

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2020-082

██████████ ██████████ ██████████
CAPT (O-6)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on March 10, 2020, and assigned the case to the staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision dated September 1, 2023, 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 current Captain (CAPT/O-6) on active duty, asked the Board to correct his record by voiding his CY2019/PY2020 O-6 selection board result and convening a Special Selection Board.

The applicant alleged that despite reasonable and prudent efforts on his part, two Personal Meritorious Service Medals (MSM) that he received on June 15, 2013, and May 31, 2019, were erroneously left out of his electronic military record presented to the 2019/PY 2020 O-6 selection board. According to the applicant, these omissions resulted in the selection board not seeing a complete and accurate view of his total military service. The applicant argued that these missing awards would have been particularly relevant to the selection board based on the level of the awards and the nature of the assignments.

The applicant explained that though Coast Guard policy places the ultimate responsibility on the service member to ensure their service record is correct, the instructions do not assign the member with specific duties. The applicant alleged that Coast Guard policy states that immediately upon approval of an award, copies should be forwarded by the member's administration to Coast Guard Personnel Command to have these awards filed in the applicant's permanent record. The applicant stated that the updated Awards Manual, COMDTINST M1650.25E, further specifies the administrative responsibility for awards among Servicing Personnel Offices (SPO) and other entities, it does not modify or place additional requirements on the member. The applicant argued

that though the Coast Guard places some responsibility on the member, the member's ability to update or correct their record remains limited to requesting the changes needed. The applicant explained that the ability to enter the changes into their own Electronic Personnel Data Record (EPDR) or other relevant systems is beyond the member's permissions or authority.

The applicant alleged that after he changed units in 2013, to ensure the accuracy of his record, he requested his EPDR on December 11, 2013. Upon finding that the award his June 15, 2013, MSM was not included in his file, the applicant stated that on January 24, 2014, he provided a scanned copy of the award to Personnel Service Center (PSC), in addition to his SPO, requesting that the award be added. The applicant explained that on February 24, 2014, he requested an update from PSC, who then asked the applicant to submit copies of the award to SPO, which he had allegedly already done. The applicant alleged that he did not realize that the June 15, 2013, award had not been added until June 3, 2019. Upon realizing that the 2013 award was still missing from his record, the applicant stated, he immediately contacted his local SPO and followed up on June 12, 2019. The applicant explained that he also submitted the 2013 award directly to PSC on June 17, 2019. The applicant alleged that in addition to receiving the system acknowledgement of his submission, he received a direct reply the following day informing him that submitting the documents directly to Head Quarters (HQ) was improper and that he needed to submit the award to his SPO, which he had already done.

The applicant stated that after receiving word of his non-selection to O-6 on June 31, 2019, he again requested a copy of his EPDR. The applicant explained that he received his EPDR on October 3, 2019. The applicant alleged that the EPDR was pulled on September 16, 2019, after the promotion selection board had concluded and therefore was presumably the EPDR the selection board reviewed upon making its decisions for promotions to O-6. The applicant stated that based on his review, the 2013 award was still not entered into his file, despite efforts over time to insert it. The applicant explained that the award would have been significant to the board in explaining the assignment for which he received the award, as well as conveying the relative organizational importance and long-term impact of the particular assignment.

Regarding his May 31, 2019, MSM, the applicant explained that it could not reasonably be included in his June 3, 2019, EPDR. The applicant stated that though service members should not need to take action for their awards to be submitted for incorporation into their record, he still took a proactive approach, prompting his SPO on June 3, 2019, and June 12, 2019. However, the applicant stated that when he received his EPDR on October 3, 2019, his May 31, 2019, MSM was not included in his EPDR. Like his 2013 MSM, the applicant explained that his 2019 MSM would have been particularly relevant to the O-6 selection board.

The applicant further alleged that on his 2012 Officer Evaluation Report (OER) PSC changed the wording in his Primary Duty block from "Workforce Forecasting/Analysis" to "Support Allowance." The applicant alleged that this change occurred after his OER was submitted and was changed without the input from the rating chain that approved the OER. According to the applicant, most Coast Guard members who are aware of support allowance positions understand that these are the billets used when personnel are unfit to serve for medical or disciplinary problems. The applicant alleged that having "Support Allowance" as his primary duty likely erroneously conveyed to the O-6 selection board members that he was either medically unfit or

facing disciplinary proceedings. The applicant stated that labeling his primary duty as “Support Allowance” is factually incorrect and asked the Board to correct the OER to list his primary duties as those provided on the original OER submitted to PSC.

