

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-118

FINAL DECISION

Attorney-Advisor:

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on May 25, 1999, upon the BCMR's receipt of the applicant's completed application.¹

This final decision, dated June 8, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, an [REDACTED] pay grade E-5), asked the Board to correct his military record by removing three negative "page 7" entries (Administrative Remarks; form CG-3307) dated June 15, 1998. He also asked the Board to remove from Coast Guard records his command's negative endorsement of his request for assignment to recruiting duty (Assignment Data Card; form CG-3698A), as well as any other negative correspondence concerning his request for recruiting duty.

APPLICANT'S ALLEGATIONS

The applicant alleged that on May 28, 1998, he submitted a request to his command to be permitted to apply for an assignment to recruiting duty in August 1999, at the end of his then-current tour of duty at the [REDACTED]

[REDACTED] He alleged that he had all of the qualifications required for recruiters listed in Articles 4.E.2. and 4.E.7. of the Personnel Manual and that his request was submitted well before the published deadline for such requests, September 15, 1998.

¹ Because the applicant submitted substantial new evidence on March 27, 2000, he waived the statutory 10-month deadline for the Board to reach a final decision, in accordance with 33 C.F.R. § 52.61(c).

The applicant further alleged that on June 9, 1998, a chief petty officer at [REDACTED] told him that his recruiting package was being "put on hold" because someone had lodged a complaint against him. The chief petty officer told him he would be notified about the complaint at a later date.

On June 18, 1998, a master chief petty officer (MCPO) presented him with a negative page 7 to acknowledge for entry in his record. The page 7 included the names of two complainants, [REDACTED]. The MCPO told him that one of the complainants [REDACTED] had drafted the page 7. The applicant alleged that he told the MCPO that the page 7 was inaccurate and that he would not sign it.² The MCPO responded that he would discuss the contents of the page 7 with [REDACTED].

Later that day, the applicant alleged, the MCPO presented him with a second version of the page 7, prepared and signed by [REDACTED]. This second version omitted [REDACTED] name and "about half the text" of the first version. He alleged that this proved that the page 7 was false because [REDACTED] must have refused to sign it. The applicant further alleged that although he told the MCPO that it was still inaccurate, the MCPO insisted that he sign it, so he did. The MCPO also told him that he would have to request recruiting duty at a later date. The applicant alleged that someone told him afterward that the reason the page 7 was prepared and his request for recruiting duty was placed on hold was because [REDACTED] was also applying for recruiting duty.

On August 10, 1998, the applicant alleged, when he was submitting his second request for recruiting duty, the MCPO presented him with a third version of the page 7. The applicant stated that in this third draft, the text had been rewritten, it was signed by the commanding officer (CO) of [REDACTED] and it accused him of making inappropriate comments on June 5, 1998. He alleged that this page 7 is patently false because he did not work at [REDACTED] on June 5, 1998, and was not even on base that day. He alleged that June 5th was an RDO (regular day off), and the shop was closed.³

Therefore, the applicant stated, he submitted a request to speak with the CO about his unfair treatment. He alleged that he submitted this request on August 17, 1998, but did not get to speak to the CO until September 17, 1998. The applicant thought his meeting with the CO went well. However, afterward, he received a memorandum from the CO stating, "What occurred this summer has certainly precluded you from a recruiting duty assignment during summer of 99."

The applicant stated that he applied for recruiting duty again after the Coast Guard issued ALDIST 232/98 on October 2, 1998, soliciting applications

² No record of this first draft of the page 7 appears in the applicant's record.

³ The applicant submitted a copy of an e-mail message dated February 4, 2000, from one of his previous supervisors at [REDACTED]. The supervisor stated in the e-mail message that June 5, 1998, was an RDO day. In a telephone conversation with a BCMR staff member, this supervisor explained that because the applicant's [REDACTED] operated on an alternate work schedule, every other Friday was an RDO. He confirmed that June 5, 1998, was an RDO for the [REDACTED].

for 100 new recruiters, but his command negatively endorsed his request. The applicant alleged that it is unfair that one incident is preventing him from being assigned to recruiting duty. Instead, he stated, his request should be evaluated on the basis of the record of his entire 13 years on active duty.

