

DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2013-015



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 application upon receipt of the applicant's completed application on November 1, 2012, and subsequently prepared the final decision as required by 33 CFR § 52.61(c).

This final decision, dated July 25, 2013, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant asked the Board to correct his record by removing an officer evaluation report (OER) for the period April 18, 2010 to May 31, 2011 (disputed OER) and by replacing it with an OER for continuity purposes only. He also requested that any reference to his failures of selection for promotion to the next higher grade be removed from his record and that his record be reconsidered for promotion by a special selection board,¹ if necessary. The disputed OER faults the applicant for violating Coast Guard policy by sharing his user password to the Coast Guard computer system with another officer.

BACKGROUND

The applicant was [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. On the day in question, the [REDACTED] [REDACTED] [REDACTED] was in session and another officer, lieutenant (LT) S, was assisting with that panel. On May 18, 2011, the OCS panel president, a captain, requested some information about a potential selectee that was in the Coast Guard's "Direct Access" personnel system. LT S did not have access to this system. According to the applicant, LT S

¹ The Coast Guard does not have authority to hold special selections boards. Therefore, this portion of the applicant's request is treated as a request for removal of his non-selections for promotion to lieutenant commander (LCDR).

contacted several persons trying to get the [REDACTED] they were [REDACTED] LT S contacted the applicant for assistance and explained the situation. The applicant was busy training his replacement, [REDACTED] and told LT S that he could not get the information for him right then because he was in the middle of the training. LT S then asked the applicant for his password to Direct Access. After some hesitancy, the applicant whispered his password to LT S, who used it to get the information that the President of the OCS panel had requested. After the applicant gave LT S his password, the officer who was being trained, [REDACTED] lectured the applicant about sharing his password and that he needed to change it. The applicant stated that he changed his password within a short period of time.

An administrative investigation was convened to look into this matter by the executive officer (XO) of Military Personnel, Personnel Service Center (PSC). The applicant gave a statement to the investigating officer. In addition to facts mentioned previously, the applicant stated that the investigating officer told him that some individuals thought that LT S was attempting to take advantage of the system by viewing the list [REDACTED] dates who would be considered for promotion [REDACTED] upcoming [REDACTED] [REDACTED] selection board. The applicant stated that he explained that LT S was at least one or two years his junior and was not in the zone for [REDACTED]. The applicant stated that it was a well-known fact that LT S was not liked by the applicant's rating chain or by [REDACTED]. The applicant stated that his rating chain for the disputed OER was prejudiced against the applicant because of his association with LT S.

The Disputed OER

The applicant asserted that the following comment in block 8 of the disputed OER is inaccurate and makes the entire OER adverse: "Displayed poor judgment & lack of responsibility by willfully providing [REDACTED] DA user name and password to another member who used them to access [the] system. Action violated COMDT policy & DA user agreement."

[REDACTED]

The disputed OER comment supports the below standard marks of 3 in "judgment" and "responsibility" in section 8 of the disputed OER. Also, in [REDACTED] 10 (potential) of the dispute [REDACTED] OER, [REDACTED] the reporting officer wrote the following: "Although this officer has strong potential, actions this rep [REDACTED] [REDACTED] [REDACTED] possible for me to offer him an unqualified recommendation, either for de [REDACTED] a [REDACTED] [REDACTED] [REDACTED] [REDACTED] without further observation."

[REDACTED]

The applicant submitted a reply to the disputed OER wherein he admitted that he shared his pass [REDACTED] with another commissioned officer and he explained the reasons that he did so. He stated in his reply that the marks of 3 and the disputed comments were excessive and reflected only a one-hour time-period within the course of the entire reporting period.

[REDACTED]

The reporting officer commented on [REDACTED] applicant's OER reply and stood by his evaluation. The reporting officer stated that the applicant violated policy by providing his Direct Access user name and password to another member to gain access at a level for which that other member was not authorized. The reporting officer stated that the applicant did not [REDACTED] guidance from his chain of command, nor did he heed the warning of another officer present at that time that his actions would constitute a violation of information security policy. The reporting officer

The PRRB found that based upon [REDACTED] obtained [REDACTED] and the statements of the applicant, the applicant did not provide sufficient evidence to overcome the presumption of regularity [REDACTED] pect to the construction of the disputed OER. Although not a restricted comment per policy, redacting the words “& DA user agreement” in block 8 of the contested OER would remove any ambiguity.

