

Although not mentioned by the applicant, the comments supporting the Personal and Professional Qualities section of the OER, of which health and well-being is a part, also contained the comments: "Uniform appearance below standard during per[sonnel] inspection. Set bad example for crew. Prof[essional] demeanor lacking in several dif[ferent] situations . . . Failed to use alcohol responsibly & as a result reported 4 hours late for work on duty day. . . [First] alcohol incident."

Views of the Coast Guard

On October 29, 2001, the Board received an advisory opinion from the Chief Counsel of the Coast Guard. He recommended that the Board deny relief in this case for lack of proof and merit. Attached to the advisory opinion was a memorandum from the Commander, Coast Guard Personnel Command, the reasoning of which was adopted by the Chief Counsel.

CGPC stated that Article 10.A.4.c.7 of the Personnel Manual states that "the reporting officer shall include comments citing specific aspects of performance behavior for each assigned mark that deviates from a 4. Comments should be consistent and compare reasonably with standards marked on the performance dimensions in the evaluation area." CGPC stated that based on the reporting officer's comment that the applicant's failure to use alcohol responsibly resulted in his reporting to work four hours late supported the 3 in health and well-being since sobriety is included in that dimension. He stated that the comments as written do not support a higher mark in this dimension.

The Chief Counsel stated that the applicant had failed to overcome the presumption that his rating officials acted correctly, lawfully, and in good faith in evaluating the applicant's performance under the Coast Guard's Officer Evaluation System. See Arens v. United States, 969 F.2d 1034, 1037 (1992). Accordingly, the applicant has failed to prove that the mark of 3 in health and well-being is in error or unjust.

Applicant's Response to the Views of the Coast Guard

On November 2, 2001, a copy of the advisory opinion was sent to the applicant with an invitation for him to respond. He did not submit a response.

FINDINGS AND CONCLUSIONS

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

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

2. The applicant has failed to prove by a preponderance of the evidence that the mark of 3 in the health and well-being category was in error or unjust. He asserted that a comment about his handling of a confrontation between crewmembers and local residents during a patrol break supports a mark of 5 in this category. An officer's misuse of alcohol must be considered.

3. The Board cannot say that the 3 in health and well-being is inconsistent with the comments. The OER states that the applicant was four hours late for work because of his misuse of alcohol. Apparently, the reporting officer found that this negative event was significant enough to mention in the applicant's OER and marked him accordingly.

4. The applicant has not produced any evidence showing that event did not occur. The Board finds that the comments about the applicant's misuse of alcohol support the mark of 3 in health and well-being.

5. Accordingly, the applicant's request for relief should be denied.

[ORDER AND SIGNATURES ON NEXT PAGE]

