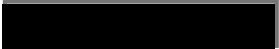


**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-067


BMC/E-7

FINAL DECISION

This proceeding was conducted by the Board for Correction of Military Records of the Coast Guard (hereinafter “Board”) according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on May 28, 2024, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated April 24, 2025, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

INTRODUCTION

The applicant, a Chief Boatswain’s Mate (BMC/E-7), requests that the Board change the advancement recommendation on his Enlisted Evaluation Report (EER) issued in June 2021 from “Not Recommended” to “Recommended.” He alleges that the recommendation was withheld due to personal bias.

SUMMARY OF THE RECORD

The applicant joined the Coast Guard on August 20, 2002. He was promoted to Boatswain’s Mate, First Class (BM1/E-6) on June 20, 2014. On June 25, 2018, the applicant was transferred to a new afloat unit where he served as Executive Petty Officer (hereinafter “XPO”).

The applicant submitted a printout of a typewritten recommendation, dated July 9, 2020, in which J.T. stated that the applicant would represent the Coast Guard well in any Officer-in-Charge (OIC) position. J.T. praised the applicant’s high standard of professional conduct and demeanor, and noted the applicant had demonstrated leadership during the

COVID-19 pandemic and in performing as OIC on occasions when his unit's OIC had been absent.

On November 10, 2020, mid-marking period marks were issued by the applicant's OIC, BMC T.E. The applicant was marked a 4 (Average) or 6 (Excellent) in all performance categories.¹ The applicant was also marked "Ready" for advancement. These marks were followed by T.E.'s comments, which were as follows:²

BMC [T.E.] sat down with BM1 [the applicant] in September to address some deficiencies. This evaluation will cover some of those same deficiencies for two reasons. Many of them are still present and to ensure the expectations are written down and there is a clear expectation of the direction BM1 needs to go forward.

BM1 is one of the nicest shipmates I have had the pleasure to work with. He is fairly strong in the administration side of being an Executive Petty Officer. Moving forward BM1 needs to work immensely on his leadership, mentoring, and his in the moment decision making. As XPO you are expected to be the go to person. The XPO is expected to be extremely knowledgeable of every aspect of the unit, because in the end the XPO is second in command and responsible for most of the things on a boat. In July BM1 asked for a command endorsement to screen for Officer in Charge. At that point we did not have much time together so after my few weeks of working with BM1 [the applicant], which was mostly in the office, and looking back on his past marks I chose to push his endorsement through to process. If I had to make that same decision today I don't think I would recommend the command endorsement. With multiple occasions where the ship or unit were in a spot where a split second crucial decision was to be made or actions were to be taken, BM1 struggled to act. If being an OIC was just navigating from point "A" to Point "B" BM1 would be good to go. However the position entails a lot more than that. The leading and mentoring of multiple personnel. Keeping a level head and taking action with confidence in a reasonable amount of time when things take a turn for the worse. Making decisions that are best for the unit and align with policy even when it sometimes isn't the most favorable decision by the crew. These are all aspects and challenges you are presented as Officer in Charge. Sometimes I question if BM1 would be able to successfully fill that role.

During an informal verbal counseling session, all of this was discussed. I offered my assistance in any way BM1 needed in order for him to get over this hurdle. He has yet to approach me with a plan or a request to improve these deficiencies.

I don't want BM1 to take these things discussed here as a negative thing. I challenge BM1 [the applicant] to look at it as a set of goals. Goals that he needs to work on in order to take on the next level. BM1's success is key to me and I feel working on this is the path to success and hopefully one day a successful Officer in Charge role. It is important, not just for BM1 but to the crew that he continues to challenge himself to learn, grow and improve. If we aren't striving to be better then what kind of message does that send to our crew?

On February 23, 2021, a "Memorandum of Expectation" was issued by BMC T.E. to the applicant. It stated as follows:

1. During your Mid-Marking Evaluations Review provided by the Officer-in-Charge on 19Nov20, you were counseled on deficiencies to properly communicate. Based on limited improvement and reoccurring grievances beyond the unit as a result of your poor communication skills, this memorandum is intended to outline my expectations with the goal of improving your skills as an effective communicator. Furthermore, your improvement and ability to properly communicate in the future based

¹ EER numerical marks are on a scale from 1 (worst) to 7 (best). See Article 4.D.1.c.(3) of the Coast Guard's Enlistments, Evaluations, and Advancements Manual, COMDTINST M1000.2C (January 2020).

² Comments are only required for categories where the numerical mark is a 1, 2, 3, or 7. See *Id.*, Article 4.D.2.c.(1).(b).

on the objectives outlined will weigh heavily on my decision for a positive recommendation to participate in the May 2021 Service Wide Exam for Chief petty Officer.

- a. Develop and submit the unit's monthly training calendar to the OIC for review by the 25th of the prior month.
 - b. Develop the Plan of the Week with input from the Engineer Petty Officer and post on the unit bulletin board by close of business the Friday prior.
 - c. Brief the OIC at the end of each day for the next day's plans if there is any departure of the Plan of the Week. This can be done via email, phone call or in person.
 - d. Notify the OIC for any purchase request not approved for purchase and reason for justification.
 - e. Copy the OIC on all correspondence to Sector Supply Division for transparency.
2. A Chief Petty Officer exemplifies the traits of Honor, Courage and Commitment. Motivation comes from within, I encourage you to read aloud and embrace the message from the Master Chief Petty Officer of the Coast Guard to the Chiefs, "We, as Chiefs, must strive to practice good communication to remain vital and essential to the people we serve." Your recent performance reflects a clear avoidance of meeting this standard and most notably reflects poorly on this command and crew. I fully expect you to adhere to these expectations, good communication skills are critical to effective leadership, mentoring, and teamwork. I encourage you to embrace the challenge and to prove you are "Ready" to be not only a Chief, but a future Officer-in-Charge.

