

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2006-154

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

FINAL DECISION

AUTHOR: Ulmer, D.

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 case on August 4, 2006, upon receipt of the completed application.

This final decision, dated May 11, 2007, is approved 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 her record by removing a special officer evaluation report (SOER) for the period from April 28, 2003 to May 8, 2003. She also requested that an administrative remarks entry (Page 7) be removed from her record as well as a punitive letter of reprimand.

BACKGROUND

At the time the applicant filed her application with the Board she was a lieutenant junior grade (LTJG) serving under an active duty agreement for a period from September 25, 2002 until September 24, 2005. On March 11, 2005, the applicant's active duty agreement was extended for two years with an expiration date of June 30, 2007.

On May 8, 2003, a page 7 entry was placed in the applicant's record counseling her on the Coast Guard's policy prohibiting romantic relationships outside of marriage between commissioned officers and enlisted personnel. The applicant was ordered to refrain from any personal relationship with a BM3 and advised that she should interact with him on a professional basis only. She was warned that a violation of the order was punishable under the Uniform Code of Military Justice (UCMJ).

On May 8, 2003, the applicant was awarded a letter of reprimand at non-judicial punishment (NJP) by her commanding officer (CO) for fraternizing with BM3, a violation of Article 134 of the UCMJ. The letter of reprimand stated the following:

You exchanged personal mobile phone numbers, met for dinner, which included the consumption of alcohol, and were later apprehended by U.S. Army Military Police in a secluded and off limits part of Fort Eustis Army Base. Your actions caused you to be disenrolled from MLE School and a loss of the billet for the ship. Your misconduct belies the Coast Guard core values of honor, respect, and devotion to duty and denigrates your position as a Commissioned Officer. Moreover your misconduct had a negative impact on your command and the Coast Guard.

On May 8, 2003, the applicant acknowledged the letter of reprimand and her right to appeal it. (There is no evidence in the record that the applicant appealed the NJP.)

A SOER for the period April 28, 2003, to May 8, 2003, with the letter of reprimand attached, was prepared and submitted for the following reasons:

This OER is submitted under Article 10.A.3.c.1.(1) due to [the applicant] being awarded a punitive Letter of Reprimand following UCMJ proceedings and being found in violation of Article 134, fraternization, of the Uniform Code of Military Justice.

In Block 8 (Personal and Professional qualities) of the SOER, the applicant's observed marks consisted of 3s in the judgment, responsibility, and professional presence categories. The comments in the block were as follows:

Demonstrated poor judgment by knowingly engaging in fraternization with enlisted member of crew while assigned TAD to MLE School. [The applicant] was later detained by U.S. Army Military Police after being located in a parked vehicle w/enlisted member in a remote & off limits area of Fort Eustis Army base. [The applicant] was disenrolled from MLE School due to incident. [The applicant's] actions had a negative impact on this command & on the Coast Guard.

The applicant was given a mark of 4 on the comparison scale where the reporting officer compared her with other LTJGs that he has known throughout his career.

In block 10 of the SOER, the reporting officer described the applicant's potential in the following manner:

[The applicant's] hit the deck plates running & quickly became a valued member of crew. Prior to incident that triggered this OER, [the applicant's] performance was above average for a newly assigned JO & was on track for recommendations as CO/XO Afloat WPB & Grad school. Despite this unfortunate incident I highly

recommend retention of this officer in the CG & strongly believe [the applicant] can continue to be a valued member of the crew & CG. I believe this was a one time incident & this officer has learned from the mistake.

ALLEGATIONS

The applicant alleged that the SOER should be removed because the comments give the impression that she was involved in two separate and distinct instances of fraternization. She cited to the following comments in support of her allegation: “Demonstrated poor judgment by knowingly engaging in fraternization with enlisted member of crew while assigned TAD to MLE School. [The applicant] was later detained by U.S. Army Military Police after being located in a parked vehicle w/enlisted member in a remote & off limits area of Fort Eustis Army base.”

With respect to the page 7 counseling entry, the applicant alleged that it refers to a romantic relationship, which was never an issue. In this regard, she states that neither the letter of reprimand nor the SOER refer to a romantic relationship.

Regarding the punitive letter of reprimand, the applicant alleged that it is not supported by either the SOER or the page 7, which she states is in error.

The applicant stated that the counseling she received at the time of the incident and the comments in block 10 of the SOER indicated that the violation was a one time incident and that it would not affect her future Coast Guard career. She stated this indication was reinforced by the CO’s recommendation that she be promoted with her peers. However, the applicant stated that she was not selected for promotion to LTJG by the first selection board to consider her record because of the fraternization incident, but she was selected by the second board. She stated as a result of the incident she was offered only a one year extension of her active duty contract, which she claims will only permit her to have one opportunity for selection to LT. She alleged that the mentoring given to her at the time of the incident was misleading and it has clearly affected her career.

VIEWS OF THE COAST GUARD

On December 21, 2006, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant’s request based upon the memorandum from Commander, Coast Guard Personnel Command (CGPC). CGPC offered the following in pertinent part:

The rating chain carried out its duties and accurately documented the applicant’s performance during the period of the disputed OER.

