

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-122

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

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 after receiving the applicant's completed application on April 9, 2009, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated January 14, 2010, 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 remove from his record an Administrative Remarks entry (form CG-3307, known as a "Page 7") dated March 31, 2000, and another Page 7 dated April 24, 2000. The applicant complained that the March 31st Page 7 has been entered in his record twice, whereas it should only appear once, and that the April 24th Page 7 is erroneous in that it states that he was diagnosed as alcohol dependent¹ when in fact medical officials found only that he had abused alcohol.² The applicant stated that because of the false diagnosis of

¹ Article 20.A.2.c. of the Personnel Manual in effect in 2000 defines "alcohol dependence" as follows:

A chronic disease characterized by repetitive, compulsive ingestion of alcohol which interferes with the user's health, safety, job performance, family life, or other required social adaptation. ...

The term alcohol dependence also applies to a medical diagnosis made by a physician or clinical psychologist. ... DSM-IV contains the criteria to establish a diagnosis of Alcohol Dependence (303.9). The medical diagnosis is primarily used to determine the appropriate level of treatment.

U.S. COAST GUARD, COMDTINST M100.6A, PERSONNEL MANUAL, Art. 20.A.2.c. (Change 30, Mar. 2000).

² Article 20.A.2.b. contains the following definition of "alcohol abuse":

A general term for the misuse of alcohol which interferes with the user's health, safety, job performance, family life, "Alcohol abuse" also applies to a medical diagnosis made by a physician, clinical psychologist, or a DoD or civilian equivalent Counseling and Assistance Center (CAAC) counselor. ... [T]he Diagnostic and Statistical Manual of the American Psychiatric Association (DSM-IV) contain the criteria to establish a diagnosis of Alcohol Abuse (305.0). The medical diagnosis is primarily used to determine the appropriate level of treatment.

Id. at Art. 20.A.2.b.

alcohol dependence, he is required to abstain from drinking alcohol for the remainder of his career, and any consumption of alcohol by him could cause him to be discharged from the Service.

In support of his allegations, the applicant submitted a progress report dated April 26, 2000, from the Gosnold-Thorne Counseling Center to a chief health services technician. The report notes that the applicant was first seen on April 11, 2000; that he would participate in twelve sessions of "Addiction Education Group" and a follow-up individual session. The written comments state, "Client has been diagnosed with alcohol abuse, in remission. Education on addiction is needed at this point."

SUMMARY OF THE APPLICANT'S RECORD

On March 24, 2000, the applicant's command entered the following Page 7 in his record, which the applicant signed in acknowledgement:

On 19 Mar 00 you were cited and arrested by the Plymouth Police Department, Plymouth MA, for operating a motor vehicle under the influence (OUI), operating a vehicle so as to endanger. Your blood alcohol content (BAC) was .13. This is in direct violation of Coast Guard regulations.

On 23 Mar 00 you were counseled on policies concerning alcohol use/abuse and the serious nature of this incident. You will be screened by the Group Woods Hole CDAR on 27 Mar 00. You are to continue to abstain from the use of alcohol and your driving privileges at this unit are revoked until further notice.

This is considered your first alcohol incident for documentation purposes. Per Chapter 20 of the Personnel Manual, COMDTINST M1000.6 (series), any further alcohol incidents may result in your separation from the U.S. Coast Guard.

On March 31, 2000, the applicant was assigned an unsatisfactory conduct mark and a low mark of 2 in the category "Health and Well-Being" on his performance evaluation because of his arrest for operating under the influence on March 19, 2000.

On April 24, 2000, the applicant's command entered the following Page 7 in his record, which the applicant signed in acknowledgement:

On 19 April 2000, you were screened by the Gosnold Alcohol treatment center at Falmouth, MA. Gosnold treatment center determined that you met the criteria of being alcohol dependent, DSM III code 303.9, and recommended you attend an outpatient treatment program.

You have been counseled on the policies concerning alcohol and abuse along with the seriousness of this incident. Additionally, you were directed to read Chapter 20 of the Personnel Manual. Furthermore, you will be required to adhere to the following treatment plan.

- a. Abstain from the use of alcohol.
- b. Attend counseling sessions once a week for next 6 months.
- c. Attend 2 AA meetings a week.
- d. Weekly contact with the unit CDAR.

This is considered your first alcohol incident for documentation purposes. Per Chapter 20 of the Personnel Manual, COMDTINST M1000.6A, any further alcohol incidents will result in disciplinary action and possible separation from the U.S. Coast Guard.

