

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-141

██████████
██████████ LCDR

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 June 3, 2016, and assigned it to staff attorney ██████████ to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated April 21, 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 lieutenant commander (LCDR) serving on active duty, asked the Board to remove from her record her non-selection for promotion by the commander selection board that convened in July 2015. She also requested that her promotion to commander receive the date of rank that she would have held had she been selected in 2015 and that she receive back-pay and allowances. She alleged that her military record as it appeared before the selection board contained inaccuracies that prejudiced her during the selection process. She stated that there were inconsistencies between her Personnel Data Record (PDR) and her Direct Access (DA) and Coast Guard Business Intelligence (CGBI) entries, and that two medals and one qualification were missing from DA and CGBI. Therefore, she argued, the selection board did not have her complete and accurate military record to review, and she was not selected for promotion.

The applicant claimed that her non-selection in 2015 (for Promotion Year (PY) 2016) should be expunged due to "the prejudicial errors in [her] assignment history." She argued that according to COMDTINST 1410.2, Coast Guard promotions boards are permitted to view a member's assignment history. The applicant stated that based on her DA and CGBI data, it appears that she had "three consecutive contingency preparedness/planning jobs from June 2005 to July 2015." However, the applicant stated that when she was assigned to a command in 2005, she was originally assigned to the contingency preparedness and reserve readiness position, but she was then instead assigned into a marine inspection billet. She was thereafter selected to fill the chief of the logistics department head position for one year.

The positions listed in the applicant's DA and CGBI are listed below in the Summary of the Record. They include "CONT PLANS/REST READINESS" and "PLANS/RES READINESS." The applicant asserted that her Officer Evaluation Reports (OERs) during the same period correctly listed her primary duty as "MARINE INSPECTOR" and "CHIEF, LOGISTICS DEPARTMENT." She has requested that the assignment history in the DA and CGBI be corrected to reflect the positions she actually held during these periods.

The applicant asserted that on December 21, 2015, her command submitted a request for her assignment history in the DA and CGBI to be corrected. The response stated that the applicant's assignment history on her employee summary sheet (ESS)¹ could not be corrected, because it is pulled from the DA. However, the response also stated that it is explained to promotion boards that the position history on an ESS is not reliable, and they are encouraged to focus on the "primary duty" block in a member's OERs.

The applicant argues that for PY2016, the promotion board had 381 candidates to review, and it was therefore not feasible that the board would have been able to review every primary duty slot on the OERs of every candidate during the one-week period in which they met. In addition, the applicant asserted that ALCGOFF 228/09 states that DA is the Coast Guard's "primary Human Resource information tool and is extensively used by Assignment Officers, workforce forecasters, and selections boards/panels to manage the officer corps. The accuracy of Direct Access data correlates closely to the quality of HR decisions." The ALCGOFF further states that an OER is "the primary tool for documenting performance...Selection boards/panels may have difficulty assessing an officer's experience and performance when the description of duties is inconsistent with an assignment or other service norms."

In addition, the ALCGOFF states that a command must contact the appropriate assignment officers to "propose moving officers from one position to another within their unit for any period greater than six months." The applicant argued that both of her moves at the command in question were greater than six month periods. She alleged, however, that OPM was never notified to make the necessary changes in DA.

The applicant argued that these errors alone are enough to prove a material error existed when the PY2016 promotion board viewed her record. Because the proceedings of a selection board are not disclosed,² she stated that it cannot be determined for certain if the selection members were properly directed to ascertain a member's assignment history based on OERs, or if they followed those instructions. She claimed that the "most probable" scenario is that the selection board relies on the ESSs of the 381 candidates in order to get a picture of their career history. In that case, the applicant continued, the selection process would have been prejudiced because it would have appeared that she had had planning positions for ten years.