A document titled "Advancement Eligibility List – May 2021", was submitted by the applicant, which showed him as third out of the 45 Coast Guard members listed.

In early June 2021, the applicant's EER for the marking period from June 1, 2020, to May 31, 2021, was issued. The applicant's marks were as follows:

Competency		Rating	
EPM5A	Military Bearing	6	Excellent
EPM6A	Customs, Courtesies, Traditions	7	Superior
EPP12A	Quality of Work	4	Average
EPP14A	Technical Proficiency	4	Average
EPP13A	Initiative	4	Average
EPPQ13A	Decision Making Problem Solve	3	Below Standard
EPPQ14A	Military Readiness	6	Excellent
EPPQ15A	Self-Awareness and Learning	3	Below Standard
EPPQ16A	Team Building	5	Above Average
EPL12A	Respect for Others	6	Excellent
EPL13A	Accountability Responsibility	4	Average
EPL14A	Directing Others	4	Average
EPL15A	Effective Communication	3	Below Standard
EPCONE	Conduct	S	Satisfactory
EPFP1A	Future Potential	Y	Future Potential (Comment)
EPRC2A	Advancement Potential	N	Not Recommended

The "Sum of Marks" for four overall factors – Leadership, Professional Qualities, Performance, and Military – were 17, 17, 12, and 13, respectively.

Reviewer Comments were included and stated as follows, with respect to the applicant's "Below Standard" marks and the marks related to future potential and advancement:

EPPQ13A	Decision Making Problem Solve	Rating 3	Below Standard
Inability to make sound decisions, placed safety of unit and crew at risk during routine training evolutions. Not trusted by crew during drill scenarios; crew looked to subordinate personnel for guidance.			
EPPQ15A	Self-Awareness and Learning	Rating 3	Below Standard
Member has been counseled on poor communications, lack of leadership/mentoring, and failure to effectively act as On-Scene Leader. Created a negative climate and mistrust from the crew in emergency situations/drills.			
EPL15A	Effective Communication	Rating 3	Below Standard
Member has been counseled numerous times (formal & informal) on poor communications. Rcvd a memo of expectations outlining keys to success to earn OIC's recommendation for advancement; mbr has failed to meet guidelines.			
EPFP1A	Future Potential	Rating Y	Future Potential (Comment)
Member is not recommended for any future special, independent or command cadre assignments. There are too [many] deficiencies that need to be addressed before the member will be recommended. Member fails to hold himself accountable and disregards any form of constructive feedback from OIC and other leadership.			
EPRC2A	Advancement Potential	Rating 3	Not Recommended
Member has been counseled multiple times on poor performance associated with lack of communications and intrusive leadership. This was addressed in members mid-marks counseling dtd November of 2020. The OIC was then contacted by Sector NY Supply/WWM divisions and multiple neighboring units about issues while having interaction with the member. A pattern of poor communication continued which lead to another counseling session with the OIC, which was documented in a memorandum of expectations dated February of 2021. The OIC explained the importance of good communication as an XPO and how crucial it is for becoming a Chief. The memorandum addressed guidelines for correcting deficiencies and keys to improvement in order to earn the OIC's recommendation for advancement. Member has failed to meet the guidelines on multiple occasions. The day following the counseling session, member failed to notify the OIC of a surprise drill onboard the cutter that disrupted multiple departments plans of the day and impacted operational readiness. Member has also been counseled on lack of intrusive leadership. Member is content from managing the unit from behind a workstation rather than mentoring and leading by example. Throughout the entire marking period and verbal/written counseling sessions, this remained an issue and has not been improved upon. Member also suffers from a lack of on scene initiative. There have been multiple times when member failed to act when needed. Two of the incidents put the unit in a dangerous situation and member failed to take any action which resulted in the OIC having to step in and take over. This is concerning, if the member is advanced to Chief Petty Officer, and remains in a complacent state of mind, that may lead to significant MISHAPs. In addition, OIC has been confronted by crew members on their concern with this member as WQSB on-scene leader, due to failure to act during drills. Member tends to freeze when outside elements change, and is unable to adapt and take appropriate action to combat a casualty. Moreover, the member failed to uphold major safety protocols during the COVID-19 pandemic by putting his crew at risk. The above highlights several deficiencies have been addressed and the member is still struggling with each of the course corrections. In summary, member has not learned from previous mistakes and this pattern of behavior is the main reason for the "Not Recommended".			

The applicant refused to sign the EER based on his intention to appeal it.

On June 17, 2021, BMC T.E. issued negative Administrative Remarks on a Form CG-3307 (hereinafter "Page 7"). The Page 7 stated as follows:

You are being counseled for your actions that have come to light over a 24 hour period and it is evident that you are not meeting my expectations as Executive Petty Officer (XPO) and as a senior petty officer.

On the morning of 16 Jun 2021 you were late to the cutters pre underway brief and risk assessment. Your decision was to remain in your rack until 10 minutes prior to getting underway. The crew was waiting for you to conduct a Navigation and Safety Brief (both of which are your assigned duties).

