

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-024

██████████
██████████

FINAL DECISION

This is a proceeding under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case upon receipt of the applicant's completed application on November 11, 2016, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated July 28, 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 ██████████ wrote on her application form DD 149, "See attachments," and attached the following documents:

- A CG-3307 ("Page 7") dated May 9, 2016, which is signed by her commanding officer (CO) but includes a notation signed by two other members stating that the applicant refused to acknowledge receipt of the Page 7 with her signature. The Page 7 states the following:

You are being counseled for your failure to use good judgment and rely on your permanent chain of command.

Before the May 2016 Servicewide Exam (SWE), you failed to properly adhere to common procedures and contacted units outside of your permanent chain of command regarding a question about your SWE and when you would be able to take it given [the cutter's] underway status during the time of the SWE. You were already scheduled to return to [the cutter] prior to the administration of the SWE. Your SWE was onboard [the cutter]. While you did email [the cutter's] Education Services Officer (ESO), you only provided [the cutter's] ESO 17 minutes to respond to an email before you emailed both Pay and Personnel Center (PPC) and the ESO at [the Sector office] (who also is not in [the cutter's] Chain of Command nor who had custody of your SWE). Your actions did not give the ESO ample time to reply to you in this matter and you reached out directly to PPC. After engaging PPC, you contacted the [Sector] ESO the same day with the same question. Given that you had access to a Coast Guard Workstation while you were ashore awaiting transportation to [the cutter], there was no urgent need to receive an answer without awaiting at least a reasonable amount of time to get a reply from [the cutter's] ESO before burdening other units. Further, you did not make others, i.e., your Chief, the Command Chief, or the XO, aware of your concerns until

after the fact which could have answered your question(s) or assuaged your concerns. Additionally, the [Sector] ESO acknowledged that [the cutter's] ESO should have been able to answer your question. Your lack of judgment in this instance is not an action that I expect from a First Class Petty Officer with over 15 years of service.

This action indicates a specific deficiency in judgment and may be considered in your next performance evaluation.

- On June 24, 2016, the applicant sent an email to the Sector ESO. She stated, “I was wondering if you considered my questions to you regarding my SWE and the SWE I was hand-carrying to the cutter (that was underway ...) were appropriate to ask you? I emailed my ESO initially, but figured they were busy over there, so I took the next step I thought to be reasonable and asked you. I was also TDY [on temporary duty] at the Sector at the time. From your standpoint, both as a retired AD CG member and as the [Sector] ESO, was I out of line or anything making those inquiries with you and then following your recommendations about contacting [PPC]?”
- On June 26, 2016, the Sector ESO replied, stating “As far as I am concerned you did everything correctly regarding the transfer of a service wide exam during the May cycle. Upon receiving the exam you brought the exam to me for storage in my safe where it remained until you picked it up for transfer back to your ship. At no point in this process were you ‘out of line’ and contacting [PPC] in Topeka was absolutely the correct thing to do. In fact it is that step that kept the ESO on board your vessel from making a mistake in the administrative process.
- On October 29, 2016, the applicant sent the Coast Guard Civilian Human Resources, Diversity, and Leadership Directorate a memorandum rebutting the Page 7, which states the following:
 1. This memorandum is written to rebut the negative CG-307 presented to me on 19May16.
 2. The statements made within the CG-3307 are not wholly true. It is true that on 19Apr16, specifically, I left little time for the cutter ESO to do research; however, that was not the first time I had communicated with the cutter ESO regarding my concerns for the timeline in respect to the administration of the SWE. I was initially scheduled to return to the cutter after the Coast Guard wide scheduled time for proctor. To note, I was also hand-carrying a SWE for [another member] that was TDY on [the cutter] for the duration of the patrol. I was TDY at [the Sector] and my initial correspondence with the cutter ESO was actually on 14Apr16 and 15Apr16. The responses given to my questions were not in line with the procedures outlined in COMDTINST M1000.2A, Chapter 3.B.2. On Tues, 19Apr16 I still had not had any accurate responses from the cutter ESO pertaining to my concerns, and as a result I contacted the [Sector] ESO for advice on policy and procedures pertaining to the circumstances.[¹]

¹ Chapter 3.B.2. of COMDTINST M1000.2, titled “Candidates in Transit on Examination Date,” which was in effect in April and May 2016, states the following:

a. General

Preferably every candidate who is fully qualified and recommended should be examined by his or her regularly assigned examining board. A regularly assigned examining board or Educational Services Officer (ESO) of any military service may administer an SWE to personnel in transit (PCS, TDY, or on leave) on the scheduled SWE date. Members in transit must pay for

VIEWS OF THE COAST GUARD

On April 27, 2017, the Judge Advocate General (JAG) submitted an advisory opinion in which he adopted the findings and analysis of the case provided in an attached memorandum prepared by the Personnel Service Center (PSC) and recommended that the Board deny relief.

