

DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction  
of Coast Guard Record of:

BCMR Docket  
No. 2000-149

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 February 9, 2000, upon the Board's receipt of a complete application for correction.

This final decision, dated May 3, 2001, 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 and engineer, asked the Board to purge from his record his officer evaluation report (OER), and all entries therein, for the period from June 1, 1998 to November 4, 1998 [herein "disputed Special OER"].

The applicant charged in his application that the disputed OER was, *inter alia*, an "incorrect and unjust evaluation/OER with slanderous comments and accusations, . . . [I was] relieved of duties as Engineer Officer, banned from my ship and unlawfully placed on administrative leave without due process. . . ."

APPLICANT'S ALLEGATIONS AND EVIDENCE

The applicant alleged that he was relieved as Engineer Officer and investigated, without being informed of any charges against him. When the investigation was complete, he was instructed to return to the ship where he was told that the investigation found him not at fault. Nevertheless, he was not allowed to return to his position as Engineer Officer. He was again ordered to leave his ship.

The applicant submitted 27 pieces of evidence to the Board, including the applicant's reply to the disputed OER, the commanding officer's (CO's) reply to the OER reply (the CO said that "never was his engineering expertise questioned" but his leadership was), two or three allegedly false official comments, two commendations from previous commands, and more than 15 letters of support, thanks, commendation, or appreciation.

The applicant also submitted page 3 of his disputed OER, on which he had received a "2" on the comparison scale, and page 3 of his previous OER, on which he received a "7" on the comparison scale. The difference in the comments was just as great as the difference between "2" and "7" on a Coast Guard OER.

\* Description in disputed OER: His attempts to undermine the command by speaking poorly of the Executive Officer to members of his department & refusing to support command directives has damaged loyalty among the crew."

\* Description in previous disputed OER: "Having been a tremendous asset to this command I am confident he will continue his loyal support as the new command takes over."

### VIEWS OF THE COAST GUARD

On December 28, 2000, the Chief Counsel of the Coast Guard recommended to the Board that it grant all the relief requested by the applicant by expunging the disputed Special OER for the period from June 1, 1998 to November 4, 1998. The Chief Counsel also recommended that the Coast Guard expunge the OER that was subsequent-in-time to the disputed Special OER and replace both of these OERs with a single "Continuity Only" OER for the combined period.

The Chief Counsel summarized the case as follows:

The evidence in the record reveals that the disputed Special OER may have been submitted by an improper, and perhaps, biased OER Rating Chain. Therefore, the disputed Special OER, and for the sake of equity, the subsequent follow-on "Continuity Only" OER should be expunged from Applicant's record.

The balance of the Coast Guard advisory opinion concentrated on the improper activities of the rating chain. The advisory opinion contained a summary of Coast Guard conflict-of-interest laws and discussed the application of such laws to the facts of this case.

The Chief Counsel found that the Applicant's rating chain "accepted personal favors of substantial value from Applicant." The Reporting Officer on the rating chain accepted a loan from the applicant of his personal vehicle and furniture for two weeks, and the Supervisor on the rating chain accepted the applicant's personal services (moving household goods and three truckloads of firewood). The Chief Counsel also noted "the extraordinary length of the Rating Chain's direction to Applicant to remain at home awaiting orders."<sup>1</sup>

---

<sup>1</sup> The applicant phrased it somewhat differently. The commanding officer told the applicant he would be staying at a local motel since his car had not arrived. According to the applicant, "[the CO] accepted [his vehicle] with no arm twisting and drove it for two weeks... Since he had no furniture, [I] loaned him two living room chairs and two lawn chairs from my home." When the CO bought a house "he asked if [the applicant] could help him move." The applicant solicited volunteers to help him load and move to a house 15 miles away.

## APPLICANT'S RESPONSE TO COAST GUARD VIEWS

On December 29, 2000, the Board sent the applicant a copy of the views of the Coast Guard and invited him to respond with any comments within 15 days. On January 10, 2001, the applicant responded by saying he has no objection to the Coast Guard's recommendation to expunge both OERs from his record.

## APPLICABLE REGULATIONS

Article 10.A.2.g. Coast Guard Personal Manual (CGPERSMAN) provides that a rating chain member may be disqualified from carrying out his rating chain responsibilities if the member is involved in a situation in which a personal interest or conflict raises a substantial question of whether the reported-on officer will receive a fair and accurate evaluation.

Article 8.1.c. CGPERSMAN provides that "Interpersonal relationships which raise even a perception of unfairness undermine good leadership and military discipline."

Article 8.H.2.c. CGPERSMAN provides that personal relationships are acceptable "provided they do not, either in actuality or in appearance: . . . 3. Result in members improperly using the relationship for personal gain or favor. . . ."

## 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 to determine the issues in this proceeding under section 1552 of title 10, United States Code. The application was timely.

2. The applicant asked the Board to expunge his November 4, 1998 OER on which he received a "2" on the continuity scale. He was relieved of his position as engineering officer before an investigation and before he was notified of any charges against him.

3. The applicant asked the Board to remove, in its entirety, his OER for the period ending November 4, 1998. The Chief Counsel agreed, but not on the ground of a misconceived OER or the removal of an engineer officer without due process.

4. The Chief Counsel of the Coast Guard agreed to the removal of the OER on the ground that the applicant's rating chain should be disqualified from carrying out the responsibilities of a rating chain because two of the three members "accepted personal favors of substantial value from Applicant."

5. The reporting officer accepted the loan of a motor vehicle and furniture for

two weeks from the applicant. The supervisor accepted personal services from the applicant (e.g. moving household goods and firewood). All three members of the rating chain signed the following comment on the OER subsequent to the disputed Special OER: "[The applicant] was home awaiting orders."

6. These personal relationships are in violation of the Coast Guard standard which eschews "relationships which raise even a perception of unfairness." correction should also be made. The further correction consists of expunging the OER

7. The Board finds that these personal relationships gave rise to a perception of unfairness which is an error or injustice on the part of the Coast Guard. The fact that the injustice did not help the applicant does not vitiate the wrong. There is no room for even a perception of favoritism and conflict of interest in the Coast Guard.

**[THE ORDER AND SIGNATURES ARE ON THE NEXT PAGE]**

ORDER

The application to correct the military record of USCG, is granted as follows:

1. Expunge the Special OER for the period from June 1, 1998 to November 4, 1998.
2. Expunge the OER for the period from November 5, 1998 to February 23, 1999.
3. Replace both expunged OERs with a single Continuity Only OER for the combined period.

