

**DEPARTMENT OF HOMELAND SECURITY  
BOARD FOR CORRECTION OF MILITARY RECORDS**

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Application for Correction of  
the Coast Guard Record of:

BCMR Docket No. 2002-084

[REDACTED]  
[REDACTED]

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**FINAL DECISION**

[REDACTED] **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. It was docketed on April 8, 2002, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated March 13, 2003, is signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST**

The applicant asked the Board to remove an officer evaluation report (OER) issued for the period July 1, 19XX through June 21, 19XX (disputed OER). He stated that he "believe[s] that a gross error has been made to his service record" and without Board correction, he would suffer a second non-selection for promotion and thereafter, involuntary separation from the Coast Guard.

**APPLICANT'S ALLEGATIONS AND EVIDENCE**

The applicant alleged that he was denied due process in connection with the disputed OER and was passed over for promotion by a selection board that met in November 19XX as a result of the injustice. He alleged that he did not receive a copy of the disputed OER until December 29, 19XX, after the selection board had seen it. He alleged that because his command failed to follow Coast Guard regulations in timely processing the disputed OER, he was "deprived of two opportunities to have mitigating

and/or extenuating information placed in [his] official service record for the Chief Warrant Officer (CWO) Promotion Board to consider.”

In support of his claim, the applicant stated that under Coast Guard regulations, he had the right to submit a reply to the disputed OER and the right to submit a written communication to the CWO promotion board. Personnel Manual, Articles 10.A.4.g. and 5.B.3. He alleged that instead, he received the disputed OER after the promotion board results had been posted. He contended that had he been given the opportunity to place explanatory information before the selection board, he might have been selected for promotion.

The applicant alleged that the adverse comments he received in the disputed OER concerning his “alleged wearing of an unauthorized ribbon” were unwarranted. He alleged that after he was notified about the unauthorized ribbon violation, he was placed on report and the matter was investigated under Article 15 of the Uniform Code of Military Justice (UCMJ). The applicant alleged that when the investigation was complete, he was taken to Captain’s mast where his Commanding Officer (CO) dismissed the pending charges. The applicant contended that because Article 15 proceedings are governed by a standard of proof lower than that of civilian courts, his CO would have imposed punishment had he found compelling evidence that the applicant committed the alleged offense. He alleged that in the absence of further action on his CO’s part, the incident should have been considered a “closed” matter and not mentioned in the disputed OER.

The applicant contended that the marks of “3”<sup>1</sup> that he received for the performance factors of “judgment,” “responsibility,” and “professional appearance” in the disputed OER fail to accurately reflect his overall performance. As evidence in support of his application, he offered his assessment of “specific instances of superior performance that [he] believe[s] warrant a higher number than the 3s [he] received.” In general, he alleged that he (1) solved major problems by using sound judgment; (2) was entrusted with the responsibility to represent the Coast Guard at sensitive meetings; and (3) projected the ideal Coast Guard image expected of officers whether in high level meetings or when giving boating safety presentations.

The applicant alleged that because his dedication to the Coast Guard is evident by both his career advancement and the many achievement medals and letters of commendation he has received, the Board should grant him relief.

## **SUMMARY OF THE RECORD AND SUBMISSIONS**

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<sup>1</sup> Members are evaluated on a scale from 1 to 7, with 7 being the best possible mark.

On March 30, 1987, the applicant enlisted as a seaman recruit in the Coast Guard for four years. His record contains numerous favorable page 7s, which date back to 1987, in commendation of his service.

On June 1, 1998, the applicant was appointed to chief warrant officer (pay grade W2). An OER was prepared in evaluation of his performance for the reporting period from June 1, 1998 to June 30, 1999 (first OER). The first OER shows that on the comparison scale, he was given a mark of "6," which is defined as "an exceptional officer." In the block for "leadership and potential," the Reporting Officer (RO) concluded his evaluation by stating that the applicant "has [his] highest recommendation for promotion with peers to W-3," and that the applicant is "an excellent candidate for CWO-LT selection."

The applicant's rating chain prepared an OER to evaluate his performance for the reporting period from July 1, 1999 to June 30, 19XX (second OER). In the second OER, the applicant was again found to be "an exceptional officer" on the comparison scale. Moreover, in the block for "leadership and potential," the RO concluded that the applicant was "highly recommended for CWO to LT program."

