

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-040

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

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. It was docketed on December 22, 2003, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated August 19, 2004, is 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, who was still a [rating] first class (XX1) when he submitted his application, asked the Board to return his name to the 2003 advancement list for chief [rating] (XXC); to backdate his date of advancement from February 1, 2004, to June 1, 2003, the date he would have been advanced had his commanding officer (CO) not removed his name from the list; and to remove from his military record a form CG 3307 ("page 7"), dated February 12, 2003, which contains negative criticism of his job performance.

The applicant alleged that his name was unfairly removed from the XXC advancement list after he received a mediocre Enlisted Performance Evaluation Form (EPEF) for the evaluation period from June 1 to November 30, 2002, and was not recommended for advancement on the EPEF by his rating chain.¹ The applicant stated that upon completing the Service-Wide Examination (SWE) for XXC in May 2002, he

¹ Enlisted members are evaluated by a rating chain, which consists of a supervisor, who recommends evaluation marks; a marking official, who assigns the marks; and an approving official, who approves the EPEF. All three members of the rating chain also indicate on the EPEF whether they recommend the member for advancement to the next pay grade. A member cannot be advanced if his rating chain does not recommend it. Personnel Manual, Article 10-B-4.d.

was number x on the 2003 XXC advancement list. In anticipation of his advancement, he applied for several XXC positions in October and November 2002, and these were endorsed by his command. Moreover, he applied for appointment to chief warrant officer on December 4, 2002, and this application was also endorsed by his command.

The applicant alleged that during the evaluation period, he was never told that he was not recommended for advancement to XXC. He alleged that because he had a new supervisor who had arrived in July 2002, he was expecting his marks to be a bit lower than those that he had previously received. He alleged that although he received some lower marks, they were still above average and not so poor as to justify his rating chain's decision not to recommend him for advancement or his removal from the advancement list.

The applicant alleged that he did not know anything was wrong until the third week of January 2003, when he asked his supervisor about the preparation of his EPEF. She took him to the office of a CWO4 and handed him the EPEF. When he saw that he had been not recommended for advancement, he asked for a "request and complaint mast" with the CO, a captain, but the CO refused to alter his recommendation and had his name removed from the 2003 XXC advancement list.

The applicant stated that on February 12, 2003, his supervisor counseled him and gave him the negative page 7. She told him that "to earn her recommendation [he] would have to take and admit responsibility for PSU xxx overpayment." In response, he began a daily work journal for her in which he reported everything he did and signed a statement regarding the overpayment. In the statement, he wrote that, when the orders for PSU xxx to be deployed to Bahrain were being prepared in March 2002, XX1 C, who was the auditor/supervisor for the PSU, asked the applicant about the unit's entitlements. The applicant "agreed with him [about] FSA and Imminent Danger Pay, but was unsure of the COLA." After looking at a section of the JFTR that XX1 C showed him, he was still uncertain, advised XX1 C to consult HRSIC or G-WPM, and gave XX1 C appropriate telephone numbers. The applicant further wrote that when in June 2002, he received an email from the unit about the COLA, he responded "based on [YN1C's] email to [XX1 H's] email on 6 Jun 02." He stated that he never personally researched the matter of the COLA in the JFTR except for looking at the one section with XX1 C and that, "[a]t the time, I was busy dealing with the [release from active duty] of over a hundred reserve personnel" at a unit. He further stated that two YN2s "approved the documents to start OUTCONUS COLA" for PSU xxx and that "[t]hey must have been directed because I personally know that they would not have done so on their own and I really don't think [XX1 C] would have done so either." On December 19, 2002, one of the YN2s told him that "the research was done up front in the PERSRU and [XX1 C] had also talked with [XX1 W], who was acting supervisor of the PERSRU." The applicant wrote that he was very surprised that the matter was handled at the PERSRU level and that clarification from HRSIC or G-WPM had not been requested because such clarification had previously been sought when a question about flight pay arose. He stated that it is his habit to seek clarification from HRSIC and that,

if he had been the auditor for PSU xxx, he “would have sent an email to HRSIC the same way [he] did with the flight pay [issue].” Finally, he stated that he did not agree with the wording of the page 7 he received on December 18, 2002, but signed it simply because he had sent an email concerning the COLA without researching the issue.

