

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-087



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 April 15, 2013, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated February 5, 2016, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant asked the Board to remove from his record five negative Administrative Remarks forms (CG-3307 or "Page 7s")¹ dated March 18, 2003; June 7, 2003; September 26, 2003; June 1, 2005; and October 22, 2008. He alleged that they were unauthorized and unjust and should not be in his record because they were not signed by his commanding officer (CO), as required by Coast Guard Instructions M5000.3, 1000.14B, and M1000.2B. The disputed Page 7s document counseling for poor performance:

- 1) The Page 7 dated March 18, 2003, counsels the applicant about disobeying a direct order from his supervisor and was signed by the Executive Officer (XO) of the applicant's cutter "by direction."
- 2) The Page 7 dated June 7, 2003, counsels the applicant about the "deplorable lack of cleanliness" in his Coast Guard housing during inspection and is signed by the XO of the cutter "by direction."
- 3) The Page 7 dated September 26, 2003, counsels the applicant about being found asleep while on watch aboard the cutter and notes that no disciplinary action was taken because of mitigating circumstances. It was signed by the XO of the cutter "by direction."

¹ An Administrative Remarks record entry, form CG-3307, better known as a "Page 7," is used to document a member's notification of important information, achievements, or counseling about positive or negative aspects of a member's performance in the member's military record.

- 4) The Page 7 dated June 1, 2005, counsels the applicant about setting a poor example by arriving at his unit, a communications station, at 4:50 a.m. and sleeping on the galley couch until 6:45 a.m. It was signed by his supervisor, an E-6, with the word “Acting” written underneath.
- 5) The Page 7 dated October 22, 2008, counsels the applicant about repeatedly refusing to complete tasks as assigned or to follow written instructions. This Page 7 is signed by the Deputy Commander and XO of PATFORSWA (Patrol Forces Southwest Asia).

VIEWS OF THE COAST GUARD

On September 30, 2015, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant partial relief in this case by removing one of the disputed Page 7s from the applicant’s record. In making this recommendation, he adopted the findings and analysis in a memorandum on the case prepared by the Coast Guard’s Personnel Service Center (PSC).

PSC stated that at the time the five disputed Page 7s were issued, the Executive Officer (XO) of a unit was not prohibited from signing negative Page 7s. PSC stated that the regulation limiting the signature authority for adverse Page 7s went into effect in 2009 with Change 14 of the Personnel and Pay Procedures Manual. Because the applicant challenged only the signature authority and not the content of the Page 7s, PSC stated, the Page 7s numbered 1, 2, 3, and 5, above, are not erroneous or unjust and should remain in the applicant’s record.

With regard to Page 7 number 4, dated June 1, 2005, and signed by an E-6 “acting,” PSC stated that “the handwritten ‘acting’ appears questionable and whether there was a delegation by the CO to sign [the Page 7] cannot be determined with certainty.” Therefore, PSC recommended removing this Page 7.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 7, 2015, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within thirty days. No response was received.

APPLICABLE REGULATIONS

Chapter 7-1-9 of Coast Guard Regulations, COMDTINST M5000.3, provides the following instructions about “Signing Official Correspondence”:

B. Commanding officers ... may authorize first class petty officer[s] of their staffs to sign personnel, pay, and travel documents “By direction”.

• • •

E. In official correspondence signed by subordinate officer for a senior, the words “Chief of Staff,” “Executive Officer” or “By Direction” as appropriate shall appear below the signature of the subordinate officer . . .

F. When an officer, temporarily succeeding to command, signs official correspondence, the word “Acting”, shall appear below the signature.

Chapter 5-2-9.A. of Coast Guard Regulations states the following about succession to command by petty officers:

Petty officers may succeed to command of a unit, with authority as officer in charge, in conformity with the following:

- (1) In ships ...
- (2) Within other commands, any chief petty officer or petty officer with a rating appropriate to the functions of the activity may succeed to command.

COMDTINST 1000.14B, issued on April 17, 2000, established the policy for preparing and submitting Page 7s and referenced HRSICINST M1000.2A (now PPCINST M1000.2A). COMDTINST 1000.14B did not limit the signature authority on a Page 7 but noted that “[u]nauthorized CG-3307’s received at HQ or CGPC will be destroyed.”

Prior to the 2009 Change 14 to the Personnel and Pay Procedures Manual (PPPM), HRSICINST M1000.2A, the PPPM stated the following:

The CO may authorize in writing for officers, Chief Petty Officers, First Class Petty Officers, and Second Class Petty Officers to sign forms and worksheets “by direction.”

