

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-206



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 August 24, 2019, 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 February 9, 2024, 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, an active-duty Machinery Technician, First Class (MK1/E-6), asked the Board to remove from his record a negative CG-3307 ("Page 7") that resulted from an investigation by the Coast Guard Investigative Service (CGIS) into allegations of sexual assault. The applicant stated that he was exonerated of sexual assault charges. He argued that, because the investigation cleared him, the negative Page 7 should be removed because it is unjust. The disputed Page 7, dated August 23, 2016, states the following:

23 AUG 16: From approximately May to June of 2015, you engaged in unprofessional behavior by rubbing the shoulders of two junior members, in the workplace, on duty. An investigation was convened in which it was determined that although you did not display intent to degrade or harass either member, you did create an uncomfortable working environment for these junior members, who had recently reported to the unit following bootcamp.

As a Coast Guard Petty Officer who has received extensive training on appropriate workplace conduct, particularly with respect to unwanted or inappropriate touching, you are hereby on notice that if this behavior continues, you may be subject to more severe measures including administrative separation or prosecution under the UCMJ.

In spite of this matter, I have full confidence in your ability to grow and continue down the path of becoming a productive and successful member of the Coast Guard. However, you must work on your leadership skills, particularly with respect to the service's most junior members. Furthermore, you must always keep in mind

the core value of “Respect” and ensure that your actions consistently demonstrate respect for your shipmates, both up and down the chain.

SUMMARY OF THE RECORD

The applicant, an active-duty service member, enlisted in the Coast Guard on May 17, 2010. He became a Machinery Technician (MK) and advanced to MK3/E-4 in 2011.

On June 20, 2014, the applicant reported for duty at a Coast Guard small boat station. A copy of a radio log shows that a subordinate female seaman, SN G, first reported to the unit on September 17, 2015. The date SN S first reported to the unit is not in the record.

On January 28, 2016, while he was still assigned to the small boat station, the applicant’s command contacted the CGIS about a report by a subordinate female seaman, SN S. According to the CGIS report, SN S had complained that, in May and June 2015, the applicant had repeatedly touched her without her consent and contrary to her request not to touch her; had rubbed her shoulders on several occasions; and had once pulled her into his body for a hug. CGIS initiated a criminal investigation as required by policy. During her interview, SN S identified another female seaman, SN G, as another possible victim of unwelcome rubbing or touching by the applicant. From January 28, 2016, through May 5, 2016, CGIS agents investigated these allegations against the applicant as potential violations of Article 120 (abusive sexual contact) of the Uniform Code of Military Justice (UCMJ). The CGIS agents interviewed numerous witnesses who had worked at the station, made notes of the interviews, and recorded the interviews. The agents’ notes include the following:

- Interview of SN S conducted on January 28, 2016: SN S, who had filed the initial complaint against the applicant, told the CGIS agent that shortly after she had arrived at the station in early 2015, the applicant began repeatedly rubbing her shoulders even though she asked him not to do so. SN S alleged that the applicant began rubbing her shoulders for a few seconds at a time not long after her arrival at the unit. Then in May or June 2015, the applicant had asked her supervisor why SN S “hated” him, so they had a meeting and she told him that she did not hate him. Soon thereafter, they were having a conversation while the applicant was sitting in a chair. After she told him that it was the best conversation they had ever had, he put his arms out as if to hug her. She closed the gap to hug him but then he pulled on her so she fell on top of him. She was shocked and immediately pushed against him to separate herself from him.

SN S told the CGIS agents that soon thereafter, the applicant walked toward her with his hands out, and she thought he meant to touch her, so she said, “Don’t touch me.” The applicant paused but nevertheless continued forward and rubbed her shoulders as usual. SN S stated that she and the applicant had four joint counseling sessions in May and June 2015, and after the last time he rubbed her shoulders, the applicant was moved to a different shift so they would not be working in the office at the same time. SN S stated that he did not rub her shoulders after he was moved.

SN S also told the CGIS agent that in about September 2015 she had witnessed the applicant rubbing the shoulders of SN G, a new female Seaman in the command center,

during a shift change. SN S claimed that she asked SN G if the applicant's touching bothered her, to which SN G replied "yes." SN S alleged that she then told SN G to tell the applicant to stop touching her because it bothered her. SN S alleged, that after seeing the applicant rub SN G's shoulders, she made the decision to report the situation because she did not want someone else to have to go through what she did with the applicant. SN S claimed the situation with the applicant caused her a great deal of stress because she feared the applicant's constant complaining to her superiors about her being disrespectful would affect her career. SN S alleged that the stress caused her to start smoking again. SN S declined to provide investigators with a written statement because her interview had been audio-visually recorded.

- First Interview with SN G conducted on January 28, 2016: SN G told the CGIS agent that she had never personally observed the applicant touch SN S in an abusive or sexual manner. However, SN S had told her that the applicant had rubbed her shoulders and once hugged SN S from a sitting position, pulling SN S on top of the applicant. SN G stated that SN S had dropped hints about the applicant but had never specifically warned her about him.

SN G claimed that the applicant got along well with other males within his unit, but that he was awkward around females and did not have a normal sense of boundaries in regard to touching. SN G claimed to have never seen the applicant touch other males within their unit. SN G alleged that the applicant touched her shoulders on approximately four separate occasions and once pretended to choke her in a manner popularized by the "Simpsons." SN G alleged that the applicant put his hands around her neck and said, "why I oughta." SN G claimed that the applicant was joking and did not cause her any physical harm; however, she did not like the fact that the applicant had touched her because she did not like being touched by anyone.

SN G alleged that the applicant would touch her shoulders as he walked into a room or when he passed by her from behind. SN G described the physical contact as the applicant putting his hands on the top of her shoulders for about 2 or 3 seconds as he walked by. SN G stated that the applicant did not rub or massage her shoulders. SN G alleged that she told the applicant on several occasions not to touch her, and the applicant would occasionally comply with her demands, but at other times he would continue to place his hands on her shoulders. SN G admitted that she had been smiling and speaking in a high-pitched voice when she told him not to touch her; consequently, the applicant likely thought she was joking. SN G claimed that the applicant would stop touching her when she told him in a serious manner. SN G stated that the touching bothered her, but she did not think it was something that warranted formal discipline. SN G stated that she did not fear being around the applicant at work, but that she would not associate with him alone in a social environment.

SN G claimed she did not associate with the applicant outside of work because he had controversial views on politics and sexual assault. SN G alleged that the applicant had once told her and other coworkers during Sexual Assault Awareness Training that rape was a part of human nature and that cavemen had to rape their siblings in order to survive. He had said that the DNA of rape remained in human beings today.

During the investigation, SN G was offered the opportunity to consult with Special Victim's Counsel (SVC), the Sexual Assault Response Coordinator (SARC), or a Victim Advocate (VA). SN G stated she did not want to contact any of the representatives mentioned above; moreover, SN G did not think the applicant assaulted her and said she was not a victim of abusive sexual contact. SN G then declined to provide a written statement.

- Second Interview with SN G conducted on February 3, 2016: After being assigned an SVC, SN G agreed to meet with the investigators again. At this point SN G stated she did not have any further information to report in regard to her physical interactions with the applicant. SN G claimed she accurately described the applicant's contact with her during her initial interview conducted on January 28, 2016. SN G clarified that in addition to telling the applicant not to touch her, she would contort her body to get away from the applicant's hands.

SN G again alleged the applicant would place his hands on her shoulders and would leave them there for approximately 2 to 7 seconds. SN G claimed the applicant showed her more attention compared to other Coast Guard members and addressed her and her alone by her first name. SN G alleged that on January 30, 2016, the applicant attempted to isolate her so he could help her improve her marksmanship skills on the firing range. SN G alleged that the applicant offered to move to the side of the range so he could help her with shooting fundamentals. At this point, SN G alleged she told the applicant she preferred to be around everyone else to maintain range safety.

SN G alleged that on one occasion, the applicant was looking over her shoulders and saw that she was sending text messages to someone through her phone. SN G claimed the applicant spontaneously proceeded to tell SN G that lesbians liked him, and he had almost had a threesome with two lesbians. SN G claimed that she was very uncomfortable with the conversation, so she changed the subject. SN G further claimed she did not want to report the applicant's inappropriate touching because she did not want to be a problem and she wanted to be accepted by the rest of her predominantly male crew. SN G alleged she feared she would be labeled a troublemaker if she reported the applicant's physical contact, and she did not want to put a blemish on her name so early in her career. She claimed she was the only female on her crew, was trying to learn the interpersonal dynamics of life as a female Coast Guard member, and wanted to prove herself as a good worker. She alleged that the applicant's touching had made her very uncomfortable.

- Interview with the applicant conducted on February 5, 2016: The applicant was advised of the potential charges against him and of his rights. He invoked his right to counsel and the interview was terminated. The applicant was then fingerprinted, photographed, and released. The applicant verbally acknowledged understanding he was not to speak with anyone outside of Legal or CGIS about the investigation. The applicant declined to sign a CGIS Non-Disclosure Agreement.

The investigating agent alleged that after the applicant invoked his right to counsel, he made spontaneous utterances denying he ever touched anyone. The agent alleged he reminded the applicant that he had invoked his right to legal counsel, and he could not speak with the applicant about the allegations until after he consulted with a lawyer. The

investigator further alleged that the applicant started shaking, had red eyes, and said he had difficulty thinking straight after his rights were read to him.

- Interview with an undisclosed individual identified as “Person of Knowledge” (PK) conducted on February 8, 2016: For the sake of simplicity, this witness will be identified throughout as PK1 and all other individuals labeled “Person of Knowledge” will be given similar identifiers. PK1 was interviewed regarding his knowledge and observations of the applicant’s interactions with SN S and SN G. PK1 stated he had been stationed at the applicant’s unit and was assigned to the same shift as the applicant and one of the accusers.¹ PK1 described the applicant as socially awkward. PK1 clarified the applicant’s character as friendly, intelligent, and analytical. When the applicant talked to people, he would throw out facts about different subjects as if to prove his intelligence. PK1 recalled the applicant sharing facts about human nature and DNA during a sexual assault briefing but thought it was the applicant’s normal behavior in sharing his knowledge on a subject and demonstrating his intelligence. PK1 did not think the applicant’s comments were inappropriate or threatening; rather, he thought the applicant was attempting to dig deeper into the issue of sexual assault in human nature.

PK1 stated that the applicant persistently pursued females he found attractive and did not take it well when he was rejected. PK1 was told by one of the applicant’s accusers that the applicant treated her badly after she made it clear to him that she was not interested in dating him. PK1 alleged that SN S told him the applicant would use his rank to insist that SN S conform to military standards and traditions, such as maintaining eye contact when speaking to a superior. PK1 also alleged that SN S told him the applicant started demanding military professionalism only after she rebuffed his affections.

PK1 stated that the applicant bonded to females quickly, even if the female did not reciprocate romantic feelings. PK1 stated the applicant had had a girlfriend stationed nearby, but the female had ended the relationship when she left for a different station. PK1 alleged that the applicant came to him for advice when his girlfriend would not text him back. PK1 stated that the applicant was awkward around females and did not know how to properly court them. PK1 further explained that when the applicant met a girl, he considered their relationship serious in a short period of time. PK1 claimed that the applicant thought of dating women in an analytical (step-by-step) process versus a physical and emotional process.

