

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2005-074

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

FINAL DECISION

AUTHOR: Andrews, J.

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 on March 4, 2005, upon receipt of the applicant's completed application.

This final decision, dated December 8, 2005, is 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 yeoman first class (YN1) on special assignment as a recruiter in San Antonio, asked the Board to correct his military record by (a) recalculating his May 2004 servicewide exam (SWE) final multiple with the marks from his May 31, 2003, enlisted performance evaluation form (EPEF), (b) adjusting his standing on the advancement the list,¹ and (c) removing a January 28, 2005, memorandum concerning a request mast from his permanent record.

The applicant alleged that when he received the EPEF on July 17, 2003, he signed it and sent it to the administrative offices of the Coast Guard Recruiting Command (CGRC) for placement in his record. He alleged that a tracking worksheet maintained by his unit's Recruiter in Charge (SCPO C) indicates that the EPEF was received by Petty Officer D at CGRC Administration. However, on March 25, 2004, when he received and reviewed his personal data extract (PDE)

¹ The applicant placed #37 on the list, which was above the cutoff for advancement. However, recalculating his standing might result in higher placement and an earlier date of rank.

prior to the May 2004 SWE, he discovered that his EPEF for the period ending May 31, 2003, was not in his record. The applicant knew that the absence of the EPEF might lower his standing on the advancement list following the SWE. Therefore, he notified CGRC that the EPEF was missing from his PDE and requested correction of the PDE. He was told to fax in the EPEF with his PDE and did so. However, he alleged, he had no computer and no access to the Coast Guard's database CGHRMS so he could not check that the correction had been made. He later discovered that the EPEF was never placed in his record and was not included in the calculation of his final standing on the advancement list following the May 2004 SWE.

In support of his allegations, the applicant submitted copies of several e-mail messages. One, dated January 3, 2005, is from his supervisor, SCPO C, who stated the following:

Every process or system we use is not 100% fool proof as each of these is maintained or controlled in some way by a human element. The enlisted evaluation process and Direct Access are only as good as the personnel that input or maintain them. I agree with [LCDR H] in that this matter should have been corrected 6 months ago; but it wasn't and now the member may or may not be the victim even after attempting to have the error corrected. I was personally involved in these missing eval[uation]s and also thought the situation had been resolved; obviously as Recruiter in Charge I failed one of my people.

The applicant alleged that his e-mail supports his claim that he timely faxed the EPEF to CGRC Administration. He alleged that faxing the EPEF to CGRC Administration was the accepted manner of ensuring that it was entered into a member's record and that his actions should have been sufficient. He alleged that a "follow up was never required." In addition, he stated, the CGRC staff previously had sent out e-mails listing the names of members for whom evaluations were overdue (and provided a copy of one dated January 2, 2003, which indicated that his EPEF dated November 30, 2002, was overdue). However, he received no such e-mail to inform him that the May 31, 2003, EPEF was missing. The applicant also submitted three e-mail messages he sent to CGRC on December 18, 2002; January 2, 2003; and January 15, 2003, in which he stated that while looking at CGHRMS, he had noticed that three EPEFs he had received while stationed in Puerto Rico were missing.

The applicant alleged that when he realized that his final standing on the advancement list was erroneously low because of the absence of the EPEF, he initiated a request mast with the Commander of CGRC. He stated that following the mast, the Commander refused to pursue correction of his standing on the advancement list primarily because he did not retain proof that he had timely faxed the EPEF to CGRC Administration and that his fax was received. He

alleged that both his supervisor and sector supervisor supported his claim that he had faxed the EPEF to CGRC Administration.

