

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 1999-152

FINAL DECISION

████████ Chairman:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The BCMR docketed this proceeding on July 16, 1999, upon receipt of the applicant's completed application, including his military records.

This final decision, dated May 18, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

REQUESTED RELIEF

The applicant asked the Board to change his unsatisfactory conduct mark to a satisfactory conduct mark so that he could be advanced to ██████████ second class ██████████.

The applicant alleged that he was scheduled to be advanced to ██████████ on January 1, 1999. Before that date, on August 20, 1998, he rescued a fellow Coast Guardsman from drowning, after he was said to have engaged in an alcohol incident. This he denied. According to him, "there was no proof of [his] consuming alcohol [and] no one admitted to seeing [him] drinking alcohol." The applicant said that other persons said he was drinking because he had repeated himself when speaking. He alleged that he was granted an unsatisfactory rating because he had had an alcohol incident and that he was not advanced because he had an unsatisfactory conduct mark.

SUMMARY OF RECORD

The executive officer of the applicant's ship, a CDR, submitted a statement under the penalties of perjury. The CDR said that the applicant approached him to tell him what had happened. The CDR testified as follows: "I recall that the applicant appeared to be intoxicated - by the smell of his breath, and his demeanor."

VIEWS OF THE COAST GUARD

On November 26, 1999, the Coast Guard Personnel Command (CGPC) concluded that the Coast Guard had committed no procedural errors, and that the Coast Guard Personnel Manual permits the assignment of an unsatisfactory conduct mark while also recommending advancement of the same individual.

On February 28, 2000, the Board received an advisory opinion from the Chief Counsel of the Coast Guard recommending that all relief be denied in this case.

The Chief Counsel stated that the applicant was brought to a captain's mast. He said that "[a]lthough the charges brought against him at Captain's Mast were ultimately dismissed, the confrontation was documented in his record as an 'alcohol incident.' As a consequence of "the documented alcohol incident" the applicant was assigned an unsatisfactory conduct mark, and his command took action to remove his name from the BM2 advancement list.

The Chief Counsel recommended to the Board that it deny relief for lack of merit and lack of proof. He also said that the applicant's use of alcohol was evidenced by the sworn statement of the executive officer that he smelled it on his breath. In addition, he noted that none of the three crewmembers who had knowledge of the events and submitted statements rebutted or offered any evidence on the applicant's use of alcohol.

APPLICABLE REGULATIONS

Personnel Manual, Art. 20.A.2.d. defines an "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, brings discredit upon the Uniformed Services, or is a violation of the Uniform Code of Military Justice (UCMJ), or federal, state, or local law."

Personnel Manual, Art. 10.B.7. provides that any member may be recommended for advancement if he is "... fully capable of performing the duties and responsibilities of the next higher pay grade."

Personnel Manual, Art. 10.B.9.b. provides that "[t]he rating chain must assign an unsatisfactory mark in conduct whenever an individual meets any of the criteria listed in Article 10.b.2.a."

The criteria in Art. 10.B.2.a. include "Alcohol incidents;"

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction of the case pursuant to section 1552 of title 10, United States Code. The application was timely.
2. The applicant had an alcohol incident on August 20, 1998, the same day he saved a fellow crewmember from drowning.
3. The applicant's command was required to assign him an unsatisfactory mark in conduct.
4. A member can be recommended for advancement even though he has an unsatisfactory mark in conduct.
5. The applicant has not shown that the Coast Guard improperly placed an "alcohol incident" on his record.
6. Accordingly, the application should be denied.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application to correct the military record of
s denied.

