

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2021-022**

██████████ ██████████ ██████████  
IT2

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**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 February 11, 2021, and assigned the case to the Deputy Chair to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated January 27, 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, an Information Systems Technician second class (IT2/E-5) on active duty, asked the Board to correct his record by removing a negative Administrative Remarks form (“Page 7”)<sup>1</sup> that was issued to him on April 25, 2018.

The applicant argued that in January 2018, he was falsely accused of sexual assault. He argued that after the Coast Guard Investigative Service (CGIS) completed their investigation of the allegation, his chain of command notified him that “there was no point” in court-martialing him because he would be found innocent. Nevertheless, the applicant argued, his command believed his accuser. In April 2018, the applicant received a negative Page 7 stating that he had committed wrongdoing but had not violated the Uniform Code of Military Justice (UCMJ). He argued that his command had to lie about the allegation otherwise the Page 7 would not go in his record. The applicant argued that he was ordered to sign the Page 7 regardless of whether or not he agreed with its content.

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<sup>1</sup> An Administrative Remarks record entry, form CG-3307, better known as a "Page 7," is used to document a member's notification of important information, achievements, or counseling about positive or negative aspects of a member's performance in the member's military record.

In May 2020, the Personnel Records Review Board (PRRB) ordered the applicant's command to partially redact the Page 7 due to unjust language. However, the applicant argued that the Page 7 should be removed from his record in its entirety because it is erroneous and unjust.

The applicant argued that the Page 7 is erroneous because it violates Coast Guard policy. Specifically, he argued that the Page 7 violates Coast Guard policy because the remaining, unredacted language is too general. According to Coast Guard policy, negative Page 7s "must be member specific and describe who, what, when, where, why, and how. Blanket entries describing generalities ... are not authorized."

The applicant also argued that the Page 7 is unjust because he was treated unfairly. First, he argued that members of his chain of command admitted to lying on the Page 7. Second, the applicant argued that he should never have been issued the Page 7. According to the applicant, the only Coast Guard member to ask him about the allegations against him was a Chaplain at his District. He claimed that the Chaplain recommended that he not be punished. Third, the applicant argued that his chain of command waited to add the Page 7 to his record until his Commanding Officer (CO) had retired in January 2019. Finally, the applicant argued that his branch's civil rights board acknowledged that he had been treated unfairly. However, he stated that he did not go through with a formal civil rights complaint because of the likelihood of retaliation.

To support his application, the applicant submitted two letters of recommendation. The first letter was from a Chaplain at the applicant's District. The Chaplain stated that he had met with the applicant in February 2019 to discuss the incident. According to the applicant, the Chaplain was the first person to ask his side of the story. The Chaplain recounted the incident from the applicant's perspective. The applicant and a woman had met online. On the night of the incident, the two decided to meet at a restaurant. When they both arrived, the restaurant was closed. The two agreed to drive together to the applicant's home to watch a movie. During the course of the movie, the applicant and the woman began to "make out." At some point, the woman removed her top. Shortly thereafter, the woman told the applicant that she did not feel comfortable. According to the applicant, he stopped and drove the woman back to her car. The applicant was eventually approached by CGIS after the woman made a complaint to his command. The applicant stated that he did not feel comfortable speaking with CGIS without legal representation. Before he could obtain legal counsel, the applicant was told that the investigation was dropped because the woman refused to speak with CGIS. The applicant told the Chaplain that he was surprised that he received disciplinary action despite no finding of wrongdoing by CGIS. The Chaplain stated that the applicant seemed genuine. He also stated that the applicant seemed to maintain a sense of professionalism and military bearing. Finally, the Chaplain noted that the applicant's Supervisor was very supportive of him.

The second letter of recommendation was from the applicant's immediate Supervisor, CPO S, dated July 18, 2019. He stated that he believed that the negative Page 7 was unjustified. CPO S stated that the CGIS investigation did not recommend charges against the applicant. Further, he stated that neither he nor the applicant have been provided with a copy of the CGIS investigation. Accordingly, CPO S was not aware of the reason the applicant received the Page 7. CPO S stated that the applicant holds himself to a high standard and is an excellent performer. He noted that he would hate to see the Page 7 have a negative impact on what could be a long and successful career.

### SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on September 25, 2012. After completing recruit training, the applicant attended IT “A” School. He graduated as an IT3 and later advanced to IT2.

