

DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of  
Coast Guard Record of:

BCMR Docket  
No. 85-97

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on March 17, 1997, upon the BCMR's receipt of an application for relief.

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

The applicant, a lieutenant junior grade (LTJG; pay grade O-2) at the time of his application, requested that his record be corrected by revising or removing two officer evaluation reports (OERs) for the period August 1, 1994 through January 31, 1995 (first disputed OER) and for the period February 1, 1995 through June 23, 1995 (second disputed OER). He also requested the removal of his 1995 failure of selection for promotion to lieutenant, with back dating of his date of rank and back pay, if later selected. The applicant was selected for promotion to lieutenant (LT) in 1996.

On February 24, 1998, the Coast Guard submitted an advisory opinion recommending that the applicant's request be denied.

On March 19, 1998, the applicant responded to the advisory opinion. He disagreed with it.

**EXCERPTS FROM RECORD AND SUBMISSIONS**

The applicant contended that each of the disputed OERs was in error or unjust because each one contained inaccurate narrative comments and numerical scores. The applicant asked that 12 marks on the first disputed OER, and 10 marks on the second disputed OER, be raised to the next higher level. The first disputed OER contained marks of 4s, 5s, and 6s, with a mark of 5 in block 12. The second disputed OER contained marks of 4s and 5s, with a mark of 4 in block 12.

The applicant alleged that a personality conflict existed between himself and the supervisor. This personality conflict caused the supervisor to lower unfairly the

applicant's numerical scores on the disputed OERs. The applicant alleged that the marks assigned to him by the supervisor did not conform to the written standards contained on the OER form or the instructions contained in the Personnel Manual. The applicant claimed that the narrative sections of the two disputed OERs were excellent and supported higher marks.

The applicant claimed that the alleged personality conflict stemmed from the supervisor's disdain for junior officers in general and the applicant in particular. The applicant stated that as the wellness coordinator (a collateral duty), he was very involved in encouraging physical fitness and wellness among unit personnel. He alleged that his supervisor, on the other hand, expressed antagonism for the Commandant's policy of encouraging physical fitness and wellness in the workplace. He stated that the two letters of appreciation that he received from Support Center New York for his work in this area contradict the mark given to him in the categories related to work-life and wellness on the two disputed OERs. On the first disputed OER the applicant received a 5 in block 3.e. (work-life sensitivity/expertise), a 6 in block 3.g (collateral duty/administrative expertise), and a 6 in block 9.e. (health and well-being). On the second disputed OER, the applicant received a 5 in block 3.e., a 5 in block 3.g., and a 5 in block 9.e.

The applicant stated that the supervisor openly expressed contempt for the junior officers under her supervision. According to the applicant, the supervisor was opposed to junior officers working on their collateral assignments in the office even though collateral duties were a significant portion of the junior officers' job assignments.

The applicant stated that the supervisor apparently developed a "mindset" that the applicant's "easy-going" personality was a weakness, and that he was a mediocre performer who deserved mediocre scores on his OERs. He stated that the supervisor's comment that the applicant started the evaluation period with a mark of 4 (which is considered an average mark) verified the supervisor's biased attitude towards him.

With respect to the first disputed OER, the applicant stated that the narrative is excellent and supports higher numerical scores. He stated that this "is a common sense comparison of the printed standards with the narrative written on the OER [form]. . . . For comparison, [the applicant] received higher scores in twelve (12) of the twenty-three (23) numerical categories (over 50%) in his prior OER . . . with arguably similar narrative."

The applicant alleged that the supervisor committed an error by not allowing the applicant's previous supervisor to have any input into the first disputed OER, even though the applicant worked for the previous supervisor for two months of that reporting period. The applicant stated that Article 10-A-4d.(3)(d) of the Personnel Manual directed the raters to seek input from other officers who have observed the rated officer during the reporting period.

With respect to the second disputed OER, the applicant claimed that the excellent narrative comments supported higher numerical marks than those given to the applicant. He stated that he received basically the same comments on the second disputed OER as he did on the first one, but that 11 of his marks were lower on the second disputed OER than on the first disputed OER.

