

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2013-001**

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██████████

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**FINAL DECISION**

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case upon receipt of the applicant's completed application on September 28, 2012, and assigned it to staff member ██████████ to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated June 28, 2013, 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, a reservist, asked the Board to void his reduction in rate from BM3/E-4 to SNBM/E-3 at mast on April 3, 2011, and to award him back pay and allowances. He alleged that the officer who reduced his rate as non-judicial punishment (NJP) at mast lacked authority to do so.

The applicant stated that he was punished at mast by the commanding officer (CO) of military personnel for a Sector, who came to the applicant's boat station to conduct the mast. He alleged that the CO lacked authority to do so under Article 1.A.4.a. of the Military Justice Manual, in effect on April 3, 2011, COMDTINST M5810.1D, which states the following regarding "persons subject to NJP":

At the time NJP is imposed, the member being punished must be a member of the command of the commanding officer who imposes the punishment. A member is "of the command" if he or she is assigned or attached thereto. A member may be "of the command" of more than one command at the same time, such as members assigned or attached to commands or units for the purpose of performing temporary additional duty (TAD). A member assigned to a Headquarters, Area, District, or MLC unit with a designated commanding officer or officer-in-charge is not "of the command" of a commanding officer of enlisted or military personnel for the Headquarters, Area, District or MLC staff.

## VIEWS OF THE COAST GUARD

On March 8, 2013, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny the applicant's request.

The JAG stated that the station to which the applicant is assigned to drill is a subordinate unit of the Sector. He submitted a list of the Sector's subordinate units, which includes the applicant's station. The JAG stated that the applicant was awarded NJP at a mast held at the station on April 3, 2011, due to his unauthorized use of his Government Travel Credit Card and failure to pay debts for that usage. The mast was conducted by the Sector's Logistics Department Head, who reduced the applicant in rank from E-4 to E-3 and placed him on performance probation for one year. The JAG submitted a print-out from the military record of the officer who conducted the applicant's mast, which shows that when he conducted the mast, he was serving as the Sector's Logistics Department Head.

The JAG stated that, contrary to the applicant's allegation, the applicant was "of the command" of the Sector in accordance with Article 1.A.4.a. of the Military Justice Manual. The Sector is not a Headquarters, Area, District, or MLC unit, and Chapter 3.D.2.b. of the Sector Organizational Manual, COMDTINST M5401.6, expressly states that "[t]he Chief, Logistics Department shall exercise Non-Judicial Punishment (NJP) authority over all Sector enlisted personnel, including subordinate units if so designated by the Sector Commander." The JAG alleged that pursuant to this policy, the Sector's Logistics Department Head properly exercised NJP authority over the applicant.

The JAG noted that Coast Guard policy has changed since April 3, 2011, with the promulgation of COMDTINST M5810.1E and COMDTINST M5401.6A. However, these policies were not in effect when the mast was conducted.

## APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 6, 2013, the Chair sent a copy of the views of the Coast Guard to the applicant and invited him to respond within 30 days. No response was received.

## FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely filed within three years of the applicant's discovery of the alleged error.<sup>1</sup>

2. The applicant alleged that his rank was erroneously and unjustly reduced at mast by an officer who did not have authority to award him NJP. When considering allegations of

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<sup>1</sup> 10 U.S.C. § 1552(b).

error and injustice, the Board begins its analysis in every case by “presuming administrative regularity on the part of Coast Guard and other Government officials.”<sup>2</sup> The applicant bears the burden of proving the existence of an error or injustice by a preponderance of the evidence.<sup>3</sup> 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.”<sup>4</sup>

3. The Board finds that the applicant has not proved by a preponderance of the evidence that the officer who awarded him NJP, including a reduction in rank, on April 3, 2011, lacked the authority to do so. The record shows that the applicant’s assigned station was a subordinate unit of the Sector and that the officer who awarded him NJP was the Sector’s Logistics Department Head. Chapter 3.D.2.b. of the Sector Organizational Manual, COMDT-INST M5401.6, states that “[t]he Chief, Logistics Department shall exercise Non-Judicial Punishment (NJP) authority over all Sector enlisted personnel, including subordinate units if so designated by the Sector Commander,” and the commanding officers of military personnel at Sectors were not precluded from exercising NJP authority over subordinate units under Article 1.A.4.a. of the Military Justice Manual in effect on April 3, 2011.

4. The applicant has not proved by a preponderance of the evidence that his reduction in rate at mast on April 3, 2011, was unauthorized, erroneous, or unjust.<sup>5</sup> Accordingly, his request should be denied.

**[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]**

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<sup>2</sup> 33 C.F.R. § 52.24(b).

<sup>3</sup> *Id.*

<sup>4</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

<sup>5</sup> Table 1.E.1.c. in the Military Justice Manual shows that the Logistics Department Head, a commander, was authorized to award NJP of a reduction in rate.

**ORDER**

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

