

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2000-036**

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**FINAL DECISION**

**ANDREWS, Attorney-Advisor:**

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 commenced on January 4, 2000, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated September 21, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST FOR RELIEF**

The applicant, a xxxxxxx, asked the Board to raise certain marks he received on an Enlisted Performance Evaluation Form (EPEF) for his work at the xxxxxxx from October 13, 1998, to February 20, 1999. He also asked the Board to correct the disputed EPEF to show that his rating chain recommended him for advancement to xxxxxxx and to advance him directly to xxxxxxxx.

**APPLICANT'S ALLEGATIONS**

The applicant alleged that the EPEF was erroneously prepared and that the officers on his rating chain<sup>1</sup> were biased against him. He alleged his rating chain was biased against him because he tried to prevent the officers' verbal abuse of xxs, stop the constant use of foul language in the office, and improve morale in the office. He alleged that his supervisor, the xxx, constantly demeaned the xxs with foul language and often did so in the presence of outsiders, which embarrassed everyone in the office. He alleged that the xxx cursed so much and so loudly that the xxs frequently had to cover

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<sup>1</sup> Enlisted members are evaluated by a rating chain, which consists of a supervisor, who recommends evaluation marks; a marking official, who assigns the marks; and an approving official, who approves the EPEF.

the mouth pieces of their phones so that people on the line could not hear the xxx's foul language. He also alleged that the XXX and others often cursed about their professional contacts after finishing a phone call, which undermined professionalism in the office. The applicant stated that during occasional meetings with the XXX, he let him know his use of foul language was wrong and that he should use a different approach.

In addition, the applicant alleged that the XXX was biased against him because the applicant did not attend office "after hours" at the local pub. He alleged that other xxs warned him he should go to the pub because the XXX "buddie[d] back up with [the staff] for treating [them] like crap in the office." However, he did not go because he had to take care of his children while his wife attended night classes and because the cigarette smoke in the pub made his eyes water.

The applicant also alleged that his marking official, LCDR x., who served as the xx Officer, was biased against him. The applicant alleged that when he heard a rumor that LCDR x. sometimes leaked information to the media after receiving a "gag order" from the command or the Justice Department, he asked LCDR x. about it. He alleged that LCDR x. admitted to leaking information by making anonymous phone calls but said he would deny it if the applicant ever told anyone.

The applicant alleged that the low marks he received in the disputed EPEF were erroneous and not reflective of the actual high quality of his work. He alleged that his mark of 4<sup>2</sup> in the disputed EPEF for "professional/ specialty knowledge" was too low because he "demonstrated good knowledge of policies and procedures"; "consistently solved day-to-day technical problems" with e-mail, the duty list, and media relations; and trained the four xxs he supervised how to use desktop publishing and digital imaging software. He alleged that the mark of 4 for "quality of work" was too low because, fresh from school and with little guidance, he directed the redesign of xxxxxxxx, which earned outstanding comments from other Coast Guard personnel.

The applicant alleged that his mark of 3 for "monitoring work" was too low because he always prioritized tasks and reorganized work as necessary, enforced stricter deadlines in the production of xxxxxxxxxx, which helped the office run more smoothly, and kept the XX Officer and the XXX up to date on all aspects of the work. He also alleged that his mark of 4 for "using resources" was too low. He alleged that upon his arrival, he once asked the XXX where he could find the office's Correspondence Manuals. The XXX responded, "You're not at f\*\*king school anymore and you're not at f\*\*king Headquarters anymore. You're out in the real Coast Guard doing real f\*\*king Coast Guard work. Figure it out for yourself ... ." After getting that response, the applicant alleged, he asked someone else, found the manuals, reorganized

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<sup>2</sup> Enlisted members are marked on a scale of 1 to 7 (7 being best) in various categories of performance. The applicant challenged all but three marks he received in the disputed EPEF. He did not challenge the mark of 5 he received for "communicating," the mark of 5 he received for "developing subordinates," or the mark of 4 he received for "responsibility."

them to improve access, purchased more manuals, read them, and prepared outlines and tipsheets for his XXs.

The applicant alleged that the mark of 4 for "safety" was too low because while at the XX Office, he presented a "xxxxxxxxxx" report and helped others in the office raise their computer monitors to the proper height with old textbooks and dictionaries to save money. He alleged that his mark of 4 for "stamina" was too low because he willingly worked overtime to get the job done. For instance, he worked one weekend taking photographs at a xxxxxxxxxxxx and he worked nights and weekends to produce an annual report.

