

**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2011-007

**XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX**

FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the application upon receipt of the applicant's completed application on October 16, 2010, and subsequently prepared the final decision as required by 33 CFR § 52.61(c).

This final decision, dated July 28, 2011, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant asked the Board to correct his record by modifying two officer evaluation reports (OERs) for the period from June 12, 2006 to March 31, 2007 (first disputed OER) and from April 1, 2007 to March 31, 2008 (second disputed OER). He also requested to have his non-selection for captain before the Promotion Year (PY) 2011 selection board removed from his record.

During the period covered by the two disputed OERs, the applicant was the chief of the logistics department at Sector Los Angeles. With respect to the first disputed OER, the applicant asked that the marks of 5 be raised to marks of 6 in "Looking Out for Others," "Directing Others," "Results/Effectiveness," and "Adaptability," and that the mark of 4 in "evaluations" be raised to 5.¹ He also requested that the mark in the 4th block on the comparison scale in section 9 be moved to the 5th block.²

With respect to the second disputed OER, the applicant asked that the marks of 5 be raised to marks of 6 in "Directing Others," "Evaluations," and "Judgment." He also requested that the mark in the 4th block on the comparison be moved to the 5th block.

¹ OER marks range from a low of 1 to a high of 7. A mark of 4 is considered to be average..

² Section 9 on an OER is where the reporting officer compares the reported-on officer to all other officers of that grade that the reporting officer has known during his career.

ALLEGATIONS

The applicant first noted that his supervisor for the two disputed ORS, then-Capt H, was forced to retire from the Coast Guard as a LT in April 2010 because of misconduct that included inappropriate relationships with enlisted personnel over a 13-year period. The applicant stated that for 2 of the 13 years Capt H served as his supervisor for the disputed OERs. The supervisor is referred to as Capt H in this decision because that was his grade while serving on the applicant's rating chain.

The applicant alleged that Capt H had a personal bias towards him that resulted in an inaccurate assessment of his performance. The applicant contended that Capt H, the supervisor, was biased against him because of the following:

1. The applicant confronted Capt H. about his misuse of government vehicles. The applicant stated that he spoke to Capt H about this and the misuse soon stopped.

2. The applicant confronted Capt H. about his inappropriate comments to and about women, including about their weight, as well as an appearance of impropriety in the manner in which he communicated with enlisted members.

3. The applicant approached Capt H about the appearance of an inappropriate relationship between Capt H and YN1 B, who was Capt H's executive assistant. The applicant stated that he was the approving official for enlisted evaluations, including YN1 B. He stated that he consistently counseled YN1 B about her relationship with Capt H. and about referring to Capt H by his first name in the workplace. He contended that counseling YN1 B was nearly impossible because she would immediately run crying to Capt H and tell him how she had been wronged by personnel of the logistics department. The applicant alleged that Capt H would immediately side with YN1 B. He alleged that the YN1 B utilized her personal relationship with the Capt H to sabotage his and his department's relationship with Capt H by placing them in a bad light. The applicant alleged that Capt H's opinion of him was skewed by his inappropriate personal and unprofessional relationship with YN1 B. The applicant alleged that Capt H blew little things out of proportion, such as: "[Capt] H had received a care package from a female enlisted that he was helping with an officer candidate school application. Capt H did not get the package delivered to him before he went TDY and was quite upset and I was admonished upon his return." The applicant also stated the following:

YN1 B talked poorly to Capt H about the YNC that she reported to. The YNC tried to hold YN1 B to the Coast Guard standard but was unable to because of Capt H's interference. YN1 B would consistently complain to Capt H about the YNC and about how I led the YNC and my department. Capt H called me into his office numerous times for discussions about YNC and my leadership. On several occasions he had the YNC attend meetings to personally question him on how to be a Chief and a supervisor. Capt H constantly questioned me about things going on in the Yeoman/Admin Office. As the approving official for all enlisted, Capt H never questioned the performance of other chiefs or any other

enlisted members outside the Yeoman workforce. He only questioned me on YN1 B's peers and supervisor.

