

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-159


MK1

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 June 24, 2019, and assigned the case to the Deputy Chair to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated October 15, 2020, 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 Machinery Technician First Class (MK1/E-6) on active duty, asked the Board to correct his record by expunging his Arrest and Institution Fingerprint Card (FD-249) and Disposition Report (R-84) from the Federal Bureau of Investigation's National Crime Information Center (NCIC).

The applicant argued that his records should be expunged because he was never charged with a crime. Instead, he alleged, he was investigated for sexual assault but the case was closed when it was determined that the allegation against him was a "false claim." He argued that although he was never charged with a crime, his FD-249 and R-84 still show up on his NCIC background check. He requested that this information be expunged from his record because he is interviewing for jobs in church ministry.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on January 25, 2000. After attending basic training, the applicant completed Machinery Technician "A" school.

On July 27, 2016, a Coast Guard Investigative Service (CGIS) Case Management Report was initiated regarding the applicant's conduct. That day, CGIS was contacted regarding details of an alleged sexual assault. A witness, MK1 D, reported to a Chief Boatswain's Mate (BMC) D

that he saw the applicant slap a fellow Coast Guard member on the buttocks. When BMC D consulted the victim, she stated that the applicant had repeatedly harassed her and touched her inappropriately. The victim stated that she never reported anything because the applicant was leaving soon for a new permanent duty station. CGIS conducted an investigation regarding the allegation on July 28, 2016, and July 29, 2016.

On July 28, 2016, CGIS agents conducted an interview with the victim's mother. She stated that her daughter never mentioned the applicant inappropriately touching her or making any sexual advances. However, she did witness the applicant slap her daughter's buttocks two times during a softball game. On the same day, CGIS agents conducted several interviews with members who had been identified as persons with knowledge:

- MK1 D recalled hanging out with the victim one evening in which she expressed concern about the applicant inappropriately touching her, paying for meals, and singling her out to lecture/give her "pep talks" while at work. MK1 D stated that he was aware that the applicant had paid for the victim's softball fees and that he would not allow her to pay him back. Contrary to what is written in the initial report, MK1 D stated that he never witnessed the applicant touch the victim's buttocks or any other member inappropriately.
- BM2 C stated that the victim had approached him two days earlier and asked him for advice regarding the applicant. The victim had stated that the applicant was "picking on her." Further, the victim stated that she was embarrassed that the applicant had slapped her on the buttocks several times, one of which her mother witnessed while at a softball game. BM2 C described the applicant as a "bully" and "over the top," but stated that he never witnessed the applicant inappropriately touch the victim.
- BM1 J stated that the victim had expressed to him that she felt "bullied" by the applicant. She also told him that the applicant had slapped her buttocks while at a softball game. The victim had asked BM1 J to counsel the applicant because she did not want to make a formal report. BM1 J stated that when he spoke with the applicant, he admitted to slapping the victim on the buttocks while at softball games. BM1 J never witnessed the applicant touch the applicant inappropriately.
- BM3 A stated that he had watched three or four of the softball games that the victim and the applicant played in to show support. BM3 A stated that he saw the applicant "ass slap" and "good game" the victim as well as other players on the team. BM3 A described a "good game" slap as placing a hand on the buttocks area for no more than one second. BM3 A stated that it looked like the applicant did this in a way to congratulate the victim rather than out of sexual aggression.
- MST1 V stated that the day before, she was approached by the victim who confided in her about the applicant. The victim stated that she felt "bullied" by the applicant and also mentioned that the applicant had slapped her on the buttocks. MST1 V

offered to pull the applicant aside and speak with him about her concerns. The victim advised MST1 V that she had reported the incident to her command.

- BMC D stated that the victim had told him that the applicant had touched her inappropriately. The victim told him that during softball games, the applicant slapped her on the buttocks to congratulate her for having a good game. She stated that what bothered her was that the applicant slapped her on the buttocks when they were out at a bar together. On another occasion, she stated that she touched the applicant on the chest and he responded by saying “if you’re going to touch me I’m going to touch you” and then proceeded to touch her breast. The victim had told BMC D that she did not want to make a big deal of the situation and that she would try to avoid the applicant until he was transferred. BMC D also stated that the applicant admitted to him that he slapped the victim’s buttocks during softball games, but maintained that this was a normal thing in the sports community. BMC D stated that he never personally witnessed the applicant inappropriately touch the victim or anyone else.