The applicant alleged that the mark of 4 for "directing others" was too low. He stated that upon his arrival in October 1998, the XXs told him they needed him to act as a "go-between" for them and the XXX and XX Officer. He alleged that he asked the unit's education officer if he could attend leadership school but was told there were no openings. Instead, the education officer recommended that he attend a Leadership and Management School roadshow in December. He attended the roadshow and used those skills to improve the rapport between the XXs and the XXX and XX Officer. He alleged that his mark of 4 for "working with others" was too low because he was always a team player and encouraged teamwork, as when he helped with a television feature about the xxxxxxxxxxxx and when he persuaded two XXs to submit entries for the Military Photographer of the Year Contest.

The applicant alleged that the mark of 3 for "evaluations" was too low because he always kept his superiors informed about the status and schedules of xxxxxxxx and always let his subordinates "know that they were doing a great job." He alleged that the evaluation system at the XX Office needed correction because neither he nor his subordinates received mid-term evaluations. He alleged that his mark of 4 for "work-life sensitivity/expertise" was too low because he counseled many people to further their education, informed them of events, and thought up and worked weekends to develop a monthly newsletter called "xxxxxxxxxx," which addressed housing and other local work-life issues in the xxxxxxxx area.

The applicant alleged that the mark of 4 for "setting an example" was too low. He alleged that his XXs would verify the he was an outstanding role model. He alleged that he voluntarily moved to work at the "service desk" beside the front door because he thought it was important for people entering the office to see something besides cubicles and people's backs. He alleged that the mark of 4 for "military bearing" was too low because his "standards for uniform and grooming are always model material." He alleged that he received compliments during a uniform and grooming inspection and on Groundhog Shadow Day. He further alleged that when he arrived, he was still using the nametag showing his xxxxxxxx award but removed it after the XXX informed him he should not wear it. He also alleged that the mark of 4 he received in

“health and well-being” was too low because he worked out every day, rarely drank alcohol, and encouraged others to use the gym, stop smoking, and swim.

The applicant alleged that the mark of 2 he received for “customs and courtesies” was much too low. He alleged that he was very courteous to everyone and always exercised military protocol. He alleged that the mark of 4 he received for “respecting others” was also too low because he showed great respect for all people and was always courteous and sensitive to their feelings.

The applicant alleged that the mark of 3 for “loyalty” was too low and contradicted all of the work he has done for the Coast Guard, as indicated by the awards he has received. He alleged that the mark of 4 for “human relations” was too low because he “actively campaigned against prejudicial actions (cursing problem).” He alleged that he frequently brought this long-standing problem to the attention of the XX Officer, who said he was aware of the problem but did not stop it.

The applicant also alleged that the mark of 3 for “adaptability” was too low. He stated that he easily adapted when last-minute changes were required in xxxxxxx, when plans changed on Groundhog Shadow Day, when he was sent to photograph a survival swim in heavy surf, and in setting up a new photography studio with equipment that he had researched and purchased for the office.

The applicant alleged that all of these low marks and his rating chain’s failure to recommend him for advancement were caused by their bias against him due to his attempts to stop the verbal abuse and correct “xxxxxxx practices” during his five months at the office. He alleged that his record supports his allegation that his rating chain’s assessment of his performance and potential is erroneous and unfair. Prior to serving at the XX Office, he had received the xxxxxxx and xxxxxxxxxx awards, and he had been selected for and graduated from the Coast Guard’s xxxxxxx Program. In addition, the applicant alleged that after his transfer back to Headquarters, he received phone calls from the other XXs in the office, who reported that it was “just as bad as ever out there” and that all six XXs in the office had been placed on administrative probation and were not recommended for advancement by the rating chain.

The applicant presented no statements from colleagues in support of his allegations. He provided the phone number of the XX Office and suggested that the Board could verify his allegations by speaking with the XXs in the office.

The applicant also alleged that he was never counseled concerning any poor performance and that the disputed EPEF constituted an unfair surprise. He alleged that he never received a “mid-period evaluation” as required by the Personnel Manual, which would have forewarned him of any problems and given him a chance to resolve them. Moreover, he alleged, the EPEF should have been prepared prior to his departure from the XX Office, but he never received it until after he was transferred to Headquarters.

