

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2022-081**

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LT/O-3

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**FINAL DECISION**

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on September 21, 2021, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated August 15, 2024, 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, who was separated from the Coast Guard as a lieutenant (LT/O-3) with the Coast Guard Reserve on June 30, 2021, asked the Board to correct his record by reconsidering him for promotion to Lieutenant Commander (LCDR) in the promotion year (PY) 2021<sup>1</sup> inactive duty promotion list (IDPL)<sup>2</sup> promotion cycle with the addition of the Officer Evaluation Report (OER) ending May 31, 2020, as part of his official record; to be reconsidered for continuation as a Lieutenant in the PY 2021 IDPL promotion cycle with the addition of the OER ending May 31, 2020, as part of his official record; and to be reinstated in the Coast Guard Reserve.

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<sup>1</sup> The applicant’s DD Form 149 requests reconsideration for promotion to LCDR in the “PY20 IDPB”. However, the supplemental statement prepared by the applicant’s attorney requests reconsideration for promotion in the “PY21” promotion board and continuation board. Later on in the supplemental statement, the applicant appears to erroneously reference the “PY20 [sic] IDPL Lieutenant Commander promotion board”. Because of the sequence of events described in the summary below, the Board believes that the references to the PY 2020 promotion board were made in error and that the applicant is seeking relief from actions taken during the PY 2021 promotion cycle.

<sup>2</sup> The IDPL comprises all Reserve officers in an active status, which includes the Selected Reserve (SELRES), the Individual Ready Reserve (IRR), and the Active Status List (ASL) of the Standby Reserve. Reserve Policy Manual, MI001.28A, Chaps. 1.C. and 7.A.3.

The applicant, through counsel, alleged that when his record was considered by the PY 2021 promotion board, his record was incomplete because his most recent OER ending May 31, 2020 had not been submitted to the Office of Reserve Personnel Management.

The applicant noted that the submission of his May 31, 2020 OER was delayed due to departures of senior members, retirements, and COVID-19 complications. He asserted that he entered mandatory COVID-19 quarantine from July 16 to 25, 2020, and was not aware that his OER had not been submitted.

The applicant argued that as a matter of equity and propriety, he should be fairly considered for promotion and continuation with the benefit of the May 31, 2020 OER. He emphasized that the Reporting Officer (RO) "admitted error with processing the OER and the equity and fairness of the result being that [the applicant] lost his career due to the error."

In support of his application, the applicant submitted a copy of the Standard Travel Order that was issued on December 11, 2020, reflecting the applicant's separation effective June 30, 2021. The applicant also submitted a copy of his Coast Guard Service Record, OER ending May 31, 2020, request for relief from the Personnel Records Review Board (PRRB) and corresponding decision, and an email thread from June through November 2020, all of which are included in the summary below.

### SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on May 14, 2002. He completed Officer Candidacy School and commissioned on December 15, 2004.

On December 15, 2004, the applicant began a 3-year period on active duty.

For rating period ending September 30, 2005, the applicant received an OER for his duties as an Assistant Vessel Board & Search Team (VBST) Supervisor. The applicant received twelve marks of 4 and six marks of 5. On the Comparison Scale, the applicant's Reporting Officer rated him as "One of the many competent professionals who form the majority of this grade" in the fifth of seven possible marks ranging from "Unsatisfactory" to "A Distinguished Officer." The Reporting Officer strongly recommended the applicant for promotion to O-2 with peers.

For rating period ending March 31, 2006, the applicant received his second OER for his duties as a VBST Supervisor. The applicant received four marks of 4, twelve marks of 5, and two marks 6. On the Comparison Scale, the applicant's Reporting Officer rated him as "One of the many competent professionals who form the majority of this grade" in the fifth of seven possible marks ranging from "Unsatisfactory" to "A Distinguished Officer." The Reporting Officer described the applicant as "richly deserving of selection to O2 [sic], continue to promote w/peers."

For rating period ending January 31, 2007, the applicant received an OER for his duties as Command Duty Officer, Assistant Chief VSBT. The applicant received two marks of 4, nine marks of 5, and seven marks of 6. On the Comparison Scale, the applicant's Reporting Officer rated him as "One of the many competent professionals who form the majority of this grade" in the fifth of

seven possible marks ranging from “Unsatisfactory” to “A Distinguished Officer.” The Reporting Officer strongly recommend the application for promotion to O-3 with the best of his peers.

