

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-068



FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. After receiving the applicant's completed application on February 26, 2016, the Chair docketed the case and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated February 3, 2017, 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 [REDACTED] asked the Board to remove from her record a CG-3307 Administrative Remarks form ("Page 7")¹ dated May 12, 2014, on which she was counseled by the District Commander about misusing her Government Travel Charge Card (GTCC) for unauthorized purchases totaling \$478.63 when she was the head of a Sector Response Department. She also asked the Board to remove her non-selections² for promotion to commander (CDR) in 2015 and 2016, which she alleged were caused by the disputed Page 7.

The applicant alleged that the Page 7 was prepared as a result of a "flawed investigation" that improperly included a recommendation that she be counseled about misusing her GTCC. She explained that her commanding officer (CO), the Sector Commander, was relieved for cause in 2014. Pursuant to the relief process, the District conducted an investigation of the command climate at the Sector. The applicant was not the subject of the investigation but she was interviewed by the investigating officer (IO), a captain, as a witness, and he asked her specific questions concerning allegations that she had misused her GTCC without informing her of her rights under Article 31(b) of the Uniform Code of Military Justice (UCMJ). The IO included her

¹ A Page 7 (CG-3307, or Administrative Remarks) entry documents any counseling that is provided to a service member as well as any other noteworthy events that occur during that member's military career.

² The applicant only mentioned her non-selection in 2015 and asked the Board to expedite its decision before the CDR selection board convened in 2016. The applicant was not selected for promotion in 2016, and so the Board interprets her application as a request to remove both non-selections.

response in his Report of the Investigation (ROI) and recommended in the ROI that she be counseled about her GTCC misuse on a Page 7. The applicant argued that the recommendation was improper because the IO failed to cite any Findings of Fact or Opinions in the ROI as supporting this recommendation, which is required for ROIs pursuant to policy on page 5-9 of the Administrative Investigations Manual (AIM), COMDTINST M5830.1A.

The applicant argued that the Page 7 should be removed from her record because the IO failed to inform her of her rights and failed to include the required citations in recommending that she be counseled on a Page 7.

In addition, the applicant argued, the Page 7 was improper because her misuse of her GTCC was unintentional. The applicant cited Article 5.a.(2) of the Coast Guard's GTCC Policy Instruction, COMDTINST 4600.14C, which states that "intentional use of a [GTCC] for other than official government business while on approved official travel is prohibited and punishable under Article 92 of the UCMJ and may result in other administrative, disciplinary, or adverse action." Therefore, she argued, she should not have received a Page 7 for her unintentional misuse of her GTCC. She noted that in denying her request to remove the Page 7, the District Commander acknowledged that her misuse was unintentional by noting that she had repeatedly claimed that her use of her "GTCC for unofficial purposes was an unintentional mistake. I have seen no evidence to the contrary, and the IO did not report any evidence to the contrary." However, the District Commander nonetheless denied her request to remove the Page 7, finding that the punitive provisions of the GTCC Instruction were inapplicable to unintentional misuse of a GTCC and that because she was not charged with intentional misuse—a violation of the UCMJ—no Article 31(b) rights advisement was required. The applicant argued that this reasoning is flawed because it assumes that the IO could know in advance of her interview that her misuse of the GTCC was unintentional and because the IO would not have asked her about her GTCC use if the IO did not suspect her of intentionally misusing the GTCC. The applicant concluded that the Page 7 is erroneous and unjust because she was not advised of her Article 31(b) rights and there is no evidence that she intentionally misused her GTCC.

The applicant claimed that the Page 7 is also erroneous in stating that she had violated Coast Guard policy and a general order in COMDTINST M4600.18, the GTCC Program Manual. She argued that under that policy, unintentional or accidental use of the GTCC is not a violation of the policy or of any general orders. She alleged that the Page 7 misleads a reader to believe that her misuse of the GTCC was both intentional and a violation of policy.