The applicant alleged that, at the end of February 2003, his supervisor told him that she would recommend to the CO that he recommend the applicant for advancement again so that the applicant could take the SWE in May 2003. He submitted a copy of the EPEF that shows that his CO’s advancement recommendation was changed in the database to “recommended.”

SUMMARY OF THE RECORDS

On January 31, 1989, the applicant enlisted in the Coast Guard as a seaman, based on his prior service in the Army. In 1990, he advanced to YN3; in 1993, to YN2; and in 1997, to XX1. Throughout the 1990s, he earned primarily marks of 6 in the various performance categories on his EPEFs,² with a few marks of 4, 5, or 7, and he was always recommended for advancement by his rating chain.

From June 6, 1994, to March 31, 1998, the applicant served as an auditor at an Integrated Support Center (ISC). He received his second Achievement Medal for this work, and the citation indicates that he had become “an expert in the area of reserve pay and personnel entitlements.” From April 1, 1998, to May 14, 2000, the applicant served on a cutter and received his third Achievement Medal for that work.

On May 15, 2000, the applicant was assigned to serve as the Supervisor of the PERSRU at the same ISC. On his first EPEF as the Supervisor of the PERSRU, dated November 30, 2000, he received one mark of 7, fourteen marks of 6, five marks of 5, and two marks of 4 in the performance categories and was recommended for advancement. On his EPEF dated May 31, 2001, he received two marks of 7, eighteen marks of 6, one mark of 5, and one mark of 4 and was recommended for advancement. On his EPEF dated November 30, 2001, he received three marks of 7, eleven marks of 6, and eight marks of 5 and was recommended for advancement. On his EPEF dated May 31, 2002, he received three marks of 7, fourteen marks of 6, four marks of 5, and one mark of 4 and was recommended for advancement. Following the SWE in May 2002, the applicant’s name was number x on the 2003 XXC advancement list.

On August 1, 2002, the applicant received a fourth Achievement Medal for his service at the ISC through March 2002. The citation indicates that the award was based primarily on his performance after September 11, 2001, as “the key player in the PERSRU as it faced a dramatic increase in workload with the involuntary call up of over 700 reservists.” It notes that he supervised 23 active and reserve personnel and com-

² Enlisted members are marked on a scale of 1 to 7 (7 being best) in various categories of performance.

mends him for his demeanor and dedication to the well being of his staff during a difficult time.

On December 18, 2002, the Executive Officer of the ISC entered a page 7 with the following information in the applicant's record, which the applicant signed in acknowledgement.

Member counseled this date in regards to the overpayment in excess of \$169,000.00 of OCONUS COLA to 53 members of Port Security Unit xxx, who were deployed overseas in support of xxxxxxxxxxxxxxxxxxxx.

Due to your inattention to details, and failure to fully research all applicable rules and regulations governing the eligibility and payment of a station allowance that you were not familiar with, you placed these members in a severe financial hardship.

On at least two separate occasions, members of PSU xxx questioned their eligibility to OCONUS COLA. Time and again, they were told that they were entitled to this money. According to emails that were sent from ISC xxxxxxxx PERSRU to PSU xxx's administrative personnel, your decision to pay these members OCONUS COLA was based on quarters and messing availability at their deployed location.

Your interpretation of the Joint Federal Travel Regulations (JFTR) was incorrect. Your failure to seek additional guidance and confirmation of your interpretations of the JFTR from either [the] Human Resource Service and Information Center (HRSIC) or Commandant (G-WPM-2) was an exercise in bad judgment.

You are directed to take stock of your actions, and to insure that this type of negligence is not repeated.

