

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2017-037**

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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 application upon receipt of the applicant's completed application on November 30, 2016, and assigned the case to staff attorney ██████████ to prepare the decision as required by 33 CFR § 52.61(c).

This final decision, dated August 11, 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**

The applicant, an active duty ██████████/E-6), asked the Board to correct his military record by removing a Page 7<sup>1</sup> dated November 30, 2006.

The applicant claimed that the Page 7 lists actions "that were not carried out and do not reflect [his] Employee Review Summary." He stated that his eligibility for the Good Conduct Award did not terminate, he was not assigned a mark of "Unsatisfactory" in the Conduct performance dimension, he did not receive a special evaluation report, and he was never awarded non-judicial punishment (NJP) at Captain's Mast. He therefore requested that the Board remove the erroneous Page 7 from his record. Regarding the timing of his application, the applicant stated that he did not discover the erroneous Page 7 until he reviewed his military record in June 2016. He argued that it is in the interest of justice to consider his application because the Page 7 lists actions that do not reflect his Employee Reviews or military record.

With his application, the applicant provided relevant documentation which is described below in the Summary of the Record.

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<sup>1</sup> An Administrative Remarks record entry, form CG-3307, better known as a "Page 7," is used to document a member's notification of important information, achievements, or counseling about positive or negative aspects of a member's performance in the member's military record.

## SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on July 6, 2004. Prior to and since the Page 7 disputed here, he has received only neutral and positive Page 7s.

The disputed Page 7 is dated November 30, 2006. It is signed by the applicant's Commanding Officer and by the applicant and states the following:

Period of eligibility for Coast Guard Good Conduct Award terminated this date due to assigned mark of "Unsatisfactory" in the Conduct Performance Dimension, for the special evaluation period ending 30NOV06. This is a result of Non Judicial Punishment being awarded to you at Captains Mast on this day. New period of eligibility for Coast Guard Good Conduct Award commences 01DEC06.

A summary of the applicant's performance evaluations shows that from his enlistment in 2004 until his most recent review, he has never received an Unsatisfactory mark for conduct. In 2006, he received two "Regular" evaluations – in fact, all are "Regular" or "Transfer" evaluations. The first Regular evaluation he received after November 30, 2006, is dated March 31, 2007. The applicant received mostly marks of 4, 5, and 6, on a scale of 1 (worst) to 7 (best), and he received two high marks of 7. He received a Satisfactory mark in conduct and was recommended for advancement. Overall, this evaluation was better than his prior evaluation, dated September 30, 2006, and it was his best review yet.

A summary of the applicant's Coast Guard Good Conduct Medals shows that he has received four of them at regular, three-year intervals since his enlistment.<sup>2</sup> He received these medals on July 5, 2007; July 5, 2010; July 5, 2013; and July 5, 2016.

## VIEWS OF THE COAST GUARD

On April 28, 2017, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant relief.

The JAG first argued that the application is not timely, as it has been over ten years since the applicant received and signed the Page 7, and therefore should only be considered if the Board finds it in the interest of justice. Despite the fact that government officials are presumed to have carried out their duties correctly, the JAG stated that the applicant's records appear to directly contradict each other. "The absence of an 'Unsatisfactory' mark for a special evaluation period..., and his award of the CG Good Conduct Medal of 05 July 2007...is sufficient evidence to rebut the presumption that the information" in the Page 7 is correct. The Coast Guard contacted the station where the applicant was assigned at the time of the Page 7, and no records were located of a Non Judicial Punishment awarded to the applicant.<sup>3</sup> The Commanding Officer who signed the Page 7 has since retired and cannot be reached. The JAG stated that the applicant's delay in filing his application has limited access to some evidence. However, the JAG argued that "records of Non Judicial Punishment or special evaluation periods with 'Unsatisfactory'

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<sup>2</sup> To receive a Coast Guard Good Conduct Medal, a member must go three years without receiving Non Judicial Punishment.

<sup>3</sup> Unit punishment logs are retained for only four years. Military Justice Manual, M5810.1D, Chapter 1.G.4.

marks, if they exist, should be in a servicemember's record." The JAG stated that the absence of evidence supporting the Page 7 and the presence of evidence within the record that contradicts the Page 7 leads to a recommendation of granting relief.

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

On May 2, 2017, the Board mailed a copy of the views of the Coast Guard to the applicant for a response. The applicant replied on May 9, 2017, and stated that he did not object to the Coast Guard's advisory opinion.

### 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 section 1552 of title 10 of the United States Code.

2. Although the application was not filed within three years of the alleged error or injustice, it is considered timely because the applicant is still on active duty.<sup>4</sup>

3. The applicant argued that the November 31, 2006, Page 7 should be removed from his record because it is erroneous. The Board begins its analysis in every case 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.<sup>5</sup> 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."<sup>6</sup>

4. The record shows that the applicant received and signed the negative Page 7 on November 30, 2006, which indicates that he had received NJP and a special evaluation with a conduct mark of "Unsatisfactory" and also that his eligibility period for the Good Conduct Medal had terminated. This Page 7 was apparently prepared as a result of NJP awarded at most because it conforms to the requirements in Articles 10.B.5.b.3., 10.B.8., and 10.B.2., of the Personnel Manual then in effect, which provide, respectively, that members awarded NJP must receive a special, disciplinary performance evaluation with an Unsatisfactory conduct mark; that the member's eligibility period for a Good Conduct Medal must be terminated; and that counseling about these matters will be documented on a Page 7. However, the record also shows that the applicant did not receive a disciplinary performance evaluation on November 30, 2006; he has never received an "Unsatisfactory" conduct mark; his next regular evaluation was the best he had

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<sup>4</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).

<sup>5</sup> 33 C.F.R. § 52.24(b).

<sup>6</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).

received until that point; and his eligibility period for a Good Conduct Medal was not terminated as he received one on July 5, 2007. There is no Court Memorandum documenting NJP in his record as required,<sup>7</sup> and the Coast Guard reports that it can find no record of the applicant ever receiving NJP. While it is difficult to prove a negative, the JAG agreed that the Page 7 should be removed because there is no evidence in the applicant's military record that any of the stated actions took place. The Page 7 could be a forgotten remnant of an NJP that was set aside by his commanding officer or overturned on appeal.<sup>8</sup> The Board therefore finds that the preponderance of the evidence shows that the November 30, 2006, Page 7 is erroneous and should be removed from his record.

5. The applicant has proven by a preponderance of the evidence that his record contains an erroneous Page 7. Accordingly, his record should be corrected by removing the November 30, 2006, Page 7 in its entirety.

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

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<sup>7</sup> Military Justice Manual, M5810.1D, Chapter 1.G.3.a.

<sup>8</sup> Military Justice Manual, M5810.1D, Chapters 1.E.7.e., 1.F.4.a., and 1.F.6.c.

**ORDER**

The application of [REDACTED], USCG, for correction of his military record is granted. The Coast Guard shall remove the Page 7 (CG-3307) dated November 30, 2006, from his record in its entirety.

August 11, 2017

