

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2020-023



FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on November 4, 2019, and assigned the case to the Deputy Chair to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated September 9, 2022, 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 Electronics Technician (ETC/E-7) on active duty, asked the Board to correct his record by having the following pages removed from his Personnel Data Record (PDR).

- 1) A Notification of Discharge Action dated July 9, 2013. This document includes three enclosures.
- 2) The applicant’s reconsideration request dated August 21, 2013, to remove an “alcohol incident”¹ from his record. Alternatively, the applicant requested to be retained in the Coast Guard. This document includes eleven enclosures.
- 3) Two pages of email correspondence between the applicant’s counsel and the Enlisted Personnel Management Division of the Personnel Center (EPM-PSC) regarding the applicant’s reconsideration request.
- 4) An undated email from EPM-PSC notifying the applicant that his request to be retained in the Coast Guard was approved. This email includes three supporting documents.

¹ Chapter 6.a. of the Coast Guard Substance Abuse Prevention and Treatment Manual defines an alcohol incident as any behavior, in which the CO/OIC determines by a preponderance of evidence after considering the relevant facts (i.e., police reports, eyewitness statements, and member’s statement if provided) that alcohol was a significant or causative factor that resulted in the member’s loss of ability to perform assigned duties or is a violation of the UCMJ, Federal, State, or local laws. The military member need not be found guilty at court-martial, in civilian court, or be awarded non-judicial punishment for a behavior to be considered an alcohol incident.

- 5) A screenshot of the applicant's information from Direct Access dated August 22, 2013.

The applicant stated that only documents listed in Enclosure 1 of the Military Personnel Data Records System Manual should be retained in his PDR. The applicant argued that the documents identified above are not listed in Enclosure 1 of the manual and so should not be retained in his record.

The applicant also asked the Board to remove duplicate documents from his record. He argued that the following documents erroneously appear in his PDR more than once:

- 1) An Administrative Remarks form ("Page 7") dated November 28, 2000, documenting the applicant's first alcohol incident.
- 2) A Page 7 dated December 17, 2004, documenting counseling regarding his Selective Reenlistment Bonus.
- 3) Documentation of the applicant's Coast Guard Meritorious Team Commendation that he received for his exceptionally meritorious service from March 2011 to June 2011.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on January 25, 2000.

On November 28, 2000, the applicant received his first alcohol incident. He had been found passed out from alcohol consumption in the back of a vehicle. The applicant was underage at the time.

On June 19, 2013, the applicant received his second alcohol incident. Earlier that week, the applicant had been pulled over by the police and subjected to a breathalyzer examination. His Blood Alcohol Content was .169%. The applicant was arrested and charged with Driving While Intoxicated.

On July 9, 2013, the applicant received a notification of discharge by reason of unsuitability due to alcohol abuse. His Commanding Officer cited the applicant's second alcohol incident as the reason. The notification of discharge included three enclosures: 1) an Acknowledgement & Election form; 2) an Acknowledgement of Notification of Discharge Action form; and 3) an Administrative Separation: Exercise of Rights form. The applicant requested an opportunity to consult with military counsel, waived the right to submit a statement on his behalf, and objected to his discharge.

On August 21, 2013, the applicant, through counsel, submitted a request for reconsideration. First, the applicant asked EPM-PSC to reconsider removing his first alcohol incident from his record. He stated that the notification of intent to discharge him came as a surprise because he believed that his first alcohol incident, dated November 28, 2000, had been removed from his record. The applicant argued that he had properly requested removal of his first alcohol incident. However, unbeknownst to him, his request was never forwarded to the proper authorities by his previous command. Alternatively, the applicant asked EPM-PSC to retain him in the Coast

Guard on the basis that he waive any future Administrative Separation Board (ASB) for unsuitability. The applicant's request for reconsideration included eleven enclosures.

On November 12, 2013, EPM-PSC approved the applicant's request to retain him on active duty provided that he acknowledge on a Page 7 that he waived his right to any future ASB for unsuitability. EPM-PSC ordered that a copy of the Page 7 be placed in the applicant's PDR.

