

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

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 2002-103

FINAL DECISION

██████████ Chair:

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 May 21, 2002, upon the Board's receipt of the applicant's complete application for correction of his military record.

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

Request for Relief

The applicant asked the Board to correct his record by removing an officer evaluation report (OER) for the period June 1, XXXX to May 31, XXXX (disputed OER). He further asked that if he has failed to be selected for lieutenant commander at the time the Board decides his case that the Board remove the failure of selection and direct that his record be placed before the next selection board as an in zone officer. He also requested backdating of his date of rank and back pay, if he is selected by the first board to consider him based on a corrected record. Last, he requested that the Board reinstate him to active duty if he has been involuntarily retired at the time the Board decides his application. The applicant was not selected for promotion by the most recent LCDR selection Board that met in XXXX.

EXCERPTS FROM RECORD AND SUBMISSIONS

The disputed OER is the second one received by the applicant while at the command in question. The applicant alleged that the disputed OER is not an objective evaluation of his performance and is based upon misleading information and a bias or prejudice against him by the reporting officer and commanding officer (CO).

OER marks, in general, range from 1 to 7, with 7 being the highest mark. In the supervisor's portion of the disputed OER, which includes the performance, communication, and leadership skills sections, the supervisor assigned the applicant mostly marks of 4, with three 3s (adaptability, workplace climate and evaluations), and

one 5. Many of the comments were favorable but included some criticisms of the applicant's performance as described below:

Block 3. comments: "Slow to adopt new [programs]/technologies; scoffed at proposed risk based assessment of small pax vsls; apprehensive about use of Palm Pilots to document inspections; non-support created delay & uncertainty w/subordinates."

Block 4. comments: "Sent 2 emails with inappropriate tone and allegations to/about senior officer compounded error by copying others outside unit/district."

Block 5 comments: "Created unhealthy work environment; w/out consulting supervisor, dictated unreasonable policies such as severely limiting who could sign qual books - conveyed lack of confidence & mistrust; demoralized dept. . . Failed to meet own OER rating duties narratives vague, lacked impact, and paraphrased performance standards. Ignored supervisor's counseling on submission requirements delayed submission then during Dept head's absence, attempted to delegate responsibility & directed officer outside rating chain to write supervisor comments; required significant revision by Reporting Officer."

In the reporting officer's officer portion of the OER, which included the personal and professional qualities section of the OER, the applicant received two 4s in the initiative and health and well-being categories, one 3 in professional presence, and one 2 in responsibility. In addition to some positive comments, the reporting officer wrote the following:

[Block 7 comments:] [H]arsh leadership style & insubordinate demeanor caused removal [from] asst dept head. He made derogatory comments about performance of personnel to their peers; he showed disdain for efforts of OMB when CO was not present & sent email bordering on insubordination.

[Block 8. comments:] Solid technical judgment, i.e. during shipyard repairs, application of safety standards, brokering settlement agreements w/mariners but poor judgment dealing with personnel. Inappropriately misrepresented relationships between self & senior officers in order to manipulate supervisor & subordinates. Spent 5 months recounting injustice of reassignment; openly complained LAMs training waste of time. After request for early transfer denied by CGPC, sent email alleging others had sabotaged career, put in chit to avoid an all hands team building exercise. Poor military bearing before all hands when presented BZ [bravo zulu] ltr¹. Reassigned to investigations, provided training opportunities to understand how to be team player; improve supervisory

¹ Bravo zulu letter is sometimes referred to in this opinion as a letter of appreciation.

skills. Failed to seize opportunity, twice refused to consider or work toward move-up to Assistant of Investigations Dept.

The applicant received a mark of 2 in block 9., which represented the reporting officer's opinion of the applicant as a marginal performer when compared with other LTs the reporting officer has known throughout his career. The reporting officer described the applicant's potential for assuming greater leadership and responsibility as follows:

Limited potential for promotion. Assign to inspection or investigation billets. Has technical skills of an O3, but not leadership or mentoring skills expected of a supervisor. As result was removed from assistant department head position. He failed to treat his personnel or supervisor with honor and respect. Very capable of criticizing others, often in a harsh, derogatory manner, but unable to take criticism or counseling.

