

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2020-102

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LCDR (former)

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 April 8, 2020, and assigned the case to the Deputy Chair to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated May 27, 2022, 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 former Lieutenant Commander (LCDR/O-4) who was discharged from the Coast Guard Reserve in 2020, asked the Board to correct her record by changing her discharge to a retirement. In the alternative, she asked the Board to remove her non-selections for promotion by the promotion year (PY) 2019 and PY2020 Inactive Duty Promotion List (IDPL)¹ Commander (CDR) selection boards, which convened in August 2018 and 2019, respectively.

The applicant was discharged from the Coast Guard Reserve after more than seventeen years of service. At the time of her discharge, the applicant was serving in the Individual Ready Reserve (IRR) and was authorized to Drill For Points Only (not for drill pay) at the Coast Guard Academy. She argued that she was discharged because her command failed to timely submit her OERs for consideration by the IDPL CDR selection boards. The applicant argued that her record was incomplete when it was reviewed by the PY2019 IDPL CDR selection board because her command failed to timely submit a Regular OER for the period of May 1, 2016, to April 30, 2018.

¹ The IDPL comprises all Reserve officers in an active status, which includes the Selected Reserve (SELRES), Individual Ready Reserve (IRR) and the Active Status List (ASL) of the Standby Reserve.

Instead, her record contained a Continuity OER² for the period. The applicant also argued that her record was incomplete when it was reviewed by the PY2020 IDPL CDR selection board because her command failed to timely submit a Regular OER for the period of May 1, 2016, to April 30, 2018, and a Regular OER for the period of May 1, 2018, to April 30, 2019. Instead, her record contained a Continuity OER for the period of May 1, 2016, to April 30, 2018, and a Continuity OER for the period of May 1, 2018, to April 30, 2019.

The applicant argued that her chain of command committed an error when it failed to submit her Regular OERs. First, the applicant cited the Coast Guard Officer Evaluation System Procedures Manual, which states that IDPL officers in the IRR who are authorized to Drill for Points Only will receive a Regular OER from the command at which the member is drilling. The applicant also cited the Coast Guard Academy's endorsement of her request to Drill For Points Only. In its endorsement of the applicant's request, the Coast Guard Academy stated that it would assume administrative control over her.

The applicant acknowledged that she failed to review her record before the two IDPL CDR selection boards. However, the applicant argued, she had been assured by her chain of command that the OERs had been submitted. As such, she stated that she did not believe that she needed to review her record.

To support her application, the applicant submitted two letters from members of the Coast Guard Academy who positively endorsed her request. The first letter was from CAPT H, the Reviewer for the OERs. He stated that the Coast Guard would certainly benefit if the applicant were permitted to continue her service as a Reserve officer. CAPT H stated that the applicant's contributions to the Coast Guard Academy were substantial and overwhelmingly positive, and that her efforts to develop faculty and cadets were crucial to mission success. Next, CAPT H addressed the delay in submitting the applicant's Regulars OERs. He acknowledged there was a delay in the preparation of the applicant's 2016-2018 OER. As such, the applicant requested that her OER cover the entire period from 2016-2019. However, the proposed 2016-2019 OER was never sent by the Supervisor to the Reviewer. CAPT H stated that given a lack of follow up by all members involved, the 2016-2019 OER was not submitted to the Reserve Personnel Management Division of the Personnel Service Center (PSC-RPM) until January 2019. At that time, PSC-RPM rejected the 2016-2019 OER because a period of report of three years violated Coast Guard policy. CAPT H stated that a new 2016-2018 OER was prepared and submitted, and so was a separate 2018-2019 OER. He stated that given the delays, the applicant's 2016-2018 OER and 2018-2019 OER were not included in her record when it was considered by the PY2019 or PY2020 IDPL CDR selection boards.

