

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2013-169

██████████
██████████

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 August 21, 2013, and assigned it to staff member ██████████ to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated April 25, 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 ██████████ asked the Board to correct his record by removing a negative Page 7 (administrative counseling form CG-3307)¹ dated July 18, 2005, from his personnel data record (PDR). He argued that the Page 7 entry has unjustly hindered his professional mobility. The applicant also argued that the event documented on the Page 7 occurred more than eight years ago and that he has "been appropriately held accountable and that this incident was completely isolated predicated by my positive performance since." In support of his application, the applicant submitted numerous documents, including several positive Page 7s, proof that he received the CG Achievement Medal, and proof of his selection as Sailor of the Quarter just 11 days prior to the incident documented on the July 18, 2005, Page 7.

The disputed Page 7, which is signed by the applicant and his commanding officer (CO), states the following:

18 Jul 05: Counseled this date in regards to your less than professional behavior and the poor example you set for others after being denied regular leave during the week of 13 July 2005.

Specifically, when told that you would not be able to take leave because of the lack of another qualified and certified Buoy Deck Supervisor you repeatedly and vocally challenged the decision

¹ A Page 7 (form CG-3307, "Administrative Remarks") may be used to document counseling provided to a service-member or any other positive or negative noteworthy event that may occur during a member's military career. HRSICINST M1000.2A, Encl. (6).

as unfair while challenging the Command to account for the absence of other senior people in the ship. Additionally, you repeatedly challenged the judgment of the Command in determining whether a SN trainee was ready to do the job. You were told when you submitted the request for leave that its approval was based on another member being qualified and certified as a BDS. You made little attempt to hide your dissatisfaction with this decision and even less of an attempt to challenge the decision out of earshot of your shipmates. You placed an unfair burden on the BDS trainee to assume more responsibility than the Command felt he was prepared for and caused that member to perceive he had ownership in whether or not you were able to take leave. Your outlook, behavior, and attitude that motivated them was detrimental, in fact cancerous to the good order and discipline of the ship. You set a horrible example for others to follow and embarrassed yourself by not accepting that your duties sometimes call for you to make sacrifices. You were in fact granted the leave you wanted ONLY because your attitude and resultant behavior was not wanted in the ship and the Command wanted time to contemplate how to react.

Bottom line: Your behavior was unacceptable and not appropriate for someone who aspires to be a First Class Petty Officer. The Command's judgment of whether or not you are ready for that position is now squarely in question, one that can only be answered by your performance.

VIEWS OF THE COAST GUARD

On December 4, 2013, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief. In doing so, he adopted the findings and analysis in a memorandum provided by the Coast Guard's Personnel Service Center (PSC).

PSC stated that the applicant's request should be denied because the applicant's CO prepared the Page 7 to document the applicant's less than professional behavior and the poor example he set for others, "which warranted negative documentation." PSC argued that the applicant's CO issued the Page 7 in accordance with Article 1.4.3. of the Personnel and Pay Procedures Manual, which states that the CO may sign adverse Page 7s. Moreover, PSC noted, the applicant did not provide any proof that the Page 7 was issued in error or that the actions cited on the Page 7 did not occur.

RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 11, 2013, 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

Article 5.B.1.b. of the Enlisted Accessions, Evaluations and Advancements Manual states that a one-time, minor infraction is insufficient to be classified as an adverse remarks entry. It further states that adverse entries dealing with minor infractions should focus on patterns of unacceptable behavior vice a one-time minor infraction.

Chapter 1, Article 1.4.3. of the Coast Guard Personnel and Pay Procedures Manual states that only the CO may sign Adverse Administrative Remarks (Page 7) entries.

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. Although the application was not filed within three years of the applicant's discovery of the alleged error or injustice, it is considered timely under *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994) (holding that, under § 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, the BCMR's three-year limitations period under 10 U.S.C. § 1552(b) is tolled during a member's active duty service).

2. The applicant alleged that the Page 7 is unjust and should be removed from his record. 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.² Absent evidence to the contrary, the Board presumes that military officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."³

3. The applicant requested that the July 18, 2005, Page 7 be removed from his record. He does not deny the conduct described on the Page 7, but argued that the incident occurred more than eight years ago and the Page 7 is hindering his career progression. Article 5.B.1.b. of the Enlisted Accessions, Evaluations and Advancements Manual cautions that a one-time, minor infraction is insufficient to warrant an adverse remarks entry, and that adverse entries should focus on patterns of unacceptable behavior vice a one-time minor infraction. However, applicant's CO had the authority to sign and enter the Page 7 in his record, and the applicant has not shown that the CO abused his discretion in doing so. In this regard, the Board notes that the conduct described on the Page 7 describes conduct that was more than a minor infraction, and his CO described it as "cancerous" to the good order and discipline of the ship. Although the applicant argues that the Page 7 should be removed because it describes an incident that occurred more than eight years ago, the Board finds that the age of the Page 7 is irrelevant to whether it should be in his record. Documentation of poor conduct or performance is not removed from a member's record merely because of its age.

4. Accordingly, the applicant has failed to prove by a preponderance of the evidence that his record contains an error or injustice, and his application should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

² 33 C.F.R. § 52.24(b); *see* Docket No. 2000-194, at 35-40 (DOT BCMR, Apr. 25, 2002, approved by the Deputy General Counsel, May 29, 2002) (rejecting the "clear and convincing" evidence standard recommended by the Coast Guard and adopting the "preponderance of the evidence" standard for all cases prior to the promulgation of the latter standard in 2003 in 33 C.F.R. § 52.24(b)).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

ORDER

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

April 25, 2014