He alleged that upon his departure from the office, he met with his marking official, LCDR x., who "had nothing but praise and thankfulness for the help [the applicant] provided in turning the office around and getting the other xxxxxxxx specialists 'fired up' to do their jobs." Therefore, he was shocked when he received the very poor EPEF almost two months after his departure. He alleged that the disputed EPEF was particularly unfair because it was the last one in his record prior to the service-wide examination.

The applicant alleged that when he received the disputed EPEF, he called LCDR x. to try to get his marks raised, but his request was refused. He alleged that when he decided to appeal the EPEF, someone advised him not to mention the "extreme, vulgar language" used in the office by the XXX and others because nobody would care. He also alleged that the Coast Guard's consideration of his appeal of the disputed EPEF was disapproved after a long delay that violated regulation.

### **SUMMARY OF THE APPLICANT'S RECORD**

The applicant reenlisted in the Coast Guard on May 4, 1992, having previously served five years and four months on active duty and five years and one day in the Reserve. His initial rank was SN-XX (seaman-xxxxxxx; pay grade E-3). He was assigned to work in the xxxxxxxx at Coast Guard Headquarters. On November 3, 1992, he received an EPEF with one mark of 4; nine marks of 5; seven marks of 6; and two marks of 7. He was advanced to XX3 (pay grade E-4).

The EPEFs the applicant received as a XX3 are numbered 1 through 5 in the table below. In 1995, he was advanced from XX3 to XX2. The EPEFs he received as a XX2 are numbered 6 through 9 in the table below. His record contains many administrative entries documenting exceptional performance for which he received marks of 7 in his EPEFs. He received a Coast Guard Achievement Medal for his work on xxxxxxxx from May 1992 through May 1997.

On February 28, 1997, the applicant was advanced to XX1. The EPEF numbered 10 in the table below, dated May 29, 1997, is the first he received at this rank. In June 1997, the applicant was transferred from his unit at Coast Guard Headquarters to study xxxxxxxx at an xxxxxx. He did not receive any EPEFs while studying at the institute from June 1997 through September 1998.

On October 12, 1998, the applicant was assigned to serve at the XX Office for the xxxxxx. He served there for four months before being transferred to Coast Guard Headquarters on February 20, 1999. The disputed EPEF, number 11 in the table below, covered his service at the XX Office and was prepared after his departure. On March 3, 1999, the applicant's marking official, LCDR x., made an administrative entry in his record explaining the mark of 2 he received in the EPEF for "customs and courtesies" and his non-recommendation for advancement. The entry states the following:

[The applicant's] dealing with superiors in both the officer and enlisted corps is sometimes curt and non-professional. He sometimes fails to acknowledge individuals by rank or with a professional greeting such as sir or chief, etc. When involved with conversations on the telephone after he either received or provided the necessary information to individuals, he becomes curt and boisterous. At times commenting to others in the office, that he would did [sic] not want to talk to specific individuals. This type of telephone and customer service is extremely detrimental to the xxxxxxxx Office.

[The applicant] is NOT RECOMMENDED to participate for advancement to Chief Petty Officer for the following reasons: He resists the leadership role and must develop as a leader if he is going to be advanced to Chief Petty Officer. [Leadership and Management School] training was made available to him upon his arrival at this unit and he expressed that it wasn't necessary for him to attend. This training was made available for him since he was filling the Leading Petty Officer billet in the office and was responsible for five junior petty officers. He is lacking in the skills and tools needed as an office supervisor and made no attempt to acquire these skills when they were made available to him. He lacks administrative, financial, and correspondence knowledge and skills. However, he is an excellent teacher and easily conveys his personal technical knowledge and skills to his subordinates, and has the potential to be a good leader.

On April 28, 1999, the applicant appealed the EPEF. LCDR x. forwarded his appeal to the Commander of the xxxxxxx on May 13, 1999, with a letter explaining and justifying every evaluation mark challenged by the applicant, in accordance with Article 10.B.10.b.(2) of the Personnel Manual. With respect to the marks of 4 that the applicant challenged, LCDR x. stated that his performance in each case had met the written standards for a mark of 4 but none of the written standards for a mark of 6, and he cited specific aspects of the applicant's performance that supported the marks of 4.

Regarding the mark of 3 for "monitoring work," LCDR x. stated that the applicant received a 3 because his performance "met some of the standards defined in the 2 block and some of the standards in the 4 block on the EPEF." He cited a project (rewriting an instruction for the xxxxxxx) that had a deadline of February 28, 1999, but that the applicant did not complete prior to his departure on February 20th, despite repeated reminders.