The applicant further stated that rather than assigning him to recruiting duty, he was later told he might be assigned to an [REDACTED]. He alleged that on his Assignment Data Card, he had listed [REDACTED] as one of his least preferred choices for his next duty station. Therefore, he believes the Coast Guard attempted to retaliate against him by assigning him to his least favored duty station because of his attempts to protest his CO's decision via his congressman. Later, he was issued orders for [REDACTED] his current duty station.

VIEWS OF THE COAST GUARD

On January 14, 2000, the Chief Counsel of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request for lack of proof.

The Chief Counsel argued that the applicant has failed to prove that the page 7s⁴ in his record dated June 15, 1998, are in error or unjust. He argued that the documentation of the applicant's conduct in two negative page 7s was within the authority of his supervisor, [REDACTED] and CO, under COMDTINST 1000.14A. He also argued that "[a]bsent strong evidence to the contrary, Coast Guard officials, such as Applicant's Commanding Officer and immediate supervisor, are presumed to have executed their duties correctly, lawfully, and in good faith." See *Arens v. United States*, 969 F.2d 1034, 1037 (1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

The Chief Counsel submitted with his advisory opinion a memorandum prepared by the Coast Guard Personnel Command (CGPC). CGPC stated that, aside from the two negative page 7s dated June 15, 1998 in the applicant's personal data record, the Coast Guard has a negative endorsement dated October 30, 1998, attached to his Assignment Data Form (CG-3698a) requesting recruiting duty, which is responsive to his request for relief from the BCMR.

The Chief Counsel submitted with his advisory opinion a sworn declaration signed by [REDACTED] stated that in June 1998, he was the [REDACTED] and "was responsible for inspecting [the applicant's] work as a technician." He affirmed that the page 7 he signed on June 15, 1998, "was true and accurate." He alleged that, prior to preparing the page 7, he "was concerned this might be viewed as a personal issue between [the applicant and himself], so [he] conferred with other senior petty officers (i.e., watch captains, other [REDACTED] about his attitude and working with others. This view was also shared by other senior petty officers in this command."

⁴ The Chief Counsel stated that there are only two page 7s in the applicant's record dated June 15, 1998: one signed by [REDACTED] and one signed by the CO of [REDACTED] on August 10, 1998.

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On January 19, 2000, the BCMR sent the applicant a copy of the Chief Counsel's advisory opinion and invited him to respond within 15 days. The applicant requested an extension to gather additional evidence, which was granted. On March 27, 2000, the BCMR received his response.

The applicant reiterated many of the same allegations made in his original application. In addition, he stated that the page 7 signed by [REDACTED] is untrue because [REDACTED] never counseled him about the matter, and they never spoke to each other again after June 18, 1998. Thus, he alleged that [REDACTED] declaration constituted perjury.

The applicant alleged that no superiors ever held a meeting with [REDACTED] and him to discuss the allegations against him. The applicant stated that the Coast Guard should not have made two page 7 entries in his record for one incident. He alleged that the MCPO who gave him the page 7 signed by his CO told him that there should only be one page 7 in his record rather than two or three. Furthermore, he alleged, he had told the MCPO that the page 7 signed by his CO was untrue, but the MCPO told him that his signature was just considered an acknowledgment and that he could dispute the truth of the matter "at a later date."

In addition, the applicant alleged that his request to speak to the CO personally was delayed for a month. By the time he was permitted to see the CO, the one who had signed the page 7 had been transferred, and a new CO who did not know the people involved had just arrived.

The applicant stated that, although he submitted his third request for recruiting duty on October 7, 1998, just five days after the announcement, his request was not submitted to CGPC by his command until after the deadline, October 31, 1998. The applicant alleged that his command's delay of his package contributed to his failure to be selected as a recruiter.

The applicant also alleged that in December 1998, he initially received an inaccurate performance evaluation for that marking period. He alleged that when he first protested the lowest set of marks he had ever received, totaling just 99, the commander who had evaluated him offered to raise his marks by 3 points. However, he chose to appeal the marks anyway, and on January 27, 1999, his marks were raised by 11 points.

