

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2022-021


BMC/E-7

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 3, 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 November 18, 2022, 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 Boatswain's Mate (BMC/E-7) on active duty, asked the Board to correct his military record by removing a negative CG-3307 ("Page 7") dated December 1, 2020.

The applicant alleged that the facts, as presented in the negative Page 7, were never substantiated or corroborated. The applicant further alleged that he was never given the opportunity to review the investigation, and because of that, he was unable to provide the necessary documents with his application for relief. According to the applicant, when asked to see the investigation, he was told that he did not have the right to do so and that he would never be afforded the opportunity to review the investigation.

The applicant alleged that the person who made the allegations against him was never held accountable for the comments or threatening manner that they displayed toward him, which he believed was due to the Commanding Officer's (CO) inability to handle any type of conflict following a collision at sea that occurred shortly before the alleged incident documented in the negative Page 7.

The applicant stated that he has suffered a great deal of anxiety for more than 12 months since the allegations were brought against him, to the point that it keeps him awake some nights.

The applicant claimed that at no point throughout this process did his previous chain of Command support him. Finally, the applicant alleged that the allegations against him were completely false.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on February 1, 2001.

On June 8, 2018, the applicant was assigned as Executive Petty Officer of the cutter at issue here.

On December 1, 2020, the applicant received a negative Page 7 for his handling of a semi-annual body composition screening of a junior service member. The contents of the Page 7 are as follows:

You are being counseled for failing to follow policies and procedures listed in reference (a) while conducting semi-annual weigh-ins of [cutter] crew. Specifically during an incident on 21 OCT 20, you allowed untrained members to conduct a body fat taping and although you were not specifically watching the taping process, you required yourself to be in a private space where a female taping was being completed.

Furthermore, when confronted by a female member conducting the weigh-in on your misinterpretation, misapplication of the observation policy, your actions led to an unprofessional verbal disagreement in the presence of another junior member. During a follow-on counseling session between the female observer and yourself, you again did not display sound leadership values expected of a Chief Petty Officer by allowing this conversation to escalate to unprofessional level and denying the member the presence of the Commanding Officer when requested. These actions ultimately led to a formal investigation. Although the investigation did not substantiate any Civil Rights [*sic*] policy violations, your actions were not in line with the Core Values of the Coast Guard.

Because of your poor leadership and judgment, I am revoking your AY21 Executive Petty Officer Command recommendation and my future recommendation for promotion to Chief Warrant Officer in PY21.

As a Chief Petty Officer and Executive Petty Officer, you must uphold the highest standards of professionalism and judgment while maintaining humility during all leadership situations. A strong voice alone is not an effective leadership tool, your actions must have a positive influence to effectively lead the workforce.

VIEWS OF THE COAST GUARD

On August 16, 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 meet his required burden of proving an error or injustice. The JAG further argued that contrary to the applicant's allegations, the record shows that the statements contained within the Page 7 are accurate.

The JAG explained that the first paragraph of the Page 7 discusses the applicant's handling of the body screening, and his failure to follow policy. According to the JAG, the applicant did not properly follow policy when he required himself to be present during the body composition screening of a female member. The JAG stated that although the applicant may have erroneously

believed that he was following policy, he was not. The JAG argued that policy states that the Command is only required to be present when the member is subject to separation, which the female MK3 undergoing the screening was not, and even when subject to separation, if there are no female members of the Command, the Command will designate a female member to stand in. As such, the JAG argued, it was not proper for the applicant to require himself to be present during the screening of a female member and it was not erroneous for the Command to counsel the applicant on his failure to properly follow policy.

Furthermore, the JAG argued that the Page 7 counseled the applicant for conduct that “led to an unprofessional verbal disagreement in the presence of another junior member. During a follow on [*sic*] counseling session between the [BM1] and yourself, you again did not display sound leadership values expected of a Chief Petty Officer by allowing this conversation to escalate to unprofessional levels and denying the member the presence of the Commanding Officer when requested. These actions ultimately led to a formal investigation.” The JAG claimed that applicant got into an argument with the BM1 in front of the MK3; told the BM1, “it’s best to know when to shut up and listen to what others have to say”; and refused the BM1’s request to have the CO present. Therefore, a formal investigation was initiated due to the applicant’s actions. The JAG further argued that the applicant has failed to prove that any of the statements contained within the December 1, 2020, Page 7 are erroneous or unjust. As such, the JAG stated that the applicant has failed to overcome the presumption of regularity afforded to the Command, and that the applicant has failed to meet his burden of proving an error or injustice with the issuance of the Page 7.