PK1 alleged that he had witnessed the applicant touch one of the accusers on one occasion. PK1 observed the applicant touch one accuser’s shoulder as he reached around her to retrieve a manual during a Search and Rescue operation. PK1 stated the applicant briefly touched the side of the accuser’s shoulder to “let her know he would be reaching around her.” PK1 stated he did not think the touch was inappropriate and it seemed to be a normal workplace interaction considering the tight quarters in the command center. The applicant did not massage the accuser’s shoulder or leave his hand on her shoulder for an inordinate

¹ The specific accuser here is unknown as her name was redacted from the original document. As such, a general term is used to replace the specific accuser’s identification. This will be done throughout when the accuser cannot be readily distinguished.

amount of time. PK1 stated the applicant placed his hand on the side of the accuser's shoulder, grabbed the manual and then walked away. PK1 could not recall a time when the applicant had touched him during a shift. PK1 further stated that because of the tight quarters, it would not be unusual for someone to touch a co-worker during the course of a shift.

PK1 claimed that the applicant stood close to individuals with whom he conversed. PK1 claimed the applicant did not stand too close, but closer than what he considered a normal distance.

PK1 stated that he had been aware that SN S did not like the applicant but was not aware of the entire situation that had occurred in May and June of 2015. PK1 reiterated that SN S did not like the applicant because she claimed that after she rebuffed the applicant's advances, he became stricter with her. PK1 claimed that he had noticed the tension between SN S and the applicant. PK1 stated that he never observed any unusual interaction between SN S and the applicant, but the tension between them was obvious. PK1 stated that he had never observed the applicant interact with SN G.

PK1 spontaneously stated that the applicant may be the type to retaliate against his co-workers due to this investigation. PK1 uttered this opinion after the investigator asked him to maintain confidentiality in regard to his interview with CGIS. PK1 continued to explain that the applicant has never made threats or spoken in a violent manner; however, the applicant took rejection hard and had an emotional interest in the loyalty of his co-workers. PK1 appeared concerned that the applicant would interpret this investigation as his co-workers being disloyal to him and might make it hard for them.

- Interview with PK2, conducted on February 8, 2016: PK2 began working with the applicant in August 2014. PK2 described the applicant as socially awkward, but clarified by stating the applicant was "different, but not in a bad way." PK2 claimed that the applicant got along well with his co-workers but liked to talk about subjects on a deeper level than the conversation dictated.

PK2 was aware of the conversation the applicant had had regarding sexual assault being tied to human nature. PK2 stated she was speaking to co-workers about how females needed to take more responsibility when it came to sexual assault and the applicant offered his opinion about how sexual assault was linked to human nature. PK2 stated that she did not believe the applicant's comments were out of context and further elaborated that she believed the applicant was trying to offer a deeper explanation for sexual assault. Once again, PK2 stated that she believed the applicant only wanted to discuss the subject on a deeper intellectual level and wanted the group to think about sexual assault in a broader context. PK2 admitted her own views on sexual assault were not politically correct (that women needed to take more responsibility), but the whole discussion took place within the context of sexual assault training.

PK2 told investigators she was not aware of any situation between the applicant and SN S because she was on maternity leave during May and June of 2015. PK2 stated that the applicant had never touched her and that she had never observed the applicant touch SN S or SN G. Furthermore, PK2 claimed that she had never observed the applicant touch any

co-workers and that she believed any physical contact would make the applicant feel uncomfortable.

PK2 told investigators she never felt uncomfortable around the applicant. She stated she enjoyed the morale within their unit because it felt like family. PK2 stated she had been stationed on cutters where she had observed sexist behavior, but she had not seen or experienced inappropriate behavior from anyone within her unit.

- Criminal background check of the applicant conducted on February 8, 2016: Investigators found no record of the applicant at the National Crime Information Center (NCIC) or the California Department of Justice Command Center.
- Interview with PK3 conducted on February 11, 2016: PK3 told the CGIS agent he had worked with the applicant and one of the accusers only since January 2016 and in his opinion the applicant and the accuser appeared to get along well. PK3 told investigators that his opinion was based on the fact that the applicant and the accuser's interactions appeared positive and because the applicant would help the accuser learn her duties. PK3 stated he had not witnessed the applicant touch either of the accusers at any time.

PK3 described the applicant as easy going, intelligent, and respectable. PK3 stated that the applicant would report early to their duty station in order to meet the crew and become familiar with his duties. PK3 stated that in his observations, the applicant treated everyone the same and did not show extra attention to anyone. PK3 told investigators that to his knowledge, the applicant had had romantic relationships with two women stationed at other Coast Guard stations. PK3 claimed the applicant had bad luck with women. The applicant would meet a girl and go on a couple of dates and then the relationship would fade away.

PK3 told investigators that in his opinion, the applicant did not portray the attributes of a sexual predator. PK3 claimed the applicant did not go out to bars, drink alcohol, or attempt to separate or isolate women. PK3 stated that the applicant had a unique personality but meant well. PK3 elaborated on this statement by telling investigators the applicant was friendly but thought too much about subjects of conversations (looked deeper than the conversation dictated). PK3 stated that he believed his unit had a good, positive working environment and he was surprised to learn there was an allegation of abusive sexual contact.

- Interview with PK4 conducted on February 11, 2016: PK4 told the CGIS agent that he met the applicant in August 2014 and saw him on a daily basis. PK4 worked on the same shift as the applicant but did not work with him directly. PK4 claimed to have spoken to the applicant often and enjoyed their conversations. PK4 would joke with the applicant about his vehicle and stated that in his opinion, the applicant had a good sense of humor. PK4 described the applicant as approachable with a strong intellect. PK4 claimed the applicant had a vast knowledge of history and politics and enjoyed discussing those subjects at length.

PK4 met SN S in August 2014 and said she was extremely helpful in getting him familiar with his duties. PK4 claimed to have spent a lot of time with SN S, who helped him

professionally after he first reported to their unit. SN S did mention to PK4 that she had been involved in a situation with the applicant where the applicant was sitting in a chair and asked her for a hug. SN S described the exchange as awkward. SN S had told PK4 that she had spoken with her supervisor about the situation. PK4 did not have any additional information about the incident and did not know what SN S meant by saying the exchange was “awkward.”

PK4 told the CGIS agent that he had observed the applicant touch SN S on one occasion. The applicant was conducting training with SN S and placed his hand on the upper part of her back. PK4 told investigators he did not think the touch was unusual and said it appeared that the applicant was in “training mode.” PK4 stated the applicant appeared to be guiding SN S to look at the object he was training her on. PK4 stated that the applicant did not massage or leave his hand on her for an inordinate amount of time. Furthermore, PK4 stated the exchange between the applicant and SN S appeared normal and was within the context of the training the applicant was providing.

PK4 claimed to have observed the applicant interact with SN G on numerous occasions and said the interactions involved the applicant training her on various work-related subjects. PK4 had never observed the applicant touch her.

- Interview with PK5 conducted on February 11, 2016: PK5 told the CGIS agent that he had known the applicant since 2013 and worked with the applicant for about a year while stationed on the same ship. PK5 described the applicant as the smartest guy he had ever known and the best electrician and crew member to handle electrical issues. PK5 claimed the applicant got along well with his crewmates and that he did not “go out of his way” to touch anyone. The applicant seemed comfortable interacting with female crewmates.

PK5 told investigators he was aware of an incident between the applicant and SN S. PK5 believed that the incident was caused by the applicant believing that SN S was attracted to him and vice versa. PK5 believed that both the applicant and SN S had told one another they were not interested in the other, which created tension between the two. SN S had told PK5 that the applicant was weird and made her feel uncomfortable, and she did not want to be around him. SN S had never told PK5 that the applicant had touched her in any inappropriate way. PK5 had spoken to the applicant about the tension between them, but the applicant claimed not to know where the problem came from. At that point, PK5 advised the applicant to interact with SN S only in public. PK5 alleged that the last time he observed the applicant interact with SN S was during the summer of 2015. PK5 alleged that during a patrol he overheard SN S giving him relationship advice, though PK5 could not recall the details of the conversation, but it involved a girl the applicant was dating at the time. PK5 stated that he believed the relationship between the applicant and this accuser was amicable at the time.

PK5 had never observed the applicant touch any crew members (male or female) at their current unit or while at their previous unit. PK5 claimed the applicant had never had any disciplinary issues or incidents of misbehavior while assigned to their previous unit. PK5 claimed to have observed the applicant give training to SN G without noting any touching

or unusual behavior. PK5 claimed that the applicant provided SN G with additional firearms training because she wanted to be more proficient with her assigned weapon. PK5 did not believe the interaction was unusual or unprofessional.

PK5 claimed that the applicant did not portray the signs of a sexual predator as he has been trained in sexual assault response and awareness training. PK5 stated that he knew what a sexual predator looked like through his years in the Coast Guard, and it was “absolutely not [applicant].”

- A review of the applicant’s personnel file revealed nothing pertinent to the investigation.
- Interview with PK6 conducted on February 24, 2016: PK6 told the CGIS agent that she had worked with the applicant for approximately one year prior to her separation from the Coast Guard in July 2015. PK6 stated that the applicant had a unique personality because he liked to work on trucks and had a strong interest in firearms. PK6 stated that she never felt threatened by the applicant but knew some people were annoyed by his personality. PK6 stated that she was never annoyed by the applicant because she recognized he had a unique personality and thought he was “harmless.” PK6 claimed that the applicant seemed awkward around females and did not really know how to interact with them. PK6 stated the applicant had never touched her or treated her differently than other co-workers, and she did not feel uncomfortable around the applicant. Furthermore, PK6 stated she had never observed the applicant touch anyone in an inappropriate manner. PK6 was a Victim’s Advocate for their unit, so she felt confident she would notice any inappropriate behavior by the applicant, which she did not. PK6 stated she knew SN S but not SN G. She stated that SN S had never told her that the applicant had touched her in an inappropriate manner. SN S did tell PK6 that the applicant had a crush on SN G and that the applicant had annoyed the other individual.

PK6 claimed that the applicant did not always get the message when he was being annoying. PK6 explained that the applicant used to play a harmonica at work and she told him to stop. PK6 stated the applicant thought it was a joke between the two of them, so he would pull out the harmonica in front of her, prompting her to react. The applicant continued this activity with the harmonica until PK6 made it clear she was serious, at which point he stopped.

PK6 stated that SN S had “overreacted” to a co-worker on one occasion. PK6 alleged that SN S had reported this co-worker for sexual discrimination (possibly sexual harassment) after he made a comment to her during the workday. PK6 conceded that she was not confident on the details, but said a co-worker had jokingly made a comment to SN S about not being able to take her seriously because she was a non-rate. The investigator noted that PK6 could not remember the comment verbatim but was confident that it was non-sexual in nature. PK6 further stated that SN S became angry with the co-worker and reported the co-worker for sexual harassment or sexual discrimination because she understood the sensitivity of such charges and she knew it would be taken seriously. PK6 expressed concern that SN S had reported the incident to get vengeance on the co-worker for

embarrassing her. PK6 told investigators she was unsure what exactly happened after the situation was reported but said the issue was resolved without any further action.

PK6 stated she was hesitant to share the above situation because she did not want to insinuate that SN S was overreacting to this investigation. PK6 explained she could understand SN S's decision to report the applicant and how she would feel helpless based on her rank and gender. PK6 stated that she shared the prior situation because she thought it was pertinent to this situation and wanted to be fair to both sides.

