

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-094


LT/O-3

FINAL DECISION

This proceeding was conducted by the Board for Correction of Military Records of the Coast Guard (“Board”) 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 April 2, 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 March 20, 2025, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

INTRODUCTION

The applicant, a Lieutenant (LT/O-3), has requested that the Board “rectify” or “expunge” two documents in his personnel file related to his arrest for driving under the influence of alcohol (DUI) by civil law enforcement in April 2023. The first record is a negative administrative remark, CG-3307 (“Page 7”) dated July 11, 2023. The second record is an Officer Evaluation Report (OER) for his period of service from February 2022 to May 2023. The applicant has contended that the requested record corrections are warranted because his DUI charge has been dismissed due to “insufficiency of evidence,” and this is not reflected in the records at issue.

SUMMARY OF THE RECORD

The applicant joined the Coast Guard on June 5, 2017, and received his commission as an Ensign on November 20, 2018. He was promoted to O-2 on May 20, 2020, and O-3 on November 20, 2022.

A state superior court “Minute Order” indicates that the applicant was arrested and charged with DUI by civil authorities on April 30, 2023.

On July 11, 2023, a Page 7, specifically a Performance and Discipline 15 (P&D-15), was issued by the applicant’s Commanding Officer (CO). The Page 7 reads, in full, as follows:

Entry Type: Performance and Discipline (P&D-15) – Completed Screening (Incident Referral)
Reference: Military Substance Abuse and Behavioral Addiction Program, COMDTINST 1000.10 (series);
Coast Guard Substance Abuse Prevention and Treatment Manual, COMDTINST M6320.5
Responsible Level: Unit
Entry:
11JUL2023: You have been screened pursuant to an incident dated 30 April 2023. You should report the results of your screening to future unit Commands/Command Drug and Alcohol Representatives (CDARs).

You have been advised of the contents of the Military Substance Abuse and Behavioral Addiction Program, COMDTINST 1000.10 (series) regarding the policy for an incident and conduct expected of Coast Guard personnel. You have also been advised of the contents of Chapter 4 of the Coast Guard Substance Abuse Prevention and Treatment Manual COMDTINST M6320.5 regarding continued support plans.

In August 2023, an OER (CG-5310A) was completed by the applicant’s “Rating Chain.” The “Occasion for Report” was marked “Annual”, and the period covered was February 1, 2022, to May 31, 2023. Overall, the OER was highly favorable, with marks of 5 or 6 in most categories. In relevant part, however, the applicant received a 3 in the “Judgment” and “Health & Well-Being” categories. The comments section stated, with respect to Judgment, “[j]udgment mark due to ROO receiving alcohol incident; otherwise, sound judgment....” The comments section for Health & Well-Being stated, “Health & Well being mark due to alcohol incident; otherwise positive health & wellness.” In the OER’s final comments section, the applicant’s Reporting Officer stated the following, in relevant part: “Strongest recommendation for retention. Received Alcohol Incident (AI) due to irresponsible driving after drinking, & arrest for DUI. Upon arrest, immediately info’d cmnd & was extremely forthright w/related info, no other judgment/conduct issues.” The Comparison Scale section of the OER indicated the applicant was “One of the many high performing officers who form the majority of [his] grade.”

The Minute Order referenced above shows that following a hearing in a civilian state court on September 27, 2023, the applicant’s DUI charge was dismissed on the basis of “insufficient evidence.”

APPLICATION TO THE BOARD

In his April 2024 application to the Board, the applicant requested that a “Negative CG-3307/AI” be removed from his record. He explained that he received the negative documentation “upon arrest for DUI/CG investigation,” but that the entire case was dropped/dismissed on the basis of insufficiency of evidence and no further corrective actions were ordered. The applicant requested that if the documentation could not be

removed, that his record be amended to show his DUI case was dismissed. The applicant also stated that he would “like a possible correction to OER.” He went on to state that he had immense satisfaction from his Coast Guard career and that his aspiration was to serve until retirement. He stated that he fully comprehended the gravity and consequences of drinking and driving and was willing to accept full responsibility. To that end, he stated that during the investigation, he provided complete and honest information. Because the case was ultimately dismissed due to insufficient evidence, however, he requested that the relevant records be “rectified or expunged.”