Finally, the applicant stated that he was issued a CG-3307 (“Page 7”) on September 16, 2019, that required him to obtain his Incident Command System (ICS) qualifications before a certain date, which he did. However, the applicant claimed that despite obtaining the necessary qualifications on time, his command failed to submit a subsequent Page 7 documenting his successful completion of the required certifications. The applicant further claimed that the O-6 selection board would have had to cross reference the Page 7 with his OER to learn that not only did he obtain his qualifications required by the Page 7, but he did so five months ahead of schedule. The applicant alleged that due to the sheer volume of records the selection board must review, it can be assumed that a board member reading the Page 7 could have interpreted the Page 7 to be derogatory in nature and that he failed to obtain the qualifications outlined in the Page 7. As a result, the applicant asked the Board to remove the original Page 7 from his record, but if that is not possible, he asked the Board to incorporate a second Page 7 issued by his Sector Command wherein it deemed all Page 7s previously issued regarding ICS qualifications null and void.

SUMMARY OF THE RECORD

The applicant graduated from the Coast Guard Academy and was commissioned an ensign on May 19, 1999. He was promoted to lieutenant junior grade in 2000; to lieutenant in 2003; and to lieutenant commander in 2009.

On August 7, 2013, the applicant was issued a Page 7 wherein he was notified that he must obtain his ICS qualifications within one year of the date of the Page 7.

On December 11, 2013, the applicant submitted a request to receive his EPDR.

On January 24, 2014, the applicant requested by email that his June 15, 2013, MSM be added to his EPDR.

On February 25, 2014, the applicant requested a status update on his January 24, 2014, request and was told to submit his request and a copy of his MSM to his SPO.

On April 15, 2014, the Coast Guard issued a Page 7 wherein it stated that the applicant’s Sector had amended its ICS qualification process and that any previous Page 7s issued by the applicant’s Sector requiring completion of the ISC qualification were null and void. The Page 7 further stated that the applicant’s Sector would no longer utilize Page 7 entries to assign or indicate completion of ICS qualifications.

On June 29, 2015, the applicant was promoted to Commander (O-5).

On June 3, 2019, the applicant received a copy of his EPDR and realized that his June 15, 2013, MSM was still not included in his record. The applicant requested that his June 15, 2013,

and May 31, 2019, MSMs be added to his record. The applicant further asked that his request be processed urgently because his record was set to go before the O-6 selection board.

On June 17, 2019, the applicant followed up on his request and once again asked that his MSM awards be added to his record. A unit yeoman forwarded the applicant's request to the applicant's SPO and requested the awards be included in the applicant's file.

On June 18, 2019, the applicant received a response to his request and was once again told that the proper procedure was to send his request and copies of the missing documents to his SPO. The applicant acknowledged receipt of the email and apologized for the confusion.

On July 31, 2019, the applicant once again requested a copy of his EPDR.

On September 9, 2019, the applicant requested a copy of the August 7, 2013, Page 7 documenting his need to obtain his ICS qualifications within one year.

On December 30, 2019, the applicant reviewed his record and found that his June 15, 2013, and May 31, 2019, MSM awards were still missing from his file. The applicant then emailed the yeoman and stated that despite his many efforts to get his MSM awards added to his record, they were still missing and again requested that they be added to his record.

On January 2, 2020, the applicant received an email from a yeoman informing him that his MSM awards had been added to his file.

VIEWS OF THE COAST GUARD

On September 30, 2020, a Judge Advocate (JAG) for the Coast Guard submitted an advisory opinion in which he recommended that the Board grant alternate relief in this case and adopted the findings and analysis provided in a memorandum prepared by the PSC. The JAG stated that while the Coast Guard admits error in not incorporating the applicant's personal awards into his EPDR in a timely manner, it is speculative to say whether it was their absence that was dispositive in his PY2020 non-selection. The JAG explained that the PY2020 O-6 promotion was competitive and that it is noteworthy that the applicant was subsequently selected for promotion to O-6 on July 31, 2020. The JAG argued that in reaching their decision during the PY2021 selection process, the selection board would have had the benefit of a different membership, precept, awards, as well as an additional O-5 OER upon which to evaluate the member. Finally, the JAG stated that the applicant had pointedly not requested the backdating of his promotion to PY2020.

