

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2022-032

██████████ ██████████ ██████████
MEC/E-7

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 February 15, 2022, and assigned the case to the Staff Attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated May 17, 2024, is approved and signed by 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 Chief Maritime Enforcement Specialist (MEC/E-7), asked the Board to correct his record by removing a CG-3307 (“Page 7”) documenting an “alcohol incident” and an associated Enlisted Employee Review (EER) dated June 5, 2018, from his service record. The applicant explained that his current Command encouraged him to pursue a correction to his record through the BCMR process to have removed from his record an unfounded alcohol incident. The applicant alleged that the facts outlined in the administrative investigation associated with the alcohol incident failed to support the criteria or evidentiary threshold for an alcohol incident as defined in COMDTINST M1000.10A. The applicant further alleged that the actions taken against him were without due cause or justification, and that as he endeavors to continued positions of increased responsibility in the Coast Guard that it is important that his record be corrected to prevent unwarranted prejudice in future assignment and advancement decisions.

To support his application, the applicant submitted 72 pages of enclosures which included a signed statement in the form of a Memorandum for the Record from (1) the applicant’s current Commanding Officer and (2) the applicant’s Deployable Team Lead at the time of his alleged alcohol incident (who, he alleged, had the most relevant and first-hand knowledge about the issue and substantiated his claims). Those submissions deemed most relevant to the applicant’s claims and allegations will be summarized below in the Summary of the Record section of this decision.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on February 19, 2002. During his service with the Coast Guard, the applicant received several commendations, honors, and awards for his dedication, frequently going above and beyond in his service. The applicant briefly separated from service to attend college, during which time he served in the Coast Guard Reserve beginning on August 18, 2011, for about two years. On June 20, 2016, the applicant executed Permanent Change of Station (PCS) orders and transferred into a Coast Guard Maritime Security Response Team (MSRT) as a Direct Action Section (DAS) member.

In May 2018, the applicant, along with other members of MSRT, were deployed overseas. While deployed, on June 6, 2018, the applicant arrived approximately 10 to 15 minutes late for training/duty. Due to the applicant's failure to report, a senior member of the team, MECS H, who at that time was the DTL, went to search for the applicant and found him asleep in his hotel room. MECS H woke up the applicant and later provided a statement stating that at that time he did not smell alcohol on the applicant or see any sign of alcohol consumption in his hotel room. Other members of the team, however, alleged that they did smell alcohol on the applicant while driving with him to training and, as a result, the applicant's immediate superiors decided to remove the applicant from training to ensure the safety of the team.

An investigation was conducted several months after the incident and, by the time of the investigation, the exact date and time of the incident could not be ascertained. By memorandum dated August 17, 2018, the MSRT commanding officer (CO) convened a single-officer standard investigation into all of the circumstances surrounding the alleged drunkenness of the applicant, his failure to report for duty on time during the time period May 7, 2018 to August 11, 2018, and any failure of his supervisors to properly report the incident through the unit chain of command. The memorandum noted that the officer conducting the investigation was not required or authorized to conduct a hearing or to take testimony under oath. The memo further noted that the investigator must consult with legal counsel before commencement of the investigation and provided the name of the attorney. The investigator was authorized to recommend appropriate administrative or disciplinary action and was to consult with counsel as to whether he should obtain written and/or sworn statements from the witnesses interviewed during the investigation. The record reflects that the investigating officer did consult with counsel.

On October 2, 2018, the investigating officer routed his investigation report to the MSRT CO. The investigation report included an opinion that there was sufficient evidence to find that the applicant's actions constituted an alcohol incident and it was recommended that the applicant receive an alcohol incident. The report included the following findings:

3. [The applicant] is over the legal drinking age of 21.
...
6. The Team was deployed [overseas] from 11 thru 18 June 2018.
...
7. Due to the fact that roughly 4 months has past [since the incident], the exact date and time of this incident cannot be ascertained.
9. During this training, [the applicant] did not report to the hotel lobby, as required, to depart for training/duty.

