

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2017-027**

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**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 November 10, 2016, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated July 28, 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, currently a ██████████ on active duty, asked the Board to correct her record by removing an adverse CG-3307 ("Page 7") dated June 21, 2016, and another dated June 24, 2016. She also asked the Board to backdate her advancement to ██████ retroactively to July 15, 2016, and award her back pay and allowances.

The applicant explained that in June 2015, she received non-judicial punishment (NJP) from the commanding officer (CO) of her cutter for three counts of disobeying a direct order on May 20, 2015. The applicant stated that the CO of the cutter never awarded her an "alcohol incident"<sup>1</sup> for the conduct for which she received this NJP. However, about a year later, she served as a "key witness in a court martial case that revolved around that exact same time frame. During this investigation, I admitted that I had drunk underage during my time onboard [the cutter] and once [when] I was at Training Center Petaluma" for ██████ "A" School to advance to ██████. The

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<sup>1</sup> 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." Pursuant to Article 2.B.8.b., "members involved in a second alcohol incident will normally be processed for separation," and a member's CO may request retention of the member if there are mitigating or exceptional circumstances. However, pursuant to Article 2.B.9., "members involved in a third alcohol incident shall be processed for separation."

applicant stated that as a result of this admission, her training was suspended and her recommendation for advancement to [REDACTED] was withdrawn. In addition, on June 24, 2016, an alcohol incident for her underage drinking on May 20, 2015, was documented in her record on a Page 7. The applicant alleged that this Page 7 dated June 24, 2016, is erroneous and unjust because the CO of the cutter who had awarded her NJP for the same incident had not documented her underage drinking as an alcohol incident in 2015.

The applicant also argued that according to policy, only the CO [REDACTED] tive officer (XO) of the Training Center have the authority to sign a negative or adverse Page 7 and that a chief warrant officer (CWO), who was the acting Administration Department Head at the time, signed the Page 7 dated June 24, 2016, and was neither the CO or XO [REDACTED] the Training Center and so did not have authority to sign it. The applicant noted that she [REDACTED] received a Page 7 signed by the XO on June 24, 2015, which she is not challenging, and it did not document an alcohol incident.

The applicant also alleged that the Page 7 documenting the alcohol incident is erroneous because COMDTINST M1000.10, the Coast Guard Drug and Alcohol Abuse Program Manual, requires the determination of an alcohol incident to be made by a CO, but the CWO signed the Page 7. In addition, she noted that a Page 7 documenting underage drinking should “state the circumstances of the incident and whether the consumption affected the member’s ability to perform assigned duties or brought discredit upon the Uniformed Services” but neither disputed Page 7 does so.

The applicant alleged that as a result of these two Page 7s, the Training Center [REDACTED] mmand erroneously and unjustly withdrew her advancement to [REDACTED]. Therefore, she argued, the two Page 7s should be removed and her date of rank as a [REDACTED] should be backdated to July 15, 2016.

In support of her allegations, the applicant submitted copies of her records and policies, which are included in the summaries below.

### SUMMARY OF THE RECORD

The applicant enlisted on February 9, 2015; attended recruit training; and was assigned to a cutter from April 8, 2015, to April 23, 2016.

On May 30, 2015, while assigned to the cutter, the applicant was charged with three counts of violating Article 92 of the Uniform Code of Military Justice (UCMJ) by failing to obey an order or regulation. The Report of Offense states that in April and May 2015, she had engaged in sexual activity while aboard the cutter. Moreover, she had done so with a crewmember. The Court Memorandum documenting the NJP notes that the Discipline and Conduct Manual and the cutter’s policy, which the applicant had acknowledged by signature upon reporting for duty, prohibit both sexual activity aboard the cutter and sexual activity with another crewmember (anywhere). The investigator recommended that the charges be disposed of at mast.

At mast on June [REDACTED] 2015, the applicant’s CO awarded her restriction to base for 45 days with extra duties as NJP for violating a lawful order or regulation.

On June [REDACTED] 2015, the CO documented the applicant's NJP on a Page 7 on which he noted the charges and placed [REDACTED] on performance probation for six months for misconduct. He noted that he could initiate discharge proceedings if she failed to make sufficient progress or effort.

