

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2012-088

XXXXXXXXXXXXXX
XXXXXXXXXXXXXX

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. The Chair docketed the case after receiving the applicant's completed application on March 6, 2012, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated January 18, 2013, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant, a storekeeper, first class (SK1/E-6), asked the Board to remove from her record a Page 7 (CG-3307)¹ dated May 20, 2011, documenting counseling about improper use of a Government Travel Charge Card (GTCC); to change the conduct mark of "unsatisfactory" to "satisfactory" on her July 2011 enlisted performance evaluation (EPE); to make her eligible to compete for advancement in the May 2012 service-wide examination (SWE); and to restore her eligibility for a Good Conduct Medal "to the pre-NJP status."

The applicant explained that in January 2011, when she was assigned to a Washington, D.C., xxxxxxxxxxxxxxxx, her command began an investigation into her use of the GTCC after it was canceled. As a result of the investigation, in May 2011 she was flown to xxxxxxxx for a captain's mast before her commanding officer (CO) for allegedly misusing the card. However, she alleged, the CO found her not guilty on all charges. She asked the CO at the end of the mast if she would be eligible to compete for advancement in May 2012, and he told her she would. Furthermore, the CO said that he was dismissing the charges² because she had already been

¹ A Page 7 (form CG-3307, "Administrative Remarks") is used to document counseling provided to a member or any other positive or negative noteworthy event that occurs. HRSICINST M1000.2A, Encl. (6).

² Chapter 1.D.17. of COMDTINST M5810.1E states that at mast, "[t]he commanding officer may decide not to punish a member and dismiss the matter with a warning. Such a decision may be based on either a lack of proof or a determination that punishment is not appropriate even though the member committed the offense(s). Dismissal with a warning is not considered NJP, and no entry shall be made in the member's service record."

sufficiently punished because she had not been able to execute orders to an overseas assignment she had requested and received. The CO told her that there would be no non-judicial punishment (NJP) in her record and that she should “put this behind [her] and move forward.”

Upon returning to her Detachment, however, her Division Chief called her into his office and gave her a Page 7 dated May 20, 2011, which states the following:

[Applicant’s name], this CG-3307 documents your failure to comply with the general orders provided in CI 4600.14 regarding use of the Government Travel Charge Card (GTCC). Specifically, you attempted to pay the account balance with insufficient funds on four occasions during a 12 month period and you utilized the card to pay for expenses not directly associated with official government travel on two occasions.

It is your responsibility to be familiar with all general orders and ensure your compliance. You completed remedial DHS GTCC Training on 06 JAN 11. You are to read CI 4600.14 and ensure you comply with its provisions in the future. The issuing agent has suspended your GTCC. This command will not seek reinstatement. You can expect that any failure to comply with this policy in the future will result in further disciplinary action.

The applicant stated that the Division Chief told her that the Page 7 was “the administrative result of [her] Captain’s mast.” Because the charges against her had been dismissed, she was confused about why he thought documentation was required. She asked him to confirm that she would be eligible to compete for advancement, and he said she would. Therefore, she began studying and preparing to take the SWE in May 2012.

When the applicant received her EPE from her supervisor on July 7, 2011, she saw that she had been assigned average to superior marks in all of the performance categories and she was recommended for advancement. However, she received an “unsatisfactory” conduct mark. Her supervisor told her that the unsatisfactory conduct mark was required because of the Page 7 dated May 20, 2011.³ The applicant told her supervisor that she was “very relieved with the high marks and the recommendation for advancement because [she] knew [she] needed continuing good marks to compete for E-7” in the May 2012 SWE.

The disputed EPE, which covers the applicant’s performance from December 1, 2010, through May 31, 2011, but was signed on July 7, 2011, contains two “average” marks of 4 for the performance categories Responsibility and Evaluations, two “above average” marks of 5 for Setting an Example and Judgment, eighteen “excellent” marks of 6, and three “superior” (highest) marks of 7 for Professional/Specialty Knowledge, Professional Development, and Working with Others. The applicant was recommended for advancement but the conduct mark was “unsatisfactory.” The comment supporting the conduct mark states that she had “received an adverse CG-3307 this evaluation period.”

