

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2023-027

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FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on March 22, 2023 and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated September 19, 2024, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant, an Electrician's Mate, First Class (EM1/E-6), asked the Board to correct his record by restoring his rank to Chief Electrician's Mate (EMC/E-7), and that his reduction in rate from E-6 to E-5 be expunged from his record along with his Non-Judicial Punishment (NJP) and an April 23, 2020 Negative CG-3307 ("Page 7"). The applicant also asked the Board that his 2019 Service Wide Examination (SWE) placement be honored and that he be awarded all backpay and allowances that flow from these corrections.

A summary of the applicant's allegations and arguments appears below the Summary of the Record.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on August 28, 2007, and trained as an Electrician's Mate, advancing to Electrician's Mate, First Class (EM1/E-6) on February 1, 2016.

On July 24, 2018 a Commendation Medal was incorrectly entered into the applicant's Direct Access information sheet. The award that should have been entered into Direct Access was the Achievement Medal.¹

February 1, 2019 was the deadline for the applicant to verify the accuracy of his Personal Data Extract (PDE)² in order to compete for the May 2019 Service Wide Examination (SWE) for Chief Electrician's Mate (EMC/E-7). The applicant submitted an application package to the May 2019 EMC SWE with an erroneous PDE that included the erroneous Commendation Medal. Despite the erroneous inclusion of the award, the applicant validated his PDE, allowing him to compete for the May 2019 EMC advancement list that gave the applicant a one point advantage during the advancement cycle.

On October 3, 2019 and again on March 9, 2020, the applicant emailed a Yeoman, YN1 P, to report the error in his PDE, but the emails were encrypted so YN1 P could not open or view the data contained in the emails.

On February 28, 2020, the applicant attended the Chief Petty Officer's Academy where he wore the Commendation Medal insignia knowing that he had not been awarded the Commendation Medal but was instead awarded the Coast Guard Achievement Medal.

On March 12, 2020, the applicant's CO issued a memorandum, "INVESTIGATION OF UNAUTHORIZED INSIGNIA FROM 24JUL2018," wherein he ordered a single officer investigation be conducted to investigate allegations that the applicant knowingly purchased and wore the Commendation Medal insignia knowing that he did not receive the Commendation Medal. The CO further requested that the Investigating Officer (IO) attempt to determine when the applicant became aware of the error in his PDE.

On March 23, 2020, the MKCS L submitted a statement regarding the applicant's wearing of an insignia for an award he had not been awarded. MKCS stated that on March 7, 2020 he had a conversation with the applicant that involved the applicant believing he had not received the proper level of awards in the past and was adamant that he deserved the Coast Guard Commendation Medal for his service while serving aboard the cutter. MKCS L stated that he told the applicant to review the Coast Guard Commendation Medal he had received from his previous

¹ The Coast Guard Commendation Medal is a more prestigious award granted to service members who have distinguished themselves for "heroic or meritorious achievement or service." Article 2.A.13 of the Military Medals and Awards Manual, COMDTINST M1650.25E, states that to merit this award, the acts or services must be accomplished or performed in a manner above that normally expected and sufficient to distinguish the individual above others of comparable grade or rating performing similar services. Whereas Article 2.A.14. of the same manual states that the Achievement Medal only requires the member to "distinguish themselves for professional and/or leadership achievement in a combat or non-combat situation based on sustained performance or specific achievement of a superlative nature which must be of such merit as to warrant more tangible recognition than the Commandant's Letter of Commendation Ribbon, but which does not warrant a Coast Guard Commendation Medal or higher award."

² The PDE is personnel data record which are service member specific and are updated prior to every SWE cycle. The PDE includes pertinent information about the service member such as the member's sea time points, surf time points, award points, evaluation points, creditable awards, etc. The member is responsible for ensuring that all information in this extract is correct prior to the outlined SWE deadline. The PDE erroneously validated by the applicant would have included 3 award points for the Commendation Medal instead of the 2 points he should have received for the Achievement Medal.

unit, but the applicant stated he had not received a Commendation Medal from his previous unit but received an Achievement Medal instead and that the award listed in Direct Access was incorrect. When questioned if he had notified a Yeoman to have the error fixed, the applicant claimed that he contacted a Yeoman in October, approximately eight months earlier, which is when he first noticed the error. MKCS L also asked the applicant if he had reviewed his PDE prior to the 2019 SWE and the applicant claimed that he did not notice the error in his PDE prior to the SWE. MKCS L stated that he saw the applicant wearing the unauthorized insignia in February 2020, approximately five months after he discovered the error in his record.

On March 24, 2020, the IO submitted his Report on Investigation (ROI) which included the following relevant “Findings of Facts” and “Opinions”:

4. In a statement from MKCS [L], EMC [Applicant] admitted to MKCS [L] on March 7th 2020 that the CGCOM entered into DA was an error and he never received the CGCOM. EMC [Applicant] also informed MKCS that he tried to correct the issue eight months prior with YN1. Exhibit (6).
5. A picture EMC [Applicant] wearing the CGCOM while at the Chief Petty Officer’s Academy on February 28th, 2020. Exhibit (4).
6. EMC [Applicant] ██████ contacted the YN1 [P] at Sector [redacted] Admin on October 3rd 2019 and March 9th 2020 to report the error in DA. Exhibit (5).
7. YN1 [P] confirmed she did not receive the two emails from EMC [Applicant] on October 3rd, 2019 and March 9th, 2020. Exhibit (7).
8. After requesting email record from CGCYBER to validate the correspondence between EMC [Applicant] and YN1 [P], two emails to YN1 [P] were found in EMC [Applicant’s] sent items that matched the date and time sent in Exhibit (5). The body and subject of both emails were encrypted and unable to be opened. Two emails were found YN1 [P] deleted email file which matched the date and time sent from EMC [Applicant]. The body and subject of both emails were unable to be opened because they were encrypted.
9. During the interview with EMC [Applicant], he stated that he has never worn CGCOM on his uniform prior to February 28th, 2020 while attending the Chief Petty Officer Academy.

Opinions

1. The cause of the wrong award entered into DA is undetermined, but that alone doesn’t justify the member is allowed to wear the CGCOM. It is up to the member to verify their personal data and EMC [Applicant] was afforded at least two opportunities to correct this error prior to his advancement. Once during PDE validation before the 2019 SWE and again when the member requested their EIPDR to apply for a special CG program. This error has since been corrected and DA now reflects he was awarded the CGAM on July 24th 2018 and not the CGCOM.
2. EMC [Applicant] states that he does not know the process for how awards are entered into DA and EIPDR. Member knew the wrong award was entered after he requested a copy of his EIPDR in October 2019, this was the second time it could have been corrected. Member did not understand that a signed copy of an award superseded what is entered into DA.
3. Member was not formally recognized for the CGAM during an all hands or quarters on the ship prior to his departure of the CGC [cutter]. Member was handed the award onboard his new cutter the CGC [new cutter] and did not open it, assuming it was the CGCOM. I am unsure of why the member made the assumption unless the submitter of the 1650 divulged that information to the member. Either way, the member should have at least looked at the award he was handed.

4. EMC [Applicant] did send two emails matching the date and time from Exhibit (5) to YN1 [P], but YN1 was unable to open them due to them being encrypted. Two emails from EMC [Applicant] matching the date and time were found in YN1 [P's] deleted folder. It is my opinion she deleted them out of frustration because they could not be opened due to encryption, hence the reason she confirmed not seeing them. Exhibit (7).

5. EMC [Applicant] willingly participated in the May 2019 SWE with an unverified or fraudulent PDE. CGCOM is valued at three award points and the CGAM is valued at two award points, meaning member will be advancing on the incorrect awards points. EMC [Applicant] is currently frocked as an EMC and is due to advance prior to 2021. If member advances off an invalid or fraudulent PDE then Article 107, "False official statements" should be addressed by the convening authority.

6. It is my opinion that there is a severe lack of integrity within EMC [Applicant]. A member of the United States Coast Guard does not make it to E-7 only to claim ignorance for which medal was awarded and which medal you wear. These are personally earned awards, something a member is proud of and will be remembered forever. It is disgraceful and disrespectful to the true bearers of the Commendation Medal.