On April 24, 2016, the applicant reported to the Training Center to attend [REDACTED] "A" School.

On June 13, 2016, a master chief who was the [REDACTED] School Chief signed a Page 7 for the applicant informing her that she had been "suspended in training from [REDACTED] Class "A" School due to pending NJP. You will report to the Chief, Customer Support Center who will determine your assignment."

On June 21, 2016, when the applicant was attending [REDACTED] "A" School at the Training Center, she acknowledged receiving a Page 7 that states that she had undergone alcohol screening as a result of the alcohol incident on May 20, 2015, and that she "should report the results of your screening to future unit Commands/Command Drug and Alcohol Representatives (CDARs)." It also states that she had been counseled about the Coast Guard's alcohol policies and "continued support plans." This Page 7 is signed by a CWO "by direction."

On June 24, 2016, the applicant acknowledged receipt of another Page 7 signed by the CWO "by direction." It states the following:

[REDACTED]  
24 JUN 2016: You received an alcohol incident on 20 May 2015 when you consumed alcohol before the age of 21, a violation of the Uniform Code of Military Justice. During an interview with [REDACTED] Guard Investigative Service on 18 April 2016 you admitted that while in ... during [REDACTED] cutter's] port call from 19 – 21 May 2015 you knowingly consumed alcohol while [REDACTED] being underage.

You were counseled on Coast Guard policies concerning alcohol use and abuse as well as the serious nature of this incident. The unit Command Drug and Alcohol Representative (CDAR) will arrange an appointment with a provider who will determine the nature of your relationship with alcohol. Consumption of alcohol beverages while under age 21 is prohibited for all Coast Guard military members on active duty.

This is considered your first documented alcohol incident. Any further incidents may result in you being processed for separation, in accordance with Chapter 2 of the Coast Guard Drug and Alcohol Abuse Program, COMDTINST M1000.10 (series).

Also on June 24, 2016, the applicant and the CO of Military Personnel at the Training Center signed the following Page 7:

24 JUN 2016: Effective this date your recommendation for advancement upon graduation from [REDACTED] "A" School is withdrawn for the following reasons:

While at [REDACTED] "A" School, TRACEN Petaluma became aware of the following violations of the Uniform Code of Military Justice and Coast Guard core values that occurred during your tour onboard [the cutter]:

In May 2015, you were not truthful with a preliminary inquiry officer regarding your underage drinking during an investigation into inappropriate relations during a port call. As a result of the investigation, you were awarded non-judicial punishment in June 2015 for inappropriate relations with another member of the crew.

On 04 March 2016, you were once again not truthful with Coast Guard Investigative Service (CGIS) investigators while they were investigating a sexual assault case that occurred in a port call (involving same port call as above case).

On 18 April 2016, you admitted to lying to CGIS regarding your underage drinking during the port call.

These violations reflect poorly on your performance and character as a member of the Coast Guard. Further lack of adherence to the Coast Guard core values may result in additional disciplinary action.

You have met all course completion requirements to successfully graduate [REDACTED] "A" School. However, as a result of your actions, you will not graduate as a Third Class Petty Officer. Instead, you will depart Training Center Petaluma as an [REDACTED] [which denotes a seaman with a [REDACTED] designator in pay grade E-3].

On June 17, 2016, the applicant completed [REDACTED] "A" School and earned the designator to become an [REDACTED]

On July 15, 2016, the applicant reported for duty at another base. She advanced from [REDACTED] to [REDACTED] a few weeks later, on August 25, 2016.

### VIEWS OF THE COAST GUARD

On March 16, 2017, 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 deny relief.

PSC recommended that the Board deny relief and noted that the applicant does not contest the fact that in 2016 she admitted that she drank alcohol while underage in 2015. Therefore, PSC argued, her command at the Training Center appropriately documented her underage drinking as an alcohol incident after discovering it in 2016. Although the applicant argued that the disputed Page 7s are erroneous and unauthorized because they were not signed by the CO, PSC stated that pursuant to paragraph 8 of COMDTINST 1000.14C, the Commandant's policy for Administrative Remarks [REDACTED] which was issued on June 4, 2015, adverse Page 7s may be signed "by direction" by officers other than the CO.

