

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2002-101

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XXXXXXXXXXXXXXXXXXXX

FINAL DECISION

ANDREWS, Deputy Chair:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on May 21, 2002, upon the BCMR's receipt of the applicant's application. On November 1, 2002, the applicant asked that his case be held in abeyance while he sought new evidence, which he submitted on April 17, 2003.

This final decision, dated July 24, 2003, 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 an officer evaluation report (OER) that he received for his service as an ensign for the four and one-half months from September 16, 2001, through February 1, 2002.

SUMMARY OF THE APPLICANT'S RECORD

On July 27, 2000, the applicant received a commission as an ensign in the Reserve and began a three-year active duty contract as an intelligence officer, analyzing information gathered from field units. On his first OER, covering his work through March 31, 2001, he received fourteen marks of 4, four marks of 5, and a Comparison Scale mark of 4.¹ His supervisor was Mr. X, Chief of the Intelligence section; his reporting officer (RO) was CDR X, Assistant Chief of the Law Enforcement and Intelligence branch; and

¹ Officers are evaluated in various performance categories on a scale of 1 to 7, with 7 being best. Of the seven possible marks on the Comparison Scale, a mark in the third, fourth, or fifth position describes the officer as "one of the many competent professionals who form the majority of this grade."

the reviewer of the OER was CDR Y, the branch chief. Mr. X and CDR X made many positive comments in this OER, including the following regarding his potential:

[He] has quickly adapted to the Coast Guard and become a fully contributing member of the intelligence section. A self-reliant and confident attitude and approach have allowed rapid progress on a very steep learning curve. A good and growing ability to deliver results in a variety of circumstances bodes well for the future. [He] is fully ready and recommended for positions of increased responsibility. Particularly suited for assignment as a deck watch officer or to a group operations staff. Also an excellent candidate and fully recommended for flight training. Recommended for on-time promotion to O-2.

On the applicant's second OER, covering his work from April 1 to September 30, 2001, he received seven marks of 4, eight marks of 5, three marks of 6, and a mark of 4 on the Comparison Scale. His supervisor for this OER was a civilian intelligence officer, Mr. Y; Mr. X served as the RO; and CDR X served as the reviewer. The comments on this OER were similarly positive to those he received on his first OER.

The third OER that the applicant received is the disputed OER. It covers his work as an intelligence officer in the same office from October 1, 2001, to January 31, 2002. It notes that his primary collateral duty was to serve as "Armory Liaison Officer."

MARKS AND COMMENTS IN DISPUTED OER

#	CATEGORY	MARK	WRITTEN COMMENTS
3a	Planning and Preparedness	4	<p>"[The applicant] has had no formalized weapons management or administrative training and does not have a prior service ordnance designator, yet he has effectively managed the variety of activities and duties associated with being the [X] District Weapons Officer. During this period [he] used exceptional initiative in arming numerous Coast Guard MSOs, he acquired 263 M9 pistols, 68 M-16 rifles and 102 Remington shotguns. In addition [he] responded favorably to unexpected increases in ammunition requirements by various units throughout the District. [His] ability to positively respond to unusual demands resulted in him obtaining additional vessels from other Federal and State agencies to support the Coast Guard during the immediate period post 9-11. [He] also performed effectively as the Law Enforcement Duty Officer. Unfortunately while [he] performed most of his duties effectively, he had to be counseled on more than one occasion about less than positive performance in some areas—e.g. excessive personal phone calls, reading non-work related materials. There were several instances where routine tasks such as preparing basic intelligence reports were completed late and not correctly. [He] accepted constructive criticism in a positive manner, and is putting forth effort to improve his performance in the needed areas."</p>
3b	Using Resources	4	
3c	Results/ Effectiveness	3	
3d	Adaptability	4	
3e	Professional Competence	4	
4a	Speaking and Listening	4	<p>"Strong communicator in briefing, training & social environments: provided clear and concise weekly briefs to [district] Senior Staff; effectively communicated Intel program and policies to field units. Major player in re-designing the intelligence briefing; comfortable in a variety of social settings with personnel of all grades; takes direction well, however requires a significant amount of direction in complex situations. Writing skills need significant improvement; often contained grammatical errors, did not meet requirements of assignment."</p>
4b	Writing	3	
5a	Looking Out for Others	6	<p>"Looking out for others: During the period provided transportation, on numerous occasions, to office members to medical appointments, he volunteered to take extra duty when the individual scheduled could not stand their duty, acted as sponsor for new staff members. Always displayed a great deal of respect to his senior officers, enlisted members and civilian employees. Developing others: During this period obtained additional education opportunities for members of the ole staff. He also assisted two potential officer candidates in completing their OCS packages. Provided guidance to unit CIO's on intelligence collection and reporting. Directing</p>
5b	Developing Others	4	
5c	Directing Others	4	
5d	Teamwork	4	

