

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2011-214

XXXXXXXXXXXXX
XXXXXXXXXXXXX

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 after receiving the applicant's completed application on July 27, 2011, and assigned the case 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 April 19, 2012, 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 asked the Board to correct a Final Mishap Report and SF-600 medical record to show that she did not refuse medical evaluation or treatment when she was injured aboard a cutter in September 2010 and to correct the date of injury shown on these records. She alleged that she never refused medical evaluation or treatment and that the dates earlier than September 29, 2010, in those documents are erroneous because that was the date she was injured. In support of her allegations, the applicant submitted numerous documents, including the following:

- An October 5, 2010, hospital report shows that the applicant sought treatment for increased dizziness and disequilibrium on that date. She told the doctor that on September 29, 2010, she had fallen against a bulkhead and hit her head but had not lost consciousness. The doctor noted that the applicant had visited the hospital on October 3, 2010, complaining of nausea, sleepiness, and dizziness, and was diagnosed with a concussion.
- On November 22, 2010, the applicant sent HS1 [X] an email asking for a copy of the mishap report of her injury. Subsequent emails show that during the following month, the applicant complained about the lack of a mishap report to HS1 [X's] superiors.

- Medical records show that the applicant continued to complain of dizziness following her concussion and began physical therapy for her imbalance. Her military record shows that she was transferred off the cutter on November 29, 2010, just five months after her tour of duty began.
- The disputed Final Mishap Report, which is undated, states that on September 24, 2010, the applicant was seated at a desk on the mess deck while the cutter was transiting through large swells near Cape Hatteras. When the cutter hit a particularly high swell, her chair slid 12 feet to port with her in it, hit a door frame, and toppled. The applicant “landed on the deck of the serving line, then immediately complained of head, wrist, and shoulder pain. The corpsman was called to the scene and asked the member if [she] wanted to be evaluated, and the member declined evaluation. Member was given a bag of ice for [her] head and sat on the mess deck. Upon return to homeport approximately 48 hours after the incident, member went to the emergency room complaining of headaches and vertigo. After examination by emergency room personnel, it was discovered that member had a slight concussion.” Reviewers noted that the chair should have been secured because of the rough weather and that “declining medical attention is never a good idea. Initial evaluation and treatment may have identified this injury sooner and allowed appropriate steps to be taken to care for the member.”
- Medical records dated in 2011 show that the applicant was diagnosed with and treated for traumatic brain injury (TBI).
- Several emails show that in March 2011, the applicant discovered and reported that HS1 [X] had never made any note in her medical record about the injuries she incurred on September 29, 2010. (Such medical notes are made on an SF-600.)
- The disputed SF-600 entry in the applicant’s medical record is dated March 15, 2011, and is signed by both HS1 [X] and the cutter’s Executive Officer. It states that the following:

Addendum to previous write up dated 25 Sep 10 missing into [sic] member’s record. On above date, member slipped while seated upon taking a role [sic] from the food service desk to the entrance in galley. Member fell and hit her head against bulkhead. Upon called to the seen [sic], I noticed member was alert and conscious. I asked member if she needed medical attention and she refused treatment at that time. No further treatment was given.

- On March 17, 2011, the applicant wrote an email containing a detailed statement about her injury to the HSCS. She said that on September 29, 2010, she sat down at a desk on the mess deck because her end-of-the-month report, which had to be submitted the following day, had “flown ... all over the place” in the rough seas. When the cutter took a deep pitch, her chair slid and flipped and her head hit

the stainless steel serving line. I remember [HS1 X] asking me if I thought I had been knocked unconscious and could I tell him what happened. I told him what I remembered and that I wasn’t sure but my head was pounding, my left elbow and right hand were really hurting. He felt my elbow and arm; didn’t say they were broken, just bruised maybe. He checked my head; no cuts, just a couple goose eggs. I remember seeing my XO standing over us asking if I was okay. HS1 told me just take a Motrin because I would probably be really sore the next day and try getting up.

He helped me to the mess deck table and went back to playing cards. After some time, he saw I was still sitting there, he said I would be more comfortable if I went to my rack and I said I don't think I could do it myself. He says someone could help me. I replied I just needed to sit a little longer because I was wobbly feeling and my head was still pounding and I would try to walk in a few minutes. While sitting there I did take a 800 mg Motrin. HS1 asked me if I needed any ice and I said no I was using my water bottle, which was cold; I had been holding it on my head the whole time I sat on the mess deck. HS1 never asked me again how I was or any light duty status.