The applicant also stated that after receiving the January 28, 2005, memorandum, he replied to it with his objections via e-mail. The Commander replied to him via e-mail on February 1, 2005, and stated that he knew that the applicant had faxed the EPEF to CGRC Administration and that this was proper procedure. However, the Commander stated, he did not know if CGRC had received the fax and the applicant admitted at the mast that he did not follow up the fax with a telephone call or e-mail. Therefore, the Commander had determined that the applicant did not do enough to "ensure" that the correction was made, as required. The Commander also pointed out in this e-mail that the applicant did not raise the issue until December 4, 2004, "when it was too late to make corrections that would affect the advancement list." The applicant argued, "If the CO 'knows' that the fax was sent, doesn't that mean they received it. Then shouldn't they proceed to correct the problem."

The applicant also alleged that CGRC tried to "get [him] to back down," by pointing out that an evaluation dated May 31, 2002, which had lower marks, was also missing from the PDE. The applicant alleged, however, that that EPEF was invalid because it was signed only by his supervisor on a temporary assignment to South America and not by a marking official and approving official.

The applicant alleged that he has been harmed by CGRC Administration's mistakes: first when it failed to enter his May 31, 2003, EPEF in his record in 2003, and second when it failed to enter it in his record after he faxed it to them in March 2004. The applicant stated that while there may have been a deadline for correcting his PDE, there is no deadline for correcting the advancement list and that his name should appear on that list in the proper position.

SUMMARY OF THE RECORD

On July 11, 1988, the applicant enlisted in the regular Coast Guard. He attended boot camp and YN "A" School to join the yeoman rating. The applicant received many excellent evaluations, commendations, and medals first as a yeoman and then as a recruiter.

On the applicant's EPEF for his work as a recruiter from December 1, 2002, to May 31, 2003, he received one mark of 4,² two marks of 5, twelve marks of 6, and seven marks of 7. The EPEF was signed by the applicant's supervisor

² In an EPEF, a petty officer is evaluated in 22 different performance "dimensions" on a scale of 1 to 7, with 7 being best.

and marking official in June 2003; by the approving official on July 10, 2003; and by the applicant on July 17, 2003. His next EPEF was similarly excellent. He was recommended for advancement by his rating chain.

On March 25, 2004, the applicant signed his PDE, which did not include the marks from his May 31, 2003, EPEF. He noted the absence of the EPEF on the PDE with a handwritten notation. The PDE form states the following above the applicant's signature and notes that, after signing it, the member should give the form to his "unit admin personnel":

If errors are found, note them on a printed copy of this form and inform your admin personnel. It is the member's responsibility to ensure that incorrect or missing data is [sic] updated in Direct Access prior to the PDE verification deadline date for each SWE.

Certification: I have reviewed my PDE for accuracy. If any data is [sic] missing or incorrect, I have so noted it on this form and will ensure correction is made prior to the PDE correction deadline date.

On December 27, 2004, the applicant e-mailed the Personnel Service Center (PSC) and informed them that his "evals were never input into the system for 2004 MAY SWE. I submitted my evals again and my understanding is that they have been put into the system. I had also pointed out the discrepancies on my PDE for YNC MAY 2004. I believe that somewhere along the line these were misplaced up at HQ CGRC. I have copies of all these documents. What I need is for PSC to recalculate my MARKS FINAL MULTIPLE so that [I] can be placed in the proper slot for advancement." The applicant's request for recalculation was disapproved the same day. The PSC pointed out that ALCGEN 008/04 stated that "[m]embers are responsible for identifying discrepancies on their PDE and working with their unit and/or PERSRU to ensure appropriate corrections are made," that the deadline for corrections was April 5, 2004, and that the PSC was the sole point of contact for all SWE inquiries. However, the PSC was not notified of any problem until December 22, 2004. The PSC also pointed out that the advancement list was published on July 14, 2004. The PSC's decision was approved by LCDR H, Chief of the Advancements and Separation Branch of the Coast Guard Personnel Command (CGPC). Although the applicant appealed the matter to LCDR H again on January 2, 2005, his request was again disapproved.

