

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-089

[REDACTED]

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 case after receiving the completed application on March, 23, 2016, 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 3, 2017, 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, a [REDACTED] serving on active duty, asked the Board to correct her Coast Guard record by:

- promoting her to commander retroactively as if she had been selected for promotion in the Promotion Year 2015 (PY15) and award her all back pay and allowances, or
- conducting a Special Selection Board (SSB), and should she be selected for commander, awarding all back pay and allowances, and
- if she is selected for promotion during the Promotion Year 2017 or 2018 selection boards, repositioning her with her peers from the PY15 board and awarding back pay and allowances.

The applicant alleged that two entries in the Coast Guard's database erroneously listed her as a Reserve member on Extended Active Duty (EAD) instead of Active Duty. As a result of these errors, she claimed, she was denied a full and fair opportunity for selection because the PY15 and PY16 Active Duty [REDACTED] Selection Boards saw that she was a reservist on an EAD contract and therefore did not select her for promotion with her Active Duty peers.

The applicant stated that these errors were particularly egregious because of the highly competitive nature of the selection boards. She stated that during the PY15 board, the Actual

Opportunity of Selection (OOS) for an In-Zone officer was 62 percent, and for an Above-Zone officer was 16 percent. During the PY16 board, the Actual OOS for an In-Zone officer was 66 percent, while for an Above-Zone officer it was 12 percent. The applicant was an In-Zone officer for PY15, but an Above-Zone officer for PY16, and she will remain so in the future.

In support of her allegations, the applicant submitted a Notice of Overpayment, which noted the applicant as in the “USCGR.” Although the Notice of Overpayment would not have been seen by the selection boards, the applicant stated that this is how the alleged problem first came to her attention. The applicant submitted a print-out of her “Coast Guard Member Information” page as available via Direct Access (DA) on September 29, 2015, and her Reserve Points Statement as available via DA on December 7, 2015, to show that she was listed as a Reserve member on EAD during periods in which she was on active duty.

SUMMARY OF THE RECORD

The applicant entered the Coast Guard with a Reserve Commission on [REDACTED], as an Ensign with an EAD agreement for a period of three years. The agreement was extended by one year to allow her to compete on the Active Duty Promotion List (ADPL) Lieutenant Promotion Board. The applicant was selected and promoted to Lieutenant on [REDACTED] and was then integrated as a regular active duty officer on [REDACTED]. The applicant was promoted to Lieutenant Commander on [REDACTED].

The applicant has consistently received good officer evaluation reports (OER) for her work. In the beginning of her career until 1999, she received OERs with primarily marks of 4 and 5 in the various performance categories, with a few marks of 6.¹ During her performance periods of 1999 through 2016, she received primarily marks of 6 and 7, with a few marks of 5. The applicant received marks in the fifth spot on the comparison scale,² except in her OERs dated in 1998, 1999, 2000, 2013, 2014, 2015, and 2016, when she received a mark in the sixth spot. She was twice non-selected for promotion to [REDACTED] in PY15 and PY16 (calendar years 2014 and 2015, respectively).

VIEWS OF THE COAST GUARD

On September 7, 2016, 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 admitted that some entries in the applicant’s record available in DA erroneously stated that she was a reservist on EAD. These errors have been administratively corrected by PSC. PSC provided a copy of the applicant’s Coast Guard Member Information available via

¹ On OERs, officers are evaluated in eighteen different 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.”

DA as available on July 13, 2016, which correctly states that the applicant has been on active duty since [REDACTED]

PSC recommended that no further relief be granted beyond this administrative correction. In the advisory opinion, PSC stated that “the applicant’s contention that this error caused her non-selection for promotion before two promotion Boards is unfounded.” According to the Coast Guard, the boards were not provided with the data that would have indicated that the applicant was a reservist. In accordance with COMDTINST 1410.2, the selection boards are not provided with a print-out of the Coast Guard Member Information page in DA, which is where the applicant was erroneously listed as a reservist. PSC stated that the selections boards have access to the Electronically Imaged Personnel Data Records (EIPDR), and the applicant’s EIPDR included her Acceptance and Oath of Office for her appointment as a Lieutenant in the regular, active duty Coast Guard in 2001. PSC stated that the selection boards are also provided with an Employee Summary Sheet (ESS). PSC provided a copy of the ESS that the PY15 and PY16 boards viewed, which does not show the applicant’s duty status.

