

DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

**Application for Correction of
The Coast Guard Record of:**

BCMR Docket No. 2024-066


CWO4

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. §1552 and 14 U.S.C. §2507. The Chair docketed the case after receiving the completed application on June 25, 2024 and assigned the case to a staff attorney to prepare the decision in accordance with 33 C.F.R. § 52.61(c).

This final decision, dated September 30, 2025, is approved and signed by the three (3) duly appointed members who were designated to serve as the Board in this case.

APPLICANT’S REQUEST AND ALLEGATIONS

Applicant requests removal of an adverse Officer Evaluation Report (OER) from his official record. Specifically, Applicant states that on May 9, 2013, he was removed from duties as the U.S. Coast Guard’s Instructor to the Joint Counterintelligence Training Academy (JCITA) on allegations of academic misconduct. On May 12, 2023, Applicant received an OER for “Removal from Primary Duties,” based on the allegations, for dates beginning and ending on May 12, 2023. The allegations arise from actions that occurred during JCITA academic testing in May 2023. A preliminary investigative inquiry into the alleged actions ensued, resulting in findings of no evidence to support the allegations and no violations of JCITA or USCG policies. The Report further recommended no adverse or disciplinary action.

Applicant submitted the following materials in support of his application:

1. DD-149;
2. Preliminary Inquiry Officer’s Report (redacted), dated August 23, 2023;
3. Applicant’s OER—positive, dated April 2023;
4. Applicant’s OER—derogatory, dated October 2023;

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5. Witness statement (CWO 1);
6. Witness statement (CWO 2);
7. Student feedback comments on Applicant's teaching;
8. Applicant's medical diagnosis;
9. Personnel Records Review Board Results, dated April 2024.

SUMMARY OF THE RECORD

The U.S. Coast Guard detailed Applicant to the Joint Counterintelligence Training Academy (JCITA), from July 2020 until May 2023. In that time, Applicant served as a faculty advisor or course director for nine (9) sessions, or convenings, of the Defense Counterintelligence Agents Course (DCAC).

In May 2023, allegations of academic misconduct at JCITA were brought against the Applicant. Specifically, JCITA instructors accused the Applicant of assisting a student before and during testing. Within three (3) days of the alleged incidents, and before a full investigation into details of the accusations, Applicant's reporting officers issued an OER on the removal from JCITA duty based on little time to understand or analyze the reported circumstances. After receiving the OER, Applicant submitted a response, explaining the circumstances leading to the allegations. Thereafter, Applicant's chain of command submitted statements on his response.

One reporting officer commented that Applicant's removal was based on personality differences between Applicant and other JCITA faculty. This was a reference to Applicant's time as the interim DCAC course chair, a position he held from January to September 2022, when the JCITA Section chief position was vacant. Once the position was filled, the new Section Chief requested faculty feedback on student morale and areas for improvement. Applicant candidly recommended significant changes. Although his suggestions were less than well-received, several of Applicant's recommendations were later implemented, as noted by the PIO.

Applicant's second reporting officer commented that Applicant was an "incredible asset to the U.S. Coast Guard and a credit to both the service and intelligence profession." Although noting that Applicant's removal diverted mission focus, as a new detail was required, the RO agreed with the PIO's recommendation of no punitive action, adding that "this derogatory OER should have the least possible, if any, impact on [Applicant's] future ambitions and goals, including potential retirement."

As detailed in the Preliminary Inquiry Report, the faculty and Applicant differed in teaching styles and manner of student interactions, including the level of support owed a student by an instructor. In the end, according to the PIO, these differences, and not actual academic misconduct and/or UCMJ or JCITA policy violations, would lay the foundation for JCITA to remove Applicant.

Pursuant to a lengthy, three-months long investigation into Applicant's alleged actions, the Preliminary Inquiry Officer recommended no action be taken against the Applicant, noting, specifically, that Applicant had "suffered reputational damage and career consequences for his intrusive leadership and/or passionate approach to teaching his craft."

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Applicant submitted a request to the USCG Personnel Records Review Board (PRRB), for removal of the derogatory OER. Based on an incomplete review of Applicant's record, the PRRB denied relief on April 3, 2024. Pursuant to that decision, Applicant timely applied to this Board for consideration on the merits.