On the applicant's EPEF for the period from June 1 to November 30, 2002, he received three marks of 6, ten marks of 5, nine marks of 4 and was not recommended for advancement. The Approving Official for this EPEF was his CO, and on January 23, 2003, the CO instructed HRSIC to remove the applicant's name from the 2003 XXC advancement list because he had not been recommended for advancement on the EPEF. On January 30, 2003, the CO entered a page 7 in the applicant's record with the following statement:

Based on your most recent evaluation, your recommendation and nomination for advancement and participation in the May 2003 service wide competition for XXC are withdrawn at this time. ... Specifically, you fell short in holding personnel under your direct supervision accountable for their actions and in taking a sincere interest in the welfare of your people.

It appeared that you took a "hands off" approach to the daily management of your section. This led several of your subordinates to approach your fellow XX1 concerning difficulties they were experiencing in both their personal and professional lives. Because empowerment must be coupled with two way accountability to be an effective leadership tool, you must make yourself available to your personnel and take a personal interest in their overall well being.

Another area of concern was your reluctance to step forward, admit your mistakes and take corrective action. This became especially apparent during the unfortunate PSU xxx overpayment situation.

However, since you were counseled on your most recent set of marks, your supervisor has informed me that you are making progress in these critical leadership areas. ...

Per our discussion of 28 Jan 03, if you proceed on the positive path outlined by your supervisor, I am confident that you can earn both her and my recommendation for advancement to Chief Petty Officer.

On February 12, 2003, the applicant signed the above page 7, acknowledging receipt of counseling. On March 13, 2003, his CO sent HRSIC a message changing his recommendation regarding advancement from "not recommended" to "recommended" based on the applicant's "significant improvements in his overall leadership capabilities. He has taken a personal interest in the overall welfare of his subordinates, and has displayed the inherent traits required of a prospective chief petty officer." The applicant was allowed to take the SWE in May 2003.

On May 22, 2003, the Commandant issued ALCGENL 064/03, which indicates that the applicant would have been advanced to XXC on June 1, 2003, if his name had not been removed from the 2003 XXC advancement list.

On the applicant's EPEF dated May 31, 2003, he received two marks of 7, sixteen marks of 6, two marks of 5, and two marks of 4, and he was recommended for advancement. On June 15, 2003, he was transferred from the ISC to another unit.

On July 17, 2003, the applicant's name appeared in xx place on the 2004 XXC advancement list. On January 28, 2004, the Commandant issued ALCGENL 009/04, which authorized the applicant's advancement to XXC as of February 1, 2004.

VIEWS OF THE COAST GUARD

On April 19, 2004, the Judge Advocate General (TJAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request.

TJAG argued that the Board should deny relief because the applicant failed to exhaust his administrative remedies by appealing the EPEF marks or by filing a complaint under Article 138. "Applicant is estopped from alleging error or injustice regarding his disputed [EPEF] where he has failed to perfect an appeal of those marks or his commanding officer's recommendation regarding advancement." TJAG argued that the applicant "made a conscious decision not to appeal his marks." TJAG argued that by reviewing the application of a member who has failed to appeal his EPEF marks or his CO's recommendation against promotion, "the Board would effectively eviscerate the regulatory scheme implemented by Article 10" of the Personnel Manual. Accordingly, in the absence of a completed appeal, it is submitted that the Board is without proper jurisdiction to consider this application where Applicant has failed to exhaust

'all effective administrative remedies afforded under existing law or regulations.' 33 C.F.R. § 52.13(b). At any rate, because of the appeal procedures established by regulation, in determining whether it is a record correction 'necessary' under 10 U.S.C. § 1552(a) to correct an error or injustice, the Board should deem any issue not raised through this process to be waived, absent proof of compelling circumstances that prevented Applicant from raising such issues within the service's EPEF appeal system."

Regarding the merits of the case, TJAG argued that the applicant "has failed to provide any evidence to substantiate his claim that his marks were inappropriate," and that his request must be denied because his different opinion of his performance "is insufficient as a matter of law to overcome the strong presumption of regularity afforded her [sic] military superiors." *Arens v. United States*, 969 F.2d 1034, 1037 (1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

TJAG based his recommendation in part on a memorandum on the case prepared by the Coast Guard Personnel Command (CGPC). CGPC argued that the applicant has not proved that his CO or the Coast Guard committed any error or injustice in withdrawing his recommendation for advancement, in removing his name from the 2003 XXC advancement list, or in not reinstating him on that advancement list. CGPC alleged that the record shows that the applicant's CO "exercised proper authority and discretion" in deciding not to recommend the applicant for advancement on the EPEF. CGPC stated that the applicant's argument about the marks on the EPEF not supporting his CO's decision is not evidence of error or injustice because a CO's recommendation for advancement is not based on EPEF marks alone. Moreover, CGPC alleged that the applicant's "assigned marks [on the disputed EPEF] are not incongruous with the commanding officer's decision not to recommend him for advancement."

