

**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. 2024-106**

  
AET1

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**FINAL DECISION**

This proceeding was conducted by the Board for Correction of Military Records of the Coast Guard (hereinafter “Board” or “BCMR”) under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the application on July 24, 2024, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).<sup>1</sup>

This final decision, dated July 24, 2025, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

**INTRODUCTION**

The applicant, an active Coast Guard Avionics Electrical Technician, First Class (AET1/E-6), has asked the Board to amend or expunge records created by the Coast Guard’s Family Advocacy Program (FAP) relating to allegations that he committed child emotional abuse in mid-2020. He has also asked that his name be removed from the FAP Central Registry, an electronic database of substantiated abuse allegations.

**SUMMARY OF THE RECORD**

The applicant joined the Coast Guard on November 4, 2008.

In June 2020, a domestic incident was referred to the Coast Guard’s FAP. According to civilian police records, the incident occurred on May 31, 2020, and involved a domestic dispute between the applicant and his wife over the punishments the applicant gave to their

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<sup>1</sup> Although the applicant submitted his DD Form 149 (Application for Correction of Military Record) in November 2023, the application was not considered complete and reviewable until the applicant’s personnel files were received in July 2024.

eldest daughter. The applicant was interviewed by a Family Advocacy Specialist (FAS), who also gathered other relevant information about the incident.

On July 13, 2020, an Incident Determination Committee (IDC) convened to review the incident and issued an Incident Status Determination (ISD). That ISD was detailed in a memorandum sent to the applicant on July 17, 2020. Therein, the IDC stated it had determined the incident in question *did not* meet the criteria for Intimate Partner Physical Abuse (IPP) or Intimate Partner Emotional Abuse (IPE) by the applicant or his wife, or Child Physical Abuse (CP) by the applicant of his daughter. The IDC determined, however, that the incident *did* meet the criteria for Child Emotional Abuse (CE) by the applicant of his daughter.<sup>2</sup> The ISD memo detailed an individualized service plan established for the applicant, which included attendance at individual therapy sessions and virtual “Father’s Ending Abuse” group sessions. The applicant was also informed that review of the ISD could be requested by submitting a request within 14 days, either directly to the IDC Chair or through his command. Review request guidelines were enclosed, which explained that such a request must be based on either new information, or a contention that IDC protocol described in Coast Guard policy was not followed.

The applicant submitted some form of review request to his command in the days following his receipt of the ISD memo, but his command informed him that changes to the format and/or content of the submission would have to be made before it could be forwarded to the IDC Chair. Ultimately, the applicant did not submit a timely request for review of the ISD. His subsequent review requests were denied as untimely.

In an August 8, 2020, letter, an employee of a state family services agency stated that the agency had received allegations of domestic violence and neglect relating to the applicant’s three children in June 2020. The letter stated that the agency investigated the allegations and determined that they were “Not Established.” It went on to explain that a finding of “Not Established [was] made when some credible evidence indicates that a child was harmed or placed at some risk of harm by an action or inaction on the part of the child’s parent or guardian, but the action or inaction did not rise to the level of abuse or neglect.”

In late October 2020, the applicant’s wife filed an Order to Show Cause in a state civil court proceeding involving custody of the applicant’s children. Attached as an exhibit to the filing was a letter from the FAS who handled the applicant’s FAP case to the applicant’s wife, dated July 21, 2020. This letter detailed the ISD findings in the same format as was provided to the applicant in the memo dated July 17, 2020 (described directly above).

In a July 6, 2021, letter, the Coast Guard informed the applicant that in March 2021, the FAS who handled his FAP case had resigned, and that all FAP case records were sent

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<sup>2</sup> The ISD memo did not provide any details regarding the nature of the alleged physical or emotional abuse.

via FedEx to two locations, but the applicant's record could not be found. The applicant was offered free credit monitoring and directed to fraud and identity theft prevention resources.

On December 1, 2021, the applicant was promoted to AET1/E-6.

In an addendum to a property settlement agreement dated July 27, 2022, the applicant's wife represented that she had no concerns related to the applicant's abuse or neglect of any of their children.

### APPLICATION

In his submission to the Board, the applicant requested that the July 2020 ISD be expunged. Alternatively, he requested that the ISD be amended to either (1) remove the finding that the incident in question met the criteria for CE of the applicant's daughter, or (2) change the finding to reflect that the incident did *not* meet the criteria for CE. The applicant also requested that he be removed from the Coast Guard's FAP Central Registry, which lists individuals for whom an ISD includes a finding of "met criteria" for abuse.

