by the Chiefs Mess that your relationship to LTJG [S] was too close, specifically the amount of time you spent together and your behavior while on liberty and at work was inappropriate. LTJG [S] visited you in [redacted] shortly after your wife departed in January of 2018 and you talk[ed] with LTJG [S] regularly on the phone sometimes several times per day. You acknowledged that you have discussed having a romantic relationship with her during the investigation. The relationship between LTJG [S] and yourself is not in compliance with Chapter 2.A of COMDTINST 1600.2 Discipline and Conduct Manual.

You are hereby ordered to cease all contact with LTJG [S]. If she attempts to contact you report this to your chain of command immediately.

On June 29, 2018, the same day the applicant was issued the No Contact Order, the applicant texted LTJG S and informed her of the order. At no time did the applicant report his contact as required by the No Contact Order.

On July 6, 2018, through July 9, 2018, a week after the No Contact Order was issued, the applicant met with LTJG S in person, as supported by text messages shared between the applicant and LTJG S. Of significance are text messages shared on July 9, 2018, wherein the applicant told LTJG S, “I want last night every night,” to which LTJG S stated, “It was very intimate,” and the applicant replied, “Yes, and f\*\*king wonderful.”

On July 18, 2018, the applicant’s Executive Officer (XO), LCDR B, issued a memorandum wherein he initiated an administrative investigation into allegations that the applicant had violated a direct order to cease his inappropriate relationship with LTJG S, violating security regulations, and committing Basic Allowance for Housing (BAH) fraud from May 2018 through July 2018.

On July 25, 2018, the PIO submitted his ROI and found that during the applicant’s May 8, 2018, interview with the previous investigation’s PIO, the applicant had told the PIO that he and LTJG S were only friends. However, on September 15, 2017, the applicant admitted to being in love with LTJG S and they discussed being in a romantic relationship. The PIO also found that the applicant signed a June 29, 2018, Page 7 wherein he was ordered to cease all contact with LTJG S. Finally, the PIO found that the applicant had told a CWO2 that he had communication with LTJG S and that his relationship with LTJG S was going to continue. On June 30, 2018, the applicant sent LTJG S a text that stated, “I love you!” The PIO concluded that there was enough evidence to support a finding that the applicant had made a false official statement on May 8, 2018, when he stated that he and LTJG S were just friends. The PIO found that the applicant made the false statement with the intent to deceive because he knew at the time the statement was false and that his relationship with LTJG S was a romantic relationship. The PIO also found that there was enough evidence to support a finding that the applicant had violated Article 92 of the UCMJ—Failure to Obey a Direct Order, when he continued to communicate with LTJG S even after he was ordered to cease all contact with her. There was no evidence to support a finding that the applicant had committed BAH fraud or violated security regulations. The PIO recommended that the applicant receive NJP for violating Articles 92 and 107 of the UCMJ.

### ***NJP and Administrative Separation***

On August 22, 2018, the applicant received NJP for violating Article 92(1)—Violating a General Order—when the applicant engaged in a prohibited relationship with LTJG S on or about January 2016 through July 10, 2018; Article 92(2)—Failure to Obey a Direct Order—when the applicant continued his contact with LTJG S after he was ordered by a June 29, 2018, Page 7 to cease all contact with her; and Article 107—False Official Statement—when the applicant told administrative investigators that he and LTJG S were only friends when he knew that statement to be false. The applicant was awarded 60 days of restriction, forfeiture of ½ month’s pay for two months, and a Letter of Reprimand.



On August 22, 2018, the applicant received a disciplinary EER for misconduct wherein he received two very low marks of 2, two marks of 3, eight “standard” marks of 4, two marks of 5, and one mark of 6. The applicant also received a “Not Recommended for Advancement” mark and an Unsatisfactory conduct mark. The rating official stated that the applicant had violated a No Contact Order issued by the Command, was in a prohibited relationship, and had lied to an investigating officer. Regarding the applicant’s leadership, the rating official stated that the applicant had not been an active member of the mess and had not made himself available for local Chiefs Mess functions. The applicant was not recommended for advancement due to his failure to adhere to the Coast Guard’s Core Values after he was found to have violated three Articles of the UCMJ. CDR H served as the Approving Official for this EER.

On August 23, 2018, the applicant received a Punitive Letter of Reprimand wherein he was admonished for his prohibited relationship with LTJG S and his failure to cease all contact with LTJG S as ordered by his June 29, 2018, No Contact Order. The applicant was also admonished for lying during the course of the administrative investigation regarding the nature of his relationship with LTJG S.

On September 26, 2018, the applicant’s base Commander (CDR), CDR H, issued two memoranda wherein she notified the applicant of her intent to discharge him involuntarily pursuant to Article 1.B.17.b.3. of the Military Separations Manual, COMDTINST M1000.4. CDR H stated that her reason for initiating the action was the applicant’s conduct in relation to his prohibited relationship with LTJG S and his failure to obey a direct order to cease all contact with LTJG S, in addition to making false official statements to investigating officers. The applicant was informed that because of his misconduct, he faced the possibility of receiving a General, Under Honorable Conditions, characterization of service. The applicant was warned that if he were to receive this unfavorable characterization of service, he might encounter prejudice in the civilian world. Finally, the applicant was informed of his rights, which included the right to consult an attorney, to submit a written statement, and to appear before an Administrative Separation Board (ASB).

On September 29, 2018, the applicant submitted a First Endorsement wherein he acknowledged receipt of CDR H’s September 26, 2018, “Notice of Intent to Discharge,” and stated that he understood the information contained within the memorandum. The applicant further acknowledged the consequences he would face as a result of receiving either a General, Under Honorable Conditions, discharge or a discharge under Other Than Honorable (OTH) Conditions. The applicant reserved his right to speak with an attorney, but waived his right to submit a written statement.

On October 18, 2018, the applicant submitted a memorandum wherein he exercised his right to an attorney and to appear before an ASB, but waived his right to submit a written statement.

On October 19, 2018, CDR H issued a memorandum, “Recommendation for Discharge...” wherein she recommended that the applicant be separated from the Coast Guard with an Honorable characterization of service.

On November 5, 2018, CDR H issued a memorandum wherein she ordered that an ASB be convened.

On January 17, 2019, the applicant, through counsel, submitted a memorandum wherein he requested relief regarding his Command's No Contact Order with LTJG S. The relevant portions of the memorandum are summarized below:

3. The Base [redacted] No Contact Order is Not in Accordance with Coast Guard Policy: Reference (a)<sup>[1]</sup> governs No Contact Orders. The instruction states that No Contact Orders “are designed to stabilize a situation and allow time for more considered action regarding keeping two individuals apart.”<sup>2</sup> Further, they are designed to “provide commanding officers with tools to use as an emergency remedy. (Emphasis added).” Here, the two individuals are geographically separated, in a stable situation, and no emergency exists. “A No Contact Order is designed to fill the role that a temporary restraining order fills in the civilian community. It is limited in scope to contact between the subject of the order and the protected person(s), and is of limited duration.”<sup>3</sup> (Emphasis added). The No Contact Order in question has no finite termination date and is therefore not limited in duration as required by policy. As with all orders, to be valid, a No Contact Order must be a lawful order. An order is lawful if “it is clearly in furtherance of valid military purposes of maintaining good order and discipline in the unit, protecting the well-being of members of that unit, and preventing further obstruction of a military investigation.”<sup>4</sup> The order may not, without such a valid military purpose, interfere with private rights or personal affairs.<sup>5</sup> Here, the order accomplishes none of these objectives while significantly interfering with GMC [Applicant's] private rights and personal affairs. If there was once a valid military purpose for issuing this order, it no longer exists. The relationship between GMC [Applicant] and LTJg [S] is not impacting good order and discipline at their current units (they are at separate units), is not protecting the well-being of any members of either command, and is not preventing further obstruction of a military investigation.

4. The command denied an informal request to rescind the No Contact Order on 15 Jan 2018. Enclosure (2). Now, GMC [Applicant], through counsel, formally requests this No Contact Order be rescinded or modified to permit telephonic contact. For all of the reasons above, the imposition of this No Contact Order amounts to a form of pretrial punishment forbidden under Article 13 of the Uniform Code of Military Justice, as this restriction on GMC [Applicant's] liberty is no longer related to a legitimate government objective or purpose.

On February 4, 2019, the applicant's Base Commander, CDR H, responded to and denied the applicant's request for relief from the No Contact Order. CDR H countered the applicant's arguments and stated that despite the applicant's position that the No Contact Order did not serve a valid military purpose, it did. CDR H argued that the articles referenced by the applicant in his memorandum are primarily focused on situations meant to prevent further violence, such as domestic violence, sexual assault, harassment, stalking, and workplace violence, and therefore were inapplicable to the applicant's No Contact Order. Instead, CDR H explained that the applicant's No Contact Order is simply a lawful order by a Commanding Officer for the applicant to cease all contact with LTJG S. CDR H further stated that pursuant to Paragraph 16(c)(2)(a)(iv) of Part IV of the Manual for Courts-Martial (MCM) an order is lawful if it “relate[s] to military duty, which includes all activities reasonably necessary to accomplish a military mission, or safeguard or promote the morale, discipline, and usefulness of members of a command and *directly connected with the maintenance of good order in the Service*. The order may not, *without such a valid military purpose*, interfere with private rights or personal affairs. (Emphasis added). CDR H stated that she did not agree with the applicant's assertion that there was no valid military purpose

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<sup>1</sup> The Coast Guard's Discipline and Conduct Manual, COMDTINST M1600.2.

<sup>2</sup> Article 5-2, COMDTINST M1600.2.

<sup>3</sup> *Id.* at 5-1.

<sup>4</sup> Paragraph 14.c.2.a.(iv), Part IV, Uniform Code of Military Justice (2016).

<sup>5</sup> *Id.*



or that his continued unacceptable and prohibited relationship with LTJG S had no impact on good order and discipline at their respective Coast Guard units. CDR H argued that the valid military purpose was to ensure that Coast Guard members abide by the clear language of Coast Guard policy pertaining to unacceptable and prohibited romantic relationships. Based on this analysis, CDR H found that the No Contact Order was a lawful order that was consistent with the language of Paragraph 16(c)(2)(a)(iv) of Part IV of the MCM. Finally, CDR H argued that Article 13 does not apply to administrative proceedings, but only to judicial proceedings.

On March 14, 2019, the applicant appeared before an ASB, where he challenged all board members. The applicant's challenges were recorded, but the Convening Authority did not excuse or substitute any of the challenged board members. Following the applicant's challenges to the board members, the board's president inserted the Convening Order into the record and the applicant objected to the Convening Order on grounds that the Convening Authority lacked authority over him when the order was issued. Following the applicant's challenge, the board president requested clarifying information on the applicant's claims, while proceedings continued, with both sides presenting evidence and witnesses. Before closing out the proceedings, the board president indicated that clarifying information regarding the Convening Authority's authority over the applicant was still needed, but the applicant's counsel presented no objections to the information being obtained after the ASB was closed. The applicant's counsel only requested that he be included in any discussions that took place on the matter.

As part of the ASB proceedings, the applicant submitted a personal statement. The relevant portions are recorded below:<sup>6</sup>

I would like to start by *[sic]* offering a sincere apology for taking so much of your and the Coast Guard's time with this situation. When these events took place, I was in the midst of resolving complex family issues and trying to get my personal life on track. My family situation has been difficult, to say the least, and has at times impacted my ability to make sound personal decisions. This is not an excuse for my conduct and I fully accept the consequences for those decisions. I am hopeful that you believe that questionable personal decisions made by me are in no way a reflection of my dedication and professional performance over the past 16 years I have served in the Coast Guard. While I do regret decisions that have reflected poorly upon me, I want you to know that I do not regret them because I was punished for them. I regret them because I consider myself to be a very honorable and honest man. I have always been true to my word and acted in ways to bring credit upon myself and the Coast Guard. The behavior exhibited by me in regard to the events that led to this board convening are not a true reflection of my character or who I really am, either personally or professionally.

The truth is that my relationship with LTJG [S] had nothing to do with the end of my marriage with [ex-wife]. My relationship with [ex-wife] had been rocky for years and was very much over before I even met Ms. [S]. I was very unhappy in the marriage, but I stayed with [ex-wife] for a long time trying to work things out because that is what you do after you make a decision to marry someone. Even my decision to marry [ex-wife] was a poor one. We had not been dating for long, and I got orders to be stationed in [redacted]. We married quickly because of my pending transfer to [redacted] and did not want that forced move to end our relationship. In hindsight, that was a very poor reason to get married so quickly. I regretted this decision about six to eight months after making it. Even still, I fought hard for years to try and make that marriage work until I could no longer.

