


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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-082


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 March 12, 2024, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated June 5, 2025, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant was serving as a BMC (E-7) in Kodiak, AK as the MWR Community Support Branch Chief. He received a request to use the theater for a LGBT+ event. After an administrative investigation, he was issued a negative CG-3307 "Page 7" related to his actions on September 8, 2022. He was subsequently discharged for apparently refusing to receive the COVID-19 vaccine on October 28, 2022 after nearly 17 years of active-duty service. When the vaccine mandate was lifted, the applicant was reinstated to the Coast Guard and appears to have resumed active-duty service on October 23, 2023.¹ He asks that this Page 7 be removed from his record, and that his rank be restored to E-7 with his original date of rank of June 1, 2020.

SUMMARY OF THE RECORD

The applicant served as a Chief of MWR Community Support for Base Kodiak, AK, from 2020 until his discharge from active duty on October 28, 2022.

¹ The record provided by the Coast Guard does not make clear the exact date the applicant resumed active-duty service, since there are several entries in his Coast Guard Member Information (CGMI) that indicate this date could have been as early as September 20, 2023.

The events at issue in his application occurred in April 2022, and are documented in an administrative investigation dated June 3, 2022. AMT3 T, acting as a representative of a Coast Guard LBGT+ affinity group called “CG Northern Lights Spectrum Chapter” contacted the applicant to schedule a movie event at the theater. She described this event as follows: “My idea is to play an LGBT+ documentary and then take some of the facts from it and incorporate into the Gay Trivia Night I am also planning.”

The applicant’s response to this email – the only interaction between the applicant and AMT3 T in the record – is quoted in its entirety below:

“Good afternoon AMT3, sorry for the delay, I just got this email forwarded to me. Normally I am the one to approve of these requests for the Billiken Theater, however, due to the nature of this request and the content, I can’t approve this as it promotes life styles that are contrary to my religious beliefs as a follower of Jesus Christ. As your request is within CG policy, if you want to pursue this event you may go over me and contact the MWR Director, Mr. C[], and seek to get approval which I do not need to be a part of. If approved, you will need to work out the details with the theater manager [] as in order to play a movie there are some licensing agreements and such that need to be done to play movies that may not be on the navy motion picture list.”

This was followed by his signature block which includes three quoted Bible verses.

Following receipt of this email, AMT3 T contacted the base commander the same day. Her email, forwarding applicant’s response, is quoted in its entirety below:

“Good morning Captain,

I’m so sorry to just pile on an already terrible week, and I’m not sure if this is something of which you want to be informed, but I figured I would put it on your radar nonetheless.”

The commander, CAPT H, responded by apologizing for the applicant’s response, stating “I know that your request is simply a movie request which is not some sort of politically-charged, anti-government, anti-religion movement, and also that your request and idea is an effort to promote inclusivity which is something that Base has focused on since I have been at the helm.” It appears from subsequent email traffic that others assisted AMT3 T in coordinating the event.

On May 6, 2022, CAPT H appointed CDR M to conduct an administrative investigation into the “facts and circumstances surrounding the allegation of harassment, based on sex and gender, in the communications between applicant and AMT3 T.” The

record contains no formal allegation of harassment by the applicant, and therefore presumes that this refers to AMT3's email, quoted above, as the allegation. This investigation, concluded on June 3, 2022, made several findings and opinions related to the applicant's conduct, including that the applicant's email constituted "prohibited harassment," but not "unlawful harassment," and "served no legitimate functional purpose." The investigation did not find that the applicant had failed to perform his duties adequately.

The record contains little documentation of what occurred between June and September 2022, but statements provided by the applicant and two witnesses provide a more complete picture. On or about August 24, 2023, the applicant was scheduled to receive a hearing to consider nonjudicial punishment under Article 15, Uniform Code of Military Justice (UCMJ), commonly referred to as "Captain's Mast" to face discipline for this incident. He requested instead to have his case referred to trial by court-martial. This did not occur.

