

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-142

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. The application for correction was filed on June 30, 1999. The application was not completed until December 13, 1999, when the applicant submitted new evidence in support of his allegations.

This final decision, dated September 7, 2000, 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 xxxxxxxxxxxx now serving on an active duty contract in the Coast Guard Reserve, asked the Board to correct his record by removing or revising three written comments in an officer evaluation report (OER) issued prior to his discharge from the regular Coast Guard. The disputed OER was issued for the period October 1, 1991, through August 6, 1992, during which time, the applicant served as a deck watch officer aboard the Coast Guard cutter *Xxxx*. Specifically, the applicant asked that the following two comments in the disputed OER be removed:

- However, [the applicant's] underway OOD watchstanding was occasionally lax; he allowed his quartermaster to plot a course with a 10 degree error which would have carried the ship across a shoal and once proposed an unrealistic passing arrangement with another ship in restricted waters.

- ... (somewhat offset by his mediocre watch-standing) ...

In addition, the applicant asked that the third disputed comment —

- I am sure he will succeed in [REDACTED] and become a typically productive member of the [REDACTED] community. I consider him fully qualified for promotion with his peers.

– be removed and replaced with the following:

- I am sure he will succeed in [REDACTED] and become an outstanding member of the [REDACTED] community.

The applicant asked the Board to remove his failures of selection to xxxx by the 1994 and 1995 selection boards and to remove his involuntary separation from the Coast Guard on June 30, 1996. He further requested that his record be corrected to show that he reentered the regular Coast Guard on July 9, 1998, through the [REDACTED] program in the rank of xxxx and that the OERs he has received since that date be corrected to show his rank as xxxx. He asked to be awarded back pay and allowances for the periods November 1994 to July 1996 and July 1998 through the present for service in pay grade O-3 rather than O-2.

APPLICANT'S ALLEGATIONS

The applicant alleged that during the period covered by the disputed OER, he held numerous responsible positions aboard the Xxxx and “always received positive feedback from [his] supervisors and other senior officers ... concerning [his] performance in all assigned duties.” Because no one had ever criticized his watchstanding, he was “completely taken off-guard and surprised by the comments” in the disputed OER, which he received upon his departure from the [REDACTED]. He alleged that none of his supervisors or the executive officer (XO) of the Xxxx, who was his reporting officer and who wrote the comments, “had ever mentioned any watchstanding issues during the reporting period.”

Upon receiving the disputed OER, the applicant alleged, he asked his supervisor about the negative comments. He alleged that his supervisor recommended that he do nothing about the “harsh” comments because the XO might retaliate by adding worse comments or by lowering his marks. The applicant stated that his experience with the XO led him to believe this might be true. He alleged that the XO had “recently become very bitter after being passed over [for promotion] the second time for [captain].”

The applicant also alleged that his supervisor told him the comments would not prevent him from being promoted. He himself could not imagine that the Coast Guard would separate him because of the comments since it “was about to spend over a million dollars on [his] [REDACTED] education.” Therefore, he “naively” chose not to “rock the boat” by protesting the comments.

The applicant alleged that he learned to [REDACTED] and xxxxs at the U.S. [REDACTED] and that his performance was “well above average.” However, as a

student, his performance was not evaluated in his OERs but marked "not observed."¹ After he finished [REDACTED] in May 19xx, he was assigned as a [REDACTED], but no OER for his performance as a [REDACTED] was added to his record before it was considered by the 1994 xxxx selection board. He alleged that he failed of selection by the 1994 selection board because the most recent operational OER in his record was the disputed OER with the inaccurate and unfair comments. He alleged that he considered seeking relief via the BCMR at this time, but was advised by a fellow officer that to do so, he had to hire an attorney, which he could not afford. Instead, he worked very hard, was upgraded from [REDACTED] to [REDACTED] and earned two outstanding OERs. He hoped those OERs would improve his record before the 1995 selection board, but he failed of selection again and was therefore involuntarily discharged on June 30, 1996.

After being separated from the Coast Guard, the applicant worked as a plant manager and engineer for a large paper company. However, two years later, the Coast Guard asked him if he would reenter the service through the [REDACTED]. Because he missed [REDACTED] he applied and was commissioned as a xxxx in the Coast Guard Reserve. He signed an active duty contract and was assigned to [REDACTED]. Thus, he ended up picking up where he had left off two years earlier. He alleged that he requalified as a [REDACTED] within three weeks and qualified as an [REDACTED] in just five months. After less than a year, he applied for and was accepted by the [REDACTED] and advanced education program, "the most competitive program within Coast Guard [REDACTED]"

Since his return, the applicant alleged, his Coast Guard mentors have encouraged him to seek relief with the BCMR. He alleged that they have told him that the comments in the disputed OER show that his reporting officer, the XO of the Xxxx, discriminated against him because he was leaving the cutter to enter the "[REDACTED] community," which the XO did not respect.

The applicant argued that the comments should be removed from the disputed OER because they are "damaging, career-ending statements" about his performance concerning incidents that neither he nor his supervisors could remember and about which he was never informed or counseled by the XO. In support of this allegation, he submitted two affidavits by his supervisors aboard the Xxxx, which are summarized below. He also submitted an affidavit by the cutter's navigator, who denied the occurrence of the ten-degree course error and the unrealistic passing arrangement mentioned by the XO in the disputed OER. The applicant alleged that if he had ever performed his watchstanding duties poorly, his supervisors would have known or would have been told, and the navigator would have known of any error in course or passing arrangement. Because neither he nor his supervisors or the navigator could recall any incidents

¹ All performance traits are marked "not observed" in OERs for officers in school. Personnel Manual, Article 10-A-3.a.(6).

that might have given rise to the comments, he alleged, the disputed statements must be either false or highly exaggerated.

The applicant further argued that if his watchstanding had in fact been "lax," he would not have received his command's strong endorsement for [REDACTED] training, and he would not have had what it takes to succeed as a [REDACTED]. He stated that both [REDACTED] and watchstanding require navigational accuracy, procedural knowledge, and situational awareness.

The applicant alleged that the XO was motivated to make these false or exaggerated negative comments because of his bias against [REDACTED] and his bitterness about failing of selection himself. He stated that the XO once told him that [REDACTED] were "below whale sperm," that [REDACTED] were "at the bottom just above lawyers, and that the worst possible situation would be a Coast Guard [REDACTED] who went to law school." The applicant alleged that the XO was serious and "never cracked a smile" when he said this. He alleged that the XO's bias is proved by the sarcastic remark in his disputed OER about him becoming a "typically productive member of the [REDACTED] community."

