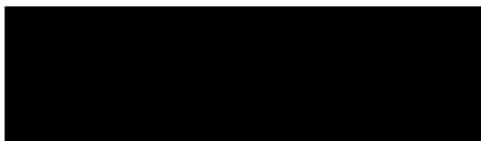


**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2013-170



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 August 21, 2013, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated July 18, 2014, 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, a [REDACTED] on active duty, asked the Board to correct his record by removing a derogatory officer evaluation report (OER) that was prepared following his relief from his primary duties as the [REDACTED] of a Coast Guard cutter on August 30, 2011, and to raise a low mark of 3 (out of 7) he received for the performance category "Judgment" on his next OER, dated January 6, 2012.

The applicant stated that although the commanding officer (CO) of his cutter removed him from his primary duty in August 2011, just one week later the CO recommended him for a two-month, high visibility assignment to an international training program. When he returned stateside in November 2011, he learned that he was under investigation by the Coast Guard's Counter Intelligence Service (CIS). The applicant stated that he was interrogated and cleared of any wrongdoing "but not after being libeled by [the cutter's] command and being permanently transferred to a shore unit." Because of the unfounded accusations, his promotion to LTJG was delayed until June 2012, when the Officer Personnel Management (OPM) Division of the Personnel Service Center told him that he was being retroactively promoted to LTJG as of November 2011, when he should have been promoted.

The applicant stated that he has been working to clear his name since August 2011. He submitted a copy of his appeal of the delay of his promotion, dated February 7, 2012, which contains his allegations regarding the first disputed OER. He noted that he subsequently

received a very responsible assignment [REDACTED] and he had received three outstanding OERs for this work. However, he stated, the derogatory OER and the mark of 3 in his next OER, which “reflect the misguided opinions of an unfairly biased command,” have prevented him from being selected for promotion to lieutenant and so unjustly cut short his career.

SUMMARY OF THE RECORD

The applicant received his commission as an ensign on [REDACTED] and was assigned to serve as a deck watch officer on a large cutter. One of his collateral duties was to be the Command Intelligence Officer (CIO). On his first OER, dated March 31, 2011, he received marks of 4 and 5 in the various performance categories, a mark in the middle, fourth spot on the Comparison Scale, and a recommendation for advancement. In May 2011, the CO assigned him to be the cutter’s [REDACTED] is responsible for supervising and [REDACTED]

The applicant’s next OER is the derogatory OER that covers his service from April 1 through August 30, 2011, and documents his removal from his primary duties as an [REDACTED] and [REDACTED]. The OER contains low marks of 2 and 3 in several performance categories; a mark in the second spot on the Comparison Scale, which denotes only a “qualified officer”; and a comment that he was recommended for promotion to LTJG, as scheduled, but not recommended for promotion to lieutenant. (See OER with addendum and endorsements, Attachment A.) The reporting officer noted that the applicant was most interested and performed best when engaged in law enforcement training and work.

Because this OER was derogatory, the applicant was allowed to submit an addendum to it. In the addendum, dated August 31, 2011, he acknowledged his mistakes and shortcomings as the [REDACTED]. He noted that he was new to the job of [REDACTED] and that his job was made much more difficult because his E-7 and E-6 were not aboard the cutter during the recent patrol. In addition, his work was affected by a very serious and distressing family problem that he learned about in early June 2011. His rating chain disagreed with some of his claims in their endorsements to the addendum. His supervisor stated that the applicant had failed to consult more experienced officers when directed to do so, denied that his family problems would distract him, and adopted a lackadaisical approach to leadership. His reporting officer stated that because of the absence of the E-7 and E-6, the command had reassigned a chief boatswain’s mate (E-7) from another department to the applicant’s [REDACTED] and reassigned all of the applicant’s collateral duties, except Morale Officer, to other personnel.

Soon after being removed from his primary duties, the applicant was sent overseas for a [REDACTED]. In a memorandum dated October 31, 2011, PSC notified the applicant that his promotion to LTJG on November 19, 2011, would be delayed pending an investigation. Upon the applicant’s return from overseas in November, the cutter was still his permanent duty station and so he remained mostly at home awaiting orders while CIS conducted an investigation.