On July 29, 2016, the victim was interviewed by CGIS agents. She stated that despite the fact that the applicant was not her supervisor, he was constantly calling her about work-related issues. He also consistently picked up her tab/check and would throw this back in her face saying, “I always take care of you.” She expressed that she felt weird and like she owed him. What bothered her the most was that she felt like he was manipulating her. She stated that the applicant would not leave her alone if he did not get what he wanted. On one occasion, she was having a personal problem with a guy whom she was dating and while she was on the phone, the applicant threatened to call his command and “kick his ass.” On another occasion, the applicant asked to see some nude pictures of her friends that she had on her phone. She stated that on July 21, 2016, the applicant slapped her buttocks during a softball game and her mother witnessed it. Additionally, she stated that the applicant had slapped her buttocks more than five times while out at local bars, and she could not recall the applicant slapping anyone else’s buttocks except hers. Then on July 23, 2016, she stated, she accidentally touched the applicant’s chest and he replied: “if you touch mine I will touch yours” and proceeded to cup his hand and touch her breast. She stated that she wants to see the applicant removed from his command position because she does not want this to happen to anyone else.

Also on July 29, 2016, the applicant was interviewed by CGIS agents. Before the interview, he signed a Rights Warning Procedure/Waiver Certificate. The applicant acknowledged that a CGIS agent had informed him that he was suspected/accused of sexual assault. He further acknowledged that he did not have to answer any question or say anything; that anything he said or did could be used as evidence against him in a criminal trial; and that he had the right to talk privately to a lawyer before, during, or after questioning and to have a lawyer present with him during questioning. During the interview, the applicant stated that he never bullied the victim. He stated that if he could go back and do things over, he would apologize to the victim if he was being overbearing. He acknowledged giving the applicant a “good game” slap approximately 5-10 different times during softball games. However, he stated that his actions were not for sexual gratification. He stated that he treated the victim like a niece or little sister. He denied touching the applicant’s breast and instead stated that he briefly slapped her shoulder.

On July 29, 2016, the Report of Investigation was sent to the Command and the unit's legal office.

On August 2, 2016, the Coast Guard Cyber Security Operations Center seized electronic data from the applicant and the victim and provided the information to CGIS agents.

On August 18, 2016, a CGIS agent submitted an FD-249 fingerprint card for the applicant to the FBI's NCIC. The FD-249 shows the applicant's charge/citation as "UCMJ Article 120-AA2 Sexual Assault on or after 6-28-12." No disposition was reported.

On November 17, 2016, the applicant received an Administrative Remarks form CG-3307 ("Page 7") regarding his substandard performance. The Page 7 states the following:

As a member of the Coast Guard, and in alignment with the Coast Guard Core Values, you are expected to exercise sound judgment, respect others, and demonstrate professionalism. Your actions, as recorded below, fail to meet these standards and expectation.

A CGIS investigation revealed credible information that you slapped a female subordinate on her buttocks during an intramural softball game. This incident caused your subordinate to feel extremely uncomfortable. Although the investigation did not find evidence that your conduct was done with an intent to humiliate or degrade your subordinate, your actions demonstrate poor judgment, and certainly were not befitting a First Class Petty Officer.

On April 3, 2019, a CGIS agent submitted an R-84 to the FBI's NCIC. The R-84 shows the applicant's charge at the time of disposition as "Article 120-AA2 Sexual Assault on or after 6-28-12," and the disposition as "charges dismissed on 9/17/2016, mbr received a negative performance (CG-3307) memorandum on the same date."

VIEWS OF THE COAST GUARD

On January 2, 2020, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board grant alternative relief in this case.

