

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 1998-004

FINAL DECISION

ANDREWS, Attorney-Advisor:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on October 7, 1997, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated August 27, 1998, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST FOR RELIEF

The applicant, a xxxxxxxxxxxx in the Coast Guard, asked the Board to correct his record by deleting a comment from the officer evaluation report (OER) covering the period May 1, 199x, to August 23, 199x (contested OER). The comment, in block 9.f. of that OER, appears as follows:

. . . Took appropriate steps to meet COMDT standards with regard to alcohol use which had begun to affect performance. . . .

APPLICANT'S ALLEGATIONS

In his application, the applicant included a letter from the Coast Guard Personnel Command to his Reviewer which stated that the OER Administrator was returning for revision the first OER drafted by the applicant's rating chain for the period May 1, 199x, to August, 23, 199x, because it contained the following prohibited comment:

. . . Dealt in a forthright way with alcoholism, seeking treatment and maintaining an aggressive aftercare program. . . .

After this prohibited comment was replaced with the one which the applicant has asked the Board to remove, the OER passed review by the applicant's rating chain and the OER Administrator. The applicant alleged that "[t]he revised comment, while having a derogatory affect [sic], is not supported or amplified by any other comment or mark in the OER." He stated that he had established a "record of solid performance," which the rest of the disputed OER reflects.

The applicant alleged that he had no alcohol incidents in his record, but that he had been diagnosed as an alcoholic and had referred himself to a treatment program. He stated that he has strictly adhered to his prescribed treatment of aftercare and abstinence and has begun counseling other members "who show signs of having problems with alcohol."

VIEWS OF THE COAST GUARD

On June 16, 1998, the Chief Counsel of the Coast Guard recommended denial of the applicant's request for relief.

The Chief Counsel stated that the applicant had not provided sufficient evidence that "the challenged OER is the result of an error or injustice" to "overcome the presumption of the administrative regularity in the completion or content of the contested OER." According to the Coast Guard Personnel Command, the first draft of the OER was returned for revision because it referred to applicant's alcoholism, which, as a medical diagnosis rather than a statement of performance, cannot be mentioned in an OER. However, "[a]s corrected, the OER properly refers to the effect of Applicant's use of alcohol on his performance, not to an underlying medical condition. This is a completely appropriate performance observation under the [Officer Evaluation System] regulations, and directly relevant to Applicant's performance in the health and well-being standard."

The Chief Counsel pointed out that the comments in block 9.f. are supposed to support whatever numerical marks the applicant has received in blocks 9.a. through 9.e., rather than vice versa as the applicant suggested. The applicant received a mark of 4 (on a scale of 1 to 7, with 1 being the poorest performance level) for block 9.e., which is titled "Health and Well-Being" and which is expressly required to reflect an officer's use of alcohol as well as his or her weight and effort to care for his or her health during the rating period. Thus, the Chief Counsel stated, it was appropriate for the applicant's rating chain to support the mark of 4 by including a comment about whether and how the applicant's use of alcohol had affected his job performance.

In addition, the Chief Counsel pointed out that the standards an officer is supposed to meet to qualify for a mark of 4 in block 9.e. allow only “discriminate” use of alcohol that does not affect the officer’s job performance or social behavior. Therefore, the comment about the effect of alcohol on the applicant’s job performance could have supported a lower mark. However, because the numerical marks are cumulative assessments of an officer’s overall performance in each category, the Chief Counsel stated, the inclusion of a comment that reveals one way in which the officer did not meet the standards (amid many other comments that show how he did meet the standards) is not automatically inconsistent. In fact, in justifying the marks, “rating officials are encouraged to cite performance weaknesses as well as strengths.”

The Chief Counsel also stated that the absence of an “alcohol incident” in the applicant’s record does not mean that the comment in the OER is unjust. Alcohol incidents are grounds for being separated from the Coast Guard, but they are not a prerequisite for including a comment about how alcohol has affected an officer’s performance in an OER.

