


DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:



BCMR Docket
No. 46-97

FINAL DECISION

 Attorney-Advisor:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on January 10, 1997, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated January 30, 1998, is signed by the three duly appointed members who were designated to serve as the Board in this case.

Applicant's Request for Relief

The applicant is a lieutenant, junior grade (LTJG; pay grade O-2) serving on active duty in the Coast Guard. He asked the Board to remove from his military record three officer evaluation reports (OERs) that he received during the time period from April 1, 1994, to June 7, 1995 (disputed OERs). Conversely, he asked the Board to amend the marks on the disputed OERs to "correctly show [his] performance during those marking periods."

The applicant alleged that the disputed OERs "were not used as an adequate performance evaluation or counseling tool." He also asserted that his chain of command at that time "did not provide appropriate, accurate, or timely performance evaluations." He stated that he did not receive a signed copy of his marks for the period ending September 30, 1994, until February 21, 1995. He also asserted that as of the date of his application to the BCMR (January 10, 1997), he had not yet received his official marks for the period ending January 31, 1995.

The applicant asserted that the disputed OERs were "delayed, inaccurate, or missing." He also asserted that the marks he received for the evaluation period ending September 30, 1994, "depict[ed] poor performance at TSTA [Tailored Ship's Training Availability], but the scores show excellent performance." He also stated that the marks did not show that during that marking period, there was a new engineer officer (EO), a

new executive officer (XO), and a new commanding officer (CO) on the cutter. He stated that during that marking period, he had taken on additional, challenging duties.

The applicant asserted that the "two OERs [he] received [in that time period] were not an accurate depiction of [himself], [his] professionalism, or [his] performance."

Applicant's Submissions

In support of his application, the applicant submitted a sample OER that he drafted which covers the marking periods of April 1, 1994, to September 30, 1994, and October 1, 1994, to January 31, 1995. He asserted that the sample OER accurately describes his performance during those marking periods.

The following is an excerpt of the comments he provided for Block 3.h (performance of duties) on the sample OER.

Block 3.h

Smartly completed parts 1-2 of EOIT ahead of sched(1yr). Qualified as U/W EOW [underway Engineering Officer of the Watch]. . . . Successfully finished DCA school/3.49 ave, while fighting a mono virus. Spearheaded DWO qual[ifications]. . . . Volunteered as Catholic Leader. . . . While guiding/adapting to new Eng Dept, produced high-quality work. . . . Used resources extremely well, while creating/organizing/monitoring specifications for extensive contract work, in a minimal amount of time. Kept EO informed of pertinent matters as watch stander and division officer. Surpassed expectations, after having relieved 3 of 5 Eng Divs w/new EO. Prompt response/extremely flexible to new command

The remaining comments on the sample OER continued in the same manner. All comments on the sample OER were complimentary of the applicant and did not describe any weakness in his performance.

In addition to the sample OER, the applicant submitted personal notes he had made of his performance during the evaluation periods of the disputed OERs. He also submitted copies of rapidraft letters to the Commandant in which he requested a copy of his OERs for the evaluation periods ending September 30, 1994, and January 31, 1995.¹

¹ The applicant did not indicate whether he received a response to those rapidraft letters.

Views of the Coast Guard

On April 21, 1997, the Coast Guard recommended denial of the applicant's request. The Chief Counsel of the Coast Guard stated that the "[a]pplicant's own evaluation of his performance on [redacted] his duty station] was apparently at odds with those of persons responsible under Coast Guard regulations for evaluating him, but this is not error or injustice." The Chief Counsel asserted that the applicant "has not presented substantial evidence of error or injustice in the challenged OERs."

The Chief Counsel stated that "[a] delay in signing marks indicated on an OER is not substantial evidence of error or injustice in the OER itself." BCMR Docket No. 183-95.² The Chief Counsel asserted that the applicant "has neither alleged nor presented evidence that the lateness of his OERs rendered them unreliable or caused him other harm."

The Chief Counsel stated that the applicant's comments about the performance of his division at TSTA and his own performance in the face of "personnel turnovers within the command show nothing about [the applicant's] performance in the face of those challenges, nor do they rebut the contents of the contested OERs."

The Chief Counsel further stated that the applicant's claim that he never received an OER for the evaluation period ending January 31, 1995, does not prove that the marks on that OER were erroneous. The Chief Counsel asserted that the applicant "has proved no effort to obtain a copy [of the January 31, 1995] OER since June of 1995, and [the applicant's] service record indicates that the [January 31, 1995] OER was ... validated ... 11 August of that year."

