

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2022-018

██████████ ██████████ ██████████
CPO

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 December 22, 2021, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

The final decision, dated July 25, 2024, 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 Chief Petty Officer (CPO/E-7) on active duty, asked the Board to correct her record by removing four negative CG-3307 forms (“Page 7s”) documenting incidents of poor performance as an E-4 in 2004 and 2005 from her record. She alleged that the Page 7s were based on bias and constitute an act of reprisal from a senior leader of the large cutter to which she was assigned. The disputed Page 7s counsel her as follows:

- The first Page 7, dated January 9, 2004, is signed by the Executive Officer (XO) M of the cutter and acknowledged by the applicant. It counsels her about the leadership and responsibility expected of a petty officer and states that she had placed herself and others in danger by taking action that was detrimental to her health and the safety and well-being of the cutter and its crew.
- The second Page 7, dated April 15, 2005, is signed by the new XO G of the cutter, but the applicant refused to acknowledge it with her signature. It states that she had been “well over an hour late for work and not on board for quarters before getting underway on 15 April 2005. She called and stated she was going to be late due to traffic. It would stand to reason if she [had] left home with enough time to get to work, traffic would not have been a problem. [The applicant] has been counseled numerous times concerning her lack responsibility to show up for work on time. If further tardiness occurs disciplinary actions will be taken and a hard look at performance probation will be considered.”

- The third Page 7, dated May 3, 2005, is signed by the same XO of the cutter and by the applicant in acknowledgement. It states that she “did not report to her supervisor on time. You were counseled on the time you need to awake from night baking duties. You failed to comply and were found sleeping at 1100. As a Third Class Petty Officer the expectations of responsibility, work habits, and setting the example for junior [crew] mates is key to their development. By failing to do so you have let your shipmates down. If another incidence of tardiness occurs disciplinary actions will be taken.”
- The fourth Page 7, dated November 4, 2005, is signed by the same XO of the cutter and by the applicant in acknowledgement. It states, “You are being counseled concerning the perception of an improper supervisor to subordinate relationship with a non-rate member assigned to the galley as a mess attendant. This type of relationship is against [cutter] and Coast Guard Policy. As a supervisor within the Food Service Division, this is a breach of discipline and breaks down the chain of command. You are to treat all subordinates working for you equally, in accordance with Coast Guard Policy, and not show favoritism to any member. Any further incidents result in disciplinary action.”

The applicant alleged that each of the disputed Page 7s is either erroneous or unjust. First, the applicant alleged that the January 9, 2004 Page 7 is unjust because it fails to cite wrongdoing and does not put her on notice of her alleged misconduct. She says, “I believe this was an act of spite and an attempt by my Supply Officer to put as much negative documentation in my record as possible.” She did not provide any documentation to support this allegation.

Next, the applicant alleges that the April 15, 2005 Page 7 is unjust because there was an accident causing a major delay on the highway, she informed her supervisor of the delay, and she was not the only member to show up late due to the accident. She alleged that this Page 7 is unjust because there was no deliberate wrongdoing and her tardiness was due to circumstances beyond her control.

The applicant alleged that her May 3, 2005 Page 7 is erroneous because she had been granted “late sleepers” by her supervisor, an FS1. This was granted because, in addition to her normal baking duties, she had to make fresh bread because they were underway and ran out of pre-made bread, and so she had finished her duties late. She explained, “[m]y approval for late sleepers was never passed up the chain of command and it resulted in the negative write-up despite explaining the above information to my Supply Officer.”

Finally, the applicant alleged that the November 4, 2005 Page 7, which alleged that there was a perception of an inappropriate relationship with a non-rate subordinate, is both erroneous and unjust because it was due to a preconceived notion by her Supply Officer that she was gay. The applicant alleged that she “was given this citation after [the Supply Officer] walked on the mess deck and saw us eating dinner at the same table. There was no evidence of favoritism leading up to this citation and no violation of policy or wrongdoing, this citation was solely based on assumption.”

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on November 12, 2002. After completing recruit training, she attended “A” School in 2003 and earned the Food Service (FS) rating. On May 27, 2003, the applicant reported for duty aboard the large Coast Guard cutter where she received the Page 7s. In December 2003, the applicant advanced to FS3/E-4.

On January 9, 2004, the XO of the cutter issued the applicant a negative Page 7 for placing herself and others in danger due to “actions detrimental to [her] health, the safety and wellbeing of the ship, and its crew.”

