

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-048



FINAL DECISION

This is a proceeding under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case upon receipt of the applicant's completed application on January 14, 2016, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated August 26, 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 AND ALLEGATIONS

The applicant, a [REDACTED] on active duty, asked the Board to correct his record by removing a CG-3307 ("Page 7") dated December 19, 2012. The Page 7 is noted to be of the type "Performance and Discipline (P&D-15)" and was signed by the applicant's commanding officer (CO) and acknowledged by the applicant. It states the following:

On 15 December 2012, you were involved in an alcohol-related situation^[1] where alcohol was a contributing factor but not considered a significant or causative factor. On 16 December 2012, you were administered [sic] to ... Medical Center. Your consumption of alcohol did not impact your ability to perform your prescribed duties, however the psychological stressors in your life and a unique factor in your medical anatomy, combined with the alcohol consumption rendered you in a precarious physical state requiring the medical attention. You were

¹ Article 2.B.4. of COMDTINST M1000.10 defines an "alcohol-related situation" as "any situation in which alcohol was involved or present but was not considered a causative factor for a member's undesirable behavior or performance. A member does not have to consume alcohol to meet this criterion, e.g., purchasing alcohol for minors. ... Members involved in alcohol related situations shall be counseled on their use of alcohol and informed of the conduct expected of Coast Guard members. Commanding officers are strongly encouraged to consider whether screening and/or alcohol awareness training such as IMPACT is appropriate. Commanding officers shall document such occurrences with an appropriate Administrative Remarks, Form CG-3307, entry filed in the member's Personnel Data Record (PDR)."

counseled on Coast Guard policies concerning alcohol consumption and work-life programs.

You have been directed to contact EAP [Employee Assistance Program] to obtain assistance with stress management in a healthy manner and are directed to meet with CAPT ... at the Air Station ... Medical Clinic who will determine the nature of your relationship with alcohol. You are directed to abstain from consumption of alcohol until your screening and assessment is completed.

This is not considered an alcohol incident,^[2] but it is entered for documentation purposes only. You have been advised of the contents of [the Coast Guard Drug and Alcohol Abuse Program Manual, COMDTINST M1000.10] concerning the conduct expected of Coast Guard personnel.

The applicant argued that the Page 7 should be removed because it contains medical information and does not meet the criteria for disciplinary or punitive action. He stated that the Page 7 documents a medical issue, which should only appear in his medical record, not in his personnel file. Moreover, neither alcohol nor stress was shown to be a contributing factor. In addition, he argued that the Page 7 implies that he required alcohol rehabilitation and received treatment, but this was not the case.

The applicant noted that pursuant to Chapter 7.G.1.a.(2) of the Coast Guard Health Promotion Manual, when there has been no disciplinary problem and no alcohol or drug incident has occurred, documentation of a referral for screening should be maintained only in the member's medical record, not in his personnel data record (PDR). The applicant stated that at the time, he was unaware that he had a medical condition that might be exacerbated by consuming alcohol, and he would not have consumed alcohol had he known.

In support of his allegations, the applicant submitted a copy of Chapter 7.G.1.a.(2) of the Health Promotion Manual and a letter from the Executive Officer (XO) of the cutter for which the applicant was the Engineering Officer in 2012. The XO explained that in December 2012, the applicant was transported to a hospital emergency room due to abdominal pain. An investigation showed that the applicant had drunk alcohol earlier that day, but his consumption of alcohol "was not the contributing issue as it was a previous medical condition that contributed to the state of pain." The XO stated that he and the CO counseled the applicant to ensure that there were no other underlying issues and to ensure that the applicant would consult EAP due to "concern about his potential stress from the emergency dry dock." The XO stated that the Page 7 was not prepared to document any negative performance or misconduct by the applicant. The XO stated that the Page 7 should be removed from the applicant's PDR.

² Article 1.A.2.d. of COMDTINST M1000.10 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."