The Chief Counsel stated that the applicant's "suggestion that the Board should manufacture an OER for him from his own draft and self-serving notes is absurd: the Officer Evaluation Report is not a self-evaluation system." The Chief Counsel stated that the appropriate remedy that the applicant should have followed with regard to the challenged OERs was to submit an OER reply, pursuant to the provisions of Article 10-A-4.h of the Coast Guard Personnel Manual.

² In BCMR Docket No. 183-95, the Secretary's Delegate found, in her review of the Final Decision on Reconsideration completed by the Board, that "[n]o harmful error or injustice occurred when two OERs were submitted late because applicant has not shown that such lateness caused a material inaccuracy in the OERs or otherwise prejudiced him."

The Board has determined that the issue in Docket No. 183-95 is distinguished from the issue in the present case. The applicant in #183-95 was arguing that the OERs were submitted to Coast Guard Headquarters late, thereby causing him material harm. In the present case, the applicant complains about the delay in receiving his official copy of his OERs. He makes no allegation that the OERs were delayed in submission to Coast Guard Headquarters. The Board will therefore not address the Coast Guard's reference to Docket No. 183-95 in its findings.

Applicant's Response

On May 7, 1997, the BCMR received the applicant's response to the Coast Guard's comments.

The applicant asserted that he had not submitted the sample OER with the intention that the Board substitute it for the actual disputed OERs in his record. He stated that he "submitted the information and draft OER in an attempt to show that [he] completed many substantial accomplishments during [the marking periods of the disputed OERs]." The applicant asserted that it was not uncommon for junior officers to supply their supervisors with draft OERs for their review prior to the completion of the official OERs. The applicant stated that he had not submitted an OER reply in response to the marks on the disputed OERs because the reply would have been forwarded through the chain of command that "gave [him] the questionable and tardy evaluations."

On July 14, 1997, the applicant informed the Board that he was not selected for a postgraduate studies program in Naval Engineering. He also stated that he had received the Coast Guard Achievement Medal for his accomplishments from the Period of June 1995 to February 1997.

On December 2, 1997, the applicant informed the Board that he was not selected for promotion to lieutenant (pay grade O-3).

SUMMARY OF MILITARY RECORD

Disputed OERs

The OERs which the applicant requested be removed from his record cover three marking periods, from April 1, 1994, to June 7, 1995.

The first disputed OER covered the marking period of April 1, 1994, to September 9, 1994. During this marking period, the applicant was serving his first term as an Engineer Officer in Training (EOIT). Out of 23 performance categories, the applicant received 7 marks of three, 14 marks of four, and 2 marks of 5, on a scale of one through seven. The comments of the applicant's supervisor addressed the applicant's strengths and weaknesses in his first tour as an EOIT:

Block 3.h

Satisfactorily completed parts 1, 2, 3, & 4 of EOIT program which included practical naval engineering watch qualifications. . . . While successfully used available resources to complete most tasks, occasionally produced work that needed redoing; Routinely did not report back & failed to keep supervisor informed of status of routine & special projects, especially

when on watch as EOW [engineering officer of the watch]; failed to route routine written material for approval after repeated direction to do so Demonstrated a weak performance as DCA & engineering watch section leader . . . proficiency improved with repeated practice. During two month dock side maintenance availability satisfactorily performed as lead inspector for several items, Gas Free Engineer & Fire Marshall

Block 4.c

Worked well with military and civilian peers and subordinates aboard and off the cutter. Maintained a professional, yet friendly relationship with juniors; however, he occasionally showed disrespect to seniors by being loud and argumentative. He is a very conscientious individual and is personally aware of the Commandant's Human Relations Policy;

Block 5.e

As Repair Division Officer, supported the needs of subordinates to following up on award submissions. Spent many extra hours training crew on engineering and damage control qualifications and correcting break-in watchstanders and participated in other watch qualification boards Weakly led Damage Control Central and engineering watch section during TSTA; as DCA [damage control assistant] didn't firm control of situations until directed to do so; critical communications and actions were slow. . . .

The applicant's reporting officer stated that the applicant "put a lot of effort into his work, but [he] needs to focus his attention on details, responsiveness, and teamwork." The reporting officer stated that the applicant also needed "to take more responsibility for events around him. His passivity has gotten him into difficulty."

