

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-196

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

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 on August 24, 2007, upon receipt of a completed application, and subsequently prepared the final decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated May 29, 2008, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant asked the Board to correct her military record by removing the officer evaluation report (OER) for the period June 1, 2003 to February 19, 2004 (disputed OER).

Disputed OER

The disputed OER is marked as a detachment of officer OER and covers the period when the applicant was the administration department head for Coast Guard Group Galveston. The OER is divided into three parts: the supervisor's portion, the reporting officer's portion, and the reviewer's portion.¹

Supervisor's portion

The supervisor's portion of the OER evaluates the applicant's performance in three areas: performance of duties, communication skills, and leadership skills.² Each area has several

¹ Many abbreviations have been spelled out in quoting from this OER and the final decision will not contain markings indicating when an abbreviation has been written in full.

² OER marks range from a low of 1 to a high of 7. A 4 is considered to be an average mark as it represents the expected standard of performance. Article 10.A.4.c.4.g. of the Personnel Manual.

categories in which the applicant is evaluated.³ In the performance of duties section, the applicant received marks of 5 in “planning and responsiveness” and “using resources,” marks of 4 in “results/effectiveness” and “professional competence,” and a mark of 3 in “adaptability.” The supervisors wrote the following comments:

Demonstrated strong planning skills: coordinated the first annual XPO conference, solicited inputs for & published agenda, arranged for knowledgeable speakers available to address topics, made arrangements for Area(o) visit, attended to many last minute details that resulted in A(o) meeting all transportation time lines; ensures a dept representative attends various mtgs so the dept input is considered & info passed. Identified various resources needed to accomplish tasks; ensured mail service to LEDET’s continued; used contacts at local hospital to assist AUX member w/health care consultation. Results achieved had positive impact: oversight of base gym led to improved facility & increased usage; coordinated with department members contributed to passing MLC compliance inspection; tenaciously ensured travel claims issued for surge ops reconciled so books balanced. Able to adapt to changes in tasking & priorities so that discharge packages properly prepared & expedited, mutual assistance requests processed in a timely manner & members received needed funds. Struggled to adapt to new role as department head; actions conveyed attitude that the move from OPS dept was a demotion vice opportunity to grow professionally & learn skills needed to be assigned & successful as command cadre. Did not demonstrate the competence level desired in Group Duty Officer during STAN Team visit; qualifications were revoked, eventually, through hard work, member requalified. Attended mentor training & drafted unit program.

In the communications section of the OER, the supervisor gave the applicant marks of 4 in the “speaking and listening” and “writing” categories. The supervisor wrote the following:

Spoke well in settings where member had opportunity to be prepared, such as OCS interview panels, staff meetings & routine briefs on on-going personnel issues: but sometimes provided unclear information when briefing GRUCOM as duty OPS, causing confusion between unit OIC & GRUCOM. Sometimes displayed inappropriate non-verbals when receiving feedback. Written material improved after counseling to ensure subordinates were spell-checking, adhering to formatting & checking references. Submitted well written articles for Aux publication.

³ Article 10.A.2.b.4.b. of the Personnel Manual states that for each evaluation area, the supervisor shall review the reported-on officer’s performance and qualities observed and noted during the reporting period. Next, the supervisor shall carefully read the standards and compare the reported-on officer’s performance to the level of performance described by the standards. After determining which block best describes the reported on officer’s performance and qualities, the supervisor shall fill in the appropriate circle on the form. Subsection e. states that comments should amplify and be consistent with the numerical evaluations, and they should identify specific strengths and weaknesses in performance. Further, comments must be sufficiently specific to paint a succinct picture of the officer’s performance and qualities which compares reasonably with the picture defined by the standards marked on the performance dimensions in the evaluation area.

In the leadership section of the disputed OER, the applicant received a mark of 6 in “looking out for others,” marks of 5 in “developing others,” “directing others,” and “evaluations,” and marks of 3 in “workplace climate” and “teamwork.” The supervisors wrote the following in the comment block:

Sincerely committed to welfare & well-being of subordinates: followed thru to acquire additional SWIIs so members could have productive workdays & not have to share computer time; scheduled OPCEN watches to benefit assigned watchstanders; submitted departing members for awards & prepared page 7s to recognize good performance. Showed genuine interest in development of others; drafted unit mentor instruction for CPOs to use in developing program; worked with division CPO on improving skill to earn recommendation for advancement; acted as positive role model for young girls in Expanding Your Horizons Symposium & provided intro on civil & military aviation; mentored 2 JOs on OER prep. Competently directed department in preparing for XPO conference & MLC compliance inspection. A team player some of the time: worked well w/subordinates & peers, but avoided OPS officer when he returned from sick leave, failed to get member up to speed on happenings for 2 week period; attitude towards & comments about co-worker did not foster esprit de corps or positive work environment. Actions did not always foster open communication & respect; rather than confronting & engaging constructively chose avoidance & in some instances, speaking negatively about co-worker. Submitted timely evaluations that appropriately reflected subordinates performance.

