

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

Application for the Correction
of the Coast Guard Record of:

BCMR Docket No. 2022-033

██████████ ██████████ ██████████
ASTCS (Retired)

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 applicant's completed application on February 15, 2022, and assigned the case to an attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision August 8, 2024, 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 retired Senior Chief Aviation Survival (ASTS/E-8), who was separated from service on October 1, 2022, asked the Board to remove from his record the unsatisfactory conduct mark and relief for cause (RFC) terminology in his Enlisted Employee Review (EER), dated June 28, 2018, and a negative Page 7 (CG-3307¹) dated February 15, 2019, as well as all other associated electronic and paper personal data records at his current unit and Coast Guard Headquarters before his next Master Chief Advancement Panel correction deadline of April 1, 2022.

The applicant argued that the June 28, 2018 EER and associated CG-3307 were erroneous and unjust because he was not in a designated position that could be relieved for cause, and did not fill the capacity of a full time command master/senior chief (CMC/CSC) position; did not meet any of the criteria to earn the unsatisfactory conduct mark, particularly relief for cause; was never notified in writing or given the opportunity to submit a written statement on his behalf regarding the RFC action; and that the administrative investigation failed to prove he violated any articles of the Uniform Code of Military Justice (UCMJ). He also claimed that he should have received a

¹ An Administrative Remarks record entry, for 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.

regular EER and not a relief for cause or disciplinary EER because the timing coincided with the end of a marking period and he did not meet the criteria or qualify under the specific relief for cause or unsatisfactory mark in conduct criteria.²

The applicant further argued that a Senior Enlisted Continuation Board (SECB) convened on October 19, 2021 to select 2022 SECB candidates for non-continuation in the Coast Guard and that he was erroneously selected for non-continuation because he did not meet the criteria for non-continuation. The applicant argued that the SECB must only recommend members for non-continuation for reasons listed in Military Separations, COMDTINST M1000.4.

He claimed that because of the unsatisfactory conduct mark and relief for cause he was selected for non-continuation and, as a result, he will be involuntarily retired from the Coast Guard by October 1, 2022. He stated that it was his strongest desire to have the erroneous administrative errors permanently removed from all of his personal data records so that he could remain in the service.

In support of his application, the applicant included his regular EER, dated November 30, 2017 (prior to the alleged misconduct); the disciplinary EER dated June 28, 2018 and associated CG-3307 dated February 15, 2019; and the Command Endorsement he received for USA Sergeants Major Academy.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on October 15, 1996. On July 25, 2013, the applicant executed permanent change of station (PCS) orders as a First Class Petty Officer (E-6). The applicant rose to the rank of Chief Petty Officer (E-7) on September 1, 2013, and on June 1, 2016, the applicant was advanced to Senior Chief Petty Officer (E-8). On October 15, 2016, the applicant's position was changed to designation as the Assistant Leading Chief Petty Officer (E-8). During this time the applicant received outstanding EERs and numerous commendations for his service.

On November 30, 2017, the applicant again received an outstanding regular EER, receiving marks of all 7s and one 6, and a recommendation for advancement.

[The applicant] is recommended for advancement to the next pay grade. He expertly performed at the Senior Chief Petty Officer level and is well respected by his seniors, peers and subordinates. [The applicant] has developed into a servant leader and maintains expertise in all areas of the [] Department and continues to remain committed to develop the traits required to be a top performing Leading Chief. He is an outstanding example of leadership, professionalism, and selflessness. He will serve the organization well as a Silver or Gold Badge and as a Chief Warrant Officer Marine Safety Specialist Deck (MSSD).

This EER also included the handwritten notation: "Love working with you []. Thank you for the great leadership, tireless work ethic, and friendship." The applicant signed this EER on December 26, 2017.

² In support of his claims, the applicant cited to the following authorities: COMDTINST M1000.8A, Military Assignments and Authorized Absences, Chapter 1.F.a & e; COMDTINST M1000.2B, Enlistments, Evaluations, and Advancements, Chapter 4.C.1.b.

By memorandum dated January 10, 2018, the applicant's November 30, 2017 EER was corrected at competency ECP8C, Stamina; the original numerical mark was changed from a 6 (Excellent) to a 7 (Superior) for the period ending November 30, 2017.