The applicant claimed that prior to the end of the reporting period for the second disputed OER, he discussed his performance with the supervisor. He stated that the supervisor informed him that his OER rating for the second disputed OER would be higher than the rating on the first disputed OER. The applicant claimed that the supervisor implied that he would be rated "exceptional" (a mark of 5 out of a high of 7) in block 12. He received a mark of 4 in this category on the first disputed OER. The applicant stated that despite the supervisor's representations to him, the second disputed OER was lower than the first one.

#### **Statements Submitted by the Applicant**

The applicant submitted five sworn statements that are summarized below.

1. The first statement is from the command wellness coordinator at the command where the applicant worked. She described the applicant as a "solid, professional person with a sensitivity to the needs of those around him, while at the same time, demonstrating an example of energy and strength in the work place."

The wellness coordinator wrote that the applicant discussed with her some personality conflicts that he was having with his current supervisor. She stated that she recommended some reading materials for the applicant. This individual stated that she understood that the supervisor ordered the applicant to dismantle a wellness center that he opened at the unit. She expressed the opinion that the supervisor's actions in this regard were not in accordance with the Commandant's policy.

The wellness coordinator stated that the applicant told her that his marks in the categories relating to work-life and wellness on the OERs were lowered by the supervisor. This individual concluded by stating the following:

I am not aware of the total picture of the interaction of these two officers and their personality conflict. However, given [the applicant's] commitment to the Commandant's policy of encouraging wellness and improving the work-life of the people in the Coast Guard, [the supervisor's] personal actions to actually discourage wellness activities were certainly a justified source of potential conflict.

2. The applicant's previous supervisor wrote that the applicant worked for him as planning officer for most of 1994. He stated that the applicant was a good performer during that period of time. The previous supervisor further stated:

I was made aware by [the applicant] that the scores on his officer evaluation report (OER) were actually lower than previous marks, and that there was some personality conflict with the (current) supervisor.

I was very surprised when I found out that [the applicant] failed to be selected for promotion to lieutenant. I think he would make a fine Lieutenant and his performance, as I observed it, warranted promotion.

Despite the fact that I was his supervisor for two (2) months [of the period covered by the first disputed OER], I did not have any input to his OERs.

3. The applicant also submitted another statement from another previous supervisor. This individual stated that the applicant worked for her at the [REDACTED] during 1992, 1993, and 1994. This previous supervisor stated that the applicant's performance was in the good to excellent range. After the applicant's transfer to the planning branch, this previous supervisor stated that she was told by the applicant that a personality conflict existed between the applicant and the supervisor for the disputed OERs.

This previous supervisor stated that she and the applicant's supervisor for the disputed OERs often discussed their subordinates' performance. She stated that the applicant's supervisor on the disputed OERs had a different outlook on her subordinates than most other officers. According to the previous supervisor, the applicant's supervisor had a personal disdain for junior officers in general and the applicant in particular. She stated that the applicant's supervisor seemed rigid and very demanding of her subordinates, with extremely high expectations of junior officers. She stated that the supervisor on the disputed OERs saw the applicant's modest easy-going personality as a weakness. According to this previous supervisor, the applicant's supervisor on the disputed OERs used this perceived weakness to lower the applicant's marks.

This previous supervisor stated that the applicant's supervisor on the disputed OERs did not endorse the Commandant's policy on work-life. The applicant's supervisor was critical of the applicant, as well as others, who exercised during the work-day. This individual expressed surprise at the applicant's failure to be selected for promotion to LT. She stated that the applicant's performance, as she observed it, deserved promotion.

4. The applicant submitted a statement from a LT who worked with the applicant prior to the applicant's transfer to the supervisor's division. This individual

served as the applicant's supervisor when the applicant was an ensign. This LT stated that after the applicant's transfer to the planning division he observed a severe personality conflict between the applicant and his supervisor. This LT also stated that the applicant's supervisor for the disputed OERs did not want him to participate in fitness activities during the work day. This LT stated that he could "tell from the way [the supervisor] talked to [the applicant] and expressed her feelings about [the applicant's] work that [the supervisor] had strong feelings against [the applicant]."