Reporting Officer's Portions of OER

In block 7 of the OER, the reporting officer concurred with the supervisor's marks and comments. The reporting officer further stated:

[The applicant] was presented opportunities to learn critical new skills and grow professionally when member was given admin officer duties; responsible for a department. Did not always meet performance standards expected of an O-3; behavior in several instances was immature, lost composure easily. Disengaged from command after receiving more formal counseling & documentation of performance shortcomings w/actions to improve; actions & comments regarding co-worker caused negative work environment.

In block 8 of the OER, the reporting officer gave the applicant marks of 4 in “initiative,” “judgment,” “responsibility,” a mark of 5 in professional presence, and a mark of 6 in “health and well-being.” The reporting officer wrote the following comments:

Sought opportunities for professional development: Attended Mentor & Gulf Fisheries training courses; attained advanced rating for private pilots license & active member of CGAUS; implemented changes in routing paperwork so that Admin dept could follow up on necessary action items such as ensuring members in compliance w/weight stds & marks completed. Showed good judgment in

making recommendations for OCS candidates; qualify members as base OODs & hiring the first civ Group Duty Officer. Took responsibilities w/utmost seriousness; maintained accountability for department members for all required training; ensured taskers to subordinates were replied to/followed up on; ensured dept prepared for MLC admin compliance visit. Successfully represented CG; participated in highway clean-ups; attended hi-visible memorial service; set excellent example for uniform appearance & military bearing @ inspections. Outstanding effort as wellness coordinator: provided timely, personal counseling for member enrolled in wellness program to help them achieve their fitness goals; prepared information packets for members on the CG weight program w/pamphlets on recipes & wellness; solicited input for improvements to base gym.

On the comparison scale in block 9⁴, where the reporting officer compared the applicant to other LTs she has known in her career, the applicant was marked as a “fair performer; recommended for increased responsibility,” the third block of seven, with the seventh block being highest.

In block 10⁵ where the reporting officer describes the applicant’s potential to assume greater leadership roles and responsibilities, the reporting officer wrote the following:

The applicant demonstrated insufficient maturity & interpersonal skills to be successful at the O-4 level. I do not recommend member for promotion at this point. Member has capacity to be successful & develop professionally, but must commit to separate work performance feedback from member’s belief that any feedback is a personal criticism. If member can overcome shortcomings, will be ready for more challenging leadership roles. Member has strong desire to be seen as competent & work hard toward that end. Works well w/& shows care for subordinates; works well w/peers if issues are not contentious.

Applicant’s Reply to the OER

The applicant submitted a reply to the disputed OER disagreeing with the comments that she was slow to adjust to head of administration department, that she was not a team player, that she was incompetent as group duty officer, that she exhibited poor communication and interpersonal skills when given negative feedback, and that she was not ready for promotion. Of

⁴ Article 10.A.2.b.8.a. of the Personnel Manual states that the reporting officer shall fill in the circle that most closely reflects the reporting officer’s ranking of the reported-on officer relative to all other officers of the same grade the reporting officer has known. The provision further provides that block 9 represents a relative ranking of the reported-on officer, not necessarily a trend of performance. Thus from period to period, an officer could improve in performance but drop a category on the comparison scale.

⁵ Article 10.A.2.b.9.a. of the Personnel Manual states that the reporting officer shall comment on the reported-of officer’s potential for greater leadership roles and responsibilities and shall limit such comments to the performance or conduct demonstrated during the reporting period. Subsection Article 10.A.2.b.9.b. states that comments in block 10 reflect the judgment of the reporting officer, and the reporting officer may include a recommendation for or against promotion to the next higher grade.

note, the applicant denied that she made negative comments about a co-worker and that the OER was the first time she knew of this allegation.

APPLICANT'S ALLEGATIONS

The applicant made four arguments for removal of the disputed OER from her military record. First, the applicant contended that the disputed OER does not reflect a consistent picture of her strong performance for the period under review, as required by Coast Guard policy. In this regard, she submitted an exhibit from a Coast Guard web site which stated that the reviewer should "ensure [that an] OER Reflects [a] Reasonably Consistent Picture of Performance." In support of her contention, the applicant relied on a statement from LT C who, as the education services and training officer, worked with and under the direction of the applicant from March 26, 2003, until February 8, 2004. LT C stated that he always found the applicant to be competent, professional and helpful. He further stated that under the applicant's direction they were able to secure several thousand dollars in outside funds to renovate the unit's weight room.