- Interview with PK7 conducted via satellite telephone on February 25, 2016: PK7 stated that he had worked with the applicant for approximately one year and served as his shift supervisor. PK7 had also supervised SN S but was not acquainted with SN G. PK7 stated that the applicant had a weird personality and did not get along well with some of the other members on their shift because of his interest in off-road driving, guns, and computer games. PK7 stated that the applicant got along well with his co-workers while they were performing their duties, but kept to himself during breaks and downtime.²

PK7 told the CGIS agent that in approximately May or June 2015, the applicant had approached PK7 because he felt as though SN S was being disrespectful to him by avoiding eye-contact when she spoke to him. PK7 thought there might be more to the situation, such as the applicant having a "crush" on SN S, at which point the applicant adamantly denied being attracted to SN S and told PK7 that she was not his type. PK7 stated that he spoke with SN S about the situation with the applicant, and she told PK7 she did not have a problem with the applicant, but thought he was weird. SN S then told PK7 about a "weird" interaction with the applicant in which the applicant had approached her and asked her for a hug, to which she complied, but the hug had made her feel awkward. SN S elaborated and told PK7 that she did not mind giving people hugs, but the applicant had asked for the hug as if they were friends, and she did not consider the applicant to be a friend. PK7 alleged that he told SN S to tell the applicant she did not consider him to be a friend and she thought it was weird that he had asked for a hug. PK7 concluded the conversation with SN S by asking her if she felt she was sexually assaulted and needed to report the applicant's behavior. SN S responded by telling PK7 "no."

In order to deal with the situation PK7 had gathered both SN S and the applicant together for a joint counseling session. During the session, SN S told the applicant she did not like the hug, and he indicated he understood. PK7 claimed that both SN S and the applicant had used this time to air their complaints about the other and had apparently settled their dispute. Both of them had verbalized that they were not attracted to the other.

Following the counseling session, PK7 had asked SN S if she would be more comfortable if the applicant was moved to a different section. SN S told PK7 she did not want to make a big deal out of it and did not want him to move the applicant to another section. PK7 stated that despite SN S's request, PK7 had moved the applicant to a different duty section.

² This statement seems to be in conflict with PK7's opening statement where he claims the applicant had a weird personality and did not get along well with some of the other crewmates.

PK7 stated that he had never observed the applicant touch SN S or anyone else within their station.

- An NCIC check on one of the accusers conducted on March 7, 2016, revealed no record for this individual.
- Interview with PK8 conducted on March 2, 2016: PK8 described the applicant as a very smart individual who got along well with his other crewmates. PK8 stated that he was acquainted with one of the applicant's accusers but not the other. PK8 described the accuser he knew as very bright and displayed a keen sense of responsibility. PK8 stated he never observed the applicant touch the accuser or any member within their unit. PK8 also stated that he had not noticed any unusual interaction or tension between the accuser and the applicant, nor was he aware of any situation involving abusive sexual contact by the applicant.

PK8 was aware of a situation that had developed between SN S and another service member, who will be referred to as A, while stationed in another state. PK8 explained that SN S had told another member that when she would give her input on situations at work, A would respond with "now what is your rank?" which frustrated her, and that member had told PK8. PK8 stated that A had just been promoted and was not aware his teasing was creating tension. PK8 advised SN S that he would talk to A about his comments. SN S told PK8 that she did not want to make a big deal about the situation, but PK8 advised her that A's behavior was unacceptable. PK8 alleged that he spoke with A who was shocked and very penitent that his behavior had created stress for SN S. PK8 alleged he told A his comments would not be tolerated, at which point A expressed a desire to apologize to SN S. PK8 mediated a meeting between SN S and A where A apologized to her. She had accepted the apology and the situation ended. PK8 stated that SN S had never accused A of sexual discrimination or sexual harassment. Instead, she had reported that A's comments bothered her, which was translated by leadership as A having created a hostile work environment. Furthermore, PK8 alleged, SN S would likely never have reported the situation with A had another member not reported the incident first.

- A review of SN S's Personnel Data Record (PDR) conducted on March 9, 2016, revealed no information pertinent to the investigation.
- A review of SN G's PDR conducted on March 9, 2016, revealed no information pertinent to the investigation.
- Interview with PK9 conducted on March 11, 2016: PK9 stated that he had been stationed with the applicant for approximately three years and maintained only a professional relationship with him. PK9 stated the applicant seemed like a good guy, but he could not speak to his character due to their limited interaction. PK9 stated he was unaware of the applicant being investigated at any point during their tour of duty together and he had never heard any rumors of such an investigation. PK9 also stated he was unaware of anyone in the crew having anything against the applicant while they were stationed together. PK9 stated that he had never witnessed the applicant mistreat or disrespect women in public, never

witnessed any woman complain about the applicant, and never witnessed the applicant lose his temper on another individual. PK9 did not have any other information related to the investigation.

- Interview of PK10 conducted on March 11, 2016: PK10 stated that she had met the applicant in September 2015 and they had dated for about three weeks before she ended the relationship because “in all honesty, I was just not into the thought of having a long-distance relationship with him.” PK10 also stated that at no point did the applicant touch her or physically force her against her will during their time together. She further stated she does not feel she was subjected to any type of physical or sexual assault during her relationship with the applicant. PK10 claimed that only one person from her crew personally met the applicant while they were dating. That crewmate may have witnessed the applicant raising his voice at her “because he [the applicant] thought it was wrong that I broke up with him.” PK10 stated that towards the end of her three-week relationship with the applicant, she did begin to feel uncomfortable around him because he seemed to be growing persistent. PK10 alleged this was the only time the applicant used profanity aimed at her. PK10 alleged that at no point did she see the applicant disrespect or act in a negative manner towards another female during their time together.

PK10 stated that the applicant seemed to have a “me against the world mentality and felt as though people were always out to get him in trouble.” PK10 stated that on one occasion the applicant spoke to her about a female at his former unit who constantly spoke to him with disrespect, and the matter was brought to the command. PK10 claimed that the applicant never gave full details about why she was disrespectful towards him, but PK10 found it “odd” that the applicant was discussing the matter.

PK10 stated that the applicant confided in her that while he was serving aboard a cutter, he was involved in an incident with a female crewmate. PK10 stated that the applicant told her that the female had had “it out for him,” but the matter was handled internally by the Chief’s Mess. PK10 stated that she was unaware if the matter involved any sexual or physical accusations. PK10 gave investigators the name of another individual who was stationed on the same ship as the applicant and who may have been able to provide more information about the above-mentioned situation.

Finally, PK10 stated that she did not feel victimized in any way by the applicant and is not currently seeking any assistance from counselors or her command cadre. PK10 stated that while she was not personally victimized by the applicant, she was not surprised to learn that he may have touched a female inappropriately based on her experience with his growing persistence and slight temper when he felt rejected by the opposite sex.

- Interview of PK11 conducted on March 11, 2016: PK11, when asked if she knew why she was being interviewed, stated she did not and was surprised to learn it was about the applicant. When asked by investigators if she would be surprised by the accusations made against the applicant, PK11 stated she thought the investigator might be telling her a joke and would not have believed him. She told investigators that the applicant was her “buddy” and they were in “A” gang together and had worked together for three years. PK11

described the applicant as very smart, friendly, responsible, and well mannered. As far as the alleged sexual assault, PK11 claimed that the applicant is the complete opposite of that, stating “he would never...”

PK11 claimed she did not hang out with the applicant outside of work, but the applicant treated her with respect and helped her with her work. PK11 stated that she gives the applicant credit for making her a better MK and that she had no issue with the applicant in that regard. PK11 described the applicant’s interactions with other females as the applicant having “no game” and not knowing how to talk to women. PK11 provided names of other females in engineering with whom the applicant would hang out, and to her knowledge there were no issues. PK11 stated that the aforementioned females would be just as shocked as her by the allegations against the applicant.

PK11 claimed that the applicant did not hang out with other females off the boat and other males may have had issues with the applicant because of his knowledge. PK11 claimed the applicant was helpful to other people working on their engineering drawings for general qualifications. PK11 stated that she had never witnessed any unwanted attention to any females, that she was never touched inappropriately by the applicant, and that she never witnessed any inappropriate touching of any other females or males in or out of the Coast Guard.

PK11 stated that she had never witnessed the applicant try and separate or target any females on or off duty, nor did she witness the applicant talk derogatorily about women. She told investigators, “He’s just not that kind of a person.” PK11 stated that she believes the applicant is misunderstood and she could see someone trying to get him in trouble on purpose if they did not like him. She further explained that people do not try and get to know him and that she would be willing to take the stand and testify to these facts. PK11 told investigators that she feels someone got upset with the applicant and that they are trying to get him in trouble. When asked by investigators if there was anything else they needed to know, PK11 stated, “Honestly, he’s being falsely accused.” PK11 stated she thinks the applicant may know something about his accusers, and now they are trying to get him into trouble. PK11 further alleged that if the investigators asked anyone in “A” gang on their ship, they would have the same reaction and she is unaware of anyone who would think that the applicant did or could have done what he had been accused of.

Finally, PK11 claimed that she was unaware of any relationships the applicant had with other females on the ship. PK11 told investigators that new female Coast Guard members cause drama and the woman accusing the applicant probably had some other issue that would have caused this. She concluded by telling investigators that she hopes it can be proven that the applicant was falsely accused.

- A review of the applicant’s CGOne Office Communicator and Exchange Outlook email records conducted on March 23, 2016, resulted in no information pertinent to the investigation.

- A review of SN G's CGOne Office Communicator and Exchange Outlook email records conducted on March 23, 2016, resulted in no information pertinent to the investigation.
- Interview with PK12 conducted on April 14, 2016: PK12 stated that he met the applicant in June or July of 2011 while assigned to a cutter. PK12 stated that there was minimal interaction between himself and the applicant due to the difference in rank and supervisory position. PK12 indicated he provided support to approximately 130 Coast Guard members and that approximately 5% of his time may have been spent with the applicant. PK12 stated that aside from small talk with the applicant during the daily muster, his relationship with the applicant was mostly professional.

PK12 alleged that he was not aware of any non-rate female Coast Guard members who assigned to their ship who had accused the applicant of sexual harassment or sexual discrimination. PK12 claimed he had never observed the applicant treat others in a bad way or noticed anything abnormal about him. PK12 had not observed the applicant treating females differently. PK12 stated that there was mention of discrimination where a specific team was instructed to clean; however, the complaint was not sexual in nature and was more about degrading and belittling in an unprofessional manner. PK12 stated that he could not recall nor was he able to describe a female who had accused the applicant. PK12 indicated that there may have been personality issues and clashes with the male crewmates as in a typical workplace, but nothing to do with sexual harassment or sexual discrimination. PK12 told investigators he had not observed whether or not the applicant showed any extra or undue attention to younger female crewmates or newly assigned non-rates. PK12 alleged that the applicant had touched everyone in the unit, both male and female, by, for example, patting them on their back, but did nothing that would stand out as abnormal behavior. PK12 stated that he could not think of a reason why the applicant would touch anyone while communicating with them, even during training. PK12 indicated he did not observe or hear about the applicant trying to separate or isolate females from others, nor did he observe the applicant speaking about women in a derogatory manner. PK12 stated that the applicant did not go into detail about his personal life. PK12 stated it did surprise him that the applicant had been accused of inappropriately touching a female crewmate because he did not see that in his character. PK12 stated that occasionally, the applicant does not think before he speaks and makes comments irrelevant to the topic. Finally, PK12 stated that he had never heard anything negative about the applicant and considered him to be a hard worker, reliable, loyal and a trustworthy individual.

- A review of CGOne Office Communicator logs and Outlook email records from SN S's account was conducted on March 23, 2016. The investigator noted that there were several conversations on Office Communicator that referenced some of the details of the investigation pertaining to SN S's interactions with the applicant:³

The logs show that during an August 5, 2015, conversation with a friend stationed across the country, SN S said the following in pertinent part:

³ Any and all statements quoted from SN S's Office Communicator logs were copied and pasted directly from the logs. Any spelling or grammatical errors were made by SN S while originally sending the messages.

SN S: theres drama every where you go its inevitable. But im doing okay im doing muay thai kickboxing competitions so thatll be fun lol. uhm the unit is okay nothing special. But not bad either. its a good unit and its definitely getting better its just mostly the people here that cause me issues but people gon hate. and i should be getting orders to A school in February. next class. theres a sept class but i didnt get in so february im praying for.