The second letter was from CAPT V, whose relationship to the applicant is unknown. He stated that the Coast Guard Academy has limited Reserve program administrative expertise. As such, CAPT V stated that the Coast Guard Academy depends entirely on the members to know Reserve policy and advocate for themselves with respect to administrative processes. He stated that given the differences in reporting periods and requirements, OERs for Reserve members had

² A Continuity OER is one prepared "for continuity purposes only." It contains the start and end dates for the period and a description of the officer's duties but no numerical performance marks, no written comments, and no recommendation regarding promotion or officer comparison scale mark.

not been tracked by the Coast Guard Academy's internal OER accountability system. He stated that this explains why the applicant's chain of command did not notice that her Regular OERs were missing through the normal failsafe checks. CAPT V concluded by stating that the applicant had made important contributions in developing leaders of character at the Coast Guard Academy.

SUMMARY OF THE RECORD

The applicant graduated from the Coast Guard Academy and was commissioned as an ensign on May 21, 2003.

On October 29, 2014, the applicant was discharged from active duty. The next day, she transferred to the IRR.

On October 11, 2016, the applicant sent PSC-RPM a memorandum requesting to be assigned to the Coast Guard Academy to Drill For Points Only from October 1, 2016, to September 30, 2018.

That same day, the Coast Guard Academy endorsed the applicant's request. If the request was approved, the Coast Guard Academy stated that it would assume administrative control of the applicant. For example, the Coast Guard Academy stated, it would ensure a Concurrent OER was completed and submitted in accordance with the Coast Guard OER System Procedures Manual.

On July 1, 2018, an Officer Evaluations System manager at PSC-RPM placed a Continuity OER in the applicant's record for the period of May 1, 2016, to April 30, 2018. The only comment included in the Continuity OER states the following:

Submitted for "continuity purposes only" IAW Officer Accessions, Evaluations, and Promotions COMDTINST M1000.3 Articles 5.E.9. ROO is in the IRR.

On July 6, 2018, a member from PSC-RPM sent the applicant an email regarding her missing 2016-2018 Regular OER. The applicant was notified that she was a candidate for the PY2019 IDPL CDR selection board, which would convene on July 23, 2018. He stated that the applicant's OER was missing, and that a missing evaluation could adversely affect her opportunity for promotion in the Coast Guard Reserve. He stated that the deadline to submit her OER was fourteen days before the selection board.

On July 23, 2018, the PY2019 IDPL CDR selection board convened. Two months later, on September 24, 2018, the results of the selection board were released. The applicant had not been selected for promotion.

On September 26, 2018, the applicant sent RPM a memorandum requesting to be assigned to the Coast Guard Academy to Drill For Points Only from October 1, 2018, to September 30, 2020.

That same day, the Coast Guard Academy endorsed the applicant's request. If the request was approved, the Coast Guard Academy stated, it would assume administrative control of the

applicant. For example, the Coast Guard Academy stated that it would ensure a Regular OER was completed and submitted in accordance with the Coast Guard OER System Procedures Manual.

On May 14, 2019, the applicant sent an email to her Reporting Officer regarding her OER. The applicant stated that it was really important to have her signed OER sent to Headquarters. She stated that she knew everyone was very busy, so in order to get this done, she requested a signed copy of her OER be sent to Headquarters by May 17. She emphasized to her Reporting Officer how important the OER was for her continued service in the Coast Guard.

On July 17, 2019, an Officer Evaluations System manager at PSC-RPM placed a Continuity OER in the applicant's record for the period of May 1, 2018, to April 30, 2019. The only comment included in the Continuity OER states the following:

Submitted for "continuity purposes only" IAW Officer Accessions, Evaluations, and Promotions (COMDTINST M1000.3) Article 5.E.9. ROO is in the IRR and this OER fulfills regular submission cycle requirements IAW Officer Evaluation System Procedures Manual (PSCINST M1611.D) Chapter 7.A.4.a.

On July 22, 2019, the PY2020 IDPL CDR selection board convened. The announcement stated that the opportunity of selection was 51%. Two months later, on September 11, 2019, the results of the selection board were released. The applicant had not been selected for promotion.