Just hours later, it was discovered that an incident from months prior wasn't fully briefed to the command. When inquired into this incident, you explained it in much more detail displaying actions that violated policy, failed to properly assess risk versus gain, ignored your shipmate when they advised you against performing the action, and most importantly put your life in grave danger. This is a clear example of poor leadership, ineffective communications and actions detrimental to good order and discipline.

Lastly, this same day, HAWSER's Officer of the Day contacted you requesting a relief due to him feeling ill. When you contacted the OIC, you were directed to have the member seek medical attention. At 2223 you informed the OIC that the member was headed to the emergency room. The next morning, 17Jun21 at 0512 the member updated you that he had a medical condition that warranted inpatient hospitalization. You failed to gather basic information including the name of the hospital, to adequately brief SECNY Medical and family if needed. We then lost communications with our member for about four hours, not knowing his current location or medical status.

Moving forward, I am rescinding your authority to act as Officer in Charge in my absence and your authority to make decisions on personnel related issues and financial responsibilities. You are ordered to review all remaining financial obligations with the OIC.³

On July 6, 2021, a new EER was issued in response to the applicant's appeal. The 3's previously assigned for the categories "Decision Making Problem Solve", "Self-Awareness and Learning", and "Effective Communication" were increased to 4's. The 4 previously assigned for "Initiative" was increased to a 5. The new "Sum of Marks" entries were 18 (Leadership), 19 (Professional Qualities), 13 (Performance), and 13 (Military). The entry of "Not Recommended" for advancement was not changed, nor were the Reviewer Comments associated with the "Future Potential" and "Advancement Potential" categories. The Approving Official (AO) listed on the EER counseling sheet was Commander (CDR) J.S., and the EER was signed by BMC T.E., who confirmed that he had counseled the applicant on behalf of the AO.

The applicant submitted a printout summarizing his marks on EERs issued between 2016 and 2023, which showed that he received significantly higher marks and was recommended for advancement in each year other than 2021. The applicant also submitted a Coast Guard Achievement Medal and citation recognizing him for outstanding achievement between June 2018 to June 2021. The citation discussed the applicant's devotion to duty and superior service as XPO as part of significant ice breaking, coastal security, and transportation missions over this period. The applicant received additional Coast Guard Achievement Medals for superior performance from July 2021 through May 2022 and June 2022 to June 2023.

On June 1, 2023, the applicant was promoted to BMC (E-7).

³ Although this Page 7 was issued in June 2021, a statement from a Coast Guard colleague submitted by the applicant, and summarized in the section below, indicates that the event in which the applicant "put [his] life in grave danger..." took place in the winter of 2021 (likely either January or February 2021).

APPLICATION

In his May 2024 submission to the Board, the applicant made the following assertions and arguments:

- The 2021 EER was influenced by personal bias from the OIC, T.E.
- The applicant was recommended for advancement by the OIC in his first two years with the unit, but in his final year, under a new OIC, his career had “suffered unnecessarily through personal bias, inconsistent direction, and poor leadership.”
- The applicant’s November 2020 mid-marks counseling assigned a 4 or better in all categories and included a recommendation for advancement. The three areas of improvement specified were leadership, mentoring, and in-the-moment decision making, but 4’s were assigned for the categories corresponding to these areas.
- While the November 2020 command comments discussed the requirements to be an OIC, they did not address requirements for a recommendation for advancement.
- The February 2021 expectations memorandum stated that issues with communication were addressed in the mid-marks review, but this was inaccurate, since the only reference in the mid-marks counseling to communications was his mark of 4 in that category.
- The February 2021 memorandum stated that the applicant’s improvement in communication skills would be weighed heavily in the OIC’s decision whether to permit him to sit for the May 2021 Servicewide Exam (SWE), and the applicant. The applicant was permitted to sit for the SWE, indicating his compliance with the February 2021 memo’s guidelines.
- The “Not Recommended” mark was in stark contrast to his receipt of 4’s in all categories on the 2021 EER (following his appeal).
- The lack of an advancement recommendation was inconsistent with his EERs in previous years and with his “departing award” received for service between June 2018 and June 2021.
- Upon leaving the unit in question, the applicant’s career returned to a positive trajectory, as reflected in his marks received in May 2022 and May 2023, and awards received in June 2022 and June 2023.

The applicant also submitted statements from three fellow Coast Guard members. The first two statements expressed disagreement with the OIC’s description of events in the Page 7 issued on June 17, 2021. Both authors had served on a crew with the applicant in December 2020 on a small boat on a mission to repair and/or replace grating on “Aid to Navigation” towers. While working on their third tower of the day, the small boat became unsecured from the boulder it was tied to and began to drift away. The applicant swam to the boat in his dry suit, retrieved it, and later notified the OIC of the incident. In their statements, both crew members asserted that the applicant had appropriately assessed risk and acted properly and in accordance with policy. The Board infers that this event forms

the basis of the Page 7's description of the applicant having placed his life in "grave danger."

The applicant also submitted a statement by a third Coast Guard member who was the subject of the June 2021 Page 7's discussion of the applicant having lost track of a member who was excused from duty to receive medical care. In his statement, the member recalled that when he was admitted to the emergency room on the day in question, and for the three days he was subsequently hospitalized, his mother and father were aware of his location.