The reporting officer's remaining comments were similar to those of the supervisor. The reporting officer stated that the applicant was "conscientious, sincere, and enthusiastic, and possess[ed] the drive and ambition to become a successful officer." He also stated, however, that the applicant lacked "cooperativeness" in relations with his superiors and that he needed to "work on his interpersonal skills."

The second disputed OER covered the marking period beginning October 1, 1994, and ending January 31, 1995. In the 23 performance categories, the applicant received a total of four marks of 3, thirteen marks of 4, and six marks of 5, on a scale of one to seven.

The comments of the applicant's supervisor addressed his performance in several capacities on the cutter. Some of the comments are excerpted below:

Block 3.h

.... As the Senior Engineering Watchstander, used acquired knowledge and experience to competently stand as Engineering Officer of the Watch both underway and inport. Started reporting period by continuing to satisfactorily function as Damage Control Assistant, electrical Assistant, Engineering Department Training Officer and Hazardous Material Officer. Following [TSTA]. . . , incorporated Navy ship riders recommendations into damage control instructions and manuals to ensure they were updated and in compliance with current standards. . .

Block 4.c

Interacted well with military and civilian peers and subordinates in and outside the Coast Guard, but was uncomfortable when working with others senior to him; tended to avoid direct contact. . .

Block 5.e

As a division officer, supported the needs of subordinates by following up on special request submissions. Spent many extra hours training crew on engineering and damage control qualifications. . . Control of Damage Control Central and engineering watch section improved toward the end of TSTA; . . .

The applicant's reporting officer stated that he agreed with the supervisor's observations and marks. He stated that the applicant "satisfactorily executed all duties of Engineer of the Watch . . . and is working toward completing Part 5 of the Engineer Officer in Training qualifications." The reporting officer stated that the applicant had "shown that he was capable of performing the technical aspects of his duties and responsibilities, but still needs to focus on responsiveness and teamwork . . . continued passivity as a leader has created problems for a second marking period."

In Block 11, the reporting officer stated that the applicant was "technically competent, but must still improve leadership skills before selection as an Engineer Officer afloat."

The third disputed OER covered the marking period of February 1, 1995, to June 7, 1995. Of the 23 performance evaluation categories, the applicant received eight marks of 3, thirteen marks of 4, and two marks of 5, on a scale of one to seven.

The supervisor's comments on this OER appeared, in part, as follows:

Block 3.h

Having completed the required parts of Engineer Officer in Training program and engineering watchstanding qualifications during previous periods, he moved on to supervising and training subordinates, professionally conducted training on damage control, handling hazardous materials, and engineering procedures in both hands-on and lecture format; . . . Was relieved as Auxiliary Assistant because of his failure to stay abreast of his division's equipment problems, failure to keep his supervisor informed of auxiliary equipment status, and failure to be pro-active in responding to and managing casualties. . . . He should have been much more aggressive in identifying causes and scheduling repairs. As a member of numerous engineering watch qualification review boards, showed an extensive knowledge of engineering system, which improved the watchstanding posture of the Engineering Department. . . .

Block 4.c

Worked well with peers and subordinates both military and civilian, but was on several occasions disrespectful to supervisor during one-on-one counseling sessions; did not take constructive criticism well. . . .

Block 5.e

His division was often confused on priorities because he didn't follow supervisor's directions nor report back; subsequently, his division was not responsive to casualties. Didn't lead, manage, or support his division in correcting problems with assigned equipment Spent extra time in getting personnel properly trained and qualified for engineering watches & damage control PQS;

The reporting officer concurred with the supervisor's marks and comments. He stated that the applicant was "[c]apable of performing the technical aspects of his duties and responsibilities, but showed no progress in improving responsiveness and teamwork." The reporting officer stated that the applicant's "continued lack of understanding of officer-enlisted professional relationships has created problems for a third marking period." The reporting officer stated the following in Block 11 of the OER:

[The applicant] successfully completed all technical training as required by parts 1-4 of the EOIT program and received certification as an Assistant to the Engineer Officer. Although knowledgeable in engineering systems, he failed on occasion to apply that knowledge productively to manage his

division. He also demonstrated a serious lack of understanding of the importance of professional, personal relationships between officers and enlisted, and supervisors and subordinates. He must still improve leadership skills before selection as an Engineer Officer afloat or post graduate training.

