

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2015-102**

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██████████ SR (former)

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**FINAL DECISION**

This proceeding was conducted under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case upon receiving the completed application on May 12, 2015, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated April 1, 2016, 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 asked the Board to correct her record to show that she was not found guilty at most of the offenses of conspiracy to commit fraud and larceny against the Government or of fraud and larceny against the Government and that she does not owe a lawful debt to the Government. She explained that she enlisted on February 24, 2009, and married her boyfriend from high school on April 27, 2009, after completing recruit training. Because she had married, she was entitled to and received the basic allowance for housing (BAH) at the "with dependents" rate. Initially, they were placed in family housing, and she received no BAH. Her husband got a job as a paralegal, but she was gone frequently since she was assigned to a cutter. He became depressed and decided to move back to ██████████ with his family. She also stated, however, that her husband moved back to ██████████ in late 2009 because he had not found a job and wanted to attend college. About six months later, she was advised that she could not stay in family housing since her husband had moved out. She asked about getting a roommate but was told that she would receive BAH instead.

The applicant stated that after she was seen hugging and kissing a female crewmate in July 2011, the command began an investigation into whether she was having an inappropriate or prohibited relationship. After the investigation was complete, she was charged with violating the following articles of the Uniform Code of Military Justice (UCMJ): Article 92, Failure to Obey Order or Regulation; Article 107, False Official Statement; Article 132, Fraud against the United States; Article 121, Larceny; and two specifications of Article 81, Conspiracy to Commit Forgery and Conspiracy to Commit Larceny/Fraud against the United States.

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The applicant stated that she did not dem██████████al by court-martial and accepted non-judicial punishment (NJP) under Article 15 of the UCMJ, instead. At mast on March 27, 2012, her commanding officer (CO) dismissed the Article 92 charge but awarded her punishment for violating Articles 107, 132, 121, and 81 of the UCMJ. Her punishment included reduction in grade from E-3 to E-2 and 45 days of restriction to base with extra duties.

The applicant stated that on March 28, 2012, she was advised that her command intended to recommend that she receive an administrative general discharge for commission of a serious offense. She objected to the proposed discharge and requ██████████ideration under the Second Chance Program. Also, on March 28, 2012, her command initiated a recoupment of her BAH, claiming ██████████ investigation showed a preponderance of the evidence that [she] is married to her husband solely for purposes of receiving BAH.” The CO noted that the investigation showed that the applicant’s husband had been living in ██████████ for two years; that in nine months, that the applicant and her husband had exchanged a total of 12 emails, which were “about tax forms and small talk”; that the applicant had a romantic relationship with another member and had plans to “set up house together, get a dog, etc.”; and that the applicant’s husband was not her emergency contact or her beneficiary for life insurance or death gratuity. ██████████

The applicant stated that as a result of her command’s actions, she erroneously and unjustly received a general discharge on June 14, 2012, and the Coast Guard is recouping BAH from her. The applicant alleged that sh██████████ get married to collect more BAH ██████████ at the preponderance of the ██████████ found by the investigator showed th██████████ S██████████hat when they first married, th██████████red together in base housing and she was unaware of any potential financial benefit through BAH. After her husband moved back to ██████████ he visited her “every few months and stay[ed] for a week or two” while they continued to work on their marriage. She argued that the fact that she used her Coast Guard email to communicate with her husband only a few times is irrelevant because she did not normally communicate with him by email. Instead, they communicated by phone and text. The applicant stated that although they have “struggled throughout our relationship we are ██████████ married to this day, supporting each other and continuing to work on our marriage.” She alleged that the Coast Guard did not have a scintilla of evidence that ██████████nd her husband had conspired to commit fraud and ██████████ rding her B██████████

██████████ cant also ██████████ed that because her CO dismissed the Article 92 char██████████ her at mast, he must have determined that the preponderance of the evidence did not show that she had an improper relationship with another member and so ██████████ng for the CO to rely on the alleged improper rel██████████ as evidence to demonstrate that she had married to commit ██████████ She stated that while her emails with the oth██████████mber certainly show a close relationship with the other member, they do not show a romantic or sexual relationship. In addition, the applicant stated that choosing her younger siblings as her beneficiaries was a way to take care of them because her parents were divorced and that her husband had agreed with her decision.

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The applicant submitted statements from her husband, her father██████████her mother, who supported the validity of her marriage and reject the notion that she married just to collect more BAH. She argued that because the preponderance of the evidence shows that she did not marry

just to collect money. Her NJP should be overturned and she should not be required to repay the BAH that the Coast Guard is trying to recoup. [REDACTED]

### *Statement of Husband*

The husband stated that he started dating the applicant in high school although her mother never approved. Her father's family was more welcoming. After high school, they both enrolled in junior college without much success and so dropped out. He supported the applicant's decision to join the Coast Guard and he worked at a legal support company while she attended boot camp. One day, she told him she was being transferred to [REDACTED] instead of near home. She was upset, and so he promised he would move with her. He decided to propose marriage, bought an engagement ring, and told their families about it. The applicant's mother tried to convince him that they were too young, and his family did not approve either. However, he proposed and he and the applicant decided not to inform the [REDACTED] families because they disapproved. The applicant decided not to wear the engagement ring because she did not want her mother to find out, so he asked his mother to keep it for him.

The husband stated that he and the applicant packed up and drove to [REDACTED] together and got married. A few days later, a Coast Guard administrative officer did the paperwork to make him the applicant's dependent and got them housing on base. He immediately looked for work, but could not find a job, and when he looked into returning to college, learned that he would not qualify for in-state tuition in [REDACTED]. A few weeks later, they both flew home to pack more belongings. [REDACTED] pickup truck, which they drove back [REDACTED]. They found a dog and some furniture and painted the interior of their house. After a couple of months of searching, he found a job at One Legal. [REDACTED]

The husband stated that the applicant was often gone, underway on the cutter, and he became homesick and stressed from work and his depression returned. The applicant was also having issues adapting to the Coast Guard and they began to argue and fight frequently. Therefore, in September 2009, he moved back home to [REDACTED] where he got a part-time job at a grocery store to support himself. He and the applicant did not speak to each other for about two months. When she visited [REDACTED] around Christmas time, she asked him to move back to [REDACTED] but he told [REDACTED] he was going back to college and would visit her when he could afford to. Thereafter, they kept in touch with phone calls and texts and tried to work out their issues. He flew to [REDACTED] during [REDACTED] breaks. At one point, she told him she was being kicked out of family housing because he had left but that she would receive a housing stipend to help pay for her new housing. At one point, he decided to move back to [REDACTED] and started job hunting there without luck, and [REDACTED] colleges would not accept his credits from his college in [REDACTED]. Therefore, he decided to finish school in [REDACTED] and this decision caused another fight with the applicant, and they did not speak for several weeks.

