

**DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction of  
Coast Guard Record of:

BCMR Docket  
No. 1999-134

**FINAL DECISION**

██████████ Deputy Chairman:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was commenced on June 15, 1999, upon the Board's receipt of the applicant's request for correction of her military record.

This final decision, dated November 9, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a former yeoman third class (YN3; pay grade E-4) in the Reserve, asked the Board to correct her record by removing administrative remarks (page 7) entries documenting her placement on performance probation, her receipt of formal counseling with respect to performance deficiencies, and her receipt of substandard marks on her performance evaluation.

At the time the applicant received the disputed page 7 entries she was serving a two-year period of extended active duty. The applicant was discharged from the Coast Guard on November 20, 1999.

**EXCERPTS FROM RECORD AND SUBMISSIONS**

**The Page 7 Entries**

On January 22, 1998, the applicant received a page 7 entry informing her that she was being placed on a formal probation for a period of six months. The applicant was counseled that she had permitted her personal problems to interfere with her ability to do her job, i.e. inability to stand duty because of childcare problems. Additionally, the applicant was advised that questions about her honesty had arisen. She was advised that if she did not show improvement in her performance that she could be administratively separated from the Coast Guard. The page 7 entry also contained the following specific milestones for the applicant to accomplish during the probationary period:

You need to take whatever steps are necessary to resolve your personal, financial and dependent problems so that you can perform your prescribed duties and become a productive Coast Guard member. You

also need to demonstrate that you are capable of adapting to the military way of life, including standing duty and being available for deployments (including world-wide assignment), as well as taking responsibility to "carry your own weight" for the sake of your shipmates....

On February 27, 1998, the applicant received a page 7 entry counseling her that she had failed to make progress in overcoming her deficiencies. She was further counseled that she could not have her son with her when she stood duty. The applicant was told that she was not adapting to military life and that she had continued to display a consistent inaptitude in becoming a productive Coast Guard member. The page 7 entry further counseled the applicant as follows:

You have been informally counseled on several occasions since reporting on board Group [REDACTED] in October 1997 concerning your lack of adherence to Coast Guard uniform regulations and grooming standards, and you were directed to read the Coast Guard Uniform Regulation Manual. For example, in November 1997 your supervisor directed you to replace your combination cap because it did not conform to the Uniform Regulations. You were also aware that you needed a service strip sewn on your Service Dress jacket. Despite being placed on probation, you still failed to correct these uniform discrepancies. Also since being placed on probation, you have been told to remove inappropriate jewelry (unauthorized bracelets and earrings) on more than one occasion. Furthermore, you have been counseled on numerous occasions that your hair and hair accessories do not conform to Coast Guard grooming standards.

\* \* \*

Since your probationary period began, your lack of proficiency and accuracy as a Third Class Yeoman have become alarming. Your document accuracy rate is a dismal 25%, you have failed to complete the yeoman performance standards and Military Requirements qualifications, you have submitted documents without the required member's signature; much of your correspondence does not conform to Correspondence Manual standard, and you have submitted incorrectly formatted e-mails to HRSIC. . . . The quality of your work has adversely affected your customers, lowered morale and impacted their ability to perform their respective jobs. In addition, the unsatisfactory quality of your work has required constant scrutiny by our superiors, and thus detracted from their work productivity as well.

On March 31, 1998, the applicant received a page 7 entry, consisting of three and a half pages, documenting the marks of 2 that she received in professional/specialty knowledge, quality of work, stamina, communicating, responsibility, setting an example, military bearing, custom and courtesies, integrity, loyalty, and adaptability.

Another page 7 entry, dated March 31, 1998, advised the applicant that her eligibility period for a good conduct award was terminated that date and a new period for the award commenced on April 1, 1998.

### The Applicant's Allegations

The applicant claimed that the page 7 entries were maliciously done to defame her character and hinder her career advancement and employment opportunities. She stated that her unit engaged in "a relentless campaign of harassment to get [her] out [of the unit] so that another reservist . . . could have [her] job."

