

DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of  
Coast Guard Record of:

BCMR Docket  
No. 67-96

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on January 30, 1996, by the filing of an application for relief with the Board.

This final decision, dated February 14, 1997, is signed by the three duly appointed members who were designated to serve as the Board in this case.

**Request for Relief**

The applicant, a lieutenant junior grade (LTJG) at the time he filed his application, asked the Board to modify three officer evaluation reports (OERs) for the periods from October 1, 1991 to March 31, 1992, (first disputed OER), April 1, 1992 to December 31, 1992 (second disputed OER), and January 1, 1993 to May 27, 1993 (third disputed OER). The applicant asked to be promoted to lieutenant (LT) and to have his active duty contract extended to permit him an opportunity to apply for integration into the regular Coast Guard.

On June 30, 1996, the applicant was discharged from the Coast Guard because he had twice failed of selection for promotion to LT. In an amendment to his application, dated November 27, 1996, the applicant stated that since he has been discharged from the Coast Guard, that portion of his application requesting an extension of his active duty contract is moot. The applicant also requested an oral hearing.

On December 16, 1996, the Coast Guard recommended that the applicant's request be denied.

On January 16, 1997, the applicant disagreed with the views of the Coast Guard.

## EXCERPTS FROM RECORD AND SUBMISSIONS

### Applicant's Record and Allegations

The applicant alleged that "[t]he numerical values in the OERs do not accurately reflect the performance as documented in the narratives of [the disputed OERs]." According to the applicant, this error or injustice was created by the reporting officer, who unfairly placed the responsibility for preparation of the disputed OERs on the applicant who was then a newly commissioned officer. The applicant stated the supervisors for the disputed OERs were civilian government employees who did not have experience supervising Coast Guard officers.

The applicant stated that in preparing his first OER, he only had guidance from Chapter 10 of the Personnel Manual. The applicant stated that the reporting officer told him that: "since he did not see me on a regular basis, I would be responsible for drafting my OER, including the assignment of numerical values. . . . I was to provide the [the reporting officer] with a list of 'bullets' for his section. [The reporting officer] would select the ones he wanted . . . to use, and I was to use them to complete the [r]eporting [o]fficer's section [of the disputed OERs]."

The applicant stated that when he drafted the disputed OERs he used the advice provided to him in officer's candidate school (OCS): (1) Coast Guard OERs are not inflated; and (2) the applicant should expect to receive 4s at his first assignment. The OERs in question were drafted based on this guidance, although during the period covered by the second and third disputed OERs, the applicant gained more experience, became more proficient, volunteered for various schools, undertook more responsibility, represented the Coast Guard, and managed the morale fund. The applicant stated that these achievements are documented in the disputed OERs, but they were not reflected in his marks.

The applicant stated that he and his supervisors believed that since he had been recommended for promotion with his peers and had been recommended for an extension of his active duty contract, he believed that his performance had been accurately reflected in the disputed OERs. He claimed that only after leaving that assignment and receiving training in the officer evaluation system (OES), did he realize that instead of representing strong, consistent performance, the disputed OERs represented consistency without progress. The applicant claimed that he and his supervisor did not assign higher marks on the disputed OERs because of their concern that the marks not appear to be inflated.

The applicant alleged that his supervisors, at the time they prepared the disputed OERs, did not have the knowledge and experience necessary to properly evaluate his performance. He further claimed that since the reporting officer and reviewer for the

disputed OERs were not in a position to observe him on a daily basis, they were unable to note discrepancies, if any existed, in the disputed OERs.

### Statements Submitted by the Applicant

1. The applicant submitted a statement from his supervisor for the first disputed OER. (It should be noted that the supervisor for the first disputed OER prepared an earlier OER on the applicant, which is not contested). The supervisor stated that since he had never supervised a Coast Guard officer, he met and discussed the OER process with the applicant. The supervisor stated that the applicant told him that he had never prepared an OER, but he had studied the necessary regulations to ensure that the OER would be drafted properly.

