

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-033

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████████████████

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. The Chair docketed the case upon receipt of the applicant's completed application on November 22, 2016, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated August 4, 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 (LT) serving on active duty, asked the Board to remove from his record his non-selection for promotion by the lieutenant commander (LCDR) selection board that convened in August 1, 2016. He alleged that his non-selection was erroneous and unjust because his military record was incomplete when it was reviewed by the 2016 LCDR selection board because it did not include the award summary (narrative citation) for three Achievement Medals he had received. The applicant also asked that, if he is selected for promotion in 2017, his date of rank be backdated to what it would have been had he been selected for promotion in 2016.

The applicant explained that in February 2016, as recommended by ALCGPSC 051/16, issued on April 4, 2016, he requested a copy of his electronically imaged personnel data record (EI-PDR) to review it before the LCDR selection board convened in August. He submitted a copy of the email he received on February 19, 2016, from the Personnel Service Center (PSC) with his EI-PDR attached, which shows that he had sent them a memorandum requesting his EI-PDR on February 10, 2016. This email also shows that the applicant was the air station's Administration Officer at the time. The applicant explained that he requested his EI-PDR in February 2016 because he was transferring to a new unit in the summer of 2016 and "wouldn't have a chance to review it later in the year." He noted that the subsequent announcement about the selection board recommended ordering a copy of the EI-PDR at least three months early.

The applicant stated that upon reviewing his EI-PDR in February 2016, he noticed that an Achievement Award he had received at the air station on February 11, 2015, was entered in the Direct Access database, but there was no corresponding citation describing the performance for which he had received the award in his EI-PDR. Therefore, he alleged, he contacted his unit's yeoman to have the citation entered in his EI-PDR and was told it would be taken care of.¹

The applicant stated that before the LCDR selection board convened on August 1, 2016, he received two more Achievement Medals, one on April 12, 2016, and another on May 17, 2016, and he assumed that the citations would be entered in his record. The applicant stated that he departed his prior unit, an air station on the West Coast, in June 2016 and did not report for duty at his next unit on the East Coast until August 1, 2017, the same day the LCDR selection board convened. Therefore, he stated, he did not have access to Coast Guard email and did not have the ability to recheck his EI-PDR. However, the applicant stated, he believes that he "made notable efforts and showed due diligence in checking, and trying to correct, [his] record."

The applicant stated that although the three Achievement Medals had been entered in the Direct Access database, he did not learn that the corresponding citations were missing from his EI-PDR until after he was non-selected for promotion. He noted that Chapter 10.A.2. of PPCINST M1000.2B states, "Immediately upon approval of an award, the awarding authority shall forward a copy to the Servicing Personnel Office (SPO) and forward a copy to Commander, Coast Guard Personnel Service Center (PSD MR) for electronic imaging into the EI PDR." The applicant stated that when he contacted his prior unit, he learned that although the yeomen would enter members' medals in the Direct Access database, members were expected to provide signed copies of their awards for entry in their EI-PDRs after receiving them. The applicant stated that he had never been told this information, and it was not a written policy. The applicant submitted an email chain showing the following:

- On September 22, 2016, the applicant sent two yeomen at the air station's Administrative Office an email noting that he had been non-selected for promotion and that the three Achievement Medals he had received at the air station had not been in his EI-PDR, although they did appear in Direct Access and on his Employee Summary Sheet (ESS). He asked whether there were any emails showing when the awards were sent to the SPO.²
- On September 27, 2016, one of the yeoman responded, stating that they had entered the Achievement Medals in Direct Access and "the SPO is responsible for the EI-PDR submissions."
- Later on September 27, 2016, the applicant replied, asking whether there were any saved emails between them the yeomen and the SPO.
- On September 28, 2016, the same yeoman responded, stating that he could not find any emails between himself and the SPO concerning the applicant's medals, although he thinks his intentions were to make sure that EI-PDR documents were sent to PSC. He noted that the SPO was responsible for entering award citations into an EI-PDR, but he had "trust

¹ There are no corresponding emails in the record to document this communication.

² The applicant did not ask the yeomen whether they could provide copies of the emails he allegedly sent them requesting correction of his EI-PDR by the addition of the 2015 Achievement Award citation.

issues” with the SPO and so intended to have it done by having the Administrative Office send such documents directly to PSC. However, the yeoman responsible “was waiting for members to bring their signed award to him for submission into their EI-PDR. I apologize if this was overlooked, and I hope this email helps resolve any issues you are having with advancement. Admin is going to make sure that there is a process in place to make sure all members are aware to turn in their signed ... awards to us after award presentation.

In support of his request, the applicant submitted a statement from the Executive Officer (XO) of his prior unit. The XO stated that the applicant had earned three Achievement Medals while at the air station, two for particular search-and-rescue missions and one for his outstanding performance throughout his tour of duty from 2012 to 2016. The XO stated that he had encouraged all of the officers to review their records to verify accuracy so that they could identify and fix discrepancies. The XO noted that the applicant claimed to have asked a unit yeoman to forward one of the citations to PSC, but the XO was unaware of this and could not verify whether it happened. He noted that there “is a reasonable expectation that the Yeoman would forward the appropriate awards to [PSC].” The XO stated that all three of the Achievement Medals were entered in Direct Access and so appeared on the applicant’s ESS, which was provided to the selection board, but the citations were not in the applicant’s EI-PDR when it was reviewed by the selection board in August 2016. The XO stated that “[a]s the executive officer, I would have no reason to believe that all awards would not be entered into [the applicant’s] EI-PDR. Furthermore, [the applicant] can reasonably expect all [medals] would be properly processed and entered into the EI-PDR.” The XO stated that he believes that the applicant “took the necessary actions to review his ESS and EI-PDR prior to the LCDR promotion panel and that these three missing [medal] narratives negatively affected his chances for selection to LCDR.” The XO stated that the applicant was the air station’s top performer and he was astonished that the applicant was not selected for promotion.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard in [REDACTED] and completed recruit training and [REDACTED] “A” School to advance to [REDACTED]/E-4. He served aboard a cutter for more than a year before attending Officer Candidate School in the fall of [REDACTED]. The applicant was commissioned an ensign in the Reserve on [REDACTED], and began serving on an extended active duty contract.

