

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-076

██████████
██████████ ENS (former)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the completed application on February 3, 2017, and assigned it to staff attorney ██████████ to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated September 28, 2018, 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 former Ensign who was discharged on October 18, 2014, asked the Board to correct his record by removing a Non-Judicial Punishment (NJP) and Letter of Reprimand. The applicant, through counsel, explained that he received NJP for three violations of the Uniform Code of Military Justice (UCMJ). He stated that the only evidence against him was the testimony of two of his shipmates, ENS P and ENS S, turning the proceedings into a “he said/she said” situation. He claimed that his Commanding Officer (CO) accepted the testimony of his shipmates over his own and decided to impose punishment. He therefore requested that the Board grant relief by removing the NJP and the Letter of Reprimand from his military record.

The applicant claimed that he was not given the opportunity to present a complete defense at the NJP proceeding. He stated that he had been reassigned to another unit before the proceeding and had been “performing operations as he was trained to do [and had] put the ... incident behind him.” He stated that he was brought back to the area on January 21, 2014, and was informed that he was “going to NJP.” He met with an assigned NJP representative, now Lieutenant (LT) I. The applicant stated that it was at this time that he learned that there was an alleged alcohol incident against him from October 24, 2013. He claimed that he was “never counseled by the command about any such incident until after his NJP.” He asserted that the “evidence supporting the allegation of an alcohol incident together with the other allegations was solely provided in ENS [P’s] statements.”

The applicant stated that according to ENS P, a female shipmate, the alcohol incident occurred outside of a local bar. He stated that there were no other witness statements and no security footage was obtained from the bar. He stated he “knew that ENS [P] was lying about what happened” so he tried to obtain videotape evidence from the bar himself to no avail. He claimed that the “command was not interested in trying to retrieve the video tapes or making a simple request to the Coast Guard Investigative Service to do so.”

The applicant stated that ENS P’s motivation for falsely accusing him of harassing her was that he had confronted her about an inappropriate relationship she was having with ENS S. The three of them, the applicant, ENS P, and ENS S, had been classmates at the Coast Guard Academy before being assigned together on a cutter. The applicant claimed that he confronted ENS P about the alleged relationship on October 24, 2013, and “warned her to break off the relationship ... or he would report [it] to the Command.” He added that all junior officers had acknowledged that personal relationships aboard the cutter were prohibited. The following day, ENS P reported the applicant for harassment and drunk and disorderly conduct.

The applicant claimed that after he was transferred off of the cutter, ENS S confessed to him that he had a romantic (inappropriate) relationship with ENS P. The applicant alleged that “ENS [S] said that ENS [P] told him that she reported [the applicant] so that the Command would not believe [the applicant] if he ever reported their relationship to the Command.” The applicant stated that ENS S refused to provide a written statement to the Board “because he is afraid of its adverse ramifications.” However, the applicant stated that he did provide an email from ENS S, which he alleged would show that the applicant was treated unfairly at his NJP proceeding. The applicant also alleged that both ENS P and ENS S were taken to NJP for their inappropriate relationship.

The applicant argued that at the time ENS P made her allegations against him, the military was “under intense pressure to support female complainants and take action against alleged male perpetrators.” He stated that this was a “classic case” wherein a female made a complaint against a male who denied the accusations. The applicant claimed that at the time of his NJP proceedings, an investigation had just started looking into whether ENS P and ENS S were involved in an inappropriate relationship. But he had no proof at the time of his proceedings that they were in fact engaged in such a relationship. He therefore came to the conclusion that his Command “had to support ENS [P’s] allegation or face potential political consequences.” The applicant stated that after his NJP proceedings there was evidence of a relationship between ENS P and ENS S; had he had access to that evidence at his proceeding, he argued, he would have been able to cast “significant doubt” on ENS P’s credibility.

The applicant requested to “provide testimony” to the Board via personal appearance. He stated that he would like the opportunity to make an oral statement and answer any questions from the Board members. He asserted that this would give the Board members the chance to “evaluate his demeanor and credibility firsthand.” He restated his request that the Board remove from his record his NJP and his Letter of Reprimand.

With his application, the applicant provided several documents which are described below in the Summary of the Record. He also provided several affidavits and an email. The first affidavit

is from LT I. She stated that she was assigned as the applicant's mast representative for his NJP proceedings that were held on January 23, 2014. She clarified that she did not have any formal legal training. She stated that she and the applicant were "allowed to review the evidence [but] were not allowed to make copies; [they] were just allowed to take notes." She stated that she was present for the proceeding, and it "was a she said/he said case involving [the applicant] and ENS [P]. ENS [P] testified that [the applicant] had harassed her and [the applicant] denied that he had done that. The CO sided with ENS [P]."