CGPC stated that under Article 5.C.25. of the Personnel Manual, the CO could have withheld his recommendation for a definite period instead of removing the applicant's name permanently from the advancement list, "[b]ut in light of the Applicant's serious performance lapses, his request to remove the Applicant from the advancement list was reasonable and not an abuse of his authority." CGPC alleged that the applicant was properly counseled and did not pursue an Article 138 complaint against the CO.

CGPC stated that when the CO changed his recommendation on March 13, 2003, he "could have specifically requested that his original 'not recommended' determination be changed retroactive to November 30, 2002 ..., but he clearly did not intend to do this. The wording of [the CO's March 13, 2003] request clearly indicates that it was the command's intent to establish the Applicant's eligibility to take the upcoming May 2003 SWE, not to reinstate his name on the July 2002 advancement list." CGPC stated that to make the applicant eligible for the May 2003 SWE, the CO's recommendation in the electronic version of the EPEF was changed to "recommended," but this did not mean that the recommendation was retroactive or that the applicant was reinstated back on the 2003 XXC advancement list.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 23, 2004, the BCMR sent copies of the Judge Advocate General's advisory opinion and CGPC's memorandum to the applicant and invited him to respond within 30 days. No response was received.

RELEVANT REGULATIONS

The BCMR's rule at 33 C.F.R. § 52.13 provides that "[n]o application shall be considered by the Board until the applicant has exhausted all effective administrative remedies afforded under existing law or regulations, and such legal remedies as the Board may determine are practical, appropriate, and available to the applicant."

Article 10.B. of the Personnel Manual governs the evaluation of enlisted members. Article 10.B.7.1. provides that a rating chain's recommendation for advancement must consider both past performance and "the member's potential to perform satisfactorily the duties and responsibilities of the next higher pay grade, qualities of leadership, and adherence to the Service's core values. Each rating chain member must address this independent section every time they complete an employee review." Article 10.B.7.3. states that if the Approving Official of an EPEF does not recommend the member for advancement, he or she "must ensure that the member is properly counseled on the steps necessary to earn a recommendation and prepare supporting remarks." Article 10.B.7.4. provides that the "Approving Official's decision on the advancement recommendation is final and may not be appealed. However, if the Approving Official learns new information and decides to change the recommendation, they should follow the procedures in Article 10.B.11.b."

Under Article 10.B.10. of the Personnel Manual, a member may appeal his EPEF marks first by requesting an audience with his rating chain to discuss the marks and then, if the problem is not resolved satisfactorily, by submitting within 15 days of receipt of the EPEF a written appeal, which is forwarded to the Appeal Authority. The Approving Official must ensure that the member is aware of his right to appeal "under this Article." Article 10.B.10.a.3. provides that the "recommendation for advancement portion on the EPEF is not appealable." No mention is made of UCMJ Article 138.

Article 5.C.4.e.4. of the Personnel Manual provides the following:

The commanding officer's recommendation for advancement is the most important eligibility requirement in the Coast Guard advancement system. A recommendation for advancement shall be based on the individual's qualities of leadership, personal integrity, adherence to core values, and his or her potential to perform in the next higher pay grade. Although minimum performance factors have been prescribed to maintain overall consistency for participation in the SWE, the commanding officer shall be personally satisfied that the member's overall performance in each factor has been sufficiently strong to earn the recommendation.