5. An LTJG who worked with the applicant when he worked for the supervisor on the disputed OER stated that "there was a severe personality conflict between [the supervisor] and all of the junior officers who worked for her." This LTJG stated that the supervisor trusted the petty officers more than she did the junior officers. The LTJG stated that the work atmosphere became so bad that she began keeping a log of all of the "incidents" in the office.

The LTJG stated that the supervisor had a very aggressive personality and demanded to be treated like a captain. In contrast, the applicant was a quiet conscientious person, with prior enlisted experience as a corpsman.

The LTJG also spoke of the supervisor's negative feelings toward the junior officers' collateral duty assignments. The LTJG stated that the supervisor told the applicant that "working on his official collateral duties during work hours was not appropriate. The LTJG stated that this was unbelievable "since collateral duties were a significant part of every junior officer's official job descriptions and work assignments."

#### **Other evidence submitted by the applicant**

The applicant submitted copies of two letters of appreciation that he received from the Commanding Officer (CO) complimenting him on his participation in health-related events at the unit.

The applicant also submitted a statistical analysis comparing the grades he received on the OER prior to the first disputed OER and the grades he received on the first and second disputed OERs. On the prior report, the sum of all of his grades was 114, on the first disputed OER the sum of his grades was 108, and on the second disputed OER the sum of his grades was 105.

The applicant's service record shows that he received an Achievement Medal for the period from October 1991 to June 1995 while serving at Coast Guard [REDACTED]. The citation commented on his performance in several areas and also stated that he "diligently coordinated the development of a new Operations Plan, incorporating input from six different units."

### Views of the Coast Guard

The Coast Guard recommended that the Board deny relief in this case. The Service stated that while the applicant has expressed strong disagreement with his supervisor's evaluations of his performance, he has not provided prima facie evidence that those evaluations were the result of error or injustice.

The Coast Guard stated that to establish that an OER is erroneous or unjust, the applicant must prove that the disputed OER was adversely affected by a clear, material error of objective fact, factors "which had no business being in the rating process," or a clear and prejudicial violation of a statute or regulation. Germano v. United States, 26 Cl. Ct. 1446, 11460 (1992). The Coast Guard stated that in proving his case, the applicant must overcome a strong presumption that his rating officials acted correctly, lawfully, and in good faith in making their evaluations under the Coast Guard's Officer Evaluation System. Arens v. United States, 969 F.2d 1034, 1037 (1992). The Coast Guard also stated that the process of evaluating officers is an inherently subjective process.

The Coast Guard argued that in the absence of proof that an error affected the disputed OERs, the Board should defer to those responsible for evaluating the reported-on officer's performance under Coast Guard regulations. See, e.g. Opinion of the Deputy General Counsel in Docket No. 84-96 ("Consistent with legal precedent, absent legal error I am reluctant to second guess expressions of opinion in OER's by supervisors who are not only entitled to a presumption of correctness, but are much closer to the facts than I am. See e.g. Grieg v. United States, 226 Ct. Cl. (1981)"). The Service stated that the Board should consider that removal of valid evaluation data from a service record would not only jeopardize Coast Guard personnel decisions and provide the applicant with a windfall of competitive advantage, but would also perpetrate a corresponding injustice to others against whom the applicant may be competing for advancement, choice assignments, and other desired actions.

The Coast Guard stated that the marks in the disputed OERs are consistent with the narrative and reflect the legitimate judgment of the rating officials. The Service further stated that based on a detailed quality review of the disputed OERs few of the suggested revised marks offered by the applicant would be supported by the existing narrative.

The Coast Guard stated that the applicant has relied on third party statements to highlight a personality conflict between himself and the supervisor. The Service stated that a majority of the statements alluding to a bias by the supervisor against junior officers are hearsay and made without the knowledge of performance expectations established between the applicant and his rating chain.

