

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

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 2000-183

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

FINAL DECISION

██████████ Chair:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14, United States Code. It was docketed on September 7, 2000, upon the BCMR's receipt of the applicant's complete application for correction of his military record.

This final decision, dated July 3, 2002, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a drilling reservist at the time he filed his application, asked the Board to correct his record by removing the reviewer comment page from the officer evaluation report (OER) for the period from October 1, XXXX to April 30, XXXX (subject OER) and replacing it with a "for continuity purposes only" reviewer comment page. The applicant also requested that the decision of the captain retention board not to retain him in an active drilling status be set aside and that he be reinstated as an active driller. He was involuntarily removed from an active status on XXXXXXXX, after his non-selection for retention by the captain retention board.

Subsequent to filing his application with the Board, the applicant amended it to request that a special selection board be convened to evaluate him for promotion to admiral because his record was not considered by the most recent admiral selection board that convened after his failure to be selected for retention in an active drilling status.

EXCERPTS FROM RECORD AND SUBMISSIONS

The applicant alleged that the reviewer comments should not have been placed in his military record because he had not been given an opportunity to file a reply to them before they were submitted to the retention board for use in that selective process. He further alleged that the reviewer committed other violations of the Personnel

Manual in preparing his comments and rating scale mark. He also alleged that the reviewer comments were inaccurate.

The OER rating chain consists of a supervisor, reporting officer and reviewer. Reviewer comments are prepared on a separate sheet called the reviewer page and attached to the OER after the supervisor and reporting officer have completed their portions of the OER. Reviewer comments are not always necessary. However, in this case, reviewer comments were necessary because the applicant's supervisor and reporting officer for the OER in question were not members of the Coast Guard but members of another branch of the service. Pursuant to Article 10-A-2f(2)¹ of the Personnel Manual, reviewer comments were required to be attached to the OER.

The applicant's marks in the performance dimensions (given by the supervisor and reporting officer) of the subject OER were mostly 5s and 6s, with 4s in developing others and evaluations. The supervisor's and reporting officer's comments described the applicant's performance in complimentary terms. They described his achievements as XXXXXXXXXXXX, serving as XXXXXXXXXXXXXXXX, obtaining the appropriate security clearance, attending a two-day training course, participating in an exercise at the XXXXXXXXXXXX, and qualifying as a duty officer. The reporting officer rated the applicant as a 7 (on a scale of 1 to 7, with 7 being the highest) in block 9 (the rating scale). Article 10.A.4.a.8.b. of the Personnel Manual states that the mark assigned to a captain in this area should be "that [which] most closely reflects the Reported-on Officer's performance in consideration of information contained in the OER."² The reporting officer recommended the applicant for promotion to flag grade (pay grade O-7) "ahead of the best of his peers," in block 10 (potential) of the subject OER. The

¹ Article 10.A.2.f.2.. of the Personnel also states in pertinent part: "Responsibilities. The Reviewer: a. Ensures the OER reflects a reasonably consistent picture of the Reported-on Officer's performance and potential. . . b. Adds comments as necessary . . . that further address the performance and/or potential of the Reported-on Officer. For any officer whose Reporting Officer is not a Coast Guard commissioned officer, member of the Coast Guard, member of the Coast Guard Executive Service (SES), or a USPHS flag officer serving with the Coast Guard . . . the reviewer shall describe the officer's "Potential" and include an additional "Comparison Scale" or "Rating Scale" mark. **The comparison scale is not to be completed unless the Reviewer comments are mandatory . . .**"

² A mark of 4 on the block 9 rating scale for a captain describes "[a] good solid captain. Skilled in management and leadership. Respected for views and ability to contribute to the [Coast Guard] and its work.

A mark of 5 describes a captain who "[h]as flag POTENTIAL. Should be given challenging assignments and considered with peers."

A mark of 6 on block 9 describes a captain who is "[r]ecommended for flag selection at a future board."

A mark of 7 on block 9 describes a captain who is "[r]ecommended for flag selection at next board."

applicant stated that the following comments by the reporting officer fully supported that officer's rating scale mark.

An outstanding, exceptionally skilled officer . . . is respected by superiors, peers and subordinates alike. My "Go-To" person for all CG related issues . . . his expertise is impressive and advice always on target. **Will make an outstanding Flag Officer in 2001.** (Emphasis in brief.)