The applicant began a one year and six-month period of active duty on December 15, 2007.

On June 15, 2007, the applicant received a Coast Guard Achievement Medal for superior performance of duty between January 2005 to June 2007.

For the rating period ending on June 15, 2007, the applicant received an OER for his assignment with the Sector Seattle Enforcement Division. The applicant received one mark of 4, ten marks of 5, and seven marks of 6. On the Comparison Scale, the applicant’s Reporting Officer rated him as “One of the many competent professionals who form the majority of this grade” in the fifth of seven possible marks ranging from “Unsatisfactory” to “A Distinguished Officer.” The Reporting Officer highly recommended the applicant for promotion to O-3 with the best of his peers.

For the rating period ending January 31, 2008, the applicant received an OER for his duties as a Law Enforcement Detachment (LEDET) Deployable Team Leader. The applicant received five marks of 4, eleven marks of 5, and two marks of 6. On the Comparison Scale, the applicant’s Reporting Officer rated him as “One of the many competent professionals who form the majority of this grade” in the fifth of seven possible marks ranging from “Unsatisfactory” to “A Distinguished Officer.” The Reporting Officer recommended that the applicant continue to be promoted with the best of his peers.

On June 2, 2008, the applicant received a Coast Guard Unit Commendation for his service while at Coast Guard Sector Seattle between June 2005 and December 2007.

For the rating period ending July 31, 2008, the applicant received a second OER for his duties as an LEDET Deployable Team Leader. The applicant received four marks of 4, eight marks of 5, and six marks of 6. On the Comparison Scale, the applicant’s Reporting Officer rated him as “One of the many competent professionals who form the majority of this grade” in the fifth of seven possible marks ranging from “Unsatisfactory” to “A Distinguished Officer.” The Reporting Officer strongly recommended the applicant for promotion with peers.

For the rating period ending May 31, 2009, the applicant received a third OER for his duties as an LEDET Deployable Team Leader. The applicant received six marks of 4, ten marks of 5, and two marks of 6. On the Comparison Scale, the applicant’s Reporting Officer rated him as “Good performer; give tough, challenging assignments” in the fourth of seven possible marks ranging from “Performance unsatisfactory for grade or billet” to “Best officer of this grade.” The Reporting Officer recommended the applicant for promotion with peers and additional tough assignments.

The applicant was promoted to LT/O3 with a date of rank of March 22, 2010.<sup>3</sup>

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<sup>3</sup> The applicant was initially promoted to LT/O3 in late 2008. However, his date of rank was changed following his separation from the active component. He had a break in service from approximately 2012 to 2017 when he joined the SELRES.

For the rating period ending May 31, 2010, the applicant received a fourth OER for his duties as an LEDET Deployable Team Leader. The applicant received eleven marks of 4, six marks of 5, and one mark of 6. On the Comparison Scale, the applicant's Reporting Officer rated him as "Good performer; give tough, challenging assignments" in the fourth of seven possible marks ranging from "Performance unsatisfactory for grade or billet" to "Best officer of this grade." The Reporting Officer recommended the applicant for promotion to O-4 with peers.

On June 18, 2010, the applicant received a Letter of Commendation for his performance of duty while assigned to the Pacific Tactical Law Enforcement Team from July 2007 to June 2010.

For the reporting period ending on May 31, 2011, the applicant received an OER for Command Center Duty. He received two marks of 4, twelve marks of 5, and four marks of 6. On the Comparison Scale, the applicant's Reporting Officer rated him as "Good performer; give tough, challenging assignments" in the fourth of seven possible marks ranging from "Performance unsatisfactory for grade or billet" to "Best officer of this grade." The Reporting Officer highly recommended the applicant for promotion with peers.

For the reporting period ending September 18, 2012, the applicant received a second OER for Command Center Duty. He received one mark of 4, nine marks of 5, seven marks of 6, and one mark of 7. On the Comparison Scale, the applicant's Reporting Officer rated him as "Excellent performer; give toughest, most challenging leadership assignments" in the fifth of seven possible marks ranging from "Performance unsatisfactory for grade or billet" to "Best officer of this grade." The Reporting Officer noted that the applicant was well deserving of the Reporting Officer's recommendation for promotion with the best of his peers.

