

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-095


O3 (reserve)

Reconsideration of BCMR 2022-002

FINAL DECISION

This proceeding is conducted according to the provisions of 10 U.S.C. § 1552. The Chair docketed the case after receiving the completed application on April 2, 2024, and assigned it to an attorney to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision dated June 5, 2025, 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 asserts the presence of a negative page seven (Form 3307) within his military record contains error and creates an undue prejudice towards his ability for advancement. The applicant received a negative page seven for parking without proper authorization. Previously, the applicant requested removal of this negative page seven to his chain of command and he refused to sign it. Then, the member applied to the BCMR and received partial relief by having a specific line removed from the negative page seven, but the remainder of the documentation remained. Now, the applicant applies to the BCMR with additional evidence that the negative page seven should not have been created as it did not have the impact it proposes and therefore creates a false depiction of the applicant when he attempts to promote. The surrounding concern from the negative page seven is accusing the applicant that he caused a violation in a contractual agreement between the Coast Guard and the dry dock contractors. The language is strong and emboldens the circumstances of parking in the wrong location as being detrimental to the contract agreement. The applicant offers email correspondence with the contractors involved as evidence that no records exist of a parking concern surrounding the dry dock period in question. The applicant attempts to demonstrate that the Coast Guard is claiming a harm occurred that the civilian contractors do not have any record or concern for the issue raised. This creates a counter narrative to that of the applicant's previous command and brings to question why such an extreme response to the applicant for parking in the wrong location is appropriate if there is no identifiable harm or documented incident by anyone other than the Coast Guard placing the error in the applicant's military record. The applicant asserts that this negative page seven (Form 3307) contains error as demonstrated by the correspondence with the contractors as well as the creation of injustice

towards the applicant because this response to parking in the wrong spot has created a devastating outcome to his career that appears disproportionate to the error.

The applicant did not promote on schedule to O4 and was ultimately removed from active duty. He now serves in the Coast Guard Officer Reserves. The applicant asserts that not only does this negative page seven contain error but is also unjust as its creation has had an extreme impact on his career for the infraction of parking in the wrong location. The applicant is requesting the negative page seven be removed entirely, a special selection board review the applicant for promotion to Lieutenant Commander (O4), and if selected, back date his new rank to the previous promotion board period with back pay and activated back into the Coast Guard.

SUMMARY OF THE RECORD

On August 6, 2020, the applicant received a negative page seven (Form 3307) from his command depicting a parking violation. The applicant refused to sign the form and stated it was inaccurate. The applicant was subsequently passed over for promotion to the rank of Lieutenant Commander (O4) and asserts that this negative page seven is the primary cause.

In 2021, the applicant submitted an application for relief to the BCMR.¹ The applicant sought removal of the disputed negative page seven (Form 3307), and the Board granted partial relief by way of a redaction of an unsubstantiated statement within the negative page seven. However, they did not remove the document entirely from the applicant's military record.

On June, 30, 2023, the applicant received a mandatory separation for failure to advance according to Coast Guard Policy.² The applicant was discharged for not making rank in the allotted time frame and now serves in the Coast Guard Officer Reserves.

On April 2, 2024, the applicant submitted an application for relief to the BCMR with new evidence to support the removal of the disputed negative page seven. The applicant requests again that the Board grant relief by the removal of the negative page seven (Form 3307) in its entirety from the applicant's military record. Then, require a Special Selection Board to convene to review the applicant for promotion to Lieutenant Commander (O4).

VIEWS OF THE COAST GUARD

On November 21, 2024, a Judge Advocate (JA) for the Coast Guard submitted an advisory opinion in which he recommended that the Board grant alternate relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Coast Guard Personnel Service Center (PSC).

The JA concurred with the PSC evaluation of the applicant's request. PSC determined that the disputed negative page seven (Form 3307) should not be removed from the applicant's record but should include another redaction. A previous redaction was approved by the BCMR for the applicant's prior request for removal in application file 2022-002. The JA is recommending

¹ Case 2022-002 docketed 11/23/21; decided on 9/15/22

² Military Separations Manual 2023, Chapter 1 Section B.1.b: Discharge because of failure of selection for promotion.

another redaction to account for the new information the applicant shared showing the contract was unharmed and the concern with parking did not have an impact on anything nor was a record even kept of any issue. The JA recommends redacting the statement, “Your actions resulted in the Coast Guard violating the contractual agreement between the government and the contractor.” The JA argues the applicant has not proven he was ever permitted to park or that he did not park in the disputed location therefore the remaining negative page seven would be accurate.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 24, 2025, the Chair sent the applicant a copy of the Coast Guard’s views and invited him to respond within thirty (30) days. The applicant has not responded since the date of this decision.

APPLICABLE LAW AND POLICY

The Board may correct errors or remove injustices in a service member’s records pursuant to 10 U.S.C. § 1552(a).

(1) Error can be defined as either legal and/or factual.