On March 6, 2018, the applicant was involved in what has been described as an emotional exchange against the Mast Chief's (E-9s) at the unit. Sometime after this incident, the Coast Guard reported that the unit conducted an investigation into the applicant's actions, and this investigation revealed other such incidents by the applicant. The Coast Guard searched³ but was unable to locate a record of this unit investigation and there is no evidence of any other incidents of misconduct by the applicant in the record.

On June 28, 2018, the applicant executed PCS orders and was transferred to a different duty station. Because of this transfer, the applicant received a transfer EER for the period ending June 28, 2018. In the transfer EER, the applicant received unsatisfactory conduct marks and was not recommended for advancement. The counseling sheet associated with this EER is not signed by the counselor or the applicant.

Competency		Rating	
ECM5A	Military Bearing	5	Above Average
ECRC2A	Advancement Potential	N	Not Recommended
ECP16A	Quality of Work	4	Average
ECP11A	Technical Proficiency	6	Excellent
ECP14A	Initiative	5	Above Average
ECP15A	Strategic Thinking	5	Above Average
ECPQ13A	Decision Making Problem Solve	5	Above Average
ECPQ14A	Military Readiness	3	Below Standard
ECPQ15A	Self Awareness Learning	2	Poor
ECPQ16A	Partnering	4	Average
ECL13A	Respect for Others	2	Poor
ECL14A	Accountability Responsibility	4	Average
ECL15A	Workforce Management	4	Average
ECL16A	Effective Communication	3	Below Standard
ACL17A	Chiefs Mess Leadership	3	Below Standard
ECCONE	Conduct	U	Unsatisfactory
ECPP1A	Future Potential	Y	Future Potential (Comment)
ECM6A	Customs Courtesies Traditions	3	Below Standard

Factor	Sum of Marks
LEAD	16
PROF	14
PERF	20
MIL	8

³ The Coast Guard advised that it contacted both the Air Station and the District Legal Office who were not able to locate the administrative investigation.

Reviewer Comments:

ECM6A, Customs, Courtesies Traditions, Rating 3, Below Standard CPO Mess Incident revealed contentious action towards CMC & LCPO. Workplace Incidents were disrespectful and served as a foundation for disruptive behavior and challenging authority and are not a role models for CPOs.
ECPQ14A, Military Readiness, Rating 3, Below Standard In peak physical condition, but lacked ability to constructively manage stress, anger and anxiety which impacted performance. Actions negatively impacted ability of the E9's to lead the CPO Mess.
ECPQ15A, Self Awareness Learning, Rating 2, Poor Extremely self-serving, demonstrated clear lack of humility or acceptance of constructive mentoring from E9s. Unable to correct behavior which resulted with an incident that cause removal from leadership position.
ECL13A, Respect for Others, Rating 2, Poor Created divisive climate in CPO Mess, failed to uphold M3710 standards equitably across aircrew, and Insubordinate to E9s without remorse show inability to foster healthy, team-oriented climate in line with core values.
ECL16A, Effective Communication, Rating 3, Below Standard Investigation of actions within CPO Mess showed multiple incidents of aggressive behavior and non verbal intimidation as documented in CG3307. Unwilling to accept E8/E9 constructive feedback.
ECCONE, Conduct, Rating U, Unsatisfactory ASTCS [] conduct is unsatisfactory as evidenced by the Administrative Investigation conducted by Air Station [] and resultant CG3307 entry that documented the inability to foster a healthy, team-oriented work environment aligned with the Core Values. ASTCS' actions were contrary to the good order and discipline of the unit and failed to meet the standards for effective communications and leadership. As a result, ASTCS [] was relieved of primary duties as Asst. Leading Chief indicating a loss in faith and confidence in his leadership ability.
ECFPIA, Future Potential, Rating Y, Future Potential (Comment) As documents in a CG3307, ATSCS [] showcased a self-serving behavior and lacked leadership consistent with a productive team. An investigation documented 10 separate incidents of verbal intimidation. As a result, ASTCS [] was relieved as the Asst. Leading Chief and does not show any immediate potential as an E9 or in command positions. ASTCS demonstrates the technical proficiency but lacks self-awareness and must correct these leadership issues prior to future responsibilities.
ECRCA, Advancement Potential, Rating N, Not Recommended ASTCS [] is not recommended for advancement. An incident on 06 March 2018 and previous incidents documents in the Administrative Investigation demonstrate that ASTCS is not ready to assume greater leadership responsibility. The workplace incidents involving ASTCS show unsatisfactory leadership, communication skills, compassion, and inability to work in a functioning leadership team. These actions resulted in relief of his primary duties as Assistant Leading Chief Petty Officer. In order to earn a ready for advancement, ASTCS [] needs to improve across several performance factors in order to demonstrate leadership that fosters a healthy workplace and team-oriented environment aligned with the core values. Specifically, ASTCS [] needs to improve on effective communication up and down the chain of command for positive conflict resolution, promote cooperation between team members, demonstrate a commitment to respecting others and supporting senior enlisted leadership initiatives, and utilize the Work Like and other service support entities to enhance readiness and self awareness and learning. Mentoring and counsel can be sought from many sources, but is highly encouraged from engagement with focused sessions with E9's & E8's in command leadership positions and Employee Assistance Program.

