

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

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Application for Correction of  
the Coast Guard Record of:

BCMR Docket No. 1998-043

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**FINAL DECISION**

**Attorney-Advisor:**

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was commenced on December 23, 1997, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated March 25, 1999, is signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST FOR RELIEF**

The applicant, a [REDACTED] in the Coast Guard, asked the Board to correct his record by expunging three officer evaluation reports (OERs). The first disputed OER (OER1) covers the period December 27, 1990, to June 7, 1991. The second disputed OER (OER2) covers the period May 1, 1992, to April 30, 1993. The third disputed OER (OER3) covers the period May 1, 1993, to May 23, 1994. The disputed OERs are the first, third, and fourth that he received while serving as a [REDACTED]

The applicant also requested that the Board remove from his record his failures of selection to the rank of commander, which, he alleged, resulted from the presence of the three disputed OERs. If the applicant is selected for promotion by the next selection board, he wants his date of rank to be backdated to the date of rank he would have had had he been selected by the promotion year 1995 selection board, which met in 1994.

**APPLICANT'S ALLEGATIONS**

The applicant alleged that OER1, which covered the period December 27, 1990, to June 7, 1991, should be removed from his record because he received an erroneous mark. He alleged that the mark he received on the comparison scale, "excellent per-

former," which is one block to the left of center, was too low. Instead, he asserted that he should have received a mark in the center circle ("exceptional performer"). He stated that the reporting officer who made the low mark now acknowledges that it was a mistake. He alleged that the reporting officer did not know when he made the mark that he was comparing the applicant "less favorably to the typical lieutenant he [had] known."

The applicant alleged that OER2 and OER3 should be removed because they were completed simultaneously. Therefore, he was "denied the opportunity of knowing how my performance was evaluated, what marks to improve upon, and how to do so." In addition, he stated, "Because these OERs were completed simultaneously, sections 8, 11, and 12 were nearly identical, do not reflect [his] performance, and lead to less meaningful information contained in [his] OERs."

The applicant alleged that he and his supervisor had completed their work on OER2 on time, but the reporting officer did not complete it for more than a year. OER2 was signed just one day before OER3. The applicant explained his failure to report the lateness of OER2 after 90 days, as required by regulation, as follows:

[T]here were 10 other [redacted] officer OERs that were up to one year late. . . . Because so many officers in the [redacted] had late OERs and the [redacted] . . . had knowledge of this deficiency, I judged it was better to remain silent on this matter and not risk antagonizing my reporting officer by calling attention to this matter when his superiors knew of this wide ranging situation in the [redacted]

The applicant alleged that he did not receive OER2 and OER3 until mid-August, after the selection board had already met. Therefore, he felt that any reply would be moot, and he decided to apply to the BCMR for correction instead.<sup>1</sup> He submitted a copy of an OER quality review worksheet showing that he submitted OER2 on time (more than 21 days prior to the end of the reporting period) on April 7, 1993. However, it was not signed by the reporting officer until June 29, 1994, and it was not received by the OER Administrator until July 11, 1994. He also submitted photocopies of the envelopes in which he received OER2 and OER3. The envelopes are postmarked August 15, 1994, and August 25, 1994.

The applicant also submitted copies of OER status sheets for [redacted] personnel. The status sheets show that the vast majority of the Spring 1993 OERs of lieutenants and lieutenant commanders at the [redacted] were several months late and that several, including the applicant's, were not completed until July 1994. In addition, the applicant submitted several documents relating to the importance of timely OERs and of blocks 8, 11, and 12 in the OERs. A copy of a message from the Military Personnel Command (MPC) dated October 13, 1994, stated that "[s]election boards and panels also

<sup>1</sup> The applicant explained that his application to the BCMR was delayed because he was overwhelmed with the medical problems of his wife and child and with his job as the [redacted]

consistently commented on the importance of the reporting officer's comments in narrative sections 8 and 11 of the OER. . . . The timely submission of OERs remains a serious challenge to the effectiveness of the OER. Late OERs may cause personnel decisions affecting an individual officer to be made based upon incomplete record information." A copy of a letter from the Commandant to marine inspection safety officers dated October 1, 1993, advised officers that "[a]lthough all of the narrative blocks are important, and should be completely filled with narrative, you must pay particular attention to blocks eight, eleven and twelve. Promotion boards scrutinize these blocks to obtain a clear picture of how the reporting officer views the evaluated officer for overall performance, promotability, and readiness for increased responsibilities and command.