Regarding the applicant's allegation that the Page 7 documenting the alcohol incident fails to meet the requirements of Article 2.B.7.c. of COMDTINST M1000.10, by not describing "the circumstances of the incident and whether the consumption affected the member's ability to perform assigned duties or brought discredit upon the Uniformed Services," PSC stated that the omission of the language does not invalidate the CO's finding that she had incurred an alcohol incident or negate the fact that the applicant incurred an alcohol incident, which must be documented in her record on a Page 7.

Regarding the applicant's claim that the disputed Page 7s are unjust because the CO of the cutter decided not to award her an alcohol incident in 2015, PSC argued that the claim is baseless because the applicant had admitted to consuming alcohol underage, which constitutes an alcohol incident according to policy.

PSC noted that the Page 7s are presumptively correct and completed lawfully and in good faith and argued that the applicant has not submitted sufficient evidence to overcome the presumption.

In adopting PSC's recommendation to deny relief, the JAG explained further that under paragraph 8.h. of COMDTINST 1000.14C, "Commanding Officers (including Commanding Officers of Enlisted or Military Personnel) may delegate this authority further, either to specific individuals or positions, provided such delegations are documented in writing via memorandum or unit instruction," and that under this provision the CO of the Training Center or the CO of Military Personnel at the Training Center were authorized to delegate to the CWO.

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

On May 2, 2017, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited her to respond within thirty days. No response was received.

### **APPLICABLE POLICY**

Article 1.A.2.d. of COMDTINST M1000.10, the Coast Guard Drug and Alcohol Abuse Manual, provides the following definition of an alcohol incident (emphasis added):

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.

Article 1.A.2.f. of COMDTINST M1000.10 states, "As used in this chapter, 'commanding officer' includes commanders, commanding officers, and officers-in-charge."

Article 2.B.7.c. of COMDTINST M1000.10 states, "If the incident involves underage consumption, the Administrative Remarks, Form CG-3307, shall also state the circumstances of the incident and whether the consumption affected the member's ability to perform assigned duties or brought discredit upon the Uniformed Services. (See Article 2.B.10. of this Manual.)"

Article 2.B.10. of COMDTINST M1000.10, titled “Underage Consumption of Alcohol,” states the following:

- a. General. Underage drinking is considered an alcohol incident. Should an incident occur, the CDAR shall counsel the member and initiate an alcohol screening as detailed in reference (a), Coast Guard Health Promotion Manual, COMDTINST M6200.1 (series). If this is not the member’s first incident, discharge proceedings shall commence as described in Article 2.B.6. and 2.B.8. of this Manual.
- b. 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.

Article 2.B.5.a. of COMDTINST M1000.10 states that “[a]ny member who has been involved in an alcohol incident or otherwise shown signs of alcohol abuse shall be screened in accordance with the procedures outlined in reference (a), Coast Guard Health Promotion Manual, COMDTINST M6200.1 (series), Ch 2, ... The results of this alcohol screening shall be recorded and acknowledged on an Administrative Remarks, Form CG-3307, entry or letter, as appropriate, in the member’s PDR.”

Coast Guard Training Center Petaluma Instruction 5216.3P, which the applicant relied on, is dated June 18, 2014, and concerns “Authority to Sign Correspondence and Release Materials.” It follows guidance published in COMDTINST 1000.14B, which was superseded on June 4, 2015, by COMDTINST 1000.14C. Training Center Petaluma Instruction 5216.3P includes the following paragraphs:

1. PURPOSE. This instruction delegates authority to sign correspondence and release messages.
2. ACTION. Those personnel authorized to sign “by direction” shall ensure compliance with this instruction. Internet release is authorized.
3. DIRECTIVES AFFECTED. CG TRACENPETINST 5216.3O is cancelled.
4. DISCUSSION. Efficiency and accountability are strengthened when correspondence is issued at the lowest organizational level, consistent with the need for coordination and discretion. Correspondence signed by a staff member validly acting for the Commanding Officer has the same legal effect as if signed by the Commanding Officer.
5. DISCLAIMER. This guidance is not a substitute for applicant legal requirements, nor is it itself a rule. It is intended to provide operational guidance for Coast Guard personnel and is not intended to nor does it impose legally-binding requirements on any party outside the Coast Guard.
6. DELEGATION.
  - a. Executive Officer. The Executive Officer is authorized to sign any correspondence and release any message except:
    - (1) Matters addressed to higher authority relating to the mission or efficiency of the Training Center.