VIEWS OF THE COAST GUARD

On June 23, 2016, the Judge Advocate General (JAG) submitted an advisory opinion in which he adopted the findings and analysis of the case provided in an attached memorandum prepared by the Personnel Service Center (PSC) and recommended that the Board grant relief.

PSC noted that pursuant to Article 2.B.4. of COMDTINST M1000.10 in effect in 2012, a CO could document an “alcohol-related situation” (as distinguished from an “alcohol incident”) when “alcohol was involved or present but was not a causative factor for a member’s undesirable behavior or performance.” Members were to be counseled on a Page 7 and could be referred for alcohol screening, and this Page 7 was to be entered in the member’s record. PSC noted, however, the regulations allowing documentation of “alcohol-related situations” were abolished in March 2014 pursuant to ALCOAST 104/14.

PSC stated that the XO’s statement on behalf of the applicant shows that the matter was investigated and documented as an “alcohol-related situation” because the applicant had drunk alcohol sometime before the ambulance was called due to his abdominal pain. PSC stated that relief should be granted because although alcohol was consumed by the applicant, his consumption was “completely unrelated to [his] need to receive emergency medical attention.” Therefore, PSC argued, the incident did not require documentation on a Page 7 as an alcohol-related situation because there was no “undesirable behavior or performance” that resulted from the applicant’s consumption of alcohol that day.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 28, 2016, the applicant responded to the Coast Guard’s advisory opinion and agreed with the recommendation for relief.

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 (when he was presented the Page 7 in December 2012), it is considered timely because he has continued serving on active duty in the interim.³

2. The applicant alleged that the Page 7 in his record documenting an alcohol-related situation constitutes an error and injustice. In 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

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).

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. Although the applicant did not reveal the medical condition that sent him to the hospital in December 2012, the CO wrote on the Page 7 that “the psychological stressors in your life and a unique factor in your medical anatomy, combined with the alcohol consumption rendered you in a precarious physical state requiring the medical attention.” The CO also wrote that “alcohol was a contributing factor but not considered a significant or causative factor.” The applicant and the XO now claim that alcohol was not diagnosed as a contributing factor and so his trip to the hospital did not meet the criteria for an “alcohol-related situation.” PSC agreed and also argued that there was no alcohol-related situation because there was no “undesirable behavior or performance” that resulted from the applicant’s consumption of alcohol that day.

4. A member drinking so much alcohol that he required a trip to the hospital would surely constitute an “alcohol incident,”⁶ but having an underlying, undiagnosed medical condition discovered due to abdominal pain on a day when one has drunk some alcohol does not appear to meet the definition of either an “alcohol incident” or an “alcohol-related situation.” The former requires that the consumption of alcohol be a significant or causative factor in a member’s misconduct or embarrassing behavior, and the latter requires that alcohol be somehow involved in a member’s “undesirable behavior or performance.” The regulation gives buying alcohol for minors as an example of such “undesirable behavior or performance,” and the following examples of documented “alcohol-related situations” appear in past BCMR cases: ignoring misconduct by drunken subordinates during a morale event (2015-078); drinking alcohol while in alert duty status (2011-262); arrest for public drunkenness (2006-063); reporting for duty late after drinking alcohol and having difficulty performing duty with the smell of alcohol on one’s breath (2004-036); and providing alcohol to and having sexual contact with a minor (1999-161). In light of these examples, the Board agrees with the Coast Guard that having to go to the hospital due to abdominal pain caused by a previously unknown medical condition does not warrant documentation of an “alcohol-related situation” even if medical wisdom indicates that the pain might have been exacerbated by one’s consumption of alcohol that day.

5. Accordingly, the applicant’s request should be granted.

(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).

⁶ *See, e.g.*, BCMR Docket No. 2006-086

ORDER

The application of [REDACTED], USCG, for correction of his military record is granted. The Coast Guard shall remove from his record the CG-3307 dated December 19, 2012, concerning an alleged alcohol-related situation on December 15, 2012.

August 26, 2016

