

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 118-96

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on May 31, 1996, when the applicant filed her application for correction.

This final decision, dated May 23, 1997, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a former lieutenant junior grade (LTJG) in the Coast Guard Reserve, asked the Board to remove from her military record an officer evaluation report (OER) for the period May 1, 1993 to April 30, 1994 and implicitly to remove two failures of selection for promotion to lieutenant (LT). The applicant argued that it was this disputed OER that caused her two failures of selection for promotion to lieutenant (LT). The applicant was discharged from the Coast Guard on June 30, 1995 because she had twice failed of selection for promotion to LT.

The Coast Guard recommended that the applicant's request be denied. The Service stated that the applicant has not proven any error or injustice.

EXCERPTS FROM RECORD AND SUBMISSIONS

Pertinent Excerpts From Disputed OER

The applicant's reporting officer rated her in the second lowest possible category in section 12, the comparison and distribution scale. On a scale of 1 to 7, with 7 being the highest, she was rated as a 2.

The supervisor commented, in block 3.h., that the applicant "did not spend a great deal of time in her assigned duty area during this marking period, nor did she progress in her assigned qualifications due to unusual circumstances in her personal life. . . . Previously a valuable reserve asset in the OPCEN (operations center) in the past, failed to stand assigned watches and did not contribute significantly during this

period as evidenced by inability to provide comments/accomplishment for this report.
. . . ."

The reporting officer wrote the following in block 9.f.: "[The applicant] cited no significant events during this period, yet failed to use this time to complete her SAR correspondence course requirement. Reported by others that [the applicant] left the OPCEN at a critical time. Failed to notify command of physical and mental limitations. Developed own agenda which was not consistent with goals of the organization."

Regarding the applicant's leadership and potential, the reporting officer stated in the disputed OER that "[the applicant] has shown a great potential in the past and was recommended on previous OER for promotion. Potential remains, unfortunately personal circumstances hindered [the applicant] during this period. Previous Coast Guard and current civilian experience and training make her a valuable asset."

The supervisor sent the applicant a copy of the disputed OER with a note that stated in pertinent part: "I know this is not what you had hoped for, but it is an honest assessment on my part. I feel you are an excellent officer & hope you get back in the 'Reserve Routine,' but I could not mark you on potential or past performance."

Applicant's Statement

The applicant stated that there were extenuating circumstances that existed during the period covered by the disputed OER. She stated the following regarding those circumstances:

I was involved in an abusive personal relationship for approximately twelve years before the dissolution of this relationship on 10 July 1993. Counseling was first sought on 11 August 1990. As a result of the dissolution in July, 1993, I underwent psychiatric outpatient treatment which included individual therapy, group therapy and antidepressant medication prescribed for me from October, 1993 through March, 1995. The period covered by the subject OER is 1 May 1993 to 30 April 1994 which is the period during which my personal upheaval occurred. I did not rebut the subject OER within the fourteen-day period allotted for rebuttal because I did not want to divulge these details. Over time, however, I have realized just how important my Coast Guard career is to me; indeed, the record clearly shows how diligently and tenaciously I worked towards earning a Coast Guard commission, and I do not want to relinquish it without a fight,

The applicant stated that her rating chain was aware of the situation, but failed to counsel her with regard to certain options that were available to her. For example, the applicant argued that neither her supervisor nor her commanding officer counseled her to seek Coast Guard quality of work life assistance or to transfer into the standby

Reserve where she would not have received an OER. The applicant stated that if she had been counseled, she would have entered the standby Reserve.

The applicant stated that while she received encouragement from the rating chain in her efforts to lose weight, it failed to assist her in salvaging her Coast Guard career. She stated that although the situation regarding her personal circumstances was acknowledged in the disputed OER, the information was used to downgrade her performance.

The applicant argued that two of her previous OERs stand in sharp contrast to the disputed OER. On one, the same rating chain as that on the disputed OER, recommended her for promotion without reservation, a mark of 5 in block 12. On the other, a two week active duty OER (involving another rating chain) she alleged that she was rated as a distinguished officer, which would be a mark of 7 in block 12. (This OER shows, however, that the applicant was rated as an excellent officer, a mark of 6 in block 12.)

Views of the Coast Guard

The Coast Guard recommended that the applicant's request be denied. The Service stated that the applicant feels that the Coast Guard should have done more to assist her with personal problems. She has not provided, however, evidence that the Coast Guard had a duty to provide more support than it did. The Service argued that the applicant has not rebutted the presumption that the rating chain members performed their duties correctly, lawfully, and in good faith.

In addition, the Coast Guard argued that the applicant has not shown that any of the matters she discussed justified any correction to the challenged OER or removal of the OER from her record. The Service stated that the applicant did not challenge any of the marks or comments on the disputed OER, nor did she allege any procedural error with regard to it. The Service stated that the applicant implicitly admits that the disputed OER is accurate. The Service stated that the applicant waived the opportunity to provide additional information explaining her performance problems by failing to submit an OER reply.

The Coast Guard stated that the applicant's first non-selection for promotion to LT was before a selection board held in November 1993 -- before the disputed OER was prepared. The Service noted that it was impossible for it to provide any analysis of the nexus between any error and the applicant's second failure of selection because the applicant has not alleged a specific error or injustice in her disputed OER. The Coast Guard stated that the applicant's failure of selection by the first selection board, which did not have the disputed OER, indicated that it was unlikely that the applicant would have been selected by the second board in any event, without substantial additional documentation of improved performance.

Applicant's Response to the Views of the Coast Guard

The applicant did not submit a response to the views of the Coast Guard.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction of this case pursuant to section 1552 of title 10, United States Code. It is timely.
2. The Chairman has recommended disposition of the case without a hearing. 33 CFR § 52.31. The Board concurs in that determination.
3. The applicant did not present any evidence that her performance was different than that described in the disputed OER, nor has she alleged a specific error or injustice with regard to it. She argues that the disputed OER should be removed because the supervisor and reporting officer were aware of her situation and failed to counsel her with regard to certain options that were available to her that might have helped to save her career.
4. The applicant also had a responsibility to seek assistance from the rating chain and to inform them of the nature and severity of her personal problems, if such problems were interfering with the performance of duty. See 10-A-1b.(2), Personnel Manual. If she was under a doctor's care, she should have also informed the rating chain of that situation. The applicant has presented no evidence that she asked the supervisor and reporting officer for assistance in managing her career or her personal problems. The applicant stated that the rating chain was aware of her situation, but there is no evidence in the record that she told the members of the rating chain that her "personal problem" was in fact an abusive relationship. The Board notes, in this regard, that the applicant did not file a reply to the disputed OER because she did not want to divulge the facts that pertained to that situation.
5. Moreover, the applicant has not provided the BCMR with any Coast Guard regulation that requires the members of the rating chain to counsel her on matters other than those related to her performance.
6. Both the supervisor and reporting officer stated that the applicant had great potential, but that her performance for the period under review had to reflect her actual accomplishments. The applicant has not demonstrated that the disputed OER is an inaccurate assessment of her performance for the period under review.

7. The applicant's request to return to the Coast Guard Reserve is treated as a request for removal of her failures of selection. Since the board finds no error or injustice with regard to the disputed OER, no basis exists to consider removing the applicant's failures of selection for promotion to LT.

8. The applicant has failed to demonstrate any error or injustice. Accordingly, her application should be denied.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The application of former [REDACTED]
correction of her military record is denied.

USCG, for