PSC explained that the standard timeline for an SPO to process an award citation is five days. PSC further explained that once the SPOs process the award(s), the SPOs then send the awards to PSC Business Operations, Military Records for entry into the member's EPDR. Finally, PSC explained that PSC Business Operations, Military Records' standard for urgent records entries is 1 business day, and other requests sent via email is within 14 days. Accordingly, PSC stated that the applicant's June 3, 2019, and June 18, 2019, request to have his May 31, 2019, award entered into his EPDR should have been completed prior to the July 8, 2019, O-6 selection board.

However, PSC stated that despite the applicant's contentions that he first received notice that he would be considered for promotion to O-6 on May 24, 2019, ALCGPSC 045/19 issued on April 24, 2019, notes that O-5s with the SIGNO less than 849 should plan on being considered for promotion to O-6. According to PSC, the applicant's SIGNO was 825, which placed him within the group of O-5s that would be considered by the O-6 selection board.

PSC argued that the applicant did not provide compelling evidence to support a removal of his April 7, 2013, Page 7, but there is evidence that the Coast Guard's April 15, 2014, Page 7, wherein all previous Page 7s issued requiring completion of ICS qualifications were null and void, should be added to the applicant's EPDR. PSC further argued that pursuant to Military Personnel Data Records System, COMDTINST M1080.10I, the applicant's April 7, 2013, Page 7 was a permissible Page 7 entry, and was therefore required to be entered into the applicant's EPDR. However, PSC explained that the second Page 7 issued on April 15, 2014, wherein all previous Page 7s requiring ICS qualifications were null and void, was also issued in accordance with Coast Guard policy and was therefore also required to be entered into the applicant's EPDR.

Regarding the applicant's contentions that the nomenclature of his 2012 OER was erroneously changed by PSC without input from his command, PSC stated that the applicant failed to provide compelling evidence to show that the nomenclature was erroneous. PSC argued that PSC's Officer Evaluation Branch (OPM-3) is authorized to make administrative corrections to OERs during the validation process, pursuant to the Officer Evaluations and Accessions Manual, COMDTINST M1000.3. According to PSC, Comparing the Primary Duty nomenclature to that on the Personnel Allowance List is part of the validation process, and the Primary Duty nomenclature was changed when the applicant's 2012 OER was validated. PSC stated that additionally, the description of duties in the applicant's 2012 OER indicated that the applicant's actual duties during the marking period involved workforce forecasting and analysis. Accordingly, PSC argued that the juxtaposing of the Primary Duty with the description of duties, though apparently somewhat misaligned, are still accurate and do not represent a material error.

Finally, PSC argued that the absence of the applicant's June 15, 2013, and May 31, 2019, MSMs did not constitute a material error. PSC stated that in accordance with Article 6.B.13.F.5.b of the Officer Accessions, Evaluations, and Promotions Manual, COMDTINST M1000.3A, which addresses prohibitions for convening an SSB states, "The omission of letters of appreciation, commendation, or other commendatory data or award of the Meritorious Service Medal and below from an officer's record does not constitute ground to initiate an SSB action under this Article." Accordingly, PSC argued that the applicant should be granted alternate relief in adding the April 15, 2014, Page 7 into the applicant's EPDR, but no other relief should be granted.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 9, 2020, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited him to respond within thirty days. The Chair received the applicant's response on November 10, 2020.

The applicant explained that while the Coast Guard was correct in that the PY2020 O-6 promotion was competitive, the PY2021 O-6 was slightly more competitive. The applicant argued

that because he was selected for O-6 during a slightly more competitive O-6 promotion year, the Coast Guard's argument that due to the PY2020 O-6 competitiveness, it is speculative that he would have been promoted with a more accurate EPDR are immaterial. The applicant stated that while it is true that the annual promotion panels are made up of different individuals, the most fundamental assumption underpinning the Coast Guard's promotion system is that though selection boards are made up of different service members, these different members would make the same decisions regarding who to select for promotion if given the same set of records to review. According to the applicant, the closest instance where two different selection boards would look at the same service member's records are those members in the above-zone category. Accordingly, the applicant claimed that the second selection board, though made up of different members than the first, should likewise make the same conclusions as the first board.