On March 7, 2019, the applicant was presented with a negative Page 7 (counseling form CG-3307) dated February 15, 2019, which the applicant refused to sign. The Page 7 only referenced the March 6, 2018 incident but the earlier dated transfer EER includes other instances of misconduct alleged based on the findings of an alleged administrative investigation.

Entry: (General – Negative)

15 Feb 19: Air Station [] conducted a Standard Investigation into the facts and circumstances surrounding an incident that occurred at Air Station [] Chiefs Mess on 6 March 2018 in accordance with the Administrative

Investigations Manual, COMDTINST M5830.1A. In summary, the investigation substantiated an emotional exchange of an insubordinate nature by [the applicant] with the E7s and E8s of the mess against the E9s at the unit. The investigation led the Command to question [the applicant's] leadership, communication skills, compassion, and ability to work in a functioning leadership team. It became apparent that [the applicant] lacked the ability to foster a healthy, team-oriented work environment in line with Coast Guard Core Values.

Based on the above, Air Station [] took the following actions:

- a. [The applicant] was relieved as Air Station [] Assistant Leading Chief Petty Officer.
- b. [The applicant] was not recommended for advancement to Master Chief Petty Officer.

On October 19, 2021, the 2022 Senior Enlisted Continuation Board (SECB) convened for the purpose of considering, without prejudice or partiality, the record of every eligible candidate and recommend non-continuation for those active duty enlisted members who meet the criteria for non-continuation, and whose service is no longer in the best interest of the Coast Guard. Those members non-continued must be retired no later than October 1, 2022. In doing so, the SECB used a performance and conduct-based methodology to select the members in the 2022 SECB candidate pool who best meet the high standards required for continued service in the senior enlisted workforce.

The SECB's precept noted that if the Board decided that a member should not continue his service with the Coast Guard that the member was to be retired. The SECB decided that based on a review of the applicant's record that he should not continue his service.

The applicant appealed to the Personnel Records Review Board (PRRB). By memo dated February 8, 2021, the Executive Secretary of the PRRB emailed the Chair of the Coast Guard BCMR advising that the applicant appealed to the PRRB but that, upon review of the application submitted, it was determined that the PRRB does not have jurisdiction because the request is to correct an EER, and the CG-3307 requested to be corrected is beyond the one year time restriction of the PRRB.

VIEWS OF THE COAST GUARD

On September 9, 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. In doing so, he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC) and provided additional comments and analysis.

PSC recommended not granting relief based on lack of evidence that there is an error or injustice. PSC explained that on June 28, 2018 the applicant received a "Transfer EER": an unscheduled evaluation for Detachment for Permanent Change of Station because more than 184 days (i.e. 210 days) had elapsed since the applicant's last EER on November 30, 2017. PSC further stated that the Negative Page 7 dated February 15, 2019 "captures an incident which occurred on March 6, 2018, within the marking period, which was investigated, confirmed, documented, and later added to the member's counseling report" and that the Coast Guard had the authority to assign the applicant an unsatisfactory conduct mark for what they viewed as a one-time major infraction. PSC explained that the incident led to the member being removed from a collateral duty (Assistant

Leading Chief Petty officer) and loss of advancement recommendation. PSC further stated that the applicant was not afforded the opportunity to provide a statement because he was not relieved for cause, however, the member had the opportunity to appeal the EER, but failed to do so. PSC also stated that the member is mistaken that the command had no authority to complete an unscheduled evaluation or award an unsatisfactory conduct mark and that, further, the limiting guidance for prohibited comments does not apply to the language used in the EER at the time.