The applicant noted that in denying her request, the District Commander also cited a table of minimum required actions in cases of unauthorized GTCC use. The District Commander noted that her unauthorized use of her GTCC fell into the third, most egregious category because she had charged more than \$300, but that "because no violation of the UCMJ was suspected due to lack of intent, I considered the required actions for the lesser, second category of unauthorized use ... which requires a 'Page 7 Entry'."

The applicant complained that the table refers to "unauthorized use," but this term is not defined in COMDTINST M4600.18, which instead defines "GTCC Misuse" as "[u]se of a [GTCC] for other than official government business while on approved official travel and

depending on the situation, may constitute fraud.” The applicant alleged that this definition of misuse “clearly contemplates an intentional act.” She argued that the use of “unauthorized use,” instead of “misuse” in the title of the table “results in unintentional conduct being punished, administratively or otherwise,” and that punishing unintended misuse is “inconsistent with the Commandant’s overall intent in establishing the guidance for the GTCC program.” In this regard, she noted that Article 5.a.(2) of the GTCC Instruction states that intentional misuse of a GTCC is “punishable under Article 92 of the UCMJ and may result in other administrative, disciplinary, or adverse action, and depending on the situation may constitute fraud.” Therefore, the applicant argued, the application of the table to a member who unintentionally misused her GTCC is unwarranted and unjustified. She claimed that she should not have to suffer any administrative consequence for her unintentional misuse and so the Page 7 should be removed from her record.

The applicant also alleged that her CO, the Sector Commander, had already addressed her misuse of the GTCC two years earlier by counseling her verbally, as proved by an affidavit signed by another officer assigned to the Sector.³ However, she did not receive the Page 7 until her misuse was discovered during the investigation resulting in the CO’s relief for cause. The applicant complained that the Coast Guard has never explained why it waited two years to prepare the Page 7, which it considers to be a routine administrative action.

The applicant stated that upon receiving the Page 7, she first submitted a request for redress from the District Commander, but her request was denied. She then submitted a request for redress from the District Commander’s action to the Area Commander pursuant to Article 138 of the UCMJ, but her request was denied. Then she submitted an application to the Personnel Records Review Board (PRRB), but the PRRB denied her request. The applicant stated that the PRRB ignored her claim that she had not violated general orders by misusing her GTCC and that her unintentional misuse of her GTCC had been admitted by the District Commander. She also claimed that the PRRB applied an “incorrect standard” in stating that she should have known her charges were unauthorized and failed to take corrective action. The applicant stated that policies requiring corrective action apply only to intentional misuse, not unintentional misuse.

The applicant alleged that her non-selections for promotion to CDR should be removed because the erroneous and unjust Page 7 was in her record when it was reviewed by the selection boards and the remainder of her personnel record is exceptionally positive.

The applicant submitted numerous documents to support her claim, the most relevant of which are included in the summary of the record below.

³ In an affidavit dated October 3, 2014, a lieutenant stated that after the District told him in September 2012 that the applicant had unauthorized charges on her GTCC, she told him that she “must have used the wrong card.” Then an officer at the District instructed the command to issue the applicant a Page 7 regarding her misuse of her GTCC. However, the CO stated that a Page 7 would hurt the applicant’s career and instructed another officer to inform the District that the CO would verbally counsel the applicant instead. The lieutenant left the office “with the impression that the issue of [the applicant’s] misuse of the GTCC had been fully resolved by the command.”

SUMMARY OF THE RECORD

Command Climate Investigation

On April 14, 2014, the District Chief of Staff issued a convening order to investigate the command climate at the applicant's Sector. The convening order directed the IO to submit an ROI in the format provided in Article 5.B. of the AIM but noted that the IO could modify the format after consulting the Chief of Staff. The convening order also directed the IO to comply with Article 31 of the UCMJ for anyone suspected of violating the UCMJ and stated that if the IO "discover[s] information that warrants expanding the scope of this investigation, contact [the] assigned legal counsel for guidance. After consulting with [the] assigned counsel, [the IO] may contact me, in writing, with unresolved issues or recommendations that you may have."