On April 1, 2020, the applicant's CO submitted a Change in Commanding Officer Recommendation Change (CORC) evaluation wherein he changed his advancement recommendation for the applicant from "Recommended" to "Not Recommended." The CO's change was made due to a loss of confidence in the applicant's adherence to the Coast Guard's Core Values. The CO stated that inconsistencies were discovered during an investigation into the applicant's wearing and benefiting from unearned awards. Finally, the CO stated that in order for the applicant to regain a recommendation for advancement, he must take full responsibility for his mistakes and demonstrate commitment to the Core Values.³

On April 6, 2020, the applicant received a Disciplinary Enlisted Evaluation, Member Counseling Receipt, wherein he received one mark of 1 in "Accountability/Responsibility" (out of a scale of 1 to 7, with 1 being the lowest mark and 7 being the highest possible mark), one mark of 2 in "Decision Making/Problem Solving," one mark of 3 in "Military Bearing," two marks of 4, four marks of 5, and four marks of 6. The applicant also received a mark of "Unsatisfactory" in the Conduct performance dimension, a mark of "Yes" for Future Potential, and a mark of "Not Recommended" for Advancement Potential. The applicant also received the following comments:

Military Bearing. Mbr attended the CPOA [Chief Petty Officer Academy] graduation dinner intentionally wearing an unauthorized award.

Decision Making/Problem Solver. Mbr repeatedly postponed needed corrective action over a year-long time period for SWE PDE DA mbr info, and benefited from administrative error. Did not reflect on impact of actions on others.

Accountability/Responsibility. Mbr failed to correct inaccurate May 19 PDE for over a year, resulting in unearned SWE points. Mbr submitted for CWO [Chief Warrant Officer] program included endorsement by CO & Sector Cmdr w/incorrect award. Mbr bought and wore unauthorized award.

³ Article 3.A.4.b.3. of the Enlistments, Evaluations, and Advancements Manual, COMDTINST M1000.2C, states, "The Commanding Officers' recommendation or change in rating by participation in the SWE is valid only for a specific competition and must be renewed for each succeeding competition. To be valid for the SWE, the recommendation of ready must be on an effective EER dated after the SED of the previous SWE cycle and on or before the SED of the current SWE cycle. The Commanding Officer's recommendation for advancement must be maintained from the recommendation date up to the advancement date "

Conduct. Failed to meet standards. Member was awarded NJP 06APRIL2020, and found to have committed violations of Article 92 (WILLFULL DERELICTION OF DUTY), Article 106a (WEARING UNAUTHORIZED INSIGNIA), and Article 107 (FALSE OFFICIAL STATEMENTS) for misrepresenting authorized award level on three occasions.

Future Potential. Work and technical expertise are strong and mbr has future potential if mbr takes ownership of CG Core Values, focusing on integrity. Mbr needs to learn from the NJP in order to move forward. At this time I do not recommend member for independent duty or advancement. Mbr is not read to be a CPO yet.

Advancement Potential. Mbr is not recommended for advancement due to Core Value concerns and NJP awarded 06APRIL2020. In order to regain Ready recommendation, mbr must continue to perform at a high level, take responsibility for mbr's mistakes and demonstrate commitment to the Core Values moving forward.

On April 6, 2020, the applicant went before a Captain's Mast for violations of Article 92—Willful Dereliction of Duty, Article 106a—Wearing Unauthorized Ribbon, and Article 107—Making a False Official Statement of the Uniform Code of Military Justice (UCMJ). The applicant was sentenced to reduced rank that was suspended for six months. The Continuation Sheet (CG-4910) outlined the following specific offenses:

Charge I: Violation of the UCMJ, Article 92 (WILLFUL DERELICTION OF DUTY)

In that Petty Officer First Class [Applicant], U.S. Coast Guard, on active duty, who knew or should have known of his duties at or near [redacted] between on or about January 2019 and on or about May 2019 was derelict in the performance of those duties in that he willfully failed to report incorrect information on his Personal Data Extract it was his duty to do.

Charge II: Violation of the UCMJ, Article 106a (WEARING UNAUTHORIZED INSIGNIA, DECORATION, BADGE, RIBBON, DEVICE, OR LAPEL BUTTON)

Sole Specification: In that Petty Officer First Class [Applicant], U.S. Coast Guard, on active duty did, at or near [redacted], on or about February 2020 wrongfully, without authority, wear upon his uniform the ribbon representing the Coast Guard Commendation Medal.

Charge III: Violation of the UCMJ, Article 107 (FALSE OFFICIAL STATEMENT)

Sole Specification: In that Petty Officer First Class [Applicant], U.S. Coast Guard, on active duty did, at or near [redacted] on or about October 2019, sign an official record, to wit: his application for appointment to the EMITP [Enlisted Marine Inspector Program],⁴ which record was false in that it indicated that the said Petty Officer First Class [Applicant] had been awarded the Coast Guard Commendation Medal, and was then known by the said Petty Officer First Class [Applicant] to be false.

⁴ The EMITP is a training program that was at one point specifically for Warrant Officers. However, due to staffing shortages, in 2018 the Coast Guard created a new training opportunity that allowed senior enlisted personnel with specific backgrounds to apply to the newly implemented program designed to train enlisted participants to become fully qualified Journeyman Marine Inspectors. The application process and requirements are different from that of a warrant officer but still require an application package that is reviewed by a panel. Applicants are scored on the totality of their record, including their awards. This program offers selectees several benefits including waiver of some Warrant Officer eligibility requirements. The 2019 announcement for EMITP stated, "selectees will have the opportunity to apply for appointment to Chief Warrant Officer at or near the 18-month mark of their three-year apprenticeship. Program participants will also have traditional Chief Warrant Officer pre-board eligibility requirements waived, including time in grade and placement in the top 50 percent on the eligibility list for advancement."

On April 10, 2020, the applicant appealed his NJP arguing that the outcome of the NJP was unjust and the punishment was disproportionate to the offense. The applicant provided the same claims and arguments to the appeals authority as he made to this Board.

On April 12, 2020, the applicant appealed his April 6, 2020 disciplinary enlisted evaluation to Captain (CAPT) W, based on what the applicant called, “Disproportionately low marks for the particular circumstance. The competencies of Military Bearing, Quality of Work, Technical Proficiency, Initiative, Military Readiness, Team Building and Accountability and Responsibility are in dispute and I respectfully request for them to be reviewed.” Within his appeal, which was reviewed several times by his chain of command, the applicant claimed that he had volunteered for his base’s volunteer rescue squad, which was untrue. This appeal was sent back to the applicant for corrections and formatting issues. Specifically, the applicant included in his initial appeal a false statement that he volunteered for a rescue squad during the rating period.

On April 23, 2020, the applicant emailed his CO, LCDR O (LT at the time), and attached his appeal to his enlisted evaluation marks. The applicant stated that he believed his marks were based on an isolated incident and did not fairly represent his performance over the past year.

On April 23, 2020, the applicant’s CO responded to the applicant’s email and highlighted procedural errors with the applicant’s appeal. Specifically, the CO explained to the applicant that his signed counseling report needed to be the first enclosure to the appeal and that the appealed required that the, “Supporting information must include specific examples of demonstrated performance that indicate how the member met or exceeded the written standards.” The CO explained to the applicant that because his appeal was based on incorrect information the applicant needed to specifically identify the incorrect information contained in the evaluation. At the time, the CO stated that he could not discern by the applicant’s appeal what information the applicant was saying was incorrect. The CO invited the applicant to reach out to either himself or the XO if he needed help drafting or completing the appeal.

On April 26, 2020, the applicant resubmitted his enlisted evaluation appeal with the necessary corrections, including removing the false claim that he had volunteered for a local rescue squad.