Applicant's Allegations and Arguments

During the period covered by the disputed OERs the applicant was relieved of duty as the Assistant Chief of the Inspections Department of a Marine Safety Office (MSO) due to the CO's loss of trust in the applicant's ability to lead the department. The reporting officer and the reviewer for the disputed OER were the same persons who had commended the applicant for his leadership skills, dedication, work ethic and support for his subordinates on an OER for the previous reporting period. The applicant stated that the description of his performance in the disputed OER contrast sharply with the high caliber of performance described in his other OERs.

The applicant alleged that the disputed OER was prepared by a supervisor who was unaware of the actual facts surrounding the applicant's performance during the period and was adversely affected by the bias of the reporting officer. He alleged that the reporting officer provided inaccurate information to the supervisor and reviewer causing him to receive a less than objective OER.

The applicant stated that when comparing the disputed OER to the immediate previous OER it is noticeable that a reporting chain that once praised his work ethic and the support he showed for his subordinates now viewed him as the source of the problems within the department. The applicant argued that this perception on the part of the reporting officer and reviewer was based on a meeting between the reviewer and the other officers, in the absence of the applicant. According to the applicant, the junior officers claimed that they were afraid of the applicant because he had allegedly brought a firearm to his office at his previous command. He stated that the reviewer, who was also the commanding officer (CO), permitted the meeting to degenerate into requests by the junior officers that the applicant be removed as their supervisor. The applicant claimed that as a result of this meeting the CO removed him as assistant head of the inspections department without investigating the allegations against him by the junior officers. The applicant claimed that the junior officers wanted him dismissed from the

job as assistant department head because they resented being supervised by him since they had been assigned to the command longer than he had. According to the applicant, after he appealed the CO's decision relieving him of his duties,² both the CO and reporting officer were openly hostile toward him.

The applicant alleged that in addition to the complaints by the junior officers, the CO's decision to relieve the applicant as assistant department head was based in part on allegations that the applicant had "implemented changes in the [inspections department] without the knowledge of his supervisor." The applicant claimed that prior to implementing any changes, he discussed them with his supervisor, who agreed with them and told the applicant to implement any changes the applicant deemed necessary. The applicant alleged that some of his subordinates complained to the reporting officer that the changes implemented by the applicant were an affront to the reporting officer, who had previously headed the investigations department before becoming the executive officer (XO). The applicant claimed that both the supervisor and reviewer were well aware of his plans to implement changes within the department.

The applicant alleged that the reporting officer had a strong personality conflict toward him, which is evidenced by the comment in the reporting officer's portion of the OER that the applicant "showed disdain for the QMB in the absence of the commanding officer." The applicant stated that it was the reporting officer who showed disdain for the applicant at that meeting. According to the applicant, the reporting officer "was so abusive to the [applicant] in front of all persons attending the meeting that he was counseled by the District Quality Performance Consultant for his abhorrent behavior toward the [applicant]."

The applicant denied the reporting officer's comment in the disputed OER that he showed poor military bearing when he was presented with a Bravo Zulu letter during an "All Hands" ceremony. The applicant stated that three statements from other individuals, which are discussed later in this decision, contradicted the XO's comment that he showed poor military bearing.

The applicant alleged that the reporting officer deliberately misled the CO as well as the applicant's rating chain supervisor³ about the applicant's performance, resulting in an adverse OER. The current OER supervisor was not the applicant's supervisor for the entire reporting period. He began serving in the rating chain after the applicant was relieved of duty as the assistant department head. The applicant argued that the supervisor's evaluation of his performance while in the assistant department head position was based in part on erroneous information from the reporting officer. As an example, the applicant stated that another officer was present when the applicant

² Apparently, the applicant's appeal of the CO's decision to relieve him of his duties was denied. There are no appeal documents in the military record and the applicant did not submit any.

³ The supervisor on the disputed OER was not the applicant's supervisor at the time these events occurred.

informed his supervisor about the proposed changes and has prepared a statement contradicting the reporting officer's statement that the applicant failed to inform his supervisor of the changes he planned to make in the department.

Applicant's OER reply

The applicant filed a reply to the disputed OER, which is in the military record along with endorsements from the supervisor, reporting officer, and reviewer. The applicant challenged several other comments in the OER reply that he did not specifically challenge in his application. This decision only addresses those issues in the OER reply and related documents that are before the Board.