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<sup>6</sup> The applicant provided an overview of service history and his personal feelings about his time in the service. The relevant portions of the applicant's service history are already recorded elsewhere in the decision and therefore will not be recorded here.

LTJG [S] and I were shipmates onboard CGC [redacted]. We worked very well together, and eventually became close friends largely in part to both of us going through similar problems in our marriage and eventually became best friends. Our close friendship did eventually develop into strong romantic feelings for one another. We both fought these feelings for a long time until we could no longer ignore them. I do not regret being in a relationship with LTJG [S]. She is my best friend and I am very much in love with her. We plan to marry as soon as her time in the Coast Guard is done, which as you have heard today is in the very near future. I do, however, regret starting our relationship when we did, as the relationship was prohibited by the Coast Guard. As I think back on this poor decision that I made I know I did it because of the hard times I was having in my life and I looked to my best friend to help me through those times. I had been unhappy in life for the past eight years and wanted that unhappiness to end. I wanted to finally be in a relationship with someone that I loved dearly. I see now that my decision to be in a relationship with LTJG [S] at that time was a selfish one, and I am very sorry for it. I am also really sorry that I lied about being in a relationship with LTJG [S] during my investigation. I panicked when I was told that I was under investigation for being in a prohibited relationship and I made a very poor choice that I regretted as soon as I walked out of the room. I am not a liar. I have very strong beliefs about how a man should be honest and forgiving. It has been very important to me to be an honest person my entire life. I know that I messed up on this. I can tell you that my intent was not that of malice or harm, my immediate instinct was to protect my best friend. Still, I know that one act of dishonesty counter-acts ten thousand acts of honesty. I fully regret my dishonesty in this situation.

This brings me to my final misconduct that I committed in this situation, disobeying an order of no contact with LTJG [S]. This is the one that I regret most of all. I have had a lot of time to think about this since it occurred. I am very disappointed in myself for breaking the no contact order. Not only was I disobedient, but it was also the most dishonest thing I have ever done in my life. I took an oath to follow the orders of the officers appointed above me, and I broke that oath. I have thought about this every day since 10 July 2018. Being ordered to no longer contact the person that you love and want to spend the rest of your life with is an order that anyone would find hard to follow, but the fact is I made a promise to the Coast Guard first, and I broke that promise. I will regret making this decision for the rest of my life. I am truly sorry for everything, but especially that.

...

In addition to my service record, I ask that you consider the punishments I've already received from this mistake. I pled guilty at Captain's Mast for these offenses, where I was awarded 60 days of restriction, a punitive letter of reprimand, disciplinary marks, and forfeited nearly \$5,000 in pay. I know I will never make Chief Warrant Officer or Senior Chief as a result of this, and if you decide to retain me in service, I know I will face discharge immediately upon reaching 20 years on account of the career retention board when a Chief hits the 20-year mark. Other consequences of my actions included losing my highly desired orders to USCGC [redacted] in [redacted] (where I would have met my career goal of 10 years of sea time), being without my household goods for the past eleven months, and additional financial costs resulting from paying \$280 per month for storage of my household goods on the east coast after the government funded storage ended. I don't expect you to feel sorry for me or my predicament, I just want to let you know I've been punished professionally and financially, I accept responsibility for my actions, and I'm ready to move on and continue to offer value and serve to the Coast Guard moving forward.

I will never allow this to happen again. I will not let dishonesty stain me again, and I promise that I will never dishonor myself by disobeying an order like that again. I am an excellent Chief Gunner's Mate. I love being a Gunner's Mate, and I love being in the Coast Guard. I have worked very hard to make sure that I am a person that knows that [what] he is doing. I take my job very seriously, and have strived to do the best that I possibly can to keep all of that Coast Guard's weapon systems fully functional and to make sure to pass as much of my knowledge as I possibly can down to junior people in hope that future generations of Coasties will be able to keep them working in the future. I promise that I am worth keeping in the Coast Guard. I am very dedicated to this service and its people and I have a lot more to give to it. Thank you for your time and consideration of my case today.

Between March 14 and 15, 2019, a series of emails were exchanged between members of the applicant's ASB proceedings, the Coast Guard Personnel Service Center (PSC) staff attorney, PSC Enlisted Personnel Management Division, and the applicant's parent command to determine who had legal authority over the applicant. The following emails are pertinent:

- Thursday, March 14, 2019, email sent at 8:00 a.m.

Subject: Detached MAT Functional Relationships

CDRs et all,

DOL [Director of Operational Logistics] and SFLC-IOD [Surface Forces Logistics Center – Industrial Operations Division] are remiss in providing you a clear picture of the functional relationships for MAT [Contested Convening Authority] with Base [Contested Convening Authority] and Base and [Alleged Convening Authority]. Mr. [S] and I worked through this issue this morning and concur to follow the premise set forth in the DOL CONOP which I will summarize below. Additionally, DOL plans to provide additional detail and clarification to what is contained in the CONOP in the forth coming Base Organization Manual. DOL is working to clean up all Base PALs in EPAL as numerous errors abound. Strong working relationships between the MWD Coordinator, [Alleged Convening Authority] and Base [Contested Convening Authority] CO/XO are essential to sustaining mission support.

The attached diagram provide a visual of the relationship.

Roles & Responsibilities:

Base [Contested Convening Authority]: Host/SPO/Medical/Admin Support/EERs/XO as Reviewer for MAT [Contested Convening Authority] Supervisor

Base [Alleged Convening Authority]: Technical Authority/RO for MAT [Contested Convening Authority] Supervisor

MWD Coordinator ([Alleged Convening Authority]): Technical Authority/Supervisor for MAT [Contested Convening Authority] Supervisor

MAT [Contested Convening Authority]: Depot Level Maintenance execution/Support Base Operations (Duty, Snow removal, etc)

v/r

[TR]

SFLC-IOD Deputy

- Thursday, March 14, 2019, email sent at 11:15 a.m.

Good Morning Again!

This will hopefully help answer some questions. I did a little digging with my DH, as well. GMC [Applicant] is technically on our PAL because when the MAT billets were moved under [Contested Convening Authority] authority, the WAT billets were overlooked. As stated on the phone however, we are really here for technical authority, while [Contested Convening Authority] maintains a lot of the command authority functions.

CDR [P] has been at NED [Alleged Convening Authority] for GMC's tenure in [Contested Convening Authority] and is up to speed on everything. I spoke with him this morning and he's pretty up to speed on the situation. We are both onboard with Base [Contested Convening Authority] authority to perform an ADSEP board for GMC.

Very Respectfully,

LT [LS]  
 [Alleged Separation Authority]  
 [Redacted] Coordinator

- Thursday, March 14, 2019, email sent at 3:29 p.m.

[Redacted],

After our discussion with Base [Alleged Convening Authority] and a review of GMC [Applicant’s] record, I’m confident that in concept and in practice, Base [Contested Convening Authority] has administrative authority over GMC [Applicant].

V/r,  
 [AK], CDR  
 Personnel Service Center

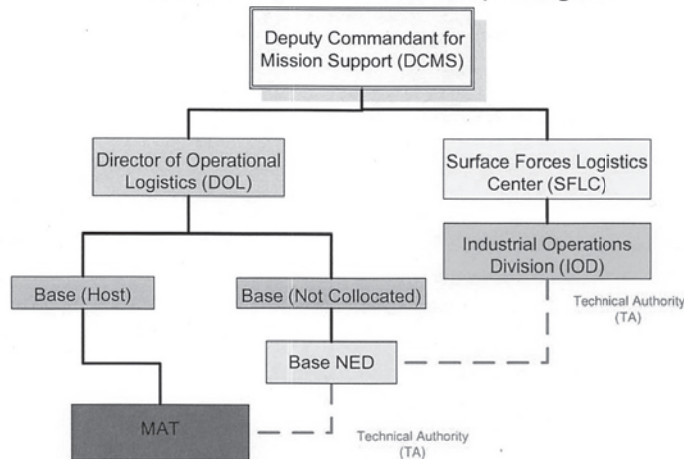
- Friday, March 15, 2019, email sent at 9:21 a.m.

[ASB Recorder], EPM - see the attached DCMS chart - CDR [K] from EPM considers it dispositive. The tieback to Base [Alleged Convening Authority] for is for responsibility for handling weapons only. The admin “chain of command” is through the local base.

That is dispositive of the issue.

Vr, [TB]  
 Staff Attorney  
 LSC-PSC

### Detached MAT Relationship Diagram



On March 20, 2019, the ASB released its report wherein it found that the Convening Authority did in fact have authority to convene the ASB due to her role as the applicant’s Base host and EER Reviewer. The board found that although the applicant had violated Articles 92(1), 92(2), and 107 of the UCMJ, it was the board’s opinion that the applicant had already received punishment for his UCMJ violations. It was also the board’s opinion that there was no pattern of misconduct to warrant a misconduct separation and that the applicant was not at fault for the AI on June 7, 2017, but instead took appropriate action to mitigate the circumstances. The board stated that based on the recommendations of the applicant’s supervisors, coworkers, commanding officers, the applicant’s own testimony and an otherwise strong service record, it was unlikely the applicant would repeat the same misconduct again. The board stated further that for reasons already outlined, the board’s opinion was that the applicant’s actions were not egregious enough to be considered commission of a serious offense. The board believed that the applicant possessed

the competencies to continue to serve as an effective gunner's mate and should be retained but placed on probation in lieu of immediate involuntary separation.

On March 29, 2019, through the applicant's counsel submitted a "Letter of Deficiency" in accordance with the applicant's ASB. The applicant claimed that his ASB was plagued by three deficiencies: 1) The ASB was improperly convened, 2) The ASB considered evidence that was not presented during the hearing, and 3) the ASB was advised by someone other than the appointed legal advisor. The applicant argued that the Coast Guard failed to abide by the Administrative Procedures Act (APA) when, during the applicant's ASB, the Coast Guard violated an agency instruction that affected the rights of an individual. The applicant claimed the agency instruction violated was PSCINST 1910.1.<sup>7</sup>

### ***Command Recommendation for Separation***

On June 7, 2019, the ASB Convening Authority, CDR H, issued a memorandum wherein she disagreed with the ASB's findings that there was no basis to discharge the applicant and that he should be retained in the Coast Guard. CDR H recommended the applicant be immediately separated from the service with a General characterization of service. CDR H explained that she had reviewed the exhibits submitted to the Board and contended that the basis for the commission of a serious offense had been established by a preponderance of the evidence, when the applicant violated a lawful order given to him to cease all contact with LTJG S, and then proceeded to contact LTJG S the same day the No Contact Order was signed and acknowledged by the applicant. CDR H explained that the same day the No Contact Order was signed and issued, the applicant contacted LTJG S on his phone and they discussed the No Contact Order at length via text messages. Additionally, CDR H stated that not only did the applicant continue to talk to LTJG S via text and phone calls, but he also visited LTJG S in person and told other members of his Command that he had no intention of ending the relationship with LTJG S. As a result, CDR H stated that the applicant should be separated immediately.

On July 19, 2019, RADM B, the Director of Operational Logistics (now Operational Logistics Command, or LOGCOM) issued a Second Endorsement wherein he concurred with the Convening Authority's recommendation that the applicant be separated from the Coast Guard for Commission of a Serious Offense and that the applicant be given a General characterization of service.

### ***Action of Final Reviewing Authority***

On February 4, 2020, the Final Reviewing Authority issued findings and a decision in response to the ASB's final report, which appear as follows in pertinent part.

The Record, Findings of Fact, Opinions, and Recommendations of the Administrative Separation Board for GMC [applicant] held on 14 Mar 2019 have been reviewed and are approved except for Opinion #7, Recommendations #8.a, #8.b and #8.d which are disapproved and, or modified for the reasons explained below.

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<sup>7</sup> Enlisted Personnel Administrative Boards Manual, PSCINST M1910.1.



**Basis for Discharge.** In Recommendation #8.a. the Board found no basis for discharge was proven at the bearing. Nevertheless, in Finding of Fact #1 the Board found that GMC [Applicant] “failed to abide by a cease all contact order (art 92(2) UCMJ), and made a false statement about the relationship to the investigating officer (art 107)(UCMJ).”

