

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2021-006

██████████ ██████████ ██████████
MKC

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 December 10, 2020, 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 March 17, 2023, is approved, and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT’S REQUEST AND ALLEGATIONS

The applicant, a Chief Machinery Technician (MKC/E-7) on active duty, asked the Board to correct his military record by removing a negative CG-3307 (“Page 7”) dated October 1, 2020, wherein he was counseled as follows:

Upon relief as EPO from STA [redacted] in July 2018 and your PCS reporting to new unit Coast Guard [redacted] in October 2018, you claimed to have coordinated arrangements to work at a local recruiting office, however no evidence was found that you have ever followed through. Upon checking into [redacted] you claimed to have coordinated arrangements to work at the [redacted] recruiting office, however, no evidence was found that you ever reported. In November or December 2018, you made alternative arrangements to instead work at the [redacted] recruiting office, where you checked in a few times per week until February or March 2019, likely visiting a total of less than 20 times. From March 2019, until reporting to [redacted] in June 2019, there is no evidence of you reporting to any Coast Guard units, and only took 30 days of leave in May 2019.

Although there were contributing factors, including the uncertain status of your security clearance disposition, and you had approval of the proposed arrangements outlined above, you still displayed a lack of initiative, honesty, and the core value of devotion to duty by not contributing regular, full time work to the Coast Guard in the period from departing STA [redacted] in July 2018 until reporting to [redacted] in June 2019. As a Chief Petty Officer you should have reasonably known the duties and responsibilities required of you to provide full time work and value to the Coast Guard, even if awaiting final disposition of your new PCS assignment.

MEMBER REFUSED TO SIGN

The applicant alleged that the Page 7 was issued contrary to Coast Guard policy and entered in his record after he had executed a Permanent Change of Station (PCS) to a new unit. According to the applicant, the Page 7 addressed events that had already been addressed by his prior chain of command. The applicant explained that in July 2019, because he had not been able to work at his assigned unit, his chain of command for that unit waived the annual evaluation period by submitting an explanatory memorandum instead of an Enlisted Evaluation Report (EER), and thereby acknowledged that he had been doing what he was supposed to be doing. The applicant further explained that throughout the entire year from July 2018 to June 2019, he was on stand-by status, and there were contributing factors to his situation.

The applicant further explained that under Article 8.j. of the Coast Guard Administrative Remarks Manual, COMDTINST M1000.14D, “Authorized personnel may issue Administrative Remarks, Form CG-3307, documentation for incidents within two years of the date of the incident, or within two years of the date that the command knew, or should have known, about the incident.” The applicant alleged that his Command knew his status and that he was later counseled by another chain of command for working in the status that he was assigned with. The applicant further alleged that the conduct for which he was counseled took place in July of 2018, but he was counseled for his conduct in October of 2020, more than two years past the required timeline.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on August 3, 2006, and trained as a Machinery Technician, where he continued to advance to his current rank.

The applicant was serving at a boat station in 2018 when he received orders to transfer from the station and report for duty at another unit for a billet that would require a security clearance. Apparently because of an issue with the applicant’s security clearance, he could not start work at the new unit for several months. In June 2019, he was reassigned and reported for duty in a different billet.

On October 1, 2020, the applicant received the disputed Page 7 from his new command for his failure to report for duty on a regular, full-time basis from July 2018 to June 2019.

VIEWS OF THE COAST GUARD

On May 6, 2020, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

The JAG argued that the applicant failed to report regularly for prearranged assignments between July 2018 and June 2019. The JAG further argued that the applicant’s Page 7 was issued within policy. The JAG explained that the applicant did not report to his new station until June 2019, which is when questions regarding his previous reporting status would have arisen with his new Command. The JAG argued that the Page 7 was issued within two years of the date his Command became aware of the incident. Finally, the JAG argued that the applicant failed to meet his required burden of proving an error or injustice and his request for relief should be denied.

To support his advisory opinion, the JAG submitted the following document:

- An April 26, 2021, email from the applicant's Commanding Officer (CO) to the JAG, wherein he provided the following account:

Here is a summary of events and some additional context for the situation leading up to the CG-3307 we issued to MKC [Applicant] last year:

On or about 05 Nov 2018, MKC [Applicant] transferred from his prior assignment at CG Station [redacted], to his anticipated assignment with CG [redacted] in [redacted]. While awaiting security clearance adjudication for his new [redacted] position, MKC [Applicant] was to report to one or more units for temporary duties as assigned. A CGIS investigation was commenced of the member due to allegations of misconduct that came to light while his security clearance review was still pending. On or about 01 Jul 2020, MKC was formally assigned as an overbillet to CG [redacted] (formerly, CG [redacted]) while under CGIS investigation. Upon receipt of the CGIS investigation in mid-2020, it was determined that MKC [Applicant] had not been forthright in his attendance and execution of duties while in a temporary status for approximately 1 year between assignments at CG Station [redacted], while awaiting reporting to new position with [redacted], and prior to being reassigned to [redacted]. Given consultation with MKC's prior "temporary" supervisors, [redacted] determined that, by a preponderance of the evidence, misconduct had occurred that, in their discretion, was suitable for annotation in the member's PDR by means of the CG-3307 dated 01 Oct 2020. MKC [Applicant] was given the opportunity to provide additional information in mitigation or extenuation to explain the period of time between assignments that could not be properly accounted for, and was unable or unwilling to do so. The CG-3307 is meant to capture an extended period and encompass MKC [Applicant's] unacceptable conduct prior to his reporting to CG [redacted].