For the reporting period between April 4, 2013, and May 23, 2016, the applicant received a Continuity OER while in the Individual Ready Reserve.

For the reporting period ending May 31, 2018, the applicant received an OER for his duties as a Preparedness Specialist. The applicant received eight marks of 5 and ten marks of 6. On the Comparison Scale, the applicant's Reporting Officer rated him as "One of the many high performing officers who form the majority of this grade" in the fifth of seven possible marks ranging from "Unsatisfactory" to "Best officer of this grade". On the Promotion Scale, the Reporting Officer marked "Promote".

For the reporting period ending May 31, 2019, the applicant received an OER for his duties as District Planning Officer. The applicant received four marks of 5 and fourteen marks of 6. On the Comparison Scale, the applicant's Reporting Officer rated him as "One of the many high performing officers who form the majority of this grade" in the fifth of seven possible marks ranging from "Unsatisfactory" to "Best officer of this grade". On the Promotion Scale, the Reporting Officer marked "Promote w/top 20% of peers".

On September 18, 2019, the applicant received a Letter of Commendation for his performance of duty while serving as a Command Operations Watchstander from July 2019 to September 2019.

***PY 2020 IDPL Promotion Board***

On October 1, 2019, the applicant was notified that the PY20 promotion board did not select him for promotion to LCDR. However, due to an analysis that identified a significant shortage of available LTs on inactive duty, the applicant was retained in active status until PY 2021. As a result, the PY 2020 promotion board separate action to remove the applicant from active status effective July 1, 2020 was suspended.

***Delayed OER***

The reporting period for the OER at issue in this case ended on May 31, 2020. The applicant received two marks of 5, fifteen marks of 6, and one mark of 7. On the Comparison Scale, the applicant's Reporting Officer rated him as "One of the many high performing officers who form the majority of this grade" in the fifth of seven possible marks ranging from "Unsatisfactory" to "Best officer of this grade". On the Promotion Scale, the Reporting Officer marked "Promote w/top 20% of peers".

Between June 1 and 19, 2020, the draft OER was formatted, revised, discussed, and finalized for signature. The applicant's Supervisor and Reporting Officer signed the OER on June 19, 2020. The Reviewer did not sign the OER until November 2, 2020. The applicant signed the OER on November 4, 2020.

***PY 2021 IDPL Promotion Board***

On August 10, 2020, the applicant was not selected for promotion to LCDR. He was notified on December 3, 2020 that the board did not recommend him for continuation in the Coast Guard Reserve. The applicant was notified that since he was non-selected multiple times to the next higher paygrade and was not recommended for continuation, he would be separated from the Service no later than June 30, 2021.

The applicant received two additional OERs prior to separation. The first OER had a reporting period ending on May 31, 2021. The applicant received two marks of 5, twelve marks of 6, and four marks of 7. On the Comparison Scale, the applicant's Reporting Officer rated him as "One of the many high performing officers who form the majority of this grade" in the fifth of seven possible marks ranging from "Unsatisfactory" to "Best officer of this grade". On the Promotion Scale, the Reporting Officer marked "Promote w/top 20% of peers".

The second OER had a reporting period ending June 7, 2021. Because it was a Concurrent OER covering the 59-day deployment that applicant completed to support a Community Vaccination Center, the applicant did not receive marks for individual competencies. Instead, he only received marks on the Comparison and Promotion Scales. On the Comparison Scale, the applicant's Reporting Officer rated him as "One of the many high performing officers who form the majority of this grade" in the fourth of seven possible marks ranging from "Unsatisfactory" to "Best officer of this grade". On the Promotion Scale, the Reporting Officer marked "Promote".



