

Case Summary
Office of the Judge Advocate General

DEFENDANT: CPO Seaman
TYPE OF PROCEEDING: Defence Force Magistrate
DATE OF TRIAL: 06-08 March 2023
VENUE: Garden Island, NSW

Charges and plea

	Statement of Offence	Plea
Charge 1	DFDA, s. 61(3) and Crimes Act 1900 (ACT), s. 60(1) Act of indecency without consent	Not Guilty
Alternative to Charge 1	DFDA, s. 34 Assaulting a subordinate	Not Guilty
Charge 2	DFDA, s. 60(1) Prejudicial conduct	Not Guilty
Charge 3	DFDA, s. 60(1) Prejudicial conduct	Not Guilty
Charge 4	DFDA, s. 61(3) and Crimes Act 1900 (ACT), s. 60(1) Act of indecency without consent	Not Guilty

Pre-Trial: Closed hearing and non-publication orders

Application made:	Yes. The prosecution applied under the <i>Evidence (Miscellaneous Provisions) Act 1991</i> (ACT), s. 50 for the hearing to be closed during the evidence of the complainant based on the nature of Charge 1 and 4.
Determination:	The application was unopposed and was granted.

Trial: Facts and legal principles

It was found proved beyond reasonable doubt that at a social event attended by various members, the offender while hugging a more junior sailor touched her indecently (charge 1 act of indecency); then made comments about her physical appearance and sexuality (charge 2 and 3 prejudicial conduct); then subsequently walked up behind where she was sitting touched her indecently again (charge 4 act of indecency).

Findings

	Finding
Charge 1	Guilty
Alternative to Charge 1	No finding required
Charge 2	Guilty
Charge 3	Guilty
Charge 4	Guilty

Sentencing: Facts and legal principles

On sentence, it was concluded the four charges were part of a course of conduct: which were all at the lower end of the scale of objective seriousness. Having regard to issues of general deterrence; lack of contrition

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insight or remorse; the need to maintain service discipline; the seriousness of each offence; and the subjective case relied upon; it was concluded that for charges 1 and 4 dismissal was the most appropriate sentence which could be imposed consistent with the sentencing principles; and a severe reprimand on charges 2 and 3.

Punishments and orders

Charge 1	Dismissal from the Defence Force
Alternative to Charge 1	N/A
Charge 2	Severe Reprimand
Charge 3	Severe Reprimand
Charge 4	Dismissal from the Defence Force

Outcome on automatic review

The Reviewing Authority's decision on automatic review was handed down on 21 March 2023.

	Conviction	Punishments / Orders
Charge 1	Upheld	Upheld
Alternative to Charge 1	N/A	N/A
Charge 2	Upheld	Upheld
Charge 3	Upheld	Upheld
Charge 4	Upheld	Upheld

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