On September 17, 2019, the applicant received a memorandum from PSC. The applicant was notified that she was not recommended for promotion by the PY2020 IDPL CDR selection board. She was further notified that because she had not completed eighteen years of qualifying service towards a Reserve retirement, the selection board had considered her for continuation. However, the PY2020 IDPL CDR selection board did not recommend her continuation in the Coast Guard Reserve.³ Finally, the applicant was notified that since this was her third non-selection to the next higher paygrade and she was not recommended for continuation, she had to be separated from the Coast Guard Reserve no later than June 30, 2020.

On December 2, 2019, the applicant signed a biennial OER for the period of October 1, 2016, to April 30, 2018. The applicant's description of duties stated as follows:

Instructor: swab summer mathematics review course 32 cdt/yr. Developed content for Physics 11 course. Planned & executed Instructor Development Course (IDC) for 22+ newly reported faculty per yr. New faculty orientation project officer. Chase Hall Duty Officer (CHDO) Watchstander. Rep of the Commandant of Cadets, Supervisor for 12 duty personnel. Accountable for over 1k+.

For the section evaluating her performance of duties, on a scale from 1 (worst) to 7 (best), the applicant received three excellent marks of 6 and four outstanding marks of 7. The comments for this section were as follows:

³ According to Article 7.A.6.d. of the Reserve Policy Manual, COMDTINST M1001.28C, to be eligible for (selective) retention, the officer must: (1) Have less than 18 years of satisfactory federal service for retirement; (2) Have 75% of total commissioned service as satisfactory years for retirement; (3) Have three of the last four years met requirements for satisfactory federal service for retirement; (4) Have documentation of sustained active participation in performance records; and (5) Have solid performance in current grade, documented in OER.

Executed extensive revisions to swab summer math review course incorporating evidence based teaching methods; resulted in above average student improvement, remarkable 25% gain knowledge/cdt. ROO successfully planned, organized & executed IDC directly responsible for integration & success of 22 new military faculty/yr; directly led to qualifications as CG instructor & career development of JOs. Developed all class materials, lesson plans, testing materials, PowerPoint presentations, online reading assessments, & syllabi for physics II course in support of core curriculum revision; ensured success to 2nd largest class at CGA critical to mission success. New faculty orientation project officer developed schedule, organized & arranged week-long course; actively managed the day to day operations of the course for 2016 and 2017. Mbr developed 38 page handbook to assist new faculty; valuable reference material ensured faculty were prepared for all contingencies. Developed 12 lesson plans for 4CASP & 2 for CAAP & delivered them to 280+ 4/c cadets. Improved cadet performance in physics & led to success of cdt. Volunteered to speak w/4/c cdt about academics w/Dean of Academics; advice critical to academic success of new students.

For the section evaluating her leadership skills, the applicant received three marks of 6 and three marks of 7. The comments for this section were as follows:

Volunteered for 2 evening CAAP watches & created associated review materials for need created by billet gap; increased unit effectiveness, work life balance of peers & academic success of cadets. Exceptionally astute intervention on behalf of cadet w/significant challenges: Expert advocacy was critical for one member thru med board & return of cadets to high-level performance. Mentored 30 instructors thru 2—IDCs; leading to more effective teaching for 30 instructors & academic success for over 250 cadets. Driving force behind annual health & wellness week events about eating disorders, educated 20 cdt/yr increasing awareness & resiliency of future officer corps. Excelled in building expert Physics team; creatively leveraged multiple staffing sources & mentored faculty through evidence based teaching methods implementation. Results far exceeded expectations; cadet performance was extremely high- set standard for multi section core course implementation at CGA.

For the section evaluating her personal and professional qualities, the applicant received two marks of 6 and three marks of 7. The comments for this section were as follows:

ROO volunteered to act as Physics I course coordinator & filled a critical role in core mission of CGA; organized, planned, & created documents for over 400 students and 11 instructors and managed a team of 3 people to expertly create the course. ROO directly responsible for success of first revision to core curriculum in over 20 years & success of academic program. Voluntarily initiated & created Health & Wellness mentoring program for 4 mentors and 13 students, resulted in reaching female population of cadets many of whom are not varsity athletes & otherwise would not have direct access to a coach. ROO volunteered for the Mental health Awareness team, participated in discussions on developing policy to address mental health issues in the corps of cadets, impacting the personal growth and development of over 2000 personnel. ROO own fitness at highest lvls; model officer.