Included with the applicant’s submission was the state trial court’s Minute Order granting a dismissal in his case, as referenced above. The applicant also attached a September 2023 email from his state Assistant Public Defender explaining that the Order showed his case had been dismissed based on insufficiency of the evidence.

VIEWS OF THE COAST GUARD

In an advisory opinion dated December 26, 2024, a Coast Guard Judge Advocate (JA) recommended that the Board deny the applicant’s request for relief. In support of this recommendation, the JA adopted the findings and analysis provided in a memorandum prepared by the Coast Guard’s Personnel Service Center (PSC). The PSC memorandum, dated November 21, 2024, was enclosed.

The PSC first noted that the applicant had not provided or specified which documents in his record his application related to. The PSC concluded, however, that the applicant was referencing the Page 7 dated July 11, 2023, which the PSC enclosed with its memorandum. In this regard, the PSC asserted that the Page 7 was a P&D-15, which was completed to document a medical screening that followed an alcohol incident dated April 30, 2023.

The PSC then stated that a Page 7, P&D-13, rather than a P&D-15, was typically used to document alcohol incidents, and that a P&D-13 typically provides a detailed description of what happened. The PSC noted that there was no P&D-13 in the applicant’s records. However, the PSC argued, “while the lack of this entry is emblematic of an incomplete military record,” the P&D-15 and the OER for the period from February 2022 to May 2023 “hint at the fact that an alcohol incident was indeed awarded by the [CO].”

The PSC acknowledged that the applicant had provided documentation showing his civil/criminal charges were dismissed. The PSC stated, however, that this did not prevent the applicant’s CO from determining that an alcohol incident had occurred or documenting the incident accordingly.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

The Board provided the applicant with the Coast Guard's views and invited him to submit a response. As of the date of this decision, the applicant has not submitted a response.

APPLICABLE LAW AND POLICY

Board Proceedings

The Board may correct errors or remove injustices in a service member's records pursuant to 10 U.S.C. § 1552(a). "Error" means a mistake of a significant fact or law and includes a violation by the Coast Guard of its own regulations. *See Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976) ("Error" means legal or factual error.); *Ft. Stewart Schools v. Federal Labor Relations Authority*, 495 U.S. 641, 654 (1990) ("It is a familiar rule of administrative law that an agency must abide by its own regulations."). "Injustice," when not also error, is treatment by the military authorities that "shocks the sense of justice." *Sawyer v. United States*, 18 Ct. Cl. 860, 868 (1989) citing *Reale v. United States*, 208 Ct. Cl. 1010, 1011, cert. denied, 429 U.S. 854, 50 L. Ed. 2d 129, 97 S. Ct. 148 (1976). The Board has authority to determine whether an injustice exists on a "case-by-case basis." Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002).

"It is the responsibility of the Applicant to procure and submit with his or her application such evidence, including official records, as the Applicant desires to present in support of his or her case." 33 C.F.R. § 52.24 (a). "The Board begins its consideration of each case presuming administrative regularity on the part of the Coast Guard and other Government officials. The Applicant has the burden of proving the existence of an error or injustice by the preponderance of the evidence." 33 C.F.R. § 52.24 (b). 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." *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

Coast Guard Policies

The citations below derive from the versions of the Coast Guard policies in force during the relevant time period (April 2023 through August 2023).

1. Military Substance Abuse and Behavioral Addiction Program, COMDTINST 1000.10B (October 2022)

CHAPTER 3 ALCOHOL USE DISORDERS

D. Alcohol Incident (AI).

1. **Definition.** An AI is any behavior that the CO/OIC determines by a preponderance of evidence, after considering all the relevant facts (i.e., police reports, administrative investigation, eyewitness statements, and member's statement, if provided), in which alcohol was a contributing factor that results in a member's loss of ability to perform assigned duties or is a violation of the Uniform Code of Military Justice (UCMJ), Federal, state, or local laws. The military member need not be found guilty at court-martial, in civilian court, nor be awarded non-judicial punishment for a CO/OIC to determine that the member's behavior constitutes an AI.