On January 21, 1999, the applicant stated, he received an e-mail message indicating that he would be transferred to [REDACTED]. He alleged this was because his command at [REDACTED] had "lost" his Assignment Duty Card. He stated that, when he asked to leave active duty and enter the Reserves because of this pending assignment, he was offered an assignment at [REDACTED] his last preferred choice. He accepted this assignment even though it created a hardship for his family because his wife, a registered nurse, [REDACTED]. The

applicant submitted evidence indicating that his transfer to [REDACTED] was complicated by numerous administrative problems. He alleged that his threatened transfer to [REDACTED] and the problems he encountered regarding his transfer were caused or exacerbated by his previous problems with his command and his letters to his senator. Furthermore, he alleged that the first set of evaluation marks he received at his new station were based on the last, poor set of marks he had received at [REDACTED].

Finally, the applicant alleged that all of these problems stemmed from his willingness to speak up about legitimate safety problems at [REDACTED]. He alleged that [REDACTED] was not qualified to perform his duties and often had to ask the applicant where certain parts of [REDACTED] were before he could inspect them. However, when raising safety concerns, he "always went through the proper channels and followed the chain of command. On several occasions, co-workers and I submitted safety concerns in writing to the leading chief for action. Some co-workers military and civilian viewed this as not being a team member. I did not let this affect my work and my 'safety first' ethic."

The applicant submitted with his response four affidavits signed by Coast Guard employees and one signed by his pastor. One of his supervisors at [REDACTED] stated that he regretted not having had any input on the applicant's previous performance evaluation. He also praised the applicant highly for his inspiring "dedication, commitment, and professionalism" and his "priceless" expertise. A civilian mechanic at [REDACTED] stated that the applicant's "knowledge and experience [are] well above most of the military personnel that are assigned to [REDACTED] and that he appreciated the applicant's "efforts to be a team player and [willingness] to share his experience and knowledge." Two others praised the applicant's expertise and job performance.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on July 15, 1985, for a term of four years. On September 18, 1987, he advanced from seaman to [REDACTED]. In 1988, he received a Good Conduct Award for his service since July 1985. On June 1, 1990, a senior [REDACTED] made a page 7 entry in the applicant's record, praising his "positive attitude, high motivation, and technical expertise" and his willingness to work extra hours. He was advanced to [REDACTED]. In 1991, he received a second Good Conduct Award, and in 1992, he received a Coast Guard Commendation Medal for outstanding achievement.

In 1993, two page 7s documenting his excellent performance were entered in his record by the commanding officer and the executive officer of [REDACTED]. In 1994, he received his third Good Conduct Award, and in 1995, the commanding officer of [REDACTED] awarded him a letter of commendation for his "outstanding performance of duty." In July 1997, the applicant received his fourth Good Conduct Award.

⁵ Until recently, the [REDACTED]

The applicant's record contains two page 7s dated June 15, 1998, entered into his record by his command at the [REDACTED]. The first, signed by [REDACTED] and the applicant, states the following:

You are being counseled this date concerning your attitude, working with others (i.e., peers and seniors) and by not showing proper military customs and courtesies.

You make many inappropriate comments and actions. You do not work as a team member and frequently cause conflicts.

By showing a willingness to improve and change your actions, I am confident we will not have to pursue this any further.

On August 6, 1998, the applicant submitted a second request to submit an Assignment Data Card for recruiting duty to his shop supervisor, [REDACTED]. The card indicates that his current tour would end in July 1999 and that he would be available for a recruiting assignment in August 1999. The request was approved by [REDACTED] and another supervisor. However, on August 11, 1998, the MCPO recommended that the request be disapproved, and the executive officer, a commander, disapproved the request. As a reason for the denial, the MCPO wrote on the request form that the applicant "lied about letter of recommendation from [REDACTED]. I will not approve any further request from this individual."

On August 10, 1998, the second page 7 dated June 15, 1998, was signed by the CO of [REDACTED] and the applicant. It states the following:

98JUN15: [The applicant] was overheard making inappropriate comments concerning the ability and qualifications of the [REDACTED] on 98JUN05. Member was counseled that by doing so he used poor judgment in his lack of proper military courtesy, attitude and that his actions did not contribute to a team effort and frequently cause conflicts. Member was advised that any future incidents may lead to disciplinary action.

On September 2, 1998, the applicant signed an Assignment Data Card listing as his preferred duty stations for his next tour the air stations in [REDACTED].