In the reply to the OER, the applicant challenged the comments about his demeanor and attitude toward the QMB. He stated that he was never counseled regarding his leadership style, although the XO counseled him on his demeanor when they had a difference of opinion on a technical issue. With respect to the comment that he showed poor military bearing when presented with a letter of appreciation (bravo zulu (bz)), the applicant wrote in his reply that he stood and listened reflectively while the letter was read aloud. He then thanked the CO and returned to his seat. In his reply, the applicant also challenged comments about having disdain for the QMB and instituting changes without informing his supervisor.

In response to the applicant's OER reply, the supervisor stated that he received direct input from the applicant's previous supervisor, who had been the applicant's supervisor for 40% of the reporting period. The reporting officer wrote that the applicant "did not discuss the policy changes with CID and forcefully imposed his own policy on Branch Chiefs."

The XO responded to the applicant's OER reply by stating that he stood by his evaluation of the applicant's performance. He stated that despite counseling the applicant failed to modify his leadership style or interpersonal behavior, but rather continued to berate subordinates and display extremely poor judgment in his dealings with personnel in his chain of command. The XO stated that at the presentation of the letter of appreciation, the applicant "stood with his hands in his pockets, shifting uneasily, and at one time rolled his eyes." The XO described the applicant's action as "turning the ceremony into a very public display of disrespect.

In his response, the CO wrote that he removed the applicant from his duties as assistant department head because he had a "loss of trust and confidence in [the applicant's] abilities to lead the department." He stated it was a difficult decision, but it was necessary considering the overall needs of the department. He stated that instead of the applicant providing the leadership necessary to nurture and grow the junior officers, he caused turmoil within the department. He stated that the applicant recently began to accept his reassignment to the investigations department.

Statements Submitted by the Applicant

The applicant submitted several statements in support of his application. They are summarized below.

1. A lieutenant commander (LCDR) wrote that he witnessed unfair treatment of the applicant by the CO. He stated that he attended the meeting in which the junior officers allegedly vigorously attacked the applicant's character, without interruption by the CO. Six of them requested that the applicant be removed as their supervisor. "This meeting was a public flogging session of [the applicant] and no attempts were made to structure it otherwise. [The CO] relieved [the applicant] of his duties before he returned from leave and without consultation." He stated that the applicant took the issue of his relief to the work-life staff and to District Fourteen staff. "To say the CO and XO . . . were hostile toward [the applicant] after this would be an understatement." He stated that the command attempted to do a special OER on the applicant but was prevented from doing so by District Fourteen. He stated that the denial of the applicant's request for a transfer were vindictive.

This individual stated that the applicant shared an office with his then supervisor and spent a significant amount of time with him and the CO discussing inspection issues. "[The supervisor and CO] were well aware of the daily business within the Inspection Department and had ample opportunity to adjust [the applicant's] priorities prior to being relieved of duties."

The LCDR stated that he was present at the presentation of a letter to the applicant, and he did not witness any disrespect. He stated that the reporting officer had a serious personality conflict with the applicant and that many others had been abused or mistreated by the reporting officer including himself. In this regard, he stated that the reporting officer removed a recommendation for XO on one of his OERs without notifying the supervisor. According to the LCDR, the CO said that he thought the LCDR deserved the recommendation but refused to do anything about it, stating that he had to support the reporting officer, who was his XO. He stated that the reporting officer mistreated another officer by claiming that he was an unauthorized absentee. He stated that he believe the applicant to be a good officer and an honorable person.

2. Another individual who worked at the same command although not in the same department, wrote the following:

During conversations with [the applicant] I learned that he was trying to bring his under trained and partially inexperience staff up to speed. Some of the inspectors [whom the applicant supervised] were at the unit before [the applicant] arrived, and resented being pushed by the new guy. The resentment finally manifested itself during a meeting between the CO and the junior officers in the command about how to make the unit function more efficiently. [The applicant] was on leave. Though unintended, the entire meeting turned into a discussion about [the applicant] and how he

carried out his duties as the Assistant Chief of Inspections. I was amazed at some of the allegations, including an officer being concerned about their physical safety when they were alone in the building with [the applicant]. I had a strong impression during the meeting that some of the officers had an agenda beyond altering [the applicant's] behavior. They clearly wanted him dismissed and would not settle for anything less.

