

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2012-118

**XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX**

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 April 12, 2012, and subsequently prepared the final decision as required by 33 CFR § 52.61(c).

This final decision, dated December 21, 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 an August 6, 2003 administrative remarks page (page 7) documenting an alcohol incident and the related December 9, 2003 page 7 documenting the results of his alcohol screening. He alleged that the August 6, 2003 page 7 is factually inaccurate because he was 23 years old at the time and 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 20 July 2003, you were consuming alcohol as a minor. The station OOD received a phone call regarding an inappropriate relationship that occurred after a party that took place at FN [D's] apartment. Upon informal investigation, it was confirmed that you had indeed consumed alcohol. Michigan state law prohibits the consumption of alcohol by minors.

This is considered your first documented alcohol incident for documentation purposes . . .

Additional Related Page 7

The related page 7 is dated December 9, 2003, and states the following: "On 12 August 2003 you were screened by the Substance Abuse Rehabilitation Program (SARP) at Naval

Hospital, [REDACTED] SARP determined that you do not meet the DSM-IV diagnostic criteria for alcohol or other drug dependence or abuse at this time.”

VIEWS OF THE COAST GUARD

On September 6, 2012, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended granting relief by expunging the page 7 documenting the alcohol incident from the applicant’s record because it is factually inaccurate. The JAG stated that the page 7 erroneously describes the applicant, who was 23 years old at the time, as “drinking under age.”

The JAG stated that Article 20.A.2.d. of the Personnel Manual 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] . . .” The JAG 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. The JAG also recommended removing the December 9, 2003 page 7 documenting the applicant’s alcohol screening because it was based upon the erroneous alcohol incident documentation.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 17, 2012, the applicant responded to the views of the Coast Guard and agreed with the recommendation that his request should be granted.

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. According to Article 20.B.2.j. of the Personnel Manual (2003) underage drinking is considered an alcohol incident. In this case, the Board agrees with the JAG that the August 6, 2003 page 7 documenting an alcohol incident on July 20, 2003, should be removed from the applicant’s record because the applicant was 23 years old at the time of the alleged incident 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 December 9, 2003, 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 XXXXXXXXXXXXXXX, for correction of his military record is granted. His record shall be corrected by removing the August 6, 2003 Administrative Remarks (page 7) documenting his first Alcohol Incident and the December 9, 2003, page 7 documenting the results of an alcohol abuse and dependence evaluation.