The applicant submitted pages 1, 13, 17, and 18 of the ROI dated May 4, 2014. On page 13, under the heading "**GOVERNMENT TRAVEL CHARGE CARD**," the IO reported that the applicant had two misuses of her GTCC following her Sector's Coast Guard Ball on August 4, 2012. Specifically, she had charged \$432 at one local hotel on August 4, 2012, and \$45.73 at another local hotel on August 5, 2012. The applicant had stated that those charges paid for her hotel room and brunch the following morning. A chief yeoman at the Sector's Servicing Personnel Office reported that she had advised the command to issue the applicant a Page 7 in accordance with GTCC policy, but the CO had only verbally counseled her out of concern for her career. A Page 7 had been prepared but the CO had not entered it in her record. However, several months later, the CO had issued a Page 7 to an enlisted member because of overdue payments on his GTCC. The chief yeoman stated that this disparity showed how the command had a "double standard and how relationships (i.e., friendships) could cloud judgment." The chief yeoman stated that the command had one standard for officers and a different standard for enlisted members when interpreting GTCC policy. The IO reported that in October 2012, the District Command had asked the Sector about the "status of action" on the applicant's misuse of her GTCC but received no response. The IO also noted that the applicant had been delinquent in repaying her GTCC six times from March through December 2011. The IO stated that the CO "in hindsight recognizes how her actions or inactions may have impacted the command climate." The CO told the IO that she had intended to hold the applicant accountable for her misuse of her GTCC in the applicant's performance evaluation but admitted that "that never happened."

The IO recommended that the CO and Executive Officer be counseled regarding their failure to uphold GTCC policy and that their conduct be "documented" and that the applicant be referred for alcohol screening and receive a Page 7 "for misuse of the [GTCC] per COMDTINST M4600.18." None of the IO's recommendations are followed by citations to his findings of fact or opinions.

Page 7 and Administrative Letter of Censure

On May 12, 2014, the District Commander entered a Page 7 in the record stating that the report of a preliminary investigating officer dated May 7, 2014, had shown that on two occasions she had used her GTCC for "purchases totaling \$478.63 that were not authorized by an approved set of official travel orders. This is in direct violation of a General Order issued by

[COMDTINST M4600.18 (series)], and your GTCC is closed effective May 8, 2014.” The Page 7 noted that her misuse of her GTCC, which is only for authorized travel-related expenses, brought discredit upon the Service, burdened the command administratively, jeopardized her ability to maintain a security clearance, and could prevent her from being assigned overseas. The Page 7 also noted that misuse of a GTCC may be reflected in performance evaluations and be grounds for discharge.

Also on May 12, 2014, the District Commander gave the applicant a private, non-punitive Administrative Letter of Censure pursuant to Article 1.E.4. of COMDTINST M1600.2. The letter states that the officers and crew at her Sector had reported instances in which she appeared to be “under the influence of alcohol on numerous occasions from August 2012 until April 2014.” They reported that at social events she had had slurred speech and appeared disoriented. She had also had slurred speech “while receiving operational duty calls.” The letter noted that some of these instances could have been caused or exacerbated by medication she was taking. The District Commander stated that there was insufficient information to award the applicant an “alcohol incident” but that the reports were “alarming.” The letter also noted her misuse of her GTCC.

Article 138 Complaint to District Commander

On October 9, 2014, the applicant submitted a request for redress to the District Commander in accordance with Article 138 of the UCMJ. She argued that her CO should not have entered the disputed Page 7 in her record and made many of the same allegations summarized above. She also complained about other matters not presented in her application to the BCMR, including the improper disclosure of an Administrative Letter of Censure she had received from the District Commander. Of note, she complained that she had not been allowed to review the ROI and stated that a preliminary investigation had been initiated “to solely investigate allegations of alcohol abuse/misuse by me,” but the IO asked about the circumstances of her GTCC misuse in August 2012. The IO had asked her if she thought it was fair that she had been verbally counseled about her misuse when enlisted members receive Page 7s under similar circumstances. She stated that the inquiry into her alleged alcohol abuse overlapped with the command climate investigation. She argued that nothing in the convening order for the command climate investigation authorized the IO to investigate her misuse of her GTCC.

