

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 165-96

FINAL DECISION

████████ Chairman:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on September 18, 1996, upon the BCMR's receipt of the applicant's request for correction of his military record. The Coast Guard did not recommend that the request be granted or that it be denied.

This final decision, dated September 26, 1997, is signed by the three duly appointed members who were designated to serve as the Board in this case.

Applicant's Request for Relief

The applicant was a ██████████ pay grade E-5) in the Coast Guard until he retired on ██████████

The applicant asked the BCMR to remove from his military record his April 25, 1995 non-judicial punishment (NJP). He alleged that the 1995 NJP should be removed from his record because the commanding officer of his ship, the CGC ██████████ failed to complete the "paperwork" necessary to make this a valid nonjudicial punishment. The applicant termed the Captain's Mast which awarded the NJP an illegal Captain's Mast.

The commanding officer charged the applicant with unauthorized absence, and, on April 7, 1995, issued a "Report of Offense and Disposition" against him. The Report charged him with violation of Article 86 of the Uniform Code of Military Justice; it accused him of failing to report to the CGC ██████████ between "0645 to 0740."

The Captain's Mast on this charge took place at approximately 12 noon on April 25, 1995. The applicant alleged that he was not notified that he had been charged and a hearing scheduled until 10 AM on April 25, 1995.

The applicant alleged that he generally reported for work at 0635, 10 minutes before his shift was due to start at 0645. He did not, however, explicitly deny that he had been late for work at any time. He alleged that the executive officer of the CGC [REDACTED] failed to initiate action that was required to make this a valid NJP. Half of the report form, which was entitled "Initial Action of Executive Officer" was not filled in, including the accused's signature, and it did not indicate whether he wanted or did not desire a "case representative." The applicant, in his BCMR application, admitted that he had time to "ask the EMC to be [his] Mast representative."

Views of the Coast Guard

The Coast Guard did not submit its views on the applicant's claim because it was unable to find his service record.

APPLICABLE UCMJ PROVISIONS ON NJP PROCEDURES

Some of the provisions of the UCMJ which are applicable to nonjudicial punishment are as follows:

(1) Purpose: "Nonjudicial punishment provides commanders with an essential and prompt means of maintaining good order and discipline and also promotes positive behavior changes in servicemembers without the stigma of a court-martial conviction."

(2) Rights of servicemembers. A member is entitled to receive a notice stating that he or she can examine available statements and evidence and that he or she can be accompanied by a spokesperson and can present witnesses and matters in defense etc.

(3) Appeals. Any servicemember punished under Article 15 who considers the punishment to be unjust or disproportionate to the offense may appeal to the next superior authority.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the submissions of the applicant and the Coast Guard and applicable law:

1. The BCMR has jurisdiction of the case pursuant to section 1552 of title 10, United States Code. The application is timely.

2. The applicant was awarded non-judicial punishment, but he has characterized the process that awarded NJP an "illegal Captain's Mast."

3. The applicant alleged that the NJP amounted to illegal punishment because the Report form was not filled in completely. For example, the accused did not indicate whether or not he wanted a mast representative.

4. The applicant did not, however, allege that the substantive rights guaranteed by the 1995 edition of the Manual for Courts-Martial (MCM) had been violated. These rights include the right to appeal the punishment awarded, the right to be accompanied and present witnesses, the right to have a spokesperson, the right to present witnesses and defenses.

5. If the right to appeal had been exercised by the applicant, for example, he could have secured a new hearing with a properly filled in "Report of Offense and Disposition."

6. The applicant has not submitted sufficient evidence to support any of the other allegations of error or injustice that he has made.

7. The applicant should be denied the relief requested because he has not established that the Coast Guard committed any error or injustice. The application, accordingly, should be denied.

ORDER

The application of former
the correction of his military record is denied.

JSCG, for