He listed his least desired [REDACTED]

On September 17, 1998, the applicant met with the CO of [REDACTED] to discuss his situation. On September 21, 1998, the CO sent the applicant a memorandum in which he stated the following:

Following our meeting Thursday afternoon, I thoroughly reviewed your file. As I mentioned during our meeting, your marks indicate your rating in the performance dimension as a [REDACTED] is comparable to the best [REDACTED] we have in the Coast Guard. However, several of your marks in areas that deal with interpersonal skills are lower than what I would expect when compared with your [REDACTED] skills. ...

What occurred this summer has certainly precluded you from a recruiting duty assignment summer of 99. You do have control of your destiny, though, and I strongly recommend you seek assistance through [the Employee Assistance Program] and work with [the MCPO] to develop a plan to improve your interpersonal skills. ...

On October 2, 1998, the Coast Guard issued ALDIST 232/98, announcing the need for 100 new recruiters. The deadline for submitting applications was October 31, 1998. On October 7, 1998, the applicant signed an Assignment Data Card requesting recruiting duty. He signed a request to submit the Assignment Data Card on October 13, 1998. One supervisor recommended approval of his request, but [REDACTED] did not. [REDACTED] advised the applicant "to wait for evaluation time due to previous incident." On October 31, 1998, the CO of [REDACTED] marked on the card that his request was disapproved and that the CO did not recommend him for recruiting duty. The CO wrote that the applicant "lacks the maturity, judgment, and willingness to work as a team to be an asset to the recruiting ranks." Nevertheless, the applicant asked that his Assignment Data Card be forwarded to CGPC. This Assignment Data Card was not received by CGPC until after the deadline, on November 4, 1998. CGPC later denied the applicant's request based in part on his command's failure to endorse it favorably.⁶

On November 4, 1998, the applicant resubmitted the same Assignment Data Card he had completed on September 2nd. This card was approved by his CO on November 9, 1998.

On November 30, 1998, the Coast Guard responded to an October 19, 1998, letter from one of the applicant's senators, inquiring into his command's non-recommendation for his assignment to recruiting duty. In its response to the senator, the Coast Guard stated that

[The applicant] was counseled on numerous occasions that he failed to meet the primary requirement for recruiting duty as described in section 4.E.2 of the Coast Guard Personnel Manual (COMDTINST M100.6A) which is: "Must consistently exhibit mature judgment, even temperament, tact, diplomacy, and discretion." This was and remains the only reason that he was not recommended for recruiting duty. [The applicant] showed disrespect and made inappropriate comments towards a senior petty officer when asked to redo work which was not done properly the first time. Since this was not an isolated incident for [the applicant], the Command Master Chief formed a plan to give [the applicant] the best opportunity to become a Coast Guard Recruiter. This plan involved counseling [the applicant] on the areas where he fell short of the Coast Guard requirements for Recruiters and advised him to wait six months before applying. This delay would give [the applicant's] supervisors time to observe him for any changes in attitude and would hopefully result in a favorable endorsement.

[The applicant] met with the Commanding Officer to voice his objections ... Following this meeting the Commanding Officer again outlined, in a memo to [the applicant], the problem areas that were preventing him from receiving a positive endorsement, and recommended specific actions [he] should take to receive a positive endorsement.

⁶ CGPC reported that it received over 400 applications for the 100 open positions.

In December 1998, the applicant received his evaluation marks for the marking period ending October 31, 1998. His total score was 99, which was 18 points lower than his previous evaluation. The form had been signed by his supervisor on September 20, 1998; by the marking official on October 27, 1998; and by the approving official on December 10, 1998.

On January 18, 1999, the applicant appealed his performance marks on the grounds that neither he nor his night-shift supervisor were allowed to have any input, as required by Articles 10.B.4.d.2. and 10.B.4.d.3.d. of the Personnel Manual. In his appeal, he explained in detail why he felt the marks were too low. Overall, he asked that his total marks be raised by 14 points, from 99 to 113.

