

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2017-134**

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**FINAL DECISION**

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the completed application on March 24, 2017, and assigned it to staff attorney ██████████ to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated October 27, 2017, 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 Chief ██████████ on active duty, asked the Board to correct his record by changing the conduct mark of Unsatisfactory on his July 7, 2014, Enlisted Employee Review (EER) to a mark of Satisfactory. The applicant argued that there were no supporting remarks or proper documentation to justify the Unsatisfactory conduct mark on the disputed EER. He stated that according to Coast Guard policy in effect at the time in the Enlisted Accessions, Evaluations and Advancements manual, COMDTINST M1000.2, Article 5.B.1.a., "EERs that result in assignment of an unsatisfactory conduct mark or low competency mark... must be supported by an adverse entry for: (1) Non-judicial punishment; (2) Court-martial; (3) Civil conviction; (4) Financial irresponsibility; (5) Not supporting dependents; (6) Alcohol incidents; [or] (7) Not complying with civilian and military rules, regulations, and standards." The applicant claimed that none of these violations occurred during the period covered by the disputed EER. He added that in August 2014, his Command sent a memorandum requesting to change of the Unsatisfactory mark to Satisfactory, but the memorandum was not properly processed. He followed up after he arrived at his subsequent Command in February 2016, and he discovered that his previous Command had no record of a memorandum to change his conduct mark. The applicant contacted the Pay and Personnel Center and was told to apply with the BCMR.

In support of his application, the applicant provided relevant documentation which is described below in the Summary of the Record.

## SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on November 26, 1997. He earned the [REDACTED] rating, served aboard a few large cutters, and advanced to [REDACTED] in 2008. On July 15, 2013, after completing a three-year assignment to an acquisition project staff, he reported for duty [REDACTED]

On December 10, 2013, the Sector Commander issued a memorandum to the applicant's Commanding Officer (CO) at the [REDACTED] regarding an "Investigation of Reduction Gear Shaft Discrepancies." The Sector Commander stated that while he agreed with most of the Investigating Officer's recommendations, he did not agree with the recommendation to charge the applicant with violations of the Uniform Code of Military Justice and to dispose of the charges at Mast. He also stated that he did not believe the applicant's actions warranted a Relief for Cause,<sup>1</sup> which would remove the applicant from his position as [REDACTED]. The Sector Commander acknowledged that the applicant had exhibited poor supervisory oversight and leadership but noted that there were "several extenuating factors contributing to this situation that were beyond his control." These factors included the following:

- The applicant did not have prior small boat experience.
- He had been serving at [REDACTED] for only two weeks before he was sent away to attend Command Cadre school, which is where he was when an incident occurred.
- There had been communication problems.
- There had been new/different personnel assigned to the project daily.
- A group had left the project before the repairs were finished.
- Detailed instructions for maintenance had not been provided.

The Sector Commander also noted that the applicant had taken responsibility for the situation in "an unsolicited email."

On March 4, 2014, the applicant received a memorandum from his CO titled "Command Cadre Expectations," to ensure he was aware of his job duties, the CO's expectations for how he would manage and lead his team, and the resources that would be made available to help him meet goals and expectations.

On March 6, 2014, the CO issued the applicant a negative CG-3307 ("Page 7")<sup>2</sup> regarding his failure to certify as a boat crewman and [REDACTED] within the allotted timeframe. The applicant was reminded that the applicable manual required certification, and members who are unwilling or unable to certify could be relieved for cause. The applicant had already been granted

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<sup>1</sup> "A relief for cause (RFC) is the administrative removal of a commanding officer (CO), officer in charge (OIC), executive petty officer (XPO), engineer petty officer (EPO), or a designated full-time command master/senior chief (CMC/CSC) from their current duty assignment before the planned rotation date. It normally consists of a two-step process: (1) Temporary relief for cause, and (2) Permanent relief for cause." COMDTINST M1000.8A, Article 1.F.1.a.