- (2) Matters which are required by law or regulation to be personally signed by the Commanding Officer.
  - (3) Sign adverse Administrative Remarks (CG-3307) entries. However, per CG Regulations (7-1-9.F), an officer, temporarily succeeding to Command may sign as acting; and
  - (4) Other matters ...
- b. Other Personnel. Subject to the same restrictions imposed on the Executive Officer, the following personnel may sign official correspondence and release messages.

PSC relied on paragraph 8 of COMDTINST 1000.14C, the Commandant's policy for Administrative Remarks, which was issued on June 4, 2015, and states the following (emphasis added):

f. Deputy/Assistant Commandants and Commanding Officers may sign Administrative Remarks, Form CG-3307 entries. In addition, the following may sign Administrative Remarks, Form CG3307 entries, unless the authority to sign is explicitly withheld by a superior authority:

- (1) Personnel designated as Commanding Officers of Enlisted or Military Personnel.
- (2) Officers in the grade of commander or higher.
- (3) Officers in Charge.
- (4) Executive Officers.
- (5) Executive Petty Officers.
- (6) Sector Logistics Department Heads.
- (7) District or Sector Senior Reserve Officers.
- (8) Base Personnel Support Department Heads.
- (9) Civilian deputies in Senior Leadership positions at the following commands: Health Safety Work-Life (HSWL), Security Center Chesapeake (SECCEN), National Pollution Funds Center (NPFC) and Finance Center (FINCEN).

g. Commanding Officers may delegate this authority to other commissioned officers, either specific individuals or positions, provided such delegations are documented in writing via memorandum or unit instruction.

h. Except as limited in paragraph (i) below, Deputy/Assistant Commandants and Commanding Officers (including Commanding Officers of Enlisted or Military Personnel) may delegate this authority further, either to specific individuals or positions, provided such delegations are documented in writing via memorandum or unit instruction.

i. This Instruction is intended to provide requirements for Coast Guard personnel when issuing Administrative Remarks, Form CG-3307. Failure to follow the procedures established therein is not intended to limit the admissibility of such documents at judicial or administrative proceedings. The rules of evidence will govern admissibility of the documents at such proceedings.

j. Authorized personnel may issue Administrative Remarks, Form CG-3307, documentation for incidents within two years of the date of the incident, or within two years of the date that the command knew, or should have known, about the incident.

k. The following additional restrictions apply to Administrative Remarks, Form CG-3307 entries:

- (1) Officers will not delegate authority to sign negative Administrative Remarks, Form CG-3307s, below the Department Head level.
- (2) No enlisted member, other than an Officer in Charge or an Executive Petty Officer, will be authorized to sign negative Administrative Remarks, Form CG-3307 entries.

## 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 application is timely.

2. The applicant alleged that two Page 7s in her record documenting an alcohol incident and alcohol screening and the delay of her advancement to [REDACTED] are erroneous and unjust. 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 preponderance of the evidence that the disputed information is erroneous or unjust.<sup>2</sup> 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."<sup>3</sup>

3. The applicant argued that the documentation of a 2015 alcohol incident, incurred while she was assigned to a cutter, by her next command in 2016 was erroneous and unjust because her CO in 2015 had not awarded her an alcohol incident. Under paragraph 8.j. of COMDTINST 1000.14C, however, a Page 7 may be issued up to two years after the incident in question or within two years of when the member's command discovers the incident. According to the Page 7 signed by the CO of Military Personnel on June 24, 2016, the applicant lied about drinking alcohol while underage in 2015 but admitted that she had done so in 2016, and there is no evidence in the record showing that the CO of the cutter knew that she had been drinking alcohol while underage in 2015. Therefore and because underage drinking is *per se* an alcohol incident under Article 2.B.10.a. of COMDTINST M1000.10, the Board finds that the applicant has not proven by a preponderance of the evidence that the decision of her new command in 2016 to document her underage drinking in 2015 as an alcohol incident was either erroneous nor unjust.

