

[T]he Commanding Officer has determined you engaged in an unacceptable relationship. Two crew members witnessed you kissing YN1...in a public place during a port call in... on 16MAR15. You are hereby ordered to terminate your unacceptable and/or prohibited relationship with YN1... and you will not be alone behind closed doors in any ship compartments. Failure to follow this order is punishable under the Uniformed Code of Military Justice.

The applicant refused to sign this Page 7 in acknowledgement of receipt. Therefore, two members signed under the written statement “counseled but refused to sign.” The date next to their signatures is May 18, 2015.

On July 26, 2016, the Chair received a letter from the Coast Guard Personnel Records Review Board (PRRB) along with a copy of the application. The applicant had applied to the PRRB, but had not done so within one year. Applications to the PRRB must be made within one year of the alleged error or injustice. Therefore, the PRRB forwarded her application to the BCMR for consideration.

VIEWS OF THE COAST GUARD

On January 25, 2017, the Judge Advocate General 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 received a negative Page 7 for engaging in an unacceptable relationship on March 16, 2015. PSC noted that the applicant refused to sign the Page 7 acknowledging receipt, so two members of the applicant’s command signed the document in accordance with COMDTINST 1000.14C, Article 8.1. In regards to the applicant’s argument that the Page 7 is incorrect because it should have been drafted with the designation P&D-12 instead of P&D-7 and because the counseling date is not the same as the text entry date, PSC stated that in previous BCMR cases, such administrative errors have been determined not to be prejudicial to the applicant and therefore do not warrant removal of the Page 7.¹ As a result, PSC argued that the applicant has not proven by a preponderance of the evidence that the contested Page 7 is erroneous or unjust. PSC noted that the applicant does not contest the contents of the Page 7 as factually inaccurate, but instead argues that its allegedly incorrect format warrants its removal. PSC argued that the applicant’s command acted according to policy, in particular Article 2.A.6.c. of COMDTINST M1600.2, when it counseled the applicant on her inappropriate relationship. Therefore, PSC recommended that the Board deny relief.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 30, 2017, the Chair sent a copy of the Coast Guard’s opinion to the applicant and invited him to respond within 30 days. The applicant replied on February 22, 2017, and stated that she disagreed with the advisory opinion. The applicant stated she did not believe the Page 7 contains an “administrative error.” She argued that the use of an improper form, incorrect

¹ See BCMR Final Decision Docket No. 2015-122.

dates, and without having been counseled personally by the person who signed the Page 7 shows that her command did not follow policy and procedures properly. The applicant claimed that after she complained about the P&D designation and dates, she was told that “it would be resolved.” She stated that she requested to be counseled personally by her CO, who signed the Page 7, when it was corrected and completed. She stated, however, that she was never given any additional information about the Page 7 and that her CO retired and her Executive Officer (XO) transferred.

The applicant stated that her CO signed the Page 7, and 22 days later she was presented with it by her XO and without her CO. The applicant alleged that no one in her chain of command was present when she was counseled. She further stated that she was not “counseled” but was merely given the document to review. She stated that she asked to review the references, but she was told that she did not have a right to review those documents. The applicant stated she questioned the P&D format of the Page 7 at that time as well, because the date listed did not align with the date she reviewed it. She was told that the dates would be corrected, and that she could sign the Page 7 at that point.

The applicant stated that she also voiced her concern that the Page 7 was being documented as P&D-7 instead of P&D-12, because she it would adversely affect her record. She alleged the XO assured her it would be a neutral, P&D-12, Page 7. The applicant stated that she trusted the error would be appropriately corrected. She reiterated that she does not believe these alleged errors are merely “administrative” errors. She stated that “if policy isn’t followed and chains of command do not correct errors brought to their attention and corrected as they promise, ‘Administrative Errors’ that are intentional disregard for policy will continue.” She added that if these types of mistakes are considered acceptable, she is unsure how to resolve Coast Guard errors that are prejudicial to a member’s career.

The applicant also claimed that the other member who was counseled regarding this incident was not awarded a Page 7. She clarified that she was not arguing the contents of the Page 7. However, she stated, it was unjust that the other member received no documentation in his record, whereas she now has an incorrect and prejudicial Page 7 documenting the event.

APPLICABLE REGULATIONS

Under Article 2.A.2.f. of COMDTINST M1600.2, the Discipline and Conduct Manual, romantic relationships between members who are assigned to the same cutter are listed as “unacceptable relationships.” A note to this policy states, “The nature of operations and personnel interactions on cutters and small shore units makes romantic relationships between members assigned to such units the equivalent of relationships in the chain of command and, therefore, unacceptable. This policy applies regardless of rank, grade, or position.” Article 2.A.2.d.3.(c) states that an unacceptable relationship is “[i]nappropriate and not allowed under Service policy. Resolution normally administrative. Relationship must be terminated or otherwise resolved once recognized.”

Under Article 2.A.2.g. of COMDTINST M1600.2, “Engaging in sexually intimate² behavior aboard a Coast Guard vessel, or in any Coast Guard-controlled work place” is on the list of “prohibited relationships” and is punishable under Article 92 of the Uniform Code of Military Justice (UCMJ). Article 2.A.2.d.3.(d) states that prohibited relationships violate the UCMJ and that their “[r]esolution may be either administrative, punitive, or both as circumstances warrant.”

Article 2.A.6.c. of COMDTINST M1600.2 concerns “inappropriate relationships” and states that early counseling can resolve potential concerns about the characteristics of a relationship and appropriate actions to ensure the relationship develops in a manner consistent with Service custom. Counseling may be informal or more formal, including a Page 7 entry or an Administrative Letter of Censure. Article 2.A.6. also provides that members may be ordered to terminate unacceptable relationships and that such relationships may affect or be mentioned in performance evaluations; may warrant separation or the withdrawal of an advancement recommendation; and may result in non-judicial punishment or court-martial.