The husband stated that after the applicant was discharged, she told him what the Coast Guard had claimed about the [REDACTED] and he read the documents she had received, which infuriated him "because they are false. I never conspired with [the applicant] to get housing allowance, we never even discussed her getting housing allowance when we were getting mar-

ried. I wasn't even aware that she would get housing allowance until she told me, which was after we got married and I had decided to return to [REDACTED]

### *Statement of Father*

The applicant's father stated that the Coast Guard did a very poor job in the investigation and never interviewed him. He stated that his daughter and her husband dated during high school and advised him that they planned to get married. He told them he could not forbid it but that it "was a common occurrence with servicemen coming out of boot camp—'boot camp blues.'" He thought that they were too young and immature to get married and that they intended to get married after her deployment. The father stated that he visited his daughter a few times in [REDACTED] and "spent countless hours with [her husband] while [she] was on the base working." He often heard his daughter and her husband "talk[ing] about their hopes and dreams for the future." He stated that he is 100% certain that the Coast Guard's assumption that they married for BAH is erroneous even though he "always thought they made a bad decision."

### *Statement of Mother*

The applicant's mother stated that the applicant and her husband dated in high school and that the husband often came to their house for holidays and family events, including the parties prior to the applicant's departure for boot camp. She stated that the two were together constantly during the last two weeks before the applicant's enlistment and that the husband left [REDACTED] to be with the applicant in [REDACTED]. When the applicant came back to [REDACTED] its [REDACTED] and would stay overnight at her [REDACTED] with the applicant. She stated that she believes that they "married with the intent of creating a life together. They are still married to this [REDACTED]"

## SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on January 22, 2009, at age 19. She signed a Page 7 (CG-3307) acknowledging that pay and allowances for a member, both before and after recruit training, had been explained to her. She named her parents as her beneficiaries and her emergency contacts. [REDACTED]

Following training, the applicant married on April 27, 2009. She was initially assigned to a cutter [REDACTED] transferred to [REDACTED] tor office in June 2009, where she met another female [REDACTED] (hereinafter, "FN")

On September 1, [REDACTED] applicant was transferred to another cutter. On that date, she [REDACTED] her siblings her insurance beneficiaries and [REDACTED] parents her contingent beneficiaries. In addition, her sister was designated as the person to receive her personal effects and to dispose of her remains. The applicant also signed a Page 7 acknowledging shipboard policies, including the fact that romantic relationships between crewmates were "inappropriate, unacceptable, and ... not allowed under Coast Guard [REDACTED] and that crewmembers "shall not engage in romantic or sexual acts" with other crewmembers, including kissing. [REDACTED]

In September 2010, the FN attempted to arrange a mutual transfer to the applicant's cutter with another FN, but it fell through.

On November 29, 2010, the applicant signed a Family Coverage Election on which she declined to provide life insurance coverage for her spouse at a monthly rate of 55 cents per \$10,000.

On November 30, 2010, the applicant certified by her signature that she was "supporting" her husband as a dependent, would notify the command of any change in dependency status, and understood that making a false statement was punishable by court-martial.

In 2011, the FN arranged a mutual transfer with a crewmember of the applicant's cutter and was transferred to the cutter on temporary duty.

### *Command's Administrative Investigation*

After the applicant was seen kissing the FN aboard the cutter in July 2012, the Executive Officer (XO) of the cutter assigned a female ensign to serve as a preliminary investigating officer (PIO) and investigate whether the applicant had an inappropriate relationship with the FN. On August 10, 2011, the PIO reported that although the FN lived in the barracks, she had stayed overnight with the applicant a few times, which the PIO described as "approximately 5 drunken nights." According to the PIO, the two "mostly hang out [together] on the weekends while in port," and the FN applied to be released from barracks to collect and share housing with the applicant. The applicant had told the FN, who wanted to join the health services (HS) rating, about an opening on the HS staff on her cutter, and the FN was able to arrange a transfer from the base to the applicant's cutter in April 2011. The PIO reported that the night before the FN's first underway deployment on the cutter in June 2011, the applicant spent the night in the FN's barracks apartment instead of her own off-base housing. The FN said the applicant had been there "to do laundry and to help her get ready for the underway period." A witness stated that they spent the night "doing laundry constantly going in and out of the head, and it appeared that they didn't get much sleep that night because of the constant coming and going." The next morning the FN denied that the applicant had slept over but admitted she had been doing laundry all night to get ready for the underway period. The witness advised her that the applicant should not be staying in barracks since she was collecting BAH. The FN and the witness both claimed that the applicant had not slept at the barracks but had stayed with two civilian friends.

According to the witness during the underway period, the FN got into several arguments with a crewmate, who ended one argument by accusing the FN of "sleeping with all the girls onboard." After this argument, there were many rumors about the FN and the applicant, and they were each counseled by chiefs. On the night of July 20, 2011, another crewmate saw the applicant and the FN kissing in the junior enlisted female berthing area and reported it the next morning. The FN later asked the crewmate to change her story about what she had seen because, if not, the applicant "would go to jail" because she was married. The FN admitted that she loved the applicant and asked the crewmate to say that she had just seen them lying down in the applicant's rack.

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The applicant was advised by the investigator █ she was suspected of violating Article 92 of the UCMJ by kissing and having an inappropriate, romantic relationship with the FN. (Romantic relationships between crewmates are unauthorized.)

### *CGIS Investigation*

On September 27, 2011, the XO of the cutter signed a memorandum directing the PIO to continue her investigation of the applicant and the FN regarding allegations of an inappropriate relationship, violations of barracks rules, and making false █ ts. The XO also asked the Coast Guard Investigative Service (CGIS) for assistance. The XO stated that the command's investigator █ revealed numerous emails between the applicant and the FN reflecting an inappropriate relationship and only one email between the applicant and her husband concerning a tax document. The CO stated that the applicant █ suspected of committing BAH fraud.