The applicant stated that the AY2020 selection board had four O-5 OERs wherein his performance was rated, in addition to OERs from his lower grades wherein he was recommended for accelerated promotion and spoke of his potential to serve as an O-6. The applicant explained that out of a maximum of 7 in each performance category, he averaged marks of 6.78 on his 2018 OER and 6.83 on his 2019 OER, which were completed by different rating chains. The applicant stated that on both his 2018 and 2019 OERs he was marked as "One of few distinguished officers" and was given the strongest possible recommendation for selection to O-6. The applicant claimed that despite the Coast Guard's position that the second O-6 selection panel had the benefit of an additional OER on which to rate the applicant, there is not clear evidence that an additional OER was meaningful to the selection board's decision.

The applicant alleged that he provided the Coast Guard with compelling evidence that there were significant errors in entering records into his EPDR. The applicant disputed the Coast Guard's claims that Article 6.B.13.f.5.b. renders the omission of his awards as immaterial. However, the applicant disagreed that the addition of his awards into his EPDR was immaterial because his record between the PY2020 and PY2021 was substantially the same, except the missing awards, but after the awards were added he was promoted to O-6 in a more competitive board. The applicant argued that the Article cited by the Coast Guard is subordinate to Article 6.B.13.f.5. which states, "The convening authority determines that the error in the officer's record was immaterial or could have been discovered and corrected prior to the board convening." Furthermore, Article 6.B.13.f.5.a. states, "It is the officer's responsibility to review his or her record before the board convenes and takes reasonable steps to correct any errors..." The applicant stated that he took reasonable efforts to have his 2013 and 2019 MSMs added to his EPDR prior to the PY2020 O-6 selection board but was unsuccessful. Moreover, the applicant stated that the Articles relied upon by the Coast Guard are applicable to SSBs, and though an SSB is an avenue that he could have pursued but the issue is moot and irrelevant to his case because he was already selected for promotion during the normal selection process. Accordingly, the applicant argued that an SSB is inapplicable to his case and requested that his promotion be backdated to reflect a PY2020 promotion date.

The applicant once again restated the importance of his missing MSMs to his record and how their importance could not be understated. These arguments were already previously summarized in the "Applicant's Request and Allegations" section of this memorandum and will therefore not be recorded again here.

The applicant also repeated his belief that allowing the Page 7 to remain in his record was erroneous and in the interest of justice should be removed. The applicant argued that the basic meaning of the words “null and void” reflects an intent on the Coast Guard’s part to make his April 7, 2013, Page 7 nonexistent as though it was never there in the first place. The applicant claimed that simply because Coast Guard policy allows the disputed Page 7 to remain in his record does not mean that it should remain.

Finally, the applicant repeated his request that the Primary Block on his 2012 OER be changed to reflect the original title used by his chain of command. The applicant made numerous arguments as to why the Primary Duty block should be changed, including the fact that “Support Allowance” does not and did not accurately describe the totality of the work he did while assigned to his unit. The applicant also argued that changing the Primary Duty block is not a minor change, as argued by PSC. According to the applicant, PSCINST M1611.1B states that OPM-3 is allowed to make changes to the Primary Duty block and “If the Primary Duty differs significantly (i.e. completely different job) from what was originally submitted on the OER, CG PSC-OPM-3 will send the Reported-on Officer and/or original rating chain a courtesy email to inform them of the change.” The applicant alleged that pursuant to this policy PSC-OPM-3 was required to notify his chain of command, but that did not happen. According to the applicant, had his chain of command been notified the Primary Duty block would likely have been changed back to the position back in 2012.

APPLICABLE LAW AND POLICY

Article 5 of The Coast Guard Officer, Accessions, Evaluations, and Promotions Manual, COMDTINST M1000.3A (September 2013), provides the following guidance on the Officer Evaluation System (OES):

Article 5.A.1.a. Purpose. This Chapter states policies and standards for conducting performance evaluations for Coast Guard officers.

The OES has been designed to:

- (1) Provide information for important personnel management decisions. Especially significant among these decisions are promotions, assignments, career development, and retention,
- (2) Set performance and character standards to evaluate each officer,
- (3) Prescribe organizational values by which each Coast Guard officer can be described, and
- (4) Provide a means of feedback to determine how well an officer is measuring up to the standards.

