

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-161



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 June 23, 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 May 5, 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, an active duty Senior Chief [REDACTED] asked the Board to correct his record by removing an administrative form CG-3307 ("Page 7"), dated March 18, 2015, from his record. He stated that the Page 7 is erroneous and inaccurate. The applicant claimed that while the whole Page 7 is inaccurate, he can prove "beyond a preponderance of evidence" that the first paragraph specifically is incorrect. He added that his employee identification number is not included on the Page 7, which "shows additional disregard of administrative measures."

The applicant stated that the first paragraph of the Page 7 in particular contains "significant errors and inaccuracies." He stated that the portion stating that the applicant sent an email directly to a medical clinic outlining complaints of members rather than discussing such concerns with the unit's Executive Officer (XO) or Commanding Officer (CO) is incorrect because he never included any attachments in his email to the medical clinic. The applicant stated that when he forwarded the email to his XO and CO, he did include a zip file with specific information regarding member complaints. He emphasized that he did not provide the medical clinic with any specific member complaints, yet the Page 7 describes it "that way which is not accurate or factual."

While the first paragraph is the only section he is able to prove is inaccurate, the applicant stated, the Coast Guard inaccurately captured facts and details and "reprimanded [the

applicant] for following direction.” In support of his application, he provided a copy of the Page 7 and copies of his emails, which are discussed below in the Summary of the Record.

SUMMARY OF THE RECORD

The applicant’s record contains four negative Page 7s reflecting on his responsibility and lack of compliance with orders at three different units. The first, dated May 20, 2011, criticizes the applicant for failing to demonstrate responsibility and leadership and advises him that he is a “potential candidate for a reduction in rate.” The second is the disputed Page 7, addressed below. The third, dated May 28, 2015, reprimanded the applicant for sending an email to members of the Chief’s Mess on topics which the applicant was not authorized to speak and was not privy to all applicable information. The fourth Page 7 is summarized below.

On February 5, 2015, the applicant sent an email to the members of his command that states he had “[f]ielded some recent concerns regarding some medical situations...so, curious to know during the past year if anyone has either had a medical record lost, had a medical apt cancelled or re-scheduled by the Clinic last minute, and/or if you have been turned away from sick call related issues.”

On February 13, 2015, the applicant sent an email to his XO which states in full:

I have fielded quite a bit of complaints from both Officers and Enlisted which mainly stem from lack of professionalism and the clinic cancelling appointments on our MBR’s last minute. My suggestion/recommendation is this:

Since I have seen various flyers at the clinic requesting feedback and comments about the service they provide, I was going to summarize the concerns/complaints in an email and send the...Clinic Supervisor and CWO... (Clinic Administrator) so they’re aware and kept in the loop. I will not include names of our MBR’s and will keep it short and sweet, but need to capture certain details. I think this is important to pass as they are giving a service and if there are better ways they can do business or serve patients...I think the feedback we provide can help. I will fwd on the email I send to you and the CO when it is sent as for now I would like to keep this on a certain level (Senior Chief to Chief/CWO), but still think you and CO should be privy and aware in case later down the road we get more complaints. In addition, this does create a paper trail as well.

On March 3, 2015, the applicant sent an email to the medical clinic and the Clinic Administrator. The email states in full:

I wanted to take a moment and send this to you both as recently several MBR’s of this unit (Enlisted and Officer) brought forth medical/dental concerns and complaints to my attention that I thought were warranted to at least make you both aware. I know from my experience thus far it has been more positive than negative and I know you have various HS’s and staff there that do work hard and have been helpful, welcoming, and supportive. I have seen various flyers hanging up in the patient rooms and p-ways that encourage feedback hence this email. To sum it up, majority of the complaints I received seem to stem from last minute medical/dental appointment cancellations, cancelling appointments on MBRs being late (be it due to weather, accidents, bridge closures, etc) and a lack of professional courtesy/empathy at the front desk. What I mean by that last one is that there have been times where MBR’s have come in with an illness or injury only to be turned away or left hanging without an answer. I have also heard there has been instances in the past (recently and about a year ago) where the clinic has either lost and/or replaced medical records of our MBR’s here too.

