

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 1998-072

FINAL DECISION

██████████ Deputy Chairman:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on April 2, 1998, upon the Board's receipt of the applicant's request for correction.

This final decision, dated October 8, 1998, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a ██████████ (pay grade E-4), asked the board to correct his record by removing administrative remarks (page 7) entries documenting an alcohol incident. The applicant also claimed that as a result of this entry, his eligibility for a Coast Guard Good Conduct Award was terminated.

EXCERPTS FROM RECORD AND SUBMISSIONS

The applicant stated that in 1994 he was found not guilty of driving while intoxicated in a court of law. He stated that his officer-in-charge (OIC) still issued a page 7 entry classifying the incident as an "alcohol incident." The applicant stated that "[t]his or any infraction on my record brings with it [d]ishonor and [e]mbarrassment. Leaving a [e]verlasting [b]lemish on [an] otherwise clean military career."

Three page 7 entries relating to the same alcohol incident were entered into the applicant's records. They are set out below.

On March 22, 1994, the following page 7 entry documenting the applicant's arrest was made in the applicant's record:

This is an adverse [page 7] entry for [the applicant], due to civil arrest in the state of ██████████ for DUI, making this an alcohol related incident. SNM refused to submit to a lawfully requested BAC test. As a result, SNM's driving privileges aboard Coast Guard installations are suspended for 1-year Command has scheduled an appointment for SNM for alcohol dependency screening.

On May 31, 1994, a page 7 entry was entered into the applicant's record terminating his eligibility for a Good Conduct Award. This entry stated in part:

period of eligibility for Coast Guard Good Conduct Award Terminated 94 May 31 due to unsatisfactory conduct mark as evidenced by an alcohol incident. New period of eligibility for Coast Guard Good Conduct Medal commenced 97 Jun 01.

On November 9, 1994, the final page 7 entry relating to this incident was placed in the applicant's record. It stated the following:

On 12 Apr 94 you were screened by the Navy Counseling and Assistance Center (CAAC) at [REDACTED] CAAC recommended, level I awareness training which you completed satisfactorily on 6 May 94. While you were found innocent of civil charges of driving while intoxicated, this matter remains classified as a first alcohol "incident". You shall become very familiar with chapter 20 of COMDTINST M1000.6A PERSMAN. . . .

Views of the Coast Guard

On July 9, 1998, the Board received the views of the Coast Guard written by the Chief Counsel. The Chief Counsel recommended that the Board deny relief to the applicant.

The Chief Counsel asserted that the applicant failed to allege an error or injustice or provide proof of same. He stated that the Personnel Manual (in effect in 1994), defines alcohol incident as "any behavior in which the use or abuse of alcohol is determined to be a significant or causative factor and which results in the member's loss of ability to perform assigned duties, bring discredit upon the uniformed Services, or is a violation of the Uniform Code of Military Justice (UCMJ) or federal, state, or local law. The member need not be found guilty at court martial, in a civilian court, or be awarded non-judicial punishment for the behavior in a court of law."

The Chief Counsel stated that pursuant to Articles 10-B-9b and 10-B-2a, a member must be assigned an unsatisfactory conduct mark, and thus lose his good conduct eligibility, for any alcohol incident.

The Chief Counsel stated that in a criminal court, guilt must be proved beyond a reasonable doubt. In contrast, under the Personnel Manual, an incident need not be a crime, nor must the facts of the incident be proved beyond a reasonable doubt, to establish an alcohol incident. The Chief Counsel concluded that the criminal court's finding of not guilty does not indicate that the applicant was not involved in an alcohol

incident; nor does it tend to rebut the strong presumption that applicant's OIC acted correctly, lawfully, and in good faith in documenting the alcohol incident.

Applicant's Response to the Views of the Coast Guard

On July 24, 1998, the Board received the applicant's response to the views of the Coast Guard. He stated that he understood the Coast Guard's recommendation and he did not have any objection.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's submissions, the Coast Guard's submission, the military record, and applicable law:

1. The Board has jurisdiction of this matter pursuant to Section 1552 of title 10; United States Code. The application was timely.
2. The applicant has failed to show that the page 7 entries are in error or unjust. While it may be true that a civilian court found the applicant not guilty of driving under the influence, that fact would not prevent the Coast Guard from treating the situation as an alcohol incident. The Personnel Manual in effect at that time specifically stated that to have a documented alcohol incident it was not necessary to be court-martialed or to have a civil conviction. Article 20-A-2d, Personnel Manual (Change 16). The applicant has not presented sufficient evidence to show that he was not involved in an "alcohol incident".
3. The Personnel Manual in effect at that time also permitted an unsatisfactory conduct mark due to an alcohol incident. The applicant's record contains a page 7 entry stating that the applicant's eligibility for a good conduct award had been terminated due to the unsatisfactory mark in conduct that resulted from the alcohol incident. Articles 10-B-9b and 10-B-2a, Personnel Manual. The applicant has not presented sufficient evidence to show that the unsatisfactory mark in conduct is in error or unjust.
4. The applicant has failed to establish that the Coast Guard committed either an error or injustice in this case.
5. Accordingly, the applicant's request should be denied.

ORDER

The application of
military record is denied.

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