<sup>2</sup> An Administrative Remarks record entry, form CG-3307, better known as a "Page 7," is used to document a member's notification of important information, achievements, or counseling about positive or negative aspects of a member's performance in the member's military record.

a thirty-day extension, and he was still unable to certify. His certification due dates were adjusted again to allow him to have time to certify on the required boats.

The applicant received another negative Page 7 from his CO on March 18, 2014, which states the following:

On this date, you are being counseled for your continuous poor managerial oversight of [redacted]. On several occasions, the [redacted] failed to follow standard operating procedures, which has led to careless and avoidable casualties to station resources and countless man hours to repair the noted discrepancies. In February, [the Command] received a call from the District's Port [redacted] to discuss several discrepancies on CG...yard availability inspection. The significant discrepancies noted during the inspection led to a bombshell inspection of the unit's resources by the Sector's Surface Operations Supervisor, Naval Engine [redacted] Chief. While the resources were deemed ready for sea, the Sector Naval Engineer [redacted] you with a list of recommendations and corrective actions to mitigate further degradation. On March 13th and 14th, the Commanding Officer and Executive Petty Officer inspected the unit resources and found safety hazards and numerous discrepancies on CG..., many of which were noted during the Sector's inspection. I have consistently had to focus on your leadership and department rather than the unit as a whole to mitigate these constant failures. These inspections coupled with an avoidable CASREP [redacted] the unit's Response Boat-Small trailer and damage to the unit's boat maintenance facility door by an unsupervised crew.

I agreed to have you move down to Boat Maintenance Facility to provide [redacted] to directly supervise your crew, develop as an [redacted] and provide much needed guidance to the [redacted]. Your role as a Chief, department head and member of the Command Cadre is to lead your crew, correct deficiencies and keep the CO advised of discrepancies, and corrective actions. The consistent negligence [redacted] led me to doubt in your abilities to operate as the [redacted] for the unit.

On April 1, 2014, the applicant received two negative Page 7s from his CO, the first of which states the following:

Your role as the Unit's Command Chief has been terminated; the unsatisfactory conduct, performance, and impact of your personal deficiencies has caused me to lose confidence in your ability to aid junior petty officers and non-rates in their personal affairs outside of your role as a department head. If a member experiences the need to talk to the Command Chief, you shall refer [redacted] design [redacted] Executive Petty Officer for additional support.

The second negative Page 7 dated April 1, 2014, states the following:

On this date, you are being counseled for your failure to certify 47' [redacted] within the specified allotted time. The Boat Operations and Training Manual (BOAT), COMD [redacted] provides specific guidance for members of the Command Cadre; a member of the Command Cadre unable or unwilling to attain required certification or maintain currency shall normally be relieved for cause. As the unit [redacted] you were required to certify [redacted] on the [redacted] MLB, 52' SPC-HX, and boat crew [redacted] within six months of reporting aboard. Despite being granted an additional 30 days, you have failed yourself, your department, and the unit in achieving these certifications. You have been provided an ample amount of time to get underway and join in on duty section study periods.

On April 1, 2014, the CO issued to the applicant a memorandum titled "Unsatisfactory Performance." The CO stated that his performance for the previous nine months had been unsatisfactory when compared with that of his peers in his grade and position. He was placed on a six-month probation during which time he was to be observed by the command. Failure to successfully complete this probationary period would lead to Relief for Cause or separation from the Coast

Guard. The reasons provided included “failure to adhere to or understand the responsibilities of [his] assigned billet”; “inability to certify within the allotted time frame”; an Administrative Investigation concerning [redacted] discrepancies and evidence of unsafe practices; failure to certify as Boat Crew and [redacted] within his allotted time; poor managerial oversight of his department; poor administrative control leading to two avoidable and costly mishaps; a [redacted] failure to meet a modified timeline for being certified as a 47’ [redacted]. The applicant was informed of the actions he needed to take to successfully complete probation and be retained as [redacted].