The applicant further alleged that the XO's comment concerning a ten-degree error that would have carried the cutter across a shoal was demonstrably false. The Xxxx's mission, he alleged, was to monitor high seas fisheries, and the cutter only came near shoals when entering or leaving port. At these times, he alleged the cutter's course was set beforehand, and any changes called for by the conning officer had to be cleared by the navigator. Therefore, the navigator would have known if he had ever endangered the cutter by changing a preset course while entering or leaving a port.

The applicant also submitted an affidavit from a fellow junior officer (see below), who denied hearing of any problems with the applicant's performance. The applicant alleged that if there had been any such problems, his peers would have known.

The applicant alleged that, if any negative watchstanding incidents did occur, unbeknownst to him, his supervisors, the navigator, and his peers, he should have been formally counseled about them and given a chance to improve. He alleged that his counseling sessions with his supervisors were always "routine and informal conversations about ongoing projects and other assigned work." He alleged that his supervisors did not use the officer support form (OSF), to counsel him, as required by the Personnel Manual for all xxxx and xxxxs, because his performance was very good. He did not insist that they use it because he "thought it was intended more for someone who needed to improve his or her performance." He argued that if his performance was actually as lax as the XO's comments indicate, the XO or his supervisors should have counseled him about it and used an OSF so that he could improve.

The applicant stated that he can remember only one occasion when the XO was “outwardly upset” about something he did. During a training exercise, the XO seemed unhappy with how he anchored the cutter. He alleged that after the exercise was over, he asked his supervisor what he had done wrong. His supervisor told him that he had not seen the applicant do anything wrong and that the anchoring exercise had gone well. The supervisor attributed the XO’s unhappiness to “a personal problem that the XO must have” with the applicant, rather than to any mistake he had made. He alleged that his supervisor told him to “minimize his exposure to the XO” because the “XO just didn’t like” him. The applicant stated that the cutter received a “clean sweep” of excellent scores for the training exercise, including the anchoring evolution for which he stood watch. The applicant alleged that if the XO really disapproved of his performance, he should have counseled him about it at least once during the ten-month reporting period, but he never did. He alleged that it was unjust for the XO to remain silent for ten months and then destroy his Coast Guard career by including such negative comments in his departing OER.

The applicant alleged that the XO’s bias also led him to lower most of the applicant’s marks in the disputed OER to 4s² in performance categories for which he had previously earned 5s. He stated that the comment about his being “fully qualified for promotion with his peers” was also a sign of prejudice because he was a xxxx. He explained that, whereas xxxxx are selected for promotion to xxxx as long as they are “fully qualified,” xxxxs are selected for promotion to xxxx only if they are among the “best qualified.” Therefore, the use of the phrase “fully qualified” in the OER of a xxxx is a backhanded compliment and prejudicial to the reported-on officer.

The applicant alleged that the problem he suffered in receiving an unfairly poor OER as he departed the cutter for a specialty career path is a systemic one recently identified in a Junior Officer Needs Assessment study conducted by the Coast Guard’s Work Life Department. The study, he alleged, found that first tour officers receive dramatically lower marks when they leave underway positions for [REDACTED] or engineering school, as compared to officers who choose to remain in underway operations. The applicant alleged that he was one such victim of this phenomenon.

The applicant also alleged that the XO’s failure to counsel him concerning any perceived performance problems was evidence of the “zero-defect mentality” described in an article in the October 1998 issue of *Naval Institute Proceedings*. The article surmised that junior officers were leaving the service because “[m]istakes on the job no longer are treated as learning tools but are addressed immediately and publicly with punitive corrective actions ... one mistake can kill years of faithful service.” Senior officers, he alleged, “are afraid to let any of their junior officers make a mistake that might make them look bad” because of “career fear,” which was a recent topic of several articles and

² Officers are graded in approximately 20 different performance categories, such as “judgment” and “getting results,” on a scale of 1 to 7, with 7 being highest.

an address by the Commandant. The applicant alleged that “zero-defect mentality” and “career fear” may also have caused the XO to fail to counsel him properly concerning any issues he had with the applicant’s watchstanding.

Furthermore, the applicant alleged, he was not the only victim of the XO’s disfavor. He stated that four other deck officers aboard the *Xxxx* for whom the XO acted as reporting officer were passed over for promotion to xxxx.³ This extremely high failure rate, he alleged, proves the XO’s “inability or unwillingness to provide effective performance counseling [or to] develop and mentor junior officers that were entrusted to his care.”

The applicant also alleged that the disputed OER was unfair because it was completed in a type font that was smaller than that prescribed by regulation. The use of the smaller font, he stated, left significant blank spaces in his OER, which are prejudicial to reported-on officers.

Finally, the applicant argued that his failures of selection should be removed from his record because they were caused by the damaging comments in the disputed OER. The disputed comments had a significant negative impact on his record before the selection boards because the OER was the last operational OER in his record and covered his last ten months on the *Xxxx*. He explained that the reporting period for the disputed OER was extended from the normal six months to ten months because both he and the XO were departing the cutter at that time. Under *Engels v. United States*, 230 Ct. Cl. 464 (1982), he argued, his failures of selection should be removed because the unfair and inaccurate comments made his record significantly worse and without them, “it is not unlikely that [he] would have been promoted in any event.”

The applicant stated that he believes most applicants in his position ask to be reinstated and to have their dates of rank back dated if they are selected for promotion by the next selection board to consider their records as corrected by the Board. However, he is asking the Board to reinstate him in the regular Coast Guard as a xxxx with the day he entered the Coast Guard Reserve as his new date of rank. The applicant stated that this relief would be fairest to him because his original year group from the Coast Guard Academy has already been promoted to xxxx and has even been considered by its first xxxx selection board. He argued that the date of rank he seeks would give him enough time in service as a xxxx “to build a competitive record” for a xxxx selection board. An earlier date of rank would prejudice him before a selection board and prevent him from building a competitive record as a xxxx before he is considered for promotion to xxxx.

³ In BCMR Docket No. 1998-073, evidence was presented indicating that nine out of ten xxxxs who served on the *Xxxx* from July 1991 to July 1994 were passed over for selection twice and separated involuntarily. The applicant in that case also alleged that 21 out of the 28 (75 percent) officers who served on the *Xxxx* during those three years were subsequently involuntarily separated from the Coast Guard.