In an undated memorandum, the commander who had approved the applicant's low marks reported to the station's executive officer that the applicant had received them due in part to his conduct as reflected in the page 7s and in part to his own interpretation of the standards, which might be stricter than that of previous approving officials. In addition, the commander stated that the applicant's score for professional qualities had decreased by 5 points because

[h]e basically presented a proposed recommendation to us for recruiting duty as being drafted by his supervisor ..., when in fact [his supervisor] had told him that he would not be recommended for recruiting leave. This happened around the last week of August. I personally counseled [the applicant] on this incident and informed him at that time that while I wasn't booking him [for lying], the incident would be reflected in his marks. He was also counseled that given the lack of trust from this incident, he would not get a favorable recommendation for recruiting duty. ...

The marks were signed and forwarded on 27 Oct [1998]. I was notified in mid-November ... that we'd received Congressional Inquiry into the circumstances, which led to his unfavorable command recommendation for recruiting duty. His [page 7s] should make it clear why he wasn't recommended for recruiting duty and the dates on the [page 7 and evaluation form] show that the lowering of his marks [was] due to his performance for the period and [was] not in any way influenced by the Inquiry.

On March 4, 1999, in response to the applicant's appeal, the CO raised his evaluation marks by 11 points.

On March 15, 1999, CGPC responded to a further inquiry from the applicant's senator regarding his next assignment. CGPC stated that the applicant had been

identified as a possible candidate for an assignment to [REDACTED] due to the need for his qualifications in that area. ... Once [he] gained knowledge of the possibility of an assignment to [REDACTED] his least desired area, he immediately concluded that this was due to his request for your assistance regarding recruiting duty. I assure you that this was strictly a preliminary decision, and had absolutely no relationship to his congressional inquiry.

As the time grew nearer to make final assignment decisions for the 1999 transfer season, [the applicant's] Assignment Officer identified a need for [his] qualifica-

tions at [REDACTED] a choice listed on his ADC. On January 29, 1999, [he] was issued official transfer orders to [REDACTED]

In your letter of January 27, 1999, you requested that a review of the administrative inconsistencies described in your letter be conducted by someone outside of [the applicant's] command. We have forwarded your letter to the Office of [REDACTED] at Coast Guard Headquarters to address these issues in a separate letter.

On December 15, 1999, the Offices of [REDACTED] at Coast Guard Headquarters reported to the senator that it had reviewed the applicant's complaints and that most of the applicant's concerns had been resolved because his evaluation marks had been raised and he was "very pleased" with his assignment at [REDACTED]. His remaining concerns were pending resolution via the BCMR.

The applicant's recent evaluation marks are as follows, with the appealed marks shaded in gray:

DATE	STATION	JOB PERFORMANCE	LEADERSHIP	MILITARY BEARING	PROFESSIONALISM	TOTAL
10/31/99	[REDACTED]	39	35	12	31	117
4/30/99	[REDACTED]	39	34	10	33	116
10/31/98	[REDACTED]	40	32	10	28	110
10/31/98	[REDACTED]	36	29	8	26	99
4/30/98	[REDACTED]	40	35	11	31	117

Previously, the applicant received total marks of 115 in October 1997, 120 in April 1997, 113 in October 1996, and 118 in April 1996.

APPLICABLE LAWS

COMDTINST 1000.14A, "Preparation and Submission of Administrative Remarks (CG-3307)," authorizes commanding officers to prepare negative page 7 entries for the PDRs of members who commit acts that are contrary to Coast Guard rules and policies but that the officer, in his discretion, does not deem serious enough to require non-judicial punishment or court-martial. Enclosure (5) to the instruction states that a negative page 7 "must be member-specific and describe who, what, when, where, why and how." The authority to prepare page 7s may be delegated.

Article 4.E.2.a. of the Personnel Manual contains the minimum qualifications for members seeking a special duty billet, such as a recruiting billet. The first listed qualification is that the member "[m]ust consistently exhibit mature judgment, even temperament, tact, diplomacy, and discretion." The other 12 listed qualifications include having a sharp military bearing, no felony convictions, no recent alcohol incidents, and no recent weight problems. Article 4.E.7.c. states that, in addition to the qualifications listed in Article 4.E.2.a., members who apply for a recruiting position must have served at least one full enlistment and should preferably have "a good career pattern of general duty ... because a recruiter should have a wide knowledge of the Coast Guard's many duties and activities."