On May 1, 2020, Rear Admiral (RADM) B denied the applicant’s appeal.⁵

On May 1, 2020, the applicant received a negative Page 7 for failing to tag out an HVAC exhaust fan circuit on April 22, 2020 while replacing the electric fan motor. The applicant’s Commanding Officer (CO), Lieutenant Commander (LCDR) O, stated that as the cutter’s Electrical Safety Officer—the senior EM on board—and the Assistant Engineering Petty Officer, the applicant’s actions showed a lack of regard for established procedures and set a poor leadership example to the EM3 working with the applicant, as well as the rest of the crew. The CO further stated that the applicant’s lack of judgment and carelessness could have resulted in injury or death.

⁵ On August 13, 2024, the Board reached out to Coast Guard Personnel Service Center and requested a copy of RADM B’s memorandum wherein he outlined his reasons for denying the applicant’s NJP appeal. However, the Coast Guard stated they were unable to locate the memorandum issued by RADM B.

On May 6, 2020, the applicant underwent Vacation Proceedings for the suspension of his NJP. The applicant was accused of violating one or more of the conditions of his suspension. The evidence relied upon by the applicant's CO was the applicant's appeal memorandums submitted by the applicant on April 23 and 26, 2020, wherein the applicant falsely claimed to have volunteered for the base's volunteer rescue squad when he had not. The CO accused the applicant of violating Article 107—Making a False Official Statement when, with the intent to deceive, he submitted a record, namely his April 6, 2020 appeal of his evaluation marks, wherein he stated, "I volunteer in the [redacted] Rescue Squad," which had not occurred during the rating period and was known by the applicant to be false.

On May 7, 2020, the President of the rescue squad that the applicant allegedly volunteered with wrote a letter stating the following:

[Applicant] joined the [redacted] Volunteer Rescue Squad March 22, 2018. [Applicant] is currently maintained on our roster as a member and receives electronic notifications of training events and requests for emergency responses.

Our organization does not require minimum attendance to retain membership, however it is difficult to consider [Applicant] an active member, as a check of our records show he has failed to attend any scheduled training events and has not responded to any search operations in 2018, 2019, or 2020.

If you have any questions, please don't hesitate to call.

On May 8, 2020 the applicant's suspended sentence was vacated and he was reduced in rank from E-6 to E-5.

On May 19, 2020, the applicant's CO submitted a memorandum, "Summary of Proceedings," wherein he summarized his discussions with the applicant during the May 6, 2020 proceeding to vacate the applicant's suspended reduction in rank. The content of the memorandum are as follows:

2. I discussed at the hearing that I had been on the fence about suspending your reduction in rank at the original NJP and wanted to give you the benefit of the doubt. We discussed, and you mentioned in your statement, that your performance and actions did not live up to the standard of an E-6 following the NJP. We discussed how the totality of the circumstances, including your integrity issues, specifically involving a false official statement, in violation of Art. 107, UCMJ, and your performance issues, including failing to comply with the tagout program despite serving as the Electrical Safety Officer and your failure to accurately determine the extent of a MCMS alarm degradation, both of which could constitute a negligent dereliction of duty, in violation of Art. 92(3), UCMJ, ultimately led me to vacate your suspended sentence.

3. I told you that there were numerous examples in the past month where you either spun the truth, told me only part of the story, or seemingly gave a snap false answer to paint yourself in the best possible light. I explained that some of these weren't necessarily outright false hoods, but even the statements that were in a grey area continued a disturbing trend of bending the truth for your advantage and furthered my loss of trust in you. Your false official statement about volunteering in the [redacted] Volunteer Rescue Squad was an example of this integrity trend, is a UCMJ offense, and was especially troubling to me because you passed up multiple opportunities to correct the statement (just like at the original NJP) before being told you needed remove it by Master Chief [D].

4. During the proceeding you expressed remorse, acknowledged your mistakes, and took responsibility for your actions. I acknowledged this change in your outlook and expressed disappointment that this change had

not occurred after the first NJP. I also explained that even if you were ready to change, your actions still had consequences, particularly when I had already given you the benefit of the doubt previously. I encouraged you to learn from these events and be very aware of your word choice and presentation of yourself moving forward. I also expressed a belief that you could make the needed changes this time around to remain a valuable member of the Coast Guard and hoped that you would recover from these events. I also told you that I thought you needed to prove to yourself and the Coast Guard that you had actually embodied these changes.

5. I told you during the proceeding that I would ask EPM about the ability to provide input on a re-enlistment waiver for you in the future. I said that if you turned around your integrity issues and were a great performer at your new command, then I would be willing to provide support for a waiver to re-enlist. EPM-1 confirmed that I could provide input on the waiver and that it was not an uncommon practice. If you meet these standards and are interested in having me provide input, please contact me when you are preparing your waiver.

6. I also told you that I would work with Sector [redacted] to see if you could get orders to the [redacted] area since you had recently bought a house there with a VA loan relying on previous orders. I explained that this decision was ultimately up to EPM and that there was no guarantee of success, but that I would work with Sector to advocate for you. We have followed through on this promise, and both several members of the Sector command staff and I have spent a significant amount of time advocating on your behalf.

APPLICANT'S ALLEGATIONS

The applicant alleged that between March 2020 and May 2020 there was a trend of seclusion and favoritism from senior leadership that promoted retaliation against him. The applicant claimed that there were errors in the Continuation Sheet (CG-4910) that were changed after his NJP. The applicant further alleged that he was charged with UCMJ violations that did not accurately depict his CO's accusations.

Allegations of Erroneous UCMJ Violations

Regarding the claim that he "willfully failed to report incorrect information on his Personal Data Extract," the applicant explained that on October 3, 2019 he contacted a unit administrator, YN1 P, over the phone and discussed with her the fact that he noticed that an award listed in Direct Access was a Commendation Medal, but the citation he actually received was an Achievement Medal. According to the applicant, he told YN1 P that he was unsure of which award took precedence. The applicant claimed that YN1 P told him that she would look into the issue, and make any necessary corrections and contact him if additional information was needed. The applicant alleged that after he spoke with YN 1 P over the phone, he sent a follow up email wherein he reiterated the difference in awards and requested guidance on how to proceed. However, the applicant stated that unbeknownst to him, he was actually sending YN1 P encrypted emails.⁶ The applicant claimed that he sent nineteen different encrypted emails to several individuals, including the one sent to YN1 P, which led to YN1 P being unable to read his email.

The applicant explained that he assumed that the award discrepancies discussed with YN1 P had been corrected and decided to wear the Coast Guard Commendation Medal believing it to

⁶ According to Microsoft Support, for users of Outlook 2019, to encrypt a message one would have to go to the File folder, click on Properties, then click on Security Settings and specifically choose to encrypt an email message. The applicant had to have deliberately encrypted the email to the Yeoman, it was not something that could have been done inadvertently.

be authorized. The applicant argued that categorizing his actions in the Article 92 as “willful” was erroneous and inaccurate and should be dismissed.

Regarding the claims that the applicant “wrongfully, without authority, wear upon his uniform the ribbon representing the Coast Guard Commendation Medal,” the applicant stated that upon leaving his previous unit, no citation award was presented to him. The applicant claimed that it was not until several months later that an award was given to him but he never validated the level of award, which was submitted into Direct Access on July 24, 2018. The applicant alleged that during the investigation conducted by the IO, he told the IO that he was unsure of which award superseded the other, knowing that his Engineering Petty Officer on his previous cutter recommended a Coast Guard Commendation Medal and that Direct Access also reflected a Commendation Medal. The applicant claimed that this was in addition to having previously reached out to administration. The applicant again claimed that he assumed that any such errors had been corrected. The applicant explained that at the Chief Petty Officer Academy, he wore the Coast Guard Commendation Medal with his uniform after verifying that it was authorized as per his Member Information Page in Direct Access.