Articles 1.B.17.b.(3)(a)(1) and (2) of the MILITARY SEPARATIONS MANUAL, COMDTINST M1000.4 (series) (MILSEP) explains when a Coast Guard member may be separated for “commission of a serious offense”:

“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 Board's Finding of Fact #1, which is supported by five exhibits attached to the record (#13, #16, #17, #23 and #46), provides ample basis to prove, by a preponderance of the evidence, that GMC [Applicant] committed two military offenses under the Uniform Code of Military Justice (UCMJ). The Board's Findings of Fact #10 goes on to conclude that violations of Articles 92(2), Failure to Obey an Order or Regulation, and 107, False Official Statements, of the UCMJ can result in punitive discharges, “which may allow such offenses to be classified as a serious offense.” In summary the Board's Findings of Fact #1 and #10 conclude that GMC [Applicant] violated two articles of the UCMJ that carry with them the possibility of a punitive discharge.

The only outstanding question to answer in determining whether a basis for discharge was proven at GMC [Applicant's] hearing is to determine whether the specific circumstances of the offense warrant separation. See Article 1.B.17.b.(3)(a)(1) of the MILSEP. The Board was either silent on this matter or answered it only indirectly in its Opinion #7 (Supplemental Page Enclosure 2 of Board Report). In Opinion #7, the Board states the following: “Due to the limited scope and impact of his UCMJ offenses his role as the junior member in the affair, lack of other misconduct and his punishment already being received, it is the opinion of this board that GMC [Applicant's] actions were not egregious enough to be considered a commission of a serious offense.” Opinion #7 can reasonably be read as the Board's conclusion that the specific circumstances of GMC [Applicant's] offense(s) do not warrant separation. Pursuant to my authority under Article 1.B.22.d. of the MILSEP I am disapproving Opinion #7 because it is contrary to the evidence the Board considered and is clearly in error for the following reasons:

1. The Board's reference to GMC [Applicant's] status as the “junior member of the affair” is irrelevant to this analysis. The “affair” to which the Board makes reference was not the reason GMC [Applicant] was being considered for separation by an administrative separation board. GMC [Applicant] was referred to that board because he received an order on 29 June 2018 to “cease all contact with LTJG [S].” See Exhibit #12. GMC [Applicant] then disobeyed that order by contacting LTJG [S] the same day by text and after he received the order:

GMC [Applicant]: Exhibit #19 pages #25 and #26 of 26

“And said that I am being counseled about our relationship” 6/29/2018 at 18:07

“The life Insurance, and that the time we have spent together is inappropriate” *Id.*, at 18:07

“And it ordered me to cease communications with you, and ordered me to report to my command if you attempt to contact me,” *Id.* at 18:08

LTJG [S]:

“Wow” 6/29/2018 18:08 .

“That’s insane,” *Id.*, at 18:08

GMC [Applicant];

“Yeah” 6/29/2018 18:08

LTJG [S];

“Why?” 6/29/2018 18:08

“That makes me very upset,” *Id.*, at 18:08

“It’s not like we [expletive deleted] robbed a bank together” *Id.*, at 18:08.

The order GMC [Applicant’s] command issued to him to cease all contact with LTJG [S] conformed to Coast Guard policy<sup>8</sup> and was well-suited to help GMC [Applicant] avoid damaging his Coast Guard career. Nevertheless, he chose to disobey an order given by his commanding officer when he contacted LTJG [S]. GMC [Applicant’s] rank relative to LTJG [S] did not excuse him from his duty to obey an order from his command. Therefore, the Board was clearly in error as that term is used in Article 1.B.17.b.(3) of the MILSEP when it concluded that “GMC [Applicant’s] role as the junior member in the affair” meant that his actions were not “egregious enough to be considered a commission of a serious offense.” (Opinion #7).

In summary, GMC [Applicant’s] juniority in his relationship with LTJG [S] is irrelevant to the question of whether he committed a serious offense by disobeying his command’s order to cease contact with LTJG [S]. GMC [Applicant] received an order to not contact LTJG [S] that was issued in conformity with Coast Guard policy, but rather than comply with the order, he disobeyed it. As a Chief Petty Officer in the Coast Guard, GMC [Applicant] had the responsibility to comply with the order.

2. The Board’s Opinion #7 was also clearly in error when the Board concluded that there was a “lack of other misconduct.” In fact, GMC [Applicant] also made false official statements in violation of Article 107 of the UCMJ when he lied to a Preliminary Investigating Officer (PIO) about violating the “cease all contact” order. See Findings of Fact #1 and #10.

Pursuant to my authority under Article 1.B.22.d.(1) of the MILSEP, I am expanding the Board Findings of Fact by adding a new Finding of Fact #11 to read as follows:

**Finding of Fact #11:** GMC [Applicant] has a duty as a Coast Guard Chief Petty Officer to follow orders given by his commanding officer. The “cease all contact” order issued by GMC [Applicant’s] command was issued in conformity with Coast Guard policy, namely, Article 2.A.6.c., COMDTINST M1600.2, DISCIPLINE AND CONDUCT. GMC [Applicant’s] status as the junior member of a relationship with LTJG [S] did not vitiate his duty to obey the “cease all contact” order issued by his command. In light of GMC [Applicant] knowing, and intentional violating of those orders, the specific circumstances warrant separation as that term as used in Article 1.B.17.b.(3)(a)(1) of MILSEP.

Pursuant to my authority under Article 1.B.22.d.(1) of the MILSEP, I am also expanding the Board’s Findings of Fact by adding a new Finding of Fact #12 to read as follows:

Finding of Fact #12: In light of GMC [Applicant’s] duty as a Coast Guard Chief Petty Officer to answer truthfully when questioned by a preliminary investigating officer (PIO) carrying out his lawful duty to

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<sup>8</sup> “Early counseling often can resolve potential concerns about the characteristics of a relationship and appropriate actions to ensure the relationship develops in a manner consistent with Service custom. Counseling may be informal or more formal, including written documentation by Administrative Remarks, Form CG-3307, entry or Administrative Letter of Censure (cite omitted). ***Counseling may include a direct order to terminate a relationship.***” Article 2.A.6.c., Discipline and Conduct Manual, COMDTINST 1600.2 (series). (emphasis added)

investigate potential misconduct, GMC [Applicant's] false official statements to LT [V] (PIO) is a circumstance that warrants separation as that term is used in Article 1.B.17.b.(3)(a)(1) of the MILSEP. GMC [Applicant's] violation of Article 107, False Official Statements, of the UCMJ constitutes a second basis for separation under the MILSEP and constitutes other misconduct not accounted for by the Board.

After a careful review of the hearing record, I conclude that the evidence developed by the Board, coupled with new Findings of Fact # 11 and #12, shows that GMC [Applicant] violated Articles 107 and 92(2) of the UCMJ. This is corroborated in the Board's Findings of Fact #1 and #10. Therefore, I disapprove Recommendation #8.a, and find that there is a basis to discharge GMC [Applicant] for Misconduct due to Commission of a Serious Offense. As a Chief Petty Officer, who had already been counselled by his peers (Exhibit #15) on the inappropriateness of his relationship with LTJG [S] and was then directly ordered by the Command in writing to cease all contact with her, I find that the offense of Article 92(2) Failure to Obey an Order, of the UCMJ is the more egregious of the two violations.

**Separate/Retain and Probation.** Having established that there is a basis for discharging GMC [Applicant] proven in the record, the next question is whether he should be retained in the Coast Guard. In Recommendation #8.b, the Board recommended that GMC [Applicant] be retained in the Coast Guard. In Recommendation #8.d, the Board recommended to place GMC [Applicant] on probation in lieu of immediate separation if CG PSC determines that he should be administratively separated. I disagree with these recommendations because they are contrary to the evidence in the record developed by the Board as explained in more detail above.

On 30 May 2018, in order to conceal his relationship he knowingly made false statements to a PIO during an investigation in violation of Article 107, False Official Statements, of the UCMJ. On 29 Jun 2018, GMC [Applicant] was ordered to cease all contact with LTJG [S]. See Exhibit #12. The same day GMC [Applicant] was ordered to stop contacting LTJG [S], he communicated with her and continued the relationship, disobeying the no contact order and violating Article 92(2), Failure to Obey an Order, of the UCMJ. See Exhibit #20.

Therefore, I disapprove Recommendations #8.b and #8.d.

**Characterization of Service.** In Recommendation #8.c, the Board recommended that GMC [Applicant's] current military enlistment be characterized as Honorable. In its reasoning, the Board wrote "Based on the favorable recommendations of the Respondent's current and former chain of command and his otherwise unblemished service record, the board recommends an Honorable discharge characterize." I agree with the Board's reasoning and therefore approve Recommendation #8.c.

GMC [Applicant] shall be separated from the Coast Guard in accordance with Article 1.B.17.b.(3) of the Military Separations Manual, COMDTINST M1000.4 (series) with an Honorable characterization of service for Misconduct due to Commission of a Serious Offense for violating Article 92(2), failure to Obey an Order, of the Uniform Code of Military Justice.

A copy of this final action shall be filed in GMC [Applicant's] service record.

On March 23, 2020, the applicant was discharged for misconduct pursuant to Article 1.B.17.b.3. of the Military Separations Manual, COMDTINST M1000.4, with an Honorable characterization of service and a reenlistment code of RE-4.

### THE APPLICANT'S ALLEGATIONS

The applicant alleged that he met LTJG S while onboard a cutter, where they became close confidants after they completed two patrols together. In addition, the applicant stated their relationship was built on the fact that they had no other gunner mate support and because they were experiencing similar troubles in their respective relationships.

### *Alleged Alcohol Incident*

The applicant explained that after he was transferred to the MAT, he received his first alcohol incident after he and another GMC stationed with him met for drinks at the applicant's residence where they hung out talking. The applicant further explained that he and the other GMC had been talking for a while and did not notice how much alcohol the other GMC had consumed. The applicant alleged that the other GMC became very intoxicated and aggressive and that after he had calmed the other GMC down, the applicant attempted to walk him to the spare bedroom so the GMC could sleep, but while walking to the bedroom, the GMC fell backwards and hit his head on a table. The applicant explained that when he noticed the blood coming from the GMC's head, he called the ambulance. The applicant claimed that the GMC was taken to the hospital where doctors told the applicant that his actions may very well have saved the other GMC's life.

The applicant alleged that this was the first time he had ever been in trouble in the whole of his Coast Guard career. According to the applicant, he got in trouble for drinking in his off time with a friend and ultimately playing a part in saving the friend's life after he drank too much and hurt himself. The applicant argued that it was not his responsibility to monitor how much his fellow service members are drinking nor is it his responsibility to act as their mother, by preventing them from drinking when he felt they had too much. Despite this, the applicant stated that he received a negative Page 7, the language of which completely mischaracterized the events that transpired the night of the alcohol incident. The applicant claimed that the criteria for finding an alcohol incident had occurred was not met.

The applicant argued that CDR H's citation of this alcohol incident as part of the basis for her recommendation to separate the applicant was inappropriate considering the circumstances of the event and the improper issuance of the negative Page 7. The applicant argued that his contentions are further supported by the ASB, who found that the applicant acted properly during the incident and was not at fault. The applicant further argued that pursuant to Article 4.D.1. of the Coast Guard's Drug and Alcohol Manual, COMDTINST M1000.10,<sup>9</sup> the only member unable to perform his duties as a result of the alcohol was the GMC that drank too much and injured himself. The applicant claimed that he did not drink too much, did not suffer from the inability to perform his duties, and did not violate the UCMJ, Federal, State, or local laws when he drank at his home. Instead, he called an ambulance, ensuring his friend's safety after his friend, who was an adult, made the decision to drink too much. Accordingly, the applicant argued that the alcohol incident was improperly issued and should therefore not have been relied upon as a reason for punishment or separation.

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<sup>9</sup> Article 4.D.1. of COMDTINST M1000.10A, states, "Except as set forth in paragraph 4.D.3... any behavior, in which the CO/OIC determines by a preponderance of evidence after considering the relevant facts (i.e., police reports, eyewitness statements, and member's statement if provided) that alcohol was a significant or causative factor that resulted in the member's loss of ability to perform assigned duties or is a violation of the UCMJ, Federal, State, or local laws. The military member need not be found guilty at court-martial, in civilian court, or be awarded non-judicial punishment for a behavior to be considered an alcohol incident."