## VIEWS OF THE COAST GUARD

### *Advisory Opinion of the Chief Counsel*

On December 15, 1998, the Chief Counsel of the Coast Guard recommended denial of the applicant's request for relief.

The Chief Counsel alleged that the applicant "had failed to provide substantial evidence of any error or injustice regarding the disputed OERs." The Chief Counsel alleged that the applicant failed to meet the following standards:

To establish that an OER is erroneous or unjust, the applicant must prove that the challenged OER was adversely affected by a clear, material error of objective fact, factors "which had no business being in the rating process," or a clear and prejudicial violation of a statute or regulation. Germano v. United States, 26 Cl. Ct. 1446, 1460 (1992); Hary v. United States, 618 F.2d 11, 17 (Cl. Ct. 1980); CGBCMR Dkt. No. 86-96. In proving his case, an applicant must overcome a strong presumption that his rating official acted correctly, lawfully, and in good faith in making their evaluations under the Coast Guard's Officer Evaluation System. Arens v. United States, 969 F.2d 1034, 1037 (1992); Sanders v. United States, 594 F.2d 804, 813 (Cl. Ct. 1979). . . . In the absence of compelling circumstances, an OER will not be ordered expunged unless the Board finds that the entire report is infected with the errors or injustices alleged; unless the Board finds that every significant comment in the report is incorrect or unjust; or unless the Board finds it impossible or impractical to sever the incorrect/unjust material from the appropriate material. BCMR No. 151-87, cited in BCMR 106-91, et al.

As for the alleged error in OER1, the Chief Counsel stated that the reporting officer's hindsight regarding his mark on the comparison scale does not prove error. "As the Board has repeatedly noted, retrospective reconsideration of an OER, particularly in light of the Reported-On Officer's non-selection, is not a basis for correction." The Chief Counsel cited Tanaka v. United States, 210 Cl. Ct. 712 (1976), and CGBCMR Docket Nos. 84-96, 67-96, 189-94, 24-94, 265-92, and 311-88 for this proposition. The Chief Counsel also pointed out that the reviewer of OER1 had noted that he would have described the applicant as an "exceptional performer" rather than as just an "excellent performer" on the comparison scale. The reviewer's note informed all future readers, including the selection boards, that an experienced officer considered the applicant to be an exceptional performer, deserving a mark in the center circle on the comparison scale. How-

ever, the Chief Counsel alleged, the reviewer's comment does not prove that the reporting officer's initial choice of the lesser mark was an error.

Regarding OER2, the Chief Counsel alleged that the applicant "has not asserted that there was an error or injustice in the content of the disputed OER2 . . . . Applicant's sole assertion is that he was prejudiced by the delay in submitting his OER because he was precluded from 'adjusting his performance.'" The Chief Counsel cited CGBCMR Dkt. No. 183-95 for the proposition that a "delay in signing marks indicated on an OER is not substantial evidence of error or injustice in the OER itself." He argued that there is no evidence that "the lateness of OER2 rendered it unreliable or inaccurate."

The Chief Counsel alleged that the applicant's argument that he was prevented from adjusting his performance due to the delay of OER2 fails because OER3 shows that the applicant did in fact improve his performance. The Chief Counsel argued that the Personnel Manual places the responsibility for receiving performance feedback on the evaluatee, and that such feedback occurs informally day to day, not just through an OER. The Chief Counsel also argued that "Applicant's failure to submit a reply to any of the disputed OERs may be considered as evidence that he accepted the rating officials' characterization of the performance described in those OERs."