10. Due to his failure to report at the scheduled time and location, MECS H searched for [the applicant] and found him asleep in his hotel room.
11. MECS H then woke [the applicant] up. MECS H did not smell alcohol on him at this time nor did he see any sign of alcohol consumption in the room.
12. [The applicant] takes full responsibility for being approximately 10-15 minutes late for training.
13. Team members saw [the applicant] consuming alcohol 24 hrs prior to his failure to report for duty.
14. No one saw [the applicant] consuming alcohol 12 hours prior to training.
15. LT A and MECS H had to depart for a meeting in order to make the tight timeline for the plan of the day. ME1 M, ME1 L, and ME1 C were tasked by LT A and MECS H to drive [the applicant] roughly 15 minutes to the military base once he reported for duty.
16. During the transit to the base, ME1 M, ME1 L, and ME1 C all stated they ‘smelled alcohol’ on [the applicant].
17. ME1 M, ME1 L, and ME1 C collectively discussed the current state of [the applicant]. They determined ME1 M should approach team leadership about the incident.
18. Upon arrival at the training site, ME1 M discussed with MECS H their concerns about the incident in regard to [the applicant’s] ability to handle a weapon and train.
19. MECS H pulled [the applicant] from training, instead making him an observer to training.
20. MECS H briefed LT A that [the applicant] would not train on the day the incident occurred.
21. That night, LT A and MECS H held a team meeting at the hotel. [The applicant] was not present as he was not invited to attend. [The applicant’s] alcohol use and behavior were the topic of discussion at this meeting.
22. LT A and MECS H determined that [the applicant] would be stripped of his leadership responsibilities, they announced this to the team members at this meeting. He would also be restricted from drinking.
23. LT A did not inform the chain of command of the situation concerning [the applicant].
24. MECS H was aware that LT A did not inform the chain of command of the situation concerning [the applicant].

Opinions

1. [The applicant], without authority, failed to go to his appointed place of duty as directed and therefore violated Article 86.
2. [The applicant] was still experiencing residual effects of alcohol. However, legal review reference (g) is not a lawful general order or regulation because it does not have the necessary punitive language contained within the manual. Therefore, [the applicant] did not violate Article 92, failure to obey a lawful regulation.
3. [The applicant] was still experiencing residual effects of alcohol and thus was not able to perform certain duties. However, [the applicant] is over the age over 21 years old and no one witnessed him drinking twelve hours prior to training. Therefore, element (3), that such incapacitation was the result of previous wrongful indulgence in intoxicating liquor or any drug for Article 134, UMCJ, Drunkenness – incapacitation for performance of duties through prior wrongful indulgence in intoxicating liqueur or any drug is not met.

4. LT A and MECS H had a duty to report [the applicant’s] actions to the Chain of Command . . . and therefore violated Article 92(3).
5. [The applicant’s] conduct meets the definition of an Alcohol Incident. [The applicant’s] alcohol consumption was the causative factor in this incident.

Recommendations

1. [The applicant] should undergo screening for alcohol dependence and be awarded an Alcohol Incident.
2. I recommend that the charge against [the applicant] of Article 82, UCMJ, failure to report to the appointed place of duty at the time directed, is handled administratively. I recommend the following actions: the removal of Tactical Law Enforcement insignia and negative CG-3307. Evidence collected meets elemental requirements contained in findings of fact 9-12.
3. I recommend no action in that the charge against [the applicant] of Article 92, UCMJ, failure to obey a lawful general order or regulation. Evidence collected DOES NOT meet elemental requirements.
4. I recommend no action in that the charge against [the applicant] of Article 134, UMCJ, drunkenness – incapacitation for performance of duties through prior wrongful indulgence in intoxicating liquor or any drug. Evidence collected **DOES NOT** meet elemental requirements.

. . .

On October 29, 2018, the applicant was presented the Page 7 documenting the incident as an alcohol incident. The CG-3307 was signed by his then Commanding Officer, CAPT L, and was acknowledged by the applicant, as set out below:

You received an[] alcohol incident on 06JUN2018 when your abuse of alcohol was determined to be a significant and/or causative factor in the incident in which you were late to movement. You were also observed not being clear from the residual effects of alcohol use.

You were counseled on Coast Guard policies concerning alcohol use and abuse as well as the serious nature of this incident. The unit Command Drug and Alcohol Representative (CDAR) has arranged an appointment with a provider who will determine the nature of your relationship with alcohol. It is highly recommended that you abstain from the use of alcohol until your screening and assessment is completed.

