

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2017-061**

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██████████

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**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 after receiving the completed application on December 14, 2016, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated August 18, 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, a master chief ██████████/E-9) on active duty, asked the Board to remove from his record a negative Administrative Remarks forms (CG-3307 or "Page 7")<sup>1</sup> dated December 5, 2008, which he received when he was an E-7. He alleged that the Page 7 was unauthorized and should not be in his record because it was not signed by his commanding officer (CO). He alleged that a "similar request due to the same discrepancy was endorsed" by PSC in two memoranda issued in January 2014.

The applicant alleged that he discovered that the Page 7 was in his record in December 2016. He noted that he had reviewed his record in 2014 but did not notice it then. The disputed Page 7 was signed by a master chief petty officer assigned as the Tactical Operations Branch Chief at the applicant's Sector. The Page 7 was also signed by the applicant on December 5, 2008. It states the following:

You disobeyed an order from the Tactical Operations (TACOPS) Branch Chief by having a member move from your Team, Team [X], to Team [Y] after having been told that no personnel changes were authorized. Previously, you brought up the recommendation for a change and you were told that your suggestion would be considered and that no changes were to be initiated. On December 1, it was discovered by the TACOPS Branch Chief that the member in question from your team had been moved to Team [Y], a willful disregard of an order. On 01 December 08,

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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.

correspondence by electronic mail was sent to you stating again in no uncertain terms that the move was unauthorized and personnel were to return to their original teams.

Any further incidents of this nature may be cause for disciplinary action which may include NJP proceedings and may result in you being relieved as Team Leader of Team [X].

### **VIEWS OF THE COAST GUARD**

On June 19, 2017, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant relief in this case by removing the disputed Page 7 from the applicant's record. He stated that although the applicant did not dispute the accuracy of the content of the Page 7, it should not have been entered in his record because it was not signed by a proper authority under existing policy. The JAG did not cite the authority but adopted the findings and analysis in a memorandum on the case prepared by the Coast Guard's Personnel Service Center (PSC).

PSC claimed that in 2008, the Personnel and Pay Procedures Manual (PPPM), PPCINST M1000.2B, was in effect,<sup>2</sup> and Chapter 1.4. provided that only a commanding officer (CO) or officer in charge (OIC) was authorized to sign adverse Page 7s. PSC concluded that the Page 7 should be removed from the applicant's record because it did not adhere to policy. PSC stated that signature by an enlisted branch chief also does not conform to the current PPPM policy.

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

On June 29, 2017, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within thirty days. No response was received.

### **APPLICABLE REGULATIONS**

#### ***Signature Authorities***

COMDTINST 1000.14B, issued on April 17, 2000, established the policy for preparing and submitting Page 7s, and it referenced the PPPM designated COMDTINST M1000.2A. COMDTINST 1000.14B did not limit the signature authority on a Page 7.

The PPPM issued in June 2007, PPCINST M1000.2A, Change 13, authorized COs in Chapter 1 to delegate signature authority in writing (by unit instruction or memorandum) to officers, chief petty officers, and first and second class petty officers "by direction."

The PPPM that the Coast Guard relied on, PPCINST M1000.2B, was first issued in October 2012.<sup>3</sup> Chapter 1.4.3. limited signature authority on adverse Page 7s to COs and officers temporarily succeeding to command.

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<sup>2</sup> PPCINST M1000.2B was first issued in October 2012, however. The BCMR staff asked PSC for any earlier copy of this "2B" edition of the PPPM to no avail.

<sup>3</sup> In the advisory opinion for BCMR Docket No. 2015-087, however, the Coast Guard claimed that the first limitation on the delegation of signature authority for adverse Page 7s was issued in 2009 with Change 14 of PPCINST M1000.2A. The Coast Guard was able to provide only a copy of Change 14 marked "DRAFT." Chapter 1 of this

Chapter 10.A.1. of the 2017 PPPM states that the policies for Page 7s appear in COMDT-INST 1000.14 (series), which was issued in June 2015. COMDTINST 1000.14C states that COs, XO's, OICs, XPOs, officers in grade O-5 and higher, and certain others may sign Page 7s unless the authority has been explicitly withheld, and COs may delegate the authority further in writing.

### *Page 7 Appeals*

Article 14.B.2.a. of the Personnel Manual in effect in 2008 provides that a member may appeal a Page 7 as follows:

If a member believes a personnel record entry is unfair, an appeal through the member's chain of command usually is the simplest and fastest means for seeking correction or deletion of the entry. The level in the chain of command to which the appeal should be directed is dependent upon all of the circumstances. As an example, for a member who receives an Administrative Remarks, CG-3307 from his or her division chief documenting purported substandard watchstanding, an appeal through the division chief and the executive officer to the commanding officer should suffice. (This appeal may be in the form of a so-called "Request Mast" pursuant to Article 9-2-3, Coast Guard Regulations, COMDTINST M5000.3 (series).)

## 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. Although the applicant clearly knew of the alleged error in 2008, when he signed the disputed Page 7, the application is considered timely because he has remained on active duty in the interim.<sup>4</sup>

2. The applicant alleged that a Page 7 documenting counseling on December 5, 2008, should not be in his record because it was not signed by his CO and so was unauthorized. When considering allegations of error, the Board begins its analysis in every case by presuming that the disputed Page 7 is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that it is erroneous or unjust.<sup>5</sup> Absent evidence to the contrary, the Board presumes that a member's military records have been prepared "correctly, lawfully, and in good faith."<sup>6</sup>

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draft 2009 PPPM authorizes the same delegations that were authorized in the 2007 PPPM, but in Enclosure (6) signature authority on negative Page 7s was limited to the CO.

<sup>4</sup> The Board has a three-year statute of limitations under 10 U.S.C. § 1552(b), but under *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994), section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940 "tolls the BCMR's [3-year] limitations period during a servicemember's period of active duty."

<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).

3. The preponderance of the evidence does not support the applicant's claim that the disputed Page 7 was unauthorized. Although PSC agreed with the applicant that the Page 7 was unauthorized, PSC erroneously relied on policies published in PPCINST M1000.2B, an edition of the PPPM that was not issued until October 2012.<sup>7</sup> The PPPM in effect in December 2008, when the applicant received the Page 7, was PPCINST M1000.2A, Change 13, and pursuant to that edition, the CO could delegate signature authority to others in writing. The master chief who signed the disputed Page 7 did not write "by direction" under his signature, but the Page 7 is presumptively correct,<sup>8</sup> and the applicant has not shown that the master chief, who was his branch chief, was not delegated the authority to sign such Page 7s. The Board notes that under Article 14.B.2.a. of the Personnel Manual in effect in 2008, the applicant could have appealed the issuance of the Page 7 to his CO if he thought that the master chief did not have the authority to sign it or if he considered the Page 7 erroneous or unjust, but he apparently did not do so.

4. The applicant has not proven by a preponderance of the evidence that the disputed Page 7 was unauthorized because it was signed by his branch chief instead of his CO. Nor has he alleged or proven that the content of the Page 7 is erroneous or unjust. Therefore, his request should be denied.

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

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<sup>7</sup> The Board's decision in this case is consistent with prior decisions concerning Page 7s issued before and after the issuance of Change 14 to PPCINST M1000.2A in 2009. *See, e.g.*, BCMR Docket Nos. 2013-131, 2014-033, 2014-077, 2015-087, 2015-153, and 2016-065.

<sup>8</sup> *Arens*, 969 F.2d at 1037.

**ORDER**

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

August 18, 2017