The applicant also argued that her CO had properly “exercised her discretion and command authority by making the decision to resort to verbal counseling vice issuing me a [Page 7].” She stated that she had believed the matter was closed after her CO counseled her. She alleged that neither GTCC Instruction—COMDTINST 4600.14C or M4600.18—required her CO to issue her a Page 7, regardless of whether the violation was intentional or not. Therefore, she argued, the District Commander abused her discretion in issuing the applicant a Page 7 about twenty months after the GTCC use had occurred.

The applicant concluded that the District Commander had “initiated multiple administrative investigations as a pretext to create justification for the issuance of both a negative Page 7 as well as a non-punitive, administrative letter of censure, for a matter that had been previously

addressed and appropriately resolved by my former Commanding Officer.” She asked that both be removed from her record.

On November 6, 2014, the District Commander granted some of the relief requested by the applicant but denied her request to remove the Page 7, writing that although the applicant alleged that the IO should have suspected her of a crime and advised her of her Article 31(b) rights, only non-timely payment and intentional use of the GTCC for other than official business were offenses and the applicant had “repeatedly professed and reiterated ... that using [her] GTCC for unofficial purposes was an unintentional mistake. I have seen no evidence to the contrary, and the IO did not report any evidence to the contrary. Issuing [a Page 7] is an administrative function wholly separate from the UCMJ process and is unaffected by any failure to provide Article 31(b) rights warnings.”

The District Commander also stated that issuing a Page 7 was required by the table of “minimum actions required for unauthorized use” in the GTCC Program Manual, M4600.18, and noted that the applicant’s charges technically fell into the most egregious category in that table, based on the total amount of her charges. However, because no UCMJ violation was suspected, he had followed the required actions for the lesser category of unauthorized use, which requires a Page 7. The District Commander noted that Article 5(a)(3) of the GTCC Policy Instruction, COMDTINST 4600.14C, also required the command to take the actions required in the GTCC Program Manual.

Article 138 Complaint to the Area Commander

On January 8, 2015, the applicant submitted a request for redress to the Area Commander, asking that the disputed Page 7 be removed from her record. She disagreed with the District Commander’s claim that an Article 31(b) rights advisement was not required and made some of the same arguments that she made in her BCMR application.

On February 11, 2015, the Area Commander denied the applicant’s request to remove the Page 7 from her record. The Area Commander summarized the applicant’s arguments, found that the Page 7 had been properly issued, and advised her of her right to apply to the PRRB.

Application to the PRRB

On May 11, 2015, the applicant applied to the PRRB for removal of the Page 7. She made arguments that are the same or similar to those she made in her BCMR application.

On June 29, 2015, the PRRB issued a decision denying the applicant’s request. The PRRB noted that “Article 31(b) rights only protect a member from self-incrimination at trial by court-martial, and in a limited capacity at a non-judicial punishment hearing. The [Page 7] was not a result of either, so the rules of evidence regarding UCMJ actions do not apply. The evidence collected as a result of the interview was used to resolve an administrative matter.” The PRRB noted that the applicant’s misuse of her GTCC was already known to the Sector and the District so the Page 7 could have been issued even if she had not been interviewed. The PRRB stated that the Page 7 is administrative in nature, not punitive.

The PRRB sought input from the Coast Guard's GTCC program manager, who in response noted that regardless of the applicant's interview with the IO, the fact that she had misused her GTCC was documented. He also stated that "intent" to misuse may be proved by the member having been trained on GTCC usage; by the language in the cardholder agreement that prohibits personal use; by the fact that the card is clearly marked as a GSA card for "Official Use Only"; and by the member's subsequent conduct—e.g., whether the member self-reported the error, paid the bill without self-reporting, or submitted claims for the unauthorized charges. The program manager concluded that the disputed Page 7 "is proper and the account closure for misuse is justified."