To support his advisory opinion, the JAG submitted the following two documents:

- An October 21, 2020, personal statement from the applicant wherein he outlined his version of events. Specifically, the applicant stated the following:

At approximately 1030 on Wednesday, 21 October 2020, I called a female member (MK3 [redacted]) and the female observer/verifier (BM1 [redacted]) into my stateroom for the purpose of conducting a semiannual weigh-in and annual verification. When I handed over the tape to BM1, both members started to walk down the passageway towards their berthing compartment. I called for them to come back, and then explained that [I] had to be present as a command member. BM1 looked at me with a very puzzled look and generally seemed to be very confused. She then stated that I could not be present, which I then answered with the reply that I did have to be present, even though I would not be taking measurements on a female member. When BM1 stated again that I could not be present, I responded with, “[BM1] I’m not going to argue with you.” All of this took place with my stateroom door latched open. EMCS [redacted] and MK1 [redacted] were both close by, as EMCS [redacted] was waiting to conduct his assessment, with MK1 [redacted] acting as the witness.

The only time I directly witnessed MK3 during the assessment was when she stepped onto the scale in my stateroom. After the weight assessment at the scale was finished, I then closed my door to my stateroom to allow for privacy. All body fat measurements were taken by BM1 and then read aloud while I recorded them on the assessment sheet, with my back turned.

I then turned to face MK3 so that she could print and sign her name on the assessment sheet as being compliance, and then explained how to review and sign her annual verification documents. At no point, did MK3 seem uncomfortable.

...

After conducting the weight and body fat assessment for EMCS and MK1, I called BM1 to come down to my stateroom. When BM1 came into my stateroom, she looked upset and I asked what her problem was with me. She then proceeded to tell me that I was wrong to have been present during MK3 [redacted] assessment and that I was not conducting the assessment with CG policy. I told her that I was, and that nowhere in the policy did it state that I could not be present. I then explained that the manner in which I conducted the assessment was within policy and that I had seen XOs at previous units conduct themselves in the same fashion under identical circumstances. I also reminded her that I had my back turned during the body fat assessment and had the door closed. BM1 then brought up sexual harassment and sexual assault. I stated that I did not sexually harass or sexually assault anyone. When a discussion that occurred on Thursday, 08 October 2020, regarding how to properly document a member's grade/rate on a 3307 entry, was mentioned, she stated that I did not assist with professionally developing her. I then stated that when I told her to "check the Correspondence Manual," she kept explaining what she had found in writing elsewhere, without even acknowledging what I was saying. During that conversation from 08 October 2020, she kept persisting that she had found the answer to this question and that my response was the same as before. The third time, I stated my short answer, to "check the Correspondence Manual," and she left my stateroom. When I told her that I had repeated this to her three separate times, that I did in fact have the Correspondence Manual and one additional reference ready to review with her and that I had every intention of reviewing that with her, but did not do so because, one, she left, and two, sometimes it is best know when to "shut up and listen to what others have to say," she immediately raised her voice and said that I had just told her to "shut up." I explained to her that I did not tell her to just "shut up," but was trying to explain to her that sometimes it is best to just listen to others. Her immediate response to this was, "don't tell me to shut up." She then proceeded to tell me that I was yelling at her. I stated that I was not yelling at her and told her again that I never told her to "shut up." At no time did I yell at her, nor have I ever yelled at her for any reason. Regarding the conversation from 08 October 2020, BM1 repeated the instruction I gave her, word for word, by mocking what I said. I then explained that her arguing with me about whether or not I should be present for a female member's weight and body fat assessment, in front of that junior member, was not appreciated. I then told her that I would not do that to her or anyone else and that that type of behavior was disrespectful. BM1 mentioned sexual harassment and sexual assault during this conversation too. I told her that no one was sexually harassed or sexually assaulted. She then stated that she had been sexually assaulted while serving in the Coast Guard. I then told her that no one was sexually assaulted. She said that she would like for both of us to sit down with the CO to discuss this, to which I replied that would be fine. This was in fact the second time during this conversation that she said she wanted for both of us to talk this over with the CO. The first time I refused and told her to listen to what I had to say. The second time she stated this, I complied because it was clear to me that further discussion on this matter would not help either of us. Also during this conversation today, I reminded her that she had been talked to by me, the EPO and the other 1LT about stirring things up and being overly dramatic at times. She did not take this very well. After the conversation ended, BM1 left my stateroom, and I went to inform the CO of what had just taken place; the conversation and the events leading up to it.