The applicant described her subsequent symptoms and taking more Motrin. She said that by October 3rd, she was much worse. She was speaking with a slight slur, walking poorly, and feeling very dizzy. She spoke to the HS1 who told her that the base clinic was closed and that the cutter was getting underway the next day. She told him she would find someone to take her to the emergency room and the HS1 walked away. Later, a chief warrant officer told her she wasn't herself and drove her to the hospital.

- Physical therapy records show that on March 22, 2011, the applicant told a therapist that when she hit her head on September 29, 2010, she had an “instant headache, rating pain at 15/10 on pain scale; patient with immediate vertigo; medical corpsman was alerted to [patient's] situation and saw [her] on the floor and advised [her] to take 800 mg of Motrin that [patient] already had; four days later patient with worsening of symptoms ...”
- On April 11, 2011, the applicant asked her supervisor in an email how to get a false SF-600 removed from her record. She stated that there “had been a cover-up.” She noted that the date of injury was incorrect, that it should be September 29, 2010, and that the HS1 had not written down anything about offering ice or telling her to lie down and take Motrin. She stated that she never refused medical treatment; she simply refused ice because she did not need it. She said, “All I want is the truth in writing in my records.”
- The applicant's rebuttal to the report of a Medical Board convened on June 14, 2011, states the following:

On Sept. 29, 2010, I received a concussion while underway aboard the [cutter]. I was seen on the floor by HS1 [X] who came to evaluate me. He asked me if I knew the date, if I could remember what happened, did I think I was knocked out and was I hurt anywhere. I told him I had a #10 headache from hitting the stainless bulkhead. I wasn't sure about being out and my left elbow and right palm were really hurting. He asked me if I could walk and I said I'd try. He helped me to the mess deck table where I sat a while. He went back to playing cards on the mess deck. After some time had passed, he asked me if I wanted some ice and I said no. I had my water bottle I was using for my goose egg on my head. He also said I might want to go to my rack and lie down so I would be more comfortable. He also offered to get someone to get me to my rack. I told him when I felt a little less dizzy I would get someone to help.

In October I inquired via email where my injury and incident report was. I received no reply from the HS1. I had HS1 [B] at the Clinic go through all my records several times and he found nothing. I also found another CG member's medical records in my record and brought it to the attention of Chief [S] and HSCS [A]. I also requested their help with finding out where my SF-600 entry was.

On April 4, 2011, the SF-600 entry was entered into my medical report and dated for March 15, 2011. The date of injury was written in by HS1 [X] on the SF-600 as happening on Sept. 25, 2010 and states I refused medical treatment at that time. My left elbow and my right palm were never

entered in the SF-600. HS1 [X] never wrote he had offered me ice or that he asked me did I think I had been knocked out or my reply.

On Oct. 26, 2010, I complained again about my elbow and Mr. [S] saw it was swollen and had xrays done and found my bursa sac still swollen and gave me an ace bandage and some medicine called Mobex to help with the swelling. My medical records only refer to the xray; the finding isn't in my records or the medicine prescribed for the swelling. My head injury happened on Sept. 29, 2010, not the date HS1 [X] put on the SF-600. ... [At a meeting on April 4, 2011,] HS1 [X] started the meeting in his statement he said I had denied medical treatment. I asked him directly how I had denied treatment. His reply was, when he asked me if I needed "ice" and I said no and that was the end of the treatment everyone in attendance heard. My reply was really? HSCS began to speak letting the HS1 know that he should have treated it as a serious head injury. ... The question was asked why the entry was never put into my records. HS1 replied he had entered it but maybe Admin or the Portsmouth Naval Hospital had removed it. ...

VIEWS OF THE COAST GUARD

On October 28, 2011, the Judge Advocate General submitted an advisory opinion in which he recommended that the Board deny relief in this case. In so doing, he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC stated that in response to the applicant's complaints, it has revised the SF-600 once and the Final Mishap Report twice. Both documents now show that the injury occurred on September 29, 2010. PSC stated that it informed the applicant of these corrections, but she remains dissatisfied because the documents continue to show that she refused medical treatment.