[The applicant] has what it takes to be an outstanding Flag Officer: Command background from OPERATION DESERT SHIELD/STORM . . . **Is most highly recommended for promotion to Rear Admiral ahead of best of peers.** (Emphasis in brief)

The reviewer, a Coast Guard officer, prepared a separate rating scale (block 9) from that of the reporting officer as required by regulation. In contrast to the reporting officer's mark in block 9, he gave the applicant a 4 in block 9. He also wrote the following comments:

[The applicant's] service . . . has enhanced mutual understanding and improved interoperability between the Coast Guard, the joint staff, and the other four services. He has jumped into a new position and built a significant role in ensuring that the Coast Guard is well represented and regarded as an equal in the XXXXXXXX.

I concur with the assigned marks and comments in this report. It is clear that [the applicant] has quickly earned the respect of his supervisor and reporting officer.

[The applicant] is an excellent officer with demonstrated potential for challenging assignments and positions of greater responsibility. His performance of duty as a XXXXXX and action officer as well as his broad base of expertise in the Coast Guard Reserve makes him exceptionally well qualified for retention, for which he has my highest recommendation.

The applicant argued the reviewer's rating scale mark is inconsistent with the reviewer's own comments and therefore it should be removed. In this regard, the applicant stated that the reviewer wrote that he concurred with the marks and comments on the OER, but then assigned a rating scale mark of 4, which was lower than the reporting office's rating scale mark. According to the applicant, based on the reviewer's concurrence with the marks of the supervisor and reporting officer, the reviewer should have assigned the applicant a rating scale mark equal to that given by the reporting officer.

The applicant alleged that the reviewer's comments were not a "fair accurate and objective" appraisal of his performance and therefore the comments violated Article 10.A.1.b of the Personnel Manual. He also argued that the reviewer violated Article

10.A.4.c.11.g.³ of the Personnel Manual, which states the following: “The Reviewer . . . may explain or reconcile discrepancies or conflicts reflected in the completed report, if these inconsistencies cannot be resolved by returning the report to concerned rating chain members or personal discussion. Additionally the Reviewer shall limit comments to performance or behavior observed during the reporting period and/or discussion of the Reported-on Officer’s potential.” In this regard, the applicant claimed that the reviewer comments could not have been based on the reviewer’s personal knowledge because the reviewer had just arrived at the command a few weeks prior to the end of the reporting period. He alleged that the reviewer relied on information supplied by one of his subordinates, “who also did not know anything about [the applicant].” He argued because of this violation the reviewer’s comments should be removed.

The applicant stated that if the reviewer wanted to provide comments “to explain or reconcile discrepancies or conflicts reflected in the complete report,” he could do so only after he had returned the OER to the concerned rating chain members. He argued that the reviewer failed to comply with that portion of Article 10.A.4.c.11.g. of the Personnel requiring him to return the OER to the rating chain to resolve any discrepancies. He reasoned that the reviewer did not do so because there were no discrepancies in the OER. He stated that the reporting officer’s comments fully supported his rating scale mark.

The applicant also claimed that the reviewer’s comments and rating scale mark should be removed because they are inconsistent with the supervisor’s and reporting officer’s evaluation of his performance and potential. He further claimed that the reviewer’s comments and rating scale mark are inconsistent with his most recent captain OERs.

The applicant further alleged that the reviewer’s comments violated Article 10.A.4.g. of the Personnel Manual because he was not afforded his right to reply to the OER and to have it filed in his record as part of the OER. This provision gives a reported-on officer the right to reply to any OER and to have that reply filed with the OER. Specifically, the applicant alleged that he was prejudiced before the captain retention board by the denial of an opportunity to have a reply to the OER considered by the captain retention board, which met on July 10, 2001. In this regard, he stated the following:

³ Article 10.A.4.c.11.g. of the Personnel Manual states the following: “[T]he Reviewer may comment on the Reported-on Officer’s performance, qualities, potential, or value to the Coast Guard if these areas need to be expanded or explained further. Comments and a comparison/rating scale mark are required if the Reporting Officer is not a Coast Guard Officer, Coast Guard Senior Executive Service (SES) member, or the USPHS flag officer serving as Chief, Office of Health and Safety, Commandant (G-WK) . . . The Reviewer also may explain or reconcile discrepancies or conflicts reflected in the completed report, if these inconsistencies cannot be resolved by returning the report to concerned rating chain members or personal discussion. Additionally, the reviewer shall limit comments to performance or behavior observed during the reporting period and/or discussion of the Reported-on Officer’s potential.”