VIEWS OF THE COAST GUARD

In the Coast Guard's views dated February 10, 2025, a Judge Advocate (JA) recommended that the Board deny the applicant's request for relief. The JA adopted the facts and analysis provided in an enclosed memorandum provided by the Coast Guard Personnel Service Center (PSC). The PSC initially stated that Coast Guard policy delegated "final say" over advancement recommendations to approving officials based on their own judgment as to whether an individual was ready to assume the responsibilities of the next higher paygrade. The PSC argued that the reasons for the loss of confidence in the applicant's ability to carry out those responsibilities were clearly documented in the mid-period counseling of November 2020 and the subsequent memorandum of expectations in February 2021. The PSC also noted that although the applicant claimed his OIC was biased, he had not claimed that the AO was biased, and it was the AO who had the authority to finalize the evaluation in question.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

The Board provided the applicant with the Coast Guard's views and invited him to submit a response. As of the date of this decision, the applicant has not submitted a response.

APPLICABLE LAW AND POLICY

Board Proceedings

The Board may correct errors or remove injustices in a service member's records pursuant to 10 U.S.C. § 1552(a). "Error" means a mistake of a significant fact or law and includes a violation by the Coast Guard of its own regulations. *See Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976) ("Error" means legal or factual error.); *Ft. Stewart Schools v. Federal Labor Relations Authority*, 495 U.S. 641, 654 (1990) ("It is a familiar rule of administrative law that an agency must abide by its own regulations."). Injustice, when not also error, is treatment by the military authorities that "shocks the sense of justice." *Sawyer v. United States*, 18 Cl. Ct. 860, 868 (1989) citing *Reale v. United States*, 208 Ct. Cl. 1010,

1011, cert. denied, 429 U.S. 854, 50 L. Ed. 2d 129, 97 S. Ct. 148 (1976). The Board has authority to determine whether an injustice exists on a “case-by-case basis.” Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002).

“It is the responsibility of the Applicant to procure and submit with his or her application such evidence, including official records, as the Applicant desires to present in support of his or her case.” 33 C.F.R. § 52.24(a). “The Board begins its consideration of each case presuming administrative regularity on the part of the Coast Guard and other Government officials. The Applicant has the burden of proving the existence of an error or injustice by the preponderance of the evidence.” 33 C.F.R. § 52.24(b). Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.” *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

Performance Evaluation Report Challenges

To invalidate a performance evaluation report, a plaintiff must show a “clear violation of a specific objective requirement of statute or regulation, or ... misstatement of a significant hard fact.” *Turner v. United States*, 231 Ct. Cl. 882, 884 (1982), citing *Hary v. United States*, 223 Ct. Cl. 10, 17, 618 F.2d 704, 707-08 (1980). Evaluations of military personnel “is an inherently subjective process which neither the military boards nor [the] court[s] will interfere with unless there is clear and convincing evidence of factors adversely affecting the ratings which had no business being in the rating process. *Guy v. United States*, 608 F.2d 867, 871 (Ct. Cl. 1979).

Coast Guard Policy

Enlistments, Evaluations, and Advancements

The Coast Guard’s Enlistments, Evaluations, and Advancements Manual, COMDTINST M1000.2C (January 2020) (hereinafter “EEA Manual”) was in force during the relevant period and it remains in effect. In pertinent part, it provides as follows:

CHAPTER 3 ENLISTED ADVANCEMENTS

A. Advancements, Reductions, and Changes in Rates and Status.

4. Responsibilities

- b. Commanding Officers/Officers in Charge. CO/OICs are responsible for the execution of the advancement program. CO/OICs are responsible for the timely evaluation of assigned active duty ... members ... submitting recommendations ... to ensure that every eligible and recommended candidate for advancement has an opportunity to compete. The following subparagraphs briefly outline these responsibilities' various elements, which are fully amplified elsewhere in this Chapter and Article 3.B. of this Manual

- (3) Advancement Recommendation. The CO/OICs recommendation for advancement is the most important eligibility requirement in the Coast Guard advancement system. Although minimum performance factors have been prescribed to maintain overall consistency for participation in SWE, the CO/OIC will be personally satisfied that the member's overall performance in each factor has been sufficiently strong to earn the recommendation and a mark of ready. Before providing an advancement recommendation, the CO/OIC will review the policy governing the advancement recommendation in Article 4.D.3. of this Manual, which also provides guidance on when an advancement recommendation should be withdrawn.

6. Additional Eligibility Requirements for Members Competing in E-7 and E-8 Examinations.

a. General.

- (1) Members recommended for advancement to Chief petty officer and Senior Chief petty officer, must be superior in leadership, military characteristics, technical knowledge, and performance of duty. Recommendations for participation in the Chief and Senior Chief competition should not be initiated solely on the request of the member.

CHAPTER 4 ENLISTED EVALUATION SYSTEM (EES)

- A. Overview. This chapter states policies and standards for conducting performance evaluations for Coast Guard enlisted personnel. All enlisted members will be afforded accurate, fair, objective, and timely evaluations. To this end, the Service has made enlisted performance criteria as objective as possible, within the scope of jobs and tasks enlisted members perform. In using the Enlisted Evaluation System, strict and conscientious adherence to the specific wording of the performance standards is essential to realizing the purpose of the enlisted evaluation system process.

3. Definitions.

- e. Factor Types. There are four major categories of performance which are referred to as "factors":

- (1) Military. Measures a member's ability to bring credit to the Coast Guard through personal demeanor and professional actions.
- (2) Performance. Measures a member's willingness to acquire knowledge and the ability to use knowledge, skill, and direction to accomplish work.
- (3) Professional Qualities. Measures those qualities the Coast Guard values in its people.

(4) Leadership. Measures a member's ability to direct, guide, develop, influence, and support others performing work.