Investigations

On January 13, 2012, a CIS agent reported to the Area Command that an investigation had shown that the applicant posted “sensitive but unclassified videos and pictures on social networking sites about his activities while on a Coast Guard deployment” overseas. CIS had learned about these postings of what appeared to be sensitive but unclassified information on October 31, 2011. The CIS agent stated that the applicant had “revealed information that may constitute an Operations Security violation and/or be prejudicial to good order and discipline” by posting videos of training activities and maritime interdiction techniques with comments describing them. (See, e.g., Attachment B.)

On January 20, 2012, the CO of the cutter designated a preliminary inquiry officer (PIO) to administratively investigate possible misconduct by the applicant based on the findings of the CIS investigation. On January 25, 2012, the PIO submitted a report of the investigation into alleged OPSEC violations committed by the applicant. The PIO stated that the applicant had received OPSEC training before his overseas assignment, but throughout the assignment, he had posted his training location and photographs and videos of his experience and training activities on Facebook and YouTube. He had admitted that he posted them because he wanted to “show off” to his friends. The PIO stated that some of the images posted by the applicant could bring discredit on himself and the Service since he is a representative of the Coast Guard.

The PIO found that the applicant “did not understand the sensitive nature of his training when posting. In addition, he posted his timeline and location of training. His posts are a violation of OPSEC policy.” The PIO stated that some of the postings lacked mitigating context, and some revealed law enforcement tactics. The PIO found that the “actual disclosure of law enforcement tactics is minimal” and that most of the content could be found elsewhere on the internet by searching for “law enforcement maritime tactics,” for example. The PIO concluded that the applicant had “exercised poor judgment by posting pictures and video to social networking sites with either too much information about his training course or no information that may explain the content of the individual pictures.” He recommended that the applicant receive additional OPSEC training and counseling.

Second Disputed OER

The applicant’s OER for the period September 1, 2011, through January 6, 2012 (Attachment C), when he was transferred to a shore unit, notes that he performed the two-month assignment and a one-week assignment at an [REDACTED] but that there was no opportunity to evaluate his performance for 107 [REDACTED] reporting period. Most of the performance marks on this [REDACTED] [REDACTED] are “not observed,” but he received an excellent mark of 6 in “Health and Well-Being,” strong marks of 5 for “Speaking & Listening” and “Writing,” a standard mark of 4 for “Professional Presence,” the disputed low mark of 3 for “Judgment,” and a mark in the third spot on the Comparison Scale. The low marks are supported by the following comments:

- “Exhibited poor judgment w/ CG OPSEC policy. Published sensitive information to social networking sites, demonstrated immature behavior & knowingly violated regulations.”
- “Recommend [the applicant] be removed from the Lieutenant Junior Grade promotion list per Article 3.A.4.i. of COMDTINST M1000.3, Officer Accessions, Evaluations and Promotions, and re-compete for promotion at the next board.”

Recommendation for Removal from Promotion List

On January 31, 2012, the CO of the cutter sent the Personnel Service Center (PSC) a memorandum stating that an administrative investigation had shown that the applicant had not violated any articles of the Uniform Code of Military Justice but had “displayed poor judgment and failed to abide by Coast Guard OPSEC policies.” The CO stated that the applicant had shown a “trend of bad decision-making and immature behavior.” He noted that the applicant had posted information that “was easily misconstrued as either sensitive to law enforcement procedures or unprofessional without considering the ramifications of his actions.” The CO recommended that the applicant’s name be removed from the LTJG promotion list.

On February 7, 2012, the applicant submitted a s[REDACTED] response to his CO’s recommendation that his name be removed from the promotion list. The applicant stated that the cutter had gotten underway just two weeks after he became the s[REDACTED] in May 2011. During this deployment, his chief petty officer was aw[REDACTED] his first class petty officer left the cutter the first night due to a medical problem. Other experienced officers and chiefs helped him get organized but the two empty positions were not backfilled and so his work was “overwhelming as I battled the work load of 3 people, stood a 1-in-3 underway OOD rotation, and broke in as a boarding officer.” Then two weeks into the patrol, he received very distressing news from home. Although he received emotional support, the problem was “a prominent and distracting presence in my mind that lasted through August.” As a result of these issues, his “performance suffered. I missed deadlines with work and had a few close calls with certain administrative and personnel tasks,” but no one was endangered or disqualified because of his performance. In addition, his efforts contributed to the crew’s receipt of a Seamanship Award and a Battle “E” Award.