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- A November 5, 2020, a summary of an interview conducted with BM1. The following is a summary of the investigators interview:

On 21 October 2020, around the time of 0800-0900. Engineering Department was doing weigh-ins. BM1 was in the CO's stateroom, across the passage way [sic] from [applicant's] room where he was conducting the weigh-ins. As BM1 left the CO's stateroom, MK3 [redacted] asked BM1 [redacted] to remain in the passage way [sic] as she expected to need BM1 to conduct a taping of MK3.

The weigh-in scale was in BMC [applicant's] room located on the bulkhead left of the door entry. On the bulkhead the scale was located on, there was a body length mirror. BMC [applicant] rack is to the left of door entry, and BMC [applicant] was using the rack as a table top for him to write on the weigh-in sheets.

When BM1 [redacted] was ready to tape MK3 [redacted], she grabbed the tape and proceeded toward the female berthing. At that moment BMC [applicant] stopped them from proceeding further and asked what they were doing. BMC [redacted] stated that a member of the Command had to be present as per policy and yelled "I'm not going to argue this with you, its policy and in the manual."

BMC [redacted] then closed the door to the room with MK3 [redacted], BM1 [redacted], and BMC [redacted] remaining in the room. BM1 [redacted] became frustrated and wanted to reduce the amount of time that MK3 [redacted] needed to have the pants lowered for the taping. To help reduce the time, BM1 conducted three measurements of the abdomen, three of the neck, and last three of the thighs. MK3 failed the tape however passed the Abdominal Circumference measurements. During the taping, BM1 [redacted] did not look at BMC [applicant] nor did she witness BMC [applicant] look at the two others.

BM1 immediately left the room after the completion of the weigh in and went straight to the Commanding Officer (CO) who was located on the Bridge of the CGC [cutter]. CO was upset and told BM1 [redacted] to go to manual to identify where it states that the witness of a taping needs to be the same gender. Within 20 minutes BM1 [redacted] had identified the policy and went to back to the bridge, at which point BMC [redacted] had called BM1 [redacted] down to his room. When BM1 was preparing to go BMC [applicant's] room, CO told BM1 [redacted] that if it is anything other than an apology she should leave.

Upon reentering BMC [applicant's] room on 21 October 2020, BMC [applicant] questioned BM1 [redacted] asking "What's your problem with me?" "Let's figure this out now". [sic] In the conversation, BMC [applicant] had a hostile voice and cursed throughout the conversation. BM1 [redacted] said she had an issue with the inappropriate behavior that went against policy. BMC [applicant] said that BM1 [redacted] is not designated in writing to be tape females who are above the allowed weight. BM1 [redacted] mentioned that there should have been a plan since this was the first time the vessel has had females onboard. BM1 [redacted] started to feel uncomfortable and grabbed the door handle. At that moment BMC [applicant] yelled "[BM1], you are not leaving this f**king cabin" and stated he wanted to figure out their issue at the moment. BMC [redacted] commented that BM1 [redacted] always looks at him with "a stupid blank look". BMC then brought up a previous conflict between the two where they disagreed on policy. BMC [applicant] told BM1 that she needed to learn when to just shut up.

BM1 [redacted] then left the stateroom.

On 22 October 2020, BMC [redacted] drafted a letter to designate [sic] BM1 [redacted] as the person to tape females during weigh-ins and back date [sic] the letter to 21 October 2020.

BM1 [redacted] and BMC [applicant] do not have long history of conflict. This is the second time they have disagreed with each other. BMC [applicant] has a history of yelling when he speaks with the rest of the crew. BM1 [redacted] did not feel as though she was treated differently based on her gender, as BMC [applicant] has been rude to her BM1 counterpart who is a male.

BM1 [redacted], similar to BMC [applicant's] interview, alluded to sexual harassment and sexual assault. BM1 was previously involved with a reported and fully investigated incident within the Coast Guard.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 13, 2022, 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 2 of the Coast Guard Weight and Body Fat Standards Program Manual, COMDTINST M1020.8H, provides the relevant guidance on the Coast Guard's body fat standards. The pertinent articles are as follows:

2.A. When to conduct Weight and Body Fat Screening (Weigh-in). Members are required to be compliant with weight and body fat standards at all times. At a minimum, "weigh-ins" must be conducted as listed below:

1. Semiannual (April & October). All Coast Guard military personnel will be screened against weight and body fat standards every April and October.

a. Members that will be away from their Permanent Duty Station (PDS) during the semiannual weigh-in month should make arrangements to be screened at their PDS no more than 15 days before the beginning of the month or 15 days after the end of the month. If the member's travel precludes a weigh-in during this window, the PDS and the command where the member is temporarily assigned will coordinate a weigh-in. If a member will be present at their PDS at any point during the semiannual weigh-in month, prior arrangements must be made with the command to ensure resources are available to screen the member at that time.