### *Allegations of Extortion*

The applicant alleged that following the separation from his now ex-wife in September 2017, she demanded that the applicant pay her \$4500 a month and if he refused, she would report him to his Command for having an inappropriate relationship with LTJG S. The applicant claimed that his ex-wife's actions fit the elements of attempted felony extortion under Alaska Code Title 11 § 11.41.250. The applicant further claimed that when he refused to pay her the money, she reported him to his Command. The applicant contended that his ex-wife's statement was not fact-checked, nor were her motives questioned, but instead her statements were presented as proof that he was in a relationship with LTJG S. The applicant alleged that his ex-wife's statements were also used to secure a Search Authorization for LTJG S's cell phone. The applicant stated that over the span of two years he was investigated twice as a result of his ex-wife's failed attempt to extort him, but despite this, he continued to maintain a positive attitude, providing unequalled support to the operational units for which he was responsible.<sup>10</sup>

### *First Investigation & Erroneous False Official Statement*

The applicant explained that he was scheduled to leave MAT on May 15, 2018, and report to his new unit across the country in June 2018, but on May 8, 2018, he was notified by the PIO, LT V, of the impending investigation. The applicant explained that he signed an Article 31(b),<sup>11</sup> but LT V was not conducting the interviews because that responsibility fell to LT B. However, the applicant claimed that LT V did interview him in a casual setting, where LT V inquired into the nature of the applicant's relationship with LTJG S. The applicant alleged that he told LT V that his relationship with LTJG S was friendly, but they had considered moving the friendship into a romantic relationship. The applicant claimed that as a result of the interview he was charged with violating Article 107 of the UCMJ, making a false official statement to LT V, though he never signed the statement. The applicant argued that a false official statement under the UCMJ requires a statement be made orally that affects military function to a military member who is carrying out a military duty when the statement was made.<sup>12</sup>

### *Erroneous and Unjust No Contact Order*

The applicant claimed that he did not disobey a lawful order because the No Contact Orders issued by CDR H to both him and LTJG S were unlawful. The applicant stated that the primary reason given for his separation was that he disobeyed a lawful order by failing to adhere to the No Contact Order, and though the applicant does not dispute the Coast Guard's authority to order him to terminate his relationship with LTJG S while she remained in the Coast Guard, that was not the

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<sup>10</sup> Following allegations that his ex-wife attempted to extort him, the applicant provided arguments and allegations about his Command failing to help him locate proper housing during the first investigation. However, the applicant has not sought redress from this Board regarding these claims and allegations and were therefore not recorded here. Similar allegations regarding Basic Housing Allowance were not summarized as they were not central to the applicant's claims and allegations regarding his discharge.

<sup>11</sup> Article 31(b) states that "no person subject to this chapter may interrogate, or request any statement from, an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial."

<sup>12</sup> Manual for Courts-Martial, IV-55, Para. 41, Article 107(c).



order he was given. The applicant then recited his arguments as originally documented in his January 17, 2019, memorandum requesting relief from the No Contact Order, that was denied by CDR H. The applicant argued that CDR H's reasonings for denying the applicant's relief from the No Contact Order were fatally flawed.<sup>13</sup> The applicant argued that despite CDR H's position, the Coast Guard's Discipline and Conduct Manual, COMDTINST M1600.2, is legally binding guidance on the Coast Guard as it meets all of the criteria required to be binding as established by *Catawba County v. EPA*.<sup>14</sup> In this instance, the applicant claimed that COMDTINST M1600.2 does not state that it is not binding, but it specifically considers that it is binding on the Coast Guard when disclaiming to other parties that it is not binding outside the Coast Guard. In addition, the applicant argued that COMDTINST M1600.2 does much more than merely represent current views, create rebuttable presumptions, or clarify existing duties, given that it is presented as a clear guide to govern the application of Coast Guard discipline.

Secondly, regarding CDR H's reasons for denying the applicant's request from the No Contact Order, the applicant argued that the only context in which No Contact Orders are discussed in this general guidance for the entire sphere of Coast Guard discipline is within the specific confines of Article 5 of COMDTINST M1600.2, namely as an equivalent to temporary restraining orders, and that outside of this context, there is nothing to suggest that there are any other rules for No Contact Orders outside the confines of Article 5. According to the applicant, what made CDR H's arguments particularly egregious is that not only does she argue for No Contact Orders being permissible outside the context of military restraining orders, but she also argued that No Contact Orders are only governed by rules relating to time limits only when No Contact Orders are issued pursuant to Article 5 of COMDTINST 1600.2. In essence, the applicant argued that CDR H's positions was that Coast Guard guidance only sought to impose time limits on No Contact Orders when the order being issued was intended to protect someone from domestic violence. The applicant contended that such a position is completely unsupported and that had CDR H wished to order him to terminate his relationship with LTJG S, while she remained in the Coast Guard, she should have issued an order that stated so. The applicant stated that he does not deny that CDR H had the authority to do so.

Because of these contradictions in policy and CDR H's position, the applicant alleged that he could not have been lawfully separated from the Coast Guard for disobeying orders because the orders he was issued were in direct contradiction to Coast Guard guidance. Again, the applicant stated that if the Coast Guard wished to order the termination of his relationship with LTJG S, they should have done so.

### ***Second Investigation & NJP***

The applicant explained that on July 20, 2018, he signed a second Article 31(B) and was informed that he was again under investigation for two Article 92 violations, an Article 134—

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<sup>13</sup> CDR H denied the applicant's requested relief because she alleged that Article 5 of COMDTINST 1600.2 applies only to instances of domestic violence and because the order was issued for a valid military purpose of maintaining good order and discipline within the Service and the units.

<sup>14</sup> In *Catawba*, the four criteria for non-binding guidance are that it must: (1) explicitly state that it is not binding, (2) merely represent the agency's current views on a regulatory process, (3) only create rebuttable presumptions, and (4) only clarify existing statutory duties. *Catawba County v. EPA*, 571 F.3d 20, 33-34 (D.C. Cir. 2009).

Adultery violation, and Basic Allowance for Housing (BAH) fraud. However, the applicant stated that by the time he went to NJP, the only violations he was charged with were Articles 92 and 107 of the UCMJ. The applicant explained that he was sent to Captain's Mast on August 22, 2018, and received a punishment of 60 days restriction, forfeiture of a ½ month's pay for two months, and a Letter of Reprimand. The applicant further explained that despite the specific duration of 60 days being awarded, CDR H's memorandum wherein she notified him of his restriction dates required him to serve 61 days, not 60.<sup>15</sup> The applicant alleged that when he brought this error to the attention of his Command Chief, no action was taken.

### ***Erroneously Convened ASB***

The applicant alleged that the Administrative Separation Board was improperly and unlawfully convened by a Commander who was not in the applicant's chain of command and should be voided for failure to follow due process. The applicant explained that according to Article 1.D.1. of the Enlisted Personnel Administrative Boards Manual, PSCINST M1910.1, states, "[a]ny flag officer, commander, or commanding officer who is a Special Court-Martial Convening Authority (SPCMCA) or designated as a General Court-Martial Convening Authority (GCMCA) in an enlisted member's *chain of command* may convene a board controlled by this Manual, and thereby is a 'convening Authority.'" (Emphasis added). The applicant claimed that his billet was officially a "Detached Duty," and although he was physically present at the contested convening authority's (CDR H's) Base, his actual chain of command was located at a different Base and was the only command that actually held authority to convene an ASB. Despite this, the applicant contended that CDR H, an authority not in his chain of command, made the decision to send him to NJP and have him investigated. The applicant alleged that because of this violation of due process, an injustice was committed against him. According to the applicant, CDR H lacked the authority to send him any board because she was not in the applicant's chain of command.

The applicant claimed that the ASB also violated his due process rights pursuant to Article 7.B.1.d.2 of PSCINST M1019.1, which states, "[t]he Board shall be careful to consider only the exhibits approved for consideration by the board president *during* the hearing." (Emphasis added). The applicant alleged that the Board president announced that he was considering evidence submitted by the Recorder that was provided to the board after the hearing was closed. This evidence, according to the applicant, consisted of several emails between Coast Guard PSC and the applicant's home base on March 14, 2019, wherein it was discussed whether or not CDR H, Commander of the applicant's Detached Duty Base, had authority to convene the ASB. The applicant stated that of particular note is that the emails were not provided to the applicant's legal counsel until March 15, 2018, a day after the ASB proceedings. The applicant alleged that a critical element of the hearing was being decided behind the scenes with no notice to the applicant or his counsel, or the opportunity for them to review the evidence or rebut the findings. In addition, the applicant explained that the members of the ASB board were all serving within Coast Guard PSC, in the chain of command of the discharge authority. The applicant claimed that this created a bias against him, and though the bias did not result in a recommendation for discharge, the fact that such a bias was permitted remains unjust.

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<sup>15</sup> CDR H's Restriction Memorandum listed restriction dates of August 22, 2018, through October 21, 2018, which totals 61 days, not 60.

The applicant alleged that the ASB board was advised by someone other than the appointed legal advisor, in violation of Article 2.G.1.e.1. of PSCINST M1910.1 which states that the Convening Order should include, “[t]he name and duties of the board’s legal advisor.” Moreover, the applicant stated that Article 3.E. of the PSCINST M1910.1 states, “The legal advisor to the board is responsible for providing impartial advice to the board regarding its responsibilities, authorities, and other legal matters.” The applicant claimed that the Convening Order named LCDR MC as the legal advisor to the board, but LCDR RB was, at one point, incorrectly referred to as the legal advisor when he was in fact the recorder.

The applicant explained that his counsel objected to the Convening Order for being improper, and the board president called the listed and impartial legal advisor for assistance, but a Mr. TB, who is not the proper legal advisor, appeared at the board in person and provided advice to the board, telling the board to proceed with the hearing. The applicant contended that Mr. TB was not the proper legal guide, and his legal advice should not have been taken under advisement given that he was not in an impartial position to render legal advice. The applicant alleged that at the time, Mr. TB had been rapidly working behind the scenes the day of the board proceedings to gather statements from the applicant’s home Base in order to ensure that the ASB board found that it had been properly convened. To support his claims, the applicant pointed to a March 14, 2019, email that shows Mr. TB had reached out to the applicant’s home Base throughout the day on the 14<sup>th</sup>, likely after the ASB heard the applicant’s arguments as to the convening authority, in order to secretly gather statements from the applicant’s home Base. The applicant further claimed that Mr. TB worked in the direct chain of command of the discharge authority.

### ***Erroneous and Unjust Recharacterized ASB Findings***

The applicant alleged that CAPT J, the Final Reviewing Authority, did not reply to any of the deficiencies raised by the applicant. Instead, the applicant claimed that CAPT J, in his memorandum “Action of the Final Reviewing Authority,” added two new Findings of Fact, that the board did not determine. The applicant contended that while the Final Reviewing Authority is allowed to add findings of fact, it is the two findings of facts that CAPT J added that he used to support his decision to administratively separate the applicant, ignoring the ASB’s recommendation for retention. According to the applicant, CAPT J erroneously interpreted the ASB’s determination as being incompetent because of his own interpretation of the ASB’s findings.

First, the applicant claimed that CAPT J disagreed with the ASB’s Finding of Fact #7, which states, “Due to the limited scope and impact of his UCMJ offenses, his role as the junior member in the affair, lack of other misconduct and his punishment already being received, it is the opinion of this board that GMC [Applicant’s] actions were not egregious enough to be considered a commission of a serious offense.” The applicant contended that CAPT J admitted that this finding could be reasonable interpreted to mean that the applicant’s specific circumstances do not warrant separation. However, the applicant stated that CAPT J’s admission contradicts his own assertion that “[t]he only outstanding question to answer in determining whether a basis for discharge was proven at GMC [Applicant’s] hearing is to determine whether the specific circumstances of the offense warrant separation.” The applicant explained that directly after that question, CAPT J stated, “[t]he Board was either silent on this matter or answered it only indirectly in its Opinion

#7.” The applicant stated that it is unclear if CAPT J was purposefully misunderstanding the plain language of the ASB’s Findings of Fact, or if he simply failed to connect the context of the ASB’s findings and recommendations for retention, but either way, he mischaracterized the ASB’s Findings when he indicated it was still a question as to whether the applicant’s offenses warranted separation when the Board outright recommended that the applicant be retained.

Second, the applicant claimed that CAPT J mischaracterized the ASB’s findings to appease Rear Admiral (RADM) T, after he made it clear at LTJG S’s NJP that he would ensure the applicant was adequately punished as well. The applicant supported his claim by stating that both CAPT J and RADM T worked together and pointed to the fact that RADM T was clear in his threat and expectations, and his subordinate carried out his wishes that the applicant be appropriately punished. The applicant alleged that CAPT J effectively makes the ASB out to be incompetent and unable to link and process evidence across its many findings in saying that the ASB did not give a direct answer. The applicant contended that the ASB did give a direct answer in that it recommended, based on the “limited scope of offenses,” that the applicant be retained. The applicant argued that there is no other way to interpret that the ASB found violations of Article 92 and 107 of the UCMJ. The applicant claimed that if the ASB were only referring to violations of the fraternization policy, it would not have listed “UCMJ offenses,” but it did.

