

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2023-054


MKC/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 July 20, 2023 and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated November 7, 2024, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST & ALLEGATIONS

The applicant, a Chief Machinery Technician (MKC/E-7), asked the Board to correct his record by removing a May 8, 2008 alcohol incident documented on a Performance and Discipline CG-3307 ("Page 7" or "negative Page 7"). The applicant explained that after the alcohol incident was issued, he appealed the alcohol incident to his command, who agreed with the applicant and issued a subsequent Page 7 wherein his command stated there was no alcohol incident. According to the applicant, the initial Page 7 was supposed to be removed but upon downloading his Electronic Personnel Data Record (EPDR) he discovered that the original alcohol incident was never removed as promised.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on May 21, 2002.

On May 8, 2008, the applicant received a negative Page 7 wherein his was counseled for violating the Coast Guard's alcohol policies. The contents of the Page 7 are as follows:

On 19 April, 2008, you received an alcohol incident when your use of alcohol was determined to be a significant and/or causative factor, during which you borrowed a shipmates automobile for the evening. You

returned the vehicle long after the agreed time, appearing intoxicated, and openly stating that you were drunk. Further investigation showed that you left the sunroof of the car open allowing rain water to enter the vehicle causing minor damage.

You were 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 assessment is completed. Potential charges under art 134(73a) UCMJ are also being considered as a result of this incident.

This is considered your first documented alcohol incident Any further incidents will result in you being processed for separation as per Chapter 20, Personnel Manual, COMDTINST M1000.6A (series).

On June 3, 2008, the applicant's command issued a subsequent Page 7 wherein the command was counseled for the following:

On 19APR08 you borrowed a shipmate's car. You returned the car more than two hours late and left the sunroof open causing minor damage from rain later that night. You denied these actions stating you returned an hour earlier than you actually did and stating that you never touched the sunroof. The security camera at the main gate showed these statements to be false. In addition, there was a concern about alcohol consumption. Although it was determined that there was insufficient evidence to support either an alcohol situation your actions diminished your standing as a petty officer in front of junior personnel and compromised your ability to effectively lead, due to the example you set.

You are counseled concerning you actions and are cautioned to conduct yourself in an appropriate manner at all times whether on or off duty.

VIEWS OF THE COAST GUARD

On April 17, 2024, a Judge Advocate (JA) for the Coast Guard submitted an advisory opinion in which he recommended that the Board grant relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC stated that based on review of the second Page 7, it appears it was the command's intent to document the applicant's conduct of April 19, 2008 with a negative Page 7, but not award an official alcohol incident. Despite this, the first Page 7 remained in the applicant's EPDR until recently discovered. PSC recommended that the Board order removal of the Page 7 dated May 8, 2008 as it seems was intended. PSC noted that due to the lack of a referral to medical for an alcohol screening, as required by Article 1.A.2.e of the Coast Guard's Drug and Alcohol Abuse Program Manual, COMDTINST M1000.10, further indicates that the incident was not classified as an alcohol incident.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 21, 2024, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited him to respond within thirty days. As of the date of this decision, no response was received.

APPLICABLE LAW AND POLICY

Article 10 of the Coast Guard Personnel Manual, COMDTINST M1000.6A (June 2007),

provides the following guidance on required Enlisted Evaluations Report (EER) marks as a result of alcohol incidents:

10.B.2. Required Supporting Remarks.

a. Discussion.

1. Supporting remarks are required to be submitted along with the enlisted employee review, up through the marking chain to address the future leadership potential of all enlisted personnel, E-6 and above, and for any recommended marks of 1, 2, or 7, unsatisfactory conduct mark, or not recommended for advancement. Articles 10.B.6.a., 10.B.7. and 10.B.9.a.

a. Enlisted employee reviews that result in assignment of an unsatisfactory conduct mark or low competency marks as defined in Article 10.B.8.a. must be supported by an adverse remarks entry for:

...

6. Alcohol incidents; and

...

b. Do not confuse this entry with the many other reasons to provide supporting remarks when completing an employee review. This entry must either state an NJP, CM, civil conviction or low competency mark (Article 10.B.8.a.) occurred, or give specific examples of financial irresponsibility, non-support of dependents, alcohol incidents, nonconformance to civilian and military rules, regulations, and standards which discredited the Coast Guard.

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d. To clearly distinguish this type of remarks entry from all others, start the entry in the conduct competency field with:

This is an adverse supporting remarks entry for...

e. All employee reviews submitted on enlisted personnel, E-6 and above, are required to include supporting remarks, documenting the individual's leadership potential, along with the commanding officer's advancement recommendation. They must clearly identify the member's current and future potential for positions of greater responsibility. The accuracy of these entries is essential to distinguish individuals requesting to compete for command cadre or special assignment positions.

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10.B.2.b. Definitions.

