

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-051

██████████
██████████

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the completed application on January 25, 2017, and assigned it to staff attorney ██████████ to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated September 22, 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 ██████████/E-6) on active duty, asked the Board to correct his military record by removing an Administrative Remarks page ("Page 7")¹ because it was not signed by his Commanding Officer (CO) or acting CO. The applicant, who was assigned to an Aviation Training Center (ATC) in 2009, argued that the Page 7, dated December 8, 2009, was unauthorized because it was not properly signed by the CO or by an officer who was properly designated to sign adverse Page 7s. Instead, it was signed by a commander, CDR M, who was Chief of the Training Division at the ATC. The applicant stated that this officer signed the Page 7 despite the fact that the CO, an Executive Officer, an Administrative Officer, and an Administrative Department Head were all available at the command to sign the Page 7. The applicant stated that the applicable manual in effect in 2009 states "only the Commanding Officer (CO) or Officer in Charge (OIC) is authorized to sign adverse administrative remarks." He therefore argued that the Page 7 is erroneous and unjust and should be removed from his record. The applicant provided a copy of the disputed Page 7, which is included below in the Summary of the Record.

¹ 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.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on March 9, 1999. Other than the Page 7 at issue here, he has received only neutral and positive Page 7s.

The disputed Page 7 was signed by the applicant on December 8, 2009. It was also signed by CDR M, who did not indicate in what capacity he was signing the Page 7 and who retired in July 2016. The Page 7 states in full:

On December 2nd, 2009 your Government Travel Charge Card (GTCC) was cancelled for abuse. In accordance with COMDTINST 4600.14B Government Travel Charge Card Program, the GTCC is issued with the express intent of providing personnel with a mechanism to pay for travel expenses associated with official government orders – TDY and/or military PCS. The use of the GTCC for an expense that is not directly associated with official Government travel in accordance with the Joint Federal Travel Regulation (JFTR) is considered abuse/misuse. GTCC holders are personally responsible for the proper use and payment of the GTCC issued to them. Failure to fully comply with Coast Guard and the GTCC bank's instructions may result in disciplinary actions. Expect your next enlisted evaluations to reflect this negative behavior.

VIEWS OF THE COAST GUARD

On June 26, 2017, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief based on the analysis of the case provided in a memorandum from Commander, PSC.

PSC stated that the application was timely, but noted that the applicant is contesting an entry from 2009, and that he has not provided a justification for his delay. The disputed Page 7 was signed by the applicant in 2009, and the delay has prejudiced the Coast Guard's ability to obtain evidence as to whether CDR M had been delegated the authority from the CO to sign adverse Page 7s. CDR M has since retired from the Coast Guard, further affecting the Coast Guard's ability to obtain important evidence.

PSC noted that in 2009, only the CO or OIC was authorized to sign an adverse Page 7, as stated in the Personnel and Pay Procedures Manual, PPCINST M1000.2A, Change 14 (PPPM, Change 14). However, according to current policy under COMDTINST 1000.14C, Article 8.g., Deputy/Assistant Commandants and COs may sign adverse Page 7s and may delegate this authority to other commissioned officers. The delegations may be to either specific individuals or positions, but the delegation must be documented in writing via memorandum or unit instruction. In addition, under Article 8.f., certain officers, including any officer in the grade of CDR (O-5) and higher, may sign adverse Page 7s unless authority to sign is explicitly withheld by a proper authority. PSC noted that the signer of the Page 7 was a CDR with a rank of O-5.

PSC recommended that the Board deny relief. Due to the applicant's delay, the Coast Guard was unable to collect evidence regarding whether CDR M had been delegated the authority to sign adverse Page 7s. In addition, under today's policy, CDR M would have been authorized to sign the Page 7 without delegation. PSC therefore argued that the applicant's request for removal of the adverse Page 7 should be denied. In addition, the JAG added that the applicant did not dispute the underlying content of the Page 7. He signed and acknowledged the Page 7 in 2009 and

made no claim that the facts therein are false. The JAG argued that the Page 7 properly reflects the events that occurred, and it should therefore remain in his record.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 29, 2017, the Board mailed a copy of the views of the Coast Guard to the applicant for a response. The Board did not receive a response.

APPLICABLE REGULATIONS

The PPPM, Change 14 was in effect in 2009 when the CDR signed the disputed Page 7. Chapter 1.4. of this manual states, regarding the signing of forms, that “[t]he CO may authorize in writing for officers, Chief Petty Officers, First Class Petty Officers, and Second Class Petty Officers to sign forms and worksheets ‘by direction’. These ‘by direction’ authorizations must be documented, and maintained locally in an authorization file to support future audit inquiries. The authorizations are subject to the following restrictions ... Only the CO may sign Adverse Administrative Remarks (CG-3307) entries. However, per CG Regulations, (7-I-9.F.), an officer temporarily succeeding to command may sign as acting.”

