

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-041



FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the application upon receipt of the applicant's completed application on January 29, 2016, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated December 2, 2016, 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) in the Reserve, alleged that his officer classification code—IT Management—does not adequately reflect his capabilities and that his Officer Evaluation Report (OER) and other records do not reflect his past IT-related work, education, and qualifications. The applicant stated that he was recruited because of his IT skills but placed in a prevention billet because at the time there was no IT track for Reserve officers. He was assigned to work on IT projects, such as coordinating IT needs for the response to Hurricane Katrina, and so “gained no credible achievements as a prevention officer.” However, he recently gained the officer classification of IT Management.

The applicant stated that he was a member of the Individual Ready Reserve (IRR) without a designated billet from 2008 to 2011 and that his experience and professional development during that period are not properly reflected in his military record. The applicant asked that his education and qualifications be documented in his OERs and Record of Professional Development (CG-4082) and that his record be corrected to show that he entered the IRR because of a “family issue that if not addressed could have resulted in loss of life.” The applicant alleged that he was passed over for promotion because of the incompleteness of his military record and that he would likely be discharged in June 2016 if relief is not granted.

The applicant specifically requested that his OERs and CG-4082 be corrected to reflect the following:

- He worked as an IT Specialist/GS-12 at a Sector office from 2004 through 2007.
- He received a Bachelor's of Science degree in Industrial Technology Electronics in 1996.
- He received a Master's degree in IT Management in 2006.
- While working for the [REDACTED]

VIEWS OF THE COAST GUARD

On June 23, 2016, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief except to allow the applicant to submit a new CG-4802 reflecting his education and training in accordance with the recommendation in a memorandum submitted by the Commander, Personnel Service Center (PSC).

PSC stated that the applicant was voluntarily assigned to the IRR in a non-drilling status from June 25, 2008, to August 25, 2011, and so PSC properly entered a Continuity OER to cover that period in his record in accordance with Article 5.A.6.a. of COMDTINST M1000.3A. In addition, PSC stated, because Article 5.A.7.f. of COMDTINST M1000.3A prohibits mentioning medical or psychological conditions of members or family members in an OER, the applicant's request to have the Continuity OER corrected to reflect his family's circumstances should not be granted. Likewise, PSC noted mentioning civilian employment in an OER is also prohibited pursuant to Article 5.A.7.f. of COMDTINST M1000.3A. Therefore, PSC argued, the applicant has not shown that his OERs are erroneous or unjust.

PSC stated that a Reserve officer's civilian trainings, certifications, and education may be submitted by the officer on a CG-4082 for entry in his record, but not on an OER. PSC stated that the applicant's record contains one CG-4082 but "it does not contain the vast majority of the trainings, certifications, and education" documented by the applicant in his application. Because his CG-4082 is incomplete, PSC recommended that he submit a new one through his Servicing Personnel Office (SPO) in accordance with the procedures in PSCINST M1000.2B, the Personnel and Pay Procedures Manual, and COMDTINST M1080.10I, the Military Personnel Data Records (PDR) System Manual. In addition, PSC noted, the applicant may request an Officer Specialty/Subspecialty IT code in Command, Control, Communications, Computers & Information Technology (C4IT) through his SPO.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 18, 2016, the applicant submitted a response to the Coast Guard's advisory opinion. The applicant noted that he was hired by the Coast Guard as a civilian IT specialist in 2003 and was recruited for the Reserve because of his IT skills. He stated that all of his degrees, certifications, and training are based on industry standards, and he has an expert working knowledge of the federal NIST standards. The applicant stated, regarding his service from 2007 to 2011, that he takes responsibility for his failure to maintain standards during this period. He stated that his priorities "were God, Country, and family. I served my God, I served my family

for fear of death of loved ones, I served my country as a critical member of the US Census Bureau Decennial Operations, the largest project the US undertakes every 10 years and I lapsed my service to the USCG. I have been dedicated to service since my return at SOHV April 2012.”

The applicant asked the Board to extend his military service for six months past June 30, 2016, and allow him to transfer to the enlisted ranks, where IT billets are available because the “proposed Officer IT Management billets do not yet exist.”

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant’s military record and submissions, the Coast Guard’s submission and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely.

