

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

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 1998-112

FINAL DECISION

[REDACTED]

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14, United States Code. It was commenced on September 1, 1998, upon the BCMR's receipt of the applicant's request for correction of his military record.

This final decision, dated June 30, 1999, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a lieutenant commander (LCDR) on active duty, asked the Board to correct his record in the following manner:

a. That all references to his failure of selection for promotion to the grade of Commander be removed;

b. That the OER prepared on his performance for the period May 28, 1994 through April 30, 1995 [first disputed OER], be corrected by revising section 3.f. to indicate a mark of "Not Observed" in place of the existing numerical score of "4";

c. In the alternative, that the entire OER for the period May 28, 1994 through April 30, 1995, be removed and replaced by an OER "for continuity purposes only."

d. That the OER prepared on his performance for the period March 18, 1996 through April 30, 1997, [second disputed OER] be corrected by revising the numerical scores in section 3.e., 4.b., 5.d., and 9.d.;

e. In the alternative, that the entire OER for the period March 18, 1996 through April 30, 1997, be removed and replaced by an OER "for continuity purposes only".

f. That if separated from active duty at the time the [BCMR] acts on this petition, he be offered an opportunity to return to active duty at the same position on the ADPL [active duty promotion list] as the date on which he separated;

g. That if separated from active duty at the time the [BCMR] acts on this Petition, and if he subsequently returns to active duty, he receive all pay and allowances for the full period of his separation, at the same rank as the date he separated;

h. That if separated from active duty at the time the [BCMR] acts on this petition, and if he subsequently returns to active duty, he receive full longevity credit toward military retirement for the full period of his separation.

i. That he be permitted to be considered by the next two (2) commander selection boards which are convened following the PRRB's action, as a [LCDR] within the zone of selection.

j. That, if separated from active duty at the time the [BCMR] acts on this petition, and if he subsequently returns to active duty, his consideration by a selection board be delayed until he receives one additional regularly scheduled OER;

k. That if selected by the first commander selection board to consider him following the [BCMR's] action, he be given the position on the ADPL and the date of rank which would have resulted if he been selected for promotion by the commander selection board which met in July 1997; and

l. That if selected by the first commander selection board to consider him following the [BCMR's] action, he be given all back pay, benefits, and allowances at the rank of commander, retroactive to the resulting date of rank.

EXCERPTS FROM RECORD AND SUBMISSIONS

Applicant's Contentions

The applicant is a Coast Guard [REDACTED] During the period covered by the first disputed OER, he was assigned as a program analyst at Coast Guard Headquarters. His supervisor was a civilian and his reporting officer was a Coast Guard officer.

The OER form contains the following preprinted explanation for block 3.f. (operational/specialty expertise): "The acquisition of both knowledge and skills and the demonstration of both technical competency and proficiency in an operational/specialty billet. [REDACTED]"

The applicant claimed that the rationale given for the mark of "4" in the "operational specialty expertise" category is incorrect. The applicant was given a "4" (out of a possible high of 7). The applicant stated that the reporting officer told him that he was given a mark of "4" in this category because the supervisor had not observed the applicant performing in his operational specialty. The applicant stated that the supervisor's basis for assigning the "4" is not in accord with the Personnel Manual. The applicant claimed that the provision of the Personnel Manual that was in effect at the time required the assignment of the "N/O" (not observed) rating if the reported-on officer was not observed performing in his operational specialty.

During the period covered by the second disputed OER, the applicant was assigned to duty as the project officer for the [REDACTED], Coast Guard Headquarters. He alleged that the comments contained on this OER support higher grades than the ones he received in blocks 3.e., 4.b., 5.d., and 9.d.

The applicant asserted that he should have received a "6" rather than a "4" in block 3.e. (work-life sensitivity expertise). He alleged that his supervisor neglected to cite any specific examples to support any mark for this category. However, the applicant stated that comments in section 4.c. are related to the work-life principles category. The applicant claimed that comments from section 4.c. (interpersonal relations: comments) such as those quoted below, support a higher mark of 6 in block 3.e (work-life sensitivity expertise):

Led diverse project matrix team Calm, professional demeanor and personal management style fostered cooperative, synergistic environment, and motivated project team to overcome significant design/technical challenges and meet aggressive cost/schedule goals. Team work skills were the fulcrum of TCAS's unusual project success. Brought strength to TCAS project from team members' diverse backgrounds.

The applicant also asserted that the comments in block 4.c. (quoted above) support a mark of "6" rather than the "4" he received in block 4.b. (human relations). The applicant pointed to the supervisor's description of his performance as "excellent leadership of a diverse team to overcome significant challenges" to support his claim that the narrative comments in this section support a mark higher than a "4" in human relations. The applicant received a "6" in the other category of section 4. (Interpersonal Relations), block 4.a. (working with others).

The applicant claimed that the comments in block 5.e. support a "6" in block 5.d. (preparation and submission of personnel evaluations). The applicant stated that the supervisor's comment that the applicant's "evaluations were always timely, fair & accurate", was very complimentary and indicated that the applicant's evaluations were always done correctly. The applicant stated that the comments in block 5.e. "rate the applicant more than a "4" in block 5.d.; it should have rated him a "7"."

The applicant stated that the mark in 9.d. (stamina) should be raised from a "4" to a "6". He stated that 9.d. measures the applicant's ability to think and act under stressful conditions. He argued that the OER contained many excellent examples of such performance that should support a higher mark. The applicant stated that the comments that support this section of the OER are anything but average. In fact, they are highly complimentary and indicated an appreciation for the applicant's stamina at the highest level of command. In support of his position, the applicant offered as an example the following comment: "worked tirelessly and maintained composure during stressful period . . ."

