

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

---

Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2020-151**

██████████ ██████████ ██████████  
BMI/E-6

---

**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 December 10, 2018, 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 November 4, 2022, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT’S REQUEST AND ALLEGATIONS**

The applicant, a Boatswain’s Mate, First Class (BM1/E-6), asked the Board to correct his record by granting him a military retirement or, in the alternative, referring him to the Physical Disability Evaluation System (PDES). The applicant further requested that, if the Board finds that he did not qualify for PDES processing, the Board upgrade his September 18, 2017, discharge from General – Under Honorable Conditions<sup>1</sup> to Honorable, change the separation authority from COMDTINST M1000.4,<sup>2</sup> Article 1.B.17. (“Misconduct”), to Secretarial Authority, change his reenlistment code from RE-4 (ineligible) to RE-1 (eligible) or RE-3 (waiver required), and change his narrative reason for separation from Misconduct to Secretarial Authority. The applicant also asked that his DD-214 be updated to reflect any changes ordered by this Board.

Through counsel, the applicant alleged that he was suffering from Post-Traumatic Stress Disorder (PTSD) during the period of his career that led his decline in performance. According to the applicant, his PTSD affected his judgment with regards to junior personnel. The applicant

---

<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. A special court-martial may award a bad conduct discharge (BCD), and a general court-martial may award a BCD or a dishonorable discharge.

<sup>2</sup> Military Separations Manual, COMDTINST M1000.4.

argued that his separation, which resulted from his PTSD, illustrates that his PTSD was an unfitting condition that interfered with his ability to perform the duties of his grade and position. The applicant alleged that he displayed many PTSD symptoms during his career and should have been referred to the PDES. The applicant argued that even without medical records, a cursory review of his service records shows a clear pattern of decline in performance. The applicant further argued that given the many traumatic events he was exposed to while serving in the Coast Guard, it is evident that he was suffering from PTSD and as such, should have been psychologically evaluated and processed through the PDES before the misconduct allegations were made.

The applicant claimed that from 2006 to 2008, he participated in over 600 search and rescues, which often required the recovery of dead bodies. In addition, the applicant stated he experienced the death of one of his crew members. According to the applicant, the constant exposure to death, coupled with the stress of each mission, had an adverse effect on him, but he nonetheless remained strong and vigilant.

The applicant stated that prior to his time with search and rescue, he received two citations for his hard work. The applicant further stated that he also received the Coast Guard Achievement Medal for Superior Performance for his service from January 2003 to June 2008.

According to the applicant, in June 2008, after transferring to a new Coast Guard station, he began showing signs of distress. The applicant alleged that he started showing signs of a lack of interest in his duties and received a series of verbal and written counseling sessions, which culminated in him being removed as the station's Executive Petty Officer. In April 2009, the applicant alleged, as a result of his "moodiness," he was referred to the Work Life Division. However, he bounced back from his shortcomings as an Executive Petty Officer and received another Letter of Commendation for the period of July 2009 to July 2010 for his "research and attention to detail in creating aids to navigation operational orders." The applicant noted that he was also commended for his volunteer service coaching two Little League teams and actively supporting the Boy Scouts of America.

The applicant alleged that he had a flourishing career, with over 18 years of service. He argued that he had everything to lose and nothing to gain from sexual harassment. He alleged that he did not realize his low tones made some of the female personnel uncomfortable. The applicant stated that some of the females described him as "weird" and "odd." However, the applicant argued, being weird and odd is not a reason to separate someone from the Coast Guard. The applicant argued that his troubles began when the Coast Guard failed to diagnose him with PTSD, which affected both his work and family life. The applicant alleged that given his PTSD, his personality, which others described as "stickler" and "gruff," and his low voice, it is understandable that he was misunderstood.

The applicant alleged that the Coast Guard chose to administratively separate him for misconduct when he demanded trial by court-martial. The applicant argued that because he believed he had done nothing wrong and certainly never intentionally made sexually harassing or inappropriate remarks, he was willing to face the consequences of a court-martial. However, according to the applicant, the Coast Guard chose to deny him his fundamental rights of due process and instead sent him to an Administrative Separation Board (ASB). The applicant alleged

that the ASB, through innuendos and conjectures, chose to find that he had committed misconduct and recommended that he be separated with a General – Under Honorable Conditions discharge, despite the CGIS investigation finding insufficient evidence for misconduct.

*a. The applicant was suffering from PTSD that interfered with his ability to perform his duties.*

The applicant argued that he was exposed to and required to recover dead bodies during his mission with the search and rescue command, which he described as stressful. The applicant explained that the symptoms of PTSD are feeling emotionally cutoff from others, feeling numb or losing interest in things you used to care about, constantly feeling on guard, having difficulty sleeping, and having trouble concentrating.<sup>3</sup> According to the applicant, other symptoms are avoiding places or things that remind you of what happened.<sup>4</sup> The applicant argued that like many health issues, there is no single sign of PTSD. Many of the symptoms may seem relatively harmless on their own, but when professionals view them in conjunction with other symptoms, they are able to confirm a diagnosis of PTSD.<sup>5</sup>

The applicant alleged that in 2008 he was given a well-earned position as an Executive Petty Officer, but after a series of incidents, his Commanding Officer (CO) lost confidence in him, and he was relieved of his duties. In the Relief for Cause Memorandum, it was observed that he had failed to demonstrate the desire and the initiative to do his job. It was further observed that he had the required experience and training to ensure his success and that his failure to qualify or re-qualify was a willingness issue, not one of ability. The applicant pointed out that further counseling also revealed that the applicant was disinterested in his responsibilities. The applicant alleged that the Master Chief did not realize he was describing the classic symptoms of PTSD. The applicant claimed that this counseling was given after he left the search and rescue command. The applicant alleged that his PTSD also led him to fail to requalify in skills that he held for years. According to the applicant, this failure was not due to a lack of ability, but due to a lack of interest. The applicant claimed that his lack of interest was not because he was lazy or grew complacent, but because he was suffering from undiagnosed PTSD. The applicant further claimed that his symptoms were recognized by his chain of command, but they lacked the understanding or sophistication to identify the cause.

The applicant stated that although he denies sexually harassing any of the female crew, or making inappropriate comments, a change in personality is also a symptom of PTSD. The applicant cited a character statement submitted on his behalf that stated the applicant was the last person you would suspect of committing sexual harassment and the applicant did not tolerate those who did. In addition, the character reference stated that if the applicant did commit sexual harassment, it was the direct result of untreated PTSD.

The applicant alleged that his nickname was “Hurricane” because he would get upset over trivial things, which he claimed was another symptom of PTSD. He stated that he was clearly suffering from PTSD and instead of an ASB, he should have been processed through PDES.

---

<sup>3</sup> The applicant cited the following: <https://maketheconnection.net/conditions/ptsd>

<sup>4</sup> *Id.*

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

***b. The Under Secretary of Defense guidance provides a basis for relief.***

The applicant cited a memorandum from the Secretary of Defense to the Secretaries of the Military Departments.<sup>6</sup> Specifically, this memorandum provides clarifying guidance to the Discharge Review Boards (DRB) and BCMRs of the Army, Navy, and Air Force considering requests by veterans for modification of their discharges due to mental health conditions, sexual assault, or sexual harassment. Using this memorandum as support, the applicant stated that he was given a 30% disability rating from the Department of Veterans Affairs (DVA) within the first year of his discharge from active duty. The applicant argued that he had been suffering from PTSD since 2008, which he claimed accounts for his personality change, irritability, and loss of interest at work.

The applicant alleged that it was observed by those who knew him and served with him that he did not tolerate sexual harassment. The applicant alleged that the personality changes were directly attributed to his PTSD. To further support his allegations, the applicant stated he was also described as someone who would go out of his way to assist someone with qualifying. The applicant contended that if the allegations are true, he went from being helpful to harassing.

Using the DoD memorandum as support, the applicant again argued that the accusation of sexual harassment demonstrates an inability of the individual to conform their behavior to the expectations of the military environment. The applicant stated he became irritable and depressed for no reason. The applicant cited his demotion and his CO's belief that the applicant had the skills, just not the desire, to work and that he lost interest in his job. In addition, the applicant argued that his inability to mesh with young female personnel is a sign of relationship issues with his fellow Coast Guardsmen. The applicant alleged that his PTSD interfered with his ability to receive negative cues from female personnel, which led to the two complaints filed against him and his separation.

The applicant argued that because he suffered from PTSD, the Board should follow the guidance of the Under Secretary of Defense and not only upgrade his discharge, but refer him to the PDES.

***c. The ASB relied on perceptions and innuendos derived therefrom against the applicant, not facts to find misconduct and recommend separation.***

The applicant argued that an objective review of the investigation into his sexual harassment and/or creating a hostile work environment will reveal statements from witnesses that provided no context behind his statements or actions. The applicant further argued that to conclude his statements were meant to be sexual in nature, a person must have a foundation to believe that the applicant intended those statements to be sexual in nature. The applicant alleged that none of the witnesses provided supporting evidence that the applicant's statements to the female service members were intended to be sexual in nature; the female members simply took them that way.

---

<sup>6</sup> Although the applicant references DoD memoranda, the Coast Guard is not bound by the guidance from the DoD, but instead applies the liberal consideration guidance issued by the Department of Homeland Security.