Regarding the similarities between OER2 and OER3, the Chief Counsel stated that no regulation requires the language in OERs to vary. "Where the officer has not been reassigned and is performing largely the same duties as the previous period, a reasonable amount of similarity in describing performance of those duties is expected."

#### *Memorandum from the Coast Guard Personnel Command*

The Chief Counsel attached to his advisory opinion a memorandum on the applicant's case prepared by the Coast Guard Personnel Command (CGPC) dated December 8, 1998. CGPC stated that OER2 and OER3 were validated on August 3 and 4, 1994, respectively, and were immediately entered in the applicant's record prior to the meeting of the PY95 selection board on August 8, 1994. CGPC pointed out that OER3 was only 21 days late and that the applicant's failure to notify his rating chain when OER2 became overdue had "a direct bearing on his contention that he 'was denied the opportunity to timely and meaningfully communicate with the PY95 promotion board'" because he did not have time to file an OER reply.

CGPC attached two affidavits to its memorandum (see below). One affidavit is from [REDACTED] who served as the reporting officer for OER1 and who rated the applicant as an "excellent performer" on the comparison scale in that OER. The second affidavit is from Captain G, who as the reviewer for OER1 added a comment stating that he would have rated the applicant as an "exceptional performer." Captain G was also the reporting officer for OER2 and OER3.

CGPC also addressed the question of nexus: Could the existence of the disputed OERs in the applicant's record have caused his failures of selection? It concluded that the comparison mark in OER1 was low enough to have persuaded a selection board to

pass over the applicant. However, CGPC alleged that the applicant's record would appear worse to a selection board without OER2 and OER3. Both OER2 and OER3 are better than the undisputed OER that immediately preceded OER2.

## APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

The Chairman sent the applicant a copy of the views of the Coast Guard and invited him to respond within 15 days. On January 4, 1999, the applicant indicated that he wished to respond but could not do so in the allotted time. On January 11, 1999, the Chairman granted the applicant a 60-day extension. On March 3, 1999, the applicant responded to the recommendation of the Chief Counsel. The applicant stated that, if the disputed OERs could not be removed in their entirety, he would like to have removed those sections that are in error and unjust.

The applicant argued that the reviewer's comment in OER1 that he would have rated the applicant higher on the comparison scale did not render the reporting officer's erroneously low mark harmless. He argued that the selection board could not ignore the low comparison mark any more than "the characters at the end of the movie Wizard of Oz could . . . ignore the man (wizard) behind the curtain . . ."

The applicant also argued that his reporting officer erroneously gave him this low mark because the mark was misleadingly labeled "excellent performer," even though it is actually a poor mark. He pointed out that the Coast Guard has since changed the descriptions on the comparison scale. The word "excellent" is now used to describe an above-average mark on the comparison scale. The mark his reviewer gave him is now described as "fair performer" instead of "excellent performer." He submitted copies of the old and new comparison scales, which appear as follows:

### Old Comparison Scale Used in Disputed OERs

[illegible]

*New Comparison Scale Recently Adopted by the Coast Guard*

[illegible]

## RELEVANT REGULATIONS

### *Coast Guard Personnel Manual (COMDTINST M1000.6A)*

Article 10.A. of the Personnel Manual governs the preparation of OERs. Each OER is prepared by the reported-on officer's "rating chain" of three senior officers: the supervisor (the officer to whom the reported-on officer answers on a daily basis), the reporting officer (the supervisor's supervisor), and the reviewer (the reporting officer's supervisor).

Article 10.A.4.d.(9)(a) instructs reporting officers to mark the comparison scale by "fill[ing] in the circle that most closely reflects the Reporting Officer's ranking of the Reported-on Officer relative to all other officers of the same grade the Reporting Officer has known."

Article 10.a.2.f.(2)(c) states that "[f]or any officer whose Reporting Officer is not a Coast Guard commissioned officer, the Reviewer shall describe on a separate sheet of paper the officer's 'Leadership and Potential' and include an additional 'Comparison Scale' mark."

Article 10.A.1.a. states that one of the purposes of the evaluation system is "[t]o provide a means by which each officer may receive feedback regarding how well he or she is measuring up to the standards [of performance]."

