

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-020



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. After receiving the applicant's completed application on December 10, 2013, the Chair docketed the case and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated August 22, 2014, 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 remove from his record his non-selection for promotion to lieutenant (LT) by the LT selection board that convened on September 16, 2013, and to restore his orders to attend flight school, which were canceled when he was not selected for promotion. He alleged that when the LT selection board convened and reviewed his record, the following documentation of awards and qualifications was missing from his record:

- a. A Page 7 dated January 4, 2011, stating that the applicant had qualified as an underway Junior Officer of the Deck (JOOD) and Quartermaster of the Watch (QMOW) for his cutter;
- b. A Page 7 dated January 28, 2011, stating that the applicant had qualified to stand watch at seven damage-control watch stations aboard the cutter;
- c. A Page 7 dated April 8, 2011, stating that the applicant had qualified to stand watch at five more damage-control watch stations aboard the cutter;
- d. A Page 7 dated April 16, 2011, stating that the applicant had qualified as an Inport Officer of the Deck (OOD) aboard the cutter;
- e. A Page 7 dated May 11, 2011, stating that the applicant had qualified as a Landing Signals Officer (LSO) for helicopters on board the cutter;

- f. A Page 7 dated May 15, 2011, stating th [REDACTED] nt had qualified as a Night Vision Goggle Landing Signals Officer on board the cutter;
- g. A citation for a Meritorious Team Commendation awarded to him as a member of his cutter's Drug and Migrant Interdiction Team from May 1 to 19, 2011;
- h. A Page 7 dated August 7, 2011, stating that the applicant had qualified as an Underway OOD aboard the cutter;
- i. A Page 7 dated November 29, 2011, stating that the applicant was authorized to wear the Sea Service Ribbon because he had served at least one year of sea duty aboard a large cutter;
- j. A memorandum dated April 11, 2012, stating that the applicant had qualified as a Boarding Team Member for the cutter;
- k. A Page 7 dated June 11, 2012, stating that the applicant had qualified and was certified as a Deck Safety Observer for Deck Seamanship Watch Stations;
- l. A memorandum dated July 12, 2012, stating that the applicant had qualified as a Radiation Level II detection operator;
- m. A citation for a Meritorious Team Commendation awarded to him as a member of the Cutter Restoration and Renewal Team from November 4, 2012 to February 1, 2013;
- n. A Page 7 dated February 25, 2013, stating that the applicant had qualified as a certified Anti-Terrorism Force Protection Officer on the cutter;
- o. A citation for a Meritorious Unit Commendation awarded to the crew of his cutter for their operational prowess in executing counter-drug operations and performance during a Tailored Ship's Training Availability (TSTA) assessment during the year from March 1, 2012, to March 7, 2013; and
- p. A citation for a Meritorious Team Commendation awarded to him as a member of his cutter's Small Boat Standardization Team from October 2012 through April 2013.

In support of his allegation that this documentation was missing when his record was reviewed by the LT selection board, the applicant submitted a memorandum signed by a chief yeoman, who stated that he reviewed the Servicing Personnel Office's copy of the applicant's record on December 11, 2013, and that it contained eight Page 7s that were not in his official electronic record at Headquarters: the Page 7s listed at a. through f., h., and i., above.

SUMMARY OF THE RECORD

On [REDACTED], the applicant was commissioned an ensign in the Reserve after completing Officer Candidate School and began serving on a three-year extended active duty contract. His first duty station was a large cutter, where he was assigned as a deck watch officer.

On his first officer evaluation report (OER) dated September 30, 2011, the applicant received six "standard" marks of 4, ten "above standard" marks of 5, and two "excellent" marks

of 6 in the various performance categories;¹ a mark in the fifth spot on the comparison scale;² and his reporting officer's recommendation for promotion "with best of peers." This OER notes that he—

- had qualified as an LSO and as both Inport and Underway OOD;
- made a "[s]uperb integration into cutter fleet highlighted thru [three migrant and drug interdiction patrols]";
- "[c]onducted ship-wide [migrant interdiction] trng; ensured crew provided humanitarian care to 192 migrants"; and
- "[p]layed instrumental part during [three migrant interdiction and one drug interdiction] w/in 17 days"; and
- was recommended for assignment as the executive officer of a patrol boat, for future command afloat of a patrol boat, and for assignment to flight school.