In August 2011, the applicant was transferred to a new command. She continued studying for the SWE. In a conversation with a chief warrant officer (CWO) about why she did not execute the overseas orders she had received in October 2010, she told him what had happened,

³ Article 10.B.8.b. of the Personnel Manual in effect in 2011 states that a member’s “rating chain must assign an unsatisfactory mark in conduct whenever an individual meets any of the criteria listed in Article 10.B.2.a.” The list in Article 10.B.2.a. includes a Page 7 documenting financial irresponsibility.

and he told her that because of the unsatisfactory conduct mark, she was not eligible to compete for advancement⁴ and her eligibility period for her fifth Good Conduct Medal would be terminated and restarted.⁵ The CWO also told her that despite her otherwise excellent record, the Page 7 would make it very difficult for her to get selected for appointment to chief warrant officer, to get an overseas assignment, or to get any kind of training billet in the future. She had not previously been told any of this by her CO at mast, the Division Chief who gave her the Page 7, or her supervisor in discussing her EPE.

The applicant stated that she strongly objects to the long-term effects of the Page 7 since her CO had expressly dismissed the charges alleged in the Page 7 at mast, deemed the cancellation of her overseas orders sufficient punishment, and told her she could put it all behind her. In support of her allegations, the applicant submitted documents from her military record and the following:

- A lieutenant wrote on behalf of the applicant that the disputed Page 7 is preventing her promotion. He said that he personally attended the applicant's mast and because she was found not guilty, the Page 7 should be removed from her record. The lieutenant stated that during the mast, the CO said that the cancellation of the applicant's overseas orders constituted punishment and that no other punishment was needed. The lieutenant stated that the applicant's ineligibility for promotion constitutes additional punishment in excess of what the CO ordered. The lieutenant also stated that he has worked with the applicant on numerous supply and procurement processes and that she is a very knowledgeable and responsible storekeeper.
- A senior chief petty officer (SCPO) wrote on behalf of the applicant that he served as her representative at mast on May 17, 2011, and remembers that the applicant asked the CO if she would be eligible to take the SWE in May 2012, and the CO said that she would. Her Department Head and supervisor were present at the mast by video conference and so knew what the CO had said. He also stated that since the charges against the applicant were dismissed, there was no reason to give her an unsatisfactory conduct mark. Therefore, the SCPO concluded, the applicant should be eligible for advancement, her conduct mark should be corrected to "satisfactory," and her eligibility period for a Good Conduct Medal should not be terminated.

VIEWS OF THE COAST GUARD

On July 27, 2012, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

⁴ Article 3.A.5.b.(3) of COMDTINST M1000.2 states that to be eligible for advancement to chief petty officer (E-7) a member must, "[f]or 24 months prior to the terminal eligibility date (1 January following the May exam), and for the entire period from recommendation to advancement, have no unsatisfactory conduct mark, court martial (CM) or civil convictions, or non-judicial punishments (NJP)."

⁵ Article 10.B.8.a. of the Personnel Manual in effect in May 2011 states that a "new period of eligibility for the Good Conduct award begins any time a member receives an unsatisfactory mark in conduct."

PSC recommended that the applicant’s request be denied. PSC noted that under Chapter 1.E.3.1. of COMDTINST M4600.18, which contains the Coast Guard’s GTCC policies and procedures, the applicant’s CO was required to take certain actions to hold her accountable for misusing her GTCC.⁶ PSC alleged that the applicant received the disputed Page 7 in accordance with this policy. Chapter 1.E.3.1. of COMDTINST M4600.18 states that the CO must

[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 and 3-2; 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. ...

(1) Minimum action required for undisputed GTCC balances overdue:

Days Account Past Due^[7]	Military Personnel	[Other columns not shown.]
Step 1 – 1 day	Informal Counseling	
Step 2 – 31 days	Documented Counseling	
Step 3 – 61 days	Page 7 entry	
Step 4 – 91 days	[Note 3: Inquire into UCMJ accountability after discussing with legal officer.]	

(2) Minimum action required for unauthorized GTCC use:

Number/Total Value of Charges	Military Personnel	[Other columns not shown.]
Not more than 3 charges or \$100	Documented Counseling	
Not more than 5 charges or \$200	Page 7 entry	
More than 5 charges or \$200	[Note 3: Inquire into UCMJ accountability after discussing with legal officer.]	

⁶ Chapter 1.A.4. of COMDTINST M4600.18 states that “[t]he GTCC is issued with the express intent of providing personnel with a mechanism to pay for travel expenses associated with official government TDY and/or military PCS orders that are exclusively funded by the Coast Guard. 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.”