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 12, 2020, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. As of the date of this decision, no response was received.

APPLICABLE LAW AND POLICY

Article 8.j. of the Coast Guard Administrative Remarks Manual, COMDTINST M1000.14D, provides the following guidance on the issuance of Page 7s:

Authorized personnel may issue Administrative Remarks, Form CG-3307, documentation for incidents within two years of the date of the incident, or within two years of the date that the command knew, or should have known, about the incident.

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 applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.¹

3. The application was 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).

4. The applicant alleged that the Coast Guard erroneously issued him a negative Page 7 because the facts presented within the Page 7 were already addressed by his previous Command and because the conduct for which he was counseled took place outside of the two-year limit prescribed in policy. 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.² 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."³ For the following reasons, the Board finds that the applicant has failed to meet his burden of proof:

- a. The preponderance of the evidence shows that beginning in July 2018, the applicant left his prior unit with transfer orders to a new duty station that required a higher security clearance and a more extensive background investigation. While awaiting the disposition of his security clearance and background investigation, the applicant could not work at his assigned permanent duty station. According to the disputed Page 7 and the CO's email dated April 26, 2021, the applicant told his Command that he had made arrangements to work in a local recruiting office in the interim until the required clearance was approved. However, when the Command needed to prepare an annual EER for the applicant in July 2019, it was discovered that he had not worked anywhere regularly since July 2018 and so there was no input about his performance for an EER. Therefore, the Command entered a memorandum in the applicant's record in lieu of an EER and initiated an investigation into the applicant's conduct.

The applicant's CO explained in his email that the investigation revealed that the applicant had not been forthcoming about his attendance and the execution of his duties during his temporary assignments, a timeframe of approximately one year. The investigation showed that the applicant had not regularly reported for duty at any recruiting office or other Coast Guard unit between July 2018 and June 2019. The applicant's CO stated that the applicant was offered a chance to present

¹ *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

² 33 C.F.R. § 52.24(b).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

additional evidence about his work during the prior year and to explain the conflicting accounts of his temporary assignments, but the applicant did not do so. Therefore, the applicant's new Command consulted with the applicant's temporary supervisors and determined, by a preponderance of the evidence, that applicant had committed misconduct, which they documented in a Page 7.

The applicant has not disputed the findings of the investigation or provided any evidence that he was in fact working in recruiting offices during his time awaiting his security clearance. Instead, he claimed that the Page 7 is unfair because in July 2019, his Command agreed to overlook his year-long misconduct even though the Coast Guard actually initiated an investigation into his misconduct. The applicant alleged that he had already been counseled for his conduct by a previous Command, but the applicant failed to provide any evidence of this alleged counseling. The Board therefore finds that the applicant has not proven by a preponderance of the evidence that the disputed Page 7 is redundant, unwarranted, or otherwise erroneous or unjust.

- b. The applicant alleged that his Command erroneously issued him a Page 7 because the conduct for which he was counseled took place outside the two-year timeline provided for in Coast Guard policy. The Page 7 documents misconduct committed between July 2018 and June 2019. The record further shows that upon discovering the misconduct in July 2019, a CGIS investigation was initiated. Upon receiving the findings and conclusions of the CGIS investigation, the applicant's Command, in consultation with the applicant's temporary duty supervisors, decided that documenting the applicant's misconduct in a Page 7 was the appropriate course of action. This Page 7 was executed on October 1, 2020, less than two years after the Command learned of the misconduct. Therefore, the preponderance of the evidence shows that the applicant's Command recorded his misconduct within the requirements of COMDTINST 1000.14D.

5. For the reasons outlined above, the applicant has not met his burden, as required by 33 C.F.R. § 52.24(b), to overcome the presumption of regularity afforded the Coast Guard that its administrators acted correctly, lawfully, and in good faith.⁴ He has not proven, by a preponderance of the evidence, that the October 1, 2020, negative Page 7 is erroneous or unjust. Accordingly, the applicant's request should be denied.

⁴ *Muse v. United States*, 21 Cl. Ct. 592, 600 (1990) (internal citations omitted).

ORDER

The application of MKC [REDACTED] [REDACTED] USCG, for correction of his military record is denied.

March 17, 2023

[REDACTED] [REDACTED] Digitally signed by [REDACTED]
Date: 2023.05.08 09:13:09 -04'00'

[REDACTED] [REDACTED]
[REDACTED] [REDACTED] Digitally signed by [REDACTED]
Date: 2023.05.08 13:48:01 -04'00'

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[REDACTED] [REDACTED] Digitally signed by [REDACTED]
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