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2.B.3. Personnel Responsible for Conducting Height and Weight Measurements.

a. COs and OICs are responsible for ensuring proper weight screenings are conducted except as noted elsewhere in this Manual (e.g. MEPS, program managers). Actual weight screenings will be conducted by command-designated personnel (preferably senior petty officers or above) that are experienced with and trained on the proper procedures for conducting height and weight assessments outlined in this Manual.

b. Unless administratively unavoidable, the UHPC should not conduct weight screenings.

...

2.D.6. Gender Considerations for Measurements. Same gender body fat measurements will be conducted for all personnel.

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).

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).

4. The applicant alleged that the Coast Guard erroneously issued him a negative Page 7 because the facts presented within the Page 7 were unsubstantiated and uncorroborated. For the following reasons, the Board disagrees:

- a. The record shows that the applicant was present at a junior female service member's semi-annual measurement and weigh-in. This fact is supported by the applicant's own personal statement, written on the day of the incident. The applicant stated that when BM1 and MK3 began to walk down the passageway, toward the female berthing area, he stopped them and told them he had to be present during the semi-annual weigh-in. At this point, he was informed by BM1 that because MK3 was a female, policy required another female service member to conduct the measurements and weigh-in. By the applicant's own admission, at that point, he was on notice that there was potentially a Coast Guard policy that prohibited him from taking part in measurements and weigh-ins of the opposite sex. Instead of proceeding with caution and first verifying the relevant policy mentioned by BM1, the applicant chose to move forward, requiring his presence in a female service member's measurements and weigh-in, which, as the applicant was warned, was in clear violation of Article 2.D.6. of the Coast Guard Weight and Body Fat Standards Program Manual, COMDTINST M1020.8H. As argued by the JAG, the applicant's erroneous belief that he was required to be present at the weigh-in does not excuse the error, especially when his erroneous belief could have been cured had the applicant taken the time to verify whether or not the policy, as presented by BM1, did in fact prevent him from being present. As such, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that the facts presented in the December 1, 2020, negative Page 7, regarding his violation of Coast Guard policy, were erroneous. His request for the removal of the negative Page 7 should be denied.
- b. The record shows that in addition to addressing the applicant's failure to follow appropriate policy, the applicant's Command also counseled him for the unprofessionalism he displayed toward BM1 in front of junior personnel and behind closed doors, which included denying her the right to have the CO present during their conversation. The applicant alleged that the allegations laid against him were absolutely false, but once again, the applicant's own statements leave little room for doubt. In the applicant's October 21, 2020, personal statement, he admitted to calling BM1 back to his stateroom to get to the bottom of her problem with him. It was during this conversation that the applicant admitted to telling BM1 "it was best shut up and listen to what others have to say." In addition, the applicant admitted to denying BM1's initial request to have a CO present because he "[w]anted her to listen to what I had to say." It was only after BM1's second request that he complied. The applicant's statement, when combined with the investigating officer's summary of his interview with BM1, supports the statements in the Page 7 that the applicant showed poor leadership and professionalism throughout his October 21, 2020, interaction with BM1. During her interview with the investigating officer, BM1 alleged that when she began to feel uncomfortable with

where the conversation with the applicant was heading, she went to leave, but was told by the applicant, “[BM1] you’re not leaving this f**king room.”

The evidence, as submitted by the Coast Guard, supports the Page 7 statement that the applicant, when he received pushback from BM1 for what she knew was a violation of policy, and in an attempt to get to the bottom of BM1’s “issue” with him, grew increasingly unprofessional toward BM1 both publicly and privately. The Board will also note that the applicant’s actions resulted in a formal investigation that ultimately concluded that the applicant’s actions “were not in line with the Core Values of the Coast Guard.” Therefore, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that the Coast Guard’s issuance of the December 1, 2020, negative Page 7 for unprofessionalism was erroneous. His request for relief should be denied.

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.² He has not proven, by a preponderance of the evidence, that the December 1, 2020, negative Page 7 is erroneous or unjust. Accordingly, the applicant’s request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

² *Muse v. United States*, 21 Cl. Ct. 592, 600 (1990) (internal citations omitted).

ORDER

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

November 18, 2022

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