

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2013-060



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 September 26, 2013, 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 her officer evaluation report (OER) for the period October 1, 2009 to March 31, 2010 (OER) by raising the mark for "initiative" in section 8 from 3 to 4.¹

The applicant alleged that the reporting officer failed to provide comments to support the mark of 3 in "initiative" in violation of Article 5.A.4.c.(7)(d) of the Coast Guard Officer Accessions, Evaluations, and Promotions regulation, which states that OER marks deviating from a four shall include comments citing specific aspects of the reported-on officer's performance and behavior. Also, Article 5.A.4.k. states that comments "should be both reasonably consistent with the numerical marks assigned and justify those marks which deviate from a four." The applicant stated that because the mark of 3 is not supported by comments as required by regulation, the mark in initiative should be raised to 4.

The OER, in Pertinent Part

As stated the applicant received a mark of 3 for "initiative" in section 8 (Personal and Professional Qualities) of the OER. The comments supporting the section 8 evaluation are as follows:

¹ OER marks range from a low of 1 to a high of 7. A mark of 4 is considered to be the standard for an officer.

Responded to [REDACTED] [REDACTED] [REDACTED] [REDACTED] training program by scheduling [REDACTED] for first portion of winter [REDACTED] Patrol. Ensured two [REDACTED] embarked and engaged in cutter LE training program; LE teams educated in complex [REDACTED] LMR regulations. Solid recommendations to Executive Officer while assigned as Preliminary Investigative Officer (PIO) for 3 administrative investigations. Provided succinct report based on valid findings of facts which allowed commanding officer to make reasonable decision in regards to non-judicial punishment. As break-in Conning officer, provided solid recommendations to CO regarding small boat, helicopter and boarding team launch and recovery courses. Identified appropriate course for prevailing conditions to effect safe launch of helo and small boats in support of living marine resource boardings in dynamic [REDACTED] [REDACTED] environment. Quickly responded to and addressed potential safety issue with improper ventilation in DIC during dry dock availability. Brought command level attention to address safety concern resulting in corrective action and improved watchstander safety in space. Maintained rigorous personal fitness plan. Presented physically fit & trim.

VIEWS OF THE COAST GUARD

On May 23, 2013, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny 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. PSC believes that the rating chain fairly evaluated the applicant's performance in accordance with policy.

Prior to preparing the memorandum in this case, PSC obtained statements from the reporting officer and reviewer for the OER who maintained the accuracy of the OER and stressed that the applicant was not a "self-starter," which is a necessary requirement to earn a numerical mark of "4," according to the predetermined standard on the OER form.

Reporting Officer's Declaration

The reporting officer reaffirmed the accuracy of the OER and the mark of 3 in "initiative." In this regard, the reporting officer stated the following:

Earning a mark of "4" would require the member to be a "self-starter" and as documented, [the applicant] only "responded to . . . [REDACTED]s, she did not reach out to them. As an [ensign] with 9 months shipboard, she is documented as being a "break in conning officer" to highlight her not being qualified. Given this the "Responded" vice "Initiated" and that she is documented as still being a break-in, the mark of "3" is supported.

Additionally, although outside of the text of Block Eight, there are comments in Supervisor's Block three "*Although has been challenged and has not achieved final qualification as i/p OOD and u/w DWO.*" And my text in Block 7: Reporting Officers Comments: "*[The applicant] has been challenged during the period to achieve full qualification on primary duties of u/w DWO and i/p OOD but is making notable progress and is on track for near term qualification due to effective goal setting and establishment of a targeted plan of action with the operations Department Head.*"

Reviewer's Declaration

The reviewer, who was the commanding officer (CO), also submitted a declaration standing by the OER as an accurate assessment of the applicant's performance. The reviewer stated the following:

[The applicant's] primary duty aboard [the cutter] was Deck Watch Officer. Unfortunately, she took an extraordinarily long period of time (almost a full year and three full patrols) to qualify despite repeated counseling sessions with her Department Head and Executive Officer. I routinely inquired about her progress with her chain of command as she was clearly behind in the qualification process. I often spoke with her directly on this matter, advising her to work hard towards this critical professional achievement. She was given every resource and opportunity to complete this task, but was not necessarily concerned how long it took to qualify, and thus supported the mark of "3." [The applicant] was clearly not a "Self Starter" in this vital aspect of her primary duty, demonstrating less than average initiative.

