

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-041

████████████████████
████████████████

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 case after receiving the applicant's completed application on December 2, 2016, and assigned it to staff member ██████████ to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated August 4, 2017, 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, a commander on active duty in the Coast Guard, asked the Board to correct his record to show that he received a suitable and appropriate award for his achievement during service as an attorney from July 10, 2010, to August 5, 2012. He stated that on April 14, 2015, he received a Meritorious Service Medal (MSM) for his performance of duty from July 2012 to July 2014, but that his command did not realize that he had not received an award for the time he spent in another legal office from July 2010 to July 2012 while on an inter-office transfer. The applicant stated that he had taken an inter-office transfer and that his performance of duties from July 2010 to July 2012 was not recognized on the MSM but should have been. However, he alleged, he had received an award for all of his previous tours of duty and assignments except for this one, and so he believes that not receiving an award was simply an oversight. He offered that it is possible that the office from which he received the MSM assumed that he had already received an award from the other office for his work there and only "wrote up" his performance for the office in which he was awarded the MSM.

The applicant stated that he would like the Board to determine if he is eligible for an award for his performance from July 2010 to July 2012 because he believes that a potential employer could "erroneously determine" that he performed so poorly as to be "unworthy of any award for that performance period" and that it is in sharp contrast to his other assignments. In support of this request, the applicant submitted copies his records, which are included in the summary below.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on February 23, 1998; served as a staff judge advocate; and was regularly promoted up to the rank of commander. His record contains three Coast Guard Commendation Medals and a Coast Guard Achievement Medal, in addition to the Meritorious Service Medal.

From July 23, 2010, to July 2, 2014, the applicant served a four-year tour of duty under the JAG. However, he served in two different supervisory legal billets in different legal offices during this period. There is no medal covering the first two years of this tour of duty. His Officer Evaluation Report (OER) for the period July 10, 2010, to March 31, 2011, shows that he received four marks of 5, ten marks of 6, and four marks of 7 in the eighteen performance dimensions (on a scale of 1 (worst) to 7 (best)), and a mark in the middle (fourth of seven) spot on the comparison scale,¹ indicating that the reporting officer considered him an “excellent performer; highly recommended for positions of increased responsibility.” This OER notes that he had only recently been promoted to commander. The applicant’s next OER from the same office, for the period April 1, 2011, to August 5, 2012, shows that he received three marks of 5, six marks of 6, and nine marks of 7, a mark of “definitely promote,” and a mark in the fifth (of seven) spot on the comparison scale, indicating that the reporting officer considered him an “exceptional performer; give toughest and most visible leadership assignments.” The reporting officer for both of these OERs was the Deputy JAG.

The applicant served in a different legal office from July 2012 to July 2014. On his OER dated March 31, 2013, he received nine marks of 6, nine marks of 7, a mark of “definitely promote,” and another mark in the fifth spot on the comparison scale, denoting an “exceptional performer.” On his OER dated July 7, 2014, the applicant again received nine marks of 6, nine marks of 7, a mark of “definitely promote,” and another mark in the fifth spot on the comparison scale, denoting an “exceptional performer.” The reporting officer for both of these OERs was the Deputy JAG.

On April 14, 2015, the applicant was awarded an MSM for his service from July 1, 2012, to July 2, 2014. The citation mentions only his service during this two-year period. The certificate for the MSM was signed by the JAG.

APPLICABLE LAW AND REGULATIONS

Article 1.B.9.a.2. of COMDTINST M1650.25E, the Medals and Awards Manual, states, “A routine end of tour award is not an integral part of the awards system.”

¹ The options on the comparison scale on a CDR OER form are as follows: (1) “Unsatisfactory performance/conduct; no potential for increased responsibility,” (2) “Steady performer; limited potential for increased responsibility,” (3) “Strong performer; very competent and respected professional,” (4) “Excellent performer; highly recommended for positions of increased responsibility,” (5) “Exceptional performer; give toughest and most visible leadership assignments,” (6) “One of the few Distinguished performers,” (7) “Best Officer of this grade.” To mark the scale, the Reporting Officer compares the Reported-on officer to all of the other commanders the Reporting Officer has known throughout his career.