⁷ According to Chapter 1.I.2. of COMDTINST M4600.18, a GTCC billing period runs from the 12th or 13th of one month to the 12th or 13th of another month and may be adjusted for weekends or holidays. According to Chapter 1.L.

1. The payment due date of a statement is approximately 25 calendar days from the statement billing cycle end date.
2. A GTCC account is classified as Past Due if the GTCC bank has not received payment by the first day after the account due date indicated on the GTCC statement.
3. A GTCC account is classified as Delinquent if the GTCC bank has not received payment by the 31st day after the account due date indicated on the original GTCC statement.
4. A GTCC account is classified as Suspended if the GTCC bank has not received payment by the 61st day after the account due date indicated on the original GTCC statement.

PSC noted that the applicant submitted nothing to show that the Page 7 is inaccurate. In addition, PSC noted that Article 10.B.8.b. of the Personnel Manual in effect in July 2011 requires a member's rating chain to assign a member an unsatisfactory conduct mark whenever the individual meets any of the criteria for misconduct listed in Article 10.B.8.a. and that the list includes financial irresponsibility. PSC concluded that the disputed Page 7 and unsatisfactory conduct mark were prepared in accordance with Coast Guard policy.

PSC stated that the applicant's apparent belief that because the disciplinary action taken by her command—mast—ended with no NJP being awarded, no further administrative action could be taken by the command is erroneous. "Dismissal of a disciplinary action does not prevent the applicant's supervisor from taking administrative action." Therefore, PSC argued that the applicant has failed to substantiate any error or injustice in her record and her request for relief should be denied.

RESPONSE TO THE VIEWS OF THE COAST GUARD

In response to the views of the Coast Guard, the applicant disagreed with the Coast Guard's recommendation and submitted a series of emails she exchanged with the CO who dismissed the charges against her at mast on May 11, 2011. She initiated the exchange on July 26, 2012, by asking him whether he intended that she receive the unsatisfactory conduct mark and resulting adverse administrative consequences after he dismissed the charges against her. She did not mention the Page 7. The CO, who had retired on October 1, 2011, replied as follows:

[Applicant], my job was to sort out if NJP action was appropriate in your case. I decided it was not appropriate and dismissed the formal charges against you.

The marks assigned by your chain of command are a separate issue. There are specific Personnel Manual rules about marking unsat in conduct. I don't think that mark is wholly dependent on one NJP outcome, but as I said at the mast, a dismissed NJP is not grounds alone for unsat in conduct. In other words, there would have to be some reason for unsat other than the NJP dismissal.

On August 1, 2012, the applicant asked the CO to clarify whether he intended her to receive an unsatisfactory conduct mark based on the dismissed charges or whether he intended to limit her "punishment" to the cancellation of her overseas orders. The CO replied that he

dismissed your charges because I saw no value to you or the CG in my awarding you NJP. It was not my intention to have you receive an unsat in conduct mark due to that mast. It sounds to me like you have a legitimate question about how the mark was determined so I have pushed your concern to [the Division Chief and current CO of that command].

The applicant did not submit any responses by the Division Chief or the current CO to the CO's inquiry.

Regarding the events that led up to the mast, the applicant explained that four weeks after her mother died on April 9, 2010, she was asked to deploy as the xxxxxxxxxx for the xxxxxxxxxx xxxxxxxxxx. Because she had just recently been away for an extended period to care for her mother, her supervisor tried to block the orders but she received the orders anyway, which damaged her relationship with her supervisor. While she was deployed, her

supervisor, who resented her deployment, improperly continued to assign her tasks daily. Her supervisors at the NIC repeatedly advised her supervisor that the applicant could not be tasked with other duties while working at the NIC, where she worked 20+ hour days seven days a week for many months. She also served as the Administrative Assistant to the xxxxxxxxxxxx and as such traveled frequently back and forth between Headquarters and xxxxxxxx. On October 6, 2010, the applicant received a Commendation Medal for her work during this deployment from May 3 through October 1, 2010. The citation for the award states that as the xxxxxxxx, she filled a position normally filled by a CWO and was responsible for all property, purchasing, and reconciling for xxxxxxxx. The citation also states that “she provided detailed and timely logistics planning for multiple short-notice deployments and travel claim processing” for the xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