Based on their Declarations, the rating chain believes the disputed OER (and other affiliated documents) is justified due to the applicant’s misconduct . . . They are correct in their belief and the applicant’s arguments are without merit. The applicant claims that the disputed OER describes two incidents vice one and therefore the OER should be removed from her record. The applicant takes two

statements from Block 8 of the disputed OER out of context to support her argument. However, when a person reads Block 8 in its entirety, it is clear that the rating chain described one incident . . . Further, there is no merit to the applicant's argument that the [page 7 counseling entry] refers to the previous "romantic relationship" involving the applicant. According to the rating chain, the purpose of the [page 7] was to prevent the applicant from engaging in a romantic relationship in the future; it was not meant to document her previous misconduct . . . Based on the record, [the] applicant's rating chain correctly counseled the applicant and documented it. Finally, the applicant claims she was counseled that her misconduct would not impact her Coast Guard career. This argument is refuted by the applicant's rating chain . . . and it is without merit. There is no evidence that the rating chain mislead the applicant.

* * *

The OER for the period ending [May 8, 2003] accurately documents the applicant's performance during the rating period. Applicant has not provided evidence that overcomes the presumption of regularity with respect to the construction or submission of the disputed OER and the attached letter of reprimand. Also, [the page 7] is an accurate and appropriate counseling tool.

The Coast Guard obtained statements from the applicant's rating chain for the disputed SOER. The reviewer for the OER was also the CO, the reporting officer was the executive officer, and the supervisor was the operations officer.

The CO stated that the OER as written accurately reflects that after the applicant was observed fraternizing in a vehicle with a petty officer, she was subsequently detained by U.S. Army Military Police. He stated there was only one offense. With respect to the allegation about the page 7, the CO stated it was intended to prevent further fraternization with the petty officer who was also assigned to the ship.

The reporting officer stated that due to the appearance that a romantic relationship may have existed between the applicant and the petty officer, the applicant was counseled on Coast Guard policy which prohibits such relationships between commissioned officers and enlisted personnel outside of marriage. The reporting officer stated that he was at each counseling session and denies that the applicant was told that the incident would not affect her career. In fact, the reporting officer stated that "I have no doubts that [the applicant] was fully informed of the potential negative impact this incident may cause to her future career."

The supervisor wrote that he was the preliminary inquiry officer for the incident. He stated that he does not feel that the wording of the OER or other documentation is misleading. He noted the applicant's opinion that the SOER comments suggest two separate incidents; but he pointed out that in a subsequent sentence in the same comment block the word incident is used, which does not convey the impression of multiple incidents. The supervisor stated that the page 7 counseling entry put the applicant on notice that any future interaction with the petty officer should be only on a professional basis. The supervisor stated that the Punitive Letter of

Reprimand was awarded as a result of the UCMJ proceedings and does not contain any inconsistencies or misleading statements.

Each member of the rating chain commented on the high quality of the applicant's performance and her superior work ethic. According to the reporting officer and supervisor, this is the reason the command did its best to support the applicant's future in the Coast Guard, despite the fraternization incident.

APPLICANT'S REPLY TO THE VIEWS OF THE COAST GUARD

On December 27, 2006, a copy of the views of the Coast Guard was mailed to the applicant for a response. The BCMR did not receive a reply from the applicant.

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 alleged that the disputed SOER is misleading in that it suggests that she was involved in more than fraternization incident. While the first two sentences of the Block 8. comments may possibly be interpreted as suggested by the applicant, if the Block 8. comments are read in their entirety, it is clear that there was only one incident. The third sentence of Block 8 reads "The applicant was disenrolled from MLE School due to incident." In addition, the reporting officer stated in Block 10. of the OER, "I believe this is a one time incident & this officer has learned from the mistake." Accordingly, any possible confusion caused by the first two sentences in Block 8. is clarified by subsequent comments in that block as well as comments in block 10.

3. The applicant's argument that the page 7 counseling entry should be removed because neither the SOER nor the letter of reprimand uses the term romantic relationship is without merit. The Board finds no error in the use of this term. Based upon the statement from the CO and the reporting officer, the circumstances under which the applicant and the petty officer were discovered is probative evidence that they were involved in a romantic relationship. Moreover, the term fraternization includes such relationships if they exist between a commissioned officer and an enlisted member outside of marriage. Article 8.H.4. of the Personnel Manual makes clear that an officer who engages in a romantic relationship with an enlisted member outside of marriage is committing fraternization. Accordingly, the Board finds under the circumstances in which the applicant was discovered with the BM3, the page 7 counseling entry properly advised her about prohibited romantic relationships between enlisted members and commissioned officers. In addition the page 7 properly directed the applicant to cease her relationship with the enlisted member and warned her that if she violated the order she could be punished under the UCMJ.

4. The applicant's argument that the letter of reprimand should be removed because it is not supported by the SOER or the page 7 entry is without merit. The applicant was punished at NJP with a punitive letter of reprimand for fraternization. The NJP is independent of the SOER and the page 7 and may be placed in the applicant's record whether or not attached to an SOER. However, in this case Article 10.A.3.c.(1)(1) of the Personnel Manual required the submission of a special OER because of the NJP.

5. The applicant has presented only her view that she was misled by counseling she received at the time of the incident. In this regard, she stated that she was misled into believing that the NJP, SOER, and page 7 would not affect her career in a negative manner. All three members of the rating chain denied that they provided the applicant with any such counseling. Accordingly, the Board finds that she has failed to prove this allegation. The Board notes that it is implausible that senior officers, such as those in the applicant's rating chain, would provide such erroneous counseling. In the Board experience a NJP imposed on an officer usually has a significant negative effect on that officer's career.

6. Accordingly, the applicant has failed to prove error or injustice in this case and the Board finds no basis on which to grant relief. The SOER, letter of reprimand, and page 7 counseling entry appear to be accurate and properly placed in the applicant's record.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of her military record is denied.

Toby Bishop

James E. McLeod

Adrian Sevier