

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 166-96

FINAL DECISION

[REDACTED]

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced upon the BCMR's receipt of the applicant's request for correction of his military record.

The final decision, dated October 10, 1997, is signed by the three duly appointed members who were designated to serve as the Board for this case.

Request for Correction

On September 20, 1996, the applicant, a Commander on active duty (CDR; pay grade O-5), asked the BCMR to remove the "unjust comments and related low marks" on three disputed officer evaluation reports (disputed OERs). He also asked the BCMR to expunge his non-selection for Captain by the July 1996 promotion board.

On June 30, 1997, the applicant retired from the Coast Guard.

Three Disputed OERs

The first disputed OER was for the period July 7, 1993 to March 31, 1994; the second disputed OER was for the period April 1, 1994 to March 31, 1995; and the third disputed OER was for the period April 1, 1995 to August 3, 1995. The applicant alleged that the disputed OERs should be corrected because they are unjust. He said they were the "weakest and most damaging OERs" that he received in his career.

The applicant set forth a page of proposed record corrections with respect to the three disputed OERs. On that page he asked the Board to strike out the phrases (1) "Written Material is . . . at times verbose and lacks clarity of purpose," (2) "Writing continues to overwhelm w/ideas," (3) "persistent and tenacious, at times to

a fault," (4) "his tenacious commitment to his own ideas occasionally blinds him to considering larger policy issues," and (5) "he would benefit greatly from a tour that would broaden his policy making perspective." He also asked the Board to raise his mark in writing on each of the three disputed OERs, from "4" to "6." He also asked that his comparison scale mark in block 12 be raised by one mark (from "4" to "5") in two of the three disputed OERs. In support of his allegations, he submitted statements from three Admirals and other commanding officers. In all, he submitted 31 statements, comments, commendations, messages, and other entries.

The applicant asked the Board to expunge his non-selection for Captain by the July 1996 promotion board.

He further asked for certain additional changes. In addition to expungement of his 1996 non-selection for Captain, he asked for retroactivity if he were selected for Captain by the next Captain's promotion board. If selected, the applicant asked for retroactive pay and allowances and a backdated date of rank, with the retroactive date the one that would have applied if he had not failed of selection in July of 1996.

Views of the Coast Guard

On February 10, 1997, the Coast Guard Personnel Command (CGPC) submitted its views on this application to the Commandant. CGPC recommended that no relief be granted:

CGPC said the reporting officer gave the applicant credit for his accomplishments, but it maintained that the applicant's stubbornness and single-minded view diminished the applicant's overall effectiveness. CGPC concluded that the applicant failed to show that the reporting officer comments were inaccurate, unfair, or prejudicial. CGPC also concluded that the applicant's OERs were completed in accordance with guidelines and reflected the applicant's performance. CGPC also said the block 12 evaluations on the OERs were unlikely to be raised because they reflected an independent appraisal which gave another perspective of the applicant's performance and potential.

CGPC also concluded that the applicant's failure to submit OER replies "was a tacit indication that the documented observations were valid." It also found that there was a nexus between the alleged errors or injustices and his non-selections. CGPC also concluded that the applicant has not overcome the presumption of administrative regularity.

On March 17, 1997, the Chief Counsel of the Coast Guard came to the same conclusions as the CGPC. The Chief Counsel recommended the denial of relief on the ground that the applicant has not demonstrated error or shown that the OERs were unjust under the circumstances.

Response of the Applicant to the Coast Guard Views

A copy of the views of the Coast Guard was sent to the applicant on March 18, 1997. On April 4, 1997, his response to the views of the Coast Guard was received by the Board.

The applicant said his appeal centered about one question: should open and thoughtful submissions of ideas be considered a strength or a weakness. If open idea sharing is documented as a weakness, the applicant loses and so does the the Coast Guard: "[Y]ou cannot grow and succeed as an organization with senior officers displaying the attitude of intolerance of ideas contrary to their own, which were consistently displayed by my supervisor and reporting officer."

He submitted articles from the [REDACTED] which indicated that the [REDACTED] who had been the applicant's reporting officer, was relieved of command. According to the applicant, this officer was relieved because he had the problems he accused the applicant of having with the three OERs he prepared on the applicant.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction of the case pursuant to section 1552 of title 10, United States Code. The application is timely.

2. On September 20, 1996, the applicant asked the BCMR to correct a pageful of alleged errors and injustices on three disputed OERs and to expunge the applicant's failure of selection for promotion to commander.

3. On September 23, 1996, the applicant was notified that the BCMR has docketed his application, but that he "must advise [the Board] in writing of any change of address or status (discharge, retirement. . .)." On June 30, 1997, he retired from the Coast Guard without notifying the Board of that change of status.

4. The applicant alleged that his grade in writing (block 6b) should be raised from a mark of "4" to a mark of "6." He did not explain why he also received a mark of "4" on the OER submitted after the disputed OERs (4/01/95 through 8/03/95), and he did not submit any examples of his writing.

5. The applicant also did not submit any evidence to support his contention

that his marks of the comparative scale should be above average ("5" rather than "4" on a scale of "1" through "7").

6. The reporting officer on all three of the applicant's disputed OERs was relieved of his position as [REDACTED] in [REDACTED]. The applicant argued that he now has evidence that it was his reporting officer who "had the problems he falsely documented in [the applicant's] OERs." The applicant has submitted no evidence to this effect.

7. In summary, the applicant has not submitted sufficient proof to establish by a preponderance of the evidence that the Coast Guard committed error or that the applicant suffered injustice.

8. Accordingly, the application should be denied.

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ORDER

The application to correct the military record of [REDACTED]
[REDACTED] JSCG (Ret.) is denied.