The Coast Guard stated that the supervisor for the disputed OERs was aggressive and demanding. The supervisor's manner was very different from that of

the applicant's previous supervisor who exhibited a much more relaxed style of leadership.

The Coast Guard stated that OERs are considered to be snapshots of performance and are not necessarily indicative of trends, or a basis for comparison from one performance period to another. With respect to the applicant's previous and subsequent OERs, the Service stated that these reports were completed by different supervisors and reporting officers, who would intuitively have differing perspectives and characterizations of the applicant's performance.

The Coast Guard noted that the applicant failed to reply to the disputed OERs. The Service stated that the reply is the reported-on officer's opportunity to offer a different view of his performance from that of the rating officials. The applicant's failure to submit a reply to either disputed OER was a tacit indication that he accepted the rating official's characterization of his performance at that time.

The Coast Guard also submitted signed statements from each member of the rating chain. Each statement is summarized below.

1. The supervisor wrote that the applicant did not provide any corroborating evidence that his performance as planning officer was different than that reflected in the disputed OERs. She added that the applicant neither liked, nor desired, the position of planning officer.

With respect to the alleged personality conflict, the supervisor wrote as follows:

[The applicant] defines this "personality conflict" as [the supervisor's] general dislike for junior officers and, in particular, a general dislike for [the applicant]. The so-called "personality conflict" is a convenient excuse three (3) years later for [the applicant] to use for the first time as a basis to challenge his OERs; [the applicant] offers no factual evidence or substantive indication that his performance warranted higher numerical scores than [the supervisor] assigned.

The supervisor noted that she too was a junior officer. She stated that the other junior officers whom she supervised were jealous of her because she was a direct commissioned officer and because of her achievements at the unit prior to becoming the applicant's supervisor.

The supervisor stated that the wellness center was dismantled and removed from the planning and readiness division office space. She indicated this move was necessary because she had combined the planning office and another branch into one space and there was no room left for the wellness center. She stated that the applicant was free to move the center to another space.



With respect to the claim that the applicant's previous supervisor was not permitted to have any input to the first disputed OER the supervisor stated that the previous supervisor did not have input into that OER because he did not follow the Personnel Manual. The supervisor quoted the following provision from the Personnel Manual:

If the Supervisor changes during a reporting period, the departing supervisor shall provide the new supervisor with a draft of the supervisor's OER sections. The draft may be handwritten and shall include marks and comments for the period of observation. It shall be prepared and signed by the supervisor prior to detachment.

In concluding her statement, the supervisor made the following declaration:

[The applicant], as Planning Officer, was in a position he was not accustomed to and in a position he did not like. The Planning Officer position is academic in nature and the work product consists of written work. [The applicant] did not extend himself to improve performance in this area or broaden performance or experience in this area. [The applicant] did what was minimally necessary to 'get by' and that translated into average performance. In each OER, [the applicant] was recommended for promotion with his peers. . . . [T]he other officers considered by [the applicant's] 1995 selection board were simply found to be better qualified than [the applicant].

2. The reporting officer wrote that during the period covered by the two disputed OERs, he counseled both the supervisor and the applicant. He stated that he did not remember the specific advice or counsel that he provided to either individual. He stated that speaking in general terms, he provided the supervisor with advice regarding her duties as a supervisor of junior officers. He also discussed with her some of the marks she had given the applicant on his OER. According to the reporting officer, the supervisor raised some of the marks on the applicants OERs after the reporting officer's discussion with the supervisor.

The reporting officer stated that he advised the applicant to maintain open communication with his supervisor to ensure that he understood the supervisor's expectations of him. The reporting officer stated that the applicant worked diligently to meet the supervisor's expectations.

The reporting officer stated that the marks he assigned in sections 9.b. and 9.c. of both disputed OERs, as well as those assigned by the supervisor, accurately reflect the applicant's performance during those evaluation periods.



work on an operation plan project was deficient with the fact that he received an Achievement Award for the successful completion of that plan.