On his second OER, dated March 31, 2012, the applicant received two marks of 4, thirteen marks of 5, and three marks of 6 in the various performance categories and another mark in the fifth spot on the comparison scale. The OER notes that the applicant—

- was a qualified LSO, Inport and Underway OOD, and was pursuing additional qualifications as a Force Protection Officer and Boarding Team Member;
- performed well during patrols, TSTA, and inport periods;
- "ensured unit had adequate depth [in qualified boarding team members]. ... maximized operational readiness. ... ensured boarding teams well-equipped for mission and bolstered unit funding during budget constrained environment";
- "[p]roduced best results at CART and TSTA; marked improvement from prior year assessment. Key contributor as evaluator and trainee during TSTA; helped unit receive excellence award in Operations warfare area";
- "[m]anaged small boat evolutions during transfer of 104 bales of cocaine and 65 migrants in challenging sea conditions";
- qualified early, was a sound shiphandler, and was instrumental in the cutter's "operational success. Performance and leadership throughout CART & TSTA most noteworthy";
- showed "[p]roactive leadership of CART/TSTA preps during absence of E-6 led to superior results";
- had received a "well-deserved selection to O-2, on way to earning O-3 promotion recommendation"; and
- was recommended for assignment as an XO and to flight school.

¹ In OERs, officers are evaluated in a variety of performance categories, such as "Professional Competence," "Teamwork," and "Judgment," on a scale of 1 to 7, with 7 being best.

² On the comparison scale on an OER, the reporting officer compares the reported-on officer to all other officers of the same grade whom the reporting officer has known throughout his career. The 7 possible marks on the comparison scale range from a low of "[p]erformance unsatisfactory for grade or billet" to a high of "distinguished officer." On an OER form for an ensign and lieutenant junior grade, a mark in the third, fourth, or fifth spot on the comparison scale denotes the officer as "one of the many competent professionals who from the majority of this grade."

The applicant was promoted to LTJG on [REDACTED]. On his third OER, dated July 31, 2012, the applicant received eleven marks of 5 and seven marks of 6 in the performance categories and another mark in the fifth spot on the comparison scale. The OER notes that he—

- was a qualified Underway OOD, Inport OOD, Boarding Team Member, and Force Protection Officer and the cutter's "Lead LSO";
- had been designated as the ship's First Lieutenant, head of the Deck Department;
- "[c]oordinated short-notice augment to NCEA allotment ... resulted in significant readiness during [two migrant and drug interdiction] patrols";
- made sound decisions as OOD that "resulted in interdiction of drug laden g/f w/ 2K lbs of cocaine (\$26M street value). Excellent contributions to mission execution led to interdiction of 70 Dominican migrants";
- "adapted quickly to deck dept setting priorities & ID'ing areas for improvement; proactively found solutions while empowering subordinates; best employment of crew resulted in meeting maintenance objectives & improved [cutter] appearance";
- displayed a "work ethic that quickly spread throughout deck department, ensuring continued department success";
- "improved ship's habitability & materiel condition during dockside";
- had "taken ownership & responsibility for deck department. ... found ways to improve a wide range of unit practices & continues to impress with hard work and positive attitude, directly benefiting unit readiness & mission performance"; and
- was strongly recommended him for flight school and post graduate school and for promotion to LT "with peers."

On the applicant's fourth OER, dated January 31, 2013, he received seven marks of 5, nine marks of 6, and two highest possible marks of 7 for "Results/Effectiveness" and "Directing Others" and another mark in the fifth spot on the comparison scale. The OER notes that he—

- was a qualified Underway and Inport OOD, Lead LSO, Boarding Team Member, Force Protection Officer, and the First Lieutenant;
- provided "[s]uperior planning & preparedness for inport periods & highly dynamic patrol sked [that] resulted in highest cutter readiness. Excellent foresight for HELO-STAN inspection; meticulously completed 300 line item checklist prior to STAN; inspected all gear, safety equipment & reviewed all processes and documentation; displayed all items being checked in a way that expedited inspection; effort lauded by inspectors—adopted as best practice for fleet wide use; resulted in cutter recertification";
- demonstrated "[s]uperior organization of projects & training evolutions; coordinated 11 small boat trng evolutions; ... contributed to increased cutter bench strength & readiness; resulted in \$25M cocaine bust";
- "free up limited dept budget; used instead to improve materiel condition thru 106 projects including complete forecastle renovation & procurement of items in preps for rigorous BOAT STAN & AVCERT inspections; ... Flawless performance in all assigned duties";
- "improved exterior, safety, extended life of 48 year old ship. A valued team player; orchestrated 50 helo and 11 small boat training operations as LSO, 1LT & OOD contributing to superior cutter performance during CD patrol";

- demonstrated “leadership [that] resulted in [redacted] qualification to conduct helo ops; procedures adopted as ‘best practice’ by HELO STAN inspectors. As 1LT superbly maintained materiel condition and appearance of 48 year old cutter thru management of numerous work projects”;
- developed “[e]xcellent and aggressive strategies as deck department head; coordinated cross-departmental training to complete 11 inport & underway small boat training evolutions, resulted in rapid qualification of new crew members”;
- had a “[q]uick response time as OOD & LSO during 50 night/day helo & small boat operations [that] resulted in 3 successful CD cases. Led dept by example”; and
- was highly recommended him for flight school, post graduate education, and promotion to LT “with best of peers.”