The supervisor stated that the applicant told him that it was not uncommon for junior officers, such as himself, to receive overall ratings of "4" in block 12, and that after progressing in grade, the mark in this area would increase. With these guidelines in mind, the applicant prepared his first OER (not the disputed one), which was signed by the supervisor and forwarded to the reporting officer.

The supervisor stated that upon preparing the applicant's second OER (first disputed OER), he increased the applicant's marks while trying to avoid the perception of grade inflation. The block 12 mark was not raised because the supervisor thought that improvement in the applicant's performance was adequately reflected in the comments of the OER.

The supervisor stated that the first disputed OER should have included a mark of 5 in block 12. He stated that had he been rating the applicant as a civilian, he would have given the applicant the highest possible score. The supervisor stated that the only reason he did not give the applicant a higher score was his concern that the first disputed OER would appear to be inflated.

2. The applicant also submitted a statement from the supervisor on the second and third disputed OERs. This supervisor stated that at the time he prepared the second and third disputed OERs, he had no experience or training on using the OES. He stated that the applicant advised him that the Coast Guard discouraged inflated numerical marks. The supervisor stated that since the applicant had recently been promoted to his present grade, the second supervisor agreed to follow the method of preparation used in the previous year. The supervisor stated that the applicant prepared the disputed OERs and he signed them. After signing them, the supervisor returned the disputed OERs to the applicant who sent them to the reporting officer for review and signature.

The supervisor for the second and third disputed OERs stated that when he reviewed the disputed OERs, he noted that the applicant's achievements were progressively stronger. This individual stated that it is not unusual for civil service

evaluations to remain constant over a period of time, and he had no indication that the methodology for Coast Guard evaluations was different. He stated that had he been aware of this difference, he would have recommended higher scores for the applicant. The second supervisor stated the following: "If the purpose of the Coast Guard's evaluation system is to rate overall performance, then [the applicant's second and third disputed] OERs are inaccurate. Based upon my direct supervision of him, and his accomplishments both at work and at the various schools he attended, I would rate him a '5' in block 12 on his January 1993 OER. On his May 1993 OER, I would rate [the applicant] higher in the following areas: "Developing Subordinates," "Directing Others," "Responsibility" and "Professionalism" (grade of '5' on each) and an overall rating of "high" '5', bordering on '6' in block 12."

### **Pertinent Information from the Military Record**

The applicant's military record shows that the applicant received an earlier OER, which he is not contesting, from the supervisor and reporting on the first disputed OER. This earlier OER covers the period from February 22, 1991 to September 30, 1991 (non-disputed OER). In the Supervisor's section of the non-disputed OER the applicant receive six 6's, six 5's, and one 4. In this section on the first disputed OER, the applicant received three 6s, seven 5s, and three 4s. The grades in the reporting officer section were the same, consisting of 4s and 5s, with a grade of 4 in block 12.

On the second disputed OER the applicant received the following marks: one 6, thirteen 5s, nine 4's, and a 4 in block 12 (Comparison Scale and Distribution). This OER contained favorable comments.

On the third disputed OER the applicant's grades included one 6, eleven 5s, eleven 4s, and a 4 in block 12 (Comparison Scale and Distribution. This OER also contained favorable comments.

### **Views of the Coast Guard**

The Coast Guard recommended that the applicant's request be denied. The Service stated that the applicant has not shown an error or injustice in the disputed OERs, and that it is unlikely that the applicant would have been promoted even if the alleged errors or injustices had not occurred.

The Coast Guard argued that the comments on the disputed OERs are consistent with the marks. The service stated that neither the comments on the OERs, nor the statements provided by the applicant, impeached the accuracy of the assigned marks. It is common for supervisors to reconsider their evaluations in hindsight of the reported-on officer's non-selections for promotion, but that does not indicate that the evaluations were erroneous or unjust.