The applicant stated that upon YN1 B's departure from the command in 2009, he conducted a checkout interview with her, in which she stated that the applicant's department's customer service was horrible and that she had no faith in the logistics department's chain of command.

The applicant alleged that that Capt H used his bias against him to influence Capt W, the rating chain reporting officer, to mark the applicant unfairly, particularly on the comparison scale in section 9. In this category, the reporting officer marked the applicant in the 4th block of 7. The applicant stated that prior to the disputed OERs he has received only two 4s in this category in his career: one as an ensign and the other as a LT.

The applicant alleged that his OERs were severely impacted and influenced by Capt H's inappropriate relationships. The applicant stated that he learned in April 2010, that Capt H would be demoted to LT and forced to retire because of inappropriate relationships with staff members over a period of more than 13 years. The applicant stated that according to the charges against him, Capt H talked about command issues and officer performance with enlisted females. He sought their opinions when making decisions. The applicant argued that Capt H's relationship with YN1 B was no different. The applicant alleged that Capt H. discussed his performance and his department's performance with YN1 B and that their relationship negatively impacted his ability to lead the department.

The applicant submitted a redacted charge sheet dated November 3, 2009, accusing Capt H of certain offenses under the Uniform Code of Military Justice. Some of the alleged offenses included fraternization and adultery that occurred during the period in which Capt H served as the applicant's supervisor. However, the names of the enlisted members with whom he fraternized are redacted. Additionally, he was charged under Article 134 with fraternizing with an enlisted female on terms of military equality between July 11, 2008 and May 10, 2009 by wrongfully discussing with her the performance of commissioned officers under his command and by seeking her input regarding the non-judicial punishment of enlisted members.

The applicant alleged that after Capt H was transferred (May/June 2008) and replaced by Capt C, his OERs returned to their usual high marks. He received a mark in the 6th highest category on the comparison scale in section 9 of his departing OER under the new supervisor.

Statements submitted by applicant

1. CWO2 C wrote a declaration under penalty of perjury. He stated that he was the administrative officer at Sector Los Angeles and the applicant was his supervisor. He wrote that the chief yeoman (YNC) on his staff was concerned about the number of times the staff was required to fill in for YN1 B due to her absences. Those absences totaled 174 days. According to CWO2 C, he and the applicant attempted to discuss the matter with Capt H, but he protected YN1 B. CWO2 C stated that YN1 B spoke to her seniors, including the applicant, in a disrespectful tone. The CWO2 stated that "[t]he relationship with Capt H and YN1 B was

completely inappropriate and carried over to after working hours at the RV park where they lived side by side for some period of time.” CWO2 C stated that Capt H encouraged YN1 B’s behavior and belittled the applicant based on reports he received from YN1 B.

The CWO2 C opined that the applicant’s evaluations were tainted due to the inappropriate information that Capt H received from YN1 B. CWO2 C stated that on one occasion, YN1 B told him that she did not like the applicant and that Capt H was very upset with how he was running logistics. He also stated that YN1 B made inappropriate comments about the applicant’s leadership style to Capt H during the work day. CWO2 also stated the following:

On one occasion YN1 wanted me to get the applicant right away because Capt H was very upset with the SKCM’s shop because he had not received a box of cookies from a friend. [The applicant] was openly crucified at a staff meeting over this issue by Capt H. On an interesting note, we later found out that the box of cookies proved to be from one of his inappropriate relationships. With all this said, I would directly place the blame on Capt H for several Department Heads at Sector LA/LB getting passed over [for promotion].