The applicant stated that she usually paid the bills in her household but in the winter of 2010, because she was overwhelmed with traveling and her mother’s terminal illness, her husband took over paying the bills. When her husband attempted to pay her GTCC bill over the phone on two occasions in 2010, he accidentally used their savings account number instead of their checking account number. Both accounts were at the same bank, and their checking account had ample funds to make the payments, but the savings account did not. The applicant stated that in February 2010, her husband authorized a payment of \$272.70 to pay off her GTCC balance over the telephone but used the wrong account number so the payment was returned due to insufficient funds. He made the same mistake in November 2010 by authorizing a \$268.05 payment to pay the balance on her GTCC, and that payment “attempted to post 3 more times,” resulting in three insufficient fund reports.

In support of these allegations, the applicant provided documents from the investigation and her bank account statements for February, November, and December 2010, which show that her checking account maintained a balance of about \$2,500 in late January and early February 2010; a balance of about \$1,100 in late October and early November 2010; and a balance of between \$4,000 and \$6,000 in late November and early December 2010. A print-out of her GTCC account for the period June 2009 through December 2010 shows that she used the card throughout that period for purchases in the Washington, D.C. area,⁸ xxxxxxxx, xxxxxxxx, xxxxxxxx, and xxxxxxxx and made payments as follows:⁹

⁸ Chapter 1.D. of COMDTINST M4600.18 states that the following uses of a GTCC are prohibited:

1. Use by members while assigned local travel orders. Coast Guard defines local travel as authorized travel within the local commuting area (50 miles from the permanent duty station).
2. Payment of lodging expenses in the vicinity of the Permanent Duty Station (PDS), except when the lodging is in conjunction with TLA or TLE on official travel orders.
3. Use at eating establishments in the vicinity of the PDS, except when the meals are in conjunction with TLA or TLE.
4. Any other use in the vicinity of the PDS not directly associated with official travel or in conjunction with [temporary lodging allowance or temporary lodging expense].

• • •

11. Any expense associated with local travel orders, which may include, but is not limited to, parking, tolls, ferries or water taxis.

⁹ Chapter 1.J. of COMDTINST M4600.18 states that a “GTCC statement must be paid in full on or before the due date printed on the monthly statement regardless of whether the travel voucher reimbursement has been received. Partial payments are not authorized.”

- On July 15, 2009, a payment of \$1,800.00 was received.
 - On September 15, 2009, a payment of \$2,900.00 was received.
 - On September 25, 2009, a payment of \$2,083.55 was received.
 - On December 2, 2009, a payment of \$707.16 was received.
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| <ul style="list-style-type: none"> • On January 20, 2010, a payment of \$1,995.64 was received, but the payment was reversed with the notation “payment check return.” • On February 2, 2010, the applicant was charged a “returned check fee” of \$25.00. |
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- Also on February 2, 2010, the account shows both a charge and credit in the amount of \$272.70 attributed to American Airlines.
 - On February 4, 2010, a payment of \$2,000.00 was received.
 - On March 1, 2010, a payment of \$3,965.72 was received.
 - On March 26, 2010, a payment of \$58.00 was received.
 - On June 18, 2010, a payment of \$3,500.00 was received.
 - On August 23, 2010, a payment of \$3,745.88 was received.
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| <ul style="list-style-type: none"> • On October 21, 2010, a payment of \$36.00 was received, but the payment was reversed with the notation “payment reversal.” • On November 5, 2010, the applicant was charged a “returned check fee” of \$25.00. |
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| <ul style="list-style-type: none"> • On November 22, 2010, a payment of \$268.05 was received, but the payment was reversed with the notation “payment reversal.” • On November 26, 2010, the applicant was charged a “returned check fee” of \$25.00. |
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| <ul style="list-style-type: none"> • On December 8, 2010, a payment of \$268.05 was received, but the payment was reversed with the notation “payment reversal.” • On December 23, 2010, the applicant was charged a “returned check fee” of \$25.00. |
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- On December 29, 2010, a payment of \$318.05 was received.

The applicant stated that the very first time the payment failed, she and/or her supervisor should have been notified.¹⁰ If she had been notified, the error would not have happened more than once, and she would have resumed paying the bills. When she was learned of the problem, she fully disclosed the situation to her supervisors, learned about an annual GTCC training requirement that she had never been told about, took the training, and applied to get her card reactivated. She submitted documents showing that in January 2011 she underwent GTCC training and financial counseling. She also submitted a copy of ALCOAST 110/10, issued on March 8, 2010, which notes that annual GTCC training had become a requirement for members with GTCCs.