Finally, regarding the claim that the applicant falsified his Warrant Officer application by claiming to have received a Coast Guard Commendation Medal, the applicant claimed that prior to applying for Chief Warrant Officer in December 2019 he reviewed the eligibility requirements in both the Appointing Warrant Officers Manual and the Active Duty CWO appointments guide, verifying that he was eligible to apply. The applicant explained that ALCOAST 122/19 stated that Personal Data Extracts (PDE) should be verified by January 3, 2020. The applicant alleged that he verified his Warrant Personal Data Extract (PDE) and warrant profile letter and found no discrepancies. The applicant contended that he had no intent to deceive the panel. The applicant explained that on January 24, 2020 his CO, LCDR O, endorsed his application to Chief Warrant Officer in Direct Access. The applicant argued that the pen and ink changes made by LCDR O to the CG-4910 continuation sheet, after his NJP, indicating that the charge was meant to be for the applicant’s application for the Enlisted Marine Inspector Program (EMIPT) instead of the application for appointment as a Warrant Officer. The applicant noted that the date was also changed from April 2019 when I applied for Warrant Officer, to October 2019 when he applied to the EMITP. The applicant claimed that these changes were corrected only after NJP and he received no documentation prior to the proceedings. The applicant claimed that this punitive error would have resulted in a lesser punishment and should therefore be dismissed.

Allegations of Reprisal

The applicant alleged that on March 7, 2020 a conversation took place between himself and MKCS L who was the Engineering Petty Officer of the cutter. The applicant claimed that the level of his departing award was discussed and MKCS L made a statement suggesting that the applicant knew he did not receive a Coast Guard Commendation Medal and it was a known error. However, according to the applicant, the conversation was focused more on the irregularity between the awards, and they deliberated about the inconsistency in Direct Access, and whether it was an error or not. The applicant alleged that they also discussed the phone conversation and email between himself and YN1 P to correct any discrepancies in the applicant’s record. The

applicant claimed that he told MKCS L that he was under the impression that any possible errors had already been corrected.

The applicant alleged that following the initiation of the investigation into his erroneous wearing of the Commendation Medal, he reached out to the Silver Badge, Senior Chief D, several times for guidance about his concerns.

The applicant alleged that his NJP proceedings were “open door” while all crew members were on liberty, but the engineering department was required to attend as per the Engineering Petty Officer MKCS L. The applicant claimed that during his NJP proceedings, MKCS L spoke very negatively about the applicant, stating that the applicant was “selfish and a moderate performer,” which was contrary to his previous evaluations, recommendation for advancement to E-7, and Warrant Officer. The applicant explained that MKCS L’s statements were demoralizing because their prior rapport had been exceptional. The applicant alleged that this began the start of a very strained working relationship and hostile working environment.

The applicant claimed that leading up to his NJP his wife reached out to Work-Life representatives in confidence. During this time, the applicant explained that he requested 13 days of leave but was informed that his leave was denied and only four days would be granted in order to “give someone else the opportunity to take leave the second leg of the patrol.” The applicant claimed that his leave was denied even though no other crew member was scheduled for or requested leave during that period. The applicant stated that he felt his request for leave was denied out of spite. The applicant alleged that he pleaded with LCDR O over the phone to grant him the leave, but was told by LCDR O that he had spoken with the Family Advocacy Specialist, and was informed that the applicant’s “was in a good place,” and that the applicant needed to get underway with the Cutter. The applicant contended that neither his CO nor anyone else should have been able to speak with the Family Advocacy Specialist. In addition, the applicant contended that his CO should not have made a decision based on the mental health of the applicant’s family. The applicant alleged that reasons for denying his leave were unethical and that his command’s behavior was a violation of work life policy. The applicant alleged that he contacted the representative’s supervisor, and was told that the individual was new and had made mistakes by divulging information to his command but insisted that the issue would not happen again.

The applicant claimed that he was in constant communication with his incoming replacement, and that he submitted a realistic PCS departing worksheet to allow for a seamless transition for the unit. The applicant alleged that his communication with his replacement triggered a negative “trend” with the command, who deliberately avoided signing the PCS departing worksheet in order for him to depart. The applicant further alleged that around the same time, he was removed from all the group engineering text messages, which furthered his isolation from MKCS L and the engineering department.

The applicant claimed that after he contested his marks on disciplinary enlisted evaluation, the conversation about his low marks noticeably agitated his CO and MKCS L, which only intensified their discontent toward him.

The applicant claimed that after he sent his April 10, 2020 NJP appeal through his chain of command, it only intensified a hostile climate. The applicant alleged that MKCS L told him “This was a blind side; you needed [sic] let me know!” The applicant explained that as stated during the NJP proceedings, it was within his right to appeal and he did not feel like he was doing anything wrong by appealing the decision. According to the applicant, his actions, though justified, increased his command’s resentment toward him.

The applicant claimed that following his evaluation appeal, his command recognized errors in the NJP and informed him that corrections were made to the CG-4910 Continuation Sheet and that he needed to back date his signature of acknowledgement. The applicant alleged that he explained to the Executive Officer, LTJG M that he did not want to sign the new Continuation Sheet because he was not properly informed of the noted changes that had been made. The applicant claimed that this angered both his CO and XO and only embolden their desire revenge. In the end, the applicant alleged that his CO made changes and he reluctantly signed and dated that he had “reviewed the changes made on 15Apr2020.” The applicant alleged that his decision irritated his command and having to explain the corrective actions to their supervisors fueled his command’s retaliation against him.

The applicant explained that he replaced a fan motor without attaching a Danger Tag on it. He further explained that the circuit breaker was in the off/secured position and located within a locked cabinet 6 feet away. The applicant stated that during this time he and his subordinate, an EM3, verified that power was secured to the motor, prior to any work being performed and that the area was not left unattended. The applicant alleged that this was common practice and had been completed hundreds of times throughout the engineering department without attaching a Danger Tag. The applicant argued that pursuant to the EPO’s instruction, engineers should use their best judgement when deciding to use a Danger Tag or not. The applicant contended that all the engineers that were onboard witnessed the replacement of the fan and nobody, including MKCS L and MKC S said anything and never recommended attaching a Danger tag. The applicant claimed that instead, they told him to “Hurry up, your [sic] holding up everyone's liberty.”

The applicant claimed that after he submitted his first evaluation appeal with supporting documentation in order to raise my significantly low evaluations, MKCS L’s anger towards him intensified. According to the applicant, when he and MKCS L spoke about the basis of his appeal, he got noticeably irritated, and the conversation was abruptly ended.

The applicant claimed that after numerous conversations that he had with the Silver Badge⁷ Master Chief D seemed to be not improving the threats onboard, Master Chief D suggested that the applicant speak to the Gold Badge⁸ Master Chief S. The applicant stated that he sent the Gold Badge an email to discuss his situation and possible resolutions. The applicant alleged that he was

⁷ By position and title the billeted Silver Badge shall be considered the senior most “Chief” in that pay grade at their unit and at units falling under their AOR, regardless of time in service or time in grade. They work outside the chain of command, report directly to and advise/consult with their commander/commanding officer, and are responsible for assisting the command and subordinate commands in maintaining readiness, managing leadership training opportunities, and promoting professional development.

⁸ Gold Badge Command Master Chiefs are E-9s and report directly to their respective commander. The Gold Badge shall be considered the senior most “Chief” in that paygrade in their AOR, regardless of time in service or grade.

exposed to physiological torment that had him fearful to go work every day and concerned that his command was going to move forward with additional punishments.

The applicant stated that he received, but refused to sign a negative Page 7 for neglecting to place a Danger tag on the fan motor while replacing it. The applicant claimed that he was singled out, held to an underserved standard, and that his command's actions were vindictive. The applicant alleged that this was immediately after his command learned that the applicant had reached out to the Gold Badge making the Page 7 retaliatory. The applicant contended that he did not receive the negative Page 7 until April 28, 2020, but he spoke to the Gold Badge on April 24, 2020. The applicant claimed that the Gold Badge advised him not to appeal his marks and to play the long game. Heeding his advice, the applicant claimed that he immediately drove to the cutter and spoke directly his CO and XO and apologized. The applicant alleged that he informed them that he wanted to revoke his evaluation appeal, but his CO stated that the applicant still need to send the appropriate paperwork through the chain of command like a normal appeal. The applicant stated that his CO told the applicant that once he received all of the supporting documentation, he would change any particular mark he deemed appropriate and only then would he afford the applicant the opportunity to appeal the revised evaluations. The applicant claimed that he reiterated to both the CO and XO that he did not want to appeal the evaluation, but both insisted that he was required to, so he complied.