The applicant's Reporting Officer indicated that, when compared to other officers of the same grade, she was "one of the many high performing officers who form the majority of this grade." Additionally, the applicant's Reporting Officer indicated that she should be promoted with the top 20% of her peers. The Reporting Officer's comments regarding the applicant's ability to assume greater leadership were stated as follows:

Highly recommended for promotion w/best of peers. ROO fills a unique roll at CGA pioneering use of IRR to supplement training of future officers. Mbr is an outstanding military educator who excels w/all responsibilities and assignments. Exemplary role model for peers & cadets, possesses superb

technical and leadership competence, and is a champion of CG Core Values for self, colleagues, & cadets. Mbr garners utmost respect from peers, is often called upon to lead discussions in Physics Section, and provides greatly needed CG perspective to civilian faculty and staff. Strongest recommendation mbr continues drilling in IRR at CGA; mbr's excelled performance and wide range of contributions are an asset within CGA community. Mbr is highly recommended for assignment to EAD role at CGA if/when available, including serving in positions of greater responsibility.

On January 13, 2020, the applicant signed an annual OER for the period of May 1, 2018, to April 30, 2019. The applicant's description of duties stated as follows:

Physics Cadet Academic Assist Program & Physics 4/c Cadet Academic Support Program coordinator. Instructor and course consent developer for assigned sections of Programs. Mentor at-risk cadets toward proficiency in Physics courses and other academic endeavors. Facilitate group discussions and development of group skills in a supplemental instruction environment. Facilitate one-on-one support for cadets enrolled in Physics courses for development of content knowledge and study skills.

For the section evaluating her performance of duties, the applicant received five marks of 6 and two marks of 7. The comments for this section were as follows:

Created new Physics I 4/c Cadet Academic Support Program (4CASP) worksheets incorporating evidence based teaching methods; resulted in 98% pass rate for Physics I. ROO successfully managed, organized & was directly responsible for integration & success of notifying 255 students of their 4CASP status; directly led to success of students in course and of the program. Adapted materials, lesson plans, and teaching environment weekly to meet needs of students; ensured success to 2nd largest class at CGA critical to mission success. Adapted to changing student rosters (names and numbers); actively managed the assignments to 4CASP and removal from 4CASP as well as permission to miss 4CASP for varsity sporting events. Developed first-of-its-kind intervention for physics students based on mathematics preparation, directly leading to the success of 62 cadets. Directly taught ideas in one-on-one settings as well as group settings, by explaining, writing examples, and guiding students through group problems; resulting in increased critical thinking and content abilities. Provided a safe working environment for all cadets, increased cadets willingness to seek help when needed; led to successful interventions and improving learning for all.

For the section evaluating her leadership skills, the applicant received three marks of 6, one mark of 7, and two marks of Not Observed. The comments for this section were as follows:

Gifted Physics instructor and mentor. Confident & effective teaching style with forth [sic] class cadets who were in danger of attaining a low grade or even failing the course. Effectiveness evidenced by cadet interactions and supervisor observations; teaching style empowered critical thinking and engaged students in learning and are rooted in research in science, technology, engineering and mathematics best practices in education. Developed learning strategies with students, directly impacting success beyond physics courses for 244 cadets. Sound judgment & good counsel; advised department head and Associate Dean for Academic Affairs on recommendations for approving excusals from Forth [sic] Class Academic Support Program, resulting in accurate discussions on cadets [sic] ability to pass course. Provided accurate reporting which informed the end-of-semester Academic Review Board, a board to review all at-risk students- and recommends corrective courses of action.

