

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-212

████████████████████
██████████ YN2

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 8, 2018, 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 April 5, 2019, 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 active duty yeoman, asked the Board to remove a CG-3307 (“Page 7”)¹ dated April 22, 2015, from his record. He stated that his current command endorsed the removal of the Page 7 due to the fact that the alleged victim had signed a recanting statement verifying that the Page 7 was “issued under false accusations.” He argued that the Page 7 accused him of Uniform Code of Military Justice (UCMJ) violations, but that he was never tried at mast or court martial. He also argued that the Page 7 was not reviewed by his Commanding Officer (CO) and instead was signed by his Department Head, who, he alleged, was not authorized to sign a negative Page 7 per Coast Guard policy.

With his application, the applicant provided several documents which are discussed below in the Summary of the Record. He also provided a memorandum with his statement to the Board, which was routed through his current chain of command. His current Department Head signed the memorandum and stated “concur with request and recommend removal of 3307.”

¹ 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 disputed Page 7 is dated April 22, 2015. It states:

On this date you are counseled to cease all contact with SK3 ... It has been substantiated that you have been sending unwanted cell phone texts, CG Instant Messenger communications, and Facebook messages/posts to SK3 commenting on her physical beauty and trying to initiate a relationship of a personal nature. She indicated this has made her uncomfortable and stated that despite asking you to stop and “unfriending you” on Facebook, you have continued sending her unwanted communications. Ideally, direct, lowest level interaction is the preferred tier at which the CG wishes interpersonal conflicts to be addressed, however your failures to comply with her request has now resulted in three Petty Officers, including your PO1 supervisor, have had to tell you to stop. Although you did, at one time stop for a short period, you resumed the now harassing behavior; the most recent on Saturday 12 April. When such behavior is not terminated upon request, it meets the criteria for “Stalking” and also meets criteria for harassment. That you have commented upon her physical appearance also meets criteria for sexual harassment. These behaviors are absolutely unacceptable and are against all CG policies relating to interpersonal relationship in the workplace. I am extremely disappointed that it has now raised to my level. As a Second Class Petty Officer you have received many hours of training on proper workplace conduct, especially as it relates to unwanted verbal, written, or third party contact of a personal nature. You have failed to adhere to that standard and created conditions which are not conducive to a professional working environment and have created an administrative and disciplinary burden upon my staff.

As stated, you are ordered to discontinue all attempts to contact [SK3]; this specifically includes any attempts to apologize and smooth things over. This includes but is not limited to any form of electronic communication, IMs, texting, Facebook/social media posts-messages, phone calls directly or through another party, mail, deliveries, faxes etc. Additionally, you shall make no comments, written or verbal, to others (i.e. posting about her on another friends’ wall hoping she “gets the message third hand”). You are ordered to complete EMI at the direction of your department head to ensure you understand the precarious nature of your current status in the Coast Guard and the potential for significant disciplinary and/or administrative actions as a result of your conduct. This notification constitutes a direct order; failure to comply will put you in direct violation of the UCMJ and you will be held accountable as appropriate. Do not hesitate to seek guidance from your chain of command if you have any questions.

The SK3 (now an SK2) concerned in the disputed Page 7 wrote a letter dated March 17, 2017. It states:

I’m writing ... to remove a negative page seven that has falsely accused [the applicant] of accusations that I never made.

[The applicant] and I have been friends since we both attended Bootcamp in 2009. At no time did I feel harassed by [the applicant], nor did I feel he was stalking me in anyway. Like any friends, we have good times and of course have argued in the past. However after one comment I made to my [Chief] at the time (after an argument with [the applicant]) my command went off and ran with accusations that [the applicant] had been stalking me and sexually harassing me without telling me that they did so on my “behalf.” I was never informed by my command that they went ahead and accused him of wrong doing. I was not questioned about him during the process or afterward, nor was informed that a negative page seven was written up for him.

I’m not too sure why my command took a simple comment I made and flipped it to something extreme, accusing him of sexual harassment and stalking, which bears repeating; I never accused him of those things. As a matter of fact, I was unaware on how far my command went until I reached out to him to see how he was doing a few months later. He alerted his command so [as] to not get into trouble, that’s when my command sat me down and explained everything that happened. At the time I was shocked that my command

and his command didn't even bother asking me what was going on. I felt like my command went well beyond the truth and decided they didn't need me to confirm or deny the accusations.

It wasn't until months afterward, when both of our commands had a few members that were involved with this retired (including my Chief) that I reached out to his command stating the accusations were false. I didn't personally feel like I could use my command and feared a backlash if I spoke up until then. I sat down with his department head ... and was finally able to explain my side of the story. Upon talking with her, she [proposed] that I document all of this and work with the command to ensure a BCMR board will have substance to remove the page seven from [the applicant's] record, if YN2 submitted a request for that to be done.

Thank you very much for hearing me out on this.

VIEWS OF THE COAST GUARD

On February 27, 2019, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant relief in this case. In doing so, he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC stated that the applicant is timely and should be considered on the merits. PSC recommended granting relief because the applicant had provided an "absolving statement" and because the Page 7 was not signed by an authorized person.²

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 5, 2019, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. The applicant replied on March 11, 2019, and stated that he had no objection to the Coast Guard's advisory recommendation.

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. The application was timely.³
2. The applicant alleged that the April 22, 2015, Page 7 in his military record 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

² PPCINST M1000.2B, Article 1.4.3., which was in effect on April 22, 2015, states that only Commanding Officers and Officers in Charge may sign adverse Page 7s. This authority is now delegable to the Department Head level. COMDTINST 1000.14C, June 4, 2015.

³ *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).

evidence that the disputed information is erroneous or unjust.⁴ 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.”⁵

3. The applicant has proven by a preponderance of the evidence that the adverse Page 7 he received on April 22, 2015, should be removed from his record. The applicant alleged that the disputed Page 7 was based on false accusations. The alleged victim provided a statement which indicated that she had never made the allegations in the Page 7 against the applicant and that she was never consulted before the document was issued to the applicant. The applicant’s current command has concurred with the removal of the Page 7, as has Commander, Personnel Service Center and the JAG. In addition, as the applicant claimed, the Coast Guard has admitted that the Department Head was not authorized to sign the negative Page 7.⁶

4. Accordingly, relief should be granted by removing the Page 7 dated April 22, 2015, from the applicant’s record.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁴ 33 C.F.R. § 52.24(b).

⁵ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁶ PPCINST M1000.2B, Article 1.4.3. states that only Commanding Officers and Officers in Charge may sign adverse Page 7s.

ORDER

The application of YN2 [REDACTED], USCG, for correction of his military record is granted. The Coast Guard shall remove the CG-3307 dated April 22, 2015, from his record.

April 5, 2019