Article 8.1. of COMDTINST 1000.14C, the instruction for Page 7s, states that if a member refuses to sign a Page 7 entry after being counseled regarding its content, the words “member refused to sign” must be entered in the member’s signature block along with the date the member was counseled.

Enclosure (6) of the Personnel and Pay Procedures Manual, PPCINST M1000.2B, provides instructions for drafting Page 7s and templates for various types, including “Performance and Discipline” Page 7s numbered P&D-01 through P&D-028. These P&D Page 7 templates are available for counseling about various performance and disciplinary issues, such as failing to comply with the weight standards, failing to pay debts, travel card misuse, unsatisfactory conduction of personal affairs, alcohol incidents, performance probation, and protective orders. The entry “P&D-07” at the top of a Page 7 indicates that it is a “general negative” Page 7, and the sample text provided is as follows:

Entry Type: Performance and Discipline (P&D-7)

Reference: None

Responsible Level: Unit

Entry:

(General – Negative)

DDMMYY: NOTE: Entry must be member specific and describe who, what, when, where, why and how. Blanket entries describing generalities, which are photocopied for inclusion in many members’ PDRs, are not authorized.

A. B. SEA, CAPT, USCG
Commanding Officer

DDMMYY: I acknowledge the above entry.

² There is no definition of “sexually intimate behavior” in the manual, although it defines “romantic relationship” to mean “sexual or amorous relationship.” In the UCMJ, 10 U.S.C. § 920(g)(2) defines “sexual contact” to include touching with an intent to arouse or gratify the sexual desire of any person.

FIRST MI LAST

A P&D-12 Page 7 is for “counseling for inappropriate relationships,” and the sample text provided is as follows:

Entry Type: Performance and Discipline (P&D-12)

Reference: Art. 2.A.6.c., Discipline and Conduct, COMDTINST M1600.2 (series)

Responsible Level: Unit

Entry:

DDMMYYYY: Document formal counseling pertaining to improper relationships. Counseling may include a direct order to terminate a relationship.

A. B. SEA, CAPT, USCG
Commanding Officer

DDMMYYYY: I acknowledge the above entry.

FIRST MI LAST

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 is timely.

2. The applicant asked the Board to remove a negative Page 7, dated April 27, 2015, from her record. She alleged that the Page 7 is erroneous. 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.³ 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

3. The disputed Page 7 is administrative documentation of the applicant’s counseling about having engaged in an “unacceptable relationship” with a shipmate, contrary to Article 2.A.6. of the Discipline and Conduct Manual. The text of the Page 7 indicates that the CO ordered them to end any unacceptable or prohibited relationship. Under Articles 2.A.2. and 2.A.6. of the manual, documentation of counseling about either unacceptable or prohibited relationships on a Page 7 is authorized.

4. The applicant complained that the type of Page 7 entry used (P&D-7 versus P&D-12), the date of the text, and the member by whom she was verbally counseled were all incorrect, amounting to an erroneous Page 7. Although the applicant alleged that the incident should only

³ 33 C.F.R. § 52.24(b).

⁴ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

have been documented on a “neutral” P&D-12 entry, the Board disagrees. A P&D-12 Page 7 is not designated as “neutral” in the applicable instructions and cannot actually be considered neutral because engaging in an “unacceptable relationship” violates Service policy and may result in disciplinary action. In addition, engaging in a “prohibited relationship” violates the UCMJ, and the applicant has not shown that her command abused its discretion by choosing to follow the “general negative” P&D-07 format for the disputed Page 7 instead of the P&D-12 format. Even assuming that her command should have typed “P&D-12” at the top of the Page 7, which she has not proven, the Board does not correct typos or other administrative errors that are not prejudicial to a member, and the applicant has not shown how she is harmed by the “P&D-07” at the top of the disputed Page 7.

5. The Board likewise finds no error in the fact that the date of the Page 7 text that was signed by the CO differs from the date the member was counseled. There is no requirement that the two dates shown on a Page 7 be the same. It is completely feasible that the CO drafted or had the Page 7 drafted on April 27, 2015, or that the CO decided for administrative reasons to date the Page 7 text with the same date as the memorandum on which he based his conclusions about her behavior. There is no requirement that a member be verbally counseled about the contents of a Page 7 on the same day that the text of the Page 7 is drafted, signed, or dated. In the Board’s experience, many if not most Page 7s bear two different dates, and the applicant has not shown that she was harmed by the difference in dates. As far as the applicant’s contention that she was not properly counseled by her CO, the Board notes that her CO, XO, and other Coast Guard officers are presumed to have acted correctly,⁵ and she has not provided evidence to show by a preponderance that she was counseled improperly or by a member not authorized to do so on behalf of the CO. Although the applicant alleged that she was denied counseling by her CO, she has not shown that she submitted a chit for a request mast with the CO that was arbitrarily refused.

6. In response to the advisory opinion, the applicant argued that the Page 7 is unjust because, she alleged, the member with whom she engaged in the unacceptable relationship did not receive a similar Page 7. Because the applicant did not raise this issue in her initial application, however, the Coast Guard has not had a chance to address it. Moreover, the applicant has not shown that she and the other member were similarly situated or equally at fault under the circumstances or that the other member did not incur other consequences. The Board cannot find, based on the applicant’s late and unsupported claim, that the disputed Page 7 is unjust.⁶

7. 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

⁵ 33 C.F.R. § 52.24(b).

⁶ Under 10 U.S.C. § 1552, the Board is authorized not only to correct errors but to remove injustices from Coast Guard military records. 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.” *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976).

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

June 8, 2017

