

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-161

FINAL DECISION

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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 application was docketed on July 30, 2004, upon receipt of the applicant's completed application and military records.

This final decision, dated April 21, 2005, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant asked the Board to correct his military record by removing a special officer evaluation report (OER) for the period from April 10, 2002 to April 10, 2002, from his record.

The Special OER

The OER covers a period when the applicant was a student under instruction at a university working on an advanced degree. The special OER was prepared to document the applicant's involvement in plagiarism.¹ The OER marks were non-

¹ A letter from the Dean of Students dated April 25, 2002, advised the applicant that the Honor Committee hearing panel found the applicant responsible for the violation of plagiarism and imposed the following sanctions:

"1. A recommendation is being sent to [the instructor] that you be given a failing grade in the course.

observed except for the reporting officer's portion of the OER. In that portion, the applicant's marks (on a scale of 1 to 7, with 7 being highest) were marks of 2 in initiative, responsibility, and professional presence, and a 1 in judgment. The reporting officer wrote:

[The applicant] while DUNIS [duty under instruction] at [a] University, displayed extremely poor judgment by plagiarizing information in two separate reports submitted as part of the required coursework for INFO 790 Info SYS Policy & Admin. The member was found guilty by the university of an Honor Code Violation, and received an "F" in the course. The member's conduct is clearly not in alignment with our core values, and has brought discredit to the Coast Guard. [The applicant] did not complete the necessary courses for the . . . PG program and was, therefore, not awarded a degree.

The reporting officer rated the applicant as unsatisfactory (the lowest of 7 places) on the comparison scale (Block 9 on the OER) where the reporting officer compares the reported-on officer with others of the same grade whom he has known throughout his career.

In Block 10 the reporting officer wrote the following with respect to the applicant's potential for greater leadership and responsibilities:

Until [the applicant] demonstrates a willingness to keep his chain of command informed and exhibits the Coast Guard Core Values, his potential for service in greater roles and responsibilities remains significantly limited. It should not be overlooked that [the applicant's] educational achievements are needed by the Coast Guard -- and if combined with proper and professional qualities --will serve the Coast Guard quite well. With a recent selection to LT and this current period of performance, I cannot recommend him for promotion.

The applicant submitted an addendum to the special OER. He wrote the following:

1. While DUINS at . . . University during the summer of 2001, I was accused of an Honors Code violation of plagiarism. During [a certain course] we were required to write two 3-page papers. After turning in the first paper, and before I knew there was a concern regarding plagiarism, I turned in the second paper to the same professor. Upon discussing the first paper with the professor and the professor telling me that this paper was borderline plagiarism, I got a better understanding of the requirements. I informed the professor that the second paper was written similar to the first paper and requested to take a late penalty by retracting the second paper to rewrite it. He told me that I could

"2. You must attend a Writing Center Workshop on the question of how to avoid plagiarism. If such a workshop is unavailable prior to June 1, you must contact me to arrange for an alternate experience that will instruct you on the same topic.

"3. You are cautioned that any future violation of the Honor Code would result in your separation from the University."

not retract the paper based on his rules. After he reviewed the second paper, he determined that both papers were plagiarized and submitted them before [the] Honor Committee.

2. I unintentionally committed plagiarism, not intending to bring discredit to the Coast Guard, [the] University, . . . or self. As a result, I take full responsibility for my actions. In the spring of 2002, to redeem myself with the University, the Coast Guard, and self, I took the class again and received a B+.

3. As for receiving a MS degree, I am still pursuing the completion of the Degree requirements for a Masters of Science in Information System from [the] University. I am committed to completing the degree and put my education to good use in the Coast Guard. I feel that I have grown from this entire experience and if given a second chance, I will continually strive to grow the organization as well as myself professionally and ethically. I request the opportunity to redeem myself and to continue to have a successful career as an Officer in the United States Coast Guard.

APPLICANT'S ALLEGATIONS

The applicant alleged that the special OER portrays him as having engaged in a one-time integrity breach plagiarism while assigned to DUNIS at a university. He argued that the incident did not involve an intentional integrity breach, but rather, it was an act of innocence and misunderstanding not warranting a special OER.

As a result of the special OER, the applicant, who was on the list for promotion to lieutenant (LT), had his record placed before a special board to determine whether his name should be removed from the LT's promotion list. The special board that convened on November 6, 2002, recommended that the applicant's name not be removed. The special board stated the following:

It was the unanimous opinion of the board members that [the applicant] did not intentionally violate the honor code at [the] University. This was based mainly on his current command's endorsement. His office chief spoke directly with the Dean of Academics who stated that the incident was more an educational issue vice an integrity issue. The school's position was to solve the incident by having the student take a technical writing course. While [the applicant's] performance at school was not exceptional we found that he did not violate the Coast Guard's core values of Honor, Respect, and Devotion to Duty.