- k. Rating Officials. The designated members responsible for evaluating and helping to motivate the performance and behavior of the evaluatee. Commanding Officers must establish the rating chain in accordance with applicable policies, and must designate all rating officials in writing. This designation may be by individual or position, and may be designated in standard CG memo format or within a unit Instruction.

- m. Marking Official. An officer, civilian, Chief petty officer, or first class petty officer. First class petty officers must be designated as an executive petty officer to act in this capacity and are not required to be one pay grade senior to the evaluatee.
- n. Approving Official. A Coast Guard officer, officer in charge, or Coast Guard civilian who is the official supervisor of the marking official.

Note: If necessary, the approving official can fill the role of the marking official.

- o. Appeal Authority. Normally, the first flag officer in the evaluatee's chain of command. Appeal authority may not be delegated, and does not change if a commanding officer delegates the role of approving official regular Enlisted Evaluation Report. Any annual or semiannual evaluation report.

B. Roles and Responsibilities.

4. The Evaluatee. The evaluatee and the rating chain are responsible for meeting all EES standards. The evaluatee must perform the following functions:

- b. Performance. Obtain sufficient feedback or counseling and using that information in adjusting, as necessary, to meet or exceed the standards.

5. The Rating Chain.

- a. General. The following standards and policies apply to the entire rating chain.

- (2) Performance Assessment. The rating chain assesses an enlisted member's performance and value to the Coast Guard through a system of multiple evaluators who present independent views and thus ensure accurate, prompt, and correct reporting. It reinforces decentralization by placing responsibilities for development and performance review at lower levels within the command structure. It ensures the evaluatee is evaluated on the required period ending date and the evaluation report is based on how the evaluatee performed in each competency consistently throughout the period, except for conduct, which must be adhered to every day of the period.
- (3) Checks and Accountability. Responsibility for evaluating the performance of enlisted members is placed at several different levels. The evaluation report begins with the evaluatee's supervisor and is progressively reviewed and modified, as necessary, by higher supervisory levels until finally approved by the approving official. Through this process, the EES has a built-in check

and accountability system to ensure supervisors are aware of the importance of evaluation reports and give them incentive to be totally objective and accurate. Each rating official will:

- (a) Review and correct any inconsistencies found in evaluation reports when considering a member's performance compared to the written standards.
- (b) Hold the next lower supervisory level accountable for their evaluation reports by observing the accuracy and quality of the evaluation reports they submit, and by reporting the same on their performance evaluation.

b. The Supervisor.

- (1) Communication. Must clearly communicate goals and acceptable standards of performance to the evaluatee before and throughout the marking period.
- (2) Advancement Status. Gathers all written and oral reports on the evaluatee's performance. Ascertains the status of the evaluatee's advancement requirements for next higher pay grade.

- (5) Counseling. Counsels the evaluatee on the evaluation report after the approving official's action. The importance of how effective this piece of the evaluation process can be in setting the evaluatee up for future success cannot be overemphasized. How well the supervisor clearly communicates the member's past performance and methods in which to improve are primary to ensuring future success. The supervisor will provide the evaluatee with a printed counseling sheet and acknowledges receipt by obtaining their signature in accordance with Article 4.B.3.f. of this Manual.

c. The Marking Official.

- (1) Documentation. Gathers all written and oral reports on the evaluatee's performance.
- (2) Reviews Recommended Marks. Discusses with the supervisor any recommendations considered inaccurate or inconsistent with the member's actual performance, paying special attention to the required supporting remarks in accordance with Article 4.D.2. of this Manual. The marking official has the authority to return the evaluation report to the supervisor for further justification or support for any marks.

d. The Approving Official.

- (1) Documentation. Gathers all written and oral reports on the evaluatee's performance.
- (2) Must ensure:
 - (a) Overall consistency between assigned marks and actual performance/behavior and output without using any type of forced distribution process. Evaluatee will be counseled and advised of appeal procedures.
 - (b) Evaluation reports are submitted on time.
 - (c) The required supporting remarks are completed in accordance with Article 4.D.2. of this Manual.

- (d) All reviews initiated using an Enlisted Evaluation Report Form are entered into Direct Access.
- (e) Reviews the marking official's recommended marks and discusses any recommendations considered inaccurate or inconsistent with the evaluatee's actual performance, paying special attention to recommended marks of 1, 2, 3 or 7; the future potential block, a not ready and not recommended mark in the Recommendation for Advancement competency, or an unsatisfactory conduct mark. See Article 4.D. of this Manual for additional guidance. The approving official has the authority to return the evaluation report form to the marking official to further justify or support any marks in accordance with Article 4.D.2. of this Manual.
- (f) The completed evaluation report is forwarded to the supervisor to counsel and inform the evaluatee.

D. Enlisted Evaluation Report Guidance.

1. General.

c. Marking Standards.

(3) Marks Standards. Use the following guidelines to assign marks:

MARK	MEANS THE MEMBER CONSISTENTLY
1	(Unacceptable) – Did not meet all the written performance standards in the “2” level or the rater considered the impact severely detrimental to the organization or to others.
2	(Poor) – Met all the written performance standards in this level.
3	(Below Standard) – Did not meet all the written performance standards in the “4” block.
4	(Average) – Met all the written performance standards for this level and none in the “6” level.
5	(Above Average) – Met all the written performance standards in the “4” level and at least one of those in the “6” level.
6	(Excellent) – Met all the written performance standards for this level and did not exceed any of them.
7	(Superior) – Met all the written performance standards in the “6” level and exceeded at least one of them.

