

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2011-063

**XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX**

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 December 24, 2010, and subsequently prepared the final decision as required by 33 CFR § 52.61(c).

This final decision, dated September 8, 2011, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST, ALLEGATION, AND EVIDENCE

The applicant asked the Board to correct her record by removing her officer evaluation report (OER) for the period from June 1, 2007 to April 30, 2008 and replacing it with an OER for continuity purposes only.¹ She alleged that she was not observed for 165 days of the reporting period due to her extended absence for hospitalization and rehabilitation after sustaining a traumatic head injury in a motor vehicle accident.

In addition to her DD 149, the applicant submitted a letter from the Office of Servicemember's Group Life Insurance showing that she had been awarded \$25,000 on her traumatic injury claim. She also submitted a copy of the disputed OER.

Disputed OER

In the supervisor's portion of the OER, the applicant received marks of 5 in each category, except for marks of 4 in the directing others, workplace climate and evaluations

¹ A continuity OER is one in which only section 2 of the OER form is completed describing the reported-on officer's duties and explaining the reason for the continuity OER. All other areas on the OER are marked non-observed. Article 10.A.3.a.5.d. of the Personnel Manual. Continuity OERs are submitted in cases where an OER is required by regulation but full documentation is impractical, impossible to obtain, or does not meet officer evaluation system goals. See Article 10.A.3.a.5., which also provides a list of instances in which a continuity OER must or may be submitted.

categories. The supervisor wrote the following comments, among others: “Interpersonal skills in terms of tone & frequency of communications w/staff/Supervisor improving, but initially strained/limited following return to duty status. Looking forward to greater interaction, better dialogue & team building w/in team.”

In the reporting officer’s section of the OER, the applicant received marks of 5 in each performance category except for a 4 in initiative. The reporting officer does not mention her absence from duty in this portion of the OER.

On the comparison scale in section 9 of the OER, the reporting officer ranked the applicant in the 4th highest of 7 blocks, which described her as a “good performer; give tough, challenging assignments.” This section of an OER is where the reporting officer compared the applicant with others of the same grade he has known in his career.

In section 10 (potential) of the disputed OER, the reporting officer described the applicant’s potential as follows;

[The applicant] is an intelligent, highly motivated officer extraordinarily committed to the CG & job performance. She faced exceptional challenges during this period, returning after 5 months to a dramatically changed organization, a new position & rank, & expanded responsibilities. She has done a remarkable job of shouldering these new responsibilities & is progressing in all areas. Marked improvement in performance has been noted since this period began and I expect to see continued professional development/growth in the future. The determination shown this period indicates a capacity to overcome all obstacles.

The reviewer for the disputed OER added the following comments about the applicant’s performance for the period under review:

Concur with supervisor and reporting officer’s marks and comments. [The applicant] has shown tremendous determination in returning to active duty status. This has been a period of adjustment for [the applicant], and while the marks and comments may not favorably compare with past performance, they are indicative of a member who has faced an exceptional challenge, and who is currently making strides toward meeting and surpassing her past performance. Like her supervisor and reporting officer, I believe she has great potential and that we will see much improved performance in the upcoming marking period.

VIEWS OF THE COAST GUARD

On May 4, 2011, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in accordance with a memorandum from the Commander, Personnel Service Center (PSC).

PSC stated that all parties agree that there were 165 days in which the applicant was not observed. He noted that during the period the applicant was on sick/convalescent leave, which is not mentioned in the OER because comments about an officer's physical or psychological condition are prohibited. PSC noted that although the applicant was not observed for 165 days, she was observed for 200 days of the reporting period. In this regard, PSC stated the following:

The amount of time that the applicant was observed provided sufficient information and adequate observations to render a judgment on the applicant's performance and conduct. The marks and comments assigned to the performance dimensions accurately painted a succinct picture of performance. The reviewer as required ensured the supervisor and reporting officer adequately executed their responsibilities and required documentation to justify the performance evaluation. Additionally, the Reviewer stated in his declaration "we believe that this report did, in fact, document the state of her performance at that time."

PSC stated that the applicant's rating chain carried out its responsibilities in preparing and submitting the applicant's OER in accordance with the Personnel Manual, and no evidence has been presented to substantiate any error or injustice.

PSC stated that although the language that stated the reason why the applicant was not observed for 165 days was removed from the OER, she still has the option of communicating with future selections boards and can explain the reason why she was not observed for 165 days of the reporting period.

Supervisor's Statement

PSC obtained a statement from the supervisor for the disputed OER. The supervisor stated that "The OER . . . offers no explanation for the [applicant's] absence. He stated that "[b]ased on conversations with [the applicant] prior to her submittal of this request to the Board [for] Corrections, I believe her intent was to have an explanation for the absence placed in her record." He explained that he consulted with PSC (opm) Officer Evaluation Branch about the applicant's situation and that the OER was prepared in accordance with that guidance. The supervisor further stated the following:

In preparing the OER, I also consulted with Captain [M], then CG-11d, in regard to addressing the absence due to the recovery time and medical treatment. As a result of those conversations my original OER submittal contained the words "due to extended hospitalization" as a means of explaining the long absence while avoiding details of her medical condition. After the OER was submitted to PSC (opm), the Officer Evaluation Branch raised concerns about any mention of hospitalization. As a consequence my original explanation for the absence was redacted and the absence was left unexplained within the context of the OER. A similar comment by her Reviewer in regards to "following her hospitalization" was redacted at the same time.