Had [I] been able to reply, and have that reply considered by the Retention Board, [I] would have brought to their attention the errors outlined in this application. Indeed, [I] would have been able to explain that [my] service justified the marks given by [my] Supervisor and Reporting Officer. [I] would have also established that because of the tremendous service [I] provided to the Coast Guard, [I] should not only have been retained, but also that the Coast Guard should promote [me] just as recommended by [my] chain of command. Because [I] was not given the chance to reply to the Reviewer Comments, as required by Coast Guard Regulations, the Reviewer Comments page should be removed and replaced with a "FOR CONTINUITY PURPOSES ONLY" Reviewer Comments page.

With respect to the timeline for completion of the OER, the applicant stated he received a copy of the OER, without reviewer comments, on June 7, XXXX. He stated that on June 30, XXXX, the reviewer signed the reviewer comments page, and on July 10, XXXX, the OER was sent to the PY (promotion year) XXXX Reserve Captain Retention Board. The applicant stated that he received a copy of the OER that had been approved by Coast Guard Headquarters, on July 12, XXXX, two days after the Retention Board convened. He stated this was the first time he had seen the reviewer comments, which he described as damning with faint praise. The Retention Board met on July XXXXXX, but did not select the applicant for retention.

The applicant stated that the decision of the retention board not to retain him in an active drilling status was based, in part, on the disputed reviewer comments, which should not have been considered by the board because he did not have an opportunity to reply to them. Therefore, his record was not considered on a fair and equitable basis by the retention board. He stated that the BCMR is required to determine whether there is a nexus between the alleged defects in the reported-on officer's PDR (Personal Data Record) and his passover or non-retention.

The applicant stated that Engels v. United States, 230 Ct. Cl. 465 (1982) prescribes the test to be applied in determining whether a nexus exists between the alleged error and the applicant's failure to be selected for retention. Based on Engels, that test requires a two-step evaluation: "(1) would the officer's record have been stronger if it had not been [in]correctly constituted, and (2) would the officer have been passed over or not retained in any event."

With respect to the first prong, the applicant argued that it is indisputable that his record would have been stronger were it not for the reviewer's "damning "4" rating and comments." He stated that his previous OERs show an unbroken record of highly distinguished service and multiple awards and decorations. He argued that he would have had a much stronger case for retention and promotion had his reviewer's comments been in accord with those of his Supervisor's and reporting Officer's rating and comments.

Regarding the second prong, the applicant stated that the record reveals no reasonable ground for not retaining the applicant, other than the 4 in block 9. He stated that even as the reviewer assigned a mark lower than that of the reporting officer, he stated that the applicant was “exceptionally well qualified for retention,” for which he gave his “highest recommendation.” The applicant further stated that “[g]iven that the Coast Guard has long refused to release its data on the distribution . . . of OER marks, there is no way that the Coast Guard can satisfy its burden of showing that an officer with OERs like [the applicant’s] would not have been retained regardless of [the] reviewer’s comments and “4” rating.”

The Applicant’s Other Captain OERs

Footnote 1 (see page 2) explains the rating scale for captains. On the applicant’s first OER as a captain, he received a rating scale mark of 4. On the next two OERs he received a 5 on each of these rating scales.

His fourth OER was the first of two OERs with a reporting officer and reviewer rating scale. On this OER, the non-Coast Guard reporting officer rated the applicant as a 7 on the reporting officer’s scale, while the reviewer rated him a 5 on his rating scale. The applicant received performance marks of 5s and 6s, with two 7s, in the performance categories of this OER. The reviewer for this particular OER wrote that “[t]he Reporting Officer’s Block 9 comparison scale is high for Coast Guard OERs for [the applicant’s] grade, but is indicative of the valuable service he has provided to his host command.”

For the OER in question, the applicant’s last OER to be considered by the XXXX retention board, the reporting officer rated the applicant as a 7 on his rating scale, while the reviewer rated the applicant as a 4 on his rating scale. On this report the applicant received two performance marks of 4 in developing others and evaluations. He did not receive any marks of 7 in the performance categories of this OER.

Personnel Records Review Board (PRRB) Review

Prior to the Board’s processing of this case, it was considered by the PRRB as required under the doctrine of exhaustion of administrative remedies. On May 21, 2001, the PRRB refused to grant the applicant any relief. Upon notification of denial by the PRRB, the Board began its review of this application.

In denying relief to the applicant, the PRRB made the following conclusions:

- ‘1. The disputed OER was fairly and properly prepared and executed by all members of applicant’s OER rating chain.
- ‘2. Applicant has submitted insufficient evidence to rebut the strong presumption of regularity afforded the comparison scale assigned by his reviewer.

