

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2022-039

██████████ ██████████ ██████████
LT

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 April 7, 2022, and assigned the case to the staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision dated December 15, 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 Lieutenant (LT/O-3) on active duty, asked the Board to correct his record by removing a December 5, 2017, negative CG-3307 (“Page 7”) that he received for failing the Coast Guard’s weight and body fat standards. The applicant alleged that he was never counseled regarding his weight and was never involved in the process outlined in Coast Guard policy for those who fail to meet weight and body fat standards. The applicant stated that he only recently discovered the negative Page 7 in his record and realized the Page 7 refers to counseling that never took place and indicated that he was put on probation. The applicant claimed that he never knew he was outside the acceptable weight standards. The applicant further claimed that instead of following protocol and advising him that he was considered overweight, he was never informed but was ambushed by the placement of this erroneous Page 7 in his record. The applicant claimed that this error has had a negative effect on his career and his ability to promote. The applicant further claimed that had his unit informed him he was not in compliance with the Coast Guard’s weight and body fat standards, he would have gladly accepted the counseling and adhered to any provisions outlined in the documented counseling. To further support his claims, the applicant stated that his alleged weight failure was never documented in his annual Officer Evaluation Report (OER) that covered that rating period. The applicant stated that he received an above-average score for the “Health and Well-Being” portion of his OER for that rating period.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on September 1, 2009, and was commissioned on July 30, 2010.

On December 5, 2017, the applicant received a negative Page 7 for failing to adhere to the Coast Guard's weight and body fat standards. Specifically, the Page 7 stated the applicant was 34 pounds overweight. The Page 7 stated that the applicant was required to lose 34 pounds before July 28, 2018. The Page 7 was not signed by the applicant nor was it noted that the applicant refused to sign as required by Coast Guard policy.

VIEWS OF THE COAST GUARD

On November 15, 2022, a Judge Advocate (JAG) for the Coast Guard submitted an advisory opinion in which he recommended that the Board grant relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC explained that based on the negative Page 7 issued on December 5, 2017, the applicant was not in compliance with the Coast Guard's weight and body fat standards at the time of the weigh-in. PSC further explained that this negative Page 7 was not signed by the applicant, and although a member's signature is not always required to validate a Page 7, in cases where a member refuses to sign, an annotation is made on the form. Here, PSC stated there is no such annotation, and therefore no assumption can be made that the applicant was counseled and refused to sign. PSC further stated that on his next documented weigh-in the applicant was in compliance with the Coast Guard's weight and body fat standards. PSC explained that the formal process for a member on weight probation is to document compliance or noncompliance on a Page 7 after the probationary period is over and there is no evidence of this required Page 7 in the applicant's record. Furthermore, PSC stated that the applicant received a mark of 5 on his annual OER instead of the mandatory 3 required by Coast Guard policy when an officer fails to adhere to weight and body fat standards. PSC stated that the applicant's unit did not follow the correct administrative procedures and policies set out in the Coast Guard Weight and Body Fat Standards Manual, COMDTINST M1020.8H. Accordingly, PSC recommended that the applicant's requested relief be granted.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 23, 2022, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited him to respond within thirty days. As of the date of this decision, no response was received.

APPLICABLE LAW AND POLICY

The Coast Guard Weight and Body Fat Standards Program Manual, COMDTINST M1020.8H (series) in effect in 2016 provides the following guidance on Coast Guard weight standards and screening:

Article 2.A.1. Semiannual (April & October). All Coast Guard military personnel shall be screened against weight and body fat standards every April and October.

...

Article 2.A.3. Upon Expiration of an Authorized Abeyance or Exemption. As identified in chapter 5 of this Manual, members shall be evaluated for compliance on the first business day following the expiration of an abeyance or exemption.

...

Article 2.G. ... Measure the natural waist circumference, against the skin, at the point of minimal abdominal circumference, usually located about halfway between the navel and the lower end of the sternum (breast bone).

...

Article 3.A.1. Consequences of Non-Compliance with Weight and Body Fat Standards. If a member is found noncompliant with weight and body fat standards, the following limitations and restrictions apply:

...

b. Officers may be considered and selected at a promotion board if non-compliant with weight and body fat standards. However, they will not be promoted until they have met these standards.

...

Article 3.B.1. Requirement for Documentation. All members found non-compliant with Weight and Body Fat Standards during any weigh-in must sign the form CG-3307 documenting their non-compliance unless covered by an abeyance or exemption as listed in chapter 5 of this Manual.

...

Article 5 of The Coast Guard Officer, Accessions, Evaluations, and Promotions Manual, COMDTINST M1000.3A, provides the following guidance on OER required comments:

Article 5.A.7.g. Required Comments.

...

2. Weight and Body Fat Non-Compliance. Reported-on officers found non-compliant with weight and body fat standards shall have this documented in their performance evaluation. Reflection of this shall occur during the reporting period to which noncompliance occurred. Commanding officers shall ensure all other required documentation is recorded in the member’s PDR in accordance with the Coast Guard Weight and Body Fat Standards Program Manual, COMDTINST M1020.8 (series); is acknowledged by the member; and a copy sent to Commander (CG PSC-OPM-1), Commander (CG PSC-RPM-1) and (CG PSC BOPS-C-MR).

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. The application was timely because it was filed within three years of the applicant's discovery of the alleged error or injustice in the record, as required by 10 U.S.C. § 1552(b).

3. The applicant alleged that the Page 7 dated December 5, 2017, which he received for being non-compliant with the Coast Guard's weight and body fat standards is erroneous because he was never notified of his failure to adhere to the Coast Guard's weight and body fat standards, nor was he ever given the required documentation. 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.¹ 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."²

4. The Board's review of the applicant's record shows that the applicant was issued a negative Page 7 on December 5, 2017, for failing to adhere to the Coast Guard's weight and body fat standards. The Board's review also shows that the applicant's signature is not present on this Page 7, nor is there any notation from the applicant's supervisor that the applicant "refused to sign" as would normally be seen on a Page 7. The December 5, 2017, Page 7 stated that the applicant had a 27% body fat and was 34 pounds overweight and informed the applicant that he was on weight probation and had until July 28, 2018, to lose the 34 pounds or drop below a 26% body fat. The record shows that upon his next weigh-in the applicant was in compliance with the Coast Guard's weight and body fat standards, but there is no administrative paperwork in his record documenting his successful completion of weight probation as required by Coast Guard policy. Finally, the record shows that on the applicant's annual OER that covered the applicant's alleged weight probation, the applicant received a mark of 5 for "Health and Well-Being" instead of the mandatory 3 required by Coast Guard policy when an officer is placed on weight probation. Accordingly, the Board agrees with both the applicant and PSC that the applicant's unit failed to follow proper procedure when it issued the December 5, 2017, negative Page 7 and placed it in the applicant's record and it should therefore be removed from the applicant's record.

¹ 33 C.F.R. § 52.24(b).

² *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 LT [REDACTED] [REDACTED] USCG, for correction of his military record is granted. The Coast Guard shall remove from the applicant's record the December 5, 2017, Page 7 documenting the applicant's probation for failure to meet Coast Guard weight and body fat standards.

December 15, 2023

[REDACTED] [REDACTED]
Digitally signed by [REDACTED]
Date: 2024.01.04 11:18:38 -05'00'

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]
Digitally signed by [REDACTED]
Date: 2024.01.04 14:20:45 -05'00'

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]
Digitally signed by [REDACTED]
Date: 2024.01.04 14:27:49 -05'00'

[REDACTED] [REDACTED]