

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2012-084**

**XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX**

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**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 application upon receipt of the applicant's completed application on February 29, 2012, and subsequently prepared the final decision as required by 33 CFR § 52.61(c).

This final decision, dated August 16, 2012, 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 modify his officer evaluation report (OER) for the period from June 14, 2008 to June 30, 2009 (disputed OER) by making the following corrections:

- Raise the mark in "communication skills" from 4 to 5;
- Raise the mark in "workplace climate" from 4 to 6;
- Raise the mark in "responsibility" from 3 to 5;
- Raise the mark in "professional presence" from 4 to 5; and
- Raise the mark on the block 9 comparison scale from the middle block (fourth) to the 5th highest block.

The applicant also asked that the disputed OER be corrected by removing the following two comments:

"Failed to adapt to new role as mbr of Wardroom bridging gap [between] officers & crew; counseled on repeated exclusive relationships w/subordinates" (in section 8 of disputed OER).

"Anticipate promotion recommendation next period upon strengthening in personal and professional qualities" ( n section 10 of disputed OER).

The applicant alleged that the disputed marks and comments are inaccurate because they were assigned based upon the CO's undue influence on the supervisor and reporting officer. The applicant stated that in May 2009, his supervisor showed him the OER that he intended to submit to the reporting officer. The applicant stated that the supervisor explained to him that the supervisor and reporting officer were trying to "fabricate" an OER that the CO would approve. The applicant further stated on this subject:

I was a little confused with this; [the supervisor] explained the reason was because of the conversation I had with the CO nine months earlier about my relationship with the Chief's Mess. I explained to [my supervisor] that I hoped to be evaluated based on my good performance and not to diminish my performance via my OER just so it would meet the expectations of the CO. Prior to [my supervisor] departing PCS, he counseled and provided me with an OER in which he stated "this is the OER I submitted to the XO for you." [The applicant attached that alleged OER to his BCMR application.]

On or about July 2009, both [the supervisor] and [reporting officer] departed [the cutter]. I was not given an opportunity to observe my OER that they provided to the CO prior to their departure.

When the OER in question was presented to me for signature, [my new supervisor] called me into his stateroom. I read through the OER, and there were major discrepancies to which I asked for clarification . . . [My supervisor] explained to me there was nothing he could do by way of altering the OER since he had no part in it originally. I refused to sign the OER and requested to speak with the new [reporting officer]. [My reporting officer] repeated the same thing: he had nothing to do with the OER submission so he could offer no help with rectifying any discrepancies that I noted. I formally requested to be counseled by the CO who was the Reviewer. [The reporting officer] came to me and told me that the CO refused to talk to me or counsel me on my OER. [The reporting officer] told me I was required to sign the OER. At first I did not want to sign the OER since it was erroneous. Again, I was told by [the reporting officer] that it was required that I sign the OER. At this point, I felt any further refusal to sign would be considered insubordinate behavior and feared reprisal. I signed the OER as I was ordered.

The applicant asserted he has reason to believe that the CO instructed the supervisor and reporting officer to change their marks, which is a violation of the Personnel Manual. The applicant stated that there is a history of low evaluation marks from the CO during the period in question. He stated that three other officers from the cutter had corrections made to their OERs because of a determination that the command had not followed the Personnel Manual in preparing those OERs.

## VIEWS OF THE COAST GUARD

On or about June 22, 2012, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant relief in accordance with a memorandum submitted by the Commander, Personnel Service Center (PSC).

PSC stated that under the officer evaluation system (OES), the rating chain provides a timely and accurate assessment of an officer's performance through a system of multiple evaluators and reviewers. The responsibility for evaluating the applicant rested with the supervisor, the reporting officer and the reviewer.

Prior to preparing the memorandum in this case, PSC obtained statements from the supervisor, reporting officer, and reviewer for the disputed OER. PSC stated based upon all of the evidence including the supervisor's and reporting officer's affidavits, the supervisor and reporting officer failed to perform their duties in preparing the disputed OER. PSC stated the following in pertinent part:

a. The Supervisor changed the mark in "Speaking and Listening" from a "5" to a "4" after consulting with the reporting officer in hopes of providing an evaluation that they felt the "*CO [Reviewer] would accept.*" . . . It is not unusual for a member of the rating chain to submit to the next member of the rating chain a 'draft' version of the OER to review for edits and typos. This second set of eyes should not be used as a means to change an evaluator's intent. PSC believes the supervisor changed his intended mark of "5" to "4" after discussing the evaluation with the reporting officer in hopes of gaining the Reviewer's approval. The [reporting officer] stated in his declaration that "I have no facts or knowledge to dispute the marks that the [supervisor] assigned for sections 3 thru 5 other than I was certain the CO . . . would not approve them." PSC believes this violates OES policy because the applicant's OER does not represent 'independent views' from the rating chain. . . .