On November 16, 2000, the applicant's command entered the following Page 7³ in his record, which the applicant signed in acknowledgement:

You have completed an outpatient alcohol addiction treatment and aftercare requirements on 6 November 2000. I congratulate you on this accomplishment, and encourage you to use the tools learned during your treatment and aftercare to combat difficult situations which may arise from time to time in your life.

The Page 7s dated March 24, March 31, and April 24, 2000, appear twice each in the copy of the applicant's military record forwarded to the Board by the Coast Guard.

VIEWS OF THE COAST GUARD

On August 19, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant partial relief. In so doing, he adopted the findings and analysis in a memorandum on the case provided by Commander, Personnel Service Center (PSC).

The PSC stated that the applicant's record shows that he incurred an "alcohol incident"; was screened and diagnosed with "alcohol abuse," which is different from "alcohol dependent"; and prescribed an aftercare program. Therefore, the PSC stated, the Page 7 dated April 24, 2000, contains the wrong diagnosis and should be corrected to reflect a diagnosis of alcohol abuse. The PSC stated that the remainder of the treatment plan recorded on the Page 7 "is valid regardless of the diagnosis." The PSC stated that the order to abstain from alcohol on the Page 7 is not indefinite, and that only members diagnosed as alcohol dependent are ordered to abstain from alcohol indefinitely beyond the end of their aftercare program.

The PSC stated that the other Page 7s in the record are valid, but any unnecessary duplicates should be removed through normal administrative channels.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 31, 2009, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. No response was received.

APPLICABLE REGULATIONS

Article 20.B.2.d. of the Personnel Manual in effect in 2000⁴ defines an "alcohol incident" as follows:

³ This Page 7 was submitted by the applicant and is not in the record submitted to the Board by the Coast Guard.

⁴ U.S. COAST GUARD, COMDTINST M100.6A, PERSONNEL MANUAL (Change 30, Mar. 2000).

Any behavior in which the use or abuse of alcohol is determined to be a significant or causative factor and which results in the member's loss of ability to perform assigned duties, brings discredit upon the Uniformed Services, or is a violation of the Uniform Code of Military Justice (UCMJ) or federal, state, or local laws. The member need not be found guilty at court martial, in a civilian court, or be awarded non-judicial punishment (NJP) for the behavior to be considered an alcohol incident. However, the member must actually consume alcohol for an alcohol incident to have occurred.

Article 20.B.2.g.1. states that following a first alcohol incident, the member is counseled about the Coast Guard's alcohol policies and the counseling is documented on a Page 7 in the member's record with two copies sent to Headquarters. The member must be warned on the Page 7 that any additional alcohol incident may result in separation from the Coast Guard.

Article 20.B.2.e. states that "[a]ny member who has been involved in alcohol incidents or otherwise shown signs of alcohol abuse shall be screened in accordance with the Alcohol Abuse Treatment and Prevention Program The results of this alcohol screening shall be recorded and acknowledged on a [Page 7]." This Page 7 must also include a "statement of recommended treatment, if any." The Page 7 is entered in the member's record, and two copies are sent to Headquarters.

Article 10.B.2. states that when a member has incurred an alcohol incident, the command must prepare a Page 7 documenting the member's receipt of a low factor mark or unsatisfactory conduct mark on the member's next performance evaluation.

Article 20.B.3.h. states that when a member has completed rehabilitative alcohol treatment, the command "shall ensure that a record of the completion is recorded and acknowledged on a [Page 7] CG-3307 entry in the enlisted member's PDR with a copy to Commander, (CGPC-epm) and (CGPC-adm-3) This record of completion will also include a description of the aftercare plan required by the Alcohol Abuse Treatment and Prevention Program, COMDTINST M6330.1 (series)."

Article 20.B.2.1. states that members diagnosed as alcohol-dependent must abstain from drinking alcohol and that a "second episode of alcohol consumption after completing any after-care program by members who have been diagnosed as alcohol-dependent will result in separation from the Coast Guard."

According to Article 20.B.2.h.2., "[e]nlisted members involved in a second alcohol incident will normally be processed for separation in accordance with Article 12.B.16." However, in "cases involving enlisted members whose commanding officer feels that an exceptional situation warrants consideration for retention, a letter request for retention and treatment, including the medical screening results, treatment plan, and commanding officer's recommendation concerning treatment shall be forwarded via the chain of command to Commander (CGPC-epm) who shall consult with Commandant (G-WKH) and direct the appropriate action regarding retention. The command recommendation for retention will be submitted as a cover letter to the required discharge package."

Article 20.B.2.i. states that "[e]nlisted members involved in a third alcohol incident shall be processed for separation from the Service."

COMDTINST M1080.10H, the Coast Guard's manual for the Military Personnel Data Records (PDR) System, governs the organization of members' PDRs, including where particular documents are filed. The manual contains no express prohibition of duplicate entries.