On April 4, 2014, the applicant’s CO sent a “Request for Temporary Relief for Cause” to the Sector Commander. The CO stated that the request was due to the applicant’s [redacted]actory conduct, failure to adhere to Coast Guard policies, and [the CO’s] loss of confidence in [the applicant’s] leadership and ability to serve as the [redacted].” The CO explained that [redacted] is in a unique position of trust [redacted] strong technical competence and managerial abilities. He stated that the applicant’s “demeanor and lack of initiative has been a failure to his department, the unit, and [the] cadre.” Also noted was the applicant’s failure to meet his certification deadlines on several occasions, which caused him to be placed on performance probation.

On April 10, 2014, the applicant’s [redacted]r Commander sent a notice of Temporary Relief for Cause to the Personnel Service Center (PSC). The Sector Commander stated [redacted] applicant had been temporarily relieved of his [redacted] duties due to a loss of confidence in the applicant’s ability to carry [redacted]s duties. The Relief for Cause was “based on his continual lack of leadership, poor performance and failure to qualify as a boat crewman.”

On April 16, 2014, the applicant received a Notification of Temporary Relief for Cause from the Sector Commander. The Relief for Cause was based on the CO’s recommendation due to a loss in the applicant’s ability to carry out his [redacted] duties and the observation that the applicant demonstrated a “substantial disregard of [his] command and leadership responsibilities.” The Notification also noted the applicant’s “failure to qualify as 47’ MLB crewman/boat [redacted] lapses in subordinate oversight and overall poor performance [redacted] by the [redacted].” The applicant was notified that PSC had Permanent Relief Authority in this situation. The following items were listed as documentation and evidence of the applicant’s shortcomings:

- a. An Administrative Investigation regarding reduction gear shaft discrepancies on the CG...was completed by [the Command [redacted] 6 Dec 13. The findings and opinions provided [redacted] investigation officer found you demonstrated culpable inefficient [redacted] and neglect in your duties as the [redacted].
- b. On 16 DEC 13 you were given an adverse CG-3307 based on the findings of the Administrative [redacted] [redacted]... In that CG-3307 you were [redacted]ed of your [redacted]ples and responsibilities as the unit [redacted].
- c. On 04 MAR 14 you were given a memo from the Commanding Officer of Station...outlining your Command Cadre Expectations. In that memo you once again were counseled on your responsibilities as the [redacted].
- d. On 06 MAR 14 you received an adverse CG-3307 regarding your failure to qualify as a boat crewman and [redacted] within the specified allotted time. You were given a 30-day extension in which to complete your syllabus and still were unable to meet the requirement.

e. While under your supervision, your department experienced a costly mishap that was totally preventable. On 18 MAR 14 the station boat lift collided with the boat house door causing extensive damage. The door requires replacement at a cost of over \$20K. While you are not required to be physically present during all evolutions, it is indicative of your lack of oversight while performing your duties.

f. On 01 APR 14 you were placed on performance probation for failure to qualify as a 47' MLP [REDACTED]

The applicant provided a letter on his own behalf to be submitted to PSC dated [REDACTED] 2014. He explained that just a few weeks after being assigned as [REDACTED] he was sent on temporary assignment to Command Cadre class from August 5 to August 16, 2013. Before his return, he was notified of an accident that caused damage to the propulsion shaft of a [REDACTED]. He acknowledged that he did not provide proper oversight to the repairs after he returned from class. He described the events that led to the investment of [REDACTED]'s assets and poor house-keeping. The applicant took responsibility and stated that he did not "display an assertive enough leadership style or practice proper communication with the command to meet their needs." He added that his relaxed demeanor did not mesh well with the CO's "more aggressive approach," which did not foster a positive working environment. He listed many items that he accomplished while serving as [REDACTED] and concluded that his overall performance was not adequate. He stated that although he had accepted the position enthusiastically, believing that his experience on temporary assignment as the [REDACTED] of an 87' cutter had prepared him for the position, he had done so "without full comprehension of the challenges it would present [REDACTED] extent of his lack of knowledge on small boats. [REDACTED] respectfully requested the opportunity to prove himself at another assignment.