The JAG argued that the report of sexual assault against the applicant was not based on a false claim. First, the JAG referenced the Report of Investigation which did not give any indication that the report of sexual assault was based on a false accusation. Second, the JAG stated that the alleged victim in this case was not investigated for false official statements related to the accusation. Finally, the JAG noted that the Page 7 that the applicant received following the sexual assault allegations did not mention anything about false allegations.

The JAG argued that the Coast Guard did not commit an error or injustice on the FD-249 submitted to the FBI on August 18, 2016. On the FD-249, the charge/citation is listed as "Article 120 Sexual Assault on or after 28 June 2012." The JAG explained that although the applicant did not face criminal prosecution, he was arrested for the charge of sexual assault under Article 120 of the Uniform Code of Military Justice (UCMJ). The JAG stated that the FD-249 is the form used by countless federal, state, and local law enforcement agencies to report information to the FBI. As such, the JAG argued that the terminology on the FD-249 may not align perfectly with the

military justice system or the applicant's understanding of the investigation. The JAG argued that if the applicant feels there is some error or injustice based strictly on how the FD-249 is formatted, then he may seek redress elsewhere since these forms are not within Coast Guard control.

The JAG acknowledged that the applicant's R-84 is not wholly accurate and should be corrected and resubmitted to the FBI. The JAG stated that the purpose of an R-84 is to capture the disposition of an arrest to complete an individual's criminal history record information. The applicant's R-84 states "charges dismissed on 9/17/2016, mbr received a negative performance (CG-3307) memorandum on the same date." The JAG argued that the Coast Guard's intent was to confirm that the applicant was not criminally prosecuted for sexual assault. However, the JAG acknowledged that the term "charges dismissed" is not accurate since the applicant was never formally charged with an offense. The JAG recommended that the Board grant alternative relief by correcting the applicant's R-84 to read "Prosecution declined, mbr received a negative performance (CG-3307) memorandum on 11/17/2016," and resubmitting the form to the FBI.

The JAG concluded by acknowledging that the applicant may be prejudiced in civilian life as a result of his alleged actions that led to the investigation. However, the JAG stated that any prejudice he may receive is a consequence of his actions rather than the result of an error or injustice on the part of the Coast Guard. The JAG stated that the purpose of a background check is to signal to others in society that the applicant's prior alleged conduct may not be aligned with their values. The JAG stated that while this may not seem fair to the applicant, it does not shock the sense of justice.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 15, 2020, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. No response was received.

APPLICABLE LAW AND POLICY

Chapter 7-T of the Coast Guard Investigations Manual, COMDTINST M5527.1B, discusses the reporting of criminal history data in relevant part:

7-T-2 CGIS Policy.

- a. As a matter of CGIS policy, CGIS will submit suspect fingerprint cards and reports detailed in this Section to the FBI/DOJ after a case has been adjudicated.
- b. All CGIS special agents are responsible for ensuring that only those offenses under the Uniform Code of Military Justice that require submission of offender criminal history data (enclosure 7-4) are reported to the Identification Division of the FBI.
- c. As a matter of CGIS policy, special agent will fingerprint and photograph suspects when appropriate during the investigation for those offenses contained in Enclosure (7-4).

7-T-3 Standard Suspect Fingerprint Card (FBI Form 249).

- a. Offender criminal history data records required under this policy will be initiated by the preparation of a standard suspect fingerprint card (Form FD-249) (enclosure 7-5) at the

time of interrogation for an offense or offenses or when judicial proceedings are initiated by the Coast Guard command having disciplinary authority over the suspect.

b. Before taking the fingerprints, every effort should be made to learn with what offense or offenses the suspect will actually be charged.

c. Two standard suspect fingerprint cards (Form FD-249) obtained at the time of the interrogation will be maintained in the investigative case file until judicial or non-judicial proceedings against the military suspect has been completed. At that time, one FD-249 shall be forwarded directly to:

DEPARTMENT OF JUSTICE
BUREAU OF INVESTIGATION
1000 CUSTER HOLLOW ROAD
CLARKSBURG WV 26306

d. The fingerprint cards must be filled out in strict accordance with the instructions contained here and should be typed, if possible. Submission is required even if charges are reduced to a lesser offense. The fingerprint card submitted to the Department of Justice shall be sent with a Final Disposition Report form.