On January 13, 2018, a female civilian reported that she had been sexually assaulted by the applicant. That same day, a CGIS investigation was initiated regarding the matter. According to a synopsis of the investigation, the woman was interviewed. She stated that she initially met the applicant on a dating website on January 12, 2018. The next day, the two of them met in person at a restaurant. When they arrived, the restaurant was closed. They decided to go back to the applicant’s house to watch a movie. Once at his house, the applicant proceeded to kiss and grab the woman’s buttocks. She told the applicant she did not want to have sex. They started to watch a movie on his couch. Despite her repeated objections, the applicant unhooked the woman’s bra, pulled up her shirt, and grabbed her breasts. He then pushed her legs straight up towards the ceiling, forcing her on her back. The applicant attempted to remove the woman’s pants and underwear by ripping them upward from the back. The woman stated that she had a “death grip” on the front of her pants to keep them on. She stated that the applicant attempted to perform oral sex on her, but she denied that any penetrative acts occurred. The woman stated that she struggled to push the applicant away with her legs in order to get her feet on the ground and pull her underwear and pants back on. When she got to her feet, the woman asked the applicant if he routinely met girls online and tried to have sex with them. The woman stated that the applicant replied in the affirmative and stated that he was having a “dry spell lately.” The applicant drove the woman back to her car at the restaurant less than an hour after they had met.

When CGIS agents attempted to interview the applicant, he invoked his right to legal counsel.

The CGIS investigation was referred to the applicant’s CO and the Legal Services Command for adjudication. According to a memorandum from the applicant’s CO dated April 24, 2018, no action was taken under the UCMJ. However, the CO reserved the right to take appropriate administrative action.

On April 25, 2018, the applicant received a negative Page 7 that states the following:

You are hereby counseled for your behavior on 12 January 2018 in which your conduct toward a civilian brought discredit upon yourself and the Coast Guard. On that date, while socializing with a civilian woman whom you had just met, your insistence for physical intimacy in the face of her repeated requests that you cease demanding the same made her feel extremely uncomfortable, such that she reported the incident to this command and Coast Guard Investigative Service.

I specifically find that your actions did not rise to the level of misconduct under the Uniform Code of Military Justice. However, I remind you that respect to all people, not just your shipmates, is a core value and I demand that you carry yourself with integrity both in and out of uniform.

On January 29, 2019, the applicant submitted an application to the PRRB and requested that the disputed Page 7 be removed from his record. The applicant argued that the Page 7 should be removed because it misrepresented the incident.

On May 14, 2020, the PRRB granted the applicant partial relief. The PRRB noted that in preparing its decision, numerous attempts were made to solicit sworn declarations from the applicant's rating chain. However, no member of the applicant's rating chain was willing to provide a declaration.

In its decision, the PRRB disagreed with the applicant's contention that the entirety of the disputed Page 7 was unjust and misrepresented the incident. First, the PRRB found that the applicant's rating chain had the right to document poor performance or inappropriate behavior on a negative Page 7. Next, the PRRB found the applicant's rating chain had a duty to ensure good order and discipline. Finally, the PRRB found that the facts discussed in the Page 7 appeared to be incomplete, but correct.

Notwithstanding the findings above, the PRRB determined that the disputed Page 7 should be amended because a portion of the language was unjust. The PRRB stated that the disputed Page 7 used language from punitive articles of the UCMJ. Accordingly, the PRRB argued that the Page 7 would cause a reasonable person to believe that the applicant committed or attempted to commit sexual assault in violation of Article 120 of the UCMJ. The PRRB argued that such language would only have been appropriate had the applicant been given the benefit of an adequate forum in which to mount a defense. For instance, the PRRB stated that had the applicant's command taken him to court-martial, the applicant would have had the chance to challenge the allegations against him, present evidence, and potentially avoid the stigma associated with a sexual assault. The PRRB argued that in this case, the language of the disputed Page 7 attached the same stigma associated with a sexual assault without providing the requisite due process. The PRRB noted that the applicant's command could have captured the applicant's allegedly boorish behavior in a negative Page 7 while avoiding the implication of sexual assault or attempted sexual assault.

Finally, the PRRB noted that it was well within the power of the applicant's command to pursue either court-martial or non-judicial punishment based on their assessment of the findings of the CGIS investigation. However, the applicant's command did not do so for unknown reasons.

Given the PRRB's decision to redact the unjust language, the disputed Page 7 was amended to read as follows:

You are hereby counseled for your behavior on 12 January 2018 in which your conduct toward a civilian brought discredit upon yourself and the Coast Guard.

I specifically find that your actions do not rise to the level of misconduct under the Uniform Code of Military Justice. However, I remind you that respect to all people, not just your shipmates, is a core value and I demand that you carry yourself with integrity both in and out of uniform.