Under Article 3-2-5 of Coast Guard Regulations, the COs of large units may be granted the authority to designate a staff officer to serve on a collateral-duty basis as the “Commanding Officer of Enlisted or Military Personnel,” whose “authority and responsibility ... insofar as the administration and discipline of military personnel are concerned, are identical to the authority and responsibility of a commanding officer.”

Article 4-1-2.A. of Coast Guard Regulations authorized COs to delegate “portions of [their] authority ... to subordinates for the execution of details” at their discretion.

Article 5-1-4.A. of Coast Guard Regulations states, “An officer who succeeds to command due to the incapacity, death, departure on leave, or absence due to orders of the duly appointed commanding officer has the same authority and responsibility as the predecessor.”

Article 5-2-7.A.(1) of Coast Guard Regulations states that at a shore unit, in the absence of the CO, command shall pass to first the Executive Officer of the unit and then to “[o]ther assigned commissioned officers with a specialty or sub-specialty appropriate to the function of the activity in the order of their seniority in grade.”

Article 5-2-11.A. of Coast Guard Regulations states that whenever the CO “is not available for duty, the military person designated by the cognizant commander shall succeed” as the CO.

Article 7-1-9.F. of Coast Guard Regulations states, “When an officer, temporarily succeeding to command, signs official correspondence, the word ‘Acting’ shall appear below the signature.”

PREVIOUS CASES

In Docket No. 2014-033, an applicant requested that adverse Page 7s dated May 12, 2010, and September 20, 2011, be removed from his record because a Chief Yeoman, and not the CO or OIC, had signed them. PSC recommended that the Board remove the Page 7s because they were not properly signed by the applicant's CO or acting CO. The Board agreed that the Page 7s should be removed because PPPM, Change 14, was in effect. Also in that case, that applicant had requested that an adverse Page 7 dated November 25, 2008, be removed. PSC likewise recommended that this Page 7 be removed, but the Board declined to do so because PPPM, Change 14, came into effect in 2009.

In Docket No. 2015-153, an applicant requested that an adverse Page 7 dated August 5, 2009, be removed from her record because it was not signed by her CO or OIC, but by a Chief Warrant Officer. PSC recommended that the Board remove the Page 7 because PPPM, Change 14, was in effect at the time, and the Chief Warrant Officer was not the CO or acting CO and so did not have the authority to sign the adverse Page 7. The Board found that the Page 7 should be removed from her record because it had not been signed by her CO or an acting CO as required by then-current policy.

In Docket No. 2017-061, an applicant requested that an adverse Page 7 dated December 5, 2008, be removed from his record because it was signed by a Master Chief Petty Officer who was not the applicant's CO or OIC. In that case PSC also recommended that the Board grant relief due to PPPM, Change 14. However, the Board declined to grant relief because PPPM, Change 14 was not yet in effect.

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 7 and presumed knowledge of the alleged error, it is considered timely because he is still on active duty.²
3. The applicant alleged that the disputed Page 7 was not properly signed by his CO or an authorized officer and that the Page 7 should be removed because it is 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.³ Absent evidence to the contrary, the Board presumes that

² *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).

³ 33 C.F.R. § 52.24(b).

Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”⁴

4. The applicant’s chief contention is that CDR M was not authorized to sign the adverse Page 7, but he submitted no evidence to support this claim apart from the Page 7 itself. However, CDR M was the Chief of Training at a large training center, and it is entirely possible that CDR M was designated as the CO of Enlisted Personnel as a collateral duty at the time or that he was the Acting CO if the unit CO and Executive Officer were absent that day. In accordance with Article 3-2-5 of Coast Guard Regulations, M5000.3B, COs of large units often “designate a staff officer on a collateral duty basis to serve as commanding officer of enlisted or military personnel for their respective offices or units,” and the designee’s “authority and responsibility . . . insofar as the administration and discipline of military personnel are concerned, are identical to the authority and responsibility of a commanding officer.” The training center currently operates with a CO of Enlisted Personnel, and it is possible that CDR M signed the Page 7 based on this authority or that he was Acting CO that day and simply forgot to write “Acting” under his signature on the Page 7. CDR M retired in July of 2017 and is therefore unavailable to provide a statement.

5. Accordingly, relief should be denied because the applicant did not submit substantial evidence to support his claim or prove by a preponderance of the evidence that CDR M did not have the authority to sign the Page 7 as either CO of Enlisted Personnel or Acting CO. However, the Board will reconsider his request if he is able to submit additional evidence as to whether CDR M was the CO of Enlisted Personnel or Acting CO at the time the Page 7 was signed. This evidence may be in the form of copies of signed authorizations or delegations from the unit CO, sworn statements from other members who were also assigned to the ATC at the time, or other relevant documentation.

(ORDER AND SIGNATURES ON NEXT PAGE)

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).

ORDER

The application of [REDACTED] USCG, for correction of his military record is denied. The Board will grant further consideration if he submits additional evidence as discussed in finding 5, above.

September 22, 2017