On September 8, 2022, the applicant instead received the Page 7 in question. In its factual summary, it states that:

"You could have internally redirected her request to another MWR staff member, but instead you chose to send an email directly to her which was perceived to be offensive, non-supportive, and non-inclusive. Your decision to email a junior petty officer and tell her that you do not approve of perceived life styles was willfully derelict in the performance of your duties under the Commandant's Anti-Discrimination and Anti-Harassment Policy as well as the Civil Rights Manual [] by discriminating on the basis of sex (including gender identify and sexual orientation). I find by a preponderance of the evidence that your actions constitute a willful dereliction of performance of duties in violation of Article 93(3), UCMJ."

Applicant was discharged on October 28, 2022 for refusal to receive the COVID-19 vaccine. He was reinstated into the Coast Guard approximately one year later, but claims to have had to do so at a lower grade because of the negative Page 7. He is currently serving in the grade of E-6.

VIEWS OF THE COAST GUARD

On March 3, 2025, a Judge Advocate (JA) for the Coast Guard submitted an advisory opinion adopting the position of the Coast Guard Personnel Service Center (PSC) in which he recommended that the Board deny relief in this case.

The JA argued that the applicant's request for relief should be denied because his assertion that a CG-3307 is Non-Judicial Punishment is incorrect. He further argued that

the applicant had failed to demonstrate error in the disputed CG-3307. However, the JA does note that the applicant is entitled to constructive service credit and restoration of his rank, pursuant to Executive Order 14184.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

The applicant was provided the Coast Guard Advisory Opinion March 14, 2025 and given 30 days to respond. He replied on April 8, 2025.

The applicant disagreed with the JA's opinion, contending that the CG-3307 was improperly used as "finding of guilt under the UCMJ," something that only non-judicial punishment (NJP) or court-martial should do. He further contends that the CG-3307 was not used as an administrative measure at all, since it used language that appeared to adjudicate his guilt for a UCMJ offense. He then states that, because no hearing was held for either NJP or court-martial, the commander never examined the available evidence to reach the conclusion that the applicant was guilty by a preponderance of the evidence. He concludes by arguing that the alternate relief proposed by the Coast Guard is not adequate to remedy the injustice he suffered, based on the totality of his service record.

The applicant also provided evidence from his service record that shows the disputed CG-3307 was not input into his service record until June 29, 2023. This is significant, because he signed a contract to rejoin the Coast Guard on June 15, 2023, and was offered and accepted a position with his previous command on Base Kodiak. He contends that it was only after June 15, 2023 that the disputed Page 7 appeared in his record and was relied on by his command as a basis to deny a command endorsement to rejoin his previous command.

APPLICABLE LAW AND POLICY

"Derelict" is defined in Part IV paragraph 16(c)(3) the Manual for Courts-Martial as follows: "A person is derelict in the performance of duties when that person willfully or negligently fails to perform their duties in a culpably inefficient manner."

Manual for Court-Martial, Part V.3. Right to demand trial.

"Except in the case of a person attached to or embarked in a vessel, punishment may not be imposed under Article 15 upon any member of the armed forces who has been, before the imposition of non-judicial punishment, demanded trial by court-martial in lieu of nonjudicial punishment."

Executive Order (EO) 14184: Reinstating Service Members Discharged Under the Military's COVID-19 Vaccination Mandate:

Sec. 2 . Redress. Consistent with the policies announced in section 1 of this order, the Secretary of Defense or the Secretary of Homeland Security, as appropriate, shall take all necessary action permitted by law to:

(a) make reinstatement available to all members of the military (active and reserve) who were discharged solely for refusal to receive the COVID-19 vaccine and who request to be reinstated;

(b) enable those service members reinstated under this section to revert to their former rank and receive full back pay, benefits, bonus payments, or compensation;

The Coast Guard provides official guidance on the preparation of CG-3307 on an “Authorized CG-3307” web page managed by the Deputy Commandant for Mission Support (DCMS). The template for a P&D-7 General-Negative 3307 states: “NOTE: Entry must be member specific and describe who, what, when, where, why and how. Blanket entries describing generalities, which are photocopied for inclusion in many members’ PDRs, are not authorized.”

FINDINGS AND CONCLUSIONS

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

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

2. The application is timely. Under 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22, applications must be filed within three years of when the applicant discovered, or reasonably should have discovered, the alleged error. The applicant applied on February 15, 2024, and his application is therefore timely.

