

**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. 2016-054**



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**FINAL DECISION**

This proceeding was conducted according to 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 completed application on February 19, 2016, and assigned it to staff attorney [REDACTED] to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated April 7, 2017, 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 Senior Chief [REDACTED] (E-8) on active duty, asked the Board to correct his military record by removing three Administrative Remarks pages ("Page 7s")<sup>1</sup> because they contain the incorrect labels. The first Page 7, dated March 16, 1999, is erroneously labeled "P&D-21," he alleged, and two Page 7s dated September 27 and November 22, 2004, are allegedly erroneously labeled "P&D-15."<sup>2</sup> The applicant submitted a copy of the templates for the P&D-21 and P&D-15 Page 7s. The first template indicates that it is designated for counseling for placement on performance probation, and the latter indicates that it is for documenting the completion of alcohol screening.

The applicant also provided copies of the disputed Page 7s. The March 16, 1999, Page 7 documents an alcohol incident wherein the applicant arrived late to work smelling of alcohol. The 2004 Page 7s are in reference to a verbal altercation the applicant had with a shipmate. The applicant argued that the Page 7s should be removed because they are incorrectly labeled and because they contain "factually inaccurate" remarks. He stated that the "attachments will support the request." No other attachments were received.

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<sup>1</sup> A Page 7 (CG-3307, or Administrative Remarks) entry documents any counseling that is provided to a service member as well as any other noteworthy events that occur during that member's military career.

<sup>2</sup> "P&D" denotes Performance & Discipline.

### SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on December 2, 1997. On March 16, 1999, the applicant received a negative Page 7 for his first (and only) alcohol incident. It shows the label P&D-21 and states that on February 13, 1999, the applicant reported to work one hour late, and his breath smelled of alcoholic beverages. The applicant denied having been drinking the previous night. The applicant was told to return to his room to “sleep it off.” The Page 7 also states that this was not the first time he had arrived to work late with the smell of alcohol on his breath.

On September 27, 2004, the applicant received a Page 7 with a P&D-15 label. It states that on September 26, 2004, a flooding drill occurred and pillows were taken to slow the flooding. The applicant’s pillow was not taken, but he was incorrectly informed that it had been used and he became angry. The applicant confronted the junior crewmember whom he believed was responsible and used an excessive amount of profanity and ultimately “poked” the crewmember. The applicant attempted to apologize when he learned his pillow had not been used. The Page 7 further stated that the incident would be investigated.

On November 22, 2004, the applicant received a Page 7 with a P&D-15 label regarding the results of the investigation. The Page 7 states that “assault by definition or direct aggression threatening another crewmember’s well-being did not take place.” The applicant was informed that anger management courses were available to him, and he was encouraged to seek means to control his anger in the future.

The applicant’s record contains additional Page 7s, neutral, positive, and negative, that are not disputed here. One additional Page 7, received on August 7, 2010, commends the applicant for being a “great asset” to his command and for dedicating many of his personal hours to complete repairs. This Page 7 contains a P&D-07 label, which is used to denote a general negative administrative entry.

### VIEWS OF THE COAST GUARD

On July 7, 2016, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant alternative relief, based on the analysis of the case provided in a memorandum from the Commander, PSC.

PSC stated that the application was not timely, and therefore should not be considered beyond a cursory review. PSC argued that the applicant is contesting entries from 1999 and 2004, and that he has not provided a justification for his delay.

Nevertheless, PSC recommended that the labels on the three contested Page 7s be redacted, because they are incorrect. PSC provided a list of the numerous Page 7 templates with their labels, which included the following:

PD-07 – General Negative  
PD-13 – Alcohol Incident

PD-15 – Completed Alcohol Screening

PD-21 – Counseling for Placement on Performance Probation

PSC stated that the 1999 Page 7 contained the P&D-21 label, but should have been labeled P&D-13 to denote an alcohol incident. The two Page 7s from 2004 contained the P&D-15 label, but should have been labeled P&D-07 to denote a general negative administrative entry. PSC argued, however, that the applicant did not provide any evidence to substantiate his claim that the content of the Page 7s was “factually inaccurate.” Therefore, PSC recommended that the labels on all three Page 7s be redacted due to their mislabeling, and no other relief was recommended.

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

On July 12, 2016, the Board mailed a copy of the views of the Coast Guard to the applicant for a response. The applicant requested two 60-day extensions. The Board did not receive a response.

### **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.
2. Although the application was not filed within three years of the applicant’s receipt of the Page 7s and presumed knowledge of the alleged errors, it is considered timely because he is still on active duty.<sup>3</sup>
3. The applicant alleged that the P&D labels on three of his Page 7s are incorrect, that the contents are factually inaccurate, and that the Page 7s should be removed because they are therefore 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. 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. The applicant has not proven by a preponderance of the evidence that the contents of the three disputed Page 7s are factually inaccurate. He has not submitted substantial evidence to prove that these Page 7s are erroneous or unjust. However, the preponderance of the evidence shows that Page 7s were mischaracterized as P&D-21 and P&D-15, respectively. Additionally, the applicant’s August 7, 2010, Page 7 was mischaracterized as P&D-07. These typographical errors are not prejudicial to the applicant’s record and do not warrant removal of

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<sup>3</sup> *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994) (holding that, under § 205 of the Soldiers’ and Sailors’ Civil Relief Act of 1940, the BCMR’s three-year limitations period under 10 U.S.C. § 1552(b) is tolled during a member’s active duty service).

the Page 7s. However, as they are incorrect, the Board finds that the P&D labels should be redacted from all four Page 7s.

5. Accordingly, relief should be granted by redacting the P&D labels from the applicant's Page 7s dated March 16, 1999; September 27, 2004; November 22, 2004; and August 7, 2010. No other relief is warranted.

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

**ORDER**

The application of [REDACTED] USCG, for correction of his military record is granted in part as follows: The Coast Guard shall redact the P&D labels on his Page 7s (CG-3307s) dated March 16, 1999; September 27, 2004; November 22, 2004; and August 7, 2010. All other requests for relief are denied.

April 7, 2017