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15. **Unscheduled Enlisted Employee Review.** An enlisted employee review performed for any reason other than a regular Enlisted Employee Review as prescribed in Article 10.B.5.b. The term "unscheduled" is a category, which includes: advancement, change in rate, discipline, probation, reduction, Reserve ADSW, SWE and transfer. When doing an unscheduled enlisted employee review choose the appropriate reason from the dropdown list in the online Enlisted Employee Review program in Direct Access.

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10.B.5.b. Unscheduled Enlisted Employee Reviews. Unscheduled enlisted employee reviews are conducted for any reason other than a regular enlisted employee review. While the EERS focuses on regular employee reviews, occasionally an unscheduled employee review is in order. Use the following to determine whether to perform a special employee review.

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8. A disciplinary enlisted employee review is required for a member who has an alcohol incident.

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Article 20 of the Coast Guard Personnel Manual, COMDTINST M1000.6A (June 2007), provides the necessary guidance on alcohol incidents. In relevant part:

20.A.1. Policy and Goals.

a. Policy. Substance and alcohol abuse undermine morale, mission performance, safety, and health. They will not be tolerated within the Coast Guard. Thus, drug and alcohol screening is mandated by law, (10 USC 1090), to identify, treat, and rehabilitate members of the Armed Forces who are dependent on drugs or alcohol. Furthermore, the possession, use, or distribution of a controlled substance as defined in the Uniform Code of Military Justice (UCMJ), Article 112a, and (10 USC 912a), constitutes a serious breach of discipline. Effective leadership at all levels is necessary to curb substance and alcohol abuse in the Coast Guard. Each command must be prepared to identify and eliminate substance and alcohol abuse.

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20.A.2.d. Alcohol Incident.

1. Any 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.

2. The member must actually consume alcohol for an alcohol incident to have occurred. Simply being present where alcohol is consumed does not constitute an alcohol incident. The member may be counseled on appropriate behavior or may be held jointly responsible for any damage or untoward behavior associated with the group. Purchasing alcohol for use by minors is not an alcohol incident, but does represent a serious breach of discipline and subjects the member to civil or military (UCMJ) penalties.

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20.B.2.e. Alcohol Screening.

1. 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 the Coast Guard Health Promotion Manual, COMDTINST M6200.1 (series), Ch 2, or in Article 20.A.5. for inactive duty reservists. The results of this alcohol screening shall be recorded and acknowledged on a CG-3307 entry or letter, as appropriate, in the member's PDR with a copy to Commander (CGPC-epm) or (CGPC-opm), as appropriate, and (CGPC-adm-3). The entry shall describe the facts of the incident or risk factors, the results of alcohol screening, the position and organization of the individual

conducting the screening, and a statement of the treatment recommended, if any.

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FINDINGS AND CONCLUSIONS

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 applicant alleged that the Coast Guard erroneously left an alcohol incident in his record after it was determined there was not enough evidence to support an 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 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.¹ 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."²

3. The applicant alleged that the Coast Guard erroneously left a negative Page 7 documenting an alcohol incident in his record after a subsequent Page 7 was issued by his command that stated there was not enough evidence to establish that an alcohol incident had occurred. The record shows that on May 8, 2008 the applicant's command issued an alcohol incident claiming the applicant's consumption of alcohol was a significant or causative factor when he borrowed a shipmate's car and returned it late appearing intoxicated. However, on June 3, 2008 the applicant's command issued a subsequent Page 7 wherein it stated that there was not enough evidence to establish that an alcohol incident or alcohol situation occurred. The applicant claimed that because his command issued a subsequent Page 7 on June 3, 2008 wherein it determined that an alcohol incident did not occur, the May 8, 2008 alcohol incident should have been removed.

4. The Coast Guard recommends granting relief, stating that the evidence supports the applicant's claims that the May 8, 2008 alcohol incident was not meant to be treated as an alcohol incident as evidenced by the lack of alcohol screening required by Article 20.B.2.e. of the Coast Guard's Personnel Manual, COMDTINST M1000.6A (June 2007) after an alcohol incident is determined. The Board agrees. In addition to the lack of alcohol screening required by Article 20.B.2.e. that is required to follow the issuance of an alcohol incident, the applicant's record is also missing the required Disciplinary EER that must follow the issuance of an alcohol incident as required by Article 10.B. of the same Personnel Manual. For the reasons outlined above, the Board finds that the applicant has proven, by a preponderance of the evidence, that the Coast Guard erroneously left the May 8, 2008 CG-3307 in his record. Accordingly, the Coast Guard should

¹ 33 C.F.R. § 52.24(b).

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

remove the May 8, 2008 alcohol incident.

5. For the reasons outlined above, the applicant has met his 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 He has proven, by a preponderance of the evidence, that the May 8, 2008 alcohol incident was erroneous and the negative Page 7, dated May 8, 2008, should be removed. Accordingly, his request for relief should be granted.

(ORDER AND SIGNATURES ON NEXT PAGE)

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

ORDER

The application of MKC [REDACTED], USCG, for correction of his military record is granted. The Coast Guard shall remove the negative CG-3307, dated May 8, 2008, reflecting an alcohol incident from the applicant's military record.

November 7, 2024

