

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2017-153**



**FINAL DECISION**

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the completed application on May 4, 2017, and assigned it to staff attorney [REDACTED] to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated February 2, 2018, 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, an [REDACTED] asked the Board to correct her record by removing [REDACTED] Officer Evaluation Report (OER), dated January 31, 2016, because the marking period exceeds the allowable period. Alternatively, if the Board does not remove the OER, she asked that the Board correct the marking period dates and change the marks to "consistently reflect supervisor and reporting officer comments detailing [her] contributions and performance." She argued that the OER as it stands is unjust because the marks are inconsistent with the comments regarding her performance and contributions. She also argued that the marking period is in error, as it states that she began on March 18, 2015, but she did not enter the Coast Guard until May 18, 2015, and did not report to her unit until June 9, 2015.

**SUMMARY OF THE RECORD**

The applicant took an oath of office and became a [REDACTED] [REDACTED] OER, the one at issue here, originally showed the period of report as March 18, 2015, to January 31, 2016. However, the version currently in her military record shows the period of report as May 18, 2015, to January 31, 2016. Of the eighteen categories in which officers are evaluated on a scale of 1 to 7, with 7 being the best, the applicant received thirteen 4s and five 5s. She received a mark in the fourth spot of seven on the comparison scale, denoting "one of the many competent professionals who form the majority of this grade." The comments include state-

ments such as “achieved superb results,” “adjusted priorities to complete short fused task,” “confident speaker,” “daily correspondence was logically organized and well written,” “demonstrated outstanding commitment,” “went above and beyond as morale officer,” “sought and obtained opportunity for increased responsibility,” and “projected outstanding CG image.”

### **VIEWS OF THE COAST GUARD**

On October 5, 2017, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he adopted the findings and analysis provided in a memorandum on the case submitted by the Coast Guard Personnel Service Center (PSC), who recommended that the Board grant alternative relief by correcting the date of the OER (which has been done).

PSC first noted that the applicant did not submit an OER Reply as authorized by Coast Guard policy and did not file an application with the Personnel Records Review Board. PSC stated that the period of report as originally stated on the applicant’s disputed OER was incorrect, as she entered the Coast Guard on May 18, 2015, not March 18, 2015. PSC therefore recommended that the period of report be corrected. However, PSC argued that this is an administrative error, and it did not influence the marks the applicant received. PSC also stated that the applicant failed to substantiate her claim that her marks did not accurately reflect her contributions and performance during the marking period. With the advisory opinion, PSC provided declarations from the applicant’s entire rating chain, who all “clearly stated that the applicant was marked” in accordance with Coast Guard policy.

PSC provided a declaration from the applicant’s reporting officer at the time of the OER. He stated that he agreed the period of report was incorrect. However, he stated that in his opinion the marks “accurately reflect the applicant’s performance.” He stated that he affirmed that “the marks provided were accurate and supported by comments.” The applicant’s Commanding Officer provided a declaration wherein he also agreed that the period of report was incorrect. He stated that the applicant’s marks and comparison scale score were consistent with her performance and were “justified by...performance observations.” The applicant’s immediate supervisor also provided a declaration. He agreed that the period of report was incorrect. He stated that the applicant’s marks were scored to Coast Guard standards and were supported by the positive comments with examples of her performance.

### **APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On October 11, 2017, the Chair sent the applicant a copy of the views of the Coast Guard and invited her to respond within thirty days. No response was received.

### **APPLICABLE REGULATIONS**

The Coast Guard Officer Accessions, Evaluations, and Promotions Manual, COMDTINST M1000.3A, Article 5.A.2.c. states that Commanding Officers must ensure that evaluations are accurate, fair, and objective. Article 5.A.2.d.(1)(k) states that the reported-on officer assumes ultimate responsibility for managing their own performance, including ensuring that their OERs are accurate. Article 5.A.3.a. provides that lieutenants junior grade normally receive semiannual

OERs at the end of each January and July, but for newly commissioned officers who have been assigned to their first unit for less than 120 days, OER submission is optional. The reporting period for an officer on a semiannual schedule may not exceed 12 months.

