

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2022-084**

██████████ ██████████ ██████████  
DC3

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**FINAL DECISION**

This is a proceeding under 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 August 11, 2022, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated April 12, 2024, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

**SUMMARY OF APPLICANT’S REQUEST AND ALLEGATIONS**

The applicant, an active duty Damage Control Specialist, third class, asked the Board to remove a CG-3307 (“Page 7”) issued on June 13, 2022, that resulted from an Anti-Hate and Harassment Incident (AHHI) investigation initiated after allegations of sexual harassment were made against the applicant.

The applicant stated that on May 6, 2022, he was notified that he was the subject of an administrative investigation regarding alleged sexual harassment. He was given his Article 31(b) Miranda/Tempia rights. The Article 31(b) signed by the applicant stated that the applicant was being investigated for “Alleged sexual harassment at the firehouse.” The applicant claimed that he asked the investigator questions regarding the specifics of the allegations and the investigator stated that he did not know. Further, the applicant alleged that the investigator asserted that he had only done three of these investigations and did not have much information because this investigation had just been “dropped on his desk,” and that he was not given much information regarding the allegations or specifics involving the allegations. The applicant explained that the investigator asked him if he wanted to make a statement and when he asked the investigator what he would be making a statement about because he needed to decide whether he wanted to make a statement, the investigator replied that he could not provide any information unless the applicant chose to make a statement on the Article 31(b) form. The applicant stated that he chose to consult a lawyer before making a statement. According to the applicant, the investigator did not know how the investigation would proceed, as he had never conducted an AHHI investigation where the

applicant had chosen to consult with a lawyer. At this point, the applicant stated that the investigator concluded the meeting and he returned to work at the firehouse.

The applicant stated he received a follow up email from the investigator that same day, thanking the applicant for meeting with him and let him know that results of the investigation were due to the Executive Officer by May 12, 2022, and that the applicant could stop by any time if he wanted to discuss the matter. The applicant explained that he chose to remain silent after consulting with military counsel because he still did not know what allegations had been made against him.

The applicant alleged that he reached out to the investigator prior to the May 12, 2022, deadline, and informed him that after further legal consultation that he still wished to remain silent, but asked the investigator for a list of questions regarding the investigation that he could review with legal counsel to determine whether he wished to make a statement. The applicant claimed that he did not receive a response from the investigator until May 16, 2022, and even then the investigator only stated he would be happy to provide the applicant with an opportunity to make a statement. The applicant noted that once again the investigator failed to provide any information regarding the allegations made against the applicant or what kind of statement he should be making. The applicant explained that because he still had no information regarding the allegations, he discussed the situation with his counsel and informed the investigator that he would continue to remain silent in an email on May 17, 2022.

According to the applicant, after this investigator's May 16, 2022, email, he did not hear anything from the investigator or his command regarding the investigation until June 13, 2022, when he was issued the Page 7. The applicant claimed that multiple individuals in his chain of command told him that they did not know what was happening with his investigation and that had no information regarding the investigation, not even what the investigation was about. The applicant contended that the Page 7 included multiple false allegations against him, did not provide a timeline or time period of when the allegations allegedly took place, who the allegations were directed toward, or who made the allegations. The applicant stated the Page 7 was issued by Chief Damage Control Specialist (DCC) W, who was within his division, but outside of his chain of command, and when he asked DCC W whether or not he could contest or appeal the Page 7, DCC W stated that he did not know for sure but that the applicant should ask.

The applicant stated that he did not sign the Page 7 because the allegations within it were false and because he wanted to appeal and contest the Page 7 through the proper process. The applicant alleged that the process the investigator and his chain of command took deprived him of the opportunity to defend himself or make a statement based off of the specific allegations being made against him. The applicant stated that he found the investigator's and his chain of command's behavior, conduct and the final determination of the investigation as inappropriate because he was never afforded the opportunity to respond because he was never informed of what the allegations were, or the evidence and reports his command and the investigator had because they chose not to go to NJP.

## SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on December 10, 2019.

### *Article 31(B) Form*

On May 6, 2022, the applicant signed his Article 31(B) rights wherein he was informed of his Miranda/Tempia Rights. The section of the form for describing the subject of the investigation says, “alleged sexual harassment at the firehouse.” The following were listed as the offenses the applicant was suspected of:

- Article 92 Failure to Obey Order or Regulation
- Article 134 Sexual Harassment
- Article 134 Prejudice to Good Order and Discipline

The applicant initialed the form to show that he understood his rights and indicated that he wished to consult a lawyer and remain silent.