The applicant stated that after the patrol, the cutter participated in three weeks of training exercises. During the last week of these exercises, the CO told him that he was being relieved of his duties and transferred off the ship. The applicant argued that his performance aboard the cutter had been “mediocre at its worst” and s[REDACTED] justify removing him from his duties and that his rating chain had fail[REDACTED]dge the extraordinary difficulties he had faced with his s[REDACTED] personal stress, and the absence of his two most experienced petty officers.

The applicant stated that in November 2011, when he learned from his roommate that he was under investigation because of his posts on Facebook during his overseas training assignment, he immediately removed everything he had posted and deactivated his Facebook account “just to be sure.” The applicant disagreed with the conclusions of the PIO and CO, however, and noted that the CIS investigation had not led to any criminal charges. He alleged that the photo

that shows him holding a bottle of Jim Beam and a cup does not show any inappropriate behavior or discredit the Coast Guard. He stated that he was not behaving inappropriately, was holding the bottle because he had just made a presentation, and his command's assumption that he was behaving inappropriately was speculative. He pointed out that the PIO had found that disclosure of law enforcement material in his postings was minimal. Moreover, the applicant stated, he had not received a security briefing, and no one had told him what he was not allowed to post. He stated that his alleged mistakes in this regard should not overshadow the fact that he had received high marks on both the physical and academic tests during the course and should not prevent him from being promoted to LTJG. The applicant included with his statement several documents including a note from the overseas school stating that the applicant's "military, disciplinary, and academic performance was EXCELLENT. He fulfilled all of the requirements and demonstrated a high grade of professionalism and dedication in the instruction, accomplishing all proposed objectives."

On February 9, 2012, the Area Command concurred with the CO's recommendations and recommended that the applicant be removed from the promotion list pursuant to Article 3.A.4.i. of COMDTINST M1000.3.¹ He noted that "promotion is not a reward for satisfactory service but rather a confirmation of an officer's demonstrated potential to serve the Coast Guard in a higher grade," and that the applicant had fallen short of this standard. He recommended that the applicant be reassigned to a law-enforcement related staff billet to "maximize his contributions to the service based on his training" and "begin to turn his career around."

From January 7 to July 2, 2012, the applicant served as an assistant to the head of a [REDACTED] at a large base. On June 7, 2012, PSC advised the applicant that based on a review of his record by a panel of officers, the delay of his promotion had been canceled and that he was being promoted to LTJG with a retroactive date of rank of November 19, 2011, and that he would receive back pay and allowances. On his OER for this new assignment, the applicant received strong marks of 4, 5, and 6 in the performance categories, a mark in the fifth spot on the Comparison Scale, and a strong recommendation for promotion to LT.

In July 2013, the applicant was transferred to serve as [REDACTED] at a Coast Guard [REDACTED]. On his OERs dated January 31, 2013, and May 21, 2013, he received [REDACTED] of 5 and 6 in the performance categories, marks in the fifth spot on the Comparison Scale, and strong recommendations for promotion. However, he was not selected for promotion by the LT selection board that convened in [REDACTED].

VIEWS OF THE COAST GUARD

On December 30, 2013, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the requested relief but remove two comments from the OER dated January 6, 2012. In so doing, the JAG adopted the findings and analysis of the case provided in a memorandum prepared by PSC.

¹ Article 3.A.4.i. of COMDTINST M1000.3 permits the removal of an officer from a list of selectees for promotion.

Based on sworn declarations submitted by the applicant's rating chains, which strongly affirm the accuracy of the disputed OERs (see Attachment D), PSC stated that the applicant's CO properly removed the applicant from his primary duties and that his rating officials "accurately and objectively evaluated the applicant's performance during the two periods of report."