...

Article 5.A.2 d.1. Reported-on Officer.

...

- (g) Inform Commander (CG PSC-OPM-3) or (CG PSC-RPM-1) directly by written communication (e.g., e-mail) if the original validated OER has not been received six months after the end of the

reporting period. The correspondence shall include name, EMPLID, phone number, period of report, and rating chain names with phone numbers.

(h) Review the accuracy and completeness of the EI-PDR. Ensure that all days of commissioned service are covered by OERs. If an OER is missing or a gap in coverage exists, inform the appropriate rating chain. Through coordination with Commander (CG PSC-OPM) or (CG PSC-RPM-1), the rating chain shall take necessary action to correct the discrepancy.

...

Article 6 of the Officer Accessions, Evaluations, and Promotions Manual, COMDTINST M1000.3A (June 2017), provides the following guidance on convening a Special Selections Board:

6.b.13.f. Prohibition for Convening a Special Selection Board (SSB).

...

(5) The convening authority determines that the error in the officer’s record was immaterial or could have been discovered and corrected prior to board convening.

(a) It is the officer’s responsibility to review his or her record before the board convenes and take reasonable steps to correct any errors or notify the board, in writing, of possible administrative deficiencies.

(b) The omission of letters of appreciation, commendation, or other commendatory data or awards of the Meritorious Service Medal and below from an officer’s record does not constitute grounds to initiate SSB action under this Article.

(6) The officer’s record that the board considered was substantially complete and correct, but the content of which, an officer or former officer contends was materially incorrect.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on the applicant’s military record and submissions, the Coast Guard’s submission and applicable law:

1. The Board has jurisdiction over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record. The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

2. The application was timely filed within three years of the applicant’s discovery of the alleged error or injustice in the record, as required by 10 U.S.C. § 1552(b).

3. The applicant alleged that the Coast Guard erroneously omitted two personal Meritorious Service Medals from his record during the PY2020 O-6 selection board. The applicant further alleged that PSC erroneously changed the Primary Duty title of his 2012 OER and failed to remove an unjust April 7, 2013, Page 7 from his record. When 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 the military record, and the applicant bears the burden of proving, by a preponderance of the evidence, that the disputed information is erroneous or unjust.¹ 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."² To be entitled to relief, the applicant cannot "merely allege or prove that an [evaluation] seems inaccurate, incomplete or subjective in some sense," but must prove that the disputed evaluation was adversely affected by a "misstatement of significant hard fact," factors "which had no business being in the rating process," or a prejudicial violation of a statute or regulation.³

4. The applicant has stated that he is not requesting an SSB because he was already selected for promotion to O-6 through the traditional selection process and therefore an SSB is irrelevant to his case. Instead, the applicant requested that the Board backdate his selection to O-6 and provide him with backpay and allowances. However, when Congress passed 14 U.S.C. § 2120⁴ in 2012, the BCMR's role in such cases changed. Now, if the Board finds that "an action of the selection board that considered the officer...did not have before it for consideration material information,"⁵ the Board should direct the Coast Guard to convene an SSB instead of applying the *Engels* test to decide whether to remove a non-selection and backdate an officer's date of rank.⁶ In *Richey v. United States*, 322 F.3d 1317, 1324 (Fed. Cir. 2003), the court stated, "In *Porter* we held that once it is determined that the initial selection board's decision 'involved material administrative error,' nothing in this statute requires the Secretary, acting through the Corrections Board, to make a harmless error determination. Instead, under the statute, as interpreted in *Porter*, the Corrections Board should refer the matter to an SSB, which decides whether to promote the officer based on his corrected military record, and, therefore, 'the harmless error rule has no application.'"

5. June 15, 2013, MSM. The applicant alleged that the Coast Guard erroneously omitted his June 15, 2013, MSM from his EPDR when they submitted his record to the PY2020 O-6 selection board. The Board's review of the record shows that on January 24, 2014, and February 25, 2014, the applicant requested that his June 15, 2013, MSM be entered to his record. The record further shows that after these two attempts, the applicant's June 15, 2013, MSM was not fully entered into his record until April 1, 2020. The fact that he had received the MSM was entered in the Coast Guard's database, but the laudatory award citation explaining why he had received the medal was not. Finally, the record shows that despite the MSM citation not being added to his record when he requested the addition in 2014, the applicant made no further attempts to correct his record until June 3, 2019, five and a half years later. During this time, the applicant entered into another promotion cycle where he was considered and selected by the O-5 selection

¹ 33 C.F.R. § 52.24(b).