Article 10.A.1.b.(2) states that "[t]he is only one person responsible for managing the performance of an individual officer . . . and that is the officer himself or herself. He or she is ultimately responsible for finding out what is expected on the job, for obtaining sufficient feedback or counseling, and for using that information in adjusting as necessary to meet or exceed standards."

Article 10.A.1.b.(1) states that "[e]ach commanding officer must ensure that accurate, fair, and objective evaluations are provided to all officers under their command. All supervisory personnel will see to it that evaluations of their subordinates are completed on schedule and in accordance with the prescribed standards."

Article 10.A.2.c.(2)(d) requires the reported-on officer to complete the administrative section of an OER and forward it to his supervisor "not later than 21 days before the end of the reporting period." Article 10.A.2.h.(2) states that each "OER Administrator shall ensure that OERs . . . are received by Commandant . . . not later than 45 days after the end of reporting periods." Article 10.A.2.c.(2)(g) states that the reported-on officer "[i]nforms the Commander [of the Military Personnel Command] directly by Rapidraft Letter if the official copy of the OER has not been received 90 days after the end of the reporting period."

Article 10.A.4.h. allows the reported-on officer to reply to any OER and have the reply filed with the OER if they are submitted within 14 days of receipt of the OER copy

from the commandant. The provision for reply is intended to "provide an opportunity for the Reported-on Officer to express a view of performance which may differ from that of a rating official."

*Coast Guard Academy Superintendent Instruction 1611.H*

This instruction concerning the U.S. Coast Guard Academy Officer Evaluation System Rating Chain was issued on February 16, 1994. Articles 3 and 4 of the instruction includes the following statements:

The Coast Guard Academy officers deserve timely and accurate evaluations. It is the responsibility of every officer in the rating chain to ensure the standards of the Personnel Manual are met . . . . Late submissions . . . may jeopardize a top performing officer's opportunity for selection for promotion. . . . The Reviewer ensures the OER reflects a reasonably consistent picture of the Reported-on Officer's performance and potential and checks for obvious errors, . . . . If necessary, the Reviewer adds comments on a separate sheet of paper further addressing the performance and/or potential of the Reported-on Officer. For any officer whose Reporting [Officer] is not a Coast Guard commissioned officer, the Reviewer shall describe on a separate sheet [of] paper the officer's "Leadership and Potential" and include an additional "Comparison Scale" mark. . . . The Reviewer forwards the reviewed report to the OER Administrator . . . in time for the administrative review and meet the target date for the OER to be received by Commandant . . . 45 days after the end of the reporting period. . . . With few exceptions the Reported-on Officer must start the process and prepare and forward an OER 21 days before the end of a reporting period . . . .

**SUMMARY OF THE RECORD**

In [REDACTED] the Applicant graduated from the Coast Guard Academy and was commissioned an ensign. Between [REDACTED] he served tours as a cutter's deck watch officer, the commanding officer of a Loran station, and a marine safety inspector and investigator. He was promoted to lieutenant junior grade and then to lieutenant. During these tours, the comparison marks he received in this OERs rose from 4s to 5s and then to 6s.<sup>2</sup> From [REDACTED] the applicant studied [REDACTED]

From [REDACTED] the applicant served as a [REDACTED] [REDACTED] Three of the four OERs he received while at the Academy are the disputed OERs. (He did not dispute the second OER he received while at the Academy, although the marks are somewhat lower than those in OER2 and OER3.)

On OER1, the applicant received a mark of 3 ("excellent performer") on the comparison scale from [REDACTED], who was his reporting officer and the head of the [REDACTED] [REDACTED] However, Captain G, who was the reviewer for [REDACTED]

<sup>2</sup> The comparison scale is not actually numbered. See the figure on page 5, above, for the meanings of the marks on the comparison scale.



