

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2022-002


O-3

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 November 19, 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 April 21, 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 Lieutenant (O-3) on active duty, asked the Board to correct his military record by removing a negative CG-3307 (“Page 7”) dated August 6, 2020, wherein he was counseled by his commanding officer (CO) as follows:

In your official capacity as Dry Dock parking pass coordinator, you submitted official documents to [redacted] Dry Dock on 15 April 2020, 26 May 2020, and 11 June 2020, consisting of lists of vehicles and drivers authorized a parking pass which allowed the holder of the pass to park inside the Dry Dock Facility and avoid considerable inconvenience. None of these documents included your name or the vehicle you were driving. However, from April 2020 through June 2020, you routinely parked inside the [redacted] Dry Dock parking lot while not authorized to do so. Your actions resulted in the Coast Guard violating the contractual agreement between the government and the contractor, and accorded you personal gain and privilege to which you were not entitled. Your actions displayed a disregard for accuracy and lack of attention to detail in managing a project you were expected to control on behalf of the government.

06 AUG 20: I acknowledge the above entry.
MEMBER REFUSED TO SIGN [handwritten]

The applicant alleged that the Page 7 was based on perceived information drawing unfounded conclusions regarding his intentions. Specifically, the language in the negative Page 7 indicated that his mistakes were intentional and defiant. The applicant further alleged that the Page 7 stated that he knowingly left out his name and car information, but acquired a pass, which displayed a complete disregard for the system and was contrary to the standards he held other to.

According to the applicant, his Command perceived his motivations to be rooted in a desire to “avoid considerable inconvenience” and “accord personal gain and privilege” to himself, and he “displayed selfish disregard.” The applicant argued that he has always been allowed to submit his information in order to obtain a parking pass, so his CO’s comment that he was not entitled to the pass was incorrect. Accordingly, the applicant argued that the Page 7 contains misinformation, in addition to including an inaccurate assessment of his character and motives, especially to a third-party who may read the Page 7. The applicant alleged that he made multiple attempts to try and resolve this issue with his chain of command, but his efforts were unsuccessful.

SUMMARY OF THE RECORD

The applicant was commissioned an ensign in the Coast Guard on June 20, 2011. He was promoted to lieutenant junior grade in 2012 and to lieutenant in 2017.

On June 25, 2018, the applicant executed Permanent Change of Station (PSC) orders to serve as the Assistant Engineering Officer (AEO) aboard a cutter.

While on board, the applicant was designated as the as the area’s Dry Dock Facility parking pass coordinator. In this role, the applicant was responsible for submitted documentation to the Dry Dock Facility consisting of lists of vehicles and the drivers of those vehicles who should be allowed to park at the facility. The lists were relied on to issue parking passes to authorized vehicles and personnel so that they could park at the Dry Dock Facility.

On April 13, 2020, Lieutenant Commander (LCDR) S, a port engineer, asked LCDR G in an email, “Have you determined which cars/people for the parking passes?” LCDR G replied with a list of personnel and/or positions who would need a parking pass. The list included AEO, the applicant’s position. LCDR G asked LCDR S if the makes and models of the vehicles would be needed, to which LCDR S replied in the affirmative.

On April 14, 2020, LCDR G forwarded this email to the applicant and asked him to collect and provide the vehicle details from the people on the list so that parking passes could be obtained.

According to the disputed Page 7, on April 15, 2020, May 26, 2020, and June 11, 2020, the applicant submitted lists of authorized vehicles and their respective drivers to the Dry Dock Facility for the parking passes. None of these lists contained the applicant’s name or his vehicle.

From April 2020 through June 2020, the applicant routinely parked inside the Dry Dock Facility without required authorizations.

On August 6, 2020, the applicant was issued counseling in the form of the disputed Page 7 for parking inside the Dry Dock Facility without required authorization and thereby violating the terms of a government contract.