For the section evaluating her personal and professional qualities, the applicant received two marks of 6, one mark of 7, and two marks of Not Observed. The comments for this section were as follows:

Reported on Officer requested assignment to the unique Cadet Academic Assistance Program and Forth [sic] Class Academic Support Program. Unique ability to inspire: role model for all cadets especially women; developed effective ways to discuss leadership issues with cadets in academic and academic support areas; empowering them to meet high military and academic standards. Provided sound judgment in deciding rosters for the Forth [sic] Class Academic Support Program leading to overwhelming success for at-risk cadets in the course. Reported on Officer maintains a high professional presence modeling the way for cadet in academic and academic support environments. Reported on Officer interacted with cadets being mindful of their health and wellness and whether such issues are related to academic and professional concerns.

The applicant's Reporting Officer indicated that, when compared to other officers of the same grade, she was "one of the many high performing officers who form the majority of this grade." Additionally, the applicant's Reporting Officer indicated that she should be promoted with the top 20% of her peers. The Reporting Officer's comments regarding the applicant's ability to assume greater leadership were stated as follows:

Highly recommended for promotion with peers. Officer fills a unique roll at CGA pioneering use of IRR to supplement training of future officers. ROO is an outstanding military educator w/capacity for continued excellence at CGA and w/in the Coast Guard. Member garners utmost respect from peers & is often called upon to lead discussions in Physics Section & provides greatly needed CG perspective to peers. Exemplary role model for new faculty, possesses superb technical & leadership competence & is a champion of Coast Guard Core Values for self, colleagues, & for future leaders in Coast Guard. Highly recommend that mbr continue drilling in IRR at CGA; remarkable contributions provide service to future generation of officers & improving mission execution. Mbr desires & is highly recommended for & would easily transition into EAD contract at CGA.

On or about June 30, 2020, the applicant was discharged from the Coast Guard Reserve.

VIEWS OF THE COAST GUARD

On October 21, 2020, 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 PSC.

PSC argued that the applicant failed to provide compelling evidence that the Coast Guard committed an error or injustice. Specifically, PSC argued that the applicant's record was complete at the time of the IDPL CDR selection boards. PSC argued that while the applicant's record did not include Regular OERs that included performance observed by the Coast Guard Academy, her record included Continuity OERs in accordance with Coast Guard policy.

PSC acknowledged that the applicant's rating chain was negligent in their duties to timely submit her OERs. The Coast Guard Academy signed memorandums in which it assumed administrative control of the applicant, including completing OERs. Despite the memorandums, the applicant's chain of command failed to submit Regular OERs for her for the reporting periods 2016-2018 and 2018-2019. Regardless, PSC argued that the applicant is ultimately responsible for her record. According to Article A.1.h. of the Officer Evaluation System Procedures Manual, officers should review their records for accuracy and completeness. PSC stated that the applicant failed to review her record before the PY2019 or PY2020 IDPL CDR selection boards. Further,

PSC stated that the applicant failed to take any corrective action when she was non-selected for promotion by the PY2019 IDPL CDR selection board.

The JAG reiterated that Coast Guard policy ultimately places responsibility on the member for management of their record. The JAG argued that since her first non-selection for promotion to CDR, the applicant had ample notice and opportunity to correct her record.

The JAG stated that PSC-RPM did ensure that a Continuity OER was provided to the PY2020 IDPL CDR selection board. However, the applicant was not selected. The JAG argued that it is unknown whether the selection board found the distinction of having a Continuity OER rather than a Regular OER material in its deliberation. The JAG argued that the PY2019 and PY2020 IDPL CDR selection boards were extremely competitive. Specifically, the opportunity of selection for the PY2019 IDPL CDR selection board was 46%, and the opportunity of selection for the PY2020 IDPL CDR selection board was 51%.