The PPPM, HRSICINST M1000.2A, Change 14, was promulgated in 2009 and added the following restrictions to the preparation of Page 7s:

The CO may authorize in writing for officers, Chief Petty Officers, First Class Petty Officers, and Second Class Petty Officers to sign forms and worksheets “by direction”. These “by direction” authorizations must be documented, and maintained locally in an authorization file to support future audit inquiries.

Only the CO may sign Adverse Administrative Remarks (CG-3307) entries. However, per CG Regulations, (7-I-9.F.), an officer temporarily succeeding to command may sign as acting.

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.²

2. The applicant alleged that five Page 7s in his record are erroneous and unjust and should be removed from his record. When considering allegations of error and injustice, the Board begins its analysis in every case by presuming that the disputed Page 7 is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the

² The application was received more than three years after one of the disputed Page 7s was entered in the applicant’s record, but under *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994), section 205 of the Soldiers’ and Sailors’ Civil Relief Act of 1940 “tolls the BCMR’s [3-year] limitations period during a servicemember’s period of active duty.”

evidence that it is erroneous or unjust.³ Absent evidence to the contrary, the Board presumes that a member's military records have been prepared "correctly, lawfully, and in good faith."⁴

3. The applicant alleged that the Page 7s are erroneous and unjust because they were not signed by his CO, as required by current policy. The disputed Page 7s, however, were issued before Change 14 of the PPPM went into effect in 2009 and were signed by the XO of the units to which the applicant was then assigned or by his supervisor in an "acting" capacity. Chapter 7-1-9.E. of Coast Guard Regulations notes that the Executive Officer or another member at the direction of the CO may sign personnel records with "Executive Officer" or "By Direction" written underneath the signature, as appropriate. And Chapter 7-1-9.F. provides that when acting as the CO, subordinate officers may sign personnel records with "Acting" written underneath. Nothing in Coast Guard Regulations, COMDTINST 1000.14B, or HRSICINST M1000.2B, in effect at the time of the disputed Page 7s, prohibited the applicant's XOs or someone acting as CO from signing the Page 7s.

4. PSC recommended that the Board remove the Page 7 dated June 1, 2005, and signed by an E-6 in an "acting" capacity because PSC cannot now ascertain whether the E-6 was actually the Acting CO of the Communications Station on June 1, 2005. However, the Board begins its analysis in every case by presuming that Coast Guard members have "carried out their duties correctly, lawfully, and in good faith,"⁵ and the applicant bears the burden of proving that the E-6 was not actually authorized to sign this Page 7 as "acting" on the day in question. The applicant has submitted nothing to show that the E-6 was not authorized to sign the Page 7 in an "acting" capacity that day. Moreover, given that the applicant waited almost ten years to challenge this Page 7 and the information about whether the E-6 was authorized to sign the Page 7 in an "acting" capacity is no longer available, the Board finds that the doctrine of laches must bar this claim.⁶

5. The applicant has not proven by a preponderance of the evidence that any of the five disputed Page 7s are erroneous or unjust or were unauthorized at the time they were issued. Therefore, his request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

³ 33 C.F.R. § 52.24(b).

⁴ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁵ *Id.*

⁶ The doctrine of laches applies when an applicant's delay in applying to the Board has prejudiced the Coast Guard's ability to produce evidence to show that the disputed military record is correct and just. *See Lebrun v. England*, 212 F. Supp. 2d 5, 13 (D.D.C. 2002). Even when the Board's statute of limitations is tolled because the applicant has remained on active duty, "the doctrine of laches remains available to the government to protect itself from stale claims."⁶ *Detweiler v. Pena*, 38 F.3d 591, 595 (D.C. Cir. 1994) (citing *Deering v. United States*, 223 Ct. Cl. 342 (1980)). "Independently of any statute of limitations, courts of equity uniformly decline to assist a person who has slept upon his rights, and shows no excuse for his laches in asserting them." *Bliss v. Bliss*, 50 F.2d 1002, 1004-05 (D.C. Cir. 1931), citing *Speidel v. Henrici*, 120 U.S. 377, 387 (1887). Although the application in this case is considered timely filed, the Board finds that the doctrine of laches bars the applicant's claim because his delay in challenging his supervisor's authority to sign the Page 7 has prejudiced the Coast Guard's ability to ascertain whether the E-6 properly signed it in an "acting" capacity on June 1, 2005.

ORDER

The application of [REDACTED], USCG, for correction of his military record is denied.

February 5, 2016