The second affidavit is from a Chief Petty Officer who was the Command Chief on the cutter at the time of the incidents. He stated that he believed the applicant had the potential to be a beneficial asset to the Coast Guard. He stated that in December 2013, a CGIS investigation took place concerning ENS P and ENS S, which concluded that they had engaged in a romantic relationship and both members received punishment. He was present at the applicant's NJP proceedings and stated that "the case was a 'she said/he said case' involving [the applicant] and ENS [P]." He added that he believed the case "would have been resolved much differently if he could have disproved or cast significant doubt on ENS [P's] testimony." He stated that he believed the Command "acted harshly" with the applicant's case. Because he was unsure of the applicant's guilt, and "with the new evidence [the applicant] stated he has," he asked that the Board review the applicant's request thoroughly.

The applicant provided an email from ENS S dated July 19, 2014. There is no subject line to the email. The email states:

I hope all is well. As you know we got the bad shake during both NJPs. It bothers me a lot that during my mast everyone (every key witness) was on leave or not present. You were gone, [redacted] was gone, Chief [redacted] (who I told what [ENS P] was trying to do) was gone, and when a preponderance of the evidence was the difference between my word and [ENS P's] they went with hers despite the fact that she was lying, got caught, and continued to lie.

Funny you mention the nic [sic] names because the command tried to say I made those up. They said OPS would never do that. Guess what though, OPS was not even on the ship that day. It's as if the entire mast was staged and it was predetermined what the outcome would be. I'm doing great at [redacted] though. The command is great, the mission is much more real, and I have huge roles there. I am not treated like a "baby ensign" and everyone is positive. I hope you are doing well, I know we had a big fall out because [ENS P] lied and manipulated you against me like she did to the whole boat. KARMA is real though and I know it will come back to bite her later.

Bottom line I've talked to a lot of ppl about the outcome and we were treated unfairly.

SUMMARY OF THE RECORD

The applicant graduated from the Coast Guard Academy and received his commission on May 22, 2013.

On July 8, 2013, the applicant was counseled regarding the Coast Guard's policies on alcohol and its Drug and Alcohol Abuse Program. This counseling was documented on an administrative entry in his military record and bears his signature with the date July 12, 2013.

On January 21, 2014, the applicant and a witness signed an acknowledgment and acceptance of NJP. He was charged with violating UCMJ Articles 90/92, willfully disobeying an order of a superior commissioned officer; Article 134, harassment/maltreatment; Article 134, drunk and disorderly conduct; and Article 120a, stalking.¹ This document contained information regarding the applicant's rights and maximum punishment that could be imposed. The allegations against the applicant were based on the following:

That [applicant], United States Coast Guard, on active duty, at or around [city, state], from on or around December 2013 to January 2014, did willfully disobey an order given by the Operations Officer and Executive Officer.

That [applicant], at or around [city, state], from on or around October 2013 to January 2014, did maltreat ENS [P], by wrongfully subjecting her to repeated unwanted texts, phone calls (and other additional behaviors) in an attempt to engage ENS [P] in a romantic relationship, which caused ENS [P] mental harm or suffering, and that under the circumstances, the conduct of [applicant] was to the prejudice of good order and discipline in the Coast Guard.

That [applicant], at or around October 2013, was drunk and disorderly in public.

On January 23, 2014, the applicant was taken to mast for NJP. The three offenses he was charged with were cruelty or maltreatment; drunk and disorderly; and failure to obey any other lawful order. He received 30 days' restriction and written reprimand for these offenses. The offense narrative states:

Article 92 – In that [applicant], United States Coast Guard, on active duty, at or around [city, state], from on or around December 2013 to January 2014 failed to obey an order to not call, text, or interact with ENS [P] unless for work-related issues. Article 134 – In that [applicant], at or around [city, state], from on or around December 2013 to January 2014, did maltreat ENS [P], by wrongfully subjecting her to repeated unwanted texts, phone calls, and visits to her stateroom, in an attempt to engage in a romantic relationship, which caused ENS [P] mental harm or suffering, and that under the circumstances, the conduct of [applicant] was to the prejudice of good order and discipline in the Coast Guard. Article 134 – In that [applicant], at or around [city, state], from on or around 24 October 2013, did act drunk and disorderly when this abuse of alcohol was determined to be a significant and/or causative factor when [applicant] caused a disturbance manner.