VIEWS OF THE COAST GUARD

On March 3, 2022, 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 prove an error or injustice. According to the JAG, the applicant does not deny parking inside the Dry Dock Facility without the required authorization. The JAG argued that instead, the applicant alleged error with the wording in the August 6, 2020, Page 7 because the Page 7 contains language and comments regarding the applicant's perceived intentions. The JAG argued that the applicant's contentions are incorrect. Regarding the applicant's claims that the Page 7 could be misinterpreted by a third party, the JAG stated those claims are mere speculation, and speculation is insufficient to prove error or injustice.

The JAG claimed that the wording included within the Page 7 contains factual statements and does not opine on the applicant's intentions. The JAG further claimed that the applicant's contention that the wording within the Page 7 is factually incorrect because the applicant was entitled to a parking pass is a mischaracterization of the language contained within the Page 7. The JAG explained that the Page 7 does not state that the applicant was not entitled to a parking pass, only that the applicant was not entitled to the privilege of parking in the Dry Dock Facility because the applicant failed to submit his name and vehicle information to the facility. The JAG further explained that while the applicant would have been authorized to receive a parking pass, his failure to submit the required information means that he did not complete the required steps to obtain the necessary parking pass and as a result did not have authorization to park inside the facility. For the reasons outlined, the JAG argued that the applicant failed to prove an error or injustice and his request for relief should be denied.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 22, 2022, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. The Chair received the applicant's response on April 20, 2022.

Regarding the original Page 7, the applicant argued that it was an injustice to have false presumptions of his character in his record. The applicant also argued that stating he was "accorded personal gain and privilege" to which he was not entitled, though understood by this Board, will not be understood by a promotion board without seeing additional evidence. The applicant stated that based on what his Command knew, only facts should have been included in his Page 7, which is not what happened in the August 6, 2020, Page 7.

The applicant noted that on October 28, 2021, his CO issued a "revised" Page 7, wherein the CO stated that the original Page 7 may have proved judgmental. The applicant alleged that this Page 7 was an attempt to replace the original Page 7, and it contains only the facts. He stated that he concurs with what was written. In the memorandum, the CO wrote the following:

1. In the summer of 2020, [the applicant] mismanaged his responsibilities as parking officer for [the cutter's] dry dock availability at [redacted] Dry Dock in [redacted]. He was formally counseled for his misconduct,

and an administrative remarks entry was entered into his record (Enclosure 1). This entry was factual and was cleared by [Area] legal to ensure it met legal standards.

2. In the fifteen months since the entry was made, it has come to my attention that the language in the entry may have proved judgmental regarding [the applicant's] internal motivations for the actions. The tone of the original 3307 attributes to malice and selfish motivations which may be potentially explained by incompetence. Ultimately, I cannot definitely ascertain what was going on in his head at the time of the misconduct.

3. I offer for your consideration an amended version of the entry that scrubs any potential reference to [the applicant's] motivations, and focuses solely on his actions (Enclosure 2). I support replacing the original entry in his record with this amended copy.

The revised Page 7 signed by the CO states the following:

In your capacity as Dry Dock parking pass coordinator, you submitted lists of vehicles and drivers to [redacted] Dry Dock on 15 April 2020, 26 May 2020, and 11 June 2020. Despite routinely parking on the [redacted] Dry Dock parking lot, you failed to include your name or the vehicle you were driving. Your actions resulted in the Coast Guard violating the contractual agreement between the government and the contractor. Your actions displayed an unacceptable lack of attention to detail in managing a project you were expected to control on behalf of the government.

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

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).

