

**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. 2019-016**

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██████████ DCC

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**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 after receiving the applicant's completed application on October 20, 2018, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated November 1, 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, a chief damage controlman (DCC/E-7) on active duty, asked the Board to remove from his record an Administrative Remarks form (CG-3307 or "Page 7")<sup>1</sup> dated January 23, 2006, which documents the results of alcohol screening.

The applicant alleged that the disputed Page 7 mentions a prior alcohol incident<sup>2</sup> but misdates it as having happened on September 19, 2005. The applicant stated that he received no alcohol incident on September 19, 2005, and so the disputed Page 7 "can be interpreted as a second alcohol incident." He stated that a yeoman reviewing his record recently asked him if he had incurred two alcohol incidents. Therefore, he argued, the disputed Page 7 could cause him to not be advanced, to not be selected for appointment to chief warrant officer, or to be found ineligible to reenlist.

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<sup>1</sup> 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.

<sup>2</sup> Article 20.A.2.d.1. of the Coast Guard Personnel Manual (COMDTINST M1000.6A) then in effect 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." Article 20.B.2.h. states that following a second alcohol incident, officers must be discharged and enlisted members "will normally be processed for separation."

## SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on September 3, 2002, at age 18. Following recruit training, he was assigned to a large cutter and earned the DC3 rating.

On a Page 7 dated July 15, 2004, the applicant acknowledged receipt of the following counseling about his first alcohol incident:<sup>3</sup>

You have been referred to the unit CDAR [Command Drug and Alcohol Representative] this date concerning an incident involving your intemperate use of an alcohol beverage. On 11 JUL 04, you were arrested for operating a motor vehicle while under the influence of alcohol. You submitted to a breath analysis test and your BAC was determined to be above the legal limit to operate a motor vehicle. In addition, you are under the legal age limit to drink alcoholic beverages.

[Chapter 20 of the Personnel Manual, COMDTINST M1000.6 (series)] defines both offenses – driving while intoxicated and under aged drinking as alcohol incidents. In accordance with Chapter 20-B-2-g of [the Personnel Manual], it has [been] determined that your behavior caused discredit, not only to yourself, but also to the United States Coast Guard, and will not be tolerated.

You have been counseled on USCG policies concerning alcohol use and abuse as well as the serious nature of this incident. The unit CDAR will arrange an appointment with a provider who will determine the nature of your relationship with alcohol.

It is recommended that you abstain from the use [of] alcohol until your screening and assessment is completed. After your initial screening, you are to follow all instructions concerning the Coast Guard's Addictions Program.

This is considered your first alcohol incident. You have been given a unique opportunity to change the current direction of your behavior. Failure to change your behavior and attitude, in regards to alcohol, can result with you receiving another alcohol incident. If you receive a second alcohol incident in your career, which includes under aged drinking, it will require the immediate recommendation for your separation from the U.S. Coast Guard.

You have been made aware of the possible consequences of any further alcohol incidents in accordance with [Personnel Manual], Chapter 20-B-2-g.

The applicant's record also shows that he received a disciplinary evaluation with an unsatisfactory conduct mark on July 10, 2004.

The disputed Page 7, dated January 23, 2006, is also signed by the applicant in acknowledgement and documents the results of his alcohol screening<sup>4</sup> as follows:

On 19 Sep 2005 as a result of an alcohol incident you were evaluated by Dr. [C] at ISC Alameda medical where it was determined that you do not meet the criteria for a diagnosis of alcohol abuse or dependence. You are required to attend IMPACT training at Coast Guard Training Center Petaluma.

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<sup>3</sup> Article 20.B.2.g. of the Personnel Manual requires that an alcohol incident be documented in the member's record on a Page 7.

<sup>4</sup> Article 20.B.2.e. of the Personnel Manual requires that every member who incurs an alcohol incident be medically screened for abuse or addiction. The results of the screening must be recorded in the member's record on a Page 7.