This is considered your first documented alcohol incident. Any further incidents may result in your being processed for separation, in accordance with Chapter 2 of the Coast Guard Drug and Alcohol Abuse Program, COMDTINST M1000.10 (series).

Also on October 29, 2018, the applicant was presented with a discipline EER, with an effective date of June 6, 2018, documenting the incident and the issuance of an alcohol incident, as noted below:

Military Bearing Rating 3 Below Standard	MEC [] was unable to project a professional image as Chief. While deployed to [] he was late, unshaven, and unprepared to train.
Customs, Courtesies, Traditions Rating 3 Below Standard	MEC [] was unable to project a professional image as Chief. While deployed to [] he was late, unshaven, and unprepared to train.
Military Readiness Rating 3 Below Standard	MEC [] was unable to manage stress which negatively affected his work and well-being. While deployed he was late, unshaven and unprepared to train. He had responsibilities removed to focus on [personal] issues.

Accountability Responsibility Rating 3 Below Standard	MEC [] was unable to hold himself accountable to the Coast Guard standards, which ultimately led to the awarding of an Alcohol Incident.
Conduct Rating U Unsatisfactory	MEC [] work/life decisions have negatively affected his professionalism and work performance. While deployed [] he was cited for actions that reflected poorly on the CG and was administratively given an alcohol incident.
Future Potential Rating Y Future Potential Comment	MEC [] consistently seeks out more responsibility and has engaged in solving numerous leadership challenges. At current performance level, it is not recommended to assign mbr to positions of greater responsibility.
Advancement Potential Rating N Not Recommended	MEC [] is not recommended for advancement due to poor performance of expectations of an E7, culminating in an Alcohol Incident while deployed OCONUS for operations. In order to earn a recommendation for advancement, member will need to improve on highlighted areas to meet the expectations of an E7. Specifically, for the next three months, member will be placed on an observation period, during which there will be emphasis placed on judgment, military readiness, accountability, and responsibility. The member’s chain of command will specifically be evaluating these areas to determine a recommendation regarding advancement.

The applicant’s DTL at the time of the alcohol incident was MECS H. He provided a signed statement to the investigator during the initial investigation in August 2018 and also later provided a signed statement in support of the applicant’s application to the Board.

When interviewed at the time of the events in question, MECS H stated that that applicant was “minutes” late to duty and he had to go to his hotel room and wake him up. He had witnessed the applicant consuming alcohol 24 hours prior to being late to duty, but not 12 hours prior, and said that he did not know if the applicant was free of alcohol or its residual effects at that time. MECS H further stated that LT A was the senior member present during the alleged alcohol incident, and that the incident was handled on the spot with additional internal follow on actions (which he failed to detail). He clarified that the applicant did not miss training, he was late to rally to the meeting location at the hotel and was observed but did not participate in the training. MECS H stated that a group team meeting was held about the applicant’s inability to train/failure to report, and that the applicant was not invited to this meeting.

MECS H also provided a signed statement in support of the applicant’s application to the Board:

1. I was the Deployable Team leader (DTL) for the Advanced Interdiction Team tasked to Central Command and the direct supervisor of [the applicant] during a 2018 deployment. On the morning of 06JUN2018, I questioned [the applicant] on a concern brought to my attention regarding his unusual demeanor. During this process, I asked [the applicant] about his health, wellbeing and mental state. At no time did I smell alcohol, administer field sobriety tests, or administer a breathalyzer. [The applicant] stated he had received a phone call with troubling family issues the night before and did not sleep. With this information, the Officer in Charge (OIC) and I concluded that [the applicant] was not in the right mindset to perform his duties and gave him a day to work through the challenges he was facing. Follow-up conversations concluded that family issues subsided, and [the applicant] was capable of completing the remainder of the deployment without replacement or incident.

2. During the incident in question, administrative, tactical, nor operation control requested any further investigations or actions. It was only months after returning to homeport was a [Page 7] drafted for [the applicant] against the recommendations of the OIC/DTL and facts surrounding the situation.

