

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-022


OSC/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 December 22, 2024, 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 December 12, 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 Operations Specialist (OSC/E-7), asked the Board to correct her record by removing an August 16, 2019, drug incident documented on a Performance and Discipline CG-3307 ("Page 7" or "negative Page 7"). The applicant explained that after the drug incident was issued, an investigation was conducted that determined she did not voluntarily or knowingly ingest drugs, specifically Temazepam. The applicant claimed that if the Page 7 were allowed to remain in her record it could have a negative impact on future advancements, including selection for Chief Warrant Officer. Therefore, the applicant has requested that the Page 7 be removed from her record.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on December 7, 2004, where she first trained as a Boatswain's Mate and the switched ratings to an Operations Support Specialist.

On August 29, 2019, the applicant received a Page 7 wherein she received a drug incident after she tested positive for Temazepam.

On December 3, 2019, after being informed that the applicant had potentially been drugged

the Sector Commander, Captain (CAPT) R, convened an administrative investigation into the applicant's alleged drugging.

On December 18, 2019, the investigating officer submitted his investigative report wherein he found that applicant had been drugged while out with friends.¹

On January 28, 2020, CAPT R issued a memorandum, "Final Action on Investigation into Allegations of Misconduct by [Applicant]," wherein CAPT R stated the following:

1. On 20 August 2019, OS1 [Applicant] was notified she had tested positive for Temazepam on a random urinalysis test. The testing threshold is 100 Nano grams and OS1 [Applicant] tested at 108 Nano grams. After receiving information that OS1 [Applicant] had potentially been drugged, I convened an Administrative Investigation to determine the circumstances surrounding this misconduct and potential drug incident. Reference (a). On 18 December 2019, I received the completed investigation. Reference (b).
2. After reviewing reference (b), I find that the OS1 [Applicant] did not voluntarily or knowingly consume Temazepam. For that reason, I find this not to be a drug related incident. I will not be taking any administrative or punitive action against OS1 [Applicant] on the basis of this incident.
3. Although I find this not to be a drug incident, I am concerned by OS1 [Applicant's] frequent use of sleeping medications combined with her recreational drinking. I am also concerned about the failure of senior command center personnel to brief command staff on a reported drugging of a service member when she was enjoying an evening out with fellow shipmates.
4. To address my concerns, I will advise the member to seek medical advice on the effects of drinking while taking sleeping medications – whether prescribed or over-the-counter. Additionally, I will advise members of my command about the importance of notifying the command of suspicious incidents, and the importance of taking such notifications seriously and routing them up the chain of command for visibility and action.
5. This administrative investigation is hereby closed.

On January 28, 2019, CAPT R issued a memorandum wherein he found that the applicant had not voluntarily or knowingly consume Temazepam and therefore no drug incident occurred.

VIEWS OF THE COAST GUARD

On September 19, 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 applicant's record and the memoranda submitted by the applicant, the Board should grant relief in this case by removing the August 29, 2019, drug incident documented in a Page 7.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 18, 2024, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited her to respond within thirty days. As of the date of this decision, no response

¹ The Coast Guard did not provide the administrative investigation or the investigating officer's report. The information provided here was retrieved from the documents provided by the applicant.

was received.

APPLICABLE LAW AND POLICY

The Coast Guard Drug and Alcohol Abuse Program Manual, COMDTINST M1000.10A, provides the relevant guidance on the preponderance of the evidence standard used when determining if a drug incident has occurred and the illegal use of prescription drugs. The relevant sections are as follows:

5.A. Objective. Detect and separate military members who misuse or abuse, traffic in, or unlawfully possess illicit, controlled, and certain non-controlled, substances. The following are Coast Guard substance abuse policy enforcement tenants.

...

5.C. Drug Incident. Any of the following conduct constitutes a drug incident as determined by the CO/OIC:

...

2. Wrongful possession of drugs

...

5.E. Determining a Drug Incident.

1. Evidence Collection. In determining whether a drug incident occurred, a CO/OIC must consider all the available evidence, including: positive confirmed urinalysis/blood test results; any prescription documentation; medical and dental records; service record (PDR); and, chain of command recommendations. Evidence relating to the military member's performance of duty, conduct, and attitude should be considered only to measure the credibility of a member's statement(s). If the possible drug incident evidence includes a positive urinalysis result, the command must also verify that the urinalysis was conducted in accordance with policy, including properly followed collection and chain of custody procedures. The CO/OIC may delay final determination to pursue any of the following options.

2. Preponderance of Evidence Standard. Findings of a drug incident must be determined by the CO/OIC using the preponderance of evidence standard. That is, when all evidence is fairly considered, including its reliability and credibility, it is more likely than not the military member intentionally ingested drugs. A preponderance of the evidence refers to its quality and persuasiveness, not the number of witnesses or documentation. A member's drug use admission or a positive confirmed test result, standing alone, may be sufficient to establish intentional use and thus suffice to meet this burden of proof.

3. Drug Incident Finding. If after the investigation is complete, as described in Paragraph 5.C. of this Manual, the CO/OIC determines that a drug incident occurred, the following actions must be taken.

a. Administrative Action. The command must process the military member for separation by reason of misconduct per Reference (b), Military Separations, COMDTINST M1000.4 (series), as appropriate. Cases requiring Administrative Discharge Boards because of the character of discharge contemplated or because the member has served eight or more total years, must also be processed per Military Separations, COMDTINST M1000.4 (series), as appropriate.

...

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 her Coast Guard military record. The Board finds that the applicant has exhausted her 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 a drug incident in her record after it was determined there was not enough evidence to support a drug 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.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 applicant alleged that the Coast Guard erroneously left a negative Page 7 documenting a drug incident in her record after the Sector Commander, CAPT R, determined that no drug incident had occurred. The Coast Guard recommends granting relief, stating that the evidence supports the applicant's claims that no drug incident occurred evidenced not only by the memoranda submitted by the applicant, but also by the fact that the applicant was permitted to continue with her career and was permitted to reenlist. Accordingly, the Board finds that the applicant has proven, by a preponderance of the evidence, that the Coast Guard erroneously allowed a documented drug incident to remain in her record. Therefore, the Coast Guard should remove the August 29, 2010, Page 7 wherein the drug incident was documented.

4. For the reasons outlined above, the applicant has met her 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.⁴ She has proven, by a preponderance of the evidence, that the August 19, 2019, drug incident was erroneous and the negative Page 7, dated August 29, 2019, should be removed. Accordingly, her request for relief should be granted.

(ORDER AND SIGNATURES ON NEXT PAGE)

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).

⁴ *Muse v. United States*, 21 Cl. Ct. 592, 600 (1990) (internal citations omitted).

ORDER

The application of OSC [REDACTED], USCG, for correction of her military record is granted. The Coast Guard shall remove the negative CG-3307, dated August 29, 2019, reflecting a drug incident from the applicant's military record.

December 12, 2024

