

**DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS**


---

Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2001-014**

---

**FINAL DECISION**

 **Attorney-Advisor:**

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on December 29, 2000, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated September 27, 2001, 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 lieutenant (LT; pay grade O-3) in the Coast Guard, was selected for promotion to lieutenant commander (LCDR; pay grade O-4) by the LCDR selection board that met on . He asked the Board to backdate his LCDR date of rank to , the date it would have been had he been selected for promotion by the board that met in , and to award him back pay and allowances.

The applicant alleged that when his military record was reviewed by the LCDR selection board in , one of the documents in it—the comments of a reviewer in an officer evaluation report (OER)—referred to him as an LCDR, even though he was still an LT hoping to be promoted to LCDR. He alleged that the error must have caused his failure of selection in because, after the Personnel Records Review Board (PRRB) corrected the reviewer's comment page of the OER in July 2000, he was selected for promotion by the next LCDR selection board to consider his record.

**SUMMARY OF THE APPLICANT'S RECORD**

On \_\_\_\_\_, after serving in the \_\_\_\_\_ for more than five years, the applicant joined the Coast Guard Reserve to attend Officer Candidate School. Upon graduation, he was appointed an ensign in the Reserve and served as a \_\_\_\_\_ and \_\_\_\_\_ for about two years. He received five letters of appreciation from his district commander and an Achievement Medal for this work.

On \_\_\_\_\_, the applicant was appointed a lieutenant junior grade in the regular Coast Guard. In \_\_\_\_\_, he began a two-year assignment as a \_\_\_\_\_. In \_\_\_\_\_, he became a \_\_\_\_\_ and was appointed \_\_\_\_\_. On \_\_\_\_\_, he was promoted to lieutenant. From \_\_\_\_\_, he served as an alternate compliance program manager, developing procedures and policies for the \_\_\_\_\_. The OERs he received since his promotion to LT are numbered 1 through 6 in the table below. In each of these OERs, he was very highly recommended for promotion to LCDR.

In \_\_\_\_\_, the applicant began serving on duty under instruction (DUINS), \_\_\_\_\_. While in school from \_\_\_\_\_, he received two DUINS OERs (OERs 7 and 8 in the table below), which show only his courses and grades. OER 7 lists four "A"s and two "B"s earned during his first two semesters, with a cumulative grade point average of 3.7 out of 4. OER 8 lists three "A"s and four "B"s earned during his final three semesters, with a cumulative grade point average of 3.538. Neither OER 7, which contains no comments, nor OER 8, which included the reviewer's comments that erroneously referred to the applicant as an LCDR, contained a recommendation for promotion to LCDR. OER 8 was the last OER in his record when the selection board met in \_\_\_\_\_. The first page of OER 8 clearly shows his rank as O-3 (LT). The comment page, \_\_\_\_\_, stated the following:

LCDR [applicant] completed degree requirements \_\_\_\_\_ and was awarded a Masters of Science in \_\_\_\_\_. Demonstrating exceptional academic aptitude and diligence in studies, LCDR [applicant] completed this program and graduated with a 3.538 GPA on a 4.0 scale.

LCDR [applicant]'s initiative and foresight to carefully select a highly technical course of study shows a commitment to hard work. This level of training has positioned him for increased levels of responsibility within the ever growing and important field of Information Systems Management. LCDR [applicant]'s successful completion of this highly challenging graduate program should provide positive contributions to the Coast Guard's Information Technology infrastructure planning and management.

During his final semester in school, the applicant voluntarily worked as \_\_\_\_\_. However, the concurrent OER (OER 9) that he received for this work was not submitted by him to his chain of command until \_\_\_\_\_, after the LCDR selection board met. Upon finishing school in \_\_\_\_\_, he was assigned to continue working as a \_\_\_\_\_. On \_\_\_\_\_, he received a second Achievement Medal for this work. OER 10, which covers his work in the office from \_\_\_\_\_, was the last OER entered in his record before \_\_\_\_\_, when the LCDR selection board selected him for promotion.

On \_\_\_\_\_, the PRRB ordered that the reviewer's comments be corrected to reflect the applicant's correct rank. On the same day, the order was signed by the chief warrant officer (CWO) responsible for executing corrections with the notation "corrections made."