Regarding the mark of 3 for "evaluations," LCDR x. stated that the applicant's performance "met some of the standards defined in the 2 block and some of the standards in the 4 block on the EPEF." He stated that, upon his arrival, the applicant was told that he was responsible for preparing mid-period evaluations for his subordinate petty officers but failed to do so. In addition, LCDR x. stated that the applicant also failed to provide his supervisor with any input for the disputed EPEF.

Regarding the mark of 2 for "customs and courtesies," LCDR X. stated that the applicant's performance met the standards for a mark of 2 but none of the standards for a mark of 4. He repeated the explanations for this mark made in the administrative entry dated March 3, 1999.

Regarding the mark of 3 for "loyalty," LCDR X. stated that the applicant received a 3 because his performance "met some of the standards defined in the 2 block and some of the standards in the 4 block on the EPEF." He stated that "on several occasions, [the applicant] protested about decisions or lack of decisions made in conjunction with office policies or projects to his junior petty officers rather than to his supervisor. He ... showed his dissatisfaction with the decisions after [the XXX and LCDR X.] had been directed by our superiors to make specific changes. This dissatisfaction was aired to the entire office in an unprofessional, disloyal manner."

Regarding the mark of 3 for "adaptability," LCDR X. stated that the applicant received a 3 because his performance "met some of the standards defined in the 2 block and some of the standards in the 4 block on the EPEF." LCDR X. stated that the applicant "voiced his dissatisfaction with changes to projects" and, when directed to stop work on one project to work on a higher priority project, "did so grudgingly and with difficulty."

On July 19, 1999, the Commander of the xxxxxxxx denied the applicant's appeal. He stated that, based on the letters of the applicant and LCDR X., he had determined that "the marks assigned were given in a responsible manner and provide an accurate evaluation of your performance."

The applicant has received three EPEFs for his performance since his return to Coast Guard Headquarters in February 1999. They are numbered 12 through 14 in the table below. On July 23, 1999, the Chief of xxxxxx for the xxxxxxxx Coast Guard District made an administrative entry in his record highly praising the applicant's performance on a temporary assignment to handle xxxx regarding the xxxxxx that killed xxxxxxxxxx.

## APPLICANT'S MARKS IN 14 EPEFs FROM 3/31/93 THROUGH 5/31/00

CATEGORY	1	2	3	4	5	6	7	8	9	10	11 <sup>a</sup>	12	13	14	AVE <sup>b</sup>
Prof/Specialty Knowledge	4	6	6	7	7	7	7	7	7	7	4	5	6	6	6.3
Quality of Work	5	6	6	7	7	7	7	7	7	7	4	5	5	7	6.4
Monitoring Work	6	6	6	7	6	6	6	7	7	6	3	5	5	6	6.1
Using Resources	5	6	5	5	5	5	5	5	6	6	4	5	6	6	5.4
Safety	4	4	5	5	5	5	5	6	6	4	4	4	5	4	4.8
Stamina	6	7	7	6	7	7	6	7	7	5	4	5	6	6	6.3
Communicating	4	5	6	6	6	6	7	6	6	6	5	6	5	6	5.8
Directing Others	4	4	4	4	4	4	4	5	5	6	4	4	5	4	4.4
Working with Others	5	4	5	5	6	6	7	7	7	6	4	5	5	4	5.5
Developing Subordinates	4	4	4	4	4	4	6	6	6	5	5	5	5	5	4.8
Responsibility	4	4	5	7	6	6	6	6	6	6	4	5	4	5	5.4
Evaluations	4	4	4	4	4	4	4	4	4	4	3	4	4	4	4.0
Work-Life Sensitivity/Exp.	6	4	4	4	4	4	4	5	5	6	4	4	4	4	4.5
Setting an Example	5	6	6	6	7	7	7	7	7	6	4	5	5	5	6.1
Military Bearing	4	5	6	6	6	6	6	6	6	6	4	6	6	6	5.8
Customs & Courtesies	4	5	6	6	6	6	6	6	6	6	2	5	5	4	5.5
Health & Well-Being	4	7	5	6	5	5	6	6	6	6	4	5	5	5	5.5
Integrity	5	6	7	6	6	6	6	6	6	6	5	6	6	6	6.0
Loyalty	5	6	7	6	6	6	5	6	6	6	3	6	5	5	5.8
Respecting Others	6	6	6	6	6	6	7	7	7	6	4	5	6	5	6.1
Human Relations	4	5	5	5	5	5	5	5	5	6	4	5	5	5	5.0
Adaptability	6	7	7	7	7	7	7	7	7	6	3	6	5	5	6.5
<b>Average for EPEF</b>	<b>4.7</b>	<b>5.3</b>	<b>5.5</b>	<b>5.7</b>	<b>5.7</b>	<b>5.7</b>	<b>5.9</b>	<b>6.0</b>	<b>6.1</b>	<b>5.8</b>	<b>3.9</b>	<b>5.0</b>	<b>5.1</b>	<b>5.1</b>	<b>5.5</b>
Recommendation for Advancement	R	R	R	R	R	R	R	R	R	R	NR	R	R	R	

