

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2008-009

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

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 on October 12, 2007, upon receipt of the applicant's completed application, 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 June 24, 2008, 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 alleged that his military performance record contains an impermissible gap in his officer evaluation reports (OERs) from August 1, 2004, to April 30, 2005. He stated that on May 1, 2005, he was promoted from chief warrant officer (CWO) to lieutenant (LT) and quickly transferred to a remote assignment. Before his transfer, he left input for his final CWO OER with the command, but the rating chain never prepared an OER for him. He stated that when he inquired about the missing OER, he was told that members of his rating chain had retired and so no substantive OER could be prepared. Therefore, the applicant asked the Board to correct his record by ordering a "continuity OER" to be prepared to fill the gap in his performance record.

VIEWS OF THE COAST GUARD

On February 27, 2007, the Judge Advocate General of the Coast Guard recommended that the Board grant relief in this case. In so doing, he adopted the findings and analysis provided in a memorandum on the case by the Coast Guard Personnel Command (CGPC).

CGPC stated the Personnel Manual does not permit gaps in officer's performance record. However, the applicant's rating chain failed to prepare an OER for him and has since retired from active duty. Therefore, CGPC concluded that a continuity OER should be prepared to cover the applicant's performance from August 1, 2004, to April 30, 2005, since there is no OER for this period in his record.

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On February 29, 2008, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within thirty days. No response was received. However, in response to a query from the BCMR staff, the applicant stated that his duties were the same during the period August 1, 2004, to April 30, 2005, as they were during his prior evaluation period from July 1, 2003, to July 31, 2004.

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. Article 10.A.4.c.1.j. of the Personnel Manual requires all periods of an officer's active duty to be evaluated on an OER. The applicant's record impermissibly contains no OER for the period August 1, 2004, to April 30, 2005.

3. Article 10.A.3.a.5. of the Personnel Manual states that a continuity OER "may be submitted in cases where an OER is required by these instructions, but full documentation is impractical, impossible to obtain, or does not meet officer evaluation system goals." The preponderance of the evidence indicates that full documentation of the applicant's performance from August 1, 2004, to April 30, 2005, is impossible to obtain as a result of the retirement of members of his rating chain.

4. Under Article 10.A.3.5.d. of the Personnel Manual, a continuity OER contains marks of "not observed" in the performance categories and no comments about the officer's performance. However, block 2 of a continuity OER is supposed to contain a description of the reported-on officer's duties and a statement of the reason the continuity OER was prepared in lieu of a substantive OER. The applicant has affirmed that his duties during the period to be covered by the continuity OER were the same as his duties during the prior evaluation period, as described in block 2 of his OER for the period July 1, 2003, to July 31, 2004. In addition, based on CGPC's statements, the reason provided for the continuity OER should be the following: "Continuity OER required due to retirement of rating chain."

5. Accordingly, the applicant's request for relief should be granted.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted as follows:

A continuity OER shall be prepared in accordance with Article 10.A.3.5.d. of the Personnel Manual and entered in his record for the period August 1, 2004, to April 30, 2005. In preparing the continuity OER, the Coast Guard shall include a description of his duties in block 2, which the applicant has affirmed should be the same as the description of duties that appears in block 2 of his OER for the period July 1, 2003, to July 31, 2004. Block 2 shall also include the following reason for the continuity report: "Continuity OER required due to retirement of rating chain."

Francis H. Esposito

Paul B. Oman

David A. Trissell