The applicant also relied on a statement from LT P who worked with the applicant from July 2002 until May 2004. LT P stated that she observed the applicant running daily search and rescue cases, filling in as Group Operations Officer several days a month, as well as performing her primary duties as assistant operations officer, the command center officer, and weapons officer. LT P stated that she observed the applicant's superiors assigned the applicant many SAR cases and law enforcement missions, and therefore, she assumed that the applicant's supervisors were satisfied and pleased with the applicant's performance. LT P's statement also indicates that she worked with or for the applicant when the applicant was the assistant operations officer. She does not state that she worked for the applicant when the applicant became head of the administration department.

The applicant submitted a timeline for the reporting period in which she identified instances that in which she was congratulated by the supervisor for her success in obtaining mutual aid assistance for certain subordinates; instances in which she received recognition for certain achievements from other individuals or groups: such as creating a newsletter; receiving a meritorious achievement award for superior flotilla performance during 2003; receiving a Coast Guard Meritorious Team Commendation as part of the Air Station Houston Auxiliary Support Team; and attending and completing certain courses, such as the Gulf of Mexico Basic Boarding Officer Fisheries Course and the Women Officers Professional Association Symposium. The applicant argued that her timeline shows that she performed at a level that exceeded expectations.

Second, the applicant contended that some of the comments in the disputed OER were vague and lacked impact and specificity. She again submitted an exhibit from a Coast Guard website which stated that vague OER comments lack impact and specificity. The applicant alleged that her OER contained such vague comments and offered the following as examples: "[A]ction conveyed attitude that move was a demotion." . . . "Sometimes displayed inappropriate non-verbals when receiving feedback." . . . "Behavior in several instances was immature, lost composure easily." . . . "Disengaged from command." The applicant noted that a difference existed between the specificity of the comments describing her accomplishments when compared

to those describing her shortcomings. She noted how the alleged vague comments with regard to her shortcomings appear to follow the positive comments in each section of the OER, making it appear as though a personality conflict developed toward the end of the marking period; or that the rating chain chose to put them in the OER without addressing them with her at the time they occurred.

Third, the applicant argued that the evaluation of her performance is contrary to policy and contradictory to the feedback she was given during the period, and therefore, the OER provides an inconsistent picture of her performance. In this regard, the applicant argued that the OER comment “Written material improved after counseling to ensure subordinates were spell-checking, adhering to formatting & checking references” is contradictory to the praise she received from the supervisor, such as “Thanks for staying on top of this,” “Nice job,” “Thank you,” and “Nice Job laying this out. Thanks!” The applicant submitted emails in which her supervisor gave the above feedback. The applicant also noted that the reporting officer’s determination on February 23, 2004, that she was able to perform duties as group duty officer is evidence that the applicant was performing within a reasonably consistent, positive manner. The applicant’s argument in this regard is as follows:

In other words, over the first eight months of the rating period there was enough seen in [the applicant’s] actions and attitude that [the reporting officer] made [the applicant] Group Duty Officer. Somehow, a little over 1 month later everything is undone. That is simply not possible. It sets up the contradictory information and it shows an evaluation that is not accurate, fair, or objective. When writing an officer evaluation, the evaluation should reflect a reasonably consistent picture of performance. As mentioned, [the applicant] performed reasonably well. To add these contradictions goes against the intent of the OER and clearly flies in the face of how [the applicant] actually performed.

Fourth, the applicant contended that “during the reporting period the supervisor did not provide any feedback that there may be negative comments in the evaluation of the reported-on officer.” The applicant stated that her supervisor was responsible for providing feedback upon the applicant’s request, at the end of each reporting period, and at such times as the supervisor deems appropriate. According to the applicant, no feedback was provided by the supervisor that would have alerted the applicant to her weaknesses so that they could be corrected to avoid having them mentioned in her evaluation. The applicant asserted that an individual development plan was discussed between the supervisor and herself, in which she gave good feedback but the supervisor did not.

The applicant concluded her brief by restating that the disputed OER did not provide a reasonably consistent picture of her strong performance. She further argued that based on the facts she presented, the disputed OER was subjective and included isolated incidents that were described in a vague manner compounding the inappropriateness of the evaluation.

