

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-213

████████████████████
██████████ IS1

FINAL DECISION

This is a proceeding under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case upon receipt of the applicant’s completed application on September 14, 2018, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 6, 2019, 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 intelligence specialist, first class (IS1/E-6) on active duty, asked the Board to correct his record by removing a negative CG-3307 (“Page 7”) dated November 6, 2012, which documents an “alcohol incident.”¹ He explained that he “never thought much about this because I was an E-4. Later in life I started applying for PD jobs so I went to [the city police] HQ to gather information from when I was shortly detained at a football game. I was ran through all their systems & fingerprinted & they told me I was never booked for public drunkenness as the Page 7 stated. My name was also spelled incorrect on the USCG Page 7.”

The applicant alleged that he discovered the error in his record on June 17, 2015, and that the Board should consider the case on the merits because he never knew that he could appeal the Page 7. He stated that he now wants to apply to Officer Candidate School and other law enforcement jobs and does not want the incorrect information on the Page 7 preventing him from getting a job.

In support of his claim, the applicant submitted a document dated June 17, 2015, from the city and county police department entitled “Record Clearance,” which states that a search of the

¹ 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.”

department's records "did not disclose any criminal record" and that this finding was verified by his fingerprints. It further states that it "does not preclude the possibility of arrests or warrants outside the jurisdiction."

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on April 21, 2009. The disputed Page 7,² which was signed by the applicant's commanding officer (CO) and acknowledged by signature by the applicant, states the following:

06 November 2012: On this date, you received an alcohol incident when your consumption of alcohol on 24 October 2012 was determined to be a significant and causative factor in your detention by the [city] Police Department ... – an incident which brings discredit upon the United States Coast Guard. Specifically, per [a Letter Incident Report dated 01 November 2012], while attending a professional sports event, you consumed three beers and were involved in a verbal altercation with third party civilians. When the [police] arrived on scene, you became angry when they declined to provide you a personal escort and were booked for being drunk in public. You were released from county jail when sober.

I am concerned about the nature of your relationship with alcohol and direct that you be screened to identify the nature of that relationship. You will report to the unit CDAR immediately to schedule an alcohol screening.

This is considered to be your first documented alcohol incident. Any further incidents will result in you being processed for separation per [the Coast Guard Drug and Alcohol Abuse Program Manual, M1000.10].³

At the bottom of the Page 7, the fourth and fifth letters of the applicant's first name appear in reverse order.

The applicant also received a disciplinary Enlisted Evaluation Report (EER) on November 7, 2012, on which he received good marks of 5 in some ratings (on a scale from 1 to 7), but low marks of three for Setting an Example, Customs and Courtesies, Health and Well-Being, Integrity, and Judgment, an Unsatisfactory conduct mark, and a mark of Not Recommended for Advancement. These low marks were supported by the following comments:

- "Displayed careless behavior involving an alcohol incident."
- "Failed to meet minimum standards of sobriety. On 14 October 2012, member was involved in an off-duty altercation leading to an alcohol incident. Member was detained by [city] Police for public intoxication."

² Article 2.B.7. of COMDTINST M1000.10 states that when a member incurs a first alcohol incident, the CO shall ensure that the incident is recorded on a Page 7 in the member's record and that the member is counseled about alcohol abuse policy, screened, and advised that incurring a second alcohol incident will normally result in separation action.

³ Article 2.B.8. of COMDTINST M1000.10 states that after a second documented alcohol incident, officers shall be processed for separation and enlisted members are "normally processed for separation" unless there are mitigating circumstances, their CO requests their retention, and Commandant agrees to retain them.

- “Member shaded the truth by reporting he was involved in an off-duty altercation on 14 October 2012 where he requested police assistance for his own personal protection. A police report later obtained indicated he was detained for public intoxication.”
- “Based on an administrative investigation of a reported altercation on 14 October 2012, member displayed poor judgment by consuming alcohol at a public event resulting in an altercation and subsequent detainment by local police for public intoxication.”
- “UNSATISFACTORY: This is an adverse supporting remarks entry for [the applicant]. On 14 October 2002, member was involved in an off-duty altercation leading to an alcohol incident. Member was detained by [city] Police for public intoxication.”
- “NOT RECOMMENDED: Due to a recent alcohol incident, [the applicant] has demonstrated that he is not capable of satisfactorily performing the duties and responsibilities of the next higher pay grade.”

VIEWS OF THE COAST GUARD

On February 1, 2019, 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 stated that the record shows that the applicant was issued the Page 7 documenting the alcohol incident in his record because he was detained by the city police after drinking beer and becoming involved in a verbal altercation, which “resulted in being booked for being drunk in public.” He was released after he became sober. PSC stated that this conduct meets the definition of an alcohol incident in COMDTINST M1000.10, and the applicant has “failed to show an error or injustice occurred” when his CO issued the Page 7.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 14, 2019, the applicant responded to the Coast Guard’s advisory opinion and disagreed with it. He stated that he has proven that he was not “booked for being drunk in public” as the Coast Guard claimed. He stated that the claim that he was drunk was also untrue. He stated that it was he himself who told the police that he had drunk three beers, which “would in no way, shape, or form make me ‘drunk’.” In addition, he denied that his consumption of alcohol had been a significant or causative factor in his behavior. He claimed that “[t]he only reason the USCG or the [police department] are even aware of anything happen[ing] is due to my integrity to bring light on this issue.” He alleged that he was forced to sign the Page 7 in acknowledgment even though he did not agree with it.

