

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2015-142**

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**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 July 1, 2015, and assigned the case to staff member ██████████ to prepare the decision as required by 33 CFR § 52.61(c).

This final decision, dated May 13, 2016, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST**

The applicant, a ██████████ asked the Board to correct his military record by removing an administrative remarks page (Page 7)<sup>1</sup> which was placed in his record on December 14, 2012, to congratulate him on successfully completing "your N/A after care plan as per Chapter 2, Health and Promotion Manual, COMDTINST M6200.1 (series)." He stated that the Page 7 should be removed because it states that he must abstain from alcohol indefinitely, but that he was not diagnosed with an alcohol problem or required to complete any aftercare program. The applicant alleged that requiring him to indefinitely abstain from alcohol is not a requirement for members with no alcohol diagnosis and no requirement for treatment, and that such a requirement is not in line with Commandant policy.

**SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard on January 25, 2011, and began active duty on March 22, 2011. On December 5, 2012, the applicant's command entered the following Page 7 in his record, which is not the disputed Page 7 in this case. It documents the fact that the applicant incurred an "alcohol incident" on December 4, 2012, when he was arrested for DUI by

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<sup>1</sup> A Page 7 (CG-3307, or Administrative Remarks) entry documents any counseling that is provided to a service member as well as any other noteworthy events that occur during that member's military career.

local police after a breathalyzer test showed a BAC of 0.10. The Page 7 notes that he would be screened for alcohol abuse and that any further alcohol incidents would result in his being processed for discharge.

In addition, on December 14, 2012, two Page 7s were placed in his record regarding the December 4, 2012, alcohol incident. The first Page 7, (P&D-20)<sup>2</sup> states that he was screened by a provider on December 10, 2012, who determined that he met the criteria for a diagnosis of “no diagnosis” as per DSM IV and was not recommended for further treatment. The lower half of the Page 7 includes language regarding treatment and instructions to abstain from alcohol, but several fields are marked “N/A” indicating that the applicant was not required to receive any further treatment. It also documents that the applicant had been advised of the contents of the Coast Guard Drug and Alcohol Abuse Program regarding the policy for alcohol incidents and the continued care plans available for members with alcohol abuse problems.

The second Page 7 (P&D-16) dated December 14, 2012, congratulates the applicant on successfully completing his “N/A after care plan as per Chapter 2, Health Promotion Manual, COMDTINST M6200.1 (series).” It also states that he must abstain from alcohol indefinitely.

### **APPLICABLE LAW**

Chapter 1.A.2.d. of the Coast Guard Drug and Alcohol Abuse Programs Manual, COMDTINST M1000.10, states that an “alcohol incident” is “any 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.”

Chapter 2.B.7. of the Manual provides that an “alcohol incident” must be documented in a member’s record on a Page 7.

Chapter 2.B.5. of the manual provides that the results of an alcohol screening shall be recorded and acknowledged on a Page 7 and placed in the member’s PDR.

### **VIEWS OF THE COAST GUARD**

On November 17, 2015, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant partial relief, based on the analysis of the case provided in a memorandum from the Commander, PSC.

PSC argued that the December 14, 2012, Page 7 (P&D-20) should not be removed from the applicant’s record because the Coast Guard Drug and Alcohol Abuse Program Manual states that a Page 7 shall be placed in a member’s record to document screening in accordance with the procedures outlined in the Coast Guard Health Promotion Manual. PSC stated that the applicant

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<sup>2</sup> Performance and Discipline.

was screened following his alcohol incident and the results were properly recorded on the December 14, 2012, Page 7 (P&D-20). PSC noted that in 2014, the Commandant issued ALCOAST 390/14, which states that screening documentation should be placed in the medical record only but provides that the new rule has no retroactive effect on past record entries. Therefore, PSC argued, ALCOAST 390/14 is inapplicable to the applicant's 2012 Page 7s.

PSC argued that the applicant's December 14, 2012, Page 7 (P&D-20) should remain in his PDR but recommended that the portion of the December 14, 2012, Page 7 (P&D-20) that refers to the applicant's treatment plan should be removed because the applicant was not prescribed or awaiting treatment. Neither PSC nor the JAG addressed the applicant's request that the December 14, 2012, Page 7 (P&D-16) be removed from his record.

### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On November 24, 2015, 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.