Finally, the Chief Counsel stated that the applicant had not taken advantage of the opportunity to submit a reply that would be included with the OER in his record. The Chief Counsel alleged that “[i]n foregoing this timely opportunity, Applicant’s failure to submit an OER reply was tacit indication that he accepted the rating official’s characterization of his performance.”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

In response to the Chief Counsel’s Advisory Opinion, the applicant alleged that his rating chain had deviated from common practice by including the comment. He wrote, “In my experience, once a performance problem is perceived, the member is confronted with it and given the opportunity to correct it, before the member’s OER is adversely affected. . . . I was not given this common courtesy. . . . The fact that I voluntarily took immediate steps to correct the problem, shows that if I had been given the opportunity I would have taken it.” He also stated that he has continued to stay sober.

RELEVANT REGULATIONS

Preparing an OER

Article 10-A-4 of the Coast Guard Personnel Manual (COMDTINST M1000.6A) describes how members of a rating chain should prepare an OER. Section 10-A-4d.(7) states the following:

- (b) For each evaluation area, the Reporting Officer shall review the Reported-on Officer’s performance and qualities observed and noted during the reporting period. Then, for each of the performance

dimensions, the Reporting Officer shall carefully read the standards and compare the Reported-on Officer's performance to the level of performance described by the standards. . . . After determining which block best describes the Reported-on Officer's performance and qualities during the marking period, the Reporting Officer fills in the appropriate circle on the form in ink.

* * *

(d) In the "Comments" sections following each evaluation area, the Reporting Officer shall include comments citing specific aspects of the Reported-on Officer's performance and behavior for each mark that deviates from a "4." The Reporting Officer shall draw on his/her own observations, from information provided by the Supervisor, and from other information accumulated during the reporting period.

(e) Comments should amplify and be consistent with the numerical evaluations in the evaluation area. They should identify specific strengths and weaknesses in performance or qualities. Well-written comments must be sufficiently specific to paint a picture of the officer's performance and qualities which compares reasonably with the picture defined by the standards marked on the performance dimensions in the evaluation area. .

..

(f) Citing weaknesses does not make the OER derogatory and will not be interpreted as such, unless the OER contains a derogatory mark in accordance with article 10-A-4i.

Section 10-A-4i. requires special processing for OERs determined to be "derogatory." For blocks in section 9 of an OER, the only mark which qualifies an OER as "derogatory" is a mark of 1 (the lowest).

Section 10-A-4g.(3)(c) bars members of a rating chain from "engag[ing] in medical or psychological speculation, or mention[ing] any medical diagnosis."

Replies to OERs

Section 10-A-4h. allows the Reported-on Officer to reply to any OER and have the reply filed with the OER if they are submitted within 14 days of receipt of the OER copy from the commandant. The provision for reply is intended to "provide an opportunity for the Reported-on Officer to express a view of performance which may differ from that of a rating official."

Other Avenues for Performance Feedback

Article 10-A-2 of the Coast Guard Personnel Manual (COMDTINST M1000.6A) describes the responsibilities of the members of a rating chain, which includes the Reported-on Officer, a Supervisor, a Reporting Officer, and a Reviewer.

Section 10-A-2c.(2)(c) states that it is the responsibility of the Reported-on Officer to “[a]s necessary, seek[] performance feedback from the Supervisor during the period.”

Section 10-A-2d.(2)(e) states that one of the Supervisor’s responsibilities, apart from completing the blocks in sections 2 through 7 of each OER, is to “[p]rovide[] performance feedback to the Reported-on Officer upon that officer’s request during the period or at such other times as the Supervisor deems appropriate.”

Section 10-A-2e.(1) states that one of the Reporting Officer’s responsibilities, apart from completing the blocks in sections 8 through 13 of each OER, is to “[p]rovide[] performance feedback to the Reported-on Officer as appropriate.”

