

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2022-091


MECS

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 October 12, 2022, 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 February 2, 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 Senior Chief Maritime Enforcement Specialist (MECS/E-8) on active duty, asked the Board to correct his military record by removing a negative CG-3307 (“Page 7”) dated July 17, 2018, wherein he was counseled by his commanding officer (CO) for attempting to establish a romantic relationship with a female First Class Petty Officer (E-6) who was a member of his Port Security Unit (PSU). The disputed Page 7 states the following:

17 JUL2018: During an investigation into reports of sexual harassment and other potential violations of the UCMJ, it was reported that you attempted to establish a romantic relationship with a female E-6 member of this unit.

JTF-[Redacted] Policy memorandum #14.5 Fraternalization and Improper Relationships states, “Service regulations prohibit improper relationships between service members of different ranks, and between military personnel...” Improper relationships are those that are “unduly familiar” and compromise (or appear to compromise) Good Order and Discipline. Improper relationships can occur within and between enlisted ranks...” COMDTINST M1600.2 Discipline and Conduct Manual defines expectations Para 2.A.1.c. Leadership and Military Discipline by stating “interpersonal relationships always acknowledge military rank and reinforce respect for authority. Good leaders understand the privilege holding rank requires exercising impartiality and objectivity. Interpersonal relationships which raise even a perception of unfairness undermine good leadership and military discipline.”

The terms “unduly familiar” and “appear to compromise” are important as reports indicate the repeated use of texting, Instagram, and one report of sending a shirtless photo to a female E-6 in the unit as a means for establishing a romantic or inappropriate relationship. Witness statement summarize you repeatedly brought

coffee to a female E-6 while on watch, however no one else. It was also reported you grabbed a female E-6's ponytail, in front of a group of people, saying "like this" in the female E-6's ear referring to a past conversation about sexual preferences. When the female E-6 blocked you on Instagram it was reported you signed in under another name and messaged her again.

This behavior is in stark contrast to the behavior expected of a Chief Petty Officer. Your position of authority at this unit requires you to conduct yourself with the utmost professionalism as a leader of personnel that can be called upon for guidance and knowledge, and to demonstrate a strong example for junior personnel to follow. Your behavior has you on the fringes in several scenarios. In reviewing the dimensions on the Enlisted Evaluation Report for Chief Petty Officers your behavior contradicts the following dimensions:

1. Customs, Courtesies, and Traditions - This dimension requires Chief Petty Officers to "set and enforce standards for others."
2. Military Readiness - This dimension requires Chief Petty Officers to "foster a positive work- life balance" and "ensure compliance with personal readiness standards for self and others."
3. Respect for Others - This dimension requires Chief Petty Officers to "foster an environment that supports diversity, fairness, dignity, compassion, and creativity."
4. Accountability and Responsibility - This dimension requires Chief Petty Officers to "hold self and others to military rules and regulations."
5. Chiefs Mess Leadership and Participation - This dimension requires Chief Petty Officers to support/demonstrate sufficient knowledge of the Command, CMC, COTM and MCPOCG's Mission, Vision, Guiding Principles, and Standing Orders."

You are hereby ordered to terminate any further attempts to establish inappropriate relationships. Failure to follow this order may cause a recommendation of separation, removal or withdrawal of advancement recommendations, and potential punitive action. As a result of the above, I'll be removing your Chiefs Call to Initiation Competency Code in Direct Access. Be advised your next Enlisted Evaluation Report may reflect the above documented behavior, including not being recommended for advancement, and an unsatisfactory "conduct" marking. As we move forward, it's expected that you will conduct yourself in accordance with the Coast Guard's Core Values of Honor, Respect and Devotion to Duty at all.

