

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-072



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. The Chair docketed the case after receiving the applicant's completed application on March 3, 2015, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated December 31, 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 second class petty officer [REDACTED]/E-5) on active duty, asked the Board to remove from his record a negative CG-3307 Administrative Remarks ("Page 7"), dated December 10, 2010, documenting an "alcohol incident."¹ The applicant argued that it should be removed from his record because he received it while underage and more than three years have passed without further incidents or non-judicial punishment (NJP) in his record. He alleged that in accordance with policy, the Page 7 should have been removed from his record after three years with no further incidents or NJP. The disputed Page 7 was signed by the Executive Officer of the applicant's unit and states the following:

10 DEC 10: You received an alcohol incident when you violated the UCMJ, Art. 92 and Art. 111. When you failed to obey an order by drinking alcohol while underage and operating a vehicle. You were also arrested for driving under the influence of alcohol.

¹ Article 20.A.2.d.1. of the Coast Guard Personnel Manual in effect in December 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 42, April 2010). Article 20.B.2.g. requires an alcohol incident to be documented on a Page 7 in the member's record. Under Article 20.B.2.h.2., members who receive a second alcohol incident are normally processed for separation.

You were counseled on USCG policies concerning alcohol use and abuse as well as the serious nature of this incident. The unit CDAR has arranged an appointment with ... at HSWL Field Office It is recommended that you abstain from the use of alcohol until your screening and assessment is completed.

This is considered your first documented alcohol incident. Any further incidents will result in you being processed for separation as per Chapter 20, Personnel Manual COMDTINST M1000.6. ...

VIEWS OF THE COAST GUARD

On August 20, 2015, the Judge Advocate General (JAG) submitted an advisory opinion recommending that the Board deny relief and adopting the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC stated that under applicable policy, if a member receives an alcohol incident based *solely* on underage drinking, the Page 7 documenting the alcohol incident may be removed from the member's record after three years of good conduct. However, PSC stated, the disputed alcohol incident was not based solely on underage drinking because the alcohol incident also involved the applicant's driving while impaired and arrest for DUI. Therefore, PSC argued, the policy that authorizes the removal of alcohol incidents based solely on underage drinking does not apply to the disputed Page 7 and there are no grounds for removing it. PSC noted that the Page 7 should have been signed by the unit's Commanding Officer, instead of the Executive Officer, but that if the Page 7 were removed, the applicant's "past negative performance would not be properly documented."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 21, 2015, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to submit a written response within thirty days. No response was received.

APPLICABLE LAW AND POLICY

Article 20.B.2.g. of the Personnel Manual in effect in December 2010 states the following:

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; acknowledged by the member; and a copy sent to Commander (CGPC-epm) and (CGPC-adm-3). For officers the record of counseling shall be by letter with copy to Commander (CGPC-opm) and (CGPC-adm-3). This entry is in addition to that required by Article 20.B.2.e.

Article 20.B.2.j. of the Personnel Manual in effect in 2010 and Article 2.B.10.b. of the current Drug and Alcohol Abuse Program Manual, COMDTINST M1000.10, state that underage drinking constitutes an alcohol incident and also state the following:

Removal of Alcohol Incident from Record. A member who receives an alcohol incident solely for underage drinking and did not use or abuse alcohol to such an extent that he or she was unable to perform prescribed duties or brought discredit upon the Uniformed Services may, after 3 years, predicated on positive performance, request via the chain of command that Commander [Personnel Service Center] remove the alcohol incident from his or her record. Removal requires that the member has had no further alcohol incidents in that 3-year period.

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. The applicant is considered timely because the applicant has remained on active duty.²

2. The applicant alleged that the Page 7 dated December 10, 2010, in his record should be removed pursuant to policy because he did not incur any additional alcohol incidents or receive NJP during the subsequent three-year period. 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.³ Absent evidence to the contrary,

² *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).

³ 33 C.F.R. § 52.24(b).

the Board presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”⁴

3. The Board finds that the Coast Guard policy allowing the removal of Page 7s documenting alcohol incidents received solely due to underage drinking is inapplicable to the disputed Page 7 in this case. Article 20.B.2.j. of the Personnel Manual in effect in 2010 and Article 2.B.10.b. of the current manual state that “[a] member who receives an alcohol incident *solely* for underage drinking” (emphasis added) and does not bring discredit upon the Coast Guard may request removal of the Page 7 documenting the alcohol incident after three years⁵ The text of the disputed Page 7, however, shows that the alcohol incident was awarded not only for underage drinking but for being arrested for DUI in violation of State law, which brought discredit on the Uniformed Services. Therefore, the Coast Guard did not commit error or injustice when it refused to remove the Page 7 three years after the applicant’s alcohol incident.

4. The Coast Guard noted that under PPCINST M1000.2A (Change 14), in effect in 2010, the CO should have signed the Page 7, instead of the XO. The Page 7 is definitely negative in nature and so should have been signed by the CO or by the XO with the “acting” notation under his signature pursuant to Article 1.4.3. of PPCINST M1000.2A. The XO signed it but did not include the “acting” notation, and whether he was actually acting as the CO at that moment is not in the record. Nevertheless, after the applicant was arrested for DUI, the entry of the Page 7 in his record was required by Article 20.B.2.g. of the Personnel Manual, which states, “The first time a member is involved in an alcohol incident ..., the commanding officer shall ensure this counseling is conducted; for enlisted members recorded on a CG-3307 entry in the member’s PDR;” This more specific alcohol-incident policy requires the CO to “ensure” that the Page 7 is entered in the member’s record but does not expressly require the CO to sign it. In light of both policies and the circumstances of this case, the Board is not persuaded that the inclusion of the disputed Page 7 in the applicant’s record constitutes an error or injustice.

5. Accordingly, relief should be denied because the applicant has not proven by a preponderance of the evidence that the disputed Page 7 documenting his arrest for DUI while underage is erroneous or unjust.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁴ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁵ See COMDTINST M1000.6A (Change 42), Article 20.B.2.j., and COMDTINST M1000.10, Article 2.B.10.b.

ORDER

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

December 31, 2015