3. The Board may correct any military record of the Coast Guard when necessary to correct an error or remove an injustice.² Error means either legal or factual error.³ Injustice, when not also error, is treatment by the military authorities that shocks the sense of justice but is not technically illegal.⁴ 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 record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁵ 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."⁶

4. Before addressing the substance of the applicant's original request, the Board first turns to the relief the applicant is entitled to under Executive Order 14184. Service members reinstated after being separated solely for refusal to receive the COVID-19 vaccine are entitled to revert to their former rank and receive full back pay, benefits, bonuses, and compensation. The applicant made his original request prior to the issuance of this EO, and therefore was unaware that this relief may be available to him. He does, however, agree with the Coast Guard's advisory opinion – issued after EO 14184 – that he should receive back pay and restoration of rank consistent with that EO. As the Coast Guard has reviewed his service record and has confirmed that the applicant was separated from the service solely for refusal to receive the COVID-19 vaccine, the Board finds that further analysis is unnecessary. The applicant is entitled to constructive service credit and will be restored to the grade of E-7 and assume his original date of rank and seniority in that grade.

5. We will then move to considering the substance of the applicant's original request, which concerns allegations of error or injustice related to the contested CG-3307. The Board finds that this document contains error, related to the following statement: "Your decision to email a junior petty officer and tell her that you do not approve of perceived life styles was willfully derelict in the performance of your duties." The essence of this charge is failure to perform one's duties, either those assigned or those imposed by law, custom, etc. However, the Page 7 does not identify what duty the applicant failed to perform; in fact, it notes that forwarding the request to other MWR staff members was acceptable. In other words, it acknowledges that it was not the applicant's duty to personally approve this request or face criminal liability. Acknowledging that, the Board fails to comprehend how sending an email stating that the applicant disapproved of a

² 10 U.S.C. § 1552(a); 33 C.F.R. § 52.2(a).

³ *Sawyer v. United States*, 18 Cl.Ct. 860, 868 (1989), *rev'd on other grounds*, 930 F.2d 1577 (Fed.Cir.1991).

⁴ *Id.*

⁵ 33 C.F.R. § 52.24(b).

⁶ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

certain lifestyle on religious grounds could constitute dereliction of duty. We find that this statement constitutes error.

6. The Board must also address the allegations of injustice in the record, and it is this basis we find most persuasive for relief. It is axiomatic that military members accused of offenses have a right to “*demand trial by court-martial* in lieu of non-judicial punishment proceedings.”⁷ The applicant did so in this case, preferring to take his chances with more serious punishment in exchange for the opportunity to prove his innocence at a forum which accorded him more rights and imposed the burden on the command to prove its case beyond a reasonable doubt. CAPT H chose not to give the applicant the court-martial he demanded, and instead fashioned language that appeared to adjudicate the applicant guilty of a UCMJ offense into a CG-3307, going far beyond the “who, what, when, where, why and how” language that is appropriate for a CG-3307 issued for performance and discipline. In other words, the applicant demanded his day in court, and the command refused to give it to him, instead placing a purported finding of guilty to a criminal charge in his record through a means that provided no meaningful due process to the applicant. Regardless of whether the applicant could or would have been found guilty of an offense under the UCMJ, this is the exact injustice that the applicant’s right to demand trial by court-martial is designed to prevent.

7. Based on these determinations, the Board does not find it necessary to address in this decision the other factual allegations of error and injustice for which there is evidence in the record. The Board finds that the CG-3307 in question is both erroneous and unjust, and it will be removed from the applicant’s record.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁷ Manual for Courts-Martial of the United States (2018), Part V, para. 3 (emphasis added).

ORDER

The application of BM1 [REDACTED] is granted. The Coast Guard will restore his rank to BMC (E-7) with his original date of rank and seniority in that grade. The Coast Guard will credit him with constructive service to reflect a continuous period of active duty through the period of his discharge in 2022 and reinstatement in 2023. The Coast Guard will remove the CG-3307 dated September 8, 2022 from the applicant's Coast Guard record.

June 5, 2025