The applicant was dismissed when he returned to work. The speed with which this happened was unusual. From my vantage point in Port Operations I was not aware of any effort by the XO [the applicant's reporting officer] to intercede on [the applicant's] behalf, which is again unusual.

Writing this letter has left me as numb as I felt when this first happened. Though I've observed and heard of officers being dismissed for worse, I have never observed anything similar to [the applicant's] dismissal in my 15 years in the Coast Guard. From all I can tell he is a fine officer and a high performer.

3. A chief warrant officer -W4 (CWO4) wrote that he had observed the applicant being mistreated and abused by the reporting officer. By way of example, he provided the following:

I recall an occasion where our former [XO] verbally abused [the applicant] concerning his handling of the QMB. [The applicant] was the MSO QMB facilitator and did an outstanding job in this position. Nevertheless, on this occasion, our former [XO] verbally abused [the applicant] in front of all of the attendees. His demeanor was so abusive that . . . [the] Fourteenth District Quality Performance Consultant counseled [the XO] concerning his abhorrent behavior toward [the applicant].

* * *

I was present during a discussion between [the applicant and his supervisor prior to his being relieved of his duties]. [The applicant] brought some department shortcomings to [his supervisor's] attention that he remedied the situation by changing policy. [The applicant] stated that he was being a little hard on the inspectors and wanted to know if his approach was okay. [The supervisor] stated that he [the applicant] was handling the situation properly and to continue with any changes he deemed necessary in the future.

This individual stated that some officers complained directly to the executive officer about the changes implemented by the applicant and left the XO with the impression that the changes made by the applicant were a criticism of the XO's leadership when he was the department head. The CWO4 stated that as a result, the XO was openly critical of the applicant. As an example of the XO's hostility toward the

applicant, the CWO4 offered the XO's comment that the applicant was insubordinate when the CO awarded him a letter of appreciation. The CWO4 stated that he was present during the ceremony and the applicant acted respectfully and professionally at all times.

4. A Lieutenant (LT) wrote that he was in attendance at the QMB meeting in which the XO accused the applicant of showing "disdain for the efforts of QMB when CO was not present." The applicant as the QMB facilitator became involved in a discussion about the direction of the QMB. According to the LT, the applicant stated that the XO as the senior command representative should make such a decision, to which the XO took exception. He stated that based on his observations at the QMB meeting, the applicant did not show disdain for the efforts of the QMB but rather he was attempting to get his view point across and move the QMB forward.

The LT wrote that he was present at the all-hands meeting where the applicant was awarded a letter of appreciation. He stated that when the applicant's name was called he walked to the front of the room and stood next to the CO. During the reading of the letter, the applicant stood tall, was quiet, and looked at the ground. Upon completion of the reading of the letter, the applicant shook hands with the CO, thanked him, and returned to his seat. The LT stated that although the applicant was less than enthusiastic about being recognized, he did not exhibit poor military bearing.

The LT stated that the applicant is a hard working, motivated, outspoken individual. He stated that the applicant was deeply offended at the manner in which he was relieved of his duties.

This individual offered an unfavorable opinion of the XO, stating that he disliked unit personnel voicing an opinion that was different than his own. He stated that the XO would hide the truth to look better. As an example, he stated that the XO would change the date on routing slips going to the CO to more recent dates in situations where he had held correspondence/documents far too long. He stated "As a matter of habit and without my permission or approval, [the XO], as the reporting officer, modified the supervisor sections on OER's of my department personnel."

5. A boatswain's mate second class (BM2) wrote that personnel in the inspection's department had been there longer than the applicant and were not willing to accept any changes in the department. The petty officer stated these officers resented being held accountable for their performance.

6. The applicant submitted five other statements from individuals for whom he had previously worked or with whom he had previously worked. These statements were highly complimentary of the applicant's work ethic and leadership skills.

Applicants LT OERs

The applicant's imaged military record contains three other LT OERs, excluding the disputed OER. On these reports, the applicant received no performance marks lower than a 4. In fact, on the two previous OERs the applicant's performance marks were mostly 6s and 7s and he was rated as an excellent performer, a 5, in block 9, when compared with the other LTs that the reporting officers have known.

