

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2021-034

██████████ ██████████ ██████████
EMC

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 staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated June 23, 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

The applicant, a Chief Electrician's Mate (EMC/E-7) on active duty, asked the Board to correct his record by removing a negative CG-3307 ("Page 7") dated June 13, 2018, wherein he was counseled for failing to notify the Executive Officer of his location or the reasons for his absence from the dry dock facility and for failing to communicate clearly when instructed to coordinate his Assistant Engineering Petty Officer (AEPO) relief with the incoming AEPO and his Engineering Petty Officer (EPO) relief with the outgoing EPO of the cutter to which he was transferring.

To support this request, the applicant provided documents to confirm his timeline of events. Those documents relevant to the applicant's request are summarized below.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on June 5, 2007. In the Spring of 2018, he was completing a tour of duty as the AEPO of a cutter (Cutter #1) that was in drydock, and he was in receipt of transfer orders to become the EPO of another cutter (Cutter #2).

On June 13, 2018, five days before his transfer, the applicant's commanding officer signed the disputed Page 7, which states the following:

On numerous occasions the Executive Officer was unaware of your location or the reasons for your absence from the dry dock facility, your permanent duty station. This repeated behavior led to your counselling on 06 MAR 2018 when you were requested to provide a tentative schedule. Ultimately you took advantage of the leniency given to you by the command, based on your position and personal challenges, and failed to correct your behavior despite counselling and requested corrective actions. Leading up to the birth of your child the Executive Officer discussed multiple options available to you that would allow for you to stay in [a nearby city] in the event of complications. You chose not to pursue these options, or request alternatives. Following the birth of your daughter, you were left without a plan, desiring to stay in [the city]. The Executive Officer and I then generously coordinated for you to receive permissive orders, rather than take leave. You were instructed to, with the help of your supervisor, coordinate your Assistant Engineering Petty Officer Relief [procedures] onboard [Cutter #1] and Engineering Petty Officer Relief [procedures] onboard [Cutter #2] with the respective incoming and outgoing members. You were also told by the Executive Officer [XO] to allow for a 2 day AEPO relief with the incoming member. The Executive Officer was assured on numerous occasions that this situation was being addressed and on track for success. On 15 MAR 18 you submitted a PCS [permanent change of station] departing worksheet to the XO, with a report date of 18 JUN 18, which was returned for correction. XO did not receive an updated worksheet until 23 MAY 18 with a report date of 20 JUN 18. The XO asked your supervisor if this had been coordinated with [Cutter #2] and was told it was. On 01 JUN 18 the XPO [Executive Petty Officer] of [Cutter #2] notified XO that the reporting date of 20 June was not acceptable for [Cutter #2] and that they had not heard of this date until that day. Further this date did not allow for the required Engineering Petty Officer Relief [procedures]. Given the urgency of the situation, XO and I were then forced to develop numerous alternative solutions, and coordinate your relief. Your failure to clearly and promptly articulate your planned arrival to your new unit resulted in a change to the incoming AEPO's arrival date and entire PCS transfer. Your lack of clear communication resulted in a significant administrative and operational burden that impacting [sic] 4 separate units.

According to his Member Information page, on June 18, 2018, the applicant reported for duty as the EPO of Cutter #2.

APPLICANT'S ALLEGATIONS

The applicant alleged that the disputed Page 7 is erroneous because it is incorrect in stating that the Executive Officer was unaware of the applicant's location or the reasons for his absence from the dry dock facility. He also stated that the claim that he had been counseled on March 6, 2018, was erroneous, and he denied having been counseled about these issues before he received the Page 7. The applicant further alleged that the statement "[t]he Executive Officer and I then generously coordinated for you to receive permissive orders, rather than take leave" is incorrect and that he did not fail to clearly communicate and coordinate relief for the new AEPO of Cutter #1 and departing EPO of Cutter #2. Finally, the applicant alleged that the information included in the Page 7 violates the Privacy Act, both by mentioning that the applicant has a child and by referencing the complications associated with the child's birth.

The applicant stated that the time period referenced in the disputed Page 7 was February 13, 2018, through June 13, 2018. During this time period, his wife was placed on bedrest while pregnant with his first child, the child was born, and the child was subsequently intermittently hospitalized for various medical procedures and emergencies. Before the child's birth, the applicant and his wife were aware that the child would be born with a heart deformation and face significant medical challenges and so he held many meetings with his command to convey the high level of uncertainty associated with his child's birth. Between his child's birth on April 3, 2018, and June 13, 2018, the date of the Page 7, the applicant stated, his child was hospitalized for

a total of 23 days and underwent two open-heart procedures. During this time period, the applicant also attended two resident training courses at Coast Guard training facilities in other areas of the country for a total of 24 days.¹

