

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-168



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 June 26, 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 November 19, 2021, 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 active-duty first class Electronics Technician (ET1/E-6), asked the Board to correct his military record by removing a negative CG-3307 ("Page 7") for alcohol abuse from his record.

The applicant explained that on October 5, 2018, at approximately 1900 hours he left the Base to get something to eat and headed over to a restaurant/bar. The applicant claims he only had four beers while at the restaurant and at 2230 he left to meet other crew members at another location. Upon arriving at the new location, he located the other crew members and started dancing. While dancing he slipped on a wet spot on the floor and used his hand to brace himself to keep from hitting the deck. After hitting his wrist, the applicant called for an Uber driver to take him back to the Cutter due to the pain of his wrist. The applicant took some ibuprofen and iced his wrist before going to sleep. When the applicant woke up at 0800 on October 6, 2018, he realized his wrist was still swollen and not getting better. The applicant contacted the Officer of the Day (OOD) and the duty corpsman on Base to inform them. The applicant then went to an Army Medical Center where his wrist was x-rayed. The applicant was told he had two breaks in his left wrist. The applicant claims there was no alcohol consumed after he went to the restaurant and that alcohol was not a factor in his fall. The applicant claimed that his fall was the result of walking in flip flops on a wet floor.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on November 22, 2005.

There are no relevant records to summarize. The applicant has not provided any evidence or records with his application. His claim that a negative Page 7 was included in his service records could not be verified. Review of the applicant's Headquarters Electronic Personnel Data Record (EPDR) does not show that a Page 7 documenting alcohol abuse in October 2018 was included in the applicant's official records.

VIEWS OF THE COAST GUARD

On January 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).

The Coast Guard stated that the alleged Page 7 is not in the applicant's electronic record and argued that due to the lack of evidence supporting the applicant's claim that he received a negative Page 7 as a result of the incident described in his application, the application should be denied.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 6, 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.

APPLICABLE LAW AND POLICY

33 C.F.R. § 52.24 Evidence and burden of proof.

(a) It is the responsibility of the applicant to procure and submit with his or her application such evidence, including official records, as the applicant desires to present in support of his or her case. All such evidence should be submitted with the applicant's DD Form 149 in accordance with § 52.21(c)(1). Evidence submitted by an applicant after an application has been filed and docketed shall be considered late and its acceptance is subject to the provisions in § 52.26(a)(4) and (c).

(b) The Board begins its consideration of each case presuming administrative regularity on the part of Coast Guard and other Government officials. The applicant has the burden of proving the existence of an error or injustice by the preponderance of the evidence.

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 over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record. The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

2. The application is timely because it was filed within three years of the applicant's discovery of the alleged error or injustice in the record, as required by 10 U.S.C. § 1552(b).

3. Under 10 U.S.C. § 1552, the Board is authorized not only to correct errors but to remove injustices from any Coast Guard military record. For the purposes of the BCMRs, "injustice" is sometimes defined as "treatment by the military authorities that shocks the sense of justice but is not technically illegal."¹ The Board has authority to determine whether an injustice exists on a "case-by-case basis."² Indeed, "when a correction board fails to correct an injustice clearly presented in the record before it, it is acting in violation of its mandate,"³ and "[w]hen a board does not act to redress clear injustice, its decision is arbitrary and capricious."⁴

4. The applicant alleged that a negative Page 7 documenting alcohol abuse in his military record is erroneous and unjust. 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.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

5. The Board finds that the applicant has failed to submit evidence to substantiate his claims. The applicant did not submit the Page 7 at issue here with his application and the Coast Guard and the Board were unable to find it in his official record. Nor was the Board able to review any medical records to substantiate the applicant's claims.

6. Accordingly, the applicant's request should be denied. However, the applicant can reapply to the BCMR if the alleged negative Page 7 documenting an alcohol incident is located and submitted as evidence.

(ORDER AND SIGNATURES ON NEXT PAGE)

¹ *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976); *but see* 41 Op. Att'y Gen. 94 (1952), 1952 WL 2907 (finding that "[t]he words 'error' and 'injustice' as used in this section do not have a limited or technical meaning and, to be made the basis for remedial action, the 'error' or 'injustice' need not have been caused by the service involved.").

² Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002).

³ *Roth v. United States*, 378 F.3d 1371, 1381 (Fed. Cir. 2004) (quoting *Yee v. United States*, 206 Ct. Cl. 388, 397 (1975)).

⁴ *Boyer v. United States*, 81 Fed. Cl. 188, 194 (2008).

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).

ORDER

The application of [REDACTED] for the correction of his military record is denied.

November 19, 2021

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]