PSC stated that the Page 7 was signed by the applicant's CO and that when the applicant refused to acknowledge receipt with her signature, the witnesses noted this fact as provided in paragraph 8.1. of COMDTINST 1000.14C. PSC noted that the applicant alleged that the Page 7 was not "wholly true" because she had previously communicated with her cutter's ESO regarding her concerns about her SWE in April 2016 and had received a response that did not comport with Chapter 3.B.2. of COMDTINST M1000.2. PSC noted that the applicant submitted no emails to show the nature of her communication with the cutter's ESO in April 2016 to demonstrate at the cutter's ESO had provided her with erroneous or untimely information.

PSC concluded that the applicant has not proven by a preponderance of the evidence that the Page 7 is erroneous or unjust. PSC noted that the cutter's ESO should be presumed to have provided accurate advice absent evidence to the contrary and the applicant did not submit any evidence of inaccurate advice. PSC also argued that the applicant's CO should be presumed to have completed his duties correctly in determining that the applicant had exhibited poor judgment by deciding to question other units regarding the location of her SWE. In addition, PSC noted that the applicant admitted that much of the content of the Page 7 is accurate. PSC argued that the applicant has not overcome the presumption of regularity in this case and recommended that the Board deny relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 2, 2017, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited her to respond within thirty days. No response was received.

any travel expense necessary to arrive at the SWE administration location. The government will not reimburse members for these expenses.

b. Changing Exam Board OPFAC [operating facility number of member's current unit]

If the unit administration or ESO knows a member will be TDY, PCS, or on leave on the test date, he or she should contact the member's SPO. When advised, the SPO will submit the appropriate transaction to change the member's OPFAC to the unit that will be administering the SWE.

- (1) Transactions Completed Prior to Deadline. If the transaction is completed within the deadline stated in reference (1), Servicewide Examination Guide, PPCINST 1418 (series), the member's PDE [personnel data extract] will reflect the corrected examination board OPFAC.
- (2) Transactions Completed After Deadline. If the transaction is not completed within the deadline stated in reference (1), Servicewide Examination Guide, PPCINST 1418 (series), Commanding Officer (CG PPC (adv)) will mail the examination to the OPFAC listed on the PDE. Submit requests for changing the Examination Board OPFAC to Commanding Officer (CG PPC (adv)).

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 concerning this matter pursuant to 10 U.S.C. § 1552. The application is timely.

2. The applicant alleged that a Page 7 in her record documenting counseling about not following proper procedures by relying on her chain of command is erroneous and unjust. In 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.² 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."³

3. The record indicates that on April 19, 2016, the applicant was awaiting transportation to her permanent unit, a cutter, having recently finished a TDY assignment at the Sector office where her cutter was homeported, when she emailed the cutter's ESO to ask whether her SWE was aboard the cutter because she was returning to the cutter before the date of the SWE on May 3, 2016. Although it is not clear in the record, she may also have asked a question about the SWE that she was hand-delivering to the cutter for a member who was assigned to the cutter on TDY orders. Instead of waiting for a reply, she also emailed the Sector ESO and the Coast Guard Personnel and Pay Center to find the answers to her questions. As a result of these actions, the applicant was counseled about failing to use good judgment, to rely on her chain of command, and to give the cutter ESO time to respond to a question when there was no urgent need for an answer. The applicant alleged that she emailed the Sector ESO and PPC because she had previously received erroneous advice from the cutter's ESO, but she submitted nothing to support this claim and nothing to show that the cutter's ESO would have been unable to tell her whether her SWE was aboard the cutter. The applicant did submit an email from the Sector ESO, who claimed that she did everything correctly with regard to transporting the other member's SWE to the cutter and prevented the cutter's ESO from making a mistake, but the Sector ESO's email does not refute her CO's assessment of her failure to give the cutter's ESO a chance to answer her question or to notify any other member of her chain of command about her concerns.

4. Accordingly, the Board finds that the applicant has not proven by a preponderance of the evidence that the Page 7 dated May 9, 2016, is erroneous or unjust. Her request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

² 33 C.F.R. § 52.24(b).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

ORDER

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

July 28, 2017

