


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

Application for Correction
of Coast Guard Record of:




BCMR Docket
No. 2000-019

FINAL DECISION


This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on November 19, 1999, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated July 26, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

REQUESTED RELIEF

The applicant, a  on active duty in the Coast Guard, asked the Board to remove his officer evaluation report (OER) for the period from November 22, 1995 to July 31, 1996. He also asked that this disputed OER be replaced by a "continuity only" report.

SUMMARY OF ACTION

The applicant made many allegations of error and injustice in violation of the provisions of the Personnel Manual. He alleged that the requirements in Article 10.A.2.f.2.f. and in Article 10.A.4.j.3. were not met; the discrepancies were never corrected. He alleged that the disputed OER was returned for correction on the ground that the marks in blocks 3.f., 4.b, 5.a, 5.b, 6.b, 9.c., 9.d, 10.a, 10.b, and 10.c of the disputed OER were not adequately supported by comments in the disputed OER.

The disputed OER was returned for correction of many discrepancies. Despite the fact that they were never corrected, the OER was still submitted and validated within the required 30 days.

The applicant also alleged that the content of this OER is an unjust portrayal of his performance during the evaluation period. His supervisor wrote the OER in a state of personal frustration at being passed over a second time for LCDR. The applicant served in the Navy Exchange program for most of the

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period, without proper recognition. In addition, the disputed OER was typed in all capital letters "which is" prohibited in accordance with art 10-A-4a(3) of enclosure (1).

In late 1996, the Personnel Manual set forth personnel requirements as to OERs that included the following: CO must ensure "accurate, fair, and objective evaluations;" reports must be delivered to the Commandant within 45 days after the end of the reporting period; an officer's performance must be compared against the standards -not to other officers or the same officer in a previous reporting period; and each numerical block that deviates from a "4" shall include comments that should amplify and be consistent with the numerical evaluation.

The disputed OER was submitted to Coast Guard Personnel Command (CGPC) eight months after it was signed by the Reporting Officer, as opposed to 45 days. The Reviewer elected to provide comprehensive Reviewer comments to explain and reconcile the disparity between numerical marks and comments. However, the new Reviewer comments do not eliminate the significant negative impression created.

VIEWS OF THE COAST GUARD

On May 8, 2000, the Commander of CGPC recommended that the relief requested by the applicant be granted for the reasons submitted by CGPC. On June 14, 2000, the Chief Counsel of the Coast Guard adopted the CGPC submission as the advisory opinion of the Coast Guard. Specifically, the Chief Counsel recommended to the Board that it remove the disputed OER covering the period November 22, 1995 to July 31, 1996 and replace it with an OER for continuity purposes only.

The Chief Counsel adopted the analysis provided by the Commander of CGPC as the Coast Guard advisory opinion in this case. According to it, "both the Applicant's Supervisor and Reporting Officer prepared improper reports. Reviewers identified these problems and reasonably sought correction. When it became clear that no response was forthcoming, the Reviewer acted in good faith to resolve the problem consistent with the Personnel Manual. According to the advisory opinion, in any case, the Supervisor and the Reporting Officer of the applicant prepared improper reports. A Reviewer and subsequent Reviewer sought correction. The Reviewer response resolved these problems, but it yielded an OER that should not now remain in the Applicant's record.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 16, 2000, the BCMR sent a copy of the views of the Coast Guard to the applicant. The applicant was invited to submit a rebuttal or other responses to the Board within 15 days. No response was received by the Board.

FINDINGS AND CONCLUSIONS

The BCMR 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 BCMR has jurisdiction concerning this matter pursuant to section 1552 of title 10, United States Code. The application was timely.

2. The applicant asked the Board to remove an OER from his military record on the ground that it is filled with errors and injustices.

3. Article 10-A-1b.(1) of the Personnel Manual states that commanding officers must ensure that accurate, fair, and objective evaluations are provided for all officers under their command. Article 10-A-4. of the Personnel Manual describes the process for filling out the OER.

4. The officers on the Navy vessel on which the applicant served as an exchange officer and the disputed OER did not adhere to these requirements. Many numerical marks that deviated from a "4" are totally unsupported by comments. In other cases, numerical marks and comments stand in direct contradiction. At least seven of the 23 total numerical marks on the form are not supported by the comments provided.

5. CGPC found that the disputed OER probably contains some "granules of truth," but that at least 30% and as much as 50% of the marks assigned in the OER are unsupported by comments.

6. Numerical marks on a disputed OER that differ from a "4" are marks that are totally unsupported by comments. Comments are required for marks above (or below) a "4." The burden of rating an officer's performance is met by comparing his performance to the standards set by the Supervisor and Reporter provided in the blocks of the OER form rather than to previous performance of that officer.

7. The officers on the Navy vessel on which the applicant was an exchange officer did not adhere to these requirements. The Reviewer prepared comprehensive Reviewer comments that explain and reconcile the marks and comments. While they explain these circumstances to an extent, they do not eliminate the significant negative impression created by the Supervisor and Reporting Officer sections.

8. In this case, the Supervisor and Reporting Officer prepared improper reports which were returned. Reviewers identified the problems and sought correction. When no response was forthcoming from the Supervisor and Reporting Officer, the Reviewer responded with a proper solution. "[W]hile this

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was the correct solution, it yielded an OER that, upon further review, should not remain in Applicant's service record."

9. Accordingly, the disputed OER should be removed from the applicant's record and replaced by a report for continuity purposes only.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application to correct the military record of [REDACTED] [REDACTED] SCG, is granted by removing his OER for November 22, 1995 to July 31, 1996, and by replacing it with a continuity OER.