#### **VIEWS OF THE COAST GUARD**

On June 21, 2021, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she 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).

PSC argued that the applicant failed to prove that the Coast Guard committed an error. According to the applicant, the disputed Page 7 should be removed from his record because it is too general. PSC argued that the applicant is trying to leverage the redaction of the Page 7 to justify wholly removing it from his record. PSC acknowledged that redacting the Page 7 removed some of the details surrounding the incident. However, PSC argued that the redacted Page 7 is still within Coast Guard policy.

PSC also argued that the applicant failed to prove that the Coast Guard committed an injustice. First, PSC contested the applicant's assertion that members of his command admitted to lying on the Page 7. PSC stated that the applicant provided no evidence to support this assertion. Next, PSC addressed the applicant's assertion that the Chaplain recommended that he not be punished. PSC noted that the Chaplain's statement was made prior to the PRRB redacting the unjust language from the Page 7. Third, PSC addressed the applicant's assertion that his chain of command waited to add the Page 7 to his record until his CO had retired in January 2019. PSC argued that the Office of Military Records has a known backlog of routine documents. Accordingly, only urgent submissions of documents pertaining to Boards and Promotions are authorized for expedited entry. Finally, PSC contested the applicant's assertion that his branch's civil rights board stated that he was treated unfairly. PSC stated that the applicant did not provide any evidence to support this assertion.

#### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On June 23, 2021, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. In his response, the applicant maintained that the disputed Page 7 should be removed from his record in its entirety because it is erroneous and unjust.

The applicant reiterated that the Page 7 is unjust because his chain of command admitted to lying on it. He argued that the evidence that they lied is apparent. The second sentence of the Page 7 states: "I specifically find that your actions do not rise to the level of misconduct under the Uniform Code of Military Justice." The applicant argued that this statement must be a lie because his CO told CGIS agents to investigate him for a UCMJ violation.

The applicant also reiterated that his branch's civil rights board acknowledged that he was treated unfairly. He claimed that the civil rights representative's exact words to him were: "your chain of command screwed up." However, the applicant stated that since this statement was given verbally, he has no evidence to support his claim.

#### **APPLICABLE LAW AND POLICY**

Enclosure 6 of the Personnel and Pay Procedures Manual, PPCINST M1000.2B, provides a template for negative Page 7s. The note on the template states the following: "Entry must be member specific and describe who, what, when, where, why and how. Blanket entries describing generalities, which are photocopied for inclusion in many member's PDRs, are not authorized."

## FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
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.<sup>2</sup>
3. 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).
4. The applicant alleged that the disputed Page 7 dated April 25, 2019, in his military record is erroneous and unjust. 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.<sup>3</sup> Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."<sup>4</sup>
5. The applicant argued that the disputed Page 7 is erroneous because it violates Coast Guard policy. In May 2020, the PRRB ordered the applicant's command to redact a sentence of the disputed Page 7 because it contained unjust language. The applicant argued that the remaining language of the Page 7 violates Coast Guard policy because it is too general. The redacted Page 7 states the following:

You are hereby counseled for your behavior on 12 January 2018 in which your conduct toward a civilian brought discredit upon yourself and the Coast Guard.

I specifically find that your actions do not rise to the level of misconduct under the Uniform Code of Military Justice. However, I remind you that respect to all people, not just your shipmates, is a core value and I demand that you carry yourself with integrity both in and out of uniform.

According to Enclosure 6 of the Personnel and Pay Procedures Manual, negative Page 7s must be "member specific and describe who, what, when, where, why and how." In this case, the Page 7 is undoubtedly member specific as it relates solely to the applicant's conduct. Further, the applicant failed to address what information he believes to be lacking from the Page 7. The Board finds that the Page 7 sufficiently satisfies the basic information required by the manual. On January 29, 2019, the applicant submitted an application to the PRRB and requested that the Page 7 be removed from his record because it misrepresented the incident. The PRRB determined that the disputed Page 7 should be amended because a portion of the language was unjust. The Board finds that since in the

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<sup>2</sup> *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).

<sup>3</sup> 33 C.F.R. § 52.24(b).

<sup>4</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

PRRB redacted a portion of the Page 7 in response to the applicant's request, the applicant cannot now allege that the Page 7 lacks the requisite specificity to stay in his record. Finally, the Board notes that even if the Page 7 lacked the necessary specificity, the appropriate action would be to add additional information rather than remove the document from the applicant's record.<sup>5</sup> Therefore, the Board finds that the applicant failed to prove by a preponderance of the evidence that the disputed Page 7 is erroneous because of a lack of specificity. The Page 7 clearly states that the applicant was being counseled for showing disrespect towards a civilian on January 12, 2018, and that his behavior discredited himself and the Coast Guard.