2. MSTCM K (hereafter referred to as Chief K) was the command master chief. He attested to the applicant’s excellent leadership skills and judgment. He also stated generally that the applicant’s working relationship with Capt H was hostile because of the applicant’s willingness to approach Capt H on issues that he believed were in direct conflict with Coast Guard policy. Chief K stated that Captain H’s family and YN1 B’s family were neighbors, frequented each other’s homes, and were on a first name basis. According to Chief K, the applicant confided in him that he had spoken with Capt H about how his close relationship with YN1 B was interfering with the good order and discipline of the command. The Chief stated that he was aware that Capt H confided in YN1 B and discussed information and opinions with her. According to Chief K, he was aware of one particular instance in which Capt H tasked YN1 B with compiling career information about his replacement because he did not believe that his replacement was qualified for the job. He stated that when he confronted the YN1 B about the inquiry, she relied that “we are’ not sure if the new captain is qualified for the position.” According to Chief K, it was inappropriate to have a YN1 conducting background research into such a senior officer. He stated that after expressing his concerns about YN1 B’s research “to both captains,” it ceased.

3. CAPT C replaced Capt H in June 2008 and was the applicant’s supervisor from May 2008 until July 2009. Capt C stated that upon his arrival at the command, he met with the applicant and found him to be very professional, extremely organized, highly detailed, and very forthright. Capt C stated that during their discussions, the applicant brought up his concern that his working relationship with Capt H had been significantly damaged as a result of an inappropriate relationship between Capt H and YN1 B. In regard to YN1 B, Capt C wrote the following:

It did not take long for me to observe that the YN1’s behavior was indeed inappropriate, and that she had become accustomed to running roughshod over senior enlisted and junior officers who came into the front office. I observed a

particularly acrimonious, ongoing quarrel between the YN1 and most of the members of the Admin Division; YN1 voiced to me that she was only accountable to the Deputy and Sector Commander. YN1 made multiple overtures toward me designed to undermine the Logistics chain of command, which I promptly put to a full stop. I found the existing arrangement to be definitely counter-productive to the overall good order and discipline of the unit. I immediately counseled the YN1 and assigned the CWO Admin Officer as her direct supervisor. These actions quickly restored good order and discipline at the unit.

Capt C praised the applicant's work for the year that he supervised him. He stated that it was his professional opinion that the applicant's performance evaluations were adversely and unfairly affected by his predecessor Capt H. He stated that his observations at the unit supported the applicant's assertion that an inappropriate working relationship between Capt H and YN1 B resulted in the applicant being prejudiced unfairly in the time prior to his arrival. Capt C concluded with the following:

[T]he command climate between the previous Deputy and each of his department heads was very poor in general. The response Chief, Planning Chief, and Logistics Chief had all been effectively marginalized and stripped of most decision-making authority. The Intel Officer had also been marginalized. The prevention Chief was the most functional of the department heads when I arrived, however, his marks under [Capt H] had dipped substantially after he reported to the Sector. While these people were all quickly restored to their proper roles in the unit as I established myself at the command, the unfortunate prologue to this story is that the Response Chief had already been passed over for Captain and retired within a month of my arrival to Sector. In the two years that followed, despite excellent performances and very strong OERs, the Logistics, Prevention, and Planning Chiefs all failed to make their next promotion points. I suspect this to be a little out of the norm for a single unit.

First Disputed OER

The applicant received marks of 5 in "Results/Effectiveness", and "Adaptability." He asked that they be raised to 6. Capt H's comments in the Performance of duties section of the first disputed OER which include the "Results/Effectiveness" and "Adaptability" categories:

Superbly prepared for duties upon reporting; reviewed Dept procedures, inspected spaces, reviewed budget. Met w/depart/unit personnel, arranged meetings w/ISC work life supervisor/EO/XO & outlying cmds, rcvd feedback on Dept performance; ensured continuity of ops while assessing areas for improvement. Foresight for AY07; Id'd fleet ups, updated rotation dates, sought & rcvd approval for enlisted/officer Cmd concerns & communicated w/CGPC re alignment of mbrs to PAL, key to increased magmnt potential & alignment w/COMDT's direction. Maximized available resources; drew on Eng Div untapped capability to undertake housing fence project, building water intrusion