Reviewer's Statement

PSC obtained a statement from the reviewer, who was the only Coast Guard member of the applicant's rating chain for the disputed OER. He wrote the following:

In my position as Executive Assistant, I interacted with [the applicant] on several occasions prior to her automobile accident. Additionally, I was familiar with the circumstances of her mishap, closely following her rehabilitation and return to work. Upon receiving her OER for the period in question from her reporting officer, I was surprised to see the downturn in documented performance. I queried her reporting officer and requested documentation to justify the performance evaluation. I was provided with written work and anecdotal information which showed that she was not performing at the level prior to her mishap. Her ability to form ideas, clearly articulate issues and recommendations was not at the level of her previous reporting period. After extensive discussions with her rating chain and CGPC-OPM-3, we determined that the purpose of the OES is to accurately document performance of the reported-on officer during the reporting period. We believed that this report did, in fact, document the state of her performance at that time.

In accordance with paragraph 10.A.4.C.1.g. of the Coast Guard Personnel Manual (COMDTINST M1000.6A) "sick leave" is an appropriate event to document [in block 1.h. Days not Observed] on the OER. Therefore I stand by my original decision to accurately document [the applicant's] performance and absence from her assigned duties; I recommend the subject OER remain in her record.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 6, 2011, the Board sent a copy of the views of the Coast Guard to the applicant for a response. The Board did not receive a reply from the applicant.

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 applicant has not demonstrated that the Coast Guard committed an error by preparing and submitting a regular OER for the period under review. In this regard, the Board notes that PSC correctly redacted any mention of the applicant's 165-day hospitalization from the disputed OER because Article 10.A.4.f. of the Personnel Manual states that members of the rating chain shall not mention any medical or psychological conditions, whether factual or speculative. In addition, Article 10.A.4.c.1.g. states that the OER shall account for the days not

observed, which includes those taken for sick leave. The rating chain correctly noted the applicant's 165 non-observed days in section 1.h. of the disputed OER.

3. Although the applicant was not observed for 165 days of the reporting period, the Personnel Manual does not authorize a command to submit a continuity OER under the circumstances presented here. Under Article 10.A.3.a.5.b. of the Personnel Manual, a command may submit a continuity OER for an active duty LCDR, such as the applicant, when the reporting period is 92 days or fewer and there has been little opportunity to observe the officer's performance, when the officer is separating from active duty within 18 months and has met the standard of performance during the reporting period, or when a waiver has been authorized by PSC to extend a continuity OER to an officer's separation date. The applicant's situation did not fall within these parameters since the reporting period was longer than 92 days and she was not separating from active duty.

4. However, Article 10.A.2.b.2.j. of the Personnel Manual provides the following OER guidance for officers who are unable to fully perform due to illness, injury, pregnancy, etc.:

Periodically officers may experience circumstances due to a temporary condition which result in a limited opportunity to perform. These circumstances may involve specific performance restrictions (e.g., those imposed by a medical authority), which require restructuring or reassignment of duties. While no preferential treatment shall be given, commanding officers shall ensure that these individuals do not receive below standard evaluations strictly as a consequence of these circumstances.

While Article 10.A.2.b.2.j. recognizes that there will be instances when temporary conditions may limit an officer's opportunity to perform, it does not authorize the submission of a continuity OER under such circumstances. The provision does require that COs ensure that individuals do not receive below standard evaluations solely because of their limited opportunity to perform. The reviewer for the disputed OER complied with this provision.

5. In this regard, the reviewer for the disputed OER, the only Coast Guard officer in the applicant's rating chain (the supervisor and reporting officer were civilians), noted that he was aware of the applicant's mishap and that he made a special effort to ensure that the applicant received an accurate performance appraisal for the period. He stated that the applicant's performance, after her return to work, declined from previous reporting periods in that her ability to form ideas and to clearly articulate issues and make recommendations was not at her previous level. The reviewer stated that the OER was an accurate assessment of the applicant's performance for the period under review. The Board notes that the OER contains no below standard marks, and the comments are mostly complimentary.

6. While the Personnel Manual does not authorize continuity OERs under circumstances similar to the applicant's, it does permit members of the rating chain to give a mark of non-observed in a dimension if the supervisor or reporting officer has insufficient information on which to provide a mark or if observations are believed inadequate on which to render a judgment on an officer's performance. Articles 10A.4.c.4.c. & 10.A.4.c.7.c. of the Personnel

Manual. However, as PSC noted, although the applicant was absent for 165 days of the reporting period, the approximately 200 days of observed performance provided a sufficient opportunity for the rating chain to observe and evaluate her performance.

7. Additionally, the applicant makes no allegation that the disputed OER contains erroneous marks and comments, but only that she was on convalescent leave for 165 days of the reporting period. While language could not be included in the OER to explain that the applicant was hospitalized and underwent rehabilitation for a brain injury during her 165-day absence, she has the right to communicate with future selection boards and to explain the reason for her absence, as well as the impact the absence might have had on limiting her ability to perform for the period under review.

8. Accordingly, the applicant has not shown an error or injustice with respect to the disputed OER. Her request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

Julia Andrews

Robert S. Johnson, Jr.

James H. Martin