

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-208



FINAL DECISION

This is a proceeding 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 September 10, 2016, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated June 23, 2017, 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 chief [REDACTED] (E-7) on active duty, asked the Board to remove from his record an Administrative Remarks form (CG-3307 or "Page 7")¹ dated February 27, 2001, documenting an "alcohol-related situation"² and the results of his alcohol screening.³

¹ An Administrative Remarks record entry, form CG-3307, is better known as a "Page 7" and is used to document a member's notification of important information, achievements, or positive or negative aspects of a member's performance in the member's military record.

² Article 20.B.2.d. of the Personnel Manual in effect in 2001 states the following about "alcohol-related situations":

An alcohol-related situation is defined 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. Commands shall not use the term "alcohol related situations" when a member's behavior clearly meets the criteria of an "alcohol incident." 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 (CG- 3307) entry in the member's Personnel Data Record (PDR). Documentation of alcohol-related situations provides commands with significant background information for determining whether any administrative or medical action is necessary.

³ Article 20.B.2.e. of the Personnel Manual provides that any member involved in an alcohol incident or showing signs of alcohol abuse shall be screened, and the results of the screening shall be recorded on a Page 7.

The applicant alleged that he received the Page 7 because he had been caught drinking alcohol while underage.⁴ The applicant noted that under Article 2.B.10.b. of the current Drug and Alcohol Abuse Program Manual, COMDTINST M1000.10, “alcohol incidents”⁵ awarded solely for underage drinking may sometimes be removed. That article states 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 (CG PSC) 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. [The applicant did not include the final sentence when he quoted this provision.]

The applicant alleged that in 2011, he asked the Personnel Service Center (PSC) to remove the alcohol-related situation from his record, and his request was granted. However, when he was applying for an appointment to chief warrant officer (CWO) in 2016, he noticed that only one of two Page 7s that documented the alcohol-related situation had been removed from his record. He stated that the first Page 7, documenting just the alcohol-related situation, was removed from his record, but the second, documenting both the alcohol-related situation and the results of his screening, was not removed. The applicant stated that he has transferred units twice since 2011 and no longer has a copy of PSC’s approval letter, and PSC has no copy of it either.

The applicant stated that in 2016, he submitted another request for removal of the alcohol-related situation from his record, but his request was denied. He was advised to apply to the BCMR. The applicant stated that the remaining Page 7 is adversely affecting the likelihood of his selection for CWO and asked the Board to remove it. To support this request, the applicant submitted a copy of the Page 7 dated February 27, 2001, which he wants the Board to remove. It is included in the Summary of the Record below.

SUMMARY OF THE RECORD

The applicant’s record shows that he enlisted in the Coast Guard on October 17, 2000, at age 18. The disputed Page 7 was issued at age 19, when he had completed recruit training but was attending [REDACTED] “A” School at the training center in [REDACTED]. It states the following:

⁴ Article 20.B.2.j. of the Personnel Manual states, “Underage drinking is considered an alcohol incident,” but does not necessarily require screening if it is a first incident. It also states that a second incidence of underaged drinking shall result in discharge proceedings.

⁵ Article 20.A.2.d. of the Personnel Manual defines an “alcohol incident” as “[a]ny behavior, in which the use or abuse of alcohol is determined to be a significant or causative factor and which 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 (UCMJ) or 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 (NJP) for the behavior to be considered an alcohol incident. However, the member must actually consume alcohol for an alcohol incident to have occurred.” 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.

27 FEB 01: As a result of an alcohol situation, you were sent to ... Medical Center on 12 FEB 01 for an alcohol screening and no diagnosis was determined. You attended Impact [training] at [REDACTED] [REDACTED] and successfully completed training on 21 FEB 01.

This is not considered an alcohol incident, but is entered for documentation purposes only as an alcohol situation as outlined in Article 20.B.2.d. of the Personnel Manual, COMDTINST M1000.6 (series).

You have been advised of the contents of Article 20-B-2, Personnel Manual, COMDTINST M1000.6 (series) concerning the expected conduct of Coast Guard personnel and the treatment plans available for those who have problems with substance abuse.

The applicant's record also contains the following Page 7s regarding alcohol use:

- A Page 7 dated January 9, 2002, states that the applicant had been arrested for driving under the influence (DUI) by local authorities on December 22, 2001, while still underage. He had been involved in a single-car accident at 1:58 a.m., when his vehicle left the road and plunged into a river. His blood alcohol content had measured 0.16%, which was twice the legal limit in that State. The Page 7 states that the applicant had been counseled about alcohol policies and the seriousness of the incident, which was his "first alcohol incident." The Page 7 advised the applicant that any further alcohol incident or consumption of alcohol as a minor might result in his discharge.
- A Page 7 dated January 23, 2002, states that the applicant received an unsatisfactory conduct mark based on his receipt of non-judicial punishment (NJP) at mast that day.
- A Page 7 dated January 31, 2002, states that just a month before the applicant had been arrested for DUI on December 22, 2001, he been on liberty with a shipmate who received a severe, disabling head injury as a result of intoxication. The Page 7 states that the applicant's commanding officer (CO) had concluded that the applicant could not learn from others' mistakes or make responsible decisions regarding alcohol consumption. Therefore, the CO ordered the applicant not to drink alcohol in any form for the remainder of his tour of duty aboard the cutter or until he attained age 21, including times when he was on liberty or leave or assigned temporarily to other units no matter what the legal drinking age was in those jurisdictions. The CO stated that breaking this direct order would result in a violation of the Uniform Code of Military Justice and documentation of the applicant's second alcohol incident, which would result in his being processed for discharge due to alcohol abuse.
- A Page 7 dated March 6, 2002, states that the applicant was not recommended for advancement on his performance evaluation dated January 23, 2002, because he had received NJP because of an alcohol incident. The Page 7 states that a six-month probationary period would end on June 23, 2002.

