

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-033

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 December 21, 2013, and assigned it to [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 5, 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 former [REDACTED], asked the Board to remove from his record three adverse ("general-negative") Administrative Remarks forms (CG-3307 or "Page 7s")¹ dated November 25, 2008, May 12, 2010, and September 20, 2011. The three negative Page 7s, which were presented to him when he was a [REDACTED] documented counseling about the following conduct:

- November 25, 2008: Improperly requesting leave on a short notice, thereby placing an undue hardship on his fellow shipmates;
- May 12, 2010: Lack of initiative, honesty, and support to co-workers; and
- September 20, 2011: Lack of professionalism and inability to pay attention to detail.

The applicant alleged that the three negative Page 7s were signed by persons who did not have proper authority to sign the Page 7s for entry in his record. He noted that per Chapter 1.4.3. of the Coast Guard Personnel and Pay Procedures Manual (PPPM), PPCINST M1000.2A, "[o]nly the CO may sign Adverse Administrative Remarks (CG-3307) entries." However, the applicant presented no arguments or allegations about the substance of the Page 7s.

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.

VIEWS OF THE COAST GUARD

On March 25, 2014, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant relief in this case by removing the three 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 the Page 7s were signed by a supervisor or member of the applicant's chain of command; however, none of those individuals was the applicant's Commanding Officer (CO) and therefore did not have authority to sign the three negative Page 7s for entry in the applicant's record. PSC cited to Chapter 1.4.3. of the PPPM, Change 14, as being in effect at the time. The manual stated that "[o]nly the CO [or an acting CO] may sign Adverse Administrative Remarks (CG-3307) entries." Therefore, PSC concluded that the three negative Page 7s should be removed from the applicant's record.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 27, 2014, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. No response was received.

APPLICABLE REGULATIONS

The Personnel and Pay Procedures Manual, PPCINST M1000.2A, Change 13, was in effect when a lieutenant, Chief of the applicant's division, signed the disputed Page 7 in November 2008. This manual states 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, PPCINST M1000.2A, Change 14, was promulgated in 2009 and was in effect when two different chief yeomen signed the disputed Page 7s in May 2010 and September 2011. Change 14 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 three 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 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 has not proved by a preponderance of the evidence that the negative Page 7 dated November 25, 2008, should be removed from his record. In 2008, the PPPM, Change 13, was in effect and stated that the CO may authorize in writing officers, Chief Petty Officers, First Class Petty Officers, and Second Class Petty Officers to sign forms and worksheets "by direction." This language did not restrict the commanding officers from delegating their authority to sign adverse Page 7s. Although the lieutenant, Chief of the applicant's division, who signed the November 25, 2008, Page 7 failed to include the words "by direction," his signature on the Page 7 is entitled to the presumption of regularity.⁵ The restriction against anyone but the CO signing a negative Page 7 did not go into effect until 2009. Therefore and because the applicant submitted nothing to show that the substance of the Page 7 is erroneous or unjust, the Board is not persuaded that this Page 7 should be removed from the applicant's record.

4. The applicant has proved by a preponderance of the evidence that the two negative Page 7s dated May 12, 2010, and September 20, 2011, should be removed from his record. The PPPM, Change 14, was then in effect and prohibited commanding officers from delegating their authority to sign adverse Page 7s. The manual states that only the CO or the acting CO may sign adverse Page 7 entries. Because the chief yeomen who signed these two negative Page 7s were not the applicant's CO or acting CO, they lacked authority to sign them.

5. Accordingly, partial relief should be granted by removing the disputed Page 7s dated May 12, 2010, and September 20, 2011, from the applicant's record.

(ORDER AND SIGNATURES ON NEXT PAGE)

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."

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 33 C.F.R. § 52.24(b).

ORDER

The application of former [REDACTED], USCG, for correction of his military record is granted in part. The Coast Guard shall remove from his record the two adverse Page 7s dated May 12, 2010, and September 20, 2011.

No other relief is granted.

September 5, 2014

