

**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. 2022-052**

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LT (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 July 20, 2022, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated May 3, 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 AND ALLEGATIONS**

The applicant, a Lieutenant (LT/O3E), who received an Other Than Honorable Conditions<sup>1</sup> discharge on March 20, 2006, for “Unacceptable Conduct,” asked the Board to upgrade his characterization of service to Honorable. The applicant explained that his service was exemplary until his combat deployment. According to the applicant, due to his combat he was diagnosed with chronic Post Traumatic Stress Disorder (PTSD) by the Department of Veterans Affairs (VA) in May 2016. The applicant alleged that the behaviors that resulted in his Other Than Honorable discharge were caused by his PTSD and were contrary to his previous 18 years of service.

**SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard on June 21, 1987, and served as an enlisted member until being commissioned on May 3, 1996.

The applicant was promoted to Lieutenant on November 3, 2000.

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<sup>1</sup> There are five types of discharge: three administrative and two punitive. The three administrative discharges are honorable, general—under honorable conditions, and under other than honorable (OTH) conditions. The two punitive discharges may be awarded only as part of the sentence of a conviction by a special or general court-martial.

On November 13, 2004, the applicant was assigned as the Commanding Officer of a cutter that deployed overseas.

On May 31, 2005, the applicant's Sector Command issued a memorandum wherein it recommended the applicant be relieved as CO of his cutter due to a lack of confidence.

On June 17, 2005,<sup>2</sup> Rear Admiral (RADM) R issued a memorandum "Permanent Relief for Cause" wherein he approved the applicant's permanent relief as CO of his cutter due to his Sector Command's lack of confidence in him.

On June 17, 2005, the applicant received his annual Officer Evaluation Report (OER) for the June 1, 2004, through May 31, 2005, rating period. The applicant received seven marks of 2 (with 1 being the lowest mark and 7 being the highest) in "Looking Out for Others," "Teamwork," and "Workplace Climate," "Judgment," "Responsibility," "Professional Presence," and "Health and Well-Being." The applicant also received three marks of 3 and eight marks of 4. In addition to these marks, the applicant received the following comments:

Performance of Duties: LT [Applicant] identified training strategy to accomplish High Value Asset (HVA) protection mission. Developed/modified watch stations to defend cutter/HVA. Identified shortfalls w/in areas of operations resulted in better use & employment of assets & increased time for threat identification. Worked w/maintenance team to coordinate work for inport team, allowed ship to operate at projected schedule of 256 days away from homeport. Developed R&R plan which allowed cutter to maintain readiness while allowing members [to] have earned leave. Experience allowed for increased boarding & security sweeps of fishing vsls in [redacted]. Completed 25+ days patrols & operated at 6200 hour pace. Completed 3 OIF patrols & maintained security perimeter around strategic & vital [overseas oil platforms] (OPlats). Executed national defense mission tactics by implementing preplanned responses when vessels came into security zone, successful at all [times]. Assumed command after short notice, completed all missions in [redacted]. Promoted flexibility, completed 45 vessel boardings & security sweeps while maintaining Oplat security. Responded successfully during intercepts of vessels. Had good working knowledge of mission & WPB [patrol boat] capabilities. Credibility as CO undermined by poor conduct while on liberty, created hard feelings & poor communication in dynamic environment.

Communication Skills: Articulated concerns and mission to [Sector] and Commandant during visits. Discussed platform capabilities w/coalition partners during CO conferences – giving them better understanding of CG assets. Choice of words and meaning of words inappropriate, leaving some members alienated. Wrote after action reports/patrol summaries, communicated operational obstacles and best practices. Provided numerous award recommendations that processed quickly.

Leadership Skills: command climate assessment revealed a fundamental lack of leadership being exercised by the CO toward an otherwise solid crew. Created an uncomfortable work environment through the use of inappropriate comments w/ strong sexual undertones which alienated members. During time SCO, members of crew recognized tension between watchstanders & CO that often disrupted daily routine & effective watchstanding. Mbr engaged in prohibited relationship with E-3 as defined under 8.H.2.g. of Personnel Manual which undermined the respect & authority of the mbr's position. Additionally it jeopardized the CO's credibility and impartiality since many of the crew were aware or suspected the relationship. Mbr routinely fraternized with core group of crew including routinely going out with crew on liberty to bars or their places of residence, inappropriately placing the CO's position on terms of military equality w/ the crew. Frequent use of inappropriate jokes & humor further antagonized crew members resulting in further disconnect

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<sup>2</sup> The date printed in the top righthand corner of the memorandum is June 17, 2002. However, in the reference line of this same memorandum, the Sector's memorandum referenced by RADM R shows May 31, 2005. Therefore, the Board assumes that the actual date of RADM R's memorandum is June 17, 2005, not 2002.

between command & members. Directed members in combat zone despite above issues...was able to complete the mission. Provided own OER input & evaluations processed on time.