PSC explained that the June 28, 2018 EER was issued by the Coast Guard in accordance with Chapter 4.C.1.a of the Enlistments, Evaluations and Advancements Manual, COMDTINST M1000.2A, which required that a member receive an unscheduled evaluation for Detachment for Permanent Change of Station (Transfer EER) if 184 days had elapsed since the member's last EER. PSC further explained that the applicant's last EER, prior to the June 28, 2018 EER, was on November 30, 2017. Thus, 210 days had elapsed since the applicant's last EER effective the applicant's departure date of June 28, 2018, thereby triggering a required Transfer EER. Accordingly, this EER was appropriately entered by the Coast Guard, effective June 28, 2018, documenting the applicant's observed performance from December 1, 2017 to June 28, 2018.

PSC further argued that the applicant's prior record is not grounds for removing the unsatisfactory conduct mark from the disputed EER because the prior conduct fails to prove an error or injustice because a member's performance can vary over time and under different circumstances.

Finally, PSC argued that because there were no grounds for removing the unsatisfactory conduct mark, it follows that there is also no grounds for removing the disputed EER or results of the SECB.

The JAG adopted the facts and analysis provided by PSC, and also recommended denying relief in this case, making the following points.

In response to the applicant's argument that he did not meet the criteria for relief for cause or unsatisfactory conduct mark, the JAG stated that the applicant was not relieved for cause within the meaning of section 1.F. of the Military Assignments and Authorized Absences manual, COMDTINST M1000.8, but that he was removed from his position of leadership as the assistant leading chief petty officer which was the position he was filling at the unit. The JAG explained that "while the language the command used within the 28 June 2018 EER and CG-3307 was very similar to that contained in policy the command never stated that the applicant was 'relieved for cause'" The JAG explained that, while an unsatisfactory conduct mark may be a basis for a relief for cause, there are other bases and, in this case, the applicant was assigned the unsatisfactory conduct mark for not complying with civilian and military rules, regulations, and standards, and the investigation revealed multiple incidents of aggressive behavior, specifically noting 10 documented incidents, not a one-time infraction. The JAG argued that nothing in policy prohibited the command from removing the applicant from the position that he was fulfilling when they lost faith in his ability to hold that position. The JAG further stated that proof of violation of the UCMJ is also not a prerequisite for an unsatisfactory conduct mark.

Like PSC, the JAG explained that the EER in question is a Detachment for Permanent Change of Station EER, required because 184 days had elapsed since the applicant's last EER.

The JAG also explained that “performance can vary over time and under different circumstances” and that “merely including derogatory information within the EER does not make the EER a discipline EER.”

In closing, the JAG stated:

Because there are no grounds for removing the unsatisfactory conduct mark from disputed EER, no grounds for removing the disputed EER in its entirety, nor any grounds for removing the disputed CG-3307 from the applicant’s record, there are no grounds for setting aside the result of the Senior Enlisted Continuation Board (SECB) convened 19 October 2021. While the proceedings of the SECB are privileged and therefore it is impossible to discern the reason for the applicant’s non-continuation, the SECB was authorized to make non-continuation decisions based on an unsatisfactory conduct mark, which the applicant’s record contained. Overall, there is insufficient evidence to substantiate the applicant’s allegations of error and injustice in his military record, which is presumptively correct.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 12, 2023, the BCMR sent the applicant a copy of the Coast Guard’s recommendation and invited him to submit a response. The Board did not receive a response.

APPLICABLE LAW AND REGULATIONS

COMDTINST M1000.8A, Military Assignments and Authorized Absences (January 2017), discusses the definition of a Relief for Cause and the procedures. Section 1.F.1.a General provides:

A relief for cause (RFC) is the administrative removal of a commanding officer (CO), officer in charge (OIC), executive petty officer (XPO), engineer petty officer (EPO), or a designated full-time command master/senior chief (CMC/CSC) from their current duty assignment before the planned rotation date. It normally consists of a two-step process:

- (1) Temporary relief for cause, and
- (2) Permanent relief for cause

...

