

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2008-152

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case on June 20, 2008, upon receipt of the applicant's completed application, and subsequently prepared the final decision for the Board as required by 33 CFR § 52.61(c).

This final decision, dated February 26, 2009, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant, who was a lieutenant commander in the Coast Guard Reserve,¹ asked the Board to correct his military record by raising certain marks on his officer evaluation report (OER) for the period May 1, 2006 to February 28, 2007 (disputed OER). Specifically, the applicant requested that the marks in the adaptability, writing, teamwork, initiative, judgment and professional presence categories be raised from 3 to 4. He also requested that certain comments, like the following, be removed from the OER:

[REDACTED]

The applicant alleged that the disputed OER was prepared by the wrong rating and that he had never even met the individual who signed as his reporting officer. He asked that the Board correct the disputed OER and require it to be signed by the correct rating chain.

¹ The applicant resigned his Coast Guard commission effective June 21, 2008 and was commissioned as a U.S. [REDACTED] on June 22, 2008.

The applicant further alleged that although the disputed OER is marked as a regular/detachment of officer OER it did not account for the entire reporting period. He alleged that the disputed OER did not include an evaluation of his performance for the time he spent with his home unit or for the time he spent during the period on ADSW in [REDACTED]. The applicant alleged that he should have had not only a regular OER that covered the entire reporting period but a concurrent OER that covered his Title 10 assignment as the [REDACTED].

The disputed OER covers only the applicant's performance while on Title 10 orders with the [REDACTED]. The applicant stated that 105 days of this period were spent outside the continental United States and he was not under the supervision of his Coast Guard rating chain. The applicant's parent command appears to have been the [REDACTED].

VIEWS OF THE COAST GUARD

On November 18, 2008, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant relief to the applicant, as recommended by the Commander, Coast Guard Personnel Command (CGPC) in a memorandum attached to the advisory opinion as Enclosure (1), as follows:

“a. The disputed OER, including the reviewer comment page and the OER reply and any endorsements, should be removed from the applicant's record as null and void.

“b. The applicant's permanent unit should prepare a regular/continuity OER for the period May 1, 2006 through April 30, 2008. The OER shall be annotated to account for his Title 10 duties as “not observed” time. The OER shall only reflect performance directly observed by the rating chain and not include performance that was covered by the unobserved period.

“c. If possible, the rating chain for the applicant's Title 10 period should prepare a concurrent OER.”²

In recommending the above relief, CGPC stated the following conclusions:

b. The OER for the period May 1, 2006 through February 28, 2007, is not prepared consistent with Coast Guard policy. The applicant was activated on Title 10 orders for a total of 151 days and assigned outside of his IDT/ADT unit. In accordance with [the Personnel Manual], the applicant's period assigned to the [REDACTED] OER . . . by his [REDACTED] the rating chain listed on the contested OER . . . The applicant's permanent unit is responsible for ensuring continuity through regular/continuity OERs. There is no indication within the

² The Advisory opinion noted that “since the Concurrent OER is not counted for continuity purposes, if the original rating chain for this period is not cooperative or unable to prepare the Concurrent OER, the applicant will not suffer a gap in continuity as his permanent unit will cover the period as not observed.”

applicant's record or CGPC-rpm that the applicant's command requested or received approval for an alternate rating chain for the period in question.

c. Coast Guard policy requires that all officers be evaluated in an accurate, fair and objective manner and that an officer's performance be measured against established performance and character standards. The applicant and the disputed OER indicate levels of animosity between the applicant and the [REDACTED] rating chain for his TAD period. Given this animosity, passage of time, and the interagency nature, it is unlikely that the original rating chain for his Title 10 orders would be able to provide an assessment of his performance for a concurrent OER as required under [the Personnel Manual]. The applicant's permanent unit/rating chain is, however, responsible for preparation and submission of reports to cover continuity and notation of time not observed and Title 10 orders should be properly noted on the regular/continuity report.

d. The OER for the period ending [February 28, 2007] does not accurately document the applicant's type of OER during the period. Applicant has provided evidence that overcomes the presumption of regularity with respect to the construction or submission of the disputed OER.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 4, 2008, the Board received the applicant's response to the view of the Coast Guard. He agreed with the Coast Guard's views.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code. The application was timely.

2. The JAG recommended that the applicant's request for relief be granted. In this regard, the Board agrees with the Coast Guard that the applicant's permanent unit committed an error by not preparing and submitting a regular OER that covered all of the applicant's performance for the entire reporting period. The Coast Guard agreed with the applicant that the disputed OER failed to account for the time the applicant spent with his parent command or on ADSW in [REDACTED]. Article 10.A.1.b.1 of the Personnel Manual requires that commanding officers (COs) ensure that all officers receive accurate, objective, and fair evaluations. Such could not have been the case here because the disputed OER failed to account for much of the time covered by the reporting period.

3. The Coast Guard also admitted that the performance evaluated in the disputed OER covered only the applicant's performance while assigned to [REDACTED] and therefore the disputed OER should have been marked as a concurrent OER and signed by the applicant's [REDACTED]

chain and not his regular OER rating chain. Further, the JAG noted that the applicant's regular OER rating chain who signed the disputed OER did not observe the applicant's performance while he served with the [REDACTED]. In this regard, the applicant noted that he was outside the United States for the majority of the period that he was assigned to [REDACTED]. According to the JAG, a properly submitted regular OER should have counted the days the applicant served with [REDACTED] as non-observed.

4. In light of the Coast Guard's recommendation for relief, the command's failure to submit a properly prepared regular OER, and its failure to seek a concurrent OER for the [REDACTED] assignment signed by applicant's [REDACTED] rating chain, the Board finds that the applicant has established error with respect to the disputed OER and is entitled to the relief recommended by the Coast Guard, to which the applicant agreed.

5. The applicant made other challenges as to the accuracy of the disputed OER that have been rendered moot by the Coast Guard's recommendation for relief and the Board's agreement that the disputed OER is erroneous. Therefore, those other contentions are not addressed within this decision.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former XXXXXXXXXXXX, USCGR, for correction of his military record is granted as follows:

1. His OER for the period May 1, 2006, to February 28, 2007, including the reviewer's comment page and the reported-on officer's reply and all endorsements thereto shall be removed from his record as null and void.
2. His permanent unit shall prepare a regular/continuity OER for the period May 1, 2006, through April 30, 2008, for entry in his record. This OER shall account for his Title 10 duties as "not observed" time; shall not include any numerical marks or comments based on his performance during the "not observed" period; and shall include only numerical marks and comments that are based on performance directly observed by the rating chain during the evaluation period.
3. If possible, the Coast Guard shall have his [REDACTED] rating officials prepare a concurrent OER for him for the period he served as the [REDACTED] Supervisor under Title 10 orders. If they prepare a concurrent OER for him, it shall be entered in his Coast Guard military record.

No other relief is granted.

