

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2011-213

**XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX**

FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the application upon receipt of the applicant's completed application on July 16, 2011, and subsequently prepared the final decision as required by 33 CFR § 52.61(c).

This final decision, dated April 19, 2012, 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 asked the Board to correct her record by removing an administrative remarks page (page7) dated May 6, 2010, that documented her non-compliance with the Coast Guard's weight standards and her placement on weight probation. The page 7 also directed her to lose all excess weight by October 20, 2010. The applicant also requested the removal of the following related page 7s:

- The page 7 dated May 20, 2010 listing several goals the command expected her to meet during the weight probationary period.
- The page 7 dated June 18, 2010, requiring her to document weekly weigh-ins.
- The page 7 dated October 20, 2010, documenting her successful completion of her weight probationary period.

Last, the applicant asked that the mark of 3 she received in "health and well-being" on her enlisted performance review (EER) for the period ending September 30, 2010 be raised to 4.

With regard to the May 6, 2010 page 7, the applicant alleged that her command violated the Coast Guard Weight and Body Fat Standards Program Manual (Weight Program Manual) by placing her on weight probation before a medical official had determined that she could safely

lose weight and/or participate in physical fitness activities. She was medically cleared for weight loss on May 13, 2010. In this regard, she stated that Article 3.2.1 of the Weigh Program Manual states “A probationary weight loss period shall not commence until the member has completed their medical referral and it has been determined that they can safely lose weight and/or participate in fitness activities.”

With regard to the May 20, 2010 and June 18, 2010 page 7s, the applicant argued that they should be removed because they are related to the improperly prepared May 6, 2010 page 7 and because they were not prepared in compliance with the Personnel and Pay and Procedures Manual. In this regard, she argued that although “performance and discipline” was stated as the reason for issuance of the page 7s, neither page 7 commended nor disciplined her for any act. Instead the page 7s provided her with the command’s “list of expectations that she was expected to meet while on probation.” She alleged that neither page 7 was signed by the CO as required by the Personnel and Pay and Procedures Manual.

In conclusion, the applicant argued that her record should be cleared of all evidence documenting that she was placed on weight probation from May 6, 2010 to October 20, 2010 because the page 7s were not prepared in accordance with the Weight Program Manual and/or the Personnel and Pay Procedures Manual. She argued that if the weight probationary period documentation is removed from her record, the mark of 3 in health and well-being on her EER for the period ending September 30, 2010 should also be removed.

VIEWS OF THE COAST GUARD

On October 28, 2011, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant partial relief in accordance with a memorandum submitted by the Commander, Personnel Service Center (PSC).

PSC did not recommend the removal of the May 6, 2010 page 7 that documented the applicant non-compliance with the Coast Guard’s weight standards and her placement on weight probation. Instead, PSC recommended that the May 6, 2010 date be corrected to May 13, 2010, the date the applicant was medically cleared for weight loss. In this regard, PSC stated that Article 3.2.1 of the Weight Program Manual requires that a member who exceeds their maximum allowable weight be placed on weight probation, but the probationary period cannot commence until the member has been cleared by a medical official that the weight can be lost in a safe manner.

With regard to the May 20, 2010 and June 18, 2010 page 7s, PSC recommended that they be removed from the applicant’s record. PSC stated that the Weight Program Manual does not specifically prohibit units from documenting expectations or progress during weight probationary periods. However, in this case, “it was disclosed to [PSC] that the applicant’s command did not follow this practice for any other member of the command regarding their weight probationary periods. Therefore, PSC recommended removal the May 20 and June 18, 2010 page 7s.

PSC stated that the page 7 dated October 20, 2010 documenting the applicant's successful completion of weight probation should not be removed from her military record because it is required by the Weight Program Manual. Nor did PSC recommend removing the mark of 3 in Health and Well Being on the applicant's September 30, 2010 EER. PSC stated that the applicant has not provided any evidence to show this mark is inaccurate for the period in question.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 2, 2011, the Board sent a copy of the views of the Coast Guard to the applicant for a response. The Board did not receive a reply from the applicant.

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 section 1552 of title 10 of the United States Code. The application was timely.

2. The May 6, 2010 page 7 was signed by the CO and documented the applicant's noncompliance with the Coast Guard's weight standards. The page 7 also noted that the applicant was placed on weight probation and ordered to comply with weight standards by October 20, 2010. The page 7 was prepared before medical personnel verified that the applicant could safely lose the weight and/or participate in physical activities. Article 3.2.1 of the Weight Program Manual states "A probationary weight loss period shall not commence until the member has completed their medical referral and it has been determined that they can safely lose weight and/or participate in fitness activities." The applicant was cleared by medical personnel on May 13, 2010. The page 7 documenting her non-compliance with weight standards and placing her on weight probation should have been dated May 13, 2010. The Coast Guard has acknowledged the error and recommended that the date on the page 7 be corrected from May 6, 2010 to May 13, 2010. The Board agrees with this recommendation. The Coast Guard committed an administrative error by preparing the page 7 before medical personnel verified that the applicant could safely lose the weight. However, it is not in dispute that the applicant was non-compliant with weight standards and that the regulation required her command to place her on weight probation. Therefore, the Board will direct the Coast Guard to correct the date on the May 6, 2010 page 7 to May 13, 2010.

3. The Board also agrees with the JAG that the page 7s dated May 20, 2010 and June 18 2010 should be removed from the applicant's record. In this regard, the Board notes that although the Weight Program Manual does not prohibit such page 7s, the applicant's command did not prepare similar page 7s for any other members of the command who were placed on weight probation. Nor is there an explanation for why the applicant was treated differently. Accordingly, the Board finds that the May 20, 2010 and June 18, 2010 page 7s are unjust under the circumstances and should be removed. The Board reaches no decision on whether it was an

error for the applicant's department head to sign the page 7s, since both the Coast Guard and Board find they should be removed on other grounds.

4. The page 7 dated October 20, 2010, documenting the applicant's successful completion of weight probation and her compliance with the Coast Guard's weight requirements is properly in her record. Article 3.2.12 of the Weight Program Manual requires that a page 7 shall be prepared by a member's command upon the completion of the weight probationary period. This page 7 is signed by the CO.

5. The applicant has presented no evidence that the mark of 3 in health and well-being on her EER for the period ending September 30, 2010 is erroneous. The Board notes that for this reporting period the applicant was, in fact, in violation of the Coast Guard's weight requirements. Therefore, the mark of 3 should not be removed from the EER.

6. Accordingly, the applicant should be granted the partial relief discussed above.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of XXXXXXXXXXXXXXXXXXXX, for correction of her military record is granted in part, as follows:

- The date on the May 6, 2010 page 7 regarding the applicant's non-compliance with the Coast Guard's weight requirement shall be corrected to May 13, 2010.
- The related page 7s dated May 20, 2010 and June 18, 2010 that reference the applicant's non-compliance with the Coast Guard's weight requirement on May 6, 2010 shall be removed from her record.

No other relief is granted.

