

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2012-193



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 case upon receipt of the application on July 25, 2012, and subsequently prepared the final decision as required by 33 C.F.R. § 52.61(c).

This final decision, dated April 25, 2013, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant asked the Board to remove from his record an administrative remarks page (page 7) dated May 16, 2008, documenting his first alcohol incident. The applicant alleged that the disputed page 7 is unjust because his command did not take the time to thoroughly investigate the incident and that "documents were not done properly and there are missing documents." The applicant explained that during this alleged alcohol incident he was helping a female friend who was being physically assaulted by a man twice her size. He stated that he was never convicted of any crime and that he did not bring discredit upon the Coast Guard. Last, the applicant argued that an Administrative Separation Board (ASB) was convened after his second alcohol incident on July 16, 2011, to recommend whether he should be retained or discharged from the Coast Guard. He stated that the ASB recommended that he be retained in the Coast Guard, but he did not submit the ASB report.¹

BACKGROUND

A May 16, 2008 page 7 stated that the applicant received an alcohol incident on April 20, 2008 because his use of alcohol was determined to be a significant factor in his arrest for battery. The page 7 stated that while the applicant was on leave on April 19, 2008, he was involved in a verbal and physical altercation outside a local bar. The page 7 documenting this incident noted

¹ The applicant did not explain why he did not submit the ASB report. However, based upon information from the Commander, Personnel Service Center, the ASB was not finalized until February 8, 2013.

that the applicant was counseled on Coast Guard policies concerning alcohol use and abuse as well as the serious nature of this incident. The applicant was advised to abstain from alcohol pending the completion of his alcohol screening and assessment. The applicant was warned that any further incidents would result in his being processed for separation from the Coast Guard.

A June 11, 2008 page 7 noted that the applicant was screened for alcohol abuse and it was determined that he did not meet the criteria for a diagnosis of alcohol abuse or substance dependency.

The applicant's military record shows that on July 16, 2011, a page 7 was placed in the applicant's record documenting a second alcohol incident. The page 7 noted that the applicant was arrested by civilian police officers for DUI. The applicant was notified that because this was his second documented alcohol incident he would be processed for separation from the Coast Guard.

The applicant submitted evidence that on January 10, 2012, his CO appointed an ASB to conduct a hearing on the applicant's proposed separation. The ASB was directed to recommend whether the applicant should be discharged from the Coast Guard, and if so, what characterization of discharge he should receive.

VIEWS OF THE COAST GUARD

On November 20, 2012, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief to the applicant. The JAG stated the following:

The application is timely. The applicant, however, has provided no evidence to suggest the investigation was faulty or lacking in any way. Additionally, the record of this incident appears complete . . . The only justification the applicant asserts for removing the alcohol incident documentation is his desire to remain in the Coast Guard. While commendable, nothing about this application "shocks the sense of justice" and requires relief. Therefore, the Coast Guard recommends that the BCMR deny relief because the applicant has not provided any persuasive evidence of an error or injustice by the Coast Guard with respect to his alcohol incident investigation or documentation.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 4, 2013, the BCMR mailed a copy of the views of the Coast Guard to the applicant. The BCMR did not receive a response to the views of the Coast Guard from the applicant.

APPLICABLE LAW

Article 20.A.2.d.1. 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 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.A.2.d.2. states that the member must actually consume alcohol for an alcohol incident to have occurred. Simply being present where alcohol is consumed does not constitute an alcohol incident. Purchasing alcohol for use by minors is not an alcohol incident, but does represent a serious breach of discipline and subjects the member to civil or military (UCMJ) penalties.

Article 20.B.2.h. states that enlisted members involved in a second alcohol incident will normally be processed for separation.

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.

2. The Board begins its analysis in every case by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust. 33 C.F.R. § 52.24(b).

3. The applicant asked the Board to correct his record by removing the May 16, 2008, page 7 documenting his first alcohol incident. He argued that the Coast Guard committed an error or injustice by placing the alcohol incident in his record without thoroughly investigating it. In this regard, he argued that during the incident he was helping a female friend who was being assaulted by a male twice her size. He also argued that documents related to his alcohol incident were not prepared properly and that some documents were missing. However, the applicant did not present evidence that the CO failed to conduct a thorough investigation into the alcohol incident, except for his own statement. Nor did he identify which documents were absent from the investigation or which documents were prepared improperly. The applicant argued that the ASB that convened after his second alcohol incident recommended that he be retained in the Coast Guard, but he did not submit a copy of the ASB report or explain how the ASB's recommendation rebuts the accuracy of the first documented alcohol incident.

4. The determination of whether an alcohol incident occurred was the responsibility of the applicant's CO. The applicant is challenging the accuracy of the CO's determination that he incurred a first alcohol incident. Under the Board's rules, the applicant has the burden of

proving error or injustice by a preponderance of the evidence and he has not submitted sufficient evidence to meet that burden.

5. Accordingly, the Board finds that the applicant has failed to prove an error or injustice in this case and it should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of [REDACTED], for correction of his military record is denied.