On April 18, 19XX, the CO initiated an investigation into the applicant's wearing of an unauthorized ribbon. The investigation resulted in his being charged with wearing an unauthorized ribbon. On May 15, 19XX, the applicant was taken to Captain's mast, where his CO set aside the misconduct charges by disposition of "dismissal with warning."

The applicant's rating chain prepared the disputed OER, covering the reporting period from July 1, 19XX to June 21, 19XX. The applicant's supervisor, the unit's Executive Officer (XO), prepared his section of the disputed OER and forwarded it to the RO for further completion and review. The applicant's CO, who served as the RO, completed his section of the disputed OER and forwarded it to the reviewer on June 26, 19XX. On July 9, 19XX, the reviewer signed the disputed OER and submitted it to the Commander of the Coast Guard Personnel Command (CGPC) for review and validation. On August 6, 19XX, the disputed OER was returned to the rating chain, via the reviewer, for the correction of several vague or non-specific comments regarding the performance and behaviors of the applicant (the reported-on officer). In accordance with the Personnel Manual, the issues identified by CGPC were to be corrected and the disputed OER was to be re-submitted to CGPC within 30 days of the rating chain's receipt. On September 7, 19XX, the reviewer notified CGPC that because the RO had been deployed to the Arctic, the disputed OER would not be timely re-submitted.

On October 16, 19XX, CGPC received the disputed OER with corrections and, upon review, validated it on the same date. The applicant was given marks of 7 in the categories of adaptability, professional competence, looking out for others, and

initiative. He was given marks of 6 in the categories of planning and preparedness, using resources, result/effectiveness, speaking and listening, writing, developing others, directing others, teamwork, workplace climate, evaluations, health and well-being. He was given a mark of 4 on the comparison scale which is defined as "one of the many competent professionals who form the majority of this grade" and given marks of 3 in the categories of judgment, responsibility, and professional presence. Under the blocks where the marks of 3 were assigned, the disputed OER contained the following comments:

Hard driving self-starter; initiated towline inspect that uncovered entire lot of faulty material. Created extensive procurement program that successfully addressed new engine warranty demands- a shift in warranty paradigm. Expansion of Std Discrep Report sys distribution & tracking from paint prep to delivery trials expedited cornx of production defects. Completed investigation that uncovered wrong fuel injector settings by vendor. Assembled detailed raw water retrofit pkg for fleet instruction. Skillfully mngd \$10K dept budget & \$500 morale account. Recommendations to fleet COs/OinCs & EPOs are highly respected. Inputs to CO/KO are used to formulate CG positions w/Kr. Outstanding CG rep. Respected by Kr even though his job is to identify discreps. [S]poke at local high school on CG mission during Armed Forces Day observance. Participated in community construction of new playground. Faithfully rendered military customs & courtesies in all situations. Wore unauthorized high level decoration and fabricated story regarded earning/wearing of medal. Personal grooming of the highest stds. Active mbr of basketball & softball leagues, encouraged participation of other staff mbrs.

Under the category of "Potential," the following comments were included in the disputed OER:

[The applicant] has become a truly versatile officer, able to skillfully address a variety of organizational needs; admin, ops, engineering or finance. Took a mis-step when he wasn't straight in responding to [questions] about wearing unauthorized ribbon. Out of character behavior for him & I have no doubt he learned a valuable lesson. Deserves chance to redeem himself! Still an extremely valuable & capable officer...tremendous knowledge, versatility & energy, very strong leader, thoroughly devoted to the CG. Recommended for positions of greater responsibility incl promotion to W3. Would make a great instructor, Group OPS & would be a strong station CO.

On November 5, 19XX, the applicant's CWO selection panel convened. The applicant was not selected for promotion to the next higher warrant officer grade. On December 29, 19XX, the applicant received a copy of the disputed OER by mail delivery.

To date, he continues to serve as a CWO2 (pay grade W2) on active duty.