RELEVANT REGULATIONS

Article 10-A-1.b of the Coast Guard Personnel Manual (COMDTINST M1000.6A) describes the policy of the Coast Guard Officer Evaluation System. It states as follows, in part:

b. Policy.

(1) Each commanding officer must ensure that accurate, fair, and objective evaluations are provided to all officers under their command. All supervisory personnel will see to it that evaluations of their subordinates are completed on schedule and in accordance with the prescribed standards. . . .

(2) There is only one person responsible for managing the performance of an individual officer. . . . and that is the officer himself or herself. He or she is ultimately responsible for finding out what is expected on the job, for obtaining sufficient feedback or counseling, and for using that information in adjusting as necessary to meet or exceed standards.

The rating chain consists of the reported-on officer, the supervisor, the reporting officer, and the reviewer. The applicant is the reported-on officer in this case. Article 10-A-2 of the Personnel Manual describes the responsibilities of the members of an officer's rating chain. The reported-on officer's responsibilities are listed in Article 10-A-2.c. It states as follows, in part:

c. Reported-on Officer.

* * * * *

(2) Responsibilities. The Reported-on Officer:

* * * * *

(c) As necessary, seeks performance feedback from the supervisor during the period.

* * * * *

(e) May submit to the Supervisor not later than 21 days before the end of the reporting period a listing of significant achievements or

aspects of performance which occurred during the period. Submission is at the discretion of the Reported-on Officer, unless directed by the Supervisor. . . . Supplemental information may be submitted through the end of the reporting period.

* * * * *

(k) Notwithstanding the responsibilities assigned to others in the rating chain, is ultimately responsible for managing his or her own performance. This includes ensuring that performance feedback is thorough enough and received in a timely manner and that OER's and associated documentation are timely, complete, and accurate.

(3) Mandatory meetings and use of the OSF³ for ensigns and lieutenants (junior grade). All Reported-on Officers in the grades of ensign and lieutenant (junior grade) must request initial and end-of-period meetings with their Supervisors and must submit an OSF as prescribed in [the Personnel Manual]. . . .

Article 10-A-4.d of the Personnel Manual addresses the preparation of the OERs. With regard to the comments on OERs, Article 10-A-4.d(4)(d) and (e) state the following, in part:

* * * * *

(d) In the "Comments" sections 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 "4."[sic] The Supervisor shall draw on his/her own observations, from those of any secondary supervisors, and from other information accumulated during the reporting period.

(e) Comments should amplify and be consistent with the numerical evaluations in the evaluation area. They should identify specific strengths and weaknesses in performance. Well-written 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. . . .

³ The OSF is an Officer Support Form. It is an "optional worksheet which may be used by members to assist in delineating duties, and to enhance organizational communications, performance counseling, and performance reporting." See Article 10-A-1.c, (Definitions) in the Coast Guard Personnel Manual.

Article 10-A-4.g states the following, in part:

g. Restrictions.

* * * * *

(3) Members of the rating chain shall not:

* * * * *

(c) Engage in medical or psychological speculation, or mention any medical diagnosis.

* * * * *

(g) Discuss Reported-on Officer's performance or conduct which occurred outside the reporting period.

Article 10-A-4.h addresses the right of the Reported-on Officer to submit an OER reply. It states the following, in part:

h. Reported-on Officer Reply.

(1) The Reported-on Officer may reply to any OER regardless of its content, and have this reply filed with the OER. Replies must be submitted within 14 days of receipt of the OER copy from Commandant (G-PIM-3). . . .

(2) Reported-on Officer replies provide an opportunity for the Reported-on Officer to express a view of performance which may differ from that of a rating official. Comments should be performance-oriented; either addressing performance not contained in the OER or amplifying the reported performance. Comments pertaining strictly in interpersonal relations or a personal opinion of the abilities or qualities of a rating chain member serve no purpose and are not permitted.

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, United States Code. The application was timely.

2. The applicant asked the Board to remove three officer evaluation reports (disputed OERs) from his record. He alleged that the disputed OERs did not accurately represent his performance for those marking periods. He also stated that the OERs were poor "evaluation tools" because there was a great delay between the date the OERs were complete and the date he received an official copy of them. He stated that

the delay was an error by the Coast Guard and that he suffered an injustice in not receiving them promptly.