From [REDACTED], the applicant served at a Sector Command Center as a Command Duty Officer and received Officer Evaluation Reports (OERs) with increasingly high marks. He was promoted to lieutenant junior grade on August 7, 2008, and on his final OER at this unit, he received all marks of 6 and 7 (on a scale of 1 to 7) in the various performance categories³ and was assessed as an “exceptional officer” in the sixth spot (of seven) on the officer comparison scale.⁴ The applicant was awarded an end-of-tour Achievement Medal for his service at this unit.

³ 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.

⁴ On the officer comparison scale, 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

From [REDACTED], the applicant attended primary flight training and his [REDACTED] OER notes that he had received above average academic and flight training grades. On [REDACTED] the applicant was promoted to lieutenant and integrated as a regular, active duty officer. From [REDACTED], he completed advanced flight training. His [REDACTED] OER states that he had demonstrated “significant professional growth, perseverance, and expertise in earning the coveted Naval Aviator’s ‘Wings of Gold’” and that his flight grades “were above average in a highly competitive, physically demanding, and mentally challenging program.” The applicant was “[s]trongly recommended for promotion with best of peers.”

In [REDACTED], the applicant reported for duty at the air station on the [REDACTED] as a rotary wing aviator (copilot). On his first annual OER at the air station, dated [REDACTED], he received primarily marks of 5 in the various performance categories; he was assessed as an “excellent performer” in the fifth spot on the comparison scale; and he was highly recommended for promotion “with best of peers.” On his second annual OER, dated [REDACTED], he received primarily marks of 5 and 6 in the various performance categories and another mark of “excellent performer” on the comparison scale. He was strongly recommended for promotion “with very best of peers.”

On [REDACTED], the applicant was awarded his second Achievement Medal for his performance as a co-pilot during a search-and-rescue mission on [REDACTED]. The citation states that in dense fog and rough seas, the crew had lowered a rescue swimmer to hoist a critically injured man from a sailing vessel about thirty miles from shore after a motor lifeboat was unable to get close enough to the vessel to transfer the injured man. (See certificate and citation attached.) This rescue is described in the applicant’s third OER at the air station, dated [REDACTED]. The OER states that he “[d]isplayed excellent discernment and sound acumen during the MEDEVAC of a distressed mariner in severe weather & heavy seas; displayed solid decision making dealing with limited fuel, survivor’s deteriorating health, low ceilings & fog – actions directly saved one life; awarded for valor by [District Commander].” The OER shows that the applicant qualified as an aircraft commander during this period, and he received primarily marks of 6 in the various performance categories and another mark of “excellent performer” in the fifth spot on the comparison scale. He received his reporting officer’s “[h]ighest recommendation for promotion to LCDR with very best of peers.”

On April 4, 2016, the Personnel Service Center (PSC) released ALCGPSC 051/16, which noted that all lieutenants with a signal number less than or equal to 3495 would be considered for promotion to LCDR by the upcoming selection board, and this number included the applicant. The message advises all candidates to review their EI-PDRs for accuracy, including the Employee Summary Sheet (ESS) printed from Direct Access; the Officer Specialty Management System; educational transcripts; and the EI-PDR. Regarding EI-PDRs, it states, “We highly recommend candidates confirm their record is complete. Recommend requests for copies of EI-PDRs be made at least 3 months in advance of a Selection Board or Panel convening date. It is the member’s responsibility to ensure their record is complete. All missing documents sent to Military Records should indicate “URGENT: BOARD CANDIDATE” in the email subject line.”

scale range from a low of “[p]erformance unsatisfactory for grade or billet” to a high of “distinguished officer” (for ensign and lieutenant junior grade evaluations) or “best officer of this grade” (for lieutenant evaluations).

On April 12, 2016, the applicant received a third Achievement Medal for his performance as a pilot-in-command during a night-time rescue using a left-side hoist of people stranded on a rocky shore at the base of a cliff in dense fog in October 2015. (See attached certificate and citation.) This rescue is the subject of comments in the applicant's fourth and final OER at the air station, dated May 31, 2016: "[L]ed crews on 18 SAR cases resulting in \$380k property & 8 lives saved incl heroic night rescue of 2 stranded on cliff that necessitated low-level flying in fog under ... bridges to deliver survivors to medical care. ... made courageous call to use Jr copilot for difficult left seat hoist during night cliff rescue; coached crew thru 4 high-risk hoists – bold actions saved 2 & entire crew awarded for heroism. ... calmness under intense pressure and proven aviation skills in the most challenging operational conditions." The applicant received primarily marks of 6 and 7 in the various performance categories on this OER; a mark of "strongly recommended for accelerated promotion" in the sixth spot on the comparison scale; and a promotion recommendation of "Strongly recommended for accelerated promotion to O4." This OER also shows that the applicant was serving as the head of the unit's Administration Office during the evaluation period.

Upon his transfer to a new unit in the summer of 2016, the applicant received an end-of-tour Achievement Medal (his fourth) for his performance at the air station from June 2012 to July 2016. (See attached certificate and citation.) The citation describes examples of superior performance that are also mentioned in the applicant's OERs from the air station.