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 issued him an erroneous negative Page 7 with inaccurate facts and false aspersions on his motivation and character. 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 on April 14, 2020, LCDR G contacted the applicant and asked him to collect vehicle information from all personnel who were authorized to obtain parking passes for the Dry Dock Facility and report that information back to LCDR G. The preponderance of the record further shows that on April 15, 2020, May 26, 2020, and June 11, 2020, the applicant submitted to LCDR G the requested information, but did not include his own name and personal vehicle information. However, according to the disputed Page 7, from April 2020 through June 2020, the applicant routinely parked inside the Dry Dock Facility without the required parking pass, and he did not deny this fact. As a result of these actions, the applicant was issued the disputed Page 7.
- b. The applicant contended that the information in the Page 7 is factually inaccurate because the evidence shows that he was authorized to park at the facility. While the applicant was authorized to submit his vehicle information to get a parking pass, which would have allowed him to park at the facility, the preponderance of the evidence shows that the applicant was not authorized to park at the facility without a parking pass, and yet he did so routinely. Because he did not have a properly issued parking pass, the Board finds that the applicant has not proven by a preponderance of the evidence that the Page 7 is erroneous in stating that applicant routinely parked at the facility "while not authorized to do so."
- c. The applicant complained that the language in the Page 7 erroneously states that he parked at the facility without authorization to "avoid considerable inconvenience," which is not true because he could have gotten a parking pass to park there. The Board disagrees. The Page 7 accurately states that there were "lists of vehicles and drivers authorized a parking pass which allowed the holder of the pass to park inside the Dry Dock Facility and avoid considerable inconvenience." It does not state that avoiding convenience was the applicant's motivation.

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).

- d. The applicant alleged that the Page 7 erroneously impugns his character and motives by stating that his actions “accorded [him] personal gain and privilege to which [he was] not entitled.” He stated that this comment is based on unproven presumptions. The Board agrees. Although the applicant did not provide an explanation for his failure to provide his name and vehicle information, the applicant’s motivations for repeatedly failing to submit his vehicle information to get a parking pass are unclear.

Moreover, as part of his response to the advisory opinion, the applicant submitted an amended copy of the Page 7, wherein the applicant’s CO stated that while the Page 7 was “factual and was cleared by [Area] legal to ensure it met legal standards,” he also stated:

In the fifteen months since the entry was made, it has come to my attention that the language in the entry may have proved judgmental regarding [the applicant’s] internal motivations for the actions. The tone of the original 3307 attributes to malice and selfish motivations which may be potentially explained by incompetence. Ultimately, I cannot definitely ascertain what was going on in his head at the time of the misconduct.

The CO’s desire to amend the Page 7 and redact certain language is persuasive. Accordingly, the Board finds that the applicant has proven, by a preponderance of the evidence, that his Page 7 contained certain language that was needlessly prejudicial and should be redacted.

- e. The applicant argued that the August 6, 2020, Page 7 is unjustly prejudicial because it implies that he had a selfish motivation for his actions and, if not removed or corrected, it will unjustly prejudice his record before selection boards. According to the applicant, although this Board may understand the nuances of the statements contained within the August 6, 2020, Page 7, they will not be understood by members of selection boards. However, every candidate for promotion is allowed to submit a letter to each selection board to explain or address anything in their record. Therefore, while the applicant has not explained his motivation for his actions to his CO or to this Board, he will have the opportunity to clarify the facts and explain his motivation to the selection boards. The fact that selection boards will review the disputed Page 7 is not grounds for removing or amending it.

5. For the reasons outlined above, the Board finds that the applicant has not met his burden, as required by 33 C.F.R. § 52.24(b), of overcoming the presumption of regularity afforded the Coast Guard that its administrators acted correctly, lawfully, and in good faith in entering the disputed Page 7 in his record.⁴ He has not proven, by a preponderance of the evidence, that the entirety of his August 6, 2020, negative Page 7 is erroneous or unjust. Accordingly, the applicant’s request should be denied, but alternate relief should be granted by redacting the following language from the Page 7: “and accorded you personal gain and privilege to which you were not entitled.”

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

ORDER

The application of Lieutenant [REDACTED] [REDACTED] USCG, for correction of his military record is denied, but alternate relief is granted.

The Coast Guard shall amend the applicant's August 6, 2020, Page 7, by redacting the following language from the Page 7:

- “and accorded you personal gain and privilege to which you were not entitled.”

April 21, 2023

[REDACTED] Digitally signed by [REDACTED]
Date: 2023.05.02 14:48:09 -04'00'

[REDACTED]

[REDACTED] Digitally signed by [REDACTED]
Date: 2023.05.04 12:01:38 -04'00'

[REDACTED]

[REDACTED] Digitally signed by [REDACTED]
Date: 2023.05.02 14:33:37 -04'00'

[REDACTED]