The applicant contended that both the ISD's finding of CE and the release of the ISD findings to his wife constituted error or injustice, in part because relevant Coast Guard policies had not been followed. Specifically, the applicant contended that the FAS had not provided him required consent forms or otherwise obtained informed consent prior to his initial interview with her. He also contended that policy required he be notified of his rights under Article 32 of the Uniform Code of Military Justice (UCMJ). The applicant also alleged that steps taken by his command, the FAS, and others did not meet required deadlines, and that he was prevented from requesting a timely review of the ISD by his command's actions. He argued further that the ISD's finding of CE was not supported by a preponderance of the evidence. In support of this argument, the applicant pointed to the August 2020 letter documenting the state agency's "Not Established" finding, and the July 2022 statement by his wife, which he characterized as a recanting of her abuse allegations.

The applicant also discussed and provided documentation relating to complaints he made to the Coast Guard about the FAS's actions. He contended that her processing of his case was inconsistent with Coast Guard policy, and that her release of information to his wife amounted to violations of the Privacy Act and the Health Information Portability and Accountability Act (HIPAA).

The applicant also detailed requests for various records he had made pursuant to the Freedom of Information Act (FOIA), to which he alleged he received no response.

For the reasons discussed in the Findings and Conclusions section below, the Board does not describe all of the applicant's contentions in significant detail here.

### **VIEWS OF THE COAST GUARD**

In an advisory opinion dated May 14, 2025, a Coast Guard Judge Advocate (JA) recommended the Board deny the applicant's requested relief. The JA initially asserted that the Board should administratively close the case because the requested relief could not be granted. The JA explained that the applicant's FAP file had been lost when it was mailed via FedEx following the resignation of the FAS responsible for the case. Thus, the JA argued, the Coast Guard did not have the ISD and could not correct the record. In the alternative, the JA argued that the applicant had failed to submit timely requests for review of the ISD, despite being afforded the opportunity to do so, and that the application was barred by the doctrine of laches.

### **APPLICANT'S RESPONSE TO COAST GUARD'S VIEWS**

The Board provided the Coast Guard's views to the applicant and received his response on or before July 14, 2025. Therein, the applicant initially argued that the regulatory deadline for the Coast Guard to provide an advisory opinion had expired before the opinion was submitted to the Board. As such, the applicant urged the Board to disregard the Coast Guard's submission. The applicant also argued that the statutory deadline for the Board to issue a decision had expired. The applicant then reiterated various arguments made in his application and stated that because of the ISD, his name had been "placed on a Central Registry of abusers for life."

### **APPLICABLE LAW AND POLICY**

The Coast Guard's FAP policy in effect during the relevant period was contained in COMDTINST 1752.1 (August 2014) (hereinafter "*FAP Manual*"). In relevant part, it provided that "[t]he goals of the FAP are to prevent maltreatment within family and intimate partner relationships, assist commands in addressing incidents of maltreatment, and to mitigate the effects of maltreatment incidents on mission readiness where possible." *FAP Manual* § 5.b.

The policy defines an IDC as "[a] team of designated individuals tasked with the evaluation of reports of child and intimate partner maltreatment to determine whether they meet the relevant criteria for the type of maltreatment alleged." *FAP Manual*, Enclosure (1). An ISD is defined as the "[IDC's] decision whether or not the reported incident meets the relevant criteria for the type of maltreatment alleged." *Id.*

"All adult FAP clients will be provide informed consent information in their first contact with the FAS ... [although] [t]he client does not have to sign the [informed consent] form in order to receive services." *FAP Manual*, Enclosure (2) § h.

“Alleged offenders should be encouraged to seek assistance through self-referral. Those AD members who seek FAP treatment or assistance for maltreatment problems may initiate the evaluation and intervention process by voluntarily disclosing the nature and extent of his/her problem to the chain of command and/or to the FAS.” *FAP Manual*, Enclosure (2) § i. In addition, “in cases of self-referral or self-disclosure, if a [FAP staff member] suspects a member of serious criminal wrongdoing not otherwise reported to CGIS, [the staff member] shall advise the member of his/her rights under Article 31(b) of [the UCMJ].” *Id.* § i(1).

The Coast Guard FAP Central Registry is “an electronic database consist[ing] of ‘met criteria’ cases only and exists for the purpose of certain background checks.” *FAP Manual* § 7. These include background checks on persons who are applying for employment in a childcare-related position within the Coast Guard or Department of Defense, or who are the subject of an open FAP case or criminal investigation. *Id.* § 7.a. Central Registry checks may not be used for purposes other than those listed, such as for determining suitability for promotions or assignments. *Id.* § 7.b.