PSC recommended that no further relief be granted but noted that "[i]f the Board finds that further correction(s) are warranted, the Coast guard will take appropriate action. However, as far as this agency is concerned, the Coast Guard is presumptively correct, and the applicant has failed to substantiate that any error or injustice remains in her record." In support of this recommendation, PSC submitted the following documents:

- In an email to the PSC dated August 22, 2011, the applicant stated that during the meeting on April 4, 2011, she asked HS1 X why he had written that she had refused medical treatment, and he "told everyone it was because when he asked me if I needed ice I said no, so that ended his treatment."
- A copy of the disputed SF-600 with a notation at the bottom dated September 23, 2011, states, "Addendum to previous write up dated 25 SEP 10. Date of write up to be changed to 29 SEP 10 to reflect date of incident. [signature of HS1 X] Concur. Date error likely due to loss of original SF-600s. [signature of physician's assistant]."
- A second version of the Final Mishap Report has only the "date of mishap" changed to September 29, 2010.
- In an email dated September 26, 2011, the applicant complains that only the dates were changed on the SF-600 and Final Mishap Report and that she wants the claim that she refused treatment corrected because she only refused ice.

- A statement signed by HS1 X, stating that while underway on September 29, 2010, he was called to the galley and found the applicant “alert and conscious and seated against the stainless steel bulkhead. When I asked the member what had happened, she explained that ... she had fallen and hit her head. I asked the member if she required any further medical attention or if she would have liked ice to apply to her head and she refused treatment at that time and no further treatment was given to [her].”
- In an email dated October 13, 2011, the applicant stated that she had reviewed the third version of the Final Mishap Report (quoted below) and said that the report should show that she complained of a bad headache and was told to take Motrin and to lie down. She stated that the report is also wrong in stating that she was not diagnosed with concussion/TBI until after she had been transferred from the unit.
- The third version of the Final Mishap Report contains a “narrative” with the same language that was in the first and second versions, but “first level reviewer comments” that are significantly different and a new section of comments from the Maintenance and Logistics Command:

NARRATIVE: ... The member landed on the deck of the serving line, then immediately complained of head, wrist, and shoulder pain. The corpsman was called to the scene and asked the member if they wanted to be evaluated, and the member declined evaluation. Member was given a bag of ice for their head and sat on the mess deck. Upon return to homeport approximately 48 hours after the incident member went to the emergency room complaining of headaches and vertigo. After examination by emergency room personnel, it was discovered that member had a slight concussion.

FIRST LEVEL REVIEWER COMMENTS: ... From discussions with HS1 [X] an additional discrepancy was discovered with the investigator’s comments about calling the corpsman to the scene and the rendering of medical treatment. HS1 [X] was present on the mess deck and responded upon the member falling out of the chair. The above investigation indicates the member was provided ice; however, I find that the member was offered a bag of ice and declined. Member indicated she would use her water bottle instead. Further, witness accounts indicate the member was conscious and responsive and when asked if she was okay indicated that she wanted to sit on the deck for a few moments before getting up and sitting at a mess deck table. The log for official medical treatment (SF 600) indicates that medical treatment was refused by the member. This entry likely stems from the refusal of ice, lack of outward signs of injury, and indications by the member that she was okay without relaying actual symptoms. I also reviewed additional information that was not available during the initial investigation. Medical records indicate the member was diagnosed with traumatic brain injury. This diagnosis came after the member was transferred from the unit.

... However, from my discussions with those that were present during the incident, at no time were any indicators present that this was a serious incident. The opinions expressed to me summarized that the member gave the impression of being okay and did not give any indications of suffering any ill effects that prevented the member from returning to work nor was a request made for further medical evaluation. Member was on the bridge the following day in the presence of command cadre and appeared to be able to fulfill her assigned duties. No further treatment was sought out by the member to this unit. Member sought treatment on 2 October 2010 at an emergency room, two days after the unit returned to port. Diagnosis at the ER was post concussion syndrome. ...

MLC COMMENTS/REMARKS: ... In order to find out more information about the date of the mishap and the mishap response, I called the deputy [Executive Officer (XO)] of the [cutter], who was also the deputy at the time of the mishap. He stated that he did not witness the mishap occur, but was on the mess deck during the time of the response. ...

When asked about whether the applicant received a “bag of ice” for her injury, [the XO] stated that she did not receive any ice. He noted that she declined the ice because she already had a cold water bottle to apply to her head. (MOR (C)) When asked about whether he thought that declining a bag of ice constituted declining a medical evaluation, he stated that they (he and the SH1) did not think that it was a serious injury and did not see any reason to pursue further medical attention. He did not indicate that the HA1 asked the applicant if she wanted medical attention; he only stated that the HS1 asked if she wanted ice. However, he did state that the applicant never directly asked to be evaluated. (MOR (C)) I did not inquire as to why it was incorrectly noted on the E-Mishap Report and SF-600 that she explicitly refused a medical evaluation. When asked about when the mishap occurred with relation to the time the ship came back to homeport, he confirmed that the mishap occurred the day before the ship came into port, placing the actual day of the mishap as 29 SEP 2010. Again, I did not inquire as to why the discrepancies of the dates existed on two official, signed documents. ...