## **VIEWS OF THE COAST GUARD**

On November 12, 2002, the Chief Counsel of the Coast Guard submitted an advisory opinion to which he attached a memorandum on the case prepared by CGCP. In adopting CGCP's analysis, the Chief Counsel recommended that the Board deny the applicant's request for relief.

The Chief Counsel admitted that in connection with processing the disputed OER, the applicant's command did not submit his OER within the time limits imposed by the Personnel Manual. However, he argued that the error was "due to operational demands" and not made in bad faith.

The Chief Counsel stated that validated OERs are normally mailed to a member within one day of validation. He contended that although the applicant received the disputed OER more than two months after the date it was validated, the applicant took no action to ensure that he received the OER prior to November 5, 19XX, the date that the applicant's CWO selection board convened.

The Chief Counsel stated that the Personnel Manual defines the responsibilities of the reported-on officer in "managing his or her own performance," which includes, "ensuring that performance feedback is thorough enough and received in a timely manner and that OERs and associated documentation are timely, complete and accurate." He contended that it was the applicant's responsibility to notify CGPC when he did not receive the contested OER 90 days after the end of the reporting period. He argued that the applicant could have taken the initiative to notify CGPC that he did not have the disputed OER as early as September 21, 19XX, particularly with the knowledge that his selection board was to meet in November 19XX.

The Chief Counsel argued that "there is no correlation" between the applicant's non-receipt of the disputed OER and the opportunity to communicate with the President of his CWO promotion board, as the two are independent. He contended that Article 10.A.2.c.2.f. of the Personnel Manual provides the applicant the right to have met with his supervisor to discuss the anticipated content of the disputed OER. He argued that had the applicant requested such a meeting, he would have discovered that "the improper wearing of a [Coast Guard] medal and discovery of lies associated with that action would be reflected in the OER." He further argued that in the absence of proactive efforts on the applicant's part to obtain a copy of the disputed OER, there is no basis for him to claim that he was prejudiced before the CWO promotion board because he received the disputed OER on December 29, 19XX.

The Chief Counsel argued that the applicant's rating officials properly prepared the disputed OER when they assigned and supported the marks of "3" for the applicant's lapse of "judgment," "responsibility," and "professional presence." He asserted that the specific instances that the applicant provides to justify higher marks are actually reflected in the disputed OER. He stated that at an Article 15 hearing, the

CO determines the facts of the case, considers mitigating evidence, and has the discretion to award punishment. He alleged that although the evidence against the applicant, which included his own admission, was sufficient to find the applicant guilty of the offenses, the CO decided to dismiss the violation with a warning. He contended that the CO's disposition of the applicant's case, however, fails to indicate that the applicant was not guilty of the offense, nor precludes its inclusion and consideration in the disputed OER.

The Chief Counsel alleged that the applicant has failed to rebut the presumption that the rating chain executed their duties correctly, lawfully, and in good faith in preparing the disputed OER. Arens v. United States, 969 F.2d 1034, 1037 (Fed. Cir. 1992); Sanders v. United States, 594 F.2d 804, 813 (Ct. Cl. 1979). He argued that for the applicant to establish that the disputed OER is erroneous or unjust, he 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); BCMR Docket No. 86-96. He contended that absent a showing that the 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. BCMR Docket No. 84-96, *citing* Grieg v. United States, 226 Ct. Cl. 258 (1981).

#### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On November 18, 2002, the Chair sent a copy of the views of the Coast Guard to the applicant and invited him to respond within 15 days. He did not submit a response.

#### **APPLICABLE LAW**

Article 5.B.3.c.1. of the Personnel Manual (COMDTINST M1000.6A) provides that members who are "eligible for consideration by a selection board may communicate directly with the board by letter arriving by the date the board convenes," pursuant to 10 U.S.C. § 573(f).

Article 10.A. of the Personnel Manual governs the preparation of OERs. Article 10.A.1.b.1. provides that "Commanding officers must ensure accurate, fair, and objective evaluations are provided to all officers under their command." Each OER is prepared by the reported-on officer's rating chain of senior officers: the supervisor, the reporting officer, and the reviewer.