The applicant argued that CAPT J’s reinterpretation of the ASB’s findings so that every ASB finding is discrete and separate from the other fails to take into consideration the ASB’s findings as a whole. According to the applicant, CAPT J interpreted any opinion that the applicant be retained as a finding that lacked a broad focus on the case in its entirety, thus characterizing those opinions as a single point of contention. The applicant alleged that CAPT J indicated that because the ASB explicitly referenced the affair which it clarified was not the reason that the applicant was being considered for separation, their finding that the applicant should be retained was erroneous.

Finally, the applicant alleged that CAPT J erroneously equated a No Contact Order with counseling to terminate a relationship. The applicant claimed that CAPT J indicated that “Early counseling often can resolve potential concerns about the characteristics of a relationship and appropriate actions to ensure the relationship develops in a manner consistent with Service custom. Counseling may be informal or more formal, including written documentation by Administrative Remarks, Form GC-3307, entry or Administrative Letter of Censure (cite omitted). Counseling may include a direct order to terminate a relationship.”

The applicant claimed that CAPT J failed to explain how a no contact order equates to an order to terminate a relationship. According to the applicant, terminating contact and terminating a relationship are not at all the same. The applicant alleged that neither he nor LTJG S were ordered to terminate their relationship, and while they did contact each other in violation of the no contact order, not only was the order unlawful, but the purpose of a no contact order is to protect a person from threat of hostility, harm, violence, or sexual assault. It is not meant to correct a behavior the way that CAPT J indicated, rather, it is meant as a protection from harm. Therefore, the applicant argued that a no contact order does not constitute a counseling to terminate a relationship and was incorrectly used here as justification to claim that he violated an order to terminate his relationship. The applicant alleged that LTJG S was not under threat of harm from him, but was in love with

him. The applicant argued that the policy relied upon by CAPT J simply does not apply to the circumstances of this case. The claimed that CAPT J's reasoning was arbitrary and capricious, and wholly without grounds. The applicant further claimed that CAPT J mischaracterized of the purpose of the No Contact Order. According to the applicant, CAPT J used the No Contact Order as a correction tool instead of a protective tool, but the applicant stated that the fact that LTJG S and he were later married provides proof that no action needed to be taken to protect either party from harm.

As discussed in a previous footnote, the applicant's memorandum to this Board included multiple allegations and complaints regarding the Coast Guard conduct that were not central to the applicant's allegations and requests for redress made to this Board. For efficiency and clarity, all allegations and claims made by the applicant against the Coast Guard that the applicant did not specifically ask this Board for redress from are not included in this decision. Likewise, the applicant's memorandum included the applicant's service history, accomplishments and awards. The applicant's service history and awards that are deemed relevant and substantive to the Board's analysis and decision were summarized in the Summary of the Record portion of this decision. All others have not been summarized for efficiency.

### VIEWS OF THE COAST GUARD

On September 28, 2022, a judge advocate (JAG) for the Coast Guard submitted an advisory opinion in which he 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.

The JAG argued that the applicant has failed to prove an error or injustice with the issuance of an Alcohol incident. The JAG stated that although the ASB may have disagreed with the applicant's CO regarding whether or not the facts and circumstances warranted an alcohol incident, the issuance of an alcohol incident is exclusively with the purview and authority of the CO, not the ASB. Accordingly, while the ASB may have come to a different conclusion than the applicant's CO, this alone is insufficient to prove error or injustice regarding the issuance of the alcohol incident. Regarding the applicant's claim that the facts and circumstances did not meet the definition of an alcohol incident, the JAG argued that the applicant failed to provide sufficient evidence to rebut the findings of the CO. The JAG explained that despite the applicant's claim that he should not be responsible for his shipmate's drinking and that he did the right thing, the applicant admitted to drinking alcohol with his shipmate and that when the applicant took his shipmate into his care, it was at this point the shipmate fell and injured himself so badly that paramedics were required. The JAG claimed that policy notes that when deciding an alcohol incident, a member can be held jointly responsible for any damage or untoward behavior associated with the group.<sup>16</sup> The JAG stated that while the applicant's actions after his shipmate's injuries were commendable, this argument does not sufficiently rebut the CO's finding that the applicant's inebriation was a causative and contributive factor to the incident in the first place. Therefore, the JAG argued that the applicant has failed to prove that the alcohol incident was erroneous and unjust.

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<sup>16</sup> Article 1.A.2.d. of the Coast Guard Drug and Alcohol Manual, COMDTINST M1000.10 (2011).



The JAG further argued that the applicant failed to prove an error or injustice with the issuance of the No Contact Order. The JAG contended that the applicant's claim that the No Contact Order was erroneous and unjust because it did not conform to Article 5 of the Coast Guard's Discipline and Conduct Manual, COMDTINST M1600.2, fails because the No Contact Order never purported to utilize Article 5 of COMDTINST M1600.2 as the authority for which the No Contact Order was issued, nor was this Article cited in the No Contact Order. The JAG argued the policy that was cited was Article 2.A. of COMDTINST M1600.2 which relates to prohibited interpersonal relationships. The JAG explained that the No Contact Order noted that the applicant's romantic relationship with LTJG S was in violation of the regulations contained in Article 2.A of COMDTINST 1600.2 and Article 2.A.6.c. authorizes the use of Page 7s and direct orders to cease prohibited relationships. Therefore, contrary to the applicant's arguments, the JAG stated that the applicant's No Contact Order was not issued pursuant to Article 5 of COMDTINST M1600.2, but instead was issued as a direct order to cease contact with the person he was in a prohibited relationship with pursuant to Article 2.A.6.c. of COMDTINST M1600.2. The JAG argued that while the Page 7 includes language to cease all contact with LTJG S, when read in a holistic context, it was a direct order to cease the prohibited relationship with LTJG S, to include all contact. Accordingly, the JAG contended that there are other situations in which an order to not communicate (a no contact order) exists outside of Article 5 of COMDTINST M1600.2. The JAG explained that this same authority was recited to the applicant in CDR H's memorandum wherein she denied his request for relief and again by the Final Reviewing Authority's action to the ASB. For these reasons, the JAG stated that the applicant failed to prove that the June 29, 2018, No Contact Order was erroneous or unjust.

The JAG argued that the applicant also failed to provide sufficient evidence that his NJP was erroneous or unjust. The JAG explained that while the Board may review the imposition of NJP for correction or error or injustice, in doing so, it should recognize that the commanding officer is the official responsible under statute and regulation for conducting the proceedings and determining appropriate punishment. The JAG further explained that it is the commanding officer who has the opportunity to view the evidence, including the demeanor of the applicant and the witnesses against him and therefore the commanding officer's decisions and findings are entitled to substantial deference and any decision of the NJP appeal authority affirming the punishment is entitled to the same deference. The JAG stated that absent proof that the commanding officer's determinations were clearly erroneous, or that a substantial right of the applicant was materially prejudiced by clear procedural error, the commanding officer's decision should be upheld. The JAG argued that because of the appeal procedures established by statute and regulation within the military system, the Board should deem any issue not raised through this process waived, absent proof of compelling circumstances that prevented the applicant from raising such issues within the military justice system. According to the JAG, in order to establish a claim of error or injustice regarding the imposition of NJP, the applicant must prove a clear legal or factual error, or a clear abuse of broad discretion accorded to these authorities, and material prejudice to the applicant's substantial rights as a result of such error.

At the threshold level, the JAG claimed the applicant should be deemed to have waived any issue he now raises regarding his NJP because the applicant failed to appeal and raise issues with the NJP within the military system. The JAG argued that the applicant's failure to appeal the NJP should be viewed as substantial evidence that the findings and determinations were not

erroneous and thus Board should find that the applicant failed to prove error or injustice regarding his NJP.

The JAG also argued that if the Board reviews this issue on the merits, the applicant has still failed to prove error or injustice because there is insufficient proof to show that the commanding officer's determinations were clearly erroneous. The JAG stated that even if the Board were to find the June 29, 2018, No Contact Order unlawful, the applicant failed to prove error with the two other UCMJ violations he was found to have committed at the NJP. The JAG claimed that the applicant failed to prove that the determination that he violated a general order by being in a prohibited relationship with LTJG S or that he made a false official statement were clearly erroneous. The JAG argued that the commanding officer had sufficient facts and statements contained with the May 30, 2018, June 4, 2018, and July 25, 2018, investigations, as well as any additional facts that came out at the NJP. The JAG explained that while the applicant did not raise procedural errors with the NJP he did argue that the punishment exceeded that authority of the commanding officer. The JAG conceded that while the report of offense, court memorandum, and letter of restriction clearly state the applicant was to be restricted for 60 days, when specifying the actual dates of the restriction the letter of restriction does seem to impose 61 days, but this does not entitle the applicant to invalidate and expunge the NJP in its entirety.

The JAG argued that the applicant also failed to prove that the ASB proceedings were erroneous or unjust. The JAG further argued that the applicant's contentions that the ASB was improperly convened because CDR H did not have convening authority over him are incorrect. The JAG explained that as already established, the base the applicant was physically located conducted all administrative actions for the applicant, including holding final reviewing authority over his EERs. Accordingly, the JAG argued that the base the applicant was physically located was clearly within the applicant's chain of command and had the authority, pursuant to policy, to act as the convening authority for the separation proceedings.

Regarding the applicant's claim that there was no clear ruling regarding his objections to the convening authority and that it was improper for the ASB to consider information regarding the convening authority once the hearing was closed, the JAG claimed the applicant's arguments fail. According to the JAG that prior to closing the proceedings, the ASB president was still awaiting information about who had convening authority over the applicant, a fact that the president informed the applicant's counsel of prior to closing the proceedings. The JAG noted that the applicant's counsel did not object to closing the hearing without a ruling on the issue and to obtaining further information regarding the convening authority after the ASB was closed. Accordingly, the JAG argued that the applicant's counsel waived this issue because he consented to the consideration of the evidence and a decision regarding the evidence after the hearing closed.

Furthermore, the JAG contended that while the applicant argued that there was no official ruling on his objection to the convening of the ASB, the applicant's objection was improper and untimely because objections regarding pre-hearing matters should have been raised prior to the hearing. The JAG explained that pursuant to policy, the moment a board president enters the convening order and other prehearing documents into the record is not the time to challenge these prehearing documents.<sup>17</sup> In addition, the JAG explained that while the applicant claims that the

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<sup>17</sup> Article 6.B.2 of the Enlisted Administrative Boards Manual, PSCINST M1910.1.

ASB considered evidence after the hearing was closed, which he consented to, the evidence considered was not related to an issue that was within the scope of the ASB and pertained only to a logistical issue. The JAG argued that whether or not the board was properly convened is not one of the four or five questions the board is required to answer nor is evidence submitted to help the board answer such a question.

Regarding the applicant's claims that it was erroneous for the ASB to receive legal advice from a legal advisor not listed on the convening order, the JAG explained that while policy notes that the convening order should list the members that will be present and participating in the hearing, amendments are allowed, and there is no prohibition on a substitution, should a member suddenly become unavailable. In addition, the JAG argued that the applicant failed to provide any evidence of the substituted legal advisor's alleged bias or impartiality. The JAG contended that the fact that the legal advisor was an employee of PSC, the same unit as the separation authority, does not make him biased. The JAG also contended with the applicant's claims that the legal advisor's actions to obtain information regarding the propriety of the board's convening is evidence of the legal advisor's bias, arguing that such claims are insufficient to sustain allegations of impartiality. The JAG claimed that the legal advisor's collection of facts and information was requested by the ASB and there is nothing to suggest that his collection was biased for or against the applicant.

The JAG argued that the applicant has failed to provide sufficient evidence to support his claims that the Final Reviewing Authority's actions were erroneous and improper because he added findings of fact. The JAG claimed that the Final Reviewing Authority was permitted by policy to take the actions that it did and the findings of fact and opinions that the Final Reviewing Authority amended or added were supported by evidence in the record and policy. According to the JAG, the ASB's finding that there was no basis for further punishment was erroneous because ASB concluded that the applicant committed violations of the UCMJ and those violations met the definition of a serious offense. Therefore, the JAG argued that the Final Reviewing Authority was correct in deviating from the ASB's findings and recommendations. The JAG claimed that once there was a basis for further adverse action, such as separation, it was not improper for the Final Reviewing Authority to come to a different conclusion than the ASB regarding whether or not to separate the applicant, and the applicant's record was not contrary to the Final Reviewing Authority's decision. The JAG argued that the Final Reviewing Authority conducted its actions within policy and the applicant has failed to prove error or injustice.