Reporting Officer: Reporting Officer same as Supervisor. This officer demonstrated disregard for the core values of the Coast Guard by not only his actions but by allowing and condoning violations of CG policies and Patrol Forces Southwest [redacted] instructions. Mbr's actions throughout tenure demonstrated total lack of regard for established standards and values expected of a Commanding Officer. Despite personal actions cutter completed mission for 3 months in challenging and dynamic atmosphere.

Personal & Professional Qualities: within 10 days of assuming command made extremely poor decisions that included engaging in a prohibited relationship w/enlisted crew member. Allowed the playing of personal radio while deployed often to the point where the ops comms circuits could not be heard but at the very least distracting watchstanders from the primary mission. Further created an unhealthy work environment, the use of off-color stories & comments w/ a strong sexual undertone in front of crew are particular[ly] inappropriate & occurred repeatedly. Member failed to adequately enforce [redacted] curfew & [redacted] housing regulations, allowing rampant abuse of policies that were designed to safeguard military personnel. Members of crew felt CO showed favoritism & treated others unfairly - resulting in a lack of trust in CO's ability to command in wartime environment. Member was unduly familiar w/many of crew members & had an improper senior-subordinate/officer-enlisted relationship beyond prohibited relationship. CO failed to hold self & subordinates accountable for appropriate use of alcohol by tolerating excessive drinking during ship functions. Actions & lack of leadership brought discredit to unit and service.

Potential: Due to LT [Applicant's] inappropriate behavior and comments, an undue additional burden was placed on the crew during an already arduous deployment to the [redacted]. LT [Applicant] was temporarily relieved for cause for loss of confidence. Actions demonstrated A disregard for CG core values. LT [Applicant] is not recommended for future command of float assignments or any other positions of responsibility without proper supervision. Not recommended for promotion now or in the future.

On August 5, 2005, the applicant received and acknowledged a derogatory Officer Evaluation Report (OER) issued in response to his Permanent Relief for Cause.

On January 4, 2006, the applicant received Non-Judicial Punishment (NJP) for Conduct unbecoming an officer, cruelty or maltreatment, false official statement, other offenses charged under Article 134 of the Uniform Code of Military Justice (UCMJ), and violating a lawful general order or regulation. The applicant was ordered to forfeit \$2712 per month for two months and receive a reprimand in writing. The offense narrative reads as follows:

Article 92, UCMJ violation of Sec 8.H.2.g. of Personnel Manual, COMDTINST M1000.6A on Nov 30, 2004 with female SN. Article 93, UCMJ Maltreated female SN, female PO3, and male PO2 between Nov 2004 and Mar 2005. Article 107, UCMJ on or about Mar 17, 2005, made an official statement with intent to deceive a senior officer. Article 134, UCMJ fraternized with junior enlisted personnel on or about Nov 2004 to Feb 2005. Article 133, UCMJ engaged junior enlisted personnel in intimate sexual conversations on or about Nov 2004 to Feb 2005.

On January 19, 2006, the applicant received a Punitive Letter of Reprimand in accordance with his NJP sentencing. The Punitive Letter of Reprimand cited the applicant for fraternizing with his crew, which contradicted the Coast Guard's core values of Honor, Respect, and Devotion to Duty and denigrated the position of trust that he held as a Commanding Officer.

On March 20, 2006, the applicant was separated with an Other than Honorable Conditions characterization of service after he submitted a letter of resignation to avoid the possibility of a more punitive Court-Martial.

### VIEWS OF THE COAST GUARD

On December 21, 2022, a judge advocate (JAG) of 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 (PSC).