While the version of the *FAP Manual* in effect at the relevant time discussed records management generally, it did not specify whether documentation of ISD findings should be released, and if so, to whom. A recent update to the policy, however, makes clear that ISD notifications provided to offenders, victims, and/or parents or guardians of minor victims are to be made verbally, and no written records released. See *FAP Manual* § 12.n.(5)-(7) (May 2025).

Statutory authority for the FAP is provided in 10 U.S.C. § 1058. Implementing regulations are found at 32 C.F.R. Part 61. In relevant part, “[d]ata that personally identifies the sponsor, victim, or alleged abuser are not retained in the central registry for any incidents that did not meet criteria for entry....” 32 C.F.R. § 61.12(f)(3)(i).

## FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on the applicant’s military record and submissions, the Coast Guard’s submissions, and applicable law and policy:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552 because the applicant is requesting correction of an alleged error or injustice in a Coast Guard record. The applicant has exhausted available 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 is timely, as the three-year statute of limitations contained in 10 U.S.C. § 1552(b) is tolled during the applicant's active duty service, which is ongoing.<sup>3</sup>

3. The applicant requested a hearing before the Board via video or telephone. 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.<sup>4</sup>

4. Under 10 U.S.C. § 1552, the Board is authorized to "correct an error or remove an injustice" in any Coast Guard military record. "Error" means a mistake of a significant fact or law and includes a violation by the Coast Guard of its own regulations.<sup>5</sup> "Injustice" is sometimes defined as "treatment by the military authorities that shocks the sense of justice but is not technically illegal."<sup>6</sup> The Board has authority to determine whether an injustice exists on a "case-by-case basis."<sup>7</sup>

5. The Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in the record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.<sup>8</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>9</sup>

6. Initially, the Board notes that it is not empowered to adjudicate FOIA claims or appeals, or to determine or impose penalties for violations of HIPAA or the Privacy Act. The Board is also without authority to place restrictions on the applicant's wife's use of documents already released to her by the Coast Guard. As such, the Board will not address these matters.

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<sup>3</sup> *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994) (holding that, under § 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, the BCMR's three-year limitations period under 10 U.S.C. § 1552(b) is tolled during a member's active duty service).

<sup>4</sup> See *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).

<sup>5</sup> See *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976) ("Error" means legal or factual error."); *Ft. Stewart Schools v. Federal Labor Relations Authority*, 495 U.S. 641, 654 (1990) ("It is a familiar rule of administrative law that an agency must abide by its own regulations.").

<sup>6</sup> *Reale v. United States*, 208 Ct. Cl. At 1011; but see 41 Op. Att'y Gen. 94 (1952), 1952 WL 2907 (finding that "[t]he words 'error' and 'injustice' as used in this section do not have a limited or technical meaning and, to be made the basis for remedial action, the 'error' or 'injustice' need not have been caused by the service involved.").

<sup>7</sup> Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002).

<sup>8</sup> 33 C.F.R. § 52.24(b).

<sup>9</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).

7. The Board's authority is limited to the correction of Coast Guard records based on error and/or injustice. In this case, the Coast Guard has averred that the applicant's FAP case file, including the ISD in question, cannot be obtained. Accordingly, and in the absence of any information to the contrary, the Board finds that the applicant's FAP file, including the ISD, do not constitute existing Coast Guard records. For this reason, the Board is without recourse to order changes to the ISD.

8. To the extent the Board could interpret the application to include a request that the Coast Guard be directed to produce a new copy of the ISD reflecting a finding that the criteria for CE were not met, or redacting or removing the finding that the criteria for CE *were* met, the Board declines to do so for several reasons.

9. First, the applicant has not presented any substantive information regarding the nature of the domestic incident that was the subject of the ISD, nor is any contained in the record before the Board. The Board, therefore, lacks sufficient information against which to assess the ISD for error or injustice. Although the applicant has submitted a short letter in which a state agency documented its finding that abuse was "Not Established," the letter provides no explanation for this finding, and the Board finds no basis in the record to find it more probative than the ISD. In addition, the state and the IDC employed different standards for abuse. Thus, even acceptance of the state agency's finding at face value would not be sufficient to conclude that the ISD contained error or injustice. In addition, the applicant has submitted a document executed in July 2022 by his wife as part of a divorce settlement. This document states that the applicant's wife had no concerns related to the applicant's abuse or neglect of any of their children. The Board does not find that the IDC's finding of CE is outweighed by the applicant's wife's own lack of concern expressed in an unrelated document several years later in connection with a divorce settlement, a process involving considerations entirely different from the IDC's contemporaneous assessment of the incident in July 2020.