OER1 and the Associate Dean of Academics at the Academy, attached the following comment to OER1 in the applicant's record:

Concur with the marks and comments of the supervisor and the reporting officer except for the Block 12 comparison; I believe that [the applicant] is an "exceptional performer." He is an active participant in all phases of Academy life and is sincere in his efforts to be an excellent instructor. He has made an excellent start in this new assignment. He frequently stays late to help students, is an excellent role model for cadets, and eagerly shares his experiences with them. I strongly recommend him for promotion with his peers and for assignment to positions of greater responsibility.

OER2 was submitted by the applicant in April 1993 but was not signed by the reporting officer until June 29, 1994. OER3 was submitted by the applicant on May 18, 1994, five days prior to the end of the reporting period. It was signed by the reporting officer on June 30, 1994. The comments in blocks 8 and 11 in OER2 and OER3, which the applicant complained of being too similar, appear as follows. Most of the language is identical but rearranged (language that is not identical is underlined):

**OER2 Block 8. Reporting Officer Comments:**

Concur with supervisor's remarks... [The applicant's] efforts to support cadets in all phases of their experience has continued... he looks at things in a positive way, always maintaining an enthusiastic, up-beat demeanor that easily spreads to those around him... his sincere, caring manner has made him a valuable asset to the Dept & to the Academy... he has genuine credibility with cadets & they frequently seek his advice & counsel... I am pleased to have him on my staff. [ellipses in original]

**OER3 Block 8. Reporting Officer Comments:**

Concur with supervisor's marks & comments... [The applicant's] efforts to support cadets in all phases of their experience has continued in his role as Class Advisor; he has genuine credibility with cadets & they frequently seek his advice & counsel... looks at things in a positive way, always maintaining an enthusiastic, up-beat demeanor that easily spreads to those around him... his sincere, caring manner has made him a valuable asset to the Dept & CGA... I am pleased to have him on my staff. [ellipses in original]

**OER2 Block 11. Leadership and Potential:**

His sincere interest in cadets, combined with his active support of their activities, both inside & outside the classroom, has made him a very positive & significant influence in their overall development... he has supported the Academy's efforts in both the training & education arenas... he proactively takes on important tasks & executes them with infectious enthusiasm coupled with common sense... he has great potential for added responsibility & should be given challenging assignments in his areas of expertise... he is strongly recommended for promotion with his peers. [ellipses in original]



**OER3 Block 11. Leadership and Potential:**

His sincere interest in cadets, both inside & outside the classroom, has made him a very positive & significant influence in their overall development... his efforts as [REDACTED] have been exceptional; he has opened lines of frank communication & increased understanding between members of the class and the administration... he has continued to actively supported [sic] the Academy's efforts in both the training & education arenas... he takes on important tasks, frequently with short notice, & executes them with infectious enthusiasm coupled with common sense... he has great potential for added responsibility & should be given challenging assignments in his [REDACTED] areas of expertise... he is strongly recommended for promotion with his peers. [ellipses in original]

With these OERs in his record and no reply from the applicant, he failed of selection in early August 1994. He received copies of OER2 and OER3 in late August 1994, but did not file replies. He has not been selected for promotion by subsequent promotion boards either. Therefore, since he has completed 20 years on active duty, he is scheduled to be retired on June 1, 1999.

**AFFIDAVITS OF RATING CHAIN MEMBERS*****Affidavit of [REDACTED] Reporting Officer for OER1***

On April 14, 1998, [REDACTED] signed the following statements regarding OER1, which were included in CGPC's memorandum to the Chief Counsel of the Coast Guard:

Based upon the predominance of "5's" for the individual OER items, it does appear (in hindsight for seven years ago) that his mark in block 12 should be in the center position vice one to the left. However, if I understand the OER process correctly, this "glitch" was immediately caught by the Reviewer, [Captain G], USCG and "corrected" at the time by his comments dated 29 Sept 91 and appended to this June 1991 OER. Thus, raising this single mark (which denotes an "Excellent" performer based upon just six months of observation) as a contributing factor to a failure of selection seems to be a moot point.

On September 26, 1997, [REDACTED] sent the applicant an email message in which he stated, "I readily concur with [Captain G's] Reviewer Comments dated 29 September 1991, that I should have rated you as an "Exceptional" vice "Excellent" Performer at that time!"