The Coast Guard Member Information page contains an array of information, including home address, phone and email contact information, marital status, dependent information, date of birth, gender, ethnicity, security clearance information, and service length information. The ESS contains position history, education information, trainings, competencies, medals and awards, etc. Listed as “Masked in view” on the ESS are gender, race, ethnicity, date of birth, date initially entered military service, active duty base date, pay base date, grade entry date, employee rotation date, and spouse in service. The ESS essentially contains everything that the Coast Guard Member Information page contains, except the personal information listed above. The Coast Guard Member Information page was what contained the incorrect status information, and the ESS is what was provided to selection boards.

Further, PSC stated, according to COMDTINST 1410.2, it was the applicant’s duty to ensure that her records, including DA records, were accurate prior to their review by a selection board. PSC noted that the applicant did not request a correction of her DA profile until September 2015, after both the PY15 and PY16 boards had met. Therefore, and because the information in DA has already been corrected, PSC and the JAG recommended that no additional relief be granted.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 26, 2016, the applicant responded to the views of the Coast Guard and strongly disagreed with them. She stated that she had four main areas of contention. The first was that PSC stated that the selection board was not provided with information that indicated the applicant’s status as reservist. According to COMDTINST 1410.2, a selection board is permitted to view a member’s CG Reserve Annual/Term Point Statement (Reserve Point Statement). This statement is available via DA. The applicant stated that the board members have command access in order to view the documents and web pages necessary for their selection duties. With command access, a user may also access other data sets within DA, including, the applicant contended, the Coast Guard Member Information, which erroneously stated the applicant was on EAD. The applicant stated that her Reserve Point Statement listed her status as a reservist

throughout her entire Coast Guard career. Her Coast Guard Member Information listed her status as R██████ on EAD from March 19, 2014, until PSC fixed it. The applicant provided step-by-step instructions, including screen shots, on how to access the Reserve Point Statement via DA, and how to subsequently access the Coast Guard Member Information page. The applicant argued that the selection board did have access to information that incorrectly listed her as a reservist.

The second point pertained to the maintenance of member records. PSC had stated that it was the applicant's responsibility to ensure her records were accurate. The applicant stated that prior to the PY15 board, she requested and reviewed her EIPDR, in accordance with ALCGPSC 044-14, which contains guidance for officers scheduled to be considered by the selection board. The applicant submitted additional data to be added after reviewing her record. She states that her "record review of [her] ESS and EI-PDR did not reflect the incorrect Reserve Status that was available in various data sets within DA and available to the Board members." In support of this point, the applicant submitted ALCGPSC 044/14, ALCGOFF 054/14 PY14 Commander Selection Board Announcement, and PY15 PSCNOTE 1401. All three of these outline the guidelines for reviewing a member's record, which the applicant alleged she followed. She also submitted her memorandum requesting to view her EIPDR on February 25, 2014, an email with her EIPDR attached, which the applicant received on March 4, 2014, and an email with attached documentation that the applicant requested to be added to her record on June 17, 2014.

The applicant's third point pertained to the agency's responsibility to maintain member records. The applicant submitted a copy of the Privacy Act, 5 U.S.C. § 552a(e)(5), which states that each agency is required to "maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination." The applicant claimed that the Coast Guard failed to accurately record her status as active duty in DA, did not notify her of the error, and allowed the error to be viewed by the PY15 and PY16 selection boards. She further argued that reliability of DA is "deficient and inconsistent." She pointed out that in her ESS viewed by the PY15 selection board, information regarding her Master's Degree was properly listed, but in her ESS viewed by the PY16 board, the information regarding her major and school were absent. The applicant claimed that these exclusions demonstrate errors within the DA system as a whole.

The applicant's fourth point of contention pertained to the service period a selection board is likely to review. PSC stated that the selection board had access to the applicant's EIPDR, and therefore would have seen her Acceptance and Oath of Office into the Coast Guard on Active Duty in 2001. The applicant submitted COMDTINST M1000.3A Chapter 6.A.4.d, which sets out general procedures for all selection boards. According to the section titled "Material Furnished," it states that a "board must consider an officer's entire record; however, the following is considered the most significant portion of the record evaluated: **Grade Considered...Commander...Service Period...Seven years of immediate previous service or all service in present grade, whichever is greater.**" The applicant argued that, while her Acceptance and Oath of Office was in her EIPDR, the selection board was not likely to view this document because it was not entered in her record within the seven years immediately preceding the selection board or during her time as a Lieutenant Commander. Therefore, she argued, the errors

in her record caused her an injustice while competing in the active duty selection board, because she would have been viewed as a reservist to the board members.