*Personnel Records Review Board*

The applicant requested relief from the Personnel Records Review Board (PRRB). He alleged that his record was incomplete when it was reviewed by the promotion board because his last OER had not been reviewed by his Reviewer or submitted to the Officer of Reserve Personnel Management. The applicant stated that the delay in completing and submitting his OER was due to “departures of senior members, retirements and COVID-19 complications.” The applicant also admitted that it was an oversight on his part and on that of his command. He argued that if his record had been complete, he might have at least been retained in the Reserve. The applicant asked the PRRB to review his record and, if deemed fit for promotion, that he be “promoted in retrospect or granted an opportunity to be retained for future promotion opportunity.”

The PRRB obtained a declaration from the applicant dated March 6, 2021. In the declaration, he testified that he routed his OER through his chain of command on May 21, 2020. He stated that after coming into contact with a coworker who had symptoms of COVID-19, he was placed into mandatory isolation from July 16-25, 2020. The applicant stated that he was not made aware of when his OER was signed by the Reviewing Officer or subsequently submitted to the Chief of Staff. Because of his absence due to the mandatory isolation, the applicant claims he was unable to determine the status of his OER, identify a date for counseling, or sign the document before the promotion board was set to convene. The applicant stated that he did not learn that his OER had not been submitted until after the promotion board declined to promote him and he requested a copy of his record.

The PRRB also obtained a declaration from LCDR W-R, who was the applicant’s Supervisor from October 1, 2019 to June 16, 2020. In a declaration dated March 10, 2020, LCDR W-R testified that she went on maternity leave on October 28, 2019, and returned on February 17, 2020. LCDR W-R stated that LCDR V oversaw the applicant while she was on leave. LCDR W-R testified that the late submission of the applicant’s OER “was in part due to his lack of follow through and in part due to senior leadership’s lack of OER tracking.” In addition to the Timeline of Events she submitted along with her declaration, LCDR W-R testified that she reminded the applicant on May 6, 2020, that he needed to submit his OER. The applicant was prompted to submit his OER via email on May 11, 2020, and again by text on May 19, 2020. LCDR W-R specifically told the applicant that she wanted to get his OER “sorted out” before his promotion board. However, applicant did not submit the OER to LCDR W-R until May 21, 2020, and he had not completed blocks 1.a.-h. and did not provide any supporting documentation. LCDR W-R stated that she had multiple exchanges with the applicant requesting clarifying information and documentation before he submitted a completed final draft on June 3, 2020. On June 8, 2020, LCDR W-R sent the applicant’s draft OER with her comments and marks to the Reviewing Officer. LCDR W-R also stated that she met with the applicant on June 12, 2020, for counseling, and even though the verbiage had not been finalized, they discussed the numbers and confirmed that the Reviewing Officer strengthened the OER in the applicant’s favor.

LCDR W-R signed the final version on June 19, 2020 and sent it to the Reviewing Officer. The OER was forwarded on the same day to the Chief of Staff. After the applicant was assigned to a new position on June 16, 2020, LCDR W-R was no longer his supervisor and she was not aware of any issues with the applicant’s OER until November 9, 2020, when the applicant

informed her that it had not been submitted. She noted that on November 23, 2020, the applicant contacted LCDR W-R to discuss his OER again and asked her to increase his marks since he had been passed over again. LCDR W-R stated that, based on the supporting documentation already provided and the June 12, 2020 counseling session, she recommended that the applicant focus on submitting his OER rather than requesting an increase in already above average marks.

With regard to the applicant's performance, LCDR W-R stated that when the applicant "was focused and determined he could be a motivated self-starter." However, LCDR W-R stated that the applicant "regularly required follow-up and guidance to complete tasking[s] which he would typically require last minute." Finally, LCDR W-R detailed that the current Chief of Staff and Reviewer on the applicant's OER reported on June 1, 2020. The previous Chief of Staff was granted permissive leave on May 20, 2020, began terminal leave on June 9, 2020, and retired from the Coast Guard on July 1, 2020.