5e	Workplace Climate	5	others: During this period [he] was assigned more responsibilities associated with the CIO program due to personnel transfers. In addition to his additional CIO responsibilities his position as Armory Liaison Officer became more demanding. [He] was able to use his professional yet relaxed leadership style to achieve good performance from all of his subordinates in the field. Is a strong team player and works well with everyone in the office. Input for own OER was on-time, complete."
5f	Evaluations	4	
6	Signature of Mr. Y, a civilian GS-12 intelligence officer acting as the applicant's supervisor		
7	Reporting Officer's Comments	NA	"Concur with supervisor's marks and comments. [The applicant] is generally energetic and enthusiastic, especially on matters for which he has a passion. The events of 9/11 resulted in a dramatic workload for weapons/ammo issues, which [he] attacked unhesitatingly. [He] has struggled somewhat, however, with duties that involve work with which he is not familiar or not personally interested in and assignments that require extensive writing."
8a	Initiative	4	"Demonstrated strong initiative with re-arming of numerous units in wake of 9/11; likewise demonstrated good ability to think creatively when assigned to find temporary boat resources for homeland security mission; occasionally had to be reminded to research applicable directives when drafting policy/guidance correspondence for field units; sometimes needed very specific task direction to successfully complete assignments. ... Discernment and judgment demonstrated as LEDO—consistently made good recommendations on LE cases; occasionally made poor use of work time to work on lower priority tasking at the expense of high priority assignments ... Standards for quality of own work were not always acceptable—especially for correspondence; assignments were often completed just prior to or after deadlines; Uniform/grooming standards were excellent throughout period; usually represented command well to other units and outside the CG in variety of circumstances; dedication to military customs and protocol was excellent ... Met COMDT weight standards; maintained fitness throughout period thru regular exercise program."
8b	Judgment	4	
8c	Responsibility	3	
8d	Professional Presence	5	
8e	Health & Well-Being	5	
9	Comparison Scale	3	The Comparison Scale is not actually numbered. The reporting officer is instructed to compare the evaluatee with other officers of the same rank whom he has known and assign one of seven possible marks. See footnote 2 above.
10	Potential	NA	"[The applicant] usually demonstrated a strong work ethic and, when given specific task direction, a good ability to get results. Had more difficulty with independent work, especially work that required a more complex, multi-stage approach. Immediate and sustained improvement in this area will be necessary for [him] to be ready for promotion to O-3. Excellent ability to get along well with subordinates, peers, and seniors in a variety of social and professional environments. If expected improvement is realized, [he] will be capable of performing well in positions of greater responsibility."
11	Signature of CDR X, the assistant branch chief, as the reporting officer		
12	Signature of CDR Y, the branch chief, as reviewer		

On January 27, 2002, four days before the end of the evaluation period for the disputed OER, the applicant was promoted to lieutenant junior grade (LTJG), having been selected for promotion by an earlier selection board. The applicant did not submit a reply to the disputed OER, as allowed under Article 10.A.4.g. of the Personnel Manual. On his next OER, for the period February 1 to June 28, 2002, during which he was serving as Current Operations Officer of the same office, he received four marks of 4, ten marks of 5, two marks of 6, and a mark of 4 on the Comparison Scale.

SUMMARY OF APPLICANT'S ALLEGATIONS

The applicant alleged that the disputed OER is invalid because it was not prepared by his published rating chain; an unqualified civilian was allowed to rate him as

his supervisor; the supervisor failed to keep a record of his performance during the evaluation period; he received no mandatory counseling sessions at the beginning and end of the period; and the OER's numerical marks are inconsistent with the comments. He also alleged that since he was promoted to lieutenant junior grade just four days before the end of the reporting period, the OER should show that he was an ensign.

Regarding the rating chain, he stated that his supervisor was supposed to be the Chief of the Law Enforcement section, Mr. X; that his RO was to be the Chief of the Law Enforcement and Intelligence Branch, CDR Y; and that his reviewer was to be the district's Chief of Operations, Captain Z. He submitted a copy of the office's official 1998 rating chain reflecting these assignments. Instead, he pointed out, a civilian intelligence officer, Mr. Y, acted as his supervisor; the assistant branch chief, CDR X, acted as the RO; and CDR Y acted as the reviewer.²

The applicant alleged that neither Mr. Y nor Mr. X had ever been trained in the Coast Guard's Officer Evaluation System (OES), as required by Article 10.A.2.b.2.h. of the Personnel Manual, and failed to keep records of his performance, as required by Article 10.A.2.d.3. He further alleged that his supervisor never provided counseling sessions, as required by Article 10.A.2.d.3.

