

DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-064

████████████████████
██████████ ██████████

FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the application on March 8, 2016, upon receipt of the applicant's completed application and military records, and prepared the draft decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated January 13, 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 asked the Board to correct her record by removing a CG-3307 ("Page 7") dated July 13, 2012, which states that she had failed to report for an appointment for alcohol screening on July 10, 2012; that her appointment had been rescheduled; and that if she failed to attend, her failure would "constitute refusal of treatment and disobeying a direct order" and could result in her discharge.

The applicant stated that in 2012 she filed a formal complaint against her commanding officer (CO) pursuant to Article 138 of the Uniform Code of Military Justice. Upon conclusion of an investigation, the District Commander ordered the removal from her record of all of the paperwork documenting an alleged alcohol incident, but this Page 7 regarding alcohol screening was not removed. The applicant argued that she was required to undergo alcohol screening only because of the alleged alcohol incident and so this Page 7 should have removed along with the other documentation of the alcohol incident. She stated that she noticed the error when reviewing her records in 2015.

In support of these allegations, she submitted the following:

- A copy of the disputed Page 7, dated July 13, 2012, which is signed by her CO, a chief warrant officer, and that applicant, who acknowledged receipt.

- A memorandum from the District Chief of Staff, dated October 4, 2012, to the Personnel Service Center (PSC), with the subject line “Removal of CG-3307s and Disciplinary Marks Pursuant to Article 138 Redress.” The memorandum states that after a thorough review, the District Commander, a rear admiral, granted the applicant’s request “to expunge an alcohol incident from the member’s record through removal of all CG-3307s documenting the incident and removal of the disciplinary marks issued as a result.” The Chief of Staff listed five separate Page 7s, dated July 3, 5, 10, 19, and 19, 2012, and the applicant’s performance evaluation dated July 5, 2012, for removal but did not list the Page 7 dated July 13, 2012.

VIEWS OF THE COAST GUARD

On June 20, 2016, the Judge Advocate General of the Coast Guard submitted an advisory opinion recommending that the Board grant relief in accordance with the findings and analysis in a memorandum submitted for the case by Commander, Personnel Service Center (PSC).

PSC stated that when the District Commander directed the removal of all the Page 7s documenting the applicant’s alleged alcohol incident, the Page 7 dated July 13, 2012, which documents her screening because of the alcohol incident, was not removed. PSC stated that the failure to remove the disputed Page 7 directly contradicts the District Commander’s order. Therefore, PSC recommended that the Board remove the Page 7 from the applicant’s record.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 12, 2016, the Chair sent the applicant a copy of the views of the Coast Guard and invited her to respond within thirty days. No response was received.

APPLICABLE REGULATIONS

Article 2.B.5.a. of the Coast Guard Drug and Alcohol Abuse Program Manual, COMDTINST M1000.10, states the following:

Members Involved in an Alcohol Incident. Any 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, or in Article 1.D. of this Manual for inactive duty reservists. 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 with a copy to Commander (CG PSC-EPM) for an enlisted member, (CG PSC-OPM) for an officer, or (CG PSC-RPM) for a reserve member and (CG PSC-PSD-MR).

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 is considered timely because the applicant only recently discovered the error and has remained on active duty since the error occurred.¹

2. The applicant alleged that the Page 7 dated July 13, 2012, in her record is erroneous and unjust because it should have been removed pursuant to the District Commander's order to remove all of the documentation of her alleged alcohol incident. 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 her 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 Board finds that the applicant has proven by a preponderance of the evidence that the Page 7 dated July 13, 2012, should have been removed from her record along with the rest of the documentation resulting from her alleged alcohol incident. The preponderance of the evidence indicates that the applicant was directed to attend alcohol screening because of the alleged alcohol incident pursuant to Article 2.B.5.a. of COMDTINST M1000.10. Therefore, the Page 7 is a result of the alleged alcohol incident. Given that the District Commander granted her request "to expunge an alcohol incident from the member's record through removal of all CG-3307s documenting the incident and removal of the disciplinary marks issued as a result," the Board finds that the disputed Page 7 should be removed from her record.

(ORDER AND SIGNATURES ON NEXT PAGE)

¹ 10 U.S.C. § 1552(b); *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).

ORDER

The application of [REDACTED] [REDACTED] [REDACTED], USCG, for correction of her military record is granted. The Coast Guard shall remove from her record the CG-3307 (Page 7) dated July 13, 2012, regarding her failure to attend an appointment for alcohol screening.

January 13, 2017