On October 28, 2011, the applicant was informed by CGIS agents that she was suspected fraud, adultery, conspiracy, false pretenses to obtain services, and failure to obey an order or regulation. She acknowledged her rights and provided a handwriting sample. █ declined to answer questions before consulting an attorney.

A CGIS report states that emails showed that the applicant and the FN were planning to share housing and had been seen "fren █ CGIS found that the applicant had █ a fake chit for [the FN] █ that she was taking leave by herself █ in █ so they could go together to █ to visit [the applicant's] family without the command knowing they were together on leave." In addition, the applicant had previously █ forgery of her CO's signature on a memorandum to get out of her own lease. CGIS noted that the PIO who conducted the command's investigation had concluded that the applicant had gotten married just to collect BAH at the "with dependents" rate. The crewmate who reported the kiss told the CGIS agents that another crewmate had told her that the applicant's husband was gay and that "their marriage was an arrangement for the BAH benefits." █ ver, this other crewmate claimed that she knew nothing about the applicant's marriage and that she believed that the crewmate who reported the kiss had "made █ the incident" because of personality differences. █

On January 10, 2012, CGIS agents interviewed the applicant's mother. She reported that the applicant's husband █ had dated in high school and that he had moved out to █ with her for about a year. The mother called the husband a "close friend of the family [who] participates in family activities and spends time with them during █ holidays." However, she stated that she was unsure █ were still seriously dating. When asked, the mother stated that █ had no knowledge of the marriage but that "she █ ld not be surprised if her daughter was married and did not tell her."

In a telephone interview with a CGIS agent on February 7, 2012, the applicant's husband stated that he had moved to █ to be with the applicant and had married her in April 2009. They had lived together in base housing but he had moved back to █ to attend college at the end of 2009. He stated that he usually visited the applicant twice a year and had most recently visited her during his school break from January 1 to 13, 2012. He stated that the appli-

cant returned to ██████ to be with him three or four times per year but that “the separation has taken a toll on their marriage.” ██████

CGIS later closed out its investigation after learning that the applicant had been punished at mast and administratively discharged.

### *Report of Administrative Investigation*

On March 6, 2012, the PIO issued a report on her investigation. In addition to the facts mentioned above, the PIO noted that when she spoke to ██████, he was unaware that the applicant was underway on her cutter, which she characterized as “something spouses who were in regula ██████ with each other would know.” The PIO stated that the husband’s Facebook page contained several posts “suggesting his homosexual orientation,” including a poll asking, “Do you hate me because I’m gay?” In addition, the PIO stated that the applicant and the FN had exchanged multiple emails reflecting “excitement at being at home together, laying with each other and making a home for them. The claim that [the FN] made that she had only spent a few nights at [the applicant’s] house is false.” The PIO reported that their emails while they were both assigned to the cutter contained abundant “verbal affections,” rep ██████ ated their love for each other, and discussed their plans to live together. The PIO concluded that both the applicant and her husband had been romantically involved with other people for most of the duration of their marriage. The PIO stated that but for the marriage, the applicant would have been housed in barracks and so had received ██████ \$61,000.00 in BAH that she would have received if she had not ██████ ██████ ██████

Regarding one alleged forgery, the PIO stated that while underway ██████ applicant had emailed a blank memo requesting release from her lease to the FN and asked her to sign the CO’s name to it and to present it to the landlord. The applicant had not applied to the CO for a legitimate release request. In addition, the FN had asked to be released from the barracks so that she could receive BAH and room with the applicant. Her request had been denied but according to a witness, the FN “did not sleep [in the barracks ██████].” This witness also informed the command of the cutter that the applicant had stayed at the FN’s apartment in barracks the night and done a lot of laundry b ██████ the cutter got underway in June 2011, although no visits ██████ ██████ wed past 10 ██████ m. and the applicant should not have slept there since she received BAH. The PIO noted that on November 24, 2010, the applicant sent the FN an email stating that it would b ██████ o sneak ██████ and out and that there is a video camera at the barrack ██████ would have to be sneaky if they had nowhere else to stay. The PIO stated that this email confirmed that the applicant had stayed overnight at the barrac ██████ times despite receiving BAH. ██████ ██████ ██████

The PIO cited the elements for the charges of violating Articles 107, 81, and 132 of the UCMJ. She concluded that the applicant had (a) violated Article 92 (failure to obey an order or regulation) by having an inappropriate relationship with the FN while they were assigned to the same cutter and that the app ██████ lied to her about the nature of their relationship; (b) violated Article 107 (false official statement) by denying the existen ██████ an inappropriate relationship with the FN and denying having violated barracks policy; (c) violated Article 81 (conspiracy) by conspiring with the FN in December 2010 to forge the CO’s signature on a

memorandum so [REDACTED] she could get out of her lease; and (d) violated Article 132 (fraud) by entering a sham marriage with a gay man just to [REDACTED] BAH. Regarding the latter claim, the PIO stated that the applicant “did not have a momentary lapse in judgment causing her to all down this path, this was a decision she repeatedly made to lie about her relationship, break multiple Coast Guard barracks policies, and ultimately destroy any credibility she may have had.” The PIO also noted that the applicant had not called her spouse during a port call, unlike other members, and “did not behave in an appropriate manner for a married member of the United States Coast Guard.” The PIO recommended that the charges against the applicant be disposed of at a special court-martial given the seriousness of the offenses. However, the XO recommended that the charges be disposed of at mast. [REDACTED]

The [REDACTED] was notified in writing that she had been charged with violating Articles 92 (failure to obey an order or regulation); 107 (false official statement); 81 (conspiracy to commit forgery); 132 (fraud); 81 (conspiracy to comm [REDACTED] eny/fraud); and 121 (larceny) and that her CO intended to take her to mast. On March 21, 2012, she acknowledged this notification, as well as her right to consult an attorney. She accepted NJP instead of demanding trial by court-martial.