The applicant alleged that the Coast Guard’s failure to inform her about the required and available GTCC training and refusal to give her a chance to correct her husband’s mistaken use of the wrong account when he first made the mistake in February 2010 are errors that have created huge injustices that will affect the remainder of her career and possible cause her involuntary retirement if she is selected for separation by the Career Retention Screening Panel because she has not been advanced or selected for appointment to CWO. Because she does not

¹⁰ Chapter 1.E.2.c(17) of COMDTINST M4600.18 requires designated Travel Mangers to “[a]t a minimum, notify the cardholder and command in writing when an account is delinquent at 31, 61, and 91 days past due.”

have a GTCC, she will not be able to deploy overseas or remain on the Coast Guard's Incident Management Assessment Team although she is highly qualified.

The applicant stated that the allegations that she had misused her GTCC for expenses not related to official duties because they thought she was not on orders or in a travel status were disproved and dismissed at mast because she was able to submit official orders and travel claims for all of the listed dates as well as orders authorizing her to rent a car.¹¹

In support of her claims, the applicant also submitted the following documents from the investigation:

- An email from a Coast Guard Transportation Assistant who served as the applicant's command's GTCC coordinator to the officer investigating the applicant's GTCC usage states that every Monday, after the Coast Guard receives a report showing all GTCC delinquencies, an email is sent to the member and the member's supervisor. If the member's name still appears on the report the following Monday, another email is sent to the member and the supervisor. If the delinquency is resolved after the first or second report, all correspondence about the matter is deleted. If the member's name is on the report the third Monday, an email is sent up the chain of command.
- An email from the investigator to the applicant's supervisor dated February 28, 2011, states that the Transportation Assistant could not find any emails by which the applicant or her supervisor had been notified of the applicant's GTCC delinquencies and inquires whether the supervisor had copies of the emails. The supervisor stated that she had never received any such emails and that she only learned about the problems when the applicant was unable to book a trip because her GTCC had been canceled. The applicant also told the investigator by email that she had never received any emails about GTCC delinquencies and learned that her card had been canceled only after she was unable to confirm travel arrangements with an airline.
- An undated letter from the applicant to her CO requesting GTCC reinstatement and explaining that although she usually paid her GTCC bill out of her joint checking account, which had ample funds, while she was deployed for five months xxxxxxxx xxxxxxxx, she sometimes paid her GTCC bill by phone with her debit card and inadvertently used her savings account number instead of her checking account number. She stated that as soon as she discovered the error, she paid the bill from her checking account.
- An email from the Division Chief endorsing her request for reinstatement of her GTCC. He wrote that "[g]iven the extended period of her deployment and a review of the circumstances I believe the 'non-sufficient funds' payments were accidental and that the member was not aware of the situation until her card was suspended."

¹¹ The applicant also complained in her response to the advisory opinion that she has been improperly charged with 23 days of leave. Because the applicant did not raise the leave issue in the original application, it is a distinctly separate issue, and the Coast Guard has not had an opportunity to respond to it, the Board will not address the issue at this time. The applicant may submit a separate application regarding the correction of her leave balance.

- An email from a GTCC Program Coordinator dated January 10, 2011, stating that he could not approve reinstatement of the applicant's GTCC because there were four occurrences of insufficient fund checks in her past account and "it appears that she has been using her card for personal expenses while not in a travel state." He recommended that the matter be investigated.

OTHER APPLICABLE REGULATIONS

Regulations About Financial Irresponsibility

Article 8.L.1.e. of the Personnel Manual in effect in May 2011 states that "[t]endering a check drawn on a bank when the individual knows or reasonably should know that there will be insufficient funds available may constitute a criminal offense under the laws of the civil jurisdictions or the Uniform Code of Military Justice. Commanding officers shall investigate incidents of this nature and take disciplinary action when appropriate. While every instance of a check returned because of insufficient funds is not necessarily criminal, repeated incidents of this nature are indicative of financial irresponsibility and should be handled as provided for in Article 8.L.4."