The applicant stated that he submitted his second evaluation appeal and included a bullet under Military Bearing that read "I volunteer in the [redacted] Volunteer Rescue Squad, a nonprofit organization who assists in the search and rescue of hurt, lost or missing people in the community." The applicant claimed that when he used the term "volunteer" he used it in comparison to other verbs he had used in past tense such as "volunteered," "diagnosed," "stayed," and "troubleshooter." He contended that he did not deceive anyone. According to the applicant, he was conveying to his command that he was part of the rescue organization during that marking period, but his CO emailed him and requested that the applicant change the date on the memo submitted.

The applicant explained that he called the Silver Badge again and told him that he was uncomfortable working under his command because he felt they were "trying to bury" him. The applicant stated that he reiterated to the Silver Badge that he still not did not want to appeal his evaluation at which point the Silver Badge allegedly told the applicant that they were looking into his claims of volunteering for the rescue squad. The applicant claimed that they discussed his association with the organization, but decided to remove the particular supporting bullet before the submission deadline. The applicant stated that he also sent a follow up email to the Silver Badge explaining how the negative Page 7 was retaliatory and evidence showing that hundreds of Danger/Caution tags should have been documented, but only 14 tags were completed.

The applicant claimed that he made multiple comments and recommendations to the Engineering Petty Officer, MKCS L regarding the cutter's Tag Out procedures, and he told the applicant and the engineering department to use "your best judgment." The applicant stated that as the Electrical Safety Officer, he ensured that all required documentation was in place for the Tag Out program, that bi-weekly audits were performed, and that all required training for crewmembers were completed pursuant to his responsibilities. The applicant alleged that his email to the Silver Badge was routed through the Sector Commander, Captain (CAPT) W, who learned

that the Tag Out program was the responsibility of the CO, LCDR O, which brought negative attention upon him, thereby driving the commands motive for revenge.

Following the email to the Silver Badge, the applicant stated that he submitted his third evaluation appeal revision on time, which did not include any statement claiming that he volunteered for a rescue squad. The applicant claimed that at that point, he and MKCS L chose mainly to email one another in order to avoid any further hostility as their working relationship became increasingly strained. The applicant explained that after a string of emails were sent between him and MKCS L, information that the applicant should have noticed earlier but did not, became clear. He explained that as one of two electricians on board, he should have noticed particular issues onboard the cutter but did not. However, the applicant stated that as the Engineering Petty Officer, MKCS L, in addition to the cutter's MKC and many other numerous watch standers all failed to notice the errors as well. The applicant alleged that not only was he verbally counseled for the errors that had taken place, but was also with threatened with being prosecuted Article 92(3) of the UCMJ. The applicant claimed that these accusations made him nervous around his supervisors and worried to go to work, which he reiterated to the Silver Badge, who put him in contact with the Chaplain.

To support his application, the applicant submitted the following statement from MKCS D who stated that the applicant reported for duty on June 25, 2018 and shortly after the applicant arrived he received a call from the applicant's previous cutter stating they had a departing award for him. MKCS D stated that he could feel that there was some contentious feelings about the timing and circumstances of the applicant's delayed award. According to MKCS D, the applicant stated he did not want to have the award presented by his previous cutter so he and the XO made arrangements to have the applicant's award delivered to his new cutter. MKCS D stated that he did not recall exactly when the award was delivered to the applicant but he believed it was upwards of a month after he first reported. MKCS further stated that he put the award on the applicant's rack when the applicant was away from the cutter.

VIEWS OF THE COAST GUARD

On September 25, 2023, a judge advocate (JAG) of the Coast Guard submitted a memorandum in which he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC) and recommended that the Board deny relief in this case.

PSC argued that the evidence in the applicant's record overwhelmingly supports the finding that the applicant was aware that he was not authorized to wear the Coast Guard Commendation Medal and did so knowingly. PSC further argued that the applicant's command acted correctly in awarding the applicant NJP and the punishment imposed for violations of Articles 92, 106(a) and 107 of the UCMJ. PSC stated that the applicant's appeal was reviewed by RADM B, the District Commander, who found that the NJP followed all policies and denied the applicant's appeal.

Regarding the applicant's disciplinary EER, PSC stated that the EER was triggered by the applicant's NJP and was required by policy and completed in accordance with those policies. PSC argued that the evaluation appeal, submitted by the applicant, was emailed to the applicant's CO,

and nowhere in the applicant's email does he say the appeal is just a "rough draft" in order to give his CO an opportunity to proofread and edit the appeal. PSC further argued that it was the CO that responded to the applicant and pointed out procedural errors in the applicant's submission and then provided the applicant with an opportunity to correct the errors. PSC contended that the applicant's claim that he made no official false statement because his final revised appeal package was not submitted April 30, 2020 is not persuasive. PSC argued that the applicant's CO acted correctly by vacating the applicant's suspended NJP punishment.

PSC further argued that the applicant presented no evidence to back his claims that the NJP would have resulted in lesser punishment had the pen and ink changes on the Continuation Sheet been made prior to the NJP. PSC explained that the handwritten changes serve to clarify the type of Warrant Officer selection board the applicant applied to and the month of the application. According to PSC, these changes were immaterial to the substance of the allegations against the applicant and his assertions of reduced punishment are purely speculative.

Regarding the applicant's negative Page 7 for failing to follow standing orders, PSC stated that the applicant violated the Engineering Officer's standing orders when not using the correct tag out procedure and therefore the CO acted correctly in issuing the applicant a negative Page 7. PSC argued that the applicant provided no evidence to support a claim that this Page 7 was retaliatory. For the reasons outline above, PSC recommended that the Board deny the applicant's request for relief.

To support its application, PSC submitted two sworn declarations from the applicant's CO and the YN1 that the applicant allegedly spoke to regarding his erroneous Commendation award:

- I, LCDR [O], United States Coast Guard, declare as follows, pursuant to Title 28 United States Code § 1746:
 1. I am currently the Sector Intelligence Officer for Sector [redacted] and was the Commanding Officer of [cutter] at the time of the incidents in question.
 2. I was EM1 [Applicant's] Commanding Officer on [cutter] during the time of the incidents in question. I held this position from June 2018 until July 2020.
 3. Question: *EM1 [Applicant] received a negative CG-3307 signed by you dtd 23APR2020. He claims to have been presented/counseled on this CG-3307 on 28APR2020. Do you remember why there was a delay? He alleges the CG-3307 was issued in retaliation to his outreach to the District CMC. Could you please address this allegation? Address the validity of the two negative CG-3307's issued 23 Apr and 01 May 2020 based on your recollection of the EPO's standing orders.*

Response: I do not recall when the counseling for the 3307 I signed on 23 April 2020 took place. 28 April 2020 very well might have been the counseling date, but if so, I don't recall the circumstances that resulted in the delay. The 3307 was drafted because EPO (MKCS [L]) discovered EM1 [Applicant] and EM3 [W] actively replacing an HVAC exhaust fan even though the electrical circuit was not properly tagged out as required by EPO standing orders, COMDTINST 9077.1D, and CGTTP 4-07.1. As the Electrical Safety Officer and Tag Out Log Administrator, EM1 [Applicant] was responsible for the tag out program and should have been leading the crew and his subordinate by example. The fact that EM1 [Applicant] reached out to the District CMC did not factor into my decision to issue a negative 3307. Members from across the crew regularly talked with our Sector Silver Badge (CMC [D]) and had free reign to do so at any time. The crew did not interact with the District CMC as frequently due to us being a Sector asset, but I had no issues with the crew reaching out to him.