On a Page 7 dated March 20, 2012, the applicant’s CO stated that “it has become apparent to the command that you have engaged in an inappropriate relationship” with the FN. The CO ordered her to discontinue the relationship. [REDACTED]

On March 27, [REDACTED] applicant’s CO took her to mast and [REDACTED] she [REDACTED] Articles 107, 81 (two spec [REDACTED] ions), 132, and 121 of the UCMJ. The charge under Article 92 (failure to obey an order or regulation) for the inappropriate relationship was [REDACTED] missed without explanation. The CO awarded her NJP consisting of reduction to pay grade E-2 and 45 days of restriction to the cutter with extra duties. The applicant was notified of her right to appeal the NJP but did not do so.

On March 28, 2012, the applicant’s CO recon [REDACTED] ed that all of the applicant’s BAH be stopped and recouped based on the finding at mast that she had conspired to commit larceny and fraud against the governme [REDACTED] marrying her husband solely for the purpose of receivin [REDACTED] [REDACTED] CO stated [REDACTED] t for her marriage, she would not have received BAH at all. The CO cited as evidence the “12 emails total in 9 months between [the applicant] and her husband”; the fact that he [REDACTED] living in [REDACTED] for two years; the “romantic relationship” between the [REDACTED] and another member whose emails showed they were planning to live together, to get a dog, and had “romantic feelings towards one another”; and the fact that [REDACTED] applicant’s husband was not her beneficiary on her ins [REDACTED] death gratuity or her emergency contact. [REDACTED]

Also on March 28, 2012, the applicant’s CO notified her of her pending general discharge for “commission of a serious offense” and of her right to object, to consult an attorney, to submit a statement in her own behalf, and to request a second chance. In response, the applicant acknowledged having consul [REDACTED] torney, objected to the discharge, requested a second chance, and waived her right to submit a statement. [REDACTED]



On April [REDACTED] 2012, the applicant's CO recommended to the Personnel Service Center (PSC) that she receive a general discharge for commission of a serious offense. The CO stated that the applicant had misled and lied to the investigator and had "actively sought out opportunities to deceive her supervisors and peers in the pursuit of financial gain" throughout her enlistment. The CO noted that the applicant had married on April 27, 2009, and begun collecting BAH at the with dependents rate in February 2010. The CO stated that it was a "facetious marriage" that "was conducted for the primary means of collecting BAH." The CO stated that based on the fraudulent marriage, the applicant had received about \$61,000, whereas she would not have received any BAH at all if she had not married.

The CO stated that the applicant "continued her deceitful behavior in the pursuit of her inappropriate relationship with [another member]. She conspired with [the member] to forge the Commanding Officer's signature in order to effectively deceive her landlord and move into new housing with [the member] while still married to her husband." The CO explained that the applicant had forged the CO's signature to get her landlord to release her from her lease and had exchanged emails about this plan with the other member. The CO stated that the applicant had gone to "extreme lengths" to pursue this inappropriate relationship, including "influencing a mutual transfer" to the cutter and "abus[ing] Housing and Barrack regulations." The CO attached to this recommendation the applicant's acknowledgement and request for a second chance, the PIO's report, and a summary of the findings and charge specifications against the applicant. For the violation of Article 107 (false official statement), the summary states that the applicant told the PIO that she was not in an inappropriate relationship with [REDACTED] and did not violate barrack regulations but both of these statements were false. For the first specification Article 81 (conspiracy), the summary states that in November 2010, the applicant conspired with the FN in emails to forge the CO's signature on a document to get the applicant released from her apartment lease early. For the second specification of conspiracy and the violations of Article 121 (larceny) and Article 132 (fraud), the summary repeatedly states that the applicant legally married her husband solely for the purpose of collecting BAH and as a result received about \$61,000 that she would not otherwise have received.

On May 2, 2012, the Area Command found that the applicant was not eligible for a second chance and forwarded the CO's recommendation to PSC with a recommendation for approval of a general discharge with no second chance.

On May 6, 2012, [REDACTED] issued separations orders for the applicant to receive a general discharge for misconduct with an RE-4 reentry code by June 14, 2012.

On June 1, 2012, [REDACTED] received a general discharge "under honorable conditions" for misconduct with a JKQ separation code (commission of a serious offense) and an RE-4 reentry code (ineligible to reenlist). She had served 3 years, 3 months, and 9 days on active duty, and her record shows that she completed many qualifications and made average and above average performance marks until she was punished at mast on March 27, 2012, and received a disciplinary evaluation.

**VIEWS OF THE COAST GUARD**

On November 18, 2015, the Judge Advocate General of the Coast Guard (JAG) submitted an advisory opinion in which he recommended that the Board grant partial relief.

The JAG alleged that the application is untimely and so warrants only a cursory review.

The JAG noted that while the applicant strongly asserted that she had not committed BAH fraud or conspired to do so, she did not deny having violated Article 107 of the UCMJ by making a false official statement or Article 81 by conspiring to commit forgery with the FN. Moreover, these charges are supported by the preponderance of the evidence in the record, and so the JAG found that her NJP for these offenses was proper and should not be expunged.

Regarding the charge of BAH fraud, the JAG stated that the record shows that the CO relied on evidence gathered by the PIO that showed the nature of her relationships with the FN and with her husband and that indicated that her husband is gay. The JAG alleged that the PIO did not address the mother's claim to the CGIS that the applicant and her husband had dated in high school and junior college or that they were validly married in 2009. (The PIO's report clearly lists the marriage. Similarly, the JAG also claimed that the PIO did not address the statements from her family that the applicant submitted to the BCMR, but these statements did not exist in 2012.)

The JAG stated that the CO may rely on circumstantial evidence, but the evidence must still show that the applicant committed the offense by a preponderance of the evidence." The JAG stated that in this case, there is evidence that the applicant and her husband lived apart and did not communicate regularly via Coast Guard email; that there was an allegation of an inappropriate relationship that was dismissed at mast; and that the husband's Facebook posts indicated that he might be gay. The JAG stated that none of this evidence "in any way demonstrates that the applicant was not married, that the marriage was not valid and legal, or that there was any specific conspiracy to defraud the government" with respect to BAH. To the contrary, the JAG argued, the evidence shows that the couple dated in high school, got legally married after recruit training, lived together on base in family housing for months until the applicant moved back to her hometown and are still married today. Therefore, the JAG found that "[a]bsent additional evidence, it is impossible to say by a preponderance of the evidence that the applicant's marriage was a conspiracy conducted for the sole purpose of fraudulently obtaining BAH. The JAG concluded that the applicant has demonstrated that there was insufficient evidence for the CO to conclude at mast that the preponderance of the evidence supported that she had. The JAG recommended that the applicant's NJP for these offenses be expunged from her record. However, the JAG stated, the NJP for conspiracy to commit forgery and making a false official statement should remain in her record.

