


DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 1999-092

FINAL DECISION

:
This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on April 6, 1999, upon receipt by the BCMR of a complete application for correction of the applicant's military record.

This final decision, dated June 1, 2000, was signed by three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, who is a retired lieutenant in the Coast Guard, asked the Board (1) to promote him to LCDR and give him the date of rank he would have had if he had been selected for promotion to LCDR by the PY [Promotion Year] 1995 LCDR Selection Board; (2) to return him to active duty at the same position on the ADPL (active duty promotion list) that he had when he was separated from the Coast Guard and that two LCDR Selection Boards pass before the applicant again be considered for selection to LCDR; and (3) to award him back pay and allowances.

The applicant also asked that the following sentence be removed from his Officer Evaluation Report (OER) for 1/87 to 12/31/87: "Authoritarian attitude and resulting interpersonal difficulties noted in last report have disappeared."

The applicant also alleged that seven other OERs contained errors and/or injustices. He asked that they be deleted or corrected.

OER for 6/1/90 to 11/30/90 (1st disputed OER);
OER for 12/1/90 to 5/31/91 (2nd disputed OER);

OER for 06/1/91 to 11/30/91 (3rd disputed OER);
OER for 12/1/91 to 5/12/92 (4th disputed OER);
OER for 5/13/92 to 11/30/92 (5th disputed OER);
OER for 12/1/92 to 5/31/93 (6th disputed OER); and
OER for 6/1/93 to 1/31/94 (7th disputed OER).

The applicant was a graduate of [REDACTED].
[REDACTED] In 1983, he received a direct commission as a LTJG in the Coast Guard where he served as an [REDACTED] until his involuntary retirement as a LT in [REDACTED]. He failed of selection for promotion to LCDR by the PY 1995 and the PY 1996 LCDR Selection Boards.

SUMMARY OF RECORD

The 1987 OER contained the sentence the applicant wished removed because it referred to attitudes demonstrated in "last report." ("Authoritarian attitude and resulting interpersonal difficulties noted in last report have disappeared.") This OER was prepared some eight years before the applicant was considered by the next selection board, and it was prepared while he was at a lower grade (LTJG) than he was when he was considered in 1995. The Reporting Officer on this OER recommended him for promotion with his peers and gave him a mark of "5" on block 12, the comparison scale.

The marks received on the comparison scale (block 12) on the seven disputed OERs are quite similar. The marks on block 12 of each of the first three disputed OERs is a "3;" the marks on block 12 of each of the last four OERs is a "4." (Marks range from a low of "1" to a high of "7"; the average of all the applicant's block 12 marks was 3.55 on the comparison scale.)¹

The applicant alleged that the narrative comments prepared by the supervisor/reporting officer on all the disputed OERs "were excellent." He alleged that the numerical marks, however, were "inconsistent with the narrative" comments and with the standards printed on the OER forms.

The applicant also alleged that the marks on the first four disputed OERs were affected by a personality conflict between him and the supervisor on his rating chains. He also said that this personality conflict infected the last three disputed

¹ The comparison scale compares the applicant with all other officers of the same grade whom the reporting officer has known during his career. According to Article 10.A.1.c. of the Coast Guard Personnel Manual a mark of "4" "describes the high level of performance expected of all Coast Guard officers."

OERs because the same officer was the applicant's commanding officer on the last three disputed OERs.

COMPARISON OF MARKS WITH NARRATIVE COMMENTS & STANDARDS

The applicant makes the allegation that the numerical marks in seven OERs are lower than the narrative comments that correspond to them on those reports. He also alleges that the marks are inconsistent with the standards printed on the OER forms.

The applicant alleged, for example, that the mark in § 3a, "being prepared", on the first disputed OER should have been higher because the comments on his performance were excellent, better than a "4". The comments on this subsection on the first disputed OER are, inter alia, "Quickly reorganized [dept] to make better use of skills while improving morale and productivity . . . positive morale boost for unit." The standard for a "4" on § 3a is "Anticipated well. Rarely caught unprepared. . . . Took prompt positive action to meet changing or unexpected situations. . . . [S]tayed well prepared for responsibilities and missions."