According to the applicant, many of the instances where he was accused of sexual harassment can be explained as the female service member misunderstanding what the applicant said because he was accused of speaking low. The applicant alleged that one of his accusers said he greeted her by saying, "hey sexy," but his accuser's last name, when said in a low tone, could have been misheard as "hey sexy" because the two sounded similar. The applicant alleged that the accuser admitted she was not sure what the applicant said.

According to the applicant, many of the allegations that the ASB focused on were his interactions with a female seaman, SN D. The applicant alleged that SN D had previously complained of inappropriate comments or sexual harassment of another Coast Guardsman from another command. The applicant stated that at one point he noticed that the toes of SN D's boots were scuffed, which led him to the conclusion that she must have been working hard on her knees. The applicant contended that there was nothing sexual about this comment about her working on her knees a lot, unless one chose to believe it was sexual in nature. The applicant stated that the fact is, part of SN D's duties required her to be on her knees, on the non-skid deck of the boat. The applicant argued that his comment was completely appropriate given the circumstances. It was also a subtle way of notifying SN D that she needed to get her uniform squared away.

The applicant further alleged that the comment about the size of SN D's throat was also not sexual in nature. The applicant contended that this question was rooted in the fact that during training, other service members with small throats had been unintentionally choked out. The applicant argued that SN D misunderstood his comments. In addition, the applicant argued that SN D's allegation that he brushed/touched her ponytail was just a misunderstanding. The applicant alleged that he was carrying a box in his hands, which may have brushed SN D's ponytail. Since SN D's back was turned to the applicant, he argued, SN D cannot say for certain if the touching of her ponytail was intentional or incidental.

The applicant argued that the ASB took these misconstrued statements as evidence of misconduct. The applicant alleged that the ASB made assumptions of his intentions, without any supporting evidence, and determined that the statements he made were sexual in nature, when according to him, they were not. The applicant contended that the statements are only sexual in nature if you have the proper context to support it or if you have a sexually perverted mind. The applicant argued that there was no context to support the idea that the applicant's statements were anything other than appropriate workplace comments.

The applicant argued that it was a great injustice to separate him for misconduct based on innuendos and people with perverted minds.

To support his application, the applicant submitted copies of his Coast Guard Electronic Personnel Data Record (EPDR), information about himself and his family, including how many children he has, where he grew up, his exposure to gangs, why he entered the Coast Guard, and photos of himself with his family. The applicant also submitted the following Department of Veterans of Affairs (DVA) medical records:

*Mental Health Records*

- On February 14, 2016, following the investigation of the alleged sexual harassment, the applicant called a suicide crisis line and was encouraged to go to the hospital, which he did. He was subsequently admitted for approximately ten days for inpatient treatment.

The applicant received an emergency psychological evaluation where he stated he had thoughts of suicide. The Comprehensive Psychiatric Emergency Program (CPEB) stressor was described as “Legal.” The treating physician stated that the applicant’s recent stressors contributing to his increased risk were “relationship break-up, family conflict, job loss and legal troubles, in addition to the applicant’s increased use of alcohol.” The physician further stated in his report that the applicant’s level of chronic risk due to non-modifiable risk factors was low. However, the applicant’s current risk was high, and hospitalization was recommended.

- On February 14, 2016, the physician spoke with the applicant’s wife who stated the applicant had become increasingly depressed and verbalized wishes he was dead. The wife reported that she and the applicant had separated about a month prior and that the applicant had been staying in their oldest child’s room. The wife further stated that she had informed the applicant she did not wish to celebrate Valentine’s Day with him and that the only reason she allowed him to sleep in the bed was so that she could keep an eye on him. The wife explained that the reason for the separation was the applicant informing her the previous month that he was being investigated at work for sexual harassment, an investigation he had known about since November 2015. The wife informed the physician she was not sure if the allegations were true, but the applicant had been accused of sexual harassment once before, in 2014, while living in another state.

The applicant’s wife told the physician that the applicant’s drinking had recently increased, but that he did not have a history of drug or alcohol abuse. The wife stated that the applicant had never been a drinker, but had started drinking socially during the last two years and became very irritable when drinking. She was not sure what he would do in an intoxicated state. The wife told the treating physician that she would have safety concerns if the applicant was discharged from the hospital and that she felt he needed inpatient care.

- On February 23, 2016, the applicant’s treating psychiatrist referred the applicant for psychological testing, in order to obtain diagnostic clarity, in addition to assistance with treatment and discharge planning. During the evaluation, the physician spoke to the applicant about certain claims the applicant had made to emergency room personnel. Specifically, the physician asked the applicant about claims that he was frequently consuming alcohol, had ideas of taking his life, and had vague ideas of acting aggressively toward others. The applicant stated that he had never told emergency room personnel any of those things and that he did not have the opportunity to converse with any staff at the emergency room.

The physician reported that the applicant presented as alert, attentive, and cooperative, and did not endorse thoughts, intentions or plans to harm himself or others. It was noted that

the applicant did not present an imminent risk for suicide or homicide and that his thinking was organized, and reality based. There were also no indications of delusions or hallucinations. The physician's diagnosis was that the applicant's behaviors were consistent with Acute Adjustment Disorder with mixed anxiety and depressed mood. Based on these results, the physician recommended that the applicant receive individual psychotherapy to treat the Adjustment Disorder and to learn about adaptive coping skills; continue psychiatric medication to treat the Adjustment Disorder; continue group psychotherapy; and be provided with psychoeducation to help better understand the role of complementary and alternative medicine in one's recovery.

- On October 3, 2016, the applicant visited his treating mental health physician for the fourth time.<sup>7</sup> The physician stated that the applicant held a history of Major Depression Disorder: Moderate Recurrent, and had reported symptoms of PTSD. It was noted that during this interview the applicant began discussing his military experiences, in a modified Current Procedural Terminology (CPT) format, to help the applicant process his experiences and identify his core beliefs. The applicant explained how the decision of the ASB was to separate him with a General characterization, but that his attorney was going to try and appeal the decision and get his discharge upgraded. The visit was focused on the applicant's military experiences and how they had shaped him, changed him, and impacted him. He told the physician how he left the southside of his home city without telling anyone, not even his family, to join the Coast Guard. He just left one day, and no one had known where he was or what happened to him. The applicant explained that from 1999 to 2008 "everything was great." He stated that he felt very close to his coworkers and subordinates and that he was doing work that was meaningful and purposeful, such as saving lives in Search and Rescue. The applicant further explained that he was stationed back in his home city for about six years, but after he was transferred to a new unit in another state, things started to get bad for him in the military. According to the applicant, he had a supervisor who wanted to advance his own career by getting others into trouble, but that he did not ascribe to that same value system. The applicant claimed that when he helped to get his subordinates out of trouble, this would upset his supervisor, which resulted in him getting into trouble with his command. The applicant stated that this was the beginning of the end for him and that he believed his higher-ups were out for him, regardless of where he was stationed. The applicant alleged that after 2008, the value system and the culture of the Coast Guard changed and he was no longer in line with this new system, because it went against his own personal value system. He stressed that he became more and more distant, withdrawn, and distrusting of the new system and others around him. The applicant claimed that these feelings were heightened when he became desensitized and numb to his work as a Search and Rescue member because of the dead bodies recovered and human tragedy he experienced. He told his physician that these last incidents<sup>8</sup> were very hurtful because he perceived them as an attack on his own character and felt very betrayed by everyone and the system.

---

<sup>7</sup> The BCMR does not have records of his first three visits.

<sup>8</sup> The applicant is unclear about what the applicant means by "last incidents," but it can be inferred that he means the allegations of sexual harassment and his subsequent discharge.

- On October 17, 2016, the applicant went for his fifth session with his mental health physician. The applicant and his physician agreed that the biggest issue impacting his life at that time were his feelings of betrayal and mistrust stemming from his military experiences. The applicant was unsure how his marriage would be affected, stating some days are good and some days are bad. According to the applicant, his wife was waiting to see how the applicant's appeal went before deciding whether to stay or leave the applicant. The applicant stated that if his wife chose to divorce him, she would do what he did when he joined the Coast Guard, when he just left and did not tell anyone. The applicant claimed he would stop by and see his kids "every now and then," but for the most part he would "be gone." The physician attempted to "tap" into those deep feelings of hurt, but the applicant was too guarded and would not allow himself to be emotionally vulnerable.
- On October 31, 2016, the applicant met with his mental health physician wherein it was noted that the applicant had a history of Major Depressive Disorder: Moderate Recurrent and reports symptoms of PTSD. The session focused on the applicant's return to the civilian workforce. The applicant reported feeling anxiety, panic, anger he felt mostly in his chest.<sup>9</sup> During the session, the applicant brought up the negative consequences of his discharge, but stated that the verdict was still out on appeal. The physician reported that the applicant was overall open to what was discussed and that there was no evidence or reports of suicidal thoughts or harm to others.
- On November 7, 2016, the applicant visited his mental health physician where the notes were almost identical to the last session's notes, except that the applicant was not allowing himself to consider that the ASB outcome might be favorable because he was afraid of being let down if the ultimate disposition was not in his favor. The applicant also discussed how the waiting period was even more difficult and caused more anxiety because he felt as though he was just waiting to hear the worst scenario. In addition, the applicant noted that there was not much he could do until he knew what the Coast Guard was going to do, which he stated kept him in a lose/lose scenario.
- On November 14, 2016, the applicant met with his mental health physician for his routine visit. The applicant informed his physician that he was coping with the stress, for the most part, by keeping busy and distracting himself from his worries and concerns. He stated that he felt he needed coping skills training more than anything in order to help him get through this transition period and feels that group modality would be most beneficial in this process. Individual sessions were agreed to on an as needed basis.
- From November 28, 2016, through July 31, 2017, the applicant participated in group therapy where the health provider made weekly notes as to the applicant's progress or mental health status.<sup>10</sup> The applicant's mental health provider's notes were similar to the previous week's, reporting that the applicant was being separated which was causing him a great deal of stress and tension in his marriage. In addition, the applicant stated that his time spent in search and rescue has left him with many traumatic images and memories

---

<sup>9</sup> Certain portions of the medical record were not legible and are therefore not summarized here.