Article 4.E.7.d. states that "[a]pplications for recruiting duty shall not be made earlier than one year prior to completion of [the] member's present tour of duty. Requests shall be submitted on an [Assignment Data Card] to [CGPC] via the CO." Article 4.E.2.c. states that commanding officers must endorse a member's application for special duty by either recommending or not recommending him or her for the special duty and by stating that the member meets the qualifications cited in 4.E.2.a.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code. The application was timely.

2. Two negative page 7s appear in the applicant's record concerning his conduct in the summer of 1998. The applicant has not proved by a preponderance of the evidence that they are either unjust or erroneous. He has not proved that his conduct and attitude were other than as described in the two page 7s. Although June 5, 1998, was apparently an RDO for his shop, he did not prove that he was not overheard making inappropriate comments on that date or on some other date. The applicant has not presented sufficient evidence to overcome the presumption that his superior officers acted correctly, lawfully, and in good faith. *Arens v. United States*, 969 F.2d 1034, 1037 (1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

3. The applicant has not proved by a preponderance of the evidence that only one of the two disputed page 7s should be in his record. Although both page 7s are dated June 15, 1998, they are signed by different superior officers and contain different characterizations of the applicant's conduct. He has not proved that the first page 7 was unauthorized. Nor has he proved that his commanding officer, who signed the second page 7, was unaware of the first page 7 or intended the second page 7 to be substituted for the first. Therefore, the Board finds no reason to remove either of the two disputed page 7s from the applicant's record.

4. The applicant has not proved by a preponderance of the evidence that his command unfairly blocked his assignment to a recruiting billet. Under Article 4.E.2.c. of the Personnel Manual, a member's command must certify that he "consistently exhibit[s] mature judgment, even temperament, tact, diplomacy, and discretion," which is one of the qualifications listed in Article 4.E.2.a. In light of the applicant's conduct and attitude as described in the page 7s, it was reasonable for the applicant's command to hold his Assignment Data Card until his chain of command could decide whether he met that qualification. Moreover, in light of the applicant's conduct and attitude as described in the page 7s, it was reasonable for the applicant's command to decide to negatively endorse his request for a recruiting position. Therefore, the Board finds no reason to

remove from Coast Guard records any documentation concerning his command's negative endorsement of his request for recruiting duty.

5. Although the applicant's Assignment Data Card apparently arrived at CGPC after the deadline announced in ALDIST 232/98, the applicant has not proved by a preponderance of the evidence that his failure to be assigned to recruiting duty was caused by this administrative error, rather than by the professional judgment of the authorized Coast Guard officers that he was not one of the best qualified candidates. Nor has he proved that if his Assignment Data Card had been received by CGPC before the deadline, he would likely have been chosen for recruiting duty. His command's negative endorsement and the disputed page 7s provided an ample basis for CGPC not to select him for recruiting duty given the qualifications required under Article 4.E.2.a.

6. The applicant has not proved by a preponderance of the evidence that his several letters to his senator caused the Coast Guard to retaliate against him in any way. The evidence indicates that the marks that originally appeared on his evaluation form for the period ending October 31, 1998, were assigned before his rating chain had any knowledge of his correspondence with the senator. There is no evidence that his consideration for an assignment in [REDACTED] was motivated by a desire to retaliate against him rather than by the detailer's professional judgment that such an assignment would meet the legitimate needs of the Service. Likewise, while the applicant clearly encountered administrative problems regarding his transfer to [REDACTED] there is no evidence to indicate that his command intentionally created those problems. In fact, the evidence indicates that his command accommodated his request to delay his departure so that he could attend his child's graduation and facilitate the sale of his home.

7. The applicant has not proved by a preponderance of the evidence that any of the evaluation marks in his record are erroneous or unjust. He has not proved that it was improper for his poor conduct and attitude, as described in the two disputed page 7s, to be reflected in his marks for that period. In addition, he has failed to prove that his marks for the evaluation periods ending April 30, 1999, and October 31, 1999, were in any way tainted by consideration of inappropriate factors. The Board notes that the applicant's total marks for those latter two periods are not unlike his total marks for previous evaluation periods.

8. Accordingly, the applicant's request for relief should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of
tion of his military record is hereby denied.

for correc-