The Reporting Officer's comments, block 7, clearly states [the applicant] being challenged in qualifying as Deck Watch Officer. Block 8 refers to her as a Break-in Conning Officer, whereas a Junior Officer in her position should be fully qualified after two full patrols. Finally, in Block 10 Potential, it states again that she was not qualified as Deck watch Officer, although it may have been generous in stating her qualification was imminent. While holding [the applicant] accountable for her lack of initiative, the language was specifically designed to refrain from a derogatory tone which could have resulted in career damaging consequences.

PSC concluded that based on the statements from the rating chain and other comments elsewhere in the OER, the disputed OER is accurate and properly documented as per policy. Specifically, PSC believed that the use of "responded to" in the narrative does not compliment or praise Initiative and therefore was intended to indicate a sub-standard level of performance. PSC further concluded that the comments used to document the assigned numerical mark for "initiative" support a numerical mark of "3," and that the applicant has not provided clear and convincing evidence that overcomes the presumption of regularity with respect to the contested record.

As discussed earlier, the JAG recommended denial in accordance with PSC's comments. However, the JAG stated that "while we note that the applicant's supervisor documented the applicant's "initiative" in a different section of the applicant's OER . . . it is the Reporting Officer, not the Supervisor who is responsible for filling in the appropriate [mark] and including comments to justify deviations from the baseline mark of '4.'"

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 29, 2013, the Board sent the applicant a copy of the views of the Coast Guard for her response. The Board did not receive a response from the applicant.

APPLICABLE REGULATION

Officer Accessions, Evaluations, and Promotions regulation

Article 5.A.4.c.(7)(a) states that section 8 measures an officer's personal and professional qualities. Each performance dimension is defined in terms of three performance standards: below standard, standard, or above standard. The standards are not the same for all forms. Reporting officers must read each standard carefully. A space for supporting comments follows each set of dimensions.

Subsection (b) states in pertinent part that after determining which standard best describes the reported-on officer's performance and qualities during the marking period, the reporting officer selects the appropriate circle on the form.

Subsection (d) states that in the "comments" block following this evaluation area, the reporting officer shall include comments citing specific aspects of the reported-on officer's performance and behavior for each mark that deviates from a four.

Subsection (e) states that comments should amplify and be consistent with the numerical evaluations. They should identify specific strengths and weaknesses in performance.

Subsection (f) states that a mark of 4 represents the expected standard of performance.

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 Board begins its analysis in every case presuming administrative regularity on the part of the Coast Guard and the applicant bears the burden of proving the existence of the error or injustice by a preponderance of the evidence. Absent evidence to the contrary, the Board

presumes that Coast Guard officials and other Government employees have carried out their duties correctly, lawfully, and in good faith. *See* 33 C.F.R. § 52.24(b).

3. The applicant proved by a preponderance of the evidence that the Coast Guard violated Article 5.A.4.c.(7)(d) of the Personnel Manual by failing to provide comments in section 8 to support the below standard mark of 3 in “initiative.” This provision states, with regard to section 8, that “the Reporting Officer shall include comments citing specific aspects of the Reported-on Officer’s performance and behavior for each mark that deviates from a four.” For the OER under review, section 8 does not contain any comments supporting the below standard mark of 3 in “initiative.” The reporting officer’s and reviewer’s declarations attempt to justify the mark by referring to other comments elsewhere in the OER that could support the below standard mark. However, the pertinent provision of the regulation requires that below standard marks in section 8 be supported by specific comments in section 8. There are no comments in section 8 that support the below average mark in “initiative,” which constitute error and entitles the applicant to relief. PSC’s argument that the Board should interpret the words “Responded to” in the comment “Responded to [REDACTED] [REDACTED] training program by scheduling [REDACTED] for first portion of winter [REDACTED] Patrol” as meaning a lack of initiative on the applicant’s part is a stretch too far.

4. Therefore, the Board finds that because there are no comments in section 8 to support the 3 in “initiative,” the mark should be raised to 4, as the applicant requested. A mark of 4 is a standard mark for Coast Guard officers.

5. Accordingly, the applicant is entitled to relief.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of [REDACTED] for correction of her military record is granted. Her OER for the period October 1, 2009 to March 31, 2010, shall be corrected as follows:

The mark in block 8 for “initiative” shall be raised from “3” to “4.”

No other relief is granted.