Article 10.A.2.c.2. sets forth the responsibilities of the reported-on officer. Among the duties of managing his or her performance, the reported-on officer requests an "end-of-period conference" not later than 21 days before the end of the reporting period with his supervisor and informs the Commander of CGPC "directly by written communication ... if the official copy of the OER has not been received 90 days after the

end to the reporting period.” Personnel Manual, Articles 10.A.2.c.2.f. and 10.A.2.c.2.g. Moreover, Articles 10.A.2.c.2.j. and 10.A.2.c.2.k. provide that the reported-on officer “[a]ssumes ultimate responsibility...,” to ensure that “OERs are not delayed when eligible for promotion.”

Article 10.A.4. describes how members of a rating chain should prepare an OER. Article 10.A.4.c.4. provides the following:

b. For each evaluation area, the Supervisor 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 Supervisor shall carefully read the standards and compare the Reported-on Officer’s performance to the level of performance described by the standards. The Supervisor shall take care to compare the officer’s performance and qualities against the standards—not to other officers and not to the same officer in a previous reporting period. After determining which block best describes the Reported-on Officer’s performance and qualities during the marking period, the Supervisor fills in the appropriate circle on the form in ink.

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d. In the “comments” block following each evaluation area, the Supervisor shall include comments citing specific aspects of the Reported-on Officer’s performance and behavior for each mark that deviates from a four. The Supervisor shall draw on his or her observations, those of an secondary supervisors, and other information accumulated during the reporting period.

e. Comments should amplify and be consistent with the numerical evaluations. They should identify specific strengths and weaknesses in performance. Comments must be sufficiently specific to paint a succinct 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. ...

The standards on the OER form for a mark of 4 for the performance categories “judgment,” “responsibility,” and “professional presence” are as follows:

Judgment	Demonstrated analytical thought and common sense in making decisions. Used facts, data, and experience, and considered the impact of alternatives. Weighed risk, cost and time considerations. Made sound decisions promptly with the best available information.
Responsibility	Held self and subordinates personally and professionally accountable. Spoke up when necessary, even when expressing unpopular positions. Supported organizational policies and decisions which may have been counter to own ideas. Committed to the successful achievement of organizational goals
Professional Presence	Knowledgeable in how [Coast Guard] objectives serve the public; cooperative and fair in all interactions. Composed in difficult situations. Conveyed positive image of self and [Coast Guard]. Well versed in military etiquette; precise in rendering and upholding military courtesies. Great care in uniform appearance and grooming.

Article 10.A.4.c.9. governs the reporting officer's comments about the reported-on officer's "potential" in section 10 of an OER. The reporting officer is directed to "comment on the Reported-on Officer's potential for greater leadership roles and responsibilities in the Coast Guard. These comments shall be limited to performance or conduct demonstrated during the reporting period." In addition, the reporting officer should comment on the reported-on officer's qualification to assume the duties of the next higher grade and types of assignments for which the officer shows aptitude.

Article 10.A.4.g. describes how members should reply to an OER, should they choose to do so. Article 10.A.4.g.1. states that "[t]he Reported-on Officer may reply to any OER regardless of its content and have this reply filed with the OER," allowing a member the opportunity to "express a view of performance which may differ from that of a rating official." Members are to submit OER replies within 14 days from the receipt of the official copy from CGPC. Personnel Manual, Article 10.A.4.g.4.

Under Article 10.A.4.j.2., OERs are reviewed by the Commander of CGPC for substantive errors. While ensuring that OERs have been prepared in accordance with the Officer Evaluation System (OES), "[p]articular attention is given to inconsistencies between the numerical evaluations and written comments." When an OER is found unacceptable, the Commander returns the report to the RO, via the reviewer, with a letter identifying areas for correction. "When corrected by the appropriate member(s) of the rating chain, OERs are returned to [the] Commander ... via the rating chain within 30 days." Article 10.A.4.j.4. provides that after the OER has been accepted, the Commander of CGPC forwards an "Official Receipt" stamped copy of the OER to the member.

Article 14.A.4.d. of the Personnel Manual states that the materials and paperwork furnished in personnel records for consideration by personnel boards include such items as "statements of service and sea service, the record of emergency data, page 7 entries, documentation of alcohol incidents, and reports of civil arrests, performance evaluations, education information, and awards and discipline documentation."