The applicant claimed that her supervisors' harassment of her was a violation of the Coast Guard's Equal Opportunity Policy Statement. This policy statement reads, in part, as follows:

All Coast Guard personnel-military, civilian, auxiliaries - shall be treated with respect, dignity and compassion. The Coast Guard prohibits any form of discrimination, which violates law or policy in any action affecting our personnel, those seeking employment with us and those benefiting from our public services or sponsored programs.

The applicant claimed that the harassment began when she reported to United States Coast Guard Group, [REDACTED] on October 21, 1997. She claimed that she was expected to work on the same day she arrived and reported to her [REDACTED] command, even though she had just arrived with her furniture, her child, and no place to live. She stated that when she changed into her uniform she forgot to remove her non-regulation earrings. Notwithstanding the fact that she had just arrived in [REDACTED] the applicant claimed that her chief wanted to place her on report because she forgot to remove the earrings. The applicant stated that she was given five days to find housing and day care for her son. She stated that when she asked to delay her start on the watch bill, the chief replied "the Coast Guard doesn't give a damn about your son and this is the way of life in the military. The Coast Guard comes first before your son."

The applicant stated that a new petty officer first class, who reported to the unit on December 1, 1997, approximately two months after the applicant reported, became her supervisor and continued the harassment. She stated that this individual called her into his office and stated that the chief had briefed him about the applicant's personal problems. The applicant stated that the petty officer told her that he would take her personal problems into consideration, but he was also going to "crack the whip."

Later, the applicant stated that in addition to the harassment she suffered increased stress due to the false child abuse allegations that were made against her husband by a colleague who babysat her son on the night [REDACTED]. The applicant stated that this individual told the chief that the applicant's child stated that his father placed tobacco in his nose. The command reported the alleged child abuse to the Group's work-life office and they reported it to the State of [REDACTED]. The applicant stated that from the day the child abuse allegation was reported to the State, she began to have problems concentrating on her job. She stated that her supervisors, the work-life department employees, or the State were constantly questioning her on the matter.

She stated that the child abuse allegations were discovered to be false. The applicant stated dealing with the child abuse allegations was a traumatic experience for her, not only because of the falsity of the allegation, but because the entire base was aware of these allegations. Subsequently, the applicant stated that she ended her marriage and took her son, during Christmas leave, to live with her mother in another state.

The applicant stated that she was further harassed by her supervisors in January 1998. She stated that after her return from Christmas leave she was placed on performance probation. She stated that on January 14, 1998, the warrant officer (WO) insulted her by asking her if she was suicidal. Her answer to that question was no. The applicant stated that on the evening of January 15, 1998, the YN1 arrived at her home, while she was on leave, and informed her that she would be going to see a psychiatrist. The psychiatrist found that she was fit for duty.

The applicant stated that her supervisor never explained what was meant by "personal problems." She stated that "[t]he probation page 7, gives vague examples, petty arguments and no evidence. Furthermore, it was [an] SK2 . . . with her alleged child abuse accusation that distracted the workplace along with the constant calls [for her] to go into their offices for discussions." The applicant stated that the unfair treatment, in addition to the stress created by the knowledge that another petty officer was seeking her job, led her to request a discharge from active duty.

The applicant stated that on February 18, 1998 she inquired about a mutual exchange of duty station with another YN. The applicant stated that although the WO told her that a mutual exchange would not be approved because she was on probation, he did not tell her not to start the exchange process, as he claimed. In response to an inquiry about the exchange, the applicant's XO informed the other command that the applicant was on performance probation. Thus the mutual exchange idea was canceled. The WO saw this as the applicant's failure to follow instructions, but the applicant disagreed.

The applicant stated that the first day she arrived at Group [REDACTED] the Chief told her that a WO had informed the chief about the applicant's financial problems. Apparently the applicant needed to repay per diem that had been previously given to her during the period of time she was [REDACTED]. The Coast Guard was going to take an amount out of the applicant's pay, which she claimed, would have caused her serious financial problems. Apparently the applicant had gone to the XO about her financial problems, without going to her supervisors first. She was counseled by the WO officer to use the chain of command. The applicant stated that she felt her situation was urgent and no one was available to help her except the XO/CO.

