

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2008-023

**XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX**

FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case on November 8, 2007, upon receipt of the applicant's completed application, and subsequently prepared the final decision for the Board as required by 33 CFR § 52.61(c).

This final decision, dated July 24, 2008, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant asked the Board to correct his military record by raising one mark on his officer evaluation report (OER) for the period June 1, 2005 to February 22, 2006 (disputed OER). Specifically, the applicant requested that the mark on the comparison scale (block 9) be raised from the 4th place ("good performer; give tough, challenging assignments") to the 6th ("strongly recommended for accelerated promotion") or 7th place ("BEST OFFICER of this grade"). The comparison scale is the block on the OER where the reporting officer compares the reported-on officer with others of the same grade that the reporting officer has known in his career.

The applicant's marks in the eighteen performance dimensions on the subject OER were eleven 7s and seven 6s¹, with highly complimentary remarks in the comment sections: such as the applicant was as an adamant team builder, developed high quality boarding packages, was an excellent Coast Guard ambassador, had superior ability, exceeded expectations every time, handled complex ship exercises with ease, displayed keen situational awareness, and had sound tactical judgment that was trusted by commodore, etc. Notwithstanding the high marks and glowing comments in the performance dimensions, the OER contains a mark in the fourth place on the comparison scale (block 9). In block 10 of the OER the reporting officer described the applicant's potential as follows:

¹ OER marks range from a low of 1 to a high of 7. A 4 is considered to be an average mark.

A first-rate ambassador for the CG . . . who deserves greater leadership responsibilities as soon as possible . . . [The applicant] routinely given most difficult assignments because of reputation for excellence . . . 1 [of] 12 [junior officers] at [command]. Continues to work at [LCDR] level as [underway] STAO & planner for high-visibly CNT conferences/exercises . . . Promote to [LCDR] at earliest opportunity. [The applicant] has my highest possible recommendation for assignments of maximum responsibility, including command afloat/ashore. Highly recommended for post-graduate school. Sound judgment & ethics, professional acumen, & leadership qualities will make this officer extremely successful at any level.

Because the reporting officer was not a Coast Guard officer, the personnel Manual required the Coast Guard reviewer, who is always a Coast Guard officer, to attach a sheet with comments and a comparison scale mark. The reviewer gave the applicant a mark in the 4th block on the comparison scale, which was the same mark as that shown in the reporting officer's section, and wrote the following comments:

Concur with the marks and written comments of this report. Comments are a well documented reflection of [the applicant's] continued exemplary performance as a Coast Guard [REDACTED]

* * *

[The applicant] has represented the Coast Guard with distinction while serving as a [REDACTED]. Strongly recommended for promotion to LCDR with peers. Strongly recommended for post graduate school in program of choice. [The applicant] should definitely be assigned to positions of greater responsibility in the Coast Guard.

The applicant alleged that the mark on the comparison scale of the disputed OER should be raised to accurately reflect his exemplary performance as documented on the OER. The applicant also argued that his receipt of the Navy Commendation Award for outstanding performance for the period under review and his previous excellent OER that was prepared by the same rating chain, in which he received a mark in the 7th place in block 9 and similar positive marks and comments in the performance dimensions, support his contention that the block 9 mark on the disputed OER is erroneous. The applicant stated that he changed duty stations in February 2006 and believed that personnel at his new duty station changed the mark in error.

VIEWS OF THE COAST GUARD

On March 18, 2008, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant relief to the applicant, as recommended by the Commander, Coast Guard Personnel Command (CGPC) in a memorandum attached to the advisory opinion as Enclosure (1). In recommending relief, CGPC stated the following:

In [this] case, Reviewer Comments and a comparison scale mark were required because the applicant's Reporting Officer is a Navy Officer (please note that my staff attempted but could not obtain a statement from the Navy officer who served as the reporting Officer for the disputed OER). The Reviewer's comments and comparison scale mark carry more weight in this situation because he provides the Coast Guard perspective to the disputed OER. In [a statement from the Reviewer], the Reviewer recommends that the Reporting Officer and Reviewer's comparison scale marks be raised to the sixth mark from the left (Strongly recommended for accelerated promotion). I agree.