**MARKS IN ALL LT OERs FROM 8/5/94 THROUGH 5/31/00**

PERFORMANCE CATEGORY <sup>a</sup>	OER 1	OER 2	OER 3	OER 4	OER 5	OER 6	OER 7 <sup>b</sup>	OER 8 <sup>b</sup>	OER 9 <sup>c</sup>	OER 10 <sup>c</sup>
Being Prepared	6	6	6	5	6	6	NO	NO	6	6
Using Resources	5	6	6	6	5	6	NO	NO	6	6
Getting Results	6	7	6	6	6	7	NO	NO	6	6
Responsiveness <sup>d</sup>	6	6	5	6	7	6				
Work-Life Sensitivity <sup>d</sup>	4	4	5	5	5	5				
Adaptability <sup>d</sup>							NO	NO	7	7
Specialty Expertise/ Competence	5	6	6	6	6	6	NO	NO	6	6
Collateral Duty <sup>d</sup>	5	5	5	5	5	5				
Speaking & Listening	5	5	5	5	6	7	NO	NO	4	5
Writing	5	5	6	6	5	5	NO	NO	6	6
Looking Out for Others	5	5	6	6	6	6	NO	NO	5	6
Developing Subordinates	5	5	5	6	5	5	NO	NO	6	6
Directing Others	5	5	6	6	5	6	NO	NO	5	5
Teamwork	5	5	6	5	6	6	NO	NO	6	7
Human Relations/ Workplace Climate	4	4	5	5	5	5	NO	NO	5	6
Evaluations	4	5	5	5	5	6	NO	NO	4	4
Initiative	5	6	7	6	6	6	NO	NO	7	6
Judgment	5	5	6	5	6	6	NO	NO	5	5
Responsibility	6	6	6	6	6	6	NO	NO	6	5
Stamina <sup>d</sup>	5	5	5	5	5	5				
Military Bearing <sup>d</sup>	5	5	6	6	6	6				
Professional Presence	6	6	6	6	6	6	NO	NO	5	5
Health & Well-Being	4	4	5	5	5	5	NO	NO	5	5
Dealing with the Public <sup>d</sup>	6	6	6	6	6	6				
<b>Average Mark in OER</b>	<b>5.1</b>	<b>5.3</b>	<b>5.7</b>	<b>5.6</b>	<b>5.6</b>	<b>5.8</b>			<b>5.6</b>	<b>5.7</b>
Comparison Scale <sup>e</sup>	5	5	5	5	5	5	NO	NO	5	5

- <sup>a</sup> Some categories' names have changed slightly over the years. Supervisors fill in the marks for the first 16 categories, from "Being Prepared" to "Evaluations." Reporting officers complete the remaining blocks.
- <sup>b</sup> When an officer is in school, all categories are marked "NO" for "not observed. Instead, the officer's grades are listed.
- <sup>c</sup> Shaded OERs were not in the applicant's record when it was reviewed by the [redacted] LCDR selection board but were in his record when it was reviewed by the [redacted] selection board, which selected him for promotion to LCDR.
- <sup>d</sup> The category was discontinued or nonexistent until later years.
- <sup>e</sup> The comparison scale is not actually numbered. However, as with the performance categories, there are seven possible marks. Officers are supposed to be marked in comparison with all other officers of the same rank known to the reporting officer. In this row, a "5" means the applicant was rated to be an "distinguished performer; give tough, challenging, visible leadership assignments" or (after the OER redesign) an "excellent performer; give toughest, most challenging leadership assignments."

## VIEWS OF THE COAST GUARD

### *Advisory Opinion of the Chief Counsel of the Coast Guard*

On April 6, 2001, the Chief Counsel of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case for lack of proof.

The Chief Counsel alleged that although the paper copy of the reviewer's comments in the applicant's military record was corrected before the LCDR selection board met in [redacted], the electronic copy was not. Because selection boards rely solely on officers' electronic records, he alleged, the record reviewed by the LCDR selection board that finally selected the applicant for promotion still included the reviewer's comment page that erroneously referred to the applicant as an LCDR. Therefore, the Chief Counsel argued, the applicant's claim that his selection for promotion in [redacted] after his record was corrected proves that the erroneous comment page caused his failure of selection in [redacted] is specious since the comment page seen by the selection board in [redacted] had not, in fact, been corrected.