According to notes I wrote my boss at the time (CDR [H]) of this incident, during the initial counseling session for the 3307 dated 23 April 2020, EM1 [Applicant] felt that the electrical safety/tag out program was not in compliance with policy and believed there were unclear expectations for when the tag out program needed to be used. I told EM1 [Applicant] that I would investigate these allegations and get back to him prior to deciding whether to proceed with issuing him a negative 3307. I tasked EPO to look into the tag out program and address any issues he found. Additionally, I had EPO check to see if any of the other engineers onboard were confused about the tag out policy. After checking with them, he stated that the other engineers were not confused about when the tag out policy was required. I then checked with the MKC in charge of the [redacted] Maintenance Assist Team to get an outside opinion. MKC told me that his team understood our cutter policy and knew that tag out procedures had to be followed. After looking into these issues, I determined that a negative 3307 was still warranted for EM1 [Applicant] in this situation. I worked with XO and EPO to revise the language slightly and signed an updated negative 3307 on 01 May 2020. EM1 [Applicant] was counseled on this 3307 and signed the document. I was not able to find a copy of EPO's Standing Orders in my files from this period. The current CO (LT [M]) submitted the EPO standing orders that went into effect after my change of command. Although I can't attest that these EPO Standing Orders are identical to those in effect when this incident occurred, the Equipment Tag-out Procedure section is essentially the same as what I remember the EPO Standing Orders being.

Question: EM1 [Applicant] claims approval of his PCS Departing Worksheet was unduly delayed. Could you please address this allegation?

Response: I could not find copies of EM1 [Applicant's] PCS departing worksheet, but it may have been Base [redacted] that processed his final departing worksheet. I don't perfectly recall all the details surrounding EM1 [Applicant's] departure, but to the best of my memory, this is what happened. In the late winter (before the incidents that led to the NJP or negative 3307), I told the department heads and crew that my expectation was that most if not all of the current crew would go on our mid-May to mid-June out of AOR patrol. If there was an operational need for our PCSing members to report to their new unit before then, we would need to discuss on a case-by-case basis. On this deployment, we were scheduled to patrol out to remote sections of the [redacted] and be the first FRC to patrol the [redacted] and [redacted]. Due to the extreme distance and lack of support in these areas, I felt it was necessary to keep as experienced of a crew together as possible. Sometime after the NJP, EM1 [Applicant] complained to me that he felt EPO was out to get him. I believe one of the issues he mentioned was that EPO would not approve his PCS departure for before the May/June patrol. I reiterated my expectation that the entire crew would go on that patrol unless there was a very strong operational need at the gaining command. Following my decision to vacate the suspended punishment on 8 May 2020, the cutter and Sector commands (XO, EPO, Silver Badge, and Sector Commander) discussed what the best course of action was regarding EM2 (at that time) [Applicant]. Due to my lack of trust in him and hostile relationships between EM2 and the EPO/crew/command, we decided that the best course of action for the member and the cutter was to get EM2 [Applicant] off the cutter so he could have a chance at a fresh start. He was transferred to Base [redacted] and did not sail on our patrol. I believe that Base [redacted] processed his PCS request at that point, but I don't know that for a fact.

****Note for the Board**:** It bothers me that EM1 [Applicant] is asking to remove the NJP from his record by saying that the negative 3307 was issued in retaliation and the vacating of his suspended punishment was based off false statements he made in "drafts." I fully support a member's right to appeal proceedings as allowed by Coast Guard regulations, but this very much seems like a continuation of EM1 [Applicant's] abdication of responsibility and integrity issues that resulted in the NJP in the first place. During my hearing to determine whether I would vacate the suspended punishment, EM1 [Applicant] assured me that he had changed and now took responsibility for his actions. This challenge of his record makes me question whether he was sincere when he said that. As laid out above, the negative 3307 was not issued in retaliation for reaching out to the District CMC and the reasons for issuing the 3307 were carefully considered and explained to EM1 [Applicant]. The false statement he put into his appeals was not contained in draft copies – it was routed and signed by EM1 [Applicant] as the official appeal to his marks. His initial appeal (23 April 2020) had administrative errors and was returned to him for correction. Before he submitted an update on 26 April 2020, EPO specifically discussed the false statement with EM1 [Applicant], but EM1 [Applicant] did not remove or change the statement before submitting the update. After receiving the updated appeal, I once again gave EM1 [Applicant] a chance to correct the false statement and asked him if all the statements were

true and occurred during the marking period. He told me they were. It was not until the Sector Silver Badge essentially told EM1 [Applicant] that he had to take the false statement out that he acted and submitted a 3rd version of the appeal on 29 April 2020. By this point I was already considering how to handle the situation, and I felt that EM1's actions were too little too late to avoid investigating further and potentially holding a hearing to consider vacating the suspended punishment. The other discipline issues we had with EM1 [Applicant] as documented in the negative 3307 and in my memo dated 19 May 2020 to EM1 [Applicant] reinforced this decision for me.

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

Executed this ninth day of June, 2023.

- I, YN1 [P], United States Coast Guard, declare as follows, pursuant to Title 28 United States Code § 1746:

1. I was fulfilling administrative duties at Sector [redacted] during the time frame EM1 [Applicant] was attached to the [cutter].

2. I was an admin supervisor with 02 third class yeoman and reported to 01 YNC within the office.

3. Unfortunately, I do not recall a conversation or email regarding correcting an award. Per email from 02 April 2020, I stated that I cannot definitively say yes or no whether EM1 [Applicant] and I had a conversation about updating an award in Direct Access. My biggest recollection at that point in time was his engagement to get the EI-PDR updated.

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

Executed this 07th day of June 2023.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 6, 2023, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. As of the date of this decision, no response has been received.

APPLICABLE LAW AND POLICY

The Coast Guard's Enlistments, Evaluations, and Advancements Manual, COMDTINST M1000.2B, provides the following guidance on eligibility for advancement:

3.A.4. Responsibilities.

a. **The Member.** The member is solely responsible to ensure their eligibility in all respects for the SWE by verifying the accuracy of all Personnel Data Extract (PDE) information. Report any PDE discrepancies to your administrative office or SPO. The member must ensure corrective action was taken by verifying the online PDE reflects a status of "eligible". If the online PDE has not been corrected, contact PPC (ADV) prior to the PDE correction deadline listed in the ALCGENL or ALCGRSV SWE announcement. If, through administrative error, a member is deprived of the opportunity to compete in the scheduled SWE, a substitute examination may be requested from Commanding Officer (CG PPC).

b. **Commanding Officers/Officers in Charge.** CO/OICs are responsible for the execution of the advancement program. Failure to properly discharge this responsibility reflects adversely on

command performance. CO/OICs are responsible for the timely evaluation of assigned active duty, SELRES, and IRR members on active duty or approved for drill for points, submitting recommendations, and coordinating with examining boards as necessary to ensure that every eligible and recommended candidate for advancement has an opportunity to compete. The following subparagraphs briefly outline these responsibilities' various elements, which are fully amplified elsewhere in this chapter and Article 3.B. of this Manual.

...

3. The Advancement Recommendation. The CO/OICs recommendation for advancement is the most important eligibility requirement in the Coast Guard advancement system. Although minimum performance factors have been prescribed to maintain overall consistency for participation in SWE, the CO/OIC will be personally satisfied that the member's overall performance in each factor has been sufficiently strong to earn the recommendation. Before providing an advancement recommendation, the CO/OIC will review the policy governing the advancement recommendation in Article 4.D.3. of this Manual which also provides guidance on when an advancement recommendation should be withdrawn.

Note: The commanding officer's recommendation or change in rating by participation in the SWE is valid only for a specific competition and must be renewed for each succeeding competition. To be valid for the SWE, the recommendation must be on an EER effective dated after the SED of the previous SWE cycle and on or before the SED of the current SWE cycle. The commanding Officer's recommendation for advancement must be maintained from the recommendation date up to the advancement date. Personnel failing to maintain the CO's recommendation for this period shall be invalidated from the Servicewide Exam(s) in which they participated. Personnel who have been invalidated must be recommended and qualify again through a new SWE competition.

4. Mandatory Removal of Recommendation of Ready. An advancement recommendation of ready must be removed for members who receive an unsatisfactory conduct mark, NJP punishment, a court-martial conviction, or a civil conviction. When applicable, notify Commanding Officer, CG PPC (ADV) to invalidate the recommendation for advancement of the candidate.