3. The applicant has stated that because of his late receipt of the disputed OERs, the information they contained was not useful as an "evaluation tool." The applicant has not shown that he has suffered an injustice as a result of his delayed receipt of a copy of his OER. He has not shown that he sought counseling from members of his command. He also has not proven that the delayed receipt of a copy of his OERs was the direct cause of his performance problems.

Contrary to the applicant's assertions, the OER is not the only avenue through which an officer can receive performance feedback and counseling. The Personnel Manual provides an option for officers to seek performance feedback through submission of officer support forms (OSFs). The Personnel Manual states that it is incumbent upon the officer to confirm his duties and to obtain "performance feedback" from his supervisor through submission of an OSF or, for lieutenants (junior grade), to get feedback in a mandatory meeting with his or her supervisor before the end of a marking period. See Article 10-A-2. These measures are intended to provide an opportunity for the officer and the supervisor to discuss the officer's performance and duties before the completion and submission of OERs.

4. The applicant did not allege that his supervisor failed to meet with him prior to the submission of the disputed OERs. He has not shown that he did not know about deficiencies in his performance. He also has not shown that he attempted to obtain performance feedback or counseling from his supervisor through submission of an OSF. These were methods the applicant could have followed to gain an understanding of the expectations of his command and to learn whether he did, or did not, meet those expectations.

5. Additionally, the applicant's supervisor noted in Block 4.c of the OER for the period ending June 7, 1995, that the applicant was "disrespectful" to the supervisor on several occasions during one-on-one counseling sessions. The supervisor observed that the applicant "did not take constructive criticism well." The supervisor's comments suggest that the applicant had been advised of his performance deficiencies in meetings with the supervisor prior to the completion of his OER.

6. The statements about the applicant's inability to take constructive criticism and his difficulty with interpersonal relations with his seniors appear in all three of the disputed OERs. In the reporting officer's comments (Block 8) of each of the disputed OERs, the reporting officer stated that the applicant had poor interpersonal skills, had difficulty interacting with his superiors and needed to focus on improving his "responsiveness and teamwork." It is evident from the second and third OERs that the applicant made no attempt to improve those factors of his performance. Notwithstanding his improved technical performance, which was recognized by his

rating chain, the applicant's lack of improvement interpersonal relations was reflected in the marks the applicant received.

7. The applicant alleged that the evaluation marks and comments he received on his OERs did not accurately represent his performance. The Board disagrees with that allegation.

A review of the disputed OERs reveals that during the evaluation periods covered by the disputed OERs, the applicant was an Engineer Officer in Training. As such, he was learning new skills and taking on new responsibilities in order to qualify as an Engineer Officer. The marks and comments the applicant received on the first disputed OER appropriately reflect strengths and weaknesses in the applicant's performance. It is evident from the applicant's complaint that he believes that his command was too critical of his performance. This suggestion by the applicant is consistent with the comments on his OERs - that he could not take constructive criticism.

8. The marks and comments the applicant received are not derogatory. They clearly express the observations of the applicant's supervisor and reporting officer during each evaluation period. There is no evidence of inappropriate comments or of marks that are not supported by the comments, as required by Article 10-A-4.d of the Personnel Manual. Therefore, the Board will not remove, or alter, the disputed OERs.

The comments the applicant submitted on his sample OER are quite complimentary, but fail to provide the objective review of his performance that was made by his supervisor and reporting officer during each evaluation period. See Article 10-A-1.b(1). Comments addressing the applicant's physical or mental state are inappropriate and therefore, it was proper for the applicant's rating chain to not mention the applicant's illness (mononucleosis) in his OERs. See Article 10-A-4.g(3)(c).

9. The applicant stated in his response that he was hesitant to submit an OER reply because it would have been submitted through his chain of command. This is an unacceptable excuse.

The OER reply provides an officer with an opportunity to officially comment a view of his or her performance that may differ from the views of members his or her rating chain. The applicant could have submitted an OER reply which addressed the aspects of his performance, or the duties he held, that he believed were not properly represented in the disputed OERs. The reply is placed in the officer's record, and is therefore available for review. If the applicant's rating chain agreed with the applicant's statements in his reply, then, in accordance with the provisions of Article 10-A-4.h of the Personnel Manual, the members of the rating chain could have made appropriate corrections to the OER.

10. The applicant has not proven that the Coast Guard committed an error in his record, or that he has suffered an injustice.

11. Accordingly, the application is denied.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application for correction of the military record of [REDACTED]
[REDACTED] USCG, is denied.