The PRRB issued a recommendation on June 3, 2021, recommending that the relief requested by the applicant be denied. The PRRB concluded that the applicant did not provide clear and convincing evidence to overcome the presumption of regularity with respect to the submission of his OER ending on May 31, 2020. The PRRB found that even though there were failures by the applicant and the applicant's rating chain, "it was the [applicant's] failure to ensure that his OER was not delayed in accordance with PSCINST M1611.11D that is dispositive." The PRRB noted that Coast Guard policy puts the burden on the member to ensure that their OER is processed in a timely manner and that the applicant, here, provided no evidence that he took action to determine if his OER was submitted on time until after the board had convened. The PRRB highlighted that the applicant had not received his OER for final signature prior to the board convening date. Therefore, the member did not provide clear and convincing evidence to overcome the presumption of regularity and the PRRB recommended no relief. The PRRB's recommendation was approved on June 3, 2021 by the Acting Director of Military Personnel.

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

On February 23, 2023, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

The PSC found that Coast Guard policy requires the member to ensure their record is complete and that the OER is signed in a timely manner. The PSC recognized that the applicant's chain of command also bore some responsibility for the failure to submit the applicant's OER in time for the convening of the promotion board. However, the PSC concluded that the Coast Guard policy places the ultimate responsibility on the member to follow through on processing an OER in a timely manner.

The JAG argued that the applicant failed to prove an error or injustice entitling him to relief. The JAG noted that the applicant requested reconsideration for the PY 2020 selection and continuation board but based his relief on a delay for an OER signed in 2020. The JAG also noted that there is a discrepancy between the relief requested on the applicant's DD Form 149 block 12 that requests reconsideration for promotion in "FY20" and paragraph 2 of the applicant's

supplemental memorandum that requests reconsideration for promotion in “FY21”. The JAG explained that if the applicant is requesting reconsideration for the PY 2020 board, there is no error because the delayed OER would not have been included in that board. This is because the PY 2020 board met in 2019, before the OER at issue existed.

Assuming the applicant is requesting reconsideration for the PY 2021 board, the JAG argued that the applicant still failed to prove entitlement to reconsideration. First, the JAG addressed the applicant’s claim that it was the absence of his May 31, 2020 OER resulted in his non-selection and non-continuation and argued that his claim is speculative. The JAG argued that prior to the PY 2021 board, the applicant had already been non-selected on at least one other occasion, in PY 2020. Therefore, the JAG asserted that “it is conjecture that this particular OER would have resulted in a different outcome and should not be viewed as material error...”

Second, the JAG argued that even though command had a role in the tardiness of the applicant’s OER, policy placed the ultimate responsibility to follow through on the applicant. The JAG asserted that the applicant’s inaction should be viewed as the ultimate cause of his OER not being submitted in time for review by the PY 2021 board.

In support of the advisory opinion, the JAG attached an email dated January 23, 2023, from Captain (CAPT) B concerning a question raised by the Commander of the PSC, Admiral (RDML) B. RDML B inquired about Reserve Personnel Management’s (RPM) role in OER review, specifically as it related to the applicant’s application to the Board. The email stated that RPM’s Officer Evaluation Section and Boards/Panels Section “goes to great lengths to identify gaps in members’ records prior to each Board Panel.” Typically, missing OERs prompt emails to the member and the command prior to the convening of the board to provide an opportunity to submit the missing OER. The email attached a report that showed that RPM identified the applicant’s missing OER that triggered outreach by the RPM team. However, that outreach did not result in a signed OER. The email also stated that the applicant “knew that he never signed his OER prior to his IDPL LCDR Selection Board, so it’s not surprising that we are all in this situation with the BCMR 3 yrs thereafter.” The report highlighted the applicant as having a “gaped record” and identified the OER ending May 31, 2020 as missing.

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

On June 1, 2023, the Chair sent the applicant a copy of the Coast Guard’s views and invited him to respond within thirty days. The applicant submitted a response dated June 16, 2023. In his response, the applicant opposed several allegations set forth by the JAG.

First, the applicant argued that the advisory opinion acknowledged that the command erred in failing to process the OER in time for inclusion in the PY 2021 promotion board, but “attempts to conclude that the command failure is not an injustice where [the] applicant could have done more to get the OER included.” The applicant argued that the advisory opinion fails to address the amount of COVID quarantine leave that the applicant was on during that time without full access to email and “makes broad assumptions that [the] applicant was notified of the missing OER in his record without any proof of actual notification.” The applicant argued that the advisory opinion made assumptions and conclusions without full analysis of the factual scenario and that the



advisory opinion did not overcome the clear and convincing evidence presented by the applicant that warrants relief in the face of uncontested command failure.

