

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2008-015

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XXXXXXXXXXXXXXXXXXXXXXXXXXXX

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 October 26, 2007, upon receipt of the applicant's completed application, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated July 24, 2008, 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 asked the Board to enter a "continuity OER" (officer evaluation report) in his record. He alleged that there is an impermissible gap in his officer evaluation reports (OERs) and that a substantive OER cannot be prepared because his Supervisor and Reporting Officer, who should have prepared his OER for 2003 and 2004, have both retired. The applicant's personal data record (PDR) shows that he was appointed a chief warrant officer (CWO) on June 1, 2000. His PDR contains three annual OERs covering the period June 1, 2000, to June 30, 2003, and other OERs covering his service since June 19, 2004, but nothing covering his service from July 1, 2003, to June 18, 2004.

VIEWS OF THE COAST GUARD

On February 2, 2008, 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. of the Personnel Manual, every day of an officer's service must be covered by an OER. CGPC noted that the applicant should have timely informed his rating chain that the OER was missing, and the Supervisor and Reporting Officer should have prepared the OER before they retired. CGPC concluded, however, that since the Supervisor and Reporting Officer have retired and are no longer available to prepare the OER, the Board should grant relief.

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On February 29, 2008, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to submit a response within thirty days. No response was received. However, in response to a query from the BCMR staff, the applicant stated that his duties were the same during the period July 1, 2003, to June 18, 2004, as they were during his prior evaluation period from July 1, 2002, to June 30, 2003.

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.¹

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 July 1, 2003, through June 18, 2004.

3. Article 10.A.3.a.5. of the Personnel Manual states that a continuity OER "may be submitted in cases where an OER is required by these instructions, but full documentation is impractical, impossible to obtain, or does not meet officer evaluation system goals." The preponderance of the evidence indicates that full documentation of the applicant's performance from July 1, 2003, through June 18, 2004, is impossible to obtain as a result of the retirement of members of his rating chain.

4. Under Article 10.A.3.5.d. of the Personnel Manual, a continuity OER contains marks of "not observed" in the performance categories and no comments about the officer's performance. However, block 2 of a continuity OER is supposed to contain a description of the reported-on officer's duties and a statement of the reason the continuity OER was prepared in lieu of a substantive OER. The applicant has affirmed that his duties during the period to be covered by the continuity OER were the same as his duties during the prior evaluation period, as described in block 2 of his OER for the period July 1, 2002, to June 30, 2003. In addition, based on CGPC's statements, the reason provided for the continuity OER should be the following: "Continuity OER required due to retirement of rating chain."

5. Accordingly, the applicant's request for relief should be granted.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

¹ *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").

ORDER

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

A continuity OER shall be prepared in accordance with Article 10.A.3.5.d. of the Personnel Manual and entered in his record for the period July 1, 2003, to June 18, 2004. In preparing the continuity OER, the Coast Guard shall include a description of his duties in block 2, which the applicant has affirmed should be the same as the description of duties that appears in block 2 of his OER for the period July 1, 2002, to June 30, 2003. Block 2 shall also include the following reason for the continuity report: "Continuity OER required due to retirement of rating chain."