My solution would be to discuss these items with your staff to provide a friendly reminder that you have a unit...that has to drive quite a bit of ways to your locations and perhaps extending some professional courtesy could not only help us, but help you all as well. I also understand there probably have been times where MBR's may not have given themselves enough time for their scheduled medical appointment, but again due to the logistical challenges being it a long commute (45-50 min drive on avg) perhaps another solution would be we go to another clinic at a different location; one where there is less logistic issues. Regarding lost records, only solution I would have for that is to put some kind of electronic tracker or beacon on that that if it does go missing one could look it up in a computer and find out if it is in the clinic, in a Dr's office, or if MBR has it. I know that may not be feasible or realistic at this very moment, but would certainly help on rouge records.

I'm available for further discussions, but wanted to make you aware of this from our end; which is a unit that is 45-50 min drive from your location as I think it is easy for staff there to forget we do not work on Base [near the medical clinic]. It takes a great deal for our MBR's to not just schedule with you all there, but to take time out of the day to drive there, make an appointment then, drive back. And having last minute cancellations; especially when MBR's have already departed only complicates things more.

Shortly thereafter on March 3, 2015, the applicant forwarded the email to his XO and CO with a zip file attachment titled "Med Concerns_MAR 2015." The email states:

Per guidance given to me a couple weeks ago from XO, below is the email I sent to Base...Medical and attached are the email responses from our MBR's here. This is good to have on file/record for future items of interest, concerns, and if we have re-address later down the line. [The Clinic Administrator] called me right after I hit send and we spoke for about 20 min. Good conversation as I believe he will be following up in the near future on these items with his staff.

On March 18, 2015, the applicant received the disputed Page 7. It states in full:

You are hereby relieved of your duties as the...Collateral Duty Silver Badge. I have lost confidence in your ability to fulfil this duty based on your actions of 3 March and previous performance. Contrary to the instructions of the Executive Officer, on 3 March 2015 you sent an e-mail to the...Clinic administrator outlining complaints by members of this command regarding the clinic. You sent this e-mail directly to the clinic administrator rather than to me or the Executive Officer. The e-mail created the false impression that the...command was lodging a complaint with the clinic on behalf of [command] members. After reviewing the "complaints" about the clinic that you solicited from...members, I determined that none of them, alone or collectively, required or merited command intervention.

Since your assignment to this unit there have been multiple instances where your actions have been inconsistent with those expected of a Command Senior Enlisted Leader (CSEL). Sustained efforts by me, the Executive Officer, and others, including the...Command Master Chief and a 30 year CWO4 to improve your performance have not succeeded. I am now formally documenting your performance deficiencies. When you reported on board in July 2014, I informed you that you were required to qualify on the watch. Despite multiple reminders from me and the Executive Officer, you made no effort to begin breaking-in until November 2014 and then only after I issued you a direct order to do so. Then you sought permission from the Executive Officer to delay the start of your break-in watches until January 2015.

On 18 October 2014 you sent an e-mail to the senior enlisted reservist at this unit accusing him (incorrectly) of failing to enforce uniform and appearance standards among the reserve personnel. In addition, you voiced your unsupported opinion that the reserve all-hands was disorganized, when in reality the senior reservists had carefully planned the agenda and had it approved by the Executive Officer. You also criticized the chain of command without any basis for "failing" a reservist who was selected for retirement by the CRSP panel. I counseled you about this on 22 October 2014. You disclosed confidential medical information about a petty officer to the Chief's Mess. The member learned of the unauthorized disclosure thereby undermining the member's trust in leadership and negatively impacting morale.

On several occasions when I have made a decision that is clearly within my discretion as the commanding officer, you have continued to voice your disagreement well beyond the first “but, sir.” Frequently, when I take actions that are not to your liking, you exhibit facial expressions and body language that clearly demonstrate your unhappiness with my decision. Some examples include, my decision on the Uniform of the Day, my direction to return all Intelligence Credentials, and the all-hands schedule. After reviewing the results of the DEOMI 7 OAS surveys, the LDAC forwarded some recommendations to me, the Executive Officer, and you. You took some of the recommendations as a personal attack and on 20 December 2014 sent a very unprofessional e-mail to four junior officers complaining about your duties as the CSEL. The e-mail also listed all the “sacrifices” you made and accused the LDAC and other members of this command of not carrying out their responsibilities. In the e-mail, you also wrote that “some members need to soul search and look in the mirror instead of making blanket statements.” Over the next few weeks the Executive Officer and I counseled you several times not to take the survey results personally, but you continued to do so.