As indicated above, the Coast Guard obtained a declaration from the Reviewer about the applicant's allegation. The reviewer stated the following:

I have reviewed the applicant's . . . package including both his 2005 and 2006 OERs. Unfortunately I do not recall the specifics of why I gave [the applicant] a mark of 4 on the Reviewer Comment sheet for his OER ending [February 22, 2006] due to the time that has lapsed and volume of OERs I have drafted/reviewed since that time. Although I had limited contact with the applicant during the period, I do not recall anything that would have warranted a mark of 4. It appears that there was an inadvertent oversight and based on the contents of the OER and the applicant's performance level, a new comparisons scale mark is justified. As a result, I recommend that the BCMR Board change the reporting officer's and Reviewer's comparison scale marks to [6].

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

The Board provided the applicant 30 days to respond to the views of the Coast Guard. In his response, the applicant agreed with the Coast Guard views.

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 submissions, and applicable law:

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

2. The JAG recommended that the applicant's request for relief be granted. The Board agrees with that recommendation. The Board having reviewed the disputed OER finds that the mark in the 4th block on the comparison scale is not consistent with the reporting officer's declaration in block 10 that the applicant should be promoted at the earliest opportunity. The declaration by the reporting officer is more consistent with a mark in the 6th block on the comparison scale which describes an officer whose promotion to the next grade should be accelerated. The reviewer also recommended that the comparison scale mark be revised from the

4th to the 6th place. Additionally, other evidence persuades the Board that the mark should be revised upward. In this regard, the Board notes that the same reporting officer and reviewer for the applicant's previous OER gave him similar high marks and positive comments and marked him in the highest place on that comparison scale. Additionally, there is nothing in the marks and comments on the disputed OER that explains why the applicant dropped three places on the comparison scale from the previous OER when both OERs were prepared by the same reporting officer and reviewer. Last, the reviewer stated that the comparison scale mark on the disputed OER appears to have been inadvertent since he could recall nothing that would have warranted him marking the applicant in the 4th place. He therefore recommended that the mark be raised to the 6th place on the comparison scale for the reporting officer's section of the OER, as well as the reviewer's comment sheet of the disputed OER.

3. The Coast Guard was unable to obtain a statement about the OER from the reporting officer and the Board would normally not raise a mark on an OER without the input from the particular rater. However, upon reviewing the OER in question, it is clear to the Board that the mark in the 4th place on the comparison scale is in error or unjust because it is inconsistent with the evaluation of the applicant's performance on the disputed OER. In the performance of duties, communication skills, leadership skills, and personal and professional qualities sections of the disputed OER, the applicant received no mark lower than 6. Further, the comments by the supervisor and reporting officer that the applicant was as an adamant team builder, developed high quality boarding packages, was an excellent Coast Guard ambassador, had superior ability, exceeded expectations every time, handled complex ship exercises with ease, displayed keen situational awareness, and had sound tactical judgment that was trusted by commodore, etc., are not descriptions of an officer who is merely a good performer that should be given tough challenging assignments. Based on the evaluation of the applicant's performance on the disputed OER, his skills and qualifications had far exceeded that of a good performer.

4. The Coast Guard, the reviewer, and the applicant agree that the disputed mark is erroneous and that it should be raised to the 6th block on the comparison scale. The Board agrees and finds the evaluation of the applicant's performance on the disputed OER supports a mark in the 6th block on the comparison scale.

5. Accordingly, the applicant should be granted relief.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of XXXXXXXXXXXXXXXX, USCG, for correction of his military record is granted as follows:

His OER for the period June 1, 2005, to October 22, 2006, shall be corrected by raising the mark on the comparison scale in block 9 to the sixth place (“Strongly recommended for accelerated promotion”) and to the sixth place on the reviewer comment page.

No other relief is granted.