Views of the Coast Guard

On December 17, 2002, the Board received an advisory opinion from the Chief Counsel of the Coast Guard recommending that relief be denied in this case.

The Chief Counsel stated that 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 (1992). The Chief Counsel stated that in proving his case, the applicant must overcome a strong presumption that rating officials acted correctly, lawfully, and in good faith in executing their duties. Arens v. United States, 969 F. 2d 1034, 1037 (Fed. Cir. 1992). In this regard, he stated that the record established a difference of opinion with respect to the caliber of the applicant's performance, but the evidence was not sufficient to rebut the presumption of regularity.

The Chief Counsel adopted the comments of the Chief of the Coast Guard Personnel Command (CGPC), which were attached as Enclosure (1) to the advisory opinion. CGPC stated that in August XXXX, the rating chain addressed the OER challenges raised by the applicant in his OER reply. He stated that the applicant provided no evidence that the comments and marks assigned by the supervisor were an unfair and inaccurate depiction of the Applicant's performance during the period. He stated that although the applicant's dislike for the method in which information was obtained for his evaluation, the most important point is the rating chain considered the information a fair representation of the applicant's performance.

GCPG stated that the documentation does not support the applicant's contention that the reporting officer and reviewer were biased against him. With respect to the comments about the meeting in which the applicant's subordinates requested his removal as their supervisor, CGPC stated that the lack of any attempt by the CO to stop the alleged attacks on the applicant by the junior officers shows that the CO accepted the junior officer statements as creditable performance input. CGPC characterized other evidence offered by the applicant about the XO as insufficient to show that he was biased against the applicant, although the statements painted a picture of an XO who was strong willed and difficult to please, and who often demonstrated behavior which was outside of that expected for a senior officer. CGPC stated, however, that the XO treated all of his subordinates the same.

CGPC stated that the evidence offered by the applicant to prove the inaccuracy of the statement "Poor military bearing before all hands when presented BZ ltr" differs only in degree with the reporting officer's description of the applicant's demeanor. He

stated that applicant's statement that he stood reflectively coupled with a statement from another individual that the applicant was less than enthusiastic, could be reasonably interpreted, as the XO did, as poor military bearing.

With respect to the comments in the OER that the applicant made policy changes without the supervisor's knowledge, CGPC stated that the supervisor had denied that he was aware of any policy change until September XXXX. "As a department head, [the applicant previous supervisor] may have given the Applicant what appeared to be over-arching authority to handle situations, but the vague description of the content of their discussion does not countermand the supervisor's OER reply endorsement."

CGPC stated that the comment about the applicant's showing disdain for the QMB "was only refuted in degree." He stated that the reporting officer interpreted the exchange that occurred between him and the applicant during this event "as disdain for the process" by the applicant.

CGPC concluded by stating the following:

[The LT's statement] provides evidence that the reporting officer was not prejudiced against Applicant, rather had strong opinions and applied his leadership style to all members of the command. "[The LT] states [the reporting officer] disliked unit personnel stating their opinion to him when it was in conflict with his own. [The reporting officer] would become visibly irritated during such discussions, and even considered it insubordination when a subordinate would try more than once to explain their view point to him." The same [LT] describes applicant as having "a strong personality and is not afraid to speak his mind even if it may offend another individual." These two descriptions paint a clear picture for the possibility of a personality conflict between these members of the rating chain but does not support claims of prejudice.

Applicant Reply to the Views of the Coast Guard

On January 3, 2003, the Board received the applicant's response to the views of the Coast Guard. He disagreed with the arguments and recommendation of the Chief Counsel.

The applicant stated that CGPC is correct when it stated that Article 10.A.1.b.1. of the Personnel Manual required COs to ensure that accurate, fair and objective evaluations are provided to all officers under their command. He stated that his application contains evidence that questions the reporting officer's ability to evaluate him in a fair and objective manner. He stated that he has provided evidence that the reporting officer frequently disregarded the applicable provisions of the Personnel Manual in evaluating subordinates, as shown by his tendency to change Supervisor's sections of an OER without their approval or permission.