E. Alcohol Use Disorder Referrals. Command referrals, self-referrals, and incident referrals must be made in accordance with [Coast Guard Substance Abuse Prevention and Treatment Manual, COMDTINST M6320.5 (series)].

F. Alcohol Screening (AS). Upon referral, a Coast Guard Medical Officer performs a substance abuse screening to determine the nature and extent of alcohol abuse. This evaluation must be performed by a physician, physician assistant, or nurse practitioner who has attended Addiction Orientation for Health Care Provider (AOHCP) training or has equivalent training regarding substance abuse and chemical dependency. A clinical psychologist, Department of Defense (DoD) or civilian-equivalent Counseling and Assistance Center (CAAC) counselor with the above training may also perform this evaluation. CDARs are not qualified to provide alcohol screenings.

G. Response to Alcohol Incident. The first time a military member is involved in an AI, except those described in Chapter 4, Driving Under the Influence, of this Instruction, the CO/OIC must review the member's OMPF to verify that the current AI is the first one. The CO/OIC must also ensure that the following actions are completed:

1. **Counseling.** The command must counsel the military member on Coast Guard alcohol-use policy (e.g., low-risk drinking guidelines, platform operational standards, etc.) contained in this Instruction and in Reference (a).
2. **Effect of future Alcohol Incidents.** Officers and chief warrant officers must be advised that a second AI will result in a recommendation for separation by the CO to CG-PSC in accordance with Reference (b). Enlisted members must be advised that a second AI will result in their processing for separation. Enlisted members who are approved for retention in accordance with Paragraph 3.I, Recommendation for Retention, of this Instruction after their first documented AI are not entitled to an Administrative Separation Board (ASB) for any subsequent AI and must be discharged.
3. **Documentation.**
 - a. *Administrative Remarks, Form CG-3307.* Commands must use Administrative Remarks, Form CG-3307 Performance and Discipline – 13 (P&D – 13), to document an AI for both officers and enlisted members in accordance with Reference (m). The CO/OIC must sign the Administrative Remarks, Form CG-3307 (P&D – 13), because the CO/OIC holds the authority to determine whether the AI occurred. The Administrative Remarks, Form CG-3307 (P&D – 13), should explicitly state that the CO/OIC has determined by a preponderance of the evidence that the member committed an alcohol incident and should set forth the relevant facts and evidence upon which that determination was made. The Administrative Remarks, Form CG3307 (P&D – 13), must also state whether the consumption affected the member's ability to perform assigned duties or brought discredit upon the Uniformed Services where an AI involves underage consumption, see Paragraph 3.D.3., Provision of Alcohol to Underage Persons, of this Instruction. AIs must also be documented in the member's OMPF, per Reference (f).

- c. *Performance Evaluations - Officers.* Officer Evaluation Reports (OERs) must reflect a civil conviction, a military conviction, or action taken equivalent to a guilty finding (e.g., adjudication withheld; deferred prosecution; entry into a pretrial intervention program; any similar disposition of charges that may include fines, probation, or community service). An OER is required, in accordance with References (u) and (v), when the command takes final action on a command investigation and concludes, by a preponderance of the evidence, that the member committed the AI, as defined in this chapter. An acquittal or nolle pros in a civilian jurisdiction does not prohibit the command from determining that the member committed an AI using a preponderance of the evidence standard.

CHAPTER 4 DRIVING UNDER THE INFLUENCE

A. Objective. This Chapter states policies and standards to address DUI. The Coast Guard has a legal, civil, and institutional responsibility that requires a firm stance on impaired driving. As a result, there must be well-defined consequences, including serious career implications, that may result in separation for members who are found to have committed this offense.