Article 2.A.11. of the Medals and Awards Manual states that the MSM “[m]ay be awarded ... to any member of the Armed Forces of the United States ..., who distinguish themselves by outstanding meritorious achievement or service to the United States. To justify this decoration, the acts or services rendered by an individual, regardless of grade or rate, must be comparable to that required for the Legion of Merit, but in a duty of lesser degree than the Coast Guard Medal, and single acts of merit under operational conditions may justify this award. When the degree of meritorious achievement or service rendered is not sufficient to warrant the award of the Meritorious Service Medal, the Coast Guard Commendation Medal, when appropriate, should be considered.”

VIEWS OF THE COAST GUARD

On April 27, 2017, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant relief in accordance with a memorandum submitted by the Commander, Personnel Service Center (PSC).

PSC stated that the applicant did not suffer an injustice based on the subjective nature of awards but that relief should be granted because the applicant’s command believes that his service from 2010 to 2012 merits an award because the applicant’s performance was rated as “exceptional.” PSC stated that it appears that it was an oversight not to include the applicant’s service from July 2010 to August 2012 in the citation for the MSM and recommended that relief be granted by amending the applicant’s MSM that he received on April 14, 2015.

The JAG also submitted a copy of an email from the Coast Guard Deputy JAG to PSC, in which he discussed why the applicant did not receive an award for his service from July 2010 to August 2012. He stated that he cannot recall exactly what happened, but he is reasonably confident that the likely reasons are that an award at the end of an internal inter-office reassignment is not common and that the applicant’s supervisors from 2010 to 2012 likely expected that his service during that period would be acknowledged by an end-of-tour award in 2014. He also stated that he is reasonably confident that he would not have supported an MSM for the applicant’s service for his two-year performance in the final billet during that tour of duty and that the decision to award the applicant an MSM was in fact prompted by his performance in both billets.

The Deputy JAG added that the applicant’s service July 2010 to August 2012 supports an award and that if the citation for the MSM that for his service from 2012 to July 2014 does not refer to his service from July 2010 to August 2012 then his office (the JAG) supports amending the citation to reflect that service. He noted that this would be the preferred relief, as opposed to an additional, separate award just for the applicant’s service from July 2010 to August 2012.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 3, 2017, the BCMR Chair sent the applicant a copy of the Coast Guard’s views and invited him to respond within 30 days. The Chair did not receive a response.

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 10 U.S.C. § 1552. The application was timely filed.²

2. The applicant asked the Board to correct his record to show that he received a suitable and appropriate award for his achievement during service as an attorney from July 10, 2010, to August 5, 2012, alleging that it was an oversight that he did not receive an award for this period. In considering allegations of error and injustice, the Board begins its analysis 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.³ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."⁴

3. The record shows that the applicant served as an attorney from July 10, 2010, to July 2, 2014, in two different billets and received exceptional marks on his OERs for both billets. He received a Meritorious Service Medal (MSM) for his performance of duty in one office from July 2012 to July 2014, but the award citation does not include the two years he spent in the other office. The Deputy JAG has recommended granting relief, noting that there is nothing in the applicant's performance from July 2010 to July 2012 that would have precluded an MSM for that period and that he thinks it was his intent to award the MSM for the applicant's four years of service in both billets. The Deputy JAG's statement indicates that he agrees with the applicant that it was an oversight not to include both periods of service on the MSM that the applicant received on April 14, 2015.

4. Article 1.B.9.a.2. of the Medals and Awards Manual, states that a routine end-of-tour award is not an integral part of the awards system, but in light of the applicant's high marks in both billets and the Deputy JAG's statement supporting relief and claiming that the MSM was intended to reflect both periods of service, the Board finds that the applicant's MSM should be corrected to include his service from July 2010 to July 2012, as well as July 2012 to July 2014.

5. Accordingly, the applicant's record should be corrected by amending the April 14, 2015, MSM to include his service from July 2010 to July 2012.

² *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994) (holding that, under § 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, the BCMR's three-year limitations period under 10 U.S.C. § 1552(b) is tolled during a member's active duty service).

³ 33 C.F.R. § 52.24(b).

⁴ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

ORDER

The application of [REDACTED], USCG, for correction of his military record is granted as follows: The Coast Guard shall amend the Meritorious Service Medal and citation that he received on April 14, 2015, to reflect his service from July 23, 2010, through July 2, 2014.

August 4, 2017