& AC&R building maintenance, redirected over \$100K to unfunded projects; quickly organized unit & ISC resources (boat lift, personnel support) to repair 47 MLB engine/fuel casualty; exceptional effort led to boat being repaired & returned to STA w/in 2 days. Provided superb admin & financial support; coordinated mini-compliance inspections to outlying units to ensure admin. financial prgms in compliance w/applicable laws, procedures & regs; fully compliant & financial metrics at 90%+, received praise fm D11 Funds Mngr. Expertly mngd \$1.9M+ budget & aggressively pursued fallout funding to “+” up LE/PPE gear, Command Center Wall of Knowledge & Boat Engine Overhauls needs; rcvd numerous accolades re superb customer service & exceptional support.

In the “Looking Out for Others,” and “Directing Others,” categories of the leadership skill section of the OER, the applicant received marks of 5 that he wants raised to 6. He also asked that the 4 in “Evaluations” be raised to 5. Capt H wrote the following comments about the applicant’s leadership skills:

Effectively addressed numerous challenges presented upon arrival re medical conditions, domestic violence, divorce, drug abuse, financial difficulties, child care & family problems; arranged for physical separation, issued military restraining order, engaged work life for alleged domestic abuse, initiated steps for good order & discipline &/or to yield max assistance in all cases. Provided subs guidance & challenging opportunities to dvlp personally & professionally; encouraged mbrs to pursue higher education w/nearly 80% of eng crew enrolling in college classes, O-4 took on new duties & excelled as secretary to sub-ctme on training; yielded skilled & confident crew. Worked closely w/WPB, D11, Orange County, FD&CC Seattle & MLCP to devise short/long term site plan for WPB during pier reconstruction; reviewed plans for new building; ID’d temp office (trailer, shop storage); garnered mutual agreement for all affected, minimized conflict & impact on mission execution. Exchange of ideas & info enhanced working relationship; addressed civilian mbr feeling duties exceeded job dscrptn w/D11 Civil Right Ofcr, Pacarea Cmd Staff Advisor & Dept, encouraged mbr to trust Cmd, stress immediately lowered. Approving official for all enl except sub-unit OICs, held sups accountable, returned evls for sprt/clarification. OSF well documented & on time.

The applicant requested that the mark in the 4th block on the comparison scale in block 9 describing him as an “Excellent performer, highly recommended for positions increased responsibility” be changed to the 5th highest block, which would describe him as an ‘Exceptional performer, give toughest and most visible leadership assignments.’ Block 9 of the OER is the responsibility of the reporting officer. It is where the reporting officer compares the applicant alongside all commanders he has known throughout his career.

Second Disputed OER

The applicant received marks of 5 in “Directing Others” and “Evaluations.” (Comments are similar in description and tone to those discussed in the first disputed OER for this section and are not summarized here). He asked the Board to raise the marks to 6.

In the reporting officer’s portion of the OER, the applicant received a mark of 5 in “Judgment.” He asked that it be raised to 6. Capt W, the reporting officer, wrote the following comments describing the applicant’s personal and professional qualities, inclusive of judgment:

Sought a project Mgmt Seminar for unit & local cmds; Id’d instructor, dvlped syllabus & prepared handouts; efforts utilized both theoretical & interactive techniques which enhanced effectiveness of trng & provided common frame of reference improving cooperation thru-out base. Responsible & discreet; as CO, Enlisted Personnel handled sensitive personnel issues & infractions of UCMJ; placed mbr on performance probation for core value violations; offered 2nd chance but failed when discovered lying; took action to discharge w/out ability to reenlist. Confident envoy for CG in variety of forums; participated in AUX Change of Watches, appointment for future Academy cadet & volunteered as coach for youth soccer teams. Coordinated base wide soccer league; increased esprit de corps, wellness & morale of entire base. Extremely fit & trim; exceeded criteria for unit fitness assessments; encouraged & led fitness prgm for subs.