The applicant stated that the Coast Guard only learned about what had happened, which was not an arrest or alcohol incident, because he told them. The applicant stated that the football game was “very heated” and there

were signs all over the monitors to call security/police if an incident should occur. I was a visiting fan and was worried about my safety leaving the stadium and somehow I am punished by the USCG which has prevented promotion. [The football stadium] has had numerous stabbings, shootings, and beatings of visiting fans. My request after people putting their hands on me and verbally assaulting

me all game was not a [un]reasonable one. I was following stadium orders. It was much easier for them to detain me, a visiting fan, than the group of unruly hooligans harassing me. ... It is unfortunate that someone in command at that unit had it out for me otherwise this would never ha[ve] made it this far. I have seen DUI's get swept under the rug, yet somehow I am being punished for something that I did to protect myself.

The applicant submitted links to news stories about violent fans at the stadium and stated that they show why he requested police presence, including the following:

- In 2011, fights broke out after a preseason game and two men were shot in the football stadium parking lot. One was wearing a t-shirt that said, "F--- the [home team]."
- Also in 2011, a 66-year-old man stated that he was attacked by three men at the football stadium and left before the game began with three missing teeth, a concussion, and a black eye after he tapped the shoulder of the man in front of him and asked him to sit down. The accused claimed that the complainant had begun the physical part of the altercation, and his son tried to intervene to protect his father.
- In September 2013, a teenage boy was attacked in the parking lot after he urinated in a man's car. He suffered a concussion, a broken arm, and a broken nose. In addition, a woman stated that she was kicked and punched by another fan. The article notes that "[s]ecurity was increased at the stadium two years ago after two shootings, a beating and fights broke out during a preseason game."
- In December 2013, the police increased security by 50% for the final game in the stadium, which was to be torn down, because they thought fans would try to steal parts of the stadium.
- A 2014 newscast reported that the football fans in that city were arrested more often at home games than the football fans of a nearby city.

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 November 2012), it is considered timely because he has continued serving on active duty in the interim.⁴

2. The applicant alleged that the Page 7 in his record documenting an alcohol incident 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 preponderance

⁴ *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).

of the evidence that the disputed information is erroneous or unjust.⁵ 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.”⁶

3. Although the applicant alleged that the circumstances of the incident did not meet the definition of an alcohol incident, the Board disagrees. 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.”⁷ There is no requirement that a member have drunk a particular amount of alcohol or that the member have a particular blood alcohol content to incur an alcohol incident. The applicant admitted that he had drunk alcohol before his arrest, and the preponderance of the evidence shows that he became angry with the police and was arrested for public drunkenness. The applicant alleged that his conduct was reasonable in light of prior incidents of violence at the stadium, but the police clearly did not think so, and the reference to the letter report shows that the command conducted an investigation before determining that he had incurred an alcohol incident and “shaded the truth” about it. The fact that the applicant was released after he became sober without being formally charged by the state’s attorney does not persuade the Board that he did not violate local law or bring discredit upon the Uniformed Services. Therefore, the Board cannot conclude that his CO erred in finding that the applicant had incurred an alcohol incident, which must be documented in a member’s record on a Page 7.⁸

4. The applicant complained that the Page 7 states that he was “booked for being drunk in public” even though, three years later, the police department retained no “criminal record” of the incident that could be found through an electronic search with his fingerprints. But the fact that he had no “criminal record” does not mean that he was never “booked.” In legal language, to “book” someone means to “record the name of (a person arrested) in a sequential list of police arrests, with details of the person’s identity (usu. including a photograph and a fingerprint), particulars about the alleged offense, and the name of the arresting officer.”⁹ But in lay terms, to “book” someone means “to enter charges against in a police register”¹⁰ or “to enter (a name) in a police register for an alleged offense.”¹¹ Therefore, to find that the applicant had not been “booked,” as stated on the Page 7, the Board would have to assume that, although he was detained in jail until he was sober, the police failed to enter his name and why he was detained in any register. The Board would also have to assume that his command or the investigator misunderstood what had happened. But there must have been some such police documentation of the applicant’s name and alleged offense because the command’s investigation revealed facts about the applicant’s conduct

⁵ 33 C.F.R. § 52.24(b).

⁶ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁷ COMDTINST M1000.10, Article 1.A.2.d.

⁸ COMDTINST M1000.10, Article 2.B.7.; *see* BCMR Docket No. 2006-063 (upholding alcohol incident following arrest for public drunkenness).

⁹ BLACK’S LAW DICTIONARY, 11th Ed. (Thomas Reuters, 2019), *available in Westlaw*.

¹⁰ MERRIAM-WEBSTER, *see* <https://www.merriam-webster.com/dictionary/book> (last viewed September 5, 2019).

¹¹ OXFORD ENGLISH DICTIONARY, 2nd Ed., Vol. II (Clarendon Press, 1991), p. 396.

that made the command conclude that the applicant had “shaded the truth” about the incident. Therefore, although the police searched their electronic records in 2015 and could find no record of the applicant’s arrest, the Board finds that he has not proven by a preponderance of the evidence that the inclusion of the word “booked” in the Page 7 constitutes an error or injustice.

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

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of IS1 [REDACTED] USCG, for correction of his military record is denied.

September 6, 2019