The Chief Counsel argued that because the erroneous comment page was still in the applicant's record when it was reviewed by the [redacted] LCDR selection board, the applicant "cannot prove a nexus between the error contained in his record and his failure of selection before the [redacted] LCDR Selection Board." He argued that the applicant's case fails both of the test questions for the existence of a nexus set forth in *Engels v. United States*, 678 F.2d 173 (Ct. Cl. 1982): "First, was [the applicant's] record prejudiced by the errors in the sense that the record appears worse than it would in the absence of the errors? Second, even if there was some such prejudice, is it unlikely that [the applicant] would have been promoted in any event?" *Id.* at 176. The Chief Counsel argued that, "assuming *arguendo* Applicant could prove the first prong of the test, he is unable to prove the second prong by a preponderance of the evidence" because he was

selected for promotion by the next selection board with the error still in his military record.

The Chief Counsel included with his advisory opinion a memorandum on the case by the Coast Guard Personnel Command (CGPC). The memorandum, he alleged, "provides some compelling rationale" for the applicant's failure of selection .

### *Memorandum of the Coast Guard Personnel Command*

CGPC stated that upon receiving a copy of the application in this case, the applicant's electronic record was reviewed, and it was discovered that the erroneous comment page had never been corrected in his record even though an immediate correction had been ordered in accordance with the PRRB's decision.<sup>1</sup> Therefore, CGPC concluded that the electronic copy still contained the error when it was reviewed by the LCDR selection board that selected the applicant for promotion in . However, because selection boards are instructed not to construe such errors against the officers, since they do not write their own OERs, the error would not have been held against the applicant.

CGPC submitted the following statement from the CWO responsible for executing the decisions of the PRRB:

There is no formal written standard procedure for record correction; however, standard procedure for requesting records from CGPC (adm-3), records branch was followed. I pulled the Reviewer Comments page from the subject OER and replaced it with the corrected page submitted with [the applicant's] original [PRRB] application. A copy of the substituted page was submitted to the staff of adm-3 with a request for re-imaging into the electronic database record for OER maintenance. This is done to ensure the electronic copy of the member's record mirrors the member's paper record. Upon completion of the correction, the paper record was sent back to adm-3 for filing.

CGPC opined that the applicant's success before the selection board, following his previous failure, may be explained by (1) the fact that the applicant "submitted a comprehensive 'Communication to the LCDR Selection Board' for the

LCDR board," endorsed by an admiral, the Assistant Commandant for Marine Safety and Environmental Protection, in which he "highlight[ed] his qualifications and performance, and [made] a compelling argument for selection" (see below); (2) the very favorable OER he received just before the board met (OER 10); and (3) a four-percent increase in the overall opportunity for selection between .

CGPC submitted a copy of a report indicating that the overall opportunity for selection by the LCDR selection board was 88.7 percent (calculated as the number

---

<sup>1</sup> CGPC stated that the procedural problem that resulted in the failure to enter the PRRB's ordered correction into the applicant's electronic record has been corrected.

of LCDR promotions the board was allowed to make divided by the number of LTs “in the zone” – those who were being considered for promotion to LCDR the first time). The report also showed that the selection board ultimately chose 79 percent of all LTs “in the zone”; 33 percent of all LTs “above the zone” – those, like the applicant, who had already failed of selection once and were being considered for promotion to LCDR a second and final time; and 7 LTs “below the zone” – those who had not served long enough as an LT to normally be considered ready for promotion.

### *Applicant's Letter to the August 2000 LCDR Selection Board*

CGPC included with its memorandum a copy of the applicant's letter to the August 2000 selection board. In the letter, he summarized his significant accomplishments and quoted three recent statements by the \_\_\_\_\_ emphasizing the Coast Guard's critical need for \_\_\_\_\_ who can “[l]everage emerging technology ... to ensur[e] a safe and efficient \_\_\_\_\_ system and keep[] American industry globally competitive.” The applicant pointed out that as a qualified \_\_\_\_\_ with a master's degree in information resources and experience in supervising civilian and military personnel and in handling large budgets, he was one of the best qualified officers to lead the Coast Guard into the future. The letter was accompanied by three highly laudatory endorsements from the \_\_\_\_\_, and the \_\_\_\_\_. They emphasized his past significant contributions in applying advanced technology in the \_\_\_\_\_ field and his exceptional potential value to the Coast Guard in this field.

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

On April 9, 2001, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within 15 days. The applicant responded on May 2, 2001.