<sup>10</sup> Beginning here, the applicant's mental health care provider's notes were similar from week to week, with little to no variation in her comments. As such, these notes were summarized together for efficiency.



that he deals with on a regular basis. The group was reading “Mindfulness Based Cognitive Therapy” to gain tools to help the veteran identify his thought process and the work to redirect it towards things in his life that are working for him/her. Overall, the applicant was noted as being an active participant in the group sessions. The applicant continued to show interest in learning how to cope with the various life stressors he encounters. The mental health care provider noted that the applicant was diagnosed with Major Depressive Disorder: Moderate and also noted that the applicant’s claims of PTSD needed to be ruled out.

- On August 18, 2017, the applicant called his mental health care provider and informed her that he would be receiving a General—Under Honorable Conditions discharge characterization. He told her he was not sure what that meant and did not know what benefits he would be able to keep with a General discharge or whether he would be able to have a pension. The applicant processed his feelings with his provider, who noted that he sounded “contained.” The applicant stated that he had gone through various emotions but was feeling more grounded at the time of their conversation. The provider stated that the applicant had not reported any suicidal or homicidal ideations. The applicant stated that he intended to speak with his Lieutenant the following Monday about what his General discharge meant.
- On August 21, 2017, during an individual therapy session, the applicant told his mental health care provider that his General discharge meant he would not be permitted to retire. The applicant expressed anxiety about his family’s future and his intent to fight the discharge and the loss of educational benefits. The provider tried to answer some of the applicant’s questions and provided the applicant with other contacts and resources such as the State’s Department of Labor website.

### SUMMARY OF THE RECORD

The applicant enlisted into the United States Coast Guard on March 9, 1999.

During the applicant’s Coast Guard career, he received 13 negative CG-3307s (“Page 7s”), in addition to other written forms of performance counseling, such a memoranda. The negative counseling pages pertinent to the applicant’s case are as follows:

- On November 18, 2008, the applicant received a memorandum “Performance Counseling.” The memorandum served as an official record of a counseling session conducted to discuss the applicant’s performance since he reported to the unit on June 17, 2008. The CO meant to reestablish his expectations for the applicant’s performance and address areas where immediate improvement was expected. Specifically, the applicant was counseled for failing to become certified at the boat crew and coxswain positions. The applicant’s CO told him that these certifications were considered to be priority over all other duties, yet despite this warning, the CO had to bring the applicant into his office six times to discuss the applicant’s lack of initiative and progress towards achieving the goal of certification. The applicant was reminded that under the Boat Operations and Training Manual, COMDTINST M1614.32B, Command Cadre

personnel are required to certify within a reasonable amount of time, which is defined as six months. The CO noted that the applicant was approaching 5 months and was still not certified as required by policy. During previous counseling sessions, the applicant's CO had repeatedly commented on the applicant's need to get underway more regularly with their boat crews. According to the CO, since the applicant's arrival in June of 2008, the applicant had only achieved 46 hours underway, compared to another service member who had achieved 154.6 hours underway during the same period. Despite the CO's repeated counseling, the applicant was accused of continuing to leave work early or shortly after normal liberty, even when the applicant's boat crew was still underway.

The CO concluded his counseling by stating that he had attempted to determine if there were other issues preventing the applicant from focusing on his qualifications. In an attempt to assist the applicant, the CO greatly reduced the number of administrative tasks that the CO would normally send to the XPO for completion. In addition, at the applicant's request, the CO also stopped sending the amount of email traffic normally routed to the applicant. The CO stated that he asked the applicant several times how the applicant and his family were doing with the move to the area, and attempted to discover any other issues at home that may have required attention, but found none. The CO also found no other evidence that the applicant was not receiving the necessary attention from the qualified crew members when the applicant approached them for assistance. As such, the CO concluded that he could not find any reason for the applicant's lethargic attempt to satisfy his core responsibilities. The applicant was encouraged to take immediate stock in his actions and correct any deficiencies. The CO finally warned that the consequences for failing to certify were grave and would certainly result in Relief for Cause.

- On December 8, 2008, the applicant received a negative Page 7 for his performance as Coxswain during an evolution the previous weekend. According to the Page 7, the applicant had struggled with "logging into the positioning computer and with checking the boat out of the ALMIS system. This caused a delay in launching of nearly two hours. Once underway, you continued to struggle with the positioning software and spent most of the time on the phone with off duty crew seeking assistance." The applicant's authority for positioning aids was suspended until he could demonstrate proficiency to his CO.
- On April 6, 2009, the applicant received a negative Page 7 for his behavior and performance when acting as Officer in Charge (OIC) during the CO's absence on March 30, 2009. According to the applicant's CO, the CO had been unable to contact the applicant over the weekend concerning a discrepancy. The applicant was reminded that as the Acting OIC, he had a duty and responsibility to make himself available via telephone. When the CO directed the Engineering Petty Officer (EPO) to address the situation with the applicant, the applicant "looked directly at the Chief and said 'F\*\*k You!'" The CO told the applicant that not only was his behavior shocking, but it was also in direct violation of Article 91 of the UCMJ.<sup>11</sup> As a result of the applicant's

---

<sup>11</sup> Article 91, Uniform Code of Military Justice, Insubordinate Conduct Toward Warrant Officer, Noncommissioned Officer, or Petty Officer.

behavior as Acting OIC, his CO rescinded the applicant's recommendation for advancement to Chief Petty Officer.

- On April 8, 2009, the applicant received a negative Page 7 for failing to timely submit Enlisted Employee Reviews (EERs) for his subordinates, as required- by Article 10.B.4.C. of the Coast Guard Personnel Manual, COMDTINST M1000.6A. Within this Page 7, the applicant's CO stated, "I have urged you several times to develop a system to assist you with remembering what tasks are expected of you. As these efforts have not been successful, I am forced to keep a separate work list of pending assignments awaiting your action, which I re-send to you once a week."
- On May 4, 2009, the applicant received a negative Page 7 for failing to follow established procedures for making purchases with unit operating funds. According to the applicant's CO, the applicant submitted a requisition directly to supply for 2500 daylight control switches (DLCs) used in minor aids to navigation. The applicant was counseled because the equipment, which totaled nearly \$2,000, was submitted as an emergency requisition, but the purchase was not only unauthorized, but also unnecessary. The CO stated that the number of DLCs ordered by the applicant was more than his unit would use for the next seven years. Finally, the CO reminded the applicant that he had been counseled in the past for submitting milstrip requisitions without his CO's authorization and that adherence to micro purchasing guidelines was not optional. The applicant was warned that further conduct would be investigated and disposed of at an Article 15, Captain's Mast.
- On May 26, 2009, the applicant received a negative Page 7 for failing to attend a Change of Command Ceremony after being ordered to attend by his CO and then lying to his CO about why he failed to attend. According to the applicant's CO, the applicant told him that he did not attend the ceremony because he was at the Storekeeper's shop working on a finance issue. When the CO asked the Chief about the applicant's reasons for not attending, the Chief stated that the applicant had returned well before the ceremony started. The Chief further stated that he had just eaten lunch with the applicant, who was not in Tropical Blues, and made no mention of needing to attend the event. The CO counseled the applicant because the applicant's statements were not supported by the facts laid out before him. The CO stated that since the applicant's arrival to the unit in June of 2008, the applicant had received a "string" of CG-3307 entries for failing to follow and enforce unit and Commandant instructions. The CO ended the counseling by informing the applicant that his behavior had become so severe, he has not allowed him to act as OIC during the CO's last two TAD assignments.
- On May 30, 2012, the applicant received a negative Page 7 for not completing the required qualification of 25 RBS Coxswain. The applicant was required to complete the certification requirements prior to May 1, 2012, but failed to do so after being given three opportunities to pass. The applicant was subsequently put on a modified work schedule until he passed the required qualifications.