In addition to the alleged errors with her assignment history, the applicant also stated that the DA and CGBI fail to show her Waterways Management Qualification, a Coast Guard Commendation Medal, and a Coast Guard Achievement Medal. She stated that she earned her

¹ The ESS pulls data from the DA and is provided to selection boards to provide an overview of each candidate.

² 14 U.S.C. § 261.

Waterways Management Qualification on June 9, 2015, and that this qualification was entered into her PDR via a CG-4082 form. However, it was not on her DA or CGBI as was viewable to the PY2016 selection board. She further stated that she was awarded the Coast Guard Commendation Medal and Coast Guard Achievement Medal on June 16, 2015, and these were both entered into her PDR. However, these medals were also not shown in DA or CGBI as viewable to the PY2016 selection board.

The applicant argued that due to the current budgetary environment and the reduction in workforce, she should not have to assume the burden of an inadequate and incorrect computer system that does not properly display her assignment history and credentials. The applicant further stated that she believes that these errors were the causative factors for not being selected by the PY2016 selection board, meeting the material error burden of proof.

On October 20, 2016, the Board received an additional letter from the applicant stating that she was selected for promotion to commander by the PY2017 selection board.

SUMMARY OF THE RECORD

The applicant graduated from the Coast Guard Academy on [REDACTED], and assessed into the Coast Guard with a Regular Commission. She was selected and promoted to lieutenant commander on [REDACTED]. She has been selected for promotion to commander, and will be promoted [REDACTED].

The applicant's OER for the period of June 1, 2005, through July 31, 2006, states that her primary duty was "Marine Inspector – 1st Tour."

The applicant's OER for the period of August 1, 2006, through May 31, 2007, states that her primary duty was "Marine Inspector (MI) – Port State Control Branch."

The applicant's OER for the period of June 1, 2007, through May 31, 2008, states that her primary duty was "Chief, Logistics Department."

The applicant's OERs for the period June 1, 2008, through June 10, 2012, show that her primary duty was District Marine Homeland Security and Response Planner. The applicant's OERs for the period of June 11, 2012, through April 30, 2014, show that her primary duty was Contingency Planning/Force Readiness Chief.

The last OER in the applicant's record that would have been viewable to the PY2016 selection board is dated May 1, 2014, through April 30, 2015. On OERs, members are ranked from one through seven, with seven being the best, in eighteen performance categories. The applicant received seven 6s and eleven 7s. On the comparison scale the applicant received a mark in the sixth spot, denoting that she was strongly recommended for accelerated promotion. This was the first mark in the sixth spot on the comparison scale that the applicant had received on an OER.

The Coast Guard provided a copy of the applicant’s Employee Summary Sheet (ESS) as it was available to the PY2016 selection board. The “Medals & Awards” section does not include the Coast Guard Commendation Medal or the Coast Guard Achievement Medal from June 16, 2015. The ESS also does not include her Waterways Management Qualification from June 9, 2015. Her “Position History” included the following:

Date	Position	Department
7-12-2012	CONT PLNG/READ CHIEF	SEC...READINESS STF
6-23-2008	HOMELAND SECURITY PLANNER	████ PLNG & FORCE READINESS
7-26-2005	PLANS/RES READINESS	SEC...READINESS STF
7-25-2005	CONT PLANS/RES READINESS	CG MSO...

The applicant provided her “Coast Guard Member Information” as available on October 15, 2016. Her “Career Summary” included the following:

Date	Position	Department
7/12/2012	CONT PLANS/RDNS CHIEF	SEC...READINESS STAFF
6/23/2008	HOMELAND SECURITY PLANNER	████ PLNG & FORCE READINESS
7/26/2005	PLANS/RES READINESS	SEC...READINESS STF
7/25/2005	CONT PLANS/RES READINESS	CG MSO...