b. The supervisor states in his declaration that he intended to assign the applicant a mark of "6" in the "workplace climate" performance dimension, but after discussions with the [reporting officer] he changed the mark to a "4" in hopes of gaining the reviewer's approval. PSC believes that [the draft OER] represents the supervisor's intended performance evaluation of the applicant and that the supporting comments support the higher marks . . .

c. The [reporting officer] states in his declaration that he believes the applicant deserved a mark of "4" in the "Responsibility" performance dimension but he was "influenced by the [reviewer's] perception that [the applicant] was engaged in unauthorized relationships and questionable ethical behavior with the Chiefs." PSC believes the applicant's official evaluation does not represent an independent view from the [reporting officer] . . .

d. Likewise, the [reporting officer] alleges that a specific phrase in Block 8's comments was "either drafted by the CO [reviewer] and forwarded to me or influenced by her." [Footnote omitted.] PSC believes this phrase "Failed to adapt to new role as mbr of Wardroom bridging gap [between] Officers & crew; counseled on repeated exclusive relationships w/[subordinates]" does not reflect the view of the [reporting officer] conveyed in his declaration [to PSC].

e. The [reporting officer] also states in his declaration that he would have assigned a mark of "5" to the applicant for the "Professional Presence" performance dimension but felt a "4" was the highest mark [the reviewer] would allow." . . . PSC believes the [reporting officer] did not provide an independent view of the applicant for this performance dimension, and subsequently issued a lower mark to improve the likelihood the reviewer approved the evaluation.

f. A critical job of the [reporting officer] is the block 9 comparison scale for which the reporting officer compares the applicant to all other CWO3s the reporting officer has known throughout his career. The reporting officer states in his declaration that he believes the applicant deserved a mark of "5" yet he does not explain why he assigned a mark of "4." PSC opines that the reporting officer did not accurately rate the applicant on the official evaluation given his sworn statements in his declaration.

g. The reporting officer also states in his declaration that he agrees that the Block 10 comment "Anticipate promotion recommendation next period upon strengthening in personal and professional qualities" should be removed. He further comments, "It is my opinion that [the applicant] earned a recommendation for promotion and that the comment resulted from previous comments and marks from section 8 as influenced by the [reviewer]. A promotion recommendation is an optional statement in Block 10. Block 10 must include a statement to describe the officer's ability to assume greater leadership roles and responsibilities for which it does in a positive light and neither the applicant nor the reporting officer dispute it. PSC believes the comment does not reflect the views of the reporting officer."

PSC stated that prior to evaluating the applicant in the disputed OER, the reporting officer was unduly influenced by the CO in completing three other OERs for officers at the unit. PSC stated that in all three instances, the CO directed the reporting officer to change marks. This violated OES policy and eventually resulted in all three records being expunged by either the PRRB or BCMR board process. PSC stated that given the CO's documented subversion of the independent evaluation process, it is reasonable to assume the RO felt the applicant's report would receive similar scrutiny and direction.

PSC stated that it believes that the disputed OER contains some inaccuracies and does not represent the supervisor's or reporting officer's true appraisal of the applicant's performance. PSC stated that the reviewer should have noted her views of the applicant's performance through the submission of a reviewer comment page.

PSC concluded its comments by stating that the supervisor and reporting officer failed to provide their own independent view of the applicant's performance. PSC further concluded that the reviewer should have submitted a reviewer comment page to express her view of the applicant's performance, rather than directing the rating chain to assign or to change certain marks. Finally, PSC concluded that there was sufficient information in the declarations from the supervisor and reporting officer to correct the disputed OER to accurately reflect his performance for the period under review. PSC recommended the disputed OER be corrected in the following manner:

- a. Raise the mark from 4 to 5 in speaking and listening;
- b. Raise the mark from 4 to 6 in workplace climate.
- c. Raise the mark from 3 to 4 in responsibility.
- d. Raise the mark from 4 to 5 in professional presence.
- e. Remove the following phrase from block 8: "Failed to adapt to new role as mbr of Wardroom bridging the gap btwn Officers & crew; counseled on repeated exclusive relationships w/subordinates.
- f. Change the comparison scale mark in Block 9 from the center (fourth block) to the fifth highest block to the right.
- g. Remove the following phrase from block 10 comments: "Anticipate promotion recommendation next period upon strengthening in personal and professional qualities."

### **Supervisor's Affidavit**

In addition to the comments discussed in the advisory opinion, the supervisor stated the following in pertinent part:

After I submitted my portion of [the applicant's] OER, I was approached by [the reporting officer] who said that he had gone through this process during this marking period with three Deck Watch Officer (DWO) OERs. He said the CO had sent back the three DWO OERs with instructions as to how to mark certain categories and [the reporting officer] suggested we come up with an OER submission for [the applicant] the CO would accept. So, I changed the marks I originally submitted to reflect what the CO would accept.