Applicant's Other Performance

The applicant was promoted to LT on October 29, 2002. Her first LT OER covered her assignment as the assistant operations officer for the Group. Her supervisor and reporting officer on the disputed OER were on the rating chain of this earlier OER as reporting officer and reviewer. On the earlier OER, the applicant received no mark lower than 4 in any category, and she was rated as an "excellent performer; give toughest, most challenging leadership assignments" on the comparison scale in block 9. Her second LT OER was the disputed OER, which was discussed previously in this decision. The applicant has three subsequent LT OERs covering her assignment as D17 Command Center Controller and D17 Command Duty Officer. She receive no marks lower than 4 with many marks in the 5 and 6 range. The comments on these OERs were very complimentary and she was recommended for promotion on each one.

The applicant's LTJG OERs were positive in every sense with members of her rating chain noting that she was performing in a job normally assigned to an officer of higher rank.

VIEWS OF THE COAST GUARD

On January 15, 2008, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request. The JAG adopted the comments from Commander, Coast Guard Personnel Command (CGPC) as part of the advisory opinion. CGPC offered the following:

1. Based on the record, it is clear that the rating chain carried out its duties in accordance with policy found at Chapter 10 . . . of the Coast Guard Personnel Manual. Under the Coast Guard Officer Evaluation System, the rating chain provides a timely and accurate assessment of an officer's performance through a system of multiple evaluators and reviewers . . . In the applicant's case, they did so . . .
2. The OER in dispute reflects a reasonably consistent picture of the applicant's performance during the OER marking period. It contains comments with specific examples to support the applicant's above standard performance for various performance dimensions as well as comments to support her below performance for particular dimensions . . .
3. The OER does not contain vague comments. The comments that reference the below standard marks cite specific aspects of the applicant's behavior that were below standard. For example, a mark of "3" was assigned for [the] Teamwork dimension. The comment to justify this mark stated how the applicant avoided the return of another co-worker who was out sick and how the applicant failed to update the officer on what that person missed during the absence. The below standard marks are justified in accordance with policy . . .
4. The applicant also states that the disputed OER is contradictory to the feedback she received during the period of the OER. This is not the case. The

applicant was counseled on her below standard performance by [the supervisor] prior to the OER end of period . . . periodic comments from a supervisor such as, “Nice Job” and “Thank you” is common courtesy and not proof that the task was necessarily completed above standard or an indication of the officer’s overall performance for the entire period.

5. In summary, the rating chain carried out its responsibilities and submitted the applicant’s disputed OER in accordance with the Coast Guard Personnel Manual. They were in the best position to observe the applicant’s performance and provide a fair, accurate, and objective OER. There is no basis for removing the applicant’s OER from her record.

Declarations from the Rating Chain

The Coast Guard obtained and submitted with the advisory opinion declarations from the supervisor, reporting officer, and reviewer.

Supervisor’s Declaration

The supervisor stated that in February 2004, with the unit Chaplin present, she provided the applicant with a memo documenting her concerns regarding the applicant’s performance and recommending courses of action for improvement. The supervisor noted that she had discussed most of the items found to be below standard with the applicant in other counseling sessions.

The supervisor wrote that using the OER form, she provided the applicant with the following feedback:

- **Results/Effectiveness:** the work from admin is not timely, or of the best quality. As an example, discharge packages come up with errors that should have been corrected before arriving at my desk, including improper references. You need to provide completed staff work, including cross-checking references with various personnel actions.
- **Professional Competence:** I have not seen professional growth as admin officer, and was expecting training requests from you to attend training to enhance your admin officer skills. You are still relying too much on my direction. Other factors contributing to substandard evaluation in this category: loss of GDO & Duty OPS quals (worst test scores during STAN visit) as Acting OPS, did not provide visiting cutter w/OPORD. You need to make a significant effort to regain your quals; as of this date, you have not stood any additional watches in the OPCEN to improve your skills.
- **Speaking & Listening:** Your emotional outburst, for example storming out on OPS, and tears, are inappropriate and are distracting mannerisms that at a more senior level, would be viewed as manipulative. You must learn to better control

reaction to criticism. I urge you to engage EAP for assistance if you feel you do not have this under control.