Friend: damn that's awesome!!!!!! remind me not to make you to mad ;) lol. want me to come and beat them up for you?!?!?!? what are they doing? cant be upsetting my boo! that sucks im sorry to hear that but your right hopefully you get in soon and the come here hahahah miss yo face! you better keep me updated too!

SN S: just rumors some guy here is completely and totally obsessed with me because i don't like him back hes saying that im sleeping with a BM2 here in the opposite section as me so literally theres no possible way that i can like hes crazy. But other than that the people here are cool.

[conversation redacted]

im not really sad about it im more irritated and i laugh about sometimes because hes actually so childish like its pathetic and don't feel sorry he can act that way i don't care but the minute it starts affecting me in my career is where i draw the line. because one of the command found out about it he came to me asking if i can work well with others making it sound like i was the problem and i was fucking heated i was so damn pissed. So i sat down with him and told him exactly how it went and he was like oh well he didnt tell me that. And i was of course he didnt tell you that because he knows hell get in trouble. people are dumb.

Friend: omg Ya because im gunna go and say, hey capt im crushin on this chick but she thinks im a shitbag (because i am) so im starting shit but just so you know shes doing all of this stuff lol wow ppl are really stupid if he honestly thought dude was going to tell the command the truth. ... you know what[?] im comin out there and kickin ass see u soon boo (BYE)

SN S: haha come because this guy need some common sense knocked into him. Maybe the scare of getting his crow stripped from him will getting [*sic*] him to start thinking straight.⁴

Friend: lol lets do it!!! wait can i stay with you??? ill sleep on the floor swear. But ill say we are dating and ill scare him hahaha. Something needs to happen or he will always do this to ppl

SN S: duuuude so i heard that at his last unit some chick filed a sexual harassment case on him be he ended up winning because shes had some history too so i didnt really work out in her favor but i dont know that says something to me.

Friend: ya thats something odd. he will get his soon.

[conversation redacted]

Friend: dudes not working with you is he? because your only a 40hr drive away ... ill cut a hoe i aint playin

SN S: hahahahaha no theres -no need for you to come alllll the way over here. After all that happened they switched him to the other section but even from the other section hes caused me issues. it was while he was in the other section where he spread the rumor about me.

The logs show that on August 21, 2015, SN S had a conversation with a friend aboard a cutter in which she stated the following in pertinent part:

SN S: the command knows about what happened between [the applicant] and i.

SN S: good new is that they wont put us in the same section

⁴ Getting a "Crow" stripped refers to discipline that results in a service member having his Eagle insignia removed from his uniform. This would reduce his rank to E-3 or below.

SN S: did i tell you that [the applicant] was spreading rumors about me sleeping with a BM2 here?
 SN S: i was so pissed ...
 [conversation about reorganization of sections redacted]
 SN S: they are trying to figure out this whole qual shit and who gets along with who. honestly. its all fucking [the applicant]. no one can and wants to work with him. [redacted] got switched over to my section because of the way she was treated in the other section. and they want to switch everyone because the way [redacted] treats females and other non rates. ...

The logs show that on August 29, 2015, SN S had the following conversation with the same friend, in pertinent part:

SN S: i hear ya. good. just trying to put up with the people hear so fucking ready to leave
 Friend: dude still causing problems???
 SN S: yeah but they are switching me section into his section and im dreading it
 Friend: wtf if they know it's a problem why put you in his section??
 SN S: they dont thats the thing my xpo is switching me but im gonna tell him everything
 Friend: ooo ya id say something and put a stop to that shit
 SN S: yep so hopefully i don't have to stand duty with hi
 SN S: him
 Friend: hope not ill be mad and ill call your command and tell them your future ex-husband is getting pissed because of it haha

The logs show that on September 2, 2015, SN S had the following conversation with the same friend aboard the cutter, in pertinent part:

SN S: whats up???
 Friend: hey wifey how are you??? get you issue fixed??
 Friend: issue
 SN S: i did im moving sections next friday and thats the same day the other guy gets out of the section so we will never have to cross sections so im happy about that

The logs show that on September 19, 2015, SN S had the following conversation with the same friend, in pertinent part:

SN S: started my first duty period with port section
 SN S: i was switched. and it broke my heart to leave starboard section :'([conversation about work redacted]
 SN S: but they switched [the applicant] out of port because they wont let him work with me
 SN S: because of all that happened

- The Investigative Action Report shows that CGIS closed its investigation on May 5, 2016. The investigation concluded there was no evidence of intent to abuse, humiliate, or degrade either victim. The initial disposition authority referred the matter to the applicant's command for final disposition on July 27, 2016.

On June 17, 2016, SN G's Special Victims' Counsel (SVC) submitted a memorandum stating that SN G "concur[s] with the recommendation of administrative disposition of the case.

On July 19, 2016, SN S's SVC submitted a memorandum stating that SN S did not want her report to result in criminal charges against the applicant and "strongly prefers that this matter

be handled via formal counseling and administrative documentation in the accused's PDR (i.e. via CG-3307)."

On June 27, 2016, a Staff Judge Advocate (SJA) sent the District Commander an Initial Disposition Recommendation Memorandum detailing the facts and allegations in the investigation. The SJA stated that although the applicant's behavior had not constituted a sexual offense under Article 120 or Article 128 of the UCMJ, his "behavior was unprofessional, and should be addressed administratively and documented in his PDR." The SJA recommended that the applicant receive counseling on a Page 7, stating that, should his unprofessional behavior continue, he could be subjected to more severe measures, including administrative separation.

The SJA explained that the investigation had not substantiated that the applicant had committed a sexual offense, and SN S had admitted that no sexual assault had taken place and said that she did not believe there was a sexual intent behind the applicant's touching of her shoulders. But SN S had claimed that the applicant "routinely touched/rubbed the shoulders of other members in the unit as well (male and female)." The SJA noted that SN S had made her complaint because, several months after having had issues with the applicant rubbing her own shoulders, she had seen the applicant rub the shoulders of SN G, who was just 18 years old and had just completed recruit training. SN S told the SJA's office that she had made the complaint because she did not want the applicant making SN G "feel as uncomfortable as she'd been made to feel by [the applicant]." The SJA noted that SN S had admitted speaking with SN G "who also decided to file an unrestricted report, alleging the same."

The SJA further explained that the facts did not support charging the applicant with assault under Article 128 because the applicant's "touching" did not meet the elements of "offensive," meaning done without legal justification or excuse. He noted that SN S had stated that, when the applicant had asked her for a hug, she had consented even though it made her feel uncomfortable. The SJA stated that the applicant had "rubbed everyone's shoulders at the unit, did not understand that his conduct was unwanted, or that it was making SN S or SN G uncomfortable. In addition, the SJA highlighted the fact that, of the 7 crew members/employees interviewed, no one remembered having observed the applicant touch anyone inappropriately.

The SJA further stated that, although the applicant had not committed a crime, it was evident from the investigation that the applicant's touching, even if not sexually motivated, had made SN S and SN G uncomfortable. The accusers claimed that, as some of the most junior members of the unit and two of the few females, they felt that the applicant's behavior had undermined their ability to be taken seriously and distracted them from their duties. SN S claimed that her interactions with the applicant caused her so much stress that she had started smoking again. In short, the applicant, although unintentionally, had created a climate that was uncomfortable for these two females in the unit.

The SJA found that the applicant's unwanted shoulder rubs and hugs would constitute unprofessional behavior in any workplace and that, as a petty officer, he should have been aware that his superior rank magnified these unprofessional interactions with junior members.

On August 23, 2016, the applicant was issued the disputed negative Page 7 (see page 1) for unprofessional behavior. It is signed by the commanding officer (CO) for military personnel, but there is a note stating that the applicant refused to sign it to acknowledge receipt.

On June 7, 2017, the Director of CGIS sent the applicant a letter rejecting his Freedom of Information Act (FOIA) request for a copy of the CGIS investigation. He stated that there were 79 responsive pages but all 79 were being withheld under 5 U.S.C. § 552(b)(7)(A), which “protects from disclosure records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings. I have determined that the information you are seeking relates to an ongoing criminal law enforcement investigation.” The applicant was advised that he could appeal the determination within 90 days.

On July 1, 2017, the applicant advanced from MK3/E-4 to MK2/E-5. The applicant continues to serve on active duty in the Coast Guard. He has since advanced to MK1/E-6.

On November 27, 2017, the applicant filed a formal civil rights complaint of discrimination against his CO. He claimed that the CO had discriminated against him by issuing the disputed Page 7. The applicant’s complaint was dismissed on January 18, 2018, because he had made initial contact with a Coast Guard Military Equal Opportunity office outside of the 45-day time limit.⁵

APPLICANT’S ALLEGATIONS

In January 2016, the applicant explained, two female Coast Guard members accused him of having touched their shoulders in a sexual manner. Specifically, they accused him of unwelcome rubbing and massaging of their shoulders. As a result of these allegations, the applicant was subjected to a criminal investigation for Abusive Sexual Contact in alleged violation of Article 120 of the UCMJ. Despite being cleared of the charges, the applicant alleged, a negative Page 7 was placed in his file by his unit’s CO for military personnel. The applicant alleged that, throughout the process, there were clear indications that good order and discipline were not the driving force behind the negative Page 7’s issuance. For example, the applicant’s CO denied his request to submit new evidence in his defense.

The applicant argued that the negative Page 7 should be stricken from his records on the grounds of inaccuracy and because there was no evidence against him. He alleged that the negative Page 7 is a baseless defamation of his character. In addition, the applicant alleged, he made every attempt to exhaust all of his potential administrative remedies before applying to the Board for relief, but his efforts were obstructed. Specifically, his FOIA requests were denied because of an ongoing investigation.

⁵ Pursuant to the Coast Guard Civil Rights Manual, COMDTINST M5350.4 (series), before military members can initiate EO complaint they must first attempt to resolve the matter with their Commanding Officer or Officer in Charge. They must also contact a CRSP within 45 days of the event giving rise to the complaint. If the contact is made on the 45th day and the member has not attempted resolution the member will be granted a 15-day period to attempt to resolve the matter.

Allegations of Error and Injustice

The applicant alleged that multiple Coast Guard policies were violated in the issuance of the negative Page 7. Specifically, he claimed, there were numerous attempts to prevent him from filing appeals, from having oversight of the investigation, and from clearing his name. The applicant alleged that the Coast Guard was never going to clear him and that his pleas of innocence were treated as a crime. He alleged that, after he filed a civil rights complaint against his CO who gave him the Page 7, the CO's response to the applicant was, in effect, "I need to appear like I am doing something."

The applicant also claimed the information contained within the negative Page 7 is inaccurate, specifically the information about the timeframe mentioned by his accusers. Although the Page 7 states that he engaged in unprofessional behavior from "approximately May to June of 2015," the applicant stated that one of the accusers was not assigned to the applicant's unit until several months later, and it was her third unit since bootcamp, not her first. The applicant noted that these instances of inaccuracy did not seem to concern those who investigated his case.

The applicant stated that the criminal investigation was conducted pursuant to the COMDTINST M1754.10D, the Coast Guard's Sexual Assault Prevention and Response (SAPR) Program Manual. During this investigation, he received a Military Protection Order, and he alleged that it was issued to support the ongoing investigation. The applicant claimed that this was confirmed in the response to his FOIA request, which was denied on the grounds of there being an ongoing investigation. The applicant also alleged that the denial of his FOIA request indicated that the investigation was still ongoing, yet the negative Page 7 was placed in his file long before the investigation seemed to be complete, which was a clear violation of Coast Guard policy. The applicant explained that the negative Page 7 is a violation of Chapter 5.G.1. of COMDTINST M1754.10D, which states in relevant part, "The alleged offender is innocent until proven guilty in a legal proceeding," and "The alleged offender will be afforded due process and treated with respect and with appropriate care and concern at all times." The applicant alleged he was not presumed innocent and if there was a legal proceeding, he was not allowed to participate. He also alleged that the Coast Guard denied him due process. The applicant argued the negative Page 7 violates Coast Guard policies because it was issued before the investigation was complete, as shown in the memorandum denying his FOIA request.