### *Email Chain*

On May 6, 2022, the investigator sent the applicant an email. The content of the email are as follows:

Thanks for taking the time to meet with me this morning. Based on the CG-5810E UCMJ and Miranda/TEMPIA Rights, you DO desire to consult a lawyer and you DO NOT desire to make a statement or answer any questions. Note that my investigation is due to the Executive Officer (Commander [redacted]) May 12th, 2022. Stop by any time before May 12th if you would like to speak about this matter. Please respond to this email confirming receipt.

On May 6, 2022, the applicant confirmed receipt of the investigator’s email.

On May 12, 2022, the applicant emailed the investigator again and stated that he still wished to remain silent, but told the investigator that if he had any questions for him, to please send them via email so that the applicant could review them and seek counsel. The applicant stated that he would get back to the investigator either way.

On May 16, 2022, the investigator replied with the following:

DC3, I am happy to provide you the opportunity to provide a written statement. The topic is reflected in the attached 31B and you may focus on relations with your female co-worker within the last year. You can do that with counsel and I will reflect this exchange and that you sought counsel in preparation of your statement, in the investigation.

Because you already signed a 31B indicating you decline to answer questions or make a statement, I will need you to complete a second one indicating that you now want to provide a written statement. I am attaching “Second 31b DC3 [Applicant].” I will need you to complete this with a witness. You can come to my office when you hand in your statement and we can complete that together. However, I do not want to accept your statement unless your election is accurately reflected. You would be selecting Option B, on page 2.

I did have to submit my report on Thursday but I can seek an extension if you can have a signed, dated statement and come to me to complete your 31B on or before Thursday at 10 am. I’m sorry but this will have to be a hard deadline. Please let me know by 5 pm today so I can move forward with my submissions otherwise.

Later that day, the applicant stated he had not made a decision on whether to make a statement.

On May 17, 2022, the applicant declined to make a statement.

*Page 7*

On June 9, 2022,, the applicant was issued a Page 7. The entry stated:

[A]n AHHI investigation convened on 29Apr2022 and found you repeatedly made inappropriate and offensive comments and participated in sexually harassing behavior while on duty at the CGFD. Specifically, you stated that women should not be in the firehouse, suggested that a female coworker must be 'hooking up' with a male coworker because they get along so well, and suggested to coworkers that the same female was flirting. Your actions and comments are direct violations of Coast Guard and Civil Rights policies, were unwelcome, and caused a hostile and offensive work environment that is prejudicial to good order and discipline of the Coast Guard.

The applicant was directed to "cease sexually harassing comments and behaviors" and complete three trainings. The applicant refused to sign the Page 7.

**VIEWS OF THE COAST GUARD**

On March 13, 2023, a judge advocate (JAG) submitted an advisory opinion in which he recommended that the Board deny relief because the applicant had failed to exhaust all available administrative remedies. Specifically, the JAG stated that the applicant failed to apply to the Personnel Record Review Board (PRRB).

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

On June 1, 2023, 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 response on July 1, 2023.

In an email to the Board, the applicant stated the following:

My name is DC2 [Applicant] and I am writing regarding my application for docket number 2022-084, applying for relief and expungement of a CG-3307 I received last year. The advisory opinion states I have not exhausted an administrative remedy in the form of the PRRB as per COMMANDANT INSTRUCTION 1070.1. However, I was counseled by multiple PERSREPs on the application process for expungement of this 3307, and I was advised that submitting my application to the PRRB via the instructions outlined in COMMANDANT INSTRUCTION 1070.1 via mail, was the proper way to seek resolution to my predicament. Further, as outline in COMMANDANT INSTRUCTION 1070.1, it states in section 7, subsection 9 that "Where the PRRB cannot take action on the application the president may either return the application to the applicant or forward it to the BCMR." It was my understanding that through submission of my application via the DD-0149 form and supporting documentation to the PRRB would result in review and forwarding to the BCMR for review. In this matter, in my chain of command, all forms of relief have been exhausted as well as per my immediate supervisor, that the application for review of correction to my military record could be achieved via application to the PRRB/BCMR, and not through any remedy within our unit. I respond and ask that the Board review my case as well as the circumstances surrounding it in the decision to expunge this CG-3307, and I am willing and able to provide any and all subsequent information needed in making the decision. Thank you for your time and consideration.