6. The applicant also argued that the Page 7 should be removed from his record because it is unjust. Under 10 U.S.C. § 1552, the Board is authorized not only to correct errors but to remove injustices from any Coast Guard military record. For the purposes of the BCMRs, "injustice" is sometimes defined as "treatment by the military authorities that shocks the sense of justice but is not technically illegal."<sup>6</sup> The Board has authority to determine whether an injustice exists on a "case-by-case basis."<sup>7</sup> Indeed, "when a correction board fails to correct an injustice clearly presented in the record before it, it is acting in violation of its mandate,"<sup>8</sup> and "[w]hen a board does not act to redress clear injustice, its decision is arbitrary and capricious."<sup>9</sup>

(a) The applicant first argued that the Page 7 is unjust because his command lied on the document. The applicant argued that his CO lied about the following statement on the Page 7: "I specifically find that your actions do not rise to the level of misconduct under the Uniform Code of Military Justice." According to the applicant, this statement is a lie as evidenced by the fact that his CO told CGIS agents to investigate him for a UCMJ violation. Contrary to the applicant's assertion, the fact that the CO instructed CGIS agents to investigate the applicant regarding a suspected violation of the UCMJ and then determined that the conduct did not rise to the level of a violation is consistent with the military justice process. In fact, that is precisely how the process should work. When a command suspects a member has committed a violation of the UCMJ, CGIS agents conduct a criminal investigation.<sup>10</sup> The CGIS investigation helps provide a member's command with the facts necessary for subsequent command action. In this case, the applicant's CO determined that there was insufficient evidence from the investigation to prove that the applicant's conduct violated the UCMJ. However, the Board notes that such finding does not preclude the applicant's CO from deciding that formal counseling was warranted.

(b) The applicant also argued that the Page 7 is unjust because the only member to ask him about the allegations against him, a Chaplain at his District, recommended

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<sup>5</sup> BCMR Final Decision 2018-138.

<sup>6</sup> *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976); *but see* 41 Op. Att'y Gen. 94 (1952), 1952 WL 2907 (finding that "[t]he words 'error' and 'injustice' as used in this section do not have a limited or technical meaning and, to be made the basis for remedial action, the 'error' or 'injustice' need not have been caused by the service involved.").

<sup>7</sup> Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002).

<sup>8</sup> *Roth v. United States*, 378 F.3d 1371, 1381 (Fed. Cir. 2004) (quoting *Yee v. United States*, 206 Ct. Cl. 388, 397 (1975)).

<sup>9</sup> *Boyer v. United States*, 81 Fed. Cl. 188, 194 (2008).

<sup>10</sup> Article 1.F. of the Sexual Assault Prevention and Response (SAPR) Program Manual, COMDTINST M1754.10E.

that he not be punished. First, the Board notes that other members of the Coast Guard did not speak to the applicant about the allegations because he invoked his right to legal counsel. When a member is accused or suspected of a UCMJ violation, they should not be questioned about it by their chain of command before being read their rights and waiving their rights.<sup>11</sup> To support his application, the applicant submitted a character reference from the Chaplain. In his statement, the Chaplain never recommended that the applicant not be punished. Instead, the Chaplain recounted that the applicant stated that he was surprised that he received disciplinary action. Finally, the ultimate authority to issue a Page 7 remains with a member's CO.

(c) The applicant also argued that the Page 7 is unjust because his chain of command waited to add the Page 7 to his record until his CO had retired in January 2019. However, the applicant failed to provide evidence of his assertion. Even if the Page 7 was not entered into his record until January 2019, the applicant failed to explain how such a delay was an injustice.

(d) Finally, the applicant argued that the Page 7 is unjust because his branch's civil rights board acknowledged that he was treated unfairly. Specifically, the applicant alleged that a representative from the civil rights board told him that his command had "screwed up." However, the applicant failed to provide any evidence to support his assertion. Further, the applicant failed to provide any context for the comment. Therefore, the Board finds that the applicant has failed to prove by a preponderance of the evidence that the disputed Page 7 is unjust.

7. Accordingly, the applicant's request should be denied.

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

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<sup>11</sup> Military Rule of Evidence 305.



ORDER

The application of IT 2 [REDACTED] [REDACTED] USCG, for correction of his military record is denied.

January 27, 2023

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Digitally signed by [REDACTED]  
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