

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-143

██████████ ██████████ ████
CWO3 (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 August 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 June 26, 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 correction of an OER spanning active-duty period of July 1, 2022 through June 30, 2023. The applicant asserts an administrative error by command occurred when block 5.d was left empty instead of writing recommended for advancement. The applicant believes promotion boards weigh the lack of written recommendation for promotion and feels this is the reason he was passed over. The rating chain confirmed they desired the applicant be recommended for advancement and felt that is evident by the “promote with the top 20% of peers” being selected on the grouping scale within the OER. The applicant was not selected for advancement by the promotion board on the first round when he was up for Chief Warrant Officer 3 (CWO3), however he was promoted to CWO3 on March 1, 2025.

SUMMARY OF THE RECORD

On June 1, 2024, the applicant was passed over for promotion to CWO3. The applicant reviewed his most recent OER and determined the empty block 5.d must be the reason he was passed over.

On August 6, 2024, the applicant applied to the BCMR requesting a correction to the OER and supplied written statements from the rating chain for that OER that leaving the block empty was an error not intended to imply the applicant was not recommended for advancement.

On March 1, 2025, the applicant, without changes to the disputed OER, was promoted to the rank of CWO3.

VIEWS OF THE COAST GUARD

On April 7, 2025, a Judge Advocate (JA) for the Coast Guard submitted an advisory opinion in which he recommended that the Board administratively close this case.

The JA argues that the applicant failed to prove the existence of factual inaccuracies in the disputed OER. He also asserts the applicant did not use all of his available processes such as submitting a reply to his OER in question nor did the applicant apply to the Personnel Records Review Board as authorized by policy. The applicant submitted written statements from each member of his previous rating chain to confirm that it was their intention to recommend the applicant for promotion. The opportunity to write a promotion recommendation in block 5.d was left blank, which the applicant asserts is why he was passed over for promotion. The applicant views leaving the block blank as an administrative error and not the intention of the rating chain.

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 claims the applicant has failed to prove that there are inaccuracies or prejudicial review of the applicant within the disputed OER. The OER has followed Coast Guard policy and regulation in its creation to avoid error and the applicant was promoted to the rank of CWO without any change to the disputed OER, which casts doubt on the assertion of injustice. The JA recommends the Board deny the applicant's request for relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 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 has not provided a response as of the date of this decision.

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

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

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).

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 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:

³ 33 C.F.R. § 52.22

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. The applicant brings his claim within the required three (3) year mark since the date of the incident under review.
3. The applicant failed to provide clear evidence that an error or injustice occurred in the creation of his disputed OER. The applicant expressed a norming standard that leaving the block 5.d blank was not looked upon favorably and that is what prohibited his promotion. However, there is no requirement in completing that box and leaving it blank is not an error within Coast Guard standards even if the witness statements affirm they would have completed the box to recommend the applicant for advancement. The applicant did not dispute the OER upon review as is his right to draft a reply to command with concerns. It was not until the applicant was passed over that the empty box became a concern. The applicant has presented no evidence that block 5.d being left blank resulted in his non-selection for promotion. Promotion boards consider a breadth of information when selecting candidates.
4. The applicant successfully promoted to CWO3 this past March without any changes or additions to the disputed OER. If anything, this cuts against his argument that the blank block 5.d was the reason for his non-selection, or that the disputed OER amounted to an injustice in his record.
5. After full review of the application, facts, regulations, and policies the Board finds the applicant has not incurred an injustice from this OER nor does the blank box 5.d constitute an error. The applicant's request for alteration to his OER should be denied.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The application of [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] (CWO3), USCG, for correction of the disputed OER is denied.

June 26, 2025