Section 1.F.1.e sets out the procedures to request a Temporary Relief for Cause (RFC):

- (1) Any member of the chain of command may recommend a temporary RFC if warranted in accordance with Article 1.F.1.d. of this Manual. The temporary RFC package will be addressed to the temporary relief authority listed in Article 1.F.1.c.(1) of this Manual and consist of a Coast Guard memorandum containing a detailed summary of the facts surrounding the incident including any disciplinary actions taken and will include the following information and enclosures as applicable:
 - (a) Name, rate/rank, EMPLID,
 - (b) Expiration of active obligated service,
 - (c) Retirement eligibility date,
 - (d) Date reported to current assignment,
 - (e) All completed investigations,
 - (f) Court memorandum printed from Direct Access, and
 - (g) Police reports.

- (2) Before approving a temporary RFC, the temporary relief authority identified in Article 1.F.1.c.(1) of this Manual must take care to ensure they have not set expectations and standards unreasonably high and make every effort to maintain the member's self worth. The Coast Guard must ensure that whether or not the member returns to their command, the RFC process does not excessively undermine their effectiveness and future contributions to the service. After deciding to institute the temporary RFC process, the temporary relief authority must:

(a) Notify the member in writing of:

- [1] The RFC action being taken and the reason for it,
- [2] Their right to submit a statement in writing on their behalf within five working days of the temporary RFC action, and
- [3] The temporary duty station where the relieving authority will assign the member while the RFC action is pending.

COMDTINST M1000.2B, Enlistments, Evaluations, and Advancements (February 2018), discusses the policies and standards Enlisted Employee Reviews in Chapter 4, Enlisted Evaluation System (EES). Section C provides:

C. Occasion for Reports.

1. Regular Enlisted Evaluation Reports.

- a. Submission Schedule. Regular Enlisted Evaluation Reports for active and reserve members are required to be submitted in the timeframe shown below. The months identified in the second column ensure all enlisted evaluation reports are submitted in sufficient time for processing and completing the final multiple for servicewide examinations (SWE).

2. Unscheduled Enlisted Evaluation Reports. While the EES focuses on regular evaluation reports, occasionally an unscheduled evaluation report is in order. Use the following to determine whether to complete an unscheduled evaluation report.

- a. General Guidance. Complete an unscheduled evaluation report if the rating chain completed a regular or unscheduled evaluation report for a period ending more than 92 days for E-6 and below, 184 days for E-7 and above, or 19 active or inactive duty periods for reservists, in accordance with Reference (e), Reserve Policy Manual, COMDTINST M1001.28 (series) before one of the events listed below.

- (2) Detachment for Permanent Change of Station. Commands will ensure members sign the counseling sheet for transfer evaluation report no later than 15 days before departing the unit to allow adequate time for counseling and appeal processing if required.

Chapter 4, Section D, Enlisted Evaluation Report Guidance, provides:

3. The Advancement Recommendation.

- a. Basis for the Advancement Recommendation. While the rating chain must consider past performance, it must also consider and base the advancement recommendation on the member's potential to perform satisfactorily the duties and responsibilities of the next higher pay grade, qualities of leadership, personal integrity, and adherence to the Service's core values. The approving official's recommendation for advancement (to include change in rating by participation in the SWE) is valid only for a specific competition and must be renewed for each succeeding competition. Thus, the rating chain must address this independent Section every time they complete an evaluation report.

- b. Guidelines for the Advancement Recommendation. When completing the advancement potential part of the evaluation report, the rating chain should focus on the guidelines in Article 3.A.4.b.(3) of this Manual on advancement recommendations and then select one of the following choices:

(3) Not Recommended. Assign this mark if, in the view of the rating official, the individual should not be advanced to the next higher grade, regardless of qualification or eligibility, due to negative conduct or poor performance, including an unsatisfactory conduct mark, or good order and discipline issues.

- c. Qualification and Eligibility Requirements. The only qualification and eligibility requirements that an approving official must consider when determining if a member is ready for advancement are Commandant specified qualifications and eligibility requirements.