Also on January 23, 2014, the applicant received an administrative entry in his military record documenting an alcohol incident.² The applicant signed on the same date. The administrative entry states:

On this date, you received an alcohol incident when your abuse of alcohol was determined to be a significant causative factor in your behavior on 24Oct2013 when you caused a disturbance in public in [city, state], and acted in a drunk and disorderly manner. During NJP proceeding on 23Jan2014, you were awarded punishment for Article 134: Disorderly conduct/drunkenness.

¹ There is no documentation of the stalking charge being dropped, but this charge does not appear on his NJP documentation.

² Article 1.A.2.d. of the Coast Guard Drug and Alcohol Abuse Program, COMDTINST M1000.10 (series) defines an "alcohol incident" as "[a]ny behavior, in which alcohol is determined, by the commanding officer, to be a significant or causative factor, that results in the member's loss of ability to perform assigned duties, brings discredit upon the Uniformed Services, or is a violation of the Uniform Code of Military Justice, Federal, State, or local laws. The member need not be found guilty at court-martial, in a civilian court, or be awarded non-judicial punishment for the behavior to be considered an alcohol incident."

You were counseled on USCG policies concerning alcohol use and abuse as well as the serious nature of this incident. The unit CDAR will arrange an appointment with a provider who will determine the nature of your relationship with alcohol. It is recommended you abstain from the use of alcohol until your screening and assessment is completed.

The applicant received a Special Officer Evaluation Report (OER) for the period of October 1, 2013, to January 23, 2014. On an OER, officers are rated in 18 performance categories on a scale of 1 (worst) to 7 (best). The applicant received four 1s, two 2s, one 3, nine 4s, and two 5s. He received a mark in the first spot on the comparison scale, indicating that he was an “unsatisfactory” performer. The Special OER contained comments including “Failed on multiple occasions to obey lawful orders by superior officers to not call, text, or interact with a particular female Ensign”; “Officer issued an alcohol incident”; “Actions results in removal from [cutter], rescission of Inport [Officer of the Deck] qualification, loss of confidence, a characterization as untrustworthy, and significant impact on good order & discipline of the cutter”; “not recommended for promotion”; “lacks appropriate social skills for interacting with others, and demonstrates limited potential in being successful as commissioned officer. Recommend revocation of commission”; “Displayed sub-standard professional competence by making unreasonable and unsubstantiated excuses for failing to obey a lawful order”; and “continued undue behavior including sending of texts, Facebook messages, and visiting staterooms and private residences.”

On January 25, 2014, the applicant received a Punitive Letter of Reprimand as NJP. It states that the applicant had been awarded punishment at a NJP proceeding for violating UCMJ Articles 92, and two specifications of Article 134. The applicant was informed of his appeal rights and that a copy of this letter would be placed in his military record and attached to a Special OER. The letter states the following:

Between the months of December 2013 and January 2014, you failed on multiple occasions to obey a lawful order to not call, text, or interact with a particular ensign unless for work-related issues. You also maltreated this shipmate by wrongfully subjecting her to repeated unwanted texts, phone calls, and visits to her stateroom and residence, in an attempt to engage her in a romantic relationship, which caused this ensign mental harm or suffering, and that under the circumstances, your conduct was to the prejudice or good order and discipline in the Coast Guard. I also issued you an alcohol incident when your abuse of alcohol was determined to be a significant and/or causative factor in your behavior on 24 October 2013 when you caused a public disturbance.

By behaving in the manner described above, you severely neglected the Coast Guard’s Core Values. As a commissioned officer, you are given special trust and confidence. Instead, you willfully and repeatedly disobeyed an order given by two superior officers, and treated a shipmate with disrespect, resulting in your removal from the cutter. Your breach of trust and lack of self control has resulted in my loss of confidence in your ability to successfully carry out your assigned duties. Your conduct reflects poorly on your judgment, leadership, and professionalism as an officer of the United States Coast Guard. Furthermore, your transgressions have resulted in a significant disruption of good order and discipline onboard [the cutter].

On January 30, 2014, the applicant received a response to his request for reconsideration or appeal of his NJP. The applicant was informed that there is no appeal right and he had not stated any specific basis for appeal. There was likewise “no law or policy that contemplates a rehearing once [NJP] punishment is imposed.” The applicant’s mast had been conducted in accordance with Coast Guard policy and during the mast his CO “heard firsthand witness testimony, and exhaustively probed into [the applicant’s] recollection and perspective of allegations before concluding [his] guilt.” The CO stated that he made his decision based on a totality of the

circumstances and took into consideration “the nature of the offenses, [the applicant’s] record, and all aggravating and mitigating circumstances.” Therefore the CO saw no reason to provide the applicant with extraordinary relief and denied his request.

