

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2016-146**



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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. After receiving the completed application on June 11, 2016, the Chair docketed the case and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated April 7, 2017, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

**THE APPLICANT'S REQUEST AND ALLEGATIONS**

The applicant, [REDACTED] asked the Board to correct her record by removing a CG-3307 ("Page 7") dated May 4, 2005, which states that she had not met the Coast Guard's weight standards and was being placed on weight probation, as well as another Page 7, dated June 9, 2005, which states that she was being removed from weight probation because she was pregnant.

The applicant explained that on May 4, 2005, she was still an enlisted member and was unaware that she was pregnant. She did not discover her pregnancy until May 18, 2005. She stated that if her pregnancy had been known, she would not have been placed on weight probation. The applicant stated that at the time, she asked the administrative staff of her unit to remove the May 4, 2005, Page 7, but instead they entered the second Page 7 in her record. The applicant stated that the May 4, 2005, Page 7 is prejudicial and could harm her chances for selection for promotion or for other purposes. In support of her allegations, the applicant submitted several documents, which are included in the summary below.

**SUMMARY OF THE RECORD**

On May 4, 2005, the applicant received a Page 7 stating that she was 17 pounds overweight and was being placed on weight probation.

A medical record dated May 18, 2005, shows that the applicant went to the clinic because she had been having symptoms of pregnancy for several days. Her pregnancy test was positive. She was prescribed prenatal vitamins and folic acid.

A Page 7 dated June 9, 2005, states that the applicant's probationary period had ended due to her pregnancy.

A birth certificate shows that the applicant gave birth to a son on January 15, 2006, less than nine months after she was placed on weight probation.

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

On November 1, 2016, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant relief in this case and adopting the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC).

PSC stated that when the applicant's command placed her on weight probation in May 2005, they were unaware that she was pregnant and therefore exempt from the weight standards pursuant to Chapter 3.B. of COMDTINST M1020.8. Had the command known she was pregnant, she would not have been placed on weight probation. Therefore, PSC recommended removing the two disputed Page 7s.

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

On November 16, 2016, the applicant responded to the advisory opinion and agreed with the Coast Guard's 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 submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. Although the applicant waited several years to dispute the Page 7s, the application is considered timely because she has remained on active duty in the interim.<sup>1</sup>

2. The applicant alleged that two Page 7s documenting her placement on and removal from weight probation in 2005 are erroneous and unjust because she should have been exempt from the weight standards due to her pregnancy. In considering allegations of error and injustice, the Board begins by presuming that the disputed records in an applicant's military record are correct and fair, and the applicant bears the burden of proving by a preponderance of

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<sup>1</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).

the evidence that they are erroneous or unjust.<sup>2</sup> Absent specific evidence to the contrary, the Board presumes that Coast Guard officials have acted “correctly, lawfully, and in good faith.”<sup>3</sup>

3. Given the medical record dated May 18, 2005, showing that the applicant was found to be pregnant after she complained of having had symptoms of pregnancy for several days, and the date of birth of her son, January 15, 2006, the Board finds that the applicant has proven by a preponderance of the evidence that she was pregnant on May 4, 2005. Under Chapter 3.B. of COMDTINST M1020.8, therefore, she was exempt from the weight standards on May 4, 2005, and should not have been placed on weight probation, although her command could not have known that at the time. The Board finds that the applicant has proven by a preponderance of the evidence that the disputed Page 7s documenting her placement on and removal from weight probation in 2005 are erroneous and unjust and should be removed from her record.

4. Accordingly, relief should be granted.

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

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<sup>2</sup> 33 C.F.R. § 52.24(b).

<sup>3</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).

**ORDER**

The application of [REDACTED] USCG, for correction of her military record is granted. The Coast Guard shall remove from her record the two CG-3307 forms dated May 4, 2005, and June 9, 2005, which document her placement on and removal from weight probation.

April 7, 2017