With respect to the second disputed OER, PSC recommended that the Board remove the phrases "w/CG OPSEC policy" and "& knowingly violated regulations" because "PSC did not find any evidence in the rating chain's declarations to support the use of wording that says the applicant violated certain OPSEC policy(ies) or regulations." However, the rating chain members actually confirmed in their declarations that the applicant had violated OPSEC policies.

Although PSC recommended the redaction of the two phrases, PSC argued that no other relief should be granted because the remaining negative comments in that OER are sufficient to support the low mark of 3 that the applicant received for "Judgment."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

In response to the views of the Coast Guard, the applicant strongly objected to the declarations of his rating officials. He alleged that aboard the cutter, he was under constant pressure due to a hostile work environment. He alleged that the [REDACTED] berated him and publicly humiliated him at every opportunity and often made snide or vulgar remarks or veiled threats to him. The applicant alleged that he informed his [REDACTED] about this conduct to no avail. He also alleged that his supervisor, the [REDACTED], would "frequently go around me and straight to my subordinates and then criticize me for a lack of involvement in my division," which bred "an extremely toxic environment of distrust." He alleged that he did not file a complaint because he thought that doing so would be "even more detrimental to the social environment onboard." However, "the bullying continued to get worse":

The reality is that my situation was simply a self-fulfilling prophecy. With the poor command climate and pervasive distrust, my supervisors expected me to fail. When I did experience the typical difficulties of a first-tour junior officer, the hostile work environment brought me down further instead of lifting me up. Despite what they say, I was simply not given an equal opportunity to succeed.

The applicant called the rating chain's declarations inaccurate and "historiography"—"crafting details of the past with the benefit of 20/20 hindsight to support their previous actions." He claimed that they blamed him for failures that were due to a poor team effort rather than his performance alone. And contrary to the [REDACTED]ms, he alleged that they would not have assigned him the position of [REDACTED] if he had actually been a poor performer because the [REDACTED]'s job is a very demanding position with tremendous responsibilities, including oversight of twenty of the most junior personnel and the most dangerous and mission-critical daily operations. He noted that is the only department head position normally held by a junior officer in the second year of a first tour.

The applicant objected to "[c]austic and unnecessary name-calling" and personal attacks intended to "drive more nails into the coffin containing my career." He alleged that the OER

comment that he was recommended for promotion to LTJG but not LT is inappropriate, unprecedented, and “akin to saying that a middle school student is ready for high school, but not college.” And he alleged that the fine quality of his more recent OERs proves that the disputed OERs are erroneous and unjust and a product of the terrible command climate aboard the cutter.

APPLICABLE REGULATIONS

Article 10.A.1.b.1. of the Personnel Manual in effect in August 2011² states that “Commanding officers must ensure accurate, fair, and objective evaluations are provided to all officers under their command.” Article 10.A.4.h.1. of the Personnel Manual states that an OER that documents “adverse performance or conduct that results in the removal of a member from his or her primary duty or position” is “derogatory,” and “[d]erogatory reports are OERs that indicate the Reported-on Officer has failed in the accomplishment of assigned duties.” Likewise, Article 10.A.3.c.1.a. states that an OER “documenting removal from primary duties is derogatory and must be submitted in accordance with Article 10.A.4.h.”

Article 10.A.4.c.4. provides the following instructions for Supervisors completing their section of an OER (similar instructions are provided for Reporting Officers in Article 10.A.4.c.7.):

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. ... 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.

• • •

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 any 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.

• • •

g. A mark of four represents the expected standard of performance. ... [Emphasis added.]

Article 10.A.4.c.8.a. of the Personnel Manual states that on the Comparison Scale in an OER, a Reporting Officer “shall fill in the circle that most closely reflects the Reporting Officer’s ranking of the Reported-on Officer relative to all other officers of the same grade the Reporting Officer has known.”

Article 10.A.4.h.2 states that when an officer receives a derogatory OER, he may respond to the marks and comments in an addendum before the OER is passed to the reviewer. The

² These OER rules were reissued without material amendment in the Officer Accessions, Evaluations, and Promotions Manual, COMDTINST M1000.3, which went into effect in September 2011 when the Personnel Manual was canceled.

