

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 75-97

FINAL DECISION

[REDACTED]

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on February 25, 1997, upon the BCMR's receipt of the applicant's request for correction of his military record.

This final decision, dated February 26, 1998, is signed by the three duly appointed members who were designated to serve as the Board in this case.

Applicant's Request for Correction

The applicant, a Captain (CAPT) in the Coast Guard, was retired from the Service on [REDACTED] after failing to be continued by the August 1996 Captain Continuation Board.

The applicant asked the BCMR to remove errors and/or untrue statements from the reviewer's comments section of his officer evaluation report (OER) for the period from June 24, 1995 to May 31, 1996 (disputed OER). The marks on the first 10 blocks on the disputed OER included 15 "7s" (highest possible) and 8 "6s." In addition, he would mark him one to the left for block 11 and mark him lower for block 12. The disputed OER was awarded when he served as [REDACTED]

[REDACTED]

The Applicant's reviewer was a Coast Guard Vice Admiral. The reviewer reduced the applicant's "leadership and potential" mark by one position, and he reduced the applicant's rating scale and distribution mark to the position indicated. The applicant wanted both changes recorded, and he wished to have certain technical corrections made to the reviewer's comments. The applicant also asked to be retained on active duty in the Coast Guard until he was afforded the opportunity

to compete for continuation with an error-free military record.

The applicant declared that it is impossible to know if he would or would not have been 'continued' had the reviewer's comments not been present in his record. He showed the disputed OER to 15 other officers and all of them agreed that the reviewer's comments would be "detrimental," particularly since they were signed by a flag officer. The applicant said that his marks were lowered without citing any specific reason

The applicant's reviewer, a Coast Guard Vice Admiral, said that the mark in block 11 should be moved one position to the left, and the mark in block 12 should be moved to a lower position. The latter change meant that instead of being "recommended for Flag selection at a future Board," the applicant was said to have "Flag potential."

The applicant submitted an OER Reply in which he disagreed with these changes. He said that the disputed OER was incorrect in stating that it was prepared by a Navy officer; the disputed OER was not prepared by anyone in the Navy.

The Reviewer, in his reply to the OER Reply, admitted that some of "the superficial facts" in his comments were in error, but he insisted that the marks on the disputed OER were "significantly inflated based on the written comments and his actual performance."

Views of the Coast Guard

On January 13, 1998, the Board received an advisory opinion from the Chief Counsel of the Coast Guard recommending that it grant partial relief in this case. The Coast Guard recommended that the word "Navy" and "and has Coast Guard personnel assigned on staff to explain the Coast Guard OER system" should be redacted from the first sentence of the Reviewer comments. The Coast Guard also recommended that the following phrase in the fourth sentence be replaced by the follow-on sentence: "the differences in the USN/USCG performance systems has resulted in higher marks that I would assign."

The Chief Counsel said that the reviewer is the critical member of the rating chain when it comes to controlling the inflation of marks, especially when the supervisor and reporting officers are members of other services.

The reviewer stated that there are differences in the performance systems of the Coast Guard and of the other Services. These differences result in higher marks than the Coast Guard would assign. The reviewer praised the applicant's performance, but he said that allowing 15 grades of "7" and 8 grades of "6," without

more, constitutes grade inflation in his performance evaluation.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the submissions of the applicant and the Coast Guard, the military record of the applicant, and applicable law:

1. The Board has jurisdiction of the case pursuant to section 1552 of title 10, United States Code. The application is timely.

2. The Chairman has reviewed the application and recommended disposition on the merits without a hearing. 33 CFR § 53.31. The recommendation has been approved by the Board.

3. The comments of the reviewer on the disputed OER contain technical comments, in addition to policy comments. The first sentence under Leadership and Potential refers to "The Navy officer preparing this report," but there were no Navy officers in this rating chain. The fourth sentence under that clause referred to the differences "in the USN/USCG performance systems." There was no reference to "the USN performance system" in the OER. These mistakes should be corrected.

4. The comments of the reviewer includes comments that de facto reduce the marks awarded him by the Air Force general and the Marine Corps general, who were in his rating chain. "[T]he differences in the USN/USCG performance systems has resulted in higher marks than [the Coast Guard] would assign." The highest possible mark was a "7" and most of the marks were "7s." The comments supporting those marks were not, however "7s." For example, the OER statement that "his planning efforts are nearly a year in advance [which means] the usual time crunch problems will be avoided" does not justify a "7" in responsiveness. (3d).

5. The marks and comments on the disputed OER are not consistent with the applicant receiving a virtually perfect score. Under Article 10-A-2f.(2)(b), the reviewer "[c]hecks for obvious errors, omissions, or inconsistencies . . ." The inconsistency between his marks and grades call for correction.

6. The requested relief is not merited because the applicant did not show that the errors made his record appear worse nor did he make a prima facie showing that it is not unlikely that he would have been selected if the error had not occurred. Engels v. United States, 230 Ct. Cl. 464, 460-70 (1982).

7. Accordingly, the application should be denied.

ORDER

The application to correct the military record of [REDACTED]
[REDACTED] USCGR, is denied except that:

(1) the words "Navy" and "and has Coast Guard personnel assigned on staff to explain the Coast Guard OER system" shall be redacted from the first sentence of the reviewer; and

(2) the following phrase in the fourth sentence shall be deleted: "the differences in the USN/USCG performance systems has resulted in higher marks than I would assign," and, as a result, the fourth sentence shall read as follows: "While I agree with the comments regarding CAPT [REDACTED] performance of duty and leadership and potential in Block II, I would mark him one position to the left for most marks assigned."

