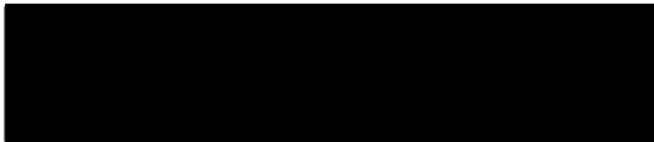


**DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS**

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Application for Correction of  
Coast Guard Record of:



BCMR Docket  
No. 82-96

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**REQUESTED EXTENSION OF DECISION IN DOCKET NO. 145-95**

This is a proceeding pursuant to the provisions of § 52.67 of the Rules of the Board for Correction of Military Records (33 CFR § 52.67). The applicant, who was granted relief in BCMR No. 145-95, requested supplemental relief in addition to that granted by the BCMR in that case.

In BCMR No. 145-95, the applicant asked the Board to remove his officer evaluation report (OER) for the period from February 1, 1993 to July 31, 1993. The Board, upon consideration of the evidence, removed this OER and directed that the applicant be promoted to CWO3.

On February 26, 1996, in BCMR No. 82-96, the applicant asked the Board to remove his OERs for the next two periods because they were "a continuation of the injustice that was directed at [him]." The additional disputed OERs were those for the period from August 1, 1993 to December 12, 1993, and those from January 31, 1994 to June 30, 1994. (hereinafter referred to as "new OERs.")

The applicant said that the final decision in BCMR No. 145-95 "established that [he] was not treated fairly at [his] previous command . . . [The] BCMR agreed that I had been forced to worked (sic) in a hostile environment. Therefore, I feel that a pattern has been established to prove that the stated OERs written by the same markings (sic) official are not true evaluations and should be removed."

**Views of the Coast Guard**

On January 28, 1997, the Chief Counsel of the Coast Guard recommended that the Board deny relief to the applicant. The Service noted that he had been granted relief in Docket No. 145-95, but it noted that he has not provided "substantial evidence, much less persuasive evidence" that the two additional OERs disputed in this application were "the result of discriminatory or retributive intent."

The Coast Guard stated that the applicant did not present substantial evidence of error or injustice. The marks and comments in the newly disputed

OERs were, according to the Service, intended to describe the applicant's performance during the period of these OERs. His performance during this period "was clearly substandard and frustrating to the command."

#### Response of the Applicant to the Views of the Coast Guard

On January 29, 1997, the BCMR sent a copy of the views of the Coast Guard to the applicant. On February 12, 1997 the applicant responded, indicating that he had reviewed the Coast Guard views and "agree[d] that [he had] no tangible evidence to offer in [his] defense."

The applicant did state that a change was made in his rating chain on his third OER because the original supervisor "was too generous in [his] marks and the command wanted [the applicant's] OER to be replete of any positive comments." (He did not submit any evidence to support this assertion.) The applicant asked the Board to review the transcript of his civil rights complaint investigation again.

#### SUMMARY OF RECORD

On one of the new OERs that the applicant sought to have removed, his Reviewing Officer wrote the following:

Despite having attended a GSA contracting course, when this officer received a written inquiry from a local vendor concerning a government contract, he did not follow the correct course of action . . . . [His] course of action exposed the Coast Guard to liability for costs . . .

[The applicant's] administrative, communication, and correspondence skills are marginal, at best . . .

His supervisor on that OER (who was not his supervisor on the OER that was removed ) wrote the following:

[T]his officer is often unprepared for routine events in a large busy clinic. . . . Celebrates having done an outstanding job when correctly completing the most routine tasks. . . . No insight as to his ineffectiveness . . . . Demonstrates no remarkable leadership skills. The only reason anyone would follow this officer would be curiosity. "

#### REGULATION REGARDING RECONSIDERATION

This final decision on eligibility for reconsideration is made in accordance with paragraph (b) of § 52.67. This paragraph states that a request for reconsideration of a final decision shall be docketed if it meets the requirements

of "paragraph (a)(1) or (a)(2)" of this section.

The word "reconsideration" itself, however, is not defined in the rule.

Under § 52.67 of title 33 of the Code of Federal Regulations, a request can be reconsidered if the applicant presents evidence or information (1) that was not previously considered by the Board; (2) that could result in a determination other than that originally made; and (3) that could not have been presented to the Board prior to its original determination in the exercise of reasonable diligence. A request can also be reconsidered if the Board or Secretary "committed legal or factual error" that could have resulted in a determination other than that made.

### FINDINGS AND CONCLUSIONS

The Chairman makes the following findings and conclusion on the basis of the applicant's request; the final decision in BCMR No. 145-95; the submissions of the applicant and the Coast Guard, and applicable law:

1. The Board has jurisdiction of the applicant's request, pursuant to § 52.67 of title 33 of the Code of Federal Regulations.

2. The applicant requested that the relief granted in the final decision in BCMR No. 145-95 (removal of a disputed OER) be extended to two additional OERs that were issued by rating chains that contained some of the same members. The OER for February 1 to July 31, 1993 was removed from his record by the earlier decision and replaced with a continuity report. In this proceeding, the applicant requested the removal of the OERs for August 1 to December 12, 1993,<sup>1</sup> and for January 31<sup>2</sup> to June 30, 1994.

3. The applicant could have requested such additional relief in the earlier proceeding, but he did not.

4. The Board finds that the applicant is either requesting a reconsideration of BCMR No. 163-95 or he is seeking new relief.

5. If the applicant is requesting a reconsideration, he has not met the three requirements for reconsideration of an application under § 52.67:

a. The applicant presented evidence or information that was not previously considered by the Board. The applicant and his attorney presented new arguments but no new evidence.

b. The new information "could have resulted in a determination

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<sup>1</sup> According to the applicant's military record, the rating period ended "93 12 31."

<sup>2</sup> According to the applicant's military record, the rating period started "94 01 01."

other than that originally made." The applicant's new arguments would not have changed the outcome of his case.

c. The new information "could not have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence." The new arguments could have been presented to the Board before the original determination.

An applicant for reconsideration may also be eligible for reconsideration if he or she shows legal or factual error on the part of the Board. The applicant has not alleged that any legal or factual error in the original decision.

6. The applicant alleges that the comments and marks on the new OERs are "not a true evaluation of [his] performance for these periods and are retributions for filing a Civil Rights complaint." He did not, however, introduce any evidence that the comments on the new OERs were the result of retribution. Moreover, he did not introduce the statements of any other person evaluating his performance.

7. If the application is considered a reconsideration of BCMR No. 145-95, it should be denied for failure to meet the requirements for reconsideration. If the application is considered a new request for relief, it should be denied. The application should be denied because the applicant has not established any error or injustice warranting removal of the latter two OERs.

**[ORDER AND SIGNATURES ON FOLLOWING PAGE]**

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ORDER

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