Notwithstanding the assertions discussed above, the JAG acknowledged that the applicant's separation "leans precariously toward injustice." First, the JAG noted the role of the applicant's rating chain in the administrative error. Specifically, the JAG stated that when the Coast Guard Academy accepted the applicant's request to Drill For Points Only, it assumed responsibility for submitting her OERs. Next, the JAG noted that the applicant was separated after seventeen years of quality service without eligibility for separation pay or the prospect of a Reserve retirement. The JAG stated that if the Board finds that an injustice has occurred, the appropriate remedy would be to order the continuation of the applicant, backdated to the date of her separation, and await consideration of the PY2022 IDPL CDR selection board.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 23, 2020, the Chair sent the applicant a copy of the Coast Guard's views and invited her to respond within thirty days. In her response, the applicant disagreed with the Coast Guard's recommendation and provided context as to the reason she did not review her record before the selection boards.

The applicant stated that in 2018, she was in zone for promotion to CDR. She stated that at the time, she intended to finish her 20 year service requirement and retire as an LCDR. The bulk of her Coast Guard career was spent at the Coast Guard Academy. She acknowledged that promotion to CDR was competitive and customarily bestowed to members with more operational experience. The applicant stated that she was realistic and happy to serve the rest of her career as an LCDR.

In September 2018, the applicant was non-selected for promotion to CDR. The applicant alleged that it was around this time that she learned that LCDRs in the Coast Guard Reserve were not automatically retained. She attributed this misunderstanding to her active duty background as well as a lack of robust Reserve structure at the Coast Guard Academy. Consequently, she began to engage her Supervisor to prepare a Regular OER so that she would meet the criteria for retention during the next board. She stated that she repeatedly reminded her command to prepare an OER that accurately reflected her performance. The applicant stated that she was repeatedly assured that

her OER was being prepared. However, the applicant stated that she did not receive a draft of the OER until May 2019, more than seven months after first engaging her Supervisor. She stated that she immediately signed the OER and returned it to her Supervisor. The applicant stated that at that point, the Reporting Officer informed her that the OER had been “taken care of.” She stated that given the numerous assurances that her OER was in transit, she had no reason to suspect that the OER was never submitted.

The applicant acknowledged that members should review their records for accuracy and completeness. In fact, the applicant stated that during the seven month preparation of her OER, she reached out to PSC-RPM over the phone. She stated that she spoke with a person about her situation in order to ascertain exactly what she needed to submit. She stated that she did everything that she believed was reasonably in her power. Despite her responsibility to review her record, the applicant argued that it was ultimately the responsibility of the Coast Guard Academy to submit an OER to document her performance. She argued that her command neglected to submit her OERs, which directly resulted in her non-selection for promotion.

The applicant concluded by arguing that her discharge was an injustice. She stated that the Coast Guard made an administrative error which led to her discharge after seventeen years of excellent service. She argued that as a result, she is denied compensation for her work as though her efforts were inadequate. The applicant argued that the proper remedy for the injustice would be to either grant her selective retention and retroactively grant her credit for the time in service that she missed, or grant her early retirement to recognize the many years of dutiful service that she has given to the Coast Guard.

APPLICABLE LAW AND POLICY

Article 5.L. of the Officer Accessions, Evaluations, and Promotions, COMDTINST M1000.3A, determines when IDPL scheduled officers will follow the ADPL schedule in relevant part:

1. IDPL scheduled officers on active duty, including multiple sets of active duty orders, for 181 consecutive days or greater must follow the ADPL submission schedule and be treated as an ADPL schedule officer for as long as they remain on active duty. If Article 5.L.1. applies, no other Article in 5.L may apply.
2. IDPL schedule officers performing active duty of any length at their permanent unit must have the performance documented in their regular OER and not a concurrent OER.
3. IDPL schedule officers performing active duty for 30 days or less at a unit other than their permanent unit may have the performance documented in a concurrent OER or in their regular OER.
4. IDPL schedule officers performing active duty for over 30 day but less than 180 days at a unit other than their permanent unit must have the performance documented in a concurrent OER.
5. Officers in the IRR and ASL who are authorized to drill for points must have the performance documented in a Regular OER according to the IDPL submission schedule. Officers in the IRR and ASL who do not have drill for points authorization must receive a Continuity OER according to the IDPL submission schedule.

6. Officers in the IRR and ASL performing active duty for 180 days or less must have the performance documented in a Concurrent OER according to the IDPL submission schedule.