Section 10-A-2f.(2) states that the Reviewer “[e]nsures the OER reflects a reasonably consistent picture of the Reported-on Officer’s performance and potential. . . . [and] [c]hecks for obvious errors, omissions, or inconsistencies between numerical evaluations and written comments and any failures to comply with instructions.

SUMMARY OF APPLICANT’S RECORD

Blocks 9.e. and 9.f. in Contested OER

Blocks 9.e. and 9.f. appear as follows in the applicant’s OER:

	1	2	3	4	5	6	7	N/O ¹
<p>e. <u>HEALTH AND WELL-BEING:</u></p> <p>The extent to which an officer exercised moderation in the use of alcohol. The degree to which an officer maintained weight standards. The measure of an officer’s effort to invest in the Coast Guard’s future by caring for his or her health.</p>	○	○	○	●	○	○	○	○
		Failed to meet minimum standards of weight control or sobriety.		Maintained weight standards. Used alcohol only discriminately or not at all; job performance and social behavior was never affected. Encouraged similar behavior in others and held subordinates accountable. Intemperate alcohol use by subordinates not tolerated.		Remarkable vitality, enthusiasm, alertness, and energy level. Consistently contributed at high standards. Demonstrated a significant commitment, beyond setting an example, to the well-being of self and subordinates. Contributed a leadership role in the civilian/military community outside normal duties. Noteworthy examples.		

f. COMMENTS: Excellent initiative identifying key issues in xxx prgm & keeping them consistently in the Flag’s view. Led the way in examining xxx force allocation and xxxs. . . . XXXX Flag’s accepted his xxx Model for implementation. Began applying the concepts in the xxxxxxxxxxxxxxxx Model across programs with favorable results. Developed a xxxxxxxxxxxxxxxx Plan which was presented to and adopted by COMDT. Worked long hours preparing short fused Flag briefs. Advice to flag on xxxxxxxxxx issues on target during an extremely fluid and volatile period in xxxxxxxxxxxxxx. Developed sound recommendations for enforcement policy on the new xxxxxxxxxxxxxx and xxxxxxxxxxxxxx regulations in xxxxxx xxxxxxxxxx, xxxxxxxxxxxxxxxx and state waters. . . . Resulted refining xx xxxxxxxxxx requirements for xx & xx. Took appropriate steps to meet COMDT standards with regard to alcohol use which had begun to affect performance. Met CG weight standards

performance with regards to the category.

Other Marks and Comments in Contested OER

Apart from the mark of 4 the applicant received for the Health and Well-Being block, he received another 4 for Human Relations; marks of 5 for Military Bearing, Stamina, Responsibility, Writing, Speaking and Listening, Evaluations, Directing Others, Working with Others, Collateral Duty/Administrative Expertise, Work-Life Sensitivity, and Responsiveness; and marks of 6 for Being Prepared, Using Resources, Getting Results, Operational/Specialty Expertise, Looking Out for Others, Developing Subordinates, Initiative, Judgment, Professionalism, and Dealing with the Public. The average of all marks in the contested OER is 5.35. None of the comments in the OER other than the one in dispute is in any way negative. All reflect a very proficient and industrious officer. In comparison with other officers, the applicant was rated as an “[e]xceptional performer; very competent, highly respected professional.”

Other OERs

In the five OERs of the applicant that preceded the one in dispute, covering the period from December 1, 199x, to April 30, 199x, the applicant’s aggregate average mark in all categories was 5.23. In the Health and Well-Being category, he received three 4s and two 5s. The only mention of alcohol among the five OERs is “practiced moderation with alcohol” in an OER covering the first half of 199x.

In the two OERs the applicant has received since the one in dispute, his aggregate average mark in all categories is 5.00. In the Health and Well-Being category, he has received one 5 and one 4. One comment states that he “[o]ffers alternative to alcohol in social situations.”