The applicant also argued that if in fact his performance diminished so dramatically during the four-month evaluation period, he should have been counseled about it. He alleged that if his performance truly declined, his rating chain should have included comments to show how it had declined in comparison to previous evaluation periods, when he received higher marks.³ He alleged that he learned of the poor quality of the OER when it arrived in the mail and that it came as a "complete surprise."

The applicant submitted a statement signed by his section chief, Mr. X, who served as the supervisor on the first OER he received at that office and as the RO on the second OER but did not serve on the rating chain for the disputed OER. Mr. X stated that Mr. Y, the intelligence officer who served as the supervisor for the disputed OER, told him at the end of the previous evaluation period that he had counseled the applicant about his performance and that he had told the applicant that he had received "the benefit of the doubt" with regard to the marks he received on that prior OER. Mr. X also stated that he himself had counseled the applicant about his performance on other occasions but the counseling was never documented. The applicant alleged that Mr. X's statement that he had been counseled about his performance was false.

² The record indicates that the published rating chain was not used for the applicant's first two OERs at the office either: On his first OER, Mr. X served as supervisor, CDR X served as RO, and CDR Y served as the reviewer. On the second OER, Mr. Y served as supervisor, Mr. X served as RO, and CDR X served as the reviewer. However, the applicant has not asked that these OERs be removed.

³ In addition to his Coast Guard OERs, the applicant included in his application several very positive evaluations he had received as an officer in the Army Reserve.

The applicant alleged that because of the terrorist attacks on September 11, 2001, he was working “almost exclusively as the district weapons liaison officer during the four-month evaluation period for the disputed OER.” He alleged that he was given only one assignment as an intelligence officer during the period. He alleged that, although he was an ensign and “made several attempts to discuss operations and expectations with [his] supervisor” during the evaluation period, he “received no mid-mark or performance based counseling during the entire period.” He stated that after September 11, 2001, he “frequently requested a strategy meeting in order to redefine the role of the intelligence section and to establish priorities of work.” He alleged that when he asked his supervisor about his assignments, he was told, “You have been an in-effective member of the intel shop. It’s not your fault, but your armory duties have kept you busy.” He alleged that, like the applicant in BCMR Dkt. No. 1999-142, he was entitled to counseling if his performance was deemed to be so poor⁴ and that he has proved that he was not counseled as required by Article 10.A.5. of the Personnel Manual. Therefore, he argued, the disputed OER should be removed from his record.

The applicant also argued that the vague, negative comments in the disputed OER do not properly support the poor marks. Regarding the mark of 3 for “Results/ Effectiveness,” the applicant pointed out that just four months earlier, he had been assigned a 6 in this category. He alleged that nothing in the comments warrants a 3 in this category and that his results in procuring more weapons and vessels for the field units were invaluable. He pointed out that at least partly as a result of his work, the chief of his office received a Meritorious Service Medal. He submitted a copy of the citation for the medal, which states in part that the chief “was the driving force behind the re-arming of Marine Safety Offices and multi-mission station boats that enabled them to accomplish the homeland security mission.”

The applicant alleged that he was never counseled about receiving personal phone calls or reading non-work related material at work. He alleged that just one time, on January 11, 2002, he was reading a publication on military history and was asked to stop. He alleged that in the disputed OER, his supervisor did not mention specific occasions when his intelligence reports had been late and incorrect.

The applicant alleged that during the evaluation period, because of the importance of his armory work, he was assigned only one project by the intelligence staff: to update the Command Intelligence Officer list. Therefore, he alleged, the comment indicating that he neglected “several” reports is inaccurate. He alleged that this assignment was not as high a priority as the armory-related issues he was dealing with, but he admitted that he did have trouble completing the task correctly.

Regarding the mark of 4 for “Using Resources,” the applicant alleged that his accomplishments as District Weapons Officer during the period deserve a higher mark.

⁴ In BCMR Docket No. 1999-142, the Board held that that “[i]f the [executive officer] had such concerns about the applicant’s watchstanding during the 10-month evaluation period, the applicant was entitled to know about it.”

He pointed out that he had received a mark of 6 in this category previously and that, if anything, his careful management of time, personnel, money, and information to get his armory work done was better than during the previous evaluation period.

Regarding the mark of 4 for "Adaptability," the applicant alleged that the mark is too low because the "armory and weapons issues required [him] to do a job that [he] was in no way trained for." He pointed out that on his previous OER, he received a 5 in this category.