(2) Injustice, when not also error, is treatment by the military authorities that “shocks the sense of justice.”³ In addition, the Board has the authority to decide whether an injustice exists in an applicant’s record on a case-by-case basis. The application must file within three years after discovery or reasonably should have discovered the alleged error or injustice for a correction or relief.⁴

Military Separations Manual 2023. Chapter 1. Section L. Failure Selection for Promotion or Continuation.

4. Lieutenants.

a. Each permanent regular Coast Guard officer serving in the permanent grade of lieutenant who has failed selection for promotion to lieutenant commander for the second time will:

(1) Be honorably discharged not later than 30 June of the promotion year in which the second failure of selection occurs

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:

³ *Sawyer v. United States*, 18 Cl. Ct. 860, 868 (1989) citing *Reale v. United States*, 208 Ct. Cl. 1010, 1011, cert. denied, 429 U.S. 854, 50 L. Ed. 2d 129, 97 S. Ct. 148 (1976).

⁴ 33 C.F.R. § 52.22

1. The Board has jurisdiction concerning this matter pursuant to 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 applicant makes this application as a request for reconsideration of our decision in Docket Number 2022-002, issued on April 21, 2023. As it was made within two years of that decision, his request is timely based on our regulations.

3. The error within the negative page seven is seen by the absence of recall or concern by the contractors in the evidence provided by the applicant. The negative page seven depicts a situation that created a highly difficult and legally unsound situation for the Coast Guard by the applicant, which does not appear to be an accurate reflection of the error. Because of this aggressive language describing the applicant's poor parking choices it may have barred his ability to advance in rank as a negative page seven is reviewed by selection boards and the language describes such a significant harm from this parking error that it is likely to have impacted the applicant's advancement abilities.

4. When reflecting on the Coast Guard as whole and the usage of a negative page seven, this use towards the applicant does appear to be prejudicial in nature creating an unjust level of criticism that the average officer making a similar mistake under a different command would be unlikely to face.⁵ The timing of the negative page seven appears to be questionable as the command waited over two months before issuing the applicant a negative page seven (harm occurred May to June, negative page seven issued in August). It would be reasonable to presume that if the command was made aware of a parking error the applicant conducted and it caused such a breach of contract as described by command in the negative page seven, that the command would have acted during the period of time the parking error allegedly occurred. However, no counseling occurred during this time of record nor was a harm reported by the contractors making it questionable if there was a true harm. The reaction by command in making a negative page seven two months later to the incident does not appear to be proportional to the perceived harm. This does not create a fair and equal opportunity to the applicant to compete with his peers for advancement. The alleged harm, parking in the wrong spot, doesn't appear to need a negative page seven to remedy the commands concerns. The applicant has disproven the accused harm to have had the negative impacts described in the page seven.

5. The JA contends that the applicant did park in the wrong spot and therefore the negative page seven should remain. However, the JA recommends the redaction of the disproven harms documented by command given the applicant's submitted evidence. The continued issue is the language the command chose to deploy in crafting this negative page seven, which has been proven to be deceptive and hyperbolic in nature. If command had written a negative page seven that the applicant parked in a parking lot where he did not have permission to park and therefore is

⁵ While general insubordination and other unique harms can result in a negative page seven (Form 3307) it is described in the Discipline and Conduct Manual COMDTINST M1600.2 2020 as documented counseling for items such as substance abuse, failure to pay child support, domestic violence, failure to repay debts, and fraternization.

receiving a page seven this documented would have a very different impact on the applicant's record. Instead, there is language about causing a violation of contract by the Coast Guard, which promotion boards are likely to view differently than parking in the wrong parking lot. Keeping any portion of the negative page seven, that has been recommended for redaction of sections written within twice now, moves this Board to agree with the applicant that the removal of the document entirely would restore the accuracy and equity owed to the applicant.

6. The applicant's OERs have qualitative language describing him as knowledgeable, strong leadership ensuring qualifications are achieved on time by his subordinates and positive support of the mission. The applicant has received many accolades and awards. There are improvements mentioned within the OERs as well regarding the administrative aspects of the applicant's job not being as strong as when "he has a wrench in his hand" and not utilizing resources well. It is speculative to predict if the applicant could advance from the removal of the negative page seven, however the opportunity should be given to the applicant.

7. The Board, in full view of all facts, assertions, and applicable laws, views this case as one of identifiable error of unsupported statements being documented as a matter of factual record that should be removed entirely and injustice from the weight of the command action taken as being disproportionate to the perceived harm.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of reserve Lieutenant [REDACTED], USCG, for correction of his military record is granted. The disputed negative page seven (Form 3307) issued August 6, 2020, and any related documentation, will be removed from the applicant's record entirely. The Coast Guard will provide a Special Selection Board for the applicant to be reviewed for O4 without the document within his record. If selected to O4, the applicant will be back dated to the rank of O4 to the previous selection board that he was passed over from and include back pay. The applicant, if selected, will have the opportunity for reappointment as an officer in the regular Coast Guard.

June 5, 2025