Medical Record

Ensure or transcribe above information on a SF600. If transcribed place the following[:] Date  
“transcribed from official records” Signature rate and duty station of transcriber.

### **VIEWS OF THE COAST GUARD**

On April 30, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board grant alternate relief in this case.

The JAG stated that the disputed Page 7, dated January 23, 2006, apparently documents the applicant’s medical screening on September 19, 2005, as a result of his alcohol incident on July 11, 2004, because there are no intervening alcohol incidents in his record. The JAG “recognize[d] Applicant’s concerns that as current[ly] written the CG-3307s within his record could lead to the conclusion that two separate alcohol incidents occurred.” But the JAG noted that the Personnel Manual did required documenting both an alcohol incident and the results of the subsequent alcohol screening on Page 7s in the member’s record. The JAG therefore argued that it would be improper to remove the disputed Page 7 but recommended that the language therein be corrected to begin as follows:

As a result of an alcohol incident that occurred on 11 July 2004 you were evaluated by Dr. [C] at ISC Alameda medical on 19 Sep 2005 where it was determined that you do not meet the criteria for a diagnosis of alcohol abuse or dependence. ...

The JAG enclosed and adopted the findings and analysis in a memorandum on the case prepared by the Personnel Service Center, which also recommended amending the first sentence of the disputed Page 7.

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

On May 2, 2019, the Chair sent the applicant a copy of the Coast Guard’s advisory opinion and invited him to submit a written response 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 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 receipt of the disputed Page 7, it is considered timely because he has remained on active duty since the Page 7 was entered in his record.<sup>5</sup>

2. The applicant alleged that the Page 7 dated January 23, 2006, which documents the results of alcohol screening, is erroneous and unjust. In considering allegations of error and

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<sup>5</sup> *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).

injustice, the Board begins its analysis in every case by presuming that the disputed information in the applicant's military record is correct as it appears in the record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.<sup>6</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>7</sup>

3. As the JAG and PSC noted, both Page 7s were required by the Personnel Manual,<sup>8</sup> and so neither should be removed. They recommended, however, that the first sentence of the disputed Page 7 be amended. That sentence is grammatically correct because both "On 19 Sep 2005" and "as a result of an alcohol incident" are adverbial phrases relating to the applicant's being "evaluated by Dr. [C]." But given the long delay between the alcohol incident on July 11, 2004, and the January 23, 2006, documentation of his screening on September 19, 2005, and in light of the JAG's and PSC's recommendations, the Board will grant the partial relief recommended by the JAG in the interest of justice to make the language in the disputed Page 7 indisputably clear.

4. Therefore, the applicant's request to remove the disputed Page 7 should be denied, but the Board finds that in the interest of justice, the Coast Guard should correct the first sentence of the Page 7 dated January 23, 2006, to read as follows:

As a result of an alcohol incident that occurred on 11 July 2004 you were evaluated by Dr. [C] at ISC Alameda medical on 19 Sep 2005 where it was determined that you do not meet the criteria for a diagnosis of alcohol abuse or dependence. ...

**(ORDER AND SIGNATURES ON NEXT PAGE)**

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<sup>6</sup> 33 C.F.R. § 52.24(b).

<sup>7</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>8</sup> Personnel Manual, Arts. 20.B.2.e. and 20.B.2.g. (requiring that alcohol incidents and the results of alcohol screening be entered in a member's record on a Page 7).

**ORDER**

The application of DCC [REDACTED], USCG, for correction of his military record is denied, but the following alternative relief is granted: The Coast Guard shall correct the first sentence of the CG-3307 dated January 23, 2006, in his record to read as follows:

As a result of an alcohol incident that occurred on 11 July 2004 you were evaluated by Dr. [enter doctor's last name] at ISC Alameda medical on 19 Sep 2005 where it was determined that you do not meet the criteria for a diagnosis of alcohol abuse or dependence. ...

November 1, 2019

