

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2011-118**

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**FINAL DECISION**

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case upon receiving the applicant's completed application on March 4, 2011, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated December 22, 2011, 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 Reserve captain (CAPT; O-6) with over 26 years of service, asked the Board to correct his record to show that in 2010 he was selected for retention in active service by the inactive duty promotion list (IDPL) CAPT retention board and that he has been retained in the active Reserve. He also asked the Board to reinstate him in a paid billet in the Selected Reserve.

The applicant alleged that when his record was reviewed by the retention board on July 7, 2010, a Meritorious Service Medal (MSM) he had been awarded by the Navy on June 22, 2010, was not in his record. The applicant alleged that the Navy mailed the documentation for the medal on June 22, 2010, but that the Coast Guard failed to enter it in his record before the retention board convened. The applicant stated that he did not learn of the Coast Guard's error until August 2010.

The applicant argued that because the Coast Guard's erroneous delay caused his performance record to be incomplete—missing a significant medal—when it was reviewed by the retention board, the result of the retention board—his non-selection for retention—should be vacated and he should be returned to active service in the Selected Reserve. In support of these allegations, the applicant submitted several documents and emails, including the following:

- ALCGRSV 029/10, issued on June 7, 2010, announced that the CAPT retention board would convene on July 7, 2010, “to consider all CAPTS in an active status who have 18 years or more of service for retirement. ... All captains who are not recommended for retention will be given the opportunity to retire by 30 JUN 2011 or will be transferred to the Stand-by Reserve, Inactive Status List (ISL). The OOS [opportunity of selection] is 88 percent. ... IDPL officers are encouraged to submit a communication to the board. ... Submissions must arrive at CG PSC-RPM [no later than] the day before the board convenes. ... All officers in-zone are encouraged to review their official record.”
- The precept for the CAPT retention board stated *inter alia* that the board “should give particular consideration to officers that stepped forward to take on the most difficult and challenging high-responsibility high-visibility assignments and leadership positions. Whether in mission execution—particularly those commanding operational units, in critical mission support assignments, or serving in high visibility details outside of the Coast Guard, these officers assumed increased risk, took on additional burdens and distinguished themselves as representatives of our service.”
- The U.S. Navy awarded the applicant a Meritorious Service Medal on June 22, 2010, for “outstanding meritorious service as Senior Coast Guard Officer at xxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxx from June 2008 to August 2010. [The applicant’s] distinguished leadership made an enduring contribution to the entire reserve community of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. ...”
- ALCGPSC 069/10, issued on August 10, 2010, announced the names of 36 Reserve captains (out of 41) who had been selected for retention. The applicant’s name is not on the list.
- On August 11, 2010, a Navy commander, the Chief Staff Officer of xxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxx, sent the applicant an email responding to an email from the applicant with the subject line “End of Tour Award.” The applicant’s email is not provided, but the Navy commander’s reply states, “CAPT, you were approved for an MSM on 22 JUN. xxxxxxxx forwarded it to your USCG cmd.”
- On August 12, 2010, the applicant forwarded the Navy commander’s email to the Reserve Program Management (RPM) division of the Personnel Service Center (PSC) stating, “Award and citation was sent to RPM. Please forward all to me. Also ensure copy of citation is scanned into my service record, and proper entries have been made into Direct Access [database].”
- On August 18, 2010, the chief of RPM advised the applicant in an email that the award had not been received. On August 27, 2010, the applicant advised the chief that “xxxxxxx reports it sent the award to RPM on 22 JUN. In an email to you OOA [on or about] 14 AUG I asked you to forward both the award and citation to me. I’ve not yet received either, nor an acknowledgment of my request.”

- On August 29, 2010, the Navy commander confirmed in an email to the applicant that the award had been mailed to RPM's correct address. On August 30, 2010, the applicant advised RPM in an email that he had received the "award and certificate were received at my home today. Attached is the citation and certificate. Please insert both into my service record, make appropriate entries in [Direct Access]." On November 1, 2010, the applicant requested confirmation that the award had been entered in his record. The chief of RPM replied, "your award was scanned and created in [Direct Access] on 9/21." On February 19, 2011, the applicant advised the chief that he had checked Direct Access and the award was not present. He requested corrective action. On February 22, 2011, the chief noted that the problem had been fixed.

## SUMMARY OF THE RECORD

The applicant enlisted in the Reserve in 1984 and was commissioned an officer in 1986. On July 1, 2003, when he was promoted to commander (O-5), he was serving on active duty as a District staff officer. On his OER for the period May 1, 2002, through March 31, 2004, the applicant received one mark of 4, eleven marks of 5, five marks of 6, and one mark of 7 in the various performance categories<sup>1</sup> and a mark in the fourth spot on the comparison scale.<sup>2</sup> The applicant continued serving on active duty and on his next OER, covering his service through March 31, 2005, the applicant received four marks of 5, ten marks of 6, and four marks of 7 in the performance categories and a mark in the fifth spot on the comparison, denoting an "excellent performer; give toughest, most challenging leadership assignments." On September 12, 2005, the applicant transferred and received an OER with one mark of 4, three marks of 5, twelve marks of 6, two marks of 7 in the performance categories and a mark in the fifth spot on the comparison scale.