The applicant also provided a signed statement from a Commanding Officer he served under after the alleged incident, CO S, who recommended that the alcohol incident be removed from his service record:

...

1. This letter serves as a recommendation in support of [the applicant's] request to have the documented alcohol incident . . . removed from his service record.

2. I served as [the applicant's CO] from 01 July 2020 through 01 August 2021. During the process of career counseling in advance of his anticipated reassignment, I reviewed [his] service record and career history [] and became aware of the alcohol incident . . . As a result, I conducted a review of the unit's discipline records and associated investigation surrounding the incident. During the course of my review, I became concerned over the manner and process of the investigation which did not comport to the standard practices designed to safeguard and ensure members are afforded due process. Specifically, I found several discrepancies related to the investigation and the findings of fact that lead me to believe that [the applicant] should not have been awarded an alcohol incident which has resulted in long term negative career implications for a member whose service record and reputation have always been above reproach.

3. The Preliminary Inquiry Officer's investigation dated 02 Oct 2018 documented in the findings of fact that the team had a valid, signed authorization to consume alcohol in theater as required by unit policy (finding of fact 4) at the time, that the investigation took place four months after the alleged incident and based on that 'the exact date and time of this incident cannot be ascertained' (finding of fact 7); that [the applicant] was '10-15 minutes late for training' (finding of fact 12), and that 'No one saw [the applicant] consuming alcohol prior to training, which would have been the only grounds for awarding this alcohol incident (finding of fact 14). Finally and perhaps most concerning, finding of fact 21 indicates a team meeting being held without [the applicant] being present or invited, a process that could be seen to have prejudiced the process and the subsequent statements and investigation.

4. With regard to [the applicant's] missing of movement/failure to report to duty, I have never seen in my nearly 34 years of service this charge being substantiated for a member being '15-20' minutes late. The spirit of the law in this case is meant to apply these elements in instances where the unit's mission is significantly impacted so as to negatively impact readiness. In [the applicant's] instance this did not occur and there is no indication that the 10-15 minute delay had any effect whatsoever.

5. Finally, and perhaps most concerning to me was the omitted fact that key witnesses providing statements in this instance had previously been subject to a hazing investigation in which it was substantiated that they had engaged over an extended period of time in 'unprofessional behavior' towards members (including [the applicant]) in the unit training pipeline. The result of this July 2018 investigation resulted in negative administrative action against two of the key witnesses in [the applicant's] case. The timing of this investigation (July 2018) is within the four month window noted in the preliminary Inquiry Officer's finding of fact. Taken in their totality, I find that there is ample evidence to support [the applicant's] remedy request.

6. During the short time as [the applicant's] Commanding Officer I had frequent and substantial interactions. In all my dealings with [the applicant] I found him to be highly competent and trustworthy. As the Precision Marksman Locker Chief he provided exceptional leadership and was a steady and positive influence on the many junior enlisted members on the team. Additionally, his effective leadership and technical acumen were critical in advancing the unit's tactical medical program and set the foundation for significant and positive policy changes that I credit with the saving of 2 detainee lives during a recent interdiction case in support of the U.S. Central Command. As a three time Commanding Officer with nearly 34 years of active duty service, I consider the good order and discipline of the unit to be a foundational to mission success and one of my most sacred duties. In carrying this out, I have always endeavored to remove personal bias despite what my gut

might be telling me and to submit to where the[] evidence takes me. In reviewing [the applicant's case, it is clear to me that this case does not meet the standard of proof to warrant this action and I believe this is clearly supported by the preliminary Inquiry Officer's findings of fact. In [the applicant's] case, the command did not find sufficient evidence to support a formal Non-Judicial Punishment proceeding and instead relied on the wide latitude of the Commanding Officer to administratively document alcohol related incidents to which there is no verifiable evidence of violation by [the applicant].

7. Based on my review and the continued long term negative effects on [the applicant's] otherwise distinguished career, I personally engaged [the applicant] and encouraged him to pursue this request to remove this incident from his service. [The applicant] has distinguished himself as an operator in the Coast Guard's Deployable Specialized Forces and he has much to offer going forward. I offer my strongest possible recommendation that [the applicant] be awarded his requested remedy by the Board . . .

