


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

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 1998-051


FINAL DECISION

 Chairman:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on January 28, 1998, upon receipt by the BCMR of the applicant's request for correction of his military record.

This final decision, dated December 17, 1998, was signed by three duly appointed members who were designated to serve as the Board in this case.

REQUEST OF APPLICANT

The applicant was a  at the time of application. He originally enlisted in the Coast Guard on October 5, 1970. He submitted his application for correction after approximately 28 years of active duty service.

The applicant alleged that the marks that he received on his officer evaluation reports (OER) for the May 29, 1993 to June 15, 1997 marking periods were "unjust." He told the Board that his "marks for the period 5/93 - 6 /97 [did] not reflect adequately [his] accomplishments." According to him, his performance was always "[e]xceptional" during the 1993-1997 period.

The applicant alleged that his performance in all categories supported marks greater than "3". He requested that the below average marks be raised, and that he be considered for promotion to CWO-4. He also submitted a four-page memo in which he summarized his achievements from 1993-1997. He said that the errors in his disputed OERs "were due in part to the fact that some of my accomplishments and stressful situations where (sic) overlooked."

The applicant submitted copies of the seven disputed OERs that were issued with respect to him between 1993 and 1997. These OERs covered the following periods, and they showed that he received the following marks during those periods on the comparison scale (comparison of applicant with others of the same grade): (1) 5/29/93 to 12/31/93 (on block 12 he received a mark of 4 out of a possible 7); (2) 1/1/94 to 7/31/94 (on block 12 he received a mark of 4); (3) 8/1/94 to 12/31/94 (on block 12 he received a mark of 5); (4) 1/1/95 to 8/31/95 (on block 12 he received a mark of 5); (5) 8/31/95 to 2/29/96 (on block 12 he received a mark of 3); (6) 2/29/96 to 7/2/96 (on block 12 he received a mark of 5); and (7) 7/3/96 to 6/15/97 (on block 12 he received a mark of 5). Overall, the applicant received an average mark of 4.43 on block 12, out of a possible 7.

On March 18, 1996, the applicant was issued an administrative letter of censure for inappropriate E mail; E-mail that was disrespectful toward a superior commissioned officer. This incident may have accounted for the fact that he received only a mark of "3" on the comparison scale for the period from 1993-1997. His reporting officer, for the applicable OER, said "[He] did not make adequate efforts to work together w/Ops dept & did not respond to repeated counselings (sic) to avoid use of antagonizing email."

The applicant submitted an attachment called a log for each of the disputed OERs. These seven OER logs described the applicant's views of his duties and achievements during the four year period. The applicant also submitted to the Board a listing, in bullet form, of his accomplishments at CG CAMSLANT (Communication Area Master Station Atlantic). Some of the bullet statements were neutral summary statements (e.g. "4. Replaced 26 antenna poles. 20 poles at tx site and 6 at the r/o site.") but others made judgments (e.g. "25. Worked well with various commands in the Coast Guard and Navy in projects to improve CAMSLANT and it's operations." There was no corroboration as to any of the alleged duties and achievements.

The applicant also submitted the text of the awards he received during this four-year period. He also submitted the notification he received from the head of the Coast Guard Personnel Command (CGPC) on January 26, 1998, to the effect that the Chief Warrant Officer Selection Board had failed to recommend him for promotion to chief warrant officer, W-4. He was told that he would be considered by the December 1998 Chief Warrant Selection Board. The CGPC commander encouraged him to continue serving the Coast Guard to the best of his ability.

VIEWS OF THE COAST GUARD

On April 2, 1998, the Chief Counsel of the Coast Guard recommended that the application in this case be denied for failure of proof.

The Chief Counsel noted that the applicant supplied "his own OER input for all factors" and that his only specific requests for correction were in the marks of "3" and his nonselection for promotion. He said that each mark of "3" in the applicant's OERs was supported by comments and was not contradicted by convincing evidence. The Chief Counsel said that the applicant had not made a prima facie case for relief.

The Chief Counsel said that the applicant failed to prove error or injustice, and that he failed to prove that an OER was erroneous or unjust. To prove that an OER is erroneous or unjust, an applicant must overcome a strong presumption "that his rating officials acted correctly, lawfully, and in good faith," and must present evidence that is "clear, cogent, and convincing."

RESPONSE OF THE APPLICANT TO THE VIEWS OF THE COAST GUARD

The applicant responded to the views of the Coast Guard by admitting that he had provided his own OER input. He also admitted that his "case is vague and probably merits little if any case for review."

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 was timely.

2. The applicant alleged that the disputed OERs for August 1993 to June 1997 do not reflect his performance during the period of these OERs. He asked the Board to "correct these OERs."

3. There were seven below-average marks on the disputed OERs. (On a scale of "1" to "7," a below average mark is a "3" or less.) On one of the "comparison scale" blocks and on six of the substantive blocks, the applicant was rated as a "3" by his rating chain.

4. The applicant alleged that the Board should correct the marks of "3" on the disputed OERs on the ground that they were not accurate and drew negative attention. The applicant, however, did not submit sufficient proof to show that the marks of 3 were inaccurate. The applicant did not state why they were inaccurate. He stated his own views, but he did not submit proof of his view.

5. The applicant had an above average mark of 4.43 on block 12 on the seven OERs. He might have been selected for promotion with that record.

6. The applicant did not show that the Coast Guard committed any error or injustice. Accordingly, the application should be denied.

[ORDER AND SIGNATURES ON FOLLOWING PAGES]

ORDER

The application to correct the military record of
JSCG, is denied.