APPLICABLE REGULATIONS

COMDTINST 1410.2 governs what documents are to be viewed by officer promotion and special boards. Among the list of documents that are permitted to be reviewed by ADPL Boards are CG Reserve Annual/Term Point Statement and Acceptance and Oath of Office. Data sets that are permitted to be viewed include identification data,³ pay grade history data, assignment history, performance data, and education data. Data sets that *must be masked* from view include security clearance data, family data,⁴ personal demographic information,⁵ pay and service length information,⁶ and medical data.

COMDTINST 1401.5 (series) is provided to officers who will be evaluated for promotion prior to the selection board. Section 9 contains “General Guidance for All Officers.” It states that all “officers under consideration by upcoming boards and panels are encouraged to review their... EIPDR... Members are responsible for ensuring the completeness and accuracy of their own records and therefore should take steps well in advance of their board or panel to verify their information.” With regards to the ESS, it states the following:

With the creation of a consolidated view of employee human resources data captured in DA, boards and panels are able to view these career summaries in addition to the EIPDR. Officers are encouraged to review and update the data in DA to ensure the summaries are correct well in advance of convening boards and panels, as the member is responsible for maintaining his or her own ESS content.

FURTHER PROCEEDINGS

Upon reviewing the case file, the BCMR staff asked PSC how officers’ records were provided to selection board members. PSC explained that all of an officer’s documents that the selection board considers are compiled electronically prior to the meeting. PSC compiles only the documents that are permitted to be viewed, including the ESS, OERs, the EIPDR, and other permissible documents. Because the Coast Guard Member Information page contains data that the selection board is not permitted to view, it is not made available to them. The member’s file is made available to the selection board on a computer in a local format, meaning that there is no access to the intranet or DA. PSC stated that the selection board is specifically not permitted to access the intranet during selection meetings and is likewise not permitted to access an officer’s records in DA generally.

³ Defined as including the officer’s full name, current rank, current grade, date of current rank, commissioning date, employee identification number, the current unit and current position at that unit. The Social Security Number may only be displayed if it is essential. COMDTINST 1401.2(6)(a).

⁴ Defined as including the dependency status of any officer, elections made for life insurance, entitlements, contact information, and information relating to spousal/dependent employment. COMDTINST 1401.2(6)(c).

⁵ Defined as including an officer’s gender, race, ethnicity, religion, and age. COMDTINST 1401.2(6)(d).

⁶ Defined as including data related to entitlements, length of active service (such as active duty base date or pay base date) and time remaining in the service. COMDTINST 1401.2(6)(e).

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 non-selections for promotion to CDR are erroneous and unjust and asked the board to be promoted retroactively with the date of rank she would have had if selected by the PY15 selection board and to be awarded associated back pay and allowances. Alternatively, she has requested that a Special Selection Board be convened to consider her for promotion and, if selected, have her date of rank backdated and be paid back pay and allowances. If she is selected for promotion by the PY17 or PY18 boards, she likewise has requested to be retroactively repositioned with peers selected in PY15 and for back pay and allowances. In considering allegations of error and injustice, the Board begins its analysis in every case by presuming that the disputed information in an applicant's military record is correct as it appears in her record, and the applicant bears the burden of proving by a preponderance of evidence that the disputed information is erroneous or unjust.⁷ 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."⁸

3. The Coast Guard has admitted that certain entries in the applicant's record in DA were incorrect when she was considered for promotion by the PY15 and PY16 CDR selection boards. Specifically, the applicant was erroneously listed as being on extended active duty (EAD) for a period when she was actually on active duty on her Coast Guard Member Information page and her Reserve Points Statement in DA. PSC has shown that these errors have been administratively corrected.

4. Given that the Coast Guard has admitted that the Member Information page and Reserve Points Statement in DA were incorrect, the inquiry turns on whether the PY15 or PY16 selection board would have seen and been misled by this erroneous information—i.e., whether the error was material to her non-selections. According to COMDTINST 1410.2, a selection board is permitted to view a member's Reserve Point Statement, which is in DA. The applicant provided evidence that, should the selection board have chosen to access her Reserve Point Statement in DA, there is a way to navigate to the Coast Guard Member Information page from the DA web page displaying the Reserve Point Statement. The Coast Guard Member Information page listed the applicant as a reservist, on EAD, during both of the selection boards. The Reserve Point Statement listed the applicant as a reservist throughout her entire career.

5. The applicant has provided evidence that she was given guidance regarding what to review prior to the selection board meeting. She has also provided evidence that she

⁷ 33 C.F.R. § 52.24(b).