The JAG argued that the applicant failed to submit a timely application and failed to show why it was in the interest of justice to excuse the delay. Here, the JAG stated that the applicant asserted that “the behaviors that resulted in [his] Other than Honorable discharge were caused by PTSD experienced in support of OIF and were contrary to [his] previous 18 years of service,” and that he did not discover the alleged error or injustice until May 2016, which appears to align with the one-page letter the applicant submitted with his application for relief indicating a PTSD diagnosis. However, the JAG argued that even if that were when the applicant discovered the alleged error, the correct standard is when the applicant discovered or *reasonably should have discovered* the error or injustice. In this case, the JAG explained that the applicant was discharged in March 2006 and was provided with a discharge certificate listing the characterization of service as Other than Honorable, a discharge the applicant is now contesting nearly sixteen years later. The JAG stated that the applicant has provided no justification for the delay in applying for relief to this Board. The JAG further stated that even if the Board were to use the 2016 date, as alleged by the applicant, the application is still untimely and the applicant failed to provide an explanation for his untimely application.

The JAG further argued that in order for the Board to waive the statutory timeliness, the Board must first do a cursory review of the merits to determine the applicant’s likelihood of success based on the merits. Here, the JAG stated that the applicant claimed the misconduct that resulted in his Other than Honorable discharge was the result of PTSD that he experienced due to his time in combat, but the applicant failed to produce any evidence supporting a claim that he was suffering from PTSD while he was in the service. The only supporting documentation the applicant provided was an unknown document from the VA that states, “Problem: Chronic Post Traumatic Stress Disorder.”<sup>3</sup> However, the JAG argued that this one-page document provides no context or explanation, and fails to prove that the applicant’s misconduct was the result of in-service PTSD.

The JAG further argued that even if the Board were to find good cause to waive the statute of limitations, the Doctrine of Laches applies and bars the applicant’s claims for relief. According to the JAG, the Doctrine of Laches can be raised as an affirmative defense. The JAG explained that in order for the government to prevail, the government must prove (1) that there was unreasonable and unexcused delay, and (2) that such delay prejudiced the government. Here, the JAG argued the applicant’s delay has been shown in his previous arguments to be unreasonable and unexcused, therefore, he turned his attention to the prejudice the Coast Guard has encountered as a result of the applicant’s delay. The JAG argued that “defense prejudice” which is a prejudice due to loss of records, destruction of evidence, fading memories, or unavailability of witnesses,

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<sup>3</sup> The “unknown document” referred to by the Coast Guard was one of only two pages of a 598-page Personal Information Report submitted and relied upon by the applicant from the “My HealtheVet” website. Neither of the two pages provided a diagnosis or disability rating for PTSD. The applicant submitted no other documents to support his application.

applies in the applicant's case.<sup>4</sup> The JAG explained that because of the many years that have passed since the applicant's discharge from active duty, the Coast Guard no longer has access to the applicant's in-service medical documentation. The JAG further explained that without these in-service medical records, it is now impossible to go back and verify the applicant's PTSD claims. Therefore, the JAG argued that the Coast Guard is prejudiced in its inability to fully defend itself and properly assess the legitimacy of the applicant's claims.

The JAG stated that the Board presumes administrative regularity on the part of the Coast Guard, which includes the presumption that action was properly taken to diagnose the applicant's condition and come to the conclusion that it was a preexisting condition and not service connected as the applicant asked the Board to find. In addition, the JAG argued that absent evidence to the contrary, the Board presumes that the individual's processing the applicant for discharge and preparing his discharge paperwork followed the policy regarding his medical diagnosis and accurately processed the applicant for discharge under the policy for Convenience of the Government.

The JAG argued that the applicant has failed to carry his burden of presumption and persuasion. According to the JAG, the applicant failed to offer sufficient evidence that the Coast Guard committed an error or injustice by separating him for Convenience of the Government. The JAG stated that while the applicant submitted a single page document, this evidence is insufficient to overcome the presumption of regularity afforded to the Coast Guard and its officials. The JAG argued that the applicant's evidence is not conclusive that he had a diagnosis of PTSD while in the service, nor that any PTSD influenced the applicant's misconduct. The JAG stated that although there is a notation of PTSD in the applicant's post-service records from the VA, the notation is specifically marked "unspecified" and is provided without any context. Regardless, the JAG claimed that even if the applicant had provided VA records that support a finding of service-connected PTSD, such a finding is not binding on the Coast Guard. The JAG explained that the VA rates a veteran to determine what extent the veteran's earning capacity has been reduced as a result of specific injuries or a combination of injuries. The JAG argued that a finding by the VA, years after separation from the Coast Guard, does not substantiate the applicant's claims. Accordingly, the JAG argued that the applicant failed to meet his burden, to show that the Coast Guard erred or committed an injustice in his separation or the characterization of his service. Therefore, the JAG stated that the applicant's request for relief should be denied.