In its decision, the PRRB claimed that the applicant did not dispute the facts of the Page 7 but argued that it was unwarranted because her misuse was unintentional. The PRRB noted that the applicant had completed travel card training "which clearly articulates that use of the GTCC for personal use is prohibited," and the cardholder agreement states that members may only use the card for official travel and travel-related expenses in accordance with agency policy. The PRRB claimed that there was no evidence that the applicant tried to rectify the unauthorized purchases once discovered and that she should have done so.

The PRRB concluded that the applicant had failed to substantiate any error or injustice with regard to the Page 7.

The applicant was not selected for promotion to commander in 2015 or 2016.

VIEWS OF THE COAST GUARD

On July 20, 2016, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC).

PSC summarized the records and argued that the applicant has not shown that the disputed Page 7 is erroneous or unjust. PSC stated that the Page 7 was properly prepared in accordance with COMDTINST 4600.18 and that an Article 31(b) rights advisement "was not required because the evidence obtained to determine her unauthorized GTCC use was not used against her in a trial by court-martial or an NJP hearing." PSC stated that Page 7s are administrative documents and that Article 31(b) does not apply. PSC concluded that neither the Page 7 nor the applicant's non-selections for promotion should be removed.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

The applicant was granted an extension of the thirty-day period for responding to the views of the Coast Guard and submitted her response on September 8, 2016.

The applicant contended that the Page 7 is inappropriate punishment for unintentional conduct. She stated that she had just returned to her Sector after traveling on temporary duty

orders and that she attended the Coast Guard Ball and stayed overnight at the hotel before going to her own home to unpack the next morning. She stated that when checking out of the hotel the next morning, she accidentally used her GTCC to pay for the hotel room and then to pay for her breakfast. She argued that her CO had appropriately handled the matter by verbally counseling her. Moreover, she stated, she was unaware that she had misused her GTCC until it was brought to her attention and she was verbally counseled about it. She had not noticed the charges when she paid the bill. She argued that it was unjust for the District Commander to punish her with the Page 7 two years later.

APPLICABLE LAW AND POLICY

GTCC Program Manual, COMDTINST M4600.18

Chapter 1.A.2. states that the GTCC “shall be used by all non-exempt personnel for all non-exempt Temporary Duty (TDY) travel. In addition, the GTCC may be used by military personnel for Permanent Change of Station (PCS) travel expenses.”

Chapter 1.A.4. states, “Use of the GTCC for an expense that is not directly associated with official government travel in accordance with the JFTR/FTR or non-payment of a GTCC bill by the statement due date are considered misuse. This Manual specifically addresses misuse of the GTCC. The chain of command shall address misuse incidents with due diligence per the requirements of [the GTCC Policy Instruction, COMDTINST 4600.14C and other manuals].”

Chapter 1.A.5.i. defines “GTCC misuse” as using the GTCC “for other than official government business while on approved official travel and depending on the situation, may constitute fraud,” or failure to pay an outstanding balance on time.

Chapter 1.D. prohibits GTCC usage for “local travel” within fifty miles of a member’s permanent duty station, as well as for lodging and eating in the vicinity of the permanent duty station.

Chapter 1.E.3.I. provides that in managing GTCC use, COs and supervisors *shall*—

[e]nsure the appropriate level of action is taken for any GTCC holder identified as not fully complying with the Coast Guard’s GTCC policies and procedures. Specifically, commanding officers shall ensure appropriate administrative and/or disciplinary actions are taken for both categories of misuse per tables 3-1 [which addresses nonpayment] and 3-2 [which addresses unauthorized use]; when accounts are past due and/or when accounts are found to have unauthorized charges. These tables provide the minimum actions to be taken by the chain of command to ensure fair and consistent treatment of GTCC holders. A key element of each counseling session and documentation shall include language that failure to make full payment of any delinquent balances or unauthorized charges will lead to further administrative and/or disciplinary actions. ... For instances where the supervisor initiating the action determines the minimum action required for appropriated fund personnel for misuse is too severe, s/he shall contact CG-1214

who will review all aspects of the incident(s) to determine whether or not a lesser penalty than what this Manual requires is warranted.