B. Driving Under the Influence (DUI). DUI refers to the illicit drunken or impaired operation of, or physical control of, a motor vehicle, aircraft, or vessel (which is also known as Boating under the Influence or BUI). Reference (e) provides safety considerations related to impaired driving, including DUI, and details the alcoholic beverages open container prohibition in both government vehicles at any time and privately owned vehicles when on any Coast Guard installation.

1. DUI of Alcohol. DUI of Alcohol is sometimes known/named as Driving While Intoxicated (DWI) or Operating While Intoxicated (OWI). A recorded Blood-Alcohol-Content (BAC) test of .08% alcohol or higher may by itself establish by a preponderance of evidence that the member drove under the influence, without the need for the government to produce any other evidence, if the member consumed the alcohol voluntarily. A CO/OIC may find that a member committed a DUI violation for vehicle operation while under the .08% BAC legal limit where there is a preponderance of evidence that the member was operating the vehicle in an unsafe manner because his or her motor skills, judgment, or both were impaired by an intoxicating substance. In some civilian jurisdictions, the civilian authorities may dismiss DUI charges, accept a member's plea to a reduced charge of reckless driving or another lesser charge, or allow a member to attend a pre-trial diversion program in lieu of formal charges. The actions by the civilian jurisdiction do not prohibit a CO/OIC from finding by a preponderance of the evidence that the member committed a DUI violation, regardless of the outcome of the civil charges.

E. Administrative and Disciplinary Actions.

1. Inquiry. COs/OICs are responsible for conducting adequate inquiries into alleged DUI/BUI incidents, in accordance with Reference (i), and for taking remedial action if necessary, in accordance with this Instruction. Commands may incorporate police reports and other documentation from civil authorities into the preliminary inquiry or investigation conducted by the command and may seek assistance from Coast Guard Investigative Service (CGIS) in obtaining such reports.
2. Medical Screening. COs/OICs must immediately screen and refer military members for medical screening in accordance with Reference (a) for the below listed situations. A Coast Guard provider, who has completed the AOHCP course, is the preferred provider to conduct such medical screenings.
 - a. When the CO/OIC makes a written finding (a negative Administrative Remarks, Form CG-3307, entry) setting forth the facts of the matter, based on a preponderance of the evidence, that the military member was drunk or impaired while operating a vehicle, aircraft, or vessel;

- b. When a member is arrested for DUI by a law enforcement authority;

- 3. Reports and Documentation. The following reports and documentation are required when Coast Guard military members (officers and enlisted, active duty and reserve) commit, or are lawfully arrested, for a DUI/BUI or related alcohol offense:

- a. *Report of Civil Arrest*. All military members (including reservists not in a duty status) are required to report to their command all incidents of civil arrest and subsequent civil action in accordance with Reference (c).
- b. *Administrative Remarks, Form CG-3307*. Commands must use Administrative Remarks, Form CG-3307 (P&D – 13), to document a DUI/BUI for both officers and enlisted members in accordance with Reference (m). The CO/OIC must sign the Administrative Remarks, Form CG-3307 (P&D – 13), because the CO/OIC holds the authority to determine whether the DUI /BUI occurred. The Administrative Remarks, Form CG-3307 (P&D-13), should explicitly state that the CO/OIC has determined by a preponderance of the evidence that the member committed a DUI/BUI and should set forth the relevant facts and evidence upon which that determination was made. The Administrative Remarks, Form CG-3307 (P&D – 13), must be included in the member’s OMPF to document the DUI/BUI.

- d. *Performance Evaluations – Officers*. OERs must reflect a civil conviction, military conviction, or action taken equivalent to a guilty finding (e.g., adjudication withheld; deferred prosecution; entry into a pretrial intervention program; any similar disposition of charges that may include fines, probation, or community service). An OER is required, in accordance with References (u) and (v), when the command takes final action on a command investigation and concludes, by a preponderance of the evidence, that the member committed the DUI/BUI, as defined in this chapter. An acquittal or nolle pros in a civilian jurisdiction does not prohibit the command from determining that the member committed a DUI/BUI using a preponderance of the evidence standard.

