

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2011-262

XXXXXXXXXXXXXX.

XXXXXXXX, MK3

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 upon receipt of the applicant's completed application on September 29, 2011, and subsequently prepared the final decision as required by 33 CFR § 52.61(c), with the assistance of staff member D. Hale.

This final decision, dated June 7, 2012, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant, a machinery technician third class (MK3), asked the Board to correct his record by removing an administrative remarks page (Page 7)¹ documenting his underage drinking. He argued that the Page 7 should be removed because he has "met the requirements for removal of the document as outlined in Article 20.B.2.j.2. of the Coast Guard Personnel Manual. The applicant stated that he has "demonstrated the utmost maturity as an Officer of the Day, Tactical Coxswain, and Boarding Officer" and "is a responsible and reliable member of the crew whose youthful indiscretion should no longer reflect in my record."

SUMMARY OF THE RECORD

On June 20, 2008, a Page 7 was placed in the applicant's record to document an alcohol incident that occurred on June 4, 2008. The Page 7 states that he had attended a party and consumed alcohol while being underage. It also notes that the applicant reported to duty more than three hours late the following morning and that "alcohol is considered to be a contributing factor" to his tardiness.

¹ A Page 7 (CG-3307 or Administrative Remarks page) documents any counseling that is provided to a service member as well as any other noteworthy events that occur during that member's military career.

On October 8, 2009, another Page 7 was placed in the applicant's record to document an alcohol-related situation that occurred on September 23, 2009. The Page 7 notes that the applicant had consumed alcohol within 12 hours prior to being on an alert duty status, in violation of a Station Seattle Standing Order.

On July 1, 2011, the applicant asked the Personnel Service Center (PSC-epm) to remove from his record the Page 7 relating to his first alcohol incident on June 4, 2008. He argued that it should be removed because the breach of conduct was a moment of indiscretion "that I have not repeated since, nor will I ever." The request was endorsed by a LT at the applicant's unit, who noted that the applicant's performance and conduct at the unit have been exemplary.

On July 25, 2011, PSC-epm disapproved the applicant's request for removal of the Page 7 relating to his first alcohol incident because the incident brought discredit upon the Coast Guard and the applicant.

VIEWS OF THE COAST GUARD

On December 29, 2011, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief, based on the analysis of the case provided in a memorandum from the Commander, PSC. The PSC recommended that relief be denied because the applicant was derelict in his duties for not reporting to work on time the next morning due to his consumption of alcohol the previous evening. PSC noted that approximately a year later the applicant was involved in an alcohol-related situation where he exercised poor judgment by consuming alcohol within 12 hours of being on alert status duty in violation of a standing command order.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 17, 2012, the Board mailed a copy of the views of the Coast Guard to the applicant and invited him to respond. The Board did not receive a response.

APPLICABLE LAW

Article 20.A.2.d. of the Coast Guard Personnel Manual states that an alcohol incident is any behavior, in which alcohol is determined, by the commanding officer, to be a significant or causative factor, that results in the member's loss of ability to perform assigned duties, brings discredit upon the Uniformed Services,² or is a violation of the Uniform Code of Military Justice, Federal, State, or local laws. The member need not be found guilty at court-martial, in a civilian court, or be awarded non-judicial punishment for the behavior to be considered an alcohol incident.

Article 20.B.2.j. of the Personnel Manual states that underage drinking is considered an alcohol incident. Subsection 2 of this provision states the following:

² To bring discredit upon the uniformed services means to injure the reputation of the service, to bring it into disrepute, or to lower it in public esteem. Manual for Courts-Martial, part IV § 60c(3).

A member who receives an alcohol incident solely for underage drinking and did not use or abuse alcohol to such an extent that he or she was unable to perform prescribed duties or brought discredit upon the Uniformed Service may, after 3 years, predicated on positive performance, request via the chain of command that Commander (CGPC) remove the alcohol incident from his or her record. Removal requires that the member has had no further alcohol incidents in that 3-year period.

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 under *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).

2. The applicant asked the Board to remove the Page 7 documenting his underage drinking from his record. He argued that his youthful indiscretion should no longer be reflected in his record. Article 20.B.2.j.2. of the Personnel Manual states that after three years and with no further alcohol incidents, a member who receives an alcohol incident solely for underage drinking and did not use or abuse alcohol to such an extent that he or she was unable to perform prescribed duties or brought discredit upon the Uniformed Service may, predicated on positive performance, request via the chain of command that PSC remove the alcohol incident from his or her record.

3. The Board agrees with the Coast Guard that the Page 7 documenting the June 4, 2008 alcohol incident should not be removed from the applicant's record because the applicant's underage drinking prevented him from performing his prescribed duties. Article 20.B.2.j.2 does not allow for the removal of an alcohol incident due to underage drinking if the incident prevented the member from performing their duties. In this case, the record shows that the applicant consumed alcohol on June 4, 2008, and was more than three hours late reporting for duty the following morning. The Page 7 documenting the incident states that alcohol was a contributing factor to his tardiness. The Board also notes that a year after his first alcohol incident, the applicant was involved in an alcohol related situation for consuming alcohol within 12 hours of being on alert duty in violation of a standing command order. Therefore, the applicant has not met the requirements for removal of the alcohol incident from his record.

4. Accordingly, the applicant's request should be denied.

ORDER

The application of MK3 XXXXXXXXXXXXXXX, USCG, for correction of his military record is denied.

Donna M. Bivona

Randall J. Kaplan

Paul B. Oman