### **Reporting Officer's Affidavit**

In addition to comments discussed in the advisory opinion, the reporting officer stated that he supported the applicant's contention that his assigned marks in "speaking and listening" and "workplace climate" should be raised, as originally submitted by his supervisor. He stated that "I have no facts or knowledge to dispute the marks that the supervisor assigned . . . other than I was certain the commanding officer would not approve of them."

The reporting officer stated that he previously dealt with the CO on other OERs on which she directly influenced the marks and comments assigned by supervisors and himself. He stated that he discussed the situation with the supervisor and they agreed to lower the applicant's marks.

The reporting officer stated that with regard to his portion of the OER, he would have assigned a mark of 4 in "Responsibility" if he had not been influenced by the CO. He admitted that the two disputed comments were either written by or influenced by the CO. The reporting officer also stated that he agreed with the applicant's contention that the 4 in "Professional presence" should be raised to 5. He stated that he believes that he assigned a 4 due to the CO influence on the OER.

### **Reviewer's Affidavit**

The reviewer also submitted an affidavit standing by the OER as an accurate assessment of the applicant's performance. She provided a four- page statement justifying the evaluation in the disputed OER. In conclusion she stated:

I do not concur with [the applicant's] characterization of the officer evaluation system during my command. High performing officers ultimately received orders to Coast Guard cutters as Commanding Officers and executive officer; they received orders to flight school and to special assignments. In addition, one officer was in-zone reordered at a promotion board. These officers were marked with the same integrity to the OES as [the applicant] was marked.

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

On July 29, 2012, the applicant responded to the views of the Coast Guard and agreed with them.

### **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 section 1552 of title 10 of the United States Code. The application was timely.
2. The applicant alleged that the disputed marks and comments on the OER under review are inaccurate because they do not reflect his supervisor's and reporting officer's honest evaluation of his performance. In this regard, the applicant alleged that the reviewer, who was also the CO, directed or unduly influenced the supervisor and reporting officer either to assign or to change certain marks and comments on the OER to ones she thought were appropriate.
3. The JAG stated the supervisor and reporting officer failed to provide their own independent views of the applicant's performance. The advisory opinion also stated, and the Board agrees, that the preponderance of the evidence shows that the disputed marks and comments on the OER were assigned to satisfy the CO and were not an honest assessment of the supervisor's and reporting officer's opinions of the applicant's performance. In this regard, the supervisor and reporting officer admitted that they allowed certain of their marks and comments

on the disputed OER to be influenced by their fear of whether the CO would accept any higher marks. Their actions violated Article 10.A.2.a. of the Personnel Manual (2007), which states the following:

The rating chain provides the assessment of an officer's performance and value to the Coast Guard through a system of multiple evaluators and reviewers who present independent views and ensure accuracy and timeliness of reporting. It reinforces decentralization by placing responsibilities for development and performance evaluation at the lowest level within the command structure.

4. Moreover, the supervisor admitted that after a discussion with the reporting officer (who was the executive officer), he changed marks on the applicant's OER to those the reporting officer believed the CO would accept so that the OER would not be returned to them. The Board finds that the reporting officer influenced the supervisor to submit inaccurate marks to satisfy the CO. This appears to be a violation of the intent Article 2.A.2.e.2.c. of the Personnel Manual which states that the reporting officer shall not direct that an evaluation mark or comment be changed.

5. In addition, the reporting officer stated that some of the disputed marks and comments on the OER were the direct result of undue influence from the CO. Article 2.A.2.f.2.c. of the Personnel Manual prohibits the reviewer from directing the reporting officer to change or assign certain marks. If the CO disagreed with the supervisor's and reporting officer's evaluation of the applicant's performance, the appropriate avenue was for her to attach comments providing her view of the applicant's performance. See Article 10.A.2.f.2.b. of the Personnel Manual.

6. In light of the above, the Board agrees with the advisory opinion that the disputed marks and comments do not represent the supervisor's and reporting officer's assessment of the applicant's performance. The Board also agrees with the advisory opinion that sufficient evidence exists in the record to support the recommended corrections. The applicant also agrees with the recommendation for relief in the advisory opinion.

7. Accordingly, relief should be granted to the applicant.

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

## ORDER

The application of XXXXXXXXXXXXXXXXXXXX, for correction of his military record is granted. The OER for the period June 14, 2008 to June 30, 2009, shall be corrected as follows:

- Raise the mark from 4 to 5 in “speaking and listening.”
- Raise the mark from 4 to 6 in “workplace climate.”
- Raise the mark from 3 to 4 in “responsibility.”
- Raise the mark from 4 to 5 in “professional presence.”
- Remove the following phrase from block 8 comments: “Failed to adapt to new role as mbr of Wardroom bridging the gap btwn Officers & crew; counseled on repeated exclusive relationships w/subordinates.”
- Change the comparison scale mark in Block 9 from the center (fourth block) to the fifth highest block to the right.
- Remove the following phrase from block 10 comments: “Anticipate promotion recommendation next period upon strengthening in personal and professional qualities.”

No other relief is granted.