Regarding the mark of 3 for "Writing," the applicant pointed out that his two prior OERs state that he has strong writing skills. He alleged that his supervisor provided no counseling with regards to his writing skills during the evaluation period. He also alleged that his supervisor's supporting comment about his needing a significant amount of direction in complex situations is vague and unsupported by specific examples. He complained that his "[s]upervisor does not define *complex* or *significant*." Moreover, he pointed out, other comments in the OER about his "exceptional initiative" in arming the district despite his lack of weapons training and about his positive response to "unusual demands" strongly contradict his rating chain's vague criticisms.

Regarding the mark of 4 for "Teamwork," the applicant alleged that the supporting comments about how he frequently stood duty when other members were sick or had other engagements and how he was a "strong team player" support a higher mark.

Regarding the comments of the RO in section 7 of the disputed OER, the applicant complained that CDR X failed to mention any specific duties in which he was perceived to be uninterested. He argued that the vague statement should be removed unless it can be supported with examples. The applicant alleged that in January 2002, he asked CDR X for performance feedback and was told him to consult his supervisor.

Regarding the mark of 4 for "Initiative," the applicant pointed out that he had previously received a mark of 6 for this category. He argued that his initiative in re-arming units after September 11, 2001, in managing and accounting for the district's ordnance, and in procuring additional vessels from the National Marine Fisheries, the state's Marine Patrol, the Army, and the Navy for the Coast Guard's Noble Eagle Patrols merited a higher mark for "Initiative."

Regarding the mark of 3 for "Responsibility," the applicant alleged that the supporting comments did not mention any specific examples of late or erroneous work, of high priority assignments that he ignored, or of any way in which he showed a lack of integrity. He alleged that his supervisor never counseled him about his responsibility. He also alleged that this mark is inconsistent with his receipt of a mark of 5 for "Professional Presence" since both categories require the officer to work "ethically, courageously, and dependably." Regarding the CDR X's supporting comment about his needing to be reminded to consult applicable directives when drafting policy, the

applicant stated that “[t]here have been a few occasions where I was instructed to reference certain publications while drafting instructions. That is growth. I am a direct commission officer from the Army. It is obvious that I would need direction when dealing with certain regulations, but there was never a time during this rating period when a supervisor had to frequently remind me to reference certain publications.”

Regarding his CDR X’s comments about his “Potential,” the applicant alleged that the insertion of the work “usually” in this comment is both damaging and unexplained. He alleged that the comment about his having difficulty with independent, complex work is erroneous and unsupported. He pointed out that, to secure weapons for the district, he had to understand the MS Manual, MLE Manual, Ordnance Manual, Physical Security Manual, and the Operation Noble Eagle Use of Force Policy even though he had no training in these matters. He alleged that even though no one on the district staff could help him, he managed to accomplish the re-arming of the district.

In support of his allegations, the applicant submitted a letter from a lieutenant junior grade (LTJG Z) in the office, who stated that the command never followed the published rating chain, that three experienced petty officers had sought transfers out of the office, and that although he had asked what his responsibilities were, he received no job description or list of responsibilities and instead was micromanaged.

A chief radarman (RDC) in the office stated that, like the applicant, he had problems with Mr. X. The RDC stated that Mr. X was “blatantly unethical” in his practices and “would frequently fail to provide guidance and support to subordinate members.” He alleged that Mr. X became agitated when asked for guidance and spent office time playing “fantasy football.” However, because Mr. X was friends with CDR X, the assistant branch chief, it was “impossible to complain about [Mr. X’s] unprofessional behavior.” The RDC stated that he himself performed well in the office and was never told otherwise. However, when Mr. X purposefully failed to interview more qualified candidates for a civilian position so that he could give the job to a friend of his, the RDC reported him up the chain of command and, in retaliation, Mr. X and CDR X took away his chances for field assignments and gave him a poor recommendation on his application to the Coast Guard Investigative Service.

The RDC stated that upon his arrival, the applicant immediately noticed the lack of guidance and support from the command. He stated that, even after September 11, 2001, no one told the members of the intelligence section what their new responsibilities were to be. When the applicant told the RDC that he had never received any job description or counseling, the RDC told him that “that was the way that [Mr. X] operated.” In late December 2001, the RDC stated, the applicant told him that he had had an argument with Mr. X over the latter’s office policy and lack of professionalism. Afterward, Mr. X began talking about the applicant as if he were a troublemaker. The RDC stated that his own treatment by Mr. X had convinced him to retire and that other people in the office were also trying to leave prematurely.