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

On January 17, 2023, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. The Chair received the applicant response on February 1, 2023.

The applicant stated that he disagreed with the Coast Guard's advisory opinion and asked the Board to consider his additional comments. The applicant explained that until his overseas deployment in 2004, his service record was exemplary. Upon his enlistment into the Coast Guard, the applicant stated that he quickly promoted to Petty Officer, First Class and was one of four out

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<sup>4</sup> *Roberts v. United States*, 98 Fed. Cl. 130, 142 (2011), quoting *Cornetta v. United States*, 851 F.2d 1371, 1378 (Fed. Cir. 1988).

of fifteen hundred who applied for and was accepted to the Coast Guard's Pre-Commissioning Program for Enlisted Personnel (PPEP). According to the applicant, after receiving his commission in 1996, he was soon selected for an Executive Officer position and selected for Command Afloat in 2004. The applicant contended that up to that point, his service records were perfect, without a single mention of any behavior unacceptable to the Coast Guard, which is the reason he was selected for command. He acknowledged that his behavior after being deployed was unacceptable.

The applicant explained that in 2006, a vast majority of the American public had no clue that the Coast Guard had a presence in overseas combat and the Coast Guard was ill prepared to screen for PTSD, let alone treat for it. The applicant alleged that his pre and post deployment and discharge screenings did not mention or contain questions about PTSD symptoms or a possible diagnosis. The applicant claimed that the Coast Guard did not have programs or policies in place to address its personnel in a combat environment. In addition, the applicant stated that there was a pervasive guilt that was associated with admitted a service member was weak enough to have succumbed to PTSD during the early years of the conflict, not to mention the applicant did not consider that he may have been prone to mental illness.

In addressing the Coast Guard's argument that the applicant failed to timely file, the applicant explained that he was not a medical professional, so he was unable to self-diagnose, but he was able to self-medicate. The applicant claimed that he abused alcohol for the first time shortly after he was discharged because without health insurance, it was the only way to cope. He explained that in 2016, his wife asked him to get screened for PTSD after which he applied to the VA for treatment. The applicant stated that he paid for the treatment since his character of discharge prevented the VA from paying for the treatments or benefits. He alleged that he was diagnosed with Chronic PTSD and that was the reason for his delay. According to the applicant, if the Coast Guard had screening procedures in place to identify PTSD back then, there would have been no undue delay.

### PSYCHIATRIC OPINION

Because the applicant's claim concerns mental health issues, specifically combat-related PTSD, the Board sought and received a medical opinion pursuant to 10 U.S.C. § 1552(g). The medical opinion, submitted April 3, 2024, by Captain (CAPT) B, a forensic psychiatrist for the United States Air Force, reads as follows:

After reviewing the materials made available by the Board, I provide the following medical advisory opinion with regard to this case per 10 U.S.C. §1552(g) to a reasonable degree of psychiatric certainty.

The Board requests that a mental health provider offer an opinion to the following question: "Assuming the VA has diagnosed the applicant with combat-related PTSD, would combat-related PTSD likely have caused or contributed to the applicant's misconduct as described in his military records?" The referenced misconduct includes entering into a prohibited relationship with a junior enlisted member of his crew, fraternizing with other enlisted members of the crew, and making a false official statement to a senior officer, which occurred during his command of the CGC Monomoy.

According to the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition Text Revision* (DSM-5-TR), published by the American Psychiatric Association in 2022, a clinical feature of posttraumatic stress disorder (PTSD) includes reckless or self-destructive behavior. Recent research investigating the impact of trauma on relationships has led to the addition of reckless or self-destructive behavior as a diagnostic

criterion.<sup>5</sup> There is some literature to support the presence of a reckless behaviors subtype of PTSD, which could include risky and impulsive sexual behavior.<sup>6</sup> In a longitudinal review of PTSD symptoms, risky sexual behaviors were described as sexual behaviors that increase the likelihood of transmission of HIV and other sexually transmitted infections, condomless sex, using substances prior to or during sexual activity, or having sex with multiple partners.<sup>7</sup>

Although the above reflects the current state of understanding of PTSD and related trauma disorders, the Board is cautioned that I cannot opine to the presence or absence of reckless or self-destructive behavior in the Applicant's case. This is because there are no records available that delineate his individual presentation or outline the clinical reasoning for the diagnosis, and not all individuals with PTSD and related disorders present similarly.

