



the United States Coast Guard, you are required to display the utmost judgment, especially in situations such as the aforementioned. If you have any doubt or perceived communication whatsoever, it is your job to make sure procedural clarification is met and then followed. Failure to comply may result in administrative action.

The applicant alleged that the Page 7 was not warranted. He explained that he reported for duty at the Marine Safety Detachment in July 2013 with no law enforcement experience, but despite being an [REDACTED] he took the initiative to join the Vessel Boarding and Security Team because he is interested in having a career in law enforcement. The applicant stated that he completed the prerequisites to attend Boarding Team Member “C” School in March 2013 and successfully completed the school and passed an oral examination by the Law Enforcement Qualification Board on May 7, 2014. On May 13, 2014, he was invited to assist with what would be his first boarding on May 18, 2014, and he agreed. He alleged that at the time he was “unsure about my certification status” because he had not yet received a memorandum from the Sector Commander approving his certification.

The applicant stated that a “boarding” is an “armed intervention aboard a vessel,” and he was instructed to report with the boarding team to the armory on May 18, 2014. He was advised that he should wear a uniform, body armor, and a law enforcement belt, but no PDW during the boarding. The applicant stated, however, that when he reported to the armory, someone “assigned” him a PDW, and the Boarding Officer, who had been a member of his oral examination board, was present at the armory when the PDW was assigned to him.

The applicant stated that the boarding occurred without incident, and on May 30, 2014, he received a memorandum from the Sector Commander stating that he had been recommended for certification<sup>2</sup> by the Law Enforcement Qualification Board. However, on June 12, 2014, he was informed that he was under investigation for the unauthorized carrying of a PDW, and on August 27, 2014, he was issued the negative Page 7. He stated that he signed it while unaware of its ramifications.

The applicant stated that after “months of consideration and exploration of options and policies,” he started trying to have the Page 7 removed in June 2015. The Sector Commander has supported his request due to the misunderstandings that led to him being issued the PDW and to the fact that the applicant did not show such a severe lapse in judgment that a Page 7 was warranted. However, the Personnel Service Center (PSC) denied his request, and he was directed to apply to the BCMR.

The applicant asked the Board to remove the Page 7. He stated that on the day of the boarding, he “felt that I was a qualified boarding team member and it was acceptable to carry the PDW that I was issued.” In support of his request, the applicant submitted the following documents:

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<sup>2</sup> The applicant noted that the memorandum states “recertification” but that it was actually his first.

- In a memorandum dated May 30, 2014, the acting Sector Commander advised the applicant that the Law Enforcement Qualification Board convened on May 7, 2014, had recommended that he be recertified as a unit Boarding Team Member and that he had examined the applicant's qualifications and was personally satisfied that the applicant possessed the judgment and temperament to carry weapons as a Boarding Team Member. The memorandum also states, "You are authorized to carry weapons and perform other law enforcement duties as prescribed in [COMDTINST M162467.1 and COMDTINST 16247.3]."
- On July 29, 2015, the Sector Commander signed a memorandum to PSC asking that the Page 7 be removed because, "[u]pon further evaluation of the methods for qualification boards and the process used to issue personal defense weapons (PDW) during that time period, it was found that there was an environment which led to a misunderstanding on the part of [the applicant]. I have subsequently determined that the actions taken by [the applicant] did not indicate a severe lapse in judgment based on the circumstances outlined in the CG-3307.
- A memorandum dated August 20, 2015, from PSC to the Sector Commander, states that the request to remove the Page 7 had "been carefully reviewed and is unfortunately denied." It advised him that the applicant could apply to the BCMR.

### VIEWS OF THE COAST GUARD

On March 22, 2016, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request.

The JAG stated that under COMDTINST M8000.2, Chapter 4.D.3., the requirements for carrying a weapon during a law enforcement operation include, *inter alia*, having your CO's documented approval in official correspondence. The JAG stated that because the Sector Commander did not issue the memorandum until May 30, 2014, about two weeks after the boarding on May 18, 2014, the Page 7 was not issued in error.

The JAG stated that the Page 7 is factual and neither erroneous nor unjust and so it should not be removed from his record. He further stated that the applicant's CO of Military Personnel, who signed the Page 7, was authorized to document the incident, and the Page was prepared and added to the applicant's record in accordance with policy. Moreover, the JAG stated, the CO of Military Personnel does not recommend removing the Page 7 and also issued one to the lead Boarding Officer. The JAG submitted the following email received from this CO and argued that the applicant has not met his burden of proving that the disputed Page 7 is erroneous or unjust:

[The applicant] asked to speak to me and sent me an email that contained policy regarding LE boardings. It was my impression that his focus of having the 3307 removed was based on the Lead Boarding Officer not following policy (to which he also received a negative 3307) vice his statement in which he said he should have questioned it when he was handed a weapon. He did not mention in his statement that he was qualified, this was not captured in anyone else's statements,

and his qual letter is dated after the boarding. Due to the member's lack of judgment regarding possession of a firearm I stand by the 3307 as issued and do not concur with the page 7 being removed from his record.

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

On March 25, 2016, 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.

### **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 over this matter under 10 U.S.C. § 1552. The application was timely filed.

2. The applicant alleged that a Page 7 dated August 20, 2014, which documents counseling for showing "below average judgment" by unauthorized carrying of a firearm during a law enforcement operation, is erroneous and unjust. In considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed documents in an applicant's military record are correct and fair, and the applicant bears the burden of proving by a preponderance of the evidence that the documents are erroneous or unjust.<sup>3</sup> Absent specific evidence to the contrary, the Board presumes that Coast Guard officers and other Government officials have carried out their duties "correctly, lawfully, and in good faith."<sup>4</sup>

3. The record shows that the applicant was told before the boarding on May 18, 2014, that he was not supposed to wear a PDW during the boarding. He had not yet received an approval letter certifying him to wear a PDW during boardings, and being told he could not wear a PDW during the boarding was another very clear signal that he was not authorized to wear one. However, when he met the boarding team at the armory where their weapons were issued, he accepted a PDW despite the instructions he had received to the contrary and despite the fact that he was as yet unauthorized to carry a weapon in a law enforcement operation. The applicant claims in one place that he was unsure of his certification at the time because he had not yet received the approval letter, and he claims in another place that he believed that he was certified. However, the applicant was clearly expecting the approval letter, had not received it, and so knew or should have known that he was not yet certified and was not authorized to carry a weapon even if the armorer assigned one to him as well as the other boarding team members in the presence of the Boarding Officer. Given that the applicant accepted and wore the PDW during the boarding while knowing that he had not yet received his certification and without raising the issue with the Boarding Officer, the Board is not persuaded that the disputed Page 7 is erroneous or unjust.

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<sup>3</sup> 33 C.F.R. § 52.24(b).

<sup>4</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. The Board notes that the Sector Commander has stated that he believes that “there was an environment which led to a misunderstanding on the part of [the applicant]. I have subsequently determined that the actions taken by [the applicant] did not indicate a severe lapse in judgment based on the circumstances outlined in the CG-3307.” Although the Sector Commander has reviewed the Page 7 and thinks it should be removed because the circumstances did not show a “severe lapse” in judgment, the CO of Military Personnel, who had authority to sign the Page 7 and was presumably aware of the details revealed by the investigation at the time, has reaffirmed his decision to issue it. The Board finds that the applicant has not proven by a preponderance of the evidence that the Page 7 is erroneous or unjust.

5. Accordingly, the applicant’s request should be denied.

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

**ORDER**

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

September 16, 2016