On January 26, 2005, the applicant met with the Commander of CGRC at a request mast to seek relief. He alleged that the May 31, 2003, EPEF was not included in the calculation of his standing after the SWE and that he had discovered that none of his evaluations had been properly entered in his record since 1999. He asked that the EPEF be included in the calculation of his standing on the advancement list.

On January 28, 2005, the Commander of CGRC sent the applicant a memorandum denying his request as follows:

2. I cannot pursue relief for this situation because I find that you did not fully discharge your duties under the Coast Guard Advancement System. [On the PDE] ... there is an annotation ... showing "5/31/2003" under the Evaluations Block. However, you stated to me during the request mast that your only action to correct this error was to fax the PDE and your 5/31/03 evaluation to CGRC, and you did not follow up on this issue in any other way, including follow up phone calls or e-mails. The PDE form states that "It is the member's responsibility" In this case, the PDE verification deadline was 5 April 2004. [The Personnel Manual] places the burden on the member, as it states, "By signing the CG-4902 (Personnel Data Extract), members state all changes noted or information on the form are current and correct and no further corrections are necessary." I note also that the May 2003 SWE shows gaps in evaluations from 11/30/2001 and 5/31/2002. However, there are not annotations on that form or corrective action noted.

3. Your recent evaluation record in Direct Access now appears complete. Evaluations are shown with the effective date of 11/30/2002, 5/31/2003, 11/30/2003, 5/31/2004, and 11/30/2004.

4. The purpose of the Service Wide Examination is to rank order individuals who are fully qualified for advancement. The accuracy and completeness of information is the cornerstone of that process, and the PDE provides the member the chance to see the information, acknowledge its status in writing, with the opportunity to take timely corrective action as needed. While you state that you sent the missing information by fax, there is no record of its receipt. If fact, the PDE for the May 2003 SWE was provided by you and is not present in the command files. Since you did not follow up on the fax of information or confirm its receipt, I cannot pursue relief.

VIEWS OF THE COAST GUARD

On July 22, 2005, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief.

The JAG argued that Article 10.B.4.b. of the Personnel Manual provides that the member is responsible for ensuring that his EPEFs are properly recorded and that the SWE Guide requires members to verify the accuracy of their PDEs and to follow-up to ensure any correction is made prior to the deadline. The JAG argued that the applicant is not entitled to relief because he failed to follow up and ensure that the EPEF was entered in his record in a timely manner. The JAG noted that the applicant did not contact the PSC until more than eight months after the April 5, 2004, deadline.

The JAG also adopted a memorandum on the case prepared by CGPC. CGPC stated that although the applicant noted the missing EPEF on his PDE, he “failed to ensure that the requested corrections were received and/or made prior to the deadline date as required by Coast Guard policy” and “failed to notify the PSC (adv) regarding the issue. The applicant made no contact with PSC (adv) until December 27, 2004, more than five (5) months after the May 2004 SWE Eligibility List was published.” CGPC recommended that no relief be granted.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 12, 2005, the applicant responded to the views of the Coast Guard. He alleged that he did ensure that the correction was made through his supervisor, the Recruiter in Charge. He alleged that his supervisor’s e-mail shows that the supervisor verified the matter with the sector supervisor.

The applicant stated that recruiters are not allowed to contact the PSC directly and can only contact CGRC about administrative matters. Therefore, he e-mailed the PSC in December 2004 only after CGRC told him to do so. Moreover, because his office was having computer problems, he had no way to verify the correction through Direct Access and had to work by fax. He alleged that neither his supervisor nor his sector supervisor could access the system either. He alleged that he only discovered the error in December 2004 because he checked his record when he was considering competing for an appointment as a warrant officer.

The applicant alleged that it is unfair for members to be held accountable when CGRC routinely fails to enter EPEFs into the database. He alleged that by the Coast Guard’s logic, even if he had tried to verify the correction ten times, he would still be accountable if CGRC failed to enter his EPEF in the system.