The applicant pointed out that the reporting officer confirmed that he counseled both the applicant and the supervisor. He stated that the reviewer further confirmed that the applicant worked diligently at meeting the supervisor's expectations.

The applicant stated that the reviewer's declaration makes arguments about the sufficiency of the applicant's evidence. The reviewer's opinions on the evidence should not be accepted since the reviewer has not been presented as an expert with suitable qualifications.

The applicant stated that he would have expected the reviewer to notice that the applicant's numerical scores in the work-life category were artificially low, particularly since the reviewer knew that the applicant had received a letter of commendation prior to the reviewer's completion of the second disputed OER.

### FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction of this matter pursuant to section 1552(b) of title 10, United States Code. The application was timely.
2. The Chairman has recommended disposition of the case without a hearing. 33 CFR 52.31 (1991). The Board concurs in that determination.
3. The applicant alleges that a personality conflict between himself and the supervisor caused the supervisor to prepare an inaccurate and unfair appraisal of the applicant's performance. The applicant offered statements from five individuals to corroborate his claim that such a personality conflict existed. Three of these five individuals offered no first hand knowledge of the alleged personality conflict. They essentially report that the applicant told each of them that he had a personality conflict with the supervisor. The remaining statements, one from a LT and one from a LTJG, were from individuals who indicated they might have some personal knowledge of a personality conflict between the applicant and the supervisor.
4. The LT stated that he observed the personality conflict between the applicant and the supervisor, but he did not provide details of what he saw. For example, the LT's statement fails to address such things as what the supervisor said to the applicant that would lead to the conclusion that a personality conflict existed between the applicant and the supervisor, how the supervisor's dislike of the applicant manifested

itself on a day-to day basis, and more particularly in the disputed OERs, or what caused the conflict between the applicant and the supervisor. The LT basically offers that the supervisor did not want the applicant to engage in physical fitness activities during the work-day. He also wrote that he could tell from the way the supervisor talked to the applicant that she had strong feelings against the applicant, but the LT failed to state what the supervisor said to the applicant that would lead the LT to conclude that the supervisor had strong feelings against the applicant. This LT made conclusory statements and failed to provide the detail that would lend credibility to his accusations.

5.. The LTJG said there was a personality conflict between the applicant and the supervisor. She also stated that a personality conflict existed between the supervisor and the other junior officers under her supervision. This individual seems to base her opinion that the supervisor had a personality conflict with the junior officers on what was probably the supervisor's leadership style (i.e. the supervisor wanted to be treated like a captain and she had a negative attitude toward collateral duty assignments). The supervisor was apparently a strong willed individual. Even the supervisor's supervisor admitted that she was very demanding. Even if the supervisor's management style caused some conflict with her subordinates, the evidence is insufficient to show that the supervisor allowed this friction to influence her judgment in evaluating the applicant's performance.

6. The same is true for unpopular management decisions. The supervisor explained that she caused the wellness center to be dismantled from the planning work space because there was not enough room for it after she moved another branch into that same space. This appears to be a legitimate reason for her actions. Neither the applicant nor the officers who wrote supporting statements for him explained or offered a reason why the supervisor would be opposed to the wellness and fitness of officers under her supervision. The supervisor explained that the applicant was free to establish the wellness center elsewhere in the unit, as appropriate. The supervisor stated that she followed the commandant's instruction as far as permitting her subordinates time for physical exercise during the work-day. As a manager, the supervisor's priorities may not have been the same as her subordinates. The Board is not persuaded that the supervisor was biased against the applicant because of his dedication to the Commandant's wellness program.

7. The Board is also not persuaded that the supervisor had a disdain for junior officers that would have influenced her evaluation of her subordinates' performance. She also was a junior officer, although senior in rank to the other officers whom she supervised. In this regard, the Board notes that the LTJG who also worked for the supervisor does not complain about her OER. In fact, the supervisor stated that that officer received a good evaluation from her. Thus, the Board is not persuaded that the supervisor was biased against the applicant in the disputed OERs.