On May 7, 2014, the Sector Commander sent PSC a Request for Permanent Relief for Cause due to unsatisfactory performance and a loss of confidence in his ability to perform his duties. This Permanent Relief for Cause request was based on the facts included in the Temporary Relief for Cause and the observations that the applicant had "shown substantial disregard for his Command responsibilities despite numerous verbal and written counselings pertaining to overall substandard performance, lackluster leadership, and his inability to attain required under-qualifications." The request notes that the applicant had acknowledged [REDACTED] of [REDACTED] for Cause and consulted with his assigned attorney to make a statement. The Sector Commander also stated the following:

Although [the applicant] takes responsibility for his shortcomings and performance, I do feel compelled to note that the two [REDACTED] immediately preceding [the applicant at this C [REDACTED]] had been relieved for cause, and [the applicant] was the third [REDACTED] assigned to this unit in the last [REDACTED] immediately prior to the [REDACTED] position was on the...project management team in a position that did not entail deck-plate level supervisory responsibilities and operational leadership. Furthermore, he arrived into a demanding [REDACTED] no small boat or Station experience and his [REDACTED] qualification had been completed [REDACTED] assignment on an 87' WPB. Considering the member's resume and the recent unit history in the [REDACTED] position, it is my opinion that the Service did not staff this position for success. I request that you take this into consideration when re-assigning [the applicant].

On July 2, 2014, the applicant's command received a notice from PSC stating that the request to permanently relieve the applicant for cause was approved. PSC notified the command that the permanent relief for cause must be documented on a Page 7 and on a Discipline or Transfer EER.

The applicant received a discipline EER on July 7, 2014. In the twenty-three categories in which enlisted personnel are evaluated, the applicant received exclusively threes and fours on a scale of one to seven (with seven being the best). The applicant was not recommended for advancement and received an unsatisfactory conduct mark. The remarks note that the applicant was not recommended for advancement because he was “not capable of satisfactorily performing the duties and responsibilities of the next higher paygrade.” The remarks also noted that he had been “relieved of all his [redacted] duties.” Regarding the conduct mark, the remarks [redacted] applicant [redacted] to meet minimum standards [redacted] as evidenced by his [redacted] for Cause. The applicant acknowledged this EER with his signature on July 10, 2014.

Also on July 7, 2014, the applicant received a negative Page 7 which states the following:

While assigned to Station...as the [redacted] you exhibited inadequate leadership and supervisory oversight, an inability to attain required underway qualifications, and general inexperience with small boat station operations.

As a result of your substandard leadership and inexperience, your Commanding Officer...lost confidence in your ability to perform your duties [redacted] and CG PSC-epm approved my request for a permanent relief for cause.

Effective immediately, you are permanently relieved as the Station... [redacted] and shall execute PCS orders as directed.

The two [redacted] immediately preceding you at Station...had been relieved for cause, and you were the third [redacted] assigned to this unit in the last two years. Your [redacted] immediately prior to the [redacted] position was on the...project management team in a position that did not entail deck-plate level supervisory responsibilities or operational leadership. You arrived into a demanding [redacted] position with virtually no small boat or Station experience, with an [redacted] qualification that had been completed over a 5-month TAD assignment on an 87' WBP. I appreciate that you have taken responsibility for your shortcomings and performance, and would like to acknowledge your positive attitude [redacted] work ethic while assigned to Sector...during the time you were temporarily relieved.

On August 29, 2014, the Executive Petty Officer at [redacted] signed [redacted] addressed to PSC in which he asked that the conduct mark be changed from Unsatisfactory to Satisfactory on the disputed EER. He noted that the applicant had been advised of the change.