The OER Manual, PCSINST M1611.1A, Article 2.E.4.b. states the following regarding a supervisor's duties on OERs:

[F]or each of the performance dimensions, the Supervisors must carefully read the standards and compare the Reported-on Officer's performance to the level of performance described by the standards. The Supervisor must take care to compare the officer's performance and qualities against the standards --- not to other officers and not to the same officer in a previous reporting period.

Article 2.E.4.d. states the following regarding the comments block: "the Supervisor includes comments citing specific aspects of the Reported-on Officer's performance and behavior for each mark that deviates from a four (if applicable). The Supervisor draws on their observations, those of any secondary Supervisors, and other information accumulated during the reporting period."

### 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.

2. The applicant alleged that her first OER should be expunged, or alternatively corrected, because it is erroneous and unjust. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed OER in an applicant's military record is correct and fair, and the applicant bears the burden of proving by a preponderance of the evidence that the OER is erroneous or unjust.<sup>1</sup> Absent specific evidence to the contrary, the Board presumes that the members of an applicant's rating chain have acted "correctly, lawfully, and in good faith" in preparing their evaluations.<sup>2</sup> To be entitled to relief, the applicant cannot "merely allege or prove that an [OER] seems inaccurate, incomplete or subjective in some sense," but must prove that the disputed OER 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.<sup>3</sup>

3. The applicant's first complaint is that the period of report is incorrect and exceeded the allowable time period. The Coast Guard has conceded that the start date for the disputed OER

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<sup>1</sup> 33 C.F.R. § 52.24(b); *see* Docket No. 2000-194, at 35-40 (DOT BCMR, Apr. 25, 2002, approved by the Deputy General Counsel, May 29, 2002) (rejecting the "clear and convincing" evidence standard recommended by the Coast Guard and adopting the "preponderance of the evidence" standard for all cases prior to the promulgation of the latter standard in 2003 in 33 C.F.R. § 52.24(b)).

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

<sup>3</sup> *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).

preceded the applicant's commissioning and has corrected the OER accordingly. The disputed OER, as it appears in the applicant's record now, states that the period of report is May 18, 2015, to January 31, 2016. This period of report is correct under Article 5.A.3.a. of COMDTINST M1000.3A because the applicant reported to her first unit on June 9, 2015, and so had been assigned to her unit for fewer than 120 days on July 31, 2015, when most lieutenants junior grade received semiannual OERs. Because the Coast Guard has already corrected the only error identified in the period of report, no further relief is warranted.

4. The applicant asked the Board to remove the OER due to the incorrect period of report. However, the applicant has presented no evidence that the incorrect period of report on the OER as initially prepared prejudiced her marks or comments in any way. Specifically, she has not shown that her Command was unaware of her start date or downgraded her performance based on the original, erroneous start date for the OER. Because the applicant has not shown that she was prejudiced by the erroneous start date, the Board agrees with PSC that the incorrect period of report was an administrative error that does not warrant removal of the OER.

5. The applicant asked in the alternative that the Board change the marks on her OER to "consistently reflect supervisor and reporting officer comments detailing [her] contributions and performance." She did not substantiate this request, however, by stating which marks she felt should be raised or why. Moreover, OERs are not prepared by selecting numerical marks that are consistent with the supervisor's written comments, as the applicant indicated. Instead, the supervisor selects numerical marks after comparing the officer's performance to the prescribed standards for the marks printed on the OER form and then adds a comment with one or more examples of performance showing why the numerical mark was selected.<sup>4</sup> The Board finds no inconsistency between the marks and the supporting comments, and all three members of the applicant's rating chain, who signed and approved of the OER, have signed declarations reaffirming that the applicant received marks commensurate with her performance and with the included comments. The Board therefore will not disturb the marks on the OER, which are presumptively correct and fair.<sup>5</sup> The Board will also note that under current policy when the applicant is considered for promotion to senior officer, her Ensign OERs will not be visible to or considered by that promotion board.

6. The error that did exist in the applicant's OER has already been corrected by the Coast Guard. Otherwise, the Board finds that the applicant has not proven by a preponderance of the evidence that any other error or injustice exists in her record. The applicant's request should therefore be denied.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

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<sup>4</sup> OER Manual, PCSINST M1611.1A, Article 2.E.4.b. & d.

<sup>5</sup> *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 her military record is denied.

February 2, 2018