## APPLICABLE LAW AND POLICY

Article 3 of the Coast Guard’s Civil Rights Manual, COMDTINST 5350.4E, provides the following guidance on Anti-Hate and Harassment Incidents (AHHI):

### **C. Prohibited Practices.**

...

2. Anti-Harassment & Hate Incident (AHHI) Policy vs. EEO/EO Complaint: The Coast Guard operates two separate and distinct complaint processes by which a civilian or military member, who is subjected to prohibited harassment, may seek relief:

a. The AHHI process: A command-led process to stop harassing behavior and take corrective action. Although Civil Rights Service Providers may assist the command in understanding its obligations and procedures under the AHHI policy, the responsibility to carry out the policy rests with the command, and ultimately the command makes a determination as to whether the complaint is substantiated and, if so, what action to take. A civilian or military member seeking to file an AHHI complaint may do so by contacting someone in their chain of command. If a member requires guidance, they can contact a CRSP.

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### **D. Defining Unlawful Harassment and Prohibited Harassment.**

1. Unlawful Harassment: Unlawful harassment is discrimination that violates federal law. Unlawful harassment includes, but is not limited to, unwelcome conduct, whether verbal, nonverbal, or physical, that is based on an individual’s protected status (including: race, color, religion, sex, national origin, age, disability, genetic information, status as a parent, marital status, political affiliation, and retaliation) and is so objectively offensive as to alter the victim’s conditions of employment.

a. Examples of unwelcome conduct include: offensive jokes, epithets, slurs, stereotyping, name calling, mockery, intimidating or demeaning acts, and the circulation or posting of written or graphic materials that show hostility toward individuals because of their protected status.

b. This standard is met when the conduct results in a tangible employment action or a hostile work environment.

...

(2) Hostile environment harassment encompasses all other situations addressed in the definition of harassment above, whether the offender is a supervisor, a coworker, a contractor, or non-employee. To meet the definition of a hostile work environment, the harassment must be so severe or pervasive that a reasonable person would view the environment as hostile, offensive, or abusive. In hostile work environment harassment, the Coast Guard is liable only if it knew, or should have known, of the conduct and failed to take prompt and effective corrective action.

2. Prohibited Harassment: Generally, a single action or utterance of an ethnic, sexual, or racial epithet that offends an employee would not be considered severe or pervasive enough to constitute unlawful harassment in violation of federal law. However, it is the Coast Guard’s policy that such conduct, even a single unintentional incident, has no place in the Coast Guard and must be stopped.

Prohibited harassment includes, but is broader than, those behaviors that amount to unlawful harassment. Unwelcome conduct that unreasonably interferes with work performance or creates an intimidating, hostile, or offensive work environment is prohibited by this policy, even if not based on a protected status.

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**E. Applicability.** This policy applies to conduct having a direct nexus to civilian or military members' positions or responsibilities that occur on duty, off duty, face-to-face, or remotely via electronic/digital means, including, but not limited to telephone, email, social media, websites and chat applications. The conduct defined above is prohibited regardless of whether it occurs during working hours or onboard Coast Guard installations or assets.

1. Anti-Harassment Hate Incident Complaint Procedures. The procedures discussed below apply to AHHI complaints, which is a command-directed process. See article C.2. of this chapter for the difference between the AHHI and EEO complaint process. All Coast Guard personnel must refrain from harassing behavior in the Coast Guard. The CO/OIC, managers, and supervisors shall ensure their conduct sets an example and is not such that they may be vulnerable to claims of harassment. Everyone is encouraged to tell any person engaging in unwelcome harassing conduct to stop, even if they are a third-party witness to the behavior.

2. Procedures Overview.

a. Any individual witness to harassing behaviors should report the inappropriate conduct to their supervisor or anyone in their chain of command immediately so that it may be addressed. Alternatively, anyone may file an AHHI complaint with the Coast Guard CRSP and/or the COMDT (CG-00H). All employees are required to ensure confidentiality to the greatest extent possible.

b. Once aware of prohibited harassment, supervisors and managers are required to:

- (1) Ensure the harassing behavior stops, which may include taking interim measures such as issuing a cease and desist letter to the alleged harasser, and/or separating the alleged harasser from the alleged victim while the matter is investigated, to decrease the possibility that the harassment can reoccur;
- (2) Take or assist with appropriate recourse to address the matter, to include initiating a preliminary inquiry/investigation within 10 days of notification; and
- (3) Report such activities via the procedures outlined in this policy.