A point for the Board to consider is that criminal activity linked to PTSD is generally impulsive rather than thoughtful or deliberate. In this case, the referenced misconduct involves non-violent behaviors that require planning rather than actions performed by an individual who lacks impulse control. The referenced misconduct is not consistent with reckless or self-destructive behaviors that have been previously reported in the literature, and his misconduct is not inherently indicative of an individual unable to control his impulses.

In summary, it is **not likely** that combat-related PTSD caused or materially contributed to the Applicant's misconduct as described in his military records.

## APPLICABLE LAW AND POLICY

### *Uniform Code of Military Justice*

Title 10 U.S.C.A. § 892. Article 92. Failure to Obey order or regulation.

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.

Title 10 U.S.C.A. § 893. Article 93. Cruelty and maltreatment.

Any person subject to this chapter who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.

Title 10 U.S.C.A. § 907. Article 107. False Official Statements; False Swearing.

(a) False official statements. – Any person subject to this chapter who, with intent to deceive –

- (1) signs any false record, return, regulation, order, or other official document, knowing it to be false; or

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<sup>5</sup> Lusk, Joanna D et al. "Reckless Self-Destructive Behavior and PTSD in Veterans: The Mediating Role of New Adverse Events." *Journal of traumatic stress* vol. 30, 3 (2017): 270-278. doi:10.1002/jts.22182.

<sup>6</sup> Contractor, Ateka A, and Nicole H Weiss. "Typologies of PTSD clusters and reckless/self-destructive behaviors: A latent profile analysis." *Psychiatry research* vol. 272 (2019): 682-691. doi:10.1016/j.psychres.2018.12.124.

<sup>7</sup> Weiss, Nicole H et al. "A Longitudinal Examination of Posttraumatic Stress Disorder Symptoms and Risky Sexual Behavior: Evaluating Emotion Dysregulation Dimensions as Mediators." *Archives of sexual behavior* vol. 48, 3 (2019): 975-986. doi:10.1007/s10508-019-1392-y.

(2) makes any other false official statement knowing it to be false;

shall be punished as a court-martial may direct.

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Title 10 U.S.C.A. § 933. Article 133. Conduct unbecoming an officer.

Any commissioned officer, cadet, or midshipman who is convicted of conduct unbecoming an officer shall be punished as a court-martial may direct.

Title 10 U.S.C.A. § 934. Article 134. General Article.

Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. As used in the preceding sentence, the term “crimes and offenses not capital” includes any conduct engaged in outside the United States, as defined in section 5 of title 18, that would constitute a crime or offense not capital if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, as defined in section 7 of title 18.

### ***Coast Guard Regulations***

Article 8.H. of the Personnel Manual, COMDTINST M1000.6A (March 2005), in effect at the time of the applicant’s discharge, provides the relevant guidance on interpersonal relationships between members of the Coast Guard. The following articles are relevant to the applicant’s case:

**Article 8.H.1.a. Coast Guard Values.** The Coast Guard attracts and retains highly qualified people with commonly shared values of honor, respect and devotion to duty. These values anchor our cultural and Service norms and serve as a common foundation for our interpersonal relationships within the Coast Guard.

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**Article 8.H.1.c. Leadership and Military Discipline.** Professional interpersonal relationships always acknowledge military rank and reinforce respect for authority. Good leaders understand the privilege of holding rank requires exercising impartiality and objectivity. Interpersonal relationships which raise even a perception of unfairness undermine good leadership and military discipline.

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**Article 8.H.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 watchstanding 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, 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.



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.

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**Article 8.H.2.g. Prohibited Relationships.** Coast Guard policy prohibits the following relationships or conduct, regardless of rank, grade, or position of the persons involved:

1. Engaging in sexually intimate behavior aboard any Coast Guard vessel, or in any Coast Guard-controlled work place,
2. Romantic relationships outside of marriage between commissioned officers and enlisted personnel. For the purposes of this paragraph, Coast Guard Academy cadets and officer candidates (both OCS and ROCI) are considered officers.
3. Personal and romantic relationships between instructors at training commands and students.

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 the UCMJ.