- **Teamwork:** You have shown strength in this area with subordinates. However, you have on several occasions, avoided conflict and not engaged constructively when provided feedback, which hurt team efforts. As examples, you avoided OPS when he gave you feedback, and you never did followup with me about naming the range after GMC [M] as I directed you to research and brief me on the correct and legal procedure for naming a structure after a living person. You must follow up each time, and every time.
- **Workplace Climate:** your emotional outbursts (crying) and the perception that you are sulking after being given feedback creates a tense work environment, and does not foster open communication. Additionally, your communication skills mislead others into believing situations that were false . . . You must take responsibility for your words and actions and be sensitive to the impact they have on others.
- **Initiative:** Did not make any effort to stand watches in OPCEN while working on requalifying . . . Did not use or share knowledge from mentor course with Leadership council. You need to make a visible effort to regain your quals, and to share information you have gained from courses attended.
- **Judgment:** As duty OPS when briefing XO as acting, recommended sending wrong asset . . . and not aware of limitations of assets, in another case, let people back into harm's way (boat capsized on jetties); not familiar with crew fatigue limits and passed incorrect info to CO; thought it was ok to take leave, liberty, leave, and had to be directed to put in for inclusive dates or show up for work. Recommend you vet important decisions if you are not sure you are doing the correct thing and doing adequate research to minimize mistakes.
- **Responsibility.** Did not follow up as directed to name range after GMC, did not come and discuss lack of follow up with me after returning from leave; did not meet w/OPS when he returned from sick leave to brief him on 2 weeks of activities. You must hold yourself to the highest standards at all times. Anything else reflects lack of effort and commitment on your part.

2. I would rank you as poor to fair performer, recommended for increased responsibility, and at this time, I would not recommend you for promotion to LCDR

Reporting Officer's Declaration

The reporting officer wrote a declaration that the disputed OER is an objective, fair, and accurate representation of the applicant's performance for the period under review. The reporting officer stated that the applicant was fragile emotionally and struggled at times with

maintaining her composure during stressful situations, “which showed her to be very unprofessional and diminished her effectiveness in dealing with others.” According to the reporting officer, the applicant performed some tasks very well and others she performed poorly. The reporting officer stated that the applicant was given both verbal and written counseling on areas of her performance that needed improvement. The reporting officer further stated as follows:

I was aware of [the applicant’s] performance deficiencies as Assistant Operations Officer, Group Duty Officer (GDO), and Administrative Officer during this timeframe. As Assistant Operations officer, she failed to communicate accurate details to me on operational missions in several instances during the absence of the Operations Officer, which required me to personally investigate the status on several law enforcement and search and rescue missions. I recall that I rescinded her qualification as GDO following her failing a knowledge exam during a Command Center Standardization Team evaluation at our Group Command Center. I recall that she was the only individual who actually failed this exam, which led to my loss of confidence in her ability to prosecute maritime search and rescue, law enforcement, and homeland security cases, and required others to cover for her in these duties when she was no longer qualified. She was provided very specific direction on how to requalify as GDO, but needed to be pressured by her supervisor to take initiative to do so, and finally requalified as GDO when she was nearly departed for her next assignment.

The reporting officer noted that LT C, who provided a statement for the applicant, was a newly reported Ensign during 2003/2004 and was not qualified to assess the applicant’s level as a leader. The reporting officer noted the same criticism with respect to LT P’s statement.

Reviewer’s Declaration

The reviewer stated that as the program manager for Groups and Air Stations, he was stationed in New Orleans and did not personally observe the applicant’s performance. The reviewer stated that he recalled reviewing the Standardization Team results for Group Galveston and noting the applicant’s results were inadequate. Although the reviewer stated that he discussed the applicant’s performance with her rating chain, he could not recall any specifics of the discussion. He stated that he believed that the disputed OER adequately documents the applicant’s performance and that the comments are specific and unambiguous.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 31, 2008, the Board received the applicant’s reply to the views of the Coast Guard. Applicant argued that from the rating chain’s responses and the additional statements she submitted it is clear that she was not in an environment that provided her with the leadership necessary to ensure that she received a fair, objective, and accurate evaluation.

Apparently the applicant’s supervisor had a profile on match.com in which she described her job as follows: “Help! I need a life! Currently an executive officer. This is akin to being an

Adult Day Care Director. I love the CG, but am looking forward to life on the outside in some significant capacity for a non-profit organization.” According to the applicant, the supervisor’s match.com comments were well-known throughout the Coast Guard. The applicant argued that with the supervisor’s attitude about her job as demonstrated through her comments on match.com, “there is little surprise that [the supervisor] would believe the [the applicant] was ‘still relying too much on [the supervisor] for direction.’” The applicant also argued that the supervisor’s attitude explained why she felt the applicant would need to make “significant effort” to regain her group duty officer qualification. The applicant stated that the supervisor’s attitude was not that of an officer with the state of mind to give fair, objective, accurate feedback, but that of an officer who believed that she was managing adults in a “day care” who got into trouble and could only get out of trouble if they followed the subjective rules of the “day care” as defined by the supervisor. She argued that this was the situation in which she found herself with the supervisor.