Under Chapter 1.D.17. of the Military Justice Manual, once a member is charged with a UCMJ offense and agrees to go to mast (thereby avoiding a potential court-martial), the CO may take the member to mast but "decide not to punish a member by dismissing the matter with a warning. Such a decision may be based on either a lack of proof or a determination that punishment is not appropriate even though the member committed an offense(s)." A dismissal with warning is not considered non-judicial punishment (NJP), and no entry is made in the member's record.



## 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 10 U.S.C. § 1552. The application was timely.

2. The Board finds that the applicant has failed to establish by a preponderance of the evidence that the comments in the disputed OER regarding his wearing of an unauthorized ribbon were erroneous. The Personnel Manual directs supervisors to include comments about specific aspects of the reported-on officer's behavior by "draw[ing] on his or her observations" during the evaluation period, and it requires ROs to comment on "performance or conduct demonstrated" during the evaluation period. Personnel Manual, Articles 10.A.4.c.4.d. and 10.A.4.c.4.e. The record indicates that the applicant was found to be and charged with wearing an unauthorized ribbon during the evaluation period. Absent strong evidence to the contrary, rating officials are presumed to have performed their duties correctly, lawfully, and in good faith in making marks and comments in an OER. Arens v. United States, 969 F.2d 1034, 1037 (Fed. Cir. 1992); Sanders v. United States, 594 F.2d 804, 813 (Ct. Cl. 1979). The applicant has submitted no evidence to show that he did not wear the unauthorized ribbon. Moreover, nothing in the Personnel Manual precludes comments on the wearing of an unauthorized ribbon.

3. The applicant argued that the OER comments about the ribbon were inappropriate because the charge was dismissed at mast. He argued that the dismissal with warning indicated that there was insufficient evidence to prove that he committed the offense. However, under Chapter 1.D.17. of the Military Justice Manual, a CO may, at his or her discretion, dismiss a charge "with warning" at mast even if the evidence presented proves that the member committed the offense. The applicant has not proved that his CO found insufficient evidence to prove that he committed the offense. In fact, the fact that the CO commented on his misconduct in the OER proves that the CO was convinced that he committed the offense. The fact that the CO apparently acted with leniency in dismissing the charge with warning so that no record of the mast would be included in the applicant's personnel record does not mean that the CO could not or should not mention the matter in the OER. The Board finds that the applicant has failed to prove that his rating chain committed any error or injustice in including the comments about the unauthorized ribbon in the disputed OER.

4. The applicant contended that the marks of 3 he received in the categories of "judgment," "responsibility," and "professional presence" did not accurately reflect his overall performance and that his performance warranted numbers higher than the

3s he received. However, in order for the applicant to be assigned the next higher mark of 4 in those three categories, he would have had to meet the performance criteria for at least a mark of 4 in each category during the evaluation period. His rating chain apparently decided that he did not and supported their assessments with specific comments, as required by Personnel Manual Articles 10.A.4.c.4.d., 10.A.4.c.4.e., and 10.A.4.c.9. Their judgment in this matter is accorded a strong presumption of regularity.

5. In light of the presumption of regularity, the burden is on the applicant to prove by a preponderance of the evidence that the assigned marks of 3 were inaccurate or unjust. In applying the presumption of regularity to the disputed OER, the Board finds that the applicant's rating chain could reasonably have concluded that by wearing an "unauthorized high level decoration and fabricat[ing a] story regarding [the] earning [and] wearing of [the] medal," the applicant did not exercise judgment that "demonstrated analytical thought and common sense," or "made sound decisions." Furthermore, the applicant's rating chain could reasonably have concluded that his behavior and statements regarding the unauthorized ribbon failed to demonstrate the level of responsibility showing that he "held [him]self ...accountable" and "[s]upported organizational policies and decisions which may have been counter to [his] own ideas." The applicant's rating chain also could reasonably have concluded that he did not bring credit to the Coast Guard by his misconduct, and that his being taken to Captain's mast failed to "[convey a] positive image of [him]self and the [Coast Guard]." Therefore, the Board is not persuaded that the numerical marks or the written comments in support of the marks were erroneous or unjust. The applicant has failed to rebut the presumption of regularity that his rating officials acted "correctly, lawfully and in good faith." Arens v. United States, 969 F.2d 1034, 1037 (Fed. Cir. 1992).