c. Investigating Officers (I/O) assigned to conduct investigations into reports of harassment reports must have undergone DHS/Coast Guard investigative training in investigating harassment allegations, including the legal requirements for claims of harassment, interviewing, and report writing triennially. The training is available in the Coast Guard Learning Management System. I/Os should also refer to the Investigator Techniques, Tactics, and Procedures (TTP) for best practices on how to conduct the investigation.

d. When the investigation of a harassment complaint is not completed within 45 calendar days of the date of initiation of the investigation, the CO/OIC will notify the servicing CRSP and the reporting party of the need for an extension.

e. Reports of harassment will be treated confidentially, to the extent possible, consistent with good order and discipline. The Coast Guard does not tolerate retaliation against any individuals for reporting harassment or assisting another individual in reporting harassment.

f. Filing a harassment complaint through this procedure, does not replace, substitute, or satisfy the separate requirements for filing an EEO/EO complaint, a negotiated grievance, EEOC or Merit Systems Protection Board (MSPB) appeal or other statutory grievance procedure. An employee may file an AHHI complaint and EEO complaint or both.

g. Managers who become aware of an AHHI allegation of harassment that a command failed to investigate should inform their servicing CRSP, or, if necessary, the COMDT (CG-00H) Director.

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3. CO/OIC Harassment Procedure Requirements. All CO/OICs shall take prompt action to address reports of harassment under the AHHI policy. All CO/OICs shall take the following steps to adjudicate complaints upon notification of a report of prohibited harassment:

a. Acknowledge receipt of the AHHI complaint and, when appropriate, issue the reporting party an Acknowledgment Memorandum (see Appendix I) and take action to ensure the safety of the aggrieved party, including contacting local law enforcement, base security forces, or emergency medical care, if necessary.

b. The CO/OIC will report the AHHI complaint to the CRSP with jurisdiction over the geographical location.

c. Advise the reporting party that filing an AHHI complaint does not replace, substitute, or satisfy the separate requirements of filing a EEO/EO complaint, negotiated grievance, EEOC or MSPB appeal or other statutory grievance procedure.

d. Respect the privacy and confidentiality of individuals reporting harassment or providing information relating to harassment to the extent permitted by law and consistent with good order and discipline. Privacy and confidentiality must be extended to all parties. Written material must be stored so as to not expose information to any individual who does not have a need-to-know.

e. Notify Coast Guard Investigative Service (CGIS) or other law enforcement agencies as required by the Coast Guard Investigative Service Roles and Responsibilities, COMDINST 5520.5 (series).

f. Unless CGIS has initiated an investigation, or the command has decided to initiate a preliminary inquiry as appropriate in accordance with the Administrative Investigations Manual, COMDTINST M5830.1 (series) (AIM), within 10 calendar days of notification of a report of harassment, CO/OIC must initiate an investigation. Typically, a standard investigation is appropriate to investigate an AHHI allegation. In addition to the procedures found in the AIM, the following requirements apply to Anti-Harassment and Hate Incident (AHHI) investigations. If the requirements of this chapter conflict with requirements in the AIM, this chapter shall take precedence.

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8. Final Action. The CO/OIC must take final action (i.e., at a minimum, make a formal finding whether the alleged conduct occurred) on every investigation.

a. The final action must be documented in writing and must be a stand-alone document. It must provide relevant information such as the identity of the complainant and the alleged perpetrator, contact dates, time, locations, allegations, the decision, and any actions taken.

b. Prior to taking final action, the CO/OIC must consult with his/her staff judge advocate. The CO/OIC's finding may substantiate that prohibited harassment as defined in 3.D. above occurred. A finding of harassment by the CO/OIC through the AHHI process does not substitute for the EEO process.

c. In order to substantiate an allegation, the CO/OIC must find that it is more likely than not that the perpetrator engaged in prohibited harassment and/or hate behaviors as defined in this chapter.

d. Conversely, if the CO/OIC determines that the behavior did not meet these standards, the allegation must be unsubstantiated.

e. Additionally: The CO/OIC must articulate, in a Final Action Memorandum, the basis for the determination of whether prohibited harassment occurred and the evidence reviewed to reach the determination (see sample memo in Appendix J).