On June 30, 2016, PSC issued ALCGOFF 092/16 announcing that the LCDR selection board would convene on August 1, 2016, and would consider the records of 471 lieutenants for promotion, which included 350 in-zone (first time) lieutenants and 121 above-zone (second time) lieutenants. It states that the board would recommend 280 of the 471 (60%) candidates for promotion and lists the names of all lieutenants who were candidates for promotion, including the applicant. It also notes that "[a]ll officers being considered are highly encouraged to take steps to review their official record," and provides instructions for obtaining a copy.

ALCGPSC 104/16, issued on September 15, 2016, announced the results of the LCDR selection board that convened on August 1, 2017. The applicant was not selected for promotion. Of the 350 in-zone lieutenants, including the applicant, 71% were selected for promotion, and 27% of the above-zone lieutenants were selected (although in-zone and above-zone officers are not distinguished as such before a selection board).

VIEWS OF THE COAST GUARD

On April 27, 2017, 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 PSC.

PSC noted that pursuant to 14 U.S.C. § 254, the proceedings of a selection board may not be disclosed and so the reason the applicant was not selected is unknown. PSC stated that to be non-selected, two-thirds of the selection board members must have found that he was not one of the 280 best qualified lieutenants out of the 471 candidates for promotion.

PSC stated that COMDTINST 1410.2 allows award citations in an officer's EI-PDR to be seen by a selection board and that the citations for the applicant's second, third, and fourth Achievement Medals were not in his EI-PDR. PSC noted, however, that the Achievement Medals at issue were listed on the applicant's ESS, which the selection board reviewed, and that the performance described on the citations for the Achievement Medals was also described in his OERs, which the selection board reviewed.

PSC argued that under Article 6.B.13.a. of COMDTINST M1000.3A (hereinafter, "Officer Manual"), a special selection board (SSB) may be convened to reconsider an officer for promotion only if the selection board "did not have before it some material information required to be presented to the board by Coast Guard policy." PSC stated that although award citations may be entered in a member's EI-PDR, they are not required to be presented to a selection board. PSC stated that only an officer's OERs are required to be in his EI-PDR for review by a selection board. PSC also noted that Article 6.B.13.f.(1)(5)(b) of Officer Manual states that the "omission of letters of appreciation, commendation, or other commendatory data or awards of the Meritorious Service Medal and below from an officer's record does not constitute grounds to initiate an SSB."

PSC also argued that the circumstances of this case fall under Article 6.B.13.f.(5) of the Officer Manual, which states that an SSB should *not* be convened if—

The convening authority determines that the error in the officer's record was immaterial or could have been discovered and corrected prior to board convening.

(a) It is the officer's responsibility to review his or her record before the board convenes and take reasonable steps to correct any errors or notify the board, in writing, of possible administrative deficiencies.

(b) The omission of letters of appreciation, commendation, or other commendatory data or awards of the Meritorious Service Medal and below from an officer's record does not constitute grounds to initiate SSB action under this Article.

PSC noted that under Article 6.B.13.f.(1)(5) of the Officer Manual, the applicant was responsible for reviewing his EI-PDR for accuracy and completeness before the LCDR selection board convened. And in ALCGPSC 051/16 and ALCGOFF 092/16, the candidates were strongly advised to review their EI-PDRs for accuracy. PSC stated that although the applicant requested and received his EI-PDR in February 2016, he has not shown that he took the proper steps to ensure that the citations were entered in his record. PSC noted that the applicant alleged that he asked yeoman in February 2016 to enter the citation for his 2015 Achievement Medal in his EI-PDR, but he submitted no evidence of this request. Moreover, he did not check to ensure his request was carried out and also assumed that the citations for his two 2016 Achievement Medals would be entered. PSC stated that ALCGPSC 051/16, issued on April 4, 2016, made it clear that "[i]t is the member's responsibility to ensure their record is complete." PSC argued that the applicant's assumptions that the citations would be entered in his record were not sufficient to fulfill his responsibility, and his failure to timely check his EI-PDR for the citations "does not shift the burden of that neglect to the Coast Guard." PSC stated that the applicant failed to take reasonable steps to ensure that the award citations were entered in his EI-PDR, as required by the instructions. PSC stated that the applicant had ample time to confirm that the citations had been entered in his record, and he could have requested another copy of his EI-PDR to review.

PSC concluded that because the three medals were listed on the ESS and the applicant's OERs describe the performance for which the medals were awarded, the LCDR selection board was not actually deprived of material information regarding the applicant. PSC further concluded that the applicant has not submitted sufficient evidence to show that his non-selection for promotion in 2016 was erroneous or unjust. Therefore, PSC recommended that the Board deny relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 26, 2017, the applicant responded to the views of the Coast Guard and strongly disagreed with them. He claimed that PSC had not denied its responsibility to maintain accurate records. He argued that the claim that he had ample time to ensure that his EI-PDR contained the citations does not take into account the fact that he was transferring across the country that summer and "did not have access to standard Coast Guard computer workstations nor my official Coast Guard email." He alleged that the "record review process is based upon access to official Coast Guard email accounts or the ability to fax in a form to eventually receive a mailed hard copy of the EI-PDR." The applicant stated that he reviewed his EI-PDR well in advance of the selection board, "allowing sufficient time for corrections to be made as well as sufficiently plan my family's move across the country." The applicant stated that "Coast Guard members are required to work with multiple entities to correct or enter records into their EI-PDR and are reliant upon other members fulfilling their roles and duties within the Coast Guard to ensure the records are correct. I fulfilled my duties to identify errors and submitted requests for those errors to be fixed, however the Coast Guard and the personnel in charge of submitting documents to the EI-PDR failed to ensure the awards were entered and failed to fix the error once I brought it to their attention." He reiterated that Chapter 10.A.2. of PPCINST M1000.2B states, "Immediately upon approval of an award, the awarding authority shall forward a copy to the Servicing Personnel Office (SPO) and forward a copy to Commander, Coast Guard Personnel Service Center (PSD MR) for electronic imaging into the EI PDR."