- A Page 7 dated April 19, 2002, states that the applicant had successfully completed an alcohol-impact course. He was encouraged to participate in an aftercare program, such as Alcoholics Anonymous.

VIEWS OF THE COAST GUARD

On March 16, 2017, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case and adopted the findings and analysis in a memorandum on the case prepared by PSC.

PSC summarized the facts of the case and noted that under Article 2.B.10.a. of COMDTINST M1000.10, underage drinking constitutes an alcohol incident and requires screening. PSC noted that the applicant claims that his February 2001 alcohol-related situation involved only underage drinking. PSC stated that only the one, disputed Page 7 documenting the applicant's alcohol-related situation in February 2001 can be found in his records. PSC stated that the alcohol-related situation should have been documented in more detail on a Page 7, and no documentation with more detail can be found. However, PSC noted, there is also no documentation supporting the applicant's claim that PSC approved the removal of the 2001 alcohol-related situation from his record.

PSC recommended that the Board deny relief because under Article 2.B.10.b. of COMDTINST M1000.10, documentation of an alcohol incident based solely on underage drinking may only be removed if the member has no further alcohol incident in a three-year period. PSC pointed out that the applicant's record contains a Page 7 documenting an alcohol incident he incurred on December 22, 2001—within the three-year period—when he was arrested for DUI. PSC argued that the applicant therefore does not qualify for removal of the disputed Page 7. PSC argued that the fact that a Page 7 with a more detailed description of the alcohol-related situation cannot be found in the applicant's record does not justify removing the disputed Page 7.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 1, 2017, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within thirty days. No response was received.

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 submission, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application is timely because the applicant has remained on active duty since he received the disputed Page 7.⁶

⁶ The application was received more than three years after the disputed Page 7 was entered in the applicant's record, but under *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994), section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940 "tolls the BCMR's [3-year] limitations period during a servicemember's period of active duty."

2. The applicant alleged that the Page 7 dated February 27, 2001, in his record is unjust and should be removed pursuant to Article 2.B.10.b. of COMDTINST M1000.10 because the sole basis for the alcohol-related situation was underage drinking. When considering allegations of error and injustice, the Board begins its analysis in every case by presuming that the disputed Page 7 is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that it is erroneous or unjust.⁷ Absent evidence to the contrary, the Board presumes that a member's military records have been prepared "correctly, lawfully, and in good faith."⁸

3. Article 2.B.10.b. of COMDTINST M1000.10 states that following three years of positive performance and no further alcohol incident, a member's Page 7 documenting an alcohol incident based solely on underage drinking may be removed from the member's record. Because members are processed for discharge following a second alcohol incident,⁹ the policy in Article 2.B.10.b. reduces the number of members who must be processed for discharge based on one incidence of underage drinking plus one other alcohol incident more than three years later.

4. The disputed Page 7 does not document an alcohol incident, but an alcohol-related situation and alcohol screening. Article 2.B.10.b. of COMDTINST M1000.10 does not mention or apply to alcohol-related situations. In this regard, the Board notes that Coast Guard policies do not require separation processing for alcohol-related situations, no matter how many are incurred, so removing Page 7s documenting alcohol-related incidents from members' records would not serve an apparent purpose of the policy in Article 2.B.10.b. The Board further notes that Page 7s documenting alcohol screening and alcohol-related situations were authorized by Articles 20.B.2.d. and 20.B.2.e. of the Personnel Manual in effect in 2001.

5. Assuming, *arguendo*, that the disputed Page 7 resulted from underage drinking, the applicant's underage drinking should have been documented as an alcohol incident, rather than an alcohol-related situation.¹⁰ However, if it had been documented as an alcohol incident, the applicant would have been processed for discharge following his arrest for DUI in December 2001, which would have been his second alcohol incident.¹¹

6. The applicant argued that the disputed Page 7 should be removed from his record because he applied for its removal pursuant to Article 2.B.10.b. of COMDTINST M1000.10, his request was approved, and he believes that the Page 7 is harming his chances for an appointment to CWO. The Coast Guard argued that the disputed Page 7 should not be removed because there is no evidence showing that PSC approved its removal and because Article 2.B.10.b. would not apply since the applicant incurred an alcohol incident for DUI about a year after he received the disputed Page 7.

⁷ 33 C.F.R. § 52.24(b).

⁸ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁹ COMDTINST M1000.10, Article 2.B.8.b.

¹⁰ COMDTINST M1000.6A (Change 33), Article 20.B.2.j.

¹¹ *Id.* at Article 20.B.2 h.2.

7. The provisions for removing an alcohol incident under Article 2.B.10.b. of COMDTINST M1000.10 do not apply to the disputed Page 7 both because the Page 7 documents an alcohol-related situation, rather than an alcohol incident, and because, even if it did document an alcohol incident, the applicant's incurrence of a second alcohol incident a year later would make him ineligible for removal of the disputed Page 7 under Article 2.B.10.b. Therefore, and given the lack of evidence supporting some of the applicant's claims, the Board finds that that the applicant has not proven by a preponderance of the evidence that the disputed Page 7 constitutes an error or injustice in his record.

8. Accordingly, the applicant's request for relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

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

June 23, 2017