In support of his claims, the applicant provided a signed statement from the EPO of Cutter #1, who was part of the cutter's command cadre and the applicant's supervisor. The EPO stated, "From 13FEB2018 to 06MAR21 the general location of my subordinate [the applicant] was known to me and I did not have any known reason to counsel him." The applicant provided documentation to support his timeline of events leading up to this alleged counseling:

- **February 4, 2018:** Applicant departed Cutter #1 to travel to a training center where he attended Chief Petty Officers' Academy.
- **February 13, 2018:** Cutter #1 entered drydock.
- **March 3, 2018:** The applicant arrived at a major airport about a two-hour drive from Cutter #1 following the completion of Chief Petty Officer's Academy.
- **March 4, 2018:** The applicant received a text message from his supervisor, the EPO, instructing the applicant not to come into work on Monday, March 5, 2018.
- **March 5-6, 2018:** In accordance with the EPO's text message (see above), a leave chit was submitted to cover leave usage on these dates. The applicant took his leave at home north of the city.
- **March 7, 2018:** The applicant returned to the dry dock facility. He did not receive any type of counseling.

The applicant stated in his appeal that he is dissatisfied that the Page 7 references both the fact that he has a child and the medical challenges she faced around the time of her birth. The applicant believes that these references violate the Privacy Act, and he stated that when he objected on these grounds upon receipt of the Page 7, he was told that if he objected he would be taken to Captain's Mast instead.

Regarding the comment that "[t]he Executive Officer and I then generously coordinated for you to receive permissive orders, rather than take leave [to accommodate the child's birth and subsequent medical needs]," the applicant explained that this is incorrect. Permissive orders were mentioned once, shortly before his child was released from the hospital to come home for the first time. But they were never received or mentioned again until the Page 7 was presented. Upon receipt of the Page 7, the applicant inquired about the permissive orders, as he had never received or signed any permissive orders. At that time, the applicant was informed that by the time the orders were ready to be executed they were no longer needed.

¹ The Training Summary on the applicant's Member Information page has two entries during this period, including his completion of Chief Petty Officer Academy from February 5, 2018, to March 2, 2018, and his no-fault disenrollment from Prospective EPO training from May 14, 2018, to May 25, 2018.

The applicant further stated that he was instructed to, with the help of his supervisor, coordinate the AEPO relief onboard Cutter #1 and the EPO Relief onboard Cutter #2, as well as to allow for two-day AEPO relief with the incoming AEPO. However, the Applicant explained, Cutter #1's Cutter Organization Manual did not define a procedure for an AEPO relief; nor did it require a face-to-face pass down, which would have required familiarizing the applicant's relief with Cutter #1's engineering systems, records, and crew training. At the time of the AEPO relief, Cutter #1 was in the midst of a major dry dock, and all of its systems were inoperable, paper logs were in storage and inaccessible, and the presence of contractors on the cutter made it difficult, if not impossible, to run drills. Further, the EPO relief for Cutter #2 was completed on day three of the planned five days of relief and so he did not cause a delay in the transition. Given these mitigating factors, the command's assertion that the applicant failed to coordinate the AEPO and EPO reliefs and so negatively impacted both cutters is not supported. In support of this claim, the applicant included a statement from the Operations Department Head on Cutter #2 in 2018, who stated, "[t]he outgoing EPO was known for being forgetful and was extremely unreliable at passing information. While [the applicant] was EPO his communication was excellent. I fully believe that [the applicant] coordinated with the outgoing EPO for a report date and the outgoing EPO forgot to pass that information to the CO/XPO."

The applicant also stated that there were mitigating factors regarding his delay in contesting the Page 7 at issue. At the time the Page 7 was issued, the applicant was very busy reporting to his dream job and dealing with his child's significant medical challenges. His child's condition required being near a children's hospital in the city (which was at least an hour's drive from his home but a two-hour drive from the dry dock). The only billets that were available at the time for the applicant's position were on cutters homeported near the dry dock or on cutters with extended patrols (which would inhibit his ability to be available for his child's medical care). The applicant did not contest the Page 7 after reporting to Cutter #2 (shortly after signing the Page 7) because in the subsequent year, his child was hospitalized over 15 times, and his new EPO position was extremely demanding.

The applicant concluded his appeal by explaining that the Page 7 damages his family's privacy rights and inaccurately reflects both his performance and professionalism.

VIEWS OF THE COAST GUARD

On July 6, 2021, a judge advocate (JAG) submitted an advisory opinion in which he recommended that the Board grant alternative relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

The JAG recommended that the Board grant alternate relief in this case. Based in part on a declaration signed by the commanding officer who signed the Page 7, the JAG alleged that the command's basis for preparing the Page 7 was proper and it did not appear to violate the Privacy Act. However, the JAG considered the applicant's concerns regarding future boards and panels, and because selection and/or promotion boards do have access to view Page 7s but do not have access to view database information about a member's marital and parental status, the JAG recommended redacting the phrases "Leading up to the birth of your child" and "following the birth of your daughter" from the Page 7.