2. *Coast Guard Substance Abuse Prevention and Treatment Manual, COMDTINST M6320.5 (May 2018)*

Chapter 3 TRAINING AND REFERRALS

C. Medical Referrals, Screenings, and Action for Substance Abuse.

- 1. Referral. The preferred method to address potential or suspected abuse is through a medical referral (e.g., Command, Self-Referral, or Incident: drug/alcohol). This method is a means of early intervention in the progression of substance misuse and abuse leading to a disorder. Commands need to declare the type of referral for which a member is being sent: Alcohol, Drug, or Command. If the command does not, the default will be a command referral. The result of the substance abuse screening (e.g., the diagnosis) should not be the determining factor of whether the referral was an incident.

- c. Incident Referral (Drug or Alcohol). Initiated by the command in circumstances in which a drug or alcohol incident has been determined or is being contemplated.
 - (1) [Military Drug and Alcohol Policy, COMDTINST M1000.10 (series)] provides a description of the criteria for an alcohol/drug incident. The following are examples of substance-related incidents that require medical screening:
 - (a) Driving or operating a motorized vehicle, aircraft, or vessel while Impaired (e.g., Driving Under the Influence);

- (2) Referrals resulting from an alcohol or drug incident will be documented in the PDR as per Chapter 5 of this Manual. Copies of the referral, screening, and Treatment plan will be maintained in the member's health record.

CHAPTER 5 RECORDS MANAGEMENT

B. Administrative Documentation.

- 1. Personnel Data Record (PDR) Entries. The only documents authorized in a member's PDR, pertaining to an alcohol or drug incident, are the appropriate Performance and Discipline (P&D) Administrative Remarks, Form CG-3307, entries located in the Personnel and Pay Procedures Manual, PPCINST M1000. 2 (series), Enclosure (6). The CDAR, in coordination with the SAP and the command, will ensure that all entries made in the member's PDR completely and accurately document the circumstances of each incident and confirm that the member has been referred for medical evaluation. Documentation for a command or self-referral will not be placed in the member's PDR.

3. *Officer Accessions, Evaluations, and Promotions, COMDTINST M1000.3 (July 2020)*

Chapter 5 Officer Evaluation System (OES)

A. Overview. This Chapter states policies and standards for conducting performance evaluations for Coast Guard officers.

- 1. Purpose. The Officer Evaluation System documents and drives officer performance and conduct in accordance with Service values and standards. This information is used to support personnel management; primarily selection boards and panels, retention, and assignments.
- 2. Applicability.
 - a. All active duty officers in the grade of W-2 to O-6 must receive officer evaluation reports (OERs).

E. Occasions for Regular OERs. A regular OER is a report that qualifies for continuous chronological coverage of the reported-on officer’s commissioned service. All OERs listed are Regular OERs.

- 2. Biennial, annual, or semiannual. Officers must receive biennial, annual, or semiannual OERs unless exempted by a policy in Article 5.E. of this Manual.

I. Prohibited Comments. The rating chain must not:

- 2. Mention a judicial, administrative, or investigative proceeding, including criminal and non-judicial punishment proceedings under the Uniform Code of Military Justice, civilian criminal proceedings, Personnel Records Review Board (PRRB), Coast Guard Board for Correction of Military Records (BCMR), or any other investigation (including discrimination investigations) except as required by a non-regular OER. Referring to the fact conduct was the subject of a proceeding of a type described above is permissible when necessary to respond to issues regarding that proceeding first raised by an officer in a reply under Article 5.K. of this Manual. These restrictions do not preclude comments on the conduct that is the subject of the proceeding. They only prohibit reference to the proceeding itself.

J. Required Comments.

- 2. Actions resulting in a drug or alcohol incident (DI/AI) must be documented in the OER. Commanding officers must also follow policy and standards with accordance with the Coast Guard Drug and Alcohol Abuse Program, COMDTINST M1000.10 (series).