6. The record shows, and the Chief Counsel admits, that the disputed OER was not timely processed in accordance with Article 10.A.4.j.2. of the Personnel Manual. The disputed OER was re-submitted to CGPC more than 30 days after the rating chain's receipt, due to the RO's deployment to the Arctic, and validated by CGPC on October 16, 19XX. As a result of this delay, the Board finds that the Coast Guard committed an error by failing to process the disputed OER within the time limits prescribed in the Personnel Manual. Although no regulation prohibits a selection board from reviewing an OER that has been approved so recently that the reported-on officer has had no chance to file a reply, when confronted with its untimely processing of OERs, the Coast Guard is encouraged to make a concerted effort to ensure that a member promptly receives a copy of his or her OER. The Board finds such lack of effort on the part of the Coast Guard to be a particularly troubling issue, which under certain circumstances, though not here presented, work an injustice against the member.

7. A member's opportunity to write his or her selection board is controlled by whether the member is eligible for consideration before the selection board. Article

5.B.3.c.1. of the Personnel Manual. Despite the knowledge of his eligibility for consideration and his knowledge of what information might be in the OER, the fact that the applicant decided not to communicate with the selection board supports a finding that the untimely OER was not the reason for his missed opportunity “to have mitigating ... information placed in his official service record ....” Moreover, the applicant could have requested an “end-of-period” conference with his supervisor to ascertain what, if any, issues he might consider discussing in a letter to the selection board. Articles 10.A.2.c.2.f. and 10.A.2.c.2.j. of the Personnel Manual. The Board finds that the applicant has failed to present any evidence that actions on the part of the Coast Guard prevented him from writing his selection board.

8. Furthermore, although the applicant apparently did not receive the disputed OER until December 29, 19XX, at least some of the blame for this delay must go to the applicant himself. According to the Personnel Manual, reported-on officers are to directly inform the Commander of CGPC “if the official copy of the OER has not been received 90 days after the end of the reporting period.” Personnel Manual, Articles 10.A.2.c.2.f. and 10.A.2.c.2.g. After the ninety-day lapse, the applicant should have notified the Commander of CGPC beginning on September 21, 19XX that he had not received the disputed OER. Even if he knew that the RO was in the Arctic, he should have stayed abreast of the situation instead of passively waiting to receive the OER. The applicant has submitted no evidence to prove that he made any efforts to obtain a copy of the disputed OER or to discover its contents prior to the convening of the November 19XX selection board. The record also indicates that the disputed OER was validated by CGPC on October 16, 19XX, slightly more than two weeks before the applicant’s selection board convened. The Board is convinced that had the applicant taken action in accordance with the responsibility that the Personnel Manual assigns to him, as the reported-on officer, he could have utilized the more than 14 days remaining to receive and file a response to the disputed OER. Because the applicant has not established by a preponderance of the evidence that he fulfilled his own responsibilities in tracking the disputed OER, he cannot now complain about an adverse result due to his inaction.

9. Even assuming *arguendo* that the untimely processing of the disputed OER prevented the applicant from communicating with the selection board about the ribbon, he has failed to state what he would have or could have told the selection board in mitigation of the marks and comments in the OER. Certainly, nothing that he has told this Board about his wearing of the unauthorized ribbon would have mitigated the negative information in the OER. Therefore, even if his personnel record were considered to be legally incomplete before the selection board because of the lack of an OER reply—despite the lack of a regulation requiring the expiration of the reply period before an OER can be reviewed by a selection board—the Board finds that the applicant has not proved that his record was significantly prejudiced by the lack of an OER reply. In addition, the Board finds that even if his record had been improperly prejudiced by

the lack of a reply, the marks of 3 and comments in the disputed OER, which was the most recent OER in his record, made it unlikely that he would have been selected for promotion in any event. Therefore, under Engels v. United States, 678 F.2d 173, 176 (Ct. Cl. 1982), the Board finds that, even assuming *arguendo* that the applicant's inability to file an OER reply prior to the selection board did make his record incomplete when it was reviewed by the selection board, he is not entitled to the removal of his failure of selection by that board.

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

**[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]**

**ORDER**

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