On February 24, 1998, the applicant stated that her husband physically abused her. Subsequently, she was ordered into a shelter by her command, even though the barracks were empty. She claimed that her chief visited her at the shelter and laughed at her. When she asked if she could stay in the barracks because an attempted suicide at the shelter had upset her, she stated that the CO ordered her to undergo another psychiatric evaluation.



Later, the applicant learned that the work-life officer had directed that she be transferred to another unit. The applicant stated that prior to her transfer, she started getting migraine headaches as a result of the harassment, which she reported to her superior. She stated that after reporting the headaches she was immediately assigned to the cleaning detail. The applicant stated that she was treated badly in this situation. She stated in part that

[f]rom March 10, 1998 to May 2, 1998, I was on cleaning detail for the entire base. During that time, I suffered a lot of abuse by this command. All the non-rates were relieved of cleaning detail, because I was their replacement.

\* \* \*

[A certain petty officer] expected me to lift 7 or 8 boxes of mail a day as well as clean the mailroom. He treated me like a gofer to hand him things, like, get him a pencil, get that fax from the fax machine, and even went as far as to crumble a piece of paper toss it in the garbage and missed. Told me to pick it up. I was referred to on base as the "cleaning woman."

#### Views of the Coast Guard

On February 23, 2000, the Board received the views of the Coast Guard written by the Chief Counsel. The Chief Counsel recommended that the Board deny relief to the applicant.

The Chief Counsel asserted that the applicant's request should be denied because she failed to exhaust her administrative remedies by filing a discrimination complaint and by failing to file an article 138 complaint against her commanding officer.

In the alternative the Chief Counsel argued that the applicant's request should be denied because she has failed to produce sufficient evidence of error or injustice. He stated that the applicant has provided no evidence of error or injustice.

The Chief Counsel stated that the disputed page 7s were required under Article 10.B.2.A.1.g. and 10.B.9.a. of the Personnel Manual. He further stated as follows:

(1) . . . The 22 January 1998 entry, placing Applicant in a six-month probationary status, was required by the [Personnel Manual, Chapter 12.B.16.c.]. At this point, under Chapter 12.B.16.c., Applicant's Commanding Officer had the authority to "recommend discharge at any time" if Applicant was not attempting to overcome deficiencies enumerated in the [page 7 entry]. Instead of exercising this power, however, Applicant's Commanding Officer, on 27 February 1998, executed another [page 7] counseling Applicant on her failure to show "progress" during her probationary period.

(2) Similarly, the two [page 7] entries made on 31 March 1998 were required by the [the Personnel Manual], Chapter 10.B. Specifically,

Chapter 10.B.2.a.1. requires a [page 7] entry to document an unsatisfactory conduct mark or low factor mark" when a member fails to comply with "military rules, regulations, and standards. . . ." In this case each unsatisfactory mark was justified and supported with numerous examples of incidents where Applicant's performance failed to comply with Coast Guard rules, regulations, and standards. Overall, analysis of the evidence supports the conclusion that the content of the disputed [page 7] entries represented the honest professional judgment of those responsible for their preparation, as they operated within the guidelines of the [Personnel Manual]. . . . *[T]he evidence points to restraint by the command, as it could have begun separation proceedings against Applicant for lack of progress, rather than continuing its counseling efforts until Applicant detached from the command.* (Emphasis in original). Finally in documenting Applicant's termination of eligibility for a Good Conduct Medal, the command simply complied with Chapter 10.B.9 [of the Personnel Manual]. Applicant acknowledged all of the [page 7] entries by her signature.

(3) Absent strong evidence to the contrary, it is presumed that Applicant's chain of command officials executed their duties correctly, lawfully, and in good faith. Arens v. United States, 969 F.2d 1034, 1037 (1992). It is the applicant who bears the burden of proving error. . . . In this case, Applicant has not met her burden. To the contrary, the evidence tends overwhelmingly to show that Coast Guard officials complied with Coast Guard procedure as enumerated by the [Personnel Manual]; and, furthermore, they had a sound basis for the actions taken against Applicant . . . [a]lthough, Applicant alleges that she was "forced [and] threatened" to sign her [page 7] entries, she submits no proof whatsoever of the alleged use of force, threats, or intimidation by Coast Guard officials. Therefore, Applicant's request for relief must be denied for lack of proof.