SUMMARY OF THE APPLICANT'S MILITARY RECORD

The applicant graduated from the Coast Guard Academy and was commissioned an ensign in May 19xx. He initially reported to the cutterxxx, but was transferred with other crewmembers to the Xxxx on xxxxx. He served on the Xxxx until August 6, 199x, when he was detached to attend [REDACTED]

The applicant received three OERs for his service on the Xxxx. All three were signed by the applicant's commanding officer, Xxxx's captain, who served as the reviewer. The first (OER1 in the table below) contains only one negative comment (by the XO) to the effect that, as gunnery officer, he failed to take an active interest in gun repairs at one point. All other comments in OER1 are positive, and his supervisor, LT x., wrote that he "[s]tands an effective watch." The XO also wrote that the applicant "is qualified for promotion to LTJG. He is interested in attending [REDACTED] and I am sure he would complete that program and become an effective Coast Guard [REDACTED]"

The second OER he received for service aboard the Xxxx (OER2 in the table below) contains no negative comments. His supervisor, LT x., wrote that he "[s]tands an effective and safe inport and underway OOD watch." The XO wrote that his "performance has improved during this period. He is fully qualified for promotion with his peers. He has a strong interest in attending [REDACTED] and I am confident he would succeed in that program and make an excellent Coast Guard career [REDACTED]"

On November 23, 199x, the applicant was promoted to the rank of xxxx. The disputed comments appear in his third and final OER for his service aboard the Xxxx, from October 1, 199x, to August 6, 199x (see OER3 in the table below). The comments appear in 10-point condensed type, with 15 letters per inch (pitch) and 7.5 lines per inch of text. His supervisor, LT x., made many positive and no negative comments. He stated that the applicant's "[d]ivision was so well prepared for the April [training exercise], the instructors spent only two days on board, [and] cancelled the next weeks of training in order to spend time on a unit that needed them The division excelled, receiving a final score of 93%." The XO wrote the disputed comments, which appear on the first page of this final decision.

From August 199x to May 199x, the applicant attended [REDACTED] where he was trained as an [REDACTED]. He received three OERs while in [REDACTED] (OER4, OER5, and OER6 in the table below) with all evaluation categories marked "not observed." OER4 indicates that his class standing was xxx in a class of xx. OER5 indicates that his [REDACTED] grades were above the [REDACTED] and his academic average was 94 percent. The reviewer for OER5 added comments stating that the applicant's completion of "[REDACTED] training shows that he "possesses a superior degree of initiative and responsibility. His academic and [REDACTED] performance were

above average in a highly competitive, demanding program. He is strongly recommended for promotion with peers." OER6 indicates that the applicant's [REDACTED] equaled the [REDACTED] and that his academic average was 96 percent. The reviewer added comments almost identical to those in OER5, except that his "degree of initiative and responsibility" was described as "outstanding."

The applicant was passed over for promotion to xxxx by the selection board that met in the summer of 1994. At this time, his record contained OER1 through OER6.

Upon completion of [REDACTED], the applicant was assigned to [REDACTED] Xxxx as a [REDACTED]. His OER covering the period xx, 199x, to January 31, 199x (OER7 in the table below), contains many laudatory comments, including praise for his "noteworthy" situational awareness. His reporting officer strongly recommended him for promotion.

The applicant's second OER after [REDACTED], covering his service as a xxxxx at Xxxx from February 1, 199x, to July 31, 199x (OER8 in the table below), contains highly laudatory comments. His reporting officer strongly recommended him for promotion. In addition, his reviewer added laudatory comments, including a strong recommendation for promotion.

The applicant was passed over for promotion to xxxx a second time in xxxx 1995. OER7 and OER8 were in his record at this time. He was separated from the service on June 30, 1996, due to non-selection for promotion.

In April 199x, the applicant applied for a [REDACTED] in the Coast Guard Reserve. His application included a letter of recommendation from a retired Coast Guard captain who had supervised him during [REDACTED]. The captain stated that the applicant's performance, demeanor, and maturity placed him "in the top 10% of all the [REDACTED] students I supervised."

In May 199x, the applicant was selected by a [REDACTED] selection board. On July 9, 199x, he signed an Acceptance and Oath of Office as a xxxx in the Coast Guard Reserve. He also signed a four-year active duty contract. He was assigned to [REDACTED], where he requalified as a xxxx on August 27, 199x, and was designated an xxxxx on March 26, 199x. Since his return, his reporting officers have rated him as "an exceptional officer" in his OERs. In September 199x, he was selected for the xxxxxxxx program.

APPLICANT'S MARKS IN EIGHT OERs FROM 5/23/90 THROUGH 7/31/95

CATEGORY	OER1 ^a	OER2 ^a	OER3 ^b	OER4	OER5	OER6	OER7 ^c	OER8 ^c
Being Prepared	5	5	5	NO ^d	NO	NO	5	5
Using Resources	4	5	4	NO	NO	NO	5	5
Getting Results	4	5	5	NO	NO	NO	5	6
Responsiveness	4	5	5	NO	NO	NO	6	6
Work-Life Sensitivity ^e				NO	NO	NO	5	5
Operational/Specialty Expertise	4	4	4	NO	NO	NO	4	5
Collateral Duty	5	5	5	NO	NO	NO	6	6
Warfare Expertise ^e	4	NO ^d	NO					
Working with Others	4	5	5	NO	NO	NO	5	5
Human Relations	4	4	4	NO	NO	NO	5	4
Looking Out for Others	5	4	4	NO	NO	NO	5	5
Developing Subordinates	4	5	4	NO	NO	NO	5	5
Directing Others	4	4	4	NO	NO	NO	5	6
Evaluations	4	4	5	NO	NO	NO	4	4
Speaking & Listening	5	4	4	NO	NO	NO	5	5
Writing	4	5	5	NO	NO	NO	5	5
Initiative	5	5	4	NO	NO	NO	5	4
Judgment	4	5	4	NO	NO	NO	6	6
Responsibility	4	4	4	NO	NO	NO	5	6
Stamina	4	5	4	NO	NO	NO	5	5
Health & Well-Being	4	4	4	NO	NO	NO	5	5
Military Bearing	5	4	5	NO	NO	NO	5	5
Professionalism	4	5	4	NO	NO	NO	5	5
Dealing with the Public	4	4	4	NO	NO	NO	5	5
Average for OER	4.3	4.5	4.4				5.0	5.1
Comparison Scale ^f	4	5	4				5	6

^a OER received for performance at the rank of xxxx, prior to promotion to xxxx.