APPLICANT’S APPLICATION AND ARGUMENTS BEFORE [REDACTED] BOARD

After the PRRB denied his application, the applicant filed his application with the Board. The applicant alleged that contrary to the disputed comment in the OER, Coast Guard user policies for computer systems do not specifically preclude the sharing of passwords when essential to accomplishing a Coast Guard mission.

With regard to the Coast Guard policy on computer use, the applicant stated that neither the “Automated Information Systems (AIS) User Acknowledgment [REDACTED] (hereafter referred to as the AIS Brief), nor [REDACTED] ct Access [REDACTED] e [REDACTED] [REDACTED] Payment Approving Official Designation” form (hereafter referred to as “DA User Agreement”) preclude the disclosure of [REDACTED] word to a fellow commissioned officer for the limited purpose of accomplishing a specific exigent tim [REDACTED] mission. However, in a subsequent statement (discussed later) the applicant acknowledged that the policy prohibited the sharing of passwords.

The applicant also alleged that the PRRB committed an error by obtaining and considering statements from the rating chain on the disputed OER without giving him an opportunity to rebut them prior to the PRRB deciding his case.

Documentary Evidence Submitted to the Board

[REDACTED] ment submitted a statement from LT S that essentially corroborates the applicant’s description of events.

[REDACTED] ptain [REDACTED], who was the applicant’s commanding officer (CO) from November 2006 to August 2009, wrote that [REDACTED] p [REDACTED] t [REDACTED] ty as evidenced by the granting of a Top Secret/SCI security clearance. [REDACTED] [REDACTED] t [REDACTED] s [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] t on the applicant to do the right thing at the rig [REDACTED] e [REDACTED] [REDACTED]

[REDACTED] [REDACTED] wrote that she came to know the applicant in 2011 in her position as XO, Military Personnel at PSC, and that she initiated an administrative investigation into the applicant’s alleged disclosure of his Direct Access user name and password. Prior to discussing the results of the investigation, [REDACTED] offered her perceptions of the situation. She stated the following:

From the initial brief . . . with legal staff, I sensed an underlying issue between [the applicant] and how his chain of command viewed him. It was appa [REDACTED] t his chain of command did not trust him because of his alliance with LT [S]. LT [S] was previously stationed within RPM and had some problems with senior

assistance in the Board's effort to determine whether a correctable error or removal injustice occurred. The applicant argued that the evidence raises a serious issue as to whether the rating chain had the impartiality needed to generate an "accurate, fair and objective" OER as required by the Personnel Manual. The applicant stated that he believed that personal animus against him played a role in his evaluation because the rating chain believed that the applicant helped LT S "game the system." The applicant cited Article 10.A.2.g.2.b. of the Personnel Manual, which requires a rating chain exception where circumstances "raise[] a substantial question as to whether the Reported-on Officer will receive a fair, accurate evaluation."

The applicant stated that although he argued before the PRRB and in his initial submission before the Board that he did not violate any Coast Guard policy, he admitted that on reflection paragraph 5 of the AIS Brief states such a policy.² He argued however that the question remains whether under the circumstances his failure to adhere to that policy warranted the harsh measures selectively taken against him. He argued that the damning OER marks and comments were disproportionate to his isolated act. He again argued that he gave his password to LT S to fulfill an urgent, real-time request from the president of the OCS selection panel; that LT S was authorized to have access to the personnel information that he sought using the applicant's password and in no way misused or altered that information; that the applicant promptly reset his DA password; and that there was no harm to the Coast Guard in giving his password to LT S to help meet a need set by the captain of the OCS selection panel.

The applicant further argued that although OERs are snapshots and marks and comments on OERs other than the one at issue do not in themselves demonstrate unfairness, if marks or comments are aberrational when viewed against the reported-on officer's PDR as a whole, that information can be taken into account along with the other evidence before the Board. The applicant stated that he has never received an OER with a mark of 3 or less until the disputed OER. He stated his average marks on 11 OERs, excluding the disputed OER, are 5.30 for "judgment" and 5.64 for "responsibility."

The applicant argued that he was treated differently and much harsher than LT S. With LT S's permission, the applicant submitted a copy of LT S's OER covering the period in question, which was prepared by a different rating chain. LT S's OER does not fault him in any way for the incident that led to the present situation. He stated that LT S has been selected for promotion to LCDR and the applicant failed to be selected twice and was released from active duty on June 30, 2013. The applicant stated that LT S's fault was comparable to his own and his disparate treatment is indefensible. He also argued in this regard that his rating chain lost situational awareness and balance regarding the situation.