The Coast Guard argued that it is not unusual for a reporting officer to have limited day-to-day contact with the reported-on officer. The Service stated that a reporting officer may seek input and rely on reports from others, including the reported-on officer and supervisors. The Coast Guard asserted that the applicant has not shown error or injustice in the reporting officer's preparation of the disputed OERs.

The Coast Guard contended that the applicant has not shown that his ranking in block 12 of the disputed OER as "one of the many competent professionals who form the majority of this grade" was in error or unjust. In this regard, the Service stated that the applicant has not demonstrated that the evaluation of his performance was inaccurate. This mark in block 12 reflects the opinion and perspective of the reporting officer. Article 10-A-4d.(9)(a) of the Personnel Manual.

The Service stated that the applicant's OERs show only a pattern of satisfactory performance with a noticeable drop in overall performance upon reporting to his next unit. The Service stated that from a numerical standpoint, the OERs the applicant received from the [REDACTED] (which include the disputed OERs) were among the best the applicant has received. The Service stated that if the Board were to modify or remove the disputed OERs, the drop in the applicant's performance during his subsequent tour would appear more dramatic to those considering his record for promotion. The Coast Guard asserted that the applicant's record did not appear better with the requested corrections.

#### **Applicant's Response to the Views of the Coast Guard**

The applicant disagreed with the Coast Guard's comment that the marks on the disputed OERs were supported by the comments. He stated that "while [the marks support the comments], 'the numeric values [on the disputed OERs] do not accurately reflect the caliber of my performance. A numeric mark of '4' will support performance of a higher caliber. . . . It is imperative that OER comments be accurate, not just supportive. . . ." The applicant noted that the Coast Guard did not object to his contention that the disputed OERs should be adjusted.

The applicant also disagreed with the Coast Guard's argument that the statements from his supervisors amounted to retrospective reconsideration. He stated that the supervisors made it clear in their statements that they noted an improvement in the applicant's performance at the time the disputed OERs were submitted. The applicant stated that it is important for the Board not to get the impression that the supervisors for the disputed OERs were using hindsight to frame their comments.

The applicant stated that while the reporting officer did not take a completely "hands off" role in the evaluation process, neither did he take a very active role in it. The applicant stated that at best the reporting officer may have initially met with his supervisors and discussed generalities with regard to OERs. There was no running dialogue between the supervisors and the reporting officer concerning the applicant's

evaluations. The applicant stated that he prepared the disputed OERs during weekend and evening shifts, and they were reviewed by the supervisors during the same periods. The applicant stated that the "reporting officer worked exclusively on the day shift. Even when [the applicant's] shift rotated to the day watch, mission requirements did not allow much time or opportunity for meetings and counseling. The contention that the [r]eporting [o]fficer 'worked with the supervisors to properly complete the contested reports' is. . . inaccurate."

The applicant argued that the disputed OERs were drafted 13 months apart. He stated that in the first disputed OER, he was focusing on individual tasks. He stated that for the second disputed OER, he and his supervisors were careful to emphasize both the applicant's professional and personal growth. Despite, the alleged demonstrated improvement in performance, the marks changed very little, if at all. The lack of an increase in the marks from the first to second disputed OER was due to the concern of the supervisor and the applicant that the disputed OERs not appear to be inflated.

The applicant stated that he is now contesting three of the six OERs that were available to the first selection board. The applicant admitted that there was a decline in his performance after reporting to his then next assignment. However, he explained it this way: "In the reporting period following my departure from [the duty station where he received the disputed OERs], I underwent the following: three weeks in a PCS status, two weeks of in processing and getting my family settled, two months of TAD/TDY at [REDACTED] two weeks of duty, then about six weeks of limited duty in the office as I recovered from a fracture to my left ankle, which I sustained inspecting a tank vessel. It is understandable that my first evaluation at the MSO was markedly lower than what I have received at my previous duty station. Assuming that the disputed OERs are accurate, the [selection] board members would have seen the following series numeric values in block 12 of the six OERs: 4, 5, 5, 5, 4, 5"

### 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 of the case pursuant section 1552 of title 10, United States Code. It is timely.
2. The applicant requested an oral hearing. The Chairman, under section 52.31 of title 33, Code of Federal Regulations, recommended disposition on the merits without a hearing. The Board concurred in that recommendation.