The JAG argued, however, that the advisory opinion "is without prejudice to CG Pay and Personnel Center's right to seek termination of BAH upon a determination that the applicant was not entitled to BAH." The JAG explained that entitlement to BAH is based on dependency determined under the policies in the Pay Manual, COMDTINST M7220.29. The JAG stated that "[g]enerally, proof of support of a spouse is not required, but, when evidence or complaints of

non-support arise [REDACTED] of adequate support is required. If it is determined that a member was not entitled to BAH then recoupment is required to [REDACTED]s of nonsupport.” Therefore, the JAG argued, no relief is warranted other than the removal of the applicant’s NJP for violating Article 81 of the UCMJ by conspiring to commit fraud and/or larceny, Article 132 by committing fraud, or Article 121 (larceny) with respect to her marriage and receipt of BAH at the with dependents rate.

### APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 19, 2015, the Chair sent the applicant [REDACTED] a copy of the views of the Coast Guard and invited a response within thirty days. No response was received until February 19, 2016 [REDACTED] because the attorney had changed addresses.

The applicant noted that her application [REDACTED] filed within three years of her discharge and so is not untimely pursuant to applicable BCMR case law. Nor was appealing her NJP a legal requirement before applying to the BCMR. Regarding her failure to appeal, the applicant explained that recoupment of her BAH was not part of the NJP, but an independent action subsequent to the NJP. [REDACTED]

The applicant thanked the JAG for acknowledging that she had not committed conspiracy, fraud, or larceny with respect to her marriage and BAH and agreed that the NJP for those offenses should be removed from her record. [REDACTED] However, the applicant argued, in arguing [REDACTED] at the expungement of these [REDACTED] does not warrant reversing the BAH [REDACTED] the [REDACTED] G’s “position is that the CG BC [REDACTED] can retrospectively justify [the applicant’s] debt on grounds other than those originally specified by the USCG (namely, that she married for [REDACTED] sole purpose of collecting BAH allowance) and through an entirely different procedure.” The applicant argued, however, that there is no complaint or evidence of non-support of her husband in the record. The Coast Guard initially determined that she was entitled to BAH at the with dependents rate because she legally married, and it made no determination of non-support. Moreover, the applicant argued, under the Pay Manual, a lawful spouse is [REDACTED]s a dependent except for in circumstances that are inapplicable, and in case of a “doubtful relationship,” the Coast Guard is supposed to follow certain [REDACTED] edures that it never followed. The Coast Guard never [REDACTED] of support [REDACTED] her, and there is no evidence of non-support in the record.

[REDACTED] ant argued [REDACTED] t “[b]ecause the debt assigned to [her] was premised on [REDACTED] gation that she married solely for the purpose of securing BAH money, and because she has demonstrated that basis to be erroneous, the debt should be voided [REDACTED]r the Board to void the NJP record of fraud, larceny [REDACTED] conspiracy without voiding the debt resulting from those findings. [REDACTED] ould be to grant half-a-loaf of relief, which [REDACTED] hibited, citing *Carlisle v. United States*, 66 Fed. Cl. 627, 638 (2005). Therefore, she argued, her record should be corrected not only by removing the NJP on those charges but by correcting her record to show that she does not owe a debt to the government.

[REDACTED]

[REDACTED]

APPLICABLE REGULATIONS

UCMJ and NJP

Article 1.D.1.f. of the Military Justice Manual, COMDTINST M5810.1D, reads as follows:

The burden of proof required in order to award punishment at NJP is a preponderance of evidence. This standard means that before NJP may be awarded, the commanding officer must determine it is "more likely than not" that the member committed an offense(s) defined by the UCMJ. Each element of each offense as defined in the Manual for Courts-Martial [UCMJ] must be supported by a preponderance of the evidence (i.e., it is "more likely than not" that the element occurred). This is a lower standard of proof than the "beyond a reasonable doubt" standard used at court-martial to find the member committed an offense.

The Manual for Courts-Martial United States provides the elements for the charged offenses in this case as follows:

Article 81. Conspiracy—

- (1) That the accused entered into an agreement with one or more persons to commit an offense under the code; and
- (2) That, while the agreement continued to exist, and while the accused remained a party to the agreement, the accused or at least one of the co-conspirators performed an overt act for the purpose of bringing about the object of the conspiracy.

Article 92. Failure to Obey an Order or Regulation

- (a) That there was in effect a certain lawful general order or regulation;
- (b) That the accused had a duty to obey it; and
- (c) That the accused violated or failed to obey the order or regulation.

Article 107. False Official Statements

- (1) That the accused signed a certain official document or made a certain official statement;
- (2) That the document or statement was false in certain particulars;
- (3) That the accused knew it to be false at the time of signing it or making it; and
- (4) That the false document or statement was made with the intent to deceive.

Article 121. Larceny

- (a) That the accused wrongfully took, obtained, or withheld certain property from the possession of the owner or of any other person;
- (b) That the property belonged to a certain person;
- (c) That the property was of a certain value, or of some value; and
- (d) That the taking, obtaining, or withholding by the accused was with the intent permanently to deprive or defraud another person of the use and benefit of the property or permanently to appropriate the property for the use of the accused or for any person other than the owner.

Article 132. Frauds against the United States

(4) *False oath in connection with claims.*

- (a) That the accused made an oath to a certain fact or to a certain writing or other paper;
- (b) That the oath was false in certain particulars;
- (c) That the accused then knew it was false; and
- (d) That the act was for the purpose of obtaining the approval, allowance, or payment of a certain claim or claims against the United States or an officer thereof.

(6) *Using forged signature in connection with claims.*

- (a) That the accused used the forged or counterfeited signature of a certain person;
- (b) That the accused then knew that the signature was forged or counterfeited; and
- (c) That the act was for the purpose of obtaining the approval, allowance, or payment of a certain claim against the United States or an officer thereof.

