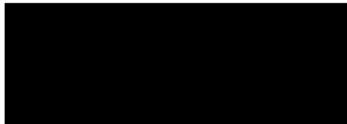


**DEPARTMENT OF HOMELAND SECURITY  
BOARD FOR CORRECTION OF MILITARY RECORDS**

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2017-209**



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**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 June 21, 2017, and assigned it to staff attorney [REDACTED] to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated March 23, 2018, 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 [REDACTED]/E-7) on active duty, asked the Board to correct her military record by removing six Administrative Remarks pages ("Page 7s").<sup>1</sup> She alleged that four should be removed because they were not signed by her Commanding Officer (CO) and two because she argued that having them in her military record was contrary to Coast Guard policy.

Regarding the first four Page 7s, dated December 22, 2004, September 15, 2008, December 10, 2008, and February 13, 2009, the applicant argued that they were unauthorized because they were not properly signed by her CO but were instead signed by her supervisor. The applicant stated that applicable Coast Guard policy states that only "the CO may sign Adverse Administrative Remarks (CG-3307) entries."

Regarding the last two Page 7s, dated April 27, 2010, and May 10, 2010, the applicant alleged that the first was issued in response to her filing an assault charge against her shipmate after he "tried to slip [her] Xanax at a bar in attempts to date rape" her. After she was screened for alcohol dependency and found not to meet the criteria for alcohol abuse or dependence, she felt her Command kept the Page 7s documenting the referral and finding as a means of punishing her for the assault allegation. She claimed that these two Page 7s should not be kept in her record

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<sup>1</sup> Page 7 (CG-3307, or Administrative Remarks) entries are used to document counseling that is provided to a service member as well as other noteworthy events that occur during a member's military career.

because applicable policy states that documentation “for a command ... referral will not be placed in the member’s PDR.” The applicant therefore argued that all of the disputed Page 7s are erroneous and unjust and should be removed from her record.

The applicant provided copies of the disputed Page 7s, which are included below in the Summary of the Record.

### SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on December 3, 2002. Other than the Page 7s at issue here, she has received a variety of positive, neutral, and negative Page 7s.

The first disputed Page 7 was signed by the applicant on December 22, 2004. It was also signed by a member of her Command “by direction.” The Page 7 states in full:

You are counseled surrounding your tardiness for Gate Watch.

You arrived at 0739 for a Watch that needed to be stood up at or prior to 0700.

You informed me that you forgot you had Watch this date.

If this were a singular offense, it would not necessitate such documentation. However, this is a repeat offense, so you are hereby counseled in regard to the consequences of repeated tardiness arriving to watch. It affects unit security and adds an unnecessary burden on your fellow personnel here.

Should this occur again, I will be forced to take stronger administrative action.

The second disputed Page 7 is dated September 15, 2008, and was signed by YNCS M “by direction.” The applicant refused to sign. The Page 7 states in full:

You are being counseled this date in regards to the e-mail you sent to LCDR [G] and OS1 [H] on 4 September 2008 concerning command check-in sheets which your actions and tone towards them was considered disrespectful and out of character for a Second Class Petty Officer.

This is not the first time you have offended someone via an e-mail and you are reminded that RESPECT for RANK and POSITION must be adhered to at all times. RESPECT is our second core value and it’s imperative that you show others the respect that they highly deserve regardless if they are junior or senior to you.

You are encouraged to use the senior leadership staff that is available to you within the office if others are preventing you from completing your assigned tasks/workload on time vice sending condescending e-mails. Remember, our rating is customer service oriented and it’s important that we treat our customers with the highest respect at all times regardless of the circumstances.

You are advised that future incidents regarding RESPECT will no longer be tolerated and it may lead to further administrative action as well.

The third disputed Page 7 was signed by the applicant on December 10, 2008. It was also signed by YNCS M “by direction.” The Page 7 states in full:

You are counseled this date regarding your negligence in making sure the office safe is checked, secured, and properly accounted for on a daily basis by failing to fill out the “Security Container Check Sheet” before you depart for the day as required.