Finally, the JAG argued that the applicant is not entitled to an upgraded DD-214 because the applicant was separated in accordance with policy after multiple UCMJ violations.

#### **APPLICANT'S RESPONSE TO 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 30 days. The Chair received the applicant's response on May 20, 2023. Through counsel the applicant restated almost the entirety of his initial memorandum to this Board and therefore for efficiency, only that information that is dispositive of the applicant's claims and was not previously recorded elsewhere in this decision will be summarized here.

The applicant adjusted his request for relief to include being given constructive credit since the time of the alleged illegal separation and that he be given any promotion for which he would have otherwise been entitled had it not been for the illegal separation.

The applicant included a list of his service accomplishments, ribbons and awards earned while serving in the Coast Guard.

### APPLICABLE LAW AND POLICY

Article 1 of the Coast Guard Drug and Alcohol Abuse Program Manual, COMDTINST M1000.10, provides the necessary guidance on the procedures for alcohol incidents. In relevant part:

#### 1.A.2.d. Alcohol Incident

1. Alcohol is the Significant or Causative Factor. Any 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.

2. Alcohol Must be Consumed. The member must actually consume alcohol for an alcohol incident to have occurred. Simply being present where alcohol is consumed does not constitute an alcohol incident. The member may be counseled on appropriate behavior or may be held jointly responsible for any damage or untoward behavior associated with the group. Purchasing alcohol for use by minors is not an alcohol incident, but does represent a serious breach of discipline and subjects the member to civil or military (UCMJ) penalties.

...

**2.B.2. Alcohol Incident.** The definition of an alcohol incident (See Article 1.A.2.d. of this Manual.) gives commands broad latitude in curbing intemperate alcohol use. A key fact to keep in mind is that the member must actually consume alcohol for an alcohol incident to have occurred.

The Military Drug and Alcohol Abuse Policy Manual, COMDTINST M1000.10A, provides the necessary guidance on alcohol incidents. Specifically, Article 4.D. states:

1. Except as set forth in Paragraph 4.D.3. below, any behavior, in which the CO/OIC determines by a preponderance of evidence after considering the relevant facts (i.e., police reports, eyewitness statements, and member's statement if provided) that alcohol was a significant or causative factor that resulted in the member's loss of ability to perform assigned duties or is a violation of the UCMJ, Federal, State, or local laws. **The military member need not be found guilty at court-martial, in civilian court, or be awarded non-judicial punishment for a behavior to be considered an alcohol incident.** (Emphasis added).

The Manual for Courts Martial, Part IV (Article 90 of the UCMJ), Paragraph 14—Assaulting or Willfully Disobeying Superior Commissioned Officer, provides that:

a. Text of Statute. (2) willfully disobeys a lawful command of his superior commissioned officer; shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, and if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.

b. Elements.

(2) *Disobeying superior commissioned officer.*

- (a) That the accused received a lawful command from a certain commissioned officer;
- (b) That this officer was the superior commissioned officer of the accused;
- (c) That the accused then knew that this officer was the accused’s superior commissioned officer; and
- (d) That the accused willfully disobeyed the lawful command.

c. Explanation.

...

...

(2) Disobeying superior commissioned officer.

(a) Lawfulness of the order.

(i) *Inference of lawfulness.* An order requiring the performance of a military duty or act may be inferred to be lawful and it is disobeyed at the peril of the subordinate. This inference does not apply to a patently illegal order, such as one that directs the commission of a crime.

(ii) *Determination of lawfulness.* The lawfulness of an order is a question of law to be determined by the military judge.

(iii) *Authority of issuing officer.* The commissioned officer issuing the order must have authority to give such an order. Authorization may be based on law, regulation, or custom of the service.

(iv) *Relationship to military duty.* The order must relate to military duty, which includes all activities reasonably necessary to accomplish a military mission, or safeguard or promote the morale, discipline, and usefulness of members of a command and directly connected with the maintenance of good order in the service. The order may not, without such a valid military purpose, interfere with private rights or personal affairs. However, the dictates of a person’s conscience, religion, or personal philosophy cannot justify or excuse the disobedience of an otherwise lawful order.

...

The Manual for Courts Martial, Part IV, Paragraph 16 (Article 92 of the UCMJ—Failure to Obey Order or Regulation), provides the following:

a. Text of statute. Any person subject to this chapter who—

- (1) violates or fails to obey any lawful general order or regulation;
- (2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or



(3) is derelict in the performance of his duties; shall be punished as a court-martial may direct.

b. Elements.

(1) Violation of or failure to obey a lawful general order or regulation.

- (a) That there was in effect a certain lawful general order or regulation;
- (b) That the accused had a duty to obey it; and
- (c) That the accused violated or failed to obey the order or regulation.

(2) Failure to obey other lawful order.

- (a) That a member of the armed forces issued a certain lawful order;
- (b) That the accused had knowledge of the order;
- (c) That the accused had a duty to obey the order; and
- (d) That the accused failed to obey the order.

The Enlistments, Evaluations, and Advancements Manual, COMDTINST M1000.2B, provides the following guidance on disciplinary EER’s after an alcohol incident:

**Article 4.C.2.c. Performance Based.** The following events require an unscheduled enlisted evaluation report, regardless of the time since the last evaluation report.

**8. Alcohol Incident.** A disciplinary enlisted evaluation report is required for a member who has an alcohol incident with an effective date of the day of the COMDTINST M1000.2B 4-15 alcohol incident regardless of the date it is determined an alcohol incident occurred.

The Coast Guard Discipline and Conduct Manual, COMDTINST M1600.2, provides the following relevant guidance on interpersonal relationships within the Coast Guard:

**2.A.2.a. Professional Work Environment.** Coast Guard policy is to sustain a professional work environment which fosters mutual respect among all personnel, and in which decisions affecting personnel, in appearance and actuality, are based on sound leadership principles. Commanding Officers, officers-in-charge, and supervisors are expected to provide an environment which enhances positive interaction among all personnel through education, human relations training, and adherence to core values.

...

**2.A.2.d. Assessing the Propriety.**

...

(3) The character of the relationship; e.g., personal, romantic, marital.

...

(b) Romantic relationship: Sexual or amorous relationship. (Does not involve conduct which violates reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended)).

(c) Unacceptable relationship: Inappropriate and not allowed under Service policy. Resolution normally administrative. Relationship must be terminated or otherwise resolved once recognized.

(d) Prohibited relationship: Violates reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended). Resolution may be either administrative, punitive, or both as circumstances warrant.

...

**2.A.2.f. Unacceptable Romantic Relationships.** Romantic relationships between members are unacceptable when:

- (1) Members have a supervisor and subordinate relationship (including periodic supervision of duty section or watch standing personnel), or
- (2) Members are assigned to the same small shore unit (less than 60 members), or
- (3) Members are assigned to the same cutter (see note below), or
- (4) The relationship is between chief petty officers (E-7/8/9) and junior enlisted personnel (E-4 and below), or
- (5) The relationship is manifested in the work environment in a way which disrupts the effective conduct of daily business.

Note: The nature of operations and personnel interactions on cutters and small shore units makes romantic relationships between members assigned to such units the equivalent of relationships in the chain of command and, therefore, unacceptable. This policy applies regardless of rank, grade, or position. This policy applies to Reservists in an active status, whether or not on duty.

...

**2.A.2.g. Prohibited Relationships, Communications, Conduct, and Contact.**

(1) Policy. Coast Guard policy prohibits the following relationships, communications, conduct, or contact regardless of rank, grade, or position of the persons involved:

...

(b) Romantic relationships outside of marriage between commissioned officers and enlisted personnel. For the purposes of this paragraph, Coast Guard Academy (CGA) cadets and officer candidates (both OCS and ROCI) are considered officers.

...

(2) Punitive Application. This provision is a punitive general regulation, applicable to all personnel subject to the Uniform Code of Military Justice without further implementation. A violation of this provision is punishable in accordance with Article 92 of the Uniform Code of Military Justice.

...

**2.A.4.b. Personal Relationships between Officer and Enlisted.** The custom of the Service accepts personal relationships between officer and enlisted personnel if they do not violate the provisions of Article 2.A.2.c. of this Manual. Relationships in conflict with those provisions violate the custom of the Service.

**2.A.4.c. Romantic Relationships between Officer and Enlisted.** The custom of the Service prohibits romantic relationships outside of marriage between officer and enlisted personnel. This includes such relationships with members of other military services. Officer and enlisted romantic relationships undermine the respect for authority which is essential for the Coast Guard to accomplish its military mission.

**2.A.4.d. Marriage between Officer and Enlisted.** The custom of the Service accepts officer and enlisted marriages which occur before the officer receives a commission. Lawful marriage between an officer and enlisted service member does not create a presumption of misconduct or fraternization. However, misconduct, including fraternization, is neither excused nor mitigated by subsequent marriage.

...

**2.A.6.c.** Early counseling often can resolve potential concerns about characteristics of a relationship and appropriate actions to ensure the relationship develops in a manner consistent with Service custom. Counseling may be informal or more formal, including written documentation by Administrative Remarks, Form CG-3307, entry or an Administrative Letter of Censure. (See Article 2.E.4. of this Manual.) Counseling may include a direct order to terminate a relationship.

Article 1 of the Military Separations Manual, COMDTINST M1000.4 (August 2018), provides the necessary guidance on discharging a service member with eight or more years of active service. In relevant part:

**1.B.1.d. Retention or Separation.** In determining whether a member should retain current military status or be separated administratively, the Service may evaluate the member's entire military record, including records of non-judicial punishment imposed during a previous enlistment or period of service, all courts-martial records or convictions, and any other material or relevant factors. Commanding officers, investigating officers, administrative discharge boards, and other agencies charged with making such decisions consider records of non-judicial punishment imposed during a previous enlistment or period of service only if, under the case's particular circumstances, the records would have a direct, strong probative value in determining whether retention or administrative separation is appropriate.

...

**1.B.17. Misconduct.**

**a. Policy.** Except as specifically provided here, only Commander (CG PSC) may direct a discharge for misconduct and the type of discharge (under other than honorable, general, or honorable) as warranted by the particular circumstances of a given case (see Article 1.B.2. of this Manual.). Disability evaluation processing will be terminated as described in Article 1.B.1.e. of this Manual for members discharged for misconduct. See Article 1.B.39. of this Manual when recommending the discharge of a first-term performer for misconduct.

**1.B.17.b. Reasons to Discharge for Misconduct.**

**3. 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.

The Enlisted Personnel Administrative Boards Manual, COMDTINST M19210.1, provides the following guidance on the duties and authority of ASBs:

**Article 1.J. Board Recommendations and Final Action by CG PSC.** Unless terminated as authorized by Article 8.C. of this Manual, final action on all boards controlled by this Manual is taken by Commander, Coast Guard Personnel Service Center. A board's report, including its findings of fact, opinions, and recommendations, *is advisory only; it will be thoroughly and carefully reviewed and considered, but it is not binding on CG PSC.* CG PSC is responsible for enforcing policy that is in the best interests of the entire Coast Guard and for ensuring the consistent application of military personnel policy across the Coast Guard. Whether CG PSC accepts the board's recommendations or not, the board process is inherently valuable for the following reasons.

...

**7.B.2. Standard of Proof – Preponderance of the Evidence.** In an administrative board hearing, the findings of fact need to be supported by a preponderance of the evidence presented at the hearing. That is, findings of fact should be based on evidence that, after considering all evidence approved for consideration, points to a particular conclusion that is more likely than not the correct conclusion.

## 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 over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record. The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

2. The application is timely because it was filed within three years of the applicant's discovery of the alleged error or injustice in the record, as required by 10 U.S.C. § 1552(b).