⁸ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

requested, reviewed, and updated her EIPDR. The applicant also states that she reviewed her ESS for accuracy, and that she found no errors.

6. While the applicant has provided evidence that the selection boards had authority to access her Reserve Point Statement and, from that page in DA, could have accessed her Coast Guard Member Information page, the Board is not persuaded that the selection boards would have viewed either of these pages in DA. The applicant was considered for promotion by the PY15 and PY16 ADPL CDR selection boards, and her record contained more than 15 years' worth of active duty OERs as well as a regular Coast Guard Acceptance and Oath of Office. Based on her EIPDR, ESS, and her OERs, which were provided to the boards by PSC, the selection boards would have had no reason to believe that she was a reservist and search for a Reserve Point Statement. COMDTINST 1410.2 does state that Reserve Point Statements are *permitted* to be viewed by selection boards. However, the fact that the selection boards had permission to view her Reserve Point Statement in DA does not prove by a preponderance of the evidence that they did view the statement given the lack of any reason why they would have done so. According to PSC, none of the information provided to the boards showed that the applicant was a reservist, so there would have been no reason for the board members to search for her Reserve Point Statement in DA.

7. The Board also finds it highly unlikely that the selection board would have viewed the applicant's Coast Guard Member Information page in DA, in large part due to the fact that the selection board is not given access to a computer connected to DA. This page contains many pieces of information that, according to COMDTINST 1410.2, must be masked from view during a selection board. Notably, it contains a member's security clearance data, marital status, personal demographic information, and pay and service length information. The only information that the selection boards were permitted to view on the Coast Guard Member Information page was provided to them on the ESS by PSC. There is no plausible reason why a selection board would have accessed DA on an outside computer in order to seek out the Coast Guard Member Information page when the ESS was already given to them since the Member Information page would not have shown them any relevant and permitted information that they did not already have on the ESS. To assume that the selection board would have sought out the Member Information page in DA would be to assume that they were acting in defiance of COMDTINST 1410.2, which the Board finds no reason to do. As stated above, absent evidence to the contrary, the Board presumes that Coast Guard officials have carried out their duties "correctly, lawfully, and in good faith."⁹

8. The Board is persuaded that the PY15 and PY16 ADPL CDR selection boards, with the EIPDR and ESS ready at hand, would have had no reason to view the pages in DA that erroneously showed the applicant as being on EAD. PSC did not make DA available to the selection boards, and the Board will not assume that a selection board member left the board meeting and searched for Reserve information about the applicant in DA on another computer or searched for information that was already provided on the ESS, especially given the active duty Acceptance and Oath of Office in her record.

⁹ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

9. PSC argued that Coast Guard policy places the burden on the officer to ensure that her records are correct. 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. According to COMDTINST 1410.2, the only required documents in an officer's personnel record are her OERs; other documents are allowed but not required. Because an officer is really the only person who has complete knowledge of her record and can know whether it is complete and correct 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 reviewed all of the documents available in DA, the disputed information would not have been in her record. The applicant apparently reviewed her EIPDR and ESS, but not her Coast Guard Member Information page or the Reserve Point Statement in DA, which strongly suggests that she believed, as the Board and the Coast Guard do, that the selection boards would not see that information. In any event, the Board is not convinced that the selection board viewed either of these pages during their selection process given the fact that they were not given access to DA, the lack of any reason to do so, and the violation of COMDTINST 1410.2 that would result from viewing her Coast Guard Member Information page. The Board finds that the applicant has not proven by a preponderance of the evidence that the records actually reviewed by the PY15 and PY16 CDR selection boards included the Reserve Point Statement or Member Information page or that they were misled to believe she was a Reserve officer on EAD contrary to the Acceptance and Oath of Office in her EIPDR.

10. Therefore, the applicant's requests should be denied because she has not proven by a preponderance of the evidence that the records actually reviewed by the PY15 and PY16 CDR selection boards included a material error warranting review by a Special Selection Board. She has not proven by a preponderance of the evidence that her non-selections for promotion to commander in PY15 or PY16 constitute an error or injustice warranting correction under the authority of the Secretary.¹⁰

(ORDER AND SIGNATURES ON NEXT PAGE)

¹⁰ 10 U.S.C. § 1552 ("The Secretary of a military department may correct any military record of the Secretary's department *when the Secretary considers it necessary to correct an error or remove an injustice.*" (Emphasis added)).

ORDER

The application of LCDR [REDACTED], for correction of her military record is denied.

February 3, 2017

[REDACTED]

[REDACTED]

[REDACTED]