You have been counseled on at least 5 occasions regarding the security, integrity, and accountability of the office safe, which you have failed to correct this discrepancy even though you were assigned to write a 500

word essay on "Accountability" as well. You was [sic] advised on 4 December 2008 that failure to check the office safe on a daily basis would result in formal documentation on my end due to the serious consequences regarding the compromise of the office safe as well as the integrity of this process.

You are reminded once again that the office safe MUST be CHECKED, SECURED, and PROPERLY DOCUMENTED on the "Security Container Check Sheet" on a daily basis before you depart the office for the day. You need to correct this deficiency on your end before a more serious offense regarding the accountability of the safe's contents takes place.

Failure to carry-out your assigned duties and responsibilities regarding the office safe may result in further administrative action on my end.

The fourth disputed Page 7 was signed by the applicant on February 13, 2009. It was also signed by YNCS M "by direction." The Page 7 states in full:

You are being counseled this date for Reserve IDT Berthing (\$4688.00) that was illegally purchased on your individual government purchase card in November 2008 which caused your account to exceed the authorized ceiling amount of \$3000.00.

Integrated Support Command [City] found this error through an internal audit on 12 January 2009 which they discovered that you were letting other individuals assigned to the command use your individual purchase card to obtain Reserve IDT Berthing which is a direct violation of Coast Guard policy. This mistake was due to poor judgment on your behalf, which it required the command to complete an expedited "Ratification of Purchase for IDT Berthing" package due to the Finance Center threatening to shut down the procurement process district wide.

Your individual government purchase card account has been suspended indefinitely, and you are required to make sure you follow proper policy from hereon when it comes to items that fall under your direct control. You're reminded to seek assistance from others when the situation/circumstances warrants your immediate attention.

Failure to follow Coast Guard policy from today forward may lead to further administrative action by the command.

The fifth disputed Page 7 was signed by the applicant on April 28, 2010. It was also signed by her CO. The Page 7 states in full:

This administrative remarks entry documents a command referral for an alcohol screening. Although this is not a documented alcohol incident, you have shown signs of alcohol abuse and are hereby required to be screened in accordance with Chapter 20.A of COMDTINST M1000.6A.

You were counseled on USCG policies concerning alcohol use and abuse as well as the serious nature of this. It is recommended that you abstain from the use of alcohol until your screening and assessment is completed. You shall comply with the results of the screening.

The sixth and final disputed Page 7 was signed by the applicant on May 10, 2010. It was also signed by her CO. The Page 7 states in full:

On April 28, 2010, you were screened by SARP [Unit] for a Command referral and it was determined that you do not meet the criterial for a diagnosis of Alcohol Abuse or Dependence as per DSM IV, SARP [Unit] has recommended that you complete IMPACT training. You will receive your training at SARP [Unit], which begins on May 18, 2010 at 0745.

You have been advised of the contents of Chapter 20, Personnel Manual, COMDTINST M1000.6 (series) regarding the policy for Alcohol Abuse and Dependence and expected conduct of Coast Guard personnel.

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

On November 16, 2017, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief.

The JAG noted that COs were not required to sign negative Page 7s until Change 14 of PPCINST M1000.2A, which is what the applicant cited and which went into effect in June 2009. All of the Page 7s the applicant disputes on this ground were signed before June 2009. The JAG also noted that in her application, the applicant does not dispute the contents of any of the Page 7s, she only argued that they were not signed by the proper authority. Regarding the applicant's two Page 7s signed after 2009, the JAG stated that they were also in accordance with applicable policy at the time she received them. The JAG argued that the applicant did not provide any evidence to substantiate her claim that those Page 7s were issued in retaliation for filing an assault charge. The JAG argued that all of the disputed Page 7s were in accordance with the policy that was in place at the time, and there was therefore no error or injustice that would justify relief by the Board.

