

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 1999-143

FINAL DECISION

██████████ Chairman:

This is a proceeding under the provisions of section 1552 of title 10 and section 4254 of title 14, United States Code. It was commenced on June 30, 1999, when the applicant filed his request for relief with the BCMR.

This final decision, dated February 10, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

Applicant's Request for Relief

The applicant, an ██████████ pay grade E-6), asked the BCMR to correct his military record by deleting the negative administrative remark received by him on December 31, 1998, and a corresponding unsatisfactory conduct mark, based on an incident that occurred on November 13, 1998. He wrote that "[t]he fact of the matter is yes [he] was found legally at the limit for intoxication under [applicable] law" but his BAC level on November 13, 1998 does "not support a determination [that he was involved] in an alcohol incident." As a result, he had a conduct mark less than 4 for the 24 months pending promotion.

The applicant further alleged that deletion of these provisions would allow him "to advance to next paygrade." He questioned "why the Commanding Officer [CO] disregarded the recommendation of [his] immediate supervisor. . . [which] would not have kept him from being promoted."

Views of the Coast Guard

The Chief Counsel of the Coast Guard advised the BCMR that the CO was not "too severe" when he documented the applicant's first alcohol incident in an adverse CG-3307. The Chief Counsel found that the record did not support applicant's allegation of error or injustice."

The Coast Guard Personnel Command [CGPC] found that the applicant was stopped, on November 13, 1998, for exceeding the speed limit on a Coast Guard installation, and his BAC at that time was measured at .08% after a breathalyzer test.

On December 7, 1998, a captain's mast was held on the incident, and it was decided to consider it his first alcohol incident.

Response of the Applicant

On December 2, 1999, a copy of the views of the Coast Guard was sent to the applicant, and the applicant was notified of his right to respond to the Service's recommendations. In response, the applicant requested an extension of the deadline for submission of the applicant's additional views until December 30, 1999. On December 30, 1999, the applicant said that he does not agree with the Coast Guard's findings in the case and asked the Board to review the case on its own.

On December 30, 1999, the applicant stated that the only way the Coast Guard will make the changes requested "is to have the DUI [driving under the influence] ticket removed." The applicant could not afford to pay a lawyer to subpoena the police department records to seek the error that could change the results in his "borderline" case.

APPLICABLE REGULATION

Article 20.A.2.d., Personnel Manual, Alcohol Incident

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, brings discredit upon the Uniformed Services, or is a violation of the Uniform Code of Military Justice (UCMJ) or federal, state, or local laws. . . .

Article 5.C.5.b, Personnel Manual, Eligibility for Participation in Competition for Advancement to Pay Grade E-7

. . . 3. For 24 months . . . for the entire period from recommendation to advancement, have no unsatisfactory conduct mark, court martial (CM) or civil convictions, or non-judicial punishment (NJP). . . .

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10, United States Code. The application was timely.

2. The Coast Guard submitted evidence that the applicant was stopped while driving with a BAC of 0.08 percent. This constituted an "alcohol incident" within the meaning of Article 20.A.2.d of the Personnel Manual.

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3. The Coast Guard committed no error or injustice in barring the applicant from advancement for 2 years according to Article 5-C-4b. of the Personnel Manual. Under 5.C.5.b of that Manual, a member serving in pay grade E-6 is eligible to compete for advancement to pay grade E-7 only if he has no conduct mark less than 4 "[f]or 24 months prior to the date of recommendation, and for the entire period from recommendation to advancement."

4. The application to correct the record should be denied on the ground that the applicant has failed to meet his burden of proof.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application to correct the military record of
USCG is denied.