Article 5.C.31.f. of the Personnel Manual provides the following with respect to "Removal from Eligibility List":

An individual's name may be removed by Commander, CGPC as a result of disciplinary action, or for other good and sufficient reasons, whereby the individual is no longer considered qualified for the advancement for which previously recommended. Commanding officers shall withhold any advancement under such circumstances and advise Commander, CGPC of their intentions relative to removal from the list. A commanding officer may also direct that the individual not be removed from an eligibility list but that the advancement [be] withheld for a definite period. [See] Article 5.C.25. Individuals who have their names removed from an eligibility list must be recommended and qualify again through a subsequent SWE competition.

Article 5.C.25.d., entitled "Cancellation of Advancement," provides the following:

If at any time prior to effecting an advancement, a commanding officer wishes to withdraw his or her recommendation because an individual has failed to remain eligible and it appears that eligibility will not be attained prior to expiration of the current eligibility list, the commanding officer shall advise [HRSIC] ... to remove the individual's name from the eligibility list. ... The only review of the commanding officer's decision under Articles 5.C.25.c. or d. would be a complaint under Article 138, UCMJ.

Article 14.B.5. of the Personnel Manual states that "Congress established UCMJ Article 138 as a means for a military member to seek redress of alleged 'wrongs' committed by the member's commanding officer. A 'wrong' can include an allegedly improper personnel record entry."

Article 7.A. of the Military Justice Manual states that a member whose commanding officer refuses to reject a wrong may file a complaint with the responsible Officer Exercising General Court-Martial jurisdiction over the complainant [OEGCMJ]. Article 7.A.4.a. provides that a complaint under Article 138 "must be submitted to a superior commissioned officer within 90 days of the date of discovery of the alleged wrong, and the complainant must have requested in writing redress from his or her commanding officer and have been refused. ... The OEGCMJ may waive the 90-day time limit and the requirement for written request for redress and denial thereof for good cause and action on the complaint by the OEGCMJ constitutes such waiver."

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. TJAG alleged that the applicant's failure to exhaust certain administrative remedies left the Board without jurisdiction over his request. TJAG offered no authority to support his position, except for his interpretation of the Board's rule at 33 C.F.R. § 52.13(b), which states that "[n]o application shall be considered by the Board

until the applicant has exhausted all *effective* administrative remedies afforded under existing law or regulations, and such legal remedies as the Board may determine are practical, appropriate and *available* to the applicant.” (Emphasis added.) In *Avocados Plus v. Veneman*, 370 F.3d 1243, 1248 (D.C.C. 2004), the court stated “[w]hile the existence of an administrative remedy automatically triggers a non-judicial exhaustion inquiry, judicial exhaustion requires much more. In order to mandate exhaustion, a statute must contain “sweeping and direct” statutory language indicating that there is no federal jurisdiction prior to exhaustion.”³ The Board's rule does not contain such “sweeping and direct” statutory language divesting it of jurisdiction due to a failure to exhaust administrative remedies. Therefore, the Board finds that even if the applicant did not exhaust an effective administrative remedy, the Board still has jurisdiction over his case under 10 U.S.C. § 1552. In addition, the application was timely.

2. TJAG argued that the Board should dismiss this case or deny relief because the applicant did not appeal his EPEF marks. However, the applicant has not alleged that his EPEF numerical marks are erroneous; he has only alleged that the lack of recommendation for advancement was erroneous. Articles 10.B.7.4. and 10.B.10.a.3. of the Personnel Manual both state that an Approving Official's decision on the advancement recommendation may not be appealed; only the numerical marks may be appealed. Therefore, the provisions for appealing EPEF numerical marks in Article 10.B.10. do not constitute an administrative remedy for the alleged error that the applicant has asked the Board to correct.

3. TJAG argued that the Board should dismiss this case or deny relief because the applicant did not file a UCMJ Article 138 charge against his CO. However, both Articles 10.B.7.4. and 10.B.10.a.3. of the Personnel Manual expressly state that an Approving Official's decision on the advancement recommendation may not be appealed. Article 10.B.10. required the CO to ensure that the applicant was aware of his right to appeal “under this Article,” but Article 10.B. makes no mention of the option of filing an Article 138 charge and the only right to appeal provided therein is the right to appeal the numerical performance marks, not the advancement recommendation. Therefore, the Coast Guard is essentially arguing that it can tell enlisted members that an Approving Official's decision on the advancement recommendation is not appealable, and if the members believe it and look no further, they lose the right to seek relief from this Board. The Board strongly rejects this argument.