The applicant argued that “it is reasonable to understand that non-verbals may be confusing and cause vague comments [in the disputed OER] when [the applicant] is directed to do diametrically opposite missions.” For instance, counseling the applicant that she relied too much on the supervisor but still advising her that she must follow-up with the supervisor each and every time are contradictory instructions.

The applicant alleged that the supervisor was providing the reporting officer with a distorted picture of the applicant’s performance because “one officer in [the supervisor’s] “adult day care” is not following the conflicting rules laid down by [the] supervisor, therefore making [the supervisor’s] babysitting duties more difficult. The applicant further alleged that the supervisor gave the reporting officer the impression that the supervisor was providing sufficient feedback to the applicant when in fact she was not. Because of the supervisor’s alleged actions, the applicant argued that she was placed in the following difficult situation:

“1. She is wrong if she does research and reports back because she will be relying on the CO too much.

“2. She is wrong if she makes a decision while not relying on the XO because she needs to report back to the XO each time, and every time.

“3. She is wrong if due to the circumstances her composure is not always perfect.”

The applicant submitted six additional statements that she contended showed the disputed OER to be unfair, inaccurate, or non-objective. She alleged that each of the statements share a common theme [although she does not identify the theme]. In support of her contention, she offered the following quotes from five of the statements:

1. OS1 J stated, “I observed [the applicant] being briefed on several highly stressful and complicated search and rescue cases. She kept calm and behaved appropriately in these situations. I never once saw her upset, with a bad attitude or interact negatively with her subordinates or superiors.” OS1 J also stated that from June 2003 to March 2004 he was a search and rescue controller and a subordinate of the applicant’s.

2. Captain J stated: “An articulate and confident speaker; quickly adjusted to changing needs and priorities in a high OPTEMPO AOR; Exceptional team player; self starter; outstanding judgment; and an extremely knowledgeable, effective dedicated officer.” Captain J stated that from June 2000 to April 2003, he was the Commander, Group Galveston and had an opportunity to observe the applicant on a daily basis.

3. Former YN V stated: “[Of the applicant] It is essential to have the support of an experienced person, who holds appropriate military seniority, when trying to excel within the military.” The YN stated that from November 2000 until 2003 the applicant was her direct supervisor. The YN further stated:

Admittedly it was discouraging to lose the guidance, mentioned above, following the Change of Command in 2003-2004 when [the applicant] was then transferred to fill an administration officer position. From my observation, once [there], she was no longer given as many opportunities to attend valuable trainings, and was presented with numerous unwarranted preventable, and unexplainable challenges . . . It is important to note that I also recall a profound downward shift in base-wide morale during this period.

4. LCDR L was chief of the planning department at the neighboring Marine Safety Unit Galveston from September 2001 until March 2004. The applicant quoted the following from his sworn statement:

I worked with then LTJG [applicant’s name] on a daily basis for the first eight months following 9-11. During that time, I came to see her as a consummate professional, a true leader dedicated to mission accomplishment and care of her personnel, and as an inquisitive junior officer, constantly striving to lean how to do more with the limited resources available to the Coast Guard.

2003 heralded some significant command changes within the region in general and at Group Galveston in particular. The new command cadre was constantly at a disadvantage assimilating into the operational and marine safety interoperability that had been the hallmark of successful operations since September 2001.

The applicant wrote that LCDR L noted friction between Group Galveston and other regional units as well as within Group Galveston. In this regard, the LCDR wrote the following:

One of the highlights of these “antics” was when the Deputy Group Commander [applicant’s supervisor] described her responsibilities as something on the order of a “professional babysitter for 350 grown men: on match.com. This lack of leadership and professionalism was well known throughout the Houston-Galveston Coast Guard community.

I would be honored to have [the applicant] serve with me at anytime during any crisis. She is a dynamic leader who is able to make a positive in the lives of others and security of our nation.

5. Captain C echoed the positive statement about the applicant, and according to the applicant, his statement shed additional light on her rating chain. The applicant quoted the following from captains C's affidavit:

We had some tough management issues for a six month [period] before I reported. ENS [the applicant's name], in her first year of commissioning was handling it all despite it being a full time LCDR (O-4) position. As Acting Chief for Fisheries, I received a plethora of feed back when I arrived, from many different sources complimenting this junior officer on her accomplishment and ability to hang in with the heavy hitters around the table to the high quality written products she produces. [The applicant] had the reputation for being one of the best that ever served on the councils and was over achieving three ranks.

