

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2022-047**

  
LTJG (O-2)

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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 April 29, 2022, and assigned the case to the staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated February 1, 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 AND ALLEGATIONS**

The applicant, who was a Lieutenant Junior Grade (LTJG/O-2) on active duty at the time of application but has since been promoted to Lieutenant (LT), asked the Board to correct his record by removing a negative CG-3307 ("Page 7"), dated September 30, 2020, wherein he was counseled about his civil and moral obligations to his lawful dependents. The applicant alleged that he was passed over for promotion to Lieutenant (LT/O-3) in 2021, during the LT selection board for Promotion Year (PY) 2022 because of this negative Page 7.

The applicant explained that in September 2020, he and his wife separated and he moved out of their shared residence. According to the applicant, on September 30, 2020, due to his recent separation from his wife, his Command counseled him via this negative Page 7 on his continued legal responsibility to support his dependents, but unbeknownst to him, the Page 7 was erroneously entered into his record. The applicant explained that the negative Page 7 was not disciplinary in nature and was intended to notify him of his continuing obligation to support his dependents after his physical separation. The applicant claimed that he has supported his legal dependents since the day of his separation and that no support payments had been missed.

The applicant argued that under Article 2.E.4.a.<sup>1</sup> of the Coast Guard's Discipline and Conduct Manual, COMDTINST M1600.2, the Page 7 only applies to enlisted personnel and was therefore inapplicable to him. The applicant claimed that there were absolutely no complaints against him—his Command had received none—alleging that he was failing to adequately support his legal dependents. Accordingly, the applicant argued that he should never have received the Page 7 in the first place.

The applicant stated that he was initially notified of not being selected for LT during the first week of January 2022, while on Temporary Duty Assignment (TDY), but he was unaware that the September 30, 2020, negative Page 7 was in his record until he received an official copy of his military record on March 21, 2022. The applicant alleged that he originally requested his record in January 2022, but received no response, and so he requested it again in March 2022 and was told the delay was the result of technical difficulties. The applicant claimed that this delay resulted in considerable delay in applying to the Board for relief.

The applicant explained that the next LT Selection Board was scheduled for September 2022 and not removing the entry or reevaluating the PY2022 results before the next LT Selection Board would likely result in him not being selected for promotion again and mandatory discharge. Accordingly, the applicant requested that the Board remove the September 30, 2020, negative Page 7 from his record and award him backpay he might be owed as a result of this error.

### SUMMARY OF THE RECORD

The applicant enlisted in the Regular Coast Guard on July 8, 2009, where he trained as an Intelligence Specialist, before receiving a direct commission on June 18, 2018.

In September 2020, the applicant separated from his wife.

On September 30, 2020, the applicant's Command issued him a negative Page 7 counseling him on his continued obligation to support his legal dependents.

In January 2022, the applicant was notified that he had not been selected for LT in 2021.

On June 1, 2023, the applicant was promoted to LT after being selected for promotion in 2022 during his second LT promotion cycle.

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<sup>1</sup> Article 2.E.4.a. of the Discipline and Conduct Manual, COMDTINST M1600.2, states, "Enlisted Personnel. Upon receipt of a complaint alleging that an enlisted person is not adequately supporting his or her lawful dependents (spouse and/or children), the member will be counseled and informed of the Coast Guard's policy concerning support of dependents...The member will be required to acknowledge in writing the following Performance and Discipline Entry Type on Administrative Remarks, Form CG-3307, entry in his or her Personnel Data Record (PDR):

"Counseled concerning civil and moral obligations to provide continuous and adequate support of lawful dependents."

### VIEWS OF THE COAST GUARD

On November 14, 2022, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

The Coast Guard agreed with the applicant that the policy under which the negative Page 7 was issued was inapplicable because he was not an enlisted member. Instead, the Coast Guard explained that Article 2.E.4.b. of the Discipline and Conduct Manual, COMDTINST M1600.2, applied to the applicant, which makes no mention of issuing a Page 7 to the officer. Accordingly, the Coast Guard recommended that the applicant's request for relief be granted and that he be given a Special Selection Board (SSB) to ensure his record is reviewed absent the derogatory negative Page 7.

### APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 23, 2022, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited him to respond within thirty days. The Chair received the applicant's response on December 21, 2022.

The applicant stated that he agreed with the Coast Guard's advisory opinion, however, he took issue with the fact that the advisory opinion made no mention of the fact that he was never accused of not honoring his financial obligations to his dependents and therefore should never have received the Page 7, regardless of whether he was an officer or not. The applicant explained that after the Coast Guard removed the erroneous Page 7 from his record, he was subsequently selected for promotion to LT.

### APPLICABLE LAW AND POLICY

Article 2.E.4. of COMDTINST M1600.2 is titled "Action upon Receipt of Complaints of Nonsupport and Insufficient Support of Dependents." Paragraph (a) provides the policy for enlisted members:

Upon receipt of a complaint alleging that an enlisted person is not adequately supporting his or her lawful dependents (spouse and/or children), the member will be counseled and informed of the Coast Guard's policy concerning support of dependents. If there is a court order or divorce decree still existing in the case, the member will be expected to comply with its terms except as noted in Article 2.E.4.a.(3) of this Manual. In the absence of a determination by a civil court or a mutual agreement of the parties, the provisions of Article 2.E.3. of this Manual will apply. Members who are the subject of complaints about non or inadequate support of dependents will be advised of their legal rights in the matter, . . . . The member will be required to acknowledge in writing the following Performance and Discipline Entry Type on Administrative Remarks, Form CG-3307, entry in his or her Personnel Data Record (PDR):

"Counseled concerning civil and moral obligations to provide continuous and adequate support of lawful dependents."

Paragraph (b) of Article 2.E.4. of COMDTINST M1600.2 provides the following policy for officers who are the subject of a complaint of nonsupport of dependents:

(1) Action of Commanding Officer:

(a) Upon receipt of a written complaint alleging that an officer of his or her command is not adequately supporting his or her legal dependents, the commanding officer will interview the officer for the purpose of emphasizing Coast Guard policy concerning support of dependents. The commanding officer will require submission of a written statement of the officer's position and intentions in the matter within the premises contained in Article 2.E.4.b.(2) of this below.

(b) When the complaint is received directly from the dependent concerned or the legal representative thereof, the commanding officer will obtain the officer's written statement. The commanding officer shall then promptly advise Commander (CG PSC-OPM) and provide a brief summary of the officer's contentions and intentions as contained in the officer's written statement.

(c) When a complaint is received via the Commandant, the commanding officer will obtain the officer's written statement and forward that statement, together with a summary of action taken or contemplated, to Commander (CG PSC-OPM). The commanding officer shall include in his or her endorsement such comments as deemed appropriate. This statement should normally be submitted to Commander (CG PSC-OPM) within 20 working days of receipt of the complaint.

(d) The provisions for waiver of spousal or child support and waiver of compliance with court orders, as set forth in Article 2.E.4.a. of this Manual are equally applicable to officer personnel.

(e) If, in the opinion of the commanding officer, it appears that the officer concerned has repeatedly and unjustifiably disregarded the provisions of a valid court order, the terms of a current mutual agreement, or the provisions of this section in a way that brings discredit upon the Coast Guard, the commanding officer should consider one or more of the following as the appropriate disposition according to the merits of the individual case:

- [1] Appropriate notation in the officer's next regular Officer Evaluation Report.
- [2] Commanding officer's nonjudicial punishment.
- [3] Recommendation for trial by court-martial.

Note: The mere fact that an officer is involved in a matter concerning the nonsupport of legal dependents should not, in itself, be the sole factor for considering the above action. However, when an officer's conduct in such a case does, in fact, become sufficiently negligent to bring discredit upon the Coast Guard, that officer's commanding officer is justified in invoking the provisions of this subparagraph, inasmuch as an officer must be morally, professionally, and physically qualified for retention in his or her present grade as well as for promotion to the next higher grade. As a general guideline, the above-listed action should be considered when six months have passed since receipt of the original complaint with no indication of satisfactory progress toward establishing an acceptable solution.