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

³ *Hary v. United States*, 618 F.2d 704, 708 (Ct. Cl. 1980), cited in *Lindsay v. United States*, 295 F.3d 1252, 1259 (Fed. Cir. 2002).

⁴ Formerly 14 U.S.C. § 263.

⁵ 14 U.S.C. § 263(b).

⁶ See *Porter v. United States*, 163 F.3d 1304, 1324 (Fed. Cir. 1998) (finding that since the enactment of the Title 10 SSB statute, 10 U.S.C. § 628, the "harmless error test" espoused for the BCMRs in *Engels* no longer applied to the BCMRs for services authorized to convene SSBs). (The Army, Navy, and Air Force were authorized to convene SSBs under 10 U.S.C. § 628 long before the Coast Guard was authorized to convene them under 14 U.S.C. § 263.

board with the June 15, 2013, MSM citation still missing from his record. Finally, the Board's review of the record shows that despite the laudatory citation being omitted from the applicant's record, his June 15, 2013, MSM was reflected in the summary of the applicant's "Medals & Awards" sheet presented to the O-6 selection board.

6. May 31, 2019, MSM. The record shows that on June 3, 2019, the applicant received a copy of his EPDR and realized that his June 15, 2013, MSM citation was still not included in his record. The applicant requested that his June 15, 2013, MSM citation be entered into his record, in addition to his recently awarded May 31, 2019, MSM. The record further shows that the applicant requested that his request be processed urgently because his record was set to go before the O-6 selection board. On June 17, 2019, the applicant followed up on his request and once again asked that his MSM awards be entered into his record. A unit yeoman forwarded the applicant's request to the applicant's SPO and requested that the awards be included in the applicant's file. Finally, the record shows that on June 18, 2019, the applicant was once again told that the proper procedure for requesting these additions to his record was to send his request and copies of the missing documents to his SPO. However, despite these requests and attempts by the applicant, on December 30, 2019, the applicant reviewed his record and found that his June 15, 2013, and May 31, 2019, MSM citations were still missing from his file. The applicant then emailed the yeoman and stated that despite his many efforts to get his MSM awards entered into his record, they were still missing and again requested that they be added to his record. On January 2, 2020, the applicant received an email from a yeoman informing him that his MSM award citations had been added to his file.

7. Due Diligence. The Board has granted relief in the past, based on injustice, when the applicants have submitted evidence proving that (a) they exercised due diligence by following the directions presented to them by Coast Guard administrators and by repeatedly trying to have the missing data entered into their records to no avail, and (b) the information on those documents was not available to the selection board on other documents such as the Employee Summary Sheet (ESS) and OERs.⁷ However, the Board has denied relief when the applicants have not exercised due diligence or when the information was available on other documents that were available to the selection board.⁸ Accordingly, the first question that the Board must answer is whether or not the applicant exercised due diligence. Although the Board is not persuaded that the applicant exercised due diligence regarding his 2013 MSM after he initially made two attempts in late 2013 and early 2014 to have the award entered into his record and went through successful selection and promotion process without raising any objections as to the award's absence until 2019, the same cannot be said for his May 31, 2019, MSM. The record is clear that the applicant repeatedly attempted to get his May 31, 2019, MSM citation entered into his record prior to his PY2020 O-6 selection board convened but was unsuccessful. Therefore, the Board finds that the applicant has proven, by a preponderance of the evidence, that the applicant exercised due diligence as it pertains to having his May 31, 2019, MSM citation entered into his record.

8. Material Information. The next question the Board must answer is whether or not the missing information was considered "material" and if so, was the missing material available on other documents that were available to the PY2020 O-6 selection board. Article 6.B.13.e.3. of

⁷ BCMR Docket Nos. 2011-215, 2013-147.