- e. Required Comments and Counseling. If a member is not ready or not recommended for advancement, the approving official must counsel the member on why this mark was assigned and on the steps necessary to earn a ready for advancement and prepare required comments in accordance with Articles 3.A.4.b.(2), 3.A.4.e., and 4.B.4. of this Manual. Comments for a not ready and not recommended must be detailed and specific to why the mark was assigned and should outline the steps necessary to earn a ready for advancement.

- g. Finality of the Advancement Recommendation. The approving official's decision on the advancement recommendation is final and may not be appealed. However, if the approving official learns new information and decides to change the recommendation, they must follow the procedures in Article 4.E.2. of this Manual.

4. An Unsatisfactory Conduct Mark.

- a. General. An unsatisfactory conduct mark on the EER is required when a member fails to meet the standards of conduct prescribed by this Article and requires an advancement recommendation of not recommended. The EER must contain required comments as prescribed by Article 4.D.2 of this Manual.
- b. Circumstances That Require an Unsatisfactory Conduct Mark. The rating chain must assign an unsatisfactory mark in conduct whenever any of the following occurs:

(8) Not complying with civilian and military rules, regulations, and standards. A one-time minor infraction (e.g., late to work) is insufficient grounds for an unsatisfactory conduct mark. Rating chains will focus on majority of infractions or patterns of unacceptable behavior vice a one-time infraction . . .

COMDTINST M1000.14C, Administrative Remarks, Form CG-3307 (June 2015)⁴, establishes policy and procedures for CG-3307 entries. Section 8.j provides that 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.

COMDTINST M1000.4, Military Separations (August 2018), section 4.G.1 provides that the Senior Enlisted Continuation Board (SECB) must only recommend members for non-continuation based on:

⁴ The advisory opinion received from the Coast Guard JAG references the 2019 version of this manual, which was not issued until May 2019, after the February 15, 2019 Page 7 at issue in this case. The manual in effect at the time was the June 2015 version. However, the error is harmless as both manuals contain the same timing requirement.

- (1) Substandard performance of duty,
- (2) Performance probation or incompetency,
- (3) An unsatisfactory conduct mark,
- (4) Moral or professional dereliction, including, but not limited to Relief for Cause,
- (5) Failure to meet service norms or regulations concerning alcohol abuse, including, but not limited to, documented instances or convictions(s) for operating a vehicle, or any other mode of transportation under the influence of alcohol or controlled substances during the period of review,
- (6) Any documented instances of sexual assault and/or harassment,
- (7) Any documented instances of Equal Employment Opportunity (EEO) violations,
- (8) Any documented offense that meets the criteria for separation for Misconduct for Pattern of Misconduct (Articles 1.B.17.b(2) of reference a)) and/or Commission of a Serious Offense (Articles 1.B.17.b(3) of reference (a)),
- (9) Financial irresponsibility, such as failure to pay just debts or a pattern of government travel charge card (GTCC) delinquency due to misuse or pattern of failure to pay outstanding balance, or
- (10) Other documented adverse information clearly indicating that the SECB candidate's continuation may be inconsistent with national security interest or may otherwise not be in the best interest of the Coast Guard, not limited to revocation of security clearance.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of 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 is requesting the removal of an EER, dated June 28, 2018, and a negative Page 7 dated February 15, 2019. The Board finds that the application is timely because it was filed while the applicant was on active duty.⁵

3. The applicant alleged that the June 28, 2018 EER and associated negative Page 7 dated February 15, 2019 in his Coast Guard record are erroneous and unjust because (1) he was not in a designated position that could be relieved for cause because he did not fill the capacity of a full time command master/senior chief position; (2) he did not meet any of the criteria to earn the unsatisfactory conduct mark, particularly relief for cause; (3) he was never notified in writing or given the opportunity to submit a written statement on his behalf regarding the relief for cause action; (4) the administrative investigation failed to prove he violated any articles of the UCMJ; (5) he should have received a regular EER and not a relief for cause or disciplinary EER because the timing coincided with the end of a marking period and he did not meet the criteria or qualify under the specific relief for cause or unsatisfactory mark in conduct criteria; and (6) he was

⁵ *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994) (holding that, under § 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, the BCMR's three-year limitations period under 10 U.S.C. §1552(b) is tolled during a member's active duty service).

erroneously selected for non-continuation by the SECB that convened on October 19, 2021 because of the unsatisfactory conduct mark in his June 28, 2018 EER and relief for cause.