VIEWS OF THE COAST GUARD

On April 8, 2013, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the relief, as recommended by the Commander, Personnel Service Center (PSC).

² Paragraph 5. of the AIS Brief states, "Do Not Share Your Password. The practices of sharing passwords and writing down passwords are prohibited. You are directly responsible for any misuse, abuse, or practices that may jeopardize the system that can be directly associated to your name."

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In recommending the denial of relief, PSC stated that it agreed with the PRRB’s analysis and decision. PSC stated ██████████ applicant failed to produce any new evidence since the PRRB issued its decision to show that the disputed OER is in error or unjust. PSC believes that the rating chain carried out their responsibilities and completed the disputed OER in accordance with policy.

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PSC disagreed with the applicant’s statement that there are times when mission requirements demand that an officer provide his password to an authorized person. PSC stated there was absolutely no urgency or importance of mission completion for the applicant to provide his password in lieu of looking up the information himself. PSC stated that the applicant did not provide any evidence for why he could not provide the information to LT S.

PSC also disagreed with the applicant’s suggestion that sharing his password with LT S was appropriate because LT S was a commissioned officer with a ██████████ clearance who worked at PSC and because LT ██████████ the password ██████████ i ██████████ and time in order to satisfy a time-sensitive requirement. PSC stated that access to PII (personal identifying information) is ██████████ dependent on rank, security clearance, building proximity, or length of time use. PSC stated that the applicant’s ██████████ tion levels exceeded LT S’s needs and access level for the panel. PSC stated that by providing LT S with his password, the applicant gave LT S access to PII about personnel other than the panel candidates. PSC stated that the bottom of the DA Access User Authorization Form states that “accessing it [DA] for purposes beyond the scope of authorization is a violation of Federal Law (18 USC 1030).”

With regard to the applicant’s contention that he was not given an opportunity to rebut the rating chain’s statements that were obtained by the PRRB, PSC stated that the applicant has not shown how he was disadvantaged before the PRRB or BCMR by not having the opportunity to rebut the ██████████ chain statements. He presented no evidence of what he would have stated in rebuttal. Moreover, PSC stated that the PRRB did not violate its regulation by obtaining rating chain statements. PSC stated that under COMDTINST 1070.1, the PRRB president has great discretion ██████████ in deciding what evidence is needed to review and decide a case.

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PSC stated that the applicant argued that his ██████████ a ██████████ h ██████████ a ██████████ ██████████ ██████████ ██████████ ██████████ sufficient evidence to prove the accusation. ██████████ ██████████ ██████████ ██████████

██████████ op ██████████ that the applicant submitted a reply to the OER and therefore was afforded the opportunity to convey his view of the incident.

PSC noted statements of ██████████ from the rating chain and concluded by stating that the rating chain carried out their responsibilities ██████████ accurately evaluated the applicant’s performance for the period under review. PSC also concluded that it was reasonable to assume that a LT with over ten years of service knew that sharing his password to a restricted personnel information system was not allowed and showed poor judgment, which the rating ██████████ r ██████████ properly documented in the disputed OER.

PSC stated that other than removal [REDACTED] erer by t [REDACTED] ant is not entitled to any other relief. PSC stated that this limited relief is not a reason “that the applicant’s record should [REDACTED] sidered by the selection boards. While the applicant’s record during the PY 2012 RPA LCDR selection board contained the subsequently redacted text, the comments “Action violated COMDT policy . . . and lack of a promotion recommendation were visible to the [selection] board.”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 14, 2012, the Board received the applicant’s response to the views of the Coast Guard. He disagreed with them. He stated that the Coast Guard ignored an email that it obtained from LT S on March 1, 2013. The applicant argued that this email supports the applicant’s contention that his rating chain made a mountain out of a mole hill. He argued that a chewing out of the applicant would have more than sufficed for this situation, and if not, then arguably an administrative remarks page (page 7) as recommended by [REDACTED] who convened the investigation into the [REDACTED] incident. Th [REDACTED] n [REDACTED] March 2013 statement rebuts the applicant’s reporting officer’s belief that the applicant and LT S were trying to game the system (th [REDACTED] of this statement is not significantly different from the earlier discussion in the background portion of this dec [REDACTED] noted that he currently has all access he needs, but admitted that at the time of the incident he did not have access to evaluations and OERs). The applicant stated that the Coast Guard did not submit any subsequent statements from the reporting officer rebutting LT S’s March 2013 statement.

