DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
the Coast Guard Record of:

[redacted]

BCMR Docket No. 2015-054

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. After receiving the completed application on February 27, 2015, the Chair docketed the case and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated December 18, 2015, 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 asked the Board to correct a Court Memorandum documenting his non-judicial punishment (NJP) at mast on December 12, 2010, by removing the statement, "Member admitted to the allegations of consuming alcohol to the Executive Petty Officer." The Court Memorandum states that he was awarded 15 days of restriction to base with extra duties for violating Article 92 of the Uniform Code of Military Justice by failing to obey a lawful general order or regulation in that he "consum[ed] alcohol on board the cutter while in a B-0 status."[1] The applicant alleged that he never admitted to the offense. He alleged that his non-admission is noted in the report of the investigation of the incident, but he did not submit a copy of the report.

VIEWS OF THE COAST GUARD

On September 3, 2015, the Judge Advocate General of the Coast Guard (JAG) submitted an advisory opinion in which he recommended that the Board deny relief in this case.

The JAG stated that under the Military Justice Manual, COMDTINST M5810.1E, Enclosure (2C), a "mast package," including the report of the investigation, is retained in a unit's punishment log for "4 years from date of mast" and is then discarded. Upon reviewing the application, the JAG contacted the cutter and was informed that the applicant's 2010 mast package had been removed from the punishment log and is no longer available. The JAG noted that the discarding of the 2010 mast package was proper because more than four year have passed since the mast. The JAG

[1] B-0 means the member is in Bravo-Zero status and must be ready to perform duty, such as search and rescue, within 30 minutes.

contacted the applicant by telephone and asked him if he had a copy of the investigation, and the applicant stated that he did not.

The JAG concluded by recommending that the Board deny relief because the Court Memorandum is presumptively correct and the applicant has not submitted any evidence to support his claim that it is false. Therefore, the applicant "has failed to overcome the presumption that military superiors involved in his case discharged their duties correctly, lawfully, and in good faith.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 2, 2015, the Chair sent a copy of the views of the Coast Guard to the applicant and invited him to submit a written response within thirty days. No response was received.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The applicant was timely filed.

2. The applicant alleged that the statement on the Court Memorandum in his record that he had admitted to drinking alcohol aboard the cutter while in a B-0 status is erroneous and unjust. 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 his 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 has submitted no evidence to overcome the presumption of regularity accorded the Court Memorandum dated December 12, 2010. Although the application is timely because the applicant continues to serve on active duty,[4] he did not challenge the Court Memorandum for more than four years, and so the report of the investigation, which might have supported his claim (or might have supported the statement in the Court Memorandum), is no longer available.

4. Because the Court Memorandum is presumptively correct and the applicant has submitted no evidence to support his claim that it is erroneous, his request for correction should be denied.

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[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] *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994) (holding that, under § 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, the BCMR's three-year limitations period under 10 U.S.C. § 1552(b) is tolled during a member's active duty service).

ORDER

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

December 18, 2015
Date

[redacted]