On the applicant’s fifth OER, dated June 14, 2013, he received six marks of 5, ten marks of 6, and two marks of 7 for “Planning and Preparedness” and “Using Resources” and another mark in the fifth spot on the comparison scale. The OER notes all the same qualifications as the prior OERs and states that he—

- demonstrated “[s]uperb planning; proactive and thorough completion of Navy Aviation and boat standardization checklists ahead of action inspections; identified discrepancies, facilitated ample correction time; resulted in certification to conduct helicopter operations with allied forces in support of counter-drug/SAR missions; ... resulted in highest preps and high scores during inspection”;
- was “[v]ery adaptable; proficiently balanced dept head position & collateral duties; updated helo & small boat operations bill, small boat NAV standards to comply with COMDT standards leading to safe small boat navigation and flight deck procedures”;
- was an “influential leader; motivated 20 subs to place best efforts in improving cutter exterior; resulted in increased safety of life, improved ship’s materiel condition by refinishing forecandle and fantail non-skid”;
- demonstrated “[e]xcellent management skill proven true after extremely successful BOAT STAN and Navy AVCERT inspections; meticulous preparations of personnel and equipment resulted in certifications and praise from inspectors. Maintained the exterior of 48 year old cutter with extreme care, ensured cutter ready for migrant/drug/SAR operations for yrs to come”;
- showed “[o]utstanding initiative; preps and innovative ideas for BOAT STAN and Navy Aviation certification resulted in superior scores during both inspections; displayed gear in way that expedited process; methods lauded by inspection teams”;
- “led numerous small boat trng evolutions; resulted in qualifications & established proficiency”; and
- was highly recommended for flight school, post graduate school, command cadre positions, and promotion to LT “with best of peers.”

On September 10, 2013, the applicant was selected as one of 20 out of 38 junior officers who applied to attend flight school. However, on September 16, 2013, he was not among the 290 (out of 376) LTJGs selected for promotion to LT. Pursuant to policy, because he was not selected for promotion, he was removed from the list for flight school.

VIEWS OF THE [REDACTED] AWARD

On March 25, 2014, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case. In so doing, he adopted the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC).

PSC stated that Page 7s and award citations are normally among the documents reviewed by selection boards, but memoranda, such as those documenting the applicant's qualification as a Boarding Team Member and Radiation Level II detection operator (j. and l. above), are not. PSC stated that when the LT selection board reviewed the applicant's record, the Page 7s and award citations listed at b., e. through i., k., and m. through p., were not in the applicant's record. PSC noted, however, that the qualifications documented on the Page 7s were "effectively captured" in the applicant's OERs. PSC stated the comments in the OERs also gave the officer credit "for the majority of the content outlined in the award [citations]," listed at g., m., o., and p. In addition, his three Meritorious Team Commendations and Sea Service Ribbon (g., i., m., and p.) and the qualifications reflected on the Page 7s and memoranda at b., c., h., j., and l. appeared in his Direct Access database file and on his Employee Summary Sheet, which the selection board received.

PSC stated that on March 7, 2013, six months before the LT selection board met, it issued ALCGPSC 037/13, which reminded officers eligible for promotion to check their Headquarters records to ensure their accuracy and completeness and instructed them how to do so. In addition, on August 16, 2013, a few weeks before the selection board met, PSC issued ALCGOFF 084/13, the "PY 2014 [2013] LT Selection Board Announcement Message," which "high encouraged" the candidates to review their Headquarters records and instructed them how to do so.

PSC stated that because the proceedings of selection boards are confidential, it is impossible to know the impact of the missing documentation, but most of the information on those documents was available to the selection board through the applicant's OERs, his database file, and his Employee Summary Sheet. PSC alleged that "all of the applicant's Officer Evaluation Reports and other *required* files were presented to the [selection board], which document and portray the member's overall Service performance."