***BAH Regulations***

The regulations for BAH appear in Chapter 3 of the Pay Manual. Chapter 3.B. provides the following:

2. General. A member on active duty is authorized a housing allowance based on grade, dependency status, and location. Rates are prescribed depending on the member's grade and whether the member has, or does not have, dependents. ... Except for BAH-Differential (BAH-DIFF), or a partial housing allowance (BAH-Partial), a housing allowance is not paid to members assigned to adequate Government quarters (see section F).

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4. Government Quarters. A housing allowance (except partial BAH or BAH-Diff) is not authorized for members who are assigned to Government quarters appropriate to the grade, rank, or rating of the member and adequate for the member and dependents, if with dependents. See section 3-F for additional information on Government Quarters.

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7. Partial Housing Allowance (BAH-Partial).

- a. Authority. A member without dependents assigned to single-type quarters (including barracks and shipboard quarters) or is on field duty, and not authorized to receive BAH or OHA without dependents, BAH or OHA with dependents based on payment of child support, or BAH-DIFF, is authorized BAH-Partial. ...

Chapter 3.D. of the Pay Manual contains the rules regarding BAH and dependency:

1. Purpose. This section explains the conditions necessary to establish dependency and the support of dependency for entitlement to a housing allowance. It must be used by commanding officers and SPOs in:

- a. Determination of the relationship or dependency of dependents.
- b. Certification of minimal support requirements.
- c. Counseling members concerning their housing allowance on behalf of dependents.
- d. Processing applications for a housing allowance.
- e. Determining relationship or dependency for a housing allowance entitlement; the appropriate official must apply the rules in figure 3-8.

2. Dependency Approval. Dependency must be determined before entitlement to a housing allowance is authorized.

3. Certification of Dependents Status. Annually, beginning in October and not later than 30 November, members must validate their housing allowance entitlement by verifying the BAH/Dependency Data report from Direct Access.

4. Fraudulent Claims. Any member who submits a claim for a housing allowance which contains false statements is subject to court-martial or criminal prosecution. Fraudulent acceptance of benefits may cause a civilian recipient to be subject to criminal prosecution. The law provides for severe penalties of imprisonment and a fine. For military personnel, it can include a dishonorable separation, total forfeitures, and confinement.

5. Lawful Spouse and Legitimate, Unmarried, Minor Children. A member's lawful spouse and legitimate, unmarried, minor children are always dependents for housing allowance purposes except under the situations in sections 3-D-6, and 3-D-10 and 3-E-2.<sup>[1]</sup>

6. No Authorization on Behalf of Certain Dependents. A member is not authorized a housing allowance for:

- a. A minor child who is entitled to basic or cadet pay ...
- b. A spouse who is on active duty ...
- c. A dependent for which the member has been absolved of the requirement to provide support; e.g. desertion without cause.
- d. A dependent whose whereabouts is unknown ...
- e. A former spouse to whom the member is paying alimony.
- f. A dependent who occupies Government quarters as a permanent residence without payment of a rental charge. See section 3-D-20.

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8. Member's Marriage Status Determination. Any case where the validity of a member's marriage is questioned is considered a case of doubtful relationship.

- a. Remarriage within Prohibited Period Following Divorce. ...
- b. Marriage by Proxy. ...
- c. Marriage by Telephone. ...
- d. Common-Law Marriages. ...
- e. Foreign Nation Divorce. ...
- f. Purported Marriage.

(1) Void Marriage. If a member's marriage is void (because of a pre-existing marriage of the spouse, for example) the member has no lawful spouse and is not entitled to a housing allowance as a result of the purported marriage. ...

(2) Annulled Marriage. ...

g. Final Divorce Decree. ...

h. Determination and Validations. Submit requests for determination on validity of a marriage (doubtful cases) or for validation of payments to: ... [address omitted]

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10. Dependent Support.

a. Proof of Support. The statutory purpose of a housing allowance on behalf of a dependent is to at least partially reimburse members for the expense of providing private quarters for their dependents when government quarters are not furnished, and not to pay a housing allowance on behalf of a dependent as a bonus merely for the technical status of being married or a parent. Proof of support of a lawful spouse or unmarried, minor, legitimate child of a member is generally not required. However, when evidence (e.g., special investigation reports; record reviews; fraud, waste and abuse complaints; sworn testimony of individuals; statement by member) or complaints from dependents of non-support or inadequate support of dependents are received, proof of adequate support as stated in section 3-D-10.e is required.

b. Nonsupport. ... If the support requirements are not established by court order or mutual agreement, the member must provide proof of support in an amount that is at least the lesser of the housing allowance received on behalf of the claimed dependents, or a

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<sup>1</sup> Chapters 3.D.6. and 3.D.10. are provided. Chapter 3.E.2. is inapplicable as it concerns BAH entitlement when members are married to members and live in separate households.

reasonable amount requested by or on behalf of the dependents; however, in no case may the support contribution be less than the difference between the “with” and “without” dependents housing allowance rates applicable to the member’s grade. ... A member who fails to support a dependent on whose behalf a housing allowance is received is not entitled to a housing allowance on behalf of that dependent. Recoupment will be effected for periods of nonsupport or inadequate support. ... If a member is not entitled to a housing allowance for dependents under sections 3-D-10.c through 3-D-10.i, consider authorization for without-dependents or BAH-Partial under section 3-G-1. ...

• • •

e. Adequate Support. If the support requirements are not established by court order or legal separation agreement, a member must provide support in an amount that is not less than the BAH-DIFF rate applicable to the member’s grade. The amount of support required to retain or receive BAH on behalf of a dependent does not necessarily mean that such amount is adequate to meet the policy of the Service concerned as to what constitutes adequate support in the absence of a legal separation agreement or court order. See web site <http://perdiem.hqda.pentagon.mil/perdiem/bah.html> for BAH-DIFF rates.

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i. Doubtful Cases. Submit any doubtful cases involving support for determination to PPC (LGL). A housing allowance on behalf of a dependent is not authorized pending a decision.