3. The applicant alleged that the Coast Guard erred when it issued him an alcohol incident for a June 7, 2017, that resulted in a fellow GMC hitting his head and needing emergency services. The applicant also claimed that the Coast Guard erred when his commanding officer issued him an unlawful No Contact Order. The applicant further argued that the Coast Guard erroneously and unjustly convened an ASB because the convening authority did not actually have authority over him. Finally, the applicant alleged that the Final Reviewing Authority erred by disregarding the findings and recommendations of the ASB and discharging him for misconduct. 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.<sup>18</sup> 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.”<sup>19</sup>

4. **Alcohol Incident.** The applicant alleged that the Coast Guard erred when it issued him an alcohol incident for his role in a shipmate’s injuries that were incurred while at the applicant’s residence on June 7, 2017. The applicant claimed that it was not his responsibility to monitor the alcohol intake of his former shipmates and act as their mother when he felt they had too much to drink. The applicant further claimed that his actions actually saved his shipmate’s life. The applicant argued that because his ability to perform his duties was not affected, his actions did not violate policy and therefore did not constitute an alcohol incident. The Board finds the applicant’s arguments unpersuasive.

Although Article 4.D. of the Military Drug and Alcohol Abuse Policy Manual, COMDTINST M1000.10A, does state that alcohol had to be a significant or causative factor that resulted in the member’s loss of ability to perform assigned duties, Article 1.A.2.d. of COMDTINST M1000.10A defines an alcohol incident as, “Any 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,” constitutes an alcohol incident. Article 2.B.2. of the same manual states, “The definition of an alcohol incident (See Article 1.A.2.d. of this Manual.) gives commands broad latitude in curbing intemperate alcohol use. A key fact to keep in mind is that the member must actually consume alcohol for an alcohol incident to have occurred.”

The Board’s review of the record shows that on the evening of June 7, 2017, the applicant and a fellow GMC went to the applicant’s residence to hang out and drink. During this time, the applicant claimed that the other GMC ended up getting very intoxicated and aggressive and after the applicant had calmed the GMC down, the applicant attempted to take the GMC to a spare room to sleep, but while walking the GMC to the spare room, the GMC fell over backwards and hit his head on a table, causing the GMC’s head to start bleeding. The GMC’s injuries were so severe an ambulance had to be called. The applicant contends that because he was drinking in his off time and ultimately contributed to saving the GMC’s life, he is not responsible for the situation that unfolded. However, the applicant ignored the fact that on the night of June 7, 2017, he too was drinking alcohol, he was the host of the other GMC and so provided the place and opportunity to drink to excess, and he was attempting to carry the intoxicated GMC to a spare room when the GMC fell backwards and hit his head.

The fact that the applicant had the wherewithal to call paramedics does not absolve the applicant of his role in the incident. The incident and excessive alcohol consumption took place at the applicant’s residence while the applicant was home and taking part in the drinking. The Board is not persuaded by the applicant’s claim that it is not his responsibility to monitor other service members’ alcohol consumption, especially when the consumption is taking place within the

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<sup>18</sup> 33 C.F.R. § 52.24(b).

<sup>19</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).



applicant's residence. The applicant relied heavily on the fact that the ASB found that the applicant's behavior did not constitute an alcohol incident, but policy places the responsibility of determining an alcohol incident on the commanding officers, not an ASB. Here, the record shows that the applicant's commanding officer found, by a preponderance of the evidence, that the applicant's conduct brought discredit upon the armed forces and so met the definition of an alcohol incident. The Board agrees and finds that the applicant's CO did not err when she found, by a preponderance of the evidence, that the applicant had incurred an alcohol incident based on his role in the June 7, 2017, incident.

5. **No Contact Order.** The applicant alleged that he did not disobey a lawful order because CDR H's No Contact Order was unlawful because it 1) did not abide by the confines of Article 5 of COMDTINST M1600.2, 2) failed to include a timeframe for the No Contact Order, and 3) ordered him to cease all contact with LTJG S instead of ordering him to terminate his relationship with her. For the following reasons, the Board disagrees:

- a. Unlawful Order. The applicant alleged that the No Contact Order was erroneous and unjust because it did not abide by the confines of Article 5 of COMDTINST M1600.2, which was binding on the Coast Guard and was therefore not a lawful order. The applicant's contention is that because Article 5 makes no mention or suggestion that there are any other rules governing No Contact Orders outside of Article 5, any other order prohibiting contact is prohibited. The applicant further alleged that because Article 5 is for the purpose of protecting service members from further domestic violence, sexual assault, and harassment, none of which applied to his situation, the No Contact Order was unlawful. The Board is not persuaded by the applicant's claims or supporting arguments. First, as argued by the Coast Guard and CDR H, the No Contact Order issued to the applicant does not support its issuance on Article 5 of COMDTINST 1600.2. In fact, nowhere in the No Contact Order does the issuing authority rely on or cite to Article 5 as its authority for issuing the order.

Second, pursuant to Chapters 2 and 4 of Coast Guard Regulations, COMDTINST M5000.3B, the Base CO had authority to issue orders to maintain good order and discipline, including the applicant's good order and discipline. Moreover, Paragraph 16(c)(1)(c) of Part IV of the Manual for Courts Martial (MCM) states in the discussion of Article 92 that an order is lawful unless it is, "contrary to the Constitution, the laws of the United States, or lawful superior orders or for some other reason is beyond the authority of the official issuing it." For further guidance on an order's lawfulness, Paragraph 16(c)(1)(c) of Part IV references Paragraph 14(c)(2)(a) of Part IV, which discusses the lawfulness of an order, including the authority of the issuing officer and the order's relationship to a military duty. Specifically, Paragraph 14(c)(2)(a)(iii) states, "The commissioned officer issuing the order must have authority to give such an order. Authorization may be based on law, regulation, or custom of the service," and subparagraph (iv) of the same paragraph states that for an order to be lawful it must relate to military duty, which includes all activities reasonably necessary to accomplish a military mission, or safeguard or promote the morale, discipline and usefulness of members of a command and directly connected with the maintenance of good order in the service." Therefore, the Board finds that the No Contact Order issued to the applicant was a lawful order because the Base CO had the

authority to issue the order to the members of the Base and because the order related to a military duty, which was the applicant's duty to stop engaging in a prohibited relationship with LTJG S for the maintenance of good order and discipline.

Furthermore, Article 2.A.5.c. of COMDTINST M1600.2 states that pursuant to Coast Guard Regulations, COs should take prompt, appropriate action to end prohibited relationships. Here, the record shows that while serving at the Base, the applicant began a prohibited relationship with LTJG S, who was not only a superior, but his supervising officer, in violation of Article 2.A.2.f.2. of COMDTINST M1600.2. The record further shows that at the start of the applicant's prohibited relationship with LTJG S, the applicant was counseled by the Chiefs Mess that his relationship with LTJG S was too close, that they spent too much time together, and that his behavior toward LTJG S while on liberty and at work was inappropriate. The record further shows that in an effort to address the applicant's inappropriate conduct and prevent further damage to all those involved, including continued violation of Coast Guard and military policy, on June 29, 2018, the Base CO, CDR H, issued the applicant an order to cease all communication with LTJG S immediately. Finally, the record shows that the applicant's relationship with LTJG S was disruptive to the Coast Guard's daily business as it resulted in not one but two administrative investigations, NJP proceedings, and emotional and mental harm to the applicant's now ex-wife who was also a member of the Coast Guard. Therefore, the Board finds that the No Contact Order issued by the applicant's commanding officer was a lawful order issued to maintain good order and discipline in the service.

- b. Lack of Time Constraints. The applicant further alleged that the No Contact Order was unlawful because it violated the boundaries for No Contact Orders set out by Article 5 of COMDTINST M1600.2 because it did not limit the order to a specific time duration of 7 to 30 days. However, as stated in Finding 5.a. above, the applicant's No Contact Order was separate and distinct from the No Contact Orders considered in Article 5 of COMDTINST M1600.2. The No Contact Order issued to the applicant by the CO was a direct order issued to maintain good order and discipline in the face of continuing prohibited conduct between LTJG S and the applicant after numerous attempts to get them to end the relationship had failed. Coast Guard Regulations do not provide a time constraint for such orders. In this case, the lack of an express time constraint was reasonable given the applicant's prolonged refusal to abide by Coast Guard and military policy and terminate his prohibited relationship with LTJG S.

As stated above, the record shows that the applicant engaged in a prohibited relationship with an LTJG while aboard a cutter. The record further shows that the applicant continued his relationship with LTJG S despite the warnings and admonishments from his Chiefs Mess, even changing various insurance and medical beneficiary forms to reflect LTJG S as his beneficiary, to the exclusion of his then wife and newborn sons. Finally, the record shows that after the applicant received PCS orders to a Base across the country, the applicant continued to speak to and meet with LTJG S, while still married to another Coast Guard member. When the applicant's behavior persisted and the applicant made it clear that he had no intentions of ending his prohibited relationship with LTJG S and thereby

abiding by Coast Guard regulations, his Command was forced to act, issuing him a No Contact Order.

Therefore, the preponderance of the evidence shows that the No Contact Order was issued to disrupt and put a permanent end to the applicant's blatant violations of Coast Guard policy. The lack of a time constraint in the order does not render the order unlawful or erroneous because the evidence shows that the applicant's misconduct was ongoing and likely to continue even though he had been told many times to end the relationship. Therefore, an open-ended No Contact Order was not only necessary but appropriate. The Board also finds the applicant's heavy reliance on the fact that he and LTJG S were eventually married misguided. Article 2.A.4.d. of COMDTINST M1600.2 states that the applicant's subsequent marriage neither excuses nor mitigates his misconduct.

- c. Order to Terminate. The applicant alleged that the No Contact Order was unlawful because his Command should have ordered him to terminate his relationship with LTJG S instead of ordering him to have no contact with her. Article 2 of COMDTINST M1600.2 does advise Commands that they can issue orders to terminate inappropriate and prohibited relationships, but that does not mean that they are limited to such orders when numerous prior attempts to get him to end the relationship had failed. Moreover, as shown in their text messages even after the No Contact Order was issued, the applicant had no intention of abiding by either an Order to Terminate or a No Contact Order.

Therefore the Board finds that the applicant's misconduct was persistent and defiant and evidence shows that he had no intention of abiding by or becoming compliant with Coast Guard policies or military regulations, even to the detriment of his career. The applicant was aware of his misconduct and his violations of Coast Guard regulations and yet that was still not enough to compel him to terminate his relationship with LTJG S. Therefore, the Board finds that because the applicant had already consistently ignored verbal orders to terminate his prohibited relationship with LTJG S, the appropriate course of action was to issue a more explicit written order to terminate, in the form of the No Contact Order.

- d. NJP Proceedings. The applicant alleged that because the No Contact Order was unlawful, his NJP proceedings were unlawful because he never violated a lawful order. However, as stated in the above findings, the applicant's contentions are simply not supported by the record or the evidence in this case. The applicant violated a lawful order from his CO when he continued to contact LTJG S in violation of a No Contact Order. Therefore the NJP proceedings were properly held and supported by Coast Guard policy and military regulations. Moreover, and as discussed previously in this decision, the applicant was in a prohibited relationship with LTJG S in violation of Article 2.A.2.g.1.b. of COMDTINST M1600.2. Article 2.A.2.g.2. of the same manual states, "This provision is a punitive general regulation, applicable to all personnel subject to the Uniform Code of Military Justice without further implementation. A violation of this provision is punishable in accordance with Article 92 of the Uniform Code of Military Justice." Accordingly, the Board finds that even absent violations of the No Contact Order, the applicant was in violation of Article 92(a)(2) of the UCMJ, which carries a maximum punishment of a bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months, and was therefore

subject to NJP. Therefore, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that the No Contact Order and the subsequent NJP proceedings were erroneous or unjust.

6. **Article 107 Violation.** The applicant insinuated that he never made a false official statement to investigators because he never signed a statement following his interview with investigators. The applicant alleged that on May 8, 2018, he was notified by LT V that he was being investigated for engaging in an inappropriate relationship with LTJG S. According to the applicant, LT V was not conducting the investigation because that was the responsibility of another officer, but LT V interviewed him in a casual setting. The applicant claimed that during this interview LT V inquired as to the nature of his relationship with LTJG S and that the applicant told LT V that the relationship was friendly, but that they did discuss moving on to a romantic relationship. The applicant contends that as a result of this interview he was charged with violating Article 107—Making a False Official Statement. However, the applicant claimed that he never signed the statement.

The Board finds the applicant's claims unsupported by regulations, the record or the evidence in this case. First, Paragraph 31 of Part IV the MCM, Making a False Official Statement (Article 107 of the UCMJ), states, "Any person subject to this chapter who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct." The elements of this offense are:

- (1) That the accused signed a certain official document or made a certain official statement;
- (2) That the document or statement was false in certain particulars;
- (3) That the accused knew it to be false at the time of signing it or making it; and
- (4) That the false document or statement was made with the intent to deceive.