The Chief Counsel submitted statements from the Commander, Coast Guard Group [REDACTED] the Deputy Group Commander, and the applicant's three direct supervisors. The Group Commander stated that the applicant's supervisors were sympathetic to the applicant's challenges and made extraordinary efforts to help her succeed in her Coast Guard career and resolve her personal problems. He stated that he has never witnessed such an outpouring of help to any one individual during his Coast Guard career. He further stated in relevant part:

At no point did I witness or perceive any indication that [the applicant] was the victim of harassment, unfair treatment, or subjected to a hostile work environment by her supervisors. Quite the contrary, her supervisors demonstrated exemplary patience, compassion and leniency in their leadership of [the applicant]. I was highly impressed with their remarkable composure, objectivity and determination to give [the applicant] every chance despite the obvious frustration caused by her deceitfulness, disrespectful attitude, attempts to jump the chain of command, mood swings, poor customer service, and crew's perception that she was being shown favoritism. Moreover, I find it extremely

difficult to believe [that the applicant's supervisors] made the derogatory comments she alleges in her statements. Each of these leaders is a consummate professional, and it would be entirely out of character for them to make such comments. Furthermore, [the applicant's] allegations of a conspiracy to remove her so [another YN] could take her place are unfounded. Her poor performance coupled with the Family Advocacy staff's determination that she should be transferred to alleviate her personal problems, was the impetus that created the need to find a replacement. Although it was fortuitous that [the other YN] was available to replace [the applicant], it was purely coincidental . . . . [The applicant] also complained about performing cleanup duties traditionally reserved for non-rates. If Group [REDACTED] were ever to achieve optimal staffing levels . . . non-rates would be directed to perform the majority of cleaning duties. . . . When a non-rate is assigned to the Group, they are most likely assigned to a station or cutter where they are most desperately needed. Consequently, petty officers are commonly responsible for performing cleanup duties. As a result, I have first class petty officers . . . who are responsible for cleaning toilets in their spaces. The assignment of [the applicant] to perform similar duties was not to humiliate her, but to gainfully employ her. Her performance of these duties allowed the other . . . yeoman to take care of the personnel records of the subunits for which [the applicant] had responsibility.

Each of the other statements written by the Deputy group commander and the applicant's three direct supervisors echoed the comments of the Group Commander.

#### Other Page 7 Entries

After reporting to her new command, the applicant experienced similar problems to those she encountered in [REDACTED]. Her military record contains the following pertinent page 7 entries:

On May 14, 1999, the applicant signed a page 7 entry that reported steps that her command took to protect her after she came forward with a threatening note from her husband.

On June 16, 1999, a page 7 entry documented an unsatisfactory conduct mark due to non-judicial punishment for making false official statements.

On June 16, 1999, a page 7 entry was entered into the applicant's record documenting a 2 in setting an example on her performance evaluation. The entry stated as follows:

After requesting to vacate government leased quarters you failed to make arrangements to move out of quarters on the date specified. Your failure to make preparations to vacate quarters resulted in the housing office contracting cleaning services to complete your check out and delayed the occupancy by the incoming family for two days. After stating that you would be interested in housing at [REDACTED] your supervisor provided

you with contacts and procedures and worked towards moving you into these quarters. While waiting for approval from [REDACTED] you resided in the barracks at the CG [REDACTED]. You were counseled that you were drawing a housing allowance and must move out of the barracks within 30 days. You failed to follow through with [REDACTED] housing and then informed your supervisor that you did not want to live in [REDACTED] housing. Your indecisiveness and inability to make decisions have set a poor example.

On June 16, 1999, the applicant received another page 7 entry informing the applicant that she was not recommended for advancement because of setting a poor example by her indecisiveness and failure to promptly vacate quarters. The page 7 entry also noted that the applicant had demonstrated questionable integrity by virtue of her making a false official statement.

On July 29, 1999, a page 7 entry was entered into the applicant's military record documenting a meeting between the applicant and her CO, wherein the applicant was permitted to address issues about her performance and conduct.