...

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record. The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

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

3. The applicant alleged that his Non-Judicial Punishment, reduction in rate, removal from the E-7 advancement list, and a negative Page 7 were erroneous and unjust. He has asked the Board to remove the NJP and negative Page 7 from his record and retroactively advance him to E-7. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in the military record, and the applicant bears the burden of proving, by a preponderance of the evidence, that the disputed information is erroneous or unjust.⁹ 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."¹⁰

4. Background. The Board's review of the record shows that on February 28, 2020 the applicant wore an insignia for the Commendation Medal for which he had not been awarded. Although the applicant encrypted the email, the applicant did send an email to his local Yeoman on October 3, 2019 and again on March 9, 2020 notifying her of the error in Direct Access regarding his awards. Despite the applicant's knowledge of the error as early as October 3, 2019, he knowingly wore the Commendation Medal insignia to the Chief Petty Officer's Academy on February 28, 2020. As a result of the applicant's conduct, his CO initiated an administrative investigation into the applicant's unlawful wearing of the Commendation Medal insignia. The IO submitted his report wherein he found that the applicant willingly participated in the May 2019 SWE with an unverified or fraudulent PDE which meant the applicant received the benefit of two award points instead of one during the advancement period. He also found that the applicant wore the Commendation Medal insignia despite knowing he had not been awarded the award. It was the IO's opinion that the applicant displayed a severe lack of integrity. According to the IO, "a member of the United States Coast Guard does not make it to E-7 only to claim ignorance for which medal was awarded and which medal you wear." After the IO issued his report, the applicant's CO notified the applicant on April 3, 2020 that the applicant would be sent to Captain's Mast. Upon the conclusion of the Captain's Mast, the applicant's CO found him guilty of violating Articles 92, 106(a), and 107 of the UCMJ. The applicant appealed his punishment to RADM B, but his appeal was denied.

5. Non-Judicial Punishment. The applicant has alleged that his NJP was erroneous because the Continuation Sheet was changed after his NJP and because the articles he was accused of violating do not accurately reflect the CO's accusations. For the following reasons the Board disagrees:

- a. Violation of Article 92 – Willful Dereliction of Duty. The applicant claimed that because he reached out to his local Yeoman on October 3, 2019 and informed her of the error in his record, this charge is erroneous. However, other than the applicant's contentions he submitted no evidence to support a finding that he did not willfully present his record to the 2019 SWE panel with erroneous information contained in the file. Article 3.A.4.a. of the Enlistments, Evaluations, and Advancements Manual, COMDTINST M1000.2B, states that the member is solely responsible to ensure their eligibility in all respects for the SWE by verifying the accuracy of all Personnel Data Extract (PDE) information. This same

⁹ 33 C.F.R. § 52.24(b).

¹⁰ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

article puts the service member on notice that he is to report any PDE discrepancies to his/her administrative office or SPO. The annual verification deadline for Chief is February 1 of the SWE year. Here, that means that the applicant was required to verify his PDE before February 1, 2019. The applicant provided no evidence that he took appropriate actions to verify his PDE meaning the applicant either failed to fulfill his required duties or he knowingly submitted an erroneous PDE to the EMC selection panel in order to gain the benefit from the more prestigious award. In either case, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that he did not willfully submit an erroneous PDE to the 2019 EMC SWE selection panel.

- b. Violation of Article 106(a) – Wearing Unauthorized Ribbon. The applicant alleged that he did not violate Article 106(a) because he did not knowingly wear an award that he was not authorized to wear. The applicant alleged that while at the Chief Petty Officer Academy, he wore the Coast Guard Commendation Medal with his uniform after verifying that it was authorized as per My Member Information, in Direct Access. According to the applicant he wore the Commendation Medal in February 2020 because he assumed that any discrepancy that he had reported in his record had been corrected and believed the Commendation Medal was authorized. The applicant contended that categorizing his actions as “willful” was erroneous and the charge should be dismissed. However, the Board finds the applicant’s claims unpersuasive. The Board’s review of the record shows that the applicant was at a minimum aware of the error in his record on October 3, 2019, when he first emailed his local Yeoman regarding the erroneous award. Upon learning of the error, the applicant could have taken any number of actions to verify that he was actually awarded the Commendation Medal, such as calling his previous unit and verifying that he had actually been awarded a Commendation Medal. The applicant also could have simply opened the envelope he allegedly never opened and verified that the award was a Commendation Medal. The applicant’s claims that he was unaware of the type of award he received because the award was delivered to him late is also unpersuasive. The personal statement from MKCS D that the applicant submitted in support of his application for relief stated that the applicant received the award approximately a month after he arrived at the cutter, which would have been around the time the award was actually issued. MKCS also stated that the award was left for the applicant on his rack, not hand delivered to the applicant as alleged by the applicant to the IO. The Board finds it unreasonable to accept that the applicant found a sealed envelope on his rack and simply chose not to open it. The record and evidence shows that at a minimum the applicant was aware of the error in October 2019 and still chose to wear the insignia for an award that he was not awarded in February 2020 in violation of Article 106(a). Accordingly, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that his NJP was erroneous or unjust.
- c. Violation of Article 107 – Making a False Official Statement. The applicant alleged that his CO crossed out wording on his Continuation Sheet after his NJP from “Warrant Officer” to “the EMITP.” The applicant claimed the CO also changed “April 2019” to “October 2019.” The applicant claimed that when he applied for Warrant Officer he verified that he was eligible to apply and the deadline to verify his PDE for Warrant Officer was January 3, 2020. Again, the Board is unpersuaded by the applicant’s arguments. Not

only has the applicant failed to submit any corroborating evidence that the disputed changes were made after his NJP proceedings, but he is also neglecting the fact that he did in fact submit an erroneous package for the Coast Guard's prestigious EMITP in October 2019. The record shows that the applicant not once but twice intentionally capitalized on the erroneous award showing in his record. First when he applied for EMC and second when he applied to the EMITP. The fact that the Continuation Sheet was changed from Warrant Officer to EMITP does not negate the fact that the applicant made a false official statement when he signed an official record, namely his application package for EMITP.

Moreover, the CO's mistake in writing Warrant Officer on the Continuation Sheet does not surprise or shock the Board. Prior to 2018, the EMITP program was reserved for Warrant Officers and was a specific Warrant Officer program and application package, so the confusion was understandable. Even PSC stated in its memorandum to this Board that "These handwritten changes serve to clarify the type of Warrant selection board the applicant applied to..." even though the new EMITP application was no longer reserved for Warrant Officers. It is therefore not surprising that the applicant's CO had not yet become fully aware that the EMITP application was no longer a type of Warrant Officer application but a separate and distinct application. The applicant argued that he submitted an accurate package to the Warrant Officer board, but that fact does not change the outcome of this case and is unpersuasive because the Warrant Officer board does not take awards into consideration during its selection process as supported by the Warrant Officer PDE submitted by the applicant. However, the EMITP does.

Finally, the applicant submitted no corroborating evidence that had the changes occurred before his NJP, it would have resulted in a less severe punishment. The fact remains that the applicant knowingly submitted an application that contained erroneous information that provided the applicant with an advantage over his peers. The applicant's repeated actions of deception—wearing the insignia he knew he had not earned and submitting PDEs that contained an award he had not earned—were not in keeping with the Coast Guard Core Values or the high level of integrity expected of high ranking enlisted members such as Chiefs and EMITPs. Accordingly, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that he was erroneously and unjustly charged with making a false official statement or that his NJP contained material errors.