PSC alleged that it was the applicant's responsibility to ensure that the missing documentation was included in his Headquarters record, as noted in ALCGPSC 037/13 and ALCGOFF 084/13, and he had sufficient time to do so. Therefore, his non-selection for promotion should not be removed from his record. When he was passed over for promotion, PSC made a policy decision to remove him from the flight school list. PSC stated that the missing documents have been entered in the applicant's Headquarters record and so no correction of his record is warranted.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 27, 2014, 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.

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 to the Board was timely.³

2. The applicant requested an oral hearing before the Board. The Chair denied the request, acting pursuant to 33 C.F.R. § 52.51, and recommended disposition of the case without a hearing. The Board concurs in that recommendation.⁴

3. The applicant alleged that his non-selection for promotion in 2013 was erroneous and unjust because his Headquarters record lacked several important documents when it was reviewed by the LT selection board. 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 his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁵ 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."⁶

4. The Coast Guard has admitted that the applicant's military record did not include several documents that could have been in his record when it was reviewed by the LT selection board that convened in September 2013. The Coast Guard argued, however, that most of the information in those documents was available to the selection board in other documents or formats and that, in any case, it was the applicant's responsibility to ensure that his record was complete when it was reviewed by the selection board, as noted in ALCGPSC 037/13 and ALCGOFF 084/13.

5. The chief yeoman stated that the applicant's Headquarters record did not include the documents listed as a. through f. and h., above, when it was reviewed by the selection board. Somewhat contrarily, the Coast Guard claimed that documents b. through i., k., and m. through p. were not in his record. The Board is unable to resolve these discrepancies based on the records provided by the applicant and the Coast Guard. The Board finds, however, that the vast majority of the information in the documents listed as a. through p., above, was actually available to the selection boards in other documents or formats, as explained below:

- a. and d. An officer who has qualified as an Underway OOD, conning officer, navigator, and ship driver has also qualified as a JOOD and QMOW, which are essentially preliminary steps toward those higher qualifications. In addition, a Deck Watch Officer normally

³ 10 U.S.C. § 1552(b) (requiring application within 3 years of the applicant's discovery of the alleged error).

⁴ See *Steen v. United States*, No. 436-74, 1977 U.S. Ct. Cl. LEXIS 585, at *21 (Dec. 7, 1977) (holding that "whether to grant such a hearing is a decision entirely within the discretion of the Board").

⁵ 33 C.F.R. § 52.24(b).

⁶ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992).

qualifies as an Inport OOD during his first port time aboard a cutter and would be criticized in his OERs if he did not. According to PSC, the Page 7 documenting the applicant's qualification as an Inport OOD was in his record before the selection board convened, and his qualification as an Underway OOD was in his database file and/or Employee Summary Sheet. In addition, the applicant's qualification and service as an Inport and Underway OOD, conning officer, navigator, and ship driver was repeatedly mentioned in his OERs.

- b., c., and k. The applicant was a Deck Watch Officer, the First Lieutenant of a large cutter (head of the Deck Department), and the Lead LSO and as such would be assumed to have most or all of the damage control and safety qualifications listed on these Page 7s. In fact, if he had not earned such qualifications, he likely would have received low marks and negative comments on his OERs. In addition, as PSC noted, some of the qualifications were listed in his database file and/or Employee Summary Sheet.
- e. and f. The fact that the applicant was the cutter's Lead LSO and conducted both day and night helicopter operations is quite clear from his OERs.
- g. This Meritorious Team Commendation was noted in the applicant's database file and/or Employee Summary Sheet. Although the reason for the award does not appear in the database and is described only on the citation that was apparently missing, the applicant's contributions to the cutter's migrant and drug interdiction efforts from May 1 to 19, 2011, are described in several comments in his first OER (see page 3 above). For example, the OER states that he "played instrumental part during [three migrant interdiction and one drug interdiction] w/in 17 days."
- h. The fact that the applicant was an Underway OOD is the first responsibility cited on his OERs and was included among the qualifications shown in his database file and/or Employee Summary Sheet.
- i. Anyone who has served aboard a large cutter for at least a year is entitled to wear the Sea Service Ribbon, so the selection board would know that the applicant had earned this ribbon whether or not it was in his record because he had been assigned to a large cutter for three years. In addition, his entitlement to this ribbon appeared in his database file and/or Employee Summary Sheet.
- j. This memorandum is not supposed to be in the record presented to a selection board.⁷ However, the applicant's qualification as a Boarding Team Member was readily apparent from his OERs and in his database file and/or Employee Summary Sheet.
- l. This memorandum is not supposed to be in the record presented to a selection board.⁸ However, the applicant's qualification as a Radiation Level II detection operator appeared in his database file and/or Employee Summary Sheet.
- m. This Meritorious Team Commendation appeared in the applicant's database file and Employee Summary Sheet. Although the reason for the award does not appear in the database and is described only on the missing citation, the applicant's excellent leader-

⁷ U.S. Coast Guard, COMDTINST 1410.2, "Documents Viewed by Coast Guard Officer Promotion and Special Boards" (July 3, 2006).

