


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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-085


LCDR (active)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552. The Chair docketed the case after receiving the completed application on July 6, 2024 and assigned it to an attorney to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision dated August 13, 2025, 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 is seeking three (3) actions related to the correction of his military record; 1) removal of an Officer Evaluation Report (OER) spanning active-duty period of June 1, 2020 to June 1, 2021 and replacing it with a continuity OER, 2) the removal of a negative page seven (Form CG 3307) dated March 9, 2021, and 3) direct the USCG Academy (USCGA) Awards Board to review his departing award that was not finalized. The applicant submits nine (9) character references and witness statements from peers and leadership working alongside the applicant during the disputed negative page seven time period. These signed statements assert that the negative page seven contains false statements creating a material error in the applicant's military record. The applicant spoke during an "All Hands" responding to an opportunity to provide feedback to command and unit. The applicant asserts he shared professionally and generally speaking to areas of improvements that several in the unit desired to voice these concerns, but the Regional Program Director (RPD) perceived these comments as direct attacks. The applicant was counseled by the RPD for allegedly lying and creating dissonance within the unit, therefore receiving a negative page seven. The applicant denied the alleged facts within the negative page seven to be true and refused to sign the negative page seven. Based on this interaction the applicant claims to have suffered additional harms in the form of a less than favorable OER and the withholding of a departing award.

SUMMARY OF THE RECORD

On November 30, 2020, the applicant met with the RPD for a scheduled mentoring and career discussion. During the meeting the RPD brought up his frustrations with the applicant's comments at a previous All Hands that made him feel personally attacked in front of the unit.

During this meeting, the applicant stated that was not his intention and the statements he made were general in nature and reflected the consensus of many in the unit.

On March 9, 2021, the applicant received a negative page seven (CG 3307) written by the RPD in response to a unit All Hands where the applicant, acting as the group's speaker, shared concerns and areas of improvement desired by the group as a whole as supported by the submitted witness statements. The RPD took these comments as personal attacks and wrote the applicant a negative page seven describing his conduct to include lying, causing significant emotional turmoil, and disrupting unit cohesion. The negative page seven also includes a claim that the applicant lied about having his leave wrongfully cancelled. The applicant refused to sign this negative page seven and disagreed with the contents within the document.

In June of 2021, the applicant was reassigned and received a departing OER. The OER contained average markings of "4" and "5" numerical scores. This is the lowest scoring OER the applicant has within his record. Additionally, a departing award was created for the applicant but when routed through the chain the award was disregarded when it reached the RPD.

VIEWS OF THE COAST GUARD

On May 27, 2025, a Judge Advocate (JA) for the Coast Guard submitted an advisory opinion in which he recommended that the Board grant partial relief in this case.

The JA argues that the applicant failed to prove the existence of factual inaccuracies in the disputed OER. As explained in *Hary v United States*, the applicant must do more than merely allege or prove that an OER seems inaccurate, incomplete, or subjective in some sense. The applicant must demonstrate, by competent evidence (1) a misstatement of a significant hard fact, (2) prejudicial violation of specific objective requirement of statute or regulation, or (3) factors adversely affecting the ratings which had no business being in the rating process.¹

The JA recommends the removal of the applicant's disputed negative page seven in light of the submitted evidence by the applicant. There are clear discrepancies and errors within the negative page seven and the witness statements. The negative page seven contains numerous errors and should be removed.

The JA claims the applicant has failed to prove that there are inaccuracies or prejudicial review of the applicant within the disputed OER. The JA recommends the Board deny the applicant's request for removal of his disputed OER and request for his departing award be reviewed, but grant relief in the removal of the negative page seven date March 9, 2021.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 24, 2025, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty (30) days. The applicant requested an extension to respond by July 24, 2025.

¹ *Hary v. United States*, 618 F.2d at 708.

The applicant, through counsel, responded with the repeated request to remove the negative page seven (CG-3307) but rescinds his request for the continuity OER in place of the disputed OER and the exiting Award review request. The applicant seeks the board grant partial relief to remove his negative page seven dated March 9, 2021, from his record. No other action is requested.

APPLICABLE LAW AND POLICY

The Board may correct errors or remove injustices in a service member's records pursuant to 10 U.S.C. § 1552(a).

(1) Error can be defined as either legal and/or factual.

(2) Injustice, when not also error, is treatment by the military authorities that "shocks the sense of justice."² In addition, the Board has the authority to decide whether an injustice exists in an applicant's record on a case-by-case basis. The application must file within three years after discovery or reasonably should have discovered the alleged error or injustice for a correction or relief.³

33 C.F.R. § 52.24(a). Burden of Proof: It is the responsibility of the Applicant to procure and submit with his or her application such evidence, including official records, as the Applicant desires to present in support of his or her case.

33 C.F.R. § 52.24(b). Presumption of Regularity: The Board begins its consideration of each case presuming administrative regularity on the part of the Coast Guard and other Government officials. The Applicant has the burden of proving the existence of an error or injustice by the preponderance of the evidence.

Hary v. United States, 223 Cl.Ct. 10, 18, 618 F.2d. 704, 708 (1981).