The applicant explained that at the time of the alleged incident, he was a Chief (E-7) assigned to the Weapons Division of the PSU, which was deployed overseas with a crew of approximately 143 members. The applicant alleged that the E-6 he was accused of soliciting an inappropriate relationship with was not in his direct chain of command and was attached to the Waterside Security Division (WSD) of the PSU while he was the Chief of the Weapons Division. The applicant stated that although he and the E-6 were texting each other and a shirtless photo of him was sent, it was immediately followed by an apology because it was not intended for the female E-6. The applicant admitted to bringing the female E-6 coffee twice while she was on watch but stated that the first time was because she had texted him and asked him to bring her coffee. Regarding the allegation that he had pulled the E-6's ponytail and said, "like this," the applicant alleged that the statement was in reference to a conversation he and the E-6 had previously had. In addition, the applicant claimed that the comment was referencing horseplay that he and the E-6 frequently engaged in. The applicant stated that although his command claimed that other crewmembers had heard his statement, he found this claim highly unlikely because it was made at a tiki bar while very loud music was playing.

The applicant stated that his command launched a Coast Guard Investigative Service (CGIS) investigation into sexual harassment complaints, but the CGIS investigation showed no fault on his part and the investigation was closed with no further action being taken against him. According to the applicant, the command was not satisfied with the CGIS investigation's results and decided to issue him and several other members negative Page 7s to punish those the command believed to be involved. The applicant also contended that the statement contained in the Page 7 regarding the pulling of his Chief's Call to Initiation (CCTI) qualification code was erroneous and unjust because his command did not have the authority to pull the qualification, as evidenced by its reinstatement not long after his command had it pulled.

The applicant claimed that five unit members received negative Page 7s based on accusations of sexual harassment made during the CGIS investigation. One such member was a male who, the applicant alleged, did engage in a sexual relationship with the female E-6, while the other male service member was a subordinate of the E-6's. The applicant alleged that as a result of this revelation, the female E-6 was sent stateside after the deployment ended. The applicant claimed that none of the members who received these Page 7s were given due process. Instead, they were considered guilty in the command's eyes. Because of the lack of due process afforded to him and the fact that the CGIS investigation concluded that he had done no wrong, he asked the Board to remove the July 17, 2018, negative Page 7 from his record.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard Reserve on October 1, 1996. He originally trained as a Boatswain's Mate (BM) at a PSU near his home until September 2001, when he began serving at a recruiting office. Then from March 2004 to June 2013, the applicant served on active duty at various units. While serving on active duty in 2010, he changed ratings and became a Maritime Enforcement Specialist, Second Class (E-5).

Since his release from active duty in June 2013, the applicant has been serving at the same PSU in various positions. He advanced to E-6 in April 2013 and to E-7 in April 2017. In September 2017, he was transferred to the Weapons Division and the PSU crew was activated and deployed overseas for a year. On July 17, 2018, while the PSU was deployed, the applicant received the negative Page 7 quoted above.

The applicant continues to serve at the PSU, and he advanced to E-8 in 2020.

VIEWS OF THE COAST GUARD

On March 14, 2023, 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).

PSC argued that the applicant's request should be denied because it is untimely. PSC explained that the applicant did not provide sufficient justification or explanation for the delay, and his application should therefore be denied. Finally, PSC argued that even if the Board were to consider the applicant's case on the merits, despite the untimeliness, the applicant's request should

still be denied because he admitted to the actions he was counseled for in the Page 7, namely that he acted inappropriately. PSC also noted that it was within his command's discretion to document the inappropriate behavior.

In support of this opinion, PSC submitted a sworn declaration from the Executive Officer (XO) of the PSU, Commander (CDR) S, wherein she stated the following:

1. Executive Officer; PSU [redacted] and Reporting Officer of MEC [Applicant].
2. I was MEC [Applicant's] Executive Officer from Sept 2017 through my departure August 2018 while deployed to [redacted], in support of the Joint Task Force.
3. I confirm all COMDT procedures and policies were followed upon receiving the verbal report of inappropriate behavior exhibited by MEC [Applicant]. Under advisement and guidance of [Sector] Legal, an administrative investigation commenced involving interviews and a review of facts that culminated in the issuance of CG-3307 dated 17JUL2018 that captures the essence of what was reported. As a senior enlisted member of the Command and Chief's Mess and in concurrence with CAPT [W] (CO), I issued a CG-3307 counseling MEC [Applicant] stating we found the initial report to be true and that his behavior/actions were in direct violation of COMDT policy and contrary to facilitating Good Order and Discipline for a deployed unit supporting the Joint Task Force. Please refer to the CG-3307 for the specifics and details related to this matter.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 8th day of December 2022.