^b OER with disputed negative comments.

^c OER non-existent when the applicant was first considered for promotion to xxxx in 1994.

^d Score given was "NO," which means there was no opportunity to observe this trait. NOs are required when an officer is in school.

^e Category discontinued or nonexistent until later years.

^f The Comparison Scale is not actually numbered. In this row, "6" means the applicant was rated as "an exceptional officer." A "4" or "5" means the applicant was rated as "one of the many competent professionals who form the majority of this grade." No marks are made on the Comparison Scale when an officer is in school.

SUMMARY OF OTHER EVIDENCE

Affidavit of the Operations Officer of the Xxxx from August 199x to June 199x

The applicant submitted an affidavit by LCDR x., the officer who served as his supervisor until two months before he left the cutter. LCDR x. stated that as the Xxxx's Operations Officer, he supervised the applicant from the time of his arrival on board in September 199x until June 199x. He stated that he never completed an OER for the applicant "due to OER timing." LCDR x. stated that he was very surprised to hear that such an outstanding officer had failed of selection for promotion to xxxx.

LCDR x. alleged that the applicant had performed well as a desk watch officer. He indicated that the applicant qualified as an underway officer of the deck in a reasonable amount of time given the cutter's schedule. Regarding the applicant's performance, he stated that he does "not recall a briefing or counseling regarding any perceived watchstanding issue." He commended the applicant's "superior watchstanding and Maritime Law Enforcement expertise."

Affidavit of the Operations Officer of the Xxxx from June 199x to August 199x

The applicant submitted an affidavit by LCDR x., who replaced LCDR x. as the Operations Officer of the Xxxx and who served as the supervisor for the disputed OER. LCDR x. stated that he could not remember "the background behind the comments" written by the XO. He stated that he does "not remember the negative events mentioned by [the XO] (specifically the lax bridge watch, plotting a wrong course and proposing an unrealistic passing agreement)." He alleged that the applicant was a very capable officer and that his "performance on board was typical of the average officer but good enough to qualify him for [REDACTED]." LCDR x. stated that he was surprised by the applicant's failure of promotion but that the cutter had "a very bad promotion rate," which he called a "curse."

LCDR x. further stated that he does "not remember specifically any negative comments [the XO] personally made towards [the applicant] concerning his personal like or dislike for him." He described the XO as a "very tough taskmaster" with a "very dry sense of humor" that "often turned people off," especially junior officers.

Affidavit of the Navigator of the Xxxx from July 199x to June 199x

The applicant submitted an affidavit by the cutter's navigator, LT x. He stated that he was responsible for planning the cutter's projected courses and ensuring its safe navigation. As the navigator, he was "routinely kept abreast" of the performance of quartermasters by the Operations Officer, the XO, and the Commanding Officer because he was the quartermasters' direct supervisor. He stated that he was always informed when a quartermaster made a navigational error. "Therefore, [he] thought it

was particularly strange that [the applicant] received a comment in his Officer Evaluation Report (OER) that said he had hazarded the ship by allowing a Quartermaster to plot an incorrect course across shoal water. This is an event that I would have been immediately informed about, especially if it was caught by the Executive Officer." LT x. further stated the following:

As Navigation Officer, I was on the bridge every time the XXXX entered or left port. The Commanding Officer's Standing Order's [sic] included a requirement to set Special Navigational Detail anytime we were within 12 nautical miles of shoal water. As Navigator, I was responsible for keeping the Conning Officer informed of the cutter's current position and distance to nearest shoal water and of a course and speed that would not take the cutter across shoal water. The Conning Officer was responsible for the exact course and speed of the ship. While I was Navigator aboard XXXX, I can affirm that there was never an error that would have taken the ship across a shoal while my special navigation detail was set. If this were to occur, I believe that it would have been noted in my OER. My last OER from XXXX make[s] no reference of any such incident and may be obtained if needed. Furthermore, I never saw or heard [the applicant] propose any unrealistic passing arrangements with any other ships while we were in restricted waters. [The applicant] was an outstanding deck watch officer; one of the best aboard XXXX. I would not consider his underway watchstanding to be lacking in any way.

LT x. also stated that the applicant "fell out of the Executive Officer's favor when he was accepted and committed to [REDACTED]. The Executive Officer made no secret of the fact that he didn't care for [REDACTED]. LT x. confirmed the applicant's allegation the XO had called [REDACTED] below whale sperm and that "the worst thing that could possibly happen would be a Coast Guard [REDACTED] who became a lawyer. One might interpret this as a joke, but the Executive Officer was serious and we weren't laughing."

Affidavit of a Junior Officer on the Xxxx from September 199x to August 199x

The applicant submitted an affidavit by Mr. x., a junior officer on the cutter who, like the applicant, was separated from the Coast Guard in 1996 after failing of selection twice. Mr. x. stated that he believes he failed of selection because of negative comments made in his OERs by the XO, because all of the comments made by other officers in his OERs were very positive. He alleged that the XO's bitterness about being passed over for promotion to captain caused him to add "arbitrary and capricious negative comments" in the OERs of several junior officers. Those comments, he alleged, caused the high rate of failure of selection among the Xxxx's junior officers. He also supported the applicant's allegation that the XO did not respect the "[REDACTED] community" and that the disputed comment in the applicant's OER is an unprofessional expression of the derogatory stereotype of [REDACTED] accepted and perpetuated by the XO.

Regarding the disputed comments in the applicant's OER, Mr. x. stated that "these accusations were never mentioned to [the applicant] outside of this OER. Lackadaisical watchstanding is [not], or never was descriptive of [the applicant's] perform-

ance. Lackadaisical watchstanding was not tolerated on the XXXX." He alleged that if the applicant's watchstanding had been lax, his qualifications would have been revoked or at least counseled about it. Mr. x. further stated the following:

I remember [the XO] taking a liking to [the applicant] soon after [the XO] reported aboard the XXXX as the new Executive Officer. [The applicant] was a motivated and hard charging officer who worked exceptionally hard at learning his collateral duties and pursuing his deck watch qualifications, and the XO admired him for that. If the XO wanted something done he routinely assigned it to [the applicant]. I remember the XO assigning [the applicant] the task of training Coast Guard Academy Cadets during their summer cruise aboard XXXX. The XO had such confidence in [the applicant's] underway watch-standing skills that he assigned [him] to help the cadets develop and complete their bridge watch standing Personal Qualification Standards (PQS) ... two years in a row ...