4. Articles 5.C.25.d. and 14.B.5. of the Personnel Manual indicate that if a CO removes his recommendation for advancement, a member can try to get the decision reversed by filing an Article 138 charge within 90 days of the CO's decision, in accordance with Article 7.A. of the Military Justice Manual. Many more than 90 days have passed since the applicant's CO withdrew his recommendation for advancement. The

³ *Avocados Plus v. Veneman*, 370 F.3d 1243, 1248 (D.C.C. 2004) (citing *Weinberger v. Salfi*, 422 U.S. 749, 757 (1975)).

Board's policy is that exhaustion of administrative remedies has occurred in situations where a remedy existed but is no longer available or practical. The Board's policy is consistent with its rule at 33 C.F.R. § 52.13(b) and with congressional intent. The Board believes such blanket denial of applications, as suggested by TJAG, would be a violation of its responsibility under 10 U.S.C. § 1552. The Board notes that the only limitation Congress placed on filing an application with the BCMR is the three-year statute of limitations, and even allowed that to be waived in the interest of justice. Moreover, since at least 1994, the courts have held that the three-year statute of limitations does not begin to run until a member is discharged from active duty,⁴ and Congress has done nothing to contradict that interpretation during the intervening decade. Can an agency completely divest an active duty or former service member of review by the BCMR when Congress did not do so? We think not. As the Supreme Court stated in *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992), "Of 'paramount importance' to any exhaustion inquiry is congressional intent."⁵

5. Finally, the Board notes that Coast Guard officers are not required to file Article 138 charges against their COs before seeking relief from this Board about a non-recommendation for advancement in an officer evaluation form (OER). The Coast Guard has written the Personnel Manual such that an Article 138 charge is not even an effective administrative remedy for an erroneous recommendation on an OER; only the Personnel Records Review Board and this Board can remove a derogatory comment from an OER. It would be significantly inequitable for the Board to require enlisted members to have filed Article 138 charges against their COs while officers are exempt from such an onerous requirement.

6. In light of the above considerations, the Board finds that the applicant has exhausted all practical and effective administrative remedies now available to him. The Board will therefore consider his case on the merits.

7. Absent evidence to the contrary, the Board presumes that the applicant's rating officials acted correctly, lawfully, and in good faith in making their evaluations.⁶ The applicant's own opinion that his performance was not sufficiently poor to merit his CO's action is insufficient to overcome this presumption.

8. The applicant argued that his rating chain's endorsements of his applications for XXC positions during October and November of the evaluation period are contrary to the removal of the recommendation for performance. However, the page 7 that the applicant received on December 18, 2002, shows that his command discovered significantly unsatisfactory performance that occurred at least in part during the per-

⁴ *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994) (holding that section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940 "tolls the BCMR's limitations period during a servicemember's period of active duty").

⁵ *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992) (citing *Patsy v. Board of Regents of Florida*, 457 U.S. 496, 501 (1982)).

⁶ *Arens v. United States*, 969 F.2d 1034, 1037 (1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

formance period. The rating chain's endorsements do not persuade the Board that the applicant's CO erred in preparing the disputed EPEF with a mark of "not recommended" or in asking HRSIC to remove his name from the advancement list on March 13, 2003.

9. The applicant argued that the numerical marks he received on the disputed EPEF are reasonably good and therefore inconsistent with his CO's decision not to recommend him for advancement. However, under Article 10.B.7.1. of the Personnel Manual, a recommendation for advancement is based not only on a member's performance, as reflected in his EPEF marks, but also on "the member's potential to perform satisfactorily the duties and responsibilities of the next higher pay grade." The page 7 that the applicant acknowledged on February 12, 2003, shows that his CO had significant concerns about his performance and accountability and properly counseled him about how he could regain the CO's recommendation for advancement. The applicant has submitted no evidence to show that the page 7 is erroneous or that his CO abused his discretion in deciding to remove his recommendation for advancement.

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

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