- 2. Required Comments. Rating officials must provide required comments for certain marks in accordance with this Chapter.
 - a. Purpose of Required Comments. These remarks serve as supplemental information on the evaluatee in determining decisions such as officer in charge certification, removal for cause, regular duty assignments, or special duty assignments as a recruiter, instructor, investigator, or Command Master Chief.

- b. Prohibited Comments. The rating chain must not mention gender identifiable pronouns, first or last name, marital status, medical status, or placing emphasis on race, gender, and religion.
- c. When Required.

(1) Comments. These comments are required for the following reasons:

- (a) To address the future potential of all enlisted members E-4 and above;
- (b) For any marks of 1, 2, 3, or 7.

Note. 1: When submitting the member's EER for final, comments must not be entered for marks of 4, 5, 6, Satisfactory Conduct, or Ready.

- (c) When the member is not ready or not recommended for advancement per Article 4.D.3. of this Manual...

- d. Specificity of Required Comments. Specific comments that paint a succinct picture to the reader of the evaluatee's observed performance and qualities allow the reader to determine how the evaluatee exceeded or failed to meet the standards and will reduce or eliminate erroneous interpretations. These comments are critical to the reader being able to ascertain an accurate portrayal of the evaluatee's daily performance; if a reader cannot form a clear picture of the performance, the human tendency is to disregard or assign a lesser value to the comments.

3. The Advancement Recommendation.

- a. Basis for the Advancement Recommendation. While the rating chain must consider past performance, it must also consider and base the advancement recommendation on the member's potential to perform satisfactorily the duties and responsibilities of the next higher pay grade, qualities of leadership, personal integrity, and adherence to the Service's core values. The approving official's recommendation for advancement (to include change in rating by participation in the SWE) is valid only for a specific competition and must be renewed for each succeeding competition. Thus the rating chain must address this independent Section every time they complete an evaluation report.
- b. Guidelines for the Advancement Recommendation. When completing the advancement potential part of the evaluation report, the rating chain should focus on the guidelines in Article 3.A.4.b.(3) of this Manual on advancement recommendations and then select one of the following choices.
 - (1) Ready. Assign this mark if, in the view of the rating official, at the time of this evaluation the individual has the capability and capacity to carry out the duties and responsibilities of the next higher grade, and has satisfied all eligibility and qualification requirements for the next higher grade. Required time in grade/service must not be considered when determining overall eligibility for advancement. Note 1.
 - (2) Not Ready. Assign this mark if, in the view of the rating official, at the time of this evaluation the individual is satisfactorily performing their required duties but is not yet ready to carry out the duties and responsibilities of the next higher grade or has not satisfied all eligibility and qualification requirements for the next higher grade (Ex. "Member has not completed EPQ/RPQ, coxswain, etc."). Required time in grade/service must not be considered when determining overall eligibility for advancement. Note 1.

- (3) Not Recommended. Assign this mark if, in the view of the rating official, the individual should not be advanced to the next higher grade, regardless of qualification or eligibility, due to negative conduct or poor performance, including an unsatisfactory conduct mark, or good order and discipline issues.

- c. Qualification and Eligibility Requirements. The only qualification and eligibility requirements that an approving official must consider when determining if a member is ready for advancement are Commandant specified qualifications and eligibility requirements, including rating performance qualifications.
- d. Approved Waivers. Members with an approved waiver for a specific advancement eligibility requirement may receive a ready if otherwise eligible and recommended.
- e. Required Comments and Counseling. If a member is not ready or not recommended for advancement, the approving official must counsel the member on why this mark was assigned and on the steps necessary to earn a ready for advancement and prepare required comments in accordance with Articles 3.A.4.b., and 4.B.4.b. of this Manual. Comments for a not ready and not recommended must be detailed and specific to why the mark was assigned and should outline the steps necessary to earn a ready for advancement.
- f. For SWE Purposes. To be valid for SWE purposes, the advancement recommendation must be on an EER with an effective date after the SED of the previous SWE cycle and on or before the SED of the current SWE cycle. The advancement recommendation of ready must be maintained for the period from the recommendation date to the advancement date. Members failing to maintain the advancement recommendation of ready for this period will be removed from the applicable SWE eligibility lists and must again meet the eligibility requirements prior to competing in subsequent SWE.
- g. Finality of the Advancement Recommendation. 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 must follow the procedures in Article 4.E.2. of this Manual.

- i. Change of Commanding Officer's Recommendation (CORC). The member's commanding officer may change a recommendation for advancement for any good and sufficient reason. A change of CORC may be submitted by the member's commanding officer (or approving official if delegated) by completing a CORC EER in Direct Access. When submitting a CORC to change a not ready or not recommended to ready, the approving official must ensure eligibility requirements are met. When submitting a CORC to change the recommendation to not ready or not recommended, comments are required in accordance with Article 4.D.3.e. of this Manual. A CORC must not be used to reverse the advancement recommendation of a discipline EER. Furthermore, if a "Not Recommended" was given by another Command/AO, the new Command/AO cannot change the "Not Recommended", and must wait for the next regular marking period.