The applicant disagreed that he received credit for the performance described on the citations in his OERs. He stated that if the citations had been in his record, the selection board members would have seen his EI-PDR "with additional images on the screens to catch [their] attention. A separate citation from an award is a significant difference and advantage to a scant line of text in an evaluation report. I believe the absence of the award citations disadvantaged my record." Regarding the two Achievement Medals he received for search-and-rescue cases, the applicant alleged that the description of his performance on the citation for his 2015 medal was reduced to a single line on his May 31, 2015, OER, and the description of his performance on the citation for his 2016 medal was reduced to a single line on his May 31, 2016, OER. Regarding the end-of-tour Achievement Medal, the applicant stated that the citation summarized his achievements during his tour of duty and highlighted his major contributions, which "would have undoubtedly left a different and much more dramatic impression to a [selection board] member reviewing records during a promotion panel."

The applicant stated that he is unable to prove that he took steps to correct his EI-PDR after reviewing it in February 2016 because when he was transferred to another unit, his emails did not transfer and are no longer accessible. He argued that his "assumption" that everything was taken care of was reasonably predicated on the Coast Guard's responsibility to maintain his EI-PDR

properly, as shown by the XO's statement on his behalf. He alleged that he had "completed to the best of [his] abilities as allowed by the Coast Guard to ensure my EI-PDR, Direct Access, and ESS were accurate."

The applicant stated that because the selection board's proceedings cannot be disclosed, "it is impossible to provide sufficient and definitive evidence that [his] non-selection resulted from the absence of the three award citations." He argued, however, that it is highly plausible that having the citations in his EI-PDR would have improved his chances of selection and that their absence prejudiced his record before the selection board.

APPLICABLE LAW AND POLICY

Special Selection Board Statute

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.--In the case of an officer or former officer who was eligible for promotion, was considered for selection 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.

(2) Effect of failure to recommend for promotion.--If a special selection board convened under paragraph (1) does not recommend for promotion an officer or former officer, whose grade is that of commander or below and whose name was referred to that board for consideration, the officer or former officer shall be considered--

(A) to have failed of selection for promotion with respect to the board that considered the officer or former officer prior to the consideration of the special selection board; and

(B) to incur no additional failure of selection for promotion as a result of the action of the special selection board.

(c) Requirements for special selection boards.--Each special selection board convened under this section shall--

(1) be composed in accordance with section 252 and the members of the board shall be required to swear the oaths described in section 254;

(2) consider the record of an applicable officer or former officer as that record, if corrected, would have appeared to the selection board that should have considered or did consider the officer or former officer prior to the consideration of the special selection board and that record shall be compared with a sampling of the records of--

(A) those officers of the same grade who were recommended for promotion by such prior selection board; and

(B) those officers of the same grade who were not recommended for promotion by such prior selection board; and

(3) submit to the Secretary a written report in a manner consistent with sections 260 and 261.

(d) Appointment of officers recommended for promotion.--

(1) In general.--An officer or former officer whose name is placed on a promotion list as a result of the recommendation of a special selection board convened under this section shall be appointed, as soon as practicable, to the next higher grade in accordance with the law and policies that would have been applicable to the officer or former officer had the officer or former officer been recommended for promotion by the selection board that should have considered or did consider the officer or former officer prior to the consideration of the special selection board.

(2) Effect.--An officer or former officer who is promoted to the next higher grade as a result of the recommendation of a special selection board convened under this section shall have, upon such promotion, the same date of rank, the same effective date for the pay and allowances of that grade, and the same position on the active duty promotion list as the officer or former officer would have had if the officer or former officer had been recommended for promotion to that grade by the selection board that should have considered or did consider the officer or former officer prior to the consideration of the special selection board.

(3) Record correction.--If the report of a special selection board convened under this section, as approved by the President, recommends for promotion to the next higher grade an officer not eligible for promotion or a former officer whose name was referred to the board for consideration, the Secretary may act under section 1552 of title 10 to correct the military record of the officer or former officer to correct an error or remove an injustice resulting from the officer or former officer not being selected for promotion by the selection board that should have considered or did consider the officer or former officer prior to the consideration of the special selection board.

(e) Application process and time limits.--The Secretary shall issue regulations regarding the process by which an officer or former officer may apply to have a matter considered by a special selection board convened under this section, including time limits related to such applications.

Personnel and Pay Procedures Manual (PPPM), COMDTINST M1000.2B

The PPPM provides “guidance to field units on how and when to report personnel actions to the Servicing Personnel Officer (SPO).” Chapter 10.A.2.1. states that “[a]ll medals and awards that have been presented to the member must be reported to the SPO for entry into Direct Access and a copy (with the member’s EMPLID on the upper right hand corner of the citation) mailed to Commander, Coast Guard Personnel Service Center (PSD-MR) for electronic imaging into the EI-PDR.” Chapter 10.A.2.3. states that “[i]mmediately upon approval of an award the awarding authority shall forward a copy to the Servicing Personnel Office (SPO) and forward a copy to Commander, Coast Guard Personnel Service Center (PSD-MR) for electronic imaging into the EI-PDR.”

Officer Manual, COMDTINST M1000.3A

Article 5.B.2.d.(1)(h) of the Officer Manual states that each officer must “[r]eview the accuracy and completeness of the EI-PDR. Ensure that all days of commissioned service are covered by OERs.”

Article 6.A.3. states that the basis criteria a selection board should use to select officers for promotion are their OERs, professionalism, leadership, and education.