The applicant restated his argument that the case reveals grossly disparate treatment of two officers arising out of the same brief, isolated incident, simply because they worked in different parts of the same command. He argued there cannot be different standards of conduct for officers merely because they are assigned to different commands within PSC.

The applicant disagreed with PSC’s contention that he could have stopped what he was doing at the time and retrieved the information from DA for [REDACTED] within 30 seconds. The applicant asserted that he could not have done this because he was already in DA training another officer for the upcoming [REDACTED] [REDACTED] [REDACTED]. He stated that one cannot simply “switch screens” while setting up for [REDACTED] [REDACTED] [REDACTED] of this contention, the applicant submitted the [REDACTED] [REDACTED] [REDACTED] Guide. He argued that this Guide refutes PSC’s contention that the switching could have been done in a matter of seconds.

As a final note, the applicant offered the following that would help to place the matter in context.

[The applicant] was providing OJT to [REDACTED]. For this part of her OJT she occupied [the applicant’s] work station, which she operated under the applicant’s immediate supervision and in his immediate presence. . . . The workstation was logged onto the system using [the applicant’s] user name and password. [REDACTED] and the applicant’s rating chain seem to have no problem with this process, which is all but indistinguishable from the fleeting access [the applicant] afforded to [LT

information from Direct Access about a [REDACTED] for the [REDACTED]. In addition, the applicant asserted that [REDACTED]

- LT S was authorized to have the information that he obtained using the applicant's password;
- there was no misuse of the password or information by LT S;
- his password was immediately reset; and [REDACTED]
- the Coast Guard was not harmed by sharing the password.

6. While there is some validity to the applicant's arguments that the Coast Guard did not suffer any harm as a result of his sharing his password with another officer and that his actions may have assisted the OCS panel with completing its mission, the bottom line is that the applicant violated Coast Guard policy. He was fortunate there were no adverse consequences to the Coast Guard as a result of the disclosure of his password. The Board notes that the policy contains no exceptions for sharing passwords. Further, it is up to the applicant's command to determine what disciplinary or administrative measures should be imposed on members for violating Coast Guard regulations. See Part v of the Manual for Court-martial. Assigning the applicant two below standard marks of 3 in "judgment" and "responsibility" that are supported by the disputed comments is not unduly harsh given the risk he took even though no harm was apparently done.

7. The applicant argued that his rating chain members were not impartial because they believed the applicant helped LT S "game the system." The applicant suggested that because of this personal animus against him, it was not possible for the rating chain to evaluate him fairly and objectively. There is insufficient evidence in the record that the rating chain had personal animus against the applicant. While [REDACTED] indicated that some senior staff mentioned other concerns about his performance, there is no evidence that such animus against the applicant actually existed. [REDACTED] does not state that she had any personal knowledge of the command's dislike of the applicant but only that she was told that he was not liked. In addition, she stated that she was not certain what "gaming the system" meant. [REDACTED] statement amounts to speculation and is insufficient to prove that the applicant's rating chain's marks and comments were based on personal animus against the applicant. Instead, the rating chain's honest judgment as to the applicant's performance for the period under review is sufficient. [REDACTED] failed to prove that his rating chain was biased against him in the disputed OER, there is no need to determine whether [REDACTED] should have been removed from the rating chain under Article 10.A.2.g.2.b. of the Personnel Manual.

8. The applicant argued that the disputed OER is unjust when compared to LT S's OER for approximately the same period. The applicant stated that LT S did not receive any negative marks or comments in his OER even though his actions were comparable to the applicant's. With his permission, the applicant submitted a copy of LT S's OER. While it may appear that the applicant was held to a different or higher standard than LT S, the truth is that they had different rating chains and were members of different commands within PSC. Because one officer is held accountable in his OER and the other in a different command and [REDACTED] does not make either OER erroneous or unjust. Disciplinary or administrative measures that could be imposed to correct behavior are up to the judgment of each command. Section 1.d.(1)

applicant has an opportunity to rebut the rating elements and to present evidence to the BCMR. Any prejudice the applicant may have suffered by not having the opportunity to rebut rating chain state in his PRRB application has been corrected through the presentation of his case to the BCMR.

14. Accordingly, the applicant's request to remove the disputed OER from his record should be denied because he has failed to prove by a preponderance of evidence that the disputed OER is in error or unjust. Nor has he shown that there was a causal connection between the minor correction ordered by the PRRB and his non-selections for promotion to LCDR.

[REDACTED]

[ORDER AND SIGNATURES ON NEXT PAGE]

[REDACTED]

ORDER

The application of [REDACTED], USCGR, for correction of his military record is denied.