A yeoman first class (YN1) in the office stated that she had reviewed the applicant's unit personnel file and "can verify that no negative counseling-performance based documents exist." She also confirmed that three experienced petty officers in Mr. X's section had "all requested to be transferred due to issues with their Civilian Supervisors." One petty officer told YN1 that she was being threatened with negative marks if she was not "loyal" to Mr. X and that if she was loyal, she could "get very good marks and anything else she wanted." The YN1 stated that she herself had observed unprofessional and unethical behavior by the civilian leadership of the office and that one member who tried to question that behavior was "transferred from the section and [has] been labeled as a poor performer/trouble maker." She further stated that CDR X had a personal relationship with the civilian supervisors in the section and that the branch chief, CDR Y, seemed unconcerned.

A yeoman second class (YN2) who worked in a nearby office of the Coast Guard Investigative Service stated that "it was common knowledge that the Intelligence section had supervisory problems. The major contributing factor would be lack of informed guidance by civilian leaders." She stated that Mr. X made jokes about whether officers "fit in" by going to bars with him. She stated that the applicant "constantly asked for guidance and training and was denied." She stated that Mr. X hired his friend, Mr. Y, for the secondary supervisory position and joked about the fact that only his friends would get hired in his "shop." Moreover, she stated, at the time, there was no supervisory guidance for the section and anyone questioning the ethics of the section's practices would be labeled as poor performers. She stated that the Intelligence section was known for its lack of professionalism.

A telecommunications specialist second class (TC2) who started providing technical support to the Intelligence section in April 2002, after the evaluation period for the disputed OER, stated that he had noticed several violations of Coast Guard Information Security Policy and reported them to Mr. Y and Mr. X. However, they told him to "disregard the established reporting policy and to handle the violations according to their, [Mr. X's and Y's] desires." TC2 told them he would not do so and reported the violations to the proper authorities and was scolded for doing so. In a closed-door meeting, Mr. X and Mr. Y told him that he would receive "any school or class" he wanted if he was a "team player." TC2 stated that he perceived their statements as threatening and told his supervisor, LTJG Z. Mr. X and Mr. Y heard of his complaint, and he was "branded as the office troublemaker." Thereafter, he alleged, Mr. X and Mr. Y frequently made untrue statements about his work and professionalism, and he received lower than average marks on his own evaluation because Mr. X and Mr. Y changed the marks assigned to him by LTJG Z. TC2 stated that it was "widely known around the office that [Mr. X and Mr. Y] gave [the applicant] poor marks as retribution.

VIEWS OF THE COAST GUARD

On April 17, 2003, the Commander of the Coast Guard Personnel Command (CGPC) submitted an advisory opinion recommending that the Board grant the appli-

cant's request and the additional relief of adding a page of reviewer's comments to the second OER the applicant received from the office, since the reviewer is supposed to add a page of comments when both the supervisor and RO are civilians.

CGPC stated that although the applicant was an ensign during most of the evaluation period, it was proper for him to receive an OER as an LTJG on January 31, 2002, under Article 10.A.3.a.4.b. of the Personnel Manual. CGPC further stated that the applicant's command had not updated the office rating chain since 1998, leaving the applicant unable to properly identify his rating chain and know who would be evaluating his performance. In addition, CGPC stated that the applicant's command failed to use the Officer Support Form (OSF) to counsel him about his performance at the beginning and end of the evaluation period, as required for ensigns and LTJGs under Articles 10.A.6.a. and 10.A.2.c.3. of the Personnel Manual. CGPC concluded that there "is no evidence to support that Applicant received the proper professional development with regard to his OER, rating chain responsibilities, [or] rating chain expectations."

CGPC stated that declarations signed by Mr. X and Mr. Y (summarized below) indicate that the applicant "was afforded informal counseling, guidance and prompting to progress professionally during the evaluation period." However, CGPC stated that there "is no proof that applicant did receive counseling as required at the beginning and end of his reporting periods." In addition, CGPC admitted, Mr. Y had never received OES training, which would make it "very difficult for [him] to properly supervise applicant especially given Applicant's very limited personal experience with the OES."

CGPC concluded that, although the applicant failed to submit "clear and convincing evidence that the facts noted in his OER did not accurately depict his performance," the fact that his supervisor was not trained in the OES and the irregularities surrounding the rating chain are sufficient to justify removal of the disputed OER. In addition, CGPC stated that reviewer comments for the applicant's second OER should be drafted by CGPC and placed in the applicant's record for continuity purposes only.