10. Second, the applicant argues that procedural errors occurred in the processing of his FAP case; however, while the Coast Guard policy provides that procedural errors may form the basis of a request for review of an ISD, it does not provide that such errors, even if proven, dictate an automatic reversal of the ISD findings, as the applicant seems to suggest.

11. The applicant has contended that he was not provided informed consent in his first contact with the FAS, as required by policy. The record shows, however, that he later signed the relevant consent forms. He has also not explained how he was prejudiced by any delay in providing informed consent, i.e., how any delay was causally connected to the ISD finding that the criteria for CE were met based on the information received from all sources.

12. The applicant also argues that the *FAP Manual* required that he be advised of his UCMJ Article 31(b) right against self-incrimination. The policy states that this should occur when an offender self-refers by “seek[ing] FAP treatment or assistance for maltreatment problems ... by voluntarily disclosing the nature and extent of his/her problem to the chain of command and/or to the FAS.”<sup>10</sup> In self-referral cases, if a FAP staff member “suspects a member of serious criminal wrongdoing not otherwise reported to CGIS, [the staff member] shall advise the member of his/her rights under Article 31(b) of [the UCMJ].”<sup>11</sup> In this case, the record does not suggest the applicant self-referred. According to the applicant, in a telephone call one day after the incident, he informed a member of his chain of command of a “domestic incident with my spouse ... in which my spouse was making false allegations of abuse.” The Board does not find that the notification of his command described by the applicant constituted an effort to “seek FAP treatment or assistance for maltreatment problems” or a disclosure of “the nature and extent of [his] problem to the chain of command and/or to the FAS.” Under these circumstances, the policy did not require that the applicant be advised of his Article 31(b) rights. The Board also notes that there is no indication in the record that prosecution for UCMJ violations was ever considered. In addition, the FAP Policy requires the FAS to report all allegations of maltreatment to CGIS.<sup>12</sup> There is no indication that the applicant’s conduct was “not otherwise reported to CGIS” in this case.

13. The applicant contends that he was prevented from filing a timely request for review of the ISD findings. A review of the evidence, however, shows that the applicant was advised that he could submit a request for review directly to the IDC Chair. It was the applicant’s choice to send the request through his command. It appears the command advised the applicant to amend his request by putting it in a format consistent with the command’s standards for professional correspondence, and that he make other changes. The Board does not find, however, that the record supports the applicant’s contention that he was unable to make these changes, or unable to change course and submit his request directly to the IDC Chair.

14. Under these circumstances, and based primarily on the lack of substantive information in the record calling into question the ISD finding of CE, the Board finds that no relief with respect to the ISD findings is warranted.

15. The Board turns next to the applicant’s request that he be removed from the FAP Central Registry. The Coast Guard did not address this request in its advisory opinion.

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<sup>10</sup> See *FAP Manual*, Enclosure (2) § i.

<sup>11</sup> *Id.* § i(1).

<sup>12</sup> *Id.* § g.

As such, it is unclear whether information related to the applicant was entered into and/or remains in the registry. In the absence of information to the contrary, the Board will assume that the applicant was entered into the registry, consistent with law and policy.

16. As noted above, entry into the FAP Central Registry is generally predicated on an ISD finding that an incident “met criteria” for abuse. In this case, the ISD in question no longer exists in the Coast Guard’s records. Nonetheless, to warrant relief from the Board, an applicant must submit “substantial evidence,” and must prove “the existence of an error or injustice by the preponderance of the evidence.” 33 C.F.R. §§ 52.21(c)(1), 52.24(b). For the reasons discussed above, the Board does not find that the applicant has met his burden to prove that his inclusion in the Central Registry was error or injustice. Namely, he has not submitted substantive information about the incident which call the ISD finding of CE into question. Accordingly, the Board declines to direct the Coast Guard to remove the applicant from the registry (to the extent he has been entered).

17. The Board wishes to make clear, however, that notwithstanding the above, the Board finds no law or policy directly addressing the situation presented here, where a servicemember’s FAP file has been lost. In the Board’s view, therefore, appropriate Coast Guard and/or Department of Defense (DoD) authorities administering the FAP Central Registry are not constrained from removing the applicant from the registry, in their discretion, as a matter of policy, and/or in response to a direct request from the applicant to those authorities.

18. In summary, the Board has determined that the applicant’s request to amend or expunge the ISD should be denied due to the unavailability of the underlying records. The Board has also determined that the applicant has not established error or injustice such that the Board may direct his removal from the FAP Central Registry. The Board notes, however, that nothing in its decision should be interpreted to prevent Coast Guard and/or DoD authorities from removing the applicant from the registry at their discretion, if they choose.

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

**ORDER**

The application of AET1 [REDACTED] is denied.

July 24, 2025