Letter of the XO of the Xxxx, Author of the Disputed OER Comments

The Chief Counsel of the Coast Guard submitted with his advisory opinion to the Board a copy of a letter from the XO to the applicant dated June 27, 1999. The XO initialed it as a "certified true copy." In the letter, the XO stated the following:

[T]he incidents described are now some seven years old. I recall the [improperly plotted] course incident only to the extent I described it in the OER. I do not recall specifically where or when it occurred, but I do remember a trackline laid out on your watch which would have taken our ship across shoal water.

I have no specific memory of the second (passing arrangements) incident. I speculate it occurred during a transit of xxxxxxx. ...

Finally this: Even though I now lack specific memory of these incidents, I do not doubt their occurrence. Had my remarks been in error I believe [LCDR x. or LCDR x.] would have insisted I rectify the mistake. I am certain [the captain] would never have allowed me to submit, nor would he have signed, an OER containing mistakes of fact.

"Listen to the JOs: Why Retention Is a Problem," Naval Institute Proceedings (October 1998)

The applicant submitted this article by a retired rear admiral of the U.S. Naval Reserve and two xxxxs on active duty in the Navy about their study of why the Navy was having trouble retaining its junior officers, especially [REDACTED]. They concluded that the retention problem was caused by loss of job satisfaction, unending inspections and "administrivia," micromanagement and the "zero-defect mentality" of superior officers, erosion of pay and benefits, and budget cuts.

"The Remedy for Career Fear," The Bulletin (October 1999)

The applicant submitted this speech by the Commandant, which he defined "career fear" as "the alleged reluctance on the part of career-minded military personnel to take necessary and prudent risks" because of "the service's purported intolerance for mistakes." He cited an example of a recent risk taken by a petty officer (beaching a boat to get a rescued swimmer to medical personnel faster) and an apparent mistake (use of force on Cuban immigrants that was caught on videotape and denounced in the media) to support his contention that risk-taking and mistakes are tolerated by the Coast Guard and that "career fear" is not a significant force.

Accompanying the Commandant's speech was a commentary by a retired commander who stated that the Commandant missed the point of "career fear." He characterized "career fear" as "that which frightens many or most junior personnel, i.e. any action that they take in the course of normal business (not emergencies) may reflect adversely on their record if it has the slightest trace of something new and better than routine."

Junior Officer Needs Assessment Final Report, August 20, 1999

The applicant submitted a copy of this report from the Commandant, which identified and studied the causes of "gaps" between the knowledge, skills, and attitudes that the Coast Guard desires in its junior officers and its junior officers' actual knowledge, skills, and attitudes. It found that most gaps were attitudinal and that the gaps increased between the junior officers' first year and second year on active duty. The identified causes of many of the gaps included senior officers' lack of approachability; lack of feedback and mid-period counseling; uncommunicated or unrealistic expectations; and "zero defect requirements for success on the OER and in the promotion system." One of the many solutions recommended by the JONA report was to train supervisors to provide better counseling and feedback to junior officers. Another was to create a mandatory feedback mechanism to replace OSFs through which supervisors and XO's could counsel junior officers on their total performance

The report recommended tackling the "zero defect" problem by eliminating ensign OERs from consideration by xxxx selection boards. It recognized that this solution might cause officers who attend graduate school or extended training to have too few OERs in their records before being considered by xxxx selection boards. However, it concluded that the problem would not be significant because such candidates would have at least two first-tour xxxx OERs in their records, as well as their school grades.

VIEWS OF THE COAST GUARD

Advisory Opinion of the Chief Counsel of the Coast Guard

On June 16, 2000, the Board received the Chief Counsel's advisory opinion for this case. He recommended denial of the applicant's request for lack of merit. He alleged that the applicant received a "fair and objective OER from his rating chain" and that the choice of font size for the OER's written comments was a "minor procedural error" and "entirely harmless." The Chief Counsel argued that the following standards should apply:

To establish that an OER is erroneous or unjust, the applicant must show a misstatement of a significant hard fact or a clear violation of a statute or regulation. Germano v. United States, 26 Cl. Ct. 1446, 1460 (1992); CGBCMR Docket No. 86-96. In determining whether the applicant has met this burden, Applicant's rating officials are strongly presumed to have acted correctly, lawfully, and in good faith in executing their duties. Arens v. United States, 969 F.2d 1034, 1037 (1992); Sanders v. United States, 594 F.2d 804, 813 (Ct. Cl. 1979). An applicant may only rebut this presumption by clear, cogent, and convincing evidence to the contrary. Muse v. United States, 21 Cl. Ct. 592, 602 (1990). Moreover, to be entitled to relief, Applicant must not only prove error or injustice, but also must make at least a *prima facie* showing of harm to his record as a result of that error. See, e.g., Engels v. United States, 230 Ct. Cl. 464, 470 (1982). Absent a showing that error or injustice affected the challenged record, it is inappropriate for the Board to change the evaluations of those responsible for evaluating the Reported-on Officer under Coast Guard regulations. See, e.g., Opinion of the Deputy General Counsel in CGBCMR Docket No. 84-96, citing Grieg v. United States, 226 Ct. Cl. 258 (1981).

The Chief Counsel argued that the affidavits of the applicant's supervisors on the Xxxx and the letter by the XO enclosed with the advisory opinion prove that the disputed OER "represents the honest professional judgement of those responsible for evaluating Applicant." He alleged that the statements by the navigator and Mr. x. "consist mainly of conjecture and do not serve to rebut the presumption of regularity."

The Chief Counsel argued that the Board should defer to the professional judgment of the officers on the applicant's rating chain because the "process of evaluating officer is inherently subjective." He stated that deference is required in this case in light of the Deputy General Counsel's statement in BCOMR Docket No. 84-96 that "[c]onsistent with legal precedent, absent legal error I am reluctant to second guess expressions of opinion in OER's by supervisors who are not only entitled to a presumption of correctness, but are much closer to the facts than I am." Therefore, the Chief Counsel alleged, the applicant is not entitled to relief because he "has not proved error or injustice."

The Chief Counsel alleged that the applicant has not proved that the XO added false comments because of any prejudice against [REDACTED]. He alleged that the XO's comments in OER1 and OER2 show that he knew of the applicant's desire to be an [REDACTED] prior to OER3 and yet are not negative.