VIEWS OF THE COAST GUARD

On September 9, 2022, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC recommended not granting relief, because the applicant provided no evidence that the Command did not follow applicable policy when awarding an Alcohol Incident, and that it is not within PSC's purview to determine whether an alcohol incident occurred or not, but simply if the Commanding Officer followed the correct administrative policies and procedures.

Consistent with PSC's recommendation, the JAG recommended the Board deny relief in this case. The JAG argued that the applicant failed to prove an error or injustice with his EER and CG-3307, stating:

While the applicant may disagree with the conclusions of the command that issued the alcohol incident, the findings were supported by evidence. The command issued the alcohol incident following a thorough investigation into the incident which bore facts sufficient to determine an alcohol incident. It is uncontested that the applicant was late for muster and was found asleep in his room and was then subsequently removed from training. The investigation further revealed that multiple members smelled alcohol on the applicant and observed him to still be under the effects of alcohol which were factors that resulted in removing the applicant from training. Based on these facts the command had sufficient basis to issue an alcohol incident. While the current Commanding Officer (CO) may disagree with the previous CO's conclusions and decision to issue the alcohol incident, that does not make the prior CO's actions erroneous or unjust. Additionally, the applicant attached a statement to his DD-149 application from the team member that made first contact with the applicant during the incident. The memo states that the member did not smell alcohol on the applicant when he woke him up. Nevertheless, this is still insufficient to prove that the issuance of an alcohol incident was erroneous or unjust. At the time of the issuance of the alcohol incident, the applicant's CO had the investigation and was aware this one member did not smell alcohol on the applicant when he first woke him (this fact was in the investigation as well), but the CO also had information that multiple other team members smelled alcohol on the member and observed him to still be under the residual effects of alcohol which resulted in him being pulled from training. As such, the applicant fails to overcome the presumption that the command executed its duties lawfully, correctly, and in good faith when issuing the member an alcohol incident.

The JAG concluded by stating that because there are no grounds for overturning the alcohol incident, there are no grounds for removing the discipline EER or negative Page 7 from the applicant's record, and that they were conducted in accordance with policy and do not contain any prohibited comments.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 28, 2022, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. The Chair received the applicant's response on November 4, 2022.

The applicant explained that, until now, he was not granted permission to review the October 2018 investigation that resulted in his negative Page 7 and associated EER. He stated that "in that regard, it is refreshing, but also disheartening, to finally read how the investigation went down." The applicant further stated that he disagreed with certain aspects of the Coast Guard Advisory Opinion, as noted below:

- "The Advisory Opinion states that I fail to prove an error or an injustice. How can I prove an error or injustice, when I was never provided a copy of the investigation prior to me submitting this BCMR package. Other than receiving the Alcohol Incident, how can I know what error[s] actually occurred?"
- The timeline for the investigation was four months following the alleged incident and there is no specific date given to when the incident even occurred. It's concerning to me that anybody's statements be considered accurate or as 'fact' when a time period of almost five months have elapsed from an uncertain day in a month.
- As per the Advisory Opinion Memo 'error can be defined as either legal and/or factual'. There is one statement from my former supervisor who states that he did not smell anything. Then you have statements from the occupants in the vehicle who apparently say they did smell alcohol, perhaps they misinterpreted my mouth wash as something else or maybe they were smelling themselves. Why did the command believe one person over the other? The truth is there are no real facts in this investigation that alcohol played a role in me being ten minutes late, only assumptions/opinions, there's the error.'
- Two out of three of the occupants in the vehicle were under investigation just prior to this investigation occurring, with the third being possibly roped in as well. I had to provide testimony for that investigation. I was then ordered to give a Chiefs Counsel (a form of reprimand) to one of the vehicle occupants based on his investigation, and the other occupant received a negative 3307; this was prior to my investigation being completed. All of their statements should have been disregarded by the command, based on possible reprisal, which would leave no 'facts', other than my supervisor stating, 'that he did not smell alcohol' on me, 'nor did he see any sign of alcohol consumption.'"
- I know of one person from the investigation who informed me that he never provided a written statement to the Investigating Officer, but instead was given a questionnaire to fill out, and that this questionnaire was being used to draft a statement in his name. When this person learned that the questionnaire was being used in this manner he asked to see it (the statement), and he was told that he could not see it. This person states that he never provided a signed written statement to the PIO even through its being referenced as an exhibit within the Findings of Facts of the Investigation. My concern here is that instead of drafting actual signed written statements by members of my former team, they were provided some standard Question and Answer sheet, which was then used as their formal statements. If that is true, is that normal, is that within policy? There were no statements provided to me in the redacted PIO, so I cannot confirm that the above is accurate on my own.