The applicant requested that the mark in the 4th highest category on the comparison scale in section 9 describing him as an “Excellent performer, highly recommended for positions of increased responsibility” be raised to the 5th highest category which would describe the applicant as an “Exceptional performer, give toughest and most visible leadership assignments.”

VIEWS OF THE COAST GUARD

On September 1, 2010, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in accordance with the memorandum from the Commander, Personnel Service Center (PSC).

PSC stated that Capt H, the supervisor, was subsequently relieved from his duties while serving at a different unit. PSC argued that there is no indication or evidence to suggest that the disputed OERs were not prepared and submitted in accordance with the guidance set forth in the Personnel Manual, and that in the absence of evidence to the contrary, it must be presumed that Capt H performed his rating chain supervisory duties in accordance with the regulation. PSC argued that the witnesses’ opinions on why the applicant was given certain marks are pure speculation. PSC obtained a statement from the reporting officer confirming that the two disputed OERS are accurate. The reporting officer’s statement will be summarized later in this section.

PSC stated that the block 9 comparison scale mark is where the reporting officer compares the applicant alongside all commanders that the reporting officer has known. According to Article 10.A.4.c.8.a of the Personnel Manual, the comparison scale represents the relative ranking of the reported-on officer, not necessarily a trend of performance. As such, from period to period an officer could improve in performance but drop a category. PSC stated that in this case, Capt W was the reporting officer for three consecutive OER periods and it was his responsibility to mark the applicant. He did so by comparing the applicant to all other officers in the grade of commander that he has known throughout his career. PSC noted that Capt W stood by all of the marks that he assigned to the applicant.

PSC disagreed with the applicant's contention that Capt H wrongly influenced the reporting officer's opinion of the applicant and as such his marks suffered. PSC noted that the reporting officer stated that Capt H was a "trusted member of [his] command staff," that he observed the applicant for three consecutive reporting periods, and that the marks, comments, and his assessment of the applicant's performance should stand. PSC argued that as a senior officer and the reporting officer, Capt W had the intellect and background to make his own assessment of the applicant's performance and did so. PSC further noted that under the Personnel Manual, Capt W, as the commanding officer, as well as reporting officer, had the responsibility to ensure that the applicant's OERs were accurate, fair and objective. PSC stated that with no specific evidence to the contrary, Capt W is presumed to have carried out his duties and completed the disputed OERS in accordance with regulation.

PSC disagreed that the applicant was not selected for promotion to captain due to negative influences from the supervisor. PSC stated that the applicant's record went before a best qualified selection board that compares officers' performance based upon their past performance, "their capacity to undertake, successfully, tasks of progressively greater difficulty involving broader responsibilities," their capability for further professional growth, and their potential to perform the duties of the next higher grade. PSC stated that the zone for selection in PY 11 was larger than it had been in previous years. For PY 11, there were 130 officers in and above the zone and only 59 were selected for promotion to captain. PSC stated that selection board deliberations are secret and one can assume that the applicant's record did not meet the criteria established by the selection board.

PSC concluded by stating that based upon all of the evidence, the applicant has not provided sufficient evidence to demonstrate that the disputed OERs contain inaccurate marks. The applicant has not provided evidence that overcomes the presumption of regularity with respect to the construction and submission of the disputed OERs.

Rating Chain Statements Submitted by Coast Guard with Advisory Opinion

Capt W, the reporting officer, stated that Capt H, the supervisor, was a trusted member of his command staff at Sector Los Angeles from 2006 to 2008. Capt W stated that the assigned marks and comments reflect his assessment and observation of the applicant's performance and qualities during the reporting periods under review. He stated, "His marked comparison during all three periods relative to all other commanders I have known throughout my career stand."