Since departing D7 (ole), I had the pleasure of following [the applicant's] career. She sought me out for professional advice discussing her career path as well as the difficult challenges she encountered with her unsupportive command. When I heard of the trouble in Galveston, I did some research into the matter. I learned from other members of the command that her performance was still top shelf but that her CO and XO just did not appreciate her or recognize her abilities. We in D7 were shocked as this woman was performing a difficult job previously several ranks above her pay grade and excelling. Something was wrong and I attribute it to the lack of leadership that her XO exercised. Additionally, the XO polluted the waters with the CO as well. [The] XO had a history of putting down folks under her and this is not the first time I heard this. I am concerned about the Coast Guard saying that our people are our greatest resources but then treating them poorly and not appreciating them.

I had the opportunity to relieve the applicant's CO (at that time) twice during the past five years and most recently in the last six months. Upon relief, within a few weeks of assuming my duties as both the XO of ISC Miami and Chief of Resources and Performance Management in the Seventh District, my new staff approached me and relayed their displeasure in their performance reports (OERs). All felt that they were marked low and they did not feel that they were treated well. These members included officers from the ranks of LTJG to CDR. Thus, there is an established history of low marking and treating people in a way that they felt unimportant and unappreciated.

The applicant's military record reveals the Captain C was her supervisor from October 1, 1999 to June 30, 2000.

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 submissions, 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 requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.

3. To establish that an OER is erroneous or unjust, an applicant must prove that it was adversely affected by a "misstatement of significant hard fact," factors that "had no business being in the rating process," or a "clear and prejudicial violation of a statute or regulation."⁶ The Board begins its analysis by presuming that the disputed OER is correct as it appears in the record, and the applicant bears the burden of proving by a preponderance of the evidence that it is erroneous or unjust.⁷

4. The Board notes that the disputed OER was the first the applicant received in her new assignment as the head of the administration department and the first under the day-to-day direction of the supervisor, although the supervisor had served on the rating chain of the applicant's previous OER as the reporting officer. The applicant has failed to prove by a preponderance of the evidence that the disputed OER is either in error or unjust and therefore should be removed from her military record. The applicant argued that the disputed OER does not accurately reflect her performance because it fails to provide a reasonably consistent picture of her strong performance during the period of evaluation. However, the evidence of record does not support her argument. A review of the OER content shows a rating chain that complimented the applicant on her strong planning skills, on her identification of resources to accomplish tasks, on her development of and concern for others, and on her ability to work well with subordinates and sometimes with her peers. The rating chain also noted that the applicant showed good judgment in certain areas, that she was serious about her responsibilities, and that she performed in an outstanding manner as the wellness coordinator. But in addition to the praise, the supervisor also noted the applicant's weaknesses in "adaptability," "workplace climate," and "teamwork." In each of these three areas, the applicant was given a mark of 3 (which is considered a below average mark). The supervisor supported the below average marks with the following comments:

Struggled to adapt to new role as department head; actions conveyed attitude that the move from OPS dept was a demotion vice opportunity to grow professionally & learn skills needed to be assigned & successful as command cadre. Did not demonstrate the competence level desired in Group Duty Officer during STAN

⁶ *Germano v. United States*, 26 Cl. Ct. 1446, 1460 (1992); *Hary v. United States*, 618 F.2d 704 (Ct. Cl. 1980); CGBCMR Dkt. No. 86-96.

⁷ 33 C.F.R. § 52.24(b).

Team Visit; qualifications were revoked, eventually through hard work member requalified.

[S]ometimes provided unclear information when briefing GRUCOM as duty OPS, causing confusion between unit OIC & GRUCOM. Sometimes displayed inappropriate non-verbals when receiving feedback. Written material improved after counseling to ensure subordinates were spell-checking, adhering to formatting & checking references.

A team player some of the time; worked well w/subordinates & peers, but avoided OPS officer when he returned from sick leave, failed to get member up to speed on happenings for 2 week period; attitude towards & comments about co-worker did not foster esprit de corps or positive environment. Actions did not always foster open communication & respect; rather than confronting & engaging constructively chose avoidance & in some instances, speaking negatively about co-worker.

In addition, the reporting officer marked the applicant in the third category on the comparison scale in block 9 and did not recommend her for promotion in block 10. The reporting officer made the following comments with regard to the applicant's performance during the period and her potential for greater leadership roles and responsibilities:

Did not always meet performance standards expected of an O-3; behavior in several instances was immature, lost composure easily. Disengaged from command after receiving more formal counseling & documentation of performance shortcomings w/actions to improve; actions & comments regarding co-worker caused negative work environment.

The applicant demonstrated insufficient maturity & interpersonal skills to be successful at the O-4 level. I do not recommend member for promotion at this point. Member has capacity to be successful & develop professionally, but must work to separate work performance feedback from member's belief that any feedback is a personal criticism. If member can overcome shortcomings, will be ready for more challenging leadership roles. Member has strong desire to be seen as competent & works hard toward that end. Works well w/& shows care for subordinates; works well w/peers if issues are not contentious.