The applicant alleged that, in September 2016, he met with his unit's Command Master Chief and requested removal of the negative Page 7 on the grounds that it violated Coast Guard policy. That request was denied. The applicant further alleged that, soon after that meeting, he made a request for the negative Page 7 to be removed on the grounds that it violated Coast Guard policy and Commandant Instructions. The applicant alleged that the two policies that had been violated were removed from the applicable instruction not long after.⁶

⁶ In December 2016, COMDTINST M1754.10E was revised and all of Chapter 5.G. was removed. The Letter of Promulgation for the December 2016 edition states that the SAPR Program "focuses on prevention strategies, supporting victim recovery, and assisting service member victims to be fully mission capable and engaged. The SAPR Program does not provide policy for legal processes within the responsibility of [the Manual for Courts-Martial]." The letter also notes that a major change to the manual was the removal of procedural guidance, which would be included in a new SAPR Tactics, Techniques, and Procedures (TTP) instruction.

The applicant further alleged that he requested a copy of the criminal investigation in accordance with the Coast Guard's Freedom of Information and Privacy Act Manual (COMDINST M5260.3), but this request was also denied. The applicant noted that this request was different than the FOIA request he subsequently made. After his request for copies of the criminal investigation was denied, the applicant then requested an audience with the District Command Master Chief, which was also denied. The applicant followed these denials with a FOIA request, which was initially denied. However, the applicant admitted, he did eventually receive the documents he requested after the case was officially closed.

The applicant alleged that until he received the FOIA documents, he had not seen the allegations laid against him in their totality, and so the first opportunity he had to respond was not until after he finally received the documents through his FOIA request and long after the Page 7 was entered in his record. Confident in the strength of his case, the applicant stated, he again requested to meet with his Command Master Chief and informed him that he had new evidence. The request was denied, and the applicant was informed that his CO's decision regarding the Page 7 was final. The applicant believed he had proof of his innocence but, he alleged, his command would not entertain the idea of clearing his name. The applicant's second request for an audience with the District Command Master Chief was also denied.

The applicant ultimately filed a civil rights complaint against his CO. He wanted to meet with his CO to resolve the issues. It was at this point, the applicant alleged, his commander stated something to the effect of, "I have to look like I am doing something." The applicant informed his CO that he had new evidence to prove his accusers had lied, but his CO refused to accept the new evidence unless the applicant re-opened his criminal case.⁷ The applicant refused to re-open a case that had ultimately found him innocent.

The applicant claimed he told his CO that the UCMJ requires an investigation into the applicant's allegations that his accusers committed perjury, but the CO refused to act.⁸ The only offer the CO made was to re-open the applicant's criminal investigation, which the applicant again declined. The applicant stated:

It is clear that justice was not blind here. Multiple policies and the UCMJ should have protected me from having my reputation and honor attacked without evidence. They were all ignored. Even when explicitly pointed out, they were still ignored. This was not ignorance; this was deliberate subversion of the legal process for other means. Leaving the CG-3307 in place would validate their 'ends justify the means' behavior and leave a stain on the ideals that this Country [*sic*] stands for.

Applicant's Allegations about Victims' Motivation

The applicant argued that the evidence he has submitted to the Board not only proves his innocence but presents a strong case that he was maliciously targeted by his accusers. The applicant argued he is innocent and there is no evidence of any kind suggesting his guilt. To substantiate his claims, the applicant quoted the investigating officer's summary:

⁷ Because the applicant did not have the authority to reopen a CGIS investigation, the Board presumes that the CO meant that if the applicant submitted new evidence, the CO would have to ask CGIS to reopen the investigation, and so the applicant declined to submit the new evidence.

⁸ The applicant did not submit evidence showing that he had submitted an Offense form to charge his accusers with committing perjury.

Interviews of the subject's current and former female coworkers revealed subject never touched them inappropriately or treated them disrespectfully; furthermore, they had never witnessed such behavior from subject toward anyone else. Interviews of the subject's male coworkers revealed they never witnessed subject inappropriately touch any coworker (male or female) or treat them in a disrespectful manner. Interviews of Person of Knowledge [name redacted] subject's ex-girlfriend revealed subject never touched her inappropriately or forced any physical activity on her against her will.

The applicant argued this statement alone should be conclusive evidence for any legal proceeding because every potential witness interviewed by CGIS conclusively contradicted the allegations of his two accusers about his public behavior. He alleged that the single most important factor in favor of his innocence is that the only witnesses against him were his two accusers, who will be referred to as SN S and SN G for the sake of clarity. The applicant alleged that his accusers, who validated each other's stories, were likely romantically involved with one another, which is a violation of Coast Guard policy for units of less than 60 service members. The applicant claimed that his unit at the time was approximately half that number.

The applicant alleged that SN S and SN G targeted him because they believed he was the source of rumors spreading within the unit that SN S and SN G were in a romantic relationship. The applicant denied being the source of those rumors. In an instant message from SN S to a friend across the country, dated August 5, 2015, she discussed being asked by the command about rumors and stated that having her career adversely affected is "...where she draws the line" and "maybe the scare of getting his [the applicant's] crow stripped from him will getting [*sic*] him to start thinking straight." The applicant argued this statement clearly shows, in SN S's own words, that she had motive and intended to get the applicant in trouble.

The applicant argued that another major piece of evidence that proved that SN S's and SN G's allegations against him were self-serving was the fact that they did not make the allegations until SN S was transferred to another unit about 25 miles away in January 2016, which separated her from SN G.⁹ The applicant argued this fact is important because, according to the applicant, the only way to effectuate a unilateral transfer in the Coast Guard is to be a victim of sexual assault.¹⁰ He stated that the allegations against him were made just after SN S was transferred.

The applicant alleged that SN G requested a transfer to the same unit SN S had transferred to immediately after she made allegations of sexual assault against him.¹¹ The applicant alleged that their accusations against him allowed SN S and SN G to remain closer to one another and to continue their relationship. The applicant further alleged that SN S's lack of specific dates, and the passage of time between when she made her allegations and when he was actually made aware of the allegations, make it difficult to find evidence to refute her claims. As such, his only recourse was to submit his personal statement of events.

⁹ To protect the identity of the individuals involved, the name of the location SN S was transferred to is being withheld. However, based on the information presented by the applicant, the distance between the two locations is approximately 25 miles.

¹⁰ The applicant provided a flyer circulated by the Coast Guard that advertises the right to transfer if you are the victim of sexual assault.

¹¹ The applicant alleged that the accuser's requested transfer was not granted, but she was granted a transfer to the closest location of the other accuser, thereby allowing the two accusers to continue their relationship.

The applicant alleged that SN S complained about the applicant holding her to a higher standard than everyone else because she rebuffed his advances, but the applicant claimed he never made any advances on SN S. The only standard the applicant claimed to have held his accuser to was not making personal insults against him. The applicant claimed that SN S was incredibly disrespectful to him and that he had to complain to her supervisor on multiple occasions to address SN S's disrespect.

The applicant alleged that almost every witness for the investigation mentioned SN S making disparaging comments about him. He claimed that this attitude is evidenced throughout her messages as well.¹² However, the applicant noted that, in all of the disparaging comments, never once did she mention any inappropriate touching, such as shoulder massages, that she would later detail to CGIS. The applicant further alleged that the hug SN S accused him of taking too far, by SN S's own admission, was a hug she initiated.¹³ As to the applicant "pulling" SN S into him during this hug, he stated that he could not recall the specific event. The applicant's response to the accusation of "pulling" SN S into him was, "Is this not how hugs work? Is it not a mutual embrace?" He noted that SN S did not accuse him of trying to grope her, nor accuse him of restraining her. The applicant argued that she described nothing more than losing her balance while initiating and giving the applicant a hug. There was no threat or duress.

The applicant then addressed SN S's claim that she witnessed SN G being subjected to a shoulder rub by the applicant during a shift change when oncoming crew members relieved one another. The applicant contested this allegation by noting that, at the time SN S claimed to have witnessed this shoulder rubbing, the unit was in a mobile home when both sections were present. The applicant alleged that, during these shift changes it was standing room only. Had this shoulder rubbing taken place, the applicant argued, there would have been multiple witnesses. In addition, the applicant noted that he and SN G did not work the same shift, so their only interaction would have been during the shift change. Finally, the applicant highlighted the fact that SN G did not report to his unit until September 17, 2015.¹⁴ The allegation by SN S indicated that the alleged shoulder rubbing began immediately upon the applicant meeting SN G. The applicant argued this allegation is in direct conflict with witness statements, who claimed they never witnessed any such behavior by the applicant and described the applicant as shy and awkward. The applicant argued that, if he is so shy and awkward, he would not be so brazen as to give the new girl a shoulder massage in front of all his co-workers, and no one observed the alleged behavior. SN G alleged that the applicant continued this behavior for months, despite her requests that he stop touching her. The applicant highlighted the fact that these alleged shoulder massages took place in a standing room only building, yet still no one, other than the two accusers, witnessed these shoulder massages.

The applicant alleged that these allegations amount to nothing more than a he-said-she-said situation. SN G made a very specific accusation, for which the applicant alleged he has absolute proof she committed perjury. SN G repeatedly stated how uncomfortable she was around the applicant. However, the applicant believed that they were friends at one point. The applicant alleged that SN G expressed her desire to become a Machinery Technician and she solicited the

¹² By "messages," the applicant is apparently referring to text and email messages sent by one of his accusers.

¹³ This allegation could not be verified.

¹⁴ The applicant provided evidence in the form of a radio log of the exact date and time of SN G's initial reporting.

applicant's help in teaching her about machinery. At SN G's request, the applicant would explain concepts to her, including drawing various machinery diagrams on the command center white board. The applicant alleged that, long after their machinery lessons ended, SN G continued to seek him out at shift change and even started confiding in him that she had no friends other than SN S and that she had endured emotional abuse as a child. The applicant expressed his confusion as to why, with nearly 30 other crewmembers available to her, SN G would have confided such personal information in the one person she claimed to have purposely avoided.

In addition, the applicant pointed out, SN G had trusted him enough to request that he be a character reference for her on a loan application to purchase a Harley Davidson.¹⁵ SN G claimed the applicant made her uncomfortable and that she avoided socializing with him, but she would continue to update the applicant through Instant Messenger about her Harley Davidson. The applicant alleged that SN G and he exchanged nearly 150 text messages, with the last one taking place less than a month before she made her accusations against him. The applicant argued that SN G's characterization of their relationship to investigators was a complete misrepresentation.¹⁶

The applicant alleged that SN G took part in two separate interviews with CGIS, one on Thursday, January 28, 2016, and a second on Wednesday, February 3, 2016. During her second interview, the applicant alleged, SN G only discussed two claims against the applicant: a conversation she claimed they had about lesbians and an incident that occurred at the gun range. The applicant claimed that the statements SN G claimed he made about lesbians were false and that he "never said them or anything remotely close to them."

As to the incident SN G claimed to have taken place at the gun range, the applicant alleged that SN G's descriptions are a provable fabrication. In her February 3, 2016, interview, she claimed that on January 16, 2016, their unit went to the gun range for training. During this training, SN G claimed, the applicant made an attempt to get her to a private part of the range, but she declined his invitation and told the investigator that she declined it because she was uncomfortable being around the applicant. The applicant argued that his unit did not go to the gun range on January 30, 2016; instead, they went on February 4th, which was one day after her last CGIS interview.¹⁷

Then, the applicant alleged, SN G attempted to recreate her testimony to the CGIS investigators. The applicant alleged that before his unit left for the range, SN G asked him to coach her on shooting.¹⁸ The applicant claimed that SN G asked him for help; he had not offered to help her.¹⁹ The applicant admitted that SN G and he did go over shooting fundamentals privately, but at no point did she display any reluctance or hesitation.