“3. There is no evidence that Applicant submitted a timely reply to the disputed OER or that his due process rights were abridged.

“4. Applicant has failed to prove a nexus between the disputed OER and his failure of retention before the XXXXX XXXXX Captain Retention Board.”

Views of the Coast Guard

On February 25, 2002, the Board received the advisory opinion from the Chief Counsel of the Coast Guard. Noting that there was no provision in the Personnel Manual for a “for continuity purposes only reviewer page,” he recommended that the Board deny relief. The Chief Counsel’s advisory opinion relied heavily on a memorandum from the Commander, Coast Guard Personnel Command (CGPC), which was attached to the advisory opinion as Enclosure (1).

The Chief Counsel argued that the comparison scale mark is not erroneous because it is lower than the performance marks in other portions of the OER. The advisory opinion stated that in assigning a comparison scale mark “the marking official is required to compare the Reported on Officer against all other officers of the same grade and [to] determine how that officer compares.”⁴ The advisory opinion states that while the applicant may have objectively performed his assigned duties at a very high level as documented by his OER supervisor and reporting officer, it was not inconsistent or erroneous for the reviewer to determine that the applicant did not have flag (admiral) potential.

CGPC stated that the applicant failed to prove a lack of due process regarding his right to submit an OER reply. He stated there is no evidence that the applicant exercised his right to submit a reply within the 14 days after receipt of an official copy of the OER, as permitted under regulation. Moreover, CGPC was not aware of any regulation entitling applicant to a right of reply before review of the OER by the retention board. Therefore, he argued the applicant’s allegation in this regard is without merit.

The Chief Counsel blamed the applicant for not ensuring that his OER was validated in a timelier manner. The Chief Counsel stated the following:

Applicant was responsible for the completion of his OER in a timely manner and the lack of any evidence showing that Applicant had been proactive in the completion of his OER, must lead this Board to the conclusion that, though unfortunate, Applicant failed to ensure the timeliness of the validation of his OER.

⁴ According to Article 10.A.4.c.8. of the Personnel Manual the comparison scale is for officers from warrant officer (W-2) through commander (O5). Captains (O6) receive a rating scale mark “that most closely reflects the Reported-on Officer’s performance in consideration of information contained in the OER.”

CGPC argued that even if the applicant could prove error with respect to the subject he OER, he has failed to establish a nexus between the alleged error and his failure to be retained in an active status. He stated that even if the applicant could show that the alleged error made his record appear worse, it was not likely that he would have been selected for retention in any event. CGPC stated that the applicant's first two captain OERs were average ones, particularly for a captain with flag aspirations.

Applicant's Response to the Views of the Coast Guard

On April 12, 2002, the Board received the applicant's response to the advisory opinion. He disagreed with the Chief Counsel that he bore any responsibility for the tardiness associated with the completion of the OER. He stated that the reporting period ended on April 30, XXXX and the OER, without the reviewer comment, arrived at Coast Guard Headquarters, on June 7, XXXX. The applicant questioned why it took from June 7 until July 6, XXXX to obtain the reviewer comments. He concluded that the OER was submitted in a timely manner and it was up to the Coast Guard to explain why the OER was not validated in a timely manner.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's submissions and military record, 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 was timely.
2. The applicant requested an oral hearing. The Chair, under section 52.31 of title 33, Code of Federal Regulations, recommended disposition on the merits without a hearing. The Board concurred in that recommendation.
3. The applicant has not produced sufficient evidence to persuade the Board that the reviewer comment page of the subject OER, which included the reviewer rating scale, was in error or unjust because the comments were not as complimentary and the rating scale mark not as high as those of the reporting officer. The reporting officer gave the applicant a 7 on his rating scale, but the reviewer gave the applicant a 4 on his rating scale. Article 10.A.2.f.2.b of the Personnel Manual states that in situations where reviewer comments are necessary, "the Reviewer shall describe the officer's 'Potential' and include an additional . . . 'Rating Scale Mark.'" Reviewer comments and a rating scale mark were necessary in this case because the applicant's reporting officer was not a Coast Guard officer, a Coast Guard senior executive service member, or a United States Public Health Services (USPHS) Officer. *Id.*
4. As required by Article 10.A.2.f.2.b. of the Personnel Manual, the reviewer's comments addressed the applicant's potential. He described the applicant as an excellent officer with demonstrated potential for challenging assignments and positions

of greater responsibility. The reviewer wrote that the applicant had his highest recommendation for retention in an active drilling status, but his comments did not include a recommendation that the applicant should be promoted to flag grade (O-7). The reviewer marked the applicant accordingly on the rating scale by giving him a 4, which describes the applicant as “a good solid captain. Skilled in management and leadership. Respected for views and ability to contribute to the [Coast Guard] and its work.”