Chapter 1.E.4.c. provides that members must, *inter alia*, complete GTCC training before applying for one and every two years thereafter; use the GTCC only when in receipt of travel orders and only for expenses directly related to travel; submit travel vouchers within three business days upon completion of travel;

Table 3-2, titled “Minimum action required for unauthorized GTCC use,” includes the following information:

Number/Total Value of Charges	Military Personnel	Civilian Employees	NAF Employees
Not more than 3 charges or \$100	Documented Counseling	Written Admonishment	Documented Discussion
Not more than 5 charges or \$200 – See note (1)	Page 7 Entry	Letter of Reprimand	Letter of Reprimand
More than 5 charges or \$300 – See note (2)	See note (3)	Suspension	Suspension
<p>Note (1): In addition to the administrative and/or disciplinary action required in Table 3-2, the GTCC account will be closed by the Travel Manager if there are more than three unauthorized charges or if the total unauthorized charges exceed \$100.</p> <p>Note (2): When the misuse is deemed egregious such as using the GTCC for flagrant personal use (i.e. buying plane tickets for family members, hotel rooms on vacation, several transactions for personal use, repeated unauthorized cash advances, etc.), commands shall notify CGIS in reference (o) of this Manual.</p> <p>Note (3): Inquire into UCMJ accountability (PIO, LIR, AIM, etc.) after contacting servicing legal office to discuss most appropriate option.</p>			

GTCC Policy Instruction, COMDTINST 4600.14

Paragraph 5.a. states that a GTCC may be used—

only when in an official travel status (i.e. pursuant to written temporary duty orders, letter orders, or other authorized travel for the conduct of official business and only for expenses that are authorized for reimbursement in accordance with the [JFTR]. ...



(2) Use of a government charge card (CBA or GTCC) for other than official government business expenses for the cardholder as authorized on approved official travel orders is prohibited and is punishable under Article 92 of the UCMJ and may result in other administrative, disciplinary, or adverse action, and depending on the situation may constitute fraud.

(3) Commands shall ensure appropriate administrative, disciplinary and/or adverse action is taken as recommended in Chapter 1, Paragraph E of [the GTCC Program

Manual]. Commands should consult their servicing CG-1214 HR specialist for advice and guidance before taking disciplinary/adverse action against civilian employees.

Paragraph 5.b. states that “[t]he affirmative obligations and prohibitions contained in paragraph 5.a. constitute, with respect to all personnel subject to the UCMJ, a punitive, lawful general order. Failure to comply is punishable under Article 92 of the UCMJ and may result in other adverse administrative or disciplinary action.”

UCMJ

Article 31 of the UCMJ (10 U.S.C. § 831) prohibits “compulsory self-incrimination.” Article 31(b) states, “No person subject to this chapter may interrogate, or request a statement from, an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.”

Article 1.D.1.g. of the Manual for Courts-Martial notes that when punished at mast the “[j]udicial exclusionary rules involving rights warnings and search and seizure do not apply at mast, and the [CO] may consider evidence that would be inadmissible at court-martial. The [CO] should apply a rule of fundamental fairness: under all of the circumstances, is it fair to the member to consider this evidence?”

Administrative Investigation Manual

Page 5-9 of the AIM, which was cited by the applicant, shows a sample ROI. A note states that “[r]ecommendations must be supported by facts and may also flow from relevant opinions as well.” It shows the following format for the “Recommendations” section of an ROI:

Recommendations

1. _____(Exhibit ()); see also
(Opinion ()).
2. _____(Exhibit ()); see also
Opinion ()).
3. _____(Exhibit ()); see also
Opinion ()).