¹⁵ The applicant has provided screenshots of the conversations that took place between himself and SN G regarding her desire that he be a character reference for her.

¹⁶ No dates were provided as to when these instant messages took place. As such, it was impossible to determine if they were exchanged in close proximity to when the allegations were made against the applicant.

¹⁷ The applicant did not provide any logs for January 30, 2016, the date that he allegedly tried to get SN G alone, to verify that his unit did not, in fact, go to the gun range that day.

¹⁸ The applicant is apparently discussing the February 4, 2016, weapons training that took place at the gun range. The applicant claimed to have testimony from another individual confirming his testimony of events.

¹⁹ The applicant claimed to have testimony from another individual confirming his testimony of events.

The applicant alleged that February 4, 2016, was SN G's last day at their unit, and she told him that she was being transferred. It was during this training session at the gun range the applicant claimed SN G once again confided in him information regarding her personal life. For example, the applicant alleged that SN G informed him that family friends she had been staying with began crying when she told them she was being transferred and that she was excited to get an apartment in the new city and to be closer to SN S. Again, the applicant expressed confusion as to why SN G would tell him these personal details when the day before she had accused him of sexually assaulting her. The applicant alleged that SN G's second interview with CGIS investigators was a complete lie and the evidence of that is irrefutable. The applicant alleged that SN G used the interview to claim she was a victim of sexual assault and request a transfer.

And that concludes my defense. I wish to remind the reader that I am not asking you to find SN S and SN G guilty of anything. I am asking that based on the evidence presented before you, would you condemn me? What am I guilty of? Not a single independent witness ever saw any of what I was accused of doing. Their accusations describe behavior that was not in the shadows, this was public behavior, on full display for all. Yet the only people to have seen or receive it, were two lovers with a motive against me and tangible benefits to receive by accusing me. Furthermore, I have only been able to gather easily found evidence against them. I have no power of subpoena, no power to compel witness testimony. Imagine what an investigator could have uncovered on my behalf, but the Coast Guard has yet to conduct any investigation as required by rule 303 of the Uniform Code of Military Justice.

The applicant concluded by stating he has shown that the integrity of the CGIS investigation was severely compromised and that this Board is the last possible step in correcting this injustice. He argued that, even after a year-long investigation, the investigators were unable to furnish a single shred of evidence or witness against him, and so declaring him innocent should not have been an untenable outcome. He also stated the following:

As I sit here writing this, I recall what this has done to my life. Coast Guard investigators flew across two continents investigating me. Co-workers stopped conversations when I walk in. Friends stopped talking to me. They are not sure who I am anymore. Fair enough, I am not sure who I am anymore. I was not found innocent. I cannot tell people I was cleared of sexual assault. Years have passed now, but it is still my life. I did not have a conversation with or allow myself to be left alone with a woman for over a year after enduring this. To this day my trust issues sabotage any chance of normalcy I can have with a woman. This is not a piece of paper in my record, this is now who I was as a human being. I am a good man, a decent man. I say all this to show that this is not some academic exercise for me. This has left me scarred in a way I don't think I am capable of ever recovering from, but you have the opportunity to restore some of what was taken from me.

The applicant submitted 100 pages of evidence in support of his claims and allegations. Most of the documents he provided the Board were obtained as a result of his FOIA request. The relevant exhibits are outlined or summarized as follows:

- Undated copies of Facebook Instant Messenger messages wherein SN G asks the applicant to be a character reference for her on a motorcycle loan application.
- A station Radio Log dated September 15, 2017, which shows that SN G "reported aboard" at 0700 hours.
- A Small Arms Record Firing Report dated February 4, 2016, which shows that more than twenty members of the unit attempted to qualify on various weapons that day. The

applicant qualified on two weapons. SN G attempted to qualify on one weapon but did not.

- A crewmember wrote on behalf of the applicant that she had observed SN G struggling to pass her Practical Pistol course. She saw the applicant approach SN G, ask her if she wanted assistance, and offer to run SN G through some shooting drills to help her increase her score. SN G agreed to this assistance. The crewmember alleged that, because there were multiple lines of fire at the time, the applicant and SN G moved to an adjacent stall so SN G's weapon could be pointed in a safe direction. This crewmember claimed that SN G and the applicant returned approximately ten to fifteen minutes later and resumed their own recertification process.
- A crewmember who had arrived at the unit in October 2015 alleged that it was obvious from the beginning that SN G favored SN S quite a bit. He noted that SN G and SN S exchanged Christmas presents.

This crewmember alleged that he was present at the firing range and witnessed the events that transpired between the applicant and SN G at the firing range on February 4, 2016. This crewmember alleged that SN G had approached the applicant and asked him for tips and pointers to increase her chances of passing the course of fire. The applicant and SN G left the witness' line of sight by going to the next stall to go over the necessary shooting procedures. The crewmember did not notice any reluctance from either person.

- A male crewmember who was at the shooting range on February 4, 2016, alleged that he had witnessed the applicant and SN G talking about the SIG P229 and how it fired. The applicant was explaining how to fire the weapon with accuracy since the applicant is an expert in firearms with competition experience. The witness claimed that the applicant demonstrated to SN G the proper grip, trigger squeeze, and sight alignment. The applicant also assisted on the firing line when he noticed other members were doing something wrong, which always resulted in better qualifying range scores. The witness alleged that the communication and body language he witnessed between SN G and the applicant that day seemed ordinary. The witness also alleged the applicant was asked to assist SN G, and the two went into a neighboring firing line. The applicant was actively engaged with SN G in demonstrating weapon procedures, sometimes using himself as a visual for stance representation while having the weapon and his attention pointed downrange. The witness alleged the applicant's interaction with SN G was in no way different from any other lessons the applicant conducted with other members of the crew, including the witness himself. The witness claimed on the drive back to the station there was no animosity, silence, or anything else that would have indicated any altercation occurred at the range.
- A letter from a female crewmember stated that she had served at the applicant's station from April 2013 until May 2016. During her three years working in the unit, she never felt uncomfortable working in a close environment with the applicant. She had worked closely with SN G and SN S and spent time with both individuals outside of work. This crewmember alleged that, before SN G arrived at the unit, the applicant and SN S had had an argument that was handled at the lowest level. This crewmember also alleged that,

although she was never close with SN G or SN S, SN S and SN G were very close to each other. SN G and SN S were assigned to the same unit and were about the same age and as such, the crewmember never found it weird that they hung out together outside of work. The crewmember described a time when both SN G and SN S came to her house and talked about the family SN G was staying with and how SN S had spent the night with SN G at this family's home. The crewmember alleged that both SN G and SN S had spent the night at her house that night, taking the bed for the two of them, and when the crewmember woke up in the morning, SN S and SN G were gone. This crewmember alleged that both SN G and SN S would compare notes when discussing the applicant and that the applicant was a regular topic of conversation between them. The crewmember alleged that SN S and SN G would talk about the argument that had taken place between SN S and the applicant and what made SN S uncomfortable about the applicant. The crewmember alleged she felt uncomfortable being in the conversation because they would gossip about people from the station, and they had asked the crewmember if she had had any similar events take place with the applicant.

IEWS OF THE COAST GUARD

On March 23, 2020, a Judge Advocate (JAG) for the Coast Guard submitted an advisory opinion in which she recommended the Board deny the relief requested and instead grant alternate relief in this case. The Coast Guard adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center.

The Coast Guard argued that the applicant's allegation that his negative Page 7 was issued prematurely was predicated upon the mistaken belief the Coast Guard was still actively investigating the allegations at the time of its issuance, a belief the Coast Guard argued was presumably based upon the response to the applicant's initial FOIA request.²⁰ However, the Coast Guard argued that, at the time of the applicant's FOIA request in May of 2016, the CGIS investigation into the allegations was completed, but the matter was not yet closed because the Sexual Assault Initial Disposition Authority (SA-IDA) did not take action on the sexual assault allegations until July 27, 2016. The Coast Guard argued that, based on these dates, the issuance of the negative Page 7 was not based on an incomplete investigation or otherwise issued prematurely and was therefore not in violation of Coast Guard policy.²¹ As such, the Coast Guard argued the applicant has failed to prove by a preponderance of the evidence that the Coast Guard committed an error or injustice.

Regarding the applicant's claim that the negative Page 7's findings violated the then-existing SAPR policy, which stated that all accused members are innocent until proven guilty in a legal proceeding, the Coast Guard argued that innocence and guilt are criminal law terms inapplicable in the administrative context of issuing a Page 7. The Coast Guard stated that negative Page 7s are administrative counseling tools used to document performance or conduct of

²⁰ The Coast Guard stated here that the applicant's initial FOIA request was made in June of 2016, but that information is incorrect. The applicant's initial FOIA request was made on March 15, 2017.

²¹ The Coast Guard provided copies of R.C.M. 306 – Initial Disposition – but it is not pertinent to the argument at hand. The Coast Guard argued that the case was not officially closed per Coast Guard policy. However, the policy referenced does not address when an investigation is considered officially closed or when an administrative remarks page is considered premature.

significance, rather than criminal findings of guilt or innocence. The Coast Guard argued that the applicant's unit issued the negative Page 7 in accordance with policy, following an extensive CGIS investigation. As a result of this investigation, the issuing authority concluded, by a preponderance of the evidence, that the applicant's unwanted shoulder touching had been unprofessional. For these reasons, the Coast Guard argued, the SAPR Manual does not apply in the way the applicant presented it and there is insufficient evidence of an error or injustice for failure to follow this policy.

The Coast Guard addressed the applicant's claim that his negative Page 7 was erroneous and unjust because it was issued only to meet appearances with the following arguments:

a. According to the applicant, his CO had refused to accept evidence that the applicant's accusers lied unless the applicant reopened the CGIS investigation into his conduct. However, the Coast Guard argued that the applicant admitted that he told the CO that he did not want the investigation reopened if that is what the process required. The Coast Guard argued that the applicant's investigation was one of the most effective tools available to the CO to validate the applicant's claims, conduct further investigation if necessary, and provide an updated CGIS report. The applicant, the Coast Guard argued, cannot point to the absence of an investigation to substantiate his claims when he was given the option of having the CO reopen the CGIS investigation to investigate his claims and new evidence and declined to do so.

b. The Coast Guard also argued that the applicant's claim that he told the CO that Rule for Courts-Martial (R.C.M.) 303 of the UCMJ required that he open an investigation into the applicant's allegations of perjury could not be substantiated.²² The applicant did not provide any evidence to establish that the CO failed to complete a preliminary inquiry, and the presumption afforded pursuant to 33 C.F.R. § 52.24(b) requires the conclusion that one was conducted absent evidence to the contrary. Furthermore, the Coast Guard argued that, because there is no standardized procedure or format required to conduct and/or document the result of a preliminary inquiry the lack of any specific preliminary inquiry documentation does not demonstrate the CO did not meet this requirement.

c. The Coast Guard argued that the applicant has failed to provide any evidence, outside of his own bald assertions that the CO said anything like "I have to appear like I am doing something," or that the CO denied the applicant's requests for and inquiry into allegations of false statements by the victims.

The Coast Guard claimed that the applicant spent much of his application attacking the reputation and integrity of the alleged victims. The Coast Guard argued that the applicant's speculation and unfounded conclusions regarding their motives did not establish that the Command's independent determination that he engaged in unprofessional behavior warranting issuance of the Page 7 was in error or an injustice.

²² The record before the Board does not contain an Offense form to show that the applicant formally accused his accusers of perjury, which would trigger an investigation.