Article 8.L.4.a. states that "[w]hen a unit receives a complaint of indebtedness, the commanding officer shall counsel the individual concerned. For units below the group level, all responses, Administrative Remarks, CG-3307, entries, and correspondence will be prepared by the group staff and copies provided to the unit commanding officer (CO) or officer-in-charge (OIC)."

Article 8.L.4.d. states that "[r]epeated complaints of indebtedness concerning an enlisted person, with no indication of satisfactory progress toward establishing an acceptable financial status, may be considered as evidence of unreliability. Commanding officers shall submit an Administrative Remarks, CG-3307, entry that the member is "Unreliable due to failure to pay debts." The entry shall also include a description of the circumstances surrounding the entry such as the dates, debts, and actions taken. Such an entry may be made for each succeeding marking period until the situation improves. Each time this entry is made, it will be considered when completing the member's next performance evaluation, particularly in the commanding officer's advancement recommendation.

Paragraph 5 of COMDINST 4600.14 states the following:

(1) Undisputed GTCC bills shall be paid in full on or before the statement due date regardless of reimbursement. Non-timely payment of the bill on the statement is prohibited and is punishable under Article 92 of the Uniform Code of Military Justice (UCMJ) and may result in other adverse administrative or disciplinary action. It is prohibited to allow account balances to age to delinquent, suspended, closed, or charged off status, as these terms are defined at paragraph A.5 to enclosure (1) of [COMDTINST M4600.18]. Violation of this order is punishable under Article 92 of the UCMJ and may also result in other adverse administrative or disciplinary action by the member's command.

(2) Intentional use of a government charge card (CBA or GTCC) for other than official government business while on approved official travel 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 required by [COMDTINST M4600.18].

Regulations About NJP and Administrative Corrective Measures

Rule 306(c)(2) of the Rules for Courts-Martial states that a “commander may take or initiate administrative action, in addition to or instead of other action taken under this rule, subject to regulations of the Secretary concerned. Administrative actions include corrective measures such as counseling, admonition, reprimand, exhortation, disapproval, criticism, censure, reproach, rebuke, extra military instruction, or the administrative withholding of privileges, or any combination of the above.”

Part V.1.g. of the Manual for Courts-Martial states that NJP under Article 15 of the UCMJ does “not apply to include, or limit the use of administrative corrective measures that promote efficiency and good order and discipline such as counseling, admonitions, ... and administrative withholding of privileges. ... Administrative corrective measures are not punishment, and they may be used for acts or omissions which are not offenses under the code and for acts or omissions which are offenses under the code.”

Chapter 1.G.1.a. of the Military Justice Manual, COMDTINST M5810.1E, states that “[c]ommanding officers are authorized and expected to use administrative corrective measures to further the efficiency of their commands or units. These measures are not to be imposed as punishment for any military offense(s). They may be administered either orally or in writing. A non-exhaustive list of administrative corrective measures generally fall into three areas: extra military instruction, administrative withholding of privileges, and nonpunitive censure.

Article 14.B.2.a. of the Personnel Manual in effect in May 2011 states that a member may seek correction of an entry in his military record through his chain of command. As an example, the article states that for “a member who receives an Administrative Remarks, CG-3307 from his or her division chief documenting purported substandard watchstanding, an appeal through the division chief and the executive officer to the commanding officer should suffice. (This appeal may be in the form of a so-called ‘Request Mast’ pursuant to Article 9-2-3, Coast Guard Regulations, COMDTINST M5000.3 (series).)”

Regulations About Enlisted Performance Evaluations

Article 10.B.1.b. of the Personnel Manual states that “[e]ach commanding officer/officer in charge must ensure all enlisted members under their command receive accurate, fair, objective, and timely enlisted employee reviews.”

Article 10.B.2.a.1.a. states that “[e]nlisted employee reviews that result in assignment of an unsatisfactory conduct mark or low competency marks as defined in Article 10.B.8.a. must be supported by an adverse remarks entry for ...” The list includes court-martial conviction, civil conviction, NJP, financial irresponsibility, alcohol incidents, etc.