Supervisor and Reporting Officer may add comments to the addendum before forwarding it to the Reviewer, who ensures that the information in the OER is consistent and that the derogatory information is substantiated.

OPSEC Program Manual

The Coast Guard's Operations Security (OPSEC) Program Manual, COMDTINST M5510.24A, defines OPSEC as a "process used to deny potential adversaries information about capabilities and intentions by identifying, controlling, and protecting generally unclassified evidence of the planning and execution of sensitive activities." The manual requires OPSEC training for all members and refresher training annually. Enclosure (3) lists "common OPSEC indicators ... as a baseline to facilitate OPSEC planning." The list included temporary duty orders, schedules, exercises and training in particular areas with particular forces, standard reactions to hostile acts, and standard maneuvers or procedures.

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 under 10 U.S.C. § 1552. The application was timely filed.

2. The applicant alleged that the derogatory OER in his record and the mark of 3 for "Judgment" in his next OER are the erroneous and unjust results of unreasonably high expectations on the part of his command, the absence of his two most experienced petty officers, an extremely stressful family situation, and a hostile work environment. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed OER in an applicant's military record is correct and fair, and the applicant bears the burden of proving by a preponderance of the evidence that the OER is erroneous or unjust.³ Absent specific evidence to the contrary, the Board presumes that the members of an applicant's rating chain have acted "correctly, lawfully, and in good faith" in preparing their evaluations.⁴ To be entitled to relief, the applicant cannot "merely allege or prove that an [OER] seems inaccurate, incomplete or subjective in some sense," but must prove that the disputed OER was adversely affected by a "misstatement of significant hard fact," factors "which had no business being in the rating process," or a prejudicial violation of a statute or regulation.⁵

3. The applicant has submitted no evidence to support his allegations of error and injustice in the derogatory OER except to point to the fact that he has received much better OERs in his more recent assignments. The fact that he has received better OERs for his performance in other assignments is not probative of the accuracy of the derogatory OER. The record before the

³ 33 C.F.R. § 52.24(b).

⁴ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁵ *Hary v. United States*, 618 F.2d 704, 708 (Ct. Cl. 1980), cited in *Lindsay v. United States*, 295 F.3d 1252, 1259 (Fed. Cir. 2002).

Board contains no evidence supporting his claims that his command's expectations were too high, that he was bullied or subject to a hostile work environment, or that he should not have been expected to perform his duties competently because of his family's situation. Although he alleged that as a new [REDACTED] he was significantly handicapped by the absence of his chief and first class boatswain's mates, his rating chain stated that they reassigned another chief boatswain's mate to his department during this period, which the applicant did not deny. In addition, his supervisor noted that because no maintenance was underway, the applicant's duties during the patrol included only "managing the small boat schedule and supervising his department watch schedule." Given the lack of evidence supporting the applicant's claims, the Board finds that he has not proven by a preponderance of the evidence that the derogatory OER is adversely affected by a "misstatement of significant hard fact," factors "which had no business being in the rating process," or a prejudicial violation of a statute or regulation.⁶ The Board will not remove it from his record.

4. Regarding the mark of 3 for "Judgment" in the next OER, the Board finds that it is amply supported in the record because as noted in the report of the investigation, the applicant thoughtlessly posted on social networking sites, despite having undergone OPSEC training, his overseas deployment schedule and location, photos and videos of training exercises with written descriptions, and a photo of him in a meeting room with other military personnel raising a bottle of Jim Beam in one hand with a cup in the other but no explanation of the context. In light of this evidence, the Board finds that the applicant has not proven by a preponderance of the evidence that the low mark of 3 for "Judgment" is erroneous or unjust.