On March 7, 2014, the applicant prepared an addendum to his Special OER for the period of October 1, 2013, through January 23, 2014. He stated that any marks below 4 were a direct result of the NJP he received on January 23, 2014. He asserted that he did not want to “dismiss what [he had] done wrong, but to prove [that it] was an isolated incident that does not truly reflect [his] character or performance as an officer.” He stated that in his addendum he would describe what he did wrong, what he learned from his mistakes, and why he should remain in the Coast Guard. He claimed that prior to the incidents in question, he had “never done anything that [had] caused command to note negative performance except not meeting the prerequisites to go to Boarding Officer School in time.” The applicant stated that he could confidently attest to the fact that he would have received only 4s and 5s, and perhaps some 6s, if he had received a regular OER before the Special OER. He highlighted several positive characteristics and noted volunteer assignments he had completed since coming aboard the cutter. He went on to state the following:

What I did wrong: In short, I made mistakes. I made poor decisions. Among other things but most notably, I disobeyed an order which resulted in a loss of trust and prejudicial to good order and discipline [sic]. I admit to disobeying the order throughout the entire investigation... I was overwhelmed with the three additional serious UCMJ charges and the notification of NJP all within 48 hours of the mast. The XO [shook] my hand and offered me advice which led me to believe that he did understand, at least to some degree, why I did the things I did (though wrongly) and how I ended up in my situation. I do not wish to dwell on the past. In fact, learning from this experience and all of the mistakes I made, I will leave this behind me and move forward and do great things in the Coast Guard as I have promised my CO. I completely understand the gravity of my offenses, [sic] and I do take ownership of what I have done.

What I have learned and how I will move forward: To actually be a leader, I must use everything I learned at the Academy and in the fleet, and must not let this type of behavior ever happen again. I know what a professional relationship is, and I will never again let my personal feelings override my professional relationships.

The applicant went on to discuss the work he had done at his temporary assignment. He claimed that he “had a new founded meaning of professionalism” after speaking with his CO at his temporary duty assignment. He requested the opportunity to stay in the Coast Guard and claimed that he had learned from his mistakes.

On March 10, 2014, the applicant’s supervisor forwarded the applicant’s addendum and added his own comment. He stated that the applicant “distinguished himself from other Junior Officers by willfully disobeying a direct order from his chain of command on multiple occasions.” The supervisor noted that the applicant was appropriately punished at NJP for maltreating another officer, the applicant’s “incomprehensible disobedience,” and his drunk and disorderly conduct. All of which led to the recommendation that the applicant not retain his commission in the Coast Guard.

Also on March 10, 2014, the applicant’s reporting officer forwarded the applicant’s addendum and the supervisor’s comment and he added his own comment. He noted that the applicant had stated that he learned from his mistakes, yet during the reporting period he had shown a “lack of awareness that blatantly and willfully disobeying a lawful order from superiors in a military

chain of command on multiple occasions, maltreating a shipmate, and causing a public disturbance after consuming alcohol would lead to a removal from primary duties, [NJP], a punitive letter of reprimand, and derogatory OER.” He stated that the applicant had been instructed no less than three times during a one-month period not to make contact with a certain officer. The applicant had acknowledged these orders, but he continued to contact the officer. In addition, the reporting officer noted that the applicant’s “average performance” is what is minimally expected and was “not enough to override his offense or predict future improvement in performance.”

The applicant was honorably discharged on October 18, 2014. His discharge certificate, DD 214, states that he had a total of 1 year, 10 months, and 27 days of active duty service. The narrative reason for his separation was “Substandard Performance.”

VIEWS OF THE COAST GUARD

On July 5, 2017, a judge advocate (JAG) of the Coast Guard recommended that the Board deny the requested relief. The JAG argued that after reviewing the applicant’s record and application, the Coast Guard was “unconvinced that there is any error or injustice in the applicant’s record, and the applicant has not provided sufficient evidence to meet his burden.”

