

**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. 2014-072**

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**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 12, 2014, the Chair docketed the case 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 October 17, 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 a negative CG-3307 Administrative Remarks ("Page 7")<sup>1</sup>, dated September 17, 2012, documenting the applicant's failure to meet his responsibilities as his Marine Safety Unit's Senior Duty Petty Officer (SDPO) Watch Coordinator on that date. The applicant alleged that his chain of command never authorized the Page 7 becoming a part of his record and it should therefore be removed.

In support of his application, the applicant submitted a memorandum signed by his Commanding Officer, dated February 25, 2014, stating that the Page 7 was completed as a counseling tool; that the original was shredded; and that it was never intended to become part of the applicant's permanent record.

**SUMMARY OF THE MILITARY RECORD**

The applicant originally enlisted in the Marine Corps on August 17, 1992, and was discharged in May 1996. The applicant subsequently enlisted in the Coast Guard on October 14,

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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.

1997, and remains on active duty. On September 17, 2012, the applicant received the disputed Page 7, which states the following:

17SEP12: You are counseled on this date for failing to meet your responsibilities as MSU ... Senior Duty Petty Officer (SDPO) Watch Coordinator. On this date you failed to report for duty, provide a qualified standby, and failed to inform the Marine Duty Officer (MDO) of any deviation from the duty schedule. Your failure to follow proper protocol resulted in an incomplete duty section and the recall of personnel to ensure unit readiness and backfill your responsibilities.

The altering of duty schedules, inadequate routing of chits, failure to keep the schedule updated, and overall lack of attention you have shown toward your obligations as the SDPO Watch coordinator has constantly been pushed on to others. As a First Class Petty Officer and SDPO Watch Coordinator you are charged with serving as a leader; ensuring personnel are in keeping with proper military etiquette, good order and discipline, and following CG and Unit policies. Your irresponsibility and unwillingness to take ownership in your duties is unacceptable. A First Class Petty Officer should serve as an example for other Petty Officers to follow, rely on, and emulate.

You are hereby relieved of your duties as the SDPO Watch Coordinator. In the future, you are expected to be more attentive in the execution of your duties. You are expected to be on time when scheduled for duty and to ensure all subordinates' chits are properly routed to the MDO and Senior Watch coordinator when absences affect a duty section. Your performance is extremely disappointing and unacceptable for a First Class Petty Officer. Any further infractions or failures to fulfill your obligations may result in more severe administrative actions or NJP.

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

On June 5, 2014, the Judge Advocate General (JAG) 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).

PSC referenced Personnel and Pay Procedures Manual (PPPM), PPCINST M1000.2A, Chapter 1.4.3, which states that "[o]nly the CO/OIC may sign Adverse Administrative Remarks (CG-3307) entries. However, [p]er CG Regulations, (7-I-9.F), an officer, temporarily succeeding to command may sign as acting." The applicant received the negative Page 7 from his Executive Officer and in accordance with Coast Guard policy, only the Commanding Officer may sign adverse administrative remarks. As such, PSC concluded that the negative Page 7 should be removed from the applicant's record.

In addition to the above referenced rule, PSC noted that the Commanding Officer himself has requested the negative Page 7 be removed from the applicant's record, as he only wanted the Page 7 to be used as a training tool by the Executive Officer. Therefore, since the Executive Officer lacked the authority to sign the negative Page 7, and the Commanding Officer confirmed that the Page 7 was never meant to be a part of the applicant's record and requested that the Page 7 be removed, both the JAG and PSC recommended that relief be granted.

## APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 16, 2014, the Chair of the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. The BCMR did not receive a response.

### APPLICABLE LAW AND POLICY

Article 1.4.3. of the Personnel and Pay Procedures Manual (PPPM), PPCINST M1000.2A, in effect in 2012, 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.' 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:

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• *Only the CO/OIC may sign Adverse Administrative Remarks (CG-3307) entries. However, [p]er 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 submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. Under 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22, an application to the Board must be filed within three years after the applicant discovers the alleged error or injustice. The allegedly erroneous Page 7 in the applicant's record is dated September 17, 2012. Therefore, the application is timely.
3. The applicant alleged that a negative Page 7, dated September 17, 2012, was erroneously included in his PDR and was never meant to be part of his permanent record, but rather just used as a method to counsel the applicant. 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.<sup>2</sup> 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."<sup>3</sup>

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<sup>2</sup> 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)).

<sup>3</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).

4. Under 10 U.S.C. § 1552, the Board is authorized to “correct an error or remove an injustice” in any Coast Guard military record. “Error” means a mistake of a significant fact or law and includes a violation by the Coast Guard of its own regulations.<sup>4</sup> For the purposes of the BCMRs, “injustice” is sometimes defined as “treatment by the military authorities that shocks the sense of justice but is not technically illegal.”<sup>5</sup> The Board has authority to determine whether an injustice exists on a “case-by-case basis.”<sup>6</sup> Indeed, “when a correction board fails to correct an injustice clearly presented in the record before it, it is acting in violation of its mandate,”<sup>7</sup> and “[w]hen a board does not act to redress clear injustice, its decision is arbitrary and capricious.”<sup>8</sup>

5. Article 1.4.3 of the Personnel and Pay Procedures Manual in effect at the time the applicant received the negative Page 7 states that only the CO/OIC may sign an adverse administrative remark but that an officer temporarily succeeding to command may sign as acting. There is no indication in the record that the Executive Officer was serving as the Acting CO when he prepared the disputed Page 7 and the CO’s memorandum strongly suggests that he was not. Therefore, the preponderance of the evidence in the record shows that, at the time the applicant received the negative Page 7, the Executive Officer lacked the authority to sign it.

6. The applicant has proven by a preponderance of the evidence that the negative Page 7 dated September 17, 2012, should be removed from his record. Not only was the Executive Officer not authorized to sign it, but the applicant’s CO, who did have authority to sign such a Page 7, has strongly supported his request to have it removed. Accordingly, the applicant’s request should be granted by removing the disputed Page 7 dated September 17, 2012, from his record.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

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<sup>4</sup> See *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976) (“‘Error’ means legal or factual error.”); *Ft. Stewart Schools v. Federal Labor Relations Authority*, 495 U.S. 641, 654 (1990) (“It is a familiar rule of administrative law that an agency must abide by its own regulations.”).

<sup>5</sup> *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976); 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.”).

<sup>6</sup> Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002).

<sup>7</sup> *Roth v. United States*, 378 F.3d 1371, 1381 (Fed. Cir. 2004) (quoting *Yee v. United States*, 206 Ct. Cl. 388, 397 (1975)).

<sup>8</sup> *Boyer v. United States*, 81 Fed. Cl. 188, 194 (2008).

**ORDER**

The application of [REDACTED], USCG, for correction of his military record is granted. The Coast Guard shall remove from his record the negative Page 7 (CG-3307) dated September 17, 2012.

October 17, 2014