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 submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The applicant was diagnosed with alcohol abuse and received the Page 7s in 2000. Although his application was not filed within three years of his discovery of the alleged error or injustice, it is considered timely under *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).

2. The Board begins its analysis in every case 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. 33 C.F.R. § 52.24(b); *see* Docket No. 2000-194, at 35-40 (DOT BCMR, Apr. 25, 2002, approved by the Deputy General Counsel, May 29, 2002) (rejecting the "clear and convincing" evidence standard recommended by the Coast Guard and adopting the "preponderance of the evidence" standard for all cases prior to the promulgation of the latter standard in 2003 in 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).

3. The Coast Guard has admitted and the applicant has proved by a preponderance of the evidence that he was diagnosed with "alcohol abuse" (305.0), rather than "alcohol dependence" (303.9) following his arrest for operating a vehicle under the influence of alcohol on March 19, 2000. Therefore, the Page 7 dated April 24, 2000, in his record is erroneous because it states that he was diagnosed as alcohol dependent. The Board also notes that the Page 7 cites the third edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, whereas the Personnel Manual in effect in 2000 used the fourth edition.⁵ The applicant asked the Board to remove this Page 7 from his record in its entirety. However, the Page 7 was a required record entry pursuant to Article 20.B.2.e. of the Personnel Manual. Therefore, the Board finds that the Page 7 should be corrected by replacing the words "being alcohol dependent, DSM III code 303.9" with the words "alcohol abuse, DSM-IV code 305.0".

⁵ American Psychiatric Association, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (DSM). The third edition (DSM-III) was published in 1980, whereas the fourth edition (DSM-IV) was published in 1994. A text revision of the fourth edition (DMS-IV-TR) was published in 2000.

4. The applicant also complained that as written, the Page 7 dated April 24, 2000, indicates that he has been ordered to abstain from drinking alcohol forever, which would make any consumption of alcohol by him now, nine years later, a violation of a direct order. The Coast Guard states that the order to abstain from alcohol was not indefinite, and that only members diagnosed as alcohol dependent are ordered to abstain from alcohol indefinitely beyond the end of their aftercare program. The Board finds that the order on the Page 7 to “Abstain from the use of alcohol” is ambiguous in that it provides no end date and so would be consistent with the diagnosis of alcohol dependence, which the Board is removing from the Page 7. Because the order should apparently have expired at the end of the applicant’s six-month aftercare program, the Board finds that the words “for next 6 months” should be added to this order to remove the ambiguity and to make the order consistent with the diagnosis of alcohol abuse.

5. The applicant complained that at least one of the Page 7s concerning his alcohol incident and treatment has been entered into his record twice. In the copy of his military record provided to the Board, there are two copies each of the Page 7s dated March 24, March 31, and April 24, 2000. The Board notes that the Personnel Manual in effect in 2000 required commands to forward copies of each Page 7 to more than one office within the Personnel Command. The PDR System Manual, COMDTINST M1080.10H, governs the filing of Page 7s. The Board can find no express prohibition of multiple entries of a single Page 7 in this manual. However, multiple entries of negative documents could prejudice an inattentive reader of the applicant’s file, and the Coast Guard has agreed that unnecessary duplicates should be removed. Therefore, the Board will order the Coast Guard to review the applicant’s PDR and to remove any unnecessary duplicate copies of the Page 7s dated March 24, March 31, and April 24, 2000, in his record.

6. Accordingly, partial relief should be granted by correcting the April 24, 2000, Page 7 by replacing the words “being alcohol dependent, DSM III code 303.9” with the words “alcohol abuse, DSM-IV code 305.0” and by adding the words “for next 6 months” to the order to “Abstain from the use of alcohol.” In addition, the Board will order the Coast Guard to review the applicant’s PDR and remove any unnecessary duplicate copies of the Page 7s arising from his alcohol incident.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted in part.

The Coast Guard shall correct the Page 7 (form CG-3307) in his record dated April 24, 2000, regarding the results of his screening at the Gosnold Alcohol treatment center, by removing the words “being alcohol dependent, DSM III code 303.9” and replacing them with the words “alcohol abuse, DSM-IV code 305.0”. In addition, the words “for next 6 months” shall be added to the order to abstain from the use of alcohol on this Page 7 so that the order shall read: “Abstain from the use of alcohol for next 6 months.”

The Coast Guard shall also review his PDR and remove from it any unnecessary duplicate copies of the Page 7s dated March 24, 2000; March 31, 2000; and April 24, 2000, pursuant to the requirements of the Personnel Manual and COMDTINST M1080.10H.

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