

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-063

████████████████████
██████████ SKC

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the completed application on January 20, 2018, and prepared the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated October 19, 2018, 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, an Chief Storekeeper on active duty, asked the Board to correct his record by removing a Page 7 documenting an alcohol incident dated January 17, 2004. The applicant argued that it should be removed because it states that it was his second alcohol incident even though there is no documentation of a first alcohol incident in his record. He stated, “While I did receive an alcohol incident on 6 JAN 04, there was no prior AI [alcohol incident].”

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard at age 19 on February 7, 2001. His military record contains the following documentation:

- A Court Memorandum dated January 6, 2004, states that at a mast proceeding under Article 15 of the Uniform Code of Military Justice, the applicant was found to have been drunk and disorderly and to have committed simple assault while on liberty on December 28, 2003, and that he had repeatedly struck a junior member and brought discredit on the Coast Guard. He was awarded non-judicial punishment (NJP) including 45 days of restriction with extra duties, forfeiture of half his pay for two months, and reduction in pay grade from E-5 to E-4.
- A Page 7 dated January 17, 2004, notes that the applicant received NJP at mast on January 6, 2004, for assault and being drunk and disorderly. The Page 7 also states, “This is your

second serious incident involving alcohol. This is considered your second alcohol incident for documentation purposes. As outlined in Chapter 20 of the Personnel Manual, COMDTINST M1000.6 (series), you are being processed for separation from the U.S. Coast Guard due to continued alcohol abuse.” The Page 7 is signed by the Executive Officer of the applicant’s unit and by the applicant himself. There is no Page 7 documenting a prior alcohol incident in his record, however.

- A Page 7 dated January 30, 2004, states that the applicant had been screened for alcoholism at a naval rehabilitation center but was not diagnosed as being alcohol dependent.

VIEWS OF THE COAST GUARD

On May 29, 2018, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant partial relief in this case.

The JAG stated that because there is no documentation of a prior alcohol incident in the applicant’s record, the Page 7 documenting the alcohol incident on December 28, 2003 should be amended by removing the language regarding a second alcohol incident and replacing it with the prescribed language for a first alcohol incident: “This is considered your first alcohol incident for documentation purposes. As outline in Chapter 20 of the Personnel Manual, COMDTINST 1000.6 (series), you are advised that you have been involved in your first alcohol incident and a subsequent incident normally will result in separation from the U.S. Coast Guard due to continued alcohol abuse.”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 13, 2018, the Chair sent the applicant a copy of the Coast Guard’s views and invited him to respond within 30 days. No response was received.

APPLICABLE REGULATIONS

Article 20.A.2.d. of the Personnel Manual in effect in 2003 and 2004 defines an alcohol incident as:

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 20.B.2.g. states that a first “alcohol incident” shall be documented in an enlisted member’s PDR on a Page 7. Article 20.B.2.h. states that a second “alcohol incident” shall be document in an enlisted member’s PDR on a Page 7 and the member shall “normally be processed for separation” due to alcohol abuse in accordance with Article 12.B.16.

Enclosure (6) to the Personnel and Pay Procedures Manual in effect at the time required Page 7s documenting alcohol incidents to include a brief description of the incident, advise the member that he would be screened for alcohol dependency, and end with prescribed language:

- For a first alcohol incident: “This is considered your first documented alcohol incident. Any further alcohol incidents will result in you being processed for separation as per Chapter 20, Personnel Manual COMDTINST M1000.6 (series).”
- For a second alcohol incident: “This is considered your second alcohol incident for documentation purposes. As outlined in Chapter 20 of the Personnel Manual, COMDTINST M1000.6 (series), you are being processed for separation from the U.S. Coast Guard due to continued alcohol abuse. You are advised that you may be eligible for further alcohol treatment by the Department of Veterans Affairs in the future.”

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 was timely.¹

2. The applicant alleged that the Page 7 dated January 17, 2004, is erroneous and unjust and should be removed from his record because it purports to document a second alcohol incident even though there is no documentation of a first alcohol incident in his record. When 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.² 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.”³

3. The Page 7 dated January 17, 2004, states that the alcohol incident for which the applicant had been punished at mast on January 6, 2004, was his “second serious incident involving alcohol” and includes the final paragraph prescribed for second alcohol incidents by the Personnel and Pay Procedures Manual. The Page 7 was signed by the Executive Officer of cutter and by the applicant, and the applicant did not challenge the accuracy of the Page 7 for more than fourteen years. Moreover, the applicant did not deny having incurred the alcohol incident and the Court Memorandum documenting his NJP supports his receipt of an alcohol incident for his drunk and disorderly conduct on December 28, 2003. The Board is not persuaded that the disputed Page 7

¹ *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).

² 33 C.F.R. § 52.24(b).

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

should be removed from the applicant's record. However, because there is currently no Page 7 documenting a first alcohol incident in his record, the Board finds that the disputed Page 7 should be amended to show that it documents his first alcohol incident, instead of his second.

4. Accordingly, partial relief should be granted by directing the Coast Guard to redact the sentence, "This is your second serious incident involving alcohol," from the second paragraph of the disputed Page 7 and by replacing the final paragraph with the one prescribed for first alcohol incidents in Enclosure (6) of the Personnel and Pay Procedures Manual then in effect.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of SKC [REDACTED], USCG, for correction of his military record is granted in part. The Coast Guard shall correct the Page 7 (CG-3307) dated January 17, 2004, in his record by—

- (a) redacting the first sentence of the second paragraph (“This is your second serious incident involving alcohol.”); and
- (b) removing the final paragraph, which concerns a second alcohol incident, and replacing it with the following paragraph:

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

No other relief is granted.

October 19, 2018

