

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2021-086

██████████ ██████████ ██████████
YN1

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on June 24, 2021, and assigned the case to the Deputy Chair to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated January 27, 2023, 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 Yeomen (YN1/E-6) in the Coast Guard Selected Reserve (SELRES), asked the Board to correct her record by removing a negative Administrative Remarks form (“Page 7”)¹ from her record. The Page 7 was issued on December 5, 2014, and documented the applicant’s tardiness.

The applicant argued that the Page 7 should be removed because it was entered into her record erroneously. She stated that the officer who signed the Page 7, Boatswain’s Mate First Class (BM1) L, was not her Supervisor or Sector Logistics Department Head. Accordingly, the applicant argued that BM1 L did not have the authority to sign the Page 7. To support her assertion, the applicant provided a copy of the Coast Guard instructions on Page 7s that was issued on May 7, 2019. The instructions provide a list of officers who have authority to sign Page 7s. The instructions state that no enlisted member, other than an Officer in Charge or an Executive Petty Officer, is authorized to sign negative Page 7s.

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.

The applicant also argued that the incident documented in the Page 7 was the opinion of a hostile active duty member. She argued that BM1 L was hostile towards Reserve members. In fact, the applicant argued that BM1 L admitted to “hating reservists.” She argued that BM1 L’s behavior towards Reservists was eventually investigated and that he was transferred to another department within the unit as a result. The applicant argued that the Page 7 was a personal attack and not a true representation of her conduct.

To address the delay in her application, the applicant stated that she did not discover the alleged error until 2020 when she requested a copy of her record. She argued that the original Page 7 was not properly filed in the Servicing Personnel Office Personnel Data Record and that she was not aware that it was entered into her Electrically Imaged Personnel Data Record.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard Reserve on June 23, 2009. Shortly after completing recruit training, the applicant was assigned to the Administrative and Personnel Support Division of her unit.

On December 5, 2014, the applicant received a negative Page 7 in which she was counseled for tardiness. The applicant was sent an email on December 2, 2014, and another two days later on December 4, 2014, reminding her of the normal operating work hours for their office. According to the Page 7, the applicant chose to ignore those prescribed times twice in three days. The applicant was informed that when members are late, it shows a blatant disregard for Coast Guard policy. She was counseled that this behavior would not be tolerated and that future instances would result in disciplinary action. The Page 7 was signed by BM1 L as the “RFRS Supervisor” (Reserve Forces Readiness System Supervisor). The applicant refused to sign it. This is the only negative Page 7 in the applicant’s record.

VIEWS OF THE COAST GUARD

On November 30, 2021, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC argued that the applicant’s application is untimely. PSC also argued that contrary to the applicant’s assertion, the Page 7 was properly filed in her Official Military Personnel File.

Regarding the merits of the case, PSC argued that the applicant failed to prove that the Coast Guard committed an error or injustice. PSC stated that in 2014, the applicant received a negative Page 7 that was signed by the Reserve Forces Readiness System Supervisor. PSC stated that at that time, the Coast Guard instructions on Page 7s did not include specific limitations on who was permitted to sign negative Page 7s. It was not until later iterations of the instructions that officers were prohibited from delegating the authority to sign negative Page 7s below the Department Head level. PSC argued that such limitations on who can sign negative Page 7s do not apply to the disputed Page 7 because the newer instructions do not have a retroactive component.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 25, 2022, the Chair sent the applicant a copy of the Coast Guard's views and invited her to respond within thirty days. No response was received.

APPLICABLE LAW AND POLICY

On April 17, 2000, Coast Guard instructions on Administrative Remarks form CG-3307, COMDTINST 1000.14B, was issued. The instructions did not limit the signature authority on Page 7s.

On June 4, 2015, Coast Guard instructions on Administrative Remarks form CG-3307, COMDTINST 1000.14C, was issued. Major changes to the guidance include a specific list of authorized and unauthorized personnel to sign Page 7s. Notably, the instructions prohibit officers from delegating authority to sign negative page 7s below the Department Head level. Further, the instructions do not authorize enlisted members, other than an Officer in Charge or an Executive Petty Officer, to sign negative Page 7s.

On May 7, 2019, Coast Guard instructions on Administrative Remarks form CG-3307, COMDTINST 1000.14D, was issued. The limitations on who is authorized to sign negative Page 7s remain consistent with the previously issued instructions.

The Personnel and Pay Procedures Manual, PPCINST M1000.2B, was issued in October 2012 and was in effect at the time the applicant received the Page 7. Regarding the signing of forms, Article 1.4.3. of the manual states 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 [Commanding Officer] 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."

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on 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. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.² The applicant received the disputed Page 7 on December 5, 2014. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in her record in 2014, and her application is untimely.

² 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.³ In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board should not deny an application for untimeliness without “analyz[ing] both the reasons for the delay and the potential merits of the claim based on a cursory review”⁴ to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted that “the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review.”⁵ Although the applicant in this case did delay filing the application, the evidence of record reveals a significant, prejudicial error in her record, as explained below, and so the Board finds that it is in the interest of justice to excuse the untimeliness of the application.

4. The applicant alleged that the disputed Page 7 should be removed because it is erroneous. 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 the military record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁶ 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.”⁷

5. The applicant alleged that the disputed Page 7 is erroneous because BM1 L did not have the authority to sign it. Specifically, the applicant argued that BM1 L did not have the authority to sign the negative Page 7 because he was not her Supervisor or Sector Logistics Department Head. To support her allegation, the applicant submitted the Coast Guard instructions on Page 7s that was issued on May 7, 2019. However, PSC properly argued that the May 2019 instructions are not applicable to the applicant’s case. Those instructions came into effect five years after the applicant received the disputed Page 7. Instead, the applicable authority is the instructions on Page 7s that were in effect in 2014.

6. Although the specific instructions on Page 7s in effect in 2014 did not limit the signature authority on the form, other relevant Coast Guard policy did place such a limitation. The Personnel and Pay Procedures Manual, PPCINST M1000.2B, was issued in October 2012 and was still in effect at the time the applicant received the disputed Page 7. Article 1.4.3. of the manual states that only a CO or acting CO is permitted to sign a negative Page 7. In this case, the disputed Page 7 was signed by BM1 L, a First Class Petty Officer. There is nothing in the applicant’s record to show that BM1 L was the applicant’s CO or acting CO. Notably, BM1 L did not sign the disputed Page 7 as the applicant’s CO or acting CO. Instead, BM1 L signed the Page 7 as the Reserve Forces Readiness System Supervisor. Further, PSC did not allege that BM1 L was the applicant’s CO or that he was the acting CO at the time he signed the disputed Page 7. Accordingly, BM1 L did not have the authority to issue the disputed Page 7. Therefore, the applicant has proven by a preponderance of the evidence that the negative Page 7 dated December 5, 2014, is erroneous.

³ 10 U.S.C. § 1552(b).

⁴ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁵ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

⁶ 33 C.F.R. § 52.24(b).

⁷ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

7. The Board finds by a preponderance of the evidence that the negative Page 7 dated December 5, 2014, documenting the applicant's tardiness, is erroneous because it was not signed by her CO or acting CO as required by PPCINST M1000.2B and should be removed from her record.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of YN1 [REDACTED] [REDACTED] USCGR, for correction of her military record is granted. The Coast Guard shall remove from her record the negative Page 7 dated December 5, 2014.

January 27, 2023

[REDACTED] Digitally signed by [REDACTED]
[REDACTED]
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[REDACTED] Digitally signed by [REDACTED]
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