The applicant argued that the special board's refusal to recommend the removal of his name from the LT's promotion list is inconsistent with the Personnel Records Review Board's (PRRB) decision not to remove the special OER from his record. On August 25, 2003, the PRRB issued a decision refusing the applicant's request to have the special OER removed from his record. The PRRB stated that the applicant had not "provided evidence that overcomes the presumption of regularity with regard to the preparation, submission, and validation of the special OER." In reaching its ultimate conclusion, the PRRB offered the following two opinions on the case:

1. Applicant's Supervisor and Reporting Officer provided appropriate performance-based documentation of a "behavior of substance" in accordance with the provisions of [the Personnel Manual].
2. The Special Board's decision not to remove Applicant from the LT promotion list is not inconsistent with his rating chain's appropriate documentation of the incident in his OER. Applicant is not entitled to have all documentation of the incident erased from his record merely because the Special Board did not find his conduct egregious enough to remove him from the promotion list.

The applicant argued that since there is no regulatory guidance provided for "distinguishing between retention on a promotion list grounded in a Special OER and keeping that same Special OER in the service member's record, an examination of the facts is required." He submitted a copy of a page from the Honor Code of the University, which defined plagiarism and cheating. According to the page of the Honor Code submitted by the applicant, plagiarism encompasses the following:

1. Presenting as one's own the words, the work, or the opinions of someone else without proper acknowledgment.
2. Borrowing the sequence of ideas, the arrangement of material, or the pattern of thought of someone else without proper acknowledgement.

The page from the Honor Code submitted by the applicant stated that cheating encompasses the following:

1. The willful giving or receiving of an unauthorized, unfair, dishonest, or unscrupulous advantage in academic work over other students.
2. The above may be accomplished by any means whatsoever, including but not limited to the following: fraud; duress; deception; theft; trick; talking; signals gestures; copying from another student; and the unauthorized use of study aids, memoranda, books, data, or other information.
3. Attempted cheating.

The applicant argued that unlike cheating and lying, which includes willful deception, plagiarism contemplates merely the failure to provide "proper acknowledgement" of source information. In this regard, he stated that plagiarism contemplates the spectrum of possibilities from innocent failure of proper acknowledgement through negligent failure to intentional failure. He argued that the language in the OER inaccurately depicts the applicant as having engaged in an intentional act of wrongdoing--namely plagiarism-- and is contrary to what actually happened. He asserted that intentional plagiarism would overlap with the Honors Code violation of cheating, which is "[t]he willful giving or receiving of an unauthorized, unfair, dishonest, or unscrupulous advantage in academic work over

other students." He argued that at no time was he found to have cheated or to have engaged in any intentional act of wrongdoing. He noted that the letter from the Honor Board advising him that he had plagiarized did not say that his failure was an intentional act. He stated that a memorandum from his then office chief, Capt S, summarizing a November 1, 2002, conversation between Capt S and the Dean of Students at the University² is evidence that his plagiarism was unintentional. The applicant's brief provided the following comments with quotations from Capt S's reported conversation with the Dean:

- a. The professor was "an unbending son of a gun" who seemed to have a chip on his shoulder over the incident. This can easily translate into bias to include anti-military, race, or academic snobbery.
 - b. The plagiarism involved Applicant "footnoting the sources, but failed to use quotation marks for direct quotes."
 - c. The matter was an "educational vice integrity issue."
 - d. One of the sources not quoted was the professor himself. It was difficult for the Dean to imagine anyone who would intentionally quote his own professor without quotation marks.
- c. The university did not regard this an egregious offense.

The applicant argued that the evidence demonstrates that there was no negative "behavior of substance" within the meaning of Article 10.A.3.c.1.d. of the Personnel Manual. He stated that at most, he simply had a lack of understanding as to the plagiarism standard of the University. "Surely footnoting a quote without quotation marks falls within the ambit of learning a experience. The footnote was a map to the quotation. No one bent on dishonesty would be so naïve as to provide such a map."

The applicant stated that he reported the incident to the Coast Guard. He further stated as a matter of honor he completed the course work on his own and earned his Master's Degree in Information Systems.

VIEWS OF THE COAST GUARD

On November 18, 2004, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request.

² This is the office chief's endorsement that the special board relied upon in recommending that the applicant not be removed from the LT's promotion list.