Capt KC, was the reviewer for the disputed OERs. He wrote that he was geographically separated from the applicant and did not directly observe his performance. He stated that his role as reviewer consisted of ensuring that the narratives of the OER supported the marks assigned and that other requirements of the officer evaluation system were met. He stated the following:

I did not personally observe the relationship between the applicant's supervisor and the enlisted command EA, and have no information as to whether that relationship could have affected [the applicant's] evaluation. I do know Capt [W], [the applicant's] reporting officer, fairly well, and I believe him to be a man who would listen closely to the input of his subordinates and take their recommendations into account, but would ultimately make up his own mind as to the final recommendation or evaluation he would give.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 26, 2011, the Board received the applicant's response to the advisory opinion. He disagreed with it. He again pointed out that Capt H. was punished at admiral's mast and forced to retire as a LT for having inappropriate relationships with women over the last 13 years that he was on active duty. He again stated that the inappropriate relationship between Capt H and YN1 B, the EA, resulted in his receiving an unjust rating because Capt. H wrongly influenced the reporting officer's opinion of the applicant's performance in the two disputed OERs. He again states that Capt H improperly relied on the YN1 B's opinion when evaluating his performance.

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. For the reasons discussed below, the Board finds that the applicant has submitted insufficient evidence to prove that Capt H was biased against the applicant in the disputed OERs; that YN1 B influenced Capt H to give the applicant erroneous and/or unjust OERs; that Capt H influenced the reporting officer to mark the applicant unjustly or erroneously on the disputed OER; or that Capt H could not accurately evaluate the applicant's performance for the periods under review because Capt H was subsequently charged with and punished for misconduct.
3. The applicant has presented insufficient evidence to prove that Capt H, the rating chain supervisor for the two disputed OERs, was biased against him because he confronted Capt H about his inappropriate use of a government vehicle, about his inappropriate comments to various women, and about the appearance of an inappropriate relationship between Capt H and YN1 B. With regard to confronting Capt H about the misuse of government vehicles, the applicant stated that he discussed the matter with Capt H and the misuse ceased. There is no other evidence in the record of Capt H's reaction to the applicant's comments about his misuse

of government vehicles. None of the three individuals who submitted statements on the applicant's behalf offered sufficient evidence that would support a finding that Capt H was biased against the applicant because of discussions about his misuse of a government vehicle. Nor was there any evidence, except for the allegation, that Capt H was biased against the applicant because the applicant confronted him about making inappropriate comments to and about women. The applicant does not describe the comments made by Capt H that required him to be admonished by the applicant or how Capt H reacted upon being cautioned about his behavior.

4. With regard to confronting Capt H about the appearance of his inappropriate relationship with YN1 B and the impact that it had on the unit, Chief K wrote that the applicant confided in him that he had spoken with Capt H about the appearance of an inappropriate relationship with YN1 B. However, Chief K was not a witness to these conversations and did not provide any specific examples of Capt H responses after the alleged discussion from which the Board can conclude that Capt H developed a bias against the applicant because of the discussion. Chief K stated that a hostile relationship existed between Capt H and the applicant as a result of the applicant's willingness to approach Capt H about his actions that conflicted with Coast Guard policy. However, Chief K fails to explain or detail the hostile relationship. For instance, there is no evidence that Capt H made unfavorable statements about the applicant to others, that he withheld any privileges from the applicant, or that he assigned the applicant or his department to any unfavorable duties that did not already belong to them. Even if the applicant approached Capt H about misuse of government property, making inappropriate comments, or the appearance of an inappropriate relationship with YN1 B, there is simply insufficient evidence to prove that Capt H was biased against the applicant as a result of such discussions.