4. Military Separations, COMDTINST 1000.4A (March 2023)

CHAPTER 1 COMMISSIONED OFFICERS

N. Separating Regular and Reserve Coast Guard Officers for Cause.

- 4. Causes for Separation. The causes for separations prescribed in this Section are also applicable to officers processed under Sections 1.G., 1.H., 1.J., 1.K., 1.S., or 1.T. of this Instruction.

- a. The existence of one or more of these or similar conditions may require removing an officer for substandard performance of duty or failure to meet standards prescribed by the Commandant:

- (8) Receiving an alcohol incident as defined in Reference (h), except when Section 1.N.4.b. (14) of this Instruction would apply.

5. Personnel and Pay Procedures Manual, PSCINST M1000.2B (October 2012)

CHAPTER 10 Performance and Discipline

10.B.9.3. AI Checklist

Step Action

1 Forward the original CG-3307 (P&D-13) or (P&D-14) to the SPO.

3 For Officers: Document Alcohol Incidents involving officers by memorandum with a copy to CGPSC (opm) for regular active duty officers or CGPSC (rpm) for reserve officers. Officer Evaluation Reports (OER) should reflect alcohol incidents.

**ENCLOSURE 6
ADMINISTRATIVE REMARKS**

CG-3307's for Performance and Discipline (PD)

PD-13 Alcohol Incident
PD-14 Involved in an Alcohol Incident
PD-15 Involved in an Alcohol-Related Situation

Template for CG-3307 (P&D 15):

Entry Type: Performance and Discipline (P&D 15)

Reference: Chap 2, Coast Guard Drug and Alcohol Abuse Program, COMDTINST M1000.10 (series)

Health Promotion Manual, COMDTINST M6200.1 (series)

Responsible Level: Unit

Entry:

DDMMYYYY: On (date) you were involved in an alcohol-related situation. Alcohol was not considered a significant or causative in describe the circumstances, violations, or actions pending).

This is not considered an alcohol incident, but it is entered for documentation purposes only. You have been advised of the contents of Coast Guard Drug and Alcohol Abuse Program, COMDTINST M1000.10 (series) concerning conduct expected of Coast Guard personnel.

A. B. SEA, CAPT, USCG
Commanding Officer

DDMMYYYY: I acknowledge the above entry.

FIRST MI LAST

FINDINGS AND CONCLUSIONS

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

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 application is timely, as it was filed within three years of the applicant's discovery of the alleged error or injustice in the record, as required by 10 U.S.C. § 1552(b).

3. The applicant declined a hearing before the Board and requested that his case be decided based on the records and evidence submitted.

4. The applicant has requested removal and/or correction of a Page 7 and OER related to his April 2023 arrest for DUI by civilian authorities. In his submission to the

Board, the applicant accepted responsibility for driving after drinking alcohol, but noted that the DUI charge was dismissed due to insufficient evidence. As such, he requested the Page 7 and OER be expunged or rectified.

5. The Board initially notes that aside from the Page 7 and OER at issue, no other records relating to the applicant's April 2023 arrest have been made available to the Board by the applicant or the Coast Guard. In particular, while the applicant referred to an "investigation" in his application, the Board has not been presented with records of any administrative investigation or Coast Guard Investigative Service (CGIS) investigation that may have taken place, and if so, what its scope and conclusions were. As such, the Board presumes, for purposes of its analysis, that any investigation was informal and not documented in the applicant's military records.

6. From the available record, the Board is able to infer that after being arrested by civilian police on April 30, 2023, and charged with DUI, the applicant informed his command, as he was required to do by Coast Guard policy.¹ The applicant's command then referred the applicant to substance use disorder screening, as was also required.²

7. Per Coast Guard policy, alcohol incidents (AIs) must be formally determined by the CO or Officer in Charge (OIC). Documentation for an AI determination is to consist of the appropriate Page 7, P&D entries located in the Personnel and Pay Procedures Manual.³ The Personnel and Pay Procedures Manual, in turn, distinguishes between different types of alcohol-related Page 7s.⁴ Regarding the P&D-15, specifically, the manual's template provides the following language, in relevant part: "On (date) you were involved in an alcohol-related situation. . . . This is not considered an alcohol incident, but it is entered for documentation purposes only."⁵