Upon research of the date when the E-Mishap Report was submitted, I found the date to be sometime in December 2010, more than 2 months after the mishap occurred. ... The Mishap Report should have been filed within 21 days. Likewise, the [disputed] “addendum to previous write-up dated 25 SEP 2010” SF-600 is dated 15 MAR 2011 and is signed by the HS1, who was the medical person on-site at the time of the mishap, and the deputy. The deputy, when asked, did not know of any original SF-600 that was reportedly dated 25 SEP 2010, and was not sure if the one dated 15 MAR 2011 really was an addendum or was the only medical record drafted by the ship’s HS1. (MOR (C)) Given that neither the HS1 nor the command felt that the applicant needed medical attention [at] the time of the mishap, I do not believe that the medical record (SF-600) of the mishap was made immediately after the applicant sustained the injury. This is also supported by the fact that the initial SF-600 is now missing, and is also reportedly dated 25 SEP 2010, four days prior to the incident. It is further supported by the fact that the HS1 only offered her ice for what was later discovered to be a traumatic head injury, treatment that would not require such reporting. I do not believe that the applicant refused treatment based on the discrepancies in the command’s reports. Additionally, I only believe that she was offered an ice bag and no further medical evaluation. Given that the official reports in question were not done in a timely manner and that no apparent effort was made to ensure that they were factual, I recommend that both the E-Mishap Report and the SF-600 be corrected with respect to the date of the mishap, the application of ice on the wound(s), and the refusal of medical attention. There are no supporting facts from the Coast Guard to presume that the mishap and mishap response did not occur exactly as indicated by the applicant. ...

The Coast Guard is presumptively correct, and the applicant has substantiated the errors and injustice with regards to her record.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 3, 2011, the Chair sent the applicant a copy of the views of the Coast Guard and invited her to respond within 30 days. No response was received.

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 10 U.S.C. § 1552. The application was timely filed.

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.¹

3. The Coast Guard has already corrected the date of injury shown on the applicant's SF-600 and the Final Mishap Report. Therefore, the only disputed matters remaining in the Final Mishap Report and the SF-600 are (a) the lack of a statement concerning HS1 X's suggestion that she take Motrin and lie down; (b) the statement that she was not diagnosed with TBI until after she left the cutter; and (c) the statements that she declined medical evaluation or treatment. The Board begins its analysis in every case by presuming that the disputed information in the applicant's record is correct, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.² 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."³

4. Regarding the lack of a statement concerning HS1 X's suggestion that she take Motrin and lie down, the Board finds that adding such a statement is unnecessary and its absence does not make the records erroneous since not every detail of a situation can be included on an SF-600 or Final Mishap Report. Inserting HS1 X's advice to take Motrin and lie down would not add significant information about the nature and treatment of her head injury to her medical record, which is the purpose of the SF-600,⁴ or help others avoid similar injuries, which is the purpose of a mishap report.⁵ Therefore, the Board is not persuaded that the SF-600 and Final Mishap Report are erroneous or unjust because they lack this information.

5. Regarding the statement in the Final Mishap Report that the applicant was diagnosed after she transferred from the cutter, the Board finds that she has not proved by a preponderance of the evidence that the statement, in context, is inaccurate. The report states, "Medical records indicate the member was diagnosed with traumatic brain injury. This diagnosis came after the member was transferred from the unit." The applicant's medical records show that she incurred her head injury on September 29, 2010, and was diagnosed with a concussion on October 3, 2010, before she transferred from the cutter. However, not every concussion results in a long-term TBI symptoms,⁶ and the diagnosis of TBI does not appear in the medical records she

¹ See *Steen v. United States*, No. 436-74, 1977 U.S. Ct. Cl. LEXIS 585, at *21 (Dec. 7, 1977) (holding that "whether to grant such a hearing is a decision entirely within the discretion of the Board").

² 33 C.F.R. § 52.24(b).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁴ Medical Manual, COMDTINST 6000. (2009), Chap. 4.B.14.a.(1).