Article 6.A.4.d. states that “Commander (CG PSC-OPM) furnishes personnel boards the names and personnel records of all officers to be considered. The personnel record consists of general administrative paperwork including such items as statements of service and sea service; the record of emergency data; Administrative Remarks, Form CG-3307, entries; documentation of

alcohol incidents, and reports of civil arrests; performance evaluations; education information; and awards and decorations.

Article 6.B.13. of the Officer Manual contains the rules for SSBs. Article 6.B.13.c.(2) provides that an officer may request for one to PSC. Article 6.B.13.e., titled "Request for Convening a SSB," states the following:

SSBs may be convened pursuant to 14 U.S.C. § 263 to consider or reconsider commissioned officers or former commissioned officers for promotion when one or more of the following occur:

- (1) An officer was not considered from in or above the promotion zone by a regularly scheduled selection board because of administrative error.
- (2) The Secretary determines that a selection board that considered an officer from in or above the promotion zone acted contrary to law or made a material error.
- (3) The selection board that considered an officer from in or above the promotion zone did not have before it some material information required to be presented by Coast Guard policy.
- (4) The Coast Guard Board for Correction of Military Records (CG BCMR) or a federal court directs a SSB be convened.

Article 6.B.13.f. states that SSBs shall *not* be convened for any of these reasons (among others):

- (5) The convening authority determines that the error in the officer's record was immaterial or could have been discovered and corrected prior to board convening.
 - (a) It is the officer's responsibility to review his or her record before the board convening and take reasonable steps to correct any errors or notify the board, in writing, of possible administrative deficiencies.
 - (b) The omission of letters of appreciation, commendation, or other commendatory data or awards of the Meritorious Service Medal and below⁵ from an officer's record does not constitute grounds to initiate SSB action under this Article.
- (6) The officer's record that the board considered was substantially complete and correct, but the content of which, an officer or former officer contends was materially incorrect.

Directives Regarding Selection Boards

COMDTINST 1410.2 concerns documents that are to be viewed by officer promotion boards. Enclosure (1) lists types of documents that *may* be viewed by selection boards, including medal certificates and citations. It also lists types of records that must be "masked from view," when the officer's records are presented to a selection board, including prior performance records from other military services, medical information, and information gathered for security clearances. Paragraph 4.a. notes the following:

Coast Guard officers are responsible for their career development and maintenance of their records. Personnel boards are a significant aspect of an officer's career and

⁵ Under the Coast Guard Medals and Awards Manual, Meritorious Service Medals are superior to Achievement Medals.

it is critical that every officer manages the contents of the record and the data in various human resources management systems such as Direct Access.

ALCGPSC 051/16, issued on April 4, 2016, states the following:

12. Officers eligible for consideration by Boards and Panels should review their Electronically Imaged - Personnel Data Record (EI-PDR), for accuracy:

a. Employee Summary Sheet (ESS): The ESS is routinely used by Boards and Panels and draws information from Direct Access. Officers should ensure correctness and completeness by updating Direct Access well before the convening date of the applicable Board or Panel.

b. Officer Specialty Management System (OSMS): Officer Specialty Codes (OSC) appear on an officer's ESS ...

c. Electronically Imaged – Personal Data Record (EI-PDR) Copies: Requests for copies of a member's EI-PDR must be in writing via standard CG memo to PSC Military Records. OPM-3 and RPM-1 ensure OERs are validated and sent off for imaging into an officer's record, but do not verify the record is imaged. We highly recommend candidates confirm their record is complete. Verbal and e-mail requests will not be accepted. Please visit <http://www.uscg.mil/psd/mr> for further information on how to receive a copy of your EI-PDR. Recommend requests for copies of EI-PDRs be made at least 3 months in advance of a Selection Board or Panel convening date. It is the member's responsibility to ensure their record is complete. All missing documents sent to Military Records should indicate "URGENT: BOARD CANDIDATE" in the email subject line.

d. In accordance with Ref E, all Educational Transcripts are to be verified by the CG Institute prior to entry into Direct Access. ...

13. The Record of Professional Development (CG-4082), while optional, is an extremely helpful tool for communicating accomplishments. The emphasis should be on quality, not quantity, of the information. Each officer should review their current CG-4082 ...

Paragraph 14 of ALCGOFF 065/16, issued on May 26, 2016, states, "All officers above-zone and in-zone should also take steps to review their official record. Directions on how to obtain a copy of the EI-PDR is listed on the PSC PSD-BOPS-MR website at"

Paragraph 6 of ALCGOFF 092/16, issued on June 30, 2016, states, "All officers being considered are highly encouraged to take steps to review their official record. Directions on how to obtain a copy of the EI-PDR are listed on the PSC BOPS-MR website ..."

PSCNOTE 1401 "provide[s] guidance to officers eligible for consideration by a selection board." Paragraph 9, titled "General Guidance for All Officers," states that all "officers under consideration by upcoming boards and panels are encouraged to review their [EI-PDR] maintained by the CG Personnel Service Center (PSC) Military Records Branch (BOPS-MR). The complete EI-PDR can be obtained by sending a signed memo request as a PDF e-mail attachment to PSC-BOPS-MR. 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. Please view <http://www.uscg.mil/psc/adm/adm3/default.asp> for additional instructions and contact information regarding officer records."

PRIOR SIMILAR CASES***BCMR Docket No. 2011-215***

In BCMR Docket No. 2011-215, the applicant asked the Board to remove a 2010 non-selection from his record. He proved that beginning in April 2010 he repeatedly tried to get several errors in his record corrected and on July 19, 2010, he submitted five signed pages of training information on a CG-4082 to his Servicing Personnel Office for entry in his record. Although he was told they had been entered, two of the five pages, documenting 22 courses and qualifications he had completed from June 9, 2005, to August 14, 2009, were not entered in his record. In the advisory opinion for 2011-215, PSC recommended granting relief after finding that the applicant had “made every effort” to have his record corrected and that the missing pages “could have had an impact on the board’s determination not to promote the applicant.” The Board concurred with the advisory opinion and granted relief.