8. Coast Guard policy is clear that an AI should be documented on a Page 7, P&D-13, and that COs and OICs hold the authority to determine whether an AI occurred.⁶ Moreover, to properly execute that authority, the CO/OIC should "explicitly state" that he or she determined by a preponderance of the evidence that the member committed an AI, and should set forth the relevant facts and evidence upon which that determination was made.⁷ The Page 7 "must" also state whether the consumption of alcohol affected the member's ability to perform assigned duties (the definition of an AI).⁸

¹ Military Substance Abuse and Behavioral Addiction Program, COMDTINST 1000.10B § 4.E.3.a.

² Coast Guard Substance Abuse Prevention and Treatment Manual, COMDTINST M6320.5 § 3.C.1.c.(a).

³ *Id.* § 5.B.1.

⁴ *See* Personnel and Pay Procedures Manual, PSCINST M1000.2B, Enclosure 6.

⁵ *Id.*

⁶ COMDTINST 1000.10B §§ 3.G.3.a., 4.E.3.b.

⁷ *Id.*

⁸ *Id.*

9. In this case, neither the Page 7, nor any other document of record, meets *any* of the applicable requirements for adjudicating an AI. The applicant's CO documented his required medical screening following his arrest on a Page 7, but it was a P&D-15, not a P&D-13. In this regard, the Board notes that while the P&D-15 template included in the Personnel and Pay Procedures Manual, cited above, is intended to document an "alcohol-related situation," the Coast Guard's public website shows that authorized uses of the P&D-15 also include documentation of a screening for alcohol abuse, as was done here.⁹ The template provided tracks precisely with the language employed by the applicant's CO on the P&D-15 issued to the applicant. Importantly, documentation of the applicant's medical screening was all that the Page 7 did in this case. It was not a P&D-13 and did not state that an AI had occurred. It did not include any facts about the applicant's alcohol consumption or arrest, nor did it state, explicitly or otherwise, that an AI was found by a preponderance of the evidence. Finally, the applicant's CO did not state whether the applicant's alcohol consumption met the definition of an AI (affected the applicant's ability to perform his assigned duties).

10. The applicant has requested that his AI be removed or corrected. In its advisory opinion, the Coast Guard JA and PSC asserted that the available documentation "hints" that the applicant's CO issued an AI. But whether an appropriate Coast Guard official *could have* determined that an AI occurred is not the issue that confronts this Board. Based on its review of the record, the Board has concluded that, because there is no evidence that a CO or OIC made the required determination, no AI occurred in this case.

11. At this juncture, the Board turns its attention to the OER completed for the applicant's service from February 2022 through May 2023. The Board's assessment is informed by the requirements imposed by the U.S. Court of Federal Claims on plaintiffs seeking to overturn OERs. Such plaintiffs must establish the following: (1) a misstatement of a significant hard fact; (2) a clear violation of specific objective requirement of statute or regulation; or (3) factors adversely affecting the ratings which had no business being in the rating process.¹⁰

12. In this case, the OER in question references an AI three separate times, despite no formal AI determination having been made. As such, the Board finds the OER's AI references constitute misstatements of a significant fact. It appears that the applicant's Rating Chain may have misinterpreted the July 2023 Page 7 as an AI, when it was, in fact, not. Because no other document in the applicant's record refers to his arrest or alcohol consumption, the Board can find no other explanation. This misunderstanding may have occurred, in part, because the applicant's CO, who issued the Page 7 on July 11, 2023, was not among the signatories of his OER, which was signed in August 2023. Whatever the explanation, it does appear to the Board that the applicant's marks for "Judgment" (3) and

⁹ See <https://www.dcms.uscg.mil/ppc/pd/page7/> (Accessed March 19, 2025).

¹⁰ See *Hary v. United States*, 223 Cl. Ct. 10, 18, 618 F.2d. 704, 708 (1981); see also *Muse v. United States*, 21 Cl. Ct. 592, 602 (1990).