Article 10.B.4.c. provides that each enlisted member is evaluated by a “rating chain,” consisting of a Supervisor, Marking Official, and Approving Official. In addition, each rating chain has a higher EPE Appeal Authority. The Supervisor “[g]athers all written and oral reports on the evaluatee’s performance [and] [a]scertains the status of the evaluatee’s performance qualifications for next higher pay grade” before completing an EPE with supporting comments and forwarding it to the Marking Official. The Marking Official “[g]athers all written and oral reports on the evaluatee’s performance”; reviews the marks recommended by the Supervisor; and “has the authority to return the employee review to the Supervisor for further justification or support for any marks.” The Marking Official forwards the EPE to the Approving Official, who “[g]athers all written and oral reports on the evaluatee’s performance”; ensures that the marks are consistent with performance; “has the authority to return the employee review to the Supervisor for further justification or support for any marks”; and forwards a copy of the completed EPE to the Supervisor to counsel the member.

Article 10.B.9.b states that before appealing an EPE, a member “should request an audience with the rating chain to verbally express any concerns that could lead to a written appeal.” If the member is unsatisfied with the rating chain’s response, the member may submit a written appeal of the EPE through her CO to the Appeal Authority within 15 days of receiving counseling on the EPE or with an explanation of why the 15-day deadline was not met. The CO has the authority to raise the marks (except for the advancement recommendation). If the CO does not raise the marks as requested, the CO forwards the appeal to the Appeal Authority for decision.

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 application was timely filed.
2. 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.¹²
3. The applicant alleged that her rating chain erroneously and unjustly entered a Page 7 in her record and assigned her an unsatisfactory conduct mark, which rendered her ineligible to compete for advancement for two years, even though her CO had said she would be eligible to compete for advancement. The Board begins its analysis in every case by presuming that the disputed information in the applicant’s military record is fair and accurate, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.¹³ Absent evidence to the contrary, the Board presumes that military officials

¹² 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”); *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).

¹³ 33 C.F.R. § 52.24(b).

and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”¹⁴

4. The evidence of record shows that the applicant’s GTCC account was charged with four returned check fees in 2010. The four payments at issue were a payment of \$1,995.64 on January 20, 2010; a payment of \$36.00 on October 21, 2010; a payment of \$268.05 on November 22, 2010; and another payment of \$268.05 sixteen days later on December 8, 2010. The record further shows that on those dates the applicant’s joint checking account held ample funds to pay those amounts. Presumably, therefore, a different bank account’s number or check-book was used when those payments were attempted, and that account did not have sufficient funds to pay those amounts. When the applicant’s GTCC was canceled due to delinquency, her command initiated an investigation based on the recommendation of the GTCC Program Coordinator.

5. When seeking reinstatement of her GTCC, the applicant told her CO that she had been paying her bills by phone while deployed to the xxxxxxxxxx and “must have” inadvertently used her savings account number instead of her checking account number when the payments failed. In her application to the Board, she stated that her husband was paying the bills while she was deployed and used the wrong account number. The Board notes that none of the four payments failed during the applicant’s deployment to xxxxxxxxxx from May 3 to October 1, 2010. The Board further notes that the four failed payments were not a \$272.70 payment in February 2010 and a \$268.05 payment in November 2010 that automatically “attempted to post 3 more times,” as the applicant alleged, but the four distinct payments described in finding 4 above.

6. Although a copy of the investigation is not in the record, the disputed Page 7, dated May 20, 2011, shows that the investigation revealed the four failed payments and two occasions on which the applicant allegedly used her GTCC to pay for expenses unrelated to her official travel. As a result of the investigation, the applicant was taken to mast by her CO. The applicant alleged that at mast, she submitted copies of orders proving to the CO that all of her charges were related to official travel, but she has not submitted that documentation to the Board.

7. A preponderance of the evidence shows that at mast on May 17, 2011, the applicant’s CO dismissed the charges in accordance with Chapter 1.D.17. of the Military Justice Manual, COMDTINST M5810.1E, not because they were erroneous, but because he believed that a recent cancellation of her overseas orders was sufficient “punishment” for whatever she had done and so actual punishment was “not appropriate.” The CO’s statements and actions indicate that he did not absolve her of the charges completely but decided no NJP was warranted. The evidence of record also shows that the CO did not want the applicant to be ineligible to compete for advancement as a result of the mast.

8. Chapter 1.E.3.I. of COMDTINST M4600.18 states that a CO must

[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

¹⁴ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

shall ensure appropriate administrative and/or disciplinary actions are taken for both categories of misuse per tables 3-1 and 3-2; 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.