APPLICABLE LAW

HRSICINST M1418.1B, the "SWE Guide," which was in effect in March 2004, stated that the "SWE cycle is a multi-level process requiring all responsible parties to do their part to ensure success. Failure by a supervisor or supporting command to fulfill their responsibilities is not justification for a waiver and may result in the member not qualifying to test." The list of the member's responsibilities includes "verify and sign Personal Data Extract (PDE)" and "follow-up to ensure action was completed to correct any PDE errors prior to deadline." The unit's responsibilities include "provide administrative assistance to member in correcting errors on PDE prior to deadline." The PERSRU's duty is to "assist units as needed in correcting PMIS/JUMPS and Direct Access errors as reflected on the member's PDE."

ALCGENL 008/04, which was issued on January 27, 2004, stated the following in pertinent part:

1. SUMMARY. This message announces the May 2004 SWE competition in all ratings ... All personnel intending to participate need to be aware of these requirements and their responsibility to confirm that they are met. All PERSRU's, units, ESOs, SWE Board officers, and affected members shall familiarize themselves with the contents of this ALCGENL. It is critical for members to carefully review and take timely action to correct their Personal Data Extract (PDE). Members are responsible for identifying discrepancies on their PDE and working with their unit and/or PERSRU to ensure appropriate corrections are made. Each SWE cycle, a significant number of members are unable to compete for advancement because they fail to verify/correct their PDE or do not receive full credit for awards. PSC (adv) is the single [point of contact] for all SWE inquiries. Questions and requests should be addressed to ... Requests for corrections and/or waivers must be sent by msg to [the PSC] and prior to scheduled deadlines.

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4. RESPONSIBILITIES.

A. MEMBER. It is the member's responsibility to ensure all eligibility requirements to compete in the May 2004 SWE are met ... PDEs should be available in Direct Access [on or about March 1, 2004]. Follow-on deadlines include:

Requirement	Deadline
(1) Verify, correct, and sign PDE	26 MAR 04
(2) Verify all corrective action has been entered in Direct Access (no corrections will be authorized after this date)	5 APR 04

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B. COMMAND RESPONSIBILITIES ...

Requirement	Deadline
(8) Last day exam Board OPFAC can be changed if incorrect on PDE (send req via msg to PSC(adv))	5 APR 04

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C. PERSRU ACTION. ...

(2) Last day for PERSRUs to input any PDE corrections	5 APR 04
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Article 10.B.4.b.6. of the Personnel Manual states that members are responsible for “[v]erifying through CGHRMS self service that their individual employee review has been properly recorded.”

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 over this matter pursuant to 10 U.S.C. § 1552. The application was timely.

2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.

3. The applicant alleged that he complied with the requirements of ALCGENL 008/04 and HRSICINST M1418.1B by correcting his PDE with a notation and faxing it with the EPEF to CGRC Administration. He alleged that he was not allowed to contact the PSC directly about the matter, and this allegation is supported by his communications with Commander, CGRC, who acknowledged that faxing the PDE to CGRC Administration was the proper procedure. The applicant alleged his supervisor and sector supervisor confirmed that CGRC Administration received the PDE and EPEF but that, with no operational computers, neither he nor they had a way to check that CGRC Administration had actually completed the requested correction.

4. The applicant has submitted no evidence to prove that he timely faxed the PDE and EPEF to CGRC Administration in March 2004. Although he alleged that his supervisor and sector supervisor confirmed CGRC's receipt of the faxed PDE and EPEF, he did not submit any evidence to support this claim. There is no statement by either the supervisor or sector supervisor in the record averring that, after the applicant faxed his PDE and EPEF to CGRC Administration in March 2004, they or the applicant called or contacted CGRC to confirm receipt of the fax or confirm the correction of the PDE. The supervisor's email dated January 2, 2005, is extremely vague and does not mention any fax by the applicant or attempts by him or anyone else to confirm that the alleged fax was received and the correction made.