The Board's review of the record shows that on May 7, 2018, the applicant was given his Article 31(B) rights, to which he acknowledged, signed, waived his right to consult with an attorney and elected to answer questions and/or make a statement. It was during this interview that the applicant lied to the investigating officer about the nature of his relationship with LTJG S. The Board need look no further than the applicant's personal statement to the ASB to support a finding that the applicant did in fact make a false official statement. Specifically, the applicant stated, "I am also really sorry that I lied about being in a relationship with LTJG [S] during my investigation. I panicked when I was told that I was under investigation for being in a prohibited relationship and I made a very poor choice that I regretted as soon as I walked out of the room." The record shows that the applicant was represented by counsel when this statement was made and submitted to the ASB and it was therefore freely and intelligently made. Therefore, the preponderance of the evidence shows that the applicant made a false official statement when he, with the intent to deceive, lied to investigators about the nature of his relationship with LTJG S, labeling the relationship as a friendship when he knew it to be romantic.

7. **Convening Authority.** The applicant alleged that the ASB was illegally convened because CDR H did not have Convening Authority over him because she was not in his chain of command. According to the applicant, the person who had convening authority over him was the

CO of the technical unit that he was he assigned to, rather than CDR H who was the CO of the base where he performed his duties. The applicant contended that he was only detached to CDR H's base, not fully assigned to it. The Board is not persuaded. The record shows that the applicant was assigned to a detached duty Maintenance Augmentation Team (MAT) that was under the direct supervision and command of CDR H. This is further supported by the applicant's Member Information Page which reflects an assignment to CDR H's unit, not the "home" base as argued by the applicant. The record further shows that the applicant's EERs were issued and approved by CDR H. Finally, the record shows that after multiple emails were exchanged, it was determined by all those involved, including the applicant's alleged "home" base leadership, that for administrative purposes, the applicant was under the command of CDR H and that the "home" base was only there for technical authority. In addition, a flowchart of the "Detached MAT Relationship Diagram" shows that the applicant was under the direct authority of the "Host" base, which in this case was CDR H. The diagram clearly shows that the "home" base only has technical authority over the MAT and nothing more. The flowchart's hierarchy is supported by a 2016 email from CDR R, who was the Deputy for the Surface Forces Logistics Center – Industrial Operations Division, wherein he stated that CDR H's base was the "host" base holding all administrative authority over the MAT, whereas the applicant's alleged "home" base held only technical authority. Accordingly, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that CDR H did not have convening authority over the applicant or that the ASB was not convened in accordance with policy.

8. **Improper Separation.** The applicant argued that because the ASB found that no basis for discharge existed, it was improper for the Final Reviewing Authority (FRA) to recharacterize the ASB's determinations and make a decision contrary to that of the ASB. For the following reasons, the Board, like the FRA, disagrees with the ASB's findings, opinions and recommendations. The ASB found in Finding of Fact #1 that the applicant failed to abide by a No Contact Order and thereby violated Article 92(a)(2) of the UCMJ. In this same finding, the ASB found that the applicant made a false official statement about the nature of his relationship with LTJG S. However, the ASB stated in its Opinion #7, "Due to the limited scope and impact of his UCMJ offenses, his role as the junior member in the affair, lack of other misconduct, and his punishment already being received, it is the opinion of this board that GMC [Applicant's] actions were not egregious enough to be considered the commission of a serious offense." The FRA disagreed with the ASB, especially its reasoning that because the applicant was the junior member in the relationship, his conduct was not egregious enough to be considered a commission of a serious offense. The FRA argued that the applicant's role in the prohibited relationship was irrelevant to the analysis of whether or not the applicant had committed a serious offense and therefore disapproved the ASB's Opinion #7.

Like the FRA, the Board finds the ASB's recommendation and opinions unsupported by the facts and evidence in this case. To start, the applicant's misconduct was not "limited in scope" as suggested by the ASB, but was persistent, defiant, and widespread. The evidence shows that the applicant's prohibited relationship spanned multiple Coast Guard jurisdictions, disrupted his units' daily business by requiring multiple investigations, ignored repeated informal requests to terminate his relationship with LTJG S, and defiantly ignored a No Contact Order the same day it was issued and continued to defy the order days and weeks after its issuance. All of this was in addition to the apparent emotional and mental anguish he put his then wife through, who was also a member of



the Coast Guard. Clearly, the applicant's misconduct was not limited in scope as argued by the ASB. The applicant's failure to obey an order and his false official statement to investigators were prohibited by Coast Guard policy, and Articles 92(a)(2) and 107 of the UCMJ. Article 2.A.2.f. of the Coast Guard Discipline and Conduct Manual, COMDTINST M1600.2, states that "romantic relationships" between members are unacceptable when the members have a supervisor and subordinate relationship, the members are assigned to the same small cutter, or the relationship is manifested in the work environment in a way which disrupts the effective conduct of daily business. The applicant's relationship with LTJG S violated all of these circumstances. Moreover, Article 2.A.2.g. of COMDTINST M1600.2 states:

(1) Policy. Coast Guard policy prohibits the following relationships, communications, conduct, or contact regardless of rank, grade, or position of the persons involved:

...

(b) Romantic relationships outside of marriage between commissioned officers and enlisted personnel. For the purposes of this paragraph, Coast Guard Academy (CGA) cadets and officer candidates (both OCS and ROCI) are considered officers.

Article 2.A.2.g.2. states, "This provision is a punitive general regulation, applicable to all personnel subject to the Uniform Code of Military Justice without further implementation. A violation of this provision is punishable in accordance with Article 92 of the Uniform Code of Military Justice." This Article makes it clear that the applicant's failure to abide by regulation would subject the applicant to punitive actions under Article 92 of the UCMJ. The applicant was on notice that his conduct was in violation of multiple Coast Guard and military regulations, and despite two Commands' efforts to mitigate the damage and preserve the applicant's career, he chose to forge ahead in defiance of policy and a direct order, obviously counting his relationship with LTJG S to be of more importance and value than his Coast Guard career.

Therefore, the Board finds that the FRA properly concluded that the applicant had engaged in a prohibited romantic relationship in violation of Article 2.A.2.f. and 2.A.2.g. of COMDTINST M1600.2, failed to obey a lawful order in violation of Article 92(a)(2), and made a false official statement in violation of Article 107, all of which constituted the commission of a serious offense under Article 1.B.17.b.3.2 of the Military Separations Manual, COMDTINST M1000.4, and were therefore contrary to the ASB's findings, opinions, and recommendations. Therefore, the applicant has failed to prove, by a preponderance of the evidence, that the FRA erred in finding that his relationship with LTJG S and misconduct constituted the commission of a serious offense and warranted separation from the Coast Guard.

9. **FRA Authority.** The applicant alleged that it was erroneous for the Final Reviewing Authority to disregard the ASB's findings and recommendations, but he is mistaken. Article 1.J. of the Enlisted Personnel Administrative Boards Manual, COMDTINST M1910.2, states that an ASB's report, including its findings of fact, opinions, and recommendations, is advisory only; it will be thoroughly and carefully reviewed and considered, but it is not binding on CG PSC. CG PSC is responsible for enforcing policy that is in the best interests of the entire Coast Guard and for ensuring the consistent application of military personnel policy across the Coast Guard." Coast Guard policy makes it clear that the ASB's report is advisory only and that the Final Reviewing Authority is not bound by those recommendations put forth by the ASB. The

Final Reviewing Authority's findings and recommendations were fully explained in the FRA's Report, supported by policy, and reviewed by legal authorities to ensure its findings and recommendations were legally sufficient before being approved. Therefore, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that the Coast Guard erred when it relied upon the Final Reviewing Authority's Report to separate him for misconduct. Accordingly, his request for relief should be denied.

10. **Post Hearing Evidence.** The applicant alleged that the ASB president erroneously admitted evidence after the closing of the hearing in violation of policy. The evidence the applicant takes issue with is the various emails exchanged between the board president, members of the "home" base, Mr. TB, and the applicant's counsel. However, the record shows that the applicant's counsel agreed to the exchange of such information prior to the closing of the ASB proceedings, so long as he was included in the communications. The record shows that the applicant was provided with the emails from the applicant's "home" base and was even given the opportunity to object to the organizational chart to the legal advisor, Mr. TB. Furthermore, the emails exchanged between all parties did not constitute evidence as alleged by the applicant because they were not dispositive of any of the applicant's misconduct; nor did they help to prove innocence or guilt. Finally, even with this alleged new evidence, the applicant was in no way prejudiced by the email exchanges because the ASB found in the applicant's favor, despite a finding that CDR H had convening authority over the applicant. Accordingly, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that the ASB president illegally considered evidence after the closing of the ASB proceedings.

11. **Illegal Advisor.** The applicant alleged that a legal advisor other than the one appointed in the Convening Order erroneously provided legal advice throughout the course of the proceedings, in violation of policy. The record shows that on November 5, 2018, CDR H issued a Convening Order wherein she appointed LCDR C as the upcoming ASB's Recorder and the Staff Judge Advocate (SJA) appointed LCDR B as the ASB's legal advisor. However, on March 14, 2019, CDR H issued an Amended Convening Order wherein the roles of the recorder and legal advisor were reversed. LCDR B was not set to serve as the ASB's recorder and LCDR C was assigned by the SJA as the ASB's legal advisor. Article 3.E. of the Enlisted Administrative Separations Board Manual, PSCINST M1910.1, makes a distinction between a legal advisor appointed by the Convening Authority and one appointed by the SJA. Here, it is clear by the Convening Order that the SJA assigned the legal advisor, not the Convening Authority. Article 4.C.2. of PSCINST M1910.1 states, "The board president shall consult with the board's legal advisor concerning board procedures before the board's hearing, and may consult with the legal advisor in closed or open sessions as appropriate during the board's proceedings." The applicant has failed to point to a specific policy, and the Board could find none, that prevented the SJA from sending another legal advisor to address the procedural concerns raised during the ASB proceedings. As a senior legal advisor Mr. TB had the requisite legal knowledge to address the procedural issues raised by the applicant.

The applicant also alleged error with the change in legal advisor because Mr. TB worked for the same office as the FRA. However, other than conjecture and his own subjective opinion that Mr. TB was biased, the applicant has provided no evidence to support his claims that Mr. TB's legal advice was prejudiced or erroneous. Accordingly, the Board finds that the applicant has failed

to prove, by a preponderance of the evidence, that the change in the ASB's legal advisor was erroneous or unjust.

12. **Ordered Restriction.** The applicant alleged that CDR H erroneously added a day to his ordered restriction. The record shows that on August 22, 2018, the applicant was sent to Captain's Mast and found guilty for violations of Articles 92 and 107 of the UCMJ. As part of his punishment, the applicant was ordered to 60 days of restriction. On August 22, 2018, CDR H issued a memorandum wherein she ordered the applicant to 60 days of restriction to be served from August 22, 2018, through October 21, 2018. However, the dates provided by CDR H amounted to 61 days of restriction not 60 as ordered by the Captain's Mast because August has 31 days. Accordingly, the Board finds that CDR H erroneously ordered the applicant to serve an extra day of restriction. However, the Board finds that no relief is warranted because of this error as there is no record for the Board to correct and the Board cannot now reverse the extra 24 hours of restriction to base.

13. The applicant made varied allegations and arguments such as attempted extortion from his ex-wife, failure of his command to help him locate housing during his first investigation, and CAPT J's reasons for changing the ASB findings such as colluding with RADM T and trying to appease RADM T. All allegations not specifically addressed above are considered to be unsupported by substantial evidence sufficient to overcome the presumption of regularity and/or are not dispositive of or germane to the issues in this case.<sup>20</sup>

14. For the reasons outlined above, the applicant has not met his burden, as required by 33 C.F.R. § 52.24(b), to overcome the presumption of regularity afforded the Coast Guard that its administrators acted correctly, lawfully, and in good faith.<sup>21</sup> He has not proven, by a preponderance of the evidence, that the Coast Guard erred when it entered the disputed Page 7s into his record, when it issued him a No Contact Order, and when it discharged him for misconduct after he was found to have failed to obey a general order and made a false official statement, which are deemed serious offenses under Articles 92(a)(2) and 107 of the UCMJ.

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<sup>20</sup> 33 C.F.R. § 52.24(b); see *Frizelle v. Slater*, 111 F.3d 172, 177 (D.C. Cir. 1997) (noting that the Board need not address arguments that "appear frivolous on their face and could [not] affect the Board's ultimate disposition").

<sup>21</sup> *Muse v. United States*, 21 Cl. Ct. 592, 600 (1990) (internal citations omitted).

ORDER

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

April 5, 2024

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