6. Reduction in Rate. The applicant alleged that the vacation of his suspended reduction in rate was erroneous and unjust. According to the applicant, because his final official enlisted evaluation appeal did not include the false statement, he never actually provided a false statement that he knew to be false. Once again, the Board is unpersuaded by the applicant's arguments. The record shows that on April 23, 2020 the applicant submitted his enlisted evaluation appeal, however, after reviewing the appeal, the applicant's CO sent the appeal back to the applicant because it was not properly formatted. At no time did the applicant indicate that the appeal sent to his CO was a rough draft that needed review. In fact, the applicant's email stated that the attachment was his submission to appeal his set of disciplinary marks. All evidence indicates that the applicant intended for his April 23, 2020 email to be his official appeal, which included false statements that he volunteered for a rescue squad that he never actually volunteered for during that applicable rating period. On the contrary, the letter from the rescue squad's

president stated that the applicant was not even considered an active member because he had failed to attend any search operations during 2018, 2019, or 2020. The applicant knew he had not attended any events for this rescue squad in several years and still claimed to have done so in his official EER appeal. The fact that the applicant ultimately removed the false statement after several admonitions from his command is not evidence that he did not intend to submit a false official statement. The applicant was shown leniency during his NJP proceedings because his CO believed the applicant was sincere in his pursuit to learn from his mistakes, only to turn around and make another misleading or blatantly false statement several weeks later. Accordingly, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that his CO erroneously and unjustly vacated his suspended NJP punishment, specifically, his reduction in rank from E-6 to E-5.

7. Advancement to E-7. The Board's review of the record shows that the applicant participated in the May 2019 SWE for E-7. Pursuant to Coast Guard policy, the applicant was responsible for verifying his PDE prior to the SWE to ensure his record was accurate. The record further shows that the applicant was aware of an erroneous award showing in his record but made no mention of the error, participated in the 2019 SWE and submitted an application package with the erroneous PDE. This error resulted in the applicant receiving an additional point during the examination process. The applicant made the cutoff for advancement to E-7 during this advancement period, however, as a result of the administrative investigation, on April 1, 2020 the applicant's CO withdrew his recommendation for advancement from the applicant by submitting a CO's Change of Recommendation Evaluation. The reason provided by the CO was the CO's loss of confidence in the applicant to adhere to the Coast Guard's Core Values.

Pursuant to the note in Article 3.A.4.b.3. of the Enlistments, Evaluations, and Advancements Manual, COMDTINST M1000.2B, the applicant must maintain his CO's recommendation for advancement from the recommendation date up to the advancement date. The Note in Article 3.A.4.b.3. further states that personnel failing to maintain the CO's recommendation for this period shall be invalidated from the Servicewide Exam(s) in which they participated. Moreover, Article 3.A.4.b.4. of the same Article states, "An advancement recommendation of ready must be removed for members who receive an unsatisfactory conduct mark, NJP punishment, a court-martial conviction, or a civil conviction." Here, not only did the applicant fail to maintain his CO's recommendation for advancement throughout the advancement period, but he was also convicted at Captain's Mast, both of which required that the applicant be removed from the E-7 advancement list. The record shows that the applicant's CO and PSC followed Coast Guard regulations by removing the applicant from the E-7 due to the CO's loss of confidence and the applicant's conviction at NJP. Therefore, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that his removal from the E-7 advancement list was erroneous or unjust or that he is entitled retroactive advancement.

8. Page 7. The applicant alleged that the Page 7 was erroneous and unjust because his command held him to a higher and unfair standard compared to everyone else. The record shows that the applicant was the Electrical Safety Officer for his cutter, which meant he was responsible for ensuring that the "tag out" program for his cutter, meaning it was the applicant's responsibility to ensure that any equipment not working properly was tagged "out of commission." Regarding the Page 7 at issue, the applicant was seen with another EM3 replacing an HVAC exhaust fan without having properly tagged the electrical circuit as "out of commission" as required by EPO

standing orders and Coast Guard regulations. Upon first being alerted to the fact that he was going to be issued a Page 7, the applicant informed his CO that the reason that he did not “tag out” the equipment is because there was confusion regarding the cutter’s “tag out” procedures. According to the applicant, these procedures were not consistently followed amongst the crew and per the EPO’s instructions, engineers should use their best judgment in deciding to use a tag during a repair. The applicant told his CO that these types of repairs had been completed hundreds of times without placing a “tag out” on the equipment.

As a result of this claim, the applicant’s CO had the matter looked in to and discovered that other than the applicant, no other crewmember believed there was a misunderstanding or confusion as to what the cutter’s “tag out” procedures were. Because the applicant was the Tag Out Log Administrator and the Electrical Safety Officer, the applicant’s CO felt the applicant was not being a good leader to his crew and was not leading his subordinates by example, so he issued the applicant a Page 7 for failing to adhere to the cutter and Coast Guard regulations regarding equipment “tag out” procedures. Other than his own statements, the applicant submitted no evidence to support his claims that the Page 7 was issued in retaliation or that the Page 7 was not based on his failure to adhere to cutter and Coast Guard policies. On the contrary, the applicant admitted to not placing a “tag out” on the faulty equipment.

The applicant’s claims that he was held to a higher and unfair standard are also unpersuasive because he was the Tag Out Log Administrator and the Electrical Safety Officer and should have been held to a higher standard than that of an E-3. Given his leadership role aboard the cutter, not to mention the higher leadership role he was seeking in advancing to E-7 and an EMITP, the fact that he may have been held to a higher standard does not shock the sense of justice. As previously stated, the applicant was the cutter’s Electrical Safety Officer and it was his responsibility to ensure that lax standards were not being adopted by the crew, not embrace them as he witnessed them occur. Furthermore, if his statements were true, that the “tag out” policies were not consistently followed, the applicant could have obtained sworn declarations from his crewmembers testifying to that fact, but he did not. The applicant submitted no additional evidence with his application to support his claims. He did state that he provided emails supporting his claims, but those emails were not included in his application to this Board. Accordingly, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that the Page 7 was erroneous or unjust.

9. Retaliation. The applicant alleged that his command retaliated against him after he reached out to the Silver and Gold Badge members of their unit and for reaching out to the work-life center. In support of its memorandum, PSC submitted a sworn declaration from the applicant’s CO wherein the CO stated that members across his unit routinely spoke with the units Silver and Gold Badge enlisted members and had free reign to do so. The Board finds the CO’s statements persuasive. First, the applicant has admitted to the conduct that led to the Page 7 and provided no corroborating evidence that the Page 7 was issued for any other reason than his failure to set an example and follow procedures. Second, the evidence supports the NJP and the punishment that flowed from the NJP. The applicant’s arguments as to why he wore the unauthorized insignia are unpersuasive and not supported by the facts in this case. Finally, the applicant alleged that leading up to his NJP, his wife reached out to the work-life center which in turn notified the applicant’s CO. According to the applicant, his CO retaliated against him for his wife’s contact to the work-life center. However, if the applicant’s CO’s intention was to retaliate against the applicant as

alleged by the applicant, arguably the CO would not have suspended his reduction in rank after the NJP but would have enforced every punishment he was authorized to.

Finally, this Board is not an investigative body and therefore does not have investigatory authority, but instead must rely on the investigations conducted by those vested with such authority. If the applicant believes that retaliation has taken place, he should reach out to the Coast Guard or the Department of Homeland Security's Office of the Inspector General for further investigation.

10. The applicant made varied allegations and arguments regarding the actions and conduct of his command. Those allegations not specifically addressed above are considered to be unsupported by substantial evidence sufficient to overcome the presumption of regularity and/or are not dispositive of the case.¹¹

11. For the reasons outlined above, the applicant has not met his burden, as required by 33 C.F.R. § 52.24(b), to overcome the presumption of regularity afforded the Coast Guard that its administrators acted correctly, lawfully, and in good faith.¹² He has not proven, by a preponderance of the evidence, that his NJP, removal from the E-7 advancement list, and Page 7 were erroneous or unjust. Therefore, his request for relief is denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

¹¹ 33 C.F.R. § 52.24(b); *see Frizelle v. Slater*, 111 F.3d 172, 177 (D.C. Cir. 1997) (noting that the Board need not address arguments that “appear frivolous on their face and could [not] affect the Board's ultimate disposition”).

¹² *Muse v. United States*, 21 Cl. Ct. 592, 600 (1990) (internal citations omitted).

ORDER

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

September 19, 2024

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