5. Nor is the evidence sufficient to prove that Capt H was influenced to lower the applicant's marks on the disputed OERs based upon negative input about the applicant from YN1 B. The applicant offered no direct evidence that Capt H discussed his performance evaluations with YN1 B. The applicant speculates that the conversations he had with Capt H about his leadership of the logistics department were the result of negative information provided to Capt H by YN1 B. However, Capt H had access to other individuals in the command other than YN1 B that he communicated with that could easily have provided him with their observations of and information about the applicant's performance. Additionally, Capt H had the ability to observe the applicant's performance daily and could have based his evaluation of the applicant's performance on his own observations. The fact that Capt H was subsequently accused of fraternizing with enlisted members by discussing officer performance with an enlisted female at another unit during a different time period does not prove that he discussed the applicant's performance evaluations with YN1 B. Even if he had, there is no evidence of what was said or how what was said affected the marks in the disputed OERs.

6. The CWO2 wrote that the disputed OERs were tainted because of the inappropriate information that YN1 B provided to Capt H. However, CWO2 C does not describe what the inappropriate information was, except to state that on several occasions YN1 B told him that she did not like the applicant and that Capt H was very upset with how the applicant was running the logistics department. YN1 B, as the executive assistant to Capt H and reporting officer could have obtained that bit of information from various other sources and to attribute it to a direct

conversation between Capt H and YN1 B is speculation. Additionally, the comment, even if true, is not proof that Capt H sought, obtained, or relied on YN1 B's opinions in his evaluation of the applicant's performance.

7. Capt C, the applicant's subsequent supervisor commented that it was his professional opinion that the applicant's performance evaluations were adversely and unfairly affected by Capt H and that based upon his observations an inappropriate working relationship between Capt H and YN1 B was prejudicial to the applicant. However, Capt C was not at the unit during the time of the disputed OERs and had no opportunity to observe the applicant and Capt H interact, to observe Capt H and YN1 B interact, or to observe Capt H and the reporting officer interact. Capt C's opinions are just that and are not proof that the applicant performed any better during the periods under review than described in the disputed OERs.

8. The applicant alleged, but failed to prove, that Capt H used his alleged bias against him to negatively influence the reporting officer to give the applicant a 4 in judgment on the second disputed OER and marks in the 4th block on the comparison scale of both disputed OERs. First, as stated above, the applicant has not demonstrated that Capt H had a personal bias against him. Second, he has not shown that the reporting officer's marks were not his honest assessment of the applicant's performance. Third, Capt W, the reporting officer stood by the evaluation of the applicant's performance in the disputed OERs. Like the supervisor, the reporting officer had the opportunity to observe the applicant's performance over the course of the two reporting periods and could make his own assessment of the applicant's performance. The applicant's allegations that Capt H influenced the reporting officer to assign unjust marks in the disputed OERs amount to speculation.

9. The third member of the rating chain was the reviewer, Capt KC. However, the reviewer is a designated position and is responsible for ensuring that the supervisor and the reporting officer carry out their OER duties, for adding comments as necessary, for ensuring that the OER reflects a reasonably consistent picture of the applicant's performance, and for returning the OER to the reporting officer to correct errors, omissions, or inconsistencies between the numerical evaluation and written comments. Article 10.A.2.f.2. of the Personnel Manual. Capt KC stated that he carried out his OER functions. He was not responsible for evaluating the applicant's performance.

10. The Board correct errors and remove injustices. The applicant asked to have certain marks raised on the disputed OERs, but he offered insufficient evidence to prove that the marks are erroneous or unjust. Even if Capt H had a bias against the applicant, the applicant would still need to demonstrate how the bias manifested itself in the disputed OERs. The applicant's disagreement with some of his marks is not proof that they are erroneous or unjust. Nor has the applicant proved that Capt H was incapable of accurately evaluating his performance for the periods under review because he was subsequently charged with and punished for misconduct, some of which may have occurred during the period that he was the applicant's supervisor.

11. The applicant has failed to prove that the disputed OERs are in error or unjust. Therefore, no basis exists on which to consider removing the applicant's failure of selection before the PY 2011 captain selection board.

12. Accordingly, the applicant's requests should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of XXXXXXXXXXXXXXXXXXXX, for correction of his military record is denied.

Katia Cervoni

Lillian Cheng

Ashley A. Darbo