

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 1999-084

FINAL DECISION

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 March 22, 1999, upon the BCMR's receipt of the applicant's completed request for correction of his military record.

This final decision, dated February 10, 2000, 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 is a [REDACTED]. He alleged that his officer evaluation report (OER) for the period from June 1, 1997 to May 31, 1998 should be removed from his record. This OER covered the period when the applicant was assigned to the [REDACTED].

The applicant alleged that his [REDACTED] supervisors did not demonstrate familiarity with "military rank and the evaluation system" and the billet to which he was assigned "has not been a productive position for years." He further alleged that evaluation reports from his previous unit "clearly contradict the marks and comments given by [his] present [REDACTED] civilian supervisors". He stated that the disputed "evaluation is completely out of character with what has been an outstanding and otherwise well documented Coast Guard career." The applicant also alleged that the:

Opportunities to exhibit high performance are non-existent leaving this billet uncompetitive. There is no avenue available to demonstrate technical abilities for evaluation purposes which makes the evaluation system vulnerable to errors and injustice.

The applicant also said that his OER was "not a true representation of [his] potential." Attached to his application was a February 8, 1999 statement he sent to CGPC (Coast

Guard Personnel Command) requesting elimination of his billet (F&S billet) at [REDACTED]. He alleged that "[o]pportunities to exhibit high performance are non-existent at the [REDACTED], and he alleged that "[i]rrespective of [his] limited responsibility at this unit, there appears to be a strong bias against [REDACTED] Coast Guard personnel in general." In support of the latter assertion, he said that 12 of the 16 [REDACTED] officers considered for promotion from 1996 to 1999 were passed over.

On November 30, 1999, a statement in support of his allegations was executed by the reporting officer (RO) on the disputed OER, who was the [REDACTED] of the Coast Guard detachment at the [REDACTED]. The RO alleged that the applicant "was working on an assignment which was inappropriate for a Coast Guard CWO3," and that his position "did not offer him the meaningful professional opportunities normally associated with positions held by a USCG CWO".

Views of the Coast Guard

On December 15, 1999, the Board received a copy of an evaluation of the applicant's case prepared by CGPC (Coast Guard Personnel Command). CGPC recommended that no relief be granted to the applicant because it found that the applicant did not provide convincing evidence to support his allegations or show that he was evaluated unfairly. With respect to the comment by the RO regarding the inappropriateness of the applicant's billet, CGPC noted that the RO never disputed the validity of the evaluative marks and narrative comments provided by the civilian supervisor on the OER.

CGPC also said that "[t]he contested OER is an average OER, with marks a little bit lower than what would be expected of a high performing CWO3." CGPC noted that the applicant's record, aside from the disputed OER, "has its weaknesses." CGPC said that one could deduce that the applicant's tour of duty at [REDACTED] was the "more professionally successful" of his last two tours of duty.

On January 6, 2000, the Chief Counsel of the Coast Guard submitted the Coast Guard's advisory opinion recommending that relief be denied the applicant. The Chief Counsel said that the disputed OER was a "fair and accurate evaluation of his performance at [REDACTED]. The Chief Counsel also stated that the applicant has not pointed to any regulation or statute that entitles any Coast Guard member to a "high performance" billet or to opportunities to exhibit high performance.

The Chief Counsel said there is no substantial evidence of any misstatement of a significant fact or any violation of any statute or regulation. The Chief Counsel concluded that the applicant had a fair evaluation of his performance, which is what is "required under the regulations." The OER reflected the applicant's performance, rather than an alleged mismatch between his capabilities and his assigned duties and responsibilities. The Chief Counsel also stated that there was no nexus between the disputed OER and his non-selection to CWO4.

Applicant's Response to Coast Guard Views

On January 7, 2000, the Board sent a copy of the advisory opinion of the Coast Guard to the applicant, with an invitation to him to respond to those views within 15 days.

The applicant did not respond to the advisory opinion.

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. The applicant asked the Board to delete a disputed OER from his military record. It covered the period from June 1, 1997 to May 31, 1998.
3. During that period, the applicant was assigned outside the Coast Guard to a unit of the [REDACTED]. The rating chain on the disputed OER consisted of a [REDACTED] official as the supervisor and two Coast Guard officers as the reporting officer and the reviewer.
4. The applicant alleged that "[REDACTED] supervisors have not demonstrated familiarity with the . . . [Coast Guard] evaluation system." He introduced no evidence, however, to support that allegation. In fact, the applicant's reporting officer, who supported the application, did not state that the OER was "factually inaccurate or biased" and did not dispute the marks and comments provided by the [REDACTED] supervisor.
5. The applicant's reporting officer stated on November 30, 1999 that the applicant "was working in an assignment which was inappropriate for a USCG CWO F&S" and which "did not offer him the meaningful professional opportunities normally associated with positions held by a USCG CWO." The applicant stated that in his position, opportunities "to exhibit high performance are non-existent."
6. No provision of the Coast Guard Personnel Manual, or any regulation or statute, guarantees a member that he will get a high performance position in every position to which he is assigned. The issue before the Board is the applicant's performance rating, not an alleged mismatch between his talent and his position.
7. Accordingly, the application should be denied.

ORDER

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