The JAG stated that absent strong evidence to the contrary, government officials are presumed to have carried out their duties correctly, lawfully, and in good faith. Arens v. United States, 969 F.2d 1034, 1037 (1992). He stated that the applicant has the burden of proving error. In this regard, he stated that the applicant plagiarized two papers while attending graduate school, which was his primary duty assignment. He asserted that the applicant's action brought discredit to the United States Coast Guard and illustrated the applicant's lack of adherence to the Coast Guard's Core Values of Honor, Respect, and Devotion to Duty. The JAG stated that the Coast Guard acted appropriately and in accordance with established policies and regulations in completing a special OER to document applicant's embarrassing and substandard performance of duty. He further stated, "far from committing error or working an injustice, the Coast Guard's response was far more tolerant than Applicant had any right to expect."

The JAG attached to his advisory opinion a memorandum from the Commander, Coast Guard Personnel Command (CGPC), who also recommended that the applicant's request be denied. He stated that the University's Honor Code makes no distinction between intentional and unintentional plagiarism; and no such distinction is made in the comments of the special OER. CGPC stated that the applicant was found guilty of plagiarism, and the rating chain for the special OER determined that he exercised poor judgment and that his conduct was not in accord with the core values of the Coast Guard.

CGPC stated that the statement obtained from the professor who accused the applicant of plagiarism rebuts the assertion that the plagiarism was an educational rather than an integrity issue. The professor disagreed with the applicant that the matter was trivial and stated that the applicant's actions reflected a clear and intentional disregard of the ethical standard pertaining to scholastic achievement and a complete lack of remorse for his deceitful actions aimed at earning credit for a work product that was not his own. "Indeed, [the applicant's] was the most blatant Honor Code infraction that I have ever had to report for disciplinary action." He described what happened in the following manner:

[The applicant] enrolled in [a course], and was assigned to write two research papers as part of the course requirements. [The applicant] submitted his first paper on time, but upon inspection, some of the phrasing and the general sophistication of the prose caused me to be skeptical that his was his own work product. After examining the sources he had listed, I was convinced that the paper was not his own. However, even I was surprised when further investigation revealed that he had copied the paper from an assigned class reading written by the professor in charge of the course . . . Please note that I mean this quite literally: the paper from the first word to the last was copied from the reading with almost no changes. He simply "borrowed" entire paragraphs of text and represented them as his own without any sort of attribution. And, the fact that he failed to list the reading in his reference list reflects a clear intent to conceal his actions. (I should also note that I spent considerable time during the first few classes explaining

how to properly format papers and warning students about the serious consequences associated with plagiarism. In addition, the syllabus addressed each of these concerns.)

CGPC noted that the Dean who allegedly told the applicant's then-office chief that he viewed the entire matter as an education vice integrity issue is in fact the official who signed the letter informing the applicant that the Honor Committee found that he had committed plagiarism. CGPC stated that while the Dean's opinion on the seriousness of the plagiarism violation is noteworthy, the facts outlined by the Honor Committee's findings and the declaration from the instructor indicate the violation was more than an educational issue.

CGPC recognized that the special board recommended that the applicant's name not be removed from the LT promotion list. CGPC stated that the special board reached its recommendation based mainly on the endorsement of the applicant's then-office chief that the applicant did not intentionally violate the Honor Code. CGPC explained that "[t]he special board did not have the facts provided by the declaration[] of the instructor[], and the copy of the subject course work. Whether these facts would have changed the decision, one can only speculate. The fact of the matter, however, is the results of the special board have no bearing, and provides no evidence that overcomes the presumption of regularity with respect to the construction or submission of the Special OER."

GGPC stated that the applicant's claim that the PRRB ignored the facts and relied instead upon the inflammatory words of the reporting officer in reaching its conclusion is unfounded. He stated that the applicant provided no proof that the OER contained an error of fact or was incorrectly drafted, except for his allegation that the reporting officer's comments were inflammatory.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 24, 2005, the Board received the applicant's reply to the advisory opinion. He stated that he stood upon his prior assertions that the alleged plagiarism was born of a misunderstanding and not a conscious decision to plagiarize.

APPLICABLE LAW

Personnel Manual (COMDTINST M1000.6A)

Article 10.A. 3.c.1 of the Personnel Manual provides that the Commandant, Commanding Officer, higher authority within the chain of command, and Reporting Officers may direct a Special OER.

Article 10.A.3.c.1.d. states that a special OER may be submitted to document "significant historical performance or behavior of substance and consequence" which was unknown when the regular OER was prepared and submitted.

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 submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code. The application was timely.

2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.31, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.

3. The Board finds that the special OER accurately reports the fact that the applicant, while assigned to duty under instruction at a civilian university in a graduate program, committed plagiarism. While the applicant attempted to cast his plagiarism as an unintentional act, the facts are that the applicant's then instructor believed that two of the applicant's papers contained plagiarism and he reported the applicant's alleged violations to the Honor Committee. The Honor Committee determined that the applicant had engaged in plagiarism, recommended that he receive an "F" for the course, ordered him attend a writing workshop, and warned him that any further infraction would result in his separation from the university.