F. Appeals.

1. General.

- a. Purpose of the Appeal Process. The evaluation report is designed to be as objective as possible. However, when one human being evaluates another, there will be some subjectivity. Even when the member perceives no difference in performance from one period to the next, small variations in marks can occur.
- b. Basis of the Appeal Process. The Appeals process is designed to review marks the evaluatee believes were based on:
 - (1) Incorrect information;
 - (2) Prejudice;
 - (3) Discrimination; or
 - (4) Disproportionately low marks for the particular circumstances.
- c. The Advancement Recommendation. The recommendation for advancement portion on the evaluation report may not be appealed to an appeal authority.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on the applicant's military record, his submission, the Coast Guard's submission, and applicable law and policy:

1. The Board has jurisdiction under 10 U.S.C. § 1552(a), as the applicant is seeking correction of an alleged error or injustice in his military records. The applicant has exhausted all other administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.
2. The application is timely because it was filed within three years of the applicant's discovery of the alleged error or injustice in the record, i.e., the EER issued in June 2021, as required by 10 U.S.C. § 1552(b).
3. The applicant requested to appear at a hearing before the Board via video or telephone. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.⁴
4. The applicant requests that the "Not Recommended" for advancement mark on his EER issued in June 2021 be "overturned," that is, changed to "Recommended" for advancement. In support of his request, he alleges that the EER was "influenced by

⁴ *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

personal bias from the [OIC].” In a statement attached to his application, he asserts further that his “career suffered unnecessarily through personal bias, inconsistent direction, and poor leadership.”

5. In determining whether to recommend the applicant for advancement on the 2021 EER, the ultimate question before the applicant’s OIC, T.E., was whether he was “personally satisfied” that the applicant’s overall performance was sufficiently strong to earn the recommendation.⁵ Because the potential advancement was to Chief Petty Officer/BMC (E-7), the OIC was also required to determine whether the applicant had demonstrated superior leadership, military characteristics, technical knowledge, and performance of duty.⁶

6. The applicant submitted no direct evidence of personal bias. Such evidence might include written communications or witness accounts of verbal statements, in which the OIC disparaged the applicant. It might include information suggesting the OIC assigned higher marks to, or otherwise treated others under his command more favorably than the applicant, under similar circumstances. No such evidence was submitted. Instead, the applicant simply alleges bias and relies primarily on his receipt of better marks in years before and after 2021 to support the allegation.

7. Review of the document summarizing the applicant’s EERs issued from 2016 through 2023 shows that he did receive significantly higher marks, and recommendations for advancement, in each year other than 2021. The applicant has also emphasized the Coast Guard Achievement Medal he received recognizing superior performance from June 2018 to June 2021. These records, without more, do not suggest impropriety with respect to the 2021 EER. In determining whether to recommend advancement, the applicant’s OIC was required to consider not only past performance, but also the applicant’s potential to successfully perform the duties and responsibilities of an E-7.⁷ Thus, good performance as an E-6 during prior marking periods does not necessarily equate to readiness to take on the responsibilities of an E-7 at the time the 2021 EER was issued.⁸ To the extent the applicant urges consideration of his pre-2021 performance, the Board also observes that such service was not entirely unblemished. The applicant, for example, was demoted from E-5 to E-4 on two separate occasions, in 2006 and 2011, as part of Non-Judicial Punishment (NJP) sentences. The 2006 NJP involved the applicant striking a buoy with the boat he was navigating, despite a warning from a lookout, and then asking the lookout to keep the matter between them. The 2011 NJP related to the unsafe conduct of a search and rescue mission. With respect to post-2021 service, the record shows

⁵ EEA Manual § 3.A.4.b.(3).

⁶ *Id.* § 3.A.6.a.(1).

⁷ *Id.* § 4.D.3.a.

⁸ See *Grieg v. United States*, 226 Ct. Cl. 258, 271 (1981) (“[T]he fact that this fine officer had better ratings before and after the challenged OER is of no legal moment nor of probative value as to the rating period covered by the one OER with which he is dissatisfied.”).

that shortly after issuance of the 2021 EER, the applicant was transferred to a new unit, where he would have had different duties and responsibilities. As such, the applicant's receipt of better marks post-2021 does not necessarily lead to the conclusion that his 2021 EER was somehow improper.

8. The applicant puts forth various arguments to the effect that the counseling he received during the marking period in question was inconsistent, and did not support the "Not Recommended" mark on his 2021 EER. Specifically, the applicant notes that his mid-marking period counseling in November 2020 assigned a 4 or higher in all categories and included a recommendation for advancement. He notes that his appeal of the 2021 EER also resulted in 4's or higher being assigned in all categories. The applicant asserts that these marks stood in "stark contrast" to the lack of an advancement recommendation. With respect to the February 2021 memorandum of expectations, the applicant contends that the memo's statement that his November 2020 counseling had addressed communication issues was inaccurate, since the only reference to communication on the November 2020 counseling sheet was the mark of 4 for "Effective Communication." In addition, the applicant states that adhering to the February 2021 memorandum's guidelines had been a precondition for being permitted to sit for the May 2021 SWE. Because he was permitted to sit for the SWE, the applicant argues, it follows that he had met all relevant expectations as of May 2021.