BCMR Docket No. 2013-147

In BCMR Docket No. 2013-147, the applicant alleged that his August 2012 non-selection was caused by a missing CG-4082 showing six recently completed courses. Upon reviewing his record before the selection board, the applicant noticed that the CG-4082 was missing, and he submitted it with his OER to his CO for signature in June 2012 as instructed by PSC. The CO signed both the OER and CG-4082 on June 29, 2012, and the command forwarded both for entry in the applicant’s record, but only the OER was timely entered in his record on July 10, 2012. In the advisory opinion for 2013-147, PSC argued that relief should be denied because the CG-4082 is only an optional document and because the applicant had not exercised due diligence to ensure that his record was correct and complete when it was reviewed by the selection board. The Board recommended granting relief however, after finding that the applicant had followed his command’s and PSC’s instructions and that his record was “substantially incomplete” because his completion of the six courses did not appear anywhere else in his record. The Board’s decision was approved by the delegate of the Secretary.

BCMR Docket No. 2014-016

In BCMR Docket No. 2014-016, the applicant asked the Board to remove his non-selection for promotion because his record did not contain a CG-4082 showing his enrollment in a Master’s degree program. The record showed that he had attempted to correct errors in his record by telephone and email and that he had submitted the CG-4082 for entry in his record just a month before the selection board. PSC recommended that the Board deny relief because the CG-4082 is “optional” under COMDTINST 1410.2; because the applicant bore the responsibility of ensuring the accuracy of his record; and because the applicant’s enrollment in a Master’s degree program was mentioned in an OER. PSC stated that the Coast Guard—

strongly opposes any preceden[t] being set that allows an officer who was non-selected to argue that the non-selection was the result of an *optional* document not being present for the selection board to view. Each selection board announcement message [published at least 30 days prior to each selection board] published by CG PSC specifically advises “*all officers being considered* [by a selection board] *are highly encouraged to take steps to review their official records.*” While the applicant emailed his Record of Professional Development, Form CG-4082 to CG Military Records

on 27 March 2013, he did not take steps to confirm its entry into his record prior to the PY14 Lieutenant Commander (O-4) Selection Board.

The Board found that whether the CG-4082 was optional or required was ambiguous because there were contradictory policies. The Board also found that the applicant had proven that he had exercised due diligence in trying to correct his records by sending emails regarding the missing CG-4082. The Board denied relief, however, because the only significant information missing from the applicant's CG-4082—his enrollment in a Master's program—was mentioned in his recent OERs.

BCMR Docket No. 2014-171

In BCMR Docket No. 2014-171, the applicant argued that his non-selection had been caused, in part, by two qualification letters and a Page 7 that were missing from his EI-PDR. PSC recommended denying relief because the information in the documents was available elsewhere in the applicant's EI-PDR and because the applicant had not made any effort to correct his record before the selection board. The Board denied relief both because the information was available in other documents and because the applicant had not fulfilled his duty to try to fix his records:

[T]he applicant and all other candidates for selection had been warned in ALCGRSV 052/13, which announced their candidacy, to review their EIPDRs to ensure they were complete. In BCMR Docket Nos. 2011-215 and 2013-147, this Board granted relief to officers who proved that they had complied with this policy by timely checking their EIPDRs and submitting the missing documents through correct channels to ensure their entry by PSC and had called and/or emailed PSC to ensure the documents had been received before their selection boards convened—all to no avail. This applicant, however, apparently did not check his EIPDR and has neither alleged nor proved that he made any effort to ensure that his EIPDR contained the missing entries. While every agency is obliged by the Privacy Act 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,”⁶ a yeoman checking an officer's record cannot know what documents are missing unless the documents are required or unless the officer tells him. Therefore, the Coast Guard's policy of putting the onus on the officers themselves to check the completeness of their EIPDRs is reasonable.

BCMR Docket No. 2015-070

In BCMR Docket No. 2015-070, the applicant asked the Board to remove his two non-selections for promotion or direct the Coast Guard to convene an SSB because, *inter alia*, certain qualifications and certificates were missing from his EI-PDR. PSC recommended denying relief because the applicant had not checked his record before the selection board convened. Based on similar reasoning to that applied in BCMR Docket No. 2014-171, the Board denied relief.

BCMR Docket No. 2016-089

In BCMR Docket No. 2016-089, the applicant alleged that two erroneous entries in Direct Access had caused her non-selection. PSC recommended denying relief in 2016-089, arguing that selection boards are provided only a print-out from Direct Access, that the print-out did not show

⁶ 5 U.S.C. § 552a(e)(5).

the erroneous entries, and that even if the selection board had seen the two database entries, the correct information was clearly available in her EI-PDR. PSC also argued that the applicant had not properly reviewed and corrected her record in Direct Access as it was her duty to do under COMDTINST 1410.2. The Board denied relief in this case and found the following regarding the applicant's failure to check all of her records in Direct Access:

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.

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.⁷

2. The applicant alleged that his non-selection for promotion in August 2016 was erroneous and unjust because his EI-PDR did not contain the citations for three of his Achievement Medals. 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.⁸ 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."⁹

3. The applicant stated that he is not requesting an SSB but the removal of his non-selection in 2016 so that if he is non-selected in 2017 he will be retained an extra year on active duty and be reconsidered in 2018. This Board used to remove non-selections, which would permit officers to remain on active duty another year, pursuant to the harmless-error test prescribed in *Engels v. United States*, 678 F.2d 173, 175-76 (Ct. Cl. 1982).¹⁰ However, when Congress passed 14 U.S.C. § 263 in 2012, the BCMR's role in such cases changed. Now, if the Board finds that "an action of the selection board that considered the officer ... did not have before it for consideration material information,"¹¹ the Board should direct the Coast Guard to convene an SSB instead

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

⁸ 33 C.F.R. § 52.24(b).