## 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 submissions, and applicable regulations:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The Board finds that the applicant has exhausted her 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. Although the applicant did not appeal the NJP within five days as allowed, her failure to appeal does not remove the Board’s jurisdiction because, under 10 U.S.C. § 1552(b), an applicant has three years to file a BCMR application to correct an error or injustice.

2. Although the application was not filed within three years of the applicant’s NJP, it is considered timely because it was filed within three years of her separation from active duty.<sup>2</sup>

3. 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>3</sup>

4. The applicant asked the Board to expunge the NJP she received on March 27, 2012, and to correct her record to show that she does not owe a debt to the Government due to BAH overpayments. She alleged that the NJP and the recoupment for the debt are erroneous and

<sup>2</sup> *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).

<sup>3</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).

unjust. In 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 her record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.<sup>4</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>5</sup>

5. False Official Statement and Conspiracy to Commit Forgery: In light of the PIO's report, the Board agrees with the JAG that the applicant has not submitted sufficient evidence to show that her CO erred in determining at mast that she had made a false official statement to the PIO and other superiors about her relationship with the FN and her abuse of barracks policy or that the CO erred in determining that she had conspired with the FN to use a document with a forged signature to get released from her apartment lease.

6. Conspiracy to commit fraud: The applicant was punished at mast for conspiracy to commit fraud to receive BAH. The elements of conspiracy under Article 81 of the UCMJ are "(1) That the accused entered into an agreement with one or more persons to commit an offense under the code; and (2) That, while the agreement continued to exist, and while the accused remained a party to the agreement, the accused or at least one of the co-conspirators performed an overt act for the purpose of bringing about the object of the conspiracy." There is no evidence whatsoever in the PIO's report or the CGIS interview reports that the applicant's husband knew anything about BAH in April 2009 or that he entered into an agreement to marry her so that she could claim BAH at the with-dependent rate. While there is evidence that the applicant was informed about BAH when she enlisted, there is no evidence of a conspiracy to marry to receive BAH, and the applicant did not apply for it until many months after she married, when she was kicked out of family housing on the base in February 2010 because her husband was no longer living there. Therefore, the Board agrees with the JAG that the preponderance of the evidence before the CO did not support this charge, and it should have been dismissed.

7. Fraud against the United States: The applicant was punished at mast for committing fraud against the United States in violation of Article 132 of the UCMJ by marrying her husband only so that she could claim him as a dependent to collect BAH at the with-dependent rate. The elements of such fraud are "(a) That the accused made an oath to a certain fact or to a certain writing or other paper; (b) That the oath was false in certain particulars; (c) That the accused then knew it was false; and (d) That the act was for the purpose of obtaining the approval, allowance, or payment of a certain claim or claims against the United States or an officer thereof." The record shows that the applicant's marriage license is valid, but the applicant signed a document on November 30, 2010, claiming that she was supporting her husband as a dependent, and she received BAH at the with-dependent rate because of her claim. The latter is the potentially fraudulent document in this case.

8. The PIO's report and the CO's summary of the mast and recommendation for recoupment of BAH focus on whether the applicant's reason for marrying was solely BAH and

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<sup>4</sup> 33 C.F.R. § 52.24(b).

<sup>5</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).



whether they were romantically attached to each other, but there is no contemporaneous evidence of why they married in April 2009 and the law does not require romance or sexual fidelity for a marriage to be a valid basis for BAH at the with-dependent rate. The issue under the elements of Article 132 is not whether they were committed or romantically in love when they married, or even whether the applicant sometimes spent the night in the barracks, but whether the applicant was actually supporting her husband as a dependent, as she certified by her signature. The record strongly suggests no one at the command or CGIS investigated whether the applicant was providing her husband with any financial support as she had certified. In her application, the applicant argued that her CO did not base his decision on the preponderance of the evidence, but she did not claim to have financially supported her husband while she received BAH at the with-dependent rate. In addition, her husband submitted a statement admitting that he had supported himself with a job in a grocery store, and he did not mention any financial support by the applicant. However, because the record strongly suggests that the CO did not require any investigation of whether the applicant financially supported her husband and did not properly apply the elements of Article 132 to the facts in making the finding of fraud at the applicant's mast, the Board agrees with the JAG that her NJP for fraud should be removed from her record.

9. Larceny: Under Article 121 of the UCMJ, to be found guilty of larceny at mast, the preponderance of the evidence must show that the accused wrongfully obtained property of some value that belonged to another person (in this case, money belonging to the Government) with the intent to permanently deprive that person of the use of the property. The applicant's receipt of BAH at the with-dependent rate can only be considered wrongful if she lied to get it or if she violated barracks policy to such an extent that she can be considered to have been living in Government housing. Although the PIO concluded that the applicant had sometimes violated barracks policy by sleeping in barracks while receiving BAH and had lied about it, there is insufficient evidence to conclude that she was not primarily living in her own apartment and neither the PIO nor the CO cited the applicant's violation of barracks policy as grounds for charging her with larceny. In addition, as the CO knew, the applicant did not lie about being married, so as with the fraud charge, the issue under Article 121 is whether she lied in certifying that she was supporting her husband as a dependent. Therefore, for the same reasons that the applicant's NJP for fraud cannot stand, her NJP for larceny cannot stand: The command apparently failed to investigate or consider whether the applicant was financially supporting her husband as she was required to do to be entitled to BAH at the with-dependent rate. The Board concurs with the JAG that the applicant's NJP for larceny should be removed from her record.

10. The Board notes that the applicant argued that these charges should be dismissed because the charge under Article 92 for having an inappropriate relationship was dismissed and the applicant's inappropriate relationship with a crewmate was part of the evidence the CO relied on at mast. The record shows, however, that the CO dismissed the Article 92 charge after counseling the applicant on a Page 7 about having an inappropriate relationship and despite finding that she had violated Article 107 by making a false official statement to the PIO about having an inappropriate relationship as well as about her violations of barracks policy. Regardless of the CO's seeming inconsistency on this issue, because the CO dismissed the Article 92 charge without explanation, because there is substantial evidence showing that the CO was convinced that the applicant had engaged in an inappropriate relationship, and because romantic and/or

sexual fidelity is not a legal requirement for entitlement to BAH, the Board finds that the CO's dismissal of the Article 92 charge is not particularly probative of the issues in this case.