⁵ Safety and Environmental Health Manual, COMDTINST M5100.47 (2007), Chap. 1.A.2. and Encl. (2), para. 9.

⁶ Eugene Braunwald *et al.*, eds., HARRISON'S PRINCIPLES OF INTERNAL MEDICINE, 15TH EDITION (McGraw-Hill, 2001), p. 2435, 2439 (stating that a "single, uncomplicated head injury only infrequently produces permanent neurobehavioral changes in patients" and that "[t]he patient who is fully alert and attentive after head injury but who has one or more symptoms of headache, faintness, nausea, a single episode of emesis, difficulty with concentration, or light blurring of vision has a good prognosis with little risk of subsequent deterioration").

has submitted until 2011. Therefore, the Board finds that in the context of the Final Mishap Report, the disputed statement is not erroneous or unjust.

6. Regarding the statements concerning the applicant's alleged refusal to accept medical evaluation or treatment, the Board finds that the applicant has proved by a preponderance of the evidence that both statements are inaccurate. Under the circumstances of this case, the long delay in the preparation of both the SF-600 and the Final Mishap Report makes their reliability suspect. Although delayed preparation *per se* does not prove that a medical or mishap report is erroneous, in this case, the reported incident was apparently not particularly significant or memorable to anyone except the applicant because the personnel who presumably would have documented it if they had thought it was significant failed to do so. In addition, by the time the documents were prepared, the applicant had been complaining about their absence to her chain of command, which might have made the personnel responsible for responding to her injury and preparing the reports interpret and report the circumstances of her injury more defensively than accurately. Moreover, the investigation conducted by the Maintenance and Logistics Command after the applicant filed her BCMR application shows that she was not offered a medical evaluation on September 29, 2010—other than to be asked if she was “okay”—and so she did not refuse a medical evaluation. In addition, the investigation shows that the only medical treatment offered was ice. The Board finds that saying one will use an available, cold water bottle, in lieu of ice, to soothe a head injury does not constitute refusing medical treatment unless the medical personnel on hand advise the member that the application of ice is important medical treatment for which a cold water bottle is not an acceptable substitute.

7. Because the applicant did not refuse medical evaluation or treatment, the Board must determine what corrections should be made to the disputed documents. The third version of the Final Mishap Report states in the Narrative section that “[t]he corpsman was called to the scene and asked the member if they wanted to be evaluated, and the member declined evaluation. Member was given a bag of ice for their head and sat on the mess deck.” None of this appears to be accurate, as explained in the First Level Reviewer Comments and the MLC Comments/Remarks. These latter sections for reviewers' comments show that the findings of the investigator as reported in the Narrative are erroneous, which is one of the purposes of requiring reviews and allowing reviewers' comments.⁷ However, if the Narrative were corrected by removing the erroneous material, the First Level Reviewer Comments and the MLC Comments/Remarks would appear nonsensical. Therefore, even though the Narrative section of the Final Mishap Report contains errors, the Board finds that the Final Mishap Report as a whole is correct because the errors in the Narrative are properly pointed out and corrected in the reviewers' comment sections. Because the errors in the Narrative section of the Final Mishap Report are adequately corrected by the reviewers' comments, the Board will not order any additional corrections of this report.

8. The SF-600, however, is erroneous because both entries indicate that they are addenda to an entry that apparently never existed; because the HS1 was not called to the scene but was already present in the room when the accident occurred; and because the applicant did not refuse medical treatment. Only this last error is potentially prejudicial to her, however. Because expunging the entire SF-600 would not be in her interest and removing one sentence

⁷ Safety and Environmental Health Manual, COMDTINST M5100.47 (2007), Encl. (2), para. 9.

from the first addendum might raise undue questions, the Board finds that another addendum, signed by an appropriate authority, should be added to the SF-600 stating, "Further inquiry has shown that member did not refuse medical treatment when her head was injured on 29 SEP 10."

9. Accordingly, partial relief should be granted by ordering the Coast Guard to add another addendum to the disputed SF-600, to be signed by an appropriate authority, stating in pertinent part, "Further inquiry has shown that member did not refuse medical treatment when her head was injured on 29 SEP 10."

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxx, USCG, for correction of her military record is granted in part as follows:

The Coast Guard shall add another addendum to the SF-600 documenting her head injury. This new addendum shall be signed by an appropriate authority and shall state in pertinent part, "Further inquiry has shown that member did not refuse medical treatment when her head was injured on 29 SEP 10."

Anthony C. DeFelice

Megan Gemunder

Patrick B. Kernan