The Chief Counsel further argued that, even assuming the applicant's allegations about a lack of formal counseling are true, "such action was not required under Coast

Guard regulations. ... Article 10.A.1.c.(9) [of the Personnel Manual] gives rating chain officials a range of counseling options.”

The Chief Counsel also argued that the applicant’s performance prior to and after the evaluation period in question is of “no legal moment.” *Grieg v. United States*, 640 F.2d 1261, 1269 (Ct. Cl. 1981). He alleged that the Board “may draw no inference from his performance of duties in different assignment during different time periods.”

The Chief Counsel also pointed out that the applicant failed to file a reply to the OER as was his right under Article 10.A.4.g. of the Personnel Manual. He argued that the applicant’s failure to file an OER reply “may be considered as evidence that he accepted the rating official’s characterization of the performance described in the disputed OER.”

Regarding the effect of the disputed comments on the applicant’s failures of selection, the Chief Counsel conceded that if the BCMR were to remove them because of some perceived error or injustice, the applicant’s failures of selection should also be removed because “it is reasonable to conclude a nexus exists between the disputed OER and Applicant’s non-selection.” However, he argued that this nexus argument is irrelevant because the applicant has failed to prove the comments in the OER are erroneous or unjust.

Finally, the Chief Counsel argued that the use of the small type font for comments in the disputed OER is “harmless error.” He alleged that it caused the comments “to occupy only 14% less space than conforming typeface.” He stated that no regulation requires spaces for comments on OERs to be filled and that the applicant’s first two OERs for service on the *Xxxx* have similar blank spaces. He argued that “[t]he harm in the OER, if it exists, flows from the content of the comments and not the size of the typeface of those comments.” Furthermore, he argued, the applicant has not proved that the nonconforming font size could have caused his failures of selection for promotion to *xxxx*.

Memorandum of the Coast Guard Personnel Command

The Chief Counsel attached to his advisory opinion a memorandum on the case prepared by the Coast Guard Personnel Command (CGPC). CGPC alleged that the XO’s description of the applicant’s performance as “lax” can be “interpreted as a loss of confidence in Applicant’s abilities and potential based on the events described, a loss of confidence he consciously chose to include in the evaluation.” CGPC characterized the applicant’s attribution of the disputed comments to the XO’s alleged bitterness and bias against [REDACTED] as unproven conjecture.

CGPC argued that the opinions in the affidavits submitted by the applicant's supervisors that differ from those expressed in the disputed comments do not make the comments wrong. CGPC further argued that the marks assigned by the XO were not inconsistent with those assigned by the supervisor.

CGPC stated that the fact that the XO did not inform the navigator or other junior officers of the applicant's errors does not mean they did not happen or that they were not significant enough to be mentioned in an OER. CGPC alleged that the captain would not have signed the OER as reviewer if the incidents had not occurred. CGPC argued that because the navigator and other officers apparently did not witness the incidents, "they have no basis for discussing the appropriateness of the [XO's] choosing to mention them [in the OER]."

CGPC further stated that when the applicant was considered for promotion in 1994 and 1995, the Coast Guard was "in the midst of a massive downsizing called 'streamlining'." Only xx percent of xxxxs were selected for promotion to xxxx in 1994 and 1995. CGPC attributed the applicant's failure to the disputed comments in OER3 and to the "relatively few OERs in his record with comprehensive performance information" due to his attendance at [REDACTED]

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 16, 2000, the Chairman sent a copy of the views of the Coast Guard to the applicant and invited him to respond. The applicant requested an extension and submitted his response on July 15, 2000.

The applicant argued that he has presented sufficient evidence to prove by a preponderance of the evidence that he suffered a manifest injustice in his final OER for service on the Xxxx. The applicant stated that the XO should have counseled him about any performance poor enough to be mentioned in his OER so that he could improve. He stated that if, as CGPC alleged, the XO lost confidence in him over the course of the reporting period, there was plenty of time in those ten months for him to be counseled and given a chance to improve. He argued that the affidavits he submitted prove by a preponderance of the evidence that he was never properly counseled. "Withholding performance counseling and denying an officer the opportunity to improve violates the letter and spirit of the Coast Guard's Officer Evaluation System and is manifestly unjust." He argued that it was unjust for the XO to keep his opinions to himself and then "include damaging, career-ending comments on my departing OER."

The applicant submitted a copy of the Junior Officer Needs Assessment (JONA) report, which he alleged "basically concludes that lack of appropriate performance counseling or feedback was the key factor" in the decline in the average performance of junior officers during the second year of their first tours of duty. He alleged that the

JONA report identified such a high degree of failure to provide counseling that, given the affidavits he submitted, “it is reasonable to conclude that [he] was also a victim of this problem.” He further argued that the JONA report negates any presumption of regularity the Coast Guard should be granted with respect to proper counseling.

The applicant argued that he has proved by a preponderance of the evidence that neither his supervisors, the navigator, nor his fellow junior officers were aware of any decline in his watchstanding performance. He alleged that if the incidents described in the disputed comments actually occurred and were significant enough to be mentioned in his OER, at least one of officers whose affidavits he submitted would have remembered.

The applicant further argued that his rating chain should not be afforded a presumption of regularity by the Board under *Arens v. United States*, 969 F.2d 1034 (1992). He argued that the extremely high rate of failure of selection among junior officers on the *Xxxx*, particularly those for whom the XO acted as reporting officer, casts significant doubt about whether the *Xxxx*'s officers acted “correctly, lawfully, and in good faith” in evaluating the junior officers. *Id.* at 1037.

The applicant argued that his failure to file an OER reply should not be held against him. He attributed this failure and his failure to question the disputed comments at the time to the recommendation of the supervisor that he not complain since the XO might retaliate with worse marks and comments.

The applicant denied the Coast Guard's claim that the small type font used to complete the comments in the disputed OER constituted “harmless error.” He alleged that the extra blank space reveals the XO's indifference to his career and that the “presence of any white space within an OER is a ‘red flag,’ sending a signal to the promotion boards that subject officer didn't accomplish enough to justify using up all of the allotted space.” He alleged that a comparison of the disputed OER with those of the other candidates for promotion, most of whose OERs must have complied with the regulations, would show how prejudicial blank space is. He submitted a copy of the ten pages of draft comments he submitted to his rating chain in preparation for the disputed OER to prove that he provided them with plenty of material that could have been used to fill the blank spaces. The applicant argued that the error of the type font, by itself, was sufficiently prejudicial to justify the Board's removing his failures of selection.