The applicant stated that the Coast Guard's claim that his electronic record had not been corrected prior to the meeting of the LCDR selection board in \_\_\_\_\_ was untrue. In support of this allegation, he submitted a photocopy of an “Image Coversheet” signed by the CWO who executes PRRB decisions. A corrected copy of the reviewer's comment page is attached to the coversheet. The coversheet indicates that the CWO ordered the comment page to be imaged and entered in the applicant's electronic record. The coversheet is stamped “COMPLETED” with the date \_\_\_\_\_ handwritten underneath the stamp.

The applicant alleged that the stamped and dated coversheet proves that the corrected reviewer's comment page was entered into the electronic copy of his record on \_\_\_\_\_, at least one month before the selection board met. He pointed out that the CWO's statement does not contradict this fact. The applicant further alleged that he himself reviewed his electronically imaged record on \_\_\_\_\_, and again on \_\_\_\_\_.

, to verify that it was correct before the selection board met, and the corrected reviewer's page was in his record at that time. He submitted a copy of a "Disclosure Log" page showing that he reviewed his entire record on these dates. He stated that he reviewed it because he "was not about to take any chances of my electronic record being incorrect a second time, especially since my 16-year career was being held in the balance."

The applicant argued that because his electronic record was corrected prior to the meeting of the selection board that resulted in his promotion, the "logical inference" is that the error caused his previous failure of selection. He alleged that the references to him as an LCDR in his record before the board may have led board members to believe that he had been an LCDR but had recently been demoted to LT and so was eligible for promotion to LCDR again.

On May 3, 2001, the BCMR sent the Chief Counsel's office a copy of the additional material and information received from the applicant. The Chief Counsel did not respond.

### **APPLICABLE REGULATIONS**

Under the schedule for OER submission in Article 10.A.3. of the Personnel Manual, LTs are supposed to receive semi-annual OERs for reporting periods that end May 31st and November 30th. Article 10.A.2.c.2.b. states that officers are expected to submit draft OERs to their supervisors, with only biographical and administrative information filled in, at least three weeks before the end of each reporting period.

Article 10.A.5. governs the preparation of OERs for officers assigned to duty under instruction (DUINS). Article 10.A.5.a.1.a. provides that the submission schedule for DUINS OERs "will be coordinated with routine breaks in the school's academic schedule. ... For lieutenants and above, at a minimum OERs shall be submitted once a year."

Article 10.A.5.d. states that "[w]hen a Reported-on Officer is assigned PCS duty under instruction and performing duty as an intern or trainee at a Coast Guard unit (e.g., law student, legal staff intern), a concurrent OER may be submitted for a period of greater than 14 days. This concurrent OER provides an opportunity for DUINS students to document performance and is an exception to the guidelines provided in --> Article 10.A.3.c.2."

Under Article 10.A.5.c., only the name of the school, the program or degree sought or earned, course titles, grades, and grade point averages may appear on a DUINS OER. All performance categories must be marked "not observed" and no writ-

ten comments are permitted on the form itself. However, the reviewer of the OER may add a comments page.

In a non-DUINS OER, some recommendation for promotion or comment about the officer's ability to handle greater responsibility must be included by the reporting officer. Personnel Manual, Article 10.A.4.c.9. No such comments are permitted on a DUINS OER. However, under Article 10.A.4.c.11.g., the reviewer may add a comment page assessing "the Reported-on Officer's performance, qualities, potential, or value to the Coast Guard if these areas need to be expanded or explained further. ... Additionally, the Reviewer shall limit comments to performance or behavior observed during the reporting period and/or discussion of the Reported-on Officer's potential."

Article 10.A.2.f.1.a. provides that "[t]he Reviewer is normally the Supervisor of the Reporting Officer. While the Supervisor and Reporting Officer are specific individuals, the Reviewer is a position. The officer occupying that position has a definite OES administrative function and may perform an evaluative function." However, Article 10.A.5.b. states that for officers serving on DUINS at a civilian university, the "rating officials will be individuals within the appropriate program managing office."