The JAG first noted that the application is timely, and therefore should be considered by the Board on the merits. The JAG stated that COs are given discretion regarding NJPs in order to maintain order and discipline in their unit.³ He added that the decision to impose an NJP does not constitute a judicial finding of guilt or a conviction. The burden of proof needed at a NJP proceeding is a preponderance of the evidence. The applicant argued that there was not enough evidence to find him guilty because subsequent evidence casted doubt on the credibility of the witness who testified against him. The JAG noted that the sworn statement from the applicant’s Command Chief indicated that the two other Junior Officers were investigated and both later received punishment. The applicant provided an email from the other male Junior Officer wherein he called the female a liar. The JAG stated that the applicant believed this evidence should now exonerate him.

The JAG argued that the “applicant has not provided any information which proves that his award of punishment under NJP was an error or injustice.” The JAG stated that the email from the male Junior Officer “is likely biased since he was also masted and should be given very little weight.” The JAG stated that the sworn statement from the Command Chief was correct in that a CGIS investigation into the Junior Officer’s relationship began in December 2013. Therefore, the command “would have already been aware that the ensign was under suspicion at the time of the NJP and would have accordingly weighed that into considering when deciding what action to take.”

The JAG argued that the applicant’s contention that he went before NJP solely as a result of ENS P’s allegations “seems to ignore statements from his Command citing several specific incidents where the applicant disregarded orders not to make contact with the ensign.” It was also noted that the applicant did not file an appeal to the NJP at the time as he was entitled to do. In addition, he admits in his response to the Special OER that he made mistakes and that what he had

³ Military Justice Manual, COMDTINST M5810.1E.

done was wrong. The record shows that the applicant had an ongoing problem with disobeying orders from his Command and the JAG asserted that the applicant “has not provided any evidence that would lead the Coast Guard to question the judgment of the applicant’s Command or that the procedures of the NJP were not carried out correctly.”

In response to the applicant’s allegations regarding alcohol incident, the JAG stated that the Page 7 was properly signed by the applicant’s CO and the applicant himself. There is no indication in the record that the applicant contested the Page 7 at the time and he did not provide any evidence that would call into question the judgment of his CO. The JAG therefore argued that the relief should be denied because the applicant did not provide a preponderance of evidence to show that an error or injustice exists in his record.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 24, 2017, the Chair sent the applicant a copy of the Coast Guard’s advisory opinion and invited a response within 30 days. After requesting extensions, the applicant replied on August 1, 2018.

The applicant, through counsel, complained that the advisory opinion did not respond to all of his allegations and evidence. He asserted that he provided statements from highly decorated and respected members of the Coast Guard that should be taken into consideration. Regarding the investigation that had begun before the applicant’s NJP, the applicant asserted that ENS P had alleged that she had been raped by ENS S and *that* is what CGIS had begun investigating – not whether ENS S and ENS P had engaged in a (consensual) inappropriate relationship. The applicant alleged that at the time of his NJP, his CO viewed ENS P “as the victim of a rape by an Ensign under his command, and the victim of harassment on the part of [the applicant].” He claimed that the CO did not fully realize how vicious ENS P was and how she would “do anything to protect herself” until after his mast. The applicant stated that he provided text messages between ENS P and ENS S that ENS S would not provide to the applicant earlier for fear of reprisal. The applicant stated that the text messages clearly demonstrate ENS P’s “attempt to conceal her relationship by deceit, a violation of a general order, in addition to threatening [the applicant] with the fabricated allegations and harassment, rendering any statement she made untrustworthy.”

The applicant reiterated that he protested all charges against him at the time because the CGIS investigation was not finished and because ENS P’s “guilt was not discovered at that time.” He asserted that because ENS P’s mast was not held until months after his, which included the coming to light of relevant text messages and affidavits, his CO should not have considered ENS P’s hearsay evidence. The applicant argued that his CO did not have all or any of the facts from the CGIS investigation as the Coast Guard advisory opinion asserts, because the rape investigation was in its early stages and concluded months after the applicant’s NJP. The applicant claimed that his “CO stated at [the] Mast that he did not know the specifics of the ongoing CGIS investigation.” The applicant stressed that he firmly believes “that the outcome would have been entirely different had the CO known the truth at his Mast, during which all of the allegations against him were based solely on [ENS P’s] testimony.”