Declaration of Mr. Y, Supervisor for the Disputed OER

Mr. Y stated that during the evaluation period in question, it was his responsibility to assign the applicant intelligence-related duties and to review his intelligence-related reports. Mr. Y stated that when he was first hired, he had been told the applicant was a "leadership challenge in that it was hard to get him to write good reports, and that there had been several incidents where field units had complained about his behavior." Mr. Y stated that the applicant's reports were "often late, poorly written, or incomplete." Mr. Y stated that before he prepared the OER preceding the disputed OER, he told the applicant that he needed to try harder, work without complaining, and watch what he said to people in and out of the office. "When the time came for his first evaluation, I made the mistake of inflating his marks. This attempt at improving his performance did not work, in fact I believe it had a negative impact." Mr. Y alleged that the applicant spent a lot of time talking to friends on the phone and reading non-work-

related books during working hours. Mr. Y stated that the “only major project” he assigned the applicant during the evaluation period was to update the Command Intelligence Officers Roster and that it took the applicant an “extremely long time to get this done, and it was not done correctly.”

Mr. Y stated that he spoke with the applicant twice about his performance during the evaluation period but did not document the counseling because he “thought as an officer [the applicant] would at least try to improve.” When the time came to prepare the disputed OER, CDR X told him that it should reflect the applicant’s actual performance. However, after Mr. Y completed his portion of the OER, CDR X “changed my evaluation significantly and raised all of [the] marks.”

Declaration of Mr. X, Chief of the Intelligence Section

Mr. X stated that he had discussed the applicant’s performance with him on several occasions and told him that his writing needed improvement and that his reports should be submitted on time and without spelling errors. Mr. X stated that the applicant was also counseled when someone from another unit with whom the applicant was working complained “that his work ethic was less than desirable.” Mr. X stated that during the evaluation period for the disputed OER, someone from a different unit that the applicant had been sent to assist also complained of the applicant’s behavior. Mr. X stated that he counseled the applicant on this occasion, but the applicant told CDR X that the complained of incident never occurred.

Mr. X stated that the OER preceding the disputed OER had inflated marks and comments. Although the rating chain members agreed that the applicant’s performance had been “lacking in several areas,” they agreed to give him “the benefit of the doubt” to encourage him since he was an ensign. Mr. X stated that Mr. Y was instructed to counsel the applicant that the marks were higher than he deserved and that he needed to improve his performance to earn similar marks on his next OER. Mr. Y later told both Mr. X and CDR X that he had completed that counseling and that the applicant said he understood.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 21, 2003, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond. The applicant responded on May 5, 2003, stating that he agreed with the Coast Guard's recommendation that the disputed OER be expunged and that a reviewer's page for continuity purposes be added to the previous OER. He stated that, although the issue may seem moot in light of CGPC's recommendation and the clear violations of the Personnel Manual, he "would like to go on record as stating [in response to the two declarations] that no such offenses or counseling statements ever occurred." He alleged that with no documentation of counseling, the Board must assume that he was performing his duties according to his command's expectations. He alleged that the disputed OER was prepared in retribution for a personal confrontation he had with Mr. X, and stated that although "verbal disputes are hard to prove or disprove," the record is clear that Mr. X and Mr. Y were untrained in the OES and unqualified to serve on his rating chain or to evaluate him properly.

APPLICABLE REGULATIONS IN THE PERSONNEL MANUAL

Every officer has a "rating chain" of three senior personnel, including a supervisor (usually the person to whom the reported-on officer answers on a daily basis), the reporting officer (usually the supervisor's supervisor), and the reviewer (usually the reporting officer's supervisor). Personnel Manual, Articles 10.A.2.d.1., e.1., and f.1.

Responsibilities of the Rating Chain

Article 10.A.2.b.2.b. provides that commanding officers are responsible for designating and publishing the command's rating chain so that officers will know who will be evaluating them. Article 10.A.2.b.2.h. states that commanding officers are responsible for ensuring that any civilian employee who must be on a rating chain receives formal training from CGPC and that "[c]ivilians shall not be assigned to a rating chain before receiving OES training certification from Commander, (CGPC-opm) or Commander (CGPC-rpm) and having incorporated the OES rating chain responsibilities in their Core Competencies."

Article 10.A.1.c.5., states that "[n]o specific form or forum is prescribed for performance feedback except for ensigns and lieutenants (junior grade). Performance feedback occurs whenever a subordinate receives advice or observations related to their performance in any evaluation area. Performance feedback can take place formally (e.g. during a conference) or informally (e.g., through on-the-spot comments). ... If the feedback is not fully understood, it is the Reported-on Officer's responsibility to immediately seek clarification."