In September and October 2005, the applicant served as a visiting faculty member at the xxxxxxxxxxxxxxxxxxxxxx, after which he became a staff officer on inactive duty for an Area Response Enforcement Branch. On his OER for the period ending December 14, 2006, the applicant received one mark of 4, three marks of 5, eleven marks of 6, and four marks of 7 in the performance categories. He also received a mark in the fifth spot on the comparison scale and a mark of "definitely promote" on the new promotion scale.<sup>3</sup> He was "strongly recommended for promotion with his peers," and he received a Commendation Medal for his prior work as a District staff officer from 1999 through 2005.

In December 2006, the applicant was transferred to a xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx to serve on inactive duty as the head of communications. On his OER dated March 31, 2007, he

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<sup>1</sup> In OERs, officers are evaluated in 18 different performance categories, such as "Professional Competence," "Teamwork," and "Initiative," on a scale of 1 to 7, with 7 being best.

<sup>2</sup> On an OER comparison scale, the reporting officer assigns a mark by comparing the reported-on officer to all other officers of the same grade whom the reporting officer has known throughout his career. Although the marks on the scale are not numbered, there are 7 possible marks, which range from a low of "unsatisfactory" for a mark in the first spot to a high of "Best officer in this grade" for a mark in the seventh spot. A mark in the fourth (middle) spot on the scale denotes the officer as a "good performer; give tough, challenging assignments."

<sup>3</sup> The new promotion scale has six possible marks: "recently promoted to O-5"; "already selected to O-6"; "do not promote"; "promotion potential"; "definitely promote"; and "accelerated promotion/in-zone reordering."

received one mark of 4, five marks of 5, eight marks of 6, and four marks of 7 in the performance categories; a mark in the sixth spot on the comparison scale, describing him as “one of the few distinguished performers”; and a mark of “accelerated promotion/in-zone reordering” on the promotion scale. Because the applicant’s reporting officer was a Navy captain, the Coast Guard reviewer on the applicant’s rating chain was required to complete a separate page with a promotion scale mark and a comparison scale mark. The reviewer assigned the applicant a mark of “definitely promote” on the promotion scale and a comparison scale mark in the fourth spot, noting that he was “considering performance compared to peers.”

In July 2007, the applicant was selected for promotion to captain (O-6) and became the Senior Reserve Officer at xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. On his OER dated June 7, 2008, the applicant received eleven marks of 6 and seven marks of 7 in the performance categories, a mark in the sixth spot on the comparison scale, describing him as “one of the few distinguished performers”; and a mark of “already selected to O-6” on the promotion scale. He received a Navy Commendation Medal for this work.

In July 2008, the applicant became the Senior Reserve Officer at xxxxxxxx. On his OER dated April 30, 2009, he received one mark of 5, fourteen marks of 6, and 3 marks of 7 in the various performance categories and, on the comparison scale, a mark in the fifth spot, indicating that he “has flag potential; should be given challenging assignments and considered with peers.” On his OER dated April 30, 2010, he received one mark of 5, thirteen marks of 6, and four marks of 7 in the various performance categories and another mark in the fifth spot on the comparison scale.

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

On June 23, 2011, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief and adopted the findings and analysis provided in a memorandum on the case prepared by the PSC.

The PSC stated that there is no evidence that the applicant pursued verification that the MSM had been entered in his record before August 12, 2010, more than a month after the retention board convened. The PSC pointed out that under COMDTINST 1410.2, “Coast Guard officers are responsible for their career development and maintenance of their records” and that ALCGRSV 029/10 advised in-zone officers (candidates for retention) to review their records. The PSC stated that “[a]lthough the applicant asserts that the Navy mailed the MSM to the CG PSC on June 22, 2010, no award for the applicant was received. CG PSC had no knowledge of the applicant’s award until August 12, 2010, when the applicant sent an email to CG PSC-rpm.” Therefore, the PSC concluded that the applicant “has failed to substantiate any error or injustice” in his record.

### **RESPONSE TO THE VIEWS OF THE COAST GUARD**

On July 30, 2011, the applicant responded to the views of the Coast Guard. He stated that he made every effort to ensure that his record was complete when it was reviewed by the retention board in July 2010. To support this allegation, the applicant submitted the following:

- On May 7, 2010, the applicant sent an email to a member at RPM requesting a copy of his record.
- On June 11, 2010, the applicant responded to an email regarding ALCGRSV 029/10 and noted that because of the endorsement requirement, he would not be able to submit his letter to the retention board until June 20, 2010. In reply, a Coast Guard officer noted that it was unclear whether an endorsement was required. The applicant replied that he would follow the instructions and get the endorsement of the Group Commander.
- Also on June 11, 2010, the applicant sent an email to the same person at RPM and cc'ed the chief of RPM stating that he needed his record as soon as possible because of the upcoming retention board. On June 16, 2010, the member at RPM responded and stated that he was creating the record and would be uploading it shortly. On June 18, 2010, the member sent the applicant an email with copies of his officer evaluation reports (OERs) and noted that other records would be attached to subsequent emails.
- On June 22, the Navy xxxxxxxx xxxxxxxxxx approved a recommendation that the applicant be awarded an MSM. The approved recommendation form shows that it was initiated on June 1, 2010; that the applicant was transferring to another unit; and that xxxxxxxx had RPM's correct address as the applicant's new duty station.
- On June 30, 2010, at 6:44 p.m., the applicant sent the xxxxxxxxxx an email with a copy of his letter to the retention board and his Record of Professional Development attached. He asked the xxxxxxxxxx to endorse the letter and forward it to the RPM no later than July 6, 2010. He did not mention a medal.
- On June 30, 2010, 6:59 p.m., the applicant also sent an email to the chief of RPM and attached to it his letter to the retention board and his Record of Professional Development. He asked the chief to ensure that they were entered in his record for consideration by the retention board. He did not mention any medal. He noted that he expected the xxxxxxxxxx would submit an endorsement separately.
- The applicant's letter to the retention board, dated June 30, 2010, outlines his career and excellent OERs. The applicant noted in the first paragraph of his letter to the retention board that he had recently been nominated for an MSM.
- The applicant submitted copies of pages of COMDTINST M1080.10I the manual for Military Personnel Data Records (PDRs) showing that the PSC is responsible for maintaining members records, including "electronically imaged documents necessary to support board and panel reviews," and that "[w]hen PSC-PSD-MR receives authorized documents to image, they shall complete the imaging process."

The applicant concluded that he has proved by a preponderance of the evidence that he worked actively to ensure that his record was complete before the retention board convened, that the Navy mailed the MSM to the Coast Guard on June 22, 2010, and that the Coast Guard erro-

neously failed to include the MSM in his record before the retention board reviewed it. The applicant argued that his evidence also proves that although the Coast Guard received the MSM from the Navy on or about June 22, 2010, the Coast Guard failed to forward a copy of it to him, as it should have, and therefore deprived him of the opportunity to contact RPM to ensure that the MSM was entered in his record before the retention board convened. The applicant argued that the PSC's lateness in emailing him his own record and in entering the MSM in his record after he provided it to them in August 2010 supports his claim that the PSC received the MSM that the Navy mailed on June 22, 2010, but failed to enter it in his record.

## 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 over this matter under 10 U.S.C. § 1552(a). The application was timely.

2. The applicant alleged that the Meritorious Service Medal awarded to him by the Navy was erroneously absent from his record when it was reviewed by the CAPT retention board on July 7, 2010, even though, he alleged, the MSM was in the Coast Guard's possession. The Board begins its analysis in every case by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.<sup>4</sup> Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."<sup>5</sup>

3. The applicant alleged that an August 11, 2010, email to him from a Navy officer stating, "CAPT, you were approved for an MSM on 22 JUN. xxxxxxxx forwarded it to your USCG cmd," proves that the Navy mailed the MSM to the Coast Guard on June 22, 2010. The Board disagrees. The email, like the award recommendation form and the citation for the MSM, shows that the medal was approved on June 22, 2010. There is no evidence whatsoever that the Navy sent the medal to the Coast Guard on that date or in time for it to be entered in his record before the retention board convened on July 7, 2010. In fact, the evidence of record indicates that the PSC had no knowledge that the MSM had been awarded until more than a month after the retention board convened.

4. The applicant's own letter to the retention board shows that as of June 30, 2010, he knew that he had been nominated for the MSM but had not discovered that it had been awarded. He submitted evidence showing that in early August 2010, he sent the Navy an email entitled "End of Tour Award" and was then advised that an MSM had been approved on June 22,

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<sup>4</sup> 33 C.F.R. § 52.24(b); *see* Docket No. 2000-194, at 35-40 (DOT BCMR, Apr. 25, 2002, approved by the Deputy General Counsel, May 29, 2002) (rejecting the "clear and convincing" evidence standard recommended by the Coast Guard and adopting the "preponderance of the evidence" standard for all cases prior to the promulgation of the latter standard in 2003 in 33 C.F.R. § 52.24(b)).

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

2010. The Coast Guard announced in ALCGRSV 029/10 that it would accept submissions through July 6, 2010, and accepted the applicant's submissions on June 30, 2010. The applicant was able, through his letter to the retention board, to inform that board that he had been nominated for the MSM. It is unfortunate that the communications that the applicant initiated in August 2010, when he emailed the Navy inquiring about whether he had received an end of tour award, did not occur in late June or early July 2010. However, the Board finds that the applicant has not proved by a preponderance of the evidence that the Coast Guard committed any error or injustice when it presented his record to the retention board without the MSM on July 7, 2010.

5. Accordingly, no relief should be granted because the applicant has not proved that his non-selection for retention in July 2010 resulted from an error or injustice in his military record.

**[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]**

**ORDER**

The application of xxxxxxxxxxxxxxxxxxxxxxxxx, USCGR, for correction of his military record is denied.

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Bruce D. Burkley

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Christopher M. Dunne

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Barbara Walthers