Applicant must do more than merely allege or prove that an OER seems inaccurate, incomplete, or subjective in some sense. The Applicant must demonstrate, by competent evidence (1) a misstatement of a significant hard fact, (2) prejudicial violation of specific objective requirement of statute or regulation, or (3) factors adversely affecting the ratings which had no business being in the rating process

Art. 4.E, Coast Guard Officer Evaluation System Procedures Manual, PSCINST M1611.1D

Article 4.E.2.f states "for each evaluation area, the Supervisor reviews the Reported-on Officer's performance and qualities observed and noted during the reporting period. Then, for each of the performance dimensions, the Supervisor must carefully read the standards and compare the Reported-on Officer's performance to the level of performance described by the standards. The Supervisor must take care to compare the

² *Sawyer v. United States*, 18 Cl. Ct. 860, 868 (1989) citing *Reale v. United States*, 208 Ct. Cl. 1010, 1011, cert. denied, 429 U.S. 854, 50 L. Ed. 2d 129, 97 S. Ct. 148 (1976).

³ 33 C.F.R. § 52.22

officer's performance and qualities against the standards – not to other officers and not to the same officer in a previous reporting period. After determining which block best describes the Reported-on Officer's performance and qualities during the marking period, the Supervisor selects the appropriate circle on the form.”

Article 4.E.2.j. states “comments shall amplify and be consistent with the numerical evaluations. They should amplify 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.”

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 10 U.S.C. § 1552.
2. The applicant brings his claim beyond the required three (3) year mark since the date of the incident under review. Under the Servicemembers Civil Relief Act (SCRA) the applicant is entitled to tolling as an active duty member. This permits the applicant to overcome the statute of limitations placed. The Board will review the applicant's file in full review.
3. The applicant suffered a harm through the erroneous creation of a negative page seven (CG 3307) depicting the applicant in a light that poses significant inaccuracies according to the nine (9) character and witness statements submitted by the applicant. The comments within this disputed negative page seven appear to be in conflict with witness accounts. Additionally, the negative page seven came several months after the All Hands that triggered a large portion of the negative page seven commentary. Documenting a perceived failure retroactively, especially when a significant amount of time has elapsed can create an inaccurate account of what occurred. Moreover, the documentation appears to be based upon the RPD's personal emotions towards the applicant instead of the applicant's actual conduct.
4. The applicant sought removal of an OER describing his performance from June 1, 2020, to June 1, 2021, but is no longer making this request. The Coast Guard reached out for declarations from the applicant's rating chain for further information. The OER contains scoring influenced by the disputed negative page seven as affirmed by the signed statement of Captain S, who was a member of the applicant's OER chain. The captain states that despite the applicant's performance falling short of expectations at times (in instances beyond the CG 3307) he considered the totality of the applicant's performance during the OER period to be generally “above-average for his rank at the time.” However, Captain S. feels marks of “4” and “5” to be reflective of good performance. This appears to be in tension as stating the applicant's performance was “above-average” but Captain S. maintains that middle of the numerical marks (1-7 scale) was an accurate reflection of the applicant's performance. By Coast Guard policy and marking philosophy a mark of “4” depicts standard performance, while a mark of “7” reflects extraordinary performance

observed.⁴ Captain S did not recommend changes to the disputed OER, but his narrative description of the applicant would score the applicant higher according to Coast Guard policy than the numerical markings Captain S affirms. The Coast Guard also received a declaration from Captain P, who was a member of the applicant's rating chain. In his sworn statement, he recommends granting relief in replacing the disputed OER with a continuity OER.

5. The JA argues the applicant failed to meet the requirements to remove the OER stated within *Hary v. United States*. However, the third prong requires, "factors adversely affecting the ratings which had no business being in the rating process."⁵ The record shows both that the disputed negative page seven was considered when creating the disputed OER, and that it contained factual errors. Together, this meets the third prong of considering factors that adversely impact the rating process that should not have been considered. Basing the applicant's OER, even in part, from an errored negative page seven prejudices the applicant to a fair OER. The Board recognizes removal of the disputed OER may be warranted by the record. However, the applicant's response to the AO rescinded his request for the removal of the disputed OER.

6. The JA recommends removal of the disputed negative page seven claiming the applicant has met his burden of proof to establish error occurred. The Board agrees. The applicant has well established that the statements within the negative page seven are inaccurate and false.

7. The applicant had a departing award generated, but upon reaching the RPD in the routing chain the award never made it further. The JA recommends denying relief of the applicant's award review for similar reasoning to denying the OER removal. The Board agrees. The applicant's response to the AO rescinds his request for the award consideration.

8. After full review of the application, facts, regulations, and policies the Board finds the applicant has suffered an injustice by the inclusion of the disputed negative page seven, which the record shows and the Coast Guard agrees was in error. While the Board recognizes that the record may also support removal of the disputed OER, the applicant has respectfully rescinded his request for removal. This decision was made with advice of counsel and may have been based on additional considerations not shared with the board. The Board will therefore grant applicant's requests for removal of the negative page seven and deny the removal of the disputed OER and the exit award review.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁴ Coast Guard Officer Evaluation System Procedures Manual, PSCINST M1611.D Art. 19.C "Marking Philosophy"

⁵ *Hary v. United States*, 618 F.2d at 708.

ORDER

The application of Lieutenant Commander [REDACTED] (O4), USCG, is granted partial relief. The removal of the negative page seven dated March 9, 2021, is granted. The removal of the disputed OER and the review of his exiting award is denied.

August 13, 2025