APPLICABLE LAW AND POLICY

Memorandum dated April 20, 2018, from LT A to CAPT L, CG MSRT, Subj: ALCOHOL AUTHORIZATION REQUEST AND CONSUMPTION PLAN, Ref: (a) MSRT Commanding Officer's Standing Orders, MSRTINST 1000.1C.

1. In accordance with reference (a), the team deploying to the U.S. Central Command area of responsibility from May 2018 through August 2019 requests authorization and command endorsement for the consumption of alcohol within the guidelines prescribed below.
2. While deployed and under the Operational Control and Tactical Control of Naval Forces Central Command (NAVCENT), all personnel will adhere to and abide by the Theatre Commander's liberty and alcohol regulations at all times. In accordance with reference (a), all members deployed will maintain a vigilant and professional atmosphere. I will ensure the highest standards of professionalism and conduct are adhered to by all members in all situations.
3. *All members will not consume alcohol within 12 hours of any operation, training evolution, or other evolution as specified by the Team Leader. All members will not consume alcohol within 12 hours of getting underway and shall be free of all residual effects. No member will operate a motor vehicle, vessel, or conduct operations or training unless free of residual effects from alcohol consumption.*
4. In addition to abiding by NAVCENT regulations, team alcohol consumption will be carefully monitored by the Team Leader and team chief petty officers. Strict controls will be established and enforced to ensure members are using alcohol responsibly and in moderation.
5. I understand that as the Team Leader for this deployment and the Command's direct representative, I am responsible for ensuring that the provisions of this request and those outlined in reference (a) are strictly enforced. As the Team Leader I have the authority to implement additional restrictions at my discretion. I further understand that I am responsible for the actions of those deployed and I will be held accountable for any violations.

Chapter 4 of The Military Drug and Alcohol Policy Manual, COMDTINST M1000.10A, (June 2018), provides the following guidance on what is required for an alcohol incident:

4.D. Alcohol Incident (AI).

1. Except as set forth in Paragraph 4.D.3. below, 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.

...

4.b. Impairment While on Duty. All military members must be free from the *residual effects of alcohol consumption and required to be free from all alcohol effects when reporting for duty*, commencing duties, and/or expiration of liberty. Research shows impairment can occur in BAC as low as 0.02% but is significant at BAC of 0.04%.

E. Alcohol Screening. A Coast Guard Medical Officer performs an evaluation to determine the nature and extent of alcohol abuse. This evaluation must be performed by a physician, physician assistant, or nurse practitioner who has attended Addiction Orientation for Health Care Providers (AOHCP) training or has equivalent training regarding substance abuse and chemical dependency. A clinical psychologist, DoD or civilian-equivalent Counseling and Assistance Center (CAAC) counselor with the above training may also perform this evaluation. However, a CDAR opinion does not satisfy the screening or evaluation requirement contained in this Manual.

G. Response to Alcohol Incident. The first time a military member is involved in an AI, except those described in Paragraph 4.H.1. of this Manual, the CO/OIC must ensure counseling is conducted. In order to verify that the current AI is the first one, commands must review a member's PDR prior to counseling. *To document an alcohol incident, Administrative Remarks, Form CG-3307, must be used for both officers and enlisted members in accordance with Administrative Remarks, Form CG-3307, COMDTINST 1000.14 (series). Because the CO/OIC holds the authority to determine whether the alcohol incident occurred, the CO/OIC must sign the Administrative Remarks, Form 3307.*

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 her 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. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. All Board members concurred in that recommendation.¹

4. The applicant alleged that the Page 7 documenting an alcohol incident in his service record and associated EER are erroneous and unjust and should be removed from his military record because the facts as outlined in the administrative investigation associated with the alcohol incident failed to support the criteria or evidentiary threshold for an alcohol incident as defined in COMDTINST M1000.10A. The applicant further alleged that the actions taken against him were without due cause or justification. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed alcohol incident in the applicant's military record is correct and fair, and the applicant bears the burden of proving by a preponderance of the evidence that it is erroneous or unjust.² Absent specific evidence to the contrary, the Board presumes that the members of an applicant's rating chain have acted "correctly, lawfully, and in good faith".