RELEVANT REGULATIONS

Preparing an OER

Article 10-A-1.b.(1) of the Personnel Manual (COMDTINST M1000.6A) provides that “[e]ach commanding officer must ensure that accurate, fair, and objective evaluations are provided to all officers under their command.” Article 10.A.2.g. states that officers are disqualified from serving on a rating chain if they have been relieved for cause due to misconduct or unsatisfactory performance, if they are an interested party to an investigation, or in “any other situation in which a personal interest or conflict on the part of the Supervisor, Reporting Officer, or Reviewer raises a substantial question whether the Reported-on Officer will receive a fair and accurate evaluation.”

Article 10-A-2.e.(2)(a) states that a reporting officer “[b]ases his/her evaluation on direct observation, the OSF or other information provided by the supervisor, and other reliable reports and records.”

Article 10-A-4 describes how members of a rating chain should prepare an OER. Section 10-A-4d.(7) states the following:

(b) For each evaluation area, the Reporting Officer shall review the Reported-on Officer’s performance and qualities observed and noted during the reporting period. Then, for each of the performance dimensions, the Reporting Officer shall carefully read the standards and compare the Reported-on Officer’s performance to the level of performance described by the standards. . . . After determining which block best describes the Reported-on Officer’s performance and qualities during the marking period, the Reporting Officer fills in the appropriate circle on the form in ink.

• • •

(d) In the “Comments” sections following each evaluation area, the Reporting Officer shall include comments citing specific aspects of the Reported-on Officer’s performance and behavior for each mark that deviates from a “4.” The Reporting Officer shall draw on his/her own observations, from information provided by the Supervisor, and from other information accumulated during the reporting period.

(e) Comments should amplify and be consistent with the numerical evaluations in the evaluation area. They should identify specific strengths and weaknesses in performance or qualities. Well-written comments must be sufficiently specific to paint a picture of the officer’s performance and qualities which compares reasonably with the picture defined by the standards marked on the performance dimensions in the evaluation area. . . .

Each OER is reviewed, usually by the Reporting Officer’s supervisor, to ensure that it “reflects a reasonably consistent picture of the Reported-on Officer’s performance and potential” and that “the Supervisor and the Reporting Officer have adequately executed their responsibilities.” Article 10-A-2.f.(2).

Article 10-A-4.a.(3) requires OER comments to be typed in a font size “not ... smaller than 15 pitch with not more than 6 lines per inch.”

Replies to OERs

Article 10-A-4h. 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.”

Performance Counseling

Article 10-A-5 states that use of Officer Support Forms (OSFs) is mandatory for supervisors of all xxxx and xxxxs. Article 10-A-2(d)(2) provides that supervisors shall use the OSFs to counsel and evaluate the reported-on officers. Reporting officers may require supervisors to use OSFs to counsel reported-on officers. Article 10-A-5.

Article 10-A-1.b.(2) provides that each reported-on officer “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-2.c.(2)(c) states that it is the responsibility of the reported-on officer to “[a]s necessary, seek[] performance feedback from the Supervisor during the period.”

Article 10-A-2.d.(2)(e) states that one of the supervisor’s responsibilities is to “[p]rovide[] performance feedback to the Reported-on Officer upon that officer’s request during the period or at such other times as the Supervisor deems appropriate.”

During an evaluation period, the reporting officer is supposed to provide “performance feedback to the Reported-on Officer as appropriate.” Article 10-A-2.e.(2)(h).

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 of the United States Code. The application was timely.

2. The applicant alleged that the comments about his watchstanding and course setting in the disputed OER are either false or greatly exaggerated. He submitted affidavits from the cutter’s navigator, two operations officers, and a fellow junior officer indicating that they cannot remember any such incidents and that they would have learned of and would remember such incidents if they had occurred. The Chief Counsel submitted a copy of a letter from the XO, who asserted that, although he

“lack[s] specific memory of these incidents, [he does] not doubt their occurrence” because the other members of the rating chain would not have allowed him to enter false information in the OER. Therefore, in deciding whether the applicant’s watchstanding errors occurred as described in the OER, the Board must weigh the recent statements of the navigator, operations officers, and junior officer against the XO’s past and present assertions that the incidents did occur as described and the rating chain’s acquiescence in his inclusion of the disputed comments in the OER when it was prepared.

3. In his affidavit, the navigator who served on the *Xxxx* from the time the applicant arrived until June 199x persuasively argued that if the course setting incident described in the OER had occurred, he would have been informed. The first operations officer, who served on the *Xxxx* for the same period, praised the applicant’s watchstanding and stated that he cannot recall the applicant ever having been counseled about lax watchstanding. The second operations officer, who served from June 199x until after the applicant left the cutter, stated that he could not remember any lax watchstanding or erroneous course setting or passing arrangements made by the applicant. The junior officer, Mr. x., stated that he could not remember any lax watchstanding by the applicant and that “[t]he XO had such confidence in [his] underway watch-standing skills that he assigned [him] to help the cadets develop and complete their bridge watch standing Personal Qualification Standards (PQS) ... two years in a row” Taken together, these statements constitute significant evidence that the disputed comments are either false or greatly exaggerated.

4. On the other hand, the XO indicated that he has some memory of an erroneous course setting and is certain the incidents occurred because otherwise the comments would not be in the OER. However, the junior officer stated that the XO was biased against the applicant after he accepted orders to [REDACTED]. This allegation of bias is strongly supported by the XO’s clearly sarcastic and derogatory reference to a “typically productive member of the [REDACTED] community.” This comment not only reveals the XO’s negative assessment of the [REDACTED] community, but also shows that his disapproval of the applicant was closely tied to his being about to join that community.

5. The supervisor and reviewer for the OER apparently did not challenge the XO’s disputed comments. However, the supervisor was the second operations officer, who had only been on board for two months of the reporting period when the OER was prepared and could not have known what occurred or did not occur throughout most of the reporting period. The reviewer, the captain of the *Xxxx*, may well have relied on the XO’s assertions regarding the applicant’s performance. Therefore, the Board is not persuaded that the applicant’s rating chain’s acquiescence in the disputed comments outweighs the evidence in the affidavits that the comments are false or exaggerated.