On December 5, 2019, the JAG contacted the Office of Military Records regarding the applicant's BCMR application. The next day, the Section Chief of the Office of Military Records responded as follows:

You are correct, A Separation Package is added to a member's record as it is received from the Separation Authority.

If the package contains items that are already in the member's record but are labeled "exhibit," or "enclosure" they are considered part of the Separation Package and are not duplicates. If the Separation Package contains items that are not authorized for entry based on CIM 1080.10I they are still added for they are treated as part of the Separation Package (an authorized addition) vice individual components.

I have reviewed all of the member's record. The only items the member brings into question are items that are contained in the Separation Package. The rest of record [sic] contains only authorized items and there are zero duplicates. In this situation, if the member wishes to have certain pages removed from the Separation Package the member will need to request that the entire Separation Package removed. Then, the BCMR can decide if relief is warranted.

VIEWS OF THE COAST GUARD

On April 2, 2020, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC argued that the applicant's PDR does not contain any errors and that all documents in his record are authorized. The Office of Military Records reviewed the applicant's record and determined that all documents in question are contained in a Separation Package. PSC argued that according to the Military Personnel Data Records System Manual, a member's entire Separation Package should be permanently retained in their PDR. Further, PSC argued that the applicant's record does not contain any duplicates.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 9, 2020, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. No response was received.

FURTHER PROCEEDINGS

In reviewing this case, the Board identified duplicates that existed in the applicant's PDR. The Board contacted the Section Chief of the Office of Military Records and asked him to again review the applicant's record. The Section Chief responded by stating that he could not remove

duplicates that exist in the applicant's separation package. However, he identified two duplicates that existed outside of the applicant's separation package and agreed to remove them. The Section Chief removed a copy of a Page 7 dated December 17, 2004, regarding the applicant's Selective Reenlistment Bonus and a copy of a Coast Guard Meritorious Team Commendation that the applicant received for his exceptionally meritorious service from March 2011 to June 2011. The Office of Military Records provided the Board with a copy of the applicant's updated PDR.

APPLICABLE LAW AND POLICY

Chapter 2.B.8. of the Coast Guard Drug and Alcohol Abuse Program, COMDTINST M1000.10, discusses second alcohol incidents in relevant part:

b. Enlisted. Enlisted members involved in a second alcohol incident will normally be processed for separation in accordance with Article 1.B.15. of reference (c), Military Separations, COMDTINST M1000.4 (series).

- (1) Request for Retention. Commanding officers retain the authority to request retention of those enlisted members who they believe warrant such exception. However, retention of enlisted members following a second alcohol incident should not be considered a routine action. In those cases when a commanding officer feels that mitigating circumstances or an exceptional situation warrants consideration for retention, a letter request for retention and treatment, including the medical screening results, treatment plan, and commanding officer's recommendation concerning treatment shall be forwarded via the chain of command to Commander (CG PSC-EPM) who shall consult with Commandant (CG-112) and direct the appropriate action regarding retention. The command recommendation for retention will be submitted as a cover letter to the required discharge package.

Chapter 1.B.3.a. of the Military Personnel Data Records System Manual, M1080.10I, states that the Commander, PSC-PSD-MR will destroy all copies of documents received, which are not authorized for imaging.

Enclosure 1 of the Military Personnel Data Records System Manual, M1080.10I, details the documents that should be retained in a member's record along with the filing location and retention requirement. Enclosure 1 states that the "entire separation package when PSC, District, TRACEN Cape May, or CG Academy directs separation" should be permanently retained.

Chapter 1.B.15.j. of the Military Separation Manual, COMDTINST M1000.4, discusses the documentation required for discharging a member due to unsuitability:

In every case of discharge for unsuitability, the documents listed below are required. Include them with the recommendation submitted to Commander (CG PSC-EPM-1) for decision or send them to Commander (CG SC-psd-mr) with documents required by Article 1.B.32. of this Manual if the district commander or commanding officer executes the discharge under Article 1.B.15.e. of this Manual.

- (1) A copy of the letter notifying the member of the reason(s) for administrative processing and of his or her rights.
- (2) If applicable, the member's declaration or waiver of opportunity to consult with counsel.