The Coast Guard further argued that the Page 7's characterization of both accusers as being newly reported from bootcamp is factually inaccurate and arguably paints the applicant's behavior in a more negative light. According to the Coast Guard, SN S had been in the service longer than SN G, and SN S had departed their unit after the investigation because she had advanced to be a Health Services Technician (SN3). Furthermore, the Coast Guard claimed, SN S had first reported the incidents in an effort to protect SN G, who was a more junior member. The evidence does support that SN G was newly reported from bootcamp. As such, the Coast Guard recommended alternative relief by directing the Coast Guard to clarify the report dates and relative seniority of the two accusers in the Page 7.

Finally, the Coast Guard argued that the applicant has failed to meet his burden of establishing via a preponderance of the evidence that the Coast Guard committed an error or injustice in issuing the negative Page 7. However, it was erroneous to state that SN S was newly reported to the unit straight from bootcamp. Therefore, the Coast Guard argued that the Board should grant alternative relief in this matter by directing the Coast Guard to correct the Page 7 by clarifying the timeline of when each accuser reported to the unit.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 9, 2020, the Chair mailed the applicant a copy of the advisory opinion and invited him to submit a written response within thirty days. The applicant was granted an extension of time to respond and responded on September 17, 2020.

The applicant stated that he disagreed with the Coast Guard's advisory opinion. He argued that much of what the opinion claimed as fact was false. The applicant claimed that neither the CGIS investigation, nor independent witnesses, confirmed what the Coast Guard had presented as a conclusive fact. The applicant stated that he had no recollection of the "hug" as it was described by SN S, and he alleged that, according to her own testimony, she initiated the hug, contrary to what was implied in the opinion.²³

The applicant argued that the Coast Guard seemed to be under the impression that the applicant made his FOIA request in May of 2016, three months prior to receiving his negative Page 7. However, the applicant claimed, his FOIA request was in fact made in March 2017, seven months after the negative Page 7 was issued. The applicant referenced the letter he received from the director of CGIS that was submitted in his initial application. This letter was dated June 2017. The applicant claimed the CGIS Director, in no uncertain terms, stated the investigation was ongoing as of April of 2017, which was eight months after the negative Page 7 was issued.

The applicant argued that, had he been given the FOIA documentation when he requested it, it would have provided the evidence to allow his Article 138 complaint to proceed, which would have allowed his case to go before the Coast Guard Personnel Records Review Board (PRRB).²⁴

²³The applicant's claim does not seem to match the testimony given by SN S. Specifically, SN S's testimony records the following, "[Applicant] was sitting in a chair and [applicant] put his arms out, indicating he wanted to give SN S a hug. SN S moved in and gave [applicant] a hug."

²⁴ The PRRB is authorized to correct member's records, including Page 7s, within a year of their issuance.

Thus, the applicant argued that the Coast Guard's failure to follow regulations prevented him from using other avenues of redress and thus the only avenue left available to him was this Board.

The applicant argued that the fact that his case was handled as a criminal investigation is beyond dispute, and his case was referred to "Administrative Action" as a result of the criminal investigation. The applicant quoted COMDTINST M5810.1G, which states in relevant part:

Commanding officers are authorized and expected to use administrative corrective measures to further efficiency of their commands and units. These measures are not to be imposed as punishment. The Administrative corrective issues generally fall into three categories: extra military instruction, administrative withholding of privileges, and nonpunitive censure.²⁵

RCM 306(C)(2) states:

A commander may take or initiate administrative action, in addition to or instead of other action [e.g. nonjudicial punishment and court martial] taken under this rule, subject to the regulations of the Secretary concerned. Administrative actions include corrective measures such as counseling, admonition, reprimand, exhortation, disapproval, criticism, censure, reproach, rebuke, extra military instruction, or the administrative holding of privileges, or any combination thereof.

The applicant argued that the negative Page 7 placed in his file constitutes censure, particularly the following sentence:

As a Coast Guard Petty Officer who has received extensive training on appropriate workplace conduct, particularly with respect to unwanted or inappropriate touching, you are hereby on notice that if this behavior continues, you may be subject to more severe measures including administrative separation or prosecution under the UCMJ.

The applicant argued that, by any reasonable standard, these comments fall into the category of administrative censure. The applicant argued that this comment shows that the negative Page 7 was not issued to document performance or conduct, but was a disciplinary threat consistent with censure.

The applicant alleged that the evidence establishes that the Coast Guard became aware of possible criminal violations, they conducted a criminal investigation based on those allegations, and they chose administrative censure as the disposition. The applicant claimed there is no evidence the Coast Guard chose to simply document his conduct.

The applicant stated that, according to Coast Guard policy COMDTINST M5810.1G, Chapter 1, A.4 Administrative Censure, administrative censure is not punitive, is private in nature, and is prohibited from being included in official Coast Guard records of the recipient. The applicant argued that, under the Coast Guard's policies, issuing a negative Page 7 as a letter of censure is not authorized. The applicant alleged that the negative Page 7 went beyond what was authorized by Coast Guard policies.

The applicant stated the opinion was correct in stating that he had refused to reopen his case. The applicant stated that he had believed the disposition in his case was complete and he was unwilling to risk putting himself in further jeopardy. Instead, the applicant alleged that a separate

²⁵ See R.C.M. 306(c)(2).

crime had been committed against him and that the CO was required to report the applicant's allegations to CGIS. The applicant alleged that whether the lies told by his accusers were considered a violation of UCMJ Article 107 (False Official Statements) or Article 131 (Perjury), both are considered felony-level violations of the UCMJ.²⁶ The applicant argued that his refusal to reopen his case did not absolve the Coast Guard of its responsibility to investigate the crimes he alleged were committed against him. The applicant further alleged that the failure of the Coast Guard to take his allegations seriously and investigate them substantiates his claim that he was treated unfairly, unequally, and contrary to Coast Guard policy.

The applicant alleged that, although there is no formal procedure for the initial inquiry and informal investigation, Coast Guard policy still requires that the CO gather all relevant evidence and information. Here, the applicant claimed, the CO refused to accept any evidence from the applicant regarding his allegations unless the applicant reopened the investigation into his actions. According to the applicant, refusing to collect evidence is not considered doing one's due diligence, and he once again asked this Board to strike the negative Page 7 from his record due to the Coast Guard's failure to follow its own policies.

Finally, the applicant alleged that there were multiple witnesses present during his meeting with the CO who could verify that the captain made a statement similar to "I have to look like I'm doing something," but because the applicant has no subpoena power, he could not compel or provide evidence. In addition, because the Coast Guard had erroneously denied his FOIA request, avenues that could have confirmed the nature of his meeting with the CO were closed in large part due to the Page 7 having been issued prematurely.

The applicant argued that the advisory opinion failed to address the significant evidence he submitted in his initial application. Specifically, he alleged that the Coast Guard had ignored the fact that the CGIS investigation had cleared his name. The applicant alleged that the only evidence contained in the investigation showed that the allegations against him were fabricated. Finally, the applicant asserted that the established facts of his case are the following:

- 1) The applicant's accusers were in an intimate relationship, which was a violation of Coast Guard policy for a unit of their size;
- 2) Rumors began to circulate that one of the applicant's accusers was in an illicit relationship;
- 3) The applicant's accuser believed he was the source of those rumors;
- 4) The accuser made a decision to retaliate against the applicant by getting him into trouble; and
- 5) The applicant's accusers took advantage of the unilateral transfer available to victims of sexual assault to remain geographically close to one another.

The applicant concluded that the Coast Guard's opinion was in direct contradiction to the evidence and gave an incomplete view of policy. According to the applicant, when Coast Guard policy is studied in its entirety, it reveals there was a clear failure by the Coast Guard to adhere to

²⁶ The UCMJ does not distinguish between felony and misdemeanor offenses as claimed here by the applicant.

its own policies and procedures. The applicant argued that it is clear the Coast Guard was remarkably careless, both in its initial handling of his case and in its issuance of an advisory opinion. Finally, the applicant argued that, even if there were no violations of policies by the Coast Guard, the fact remains that the evidence does not support the allegations laid against him. In fact, the applicant argued, the evidence is clear that the allegations were fabricated. The applicant argued that he submitted evidence proving his accusers had motive and intent to falsely accuse him and that no evidence supports the Coast Guard's conclusions submitted in the advisory opinion.

To support his response to the Coast Guard's advisory opinion, the applicant submitted copies of policies and the following:

- A statement from an officer, who is a close personal friend of the applicant, stating that, based on his professional experience as a seasoned law enforcement investigator, he was of the opinion the Coast Guard did not conduct any kind of investigation into the applicant's allegations.
- A statement from another close personal friend of the applicant's confirming that the applicant had reached out to local law enforcement officers after being obstructed by Coast Guard personnel. This friend discussed how she had personally witnessed the effects this investigation had on the applicant. According to her, the applicant had struggled with stress, depression, and anxiety and she could physically see the emotional and mental toll the investigation had had on him.

APPLICABLE LAW AND POLICY

R.C.M. 303 provides guidance on preliminary inquiries into reported offenses. In relevant part, it states:

Upon receipt of information that a member of the command is accused or suspected of committing an offense or offenses triable by court-martial, the immediate commander shall make or cause to be made a preliminary inquiry into the charges or suspected offenses.

R.C.M. 303's discussion section provides additional guidance on this matter. In relevant part:

The preliminary inquiry is usually informal. It may be an examination of the charges and an investigative report or other summary of expected evidence...

...

The inquiry should gather all reasonably available evidence bearing on guilt or innocence and any evidence relating to aggravation, extenuation, or mitigation.

R.C.M. 306(b)'s discussion provides additional guidance on dispositions and factors to be considered by Command when choosing the appropriate disposition. In relevant part:

The disposition decision is one of the most important and difficult decisions facing a commander. Many factors must be taken into consideration and balanced, including, to the extent practicable, the nature of the offenses, any mitigating or extenuating circumstances, the character and military service of the accused, any

recommendations made by subordinate commanders, the interest of justice, military exigencies, and the effect of the on the accused and the command. The goal should be a disposition that is warranted, appropriate, and fair. In deciding how an offense should be disposed of, factors the commander should consider, to the extent they are known, include:

- (A) the character and military service of the accused;
- (B) the nature of and circumstances surrounding the offense and the extent of the harm caused by the offense, including the offense's effect on morale, health, safety, welfare, and discipline;
- (C) appropriateness of the authorized punishment to the particular accused or offense;
- (D) possible improper motives of the accuser;

...

Chapter 1 of the Military Justice Manual, COMNDTINST 5810.1D, provides additional guidance on the preliminary actions required by command when an offense has been reported. In relevant part:

...

1.B. PRELIMINARY ACTIONS

1.B.1. Report of Offense

1.B.1.b. Report of Offense and Disposition, CG-4910. Completion of a Report of Offense and Disposition, (CG-4910) (often called a "booking" or "report" chit) is often the first step in the NJP process. Completion of a Report of Offense and Disposition, CG-4910 is not required to initiate a preliminary inquiry [see, subparagraph 1.B.3.c below]. Report of Offense and Disposition, CG-4910 provides a step-by-step approach to document the actions taken by the command. A copy of a completed Report of Offense and Disposition, CG-4910 is provided in enclosure (2a). This form is available on the standard workstation, or the blank copy provided in enclosure (2b) may be reproduced locally. Once the member has been placed on report, the procedure to be followed may vary with the size and type of unit and the desires of the commanding officer.

1.B.1.c. Persons Authorized to Submit a Report of Offense and Disposition, CG-4910. Any member of the armed forces who is aware of an offense may submit a Report of Offense and Disposition, CG-4910. The person submitting the Report of Offense and Disposition, CG-4910 may rely upon information received from other sources and does not have to have personally witnessed the alleged act of misconduct.

