

**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. 2012-090**

**XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX**

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**FINAL DECISION**

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the application upon receipt of the applicant's completed application on March 8, 2012, and subsequently prepared the final decision as required by 33 CFR § 52.61(c).

This final decision, dated November 15, 2012, 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 his record by removing all evidence of a March 18, 2010 captain's mast (non-judicial punishment (NJP)) in which he was punished for failing to obey the Commandant's regulation prohibiting driving under the influence (a violation of Article 92 of the Uniform Code of Military Justice (UCMJ)) and for operating his privately owned vehicle while legally intoxicated (a violation of Article 111 of the UCMJ).

The applicant was arrested on December 26, 2009 by state civilian authorities and charged with DUI. On March 15, 2010, he pleaded guilty in state civilian court to one charge of driving a vehicle while impaired by alcohol. Subsequently, on March 18, 2010, he was punished at captain's mast for the same offense.

The applicant alleged that his command violated the Military Justice Manual (MJM) by punishing him for the same offense for which he was tried in state civilian court without first obtaining the approval of the Judge Advocate General (JAG).

**VIEWS OF THE COAST GUARD**

On May 30, 2012, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant relief to the applicant. The JAG stated that the applicant's command violated Coast Guard policy by subjecting the applicant to NJP for the

same offences on which he was previously tried in state court without first obtaining authorization from the JAG, as required by Article 1.A.7.c. & 3.B.4. of the MJM.

The JAG stated that according to Article 1.A.7.c. of the MJM authorization from the JAG (CG-094) must be obtained before NJP may be imposed for an offense pending trial or tried by a state or foreign criminal court. The JAG also commented that under Article 3.B.4. of the Military Justice Manual no person in the Coast Guard may be tried for the same acts that constitute an offense against state or foreign country without first obtaining authorization from the JAG. The JAG agreed with the applicant that his command had imposed NJP on him for the same offense for which he was tried in civilian court without authorization of the JAG. The JAG stated:

Based on the command's actions of subjecting the applicant to NJP without prior JAG authorization—the applicant's NJP is legally insufficient and should be "set aside" [in accordance with] 1.E.7.e. of the MJM. The record of NJP shall also be expunged from applicant's records. Although the applicant NJP should be removed, the supporting documentation of the applicant's alcohol incident (page 7) shall not be removed.

. . . All . . . documentation of applicant's properly documented alcohol incident pertaining to his DUI arrest should remain as part of the applicant's official records. The applicant is not entitled to relief on his delay in advancement and good conduct determination because both were properly withheld due to his properly documented alcohol incident.

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

On June 4, 2012, a copy of the views of the Coast Guard was mailed to the applicant for a response. He did not submit reply.

#### **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 section 1552 of title 10 of the United States Code. The application was timely.
2. The advisory opinion recommended, and the board agrees, that all evidence of the March, 18, 2010, NJP should be removed from the applicant's record because the applicant's command violated Coast Guard regulation by punishing the applicant at NJP for the same offense for which he had been tried in civilian court without approval from the JAG, as required by Article 1.E.7.e. of the MJM. The JAG stated that the NJP is legally insufficient and should be set aside and removed from the applicant's military record. The Board agrees.

3. Accordingly, the March 18, 2010 NJP, including all references to it, should be removed from the applicant's record.

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

**ORDER**

The application of XXXXXXXXXXXXXXXX, USCG, for correction of his military record is granted. The March 18, 2010 NJP, including all references to it, shall be removed from his military record.

No other relief is granted.

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Christopher M. Dunne

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Randall J. Kaplan

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Jennifer A. Mehaffey