- On June 18, 2012, the applicant received a negative Page 7 for not completing the required qualification of 25 Coxswain, as required by the May 30, 2012, Page 7. The applicant was subsequently put on a three-month probationary period, ending September 10, 2012.
- On September 5, 2014, CGIS was notified by the CO of the applicant's station that he received a report that the applicant allegedly touched another female service member, SN R, without her consent, in addition to making inappropriate comments to other service members. Other service members within the applicant's unit were interviewed, but no one saw the alleged touching. During her interview with CGIS investigators, SN R stated that while she was sitting at a desk in the training office, the applicant had approached her and put his hands on the back of her neck. SN R claimed that when he touched her, she had jumped back because she was startled. The applicant asked, "Did I scare you?" to which SN R replied, "Yeah, like your hands are cold." SN R alleged that the applicant stated, "Oh, that's f\*\*cked up! You're saying my hands are cold and clammy." SN R answered by saying, "No, I didn't say that. I just said that your hands are cold and it's weird." According to SN R, the applicant left, but returned a short time later and touched her neck again, at which point SN R told the applicant "What are you doing?! Stop, like don't touch me." SN R claimed the applicant just laughed it off and sat down at his desk. SN R acknowledged that there were no witnesses to the touching. SN R also stated that she did not consider herself a victim, but believed the applicant should not have touched the back of her neck. Throughout the course of the investigation, it was revealed by other female service members that the applicant had made inappropriate comments about his sexual relationship with his wife, possibly greeted another service member by saying, "Hey Sexy," and hugged other female service members and made them feel uncomfortable. When the applicant was interviewed, he stated he did not recall touching SN R on the back of her neck.
- On January 20, 2015, the applicant's CO filed a Memorandum, "Chiefs Counsel Request," wherein the CO requested guidance and mentorship from the Chiefs' Counsel for the applicant to ensure he is "absolutely clear as to what is acceptable professional behavior that is respectful and what is not acceptable." According to the memorandum, the applicant was accused of inappropriate conduct toward another service member. According to the CO, an investigation had not revealed any misconduct, sexual harassment, or sexual assault, but the investigation still found that the applicant had exhibited some behavior that was unprofessional and disrespectful. Specifically, the investigation revealed that witnesses had reported that the applicant came across as "somewhat creepy," and when interacting with others, his demeanor was inappropriate. For example, he put his hands on a female subordinate's neck for no legitimate reason and discussed his marital sex life with a female petty officer until she told him it was inappropriate. The CO stated that the applicant needed to understand that his actions were not acceptable and did not meet the Coast Guard's Core Value of Respect. The CO further stated that if the applicant repeated this behavior, or went a bit further, he might cross the line of misconduct. Finally, the CO requested that a panel of three or four service members of E-7 grade (Chief) or higher be convened to hear

the applicant's side of the allegations and to use the information gathered to ensure this kind of behavior would not happen again in the future.

- On February 2, 2015, the applicant received a negative Page 7 about his lack of military bearing, professionalism, and judgment for the period of September 2013 through July 2014. The applicant was counseled for multiple occasions during which he was observed making comments towards junior enlisted members and creating a workplace environment contrary to the Coast Guard's Core Values, primarily Respect. The applicant was admonished for this behavior and reminded that this kind of behavior was not acceptable by any member of the Coast Guard and would not be tolerated. In an effort to both mentor and support the applicant, his CO had referred him to Chiefs' Counsel. Finally, the applicant was cautioned that any future incidents of a similar nature might result in further administrative or disciplinary actions. The applicant refused to sign this Page 7.
- On February 10, 2015, the Chiefs' Counsel submitted a Memorandum, "Chief Petty Officer Counsel Recommendations," wherein they found that the applicant needed to understand and work on professionalism, especially as a supervisor and Training Petty Officer. The Chiefs' Counsel stated that the applicant took accountability for his actions as a leader and understood the perceptions his actions can lead to. The Chiefs' Counsel stated it believed that the applicant, through self-awareness, would learn from the experience and will be respectful to all members, up and down the chain of command. They also stated that because the applicant had displayed accountability and responsibility, these types of situations would likely be avoided in the future. The applicant was instructed to review the Coast Guard's Leadership Competencies, focusing on the areas of "Leading Self and Leading Others." Finally, the Chiefs' Counsel found that the applicant needed a mentor outside of his chain of command, assigned from the Chiefs' Mess.
- On July 29, 2015, the applicant received a memorandum for "Unsatisfactory Performance," wherein he was counseled for his failure to recertify as Coxswain. According to the memorandum, the applicant did not recertify in a timely manner, so was given another six months to recertify, but failed to recertify within that timeframe as well. The memorandum stated that the applicant had failed four oral boards administered by the Boat Crew Examination Board. Specifically, the applicant failed to demonstrate an understanding of coxswain authority, Search and Rescue policy, operational limitations of the vessel, and could not effectively calculate time/speed/distance for a basic navigational scenario.

The applicant was also counseled about his failure to qualify as a Boarding Officer, or Boarding Team Member, which was required by his billet. The memorandum stated that the applicant's command recommended that the applicant attend a two-week Board Officer Practical Course, in lieu of a five-week course, but the applicant had failed to submit an electronic training request. The applicant also failed to complete the required Fisheries Training Course, a requirement for fisheries enforcement. The applicant was given a six-month window for improvement and to obtain the necessary certifications.

On September 25, 2015, the applicant's Sector CO issued a Memorandum, "Investigation into the Circumstances Surrounding Allegations of Sexual Harassment," wherein he appointed a single officer to conduct an informal administrative investigation under Article 4 of the Administrative Separations Manual, COMDTINST M5830.1A, and Military Justice Manual, COMDTINST M5810.1E. The investigator was instructed to investigate the circumstances surrounding allegations of sexual harassment involving the applicant. The CO ordered that should the investigator identify a member or members whose actions required them to be held accountable, the investigator was to recommend appropriate administrative or disciplinary action.

On October 27, 2015, an 18-page Memorandum, "Preliminary Inquiry into Allegations of Sexual Harassment," was submitted wherein the results of the administrative investigation were released. In summary, the preliminary inquiry concluded that the applicant had sexually harassed a junior member of his command on at least five occasions during January, February, August, and September of 2015. The following Findings of Fact were provided:

***Frisk.*** On an unspecified date in February 2015, a junior female member of the applicant's command, herein known as SN D, was in a liberty status and alone in the training room studying. While studying, SN D was approached by the applicant, who asked her how she felt about obtaining a Board Team Member (BTM) qualification, and if she felt confident in her abilities to perform the duties that come with the qualification. The applicant then asked SN D to "frisk" his person to practice a search for evidence, contraband, etc. SN D described the applicant's demeanor during this encounter as "creepy" and uncomfortable. The applicant's request that SN D frisk him came in a non-training environment and during SN D's liberty time. In addition, SN D was not actively "breaking in" as a BTM and had not yet reached that process in her overall qualifications. Finally, at the time of the applicant's inquiry, the applicant was not certified to give law enforcement training.

***Esophagus.*** On an unspecified date in February 2015, while SN D was sitting at a desk, the applicant approached her and asked her about the size of her esophagus. Specifically, the applicant asked SN D if the size of her esophagus was big. SN D stated that at the time of the applicant's question, she had no idea why he was asking it, and he provided no meaningful explanation as to why he was asking the question. The investigator stated that asking a service member the size of their esophagus is not standard practice and has no relevance in the law enforcement training program. The investigator also stated that despite the applicant's contention that he had asked other law enforcement trainees the same question, none of the three past non-rates whom the applicant identified as having been asked this question by him had any memory of the applicant ever asking them such a question. In addition, none of the three non-rates ever remembered the applicant providing them with law enforcement training, but instead remembered attending training with the applicant as a student.

***Body Piercing.*** On August 18, 2015, SN D was grabbing her evening meal from the galley while wearing civilian clothing that revealed her navel piercing. After everyone else had left the galley, the applicant and SN D began a conversation. During that conversation, the

applicant asked SN D if she had any body piercings below her belly button. SN D explained to the applicant that she had multiple ear piercings. She did not discuss any other piercings.

**Ponytail Flicking.** On September 20, 2015, the applicant made unwanted physical contact with SN D while she was filling her water bottle after a workout wearing civilian clothing. SN D alleged that the applicant flicked her ponytail while her back was turned toward him. SN D stated that she immediately felt uncomfortable and sought a room with other service members so she would not be alone with him. SN D concluded that her past interactions with the applicant had given her reason to believe that his contact with her hair was sexual in nature.

**Worn Boots.** On September 21, 2015, while in the galley, the applicant made a comment to SN D regarding the state of her service boots. SN D stated that the applicant asked her what caused the composite toe to show through the leather on both of her boots. SN D explained that her boots looked that way because of the hard work she does at the unit. The applicant stated that he had never seen service boots look like that before and said something to the effect of “looks like you’ve been spending too much time on your knees to me.”

On September 22, 2015, while underway, SN D had confided in a petty officer about the conversation regarding her boots with the applicant the day before.

On September 23, 2015, the petty officer reported the applicant’s alleged sexual harassment to a chief petty officer, who then reported the incident to the Officer in Charge (OIC) of their unit. After the applicant became aware of SN D’s report, he engaged in conversations with other members of the unit in a manner that suggested SN D was somehow at fault for reporting her concerns to the Command.

The investigator noted that the applicant held no certifications as a law enforcement instructor; nor did he hold any law enforcement qualifications or certifications. He concluded that the applicant had violated Article 93 of the UCMJ<sup>12</sup> in that he maltreated SN D through sexual harassment. It was also the investigator’s opinion that the applicant violated Article 128 of the UCMJ<sup>13</sup> when the applicant made nonconsensual contact with SN D. According to the investigator, if upon further review, it was revealed that the applicant made such contact with SN D to sexually gratify himself, then it was his opinion

---

<sup>12</sup> Article 93—Cruelty and maltreatment.

a. “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.”

b. *Elements.* (1) That a certain person was subject to the orders of the accused; and (2) That the accused was cruel toward, or oppressed, or maltreated that person.

c.2. *Nature of the act.* The cruelty, oppression, or maltreatment, although not necessarily physical, must be measured by an objective standard. Assault, improper punishment, and sexual harassment may constitute this offense. Sexual harassment includes influencing, offering to influence, or threatening the career, pay, or job of another person in exchange for sexual favors, and deliberate or repeated offensive comments or gestures of a sexual nature. The imposition of necessary or proper duties and the exaction of their performance does not constitute this offense even though the duties are arduous or hazardous or both.

<sup>13</sup> Article 129—Assault.

that the applicant had also violated Article 120 of the UCMJ<sup>14</sup> for making sexual contact with SN D.