<sup>a</sup> The disputed marks in EPEF 11 are shaded. The three undisputed marks and the calculated average mark are left unshaded.

<sup>b</sup> Average score of all EPEFs except disputed EPEF 11. Averages have been rounded.

## VIEWS OF THE COAST GUARD

On June 16, 2000, the Chief Counsel of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request for relief for lack of proof.

The Chief Counsel admitted that the Coast Guard committed two administrative errors with respect to the applicant's EPEF. First, the EPEF was not presented to the applicant for signature at least 15 days before he left the XX Office, as required by Article 10.B.5.b.1. of the Personnel Manual. The purpose of the rule, he stated, is "to allow departing Coast Guard members adequate time for counseling, appeal, and administration." However, the Chief Counsel argued, the record shows that the administrative error was harmless because the applicant "received the counseling and appellate proc-



ess he was entitled to.” Second, the Chief Counsel admitted that the Appeal Authority took more than 15 days to review the applicant’s appeal. However, he argued, this delay was also harmless because the applicant received “the full measure of due process he was entitled to under the EPEF appeals system.”

The Chief Counsel alleged that to prove 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); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979). To overcome the presumption of regularity, he alleged, the applicant must provide “clear, cogent, and convincing evidence to the contrary.” The Chief Counsel argued that the applicant has not met this burden with respect to his allegations regarding inadequate counseling. He alleged that LCDR X.’s endorsement to the applicant’s appeal indicates that LCDR X. met with him prior to his departure from the XX Office and told him why he would not be recommended for advancement. The Chief Counsel stated that the applicant admits the meeting happened but “differs in recollection as to its nature.” In addition, he stated that the record shows that LCDR X. “continued to be accessible to Applicant after his transfer.”

The Chief Counsel also alleged that the applicant failed to meet his burden of proof with respect to the accuracy of the marks in the disputed EPEF. He pointed out that the applicant “failed to submit any independent evidence in support of his allegation that his marks were disproportionately low.” The fact that the applicant disagrees with the marks, he argued, “demonstrates only that he had a more favorable view of his own performance than those responsible for evaluating him.” The Chief Counsel further alleged that LCDR X. thoroughly justified the challenged marks in the EPEF in his endorsement to the applicant’s appeal.

Finally, the Chief Counsel alleged, the applicant failed to prove that his EPEF marks and negative recommendation for advancement were the result of bias. He pointed out that the applicant submitted no affidavits in support of his allegations, did not file any complaints against his rating officials, and failed to bring his allegations “to the attention of proper authorities” while working at the XX Office.

## **APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On June 16, 2000, the BCMR sent a copy of the Chief Counsel’s advisory opinion to the applicant and invited him to respond within 15 days. He did not respond.

## **RELEVANT REGULATIONS**

### ***Coast Guard Personnel Manual***

Article 10.B. of the Personnel Manual governs the preparation of EPEFs. Article 10.B.1.b. states that “[e]ach commanding officer must ensure all enlisted members under

their command receive accurate, fair, objective, and timely evaluations.” Each enlisted member is evaluated by a “rating chain” of three persons: a supervisor, a marking official, and an approving official. Article 10.B.4.d.

When preparing an EPEF, under Article 10.B.4.d.(3), the supervisor assigns recommended performance marks for each performance category and prepares written comments supporting every recommended mark that is a 1, 2, or 7. The supervisor then indicates whether he or she recommends the member for advancement and forwards the draft EPEF to the marking official.