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's response on May 29, 2023.

The applicant's response to the advisory opinion restated almost the entirety of his initial statement to this Board. Accordingly, only the new allegations and arguments in the applicant's response will be recorded here.

The applicant stated that he disagreed with the Coast Guard's advisory opinion, because although he was in the same unit with the female E-6, they were in different divisions and so he was not in the E-6's chain of command. The applicant contended that he had no bearing on the E-6's evaluations, watches schedules, qualifications or advancements, and because of his lack of authority over the E-6, his ability to remain impartial, objective, and fair was irrelevant in this instance.

The applicant further stated that the comment in the Page 7 about him contacting the E-6 on Instagram even after he was blocked by the E-6 is categorically untrue. The applicant alleged that he has only ever had one Instagram account and never logged onto Instagram using a different name in order to contact the E-6. He also alleged that he and the E-6 are still friends and that when presented with the Page 7, he sought clarification from his CO as to where the false statement came from. According to the applicant, the CO told him that the statement did not come from the

CGIS investigation but was made by someone. When the applicant told the CO the statement was false, the CO told him the statement would be redacted from the Page 7, but it was not.

APPLICABLE LAW AND POLICY

Article 8 of the Coast Guard Administrative Remarks Manual, COMDTINST M1000.14D, provides the following guidance on the issuance of Page 7s:

Article 8.j. 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.

...

Article 8.i. If a member refuses to sign an Administrative Remarks, Form CG-3307 entry, after being counseled regarding its content, the words “member refused to sign” must be entered in the member’s signature block along with the date counseled.

...

Article 2 of the Coast Guard’s Discipline and Conduct Manual, COMDTINST M1600.2, provides the following guidance on acceptable personal relationships:

2.A.2.c. Acceptable Personal Relationships. As people work together, different types of relationships arise. Professional relationships sometimes develop into personal relationships. Service custom recognizes that personal relationships are acceptable provided they do not, either in actuality or in appearance:

- (1) Jeopardize the members' impartiality,
- (2) Undermine the respect for authority inherent in a member's rank or position,
- (3) Result in members improperly using the relationship for personal gain or favor, or
- (4) Violate a punitive Article of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended), or
- (5) Violate any lawful order, regulation or policy regarding inappropriate and prohibited relationships, communications, conduct or contact established by competent military authority.**

2.A.2.d. Assessing the Propriety. The great variety of interpersonal relationships precludes listing every specific situation that members and commands may encounter. While some situations are clearly discernible and appropriate action is easily identified, others are more complex and do not lend themselves to simple solutions. Evaluating interpersonal relationships requires sound judgment by all personnel. Factors to consider in assessing the propriety of a relationship include:

- (1) The organizational relationship between the individuals: whether one member can influence another's personnel or disciplinary actions, assignments, benefits or privileges;
- (2) The relative rank and status of the individuals: peers, officer and enlisted, CPO and junior enlisted, supervisor and subordinate, military and civilian, instructor and student; and
- (3) The character of the relationship; e.g., personal, romantic, marital.

...

(b) Romantic relationship: Sexual or amorous relationship. (Does not involve conduct which violates reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended)).

...

2.A.2.f. Unacceptable Romantic Relationship. Romantic relationships between members are unacceptable when:

...

(5) The relationship is manifested in the work environment in a way which disrupts the effective conduct of daily business.

Joint Task Force Memorandum

DEPARTMENT OF DEFENSE
HEADQUARTERS, JOINT TASK FORCE [redacted] APO AE [redacted]

TF-[redacted]-CDR

MEMORANDUM FOR All Personnel Assigned or Attached to Joint Task Force [Redacted]

SUBJECT: Policy Memorandum #14.5, Fraternization and Improper Relationships

1. References:
 - a. Uniform Code of Military Justice, Articles 92 and 134 (2016 Edition)
 - b. OPNAV Instruction 5370.2D, Navy Fraternization Policy, dated 6 January 2016
 - c. Army Regulation 600-20, Army Command Policy, dated 6 November 2014
 - d. Air Force Instruction 36-2909, Professional and Unprofessional Relationships, dated 1 May 1999
 - e. Marine Corps Manual 1100.4, dated 21 March 1980
 - f. Coast Guard COMDTINST M1600.2, Discipline and Conduct, dated 29 September 2011

2. All personnel assigned or attached to Joint Task Force [redacted] (JTF-[redacted]) must take particular care to avoid improper relationships between persons of different ranks or relationships that have the potential to compromise good order and discipline.