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**Article 8.H.4. Fraternization.**

a. Definition. Fraternalization describes the criminal prohibition of certain conduct between officer and enlisted personnel set out in the UCMJ. Interpersonal relationships between officer and enlisted personnel and fraternization are not synonymous. Fraternalization does not apply exclusively to male-female relationships, but a much broader range of inappropriate conduct. (While not an exhaustive listing, paragraph 8.H.3.) The elements of the offense of fraternization specified in the Manual for Courts-Martial are:

1. The accused is a commissioned or warrant officer, and
2. The accused officer fraternized on terms of military equality with one or more enlisted members in a certain manner, and
3. The accused knew the person to be an enlisted member, and
4. The association violated the custom of the Service that officers shall not fraternize with enlisted members on terms of military equality, and
5. That, under the circumstances, the conduct of the member was prejudicial to good order and discipline in the Armed Forces, or was of a nature to bring discredit upon the Armed Forces.

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**Article 8.H.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.

Article 12.A. of the Personnel Manual, COMDTINST M1000.6A (March 2005) provides the following guidance on officer resignations:

**Article 12.A.5. Resignations.**

a. General. Regular and reserve officers retain their commission at the pleasure of the President. This Article lists the criteria to voluntarily terminate an officer's status as deemed necessary for current Service requirements and the needs of the officer corps.

**12.A.5.b. Submitting Requests to Resign.**

Officers must submit voluntary requests to resign in writing to Commander (CGPC-opm) through the chain of command. Commander (CGPC-opm) carefully notes the immediate commanding officer's comments, which should contain pertinent facts or reasons that underlie the request. To receive an acknowledgment the request was received, provide your e-mail address in the letter and indicate you would like to receive acknowledgement the request was received.

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**12.A.6.d. Resignation in Lieu of Trial Before a General Court-Martial.**

1. The usual form for submitting this type of resignation is:

I hereby submit my resignation from the United States Coast Guard for the good of the Service and in lieu of trial before a general court-martial. I have been informed and understand if my resignation for the good of the Service and in lieu of trial by general court-martial is accepted, I subsequently **may** receive a discharge under other than honorable conditions; I may be deprived of substantial rights, benefits, and bounties Federal or State legislation confers or later may confer on persons with honorable service in the Armed Forces of the United States; and I may expect to encounter substantial prejudice in civil life in situations in which the nature of service rendered in or the character of separation from the Armed Forces may have a bearing.

2. As the form of the resignation indicates, the officer concerned submits it as an alternative to facing trial before a general court-martial and to preclude the possibility such a trial might result in conviction, with ensuing sentence perhaps extending to dismissal from the Service and imprisonment. Whenever practical, an officer desiring to submit such a resignation should be given a receipted copy of the charges and specifications preferred; or, if they actually have not been preferred, should receive a receipted set of sample charges and specifications alleging offenses for which the officer might be brought to trial. Further, it is usually required prior to permitting an officer to resign in this manner he or she submit with the resignation a complete, detailed confession to the offense(s) at issue.

3. It is desirable for a psychiatrist, or a medical officer if a psychiatrist is not conveniently available, to submit for the case record a statement with his or her professional observations and impressions of the apparent mental and physical condition of the officer submitting the resignation.

4. Officers whose resignations for the good of the Service and in lieu of trial before a general court-martial are accepted **may** be awarded a discharge under other than honorable conditions.

**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 filed by the applicant was not timely. To be timely, an application for the correction of a military record must be submitted to the Board within three years after the alleged error or injustice was discovered.<sup>8</sup> The record shows that the applicant received his Other than Honorable discharge on March 20, 2006, and a diagnosis of PTSD on May 9, 2016. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record as early as March 2006, and no later than May 2016, and his application is untimely.

3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.<sup>9</sup> In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board should not deny an application for untimeliness without “analyzing both the reasons for the delay and the potential merits of the claim based on a cursory review”<sup>10</sup> to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted that “the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review.”<sup>11</sup> Although the record shows that the applicant long delayed his application to the Board, the record also shows that he has been diagnosed with Post Traumatic Stress Disorder, which might well have interfered with his ability to submit his application. In light of his mental health condition, the Board will excuse the untimeliness of the application and consider the case on the merits.