- (3) The member's signed statement of awareness, statement on his or her own behalf, or refusal to make a statement.
- (4) Report of medical board or Medical Record, Form SF-507, as applicable.
- (5) A copy of the Enlisted Employee Review printed from Direct Access and a copy of the current Enlisted Employee Review Member Counseling Receipt with all applicable signatures.
- (6) Summary of military offenses.
- (7) Any other pertinent comments or recommendations over the commanding officer's signature.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on 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.
2. Although the application was not filed within three years of the applicant's discovery of the alleged error or injustice, it is considered timely because he has remained on active duty in the interim.²
3. The applicant alleged that several documents in his military record are erroneous because they are not approved by the Military Personnel Data Records System Manual. 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 the military record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.³ 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."⁴
4. On June 19, 2013, the applicant received his second alcohol incident. A few weeks later, on July 9, 2013, the applicant received a notification that he was being discharged by reason of unsuitability due to alcohol abuse. According to Chapter 2.B.8. of the Coast Guard Drug and Alcohol Abuse Program, enlisted members who receive a second alcohol incident are normally processed for separation. However, the applicant submitted a request for reconsideration in which he asked to be retained in the Coast Guard on the basis that he waive his right to any future ASB for unsuitability. On November 12, 2013, the applicant's command approved his request provided that he acknowledge such agreement on a Page 7, which would then be placed in his PDR. As such, the applicant was not discharged from the Coast Guard.

² *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).

³ 33 C.F.R. § 52.24(b).

⁴ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

5. The applicant argued that several documents in his PDR should be removed because they are not permitted in accordance with the Military Personnel Data Records System Manual. In preparing the advisory opinion, PSC contacted the Office of Military Records regarding the applicant's request. The Section Chief of the Office of Military Records stated that the documents identified by the applicant for removal were all part of his separation package. The applicant has not provided any evidence to dispute this assertion. According to Enclosure 1 of the Military Personnel Data Records System Manual, entire separation packages should be permanently retained. There is nothing in the manual that allows for separation packages to be removed if the member is ultimately retained in the Service. Further, common sense supports the retention of the applicant's separation package in his record. Although the applicant was not discharged, he was retained on the basis that he agreed to waive his right to any future ASB for unsuitability. Evidence of such agreement is necessary to remain in the applicant's record. Therefore, the applicant has not proven by a preponderance of the evidence that documents in his separation package should be removed from his record.

6. The applicant also asked the Board to remove duplicate documents from his PDR. Article 1.B.3.a. of the Military Personnel Data Records System Manual states that the Personnel Support Division of PSC should destroy all copies of documents received, which are not authorized for imaging. The applicant cited three specific documents that were duplicated in his record. First, the applicant cited a Page 7 dated November 28, 2000, which documents his first alcohol incident. This document appears three times in his PDR. However, the two duplicates exist in the applicant's separation package. Although copies are generally not allowed in a member's record, Enclosure 1 of the Military Personnel Data Records System Manual states that a member's *entire* separation package should be permanently retained. In fact, many duplicates exist as enclosures to documents in the applicant's separation package. Therefore, the applicant has not proven by a preponderance of the evidence that the duplicate documents that exist in his separation package should be removed from his record.

The applicant also cited a Page 7 dated December 17, 2004, regarding his Selective Reenlistment Bonus. While the applicant was correct that the document appeared twice in his PDR at the time he submitted his application, PSC has since deleted the unauthorized copy. Finally, the applicant cited documentation of a Coast Guard Meritorious Team Commendation that he received for his exceptionally meritorious service from March 2011 to June 2011. Again, while the applicant was correct that the document appeared twice in his PDR at the time he submitted his application, PSC has since deleted the unauthorized copy.

7. The applicant's request should be denied. However, a copy of the applicant's updated PDR should be mailed to him along with a copy of the Board's final decision in this case.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of [REDACTED] for correction of his military record is denied. However, a copy of his updated PDR should be mailed to him along with a copy of the Board's final decision in this case.

September 9, 2022

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