The JAG attached to her advisory opinion and adopted a memorandum prepared by the Personnel Service Center (PSC). PSC stated that the application was timely and should therefore be considered by the Board. PSC argued that all six Page 7s were properly entered in the applicant's record and should remain therein. PSC stated that Coast Guard policy at the time of the entry of the Page 7s was different from the policies that she submitted with her application. The first four disputed Page 7s all contained "By Direction" in keeping with Coast Guard policy. The final two disputed Page 7s were for a command referral and for the completion of alcohol screening and were required by Coast Guard policy at the time. Therefore, PSC recommended that the Board deny relief.

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

On November 29, 2017, the Chair 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 went into effect in 2009. 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." Previous editions of this manual did not require adverse Page 7s to be signed by COs and allowed them to be signed "by direction." PPPM, Change 13.

Under Article 3-2-5-C of Coast Guard Regulations, COMDTINST M5000.3B, 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 authorizes COs to delegate “portions of [their] authority ... to subordinates for the execution of details” at their discretion.

Article 7-1-9.B. of Coast Guard Regulations states that COs may designate officers to approve, correspondence, routine papers, vouchers, payrolls, returns, and reports not requiring administrative directions by the CO. The CO may also authorize first class petty officers to sign personnel, pay and travel documents “by direction.”

The Coast Guard Personnel Manual in effect when the applicant received the final two disputed Page 7s, COMDTINST M1000.6A, Article 20.B.2.e., states that a member who was involved in an alcohol incident or who showed signs of alcohol abuse must be screened. The results of the screening must be recorded on a Page 7 in the member’s record.

### 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 7s and presumed knowledge of the alleged error, it is considered timely because she is still on active duty.<sup>2</sup>
3. The applicant alleged that four of the disputed Page 7s were not properly signed by her CO, two of the disputed Page 7s were contrary to Coast Guard policy, and that the Page 7s should be removed because they are 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.<sup>3</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>4</sup>
4. The applicant’s contention regarding the first four disputed Page 7s is that they were not authorized because they were not signed by her CO. However, the policy that required COs to sign adverse Page 7s relied upon by the applicant did not take effect until June 2009. All of the disputed Page 7s are dated between December 2004 and February 2009. According to Coast Guard Regulations M5000.3B, which was in effect at the time, COs “are authorized to designate

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<sup>2</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>3</sup> 33 C.F.R. § 52.24(b).

<sup>4</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).

a staff officer on a collateral duty basis to serve as commanding officer of enlisted or military personnel for their respective offices or units.” In addition, the CO may also authorize first class petty officers to sign personnel, pay and travel documents “by direction.” All four of the disputed Page 7s included the phrase “By Direction” underneath the signature of the Command personnel. The Board therefore finds that the applicant has not proven by a preponderance of the evidence that the Page 7s dated December 22, 2004, September 15, 2008, December 10, 2008, and February 13, 2009, are erroneous or unjust.

5. The final two disputed Page 7s, the applicant claimed, were entered in her record in retaliation for her filing an assault charge against a fellow shipmate. The applicant did not provide any evidence to substantiate her claim, however. She also argued that including these two Page 7s was contrary to Coast Guard policy but cited policy that was not in effect at the time the Page 7s were entered into her record. Chapter 10-A-2 of the PPPM in effect in 2010 states that Page 7s may be used “to document counseling or to record any other information required by current directives, or considered to be of historical value.” On April 27, 2010, the applicant’s CO exercised his discretion pursuant to this authority to document counseling about alcohol abuse policies, her alcohol consumption, and her referral for screening. And on May 10, 2010, he documented the results of alcohol screening in her record as required by Article 20.B.2.e. of the Personnel Manual. Both of these adverse Page 7s were properly signed by the CO. The Board finds that the applicant has not overcome the presumption of regularity<sup>5</sup> or proven by a preponderance of the evidence that her CO abused his discretion or committed error or injustice by entering these two Page 7s in her record.

6. Accordingly, relief should be denied because the applicant has not proven by a preponderance of the evidence that the disputed Page 7s are erroneous or unjust.

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

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<sup>5</sup> 33 C.F.R. § 52.24(b).

**ORDER**

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

March 23, 2018