8. The applicant argues that the narrative of the two disputed OERs is excellent and deserves higher marks than those assigned by the supervisor. However, it is the supervisor's evaluation of the applicant's performance that matters. Unless the applicant demonstrates that the evaluation is in error or unjust, the evaluation stands. The applicant has not offered any corroborating evidence that his performance was other than as described by the supervisor. There are two statements from the applicant's previous supervisors stating that the applicant worked well for them. However, neither of these supervisors was in the applicant's rating chain at the time the disputed OERs were prepared. Their opinions that the applicant worked well for them does not undermine the supervisor's evaluation of the applicant's performance. Merely because the applicant may have received some higher grades during another reporting period does not necessarily mean that he deserves the same grades for a different reporting period. Additionally, neither of the disputed OERs is a negative one. As a matter of fact, both are average to above average reports.

9. The applicant alleges that the comments, when compared to the pre-written standard for each dimension, dictate higher marks. The Board is not persuaded by this argument. For example the pre-written standard for the dimensions under performance of duties (section 3 of the OER) for a mark of 4 uses descriptions such as "anticipated well," "sets high but realistic goals," "successfully used available resources," and "competent authority on specialty or operational issues." There is not a pre-written standard for a 5. The pre-written standard for a 6 uses descriptions such as "always ready never caught unprepared," "used all available resources to the best advantage," and "got results which far surpassed the supervisor's expectations in all cases." In her comments in block 3 h., the supervisor used such descriptions as "well prepared," "effective use of resources," "remained flexible without complaint," and "kept supervisor well informed." In this section, the applicant received marks of 5's, with two 4's and one 6 in collateral duty/administrative expertise. The supervisor's description of the applicant's performance on the disputed OERs is consistent with the assigned marks and the pre-written standard.

10. The applicant's claim that the supervisor promised that the second disputed OER would be better than the first one, particularly with respect to the mark in block 12, is insufficient to establish that the second disputed OER is inaccurate. As the supervisor stated, the mark in block 12 is assigned by the reporting officer and not the supervisor.

11. The fact that the applicant received the Coast Guard Achievement Medal for the period from October 1991 to June 1995 does not prove that the OERs are in error or unjust. The medal was given for a period much longer than that covered by the disputed OERs. It was also given in recognition of not just the applicant's duties as planning officer, but other duties as well. Moreover, the requirements for an OER and those for a Medal are different and governed by different regulations.

12. The applicant complains that his previous supervisor was not permitted to have input into that OER. As the supervisor stated, however, the previous supervisor could have had input into the first disputed OER, if he had followed the direction of the Personnel Manual, which stated as follows: "If the supervisor changes during a reporting period, the departing supervisor shall provide the new supervisor with a draft of the supervisor's OER sections. . . . It shall be prepared and signed by the supervisor prior to detachment." There is no indication that the previous supervisor fulfilled this obligation or that the applicant sought to ensure that the previous supervisor's evaluation of his performance would be included in the disputed OER. Moreover, the applicant offered no evidence that the previous supervisor's input would have made a significant difference in the performance evaluation that the applicant received.

13. Each member of the rating chain has vouched for the accuracy of the disputed OERs. The evidence offered by the applicant is insufficient to overcome the presumption that the members of the rating chain exercised their duties correctly, lawfully, and in good faith. Arens v. United States, 969 F.2d 1034, 1037 (1992). The Board finds that the Coast Guard did not commit an error or injustice with respect to the two disputed OERs.

14. The applicant has not proven by a preponderance of the evidence that there were 22 incorrect marks on the disputed OERs. He has not proven that the supervisor was biased against him because of a personality conflict between them. Since the applicant has failed to establish an error or injustice with respect to the disputed OERs, no basis exists to consider removing the 1995 failure of selection for promotion to LT. Additionally, the Board noted that the applicant was selected for promotion to LT with the disputed OERs in his record.

15. Accordingly, the applicant request should be denied.

**ORDER**

The application of  
military record is denied.

USCG, for correction of his