The Lieutenant Commander who was the commanding officer of Cutter #1 in 2018 and who signed the Page 7 signed a declaration confirming that all of the information in the Page 7 is accurate to the best of his recollection. He further stated that what was not included in the Page 7 were “the countless conversations, phone calls, emails, etc...of correspondence between [the applicant] and his direct supervisor and Executive Officer.” He stated that the applicant’s “communication during this period was lacking and led to much confusion not only within my command but within the command he was transferring to as well.”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

In response to the advisory opinion, the applicant stated that he disagreed with his commanding officer’s statement affirming the accuracy of the Page 7. He noted that his supervisor, the EPO, provided a statement in which he said that he was not unaware of the applicant’s whereabouts during the time period at issue.

The applicant further stated that he finds the Coast Guard’s suggested redactions acceptable. He requested additional relief in the form of an added statement to encompass the totality of what he was dealing with at the time such as “member was subject to significant challenges and events of a personal nature when this CG-3307 was received.” He explained that this would give him the ability to address the isolated nature of these alleged behaviors before any future boards.

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. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.² The applicant received and signed the disputed Page 7 on June 13, 2018. The applicant filed his appeal on February 11, 2021. Therefore, the application is timely.
3. The applicant alleged that the negative Page 7 in his 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.³ 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.”⁴

² 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

³ 33 C.F.R. § 52.24(b).

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

4. The applicant alleged that the negative Page 7 in his official military record is unjust and should be removed because it contains factually inaccurate and unsubstantiated information regarding the applicant's alleged failure to keep his superiors informed of his location; an alleged March 6, 2018, counseling; and his alleged failure in coordinating his relief as the outgoing AEPO of Cutter #1 and the incoming EPO of Cutter #2. Further, the applicant alleged that the negative Page 7 failed to take into account the extenuating circumstances related to his wife's difficult pregnancy and the child's subsequent medical complications. Finally, the applicant alleged that the Page 7's mention of his child and her medical issues was a violation of the Privacy Act.

5. The Board has reviewed the Page 7 and concluded that, while not a Privacy Act violation, the Page 7's comments about the applicant's child and her medical concerns are unnecessary, raise privacy concerns, and should therefore be redacted from the Page 7 as the Coast Guard recommended.

6. The applicant has failed to prove by a preponderance of the evidence, however, that any of the comments about his performance in the Page 7 are erroneous or unjust. Although his supervisor aboard Cutter #1 claimed that he knew where the applicant was and had no reason to counsel the applicant about repeated failures to communicate his location on March 6, 2018, this does not mean that the XO did not have reason to do so, as the Page 7 states. Likewise, the fact that the applicant ultimately did not execute permissive orders does not refute the comment that because he failed to make a plan to be able to remain in the city following the birth of his daughter, the XO and CO arranged for him to receive permissive orders so that he would not have to take leave. And the applicant's complaint that the CO should not have expected him to coordinate a two-day relief period with the incoming AEPO because of the difficulties involved since Cutter #1's systems were inoperable, its paper logs were in storage, and the presence of contractors would make it difficult to run drills is unpersuasive. The applicant also relied on a statement from the Operations Officer aboard Cutter #2 who indicated that he does not know but guesses that the applicant probably coordinated the relief with the outgoing EPO of Cutter #2 but the EPO failed to inform Cutter #2's command. That might explain why the XPO of Cutter #2 said they had not heard of this date, but it would not explain why the date was actually unworkable for Cutter #2 and would "not allow for the required Engineering Petty Officer Relief" or why the CO and XO of Cutter #1 then had to "develop numerous alternative solutions, and coordinate your relief." And although the applicant claimed that the EPO relief was not actually delayed, the Page 7 does not state that he delayed the EPO relief. Delay was not the issue addressed by the Page 7. Therefore, the Board finds that the applicant has not proven by a preponderance of the evidence that the comments in the Page 7 about counseling, repeated failure to communicate, permissive orders, and failure to coordinate the AEPO and EPO reliefs are erroneous or unjust.

7. Accordingly, the Board finds that the applicant's request to remove the disputed Page 7 from his record should be denied, but the applicant should be granted alternate relief by redacting the following phrases from the Page 7: "Leading up to the birth of your child" and "Following the birth of your daughter."

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of EMC [REDACTED] [REDACTED] USCG, for correction of his military record is denied, but alternate relief is granted: The Coast Guard shall redact the following two phrases from the CG-3307 dated June 13, 2018:

- “Leading up to the birth of your child”
- “Following the birth of your daughter”

June 23, 2023

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