

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-129

**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 on April 27, 2007, upon receipt of the applicant's completed application and military records, and subsequently prepared the final decision as required by 33 C.F.R. § 52.61(c).

This final decision, dated January 24, 2008, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant asked the Board to correct her military record by removing two administrative remarks pages¹ (page 7s) dated December 8, 1997, and March 5, 2003. The commanding officer (CO) and the applicant signed each page 7.

First Disputed Page 7

"Entry Type: Performance and Discipline (P&D-8)

"Reference: Section 5-B. (pg. 5-1), COMDTINST M1020.8 series

"Responsible Level: Unit

"Entry:

“97DEC08: On this date, you were weighed and you are in compliance with your maximum allowance weight/body fat standard. Your measurements are: Height: 65.0 (inches, Wrist Size: 6 3/8 (inches), and Weight: 186 (pounds). Your age is: 28 and your percent body fat is 32%. In accordance with COMDTINST M1020.8 (series), you are assigned a maximum allowable weight

¹ An administrative remarks page provides a means of recording miscellaneous entries, which are not recorded elsewhere in a Personnel Data Record (PDR). Administrative Remarks entries are made to document counseling or to record any other information required by current directives, or considered to be of historical value. Section 10.A. of the Pay and Personnel Manual (HIRSICINST M1000.6A)

for screening purposes^[2] of 186 (pounds). Should you exceed this maximum allowable weight in the future, you will be required to complete a body fat determination. By signature below, you acknowledge both this entry and that you have been afforded the opportunity to review COMDTINST M1020.8 (series).”

Second Disputed Page 7

The March 5, 2003 page 7 is the same as the above, except that it assigns the applicant a screening weight of 219 pounds. It lists her height as 65”, her wrist size as 6 3/8”, her body fat as 33%, and her age as 35.

APPLICANT’S ALLEGATIONS

The applicant stated that COMDTINST M1020.8E (Weight and Physical Fitness Standards for the Coast Guard) then in effect, required that a page 7 be prepared and placed in the military record to document the assignment of a new maximum allowable weight for a member who exceeded his or her original maximum allowable weight but who was within their required body fat percentage. The applicant stated that under the current regulation COMDTINST M1020.8F that became effective on April 27, 2006, page 7s are no longer used to document compliance with the weight and physical fitness program. Instead, the information is entered in the U.S. Coast Guard’s “Direct Access” system.

The applicant argued that having the page 7s in her record may have negatively impacted her opportunity for promotion. She stated that she was considered by the July 31, 2006 CDR selection board but was not selected for promotion. After failing to be selected for promotion, the applicant stated that several Coast Guard officers with selection board experience advised her that the page 7s may have created the false impression that she was not in compliance with the weight and physical fitness requirements. The applicant argued that because the current instruction no longer requires page 7s to document the assignment of a new maximum allowable weight and since they do not represent her current status, they should be removed from her record.

The applicant submitted a statement from Rear Admiral B who was very complimentary of the applicant’s skills and performance. The Admiral also wrote the following:

² Article 4.C.1. of COMDTINST M1020.8D stated the following: “Screening Weight. Some member’s physical makeup, primarily due to high muscle mass, puts him or her in an overweight category even though their body fat percentage is within limits. In cases such as this, upon determination that the member’s body fat is within standards, the member will be assigned a screening weight equal to the member’s weight when the body fat determination is made. This does not establish a new MAW. It is designed to avoid requiring the member to have additional body fat determinations as long as he or she does not gain additional weight . . . If the member exceeds the screening weight, he or she will be screened for a new body fat determination. If determined to be overfat, he or she shall be placed on probation [in accordance with] the standards outlined in . . . Article 3.C. with calculations based upon the member’s original MAW, not his or her screening weight.”

[The page 7s] document [the applicant's] compliance with weight and body fat standards. Based on my observations, having served on eleven promotion boards and numerous other personnel boards and panels, such documentation has not been consistent across the many records I have reviewed. In this particular case, these entries might have influence on decisions about her record and performance, when the records of [the applicant's] peers under consideration by the same board(s) might not contain any similar recording of weight and body fat compliance. In fact, the use of [page 7s] for this purpose is no longer required; the information is instead annotated through the Direct Access computerized human resource system.

Captain B also wrote a statement on behalf of the applicant. Captain attested to the applicant's skill as a Coast Guard officer. The Captain also stated that she believed the page 7 entries may be detrimental when viewed by selection board members even though they document compliance with the Commandant's weight standards. "I can only surmise that these screening weight page 7s negatively impacted [the applicant's] opportunity for selection to promotion where I imagine any discriminators may be used to help complete the challenging selection process."

VIEWS OF THE COAST GUARD

On October 18, 2007, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request. The JAG adopted the comments provided by Commander, Coast Guard Personnel Command (CGPC), as the Coast Guard's advisory opinion.

CGPC noted that the applicant was not selected for promotion to CDR in 2006, but she was selected for promotion to CDR by the July 30, 2007 selection board. In addition, CGPC noted that there are three page 7s in the applicant's record that document the assignment of a new maximum allowable weight for screening purposes. The earliest page 7 is dated September 12, 1995.

CGPC stated that COMDTINST M1020.8C promulgated on September 1, 1994, implemented the use of screening weights and the requirement for such information to be documented on a page 7. According to CGPC, the page 7 policy continued until the promulgation of COMDTINST M1020.8F, which eliminated it.

CGPC stated that while the page 7 entries regarding adjusted maximum allowable screening weights reflect an outdated policy, they were accurate and appropriate at the time of submission to the record. CGPC further stated that officers appearing before selection boards for promotion with records containing page 7s regarding adjusted maximum allowable screening weights are routinely found amongst those officers best qualified for promotion to the next higher grade. "In fact, the record reflects the applicant was selected for promotion to the grade of lieutenant and lieutenant commander with such [page 7s] as part of her official record." CGPC further stated that the applicant was selected for promotion to CDR in [calendar year 2007] with

the page 7s in her record and available to the selection board. CGPC did not recommend that the Board grant the applicant any relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 23, 2007, the BCMR sent the applicant a copy of the views of the Coast Guard for a response. The Board did not receive a response 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 submissions, 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 1997 and 2003 disputed page 7s were placed into the applicant's record in accordance with the instructions in effect at the pertinent times. In fact, Article 3.D.2 of COMDTINST M1020.8D stated that page 7s were to be prepared and placed in the military records of members who were assigned new screening weights because they were in compliance the body fat requirements, although they exceeded their maximum allowable weights. According to GCPC, this policy was in effect from 1994, until April 27, 2006, when COMDTINST M1020.8F was promulgated. Under the current instruction, adjustments to maximum allowable weights are entered into Direct Access instead of being documented on page 7s.

3. While the current regulation, COMDTINST M1020.8F, no longer requires page 7s, there is nothing in the regulation that states this change in policy is to have any retroactive effect. Therefore, each of the disputed page 7s was prepared according to the instruction in effect at that time and was properly placed into the applicant's military record.

4. Besides there being no error in the applicant's military record, her recent selection for promotion to CDR by the calendar year 2007 selection board and her earlier promotions to LT and LCDR with the page 7s in her record are persuasive evidence that there was no causal connection between the applicant's 2006 failure of selection and the page 7s.

5. Accordingly, the applicant has failed to prove an error or injustice in her military record and her request for relief should be denied.

[ORDER AND SIGNATURES APPEAR ON FOLLOWING PAGE]

ORDER

The application of XXXXXXXXXXXXXXXXXXXX USCG, for correction of her military record is denied.

Francis H. Esposito

Randall J. Kaplan

Darren S. Wall