Article 10.A.1.b.2. states that "[i]ndividual officers are responsible for managing their performance. This responsibility entails determining job expectations, obtaining sufficient performance feedback, and using that information to meet or exceed stan-

dards.” Article 10.A.2.c.2.k. provides that it is the responsibility of the reported-on officer to seek performance feedback, “as necessary,” from the supervisor. It also provides that the reported-on officer “[a]ssumes ultimate responsibility for managing own performance, notwithstanding the responsibilities assigned to others in the rating chain. This includes ensuring performance feedback is thorough”

Article 10.A.2.c.3., entitled “Mandatory meeting and use of the OSF for ensigns and lieutenants (junior grade),” states that “[a]ll Reported-on Officers in these grades must request initial and end of period meetings with their Supervisors”

Article 10.A.2.d.2.d. provides that the supervisor is to use the OSF provide performance feedback by noting important aspects of the officer’s performance, including problems, achievements, failures, and personal qualities. Article 10.A.2.d.3. states that supervisors “shall conduct beginning and end-of-period meetings and are required to maintain a record of significant performance related events for all Reported-on Officers” in the grades of ensign and lieutenant junior grade. Article 10.A.2.d.2.e. states that it is the supervisor’s responsibility 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.”

Article 10.A.2.f. provides that the reviewer “[e]nsures that the OER reflects a reasonably consistent picture of the Reported-on Officer’s performance and potential.” In addition, for any officer whose reporting officer is a civilian (non-SES), the reviewer must prepare a separate page of comments for the OER to describe the officer’s potential.

Instructions for Preparing an OER

Article 10.A.3.a.4.b. provides that “[o]fficers promoted to commander, or below, during a reporting period shall apply the submission criteria for the grade to which promoted to determine when their next OER is due (e.g., O-1 promoted to O-2 on 20 January shall do a 31 January O-2 semiannual OER).”

Article 10.A.4.c.4. instructs supervisors to assign marks and write comments for the first 13 performance categories on an OER as follows (nearly identical instructions appear in Article 10.A.4.c.7. for reporting officers, who complete the rest of the OER):

b. For each evaluation area, the Supervisor 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 Supervisor shall carefully read the standards and compare the Reported-on Officer's performance to the level of performance described by the standards. The Supervisor shall take care to compare the officer's performance and qualities against the standards—not to other officers and not to the same officer in a previous reporting period. After determining which block best describes the Reported-on Officer's performance and qualities during the marking period, the Supervisor fills in the appropriate circle on the form in ink.

• • •

d. In the "comments" block following each evaluation area, the Supervisor shall include comments citing specific aspects of the Reported-on Officer's performance and behavior for each mark that deviates from a four. The Supervisor shall draw on his or her observations, those of any secondary supervisors, and other information accumulated during the reporting period.

e. Comments should amplify and be consistent with the numerical evaluations. They should identify specific strengths and weaknesses in performance. Comments must be sufficiently specific to paint a succinct 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. Mere repetition or paraphrasing of the standards is not sufficient narrative justification for below or above standard marks.

• • •

g. A mark of four represents the expected standard of performance. Additional specific performance observations must be included when an officer has been assigned a mark of five or six to show how they exceeded this high level of performance. ...

• • •

i. All comments shall be confined to the space allotted to the Supervisor. No comments shall be continued from one comment block to another.

Article 10.A.4.c.8.a. instructs the reporting officer to complete the Comparison Scale on an OER by filling in the circle that most accurately reflects the RO's ranking of the reported-on officer in comparison to all other officers of the same grade whom the RO has known.

Article 10.A.4.f. prohibits a rating chain member from mentioning "performance or conduct which occurred outside the reporting period."

Replies to OERs

Article 10.A.4.g. allows an officer to file a reply to any OER within 14 days of receiving it to "express a view of performance which may differ from that of a rating official. ... Comments pertaining strictly to interpersonal relations or a personal opinion of the abilities or qualities of a rating chain member are not permitted."

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 over this matter pursuant to 10 U.S.C. § 1552. The application was timely.

2. The applicant alleged that he received no counseling that his superiors were unhappy with his performance. However, both Mr. X and Mr. Y have stated that counseling did occur on several occasions, although an OSF was not used to document the counseling, as required by Article 10.A.2.d.2.d. of the Personnel Manual. The Board

finds that the preponderance of the evidence in the record indicates that the applicant was in fact counseled about his performance and knew that his superiors were unhappy with his performance and wanted him to improve, even though they decided to give him good marks on the OER for the evaluation period ending September 30, 2001.

4. The applicant alleged that he received low marks in the disputed OER in retribution for a disagreement that he had with his superiors. However, he presented no evidence of the alleged dispute. Neither the applicant nor any of his coworkers who wrote statements on his behalf provided details of any serious dispute between the applicant and the members of his rating chain or a convincing explanation as to why his rating chain would be biased against him.