3. Commanders, Commanding Officers, Officers-In-Charge and other supervisors shall ensure that Uniform Code of Military Justice (UCMJ) prohibitions against fraternizing and service-specific fraternization policies are strictly adhered to. Commanders should contact the Staff Judge Advocate if there is any uncertainty concerning this policy memorandum.

4. Service regulations prohibit improper relationships between service members of different ranks, and between military personnel and civilian employees or contractor personnel. Improper relationships are those that are unduly familiar and compromise (or appear to compromise) good order and discipline. Improper relationships can occur within and between enlisted ranks, within and between officer ranks, or between officers and enlisted. Violations

of service regulations, directives, or orders may be punishable under Article 92, UCMJ. Personnel not subject to the UCMJ who violate this policy may be barred from Naval Station Guantanamo Bay (NSGB) and may be subject to prosecution under applicable Federal laws.

...

7. Naval regulations further prohibit relationships between Chief Petty Officers (E-7 to E-9) and junior personnel (E-1 to E-6) in the same chain of command.

...

10. Some examples of activities that can constitute fraternization or give the appearance of fraternization or an Improper relationship Include:

...

d. Unduly familiar personal relationships between individuals within the same chain of command or of different grade/rank.

...

12. Responsibility for maintaining the customary and traditional standards of conduct lies with both parties to the relationship. The senior member in the relationship bears the primary duty to avoid crossing the line between acceptable conduct and improper relationships, including fraternization. All personnel must be careful to avoid fraternization and improper relationships without undermining the traditional fraternal bond between personnel of all grades.

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 application was timely filed 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).

3. The applicant alleged that the Coast Guard issued him an erroneous negative Page 7 with inaccurate facts and false aspersions on his character. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in the military record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is

erroneous or unjust.¹ 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.”² For the following reasons, the Board finds that the applicant has failed to meet his burden of proof:

- a. The Board’s review of the record shows that on May 1, 2018, the Joint Task Force (JTF) command, which the PSU had joined overseas, issued Memorandum #14.5, wherein the members of the JTF were reminded that “Service regulations prohibit improper relationships between service members of different ranks, and between military personnel...” The Page 7 defined improper relationships as those that are “unduly familiar and compromise (or appear to compromise) Good Order and Discipline. Improper relationships can occur within and between enlisted ranks...” The record further shows that on July 17, 2018, the applicant was issued a Page 7 for what his command considered to be an improper relationship between the applicant and a female E-6 within the same JTF. Referencing the May 1, 2018, the Page 7 cited the importance of the terms “unduly familiar” and “appears to compromise” because reports indicated that the applicant’s repeated use of texting, Instagram, and sending the E-6 a shirtless photo of himself gave an appearance that the applicant was seeking to establish a romantic relationship with the female E-6. The Page 7 also noted the applicant’s purchasing of coffee for the E-6 and an incident where he pulled the E-6’s ponytail in public and said, “like this,” apparently referencing a past conversation between the applicant and the E-6’s sexual preferences. Finally, the Page 7 admonished the applicant for behavior the command believed was in “stark contrast to the behavior expected of a Chief Petty Officer.” The applicant was reminded this his position of authority at the unit requires him to conduct himself with the “utmost professionalism as a leader of personnel that can be called upon for guidance and knowledge, and to demonstrate a strong example for junior personnel to follow.” Article 2.A.2.f.5. of the Discipline and Conduct Manual, COMDTINST M1600.2, states Romantic relationships between members are unacceptable when the relationship is manifested in the work environment in a way which disrupts the effective conduct of daily business.
- b. The applicant has argued that his conduct did not violate Coast Guard procedures because he was in a different division than that of the E-6, was not in the E-6’s chain of command, and was an E-7 at the time, only one rank above the female unit member. However, the policies in the May 1, 2018, JTF memorandum do not require a large difference in rank for a relationship to be improper. Specifically, the memorandum states, “Improper relationships can occur within and between enlisted ranks...” and Article 2.A.2.f.5. states that romantic relationships between members are unacceptable when the relationship is manifested in the work environment in a way which disrupts the effective conduct of daily business.