6. The Chief Counsel of the Coast Guard argued that if the disputed comments were false, the applicant should have filed a reply in accordance with Article 10-A-4.h. of the Personnel Manual. The applicant alleged that when he asked his supervisor about the comments, he was advised not to protest because the XO might retaliate by adding worse comments. (When an officer files a reply, rating chain members are allowed to respond, and their responses are included in the officer's personnel file with the OER and the reply.) In addition, the applicant stated, he thought that the comments would not harm his career because the Coast Guard was about to spend a lot of money training him as an [REDACTED]. Thus, he declined to file a reply. If the applicant had filed a reply, the truth of the disputed comments might have been investigated and either verified or denied by the other members of his rating chain. Although the applicant's failure to file a reply has made determining the truth of the matter more difficult, the Board finds that he did not waive his right to an accurate OER when he failed to file a reply. See BCMR Docket No. 64-88(R), Decision on Application for Reconsideration. An officer's failure to file a reply is not an admission of the accuracy of the OER. Moreover, the Board finds that the applicant's reasons for not filing a reply to the OER are credible. The lack of a reply does not persuade the Board that, when he received the OER, he accepted the comments as true.

7. The officers' affidavits also prove by a preponderance of the evidence that the applicant was not properly counseled concerning the alleged watchstanding errors. His supervisors apparently did not use OSFs to counsel him concerning his performance, as required by Article 10-A-5. In the Board's experience, officers are counseled if their ongoing performance is so poor that such damaging comments could appear in their OERs, so that they have a chance to improve. If the XO had such concerns about the applicant's watchstanding during the 10-month evaluation period, the applicant was entitled to know of it, under Article 10-A-2.e.(2)(h) of the Personnel Manual.

8. The applicant has proved by a preponderance of the evidence that the disputed comments are either erroneous or unfairly exaggerated as indicators of his performance. He asked the Board to remove some of the comments and edit one by replacing the words "a typically productive" with "an outstanding." However, the applicant has not proved by a preponderance of the evidence that the substitution would make the OER accurate. Moreover, there is no reason to remove the XO's comment that "I am sure he will succeed in [REDACTED] [REDACTED]."

9. The applicant alleged that the fact that many junior officers who served beside him on the Xxxx have been passed over for promotion and forced to retire proves that his evaluation was inaccurate. Although the alleged pass over rate for the Xxxx's junior officers is very high, it is not necessarily probative of the accuracy of the applicant's own OER.

10. The applicant submitted several publications alleging certain systemic problems suffered by junior officers in the Coast Guard, including "career fear," "zero-defect mentality," and lack of performance feedback. He did not prove by a preponderance of the evidence that such problems caused the XO to write the disputed comments in the OER.

11. The applicant alleged that the disputed OER was typed in font size smaller than that prescribed by regulation and that this error in itself could have caused him to fail of selection because of the resulting increase in blank space. Article 10-A-4.a.(3) of the Personnel Manual required OER comments to be typed in a font size "not ... smaller than 15 pitch with not more than 6 lines per inch." The type in the disputed OER is 15 pitch, but the lines are very close together, so that there are 7.5 lines per inch of text. Therefore, the Coast Guard erred by typing the lines of text of the comments in the disputed OER too closely together. However, it is not blank space per se that can reflect badly on an officer's performance but the quantity of comments. The Board finds that the quantity of comments included in the disputed OER is not abnormally small. Moreover, the overall visual impression created is not one of too little commentary but of many comments typed very compactly. Therefore, the Board finds that the increased blank space created by the Coast Guard's error did not make his record appear worse than it would have if the line spacing had been in accordance with regulation. The line-spacing error was harmless.

12. To determine whether the applicant's failures of selection should be removed because he has proved by a preponderance of the evidence that his XO wrote erroneous or exaggerated negative comments in the disputed OER, the Board must answer two questions: "First, was [the applicant's] record prejudiced by the errors in the sense that the record appears worse than it would in the absence of the errors? Second, even if there was some such prejudice, is it unlikely that [the applicant] would have been promoted in any event?" *Engels v. United States*, 678 F.2d 173, 176 (Ct. Cl. 1982). The Board finds that the disputed comments do make the applicant's record appear worse than it would without them. The disputed comments in the OER weigh especially heavily since he had so few substantive OERs in his record when it was reviewed by the selection boards. In addition, the Board finds that without the disputed comments in the OER, it would not have been unlikely for the applicant to have been selected for promotion. Therefore, the Board finds that, absent the disputed comments, the applicant might well have been promoted.

13. The applicant asked the Board to reinstate him in the regular Coast Guard and to promote him directly to xxxx, with the date he re-entered the Service, July 9, 199x, as his date of rank. He also asked for back pay and allowances. However, he has not proved that, if the disputed comments had not been in the OER, he would necessarily have been promoted to xxxx. Under such circumstances, the Board does not

directly promote officers but corrects their records so that they can be fairly considered for promotion by a duly constituted selection board of Coast Guard officers.

14. Accordingly, relief should be granted by removing the disputed comments from the OER except for the phrase "I am sure he will succeed in [REDACTED]" and by making that phrase a complete sentence by ending it with a period. In addition, the applicant's failures of selection to the rank of xxxx should be removed, and he should be reinstated in the regular Coast Guard as a xxxx. Furthermore, if he is selected for promotion to xxxx by the first xxxx selection board to review his record after the corrections are made to the OER, or if he is selected for promotion to xxxx prior to the correction of his record required by this order, his date of rank as xxxx should be back dated to July 9, 199x.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application for correction of the military record of XXXXXXXX, USCGR, is hereby granted as follows:

The OER for the reporting period October 1, 199x, to August 6, 199x, shall be corrected by, in block 8, removing the entire second sentence from "However" to "waters"; in block 9.f., removing the phrase "(somewhat offset by his mediocre watchstanding)"; and in block 11, by placing a period after "[REDACTED]" to end the sentence and removing the remainder of the comment from "and become" to "peers."

His record shall be corrected by removing his failures of selection to xxxx by the 1994 and 1995 selection boards.

His record shall further be corrected to show that he was recommissioned as a xxxx in the regular Coast Guard on July 9, 199x. His date of rank as a xxxx shall be July 9, 199x. If he is selected for promotion to xxxx by the first xxxx selection board to review his record after the corrections are made to the OER, or if he is selected for promotion to xxxx prior to the correction of his record required by this order, his date of rank as xxxx shall be back dated to July 9, 199x.

The Coast Guard shall pay the applicant any back pay or allowances he may be due as a result of this correction.