5. At a request mast on January 26, 2005, however, the applicant apparently persuaded Commander, CGRC, that he had faxed or attempted to fax the PDE and EPEF to CGRC Administration. Assuming *arguendo* that the applicant did fax the PDE and EPEF to CGRC Administration in March 2004, the Board agrees with Commander, CGRC, that running pages through a fax machine cannot be considered adequate action to ensure that the faxed pages are

received and properly channeled in the recipient office. There is no evidence in the record that the applicant (or his supervisor or sector supervisor) followed up on the alleged fax with any other personal contact to ensure that it had been received and would be processed. Although the applicant alleged that receipt of the fax was confirmed, nothing in the record supports this allegation.

6. The applicant alleged that he had no access to a computer during the period in question and therefore no way to determine whether the correction to his PDE had been made. The applicant submitted no evidence of the dates the personnel in his office had no operational computers. Nor has he submitted evidence supporting his allegation that he had no reasonable way of accessing Direct Access during the relevant period. In addition, the applicant has failed to explain why he did not check that the requested correction had been made until December 2004—eight months after the April 5, 2004, deadline and five months after the advancement eligibility list was issued.

7. The applicant argued that CGRC Administration erred by failing to enter the EPEF into his record initially and then by failing to correct his PDE in response to his alleged fax. He argued that it is unfair that his name appeared lower on the advancement list because of their errors. However, as the applicant's supervisor stated, no administrative system is 100% fool proof, as the applicant clearly knew because in December 2002 he himself discovered that three prior EPEFs he had received while stationed in Puerto Rico had not been entered in his record. Members are clearly best positioned to know whether or not their own PDEs are complete and correct. Therefore, the regulations reasonably place the burden of verification on the members themselves. Contrary to Article 10.B.4.b.6. of the Personnel Manual, the applicant apparently did not check that the May 31, 2003, EPEF, had been properly recorded before receiving his PDE in March 2004. He has not proved that he took any action to ensure that his PDE was corrected apart from (allegedly) putting his PDE and the EPEF through a fax machine, as required by ALCGENL 008/04 and HRSICINST M1418.1B. While CGRC Administration apparently erred in failing to record the EPEF in 2003 and might have erred in failing to process the alleged fax in March 2004, the regulations put the applicant on notice that it was his responsibility to ensure that his PDE was corrected by April 5, 2004, and he has not proved that he did so. Therefore, the Board finds that the Coast Guard's refusal to recalculate his position on the advancement list is neither error nor injustice.³

8. The applicant has not proved his allegations by a preponderance of the evidence. Although he apparently believes that his supervisor and sector

³ See *Sawyer v. United States*, 18 Cl. Ct. 860, 868 (1989), *rev'd on other grounds*, 930 F.2d 1577 (citing *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976) (finding that for purposes of the BCMRs under 10 U.S.C. § 1552, "injustice" is treatment by military authorities that "shocks the sense of justice").

supervisor support his allegations, he has not submitted detailed statements from them to prove his specific claims. If in fact they witnessed the timely faxing of the PDE and EPEF in March 2004 and if in fact they followed up to confirm that the fax was received and that the correction was made, the applicant should be able to produce their statements detailing what they know and what they did. If in fact the applicant had no reasonable way of accessing a Coast Guard computer and verifying the correction (or lack thereof) in Direct Access throughout March and April 2004, the applicant should be able to produce a statement by his supervisor supporting this allegation.

9. The applicant's request should be denied because he has not proved his allegations. However, the Board believes that it is possible that the applicant would have been able to submit supporting, conclusive statements by his supervisors if he had understood the kind of evidence that is needed to prove his allegations. Therefore, if within 90 days of the date of this decision, the applicant is able to submit statements by his supervisors, such as those described in finding 8, above, to prove his allegations, the Board will grant further consideration of his case.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxx xxxxxxxxxxxx, USCG, for correction of his military record is denied.

Charles P. Kielkopf

William R. Kraus

Thomas H. Van Horn