“Health & Wellness” (3) were adversely impacted by the Rating Chain’s mischaracterization of the applicant’s record as including an AI.

13. The Board notes further that mentions of civil criminal proceedings in an Annual OER are prohibited.¹¹ Accordingly, the Board finds that the OER’s references to the applicant’s civil arrest were inconsistent with Coast Guard policy.

14. A DUI arrest should not be considered lightly, and the applicant has acknowledged the seriousness of his conduct. But it is also important to note that AIs generally have significant career implications. For example, even a first AI may require separating an officer from the Coast Guard for substandard performance of duty or failure to meet standards prescribed by the Commandant.¹² A second AI results in a recommendation from the member’s CO to the PSC for separation.¹³ Given these serious consequences and the clear procedural requirements for determining an AI in Coast Guard policy, the lack of any documented decision by a CO or OIC cannot be viewed merely as an oversight in documentation. The Board must consider this a deliberate, substantive determination that an AI did not occur. Whether the facts would have supported such a determination is not germane to the Board’s analysis.

15. Notwithstanding the above discussion, the Board finds that the Page 7 completed by the applicant’s CO was properly issued, having followed the relevant Coast Guard policy for authorized uses of a P&D-15. The applicant has not argued otherwise. Accordingly, the Board finds that the applicant has not met his burden to establish an error or injustice with respect to the Coast Guard’s issuance of the Page 7 dated July 11, 2023.

16. But given the Rating Chain’s misinterpretation of the Page 7, the potential for continued confusion, and the other errors identified, the Board will direct that the Page 7 be amended to include clarifying language to the effect that the document does not constitute an AI. In addition, the Board will direct that the applicant’s OER for service between February 2022 and May 2023 be removed and re-executed, or that a continuity OER be executed, without reference to an AI or the applicant’s civil arrest.¹⁴

17. While the applicant has requested that his record be amended to document the dismissal of his DUI case, the Board finds this form of relief is not appropriate. This is because following the Coast Guard’s implementation of the Board’s decision, the applicant’s record will not contain any references to his arrest. The Board also notes that the applicant is free to exercise his right to reply to and otherwise challenge any re-executed or continuity OER that takes the place of the removed OER, should prejudicial information

¹¹ Officer Accessions, Evaluations, and Promotions, COMDTINST M1000.3 § 5.I.2.

¹² Military Separations, COMDTINST 1000.4A § 1.N.4.a.(8).

¹³ Military Substance Abuse and Behavioral Addiction Program, COMDTINST 1000.10B § 3.G.2.

¹⁴ Officer Accessions, Evaluations, and Promotions, COMDTINST M1000.3 § 5.E.9.e. (CG PSC may issue a continuity OER to implement judicial and administrative adjudications).

be included in the new OER, and should the applicant determine that information about the dismissal is relevant. The applicant is also free to apply to the Coast Guard's Personnel Records Review Board, or to this Board again, for additional relief in the future, as appropriate.

18. For the reasons outlined above, and to the extent specified, the Board finds that the applicant has met his burden to overcome the presumption of regularity afforded the Coast Guard that its administrators acted correctly, lawfully, and in good faith.¹⁵

(ORDER AND SIGNATURES ON NEXT PAGE)

¹⁵ 33 C.F.R. § 52.24(b); *Muse v. United States*, 21 Cl. Ct. 592, 600 (1990) (internal citations omitted).

ORDER

The application of LT [REDACTED], USCG, for correction of his military record, is granted in part.

The Coast Guard is directed to add language to the Page 7 issued to the applicant on July 11, 2023, making clear that the document does not constitute an alcohol incident as defined by Coast Guard policy.

The Coast Guard is directed to remove the applicant's OER for his period of service from February 2022 to May 2023. The Coast Guard should either re-execute the OER or ensure a continuity OER is completed. In either case, the Coast Guard will ensure that the OER does not reference an alcohol incident or the applicant's April 2023 DUI arrest, though the OER may reference any underlying conduct that occurred during the rating period.

March 20, 2025

