

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-068

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 February 26, 2014, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated November 7, 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 asked the Board to remove from his record a Performance and Discipline (P&D-9) form CG-3307 ("Page 7")¹ dated March 1, 2011, which states the following: "Counseled concerning civil and moral obligations to provide continuous and adequate support of lawful dependents." The Page 7 was not marked as either positive or negative, and it was signed by the Chief of Personnel and Support Services, who was the commanding officer (CO) for enlisted personnel at the Coast Guard Academy, and acknowledged by the applicant's signature on March 1, 2011. The applicant also submitted a copy of a Page 7 with an identical text that his ex-wife received from her own CO on March 2, 2011.

The applicant stated that in 2011, he was stationed at the Academy and his wife was assigned to a cutter with a nearby homeport. His wife moved out of their apartment and left their three-year-old daughter with him, along with responsibility for the rent and other household bills, including daycare costs, utilities, insurance, car loans, and credit card debt. For five months, his wife contributed nothing to the household, and so he paid for everything unassisted and moved with his daughter into military housing when their lease ended. He asked the Command Master Chief (CMC) to help him receive assistance from his wife through her command, but the CMC

¹ A form CG-3307, "Administrative Remarks" record entry, better known as a "Page 7," "provides a means of recording miscellaneous entries, which are not recorded elsewhere in a Personnel Data Record (PDR). Administrative Remarks entries are made, to document counseling, or to record any other information required by current directives, or considered to be of historical value." Personnel and Pay Procedures Manual (PPPM), PSCINST M1000.2A, Chapter 10.A.

refused to get involved. Therefore, the applicant wrote directly to his wife's command to complain about her financial neglect of their daughter and joint expenses.

Soon after he wrote that letter, the applicant alleged, the Academy's Chief of Personnel and Support Services prepared the Page 7 for him, which shocked and appalled him because he was the one who had been paying for everything and the CMC had already refused to help him get his wife to contribute. His wife was also counseled on a similar Page 7, but she still refused to financially support their daughter. This situation continued without resolution until the applicant hired an attorney and filed for divorce in October 2011. On November 22, 2011, prodded by her own attorney, his wife finally began sending him \$300 per month, and after the divorce was finalized on January 10, 2012, she had to pay \$400 per month because he was awarded physical and legal custody of their daughter. Thus, the applicant argued, the disputed Page 7 is unsubstantiated and unjust because he never failed to financially support his daughter. Therefore, he asked the Board to remove the Page 7 from his record so that it will not harm his chances for promotion.

In support of his allegations, the applicant submitted a copy of a letter from his applicant's attorney dated November 22, 2011, in which the attorney wrote that the applicant wife "will continue to give monthly amount—she will actually agree to increase from \$300 to \$350-\$400 in her contribution to her child's total child support and daycare requests—if your client is agreeable to the rest of the terms" He also submitted copies of the odd-numbered pages of his divorce decree, dated January 10, 2012, which indicate that the applicant received custody of their daughter and that the wife would pay him \$400 per month for child support.

VIEWS OF THE COAST GUARD

On June 30, 2014, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case. 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 relief should be denied because the Page 7s show that the applicant and his wife were both informed of Coast Guard policy regarding the support of dependents when they separated, and the disputed Page 7 is neither considered nor documented as an adverse or negative Page 7. PSC stated that the disputed Page 7 is consistent with Coast Guard policy, and noted that Article 8.M.1.e. of the Personnel Manual in effect in March 2011 stated the following:

It is the responsibility of every commanding officer to ensure that all personnel under his or her command are informed of Coast Guard policy and expectation regarding support of dependents and the possible consequences of separation for misconduct for failure to discharge their just obligations. All personnel at sea or stationed overseas shall be counseled and encouraged to make provisions for continuous allotments to their dependents in amounts sufficient to enable them to meet the family obligations at home.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 30, 2014, 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 10.A. of the Personnel and Pay Procedures Manual (PPPM) authorizes the recording of “Administrative Remarks” on Page 7s “to document counseling or to record any other information required by current directives, or considered to be of historical value.” It further states that only commanding officers may sign adverse (negative) Page 7s and that only the Page 7s listed in Enclosure (6) are authorized. Enclosure (6) to the PPPM lists seven basic types of Page 7s: Accession; Assignment and Transfer; Advancement and Reduction; Performance and Discipline; Separation; Selective Reenlistment Bonus; and Selected Reserve Enlistment Bonus. One of the Performance and Discipline Page 7s authorized contains the exact text used on the disputed Page 7 in this case.

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 filed within three years of the date of the Page 7.

2. The applicant alleged that the Page 7 dated March 1, 2011, in his record is 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.² Absent evidence to the contrary, the Board presumes that a member’s military records have been prepared “correctly, lawfully, and in good faith.”³

3. The applicant has mistaken an administrative, informational Page 7 as an adverse Page 7. The record shows that upon learning that the applicant and his then wife had separated, his commanding officer used the standard Page 7 prescribed in Enclosure (6) to the PPPM to document the fact that the applicant had been advised of his obligation to support his dependent. Such counseling is mandated for members separating from their spouses in accordance with Article 8.M.1.e. of the Personnel Manual. This standard Page 7 uses compelling language, but it does not accuse the applicant of failing to support his daughter, and it does not state that it is a “NEGATIVE” entry as adverse Page 7s normally do.

4. Accordingly, relief should be denied because the applicant has not proven by a preponderance of the evidence that the disputed Page 7 is erroneous or unjust.

² 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] [REDACTED] USCG, for correction of his military record is denied.

November 7, 2014

