

DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS

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Application for Correction  
of Coast Guard Record of:

BCMR Docket  
No. 68-97

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**FINAL DECISION**

█ Chairman:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on February 11, 1997 upon the BCMR's receipt of the applicant's request for correction of his military record.

This final decision, dated February 26, 1998, is signed by the three duly appointed members who were designated to serve as the Board in this case.

**Applicant's Request for Relief**

The applicant asked the Board to "repeal" the nonjudicial punishment (NJP) awarded him on February 5, 1994 and to correct the resulting progression of penalties against him. He swore that he was innocent of all the charges that were awarded against him on that date.

The applicant alleged that he never had an opportunity to present his defense to the charges against him, and he said that the NJP proceeding was "biased."

The applicant said that he enclosed statements by other persons that tended to exonerate him. He alleged that these statements were provided late because these witnesses were under imminent fear of command reprisal. He alleged that witnesses on his behalf were not willing to testify at the most proceeding because of fear of retribution.

The applicant devoted several pages to denials of his alleged wrongdoing and to attacking his accuser for promiscuity, fraternization, and unprofessionalism.

The applicant, in the final paragraph of his statement, stated that he has suffered pain, humiliation, and anguish that cannot be undone. He asserted again that he was innocent and deserved reinstatement

**Court Memorandum - February 15, 1994**

According to a court memorandum, the applicant was charged with the following:

The [applicant] made sex[ual] adv[ances] toward ENS [L] by placing her hand on his genital area & attempted to stick his tongue in her mouth & did harass LT JG M. and ENS L to have a drink with him.

His pay grade was reduced to YN2/E-5, and he was advised of his right to appeal the NJP.

**Statements Submitted on Behalf of Applicant**

GM1 (February 4, 1994): Affiant said he exchanged duty with the applicant one week before Christmas 1993.

LTIG N (undated): According to the affiant, the "witch hunt" environment fostered by the Tailhook incident has "carried over to the Coast Guard." He said that he does not know whether or not the applicant committed the alleged offense, but he did think it possible as the accusing witness was "unreliable and untrustworthy." He said that he did not know if there was sexual harassment, but he alleged that the accusing witness is capable of "lying in Captain's Mast."

SSC J (August 11, 1994): "I cannot attest to [the applicant's] guilt or innocent (sic) but I feel he was unfairly treated regarding this matter."

EMC A (undated): "The Captain's Mast was conducted in "total secrecy" and the applicant was not given a fair opportunity to refute the charges against him.

DRL (August 19, 1994): Affiant was applicant's supervisor and department head. He alleged that the character of the accusing witness was "very questionable."

LR (undated): I have watched a hard-working man lose a rank and his dignity for something he wasn't warned of.

PO1 E (May 26, 1994) It saddens me to hear that the applicant's character has to be justified. I have always known [him] to be a professional.

PO3 K (undated): Affiant says that she and the applicant have been alone together. Such circumstances have always been professional and pleasant.

YN3 B (April 28, 1994): Affiant said that the applicant was her supervisor. He was "supportive, encouraging, and outstanding."

HS1 K (May 29, 1994): Affiant said that during a patrol he was told by an individual that the applicant had made advances toward her.

### **Views of the Coast Guard**

On January 8, 1998, the Coast Guard recommended that the applicant's application be denied for failure to prove error or injustice or under the doctrine of laches.

The applicant's commanding officer (CO) determined that the applicant touched an ensign in an inappropriate manner by "placing her hand on his genitals" and by attempting to kiss her. The applicant was awarded nonjudicial punishment (NJP). He received a reduction in pay grade from paygrade E-6 to E-5. The Commander of the Atlantic area upheld the NJP.

The Coast Guard said that the CO's decision should be upheld absent proof that such determinations were clearly erroneous, or that a substantial right of the applicant was materially prejudiced by clear material error. There was no such showing in this case.

The Coast Guard said that most of the issues raised by the applicant were raised in his appeal of NJP and were found by the Commander to be without merit. The Service also said that the applicant had no authority to privately investigate "the backgrounds of his alleged victims."

The Coast Guard noted that his NJP appeal was denied on March 7, 1994, but that his BCMR application was not commenced until almost three years later, on February 11, 1997. The Coast Guard alleged that this delay caused it to suffer substantial prejudice.

### **FINDINGS AND CONCLUSIONS**

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

1. The BCMR has jurisdiction of the case pursuant to section 1552 of title 10, United States Code. The application is timely.

2. The application is not barred by three-year statute of limitations because it was received in two years and 11 months. It was thus received timely by the BCMR. The Coast Guard asked that the case be denied on the ground of the equitable doctrine of laches. The Service argued that it "suffered substantial prejudice" because of the applicant's delay. The defense of laches is only available if specific indications of hardship are shown.

3. In February, 1994, the applicant was brought before a Captain's Mast and was awarded non-judicial punishment for sexual harassment. The applicant was then advised of his right to appeal an NJP. He appealed his NJP on February 7, 1994, but the issues raised by him were found by the Commander, Atlantic Area, to be without merit. The appeal was decided on March 7, 1994.

4. The applicant alleged that he did not have a fair chance to present his defense, but he did not allege that the substantive rights guaranteed by the 1995 edition of the Manual for Courts-Martial (MCM) had been violated.

5. The applicant submitted 11 statements by members of the Coast Guard in support of the applicant's character. One of the statements alleged that a similar complaint had been made against him, and several by women petty officers said he had not sexually harassed them. None of the statements declared that he was not guilty of sexual harassment, but many declared that the complaining witness was a bad person. None of the statements asserted that the witnesses withheld giving statements because of "fear of command reprisal." Most of the statements were undated or dated after the date of the mast.

6. None of the statements submitted by the applicants show that the NJP was unjust or disproportionate.

7. The applicant has not established an error or injustice on the part of the Coast Guard.

8. The application, accordingly, should be denied.

**ORDER**

The application of  
correction of his military record is denied.

USCG, for the