It was the investigator's opinion that the applicant had created an uncomfortable and potentially unsafe working environment for SN D and had then attempted to discredit SN D's status at the station after he learned about the preliminary inquiry.

Finally, the investigator recommended that the applicant be removed from the unit because he had created a hostile work environment for SN D and the crew. The investigator also recommended that the situation be referred to Coast Guard Investigative Services (CGIS) for further investigation and that the initial disposition of SN D's allegations be referred to the applicant's District command.

On December 7, 2015, the applicant was reassigned to another unit while the investigation concluded.

On June 10, 2016, the applicant's new CO, a Sector Commander, issued a Memorandum, "Notice to Respondent: Involuntary Separation," wherein the applicant was given formal notice of the Coast Guard's intent to involuntarily separate the applicant. The reasons given for the applicant's involuntary separation were Article 1.B.17.b.2.—Pattern of Misconduct, of the Military Separations Manual, and Article 1.B.17.b.3.—Commission of a Serious Offense, of the Military Separations Manual, COMDTINST M1000.4. Specifically, the applicant was accused of violating the Coast Guard's Sexual Harassment policy when he uttered numerous comments and committed multiple acts against junior female members at his two previous duty stations.

On June 10, 2016, the applicant signed the First Endorsement of the notification, acknowledging that if a General discharge was issued to him, the General discharge might deprive him of some rights and privileges available to honorably discharged veterans and that he might encounter some prejudice in situations where character of service may have a bearing. The applicant also asked to consult a military lawyer but waived his right to make a statement, with the option to submit a statement at a later time.

Sometime after June 15, 2016, the applicant submitted a Memorandum, "Exercise of Rights – Involuntary Separation," wherein he acknowledged consulting with a military attorney, waived his right to make a written statement, requested to appear before an Administrative Separation Board (ASB), requested a military lawyer to represent him, and asked that a member of the ASB belong to a minority group if possible.

On July 21, 2016, an ASB Scheduling Notice was issued wherein the hearing was set for August 18 and 19, 2016.

On August 3, 2016, the Convening Authority issued a "Convening Order – Involuntary Separation," wherein all necessary parties for the applicant's ASB were named and the ASB was officially ordered.

---

<sup>14</sup> Article 120—Rape and Carnal Knowledge



*Administrative Separation Board Proceedings*

On August 18 and 19, 2016, the ASB proceedings were held to determine whether the ASB would recommend the applicant's retention or discharge and, if the latter, what character of discharge. The government and the applicant presented their witnesses and evidence. Within the evidence package submitted by the applicant to the ASB, he included a personal statement. The following is a summary of his statement:

My name is [redacted] and I was born and raised on the south side of [redacted]. I grew up in a tough neighborhood surrounded by a lot of gang violence. I enlisted into the U.S. Coast Guard in March 1999 after I realized that I did not want my first born to grow up in the surroundings I did. I have seen too many of my childhood friends join gangs or killed at an early age.

...

In 2008, I started feeling symptoms of depression and PTSD. However, at the time, I did not understand why I was feeling that way and tried to suppress it. It started to affect my work and family as time went on. Eventually I was struggling to meet my qualifications and feeling full-blown anxiety. I felt numb to everything and found it hard to care about things like I used to. Earlier this year, I was hospitalized for 10 days to get treatment for my mental health. My psychiatrist diagnosed me with PTSD and major depressive disorder. The PTSD is related to some of the horrific things I have seen working out on the water, including pulling in dead bodies and seeing terrible accidents. I have been prescribed medication and am seeing my therapist regularly. I am also in PTSD support groups. All of this treatment is provided through the VA. I take my treatment very seriously and really want to become better so that I can continue to serve in the Coast Guard. I was also diagnosed with cancer earlier this year and had to have a large, tumorous melanoma growth removed from my chest.

This past year has been very tough. The investigations surrounding the sexual harassment are difficult because I never had any intention of making anyone feel uncomfortable. I have found young boys who mean the world to me and I always try to be professional. When I was stationed in [redacted], we had law enforcement training and performed a pressure point move called a jugular notch on an SN. He passed out during this move and stated that it was because he had a small windpipe. That is why I asked SN [redacted] and other trainees about their esophagus. Even though I was not the law enforcement training officer, I was still training officer and so I tried to be involved in all these trainings.

With the frisking comment, I was also trying to make sure that FN [redacted] was ready for the training she would eventually have to do. I asked her about many BTM qualifications, including shooting guns, searches, and frisking. I understand how my manner of asking FN [redacted] if she was uncomfortable with it could have been taken the wrong way and I regret that I approached the topics in the way I did. As far as the boots comment, I knew that the toes would rub through on boots if they are dragged across nonskid. I had no intention of making a sexual innuendo when I commented on the state of her boots. FN [redacted] and I were talking about her piercings. Again, I was trying to have a conversation and didn't mean for it to make her uncomfortable. I do not remember brushing up against her ponytail. I have learned that I need to speak with the utmost respect and consider my words before I speak. The Coast Guard means a lot to me and I want to serve as the most professional BM1 that I can be. I am very sorry to the coastguardsmen that I made feel uncomfortable and to the Coast Guard for all the trouble this has caused.

The applicant also submitted seven Character Statements, written on his behalf by fellow service members who worked with the applicant in the past. The statements are summarized as follows:<sup>15</sup>

---

<sup>15</sup> For efficiency, only those portions of the character statements that are relevant to the applicant's case will be summarized.

- The writer stated that he worked with the applicant for four years and only had positive interactions with him in a professional setting but did not know the applicant outside of work. The writer spoke to the applicant's love of being a family man, coaching his son's little league team, and raising twins. The writer expressed complete shock at the allegations laid against the applicant because the writer had never known the applicant to behave in such a manner while working with him. The writer further stated that he believed the applicant was an asset to the Coast Guard, but admitted that he was not sure of how the applicant's career had progressed since he had left the Coast Guard in 2007.
- A Chief Petty Officer (CPO), who claimed to have known the applicant for 10 years and to have at times spent three to four days together at the same duty station, stated that the applicant was always professional and a stand-up Coastguardsman. According to the CPO, as the Training Petty Officer, the applicant helped bring about some major changes to the unit's training program and spent many long hours on improvements and bringing the crew up to speed. The CPO further stated that the applicant was a superb coxswain and did a lot of sharing of his expertise. The CPO stated that the applicant always had excellent composure when receiving distress calls, which would in return calm the crew and help everyone better prepare and respond. The CPO explained that he and the applicant's families were close and had spent a lot of time together. According to the CPO, the applicant was a dedicated family man who loved his sons. The CPO stated that in his time stationed with the applicant, the applicant was always very respectful to the crew from his superiors right down to the newest members. The CPO further stated that when he learned the applicant was being separated for sexual harassment, it was very hard for him to believe that the alleged sexual harassment, whether perceived or actual, was done with true malice. The CPO continued that he has known the applicant to be a bit of a stickler and gruff at times, but never to the extent that he would risk his career or family.
- A Chief Boatswain's Mate (BMC) who had served with and was a good friend of the applicant's stated that he has known the applicant for 13 years and hung out together regularly while off duty. According to the BMC, the applicant was a hard-working shipmate and devoted family man, who always made time for his wife and kids. The BMC could not recall a time when the applicant did not stand up for his crew or his subordinates. The BMC explained that he was shocked to hear that the applicant was being separated for sexual harassment, but acknowledged that he did not know much about what happened, only that the applicant would never condone that kind of behavior. The BMC asked that the ASB consider retaining the applicant, if not for him, then for his family's sake.
- A Damage Controlman (DC) who had worked with the applicant for six months and claimed to have spent his entire workday with the applicant stated that the applicant was easy going, had a "plethora" of knowledge in the field of carpentry, had always shown initiative, and had always been willing to help. The DC stated that when he learned the applicant was being administratively separated, he was surprised.
- A CWO4 who stated he had known the applicant for 10 years and worked closely with him for two claimed to have always known the applicant to ensure fair and equal treatment for all subordinates who had ever worked with him. The CWO4 further claimed the applicant

displayed an excellent grasp of group dynamics during several key yard availability where he was sent as the deck supervisor. The CWO4 stated that the applicant always worked well with other deck force members, engineers, and sector personnel, and inspire cooperation among groups through personal example, resulting in outstanding work. Like others, the CWO4 stated when he heard the applicant was being separated, he was shocked. The CWO4 further stated that since his retirement in 2008, he had maintained regular contact with the applicant and believed he would be an asset to the Coast Guard.

- A lieutenant who had known the applicant since 2003 stated he was in disbelief when he heard the applicant was being processed for separation over the allegations of sexual harassment. The lieutenant claimed that the applicant was a well-respected trainer and mentor, and as the Training Petty Officer, had set a pathway for new crewmembers to become fully qualified.

On September 22, 2016, the ASB released its, "Board Report," wherein the ASB released 19 findings of fact, and 6 opinions in response to their findings. The relevant findings are as follows:

#2 – From June to September 2012, the applicant was placed on performance probation for failure to qualify as coxswain due to failing his DWO exam four times. This failure occurred prior to any of the alleged sexual harassment incidents.

#3 – In approximately November 2013, the applicant twice touched the neck of FS R without her consent. FS R told the applicant she did not want him to touch her, and disclosed separately that she did not feel that he should have touched her.

#4 – FS R was a member subject to the orders of the applicant because she was a junior petty officer and was within the same chain of command as the applicant. The offensive touching referenced in Finding 3 was done without legal justification or excuse.