5. The applicant’s claim that the reviewer’s comments violated the Personnel Manual because they were not based on his personal observation since he had arrived for duty only a few weeks before the reporting period ended is without merit. He did not provide any evidence of this; nor did he provide any evidence to substantiate his allegation that the staff member who provided the input to the reviewer for the OER had no personal knowledge of him. The Board disagrees with the applicant that Article 10.A.4.c.11.g. of the Personnel Manual limits the reviewers comments to his direct observation of the applicant’s performance. The provision states in pertinent part: “The reviewer shall limit comments to performance or behavior observed during the reporting period and/or discussion of the Reported-on Officer’s potential.” This provision does not state that the reviewer must directly observe the applicant’s performance to comment on it. Therefore, the Board concludes that any comment must be based on observed performance or behavior during the reporting period, but it need not be that directly observed by the reviewer.

6. This interpretation is consistent with Article 10.A.2.e.2a of the Personnel Manual which allows the reporting officer to base an evaluation of performance on direct observation, information provided by the supervisor, or other reliable reports and records. Therefore, the Board finds that the limiting words in Article 10.A.4.11.g. of the Personnel Manual are meant to ensure that the evaluation of an applicant’s performance is based on reliable information about events that occurred during the reporting period. (Emphasis added.) Even if the Board were to agree that reviewer comments should have been based on the reviewer’s direct observation, the comments are complimentary and not prejudicial to the applicant. The Board finds no error or injustice with respect to the contents of the reviewer comments and will not direct that they be removed.

7. Moreover, Article 10.A.2.f.1.a. of the Personnel Manual states that “while the supervisor and reporting officer are specific individuals, the Reviewer is a position.” Emphasis added. The provision further states that “[t]he officer occupying [the reviewer] position has a definite OES [Officer Evaluation System] administrative function . . .” Reviewer OES responsibilities are not dependent on his direct observation of the reported-on officer.

8. The applicant’s real complaint is with the reviewer’s rating scale mark, which he believes was, in part, responsible for his failure to be retained in an active drilling status. He argued that the reviewer’s rating scale mark was inconsistent with that of the reporting officer, who had an opportunity to observe his performance. However, nothing in Article 10.A.2.f.2.b. or Article 10.A.4.c.11.g of the Personnel Manual required

the reviewer to give the applicant the same rating scale mark as the reporting officer assigned on his rating scale. If the two rating scale marks were required to be the same, there would be no need for a separate reviewer rating scale. In addition, in situations such as the applicant's, where the reporting officer is a non-Coast Guard officer or civil servant, the Coast Guard is probably looking for a seasoned Coast Guard employee's assessment of a reported-on officer's potential for service in a higher grade. After all a member of another service probably would not be as knowledgeable about the Coast Guard's officer evaluation system or service needs as would individuals who are members of the Coast Guard.

9. The only direction the Personnel Manual provides on completing the rating scale mark is Article 10.A.4.c.8. of the Personnel Manual. This provision states that "[t]he reporting officer shall fill in the circle that most closely reflects the Reported-on Officer's performance in consideration of information contained in the OER." In contrast, the reviewer is only required to describe the applicant's potential and provide a rating scale mark. No evidence has been presented that the mark of 4 reflected anything other than the reviewer's honest assessment of the applicant's potential for the period under review. The 4 on the reviewer's rating scale, although lower than the 7 given by the reporting officer on his rating scale, is not so inconsistent with the applicant's other performance marks that the Board is compelled to find it inherently erroneous or unfair. For example, the applicant was given two 4s in evaluations and developing others categories, with the remainder of his performance marks being 5s and 6s. The Board notes that the applicant did not receive a 7 in any of the 18 performance categories on the subject OER. Based on all of the applicant's marks and comments on this OER, the reviewer's rating scale mark of 4 is not unreasonable.