The applicant provided a CGBI print-out as available on October 22, 2015. Under “Position History,” the following positions are in question here:

Position Entry Date	Position Description	Department
7-12-2012	CONT PLNG/READ CHIEF	SEC...READINESS STF
6-23-2008	HOMELAND SECURITY PLANNER	████ PLNG&FORCE READINESS
7-26-2005	PLANS/RES READINESS	SEC...READINESS STF
7-25-2005	CONT PLANS/RES READINESS	CG MSO...

The PY2016 results, dated September 22, 2015, lists the 173 members chosen for promotion to commander in 2016. The applicant was not included on this list.

In December 2015, a member of the applicant’s command sent an email regarding the applicant’s job positions as shown in DA and CGBI. The email from the applicant’s command included the following:

[The applicant] did other jobs while assigned to [her previous unit], she never did any planning. She would [like] her Position History summary to reflect that so it doesn't look like she had three planning jobs in a row. Ideally, she would like it to reflect what she actually did while attached to [the previous unit].

06-01-2007 LOGS DEPT HEAD SEC...LOGS DEPT
07-25-2005 MI/PSCO-JRNYMAN SEC...INSPECTIONS DIV

Attached is her ESS with these two jobs highlighted on it.

07-26-2005 PLANS/RES READINESS SEC...CP/READINESS STF
07-25-2005 CONT PLANS/RES READINESS CG MSO...

The response to this email stated the following:

The unfortunate answer is that at this time we cannot correct member's position history on the ESS. This information is pulled directly from Direct Access, and is linked to the member's position. That said, this is explained to all boards and panels that the position history data in an ESS is not entirely reliable, and to focus on the Block 1 of the OER to get a better idea of the members duties at their various units.

The Coast Guard provided a copy of the applicant's ESS as it was available to the PY2017 selection board. The Position History is the same as seen in the PY2016 ESS, including the incorrect position titles. However, the Waterways Management Qualification, as well as the Coast Guard Commendation Medal and the Coast Guard Achievement Medal from 2015 were included.

The last OER in the applicant's record that would have been viewable to the PY2017 selection board is dated May 1, 2015, through April 30, 2016. She received eight 6s and ten 7s. She also received another mark in the sixth spot on the comparison scale.

The PY2017 results, dated September 1, 2016, list the members chosen for promotion to commander in 2017. The applicant was included as number twenty-seven on this list.

VIEWS OF THE COAST GUARD

On December 1, 2016, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief. The JAG stated that the applicant admitted that her correct positions were listed in her OERs, which were available in her PDR along with the medals and qualification that were not listed in DA and CGBI. The JAG also stated that the applicant was selected for promotion to commander by the PY2017 selection board. At that time, her ESS had been updated to show her medals and qualification, but her position history had not changed since the PY2016 selection board. The JAG stated that the alleged incompleteness of the applicant's ESS does not constitute an error that would entitle the applicant to relief because her record was overall complete. Even if the Board were to find that the applicant's record did contain an error, the JAG argued that it does not rise to the level of material error needed to grant the applicant's requests.

Regarding the applicant's argument that it is not feasible for the selection board to review every candidate's OERs, the JAG stated that members of selection boards take an oath to evaluate the records of each officer "without prejudice or partiality having in view both officers' special

fitness and the efficiency of the Coast Guard.”³ In addition, Coast Guard policy “make[s] undeniably clear the importance” of OERs to the evaluation and promotion process. “In fact, the first basis of criteria listed for selection boards is ‘Performance Evaluations.’”⁴ As the applicant pointed out, the selection boards are also notified that the position history data in the ESS is not reliable and are specifically instructed to focus on candidates’ OERs to determine position duties. The JAG also stated that the applicant’s reliance on ALCGOFF 228/09 is misplaced, because her position title and description of duties within her OERs are correct, and there is no error because the correct duties were captured in her respective OERs.

Regarding the applicant’s contention that her record was incomplete because her ESS did not contain two medals and a qualification, the JAG stated that it is a member’s duty to ensure that their DA records are complete and accurate. The JAG stated that “any error that might exist regarding the awards and qualifications not appearing on the applicant’s CGBI summary and ESS ultimately lies with her.”