The applicant stated that the Coast Guard conceded that the reporting officer was abusive and demeaning "toward all/many subordinates, officer and enlisted alike." He argued that since the Coast Guard was unable to refute the unprofessional conduct of the reporting officer, it has instead sought to establish that there was a factual basis for the disputed marks and comments by addressing specific incidents submitted in support of his application. The applicant restated his interpretation of the evidence and argued that it showed a clear pattern by the reporting officer of abusing and belittling his subordinates. The applicant further stated:

[He] has shown that the Reporting Officer had treated him in such an abusive and unprofessional manner as to raise at least the appearance of impropriety regarding his ability to fairly and objectively evaluate [his] performance during the period in question . . . The [Coast Guard's] response that the Reporting Officer's abject lack of professionalism and abusive treatment of the [applicant] cannot be shown to have had a negative impact on the rating process since he was equally abusive toward many or all of his subordinates is intellectually disingenuous.

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 of the case pursuant section 1552 of title 10, United States Code. It is timely.
2. The applicant requested an oral hearing. The Chairman, 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 failed to provide sufficient evidence to persuade the Board that the disputed OER is an inaccurate assessment of his performance or otherwise unjust. The applicant's primary contention is that the reporting officer was biased against him due to a personality conflict that caused the reporting officer to be unable to objectively evaluate the applicant's performance. He also alleged that the reporting officer and CO were prejudiced against him after he appealed the CO's decision to relieve him as the assistant head of the inspections department.
4. There is some evidence in the record that a personality conflict existed between the applicant and the reporting officer. Although the LCDR wrote that the reporting officer had a serious personality conflict with the applicant, he failed to explain the basis for the personality conflict or provide specific details on how he reached the conclusion that such a personality conflict existed between them. The CWO stated that the reporting officer's dislike for the applicant could have resulted from the reporting officer's belief that the changes implemented by the applicant were a criticism

of the reporting officer who headed the inspections department before becoming the executive officer. Again this statement is based on speculation. There is no direct evidence that any personality conflict that may have existed between the applicant and the reporting officer resulted from changes the applicant implemented in the inspections department.

5. There are statements from the LT and CWO4 that the reporting officer treated the applicant abusively at a QMB meeting. Each stated that the reporting officer's behavior was so "abhorrent" that it resulted in the District Fourteen Quality Performance Consultant counseling the reporting officer on his treatment of the applicant. Again these statements are short on detail. There is no detailed description of the reporting officer's behavior at the meeting or what he actually said. Also, there is no statement from the District Fourteen Quality Performance Consultant that counseling was indeed provided to the reporting officer about his treatment of the applicant. Without more detail, the Board cannot say that the reporting officer's treatment of the applicant at this meeting was so abhorrent as to be indicative of a bias against the applicant.

6. Quite a bit of the evidence submitted by the applicant is devoted to a meeting held by the CO with other officers, while the applicant was on leave, that allegedly resulted in the applicant being relieved of duty as the assistant department head. However, it was the CO and not the reporting officer that held this meeting and relieved the applicant. There is no evidence in the record that the reporting officer had anything to do with arranging the meeting or influencing the junior officer's to complain against the applicant. One individual stated that the reporting officer did nothing to stop the tirade by the junior officer's against the applicant. However, it was the CO's meeting and not that of the reporting officer. It was the CO who stated that he had lost confidence in the applicant's leadership of the department. The Board is not persuaded that the applicant's removal from his assistant department head duties was in error or unjust. The Board notes that the applicant's appeal of his removal was apparently denied. The evidence is not clear how the reporting officer and CO manifested their alleged prejudice against the applicant after he appealed his removal as assistant department head.

7. The applicant's argument that the reporting officer allegedly changed OER marks and comments without the permission or approval of the rating chain supervisors does not establish that the reporting officer was hostile, abusive, or prejudiced against the applicant. Even if true, it has very little relevance to the applicant's case since he has not alleged that the reporting officer changed the supervisor's marks or comments on the disputed OER. Neither of the officers who submitted statements indicated that they were aware of the reporting officer changing any of the supervisor's marks on the disputed OER.

8. Although the applicant has failed to demonstrate by a preponderance of the evidence that the reporting officer and CO were biased against him, the Board must still consider whether any of the challenged comments in the disputed OER are inaccurate.

