


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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2006-168

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

FINAL DECISION

 This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case on September 1, 2006, upon receipt of the applicant's request for correction.

This final decision, dated May 31, 2007, 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 alleged that his military performance record as a lieutenant, junior grade (LTJG) contains an impermissible gap in his officer evaluation reports (OERs). He stated that he has one OER covering the period February 1, 2001, through August 31, 2001; nothing covering the period September 1, 2001, through January 31, 2002, during which time he was attending college as duty under instruction (DUINS); and another OER covering the period February 2, 2002, through August 12, 2002. The applicant asked that a new semi-annual OER be created to cover the period September 1, 2001, through January 31, 2002.

The applicant also noted that his OER for the period February 2, 2002, through August 12, 2002, fails to show his "A" grade and 3 credit hours for a philosophy course that he took in the fall semester of 2001 and fails to reflect marks of "not observed" in all the performance categories in sections 3 through 8, as required by the Personnel Manual.

In support of his allegations, the applicant submitted copies of his OERs, which show the errors he alleged. His OER for the period February 1, 2002, through August 12, 2002, shows that he was attending college on DUINS and includes his coursework and grades for the fall semester of 2001. In addition, none of the performance categories in that OER have been marked "not observed," and his grade and credit hours for a course denoted as PHIL101 Intro to Philosophy are not included with his other grades for the fall semester of 2001.

VIEWS OF THE COAST GUARD

On January 3, 2007, the Judge Advocate General of the Coast Guard recommended that the Board grant relief in this case. In so doing, he adopted the findings and analysis provided in a memorandum on the case by the Coast Guard Personnel Command (CGPC).

CGPC stated that under Article 10.A.5.a. of the Personnel Manual, the submission schedule for officers on DUINS is supposed to be coordinated with routine breaks in the academic schedule and that for ensigns and LTJGs, OERs must be submitted at least twice each year. CGPC further stated that Article 10.A.5.b.3. requires the marks in the performance categories on a DUINS OER to be “not observed” and requires the officer’s course titles, grades, and grade point average for each semester to be included in the OER.

CGPC recommended that the applicant’s request be granted. CGPC noted that the errors could not be fixed simply by advancing the start date of the applicant’s last DUINS OER from February 1, 2002, to September 1, 2001, because such a correction would violate policy by extending the reporting period of that OER beyond 182 days and would fail to provide the applicant with two OERs per year as a LTJG.

APPLICANT’S RESPONSE TO THE COAST GUARD’S VIEWS

On January 16, 2007, the applicant responded to the views of the Coast Guard by stating that he agreed with CGPC’s recommendations for corrective action.

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 under *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994) (holding that section 205 of the Soldiers’ and Sailors’ Civil Relief Act of 1940 “tolls the BCMR’s limitations period during a servicemember’s period of active duty”).

2. Article 10.A.4.c.1.j. of the Personnel Manual requires all periods of an officer’s active duty to be evaluated on an OER. The applicant’s record impermissibly contains no OER for the period September 1, 2001, to January 31, 2002.

3. Article 10.A.5.a.1.a. states that “[w]hen a Reported-on Officer is assigned PCS duty under instruction to a civilian institution ... OER submission will be coordinated with routine breaks in the school’s academic schedule. For lieutenants (junior grade) and below, at a minimum OERs shall be submitted twice a year. For lieutenants and above, at a minimum OERs shall be submitted once a year.” Therefore, the applicant’s record should be corrected by adding a new DUINS OER, prepared in accordance with Article 10.A.5., to cover his schoolwork from September 1, 2001, through January 31, 2002. All of the applicant’s coursework and grades during the fall semester of 2001, including the grade and credit hours for the Introduction to Philosophy course shown on his transcript, should be included in section 3 of the new OER, as required under Article 10.A.5.c.3.b.

4. Article 10.A.4.f.11. prohibits an OER from including information about an officer's performance that occurred outside of the evaluation period. Therefore, the applicant's OER for the period February 1, 2002, through August 12, 2002, should be corrected by removing the information about his coursework for the fall semester of 2001.

5. Article 10.A.5.c.3.a. of the Personnel Manual requires the "not observed" circle to be filled in for all marks in sections 3 through 8 of a DUINS OER. The applicant's OER for the period February 1, 2002, through August 12, 2002, is not properly completed as the "not observed" circles are not filled in. Therefore, the Coast Guard should be ordered to fill in the empty "not observed circles."

6. Accordingly, the applicant's request should be granted by adding a new DUINS OER for the period September 1, 2001, through January 31, 2002, and by making the corrections to the his OER for the period February 1, 2002, through August 12, 2002, described in findings 4 and 5 above.

[ORDER AND SIGNATURES APPEAR ON FOLLOWING PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted as follows:

1. A new DUINS OER covering his coursework from September 1, 2001, through January 31, 2002, shall be prepared in accordance with Article 10.A.5. of the Personnel Manual and entered in his record. Section 3 of the new OER shall be prepared in accordance with Article 10.A.5.c.3.b. to include his classes, credit hours, and grades for the fall semester of 2001 as shown in his official transcript, including those for his Introduction to Philosophy class.

2. His OER for the period February 1, 2002, through August 12, 2002, shall be corrected by

- (a) filling in all of the “not observed” circles in sections 3 through 8; and
- (b) removing from section 3 all of the information about his coursework in the fall semester of 2001.