9. The Board finds the applicant's arguments unconvincing. First, Coast Guard policy requires only that supervisors clearly communicate goals and acceptable standards of performance to members before and throughout the marking period.⁹ There is no requirement for documented mid-marking period counseling, memoranda, or other written performance feedback prior to issuance of an EER. Because there is no requirement for such documents to be issued, there are also no requirements with respect to their content, other than that they be "clear," as just noted. Written comments *are* required on EERs, and they must allow the reader to determine how the member either exceeded or failed to meet the relevant standards.¹⁰ When assigning a mark of "Not Ready" or "Not Recommended" for advancement, the member must be counseled on why the mark was assigned and the steps necessary to earn a "Ready" for advancement mark.¹¹ There is no requirement, however, that EERs precisely track or neatly close the loop on each issue addressed in prior counseling. No policy divests rating chains of discretion over advancement recommendations based on a member having recently been permitted to sit for a SWE. Nor is there any policy binding rating chains to particular EER marks based on a member having met performance goals assigned by commands earlier in the marking period. Finally, there is no policy entitling a member to an advancement recommendation upon receipt of 4's (equating to "Average" marks) or higher in all performance categories. Instead, Coast Guard policy is clear that wide discretion is given to supervisors and AOs

⁹ EEA Manual § 4.B.5.b.(1).

¹⁰ *Id.* § 4.D.2.d.

¹¹ *Id.* § 4.D.3.e.

to determine a member's readiness for the responsibilities of the next paygrade at the time an EER is completed.

10. In this case, the Board finds the communications issued to the applicant during the relevant marking period were clear. The November 2020 counseling informed the applicant that he needed to work on leadership, mentoring, and in-the-moment decision-making. It noted the importance of taking confident action and making sometimes unpopular decisions. T.E.'s offer to assist the applicant to overcome these deficiencies was also documented. The February 2021 memorandum noted there had been limited improvement, and stated there had been recurring grievances from "beyond the unit" regarding the applicant's poor communication skills. Specific expectations were outlined requiring the applicant to timely communicate various matters to the OIC and other members of the unit. The memo proceeded to discuss the importance of communication skills for those promoted to BMC.

11. The 2021 EER clearly explained the reasons why the applicant was "Not Recommended" for advancement to BMC. These included:

- a. Placing the safety of the unit and crew at risk during routine training evolutions.
- b. Not being trusted by crew during drill scenarios.
- c. Being counseled on poor communication, leadership, and mentoring, and failure to effectively act as on-scene leader.
- d. Failing to meet guidelines established in the February 2021 memorandum, i.e., on the day following the counseling documented in the February 2021 memorandum, failing to notify the OIC of a surprise drill onboard the cutter which disrupted plans and readiness.
- e. Failing to hold himself accountable and disregarding any form of constructive feedback from leadership.
- f. The OIC being contacted by other divisions and units about issues interacting with the applicant.
- g. The OIC being confronted by crew regarding concerns about the applicant being on-scene leader due to his failure to act during drills.
- h. Failing to uphold major safety protocols during the COVID-19 pandemic.
- i. Lacking "intrusive leadership" and being content to manage the unit from behind a workstation rather than mentoring and leading by example, despite previous discussion of this issue in verbal counseling sessions.
- j. The OIC's fear that these deficiencies, if continued as a BMC, could lead to MISHAPs.

12. After careful review, the Board finds that the record does not support the applicant's allegation that the "Not Recommended" mark on his 2021 EER resulted from bias or other improper considerations. The Board also finds the applicant has not shown he

was prejudiced by “inconsistent direction”, “poor leadership” or any other factual or legal error, or injustice, warranting alteration of the EER.

13. Notably, the applicant does not address the substance of the EER comments.¹² Instead, he makes a bare allegation of bias without supporting evidence. He relies on evidence of good performance during marking periods not at issue and suggests that he was in some way misled by the counseling he received. The record suggests, however, that the applicant’s OIC made numerous attempts, in the form of written and verbal feedback, to assist him in obtaining an advancement recommendation. To the extent the applicant did not understand the pre-EER counseling he received, it was his responsibility to seek out sufficient information to use in adjusting to meet or exceed standards.¹³ At the time the EER was issued, the applicant’s Rating Chain, including J.S., the AO, who the applicant has not accused of bias, concluded that the applicant had not improved sufficiently to warrant the recommendation. The comments supporting this decision were clear. They explained that despite repeated counseling, communication issues and a failure to lead by example persisted, and multiple reports from within and outside the unit had been received regarding the applicant’s failure to act decisively when needed.

14. When taken at face value, the deficiencies noted in the EER sufficiently support the Rating Chain’s decision not to recommend the applicant for the significant responsibilities of a BMC. This decision, a necessarily subjective one, is committed to the discretion of the Rating Chain, so much so that the advancement recommendation portion of an EER is not appealable.¹⁴ The Board’s role is not to substitute its own judgment for that of Coast Guard supervisors and AOs, who are in a position to directly observe and assess a member’s performance and conduct over extended periods. This is particularly so in the absence of any clear evidence of impropriety. It is the applicant’s burden to overcome the presumption that the Coast Guard has acted “acted correctly, lawfully, and in good faith.” The applicant must establish an error or injustice by a preponderance of the evidence. For the reasons discussed, the Board finds the applicant has not done so here. As a result, the application will be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

¹² The Board briefly acknowledges the statements of fellow Coast Guard members submitted by the applicant. The first two addressed a December 2020 incident in which the applicant entered the water to recover a small skiff which came loose from its mooring. This incident is not directly mentioned in the 2021 EER comments, and to the extent it may be referenced, it is far from the only basis cited to justify the “Not Recommended” mark. The third statement related to the applicant’s contact with a member during the member’s medical treatment in mid-June 2021 relates to events which took place after the marking period at issue had concluded. For these reasons, the three statements submitted by the applicant do not warrant further discussion.

¹³ EEA Manual § 4.B.4.b.

¹⁴ *Id.* § 4.D.3.g.

ORDER

The application of BMC/E-7 [REDACTED] is denied.

April 24, 2025