7-T-4 Final Disposition Report (FBI/DOJ Form R-84).

a. CGIS special agents will record the suspect's right four finger impressions on the Final Disposition Report (FBI/DOJ Form R-84) (enclosure (7-6) at the time of interrogation for an offense or offenses or when judicial proceedings are initiated by the Coast Guard command having disciplinary authority over the suspect.

b. Before taking the fingerprints, every effort should be made to learn with what offense or offenses the suspect will be charged.

c. The FBI/DOJ Form R-84 will be maintained in the investigative case file until judicial or nonjudicial proceedings against the military suspect has been completed. The Form R-84 will then be mailed to the FBI in Clarksburg, WV, with the fingerprint cards. Dispositions exculpatory in nature, e.g., dismissal of charges, acquittal, must also be annotated on the form.

Enclosure 7-4 of the Coast Guard Investigations Manual, COMINST M5527.1B, provides a list of the offenses under the UCMJ which require submission of offender criminal history data to the identification division of the FBI by the CGIS. The list includes Article 120.

Coast Guard Training Bulletin No. 2016-007, which was released on December 28, 2016, discusses fingerprint cards and final disposition submissions in relevant part:

When to submit fingerprint cards (FD-249) and Final Dispositions forms (R-84) and what information is needed to submit fingerprint cards and final dispositions to the FBI?

As part of all investigations, agents will fingerprint all subjects at the conclusion of a subject interview.

The submission of a fingerprint card to the FBI is determined based on the following:

a. Probable cause exists to believe the person has committed an offense listed in Enclosure (2) of the DoDI 5505.11 series instruction. When dealing with civilian personnel, if the

offense punishable pursuant to the U.S.C. is equivalent to those listed in Enclosure (2) of the DoDI 5505.11 series instruction.

b. Approval from the convening authority of a request for discharge, retirement, or resignation in lieu of courts-martial, or delivery of an other than honorable discharge based on an investigation; or a finding of lack of mental competence to stand trial, will be recorded as “final disposition” in the agency electronic fingerprint database for submission on an FD-249 or R-84 as appropriate.

The agent will complete all subject identifying information on the fingerprint card and send to CGIS NCR via FACTS for submission to the FBI. Once entered, the information will be available to law enforcement through conducting a criminal check. This will read as the arrest of the member.

Upon adjudication/findings by ADSEP, NJP, or Courts-Martial, the agent will complete a Final Disposition form (fingerprints on this form is optional) and forward the form, including Report of Result of Trial (for Courts-Martial), other documentation (for ADSEP and NJPs), to CGIS NCR for submission to the FBI to append the record currently in the database. This will read as the disposition to the arrest.

What is the importance of obtaining fingerprint cards after a subject interview? As an agent gets closer to trial, the last thing on their mind is to obtain fingerprint cards. We as a federal law enforcement agency need to ensure we document the outcome of our investigations. Remember, if agents do not obtain fingerprint cards after an interview, the likelihood is that they will never get fingerprint cards. Without fingerprint cards, there is no entry of information into the FBI database.

The instructions on the Disposition Report form R-84 state the following in relevant part:

1. The purpose this report is to capture the disposition of an arrest to complete an individual's criminal history record information. The FBI number (UCN) should be indicated, if known. Asterisk indicates mandatory field, but all known data should be provided.
2. If the arrest is disposed of by the arresting agency, as where the arrestee is released without charge, the arresting agency must complete this form. Of course, if the disposition is known when the arrest is submitted, it should be noted on the fingerprint submission and this form is unnecessary. In the event the case goes to the prosecutor this form should be forwarded to the prosecutor with arrestee's case file.