On August 3, 1999, a page 7 was made directing the applicant to go to the medical clinic for prenatal care because of a high risk pregnancy.

#### **Applicant's Response to the Views of the Coast Guard**

The applicant was granted several extensions to reply to the views of the Coast Guard. On October 2, 2000, the Board received her submission.

The applicant stated that this is not a case of discrimination, as the Chief Counsel would argue, "but rather a request seeking to correct military records whereby the [Coast Guard] 3307's were misused, misrepresented and abused through administrative techniques and ultimately damaging [her character]. The question is, she stated, are the page 7 entries accurate.

The applicant claimed that she signed these page 7 entries because she was forced to do so through threats that if she did not sign them she would be "booked." She stated that she was not aware that she had a choice of not signing them.

With respect to the page 7 entry dealing with probation, she stated that she was not placed on probation due to poor work performance, but because she had problems adjusting to military life. She asked the Board to remember that she had only been at [REDACTED] for two months when she was placed on probation, and this two month period included a two week period of leave. She stated that she never had the opportunity to adjust to military life because she was constantly dealing with the phony child abuse charges and the actions of another petty officer attempting to get her job. She stated that she suffered migraines as a result of the stressful situation at [REDACTED]. She submitted medical evidence showing that had been diagnosed with migraines caused by stress.



In response to the page 7 entry that questioned her honesty, the applicant stated that it related to the per diem that she received when she reported to a previous duty station. She stated that "[if] I am such a terrible member, stealing thousand of dollars from the Coast Guard, why wasn't I brought up in front of a court-martial and literally hung up upside down." She submitted a copy of her orders to [REDACTED] which she stated shows that a reservist with dependants and no available military housing was entitled to \$109.00 per day in per diem.

The applicant explained her 1999 non-judicial punishment as follows: "I was awarded non-judicial punishment because I mentioned to my supervisor that I had no car insurance and then I was 'booked', because I had a Coast Guard vehicle sticker on my car. I was then put on probation for six-months but not reduced to pay grade E-3... The Captain did not want to punish me monetarily because that was the reason I had no car insurance. I had no money at that time to pay my insurance." With respect to the page 7 entries received at her subsequent command, the applicant said that they are irrelevant to this action.

With respect to her alleged uniform irregularities, the applicant stated that prior to her arrival at [REDACTED] she bought almost a completely new sea bag. She stated that she was concerned about her appearance as a member of the Coast Guard. As support for her position on this, she noted the favorable marks she received in this area while assigned to [REDACTED]

The applicant concluded her statement to the as follows:

As you can see through the [statements attached to the Chief Counsel's advisory opinion] the tone is very angry and hatred is apparent. One reserve officer [who submitted a statement] we never conversed. However they claimed to do everything to help me. I never asked for help, I only wanted a job and to be the best yeoman I could be for the Coast Guard. I volunteered to go on active duty and turned down other opportunities . . . to go on active duty. . . . From the time I walked into [REDACTED] I was programmed to fail.

The applicant submitted two statements. One from her executive officer (XO) while she was stationed at [REDACTED] and one from a lieutenant (LT) from that same command.

1. The XO wrote that he was the applicant's XO at [REDACTED] from May 2, 1998 to July 31, 1998. He stated that he was asked by the Coast Guard Personnel Command to accept the applicant and to give her a fresh start, to which he agreed. He stated that at the time he spoke with the applicant and the XO at [REDACTED] and it was obvious to him that serious differences existed between that command and the applicant.

The XO stated that it was clear upon the applicant's arrival in [REDACTED] that she was still upset about the allegedly negative experiences that occurred at [REDACTED]. He stated that during the time he observed her, she displayed a willingness to succeed in her job, appeared to get along well with others, and was always respectful and pleasant

in his presence. He further stated that she appeared to perform all tasks that were given to her to the satisfaction of her peers.

2. The LT's letter is more one of recommendation for employment. He writes that he highly recommends the applicant for employment. He described her as dedicated, trustworthy, and personable. He further noted that she performed her duties at [REDACTED] in an excellent manner.