5. The applicant alleged that the marks and comments in the disputed OER are inconsistent and inaccurate and that the negative comments are too vague. However, the Board finds that each of the marks lower or higher than the standard of four is adequately supported by negative or positive comments and that the comments are "sufficiently specific to paint a succinct picture of the officer's performance and qualities," as required by Article 10.A.4.c.4. of the Personnel Manual. The Board finds that the marks and comments in the OER are sufficiently consistent and specific to meet the requirements of Article 10.A.4.c.4. Although the applicant alleged that the disputed OER should have contained much fuller and more specific explanations of how his performance had diminished in each of the various categories, such explanations are not required by the Personnel Manual, and under Articles 10.A.4.a.3. and 10.A.4.c.4.i., rating chain members are limited to the space provided on the OER form and cannot use tiny type to allow room for more comments.

6. The applicant failed to take advantage of his opportunity to reply to the disputed OER in accordance with Article 10.A.4.g. of the Personnel Manual. If an OER contains inaccuracies or omits positive information about an officer's performance, Article 10.A.4.g. allows the officer to address such inaccuracies and include the positive information in the OER in a way that allows his rating chain to reconsider the marks and comments and, if warranted, assist the officer in having the OER corrected by the BCMR. If the applicant had filed a reply, the truth of the disputed comments might have been investigated and either verified or denied by the other members of his rating chain and command. Although the applicant's failure to file a reply has made determining the truth of the matter more difficult, the Board finds that he did not waive his right to seek removal of the disputed OER by the BCMR when he failed to file a reply. *See* BCMR Docket No. 64-88(R), Decision on Application for Reconsideration. An officer's failure to file a reply is not an admission of the accuracy of the OER.

7. The applicant alleged that the disputed OER should indicate that he was an ensign during the evaluation period since he was promoted to LTJG just four days before the final day of the period. However, the Board finds that, pursuant to Article 10.A.3. a.4.b. of the Personnel Manual, the OER properly reflects his rank as a LTJG.

8. The Coast Guard has admitted that the applicant's commanding officer failed to publish his rating chain, as required by Article 10.A.2.b.2.b. The purpose of such publication is to ensure that each officer knows who will be evaluating him, whose expectations he must meet, and from whom he should seek performance feedback. Although the command did not publish the applicant's rating chain, the supervisor, RO, and reviewer for the disputed OER had all served on the applicant's rating chain before. No one had recently left or joined his proximate chain of command. Moreover, there is no evidence in the record suggesting that the applicant did not know during the evaluation period for the disputed OER exactly who would be evaluating him, whose expectations he had to meet, and from whom he should seek feedback. Therefore, although the applicant's command violated Article 10.A.2.b.2.b. by failing to publish the rating chain, the Board finds that the error was harmless. The applicant has not shown or even alleged that he suffered from any confusion during the reporting period over who would be evaluating him.

9. The Coast Guard has admitted that Mr. Y, the civilian supervisor who prepared the applicant's disputed OER, was not properly trained in the Coast Guard's OES and therefore was not qualified to serve on his rating chain under Article 10.A.2.b.2.h. of the Personnel Manual. In addition, the Coast Guard has admitted that Mr. Y failed to use the OSF to counsel the applicant about his performance at the beginning and end of the evaluation period. In light of these deficiencies, the Coast Guard has recommended that the Board remove the disputed OER from the applicant's record.

10. The applicant has not proved the existence of any error in the disputed OER. However, if Mr. Y had received formal OES training, it is possible that the applicant would have received more thorough counseling about his performance that could have persuaded him to conform his efforts to meet the expectations of the rating chain. In addition, since Mr. Y was not trained, it is possible that, as the applicant alleged, Mr. Y based some of the negative marks and comments on the applicant's performance during the previous evaluation period, when he was assigned more intelligence work. Basing marks and comments on an officer's performance during a different evaluation period is prohibited under Articles 10.A.4.c.4. and 10.A.4.f. of the Personnel Manual. The exact extent of the harm caused by Mr. Y's lack of training is unknown. Therefore, and in light of CGPC's belief that the rating chain irregularities were sufficiently prejudicial to warrant removal of the disputed OER, the Board finds that the OER should be removed from the applicant's record.

11. CGPC noticed in reviewing the applicant's record that the reviewer for his OER covering the period April 1 to September 30, 2001, should have but failed to prepare a comment page in accordance with Article 10.A.2.f. of the Personnel Manual because the reporting officer for the OER, Mr. X, was a civilian. The applicant agreed with this recommended correction.

12. Accordingly, relief should be granted.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted.

His officer evaluation report (OER) for the period October 1, 2001, through January 31, 2002, shall be removed from his record and replaced with an OER prepared "for continuity purposes only."

In addition, CGPC shall add a "for continuity purposes only" reviewer's comment page for his OER for the period April 1 to September 30, 2001.

Julia Andrews

Nancy Lynn Friedman

George J. Jordan