2. The applicant alleged that his Coast Guard OERs and CG-4082 are erroneous and should be corrected to reflect his civilian work and training. 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.¹ 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.”² To be entitled to relief, the applicant cannot “merely allege or prove that an [OER] seems inaccurate, incomplete or subjective in some sense,” but must prove that the disputed OER was adversely affected by a “misstatement of significant hard fact,” factors “which had no business being in the rating process,” or a prejudicial violation of a statute or regulation.³

3. Article 10.A.5.a. of the Personnel Manual, which was in effect while the applicant was in the IRR, states that Commander, Personnel Command (now known as PSC) shall complete a Continuity OER for officers assigned to the IRR and it shall cover the entire period that the officer is in the IRR. According to Article 10.A.5.d., a Continuity OER does not contain any performance marks or comments because it is prepared “for continuity purposes only.” In addition, Article 10.A.4.f.5. states that no OER may “[m]ention any medical or psychological conditions, whether factual or speculative” of the officer or his or her family, and Article 10.A.4.f.10. states that an OER may not mention an officer’s “marital or family status.” In light of these regulations, the Board cannot conclude that the applicant’s Continuity OER is erroneous or unjust by failing to include comments about why he entered the IRR or about his civilian duties or training.

¹ 33 C.F.R. § 52.24(b).

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

³ *Hary v. United States*, 618 F.2d 704, 708 (Ct. Cl. 1980), cited in *Lindsay v. United States*, 295 F.3d 1252, 1259 (Fed. Cir. 2002).

4. According to Article 10.A.4.f.11. of the Personnel Manual, no OER may refer to any performance or conduct that occurred outside of the reporting period. In addition, pursuant to Article 10.A.4.c., OERs are prepared to document a member's assigned military duties and leadership and to evaluate observed performance. Therefore, the applicant has not proven by a preponderance of the evidence that work and training he performed at his civilian jobs or in prior evaluation periods should have been mentioned and/or evaluated in his OERs.

5. The Record of Professional Development, CG-4082, is the primary means of documenting an officer's education, training, and certifications in his military record. Because an officer—especially a Reserve officer—is the only person who will know exactly what education, training, and certifications the officer has successfully completed, Coast Guard regulations require officers to submit completed CG-4082s to their SPOs for entry in their records at least a month before their selection boards convene.⁴ The burden to ensure a complete CG-4082 is in one's record must rest on the officer himself because no one else can know whether or not it is complete. The CG-4082 in the applicant's record, dated July 2015, contains only two entries, and he did not allege or prove that he submitted or tried to submit a more complete CG-4082 for consideration by the selection boards. Therefore, the Board finds that he has not proven by a preponderance of the evidence that his non-selections for promotion were erroneous or unjust because of the possible incompleteness of his CG-4082 or that they should be removed from his record or that his separation from the Reserve due to his non-selections should be voided.⁵ However, as the Coast Guard recommended, the applicant should be allowed to submit a properly completed CG-4082 for entry in his Coast Guard record.

6. In his response to the advisory opinion, the applicant asked the Board to extend his military service by six months and transfer him to the Reserve. However, the applicant has not shown that his non-selections for promotion resulted from error or injustice, and so his separation as an officer due to non-selection for promotion, which is required by statute, cannot be considered erroneous or unjust. The applicant's desire to serve in the enlisted ranks is admirable, and he may seek enlistment through a Coast Guard recruiter. The Board, however, will not preemptively intervene in the recruitment process.

7. Accordingly, the applicant's request should be denied but if within 120 days of the date of this decision he submits a properly completed CG-4082 for inclusion in his record, the Coast Guard should enter it in his military record.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁴ U.S. Coast Guard, COMDTINST M1500.10C, Performance, Training and Education Manual, Arts. 1.E.10.k. and 4.C.1. (2009).

⁵ *Engels v. United States*, 678 F.2d 173, 176 (Ct. Cl. 1982).

ORDER

The application of former [REDACTED] USCGR, for correction of his military record is denied, except that if within 120 days of this decision he submits to the Personnel Service Center a properly completed Record of Professional Development, CG-4082, the Coast Guard shall enter it in his military record.

December 2, 2016