The JAG therefore argued that the applicant has not provided any evidence to overcome the presumption that the PY2016 selection board acted correctly, lawfully, and in good faith while evaluating the applicant’s record. In submitting this advisory opinion, the JAG also adopted the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC). PSC likewise recommended that the Board deny the applicant’s request for relief.

PSC stated that the ESS is constructed using DA information to provide the selection boards with permitted data sets, including assignment history. PSC stated that when the applicant was transferred in 2005, she was assigned to Contingency Plans and Reserve Readiness at the Marine Safety Office. Although not approved by OPM, the applicant’s command directed her to fill a Marine Inspector and Logistics position. PSC stated that the duties actually performed by the applicant while at this command are accurately reflected in her OERs, which are in her PDR and were viewable to the PY2016 selection board. PSC also stated that the selection board is tasked with comprehensively reviewing each record, including OERs, per COMDTINST 1410.2.

PSC argued that the applicant has not proven by a preponderance of the evidence that her record was erroneous or unjust. The selection board had the correct information via her OERs. In addition, both medals and the qualification were viewable to the board in the applicant’s PDR. It is also notable that the applicant was selected for commander by the PY17 selection board, despite the fact that her assignment history remained the same in DA and CGBI. PSC therefore recommended that the Board deny relief.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 6, 2016, the Chair sent a copy of the Coast Guard’s advisory opinion to the applicant and invited a response within 30 days. No response was received.

³ 14 U.S.C. § 254

⁴ COMDTINST M1000.3A, Article 6.A.3.b.

APPLICABLE REGULATIONS

The Commandant's Instructions on Documents Viewed by Coast Guard Officer Promotion Boards, COMDTINST 1410.2, includes a list of documents and data sets that are permitted to be viewed by promotion selection boards. Included in the list of permitted data sets is "Assignment History." This is defined as "the units at which the officer has served, the dates of service, and the positions in which the officer served."

The Officer Accessions, Evaluations and Promotions manual, COMDTINST M1000.3, lists "Performance Evaluations" as the first item under basic criteria for officer advancement. Article 6.A.3.b.(1) states the following:

- (1) Performance Evaluations. A significant selection criterion is performance in present and past assignments. Boards should adhere to the following interpretations and policies when evaluating performance.
- (a) Officer evaluation report forms define performance dimensions considered most significant in assessing an officer's performance and readiness for greater degrees of responsibility.

Title 14 U.S.C. § 263, enacted in Public Law 1120213, Title II, § 208(a), on December 20, 2012, states the following:

- (b) Officers considered but not selected; material error.--
- (1) In general, if an officer or former officer who was eligible for promotion, was considered for promotion by a selection board convened under section 251, and was not selected for promotion by that board, the Secretary may convene a special selection board to determine whether the officer or former officer should be recommended for promotion, if the Secretary determines that--
- (A) an action of the selection board that considered the officer or former officer--
- (i) was contrary to law in a matter material to the decision of the board; or
- (ii) involved material error of fact or material administrative error; or
- (B) the selection board that considered the officer or former officer did not have before it for consideration material information.

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 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.
3. The applicant alleged that her non-selection for PY 2016 was erroneous and unjust because DA and CGBI showed an incorrect assignment history and did not show two of her medals and one qualification. 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. 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.”⁵

4. The Coast Guard and the applicant both acknowledged that the applicant’s assignment history was incorrect in DA and CGBI and consequently on her ESS. They both also acknowledged that two of the applicant’s medals and one of her qualifications was not viewable on her ESS to the PY2016 selection board, although it was viewable on her ESS to the PY2017 selection board. The question before the Board is whether there was a “material” error within the meaning of 14 U.S.C. § 263, because if so, the Board should direct the Coast Guard to convene an SSB for the applicant as the statute requires.