The applicant also disputed the advisory opinion's assertion that the applicant cannot prove that the absence of the OER caused his non-selection for promotion. The applicant argued that while that is "technically" true, the PY 2020 and PY 2021 years were "followed by selective continuation for non-selected Officers with completed records." The applicant pointed to the "well known and established" shortage of officers and the continuation the applicant received after his non-selection for promotion in PY 2020. Accordingly, the applicant argued, he would have been continued if the May 31, 2020 OER had been in his record.

Finally, the applicant addressed the RPM spreadsheet that was attached to the advisory opinion that identified the applicant as having a "gaped record". The applicant disputed any implication that the spreadsheet demonstrated that the applicant was notified at the time of the OER gap in his record. Instead, the applicant argued that there is no evidence that an email was actually sent to him notifying him of the missing OER, claiming that such an email would certainly still exist if one had been sent. Additionally, the applicant claimed that he was aware of the promotion cycle and recognized that it was his second look for LCDR. As a result, he argued that he would have been "vigilant and responsive" had he been notified of any missing information or problems with his board packet. The applicant asserted that he did not receive an email from RPM and that an email was never sent to him. Finally, the applicant reiterated that the advisory opinion did not overcome the clear and convincing evidence provided.

## APPLICABLE LAW AND POLICY

### *Officer Evaluation Reports*

Chapter 1.A.1. of the Coast Guard Officer Evaluation System Procedures Manual (OER Manual), PSCINST M1611.1D (January 2018), states the following regarding the responsibilities of the Reported-on Officer in relevant part (emphasis added):

k. Assume **ultimate responsibility** for managing their own performance, notwithstanding the responsibilities assigned to others in the rating chain. This includes ensuring performance feedback is thorough, **and that OERs and associated documentation are timely and accurate.** (Emphasis added.)

...

g. Inform Commander (CG PSC-OPM-3) or (CG PSC-RPM-1) directly by written communication (e.g., e-mail) if the original validated OER has not been received six months after the end of the reporting period.

...

j. Review Reference (c), Schedule of Active Duty Promotion List (ADPL) and Inactive Duty Promotion List (IDPL) Officer Personnel Boards and Panels, PSCNOTE 1401.5 (series), and Reference (d), Performance, Training, and Education Manual, COMDTINST M1500.10 (series), and **manage performance to ensure that OERs are not delayed when eligible for promotion** or applying for advanced training. (Emphasis added.)

Chapter 1.A.2.b. of the Coast Guard OER Manual, PSCINST M1611.1D, states the following regarding the responsibilities of the Supervisor in relevant part:

[9]. Initiate an OER if the Reported-on Officer is unavailable, unable, or unwilling to initiate one in a timely manner. Forward the OER; the Officer Support Form (OSF), Form CG-5308, (if used or required); ESS; OER attachments; and any other relevant performance information to the Reporting Officer not later than 10 days after the end of the reporting period.

Chapter 1.A.3.b. of the Coast Guard OER Manual, PSCINST M1611.1D, states the following regarding the responsibilities of the Reporting Officer in relevant part:

[3]. Ensure the Supervisor fully meets responsibilities for administration of the OES. Reporting Officers are expected to hold designated Supervisors accountable for timely and accurate evaluations.

...

[6]. Initiate an OER if the Supervisor does not perform their duties in a timely manner. Ensure the OER is forwarded to the Reviewer not later than 30 days after the end of the reporting period.

Chapter 1.A.4.b. of the Coast Guard OER Manual, PSCINST M1611.1D, states the following regarding the responsibilities of the Reviewer in relevant part:

[6]. Expedite the reviewed report in a reasonable time to ensure the OER is received by Commander (CG PSC-OPM-3) or (CG PSC-RPM-1) no more than 45 days after the end of the reporting period.

Chapter 7.B.3.c. of the Coast Guard OER Manual, PSCINST M1611.1D, states the following regarding the submission schedule for OERs for IDPL officers in relevant part:

OERs for IDPL officers who are candidates for a scheduled board or panel shall not be delayed and must arrive at CG PSC-RPM-1 not later than 14 days before the board or panel convening date.