¹ 33 C.F.R. § 52.24(b).

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

The goal of the May 1, 2018, memorandum was made clear in Paragraph 2, wherein it states, “All personnel assigned or attached to Joint Task Force [redacted] must take particular care to avoid improper relationships between persons of different ranks *or relationships that have the potential to compromise good order and conduct.*” In addition, and as stated above, Article 2.A.2.f.5. of COMDTINST M1600.2 states that a romantic relationship is unacceptable when the relationship disrupts the effective conduct of daily business. Accordingly, under Coast Guard policy, any relationship that has the potential to compromise good order and discipline with any given unit, regardless of the rank of those involved, is prohibited.

The record shows that the applicant’s relationship with the female E-6 became so troublesome and problematic for his unit that a CGIS investigation was initiated to address allegations of sexual harassment, for which the applicant was believed to have taken part in. Clearly, the applicant’s conduct and relationship with the female E-6 began to jeopardize good order and conduct of the JTF, so much so that his conduct was reported by other members of the JTF to the applicant’s chain of command. Moreover, the applicant has admitted to having had a unique relationship with the female E-6, such as bringing her coffee and engaging in “horseplay” with her. The applicant has attempted to explain away some of his questionable conduct, such as the topless photo of him at a beach and the incident with the female E-6’s ponytail where he said, “like this,” but his explanations are unsupported by the evidence. The fact is, someone, other than the applicant, reported the applicant’s statement “like this” to the E-6, so his claim that no one could have heard him ask the E-6 “like this” is unsupported by the record. Finally, whether or not the applicant accidentally sent a shirtless photo of himself to the female E-6, does not change the fact that he did send the photo which his command found to be contrary to the standards expected of an enlisted member of his rank. The applicant has failed to submit any evidence to support his claims, and his records are presumptively correct.

- c. The applicant alleged that the Coast Guard violated his due process rights when despite an investigation finding that he had committed no wrong, he was still issued a negative Page 7 which was paramount to a guilty verdict by his command. However, not only has the applicant failed to provide any evidence that an investigation cleared him of all wrongdoing, but he has also failed to point to any Coast Guard policy or regulation that prohibits a Page 7 from being issued based on the preponderance of the evidence even if an investigation found insufficient evidence to support criminal charges, which would have to be proved beyond a reasonable doubt. The fact that an investigation cleared the applicant of criminal wrongdoing does not prohibit the applicant’s command from making an administrative finding, based upon a preponderance of the evidence, that the applicant’s conduct disrupted the effective conduct of his unit’s daily business and was therefore contrary to Coast Guard policy. The applicant has failed to provide any evidence that his due process rights were violated. The record shows that he was notified of the negative Page 7 and he signed the Page 7 in acknowledgement

on July 17, 2018. Had the applicant contested the Page 7, he could have refused to sign the Page 7 as permitted by Article 8.1 of COMDTINST M1000.14C. Accordingly, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that the Coast Guard committed an error or injustice when it issued him the July 17, 2018, negative Page 7, and his request to have the Page 7 removed from his record is denied.

4. For the reasons outlined above, the Board finds that the applicant has not met his burden, as required by 33 C.F.R. § 52.24(b), of overcoming the presumption of regularity afforded the Coast Guard that its administrators acted correctly, lawfully, and in good faith in entering the disputed Page 7 in his record.³ He has not proven, by a preponderance of the evidence, that the August 6, 2020, negative Page 7 is erroneous or unjust. Accordingly, the applicant's request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

³ *Muse v. United States*, 21 Cl. Ct. 592, 600 (1990) (internal citations omitted).

ORDER

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

February 2, 2024

[REDACTED] Digitally signed by [REDACTED]
Date: 2024.02.05 12:24:56 -05'00'

[REDACTED] Digitally signed by [REDACTED]
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