Over a year later, on April 15, 2005, the applicant received the second disputed Page 7 from the new XO of the cutter for being over an hour late to work on a day the cutter was getting underway. The applicant did not acknowledge this Page 7 with her signature.

Three weeks later, on May 3, 2005, the same XO issued the applicant another negative Page 7 because she had not reported to her supervisor in the galley on time. The Page 7 documented that she was “counseled on the time you need to awake from night baking duties. You failed to comply and were found sleeping at 1100.”

On November 4, 2005, the same XO issued the applicant another negative Page 7 counseling her about a perception that she had an improper relationship with and was showing favoritism towards a non-rate subordinate assigned to the galley.

In addition to the disputed Page 7s detailed above, the applicant received 5 other negative Page 7s and one positive Page 7 between January 2004 and January 2006.

In May 2006, the applicant completed her tour of duty aboard the cutter and was transferred to a new unit. She has remained on active duty and was advanced to FS2/E-5 in February 2007; to FS1/E-6 in October 2013; and to Chief Petty Officer (E-7) in December 2020.

VIEWS OF THE COAST GUARD

On June 22, 2022, a Coast Guard judge advocate (JAG) submitted an advisory opinion in which the Coast Guard recommended that the Board deny relief.

The JAG claimed that the application was not timely filed. While the applicant claimed the alleged error or injustice was discovered in “2021-2022,” the JAG argued that the three-year statutory timeline starts when the applicant discovered or reasonably should have discovered the alleged error or injustice. Here, the four Page 7s were all signed and presented to her between 2004 and 2005, approximately 15 years before the alleged date of discovery. The JAG concluded that the dates on which the applicant signed the documents or was presented these documents in 2004 and 2005 are the dates she reasonably should have discovered the alleged errors and injustices she now wants removed. Therefore, the JAG argued, the dates of the Page 7s should be used to calculate when the Board’s three-year statute of limitations expired.

The JAG further alleged that, upon a review of the merits, the applicant's documentation is insufficient to prove error or injustice. Her primary argument is that the four challenged Page 7s were "based on bias and reprisal from a senior leader due to personal disdain." The applicant, however, provided no evidence to support any animosity or bias by a senior leader, such as the Supply Officer she named. All of the challenged Page 7s, however, were signed by the XOs of the cutter, not the Supply Officer. Therefore, the JAG argued, the applicant's lack of evidence is insufficient to overcome the presumption of regularity afforded her command, whom the applicant does not allege had any animosity towards her. The JAG noted that, as seen in the numerous Page 7s, the applicant's command still recognized applicant when she did perform well, even despite her history of disciplinary issues. Additionally, even with the documented history of disciplinary and performance issues, the command recognized applicant's efforts and extended her performance probation period by three months, providing the applicant further chances for rehabilitation.

The JAG noted that the record contains numerous additional Page 7s, beyond the disputed four Page 7s, that document a pattern of disciplinary and performance issues while the applicant was onboard the cutter. The JAG contended this is evidence against the applicant's argument that the four challenged Page 7s were unwarranted and were the result of bias or reprisal.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 13, 2022, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited her to submit a written response within 30 days. No response was received by the Board.

APPLICABLE LAW AND POLICY

Chapter 10.A. of the Personnel and Pay Procedures Manual (PPPM), then in effect, authorizes the recording of Administrative Remarks (CG-3307) to document counseling or record any other information required by current directives, or considered to be of historical value.

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.¹ The applicant received the disputed Page 7s in 2004 and 2005. Although the application was not filed within three years of the applicant's discovery of the

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

alleged error or injustice, it is considered timely because she has remained on active duty in the interim.²

3. The applicant alleged that four negative Page 7s in her record 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 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.³

4. The applicant has failed to prove by a preponderance of the evidence that any of the comments about her performance in the Page 7s are erroneous or unjust. The applicant has not provided any evidence, such as statements from others who served with her on the cutter or witnessed the events in question, corroborating her allegations that the Page 7s were issued as the result of bias and reprisal. Rather the Board finds the greater weight of the evidence reflects a pattern of disciplinary and performance issues during the period in question that was appropriately documented in the negative Page 7s. The Page 7s were issued by two different XO that both noted issues with her performance. Additionally, despite these ongoing issues, the applicant's command recognized and documented her performance when she performed well. As such, the Board finds no basis for removing the disputed Page 7s from the applicant's record. The request for relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

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 [now the Servicemembers Civil Relief Act], 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).

ORDER

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

July 25, 2024

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