***Affidavit of Captain G, Reviewer of OER1 and Reporting Officer for OER2 and OER3***

On July 8, 1998, Captain G signed the following statements regarding OER1, which were included in CGPC's memorandum to the Chief Counsel of the Coast Guard:

... As the Associate Dean I was the Reviewing Officer for the majority of officers assigned to the Academic Division. ... Upon review of the [applicant's] 07 June 1991 OER, I felt the marks and comments by both the Supervisor and the Reporting Officer merited a higher overall comparison mark (block 12) than that

assigned by the Reporting Officer and noted the same in my Reviewer's comments.

Captain G explained that OER2 had been delayed because of a lack of clerical assistance. Regarding the marks and comments in OER2 and OER3, Captain G stated as follows:

... [The supervisor for the OERs] submitted detailed performance information to me (as [REDACTED] in the form of draft OER comments. I edited those comments as appropriate and entered them onto the OER form. He also submitted proposed numerical ratings for all categories except the overall comparison scale, block 12. My norm is not to change these recommendations without significant personal observation that would warrant making such a change. To the best of my knowledge, the marks in all blocks (except block 12) on the OERs in question were those recommended by the Supervisor. I believe that they accurately reflect [the applicant's] performance during those periods. In my opinion, the mark in block 12 assigned by me also accurately reflects his performance in comparison with other officers of his grade.

Although [OER2] was submitted to Headquarters late, the comments and performance marks were "captured" and submitted by the Supervisor within the designated time frame. The comments were derived primarily from the supporting information submitted by [the applicant] (which accompanied the Supervisor's submission to me) and the Supervisor's personal observations. Although [OER2] was not formatted and printed on time, the comments and marks were recorded on time and are, in my opinion, an accurate assessment of his performance.

[The applicant's] submission of [OER3] information on 18 May 1994 did not, in fact, meet the prescribed timeline, i.e., 21 days prior to the end of the marking period. ... The comments and marks are, in my opinion, an accurate assessment of his performance for that period.

... While the comments in blocks 8 and 11 of the April 93 and May 94 OERs are similar, they are very positive, and, I believe, are an accurate reflection of his performance as reported by [the applicant] and his Supervisor and are consistent with my own observations of him. ...

### 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 submission, and applicable law:

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

2. The applicant asked the Board to remove three OERs and his subsequent failures of selection from his record. He alleged that OER1 should be removed because his reporting officer mistakenly gave him a low mark on the comparison scale. He

alleged that this occurred because of the misleading wording on the scale. The reporting officer signed an affidavit indicating that he now believes he should have given the applicant a higher mark.

3. With regards to OER1, the Chief Counsel of the Coast Guard argued that the reporting officer's hindsight did not prove that the mark on the comparison scale was in error. Furthermore, he argued, any error by the reporting officer was corrected by the reviewer's comment that he would have assigned the applicant a higher comparison mark.

4. The wording of the comparison scale on OER1 could mislead someone into thinking that a mark in the third circle is a good mark. However, Article 10-A-2.f.(2)(c) of the Personnel Manual provides that, if a reporting officer is not a commissioned Coast Guard officer, the reviewer will add comments on the reported-on officer's leadership and potential and provide another comparison scale mark. In this way, comparison scale marks made by those who, like the applicant's reporting officer, may misunderstand the scale are mitigated by a comparison mark assigned by a commissioned officer, who presumably better understands the scale. The applicant's reviewer complied with the rules and assigned the applicant a higher mark in his added comments. The applicant's reporting officer now states that he should have assigned the higher mark. However, the applicant has not proved that the reporting officer's original comparison mark in OER1 was in error. Nor has he proved that the reviewer's added comments and comparison mark did not adequately inform the selection board that a commissioned Coast Guard officer with better understanding of the comparison scale rated the applicant more highly. Therefore, the applicant has not proved that the Coast Guard erred with respect to OER1.