## 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 alleged that a reviewer's comment page erroneously referring to him as an LCDR was in his record when he failed to be selected for promotion in [redacted] and that his record had been corrected upon the order of the PRRB by the time he was selected for promotion in [redacted]. The PRRB decision requiring the correction was approved on [redacted]. On the same day, it was signed by the CWO responsible for executing such corrections with the notation "corrections made." The coversheet used by the CWO to order the imaging of the corrected page for inclusion in the electronic record was stamped "COMPLETED" and hand dated [redacted]. Moreover, the applicant, who had already failed of selection once with an erroneous record and applied for the PRRB correction, reviewed his electronic record twice during the week before the selection board met in [redacted]. He has signed a sworn statement indicating that the electronic record included a corrected comment page, and it is certainly likely that he would have complained loudly if the PRRB's correction had not been properly executed. Although CGPC alleged that the electronic record still contained the uncorrected comment page long after the [redacted] selection board met, no explanation was provided as to how the



correction could not have been executed when the coversheet ordering the correction was stamped "COMPLETED." Therefore, and in light of the Coast Guard's failure to even attempt to explain how the coversheet could be stamped "COMPLETED" and dated if the comment page was not actually entered in the electronic record, the Board finds that the applicant has proved not just by a preponderance of the evidence but by clear and convincing evidence that a corrected copy of the reviewer's comment page attached to his last DUINS OER was entered into his electronic record before the LCDR selection board met and reviewed his record.

3. The applicant alleged that the fact that he was selected for promotion after the comment page was corrected proves that his failure of selection by the board was caused by the erroneous comment page. To determine if he is entitled to relief, the Board must answer two questions: First, was his record prejudiced by the error in the sense that it appeared worse than it would have in the absence of the error? Second, even if there was some such prejudice, is it unlikely that he would have been selected for promotion in August 1999 in any event? *Engels v. United States*, 678 F.2d 173, 176 (Ct. Cl. 1982).

4. The applicant alleged that he failed of selection in because the erroneous LCDR references on the comment page led the selection board to believe that he had already been promoted or selected for promotion or that he had been previously promoted and demoted. However, LCDR selection boards are only given the records of qualified LTs to review, so any selection board member who saw the "LCDR"s on the comment page would know nevertheless that the applicant was an LT, especially since the first page of the OER to which the erroneous comment page was attached clearly listed the applicant's rank as O-3 (LT). Moreover, with no negative entries in his record whatsoever, the applicant's allegation that a selection board member might have assumed he had been demoted because of the four "LCDR"s is both unproven and incredible. If anything, a selection board member might draw a positive conclusion from the error by assuming that the reviewer knew the applicant and thought of him as an LCDR because of his excellent military bearing and performance.

5. Hypothetically, the reviewer might have omitted a recommendation for promotion on the comment page because he thought the applicant was already an LCDR, and the absence of such a recommendation might have caused his failure of selection. Reviewers' comment pages sometimes include such recommendations, especially when the other members of the rating chain are civilians or when the reviewer's assessment of the officer differs from that of the other rating chain members. Personnel Manual, Articles 10.A.4.c.11.g. and 10.A.5.c. However, the applicant did not mention this possibility or submit any evidence to prove that the reviewer would have included a recommendation for promotion if he had known that the applicant was not an LCDR. Nor did the Coast Guard address this issue. Moreover, OER reviewers, especially DUINS OER reviewers, often have no personal knowledge of the officer's performance

and serve on a rating chain only because of their position, not because the officer is under their command. Personnel Manual, Articles 10.A.2.f.1.a. and 10.A.5.b. The reviewer who signed the erroneous comment page, the \_\_\_\_\_, had not previously served on the applicant's rating chain. In addition, the comments on the disputed page are not personal in nature, as they would be appropriate for any officer who received a master's degree in the applicant's field with a similar grade point average. There is no evidence in the record that the reviewer was personally familiar with the applicant's performance and would have included a recommendation for promotion if he knew the applicant was still an LT. Therefore, the Board cannot find that the reviewer's misunderstanding caused the lack of a recommendation for promotion or that that lack caused the applicant's failure of selection by the \_\_\_\_\_ LCDR selection board.

6. In light of the above, the Board finds that the applicant's record was not "prejudiced by the error in the sense that it appeared worse than it would have in the absence of the error." *Engels v. United States*, 678 F.2d 173, 176 (Ct. Cl. 1982). The four "LCDR"s in his record did not cause his failure of selection by the \_\_\_\_\_ LCDR selection board.

7. It is possible that the applicant might have been selected for promotion if the concurrent OER for his volunteer work during his last semester in school had been entered in his record before the \_\_\_\_\_ selection board met. Such OERs are not required, however, and the applicant did not initiate the preparation of the concurrent OER until \_\_\_\_\_, long after the selection board met. Therefore, its absence from his record in \_\_\_\_\_ was not an error or injustice committed by the Coast Guard.

8. Accordingly, the applicant's request should be denied.

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

**ORDER**

The application of  
denied.

, USCG, for correction of his military record is