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(5) *If an investigation substantiates prohibited harassment* or shows that other misconduct occurred, *the CO/OIC will initiate*, in appropriate cases, *administrative or disciplinary actions* that may include punishment under the Uniform Code of Military Justice (UCMJ) for military personnel. In the case of civilian employees, if the administrative or disciplinary action involves a personnel action, management must consult with the servicing Human Resources Specialist (CG124).

## 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 requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.<sup>1</sup>

3. The application is timely because it was filed within three years of the applicant's discovery of the alleged error or injustice in the record, as required by 10 U.S.C. § 1552(b).

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<sup>1</sup> *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).



4. The applicant alleged that the Coast Guard committed an error and injustice when it issued him a Page 7 for sexual harassment because they never gave him specific notice of the allegations or the opportunity to respond to the allegations. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in the military record, and the applicant bears the burden of proving, by a preponderance of the evidence, that the disputed information is erroneous or unjust.<sup>2</sup> Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."<sup>3</sup>

5. The applicant alleged that he was not made aware of the specific sexual harassment allegations nor given the opportunity to respond to the allegations. According to the Article 3.E.3.f of the Coast Guard's Civil Right Manual, COMDTINST M5350, when a commanding officer is made aware of prohibited harassment, the supervisor must initiate an investigation within 10 days. Article 3.E.2.d. of COMDTINST M5350.4E further states that once the investigation begins, if the investigation is not completed within 45 days, the commanding officer must notify the Civil Rights Service Provider and the reporting party that an extension will be required. In addition, Article 3.E.2.e. of COMDTINST M5350.4E places an emphasis on the need for confidentiality in this process to prevent retaliation, stating that "[r]eports of harassment will be treated confidentially, to the extent possible, consistent with good order and discipline." This is further supported by Article 3.E.3.d of the same manual which states, "[r]espect the privacy and confidentiality of individuals reporting harassment or providing information relating to harassment to the extent permitted by law and consistent with good order and discipline." Each investigation must result in at least a formal finding about whether the alleged harassment occurred using a standard of "more likely than not." Finally, Article 3.E.8.e.5. of COMDTINST M5350.4E states "*if an investigation substantiates prohibited harassment or shows that other misconduct occurred, the CO/OIC will initiate, in appropriate cases, administrative or disciplinary actions....*"

6. The Board's review of the record shows that on April 29, 2022, an AHHI investigation was initiated into allegations that the applicant had engaged in prohibited sexual harassment. Specifically, the applicant was accused of having said that women should not be in the firehouse, that his female coworker must be "hooking up" with a male coworker because they got along so well, and that she was "flirting" with coworkers. On May 6, 2022, the applicant was told that he was under investigation for "alleged sexual harassment at the firehouse" and was given his Article 31(B) rights, which he reviewed and acknowledged, electing to consult with an attorney and remain silent. The record further shows that the applicant and the investigator exchanged a series of emails, wherein the applicant asked the investigator for the specific, written questions the investigator wanted to ask him. The investigator declined to provide written questions but gave the applicant another opportunity to address the allegations of sexual harassment by submitting a

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<sup>2</sup> 33 C.F.R. § 52.24(b).

<sup>3</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

written statement, and the investigator identified the alleged victim as the applicant's female co-worker by suggesting that the applicant provide a statement about his relations with her. Finally, the record shows that on May 17, 2022, the applicant again chose to remain silent and declined to submit a written statement about his interactions with his female co-worker. Then, on June 9, 2022, 42 days after the investigation was initiated, the applicant was issued written counseling in the form of a Page 7 (CG-3307), which stated that he had engaged in sexual harassment.

7. The applicant alleged that he received insufficient notice and opportunity to be heard before he was issued the Page 7. Specifically, he argued, he was entitled to be informed of the words or other means he was accused of using to sexually harass his female co-worker and that without this exact information, he was deprived of due process, and so the written counseling on the Page 7 is impermissible and should be removed from his record. Notice of a proposed adverse action is adequate when it “apprises the employee of the nature of the charges ‘in sufficient detail to allow the employee to make an informed reply.’”<sup>4</sup> While the AHHI investigator certainly could have provided the applicant with greater specificity about the alleged sexual harassment, he was also required to preserve confidentiality to the extent possible. Ultimately, the investigator informed the applicant of the identity of the alleged victim of sexual harassment, despite the need for confidentiality, and offered him a chance to submit a written statement about their “relations”—i.e., conversations and interactions. Thus, the AHHI investigator succeeded in meeting his deadline and in protecting the identity of some of the witnesses.

