



CGPSC noted that Article 10.A.4.c.3.a.1. of the Personnel Manual states the following:

Personal military decorations issued in accordance with Chapter 2 of the Medals and Awards Manual ... may be attached to an OER for the period in which received even if the performance cited does not relate to the period. Attach a copy of the award's certificate and citation and list the description (e.g., CG Achievement Medal dated 31 January 2005) in the attachment line in section 2 of the OER. [Emphasis added.]

CGPSC stated that the evaluation period for the disputed OER ended on June 30, 2006, and the Commendation Medal was not awarded until July 28, 2006. CGPSC stated that the date on the certificate "is used to determine the official date of the award." Therefore, the Commendation Medal could not properly be attached to the disputed OER under Article 10.A.4.c.3.a.1. because it was awarded after the end of the evaluation period for that OER.

CGPSC noted that the applicant could have the award attached to her subsequent OER. However, the award has already been entered in her record as a separate document and is thus "viewable by all promotion and selection boards and panels." CGPSC argued that attaching the award to an OER would result in a duplication of documents in the applicant's record and would be "inconsistent with practice." CGPSC concluded that the applicant has not proved that the disputed OER is erroneous or unjust and so no relief should be granted.

## **RESPONSE TO THE VIEWS OF THE COAST GUARD**

On October 5, 2009, the Chair sent the applicant a copy of the views of the Coast Guard and invited her to submit a response within 30 days. No response was received.

## **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 under 10 U.S.C. § 1552(a). The application was timely.

2. The applicant alleged that the Commendation Medal she received on July 28, 2006, should have been attached to and referenced in block 2 of her OER for the period May 1, 2005, to June 30, 2006. 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.<sup>1</sup> Absent evidence to the contrary, the Board presumes that Coast

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<sup>1</sup> 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)).

Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”<sup>2</sup>

3. Under Article 10.A.4.c.3.a.1. of the Personnel Manual, personal military decorations may be referenced as attachments on the OER for the period in which the decoration was received. The certificate for the applicant’s Commendation Medal shows that it was awarded on July 28, 2006, which was after the end of the evaluation period for the disputed OER. Therefore, the medal cannot properly be attached to that OER.

4. As CGPSC stated, the medal could be attached to the applicant’s subsequent OER even though her main assignment during the evaluation period for the subsequent OER was unrelated to the performance for which the medal was awarded.<sup>3</sup> However, the applicant did not request the correction of that OER, and the Commendation Medal has already been entered in her record as a stand-alone document.

5. Accordingly, no relief should be granted because the applicant has not proved that her military record contains any error or injustice.

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

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<sup>2</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

<sup>3</sup> The applicant’s OER for the period July 1, 2006, to May 31, 2007, is a “duty under instruction” OER, which shows only her courses and grades as a full-time graduate student in pursuit of a Master’s degree in xxxxxxxx at the xxxxxxxxxxxxxxxxxxxxxxxxx.

**ORDER**

The application of LCDR xxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of her military record is denied.

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Lillian Cheng

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George J. Jordan

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Paul B. Oman