⁸ BCMR Docket Nos. 2014-016, 2014-171, 2015-070, 2016-089.

the Officer Accessions, Evaluations, and Promotions Manual, COMDTINST M1000.3A, states that an SSB should be convened if the “selection board that considered an officer from in or above the promotion zone did not have before it some material information required to be presented to the board by Coast Guard policy.” Enclosure (1) of Documents Viewed by Coast Guard Officer Promotion and Special Boards, COMDTINST 1410.2, states that award citations “are permitted to be viewed” by selection boards, which indicates that award citations are not “required to be presented to the board by Coast Guard policy.” Moreover, Article 6.B.13.f.5.b. of COMDTINST M1000.3A specifically states that “[t]he omission of letters of appreciation, commendation, or other commendatory data or awards of the Meritorious Service Medal and below from an officer’s record does not constitute grounds to initiate SSB action under this Article,” which shows that the Coast Guard does not consider Meritorious Service Medal citations to be required pursuant to Article 6.B.13.e.(3). In this case, not only does Coast Guard policy prohibit an SSB from being convened over the absence of an MSM in a service member’s record, but both of the applicant’s MSMs were shown elsewhere in his record, specifically in the summary list of his awards, so the selection board was able to view a “substantially complete” record as required by Article 6.B.13.f.6. of COMDTINST M1000.3A. Accordingly, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that he was entitled to an SSB because of the missing MSM citations.

9. 2012 OER. The applicant alleged that the PSC erroneously changed the wording in his Primary Duty Block from “Workforce Forecasting/Analysis” to “Support Allowance.” on his 2012 OER. According to the applicant, having “Support Allowance” as his primary duty likely erroneously conveyed to the O-6 selection board members that he was either medically unfit or facing disciplinary proceedings. The applicant stated that labeling his primary duty as “Support Allowance” is factually incorrect and asked the Board to correct the OER to list his primary duties as those provided on the original OER submitted to PSC. However, the applicant’s Member Information pages do state that his position in 2012 was “Support Allowance,” and if that was an error, as stated above, the applicant must prove that he exercised due diligence when attempting to have records added or corrected in his record. Here, the record shows that the applicant received this allegedly erroneous 2012 OER in 2012, while the applicant was still a Lieutenant Commander, but the applicant did not contest the OER until seven years later, and only after he was non-selected for Captain. Moreover, the applicant has failed to prove that his primary duty in his 2012 OER was erroneous or that PSC was prohibited from correcting his primary duty without consulting his rating chain.

10. Page 7. The applicant alleged that an August 7, 2013, Page 7 wherein he was notified that he must obtain his ICS qualifications within one year of the date of the Page 7 should have been removed from his record as a result of a subsequent Page 7, issued on April 15, 2014, wherein it stated that the applicant’s sector had amended its ICS qualification process and that any previous Page 7s issued by the applicant’s sector requiring completion of the ISC qualification were null and void. However, this Page 7 was issued in August 2013, and there is no record of the applicant having contested this Page 7 prior to his PY2020 O-6 non-selection. Furthermore, the applicant has failed to prove that the Page 7 was required to be removed from his record. Although the subsequent Page 7, issued by the Coast Guard, declared all previously issued Page 7s about ICS qualifications null and void, there were no requirements that the Page 7 be removed entirely from the applicant’s record. Finally, the Board finds that the applicant failed to exercise due

diligence in regard to this Page 7 because he did not contest the validity or accuracy of this Page 7 until after he was non-selected for promotion to O-6, six years after it was issued and five years after the subsequent Page 7 was issued by Coast Guard. However, the applicant has requested that if the Board denies his request to have the August 7, 2013, Page 7 removed from his record, that alternate relief be granted requiring the subsequent Page 7, issued on April 15, 2014, by the applicant's Sector at the time, be added into his record to ensure that appropriate context is given to the first Page 7, issued on August 7, 2013. The Coast Guard has agreed that this second Page 7 should be added into the applicant's record. Therefore, the Coast Guard should add the April 15, 2014, Page 7 to the applicant's EPDR.

11. For the reasons stated above, the applicant has failed to prove, by a preponderance of the evidence, that he exercised due diligence in having the missing documents entered in his record. He has also failed to show that the erroneous omission of the documents entitled him to an SSB.⁹ Therefore, his requests for relief should be denied, but alternate relief should be granted. The Coast Guard should add the Page 7 dated April 15, 2014, to the applicant's record.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁹ *Hary*, 618 F.2d at 708.