5. The applicant requested that, should she be selected for promotion for PY2017, that her advancement be back dated to what it would have been had she been selected for PY2016, and for back-pay and allowances. However, as discussed in Docket No. 2016-029, if the Board finds that a material error did exist in the applicant’s record as it appeared before the PY2016 selection board, then the Board must order a Special Selection Board. In that decision, the Board found that just because the applicant in that case had been selected for promotion his second time before the selection board, the second year’s selection board cannot act as a Special Selection Board for the prior year. For one, the applicant in that case, and in this one, had received an additional OER for the selection board to consider. In addition, the other candidates for selection differ from year to year. Therefore, if the Board finds that the applicant’s record contained a material error, it must order the Coast Guard to convene a Special Selection Board for PY2016 and should not simply back date the advancement.

6. The Board finds here, however, that no material error existed in the applicant’s record. The applicant’s correct job assignments were properly shown on her OERs, which is where the selection board members were advised to look for that information. Regarding the incorrect assignment history in the databases, the applicant argued that it is not feasible to assume that the selection board reviewed all of the candidates’ OERs to ascertain their job titles and duties. As the Coast Guard pointed out, however, the selection boards are informed that the ESS pulls original assignment information from the DA and CGBI and may be inaccurate as far as actual assignment histories are concerned because officers are sometimes reassigned to different positions. Therefore, selection boards are expressly instructed to look at candidates’ OERs for the purpose of learning their assignment histories. In addition, pursuant to the Officer Accessions, Evaluations and Promotions manual, OERs are of significant importance to selection boards. In this regard, it is also notable that the applicant’s ESS contained the incorrect assignment history when it was viewed by the PY2017 selection board, yet she was promoted. This is evidence that selection board members follow instructions and look for an officer’s assignment history on her OERs. The Board will not assume that the 2015 commander selection board members did not follow instructions and perform their duties correctly and faithfully. Therefore, the Board finds that the presence of both the applicant’s original assignments in the databases and her actual positions and duties on her OERs did not constitute a material error in the applicant’s record when it was reviewed by the selection board in 2015.

⁵ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992).

7. The applicant also argued that the lack of her Waterways Management Qualification, Coast Guard Commendation Medal, and Coast Guard Achievement Medal in DA and CGBI constitute a material error which prejudiced her during the PY2016 selection process. The Board likewise finds this argument unconvincing. As the Coast Guard pointed out, the qualification and two medals were viewable in the applicant's PDR. While these three items were on her ESS before the PY17 selection board, the Board again will not presume that the 2015 selection board did not thoroughly review the applicant's record as it was instructed to do. Additionally, the Coast Guard reasonably places the burden to ensure such information in an officer's record is complete on the officer herself because each officer is in the best position to know what awards, qualifications, etc., she has received over the course of her career and so recognize inconsistencies or missing information. In any event, the medals and qualification were actually in the applicant's PDR and available for review in 2015 by the PY2016 selection board. Therefore, she has not proven by a preponderance of the evidence that her record was missing material information—i.e., that it contained a material error—when it was reviewed by the selection board in 2015.

8. Although not a material error for the purposes of 14 U.S.C. § 263, the applicant's assignment history in the DA and CGBI databases includes inaccuracies during the period 2005 to 2008 because they reflect her original assignments, as the Coast Guard [REDACTED] ed. Therefore, the Board finds that the Coast Guard should correct her assignment history entries in the DA and CGBI database [REDACTED] primary duties that she actually performed as shown in her OERs from 2005 [REDACTED]

9. Accordingly, the applicant's request for relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of LCDR [REDACTED], USCG, for correction of her military record is denied, except that the Coast Guard shall correct the entries in the Direct Access and Coast Guard Business Intelligence databases to reflect the primary duties that she actually performed as shown in her Officer Evaluation Reports from 2005 through 2008.

April 21, 2017