To take another example, the applicant alleged that the mark in § 4a, "working with others", on the first disputed OER (1990) was too low. The narrative comment said that he "obtained the willing cooperation of an Army engineer company . . . works very hard at attaining the proper rapprochement with juniors and seniors. Maintains excellent relations with other station departments." The standard for a "4" on § 4a was as follows: "Worked comfortably with others of all ranks/positions. . . . Got different people and organizations to work together without mandates. Carried share of load."

As a third example, the applicant alleged that the mark on § 9a, "initiative", on the first disputed OER, deserved more than a "4." The narrative comments were "[I]nitiation of a needed major reorganization . . . took courage to attempt . . . in spite of distractions and pressure from above and below." The standard for a "4" on § 9a was "[d]eveloped new ideas, methods, and practices. Supported new ideas . . . [a]nticipated problems and took timely action to avoid/resolve them."

VIEWS OF THE COAST GUARD

On April 7, 2000, the Commander of the Coast Guard Personnel Command (CGPC) recommended that no relief be granted to the applicant.

CGPC said the sentence about the disappearance of "authoritarian attitudes" was not expressly prohibited at the time the 1987 OER was prepared. The comment, according to CGPC, was "intended as a favorable statement . . . reflecting improved

performance." The applicant alleged that a personality conflict existed between him and his Supervisor resulting in his marks being lowered. However, the CGPC concluded that the applicant "provides no proof that [the Supervisor] or any other person systematically marked him below a level he deserved." CGPC noted that the applicant failed of selection for LCDR in 1991, 1992, 1993, 1994, and 1995. CGPC said that "only two of the seven OERs that the Applicant wants removed from his record were actually in his record when the first promotion board met." CGPC found that none of the remaining five "was overtly damaging."

On May 2, 2000, the Chief Counsel of the Coast Guard recommended to the Board that relief be denied, and that his comments and those of CGPC be regarded as the advisory opinion of the Coast Guard. The Chief Counsel concluded that the applicant "has failed to prove by clear and convincing evidence that any of his OERs for the period [June 1, 1990 to January 31, 1994] contain error or injustice." The Chief Counsel said [REDACTED] comments did in fact reasonably compare with Applicant's numerical scores. OERs are inherently subjective; Coast Guard regulations only require a 'reasonable' comparison" The Chief Counsel concluded that the applicant did not prove a disparity between marks and comments and failed to prove his allegation of improper influence by his reporting officer. The Chief Counsel also found that the applicant has failed to prove a nexus between his disputed OERs and his non-selection to the grade of lieutenant commander.

APPLICANT'S RESPONSE TO COAST GUARD VIEWS

On April 8, 1999, the BCMR sent a copy of the Coast Guard advisory opinion to the applicant, together with an invitation to submit a response within 15 days of notification..

On May 19, 2000, the Board received a rebuttal submission from the applicant. He alleges, inter alia, that a "comparison of the numerical scores with the supporting narrative . . . shows that there is not a reasonable consistency."

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 applicant's military record, and applicable law.

1. The Board has jurisdiction of the case pursuant to section 1552 of title 10, United States Code. The application was timely pursuant to Detweiler v. Pena, 38 F.3d 591 (D.C. Cir. 1994).

[REDACTED] was his Supervisor and later his Reporting Officer on his rating chains.

2. The sentence in the 1987 OER that referred to a previous report and was therefore alleged to be an error or injustice was permissible because it did not violate the text of Article 10.A.4.g.(3)(g) of the Personnel Manual then in effect. The challenged sentence did not prevent the applicant from being promoted on May 1, 1987.

3. The applicant alleged that the marks on seven disputed OERs, covering the period from June 1, 1990 to January 31, 1994, do not reflect his performance during that period and these OERs should be deleted from his record.

4. The applicant alleged that the Board should correct marks of "3" and "4" on the seven disputed OERs if it chooses not to delete these reports. He claimed that these numerical marks were inconsistent with and too low to be the equivalent of the rating chain's written comments. He also claimed that the standards for performance printed on each OER form were inconsistent with the numerical marks.

5. The Board finds that the numerical marks, the written comments by members of the rating chain, and the printed standards on each OER form were not inconsistent with each other.

6. The applicant did not show that the Coast Guard committed any error or injustice.

7. Accordingly, the application should be denied.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application to correct the military record of J
) , USCG is denied.

