

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-153



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 July 10, 2015, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated May 27, 2016, 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 [REDACTED] on active duty, asked the Board to remove from her record an adverse ("general-negative") Administrative Remarks form (CG-3307 or "Page 7")¹ dated August 5, 2009. The negative Page 7, which was presented to her when she was a [REDACTED], documented counseling about the following conduct:

- Raising her voice without regard for others within hearing distance;
- Spreading rumors and not controlling her temper;
- Acting inappropriately and counter-productively to the command; and
- Failing to utilize teamwork and leadership skills to resolve issues.

The applicant alleged that the negative Page 7 should not be in her record because it was not signed by her commanding officer (CO). The Page 7 was signed by a chief warrant officer (CWO), who was acting as the Executive Officer (XO) of Military Personnel at Sector [REDACTED] where she was stationed. The applicant alleged that the Page 7 was completed without her command's knowledge. At the time that the Page 7 was issued, Sector [REDACTED] had a sector commander who was a captain (CAPT) and an XO who was a commander (CDR). The applicant alleged that both the CAPT and the CDR were present at the Sector and had no

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.

knowledge of the Page 7. The applicant presented no arguments or allegations regarding the substance of the Page 7.

VIEWS OF THE COAST GUARD

On November 13, 2015, 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 Page 7 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 according to the Personnel and Pay Procedures Manual, PPCINST M1000.2A, Change 14 (PPPM, Change 14), only the Commanding Officer (CO) or Officer in Charge (OIC) is authorized to sign adverse administrative remarks. Change 14 was in effect in 2009 when the Page 7 was signed. The applicant's Page 7 was signed by a CWO4 with the title "XO, Military Personnel." The signature block on the Page 7 does not specify that the CWO was signing in "acting" capacity for the CO. Further, the Logistics Department at Sector [REDACTED] is led by a Coast Guard Commander (O-5) who serves as the CO.² Therefore, the CWO4 did not have authority to sign the negative Page 7 for entry in the applicant's record, and PSC concluded that the negative Page 7 should be removed from the applicant's record.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 24, 2015, the Chair sent the applicant a copy of the views of the Coast Guard and invited her to respond within 30 days. No response was received.

APPLICABLE REGULATIONS

The PPPM, Change 14 was in effect in 2009 when the CWO4 signed the disputed Page 7. Chapter 1.4. of this manual states, regarding the signing of forms, that "[t]he 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." Change 14, promulgated on January 1, 2009, added the following restriction to the list:

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:

² SECSENEINST M54001.1.

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely.³

2. The applicant alleged that the Page 7 in her record is erroneous and unjust and should be removed from her 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 her record, and the applicant bears the burden of proving by a preponderance of the evidence that it is erroneous or unjust.⁴ Absent evidence to the contrary, the Board presumes that a member's military records have been prepared "correctly, lawfully, and in good faith."⁵

3. The applicant has proved by a preponderance of the evidence that the negative Page 7 should be removed from her record. The applicant alleged that the Page 7 is erroneous and unjust because it was not signed by her CO or acting CO, as required by current policy. Change 14 of the PPPM was in effect when the Page 7 was signed on August 5, 2009, and prohibits commanding officers from delegating their authority to sign adverse Page 7s.⁶ The manual states that only the CO or the acting CO may sign adverse Page 7 entries. Because the XO who signed the applicant's negative Page 7 was not the applicant's CO or acting CO, the XO lacked the authority to sign it.

4. Accordingly, relief should be granted by removing the disputed Page 7 dated August 5, 2009, from the applicant's record.

(ORDER AND SIGNATURES ON NEXT PAGE)

³ The application was received more than three years after one of the disputed Page 7 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."

⁴ 33 C.F.R. § 52.24(b).

⁵ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁶ Personnel and Pay Procedures Manual, PPCINST M1000.2A, Change 14, "Chapter 1: Added "Adverse Administrative Remarks (CG-3307) Entries" to list of restrictions to "By direction authority". Removed language and exhibit pertaining to delegation of SPO data entry responsibilities to units." This change removed adverse Page 7s from the list of documents that may be signed by direction authority and made it so that only the CO or acting CO can sign the Page 7.

ORDER

The application of [REDACTED], USCG, for correction of her military record is granted. The Coast Guard shall remove from her record the adverse Page 7 dated August 5, 2009.

No other relief is granted.

May 27, 2016