⁹ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992).

¹⁰ The *Engels* test states that the Board should consider two questions when considering removing a non-selection: "First, was the claimant's record prejudiced by the errors in the sense that the record appears worse than it would in the absence of the errors? Second, even if there was some such prejudice, is it unlikely that he would have been promoted in any event?" *Engels v. United States*, 230 Ct. Cl. 465, 470 (1982).

¹¹ 14 U.S.C. § 263(b).

of applying the *Engels* test to decide whether to remove a non-selection and backdate an officer's date of rank.¹² In *Richey v. United States*, 322 F.3d 1317, 1324 (Fed. Cir. 2003), the court stated, "In *Porter* we held that once it is determined that the initial selection board's decision 'involved material administrative error,' nothing in this statute requires the Secretary, acting through the Corrections Board, to make a harmless error determination. Instead, under the statute, as interpreted in *Porter*, the Corrections Board should refer the matter to an SSB, which decides whether to promote the officer based on his corrected military record, and, therefore, 'the harmless error rule has no application.'"

4. The Coast Guard has admitted that the applicant's EI-PDR did not include the citations for his three Achievement Medals when it was reviewed by the LCDR selection board in August 2016. Therefore, the Board must determine whether the absence of the citations requires the Coast Guard to convene an SSB. Under 14 U.S.C. § 263(b), a member should receive an SSB if the "selection board ... did not have before it for consideration material information." The term "material information" is extremely broad and arguably could include all kinds of information that an officer could argue would cast light on whether an officer should be promoted but that the Coast Guard does not provide to selection boards, such as an officer's prior enlisted performance records, prior performance records from other military services, medical information, and information gathered for security clearances. Pursuant to COMDTINST 1410.2, however, all such information in an EI-PDR is "masked from view." The Board cannot conclude from the wording of the statute alone that the applicant is entitled to an SSB.

5. In 14 U.S.C. § 263(e), Congress required the Secretary to "issue regulations regarding the process by which an officer or former officer may apply to have a matter considered by a special selection board convened under this section, including time limits related to such applications." The Coast Guard has issued these regulations in Article 6.B.13. of the Officer Manual. Article 6.B.13.e. states that an SSB should be convened if the "selection board that considered an officer from in or above the promotion zone did not have before it some material information required to be presented to the board by Coast Guard policy." Enclosure (1) of COMDTINST 1410.2 states that award citations "are permitted to be viewed" by selection boards, which indicates that award citations are not "required to be presented to the board by Coast Guard policy." Moreover, Article 6.B.13.f.(5)(b) specifically states that "[t]he omission of letters of appreciation, commendation, or other commendatory data or awards of the Meritorious Service Medal and below from an officer's record does not constitute grounds to initiate SSB action under this Article," which shows that the Coast Guard does not consider Achievement Award citations to be required pursuant to Article 6.B.13.e.(3).¹³ Therefore, pursuant to Article 6.B.13. of the Officer Manual, the Achievement Award citations do not constitute "material information" for the purposes of 14 U.S.C. § 263 and their absence from his EI-PDR did not require the Coast Guard to convene an SSB.

¹² See *Porter v. United States*, 163 F.3d 1304, 1324 (Fed. Cir. 1998) (finding that since the enactment of the Title 10 SSB statute, 10 U.S.C. § 628, the "harmless error test" espoused for the BCMRs in *Engels* no longer applied to the BCMRs for services authorized to convene SSBs). (The Army, Navy, and Air Force were authorized to convene SSBs under 10 U.S.C. § 628 long before the Coast Guard was authorized to convene them under 14 U.S.C. § 263.

¹³ Coast Guard Medals and Awards Manual, Enclosure (22), "Award Precedence," lists the Medal of Honor as #1, the Meritorious Service Medal as #27, and the Achievement Medal as #38.

6. Every agency is obliged by the Privacy Act 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.”¹⁴ The Coast Guard considers an officer’s record to be complete for the purposes of a selection board as long as no required OERs are missing.¹⁵ Pursuant to COMDTINST 1410.2, the Coast Guard permits other documents, such as award citations, to be shown to selection boards but places the burden on the officers to ensure such documents are in their EI-PDRs. As the Board has noted in prior cases summarized above, this policy is reasonable because in preparing officers’ EI-PDRs for a selection board, a yeoman at PSC cannot know what documents are missing unless the documents are required, such as OERs, or unless the officer tells PSC that an unrequired document, such as an award citation, is missing. The Board notes that the Coast Guard repeatedly reminded the candidates for selection of their responsibility to check their records in PSCNOTE 1401, ALCGPSC 051/16, issued on April 4, 2016, ALCGOFF 065/16, issued on May 26, 2016, and ALCGOFF 092/16, issued on June 30, 2016.

7. The applicant argued, however, that PSC is required to provide selection boards with officers’ EI-PDRs and the award citations were required to be in his EI-PDR. Pursuant to Chapter 10.B.2. of the PPPM, an award citation must be forwarded for entry in a member’s EI-PDR in addition to being entered in Direct Access. Chapters 10.B.2.1. and 10.B.2.3. of the PPPM contradict each other regarding when this is to be accomplished because the first indicates that the signed award should be forwarded after presentation of the award to the member, while the latter indicates that a copy of the award should be forwarded immediately after approval—before presentation. The email from the yeoman dated September 28, 2016, shows that the yeomen in the air station’s Administration Office (which the applicant headed before his transfer in July 2016) expected award recipients to bring their signed awards to the Administration Office to be forwarded for entry in their EI-PDRs, indicating that the Administration Office adhered to the procedure in Chapter 10.B.2.1, rather than Chapter 10.B.2.3. The applicant, as a member of the unit—and particularly as the Administration Officer—could be expected to play a role in ensuring that his award citations were forwarded to the SPO for entry in his EI-PDR after he was presented them, in accordance with Chapter 10.B.2.1., by delivering them to the yeomen. The applicant’s policy was unwritten and the applicant was unaware of it, but he did not show that it was unreasonable or erroneous given the various provisions in Chapter 10.B.2. of the PPPM.