5. In support of his application, the applicant claimed that two of the witnesses who stated that he had smelled of alcohol had been the subject of an investigation and administrative action in July 2018. He also provided two declarations for the board: (1) a declaration from his direct supervisor at the time of the incident, MECS H, and (2) a declaration from his current CO.

¹ *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

² 33 C.F.R. § 52.24(b).

MECS H stated that, at the time of the incident, he did not smell alcohol on the applicant or see any signs of alcohol consumption. MECS H stated that it is his opinion that a lack of sleep as a result of a troubling personal matter is what led to the applicant oversleeping and being late to duty on June 6, 2018, and not the influence of alcohol.

On the morning of 06JUN2018, I questioned [the applicant] on a concern brought to my attention regarding his unusual demeanor. During this process, I asked [the applicant] about his health, wellbeing, and mental state. At no time did I smell alcohol, administer field sobriety tests, or administer a breathalyzer. [The applicant] stated he had received a phone call with troubling family issues the night before and did not sleep. With this information, the Officer in Charge (OIC) and I concluded that [the applicant] was not in the right mindset to perform his duties and gave him a day to work through the challenges he was facing. Follow-up conversations concluded that family issues subsided, and [the applicant] was capable of completing the remainder of the deployment without replacement or incident.

The information about the phone call and troubling family issues, however, was not included in the report of investigation or witness statement provided by MECS H to the investigator, closer in time to the events in question. Also, the Report of Investigation states at paragraph 22 that LT A and MECS H determined that the applicant would be stripped of his leadership responsibilities and also be restricted from drinking for the duration of the deployment.

The applicant also provided a signed statement from his CO during the time period July 1, 2020, through August 1, 2021. This CO does not have firsthand knowledge of the events in question. The CO stated that based on his 34+ years of active duty service, the CG-3307 and negative EER did not comport with standard Coast Guard practices designed to safeguard and ensure members are afforded due process.

6. The Board has considered the arguments and statements provided by the applicant but finds that, the applicant has not met the burden, as required by 33 C.F.R. § 52.24(b), to overcome the presumption of regularity afforded the Coast Guard that its administrators acted correctly, lawfully, and in good faith.³ At the time of the alcohol incident the applicant was on a special duty assignment that required heightened vigilance with regard to being free from the effects of alcohol; the Commanding Officer's Standing Orders, MSRTINST 1000.1C, state that "while deployed and under the Operational Control and Tactical Control of Naval Forces Central Command (NAVCENT), all personnel will adhere to and abide by the Theatre Commander's liberty and alcohol regulations at all times." Although no one saw the applicant violate those orders, he had been seen drinking alcohol the day before. In addition, the record shows that he was still asleep when he was supposed to report for duty; that he was removed from his assigned responsibilities because of his condition; that three members of the team who rode in a car with him smelled alcohol on him; that the team was so concerned about what had happened that they held a meeting about it that evening; that the applicant's supervisors ordered him not to drink alcohol for the rest of the deployment; and that the applicant's supervisors were investigated for having covered up the alcohol incident. Although the applicant claimed that two of the three members might have lied about him smelling like alcohol because they were the subject of an investigation in July 2018, they could not have known about that in June 2018 when they first told the team leadership that the applicant smelled of alcohol. Therefore, the Board finds that the applicant has not proven, by a preponderance of the evidence, that his CO erred in concluding that

³ *Muse v. United States*, 21 Cl. Ct. 592, 600 (1990) (internal citations omitted).

he had incurred an alcohol incident in June 2018 or that the negative Page 7 and EER associated with his conduct on June 6, 2018, are erroneous or unjust.

7. Accordingly, the applicant's request for relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

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

May 17, 2024

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