#5 – The applicant touched the small of BM M's back while the two were alone on the military installation, without her consent. BM M stated that she felt that in touching her, the applicant was "testing boundaries."

#6 – BM M was a member subject to the orders of the applicant because she was a junior petty officer and with the same chain of command as the applicant. The offensive touching referenced in Finding #5, however slight, was done without legal justification or excuse.

#7 – In approximately March 2014, the applicant made an explicit comment regarding his sexual relationship with his wife to BM M. BM M felt the comment was inappropriate and it made her uncomfortable, so she quickly changed the subject.

#9 – On July 29, 2014, the applicant reported to a new duty station. The first allegations of sexual harassment were reported to Coast Guard Investigative Services on September 5, 2014.

#10 – On February 2, 2015, the applicant was counseled on, and the applicant refused to sign, a negative Page 7 advising him of the importance of creating a workplace environment consistent with Coast Guard values in light of the findings of the CGIS investigation.

#12 – In February 2015, the applicant questioned SN D on her readiness to be a BTM while alone with her in the command training room. During this conversation, the applicant told SN D to demonstrate her readiness by “frisking him.”

#13 – In February 2015, the applicant asked SN D about the size of her esophagus while SN D was sitting alone at a desk. At the time, the applicant gave no reasonable explanation for this question. The question had no relevance to law enforcement training.

#14 – On July 29, 2015, the applicant was placed on performance probation for failure to recertify as coxswain, failure to qualify as BTM or BO, and was relieved of his primary duties as Operations and Training Officer.

#15 – On August 18, 2015, SN D was in the galley in civilian clothes that exposed her midriff and a belly button piercing. Later, when they were alone the applicant asked SN D about the piercing and she attempted to redirect the conversation. The applicant then asked SN D if she had any piercings below her belly button, which made SN D very uncomfortable.

#16 – On September 20, 2015, SN D was in the galley filling a water bottle, with her back to the passageway, when she felt her ponytail flipped up, and when she looked up, she saw the applicant walking away. The applicant did not say anything to SN D.

#17 – The applicant had room to maneuver around SN D, but did not, and touched her purposefully. SN D was made to feel very uncomfortable by this interaction and she believed the touch was purposeful.

#18 – On September 21, 2015, the applicant commented on the condition of SN D’s boots, which were worn on the toe, exposing the composite underneath. The applicant then commented that it looked like SN D had been spending too much time on her knees.

#19 – SN D was a member subject to the orders of the applicant because she was a junior petty officer and within the same chain of command as the applicant. The offensive touching referenced in Finding 18, however slight, was done without legal justification or excuse.

#### OPINIONS

#1 – The applicant’s actions toward SN D constituted sexual harassment, thereby violating Commandant’s policy and Article 93 (Cruelty and Maltreatment), of the UCMJ.

#2 – The applicant’s actions toward SN D had constituted an Assault consummated by Battery in violation of Article 128 of the UCMJ.

#3 – The violations in Opinions 1 and 2 constituted serious offenses.

#4 – The applicant had displayed a pattern of behavior towards junior female enlisted members that violated Coast Guard Core Values, particularly Respect, and that together, constitute a clear pattern of sexual harassment.

#5 – The applicant had been made well aware that his actions with female crew members were perceived negatively, and that he needed to change his demeanor, yet his inappropriate treatment towards SN D persisted.

#6 – The applicant had repeatedly failed to demonstrate competence in core skills required of his rate, including failure to qualify as coxswain, failure to pass DWO exam, and failure to lead in positions of responsibilities.

#### RECOMMENDATION

The ASB consulted Chapter 7 of Enlisted Personnel Boards Manual, PSCINST M1910.1, and Article 1.B.1.d. of the Military Separations Manual, COMDTINST M1000.4. In so doing, the ASB found that a preponderance of the evidence supported a bases for separation under Article 1.B.17.b.3. of the Separations Manual. As such, the ASB’s recommendation was that it was in the Coast Guard’s best interest that the applicant be separated from the Coast Guard due to his pattern of behavior towards junior enlisted women, which taken together clearly constituted sexual harassment, as well as his repeated failure to display basic proficiency in the core competencies of his rate. The ASB further recommended a General characterization of service and that the applicant should not be permitted to remain on active duty until he could voluntarily retire from the Coast Guard in lieu of immediate involuntary separation. It was the ASB’s opinion that the findings of fact supported this recommendation.

On September 28, 2016, the ASB president issued a Memorandum, “Right to Review Administrative Board Report,” to the applicant, wherein he notified the applicant of his right to review and comment on the report for up to 7 calendar days. The applicant was informed that the purpose of the review period was to “preserve objections, submit rebuttal comments, and submit a statement of no objection.”

On October 5, 2016, the applicant submitted a Memorandum, “Respondent’s Review to Administrative Hearing,” wherein he documented his objections to certain portions of the hearing. His arguments are summarized as follows:

a. During the proceedings, the Silver Badge of Sector [redacted] was present for only the government’s case. There are two concerns with his presence. First, his presence results in a command influence that adversely affects me because it appeared as if the command took particular interest in my case and desired a specific result. Second, because the Silver Badge only sat in during the government’s case, it emphasized the

command's desired result to the board members. This also could adversely affect Sector [redacted] action on my package because a command representative only witnessed the government's case.

b. During Closing Arguments, the Recorder started by discussing his own personal mental health issues and how he managed to overcome them. This is inappropriate, irrelevant, and unfairly biased me because each person manages his or her mental health differently.

c. The members failed to consider the reasonable person standard when determining sexual harassment. For there to be a hostile work environment due to harassment, the harassment must be so severe and pervasive that a reasonable person would find the environment hostile, offensive, or abusive. Two of the complaining witnesses offered testimony refuting a hostile environment, as outlined below. Objectively, there was no hostile environment, and subjectively two witnesses stated there was no sexual harassment.

d. BM1 [redacted] testified that she did not have a problem with me, she would work with me again, she never felt bothered or threatened by me, and she never felt sexually harassed. BM1 [redacted] did not describe a hostile work environment.

e. FS3 [redacted] stated to CGIS that I never made sexual advances to her, when I touched her in a joking manner, and she does not believe I sexually harassed her. FS3 [redacted] did not describe a hostile work environment.

f. My questions to SN [redacted] about frisking and esophagus both related to law enforcement training. I asked these questions in my capacity as Training Petty Officer to ensure that SN [redacted] was ready for training. These were not sexual in nature and at the time, SN [redacted] did not perceive them as sexual harassment. SN [redacted] testified that her boots were scuffed because she was on the deck laying nonskid. My comment about the state of her boots was misinterpreted. SN [redacted] testified that she did not think much about the comments until she added them together. When SN [redacted] was asked if she was uncomfortable AFTER she made the report, SN [redacted] did not describe an environment that was uncomfortable during the alleged harassment, just after she filed a report. SN [redacted] did not report anything up the chain. SN [redacted] also did not ask the Second Class Petty Officer she told about her interactions with me to report me. SN [redacted] actions and testimony do not describe sexual harassment.

g. The board members did not consider the defense of accident relating to Article 128 for allegedly flipping SN [redacted] ponytail and the government failed to prove by a preponderance of the evidence that I touched SN [redacted] ponytail.

h. The board members did not give appropriate weight to the fact that my work performance issues were directly related to PTSD and major depressive depression that I suffer from and am currently in treatment for. Dr. [redacted] testified to the effect of PTSD and depression on my work.

i. My command failed to provide me with needed support during this difficult time on my career. Senior Chief [redacted] described me as a "dark cloud." He also described my nervous tendencies including a visible twitch and my request to bring a Rubix Cube into qualifying board to help with my anxiety. Despite these observations, Senior Chief [redacted] testified that he did not suspect any mental health issues and did not offer my any support, other than casually pointing out that services are available. Senior Chief [redacted] also leveraged my family over my head by saying that if I didn't improve, my family could suffer. This greatly increased my stress levels, as my wife and four boys depend on me.

j. The PTSD I suffer from is directly related to my work in the Coast Guard from pulling dead bodies out of the water, including a shipmate, and witnessing horrific accidents. The board members' decision to separate me is not in the best interests of the Coast Guard. It is not in keeping with our values of taking care of our own. The Coast Guard is not providing me with the resources that I need to recover. Veterans who suffer from PTSD is a serious issue that is receiving national media attention, but I feel in my case it is being ignored.

k. The board members' decision to separate me with a General discharge and deny any voluntary retirement is not commensurate with the alleged offense and my extensive years of service. The decision also completely disregards the effect of my mental health issues on my work performance.

l. I respectfully request that you retain me in the Coast Guard. Alternatively, I request that you allow me to submit a voluntary retirement package so that I can continue to receive mental health treatment.

On February 14, 2017, the applicant's Sector CO issued a First Endorsement wherein he concurred with the ASB's findings and recommendation that the applicant should be separated from the Coast Guard and that his character of service should be General.

On March 6, 2017, a Rear Admiral from the applicant's district issued a Second Endorsement, wherein he also concurred with the ASB findings and recommendations, namely that the applicant be administratively separated and that his character of service should be General.

On September 18, 2017, the applicant was discharged from the United States Coast Guard for misconduct with a General Discharge – Under Honorable Conditions and an RE-4 reenlistment code.

### **VIEWS OF THE COAST GUARD**

On March 30, 2021, a Judge Advocate (JAG) for the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the PSC.