4. The Coast Guard has advised that on March 6, 2018, the applicant, an Assistant Leading Chief Petty Officer (E-8), was involved in an emotional exchange against the Master Chiefs (E-9s) at his unit. The Coast Guard has advised that at that time it conducted a unit investigation that uncovered evidence of approximately 10 other such incidents of misconduct by the applicant. Although the Coast Guard has stated that it is now unable to locate this investigation, the Board finds that the applicant has not provided any evidence that the Coast Guard has not acted in good faith.

5. The Coast Guard argued that it was within policy for the Coast Guard to issue the contested EER and Page 7. PSC explained that on June 28, 2018 the applicant appropriately received a “Transfer EER” because more than 184 days (i.e. 210 days) had elapsed since the applicant’s last EER on November 30, 2017. PSC further explained that the Negative Page 7 dated February 15, 2019 “captures an incident which occurred on March 6, 2018, within the marking period, which was investigated, confirmed, documented, and later added to the member’s counseling report” and that the Coast Guard had the authority to assign the applicant an unsatisfactory conduct mark for what they viewed as a one-time major infraction. PSC also states that the applicant was not afforded the opportunity to provide a statement and appeal the EER at that time because he was not relieved for cause, however, the applicant failed to do so. PSC further made the point that the applicant’s prior record is not grounds for removing the unsatisfactory conduct mark from the disputed EER. The Coast Guard acknowledged that the language in the EER and Page 7 was similarly worded to that contained in Coast Guard policies but argued that the command never stated that the applicant was “relieved for cause.” The Coast Guard explained that the applicant was assigned the unsatisfactory conduct mark for not complying with civilian and military rules, regulations, and standards and that the command viewed the incidents as a one-time infraction based on the outcome of the unit investigation which showed 10 documents incidents of such behavior by the applicant. Based on this, the Coast Guard argued there are no grounds for setting aside the result of the SECB that convened on October 19, 2021. The Coast Guard noted that the SECB proceedings are privileged and therefore it is impossible to discern the reason for the applicant’s non-continuation. The Coast Guard argued that, overall, there is insufficient evidence to substantiate the applicant’s allegations of error and injustice in his military record, which is presumptively correct.

6. The Board finds merit to the Coast Guard’s statements and agrees that the applicant has failed to prove, by a preponderance of the evidence, an error or injustice in his record. The Board notes the negative Page 7 was issued within two years of the date of the incident in accordance with Coast Guard policy. The Board finds that the June 28, 2018 EER was in fact a transfer EER and within policy because more than 210 days had passed and the applicant was transferring to another duty station. The Board further finds that although the June 28, 2018 EER did contain derogatory information about the applicant that this was within policy and did not change the type of EER to a disciplinary report. Also, there is no mention in the contested EER that the applicant was relieved for cause as the applicant claims; the EER states only that the applicant was relieved of his primary duties as the Assistant Leading Chief Petty Officer and removed from his leadership position. The Board finds that the applicant was removed from his

position because the command lost faith in his ability to hold the position given the outcome of the unit investigation.

7. In addition, the Board finds that the only evidence that the applicant provided in support of his application was a prior favorable EER dated November 30, 2017, and the Command Endorsement he received for USA Sergeants Major Academy. The Board finds that this evidence is insufficient to overcome the presumption of regularity of the Coast Guard to remove or change the contested EER and negative Page 7 in his record. Accordingly, the Board finds that the applicant has not proven by a preponderance of the evidence the existence of an error or injustice warranting change or removal of the unsatisfactory conduct mark in the disputed June 28, 2018 EER or the February 15, 2019 negative Page 7 from his record, and therefore there are no grounds for setting aside the results of the October 19, 2021 Senior Enlisted Continuation Board (SECB). The applicant may submit a request for reconsideration to the Board if he has further evidence to provide in support of his claims, such as affidavits or documentary evidence.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

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

August 8, 2024

[REDACTED] [REDACTED] [REDACTED]
Digitally signed by [REDACTED]
Date: 2024.08.14 15:48:41 -05'00'

[REDACTED]
Digitally signed by [REDACTED]
Date: 2024.08.14 17:54:05 -04'00'

[REDACTED]
Digitally signed by [REDACTED]
Date: 2024.08.15
13:58:34 -04'00'
