

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-205

████████████████████
████████████████

FINAL DECISION

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. After receiving the applicant's completed application on September 2, 2014, the Chair docketed the case and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated May 8, 2015, 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, a first class petty officer ██████████ serving on active duty, asked the Board to remove from his record a negative CG-3307 Administrative Remarks ("Page 7"), dated March 3, 2010, documenting an "alcohol incident"¹ because he had been arrested for driving under the influence (DUI), after being seen weaving in and out of his lane. The Page 7 further states that the applicant refused a breathalyzer test and so the police administered a roadside field sobriety test instead. The applicant alleged that the Page 7 should be removed from his record because it was signed by his unit's Command Drug and Alcohol Representative (CDAR), a chief petty officer, instead of by his commanding officer (CO), and because the DUI charge was dismissed.

¹ Article 20.A.2.d.1. of the Coast Guard Personnel Manual in effect in March 2010, 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 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." U.S. Coast Guard, COMDTINST M1000.6A, Personnel Manual (Change 41, April 2010). Article 20.B.2.g. requires alcohol incidents to be documented on Page 7s: "The first time a member is involved in an alcohol incident, except those described in Article 20.B.2 f., the commanding officer shall ensure this counseling is conducted; for enlisted members recorded on a CG-3307 entry in the member's PDR." Under Article 20.B.2 h.2., "[e]nlisted members involved in a second alcohol incident will normally be processed for separation."

The applicant argued that pursuant to Article 2.B.7. of COMDTINST M1000.10,² only his CO should have signed the Page 7, and the CDAR did not have authority to do so. Regarding the dismissal of the DUI, the applicant submitted a court record showing that he was arrested for careless driving and DUI at 11:50 p.m. on February 20, 2010; that he refused to take a breathalyzer test; that he pled guilty at trial on April 13, 2010; and that about a year later, on March 15, 2011, the DUI case was dismissed, presumably because he had met certain conditions of a probationary period.

VIEWS OF THE COAST GUARD

On March 16, 2015, the Judge Advocate General (JAG) submitted an advisory opinion recommending that the Board grant relief in this case because the Page 7 was incorrectly signed by the CDAR and pursuant to PPCINST M1000.22, only the CO or Officer in Charge (OIC) of a member's unit has authority to sign an adverse Page 7 for the member.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 1, 2015, the applicant responded to the views of the Coast Guard. He agreed with the JAG's recommendation that the disputed Page 7 be removed.

APPLICABLE LAW AND POLICY

Article 1.4.3. of the Personnel and Pay Procedures Manual (PPPM), PPCINST M1000.2A (Change 14), in effect in 2010, states the following:

The CO may authorize in writing for officers, Chief Petty Officers, First Class Petty Officers, and Second Class Petty Officers to sign forms and worksheets 'by direction.' These 'by direction' authorizations must be documented, and maintained locally in an authorization file to support future audit inquiries. The authorizations are subject to the following restrictions:

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• *Only the CO/OIC may sign Adverse Administrative Remarks (CG-3307) entries. However, [p]er CG Regulations (7-I-9.F), an officer, temporarily succeeding to command may sign as acting.*

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 10 U.S.C. § 1552. Although the application was not filed within three years of the applicant's discovery of the alleged error or injustice that he wants corrected—the Page 7 dated March 3, 2010—it is considered timely because he has remained on active duty in the interim.³

² This manual did not go into effect until October 2011 and so is irrelevant to the Page 7 at issue.

³ *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 alleged that the Page 7 dated March 2, 2010, in his record, which documents his arrest for DUI, is erroneous and unjust because the case was dismissed in 2011 and because the Page 7 was signed by his unit CDAR instead of his CO. When considering allegations of error and injustice, the Board begins its analysis 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.⁴ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."⁵

3. The fact that the DUI was dismissed by the judge after a year on probation is not probative of the validity of the alcohol incident or the Page 7 documenting it. The applicant's conduct on the night of February 20, 2010, clearly met the definition of an alcohol incident in Article 20.A.2.d.1. of the Personnel Manual then in effect, and a properly signed Page 7 documenting the alcohol incident should have been entered in his record in accordance with Article 20.B.2.g. of the Personnel Manual.

4. The applicant is correct, however, that only his CO was authorized to execute the Page 7 because it was adverse. Under Article 1.4.3. of PPCINST M1000.2A in effect in 2010, only the applicant's CO had the authority to execute the Page 7 after the CDAR prepared it. The JAG has admitted that the CDAR who signed the disputed Page 7 had no authority to do so. Accordingly, the Page 7 is erroneous and should be removed from the applicant's record.

5. Accordingly, relief should be granted because the applicant has proven by a preponderance of the evidence that the disputed Page 7 was not prepared in accordance with policy and that his CDAR did not have authority to execute it.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁴ 33 C.F.R. § 52.24(b).

⁵ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

ORDER

The application of [REDACTED] USCG, for correction of his military record is granted. The Coast Guard shall remove from his record the Page 7 (CG-3307) dated March 3, 2010, which documents an alcohol incident.

May 8, 2015