With his response, the applicant provided screenshots from text messages reportedly between ENS P and ENS S and screenshots of a text reportedly from the applicant to ENS P. In the texts between ENS P and ENS S, ENS P had threatened to go to the XO if ENS S did not call her back immediately because she had “received an outrageous text from [his] roommate.” When ENS S explained that he had been at training ENS P calmed down and stated that she had made him “freak.” In the texts the applicant had sent to ENS P, he told her that the command was aware of “what’s going on” and he stated that her relationship with ENS S was “on the radar big time.” He stated that she had put himself and several others “at risk.” He stated that he had no choice but to inform the command of the inappropriate relationship. He asked her to “be smart” and end the relationship. He stated that he knew she was a good person because that was what he “liked about [her].” He provided his CGIS affidavit from December 20, 2013, which shows that he told CGIS that he had been threatened with a report of harassment by ENS P and ENS S if he turned them in for having an inappropriate relationship. He discussed specifics of how the applicant discovered their romantic relationship and how the two continually threatened to claim that he was harassing ENS P if he turned them in. He stated that he felt that ENS S was a “pathological liar and a petty thief and a manipulator.” He stated that he felt ENS P was not a bad person but that she was “manipulated and caught up in a bad situation.”

APPLICABLE REGULATIONS

The Military Justice Manual, COMDTINST M5810.1E, Article 1.A.2.a. states that each CO “is responsible for the maintenance of discipline within his or her command.” When a minor offense is committed, a CO should consider invoking NJP. “This disposition decision rests within the sound discretion of the commanding officer and shall be made on an individual basis considering the nature of the offense(s).” Article 1.A.3.a. states that all COs may impose NJPs on all personnel assigned to their units.

Article 1.A.6.a. states that a NJP “does not constitute a judicial finding of guilt and it is not a ‘conviction.’” Article 1.C.4.e. states that a “mast is not an adversarial proceeding.” Article 1.C.3.a. states that the mast representative “should be an officer or petty officer and must, if practicable, be attached to the unit of the [CO] conducting the mast.” Article 1.D.1.f. states that the burden of proof required at a NJP proceeding is a preponderance of the evidence. This means that the CO “must determine that it is ‘more likely than not’ that the member committed an offense(s).” Article 1.F.1. states that a member may appeal a NJP finding if he considers it unjust or disproportionate. The appeal must be submitted in writing within five calendar days of imposition.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant’s military record and submissions, the Coast Guard’s submission and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely.

2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.⁴

3. The applicant asked the Board to expunge from his record his NJP dated January 23, 2014, and his Punitive Letter of Reprimand dated January 25, 2014, because he alleged they are erroneous and 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 his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁵ 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."⁶

4. The applicant has failed to prove by a preponderance of the evidence that he erroneously received NJP for multiple violations of the UCMJ. He claimed in his application to the Board that ENS P had fabricated a story in order to protect herself because the applicant had confronted her about an inappropriate relationship she was having with another junior officer. While the applicant may in fact have confronted ENS P about such a relationship and she may have threatened to report him for sexual harassment, such a confrontation and threat do not persuade the Board that he did not actually harass her. There is ample evidence in the record to support the COs decision to punish the applicant at NJP. This includes the offense narrative included in the NJP memorandum, the Letter of Reprimand, negative Page 7, Special OER, the applicant's addendum to the Special OER, and his supervisor's and reporting officer's comments on his addendum. These documents show that the applicant was under direct orders not to contact ENS P except about work matters but repeatedly violated those orders. The number and nature of his messages to her would have been available and apparent to the command at mast. Therefore, the Board finds that he has not proven that he received NJP based only on the word of ENS P. The Board also agrees with the Coast Guard that it is particularly enlightening that the applicant's addendum includes admissions such as "I have learned from my mistakes"; "I made mistakes"; "I made poor decisions"; "I disobeyed an order which resulted in a loss of trust"; "I do completely understand the gravity of my offenses [sic]"; and "I will never again let my personal feelings override my professional relationships." The Board is likewise not persuaded by ENS S's email or by the two statements the applicant provided that the CO erred in awarding him an alcohol incident and NJP for violating the UCMJ.

5. The applicant asked the Board to remove his Letter of Reprimand dated January 25, 2014. The applicant was awarded 30 days' restriction and a Letter of Reprimand as NJP. As discussed in finding 4, the Board finds that the applicant has not proven by a preponderance of the evidence that his CO erred in awarding him the Letter of Reprimand as punishment. Nor has he shown that the Letter of Reprimand was inaccurate or unjust in any way given that he was found

⁴ *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).

⁵ 33 C.F.R. § 52.24(b).

⁶ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

to have maltreated (sexually harassed) a shipmate, to have disobeyed a lawful order not to contact her, and to have been drunk and disorderly in public.

6. Accordingly, the Board finds that the applicant has not proven by a preponderance of the evidence that the disputed NJP or Punitive Letter of Reprimand in his record are erroneous or unjust. No relief is warranted.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

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

September 28, 2018