5. The applicant alleged that OER2 and OER3 should be removed because they were completed simultaneously and have virtually identical comments in blocks 8 and 11. He submitted documents indicating that blocks 8 and 11 are very important to selection boards. He also alleged that the lateness of OER2 prevented him from improving his performance for the OER3 reporting period. He further alleged that the lateness of OER2 and OER3 prevented him from filing replies in time for the selection board that met in August 1994.

6. Although OER2 and OER3 have many different marks and comments, the comments by the reporting officer in blocks 8 and 11 are virtually identical. The reason for their uniformity is unclear, as the reporting officer had both his own observations and written material from the applicant and the supervisor with which to work. The reporting officer submitted a signed statement indicating that the applicant's performance during the reporting period for OER2 was timely captured, although the report was not signed for over a year. He also stated that the comments and marks in both OER2 and OER3 accurately reflect the applicant's performance during those periods. Because the comments are nearly identical and because the reporting officer signed OER2 and OER3 within a day of each other, the Board believes it is likely that whoever composed the comments for those blocks merely rearranged the phrases from OER2 and retyped them into OER3, or vice versa. Nevertheless, the applicant has not proven

by a preponderance of the evidence that either the comments in blocks 8 or 11 or anything else in OER2 or OER3 is inaccurate or unfairly describes his performance during the two reporting periods. Moreover, although reporting officers should ideally use different words in describing an officer's performance from one reporting period to the next, the Board does not believe that the similarities between the comments in OER2 and OER3 constitute such an injustice as to require their removal and the removal of his failures of selection.

7. Article 10.A.1.a. of the Personnel Manual states that one purpose of an OER is to provide feedback so that the reported-on officer may improve his or her performance. The applicant arguably was denied this source of feedback since he did not receive OER2 until after the OER3 reporting period was over. However, Article 10.A.1.b.(2) places much of the burden of obtaining feedback on the reported-on officer. In addition, though the applicant states that he chose not to complain about the lateness of OER2 to avoid angering his superior officers, Article 10.A.2.c.(2)(g) provided the applicant a means by which to ensure that he received this form of feedback in a timely manner. He voluntarily chose not to exercise this option. In addition, the applicant has not stated that his superiors failed to or were unavailable or unwilling to provide him with feedback on an informal basis. Therefore, the Board finds that the lateness of OER2 did not so unfairly render the applicant incapable of improving his performance during the reporting period for OER3 as to cause OER3 to be unjust.

8. Article 10.A.2.h.(2) of the Personnel Manual requires OERs to be received by the Commandant no later than 45 days after the end of the reporting period. CGPC indicated that OER2 and OER3 were received on August 3 and August 4, 1994, respectively. Therefore, OER2 was received by the Commandant more than a year late, and OER3 was received approximately three weeks late. Although OER2 and OER3 were in the applicant's record when the first selection board met on August 8, 1994, the applicant did not have a chance to file replies to the OERs because he did not receive them until August 15 and August 25, 1994, respectively. However, the lateness of both OER2 and OER3 can be attributed at least in part to the applicant's own failures. He failed to comply with Article 10.A.2.c.(2)(g) when he did not inform the Military Personnel Command that OER2 was overdue. He did not initiate OER3 until five days prior to the end of the reporting period, whereas Article 10.A.2.c.(2)(d) requires officers to initiate an OER at least 21 days prior to the end of the reporting period. Because the applicant did not himself comply with the regulations to help ensure the timeliness of these OERs, it is not an injustice that they appeared in his record before the selection board without any reply from him. The Board also notes that the applicant has not shown that any reply he might have filed would have convinced a selection board that the OERs were in error. Moreover, if the applicant had filed replies to OER2 and OER3 after he received them, his replies would have appeared in his record before subsequent selection boards.

9. The applicant has not proved that the Coast Guard committed any error or injustice that would justify removing any of the three disputed OERs or his failures of selection from his record.

10. Accordingly, the relief requested by the applicant should be denied.

**[ORDER AND SIGNATURES APPEAR ON THE NEXT PAGE]**

ORDER

The application for correction of the military record of [REDACTED]  
[REDACTED] USCG, is hereby denied.