3. The Board finds that the disputed OERs are not unjust or inaccurate because the applicant placed the information on the form for the reporting officer. To cause the disputed OERs to be removed from his record, the applicant must show them to be an inaccurate assessment of his performance. This he has not done.

4. The applicant makes much of the fact that he prepared the disputed OERs, including the reporting officer's portion, and that he assigned grades (that he now claims are inaccurate) that would not cause the disputed OERs to appear to be inflated. While the applicant may have written at the request of the reporting officer that officer's portion of the disputed OER, it was still necessary for the reporting officer to review and sign the disputed OERs before they could become official. By signing the disputed OERs, the reporting officer, if he did not write them, agreed with the information contained therein, and by his signature, the reporting officer adopted the proposed evaluation of performance as his assessment of the applicant's performance. Article 10-A-4d.(10) of the Personnel Manual states that "the [r]eporting [o]fficer's signature verifies completion of his/her OER responsibilities and that comments and evaluations are correct." Since the reporting officer signed each of the disputed OERs, the Board concludes that he was satisfied that the applicant's performance as described on each of the disputed OERs was accurate.

5. The applicant argued that if he had not followed the advice that he gained in OCS concerning inflated OERs, he would have received higher marks. This is speculation. The applicant forgets that the reporting officer and reviewer were required to review and sign the reports. Nothing has been presented here to suggest that if the applicant had assigned higher grades to himself, particularly in the reporting officer's section of the disputed OER, that the reporting officer would have accepted those higher marks as his own judgment and evaluation of the applicant's performance. One of the responsibilities of the reporting officer and reviewer is to ensure that each portion of the OER is accurate and that the narrative and marks are consistent with each other. Articles 10-A-2e.(2)(d) and 10-A-2f.(2)(d) of the Coast Guard Personnel Manual.

6. The statements from the supervisors that they would have rated the applicant a 5 in block 12 represents their opinion, but not that of the reporting officer. What the supervisor would have given the applicant is not important because block 12 is a part of the reporting officer's portion of the OER. There has been no evidence presented that the reporting officer thought that the 4 he assigned to the applicant in this block was inaccurate.

7. It is not unusual for a reporting officer not to have the ability to observe the performance of a subordinate on a daily basis. However, this lack of frequent observation does not cause a reporting officer's evaluation of a reported-on officer's performance to be invalid. See BCMR No. 222-92.

8. The statements from the supervisors that they would have rated the applicant higher had they had more experience in writing Coast Guard OERs and had they not

been concerned about grade inflation in the disputed OERs is retrospective reconsideration. This Board has consistently held that retrospective reconsideration, by itself, is an insufficient basis to remove a disputed OER. See BCMR Docket Nos. 189-94, 24-94, 265-92, and 311-88. Additionally, the Board does not attach much credibility to the supervisor's statement on the first disputed OER. The Board notes that the supervisor for the first disputed OER stated that he gave the applicant higher marks on the first disputed OER than those he gave him on the earlier non-disputed OER. This is not the case. The applicant's grades in the supervisor's portion of the first disputed OER were lower overall than those of the earlier non-disputed OER. The grades in the reporting officer section of the non-disputed OER and the first disputed OER were the same.

9. Since the applicant has failed to prove an error or injustice in the dispute OERs, there is no basis on which to consider removing his failures of selection.

10. Accordingly, the application should be denied.

[ORDER AND SIGNATURES ON NEXT PAGE]



ORDER

The application to correct the military record of [REDACTED]  
[REDACTED] JSCG is denied.