Section 3.2. of the Department of Defense Instructions on Fingerprint Reporting Requirements, DoD Instructions 5505.11, states the following regarding dispositions:

- a. If the disposition is not known when submitting the FD-249 or its electronic equivalent, DCIOs or other DoD LEAs will submit the final disposition either using the Department of Justice Form R-84 or through electronic bulk data submission.
- b. The disposition will be submitted for each FD-249 or its electronic equivalent as soon as possible, but no later than 30 calendar days after receipt of final disposition.
- c. The disposition of “conviction” is reported for crimes prosecuted by general or special courts-martial yielding a finding of guilty.
- d. Adverse findings resulting from a summary court-martial, non-judicial proceedings pursuant to Article 15 of the UCMJ, administrative action, or discharge do not constitute criminal proceedings. The disposition must be submitted to CJIS using the following language:

- (1) Summary Court-Martial: “Subject found guilty by summary court-martial, which does not constitute a criminal conviction.”
- (2) Article 15 of the UCMJ: “Non-judicial disciplinary action, which does not constitute a criminal conviction.”
- (3) Administrative Action: “Administrative paperwork” or “administrative discharge.”

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 concerning this matter pursuant to 10 U.S.C. § 1552.
2. The application is 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 requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.¹
4. The applicant alleged that his CGIS records that were shared with the FBI’s NCIC are erroneous and unjust. 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.² 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.”³
5. The applicant argued that his CGIS records should be expunged from the FBI’s NCIC because the allegation of sexual assault against him was based on a “false claim.” However, the applicant has provided no evidence to support this argument. The fact that the investigation did not find evidence that the applicant’s conduct was done with an intent to humiliate or degrade his subordinate is not evidence that the allegation against him was based on a false claim. Further, the applicant admitted in an interview with CGIS agents that he had slapped his subordinate’s buttocks. Finally, there is nothing in the Report of Investigation to suggest that the victim made false allegations. Therefore, the applicant has not proven by a preponderance of the evidence that the allegation of sexual assault against him was based on a false claim.

¹ *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

² 33 C.F.R. § 52.24(b).

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

6. On July 29, 2016, the applicant was apprehended⁴ and interviewed by CGIS agents regarding allegations of sexual assault. After his interview, CGIS agents prepared an FD-249 by recording his fingerprints and required information on the form. The FD-249 shows the applicant's charge/citation as "UCMJ Article 120-AA2 Sexual Assault on or after 6-28-12." On August 18, 2016, the applicant's FD-249 was submitted to the FBI for inclusion in the NCIC criminal history database. Almost three months later, on November 17, 2016, the applicant received a Page 7 that counseled him regarding his conduct. Finally, about a year and a half later, on April 3, 2019, an R-84 was submitted to the FBI which listed the disposition of the applicant's arrest as "charges dismissed on 09/17/2016, mbr received a negative performance (CG-3307) memorandum on the same date."

7. The applicant argued that the contested records should be expunged because he was never charged with a crime. While the applicant is correct that he was never charged with a crime, that is not the proper basis for determining whether to submit an FD-249 to the FBI. According to the Coast Guard's Training Bulletin entitled "Fingerprint Card and Final Disposition Submissions," CGIS agents are required to fingerprint all subjects at the conclusion of a subject's interview. Then, the proper basis for determining whether CGIS agents submit the FD-249 to the FBI is whether (1) probable cause⁵ exists to believe the person committed an offense; and (2) the offense is one for which the UCMJ requires submission of offender criminal history data to the identification division of the FBI. In this case, CGIS agents were correct in submitting the applicant's FD-249 to the FBI. First, CGIS agents had probable cause to believe that the applicant had committed an offense. Specifically, two people who were interviewed stated that they had witnessed the applicant slap the victim's buttocks. In fact, the applicant himself admitted to CGIS agents that he had slapped the applicant's buttocks during softball games. Second, the offense of sexual assault is one for which the UCMJ requires submission of offender criminal history data to the FBI. Since the disposition of the applicant's arrest was unknown at the time that CGIS agents submitted the FD-249 to the FBI, an R-84 was also required to complete the applicant's criminal history data.