The JAG argued that the applicant is not eligible for liberal consideration under 10 U.S.C. §1552(h) and as such, should not be applied to his case and request for an upgraded discharge. The JAG stated that because the applicant was found, by both the ASB and the separation authority, to have violated the Coast Guard's sexual harassment policies, which amounts to the commission of a serious offense, his case cannot be reconciled with the Department of Homeland Security's liberal consideration guidance.

The JAG argued that the applicant has failed to provide sufficient evidence to establish error or injustice in the manner of his discharge. Specifically, the JAG argued that under Article 1.B.1.e. and 1.B.12.a. of the Military Separations Manual, COMDTINST M1000.4, administrative processing for misconduct supersedes that of a disability evaluation processing. The JAG stated that the applicant elected to appear before and ASB and supplied evidence and witness testimony of his diagnosis, but even with this evidence, the ASB continued its recommendation of separation with a General discharge. The JAG argued that the board's findings were found legally sufficient, and its recommendation was accepted by the separation authority. According to the JAG, the applicant has not alleged error in the procedure or the due process of his administrative processing, and none can be found upon further review of the applicant's case.

The JAG further argued that the applicant's arguments that the Coast Guard committed an injustice when they discharged him for misconduct, instead of for PTSD, is without merit. The JAG claimed that the applicant argues that his PTSD caused his decline in performance and conduct, but the applicant's clinical notes indicate that the applicant's diagnosis was the result of the applicant's investigation and administrative processing for misconduct. The JAG argued that

while 10 U.S.C. §1552(g)(1) seeks to understand the nature of the service member's separation and whether this separation coincided with a mental health condition, 10 U.S.C. §1552(h)'s liberal consideration policy is reserved for those diagnosed with PTSD or traumatic brain injury when these conditions are "related to combat or military sexual trauma." The JAG argued that in the applicant's case, his diagnosis and condition did not arise as a result of combat or him being the victim of military sexual trauma. As such, the JAG claimed the applicant's allegations of an injustice are insufficient to overcome the presumption of regularity afforded to the Coast Guard.

To support his application, the JAG provided the following documents:

- A February 16, 2021, memorandum, "Medical Advisory Opinion ICO CG BCMR Docket No. 2020-151," wherein a Lieutenant Commander of the United States Public Health Services (USPHS) provided his medical opinions on the applicant's case regarding specific questions posed by the JAG. The memorandum is summarized as follows:

*Does the applicant have PTSD, Traumatic Brain Injury, other mental health conditions, or experienced a sexual assault or sexual harassment as documented in their medical and/or service record?*

The service member was diagnosed with an Adjustment Disorder, acute, with mixed anxiety and depressed mood on February 23, 2016. The stressor was identified as a sexual harassment investigation against him which was threatening his career. After a few days of inpatient care, his symptoms improved drastically and the treating provider at the time noted: "Within a few days of being hospitalized at the [redacted], he has presented with a relative remission of his symptoms, beyond what could be accounted for by starting a psychiatric medication for just a few days." This is indicative of an Adjustment Disorder. While still on active duty, he was diagnosed by the VA social worker with rule/out Major Depressive Disorder and PTSD, however, there was no clear identified traumatic event identified in the social worker's documentation. It appears that the focus of treatment was his ongoing sexual assault investigation and the consequences of being separated from the military. There was no evidence of mental health diagnosis, or treatment, prior to 2016, which was well after the sexual assault investigation began.

*Did the applicant have the above conditions/disorders/etc. while in military service (i.e., during the misconduct or circumstances leading to separation)?*

Mental health (MH) treatment began in FEB2016 while he was still in service. However, the diagnosis and treatment were focused on the consequences of the sexual harassment investigation on his career and future benefits. There was no evidence of mental health diagnosis or treatment prior to the second investigation or during the 1<sup>st</sup> investigation occurring a few years prior.

*Could the conduct (or circumstances) that led to the applicant's [separation, discipline, discharge, etc.] be symptomatic of, or otherwise related to, their condition(s) identified above?*

No, there is no known causation between Adjustment Disorder or any other mental disorder and sexual harassment.

*In your medical opinion, does the mental health condition or experience of sexual assault or sexual harassment excuse the conduct or poor performance that adversely affected the discharge?*

No, the service member was not the victim of sexual assault or harassment. He was accused of sexually harassing his subordinates. While he did seek MH treatment after the second allegation, the focus was on the stressor of being involved in a sexual harassment investigation. The focus of treatment was on his worry about getting out of the service and any negatively impacted benefits. He did not seek MH services during his first sexual assault allegation in 2013. Adjustment Disorder or any other disorder does not excuse the misconduct of sexual harassment.



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

On April 23, 2021, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited him to respond within thirty days. No response was received.

### APPLICABLE LAW AND POLICY

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.17.b.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.

...

**1.B.17.d. Discharging Members with More than Eight Years Service for Misconduct.** Commanding officers shall process all cases in which they contemplate a discharge under other than honorable conditions for misconduct as Article 1.B.23. of this Manual prescribes. In addition, they shall follow that Article's procedures if considering discharging any member with eight or more years of total active and inactive military service for misconduct, even if contemplating an honorable or general discharge.

Coast Guard Physical Disability Evaluation System's Manual, COMDTINST M1850.2C, Chapter 2.C.2.f.i. provides guidance for service members who may experience disabilities as a civilian, but not necessarily as a service member. It states the following, in relevant part:

The existence of a physical defect or condition that is ratable under the standard schedule for rating disabilities in use by the Department of Veterans Affairs (DVA) does not of itself provide justification for, or entitlement to, separation or retirement from military service because of physical disability. Although a member may have physical impairments ratable in accordance with the VASRD, such impairments do not necessarily render him or her unfit for military duty. A member may have physical impairments that are not unfitting at the time of separation but which could affect potential civilian employment. The effect on some civilian pursuits may be significant. Such a member should apply to the Department of Veterans Affairs for disability compensation after release from active duty.

Chapter 2.C.11. states the following about "Cases Involving Disability Evaluation and Disciplinary Action Concurrently":

a. Disability statutes do not preclude disciplinary or administrative separation under applicable portions of the Personnel Manual, COMDTINST M1000.6 (series). If a member is being processed for a disability retirement or separation, and proceedings to administratively separate the member for misconduct,

disciplinary proceedings which could result in a punitive discharge of the member, or an unsuspended punitive discharge of the member is pending, final action on the disability evaluation proceedings will be suspended, and the non-disability action monitored by the Commander, Coast Guard Personnel Command. (see Article 12-B-1.e., Personnel Manual, COMDTINST M1000.6 (series)).

b. If the court martial or administrative process does not result in the execution of a punitive or an administrative discharge, the disability evaluation process will resume. If a punitive or administrative discharge is executed, the disability evaluation case will be closed and the proceedings filed in the member's official medical record.

Title 10 U.S.C. § 1552 states the following with regard to liberal consideration of claims involving PTSD:

(g)(1) Any medical advisory opinion issued to a board established under subsection (a)(1) with respect to a member or former member of the armed forces who was diagnosed while serving in the armed forces as experiencing a mental health disorder shall include the opinion of a clinical psychologist or psychiatrist if the request for correction of records concerned relates to a mental health disorder.

(h)(1) This subsection applies to a former member of the armed forces whose claim under this section for review of a discharge or dismissal is based in whole or in part on matters relating to post-traumatic stress disorder or traumatic brain injury as supporting rationale, or as justification for priority consideration, and whose post-traumatic stress disorder or traumatic brain injury is *related to combat or military sexual trauma*, as determined by the Secretary concerned. (Emphasis added.)

(2) In the case of a claimant described in paragraph (1), a board established under subsection (a)(1) shall--

(A) review medical evidence of the Secretary of Veterans Affairs or a civilian health care provider that is presented by the claimant; and

(B) review the claim with liberal consideration to the claimant that post-traumatic stress disorder or traumatic brain injury potentially contributed to the circumstances resulting in the discharge or dismissal or to the original characterization of the claimant's discharge or dismissal.

On June 20, 2018, the Principal Deputy General Counsel of DHS, as the delegate of the Secretary, signed the "Guidance to the Board for Correction of Military Records of the Coast Guard Regarding Requests by Veterans for Modification of their Discharges Based on Claims of Post-Traumatic Stress Disorder, Traumatic Brain Injury, Other Mental Health Conditions, Sexual Assault, or Sexual Harassment." Under this guidance, when deciding whether to upgrade the discharge of a veteran based on an alleged mental health condition, the Board must liberally consider the evidence, including the applicant's claims, and decide whether the preponderance of the evidence shows that the veteran had a mental health condition while in the Service that could excuse the veteran's misconduct; whether the mental health condition actually excused the misconduct that adversely affected the discharge; and, if not, whether the mental health condition outweighs the misconduct or otherwise warrants upgrading the veteran's discharge.

## FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.

2. The application was 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 requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.<sup>16</sup>

4. The applicant alleged that the Coast Guard erred when it separated him for misconduct instead of granting him a medical retirement for service-related PTSD. 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>17</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>18</sup>

5. The applicant alleged that instead of being administratively separated, he should have been processed through PDES because of his PTSD. He alleged that if he committed any sexual harassment, which he denied, it must have been due to his PTSD. As explained below, however, the applicant has not persuaded the Board that (a) he was entitled to PTSD processing because of PTSD or another mental health condition; (b) the Coast Guard erred in determining that he had sexually harassed female subordinates at two different units; or (c) he was suffering from PTSD at the time he sexually harassed the female subordinates and the PTSD caused his sexual harassment of his subordinates. For the reasons explained below, the Board is not persuaded that the applicant is entitled to relief.<sup>19</sup>

a. **PDES Processing:** Although the VA awarded the applicant a 30% disability rating for PTSD based on his self-reported symptoms and experiences after his separation from the Coast Guard,<sup>20</sup> the applicant's military medical records cast substantial doubt on whether he was suffering from PTSD at the time of his separation. The applicant did not seek counseling until after he was being investigated and facing separation for sexual harassment. Moreover, when he did seek counseling, the identified stressor was the separation proceedings, not his past participation in search and rescue efforts. His mental

---

<sup>16</sup> *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

<sup>17</sup> 33 C.F.R. § 52.24(b).

<sup>18</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

<sup>19</sup> The Board notes that the applicant relied on inapplicable DoD guidance that is similar but not identical to the Board's own "liberal consideration" guidance and that the liberal consideration guidance applies to requests for upgraded discharges (including characterization and narrative reason) but not to requests for PDES processing, disability ratings, or constructive service for retirement.

<sup>20</sup> Physical Disability Evaluation System Manual, COMDTINST M1850.2C, Chapter 2.C.2.f.i. ("The existence of a physical defect or condition that is ratable under the standard schedule for rating disabilities in use by the Department of Veterans Affairs (DVA) does not of itself provide justification for, or entitlement to, separation or retirement from military service because of physical disability.").

health records following the initiation of his sexual harassment investigation show that the applicant was diagnosed with an Adjustment Disorder and Major Depressive Disorder because of the separation proceedings, not PTSD. The applicant received mental health treatment throughout the course of his sexual harassment investigation and the ASB process, yet he was never diagnosed with PTSD. There is evidence that they considered the diagnosis because the applicant claimed to have it and they wrote “r/o” (rule out) PTSD, but they did not make that diagnosis. Moreover, PTSD is not *per se* a disqualifying condition that triggers PDES processing. According to Chapter 5 of the Medical Manual, PTSD is only disqualifying for retention on active duty if doctors determine that the member’s prognosis remains poor after at least six months of treatment. The applicant’s military medical records, including the diagnoses of Adjustment Disorder and Major Depression due to his pending separation, are presumptively correct, and the applicant’s VA rating does not overcome that presumption.

Furthermore, even if the applicant had been sent through the PDES system due to a mental health disability, under Article 2.C.11. of the (PDES) Manual, COMDTINST M1850.2C, his administrative discharge for misconduct would have superseded and suspended the disability evaluation process. Under Coast Guard policy, disability statutes do not preclude disciplinary or administrative separation. If a member is subjected to “disciplinary proceedings to administratively separate the member for misconduct,” disability evaluation proceedings are suspended. If a punitive or administrative discharge is executed—which it was in the applicant’s case—the disability evaluation case is closed, and the disability proceedings are filed in the member’s official medical record. As such, under Coast Guard policy, any disability proceedings that might have been initiated on behalf of the applicant would have been suspended and ultimately closed as a result of the applicant’s administrative discharge proceedings. Therefore, the Board finds that the applicant has failed to prove by a preponderance of the evidence that the Coast Guard committed an error or an injustice when it failed to process him through PDES. As such, his request for PDES processing for a disability retirement should be denied.

**b. Sexual harassment:** The applicant argued that the ASB erroneously relied on perceptions and innuendos, not facts, to arrive at a finding of misconduct. He also argued that an objective review of the sexual harassment investigation would reveal that the statements from witnesses provided no context to show his statements or actions were inappropriate. According to the applicant, none of the witnesses provided supporting evidence to show that his statements were of a sexual nature. The Board finds the applicant’s arguments unpersuasive. Although the applicant also alleged that the encounters at issue here could be explained by a misunderstanding on the part of SN D, because at times, he speaks low, the applicant has admitted to asking the questions at the center of the investigation and defended his actions by arguing that his questions were motivated by a desire to help SN D in her professional career. The applicant contended that there was nothing sexual about his statements and his comments were “completely appropriate.” The Board disagrees. The applicant argued that he had law enforcement training in mind when he asked the applicant about the size of her esophagus, but the record is clear that the applicant was not a law enforcement trainer and had no authority to conduct such training on SN D. Nor did he explain how asking about the size of her esophagus was

appropriate in context. The applicant has not shown that asking SN D about the size of her esophagus had any applicable law enforcement purpose, and SN D was not at a point in her career where she was undergoing that training. Therefore, the Board finds that the applicant's question was both unprofessional and without excuse.

Regarding the applicant's statement about SN D's worn boots, specifically, "it looks like you've been spending a lot of time on your knees," the Board finds the applicant's statement to have been inappropriate and sexually suggestive. If, as the applicant contends, he was merely trying to drive home the point that SN D needed to bring her uniform back up to standards, he simply could have said so, without making the suggestive comment he did. Therefore, the Board finds that the applicant has not proven by a preponderance of the evidence that the investigator, his CO, and the ASB erred in determining that he had sexually harassed female subordinates.

**c. Alleged Effect of PTSD:** The applicant argued that while he denies having sexually harassed anyone, or making inappropriate comments, a change in personality is also a symptom of PTSD and so PTSD might have caused his alleged sexual harassment of two female subordinates. As noted above, however, the applicant has not proven by a preponderance of the evidence that he was suffering from PTSD when he sexually harassed his female subordinates. He did not seek counseling until he was being investigated and facing separation for sexually harassing his subordinates, and during his months of counseling, the identified stressor was the separation proceedings, not past search and rescue missions. Even if he did have PTSD when he sexually harassed his subordinates, the applicant has not provided any medical documentation that supports his claim that PTSD could have caused him to sexually harass subordinates at two different units. Moreover, the USPHS psychologist who reviewed the case pursuant to 10 U.S.C. § 1552(g) stated that "there is no known causation between Adjustment Disorder or any other mental disorder and sexual harassment." Therefore, even if the Board were to conclude, based on the applicant's history of poor performance and the later VA rating, that the applicant was suffering from PTSD due to his past participation in search and rescue missions when he sexually harassed his subordinates, that would not lead the Board to find that his sexual harassment was caused or excused by the PTSD.

**6. Discharge Upgrade Request:** The applicant also asked the Board to upgrade his General discharge to Honorable based on his many years of military service, and he submitted many character statements to support his request. The Board has reviewed the character statements and finds them unpersuasive. First, some of those who wrote on behalf of the applicant worked with him prior to the long-term decline in his performance evidenced by the many negative Page 7s in his military record. As such, they apparently could not have personally witnessed the applicant's decline in both work ethic and professionalism. Second, the ASB was also given the opportunity to review and consider these character statements and still recommended that the applicant receive a General discharge for misconduct.

Because the applicant is alleging that a mental health condition caused or contributed to the misconduct that resulted in his discharge, the Board's liberal consideration guidance applies to

his request for an upgraded discharge.<sup>21</sup> Under this guidance, when deciding whether to upgrade the discharge of a veteran based on an alleged mental health condition, the Board must liberally consider the evidence, including the applicant's claims, and decide whether the preponderance of the evidence shows that the veteran had a mental health condition while in the Service that could excuse the veteran's misconduct; whether the mental health condition actually excused the misconduct that adversely affected the discharge; and, if not, whether the mental health condition outweighs the misconduct or otherwise warrants upgrading the veteran's discharge. In this case, the preponderance of the evidence does not show that the applicant had any mental health condition at the time he sexually harassed his subordinates that might have caused or contributed to his sexual harassment of his subordinates. Even if he had PTSD at the time, there is no medical evidence supporting his claim of causation, and having PTSD would not excuse sexual harassment. The Coast Guard has a zero-tolerance policy when it comes to sexual harassment and sexual assault.

The preponderance of the evidence does show that the applicant was suffering from an Adjustment Disorder and Major Depression because of his pending discharge for misconduct at the time of his separation. The Board finds, however, that an adjustment disorder and depression caused by a pending separation for misconduct do not outweigh the misconduct or otherwise warrant upgrading the discharge. Therefore, the applicant's request for an upgraded discharge, including his characterization of service, narrative reason for separation, separation code, and reenlistment code, should be denied.

7. The applicant has not proved by a preponderance of the evidence that he should have been processed under the PDES and separated due to a physical disability. Nor has he shown that his General Discharge for Misconduct with an RE-4 reenlistment code was erroneous or unjust or that it should be upgraded under the Board's liberal consideration guidance. Therefore, the applicant's requests for relief should be denied.

---

<sup>21</sup> U.S. Department of Homeland Security, Office of the General Counsel, "Guidance to the Board for Correction of Military Records of the Coast Guard Regarding Requests by Veterans for Modification of their Discharges Based on Claims of Post-Traumatic Stress Disorder, Traumatic Brain Injury, Other Mental Health Conditions, Sexual Assault, or Sexual Harassment" (June 20, 2018).

**ORDER**

The application of former BM1 [REDACTED] [REDACTED] USCG, for correction of his military record is denied.

November 4, 2022

[REDACTED] [REDACTED]  
Digitally signed by [REDACTED] [REDACTED]  
Date: 2022.11.14 10:03:20 -05'00'

---

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]  
Digitally signed by [REDACTED] [REDACTED]  
Date: 2022.11.16 10:03:48 -05'00'

---

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]  
Digitally signed by [REDACTED] [REDACTED]  
Date: 2022.11.16 11:20:48 -05'00'

---

[REDACTED] [REDACTED]