11. BAH Debt Recoupment: The applicant asked the Board to reverse the Coast Guard's decision to recoup her BAH, which is presumably underway by this time. She argued that the decision must be reversed and her record should be corrected to show that she has no BAH debt because the CO mentioned in his recommendation for recoupment the applicant's "romantic relationship" with the FN even though he had dismissed the Article 92 charge at mast. The memorandum dated March 28, 2012, shows that the CO recommended recoupment of the applicant's BAH, pursuant to Chapters 3.D.4. and 3.D.8.f. of the Pay Manual, because she had committed conspiracy, fraud, and larceny (along with other offenses). He explained that the preponderance of the evidence had shown that she married her husband only to receive BAH, and he specifically cited some of the PIO's findings, including the "romantic relationship" between the applicant and the FN. He did not state in the memorandum that the applicant had had an "inappropriate relationship," however, which is the charge he dismissed at mast without explanation.

12. The applicant argued that the decision must be reversed and her record should be corrected to show that she has no BAH debt because the charges of conspiracy, fraud, and larceny are being expunged as unproven. The CO's memorandum dated March 28, 2012, shows that he recommended recoupment based on her NJP for conspiracy, fraud, and larceny as a result of having gotten "married to her husband solely for the purpose of receiving BAH." These are the findings that both the JAG and the Board agree should be removed as unproven and the CO provided no other grounds for recoupment in his memorandum. He cited Chapters 3.D.4. and 3.D.8.f. of the Pay Manual, but the former pertains to cases of fraud—a charge that is unproven by the evidence of record and is being removed—and the latter pertains to legally void and annulled marriages and so is inapplicable.

13. With the NJP for BAH fraud, larceny, and conspiracy deemed unproven and removed from consideration, the CO's memorandum recommending recoupment contains no other grounds for recoupment. For example, the CO's memorandum does not state that the applicant was not financially supporting her husband or that she was living in Government housing. Nevertheless, the JAG argued that the removal of the NJP for BAH fraud, larceny, and conspiracy should be considered to be "without prejudice to CG Pay and Personnel Center's right to seek recoupment of BAH upon a determination that the applicant was not entitled to BAH." The JAG did not claim that the Pay and Personnel Center had not relied on the CO's recommendation in deciding to recoup the applicant's BAH; nor did the JAG claim that the Pay and Personnel Center has already conducted its own investigation and found that the applicant's claim that she provided support to her husband as a dependent was false. Instead, the JAG recommended that the Board deny full relief—the reversal of the recoupment—based upon a possibility that in the future the Coast Guard's Pay and Personnel Center might investigate and determine that the applicant was not supporting her husband while on active duty.

14. As the applicant argued, however, the half-a-loaf doctrine demands that the Board grant the applicant the full relief that she is due based on the corrections being made in her

record.<sup>6</sup> While the Coast Guard may have continuing authority to investigate such matters, the corrections the JAG is recommending and that the Board is ordering will remove from the applicant's record all currently known justification for recouping the applicant's BAH—justification that she has proven to be erroneous because the elements of the charges against her pertaining to BAH were not met. The Board will not deny relief based on speculation that the Coast Guard might one day find other grounds for recouping the applicant's BAH. In this regard, the Board notes that the Coast Guard has already had more than six months—from the date of docketing of this case, May 14, 2015, to the date the advisory opinion was submitted, November 18, 2015 (after the Chair granted an extension to the Coast Guard pursuant to 33 C.F.R. § 52.42)—to address the issues in this case. Nor, however, should the Board prospectively block the Coast Guard from carrying out its statutory duties.

15. Accordingly, relief should be granted by directing the Coast Guard to remove from the applicant's record her NJP for fraud, larceny, and conspiracy with respect to her receipt of BAH. In addition, the Coast Guard should correct her record to show that no recoupment of her BAH is authorized on the basis of her CO's March 28, 2012, memorandum recommending recoupment. If any BAH has been recouped from her on the basis of that memorandum or her NJP, it should be refunded to her because the grounds for recoupment in the memorandum have been refuted, and there are currently no grounds for recoupment in evidence.

16. The applicant alleged that she unfairly received a general discharge for commission of a serious offense because her command erroneously believed that she had married only to receive BAH. The records show, however, that even with some NJP removed, as stated in finding 15, the applicant's record continues to show that she conspired with the FN to commit forgery and made false official statements. The Board finds that the applicant's conspiracy to forge her CO's signature on a document to benefit herself cannot be considered honorable and is a sufficiently serious offense by itself to warrant her general discharge for misconduct. Therefore, no further relief is warranted.

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

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<sup>6</sup> *DeBow v. United States*, 193 Ct. Cl. 499, 504 (1970) (“[O]nce the Board decides to give a remedy, it should not be free to slice the relief illegally or arbitrarily, sending the claimant forth with half-a-legal-loaf or even less”), *cert. denied*, 404 U.S. 846 (1971); *see Bonen v. United States*, 229 Ct. Cl. 144, 149 (1981) (“The ‘half-a-loaf’ doctrine normally applies where a corrections board grants plaintiff’s claim, but stops short of awarding the full appropriate relief requested by plaintiff. Failure of the board to grant full relief where it is mandated by the records change results in ‘a new cause of action’ or ‘‘continuing’’ claim’ which revives the statute of limitations.”) (citing *Denton v. United States*, 204 Ct. Cl. 188, 195, *cert. denied*, 421 U.S. 963 (1975)).

**ORDER**

The application of former SR [REDACTED], USCG, for correction of her military record is granted as follows:

The Coast Guard shall remove from her record as null and void her non-judicial punishment (NJP) on March 28, 2012, for the offenses of violating Article 81 of the UCMJ by conspiring with her husband to marry solely to receive BAH; Article 132 by committing fraud regarding BAH; and Article 121 by committing larceny of BAH. In addition, the Coast Guard shall correct her record to show that no recoupment of her BAH is authorized on the basis of her Commanding Officer's March 28, 2012, memorandum recommending recoupment and if any BAH has been recouped from her on the basis of that memorandum, it shall be refunded to her.

April 1, 2016

[REDACTED]

[REDACTED]

\* This member participated in the deliberations telephonically and so was unavailable to sign but approved the decision and order.