8. The Board has granted relief in the past based on injustice when applicants have submitted evidence proving that they exercised due diligence by following instructions and by repeatedly trying to find information in their records to no avail and when the information on those documents was not available to the selection board on other documents, such as the ESS or OERs.¹⁶ The Board has denied relief when applicants have not exercised due diligence or when the information was available on other documents that were available to the selection board.¹⁷ PSC argued both that the applicant did not exercise due diligence and that his record was substantially correct because his ESS showed that he had received the three Achievement Medals and the performance for which he received the medals is described in his OERs, while the applicant argued

¹⁴ 5 U.S.C. § 552a(e)(5).

¹⁵ See Officer Manual, COMDTINST M.1000.3A, Article 5.B.2.d.(1)(h).

¹⁶ BCMR Docket Nos. 2011-215, 2013-147.

¹⁷ BCMR Docket Nos. 2014-016, 2014-171, 2015-070, 2016-089.

that he did exercise due diligence, that the visual impact of the citations might have made a difference, and that the corresponding comments in the OERs are too brief.

9. The record shows that the three Achievement Medals that the applicant received from the command of the air station were entered in Direct Access and so appeared on his Employee Summary Sheet, which was provided to the selection board. A comparison of the citations with the applicant's OERs shows that the search-and-rescue missions for which he received two of the Achievement Medals are described (with many abbreviations) in his OERs dated May 31, 2015, and April 31, 2016, respectively. The information in the citation for his end-of-tour Achievement Medal is likewise reflected in his OERs, but it is spread out over the four OERs he received at the air station, instead of being summarized cumulatively in one place as on the citation. Therefore, the Board finds that the information in the citations was in the applicant's EI-PDR and ESS as presented to the selection board in 2016, albeit not in the particularly impactful and eloquent way that the information appears on the citations.

10. The Board finds that the applicant has not proven by a preponderance of the evidence that he exercised due diligence in checking his EI-PDR and ensuring its completeness, as required by Article 5.B.2.d.(1)(h) of the Officer Manual, as well as PSCNote 1401, ALCGPSC 051/16, ALCGOFF 065/16, and ALCGOFF 092/16, to ensure his award citations were in his EI-PDR. As the XO noted, if the applicant had submitted his award citations to the yeomen, they presumably would have forwarded them for entry in his EI-PDR. In support of his claim that he exercised due diligence, the applicant submitted a copy of an email that he sent from the air station to PSC on February 10, 2016, with a signed memorandum requesting a copy of his EI-PDR, as well as the email he received in reply with the EI-PDR attached on February 19, 2016. He alleged that he contacted a yeoman about the missing 2015 citation but cannot produce copies of those emails because when he transferred to another unit in the summer of 2016, he lost access to all of his emails from the air station. He submitted emails showing that in September 2016, he asked the yeomen for copies of emails to prove that they had forwarded his award citations to the SPO, but he did not ask them for copies of the email(s) he allegedly sent them regarding the forwarding of his 2015 citation. The XO supported the applicant's claim that he had exercised due diligence just by checking his record in February 2016 and contacting a yeoman, but the XO indicates that he was uninvolved and unaware of these interactions. Moreover, the applicant admitted that he made no effort to ensure that the two Achievement Medals he received in April and May 2016 would be entered in his record and just assumed that they would be.

11. Even assuming that the applicant once contacted a yeoman at the Administration Office or the SPO about the missing 2015 citation in February 2016, however, which is unproven, this contact would not constitute due diligence under ALCGPSC 051/16. Paragraph 12 of ALCGPSC 051/16 encouraged officers to obtain a copy of their EI-PDR to review by sending a signed memorandum by email to PSC's Military Records office, which the applicant did, but it also states, "It is the member's responsibility to ensure their record is complete. All missing documents sent to Military Records should indicate 'URGENT: BOARD CANDIDATE' in the subject line." There is no evidence that the applicant followed this instruction or that he followed up in any way, and he has admitted that he made no efforts with regard to the April and May 2016 citations. Although the applicant argued that he was unable to make such efforts because he was busy planning and effecting his cross-country transfer and did not have access to a Coast Guard

workstation for a few weeks, the Board finds that this is not a compelling excuse. The applicant has not shown that he was physically incapable of following the instructions in ALCGOFF 051/16 or of asking the Administration Office or the SPO about his award citations, providing them with the citations, and/or prodding them by telephone call, personal email, or in-person visit to forward the citations to the Military Records office for entry in his EI-PDR.

12. Accordingly, the Board finds that the applicant is not entitled to relief. As noted above, the Court of Federal Claims has held that the proper remedy when an officer proves that his record contained a material error when it was reviewed by a selection board is no longer removal of the non-selection but convening an SSB. And the applicant has not shown that the Coast Guard's refusal to convene an SSB for him constitutes an error under 14 U.S.C. § 263 or Article 6.B.13. of the Officer Manual. Nor has he shown that the Coast Guard's refusal to convene an SSB constitutes an injustice because he has not shown that he exercised the due diligence required of him to ensure his award citations were entered in his record or that the performance information provided to the selection board was incomplete.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

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

August 4, 2017

