

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-070

████████████████████
████████████████

FINAL DECISION

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. After receiving the applicant's completed application on March 6, 2014, the Chair docketed the application and assigned it to ██████████ to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 19, 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 ██████████ serving on active duty, asked the Board to remove from his record two negative CG-3307 Administrative Remarks ("Page 7s"),¹ both dated April 17, 2012, which he received while serving as the Executive Petty Officer (XPO) of a boat station. One concerns failing to recertify as a coxswain on an RBS boat; the other concerns an alleged failure to protect another member's medical information. The applicant alleged that the negative Page 7s are both false and that the comments therein do not provide the necessary background information to an ongoing professional conflict between him and the Officer in Charge (OIC) of his station. The applicant refused to sign the Page 7s, as noted on both forms.

The applicant stated that after the Sector chain of command became involved, he was told that the two Page 7s were not being pursued, nor would they be placed in his record. The applicant stated that this assurance from the Sector chain of command was the only reason that he did not pursue a command climate complaint at that time.

The applicant stated the Page 7 given to him for failing to recertify was not a result of him not meeting the required standards, but a result of the OIC refusing to recertify him because

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.

of a professional conflict between them. He noted that he had been certified as an RBS coxswain since 2003 and was certified as a coxswain on other boats as well.

Regarding the second Page 7, the applicant stated that on the day in question, an E-3 and E-6 were openly discussing the weight program in the office when the E-6 asked the applicant about the Coast Guard's weight policy. The applicant explained the policy to them and answered questions from both the E-6 and E-3 about how the policy affected their situations. He helped both of them draft requests (presumably for waivers) and "was absolutely stunned" when presented with the Page 7 just because he had answered their questions. The applicant alleged that the OIC had "twisted the truth and was attempting to build a case to relieve me out of spite."

The applicant noted that the high marks he received on his performance evaluation (see attached) and his successful career both before and after April 2012 contradict the two Page 7s. He alleged that the OIC was using the Page 7s to build a case to relieve him from his position as XPO. To support his application, the applicant submitted statements from two officers and a senior chief boatswain's mate, who strongly support for the applicant's request to have the two Page 7s removed from his record:

A commander who served as the Sector Response Officer in April 2012 stated that he fully supported the applicant's request to correct his military record. He further stated that—

[t]he climate and professional decorum between the command cadre (OIC, XPO, and EPO) at [the station] was a continuing leadership challenge that required consistent Sector involvement. These leadership challenges predated [the applicant's] assignment to [the station]. As the Response Chief I was contacted by the previous XPO and EPO on multiple occasions that required Sector involvement to defuse situations and direct tactical pauses. [The applicant's] assignment as XPO was an opportunity for a new start at [the station]. I clearly recall that [the applicant] was motivated to be the best XPO possible and that the OIC was eager to have the new XPO aboard. Unfortunately after the first few months, the Sector leadership was back in triage mode and required more than ever to defuse more climate issues between the OIC and the new XPO. This eventually resulted in the OIC and XPO meeting with the Sector Commander, myself and the Command Enlisted Advisor. There is certainly a large picture and circumstances that surround the page 7s in question.

A lieutenant (LT) who was a member of the Sector Response Department stated that he was involved in various meetings regarding leadership and teamwork as it pertained to applicant's station in 2012. The LT stated that he "specifically discussed the irrationality of the negative page 7s" with the OIC since it was the first time that the Sector had been made aware of the issues. The LT stated that "[s]ince they weren't previously documented, it was difficult to determine the fairness of the charges against the [XPO] given the heightened emotional atmosphere." He stated that he explained to the OIC the importance of documentation and communication in future instances if he wanted the Sector's support on disciplinary actions.

A BMCS, the new OIC of the station, stated that the claim that the applicant could not certify as a coxswain "could not be farther from the truth" because the applicant has an in-depth knowledge of the station's area of responsibility and a high degree of navigational expertise, and he was very knowledgeable of the particular type of boat for which he received the Page 7. The BMCS stated that he also disagrees with the second Page 7 because the applicant "adheres to

ethical principles that reflect the highest standards of the organization and individual behavior. ... I have never once heard him discuss sensitive information in an open area.”

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on March 4, 1997, became a [REDACTED] transferred to the [REDACTED] rating, and advanced to chief petty officer. He was certified as an RBS coxswain in June 2003, certified on other boats, and had [REDACTED] before he was transferred to be the XPO of a new boat station in 2011.

On April 17, 2012, the applicant received a negative Page 7 from his OIC regarding his failure to be recertified as an RBS within a reasonable amount of time (six months) by his OIC. The OIC required him to take certain steps and to recertify within three months. The applicant refused to sign this Page 7.