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 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 alleged that the negative Page 7 he received on August 23, 2016, was erroneous and unjust and should be removed. 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.²⁷ 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."²⁸

4. The Board has carefully reviewed the evidence of record, the applicant's application, the JAG advisory opinion, and the applicant's response thereto. The Board finds that both the SJA's Initial Disposition Recommendation Memorandum (hereinafter "SJA Recommendation") and the Page 7 contain factual errors warranting correction. However, as explained more fully below, the Board also finds sufficient evidence to support the ultimate conclusion of the Page 7—specifically, that the applicant engaged in unprofessional behavior by touching the shoulders of two junior members, in the workplace, on duty, after they asked him to stop.

5. The Board begins with the errors in the SJA Recommendation. The SJA's Recommendation opens with the statement that "[f]rom approximately May to June 2015, [the applicant] rubbed the shoulders of [SN S] and [SN G] in a manner that made each of them uncomfortable." This statement accurately reflects the allegations relating to SN S, who claims that the applicant rubbed her shoulders in May/June 2015 in a manner that made her uncomfortable. However, it does not accurately reflect the allegations involving SN G. As the applicant points out, SN G did not report to the station until September 2015. Both SN S and SN G testified that the applicant touched SN G in September 2015. However, the notes from the CGIS interview with SN G specifically state that the applicant "did not rub or massage her shoulders."

6. The Page 7 quotes the SJA Memorandum nearly verbatim, stating that "[f]rom approximately May to June 2015, you engaged in unprofessional behavior by rubbing the shoulders of two junior members, in the workplace, on duty." As noted previously, this statement contains factual inaccuracies by misstating the dates and incorrectly stating that the applicant rubbed SN G's shoulders, as SN G never told investigators the applicant "rubbed" her shoulders. The Page 7 also adds another factual inaccuracy by stating that the junior members "had recently reported to the unit following bootcamp." Although SN G had recently reported to the unit from boot camp, SN S had transferred in from a different Coast Guard unit. Accordingly, the Board finds that the factual inaccuracies described above are sufficient to overcome the presumption of regularity accorded the SJA who signed the memorandum and the CO of Military Personnel who signed the Page 7. They also prove by a preponderance of the evidence that the Page 7 contains some erroneous and unjust information.

7. The Board finds there is considerable evidence to support the Page 7's conclusion that the applicant engaged in unprofessional behavior. That evidence includes the following:

- a. SN S states that the applicant "began rubbing her shoulders . . . shortly after [SN S's] arrival to USCG Station [redacted]." SN S states that the applicant "would rub her shoulders for

²⁷ 33 C.F.R. § 52.24(b).

²⁸ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

approximately 7 seconds then walk away.” She states that, on one occasion, she told the applicant “don’t touch me,” and he “paused, but continued forward and rubbed [SN S’s] shoulders in his usual fashion.”

- b. SN S states that she witnessed the applicant “rubbing” SN G’s shoulders.
- c. SN G stated that the applicant “touched her shoulders on approximately four (4) occasions.” She described this contact “as placing his hands on the top of her shoulders for approximately two (2) to three (3) seconds.” SN G claimed that she told the applicant “don’t touch me” on numerous occasions, but the applicant “would comply on some occasions” but not others. SN G specifically stated that the applicant “did not rub or massage her shoulders.” The Board notes that SN G did tell investigators that when she initially asked the applicant not to touch her, she would speak in a joking manner, possibly leading the applicant to believe she was not being serious. However, SN G opined that if she had asked the applicant to stop in a more direct and forceful tone, the applicant would stop touching her.
- d. SN S described an incident where the applicant pulled her into a hug, causing her to fall on top of him, which resulted in her shoving him away.
- e. SN S informed her former supervisor, PK7, that the applicant hugged her in a manner that made her uncomfortable. According to PK7’s witness statement, PK7 held a counseling session with SN S and the applicant. During the session, the applicant indicated that he understood that he had hugged SN S in a manner that made her uncomfortable.
- f. PK6 stated that the applicant “did not always get the message that he was being annoying.” She stated that, although she told the applicant not to play a harmonica at work, he “thought it was a joke between the two of them, so he would pull out the harmonica in front of” PK6.
- g. Three witnesses observed the applicant touching female colleagues. PK1 observed the applicant touch SN S on the shoulder. PK4 observed the applicant touch SN S by placing his hand on her upper back. PK12 stated that the applicant touched everyone in the unit, both male and female, by patting them on the back or the like. None of these three witnesses perceived these incidents as inappropriate.

8. The Board finds the evidence detailed above sufficient to support the Page 7’s core finding that the applicant engaged in unprofessional conduct by touching SN S and SN G in a manner that made them uncomfortable. The witness statements from SN S and SN G are broadly consistent with one another. Their statements are corroborated by the testimony of PK7, who indicates that the applicant “acknowledged” a prior incident of hugging SN S in a manner that made her uncomfortable. The testimony of PK6 is also probative, as it supports the allegation that the appellant did not always respect his colleagues’ requests that he cease certain behavior. Although none of this evidence amounts to a “smoking gun,” the cumulative weight of the evidence is sufficient to support the Page 7’s finding that the applicant touched SN S and SN G in an unprofessional manner that made them uncomfortable.

9. The applicant raised several arguments to rebut the claims that he engaged in unprofessional conduct by touching SN S and SN G. The Board has considered these arguments and the evidence submitted by the applicant and finds that the applicant has failed to prove by a preponderance of the evidence that the Page 7 should be removed in its entirety. The most significant arguments presented by the applicant and the Board's position on those arguments are addressed below.

- a. The applicant noted that none of the witnesses, other than SN S or SN G, observed the applicant touching anyone inappropriately. Because at least one of the alleged incidents occurred during a shift change in close quarters, the Board agrees that the lack of supporting eyewitness testimony does weigh in favor of the applicant's argument. The Board also notes, however, that the inappropriate nature of the alleged touching may not have been apparent to an outside observer. Without knowing that SN S or SN G had told the applicant "don't touch me," a witness might not realize that the applicant's behavior was unwelcome or inappropriate. Thus, the fact that none of the eyewitnesses perceived the applicant as making inappropriate physical contact has only limited probative value.
- b. The applicant argued that some of the witnesses did not recall the applicant touching anyone. Again, the Board gives the lack of eyewitness testimony only limited weight. The witnesses were interviewed months after the alleged touching occurred, and seeing one colleague touch another colleague on the shoulder is not a remarkable event that would necessarily stick in a witness's memory. As one witness put it, "it would not be unusual for someone to touch a co-worker during the course of a shift."
- c. The applicant argued that SN S and SN G acted out of improper motives. The record before the Coast Guard at the time of its decision contains some evidence to suggest that SN S had personal animosity towards the applicant for reasons unrelated to the alleged touching.²⁹ Although evidence of bias is relevant to SN S's credibility, there is no direct evidence to suggest that SN S fabricated her claims. The applicant pointed to an Office Communicator comment in which SN S wrote that "maybe the scare of getting his crow stripped from him will getting [sic] him to start thinking right," but, in context, this statement appears to refer to the applicant "get[ting] in trouble" with "command" due to a lack of candor. Furthermore, if SN S's goal was to level false claims of harassment or sexual assault against the applicant, it is unclear why she would tell the SJA that "she did not believe there was a sexual intent behind [the applicant] touching her shoulders." Finally, even if there is some evidence to suggest that SN S was biased, there was no evidence before the Coast Guard to suggest that SN G was biased against the applicant, or that SN G had a close enough relationship with SN S to lead her to collude with SN S in presenting false testimony.
- d. The applicant introduced further evidence purporting to show bias and improper motives on the part of SN S and SN G. However, this evidence is unconvincing. The applicant's claim that SN S and SN G were "likely romantically involved with each other" is

²⁹ In an Office Communicator log, SN S wrote that the applicant was "spreading rumors about me sleeping with a BM2 here." In another log, SN S again accused the applicant of spreading rumors, and wrote that she was "so pissed."

speculation based on a witness's statement that they were "close" and once slept in the same bed during an overnight social visit. Evidence suggesting that SN G was friendly with the applicant, including asking him to be a reference for a loan, is not inconsistent with SN G's testimony that the applicant periodically engaged in behavior that made her uncomfortable.

10. The Board assigns little weight to witness testimony speculating about whether the applicant was the type of person to engage in the alleged misconduct. PK10 stated that she was unsurprised by the allegations, while other witnesses stated the opposite. The Board appreciates that what one member considers to be unprofessional and uncomfortable conduct may not be considered so by another. That does not render the allegation of unprofessional conduct erroneous or unjust. Nor does it render written counseling about the conduct erroneous or unjust.

11. Having considered the evidence of record and the arguments presented by both sides, including arguments and evidence not specifically addressed in these findings, the Board finds that the preponderance of the evidence shows that the applicant engaged in unprofessional conduct when he made two junior members uncomfortable by touching them on multiple occasions despite their requests for him to stop. However, the Board also finds that the Page 7 contains factual inaccuracies that were not supported by the evidence in this case. Accordingly, the Board finds that the Coast Guard should redact the Page 7 as shown below. Specifically, there is sufficient evidence to support the Coast Guard's determination that:

23 AUG 16: [REDACTED] You engaged in unprofessional behavior by [REDACTED] [touching] the shoulders of two junior members, in the workplace, on duty. An investigation was convened in which it was determined that although you did not display intent to degrade or harass either member, you did create an uncomfortable working environment for these junior members. [REDACTED]
[REDACTED]

[REDACTED]

In spite of this matter, I have full confidence in your ability to grow and continue down the path of becoming a productive and successful member of the Coast Guard. However, you must work on your leadership skills, particularly with respect to the service's most junior members. Furthermore, you must always keep in mind the core value of "Respect" and ensure that your actions consistently demonstrate respect for your shipmates, both up and down the chain.

12. In closing, the Board notes that this should have been an easier case to adjudicate. If the SJA's Recommendation and the Page 7 had accurately reflected the record established by the CGIS investigation, the presumption of regularity that attaches to Coast Guard records would have justified the denial of the applicant's request for relief. However, in this instance, the Coast Guard clearly wandered from the facts gathered during the course of the CGIS investigation and issued a Page 7 that contained erroneous and unsupported statements of fact.

13. For the reasons outlined above, the Board finds that the applicant has not proven, by a preponderance of the evidence, that the Page 7 in its entirety is erroneous and unjust. Therefore, complete removal of the Page 7 from his record is not warranted. However, the

applicant has proven that some of the statements contained in the Page 7 are erroneous and unjust and warrant redaction. Accordingly, the Board finds that alternate relief should be granted in this case. The Coast Guard should correct the Page 7 by redacting the erroneous statements and substituting the word “touching” for the word “rubbing” as shown in Finding 11 of this decision.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of [REDACTED] [REDACTED] [REDACTED] [REDACTED] for correction of his military record is denied, but alternate relief is granted. The Coast Guard shall correct the applicant’s August 23, 2016, Page 7 by making the following redactions:

23 AUG 16: [REDACTED] You engaged in unprofessional behavior by [REDACTED] [touching] the shoulders of two junior members, in the workplace, on duty. An investigation was convened in which it was determined that although you did not display intent to degrade or harass either member, you did create an uncomfortable working environment for these junior members. [REDACTED]

[REDACTED]

In spite of this matter, I have full confidence in your ability to grow and continue down the path of becoming a productive and successful member of the Coast Guard. However, you must work on your leadership skills, particularly with respect to the service’s most junior members. Furthermore, you must always keep in mind the core value of “Respect” and ensure that your actions consistently demonstrate respect for your shipmates, both up and down the chain.

February 9, 2024

[REDACTED SIGNATURE]

[REDACTED SIGNATURE]

[REDACTED SIGNATURE]
