

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2011-183

**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 upon receipt of the applicant's completed application on June 14, 2011, and subsequently prepared the final decision as required by 33 CFR § 52.61(c).

This final decision, dated March 16, 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 asked the Board to correct his military record by removing the September 14, 2005 administrative remarks page (page 7) documenting an alcohol incident because it is factually inaccurate. He stated that he was 24 years old at the time and therefore was not an underage drinker as the page 7 describes. The page 7 that the applicant acknowledged with his signature states the following, in pertinent part:

On August 26, 2005 you received an alcohol incident for which you were known to be "Drinking under Age." While on Liberty Status in [REDACTED], you were consuming alcohol as a minor. This is in direct violation of Commanding Officer Overseas drinking policy . . .

This is considered your first documented incident.

Additional Related Page 7

The applicant also complained about a second page 7 that resulted from the erroneous conclusion that he was consuming alcohol underage. The second page 7 is dated January 23, 2006, and states the following:

On (October 1, 2005) as a result of an alcohol incident you were evaluated by Naval Hospital [REDACTED] . . . where it was determined that you do not meet the criteria for a diagnosis of alcohol abuse or substance dependence. You have attended and completed IMPACT training. You have been advised of the contents of Chapter 20, Personnel Manual . . . concerning the expected conduct of Coast Guard personnel.

VIEWS OF THE COAST GUARD

On January 5, 2011, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended relief in accordance with a memorandum from the Commander, Personnel Service Center (PSC).

PSC recommended that the page 7 be expunged from the applicant's record because it is factually inaccurate. PSC stated that the page 7 erroneously describes the applicant, who was 24 years old at the time, as "drinking under age."

PSC stated that Article 20.A.2.d. defines an Alcohol Incident as "[a]ny 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, or is a violation of [law] . . ." PSC stated that the details of the subject page 7 fail to document an alcohol incident as defined in the Personnel Manual and should therefore be expunged from the applicant's record.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 26, 2011, the Board mailed a copy of the views of the Coast Guard to the applicant for a response. The Board did not receive a response.

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 Board agrees with the JAG that the page 7 documenting an alcohol incident on August 26, 2005, should be removed from the applicant's record because the applicant who was 24 years old at the time was not a minor and was not prohibited from consuming alcohol. The Coast Guard admitted that the applicant was over the age of 21 on the day in question and that his consumption of alcohol did not constitute an alcohol incident. Therefore, the Board finds

that the page 7 fails to describe conduct on the part of the applicant that meets the definition of an alcohol-incident.

3. The related page 7 dated January 23, 2006, documenting the results of the applicant's medical evaluation for alcohol dependence as a result of the erroneous alcohol incident should also be removed from the applicant's record. In this regard, the Board finds that since the Coast Guard has admitted that no alcohol incident occurred, there should have been no referral for a medical evaluation for alcohol dependence.

4. Accordingly, the applicant is entitled to relief.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The application of XXXXXXXXXXXXXXXXXXXX, for correction of his military record is granted. His record shall be corrected by removing the September 14, 2005 Administrative Remarks (page 7) documenting his first Alcohol Incident and the January 23, 2006 page 7 documenting the results of an alcohol abuse and dependence evaluation.