[REDACTED] ended that the Board remove two phrases from the second disputed OER because it could not find "any evidence in the rating chain's declarations to support the use of wording that says the applicant violated certain OPSEC policy(ies) or regulations." The Board agrees with PSC regarding the phrase "& knowingly violated regulations." The rating chain members did not cite a particular regulation that had been violated during the reporting period for this OER, and the Board knows of no regulation that expressly prohibited the applicant from posting the information, photographs, and videos. The Board disagrees with PSC, however, about removing the phrase "w/ CG OPSEC policy" [REDACTED] [REDACTED] ment w/ CG OPS [REDACTED]. The investigation concluded and the applicant's supervisor (the [REDACTED]), reporting officer (the XO), and reviewer (the CO) for this OER all stated that the applicant "violated" or "failed to abide by" OPSEC policy in his online postings. Although the OPSEC Manual mostly provides guidance [REDACTED] how to write their own OPSEC policies, and the OPSEC policies of the applicant's unit are not in the record, the rating chain's declarations and the list of types of information that should be secured in Enclosure (3) of the OPSEC Manual persuade the Board that the applicant did at least "exhibit poor judgment" given OPSEC policy, as the OER states, despite having undergone OPSEC training.

6. The applicant also asked the Board to remove from his record his non-selection for promotion to LT in [REDACTED]. When an applicant proves that his military record contained an error or injustice when it was reviewed by a selection board, this Board must determine whether

⁶ *Hary*, 618 F.2d at 708.

the applicant's failure of selection should be removed by answering two questions: "First, was [the applicant's] record prejudiced by the errors in the sense that the record appears worse than it would in the absence of the errors? Second, even if there was some such prejudice, is it unlikely that [the applicant] would have been promoted in any event?"⁷ When an officer shows that her record was prejudiced before a selection board by error, "the end-burden of persuasion falls to the Government to show harmlessness—that, despite the plaintiff's *prima facie* case, there was no substantial nexus or connection" between the prejudicial error and the failure of selection.⁸ To void a failure of selection, the Board "need not find that the officer would in fact have actually been promoted in the absence of the error, but merely that promotion was not definitely unlikely or excluded."⁹ Because the Board is removing the erroneous phrase "& knowingly violated regulations" from the second disputed OER, the Board must consider whether the applicant's non-selection for promotion should be removed pursuant to the *Engels* test.

7. Regarding the first question of the *Engels* test, the Board finds that although the phrase "& knowingly violated regulations" is obviously negative, its inclusion in the second disputed OER makes that OER appear only very slightly worse than it would had the phrase not been included. The OER otherwise contains a mark of 3 for "Judgment" supported by the comments, "Exhibited poor judgment w/ CG OPSEC policy. Published sensitive information to social networking sites, demonstrated immature behavior," a low mark in the third spot on the Comparison Scale, and a recommendation that he be removed from the LTJG promotion list. In light of this other very negative information in this OER, the Board finds that the inclusion of the erroneous phrase "& knowingly violated regulations" did not prejudice his record before the selection board. Therefore, the answer to the first question of the *Engels* test is no; the inclusion of the phrase "& knowingly violated regulations" did not make his record appear worse than it would have if that phrase had not been included. And even if there were some such prejudice, given the other very derogatory information in his record, it was definitely unlikely that he would have been selected for promotion to LT since selection for LT is on a "best qualified" basis. The applicant's record contained the even more derogatory OER documenting his removal from his primary duties, with several low marks of 2 and 3 in the performance categories and a very low mark in the second spot on the Comparison Scale. Therefore, the second prong of the *Engels* test is also unmet, and there is no basis for removing the applicant's non-selection for promotion from his record.

8. Accordingly, the phrase "& knowingly violated regulations" should be removed from the applicant's OER dated January 6, 2012, but no other corrections are warranted.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

⁷ *Engels v. United States*, 678 F.2d 173, 176 (Ct. Cl. 1982).

⁸ *Christian v. United States*, 337 F.3d 1338, 1343 (Fed. Cir. 2003), citing *Engels*, 678 F.2d at 175; *Quinton*, 64 Fed. Cl. at 125.

⁹ *Engels*, 678 F.2d at 175.

The application of [REDACTED], USCG, for correction of his military record is denied, but his OER for the period ending January 6, 2012, shall be corrected by removing the comment, "& knowingly violated regulations."

July 18, 2014