Under Article 10.B.4.d.(4), the marking official reviews the draft EPEF and discusses with the supervisor “any recommendations considered inaccurate or inconsistent with the member’s actual performance.” The marking official then assigns the final performance marks, indicates whether he or she recommends the member for advancement, and forwards the EPEF to the approving official.

Under Article 10.B.4.d.(5), the approving official reviews the EPEF to ensure “overall consistency between assigned marks and actual behavior and output” and to ensure that “evaluatees are counseled and advised of appeal procedures.” The approving official may return an EPEF for revision if he or she thinks any marks are inaccurate. Otherwise he or she signs the EPEF, concurring in the marks assigned by the marking official, and indicates whether he or she recommends the member for advancement.

Under Article 10.B.6.b., the written comments supporting marks of 1, 2, or 7 must be entered in a member’s personnel data record on an Administrative Remarks page. The member must be counseled concerning the entry. Article 10.B.6.b.2.b.

Under Article 10.B.5.a., members in pay grade E-6 receive “regular” semiannual evaluations at the end of each May and November. However, if a member who has not received a regular evaluation within 92 days is transferred from a unit due to a permanent change of station, the member must receive a “special” transfer evaluation, which must be prepared and signed by the member “NO LATER THAN 15 days before departing the unit to allow adequate time for counseling, appeal, and administration.”

Under Article 10.B.10., a member may appeal performance marks on an EPEF (but not a negative recommendation for advancement) within 15 days of receiving a copy of the approved EPEF. Upon appeal, a member’s commanding officer may raise assigned marks as requested by the member. Otherwise, the appeal must be forwarded to the Appeal Authority within 15 days of receipt from the member, although the 15 days may be extended if more time is needed because, for example, a member of the rating chain has been transferred. The commanding officer must forward the appeal to the Appeal Authority with an endorsement containing “specific examples of demonstrated performance that warranted the assigned marks.” Article 10.B.10.b.2.e. The

Appeal Authority must review and act upon an appeal within 15 days of receipt. Article 10.B.10.b.3.a.

Under Article 5.C.4.b.1.1., a member must be recommended for advancement by his or her command to be eligible to take the service-wide examination for promotion.

## 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 concerning this matter pursuant to section 1552 of title 10 of the United States Code. The application was timely.

2. The applicant alleged that most of the marks in the disputed EPEF were too low and not reflective of his actual performance at the XX Office. However, in his endorsement to the applicant's appeal of the EPEF, his marking official confirmed and justified each of the challenged marks with specific examples of his performance. The marking official's comments indicate a thorough familiarity with the applicant's duties and performance. The applicant has not proved by a preponderance of the evidence that any of the challenged marks in the disputed EPEF are erroneous.

3. The applicant alleged that his supervisor and marking official assigned him low marks because they were biased against him. However, he submitted no evidence whatsoever in support of this allegation.

4. The Coast Guard erred by preparing the EPEF after the applicant had departed the XX Office. However, the applicant did not prove that he was denied any substantial right as a result of this administrative error. The record reflects that the applicant was counseled by LCDR X., his marking official, prior to his departure from the XX Office, and was able to discuss the marks with him after it was prepared. The applicant has not proved that he was not provided sufficient feedback and counseling concerning his performance.

5. The Coast Guard erred by taking more than 15 days to consider the applicant's appeal. However, the applicant has not proved that the delay deprived him of any substantial right. The record indicates that his letter of appeal and the marking official's endorsement were properly considered before his appeal was denied.

6. The applicant alleged that the excellent marks he has received on his other EPEFs prove that the marks in the disputed EPEF are erroneous. However, the fact that one EPEF is significantly worse than the others in his record does not prove that it is erroneous. *Grieg v. United States*, 640 F.2d 1261, 1269 (Ct. Cl. 1981). It is not unusual for

members being assigned to a new position requiring new skills, such as administration and supervision, to receive lower evaluation marks until they acquire those skills through experience and training. The Board notes that even after the applicant was transferred to Headquarters, many of his marks remained lower than those he had previously received as a XX3 and XX2.

7. The applicant has not proved by a preponderance of the evidence that the Coast Guard committed any error with respect to the evaluation marks in the disputed EPEF. Nor has he proved that he was unjustly denied his command's recommendation for advancement.

8. Accordingly, the applicant's request should be denied.

**ORDER**

The application for correction of the military record of XXXXXXXXXX, USCG, is hereby denied.

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Terence W. Carlson

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L. L. Sutter

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Sharon Y. Vaughn