### VIEWS OF THE COAST GUARD

On August 29, 2017, the Judge Advocate General (JAG) [redacted] of the Coast Guard submitted an advisory opinion in which he adopted the findings and analysis provided in a memorandum on the case prepared by PSC. PSC recommended that the Board grant relief in this case. PSC stated that according to the [redacted] assignment and Authorized Absences manual, COMDTINST M1000.8, Article 1.F.1.d., Relief for Cause is based on loss of confidence due to unsatisfactory conduct or unsatisfactory performance. According to the Enlisted Accessions, Evaluations, and Advancements manual, COMDTINST M1000.2, Article 5.B.1.a., an Unsatisfactory conduct mark must be supported by an adverse entry for non-judicial punishment, court-martial conviction, civil conviction, financial irresponsibility, failure to support dependents, an alcohol incident, or not complying with civil [redacted] military rules, regulations, and standards. PSC stated that there was no basis for issuance of an Unsatisfactory conduct mark in the applicant's record. The Request for Permanent Relief for Cause from the applicant's CO clearly states that it was based on a loss of confidence

and unsatisfactory performance and *not* unsatisfactory conduct. PSC also noted that the applicant’s CO attempted to have the error corrected on August 29, 2014, when the XPO signed the Request to Change Enlisted [REDACTED] Review. Therefore, PSC recommended granting relief.

**APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD [REDACTED]**

On September 7, 2014, the Chair sent the applicant a copy of the Coast Guard [REDACTED] advisory opinion and invited a response within 30 days. No response was received.

**APPLICABLE REGULATIONS [REDACTED]**

The Enlisted Accessions, Evaluation [REDACTED] manual, COMDTINST 1000.2A, Article 5.B.1.a. states that enlisted employee reviews that result in the assignment of an unsatisfactory conduct mark must be supported by an adverse entry for: “(1) Non-judicial punishment; (2) Court-martial conviction; (3) Civil conviction; (4) Financial irresponsibility; (5) Not supporting dependents; (6) Alcohol incidents; or (7) Not complying with civilian and military rules, regulations, and standards.” [REDACTED]

Article 5.E.2.c. states that certain [REDACTED] require an unscheduled EER regardless of the time since the last review. One of those [REDACTED] is Relief for Cause. Section 7 of [REDACTED] enlisted employee review is required for [REDACTED] member who is relieved for cause.”

The Military Assignment and Authorized Absences manual, COMDTINST M1000.8, Article 1.F.1.d. states that a basis for Relief for Cause is “loss of confidence” due to either unsatisfactory conduct, which requires civil or military misconduct, or unsatisfactory performance. The section on Unsatisfactory performance states, “one or more significant incidents resulting from gross negligence or substantial disregard of duty [REDACTED] may provide the basis for RFC. Substandard performance of duty over an extended period of time may also provide the basis for RFC, but only after the command has taken corrective action such as counseling, guidance, training, and [REDACTED] appropriate use of performance evaluations which have proved unsuccessful.” [REDACTED]

**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 submission and applicable law:

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

2. The applicant asked the Board to correct his record by changing the conduct mark on his July 7, 2014, EER from Unsatisfactory to Satisfactory. He alleged that the conduct mark is erroneous because the requirements for an Unsatisfactory conduct mark pursuant to Coast Guard policy were not met. 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 his record, and the applicant bears the burden of proving by a preponderance of the

evidence that the disputed information is erroneous or unjust.<sup>3</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>4</sup>

3. The applicant has proven by a preponderance of the evidence that the Unsatisfactory conduct mark on his July 7, 2014, EER is erroneous. The EER documents the applicant’s permanent Relief for Cause as a result of unsatisfactory performance and his CO’s loss of confidence. Relief for Cause is not one of the grounds for an Unsatisfactory conduct mark on an EER authorized in the Enlisted Accessions, Evaluations and Advancements manual. In addition, the Coast Guard recommended granting relief due to the fact that there is no evidence in his record that supports the Unsatisfactory conduct mark on the July 7, 2014, EER.

4. Accordingly, the Coast Guard should correct his record by changing the conduct mark on his July 7, 2014, EER from Unsatisfactory to Satisfactory.

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

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<sup>3</sup> 33 C.F.R. § 52.24(b).

<sup>4</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).



**ORDER**

The application of [REDACTED], USCG, for correction of his military record is granted. The Coast Guard shall correct his record by changing the conduct mark on his July 7, 2014, EER from Unsatisfactory to Satisfactory.

October 27, 2017

