

**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. 2013-131**



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**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 June 18, 2013, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated February 14, 2014, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST AND ALLEGATIONS**

The applicant, a chief petty officer on active duty, asked the Board to remove from his record three adverse ("general-negative") Administrative Remarks forms (CG-3307 or "Page 7s")<sup>1</sup> dated July 7, 2011, September 9, 2011, and March 30, 2012. The Page 7s were presented to him by his supervisor when he was a first class petty officer. The three Page 7s criticize the applicant for the following conduct:

- contacting junior personnel in the same rating in another office after being told to avoid contact with them;
- having tremendous knowledge of their rating but also an "arrogant attitude" when speaking with more senior members;
- violating the order to have no contact with the junior personnel in the other office; and
- behaving unprofessionally when offered two chief petty officer positions in Texas, where he did not want to live.

The applicant alleged that his supervisor did not have proper authority to sign the negative Page 7s for entry in his record. He noted that the supervisor failed to use the words "by

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<sup>1</sup> 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.

direction” for his signature as required by regulation. He also contested the accuracy of the comments.

The applicant also asked the Board to raise two low marks of 3 (on a scale of 1 to 7) he received on his performance evaluation dated November 30, 2011, to “standard” marks of 4. However, he presented no arguments or allegations about these marks.

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

On October 23, 2013, 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 the three Page 7s from the applicant’s record but not raising the marks on his performance evaluation. In making this recommendation, he adopted the findings and analysis in a memorandum on the case prepared by the Personnel Service Center (PSC).

PSC stated that the applicant’s supervisor did not have authority to sign the three negative Page 7s for entry in the applicant’s record because Chapter 1.4.3. of the October 2012 Personnel and Pay Procedures Manual, COMDTINST M1000.2B, states that “[o]nly the CO [or an acting CO] may sign Adverse Administrative Remarks (CG-3307) entries.” PSC also submitted a copy of a November 2012 delegation showing that at the command in question, members serving in the supervisor’s position had authority to sign positive Page 7s but not negative Page 7s. Therefore, PSC concluded that the three negative Page 7s should be removed from the applicant’s record.

Regarding the applicant’s request to raise the marks of 3 to marks of 4 on his performance evaluation, PSC stated that even though the three Page 7s should be removed from his record, these performance marks should not be changed. PSC stated that while the applicant’s supervisor assigned the marks, both his marking official and approving official reviewed and approved the marks and so apparently deemed them to be valid. Therefore, PSC recommended that the Board not raise these marks.

### **APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On November 20, 2013, the applicant responded to the views of the Coast Guard. He stated that he “fully support[s] the recommended partial relief submitted by the Coast Guard.”

### **APPLICABLE REGULATIONS**

The Personnel and Pay Procedures Manual, COMDTINST M1000.2A, Change 14, was in effect in 2011 and March 2012, when the applicant’s supervisor signed the three disputed Page 7s. Chapter 1.4. of this manual states, regarding the signing of forms, that “[t]he 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. The authorizations are subject to the following restrictions.” Change 14, promulgated in 2009, added the following restriction to the list:

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.<sup>2</sup>

2. The applicant alleged that three Page 7s and two low performance marks 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 evidence that it is erroneous or unjust.<sup>3</sup> Absent evidence to the contrary, the Board presumes that a member's military records have been prepared "correctly, lawfully, and in good faith."<sup>4</sup>

3. The applicant has proved by a preponderance of the evidence that the three negative Page 7s should be removed from his record. The applicant pointed out that his supervisor failed to include the words "by direction" on the Page 7s. If the supervisor had in fact had the authority to sign the Page 7s, the mere lack of this phrase would be insufficient to persuade the Board to remove them from the applicant's record. However, the record indicates that in 2009, the Commandant revised the Personnel and Pay Procedures Manual to restrict commanding officers from delegating their authority to sign adverse Page 7s to junior personnel "by direction" for entry in subordinate members' records. This change was in effect when the applicant's supervisor signed the disputed Page 7s in 2011 and 2012.

4. The applicant asked the Board to raise marks of 3 in his performance evaluation dated November 30, 2011. However, these marks were recommended by his supervisor, confirmed by his marking official, and approved by the approving official for the command. The applicant apparently did not timely appeal the marks<sup>5</sup> and has submitted nothing that calls the marks' accuracy into question. Therefore, the Board will not raise the marks.

5. Accordingly, partial relief should be granted by removing the three disputed Page 7s from the applicant's record.

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<sup>2</sup> The application was received more than three years after the disputed Page 7 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."

<sup>3</sup> 33 C.F.R. § 52.24(b).

<sup>4</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).

<sup>5</sup> COMDTINST M1000.2, Article 5.I. (allowing members to appeal their performance marks within 15 days of signing their completed evaluations).

**ORDER**

The application of [REDACTED] USCG, for correction of his military record is granted in part. The Coast Guard shall remove from his record the three adverse Page 7s dated July 7, 2011, September 9, 2011, and March 30, 2012.

No other relief is granted.

February 14, 2014