Article 6.B. of the Coast Guard's Officer Accessions, Evaluations, and Promotions Manual, COMDTINST M1000.3A provides the following guidance on when an officer is entitled to an SSB:

**6.B.13.a. Purpose.** AN SSB considers one or more commissioned or former commissioned active duty officers for promotion to lieutenant (junior grade) through captain for either of the following reasons (14 U.S.C. §263):

- (1) An officer considered but not selected for promotion to the next higher grade because of a material error in their record, or

(2) An officer not considered and not selected for promotion to the next higher grade because of an administrative error.

...

**6.B.13.e. Basis for Convening an SSB.** SSBs may be convened pursuant to 14 U.S.C. § 263 to consider or reconsider commissioned officers or former commissioned officers for promotion when one or more of the following occur:

...

(4) The Coast Guard Board for Correction of Military Records (CG BCMR) or a federal court directs a SSB be convened.

### 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 her 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 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 the Coast Guard erroneously issued him a negative Page 7 for failing to provide required support to his legal dependents, which was not in keeping with Coast Guard policy because the article relied upon by his CO applied to enlisted members, not officers. 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.<sup>2</sup> 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.”<sup>3</sup>

4. Erroneous Page 7. The Board’s review of the record and Coast Guard policy shows that the applicant’s CO erroneously issued the applicant a negative Page 7 and had that negative Page 7 inserted into the applicant’s permanent military record. Article 2.E.4.a. of COMDTINST M1600.2 shows that an enlisted member may receive a negative Page 7 upon the command’s receipt of a complaint of failure to support dependents, but Article 2.E.4.b., which applies to officers for whom the command receives a complaint of nonsupport, does not mention a Page 7

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<sup>2</sup> 33 C.F.R. § 52.24(b).

<sup>3</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

and instead provides for other responses. The record further shows that this negative Page 7 was in the applicant's record that was reviewed by his first LT selection board and therefore had a potentially negative impact on the applicant's chance of selection. Finally, the record shows that the applicant was selected for promotion to LT during his second LT selection board after the negative Page 7 was removed from his record. The Coast Guard has conceded this error and recommended that the applicant's request for relief be granted. Therefore, the Board finds that the applicant has proven, by a preponderance of the evidence, that the Coast Guard erroneously issued him a Page 7 and inserted that erroneous Page 7 into the applicant's permanent military record and that this Page 7 could have negatively impacted his promotion potential before his first LT selection board.

5. Special Selection Board. Because the Board has found, by a preponderance of the evidence, that the applicant's September 30, 2020, negative Page 7 was erroneous and must be removed from his record, the Board also finds that the applicant's record was prejudiced by a material error when it was reviewed by the PY 2022 LT selection board. Therefore, he is entitled to an SSB, in accordance with 14 U.S.C. § 2120.

6. Therefore, the Coast Guard should remove any remaining copies of the disputed Page 7 from the applicant's records and convene an SSB to evaluate the applicant's record for promotion for PY2022. If the SSB does not select the applicant for promotion, no further corrections are warranted. If the SSB selects the applicant for promotion, the Coast Guard should backdate his LT date of rank to what it would have been had he been selected for promotion by the original PY2022 LT selection board, and he should receive all due backpay and allowances.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

**ORDER**

The application of LT [REDACTED] [REDACTED] USCG, for the correction of his military record is granted. The Coast Guard shall first remove any remaining copies of the September 30, 2020, Page 7 concerning his obligations to his dependents from his military record. Second, the Coast Guard shall convene a Special Selection Board to re-evaluate his record for promotion by the PY2022 LT selection board. Third,

- If the SSB does not select him for promotion to LT, no further correction of his record shall be made.
- If the SSB selects him for promotion, the Coast Guard shall backdate his LT date of rank to what it would have been had he been selected for promotion by the original PY2022 LT selection board and shall pay him all back pay and allowances due as a result of these corrections.

February 1, 2024

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