### APPLICABLE REGULATIONS

Article 10.B.2.a.1.g. of the Personnel Manual states that an adverse administrative remarks entry is required to document an unsatisfactory conduct mark or low factor mark for "not complying with civilian and military rules, regulations, and standards."

Article 10.B.6.b.2. of the Personnel Manual Provides that "[r]aters must document certain marks. For a mark of 1, 2, or 7 in any performance dimension or an unsatisfactory in conduct, the rater shall use the following procedure."

Article 10.B.9.a. of the Personnel Manual provides for the termination of good conduct eligibility for any unsatisfactory mark in conduct or certain low marks in other performance factors. The termination of good conduct eligibility is documented on a page 7 entry.

Article 12.B.16.c. states that commanding officers will not initiate administrative discharge action for inaptitude, apathy, defective attitudes, unsanitary habits, not adhering to core values, or financial irresponsibility until they have afforded a member a reasonable probationary period to overcome these deficiencies. It further provides that "[w]hen commands contemplate discharging a member for these reasons, they shall counsel the member that a formal probationary period of at least six months has begun and make an appropriate administrative remarks . . . entry in the member's PDR that administrative discharge processing will be initiated unless the member shows significant improvement in overcoming the deficiency during the probationary period."

### FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's submissions, the Coast Guard's submission, the military record, and applicable law:

1. The Board has jurisdiction of this matter pursuant to section 1552 of title 10, United States Code. The application was timely.

2. The applicant alleges that the page 7 entries are inaccurate and are the result of harassment by her supervisors and their malicious intent to ruin her career. She takes issue with the page 7 entry that advises her that she must get control of her personal, family, and financial problems and not prevent those situations to interfere with her ability to do her job or the workplace. Although the applicant has offered explanations for each instance mentioned in the page 7, she has not provided any evidence, except for her own statement, that these personal problems did not have a

negative impact on the work place or interfere with her ability to do her job. However, the CO and the applicant's supervisors vouch for the accuracy of the page 7s.

3. The CO denied that the applicant was being harassed but rather stated that the supervisors were attempting to help the applicant. The applicant submitted several emails between herself and her supervisors addressing one or more of her problems. However, these emails do not establish that the supervisors were harassing the applicant. The fact is that she did have family problems and the government was looking into recouping an overpayment from her. The emails show how much time and involvement there was with the applicant's situation.

4. As the applicant stated, she was not placed on probation initially for poor work performance, but because of other deficiencies that interfered with the work place. Article 12.B.16.c. of the Personnel Manual allows for placing a member on probation to correct such deficiencies as those attributed to the applicant. Moreover, the page 7 entry dated February 27, 1998, did admonish the applicant about her poor work performance.

5. In addition, the February 27, 1998 page 7 counseled the applicant in detail about her failures to meet the uniform regulations. Her response to that was that she had purchased new uniforms upon receiving orders to active duty. In response to the comment in the page 7 that she wore unauthorized jewelry and hair ornaments, she stated that upon her arrival to [REDACTED] she forgot to remove the unauthorized earrings. However, the applicant's explanation does not prove by a preponderance of the evidence that her supervisors did not counsel her on several occasions about a lack of adherence to the uniform regulations or that these comments relating to her uniform noncompliance are inaccurate.

6. The applicant offered no evidence to show that the page 7 entry dated March 31, 1998, documenting the marks of 2 in the evaluation of her performance were inaccurate. She offered a statement from the XO of [REDACTED] and a statement from a LT of that same command, stating that the applicant performed satisfactorily for them. However, this does not establish that she performed satisfactorily while assigned to [REDACTED]. The applicant has not established by a preponderance of the evidence that she performed better than described in the page 7 entry.

7. The record clearly demonstrates that the applicant had personal problems not only at [REDACTED] but also at [REDACTED]. There are approximately five page 7 entries that the applicant received while assigned to [REDACTED] that relate to personal problems similar to those the applicant experienced at [REDACTED].

8. The Board finds that the applicant has failed to establish that the page 7 entries contain inaccurate information or that the Coast Guard committed either an error or injustice in this case.

9. Accordingly, the applicant's request for relief should be denied.

**ORDER**

The application of former  
correction of her military record is ~~denied~~.

USCG, for