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 submission, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10, United States Code. The application was timely.
2. The applicant requested an oral hearing before the Board. The Chairman, acting pursuant to 33 CFR 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, although Section 10-A-4g.(3)(c) of the Coast Guard Personnel Manual prohibits any mention of a medical diagnosis, such as alcoholism, in an OER, comments in block 9.f. concerning an officer’s use of alcohol and its effect on his or her performance during the rating period are not only appropriate but expressly

encouraged. Having an “alcohol incident” in one’s military record is not a prerequisite for having one’s rating chain make comments pertaining to one’s use of alcohol in an OER.

4. The applicant has not denied the Reporting Officer’s assertion that his use of alcohol detrimentally affected his performance during the rating period. He has not alleged that the comment is in any way untrue. He has alleged that the comment concerning the detrimental effect of alcohol on his performance is not supported by the other comments and marks in the contested OER and is inconsistent with his “established record of solid performance.”

5. Section 10-A-4d.(7) requires a Reporting Officer, in choosing a numerical mark for each category, to choose the one which “best describes” an officer’s performance during the rating period. Comments are supposed to “cit[e] specific aspects of the Reported-on Officer’s performance and behavior for each mark that deviates from a ‘4’”; to “identify specific strengths and weaknesses in performance or qualities”; and to “amplify and be consistent with the numerical evaluations.”

6. Because a mark of 4 in block 9.e. is supposed to be given to an officer who “[u]sed alcohol only discriminately [sic] or not at all; job performance and social behavior was [sic] never affected,” the comment concerning the applicant’s use of alcohol appears to be inconsistent with the mark he received. Nevertheless, the Board finds that the inclusion of the disputed comment does not violate the instructional regulations of Section 10-A-4d.(7). The comment identifies a specific problem of the applicant during at least part of the rating period, and the problem is very germane to the category of Health and Well-Being.

7. Although the comment would have supported a lower mark, the rating chain apparently thought that a mark of 4 best described the applicant’s performance in the Health and Well-Being category despite the fact that he had not met one of the prescribed standards for the category. The applicant does not deny the truth of the comment. The Board can only assume that other unmentioned qualities of the applicant convinced the Reporting Officer to give the applicant a higher mark in this category. By noting that the applicant had taken steps to correct the behavior, the Reporting Officer clearly mitigated the impact of the negative comment, but if the applicant wanted the negative comment to be further counterbalanced by his subsequent sober behavior, he could have submitted a reply to the OER.

8. In addition, the Board finds that neither the remainder of the marks and comments in the OER nor the applicant’s “record of solid performance” is inconsistent with the disputed comment. Marks of 4, 5, and 6 are very good but do not reflect absolutely perfect, undiminished performance. Likewise, the fact that all of the other comments in the OER reflect the applicant’s strengths does not prove that he had no weakness or that his use of alcohol had not begun to affect his performance, as his

rating chain asserted. Although the average mark the applicant received in the contested OER is slightly better than his average mark in the five preceding OERs, the rating chain may nevertheless have noticed some slippage in his performance during the rating period which was then corrected when the applicant stopped drinking alcohol.

9. The applicant also alleged that in the Coast Guard it is common for one's superior officers to point out one's failings and not report them in the next OER if they are overcome, and that this did not happen in his case. He cites this lack of warning as an injustice.

10. Although it may well be common practice for superior officers to give their subordinates warnings that their shortcomings have been noticed before factoring them into their evaluations, the fact that the applicant did not receive such a warning does not make the inclusion of the disputed comment an error or injustice. Section 10-A-2 states that Supervisors and Reporting Officers should provide performance feedback as "appropriate." However, it never says that observed problems that are subsequently corrected should not be mentioned in an OER. Nor does it state that OERs should only reflect problems about which the Reported-on Officer has ignored warnings. Moreover, it places much of the responsibility for receiving informal feedback during the middle of a rating period on the Reported-on Officer.

11. Therefore, the Board finds that the Coast Guard has committed no error or injustice by including the disputed comment in the applicant's OER.

12. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURES APPEAR ON FOLLOWING PAGE]

ORDER

The application for correction of the military record of XXXXXXX, USCG, is denied.

Walter K. Myers

Michael K. Nolan

L. L. Sutter