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 applicant has exhausted her administrative remedies as required by 33 C.F.R. § 13(b), and

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

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

3. The applicant alleged that the Page 7 in her record dated May 12, 2014, and her subsequent non-selections for promotion 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 her 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. For the reasons stated below, the Board finds that the applicant has not proven by a preponderance of the evidence that the Page 7 dated May 12, 2014, is erroneous or unjust. She alleged that it should be removed for several reasons, which the Board will address in turn:

- a. The applicant alleged that the IO did not inform her of her rights under Article 31(b) even though he must have suspected her of an offense because he asked her about her misuse of her GTCC.
- b. The applicant alleged that the IO did not use the proper format for the ROI by adding citations to his Findings of Fact or Opinions when recommending that she receive a Page 7 for her GTCC misuse.
- c. The applicant alleged that the Page 7 is erroneous because under applicable policy, unintentional misuse of a GTCC is not a violation of the policy or of any general orders.
- d. Table 3-4, the table of minimum required actions, refers to "unauthorized use," instead of "misuse," but the manual only defines "misuse" and that definition, she alleged, "clearly contemplates an intentional act."
- e. Her CO had already verbally warned her about her GTCC misuse in 2012.
- f. The applicant alleged that the Page 7 was an improper and inappropriate "punishment" for unintentional misuse of her GTCC and is inconsistent with the Commandant's "overall intent."

5. Article 31(b), UCMJ: The Board disagrees with the applicant that the IO must have suspected her of intentionally misusing her GTCC when he interviewed her pursuant to the command climate investigation. The ROI shows that the investigation was convened to investi-

⁴ See *Steen v. United States*, No. 436-74, 1977 U.S. Ct. Cl. LEXIS 585, at *21 (Dec. 7, 1977) (holding that "whether to grant such a hearing is a decision entirely within the discretion of the Board").

⁵ 33 C.F.R. § 52.24(b).

⁶ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992).

gate the command climate and, in particular, allegations that the CO used a double standard for enlisted members and officers the CO was friendly with. The ROI indicates that someone had complained that the applicant had been treated more leniently than an enlisted member had for GTCC misuse. Therefore, in investigating this complaint, the IO could easily have learned that the applicant's misuse had been deemed unintentional before the IO interviewed her, in which case the IO would not have suspected her of intentional misuse during the interview. Moreover, as the Coast Guard noted, even if the IO had suspected her of a crime, the IO's failure to advise her of her rights pursuant to Article 31(b) of the UCMJ would only prevent the Coast Guard from using her statements against her during a court-martial. Nothing prohibits unwarned statements made by witnesses for an investigation from being used in administrative matters or even non-judicial punishment.⁷ And as the Coast Guard also noted, the applicant's unintentional misuse of her GTCC had already been reported in 2012 as well as by at least one other witness interviewed before the applicant during the command climate investigation.

6. Format of the ROI: The Board is not persuaded that the lack of citations in the IO's recommendations in the ROI renders the Page 7 in the applicant's record erroneous or unjust. She has not shown how the lack of citations to the IO's findings or opinions in the ROI harmed her. None of the recommendations in the ROI contained such citations, so the convening authority apparently did not require them. Given that the information related to the applicant's misuse of her GTCC appears under the bold heading "**GOVERNMENT TRAVEL CHARGE CARD**" in the ROI, the Board does not believe that the convening authority was unaware of or unable to find the information that the IO relied on in making the recommendation, which is the purpose of such citations.

7. Violation of Policy or General Order: The Board finds that the applicant has not shown that the Page 7 is erroneous or unjust in stating that her unauthorized use of the GTCC violated a general order issued in COMDTINST M4600.18. Chapter 1.A. of this manual limits the use of the GTCC to expenses for TDY and PCS travel and prohibits its use for an expense that is not directly related to official government travel. This policy was also issued in paragraph 5.a. of COMDTINST 4600.14, and paragraph 5.b. states that "[t]he affirmative obligations and prohibitions contained in paragraph 5.a. constitute ... a punitive, lawful general order." Therefore, the Page 7 cites one of two COMDTINSTs that issue the same prohibition and it was the other, uncited COMDTINST that noted that the prohibition constitutes a general order. The fact that the prohibition was made a general order by one COMDTINST (4600.14) does not mean that the applicant did not violate that general order just because the Page 7 cites the other COMDTINST where the same prohibition was issued. Moreover, nothing in either COMDTINST states or can reasonably be interpreted to mean that a violation of the prohibition that is unintentional is not actually a violation of the prohibition, and the prohibition is a general order.