Article 7.B.4.d. of the Coast Guard Officer Evaluation System Procedures Manual, PSCINST M1611.1A, states that IDPL officers in the IRR who are authorized to Drill for Points Only will receive a Regular OER from the command at which the member is drilling.

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 requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.⁴
3. The application is timely because it was filed within three years of the applicant's discovery of the alleged error or injustice in the record, as required by 10 U.S.C. § 1552(b).
4. The applicant alleged that her failure to be selected for retention and her non-selections for promotion by the PY2019 and PY2020 IDPL CDR selection boards were erroneous and unjust because her Regular OERs were missing from her record at the time the boards convened. 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 the military record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁵ 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."⁶
5. In this case, the Coast Guard has acknowledged that the applicant's 2016-2018 Regular OER was not validated and entered into her record before the PY2019 IDPL CDR selection board convened. Further, the Coast Guard acknowledged that the applicant's 2016-2018 Regular OER and 2018-2019 Regular OER were not validated and entered into her record before the PY2020 IDP CDR selection board convened. Instead, the applicant's record contained Continuity OERs prepared by Headquarters to document her continued service. Despite the applicant's record lacking two required Regular OERs, the JAG argued that the applicant's record was complete when it was reviewed by the selection boards because her record contained Continuity OERs. However, according to Article 7.B.4.d. of the Coast Guard Officer Evaluation System Procedures Manual, IDPL officers in the IRR who are authorized to Drill for Points Only are required to have their performance documented in a Regular OER. This requirement was

⁴ *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

⁵ 33 C.F.R. § 52.24(b).

⁶ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

further established in the Coast Guard Academy's endorsement of the applicant's request to Drill For Points Only in which her command acknowledged their responsibility for completing and submitting OERs in accordance with the Coast Guard OER System Procedures Manual assuming administrative control over her. The JAG failed to submit any evidence that Continuity OERs were an appropriate replacement for the Regular OERs that were required to document the applicant's performance.⁷

6. The JAG also argued that the applicant's record was complete because she was ultimately responsible for her record. Specifically, the JAG argued that the applicant should have reviewed her record for accuracy and completeness before it was reviewed by the selection boards. This Board has held that if a member wants optional documents to be considered by a selection board, the burden is on the officer to ensure such documents are in their record.⁸ However, an officer's record is incomplete for the purposes of a selection board if there is a missing OER. As noted by the Officer Accessions, Evaluations and Promotions Manual, performance evaluations are considered the single most significant criteria in assessing an officer's performance and readiness for promotion.⁹ While the applicant was ultimately responsible for her record, such responsibility does not negate the fact that the applicant's command was negligent in their duties to timely submit Regular OERs in accordance with Coast Guard policy. Further, the record shows that the applicant contacted her Reporting Officer and emphasized the importance of submitting her OER to Headquarters for her continued service in the Coast Guard. Therefore, the Board finds that the applicant has proven by a preponderance of the evidence that her military record was incomplete in that it was missing the 2016-2018 Regular OER when it was reviewed by the PY2019 IDPL CDR selection board and the 2016-2018 Regular OER and 2018-2019 Regular OER when it was reviewed by the PY2020 IDPL CDR selection board.

7. Under *Engels v. United States*, when a Reserve officer proves that her record contained an error when it was reviewed by a selection board, the Board must answer two questions to determine whether the officer's non-selection for promotion should be removed from her record: "First, was [her] 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 she would have been promoted in any event?"¹⁰

8. The Board is persuaded that the applicant's record was prejudiced before the PY2019 and PY2020 IDPL CDR selection boards. In this case, three years of the applicant's service as an LCDR were documented on Continuity OERs instead of Regular OERs. Continuity OERs do not contain any performance marks or comments because it is prepared "for continuity purposes only." On the other hand, the applicant's two missing Regular OERs are highly favorable to her. In both Regular OERs, the applicant received only excellent and outstanding marks. Further, in both Regular OERs, the applicant's Reporting Officer indicated that she should be promoted with the top 20% of her peers. Therefore, the Board finds that the applicant's record was

⁷ According to Article 12.a. of PSCINST M1611.1C., Continuity OERS may be submitted in cases where an OER is required by policy, but full documentation is impractical, impossible to obtain, or does not meet OES goals.

