

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 1997-125

FINAL DECISION

[REDACTED]

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on May 13, 1997, upon the BCMR's receipt of the applicant's request for correction of his military record.

This final decision, dated June 11, 1998, is signed by the three duly appointed members who were designated to serve as the Board in this case.

Applicant's Request for Correction

The applicant, a Coast Guard lieutenant commander (LCDR), asked the BCMR to correct his disputed officer evaluation report (OER) for the period from January 29, 1985 to September 5, 1985. He also requested that his 1994, 1995, 1996, and 1997 passovers for promotion to commander (CDR) be voided.

The applicant said that the eight marks of "3" on the disputed OER were inaccurate. He took issue with the mark of "3" in block 3.a., 3.b., 3.c, and in five other blocks. He did not, however, submit any corroborative statements by others. He insisted that the OER did not reflect his performance during the period, but he did not prove it directly. "To avoid going into mind-numbing detail," the applicant stated, "I contend [the marks] are inaccurate on the same basis [as the other marks of "3" blocks.]"

The applicant asked the Board to order the following relief:

- (a) Void the disputed OER.
- (b) Direct the Coast Guard to substitute a continuity report in place of the disputed OER.

(c) Set aside the passovers for promotion . . .

(d) In the event I am again passed over for promotion before the BCMR can act that passover too should be set aside.

Views of the Coast Guard

On April 13, 1998, the Board received an advisory opinion from the Chief Counsel of the Coast Guard. The advisory opinion recommended that the Board deny relief.

The Chief Counsel said that the applicant wanted the Board to expunge four nonselections for promotion to CDR (1994 1995, 1996, 1997) based on the claim that he was unfairly evaluated in 1985 on matters that were beyond his control. He did not submit an OER reply to the 1985 OER; he waited 11 years to challenge it before the BCMR. The Chief Counsel alleged that the applicant could not assert error on the basis of the 1985 OER because it was barred by laches.

The Chief Counsel alleged that the applicant has not proved error or injustice and is therefore not entitled to relief. To prove error or injustice, the Chief Counsel said that an applicant must overcome a presumption that his rating officer acted correctly, lawfully, and in good faith. The Chief Counsel said that the applicant did not rebut the presumption in this case.

The Chief Counsel said that the applicant took credit for the ship's successes (e.g. seizure of marijuana, conduct of boardings) to support his request for relief, but he claimed that he was not on board long enough to be held responsible for his department's shortcomings. He apparently disagreed with the rating chain's evaluation, but he did not submit an OER Reply, and he never showed or proved specific error or injustice.

The Coast Guard, in an appendix to the Views of the Coast Guard, found that the disputed 1985 OER contained numerical marks that were properly supported by comments in the accompanying narrative sections. The Chief Counsel concluded that the applicant "did not" provide convincing evidence of error in [that OER]" or of administrative irregularity in the OER process.

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:

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1. The Board has jurisdiction of the case pursuant to section 1552 of title 10, United States Code. The application was timely pursuant to *Detweiler v. Peña*, 38 F.3d 591 (D.C. Cir. 1994).

2. The applicant alleged that the disputed OER (Jan. 29, 1985 to Sept. 5, 1985) does not reflect his performance during the period of this OER. He asked the Board to remove this OER from his record.

3. There were eight below-average marks of "3" on the disputed OER, on a scale of "1" to "7,"

4. The applicant has not established that the disputed OER should be voided since he has not shown that the Coast Guard committed an error or injustice because he submitted no evidence beyond his own statement that supported this allegation. As the Board does not find sufficient evidence to void the disputed OER, no other relief is appropriate.

5. Accordingly, the application should be denied.

ORDER AND SIGNATURES ON FOLLOWING PAGES

ORDER

The application to correct the military record of [REDACTED]
[REDACTED] USCG, is denied.