10. The more difficult issue is whether the Coast Guard should have submitted the OER to the retention board before the expiration of the 14 days allotted to the applicant to reply to the OER. The OER was validated by Coast Guard Headquarters on July 10, XXXX and provided to the retention board that same day. The applicant did not receive his official copy of the OER until July 12, XXXX. Article 10.A.4.g. gives the reported-on officer the right to submit a statement within 14 days of receipt of the official copy of the OER from CGPC. According to this provision of the Personnel Manual, the purpose of the reply is to "provide an opportunity for the reported-on officer to express a view of his performance which may differ from that of a rating official."

11. While the Personnel Manual gives an officer the right to reply to an OER, it does not address whether the Coast Guard can use that OER in any selection board process before the reported-on officer is given an opportunity to reply to it. The Chief Counsel argued that there was no denial of due process with respect to the applicant's right file a reply to the OER and he was not aware of any regulation entitling the applicant to such a right before the OER could be considered by a selection board, in this case the captain retention board. However, the Board questions the purpose of a regulation that provides an officer with a 14 day period to reply to an OER, but permits the Coast Guard selection boards to consider that OER before the expiration of the 14 days. This is particularly so in light of Article 10.A.1.d. of the Personnel Manual which

states that OERs are used by the Coast Guard to make management decisions related to promotion, assignment, and career development. The information provided by an officer in a reply could possibly impact a Coast Guard decision in one of these areas.

12. The Chief Counsel suggested that the applicant's failure to file a reply to the OER at all, even if the retention board had already convened, defeated his argument that he was denied an opportunity to reply to the OER. Under a best case scenario, three days would have been an insufficient amount of time to prepare a draft OER reply, submit it to the three members of the rating chain for their review and comment, and get it to Coast Guard Headquarters prior to the adjourning of the retention board on July 15, XXXX. Even if this could have been accomplished, it seems a heavy burden to place on a reported-on officer who should have had 14 days to submit a reply as required by regulation. Accordingly, the Board is persuaded that the Coast Guard committed an injustice by providing the OER to the retention board before the expiration of the 14 days allowed for the applicant to submit a reply.

13. Having found that the Coast Guard committed an injustice by submitting the OER to the retention board before the 14 days for the applicant to submit a reply had expired, the Board must determine whether the lack of an OER reply prejudiced the applicant before the retention board. In determining whether a nexus exists between the errors or injustices and the applicant's failure to be retained, the Board applies the standards set forth in Engels v. United States, 230 Ct. Cl. 465 (1982). The standards are as follows: "First, was the claimant'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 he would have been [retained] in any event?" Engels at 470.

14. With respect to the first prong of the Engels test, the Board finds that applicant's performance record would appear essentially the same even if the applicant had submitted a reply to the OER. Although the applicant would probably have disagreed with the reviewer's comments and rating scale mark in any reply that he would have submitted, he did not point to or provide concrete proof of any factual error in the reviewer comments or the rating scale mark. Nor has he stated that his rating chain failed to include in the OER any of his accomplishments during the reporting period. He offered only his opinion as proof that the reviewer's comments and judgment of his potential were inaccurate.

15. Moreover, the OER in question was the second of two captain OERs in the applicant's military record in which a reviewer prepared a separate rating scale containing a lower mark than that given by the reporting officer. On the applicant's previous OER the reviewer gave the applicant a 5 on the rating scale, where the reporting officer had marked him a 7 on his rating scale. It was clear to anyone reviewing the applicant's record, that Coast Guard rating chain reviewers evaluated the applicant's potential differently than did his non Coast Guard rating chain members. An OER reply, based on the information in this application, would not change that fact. Based on the information of record, the Board finds the lack of an OER reply did not make the applicant's record appear worse.

16. The Board further finds that is unlikely that the applicant would have been selected for retention in any event. The Board finds that the applicant had a substantially accurate and correct record before the retention board. He also had a strong recommendation for retention by the reviewer of the subject OER. The applicant does not claim that any awards or other pertinent material was missing from his record. An OER reply offering his view of his performance would not have changed the reviewer's evaluation of that performance and he has offered nothing, except for his own view of his performance, to show that a reply would have likely enhanced his performance record. Therefore, the Board finds that it is not likely that the applicant would have been retained in an active status in any event.

17. Accordingly, the applicant's request for relief should be denied.

18. The Board notes that there are no provisions in law or regulation that authorize special selection boards for the Coast Guard. The Board also notes that submitting incomplete OERs to retention Boards carries at least the appearance of a lack of due process and recommends that the Coast Guard resolve this issue.

ORDER

The application of XXXXXXXXXXXXXXXX, USCG, for correction of his military record is denied.