4. The applicant alleged that his misconduct was the result of combat-related PTSD. The Board’s review of the record shows that the applicant was assigned as Commanding Officer of a Coast Guard cutter on November 13, 2004. This cutter was already overseas at the time of the applicant’s assignment as Commanding Officer. Within 17 days of being assigned to this cutter, the applicant engaged in a prohibited relationship with a female E-3 aboard his cutter. Coast Guard records reveal that the applicant continued to engage in this prohibited relationship until February 2005. In addition to this prohibited relationship, the applicant also engaged in fraternization with his crew and created an uncomfortable working environment through the use of inappropriate comments that included sexual undertones. As a result of the applicant’s misconduct, on May 31, 2005, the applicant’s Sector Command recommended that the applicant be relieved as CO of his cutter due to a lack of confidence. On June 17, 2005, RADM R approved the applicant’s permanent relief as CO of his cutter.

5. Although the applicant has alleged that his misconduct was the result of PTSD, the Board is not persuaded by the applicant’s arguments. First, the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V), Criterion F of 309.81 (Post-Traumatic Stress

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<sup>8</sup> 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

<sup>9</sup> 10 U.S.C. § 1552(b).

<sup>10</sup> *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

<sup>11</sup> *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

Disorder) states that the duration of PTSD disturbances must have been for more than one month. As already stated, the record shows that at start of the applicant's inappropriate relationship with a female E-3, he had only been overseas and assigned to his cutter for 17 days and there is no evidence that at this point the applicant had been exposed to any of the DSM-V's criterion required for a diagnosis for PTSD.<sup>12</sup> Accordingly, at the time of the applicant's misconduct he would not have qualified for a diagnosis for PTSD. In addition, the Board finds that the applicant's misconduct cannot be excused by PTSD as explained in the medical advisory opinion submitted by Captain B, because:

...criminal activity linked to PTSD is generally impulsive rather than thoughtful or deliberate. In this case, the referenced misconduct involves non-violent behaviors that require planning rather than actions performed by an individual who lacks impulse control. The referenced misconduct is not consistent with reckless or self-destructive behaviors that have been previously reported in the literature, and his misconduct is not inherently indicative of an individual unable to control his impulses.

Here, although Captain B stated that PTSD can include reckless and self-destructive behavior, he also stated, "it is not likely that combat-related PTSD caused or materially contributed to the Applicant's misconduct as described in his military records." The Board agrees with the Captain and is not persuaded that the applicant's misconduct is consistent with reckless or self-destructive behaviors that normally present with PTSD. Furthermore, the Board is not convinced that the applicant's PTSD materially contributed to his misconduct. For example, the applicant's inappropriate relationship with an E-3 was not an impulsive, reckless, one-time occurrence, but was persistent and resulted in the applicant losing the confidence of his crew during a critical operation overseas.

As the Commanding Officer of a cutter, the applicant was placed in the ultimate position of trust and within 17 days of becoming the Commanding Officer, he had abused that trust by engaging in a prohibited sexual relationship with an E-3. This jeopardized the morale of the entire crew, because as noted in the derogatory OER, his crew was aware of the inappropriate relationship. At the same time, the applicant created an unprofessional and uncomfortable work environment that further exacerbated the situation, by for example, fraternizing, disrupting watchstanding, and failing to enforce curfew, with the end result being that the applicant was removed from his primary duties and ultimately received NJP and an Other Than Honorable characterization of service. Moreover, the record shows that the applicant resigned pursuant to Article 12.A.6.d. of the Personnel Manual, M1000.6A (October 2005) and received a separation code of BNC, which reflects an officer who was permitted to resign in lieu of further administrative separation proceedings or board action. The applicant received the benefit of his resignation because he was allowed to resign and avoid further punitive actions that may have resulted from a General Court-Martial.

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<sup>12</sup> **Criterion A:** Exposure to death, threatened death, serious injury, or sexual violence in one (or more) of the following way(s):

- Direct experience of the trauma
- Witnessing firsthand the trauma
- Learning a relative or close friend was exposed to a trauma
- Repeated or extreme exposure to aversive details of trauma, typically experienced by first responders, medics, police officers, etc.

The applicant's records are presumptively correct and the applicant has failed to show how his alleged PTSD caused him to engage in a prohibited sexual relationship with an E-3, fraternize with his crew, or create an uncomfortable working environment through the use of inappropriate comments that contained strong sexual undertones. He has further failed to show how his resignation was erroneous or unjust. Accordingly, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that the Coast Guard erred when discharging him with an Other Than Honorable characterization of service.

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

ORDER

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

May 3, 2024

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Date: 2024.05.08 12:16:07 -04'00'

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[REDACTED] [REDACTED] [REDACTED]

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[REDACTED] [REDACTED] [REDACTED]

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