As the JAG acknowledged in the advisory opinion, the word "charge" on both the FD-249 and the R-84 may be confusing to non-law enforcement officials. However, on both forms, the word "charge" refers to the offense the applicant was accused of committing rather than an offense the applicant was formally charged with. This is evident by the fact that the FD-249 is a form that is completed upon the arrest of an individual by law enforcement agents. At this point in the process, individuals may or may not be formally charged with a crime by prosecuting officials. As such, the "charge" on this form can only refer to the charge that an individual is suspected of or alleged to have committed. Since the R-84 form is required even in instances in which an arrestee is released without charge, the term "charge" on this form similarly refers to the offense that the individual is suspected of or alleged to have committed. Therefore, the Coast Guard did not commit an error or injustice by citing sexual assault as the applicant's "charge" on his FD-249 and R-84.

⁴ According to Rule 302(a)(1) of the Manual for Courts-Martial, an apprehension is the equivalent of "arrest" in civilian terminology.

⁵ Probable cause exists where the facts and circumstances within the officer's knowledge, and of which he or she has reasonably trustworthy information, are sufficient in themselves to warrant a belief by a person of reasonable caution that a crime is being committed or has been committed. *Brinegar v. United States*, 338 U.S. 160, 69 S. Ct. 1302, 93 L. Ed. 1879 (1949).

8. While the applicant's records should not be expunged, the Board agrees with the JAG that the applicant's R-84 is inaccurate and should be corrected and resubmitted to the FBI. The disposition listed on the R-84 states "charges dismissed on 09/17/2016, mbr received a negative performance (CG-3307) memorandum on the same date." The Board agrees that the term "charges dismissed" is inaccurate in that the applicant was never formally charged with an offense. Further, the disposition is inaccurate in that the applicant received the Page 7 on November 17, 2017, rather than September 17, 2016. However, the Board disagrees with the JAG's proposed alternative of "Prosecution declined, mbr received a negative performance (CG-3307) memorandum on 11/17/2016." According to the DoD instructions on fingerprint recording requirements, the disposition shown on an R-84 must be described in commonly understood terms. The DoD instructions specifically state that dispositions consisting of only administrative action, such as the Page 7 that the applicant received, should read "administrative paperwork." Since the Coast Guard generally follows the DoD instructions on fingerprint recording requirements, the Board should instruct the Coast Guard to correct the applicant's disposition on his R-84 to read "administrative paperwork."

9. The Board notes that while the applicant's records should not be expunged, CGIS violated two policies related to the handling of the applicant's records that were submitted to the FBI's NCIC. First, in accordance with Chapter 7-T-2 of the Coast Guard Investigations Manual, CGIS agents should not have submitted the applicant's FD-249 to the FBI until after his case had been adjudicated on November 17, 2016. The manual states that an FD-249 may be prepared at the time of interrogation, but that the forms are to be maintained in the investigative file until proceedings against the suspect have been completed. While the Coast Guard violated its own internal policy by submitting the applicant's FD-249 to the FBI before his case had been adjudicated, this violation does not have any impact on the applicant's request because submission of the form was required based on his arrest even though no formal charges were filed. Second, CGIS agents did not submit the applicant's R-84 form to the FBI until approximately 17 months after he received the Page 7. According to the instructions listed on the R-84 form, the final disposition of an arrest should be reported at the earliest possible time. While neither the FBI nor the Coast Guard provide a specific timeframe for reporting an R-84, the DoD instructions on fingerprint reporting requirements state that disposition information should be reported within 30 calendar days. Timely submission of records to the FBI's NCIC is critical for a complete and accurate background check. However, since the applicant's records have already been submitted to the FBI, the Coast Guard's delay does not impact his request.

10. Therefore, the Board finds that alternative relief should be granted. The R-84 submitted to the FBI's NCIC on April 3, 2019, should be replaced with a corrected R-84 on which the disposition should be recorded as "administrative paperwork," instead of "charges dismissed on 9/17/2016, mbr received a negative performance (CG-3307) memorandum on the same date."

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of MK1 [REDACTED] USCG, for correction of his military record is denied but the following alternative relief is granted: Within thirty days, the Coast Guard shall replace the R-84 submitted under his name to the National Crime Information Center of the Federal Bureau of Investigation on April 3, 2019, with a corrected R-84 on which the disposition shall be recorded only as “administrative paperwork,” instead of “charges dismissed on 9/17/2016, mbr received a negative performance (CG-3307) memorandum on the same date.”

October 15, 2020