On April 17, 2012, the applicant received a second negative Page 7 from his OIC with counseling regarding his responsibilities to safeguard confidential medical information. The applicant refused to sign this one, too. The Page 7 states the following in pertinent part:

On April 3, 2012, you had an informal conversation with a non-rate regarding an E-6 assigned to the unit. In the course of that conversation, you discussed the E-6's status on the weight program and cast aspersions upon the possible causal role that a medical condition may have on that member's weight compliance. Specifically, you disclosed that the member claims to have a specific medical condition, which you identified, but questioned whether the member actually suffered that condition or whether weight gain could be attributed to the condition. ... Your discussion of an E-6's personal, private, and sensitive medical information with a non-rated person—who had no legitimate need to now or right to access that information—constitutes a grave breach of your critical responsibilities to safeguard that information. Any future breach of this duty may result in formal disciplinary action.

The applicant has received high marks on his performance evaluations and numerous awards, medals, and positive Page 7s throughout his career. Aside from the disputed Page 7s, the only documentation of counseling about negative performance is a Page 7 dated October 15, 1999, which states that the applicant had been insubordinate, disrespectful, and failed to meet the higher standards of performance that came with his advancement to E-5.

On April 11, 2008, the applicant received a Coast Guard Achievement Medal (Gold Star in Lieu of a Third) for his superior performance of duty while serving as XPO of a boat station on Lake Michigan from June 2005 to May 2008.

On May 1, 2011, the applicant received the Coast Guard Commendation Medal for outstanding achievement while serving as Deck Division Chief on board a medium endurance cutter from July 2008 to May 2011.

In March 2013, the applicant received his fourth Commandant's Letter of Commendation and a Meritorious Team Commendation for his performance of duty while serving in direct support of the Coast Guard's response to Hurricane Sandy.

VIEWS OF THE COAST GUARD

On June 26, 2014, the Judge Advocate General submitted an advisory opinion recommending that the Board grant relief in this case in accordance with the findings and analysis provided in a memorandum submitted by the Commanding Officer, Coast Guard Personnel Service Center (PSC).

The Coast Guard PSC recommended that relief be granted to the applicant. PSC stated that the applicant received the two negative CG-3307s from his OIC “against the wishes of” the Sector command and that it “is obvious there were Command Climate issues at work in this case and the Command Cadre from the Sector as well as the new [OIC] both indicated they did not support these CG-3307s.”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 30, 2014, the Chair of the BCMR sent the applicant a copy of the Coast Guard’s views and invited him to respond within thirty days. On August 4, 2014, the applicant submitted a response to the Coast Guard’s advisory opinion, in which he stated he is in agreement with the Coast Guard’s recommendations.

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 submissions, 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 entry of the Page 7s in the applicant’s record.²

2. The applicant alleged that the inclusion of the two Page 7s dated April 17, 2012, in his military record is erroneous and unjust. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant’s military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.³ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”⁴

3. In support of his allegations, the applicant submitted statements from two officers in the Sector command and from his new OIC, all of whom strongly support his effort to correct

² 10 U.S.C. § 1552(b); 33 C.F.R. § 52.22.

³ 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)).

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).

his record. These statements show that the applicant was a highly qualified coxswain and that the command climate at the station had been an issue long before the applicant reported for duty in 2011. The OIC apparently prepared the two Page 7s when “emotions were running high” following a difficult meeting of the Sector command with the station’s command cadre about teamwork and leadership. The Sector officers indicated that the Page 7s were prepared against their wishes, and the evidence of record casts significant doubt on the factual bases for some of the remarks in the Page 7s. Therefore, and in light of the Coast Guard’s recommendation, the Board finds that the applicant has proven by a preponderance of the evidence that the two negative Page 7s are unjust⁵ and should not have been entered in his record.

4. Accordingly, the Board finds that the applicant’s request for correction of his military records should be granted. The disputed Page 7s should be removed.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁵ *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976) (stating that for the purposes of the BCMRs, “injustice” is “treatment by the military authorities that shocks the sense of justice but is not technically illegal”); *but see* 41 Op. Att’y Gen. 94 (1952), 1952 WL 2907 (finding that “[t]he words ‘error’ and ‘injustice’ as used in this section do not have a limited or technical meaning and, to be made the basis for remedial action, the ‘error’ or ‘injustice’ need not have been caused by the service involved.”); Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002) (stating that the Board has authority to determine whether an injustice exists on a “case-by-case basis”); *Roth v. United States*, 378 F.3d 1371, 1381 (Fed. Cir. 2004) (holding that “when a correction board fails to correct an injustice clearly presented in the record before it, it is acting in violation of its mandate”); *Boyer v. United States*, 81 Fed. Cl. 188, 194 (2008) (“When a board does not act to redress clear injustice, its decision is arbitrary and capricious.”).

ORDER

The application of [REDACTED] USCG, for correction of his military record is granted. The two negative CG-3307s dated April 17, 2012, shall be removed from his record.

September 19, 2014