The applicant has not submitted sufficient evidence to prove that the comment "w/out consulting supervisor, dictated unreasonable policies such as severely limiting who could sign qual[ification] book" is inaccurate. Neither the CWO4 nor the LCDR who addressed this issue stated that the issue discussed between the applicant and the supervisor was that mentioned in the disputed OER. The CWO4 stated that the applicant discussed some department shortcomings with his supervisor but he did not state what those shortcomings were. The LCDR stated that the applicant and supervisor shared an office and had ample opportunity to discuss inspection issues, but he provided no evidence that they discussed the issue mentioned in the above comment.

9. With respect to the comment that the applicant "showed disdain for efforts of QMB when CO was not present," the applicant offered statements from the CWO4 and the LT that he did not show disdain for the efforts of the QMB, but was merely trying to get a point across to the reporting officer. The Board finds the statements from the CWO4 and the LT to be conclusory and lacking in the kind of detail that permits the Board to find the comment as written in the OER is inaccurate.

10. With respect to the comment that the applicant showed "Poor military bearing before all hands when presented BZ ltr," the LT stated that the applicant was less than enthusiastic but showed not disrespect. According to the LT, the applicant stood tall, was quiet, and looked at the ground. The CWO4 also stated that the applicant was not disrespectful at the all hands meeting. In contrast, the reporting officer stated in his reply to the OER that the applicant "stood with his hands in his pocket, shifting uneasily, and at one time rolled his eyes." Taking all of these statements into consideration, the Board finds the applicant exhibited some mannerisms that the reporting officer interpreted to be less than satisfactory military bearing. The applicant has presented insufficient evidence to prove the statement in the OER about his military bearing to be inaccurate.

11. The Chief Counsel commented that the reporting officer was a difficult boss who sometimes demonstrated behavior outside of that expected of a senior officer, but he did not state as the applicant claims, that the reporting officer's behavior was abusive and demeaning. Nor does the Board find that the applicant has proven by a preponderance of the evidence that the reporting officer treated him in an abusive manner. The Personnel Manual does not require that a reporting officer have a certain management style. However, Article 10-A-1(b)(2) of the Personnel Manual does state that "there is only one person responsible for managing the performance of an individual officer and that is the officer himself or herself. He or she 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." It was not unfair for the rating chain to expect the applicant to meet their expectations. It was the applicant's duty to adjust his performance to meet their requirements, and if he failed to do so, it was appropriate to mention such failures in the disputed OER.

12. In an effort to show the disputed OER to be erroneous, the applicant compared the evaluation of his performance in the disputed OER with that in previous OERs. While an applicant's past performance can be a factor in considering whether a particular OER is inaccurate, such past performance alone cannot be the sole basis for removing an OER. In this case, the applicant has not shown by a preponderance of the evidence an error or injustice in the disputed OER. Additionally, an OER is an evaluation of performance for a specific period of time and is based upon a particular rating chain's judgment and observations of a subordinate. Each evaluation stands on its own merit, in the absence of error or injustice.

13. The rating chain supervisor did not serve as the applicant's supervisor for the entire rating period covered by the disputed OER. However, the supervisor stated that he received direct input from the applicant's previous supervisor about the applicant's performance as assistant department head, as permitted under the Personnel Manual. The applicant also claimed that the reporting officer gave the rating chain supervisor and the CO erroneous information about his performance leading to the inaccurate disputed OER. The applicant has not presented any evidence that the reporting officer gave the supervisor or CO any erroneous information. It was not a violation of the Personnel Manual for the supervisor to obtain input from other individuals who were familiar with the applicant's performance. Article 10.A.4 c.4.d. of the Personnel Manual states that "the Supervisor shall draw on his/her own observations, from those of any secondary Supervisors, and from other information accumulated during the reporting period." The Board finds the applicant's allegations discussed herein to be without merit.

14. Since the applicant has failed to prove error or injustice with respect to the disputed OER, the Board finds no basis on which to remove the applicant's failure of selection for promotion to LCDR. The disputed OER made the applicant's record appear worse and it was not likely that he would be promoted with the OER in his record. However, the disputed OER was properly considered by the 2002 LCDR selection board because it has not been shown to be in error or unjust.

15. Accordingly, the Board finds that the applicant has failed to prove by a preponderance of the evidence that the disputed OER is inaccurate or unjust. Therefore, the applicant's request for relief should be denied.

ORDER

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