VIEWS OF THE COAST GUARD

On May 15, 2025, the Judge Advocate General of the Coast Guard submitted an advisory opinion recommending that Applicant's request should be granted, and the disputed OER should be removed from his permanent record. This was contrary to USCG-PSC's input on the matter. PSC recommended to deny relief, determining that Applicant's rating chain correctly completed the OER and accurately documented Applicant's performance. By contrast, JAG found that Applicant had established "factors adversely affecting the ratings which had no business being in the rating process." *Hary v. United States*, 618 F.2d 704, 708 (1981). Specifically, Applicant provided: 1) evidence of factual inaccuracies in the OER which were shown in the PIO's report, 2) declarations from his rating chain with reasons supporting removal of the OER from Applicant's record, and 3) PIO's report, finding no violations of JCITA, USCG or DoD policies, and recommending no disciplinary action against Applicant. Although agreeing with PSC that the OER was procedurally filed correctly, JAG found the OER's substance violated requirements of *Hary*. Accordingly, JAG recommended to grant removal of the disputed OER.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 28, 2025, the Chair sent Applicant the Coast Guard's Advisory Opinion and invited him to respond within thirty days. The Applicant responded on June 4, 2025, that he agreed with the Coast Guard's advisory opinion without objection. He further informed the Board that he was anticipating a retirement PCS.

APPLICABLE REGULATIONS

COMDTINST M1000.8A

1.F.2.b. Circumstances that may Warrant Removal from Primary Duties

An officer may be considered for permanent removal from primary duties under the following circumstances:

- (1) The officer fails to perform primary duties such that their performance significantly hinders mission accomplishment or unit readiness, or
- (2) After an adequate amount of time at the unit (normally at least six months), it becomes clear to the command that the officer has neither the ability nor desire to perform assigned duties, or
- (3) The officer's actions significantly undermine their leadership authority.

1.F.2.d. Removing an Officer from Primary Duties

(1) At the command's discretion, an officer may be temporarily removed from primary duties at any time. Upon determining that an officer meets the requirements of Article 1.F.2.b. of this Manual for permanent removal from primary duties, the command will submit an OER in accordance with Articles 5.A.3.c and 5.A.4.h. of reference (q), Officer Accessions, Evaluations, and Promotions, COMDTINST M1000.3 (series). The command should inform the officer of the RPD process and way forward.

(2) After the OER is routed to Commander (CG PSC-OPM-3) or (CG PSC-RPM) per Article 5.A.2.i. of reference (q), Officer Accessions, Evaluations, and Promotions, COMDTINST M1000.3 (series), Commander (CG PSC-OPM) or (CG PSC-RPM) will review and make the final decision on removal from primary duties.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on 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 10 U.S.C. § 1552.
2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.¹ The incidents giving rise to the instant application occurred in May 2023. Applicant's submitted application for Board consideration was received on May 15, 2024. The instant application is timely.
3. A review of the merits of this case reveals that Applicant's request for removal of an adverse OER is warranted.
4. The applicant alleged that his performance evaluation for the period May 12, 2023, to May 12, 2023, should be removed from his military record because it is erroneous and unjust. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed evaluation 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 it is erroneous or unjust.² 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.³ To be entitled to relief, the applicant cannot "merely allege or prove that an [evaluation] seems inaccurate, incomplete or subjective in some sense," but must prove that the disputed evaluation 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.⁴

¹ 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

² 33 C.F.R. § 52.24(b).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁴ *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).

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5. Applicant provided the following in support of his request to remove the disputed OER:

a. Factual inaccuracies included in the OER.

b. Declarations by his rating chain, which included, 1) acknowledgment that the OER had been “drafted and entered into [the Applicant’s] record before a formal investigation found any wrongdoing,” and that his removal had been based on “mere speculation” of wrongful conduct, and 2) stated support for removal of the OER. Although Applicant’s Reporting Officer agreed with the PIO’s recommendations and even stated that the OER should have the “least possible ... impact” on Applicant, she justified the OER’s non-removal as the Coast Guard Counterintelligence Service’s (CGCIS) formal documentation of removal from duty.

c. The PIO’s report, finding: 1) no JCITA policy precluded Applicant’s actions, 2) no “firsthand or other credible evidence” of inappropriate conduct by Applicant and 3) recommending no punitive or disciplinary action against Applicant.

6. Although Applicant’s OER was intended to reference actual events of Applicant’s service, the evaluation actually captured mere allegations and accusations which were formally investigated and found to be without merit. The Board finds the OER to be inaccurate in its account of events concerning the Applicant. To leave this inaccurate evaluation in Applicant’s military record would further prejudice the Applicant.

7. Accordingly, it is the Opinion of the Board that the disputed OER should be removed from his military record.

[ORDER AND SIGNATURE ON NEXT PAGE]

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ORDER

The application of CWO4 [REDACTED], USCG, for removal the derogatory Officer Evaluation Report, dated May 12, 2023, for the period of May 12, 2023, from his official military record, is granted.

September 30, 2025