### ***Reserve Officer Retention Boards***

Under Section 741 of Title 14 of the United States Code (U.S.C.), whenever the Secretary of the U.S. Department of Homeland Security (DHS) determines that it is necessary to reduce the number of Reserve officers in an active status in any grade, he “may appoint and convene a retention board to consider all of the Reserve officers in that grade in an active status who have 18 or more years of service for retirement...” A Reserve officer who is not recommended for retention in an active status “shall be given an opportunity to transfer to the Retired Reserve, if qualified, but unless so transferred shall, in the discretion of the Secretary, be transferred to the inactive status list or discharged on June 30 next following the date on which the report of the retention board is approved.”

Guidelines for personnel boards are established in Article 6 of the Officer Accessions, Evaluations, and Promotions manual, COMDTINST M1000.3. Under Article 6.A.4.d., Commander (CG-PSC-OPM) furnishes personnel boards the personnel records of all officers to be considered, which “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 discipline documentation.”

Article 6.A.3.b. establishes four basic criteria upon which a personnel board should base its determination: performance evaluations, professionalism, leadership, and education.

### ***Special Selection Boards (SSBs)***

Under Section 2120(b), Title 14, U.S.C., whenever the Secretary determines that the selection board that considered an officer or former officer for promotion, but did not select the officer or former officer for promotion, did not have before it for consideration material information, the Secretary may convene a special selection board to determine whether the officer or former officer should be recommended for promotion.

Guidelines for SSBs are established in Article 6 of the Officer Accessions, Evaluations, and Promotions manual, COMDTINST M1000.3. Under Article 6.B.13.e., an SSB may be convened to consider or reconsider commissioned officers or former commissioned officers for promotion when 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.

Under Article 6.B.13.f.5, an SSB shall 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 the board convening. Article 6.B.13.f.5.(a). notes that it is the officer's responsibility to review his or her record before the board convenes and to take reasonable steps to correct any errors or notify the board, in writing, of any administrative deficiencies.

## **FINDINGS AND CONCLUSIONS**

The Board makes the following findings and conclusions based on 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.
2. The applicant alleged that he was unjustly or erroneously not selected for promotion to LCDR and not retained because his May 31, 2020 OER was missing from his record when considered by the PY 2021 IDPL LCDR promotion board. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.<sup>4</sup> 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."<sup>5</sup>
3. The applicant asked the Board to correct his record by reconsidering him for promotion to LCDR and for continuation as a LT with the addition of the OER ending May 31, 2020. If the Board finds that "an action of the selection board that considered the officer...did not

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<sup>4</sup> 33 C.F.R. § 52.24(b).

<sup>5</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

have before it for consideration material information,”<sup>6</sup> then Board directs the Coast Guard to convene an SSB to decide whether to remove a non-selection and backdate an officer’s date of rank.<sup>7</sup>

4. The record reflects, and the Coast Guard acknowledged, that the OER ending May 31, 2020, was not included in the applicant’s record when it was reviewed by the LCDR selection board when it convened on August 10, 2020. The Board finds, therefore, that the applicant has proven by a preponderance of the evidence that the OER ending May 31, 2020 was not timely entered in his record before the selection board convened. While the Coast Guard recognized that the applicant’s chain of command was partially at fault for the delay in submitting the applicant’s May 31, 2020 OER, the Coast Guard did not provide an explanation as to why the applicant’s chain of command failed to track the status of the OER. Because Coast Guard policy requires all OERs to be submitted to CG-PSC-RPM-1 no less than 14 days before a board or panel convenes,<sup>8</sup> the Coast Guard clearly expects its personnel to timely enter such documents into officers’ records so that they will be seen by selection boards. Therefore, the Board concludes that the Coast Guard committed an error by failing to enter the applicant’s OER ending May 31, 2020, in his record before the selection board convened on August 10, 2020.

The Coast Guard argued that the applicant’s request should be denied because it was his responsibility to ensure that the OER was in his record in time to be reviewed by the LCDR selection board. The applicant, on the other hand, argued that the Coast Guard failed to acknowledge the amount of COVID quarantine leave that the applicant was on during that time without full access to email and that the Coast Guard made “broad assumptions that [the] applicant was notified of the missing OER in his record without any proof of actual notification.” He emphasized that the Reporting Officer (RO) “admitted error with processing the OER and the equity and fairness of the result being that [the applicant] lost his career due to the error.” The applicant maintained that the Coast Guard did not overcome the clear and convincing evidence presented by the applicant that warrants relief in the face of uncontested command failure.