In judicial proceedings, a failure to provide sufficiently specific information about the charges against the accused before an interview would result in the exclusion of statements made by the accused during the interview and of any evidence gathered as a result of those statements.<sup>5</sup> Here, no judicial proceedings were convened, and the applicant's statements were not used against him because, with the benefit of legal counsel, he made none. The Board does not fault the applicant for opting to remain silent, but by doing so he knowingly waived his first opportunity to place his own statements about the nature of his conversations and interactions with his female co-worker into the record for his command to review. And the investigator could not halt the investigation simply because the applicant chose to remain silent.

8. Article 3.E.8.e.5. of COMDTINST M5350.4E states that if an AHHI investigation substantiates prohibited harassment or shows that other misconduct occurred, the CO/OIC will initiate, in appropriate cases, administrative or disciplinary actions. Here, the record shows that the allegations against the applicant were substantiated and, therefore, the applicant's commanding officer was required to take action. In this instance, the commanding officer chose to take administrative action by issuing the applicant a negative Page 7 documenting his prohibited conduct. A negative Page 7 (Administrative Remarks, Form CG-3307) documenting sexual harassment is clearly prejudicial to the recipient, and such adverse action against a member requires due process, which is “fulfilled by notice of the government act and an opportunity to

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<sup>4</sup> *King v. Alston*, 75 F.3d 657, 661 (Fed. Cir. 1996) (quoting *Brook v. Corrado*, 999 F.2d 523, 526 (Fed. Cir. 1993), and *Brewer v. United States Postal Serv.*, 227 Ct. Cl. 276, 647 F.2d 1093, 1097 (1981), *cert. denied*, 454 U.S. 1144 (1982)).

<sup>5</sup> MIL. R. EVID. 305(a), (c) (2000).

respond before or after the act.”<sup>6</sup> In the case of negative Page 7s, the Coast Guard policy provides the opportunity to respond after the fact, when the member knows exactly what the Page 7 states. Paragraph 7.b.(1) of COMDTINST 1070.1 states the following:

If a member believes a personnel record entry is unfair, an appeal through the member's chain of command usually is the simplest and fastest means for seeking correction or deletion of the entry. The level in the chain of command to which the appeal should be directed is dependent upon all of the circumstances. As an example, for a member who receives an Administrative Remarks, Form CG-3307, entry from his or her division chief documenting purported substandard watchstanding, an appeal through the division chief and the executive officer to the commanding officer should suffice. (This appeal may be in the form of a so-called “Request Mast” pursuant to Article 9-2-3 of reference (c) [Coast Guard Regulations<sup>7</sup>].

Thus, Coast Guard policy provided the applicant with an opportunity to appeal the Page 7 and respond to the specific allegations in the Page 7 after the fact at a Request Mast with his commanding officer. And if he was unsatisfied with the result of the Request Mast, he could appeal the Page 7 to the Personnel Records Review Board, as provided in Paragraph 7.c. of COMDTINST 1070.1. From the record, it is unclear whether the applicant submitted a chit for a Request Mast to appeal the Page 7 or simply inquired about appealing the Page 7 and was discouraged by his supervisor’s response. But according to the Coast Guard, he did not contest the Page 7 through the PRRB. Nor, aside from his own denials, has the applicant submitted any evidence, such as statements from coworkers, that casts doubt on the accuracy of the Page 7.

9. Accordingly, the Board finds that the applicant has failed to prove by a preponderance of the evidence that he was denied due process or that the disputed Page 7 is erroneous or unjust. His request for relief should be denied.

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

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<sup>6</sup> *Canonica v. United States*, 41 Fed. Cl. 516, 524 (1998); see *Board of Regents v. Roth*, 408 U.S. 564, 573 (1972); *Lee v. United States*, 32 Fed. Cl. 530, 546 n. 17 (1995).

<sup>7</sup> Coast Guard Regulations, Article 9-2-3 (“The right of any person in the Coast Guard to communicate with the commanding officer at a proper time and place is not to be denied or restricted.”).

**ORDER**

The application of DC3, [REDACTED] [REDACTED] USCG, for the correction of his military record is denied.

April 12, 2024

[REDACTED] Digitally signed by [REDACTED]  
Date: 2024.06.12 10:10:35 -04'00'

[REDACTED] Digitally signed by [REDACTED]  
Date: 2024.06.12 14:49:27 -04'00'

[REDACTED] Digitally signed by [REDACTED]  
Date: 2024.06.12 15:02:20 -04'00'