⁸ *Id.*

ship in maintaining and improving the condition of the hull, deck, and materiel of a “48 year old ship” from November 4, 2012, to February 1, 2013, is discussed repeatedly in the comments for his OERs dated July 31, 2012, January 31, 2013, and June 14, 2013.

- n. The applicant’s service as a Force Protection Officer is noted on several of his OERs.
- o. This Meritorious Unit Commendation was awarded to the entire crew for the year from March 1, 2012, through March 7, 2013, for operational prowess in executing counter-drug operations and their performance during a TSTA assessment. Although it is not clear whether this award was entered in the applicant’s database file or Employee Summary Sheet, his OER dated March 31, 2012, notes that he “helped unit receive excellence award in Operations warfare area,” and his contributions to the cutter’s operational excellence and TSTA performance are described in numerous comments throughout his OERs dated March 31, 2012, July 31, 2012, January 31, 2013, and June 14, 2013.
- p. This Meritorious Team Commendation appeared in the applicant’s database file and Employee Summary Sheet. Although the reason for the award is described only on the missing citation, the applicant’s contributions to the success of the cutter’s Small Board Standardization Team from October 2012 through April 2013 are described in numerous comments in his OERs dated January 31, 2013, and June 14, 2013.

Therefore, the Board concludes that very little of the information in the disputed documents was actually missing from the applicant’s military record when it was reviewed by the LT selection board in 2013. The most significant missing information appears to be the fact that the crew earned a Meritorious Unit Commendation for the period March 1, 2012, through March 7, 2013,⁹ although the applicant’s contributions to the successes for which the award was received are described in numerous OER comments.

6. The applicant argued that because the disputed documents were not in his Headquarters record when it was reviewed by the LT selection board in 2013, his non-selection should be removed. PSC argued that unlike OERs, which must be reviewed by a selection board, Page 7s and award citations are not required documents, and the burden is on the officer to ensure that his record contains those documents. Under 5 U.S.C. § 552a(e)(5), federal agencies, including the Coast Guard, are required to maintain and base decisions on accurate personnel records, but within reason, the Coast Guard may define what constitutes a complete personnel record for the purpose of selection boards, and it has made Page 7s and award citations permissive, instead of required, documents.¹⁰

7. Because an officer is really the only person who has complete knowledge of his qualifications and awards and can know what is missing from his record by reviewing it, the Coast Guard’s policy of repeatedly advising officers to review their own records to ensure their accuracy before selection boards convene is reasonable. If the applicant had done so, the disputed documents could have been timely entered in his record. The applicant apparently did not do so, however. He did not claim that he reviewed his record before the selection board met, as

⁹ PSC stated that the citation for the award was missing but did not mention whether it was included in the applicant’s database file and Employee Summary Sheet. The chief yeoman who wrote on behalf of the applicant did not mention whether this award was missing from the applicant’s record.

¹⁰ U.S. Coast Guard, COMDTINST 1410.2, “Documents Viewed by Coast Guard Officer Promotion and Special Boards” (July 3, 2006).

advised by ALCGPSC 037/13 and ALCGOFF 084/13, and tried to get the disputed documents entered in his record to no avail. Nor did he submit any emails or other evidence proving that he did so.¹¹ Because the applicant failed to take these steps before the selection board convened and because he has not proven that the absence of the Page 7s and award citations made his Headquarters record officially incomplete under Coast Guard policy,¹² the Board finds that he has not proven by a preponderance of the evidence that his record was erroneous or unjust when it was reviewed by the LT selection board in September 2013. In the absence of a prejudicial error or injustice in his record, there are no grounds for removing his non-selection for promotion from his record.

8. Accordingly, the applicant's request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

¹¹ *See, e.g.*, Final Decision in BCMR Docket No. 2013-147, in which the Board expunged an officer's non-selection for promotion because the officer submitted evidence proving that a few months before his selection board convened, he ordered a copy of his Headquarters record, reviewed it, and submitted the missing documents through his chain of command for inclusion in his record, to no avail.

¹² U.S. Coast Guard, COMDTINST 1410.2, "Documents Viewed by Coast Guard Officer Promotion and Special Boards" (July 3, 2006).

ORDER

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

August 22, 2014

[REDACTED]

[REDACTED]

[REDACTED]