On 5 and 8 January 2015, the Executive Officer counseled you on your performance as the CSEL. Specifically, he noted the following areas that need improvement: you need to communicate more clearly by thinking through what you want to say before you start talking; you must stop bringing problems to the command cadre without fully researching recommended solutions; you should be more judicious in offering your opinion on matters outside your purview unless asked; you need to better balance your responsibility to the crew as a whole against your responsibility to help individual members; you need to emotionally detach yourself from your duties. The Executive Officer also explained that as a CSEL you are under more scrutiny and held to a higher standards. You will report to the Senior Watch Officer to fulfil your primary responsibilities as listed in your billet.

In May 2016, the applicant was transferred to a new unit. On October 26, 2016, he received another negative Page 7 after he released a Tactical Intelligence notification that did not meet Coast Guard standards. He was also reminded that the Intelligence Branch has a “two person integrity” policy, which he disobeyed by staying by himself after hours. He stated that he did not think that the policy applied to him. The Page 7 also states since his arrival in May 2016, there were two instances where the applicant failed to follow direct orders. The final paragraph states “Your actions demonstrated lack of leadership, followership, maturity, discipline, and poor judgment, which are required qualities for a Senior Chief Intelligence Specialist. Further incidents may result in additional administrative actions.”

VIEWS OF THE COAST GUARD

On December 9, 2016, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case and adopted the findings and analysis in a memorandum on the case prepared by the Coast Guard’s Personnel Service Center (PSC).

PSC stated that the applicant has not proven by a preponderance of the evidence that the disputed Page 7 is erroneous or unjust. PSC stated that the applicant’s contention that the first paragraph of the Page 7 is incorrect because he did not include any attachments does not prove that the content of the Page 7 is erroneous. Instead, PSC argued that the email correspondence “aligns closely with the wording” of the Page 7. In addition, PSC obtained a statement from the drafter of the Page 7, who did not recommend its removal. Therefore, PSC argued that the applicant did not substantiate his claim that the Page 7 is erroneous or unjust, and that no relief should be granted.

PSC submitted an email from the CO who prepared the disputed Page 7. It states the following:

The [Page 7] dated 18 March 2015 authored and signed by me should...remain in the member's record. The member lies in his memo... After the member sent the XO...the email dated 13 February 2015...the XO ordered the member to not communicate directly with the clinic on any matters regarding the crew without first passing that correspondence via the XO. The member disobeyed that direction with his 3 March 2015 e-mail to the clinic... The [Page 7] of 18 March 2015 is not an isolated situation with this member's poor performance, disobedience to command authority, and failure to support the service's core values.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 13, 2016, the Chair sent a copy of the Coast Guard's opinion to the applicant and invited him to respond within 30 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 submission and applicable law:

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

2. The applicant asked the Board to remove a negative Page 7, dated March 18, 2015, from his record. He alleged that the Page 7 is erroneous and full of inaccuracies. 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.¹ 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."²

3. The disputed Page 7 is administrative documentation of counseling about an email the applicant sent after receiving direct instructions not to do so. The CO stated that after sending him and the XO the email dated February 13, 2015, the applicant was ordered "not to communicate directly with the clinic on any matters regarding the crew without first passing that correspondence via the XO." The applicant disobeyed this direct order when he sent the email to the medical clinic on March 3, 2015. The applicant claimed that he could prove that the first paragraph was inaccurate because he did not attach any documents to the email. The Page 7 does not reference any attachments, however. It merely states that the applicant "sent this e-mail directly to the clinic" and that the email was "outlining complaints by members." PSC argued, and the Board agrees, that the language of the Page 7 closely aligns with the evidence submitted

¹ 33 C.F.R. § 52.24(b).

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

by the applicant. Although the applicant claimed that the entire Page 7 is inaccurate and erroneous, he submitted no additional information or statements to refute the remaining contents of the document. Additionally, the applicant has received other Page 7s from other commands counseling him for not following orders and acting outside of his scope of authority, which supports the accuracy of the disputed Page 7. The Board finds that the applicant has not shown that the disputed Page 7 is inaccurate or erroneous, and the Page 7 should therefore remain in his record.

4. Accordingly, relief should be denied because the applicant has not proven by a preponderance of the evidence that the disputed Page 7 is erroneous or unjust.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

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

May 5, 2017