4. The applicant argued that the disputed Page 7s should be removed because only a CO can sign a Page 7 documenting an alcohol incident because the definition of an alcohol incident at Article 1.A.2.d. of COMDTINST M1000.10 states that the CO determines whether one has occurred. She also argued the CWO, who was serving as the acting Administration Department Head on June 24, 2016, had no authority to sign the disputing Page 7s. However, the Page 7s were presumptively prepared "correctly, lawfully, and in good faith,"<sup>4</sup> Under COMDTINST 1000.14C, which was in effect at the time, base personnel support department heads can sign Page 7s and Commanding Officers of Military Personnel may delegate the authority further in writing. Paragraph k.(1) of the instruction shows that the authority to sign Page 7s may not be delegated below the department head level, but the CWO, who signed the Page 7s "by direction," was the acting Administration Department head at the time. Moreover, if the applicant believed that the CO of Military Personnel at the Training Center—who signed another very critical Page 7 the same day

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<sup>2</sup> 33 C.F.R. § 52.24(b).

<sup>3</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

<sup>4</sup> *Id.*



documenting the fact that the applicant had lied about underage drinking—did not authorize the alcohol incident, she could have submitted a request chit to appeal the Page 7, but there is no evidence that she did. The Board finds that the applicant has not proven by a preponderance of the evidence that the alcohol incident was not authorized by the CO (or “determined” as stated in Article 1.A.2.d.) or that the CWO improperly signed the Page 7s “by direction.”

5. The applicant argued that the Page 7 documenting the alcohol incident should be removed because it does not contain specific language stating the circumstances of the incident and whether her consumption affected her ability to perform her duties or brought discredit on the Coast Guard, as required by Article 2.B.7.c. of COMDTINST M1000.10. The Board finds that the Page 7 dated June 24, 2016, does adequately describe the circumstances of the alcohol incident (underage drinking during a port call) but does not clearly state whether she could perform her duties or brought discredit on the Coast Guard, although a reader could certainly infer from the text of the Page 7 that the applicant was able to perform her duties and did not bring discredit on the Coast Guard because it notes only that she drank while underage during a port call and this fact was not known until she admitted it in 2016. The applicant alleged that she is prejudiced by the omission of this information but did not explain why. However, Article 2.B.7.c. refers the reader to Article 2.B.10. to explain this requirement. Article 2.B.10.b. states that 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.” Therefore, the purpose of the language required in Article 2.B.7.c. is to allow a member to request removal of the Page 7 after three years, and the Board agrees with the applicant that the Page 7 documenting her alcohol incident should clearly state whether her underage drinking caused her to be unable to perform her duties or brought discredit to the Coast Guard. The appropriate remedy for this deficiency is not removal of the applicant’s alcohol incident, however; the appropriate remedy is adding the following sentence to the Page 7 so that if she does not incur another alcohol incident in three years she can request the removal of her first one: “Your underage consumption of alcohol did not render you unable to perform your duties or bring discredit on the Uniformed Services.” The Board considers this relief appropriate because there is no evidence showing that the applicant’s underage drinking in 2015 rendered her unable to perform her duties or brought discredit on the Coast Guard and because it is in the applicant’s interest to have this sentence added to the Page 7 so that she will be able to request the removal of her first alcohol incident after three years if she incurs no further alcohol incident.<sup>5</sup>

6. The Board notes that the applicant also requested removal of the Page 7 dated June 21, 2016, which documents her alcohol screening. Under Article 2.B.5.a. of COMDTINST M1000.10, however, the entry of this Page 7 in her record to document her alcohol screening was

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<sup>5</sup> The Board notes that the applicant stated that she also admitted to the investigator that she had drunk alcohol while underage while assigned to the Training Center in 2016, which could have been documented as a second alcohol incident, which would likely have resulted in her discharge pursuant to Article 2.B.8.b. of COMDTINST M1000.10. Apparently, the CO of Military Personnel decided not to award her two alcohol incidents for underage drinking based on her admissions.



**ORDER**

The application of [REDACTED], USCG, for correction of her military record is denied but the following alternative relief is granted:

The Coast Guard shall correct her record so that the CG-3307 dated June 24, 2016, documenting her first alcohol incident includes the following sentence: “Your underage consumption of alcohol did not render you unable to perform your duties or bring discredit on the Uniformed Services.”

July 28, 2017