⁸ BCMR Docket Nos. 2014-016, 2014-171, 2015-070, 2016-089.

⁹ Article 6.A.3.b. of COMDTINST M1000.3A.

¹⁰ *Engels v. United States*, 678 F.2d 173, 176 (Ct. Cl. 1982). (Although *Engels* has been superseded by 14 U.S.C. § 2120 for active duty commissioned officers, that section of the code does not apply to Reserve officers.)

prejudiced by error when the selection boards reviewed it, and the first prong of the *Engels* test is met.

8 When an officer shows that her record was prejudiced before a selection board by error, “the end-burden of persuasion falls to the Government to show harmlessness—that, despite the plaintiff’s *prima facie* case, there was no substantial nexus or connection” between the prejudicial error and the failure of selection.¹¹ To void a non-selection, the Board “need not find that the officer would in fact have actually been promoted in the absence of the error, but merely that promotion was not definitely unlikely or excluded.” In this case, the JAG acknowledged that that Regular OERs are preferable to Continuity OERs, but argued that it is unknown whether the selection boards found the distinction material in its deliberations. To support this assertion, the JAG argued that the PY2019 and PY2020 CDR IDPL selection boards were extremely competitive. However, stating that both selection boards had approximately a 50% selection rate is insufficient to show that it is unlikely that the applicant would have been selected for promotion in any event. Moreover, the applicant’s performance record contains no negative OER marks or comments or other entries that would have precluded her selection for promotion. Accordingly, the applicant’s non-selection for promotion by the PY2019 and PY2020 IDPL CDR selection boards should be removed from her record.

9. Both prongs of the *Engels* test have been met, and so the applicant is entitled to relief. The applicant’s record should be corrected by:

(a) replacing the 2016-2018 and 2018-2019 Continuity OERS in her record with the Regular OERs submitted by her rating chain at the Academy;

(b) correcting her record to show that she was not separated from the Reserve in 2020 but was instead selected for continuation and has continued as a member of the Reserve with no break in service;

(c) assigning her to a Reserve unit so that she can at least drill for points as a member of the IRR;

(d) retaining her as an officer in the Reserve for at least three full years so that she will have an opportunity to earn three more satisfactory years of service toward retirement; and

(e) if she is selected for promotion to CDR by the first or second CDR IDPL selection board to review her corrected record, back date her CDR date of rank to what it would have been had she been selection for promotion by the PY2019 or PY2020 IDPL CDR selection boards, respectively, and pay her any backpay and benefits she would be due as a result of the correction.

(ORDER AND SIGNATURES ON NEXT PAGE)

¹¹ *Christian v. United States*, 337 F.3d 1338, 1343 (Fed. Cir. 2003); *Quinton v. United States*, 64 Fed. Cl. 118, 125 (2005).

ORDER

The application of former LCDR [REDACTED] [REDACTED] [REDACTED] USCGR, for correction of her military record is granted in part as follows:

(a) replacing the 2016-2018 and 2018-2019 Continuity OERs in her record with the Regular OERs submitted by her rating chain at the Academy;

(b) correcting her record to show that she was not separated from the Reserve in 2020 but was instead selected for continuation and has continued as a member of the Reserve with no break in service;

(c) assigning her to a Reserve unit so that she can at least drill for points as a member of the IRR;

(d) retaining her as an officer in the Reserve for at least three full years so that she will have an opportunity to earn three more satisfactory years of service toward retirement; and

(e) if she is selected for promotion to CDR by the first or second CDR IDPL selection board to review her corrected record, back date her CDR date of rank to what it would have been had she been selection for promotion by the PY2019 or PY2020 IDPL CDR selection boards, respectively, and pay her any backpay and benefits she would be due as a result of the correction.

[REDACTED] [REDACTED]

May 27, 2022

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