2. The applicant argued that the December 14, 2012, Page 7 (P&D-16) should be removed from his record because it contains an erroneous instruction that he permanently abstain from alcohol. He noted that his alcohol screening resulted in no diagnosis, which required no aftercare, and so the instruction that he permanently abstain from alcohol is not in line with Coast Guard policy. 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). 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." *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

3. The record shows that the applicant had a documented alcohol incident on December 4, 2012, as defined by Chapter 1.A.2.d. of the Drug and Alcohol Abuse Programs Manual, but after screening the Coast Guard determined that he required no further treatment. Although he did not require any further treatment, the Coast Guard placed two Page 7s (P&D-20 and P&D-16) in his record on December 14, 2012, to document that he had been screened, did not have a diagnosis, had successfully completed his "N/A" aftercare plan, but had to abstain from drinking alcohol indefinitely.

4. The Board finds that the December 14, 2012, Page 7 (P&D-16) which instructed the applicant to abstain from alcohol indefinitely is erroneous and should be removed from his record. It should be removed because the applicant was not diagnosed as alcohol dependent or required to complete an aftercare plan and so he was not required to abstain from drinking alcohol indefinitely.<sup>3</sup> Moreover, documentation of the fact that he was screened and other information on this Page 7 is included in the text of the other Page 7 dated December 14, 2012 (P&D-20), which was also prepared to document the results of his screening. Chapter 2.B.5. of COMDTINST M1000.10 requires that one Page 7 documenting the results of screening be placed in the member's record, not two redundant Page 7s. Because the Page 7 dated December 14, 2012 (P&D-20) states that the applicant was screened, had no diagnosis, and was counseled about the Coast Guard's Drug and Alcohol Abuse Program, it provides sufficient documentation that the applicant was properly counseled following his alcohol incident. The Page 7 (P&D-16) is erroneous and redundant and so should be removed.

5. PSC analyzed the December 14, 2012, Page 7 (P&D-20) and argued that it should remain in his record but that the portion referring to the pre-treatment plan should be removed because the applicant was never awaiting or prescribed treatment. The Board agrees. Chapter 2.B.5. of COMDTINST M1000.10 provides that the results of an alcohol screening shall be recorded and acknowledged on a Page 7 and placed in the member's PDR. The December 14, 2012 (P&D-20) Page 7 properly documents the result of the applicant's screening, but it also references a treatment plan, which is not applicable because the applicant was not required to undergo a treatment plan. Accordingly, the following portion of the Page 7 should be removed:

You will receive your treatment at N/A, which begins at N/A.

Until you begin treatment, you shall adhere to a pre-treatment plan, which will consist of the following (alcohol dependent is mandatory, alcohol abusive if recommended by screening facility).

- a. Abstaining from consuming alcohol. Any further use of alcohol until you complete treatment and your support plan will lead to further disciplinary action.
- b. You will meet with your CDAR once a week, at a time to be agreed on by both of you, for monitoring and support.
- c. You must attend at least 2 support group meetings (e.g. Alcoholics Anonymous or other HSWL approved support group) each week.

6. The applicant has proven by a preponderance of the evidence that his record contains errors which should be corrected. Accordingly, his record should be corrected by removing the December 14, 2012 (P&D-16) Page 7 in its entirety and correcting the December 14, 2012 (P&D-20) Page 7 by removing the language quoted in finding 5 above as recommended by PSC.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

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<sup>3</sup> Only those members diagnosed as alcohol-dependent must abstain from alcohol use to maintain sobriety. Chapter 2.B.12. of the Coast Guard Drug and Alcohol Abuse Program Manual.

**ORDER**

The application of [REDACTED] USCG, for correction of his military record is granted as follows: The December 14, 2012 (P&D-16) Page 7 (CG-3307) shall be removed from his record, and the December 14, 2012 (P&D-20) Page 7 shall be corrected by removing the following language:

You will receive your treatment at N/A, which begins at N/A.

Until you begin treatment, you shall adhere to a pre-treatment plan, which will consist of the following (alcohol dependent is mandatory, alcohol abusive if recommended by screening facility).

- a. Abstaining from consuming alcohol. Any further use of alcohol until you complete treatment and your support plan will lead to further disciplinary action.
- b. You will meet with your CDAR once a week, at a time to be agreed on by both of you, for monitoring and support.
- c. You must attend at least 2 support group meetings (e.g. Alcoholics Anonymous or other HSWL approved support group) each week.

May 13, 2016