5. 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 have the documents entered in the records to no avail.<sup>9</sup> On the other hand, the Board has denied relief when applicants have not exercised due diligence.<sup>10</sup> 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 his OERs. Because an officer is really the only person who has complete knowledge of his or 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.

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<sup>6</sup> 14 U.S.C. § 2120(b) (formerly cited as 14 U.S.C. § 263).

<sup>7</sup> 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 v. United States* no longer applied to the BCMRs for services authorized to convene SSBs).

<sup>8</sup> See Chapter 7.B.3.c. of the Coast Guard OER Manual, PSCINST M1611.1D

<sup>9</sup> See e.g., BCMR Docket No. 2013-147.

<sup>10</sup> See e.g., BCMR Docket Nos. 2014-171, 2016-089.

6. Here, there is no indication that the applicant made any effort to ensure that his OER ending May 31, 2020 was timely submitted before the PY 2021 LCDR selection board convened. The record reflects that the applicant's OER was formatted, revised, discussed, and finalized between June 1 and 19, 2020. The applicant's Supervisor and Reporting Officer signed the OER on June 19, 2020. The declaration provided to the PRRB by LCDR W-R indicates that she repeatedly reminded the applicant during the month of May 2020 about his need to prepare and submit the OER. LCDR W-R testified that she specifically told the applicant that she wanted to get his OER "sorted out" in advance of his promotion board. However, the applicant did not submit a completed, final draft to her until June 3, 2020. LCDR W-R counseled the applicant on June 12, 2020, and ultimately signed and submitted the final version to the Reviewing Officer on June 19, 2020. There is no indication in the record that the applicant followed up on the status of his OER after June 12, 2020, until November 2020.

The applicant argued that quarantine leave due to COVID-19 without regular email access prevented him from exercising due diligence in ensuring that his OER was timely submitted. However, in his submission, the applicant stated that he was on quarantine leave for a period of 9 days between July 16 and 25, 2020. That means that the applicant could have followed up on the status of his OER any time after he was counseled on June 12, 2020, up until he went on quarantine leave on July 16, 2020. The applicant also had ample time to follow up after he returned to duty on July 26, 2020, up until the selection board convened on August 10, 2020. The applicant did not sign his OER until November 4, 2020, so before and after quarantine leave, the applicant was aware that his OER had not been finalized. Furthermore, the applicant himself stated that he was aware of the promotion cycle and understood that it was his second look for LCDR. However, despite the burden placed on officers by Coast Guard policy to ensure the accuracy of their record, the applicant continued to claim that the Coast Guard bore the burden of notifying him of any missing information or problems with his board packet. Therefore, the Board finds that the applicant did not exercise due diligence in ensuring that his record was complete before it was provided to the selection board, as required by Coast Guard policy.

7. The applicant also argued that he would have been selected for continuation as a LT in PY 2021 had the May 31, 2020 OER been included in his record. The Coast Guard argued that the applicant's claim was speculative and there was no evidence that the applicant would have been retained had the OER been included in his record since he had been non-selected for promotion to LCDR in the prior promotion year. The Board agrees. The applicant himself admitted that it was "technically" true that he was unable to prove that the missing OER had an impact on his non-selection for continuation. The fact that the Coast Guard experienced a shortage of officers in the prior promotion year does not provide a demonstrable connection between the missing OER and his non-selection for continuation.

8. Therefore, the applicant's request should be denied because he has not proven by a preponderance of the evidence that the records reviewed by the PY21 LCDR selection board included a material error warranting review by a Special Selection Board. Further, the Board finds the applicant has not proven by a preponderance of the evidence that his non-selection for promotion to LCDR in PY 2021 constitutes an error or injustice warranting correction under the authority of the Secretary.



**ORDER**

The application of former LT [REDACTED] [REDACTED] USCG (Reserve), for correction of his military record is denied.

August 15, 2024

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