Tables 3-1 and 3-2 require the command to take various corrective actions in response to GTCC delinquencies and misuse, and the actions increase in severity with the degree of delinquency and misuse. After the applicant's CO dismissed the UCMJ charges at mast, her Division Chief made a Page 7 entry in her record on May 20, 2011, which is the next most severe action required by the tables. Whether the CO approved the preparation of the Page 7 is not clear in the record. The Board notes that the applicant did not mention the Page 7 in her recent emails to the CO, and he did not mention the Page 7 in his responses. Given the mandate for some corrective action in Chapter 1.E.3.1. of COMDTINST M4600.18; the lack of any statement by the CO that he did not authorize the Page 7, did not know about the Page 7, or would have removed the Page 7 if the applicant had appealed it pursuant to Article 14.B.2.a. of the Personnel Manual; the lack of evidence showing that the text of the Page 7 is factually inaccurate; and the presumption of regularity accorded the applicant's Division Chief in preparing the Page 7, the Board finds that the applicant has not proved by a preponderance of the evidence that the disputed Page 7 should be removed from her record.

9. Article 10.B.8.b. of the Personnel Manual in effect in 2011 states that a member's "rating chain must assign an unsatisfactory mark in conduct whenever an individual meets any of the criteria listed in Article 10.B.2.a." The list in Article 10.B.2.a. includes a Page 7 documenting financial irresponsibility. Therefore, the unsatisfactory conduct mark on the applicant's EPE for the period ending May 31, 2011, was correctly assigned by her rating chain because the disputed Page 7 documents financial irresponsibility. Under Article 3.A.5.b.(3) of COMDTINST M1000.2, a member is ineligible to compete for advancement to chief petty officer if they have received an unsatisfactory conduct mark within the preceding two years. Therefore, the applicant's receipt of an unsatisfactory conduct mark in 2011 made her ineligible to compete for advancement in 2012 and 2013.

10. The record does not show whether the applicant appealed the disputed Page 7 or unsatisfactory conduct mark in accordance with Articles 14.B.2. and 10.B.9. of the Personnel Manual, respectively. She may not have done so because she had been assured by the CO and her Division Chief that she would be eligible to compete for advancement and because she was recommended for advancement on the EPE.

11. The applicant's CO has clearly stated that he did not want her to be ineligible to compete for advancement. However, the dismissal of the charges at mast does not preclude administrative corrective measures based upon the same alleged misconduct.¹⁵ As explained above, it was Coast Guard regulations requiring corrective action for GTCC misuse and delinquency, requiring an unsatisfactory conduct mark for those with a Page 7 documenting financial irresponsibility, and causing those with an unsatisfactory conduct mark to be ineligible for advancement to chief petty officer that made the applicant ineligible to compete for advancement. Given that the requirement for corrective action in Chapter 1.E.3.1. of COMDTINST

¹⁵ Manual for Courts-Martial United States (2008 ed.), pages II-26 and V-2; Military Justice Manual, COMDTINST M5810.1E, Chapter 1.G.1.a.

M4600.18 is intended “to ensure fair and consistent treatment of GTCC holders,” the Board is not convinced that the CO’s desire that she be eligible for advancement should alone override the regulations that together rendered the applicant ineligible to compete for advancement, especially since the CO has not said that the disputed Page 7 was factually erroneous or unwarranted under Chapter 1.E.3.1.

12. The applicant has not proved by a preponderance of the evidence that the disputed Page 7 and unsatisfactory conduct mark on her EPE are erroneous or unjust. However, certain matters suggest that further consideration of this case may be warranted. In this regard, the Board notes that significant evidence is missing from the record because the applicant submitted only certain documents from the investigation but not the whole report of the investigation, that she submitted contradictory claims about why the payments failed and did not review and explain the evidence in the GTCC print-out, and that it is possible that the applicant’s CO would submit on her behalf a statement averring that he did not authorize the disputed Page 7 and would have removed it from her record had she timely appealed it despite the requirements of Chapter 1.E.3.1. of COMDTINST M4600.18. Therefore, the Board believes that further consideration would be warranted if the applicant submitted the whole investigation and addressed the other concerns identified in these findings.

13. Accordingly, the applicant’s requests should be denied, but the Board will grant further consideration if within 180 days of the date of this decision she submits a copy of the whole report of the investigation and addresses other concerns identified in these findings.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of her military record is denied.

Philip B. Busch

Ashley A. Darbo

Dorothy J. Ulmer