4. An April 25, 2002, letter from the Dean of students advised the applicant that the "Honor Committee hearing panel found [the applicant] responsible for the violation [plagiarism]." There was no indication in that letter that the hearing panel made any distinction between intentional and unintentional plagiarism. Nor does the Honor Code page provided by the applicant make such a distinction. Therefore, the Board finds that the Honor Committee was satisfied that the applicant's conduct met its definition of plagiarism. The sanctions imposed on the applicant further convince the Board that the plagiarism was a serious infraction and not merely an innocent act as portrayed by the applicant. To be given an "F" as a final grade in the course and instructed to attend a writing workshop, constitute major punishment. It is interesting to note that the applicant doesn't focus on the portion of the sanctions that recommended he receive an "F" for the course, but only the portion that directs him to take a writing course.

5. The applicant's argument that his plagiarism was unintentional and resulted from a lack of education is not persuasive. The Board considers the Dean's alleged oral statement that he considered the applicant's violation to be an educational rather than integrity issue to be his opinion and it will not be attributed to the Honor Committee. The Dean cannot speak for the Honor Committee because there is no indication in the record that he served on that committee. Moreover, there is no indication that he attempted to intervene on behalf of the applicant, as one would expect, if he felt strongly that the applicant's violation resulted entirely from a lack of knowledge on how to properly credit work that was not his own. In contrast to the Dean's statement, the professor who accused the applicant of plagiarism wrote that the applicant's plagiarism "was the most blatant Honor Code infraction that I have ever had to report for disciplinary action." The professor wrote that the applicant "borrowed" entire paragraphs of text and represented them as his own without any sort of attribution. In addition, the professor stated that he spent time during the first few classes explaining how to properly format papers and warning students about the serious consequences associated with plagiarism.

6. The applicant argued that the special board's justification for not recommending his removal from the promotion list and his then-office chief's letter to the special board that the plagiarism was due to a lack of education corroborate his contention that the plagiarism was unintentional on his part and should not have been the subject of a special OER. The special board and the then-office chief may draw whatever opinions they wish from the facts as they view them. However, the finding of the Honor Committee and the accuracy of the special OER are the important issues here. The Board notes again that the Honor Code, provided by the applicant, makes no distinction between intentional and unintentional acts and neither did the Honor Committee when it found the applicant guilty of plagiarism.

7. The applicant argued that the special board's recommendation that his name not be removed from the promotion list is somehow inconsistent with the PRRB's decision that the special OER should remain in his record. These Boards serve different functions and may reach different conclusions. The special board was not convened to determine the validity of the OER but rather to determine in light of the applicant's entire record, particularly the special OER and other evidence submitted by the applicant, whether the applicant should be promoted to LT. Apparently the special board was persuaded by the then-office chief's statement summarizing his conversation with the Dean, who stated that he considered the applicant's plagiarism more of an educational issue, and the then-office chief's positive observations of the applicant and his performance since the infraction. The Board notes that the special board's determination might have been different if it had reviewed the professor's statement.

8. The PRRB, on the other hand, determined whether the OER covering a specific performance period was prepared in accordance with the Personnel Manual.

The Board finds no inconsistency in the actions of the special board and the PRRB. Apparently, the applicant impressed his then-office chief enough that the office chief was able to recommend that his name remain on the promotion list. However, the applicant's excellent subsequent performance and his then-office chief's positive observations are not proof that the reporting officer's comments and marks in the special OER, covering a period when the then-office chief was not a member of the rating chain, are an inaccurate assessment of the applicant's performance at the time.

9. The Honor Committee determined that the applicant was responsible for plagiarism and the reporting officer determined that a special OER was required to document the applicant's "behavior of substance and consequence" in this regard. The reporting officer's comments that the applicant's plagiarism showed poor judgment, brought discredit upon the Coast Guard, and was not in accord with the Coast Guard's core values, are the reporting officer's assessment of the applicant's performance and must be respected unless something in the OER is shown to be inaccurate. Different opinions of an event offered by others do not make the reporting officer's comments or marks inaccurate. The applicant plagiarized and was sanctioned to receive an "F" and to take a writing course. The special OER reports the applicant's act of plagiarism and the CO's evaluation of the applicant in light thereof.

10. The applicant has not shown by a preponderance of the evidence that the special OER was prepared in violation of the Personnel Manual. Accordingly, the applicant's request for relief should be denied

ORDER

The application of _____ USCG, for correction of his military record is hereby denied.

Nancy L. Friedman

Adrian Sevier

Thomas H. Van Horn