The applicant argued that the presence of these inaccurate OERs in his record was an injustice for him. He claimed that they created a less than complete and accurate record for the 1997 commander selection board.

Views of the Coast Guard

On May 18, 1999, the Board received an advisory opinion from the Chief Counsel of the Coast Guard. He recommended that the Board deny relief to the applicant. The Chief Counsel stated that the applicant has failed to prove that the disputed OERs are inaccurate evaluations of his performance.

The Chief Counsel stated that if the applicant's assertion -- that he should have received a non-observed in operational specialty expertise -- were true, that would mean that an officer's operational specialty expertise could only be evaluated when the officer was serving in an operational billet, and not when the officer was serving in a staff position that required the use and application of operational expertise. The Chief Counsel stated the applicant's interpretation "makes no sense and would convolute the intent of that performance dimension which measures an officer's ability to acquire and demonstrate operational specialty expertise in both operational and staff positions." He also stated that the applicant's assertion in this regard is not supported by any regulation or Coast Guard policy.

Attached to the Chief Counsel's comments was an affidavit from the applicant's supervisor that was obtained in the processing of the applicant's application before the Personnel Record Review Board (PRRB). The supervisor stated that the mark of 4 in operational/specialty expertise represented his judgment of the applicant's expertise as a program analyst (with aviation experience) during

the period in question. The Chief Counsel contended there was no error or injustice with respect to the first disputed OER.

With respect to the applicant's allegations that certain marks on the second disputed OER should be higher, the Chief Counsel stated that the applicant had failed to provide any evidence that the OER is inaccurate.

The Chief Counsel stated that contrary to the applicant's assertion, comments in an OER support the numeric marks; marks do not support the written comments. Article 10.A.4.b., Personnel Manual. The Chief Counsel stated there is no basis for raising the challenged marks on the second disputed OER.

The Chief Counsel attached a statement from the applicant's supervisor for the second disputed OER. The supervisor stated that he disagreed with the applicant's position that the second disputed OER is inaccurate. The supervisor also noted that the applicant had not submitted any evidence that would cause him to consider revising the assigned marks.

Applicant's Response to the Views of the Coast Guard

On June 1, 1999, the Board received the applicant's response to the views of the Coast Guard. The applicant argued that he should have received a N/O (non-observed) in the operational specialty category because the supervisor did not observe his performance in his operational specialty as a pilot.

The applicant agreed that normally comments support numerical scores, except with respect to the four challenged marks. He re-asserted his claim that the comments on second disputed OER supported higher marks in the four challenged areas. The applicant stated that the Board should not draw a negative inference from his decision not to submit an OER reply to the disputed OERs. The applicant stated that OERs are optional and there should be no penalty for electing not to do an optional act.

APPLICABLE REGULATIONS

Article 10-A-4d.(4)(f) of the Personnel Manual that was in effect at the time of the first disputed OER stated as follows:

Supervisors shall specifically identify the operational or specialty expertise (expert skill or knowledge) being evaluated and comment in section 3h of the OER. Specifically address the officer's acquisition (O-1 through O-4) and demonstration (all officers) of operational or specialty expertise. When evaluating seamanship or airmanship expertise (except skill or knowledge), the following factors should be considered: easy application of the rules of the road and FAR's; understanding and

facility with relative motion concepts; good "sea sense" and a feel for the forces acting on ship and aircraft; and the ability to translate environmental inputs and mission requirements into consistently correct control applications and leadership decisions. These are some of the factors which indicate potential for future successful operational assignments including operations officer, executive officer, and command. In short, compare and discuss the officer's critical competency requirements in his or her area of operational or specialty expertise, and particularly with regard to seamanship or airmanship.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's record and submissions, 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 Board concurs in the Chairman's determination that the application can be decided without a hearing. 33 CFR § 52.31. The documents in the record provide an adequate basis for a decision.

3. The applicant did not provide the Board with the provision of the Personnel Manual that he claimed required the supervisor to evaluate the applicant as "N/O" in block 3.f. (operational specialty category) of the first disputed OER. The preprinted standard on the OER form does not require that an "N/O" be assigned in this category to reported-on officers serving in other than typical operational type jobs. Article 10-A-4d.(4)(f) of the Personnel Manual, which was in effect at the time, appeared to emphasize the evaluation of skills related to seamanship and airmanship. However, it did not state that this block was geared solely to evaluating an officer's performance in these two areas. The applicant has not demonstrated that the supervisor was in error by evaluating the applicant in his then specialty as a program analyst. Neither has the applicant shown that the "4" he received in block 3.f. (operational specialty expertise) is in error or unjust.

4. The applicant alleged, but failed to prove by a preponderance of the evidence, that certain contested marks on the second disputed OER were inaccurate. The applicant presented only his opinion that some of the comments on the second disputed OER supported higher marks in blocks 3.e., 4.b., 5.d., and 9.d, but no corroboration for that view. The supervisor affirmed that his evaluation of the applicant's performance was accurate.

5. The Board finds that none of the disputed marks were below average and the comments and marks, as assigned, are not inconsistent. The applicant failed to prove that the second disputed OER is in error or unjust.

6.. The applicant had an accurate and complete record when his record was considered by the 1997 CDR selection board. He has not demonstrated any error in his record that would have prejudiced him before that selection board.

7.. Accordingly, his application should be denied.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The application of LCDR [REDACTED] for correction of his military record is denied.

[REDACTED]