8. Unauthorized Use vs. Misuse: The Board finds that the requirement for a Page 7 in Table 3-2 of COMDTINST M4600.18 was properly applied to the applicant's unauthorized use of her GTCC even though that manual does not provide a definition of "unauthorized use." Chapter 1.E.3.1. of the manual clearly states that a CO *shall* "ensure appropriate administrative and/or disciplinary actions are taken for both categories of misuse per tables 3-1 [which addresses nonpayment] and 3-2 [which addresses "unauthorized use"]; when accounts are past

⁷ Article 1.D.1.g., Manual for Courts-Martial United States (2012).

due and/or when accounts are found to have unauthorized charges. These tables provide the minimum actions to be taken by the chain of command to ensure fair and consistent treatment of GTCC holders.” Thus, nonpayment and unauthorized use are two categories of “misuse,” as also shown in Chapter 1.A.5.i, which defines “GTCC misuse” as either nonpayment of an outstanding balance or using the GTCC “for other than official government business while on approved travel”—i.e., unauthorized use. Therefore, the applicant has not proven by a preponderance of the evidence that her use of her GTCC to pay for a local hotel room and for brunch at another local hotel near her permanent duty station did not constitute “unauthorized use” as that term is used in Table 3-2. In addition, the fact that the manual notes that some types of misuse may constitute fraud does not persuade the Board that Table 3-2 does not apply to unintentional, unauthorized use.

9. CO’s Verbal Warning in 2012: The applicant argued that the Page 7 should not have been entered in her record in 2014 because her CO had already given her an appropriate verbal warning in 2012. However, the Board finds that in using the word “shall,” Chapter 1.E.3. of COMDTINST M4600.18 required the CO to follow the minimum requirements in Table 3-2 absent special dispensation from CG-1214 through the chain of command, which was not received. The ROI shows that the Servicing Personnel Office prepared a Page 7, which the CO did not enter in the applicant’s record because she did not want to harm the applicant’s career. The ROI also notes that the District Command later inquired about the status of the Page 7 but got no response. Chapter 1.E.3.l. states that the purpose of the required minimum actions in Tables 3-1 and 3-2 is “to ensure fair and consistent treatment of GTCC holders.” The wisdom of this rule is apparent in this case because the CO’s uneven enforcement of GTCC misuse contributed to the crew’s perception of that the CO applied a double standard. The Board finds that the applicant has not proven by a preponderance of the evidence that the Page 7 is erroneous or unjust because her CO verbally warned her about GTCC misuse in 2012.

10. “Punishment” for Unintended Misuse: The applicant argued that the Page 7 constitutes “punishment,” but the Page 7 was not the result of either a court-martial or non-judicial punishment. The Page 7 is, as its title, “Administrative Remarks,” indicates, documentation of counseling for administrative purposes. The fact that the Page 7 makes the applicant’s record appear worse than it would without the Page 7 does not make the Page 7 “punishment.” Nor is it inappropriate or inconsistent with the Commandant’s intent to document an officer’s unauthorized use of a GTCC in the officer’s record even if the misuse was unintentional—a matter of negligence—rather than intentional. The GTCC instructions, including the periodic training requirement and the general order prohibiting misuse, clearly require members to exercise great care in handling their GTCCs, and Table 3-2 expressly applies to all “unauthorized use,” not just intentional misuse that might result in a criminal charge of fraud. The Board finds that the applicant has not proven by a preponderance of the evidence that the Page 7 constitutes erroneous, inappropriate, or unjust punishment for her unauthorized use of her GTCC.

11. The applicant has not proven by a preponderance of the evidence that the Page 7 dated May 12, 2014, in her record is erroneous or unjust. Therefore, she has not shown that her record was prejudiced by a material error when it was reviewed by the CDR selection boards in 2015 and 2016. Accordingly, her requests for relief should be denied.

ORDER

The application of
military record is denied.



USCG, for correction of her

February 3, 2017