5. The statements submitted by the applicant are insufficient to prove that the rating chain's evaluation of the applicant's performance is erroneous. LT C and LT P were the applicant's peers and not responsible for supervising the applicant or managing the command. As noted by the reporting officer, they were ensigns at the time and not in a position to assess the applicant's performance as head of the administration department or her leadership capability. Their statements presented no evidence that they were aware of the requirements placed on the applicant by her supervisor and reporting officer. Nor is there any evidence that they were aware of how well the applicant measured up to her rating chain's expectations. Each wrote very positive statements of what they knew of the applicant's performance but their opinions are not

sufficient to overcome the evaluation of the supervisor, who was responsible for the day-to-day supervision of the applicant or that of the reporting officer who had first hand knowledge of the applicant's performance. In contrast to the statements of the two LTs, each member of the rating chain stated that the disputed OER is an accurate evaluation of the applicant's performance for that period.

6. Likewise, the statements from OS1 J, Captain J, former YN V, LCDR L, and Captain C are all very positive in describing their observations of the applicant's performance and abilities. However, none of these statements directly contradict the judgments of the rating chain that the applicant struggled to adopt to her new role as head of the administration department; that her group duty officer qualification was revoked and had to be regained; that she displayed inappropriate non-verbal mannerism when receiving feedback from her superiors; that she disengaged from the command after receiving formal counseling; or that she exhibited immature behavior in several instances, etc. during the period under review. Unless proof is submitted that such statements or others on the OER were not factual, the Board must accept the evaluation of those designated by the Coast Guard to serve on the rating chain. Article 10.A.2.a. of the Personnel Manual charges the rating chain with responsibility for assessing an officer's performance and value to the Coast Guard. Neither Captain J, nor LCDR L, nor Captain C were in the applicant's rating chain for the period under review; nor do they state that they worked with her while she served as head of the administration department. OS1 J, as an enlisted subordinate of the applicant's during the period under review, was not in a position to assess the applicant's officer leadership skills and performance of duties. Nor was former YN V who did even work for the applicant during the period under review. Therefore, their opinions do not prove that the judgment of the rating chain with respect to the applicant's performance was inaccurate or unjust.

7. The applicant argued that certain of the less positive comments, like the following, were vague and lacked specificity: "[A]ction conveyed attitude that move was a demotion." . . . "Sometimes displayed inappropriate non-verbals when receiving feedback." . . . "Behavior in several instances was immature, lost composure easily." . . . "Disengaged from command." The Board disagrees with the applicant and finds that the comments are not vague or non-specific. The comments when read in their entirety on the OER detail the applicant's shortcomings in interacting with her rating chain and superiors. Moreover, the applicant provides no examples of what the command should have stated to describe her behavior in this instance. Certainly, the rating chain could have used harsher more descriptive language but that could have been more damaging to the applicant's career than that actually used.

8. The applicant suggested that the evaluation of her performance, particularly by her supervisor, is contradictory to the feedback she received during the reporting period. In this regard, she points to accolades from the supervisor thanking the applicant for work on certain projects or stating that the applicant had done a good job on this or that task. However, there is evidence in the record that the supervisor had provided the applicant with feedback identifying problems with the applicant's performance during the reporting period. The supervisor's statement (obtained by the Coast Guard) commented that with the unit's chaplain present, she had given the applicant extensive feedback on her performance using the OER form to counsel the applicant in each designated category. In her reply to the advisory opinion, the applicant did

not deny that she had received this particular counseling from the supervisor. In addition, the fact that the supervisor complimented the applicant on several aspects of her performance does not mean that the supervisor was satisfied with the applicant's performance in all areas of her responsibility as the unit's administration officer. The counseling provided to the applicant in February 2004 (with the chaplain present) certainly should have put the applicant on notice that her OER would reflect her shortcomings. If she was confused on this point or whether her performance still needed improvement, she was required to seek the necessary feedback from her rating chain. The Personnel Manual states clearly that feedback occurs whenever a subordinate receives any advice or observation from a rating chain official. It further provides that if such feedback is not clear, it is the reported-on officer's responsibility to seek such clarification. See 10.A.1.c.5. of the Personnel Manual.

9. The applicant suggested in her brief that the supervisor was biased against her due to a personality conflict and that she made false statements to the reporting officer about the applicant. However, except for the applicant's allegation, there is simply no evidence that the supervisor had a personality conflict with the applicant or that she was biased against the applicant. Captain C wrote that he heard that the supervisor had a history of putting down her subordinates. However, such hearsay is not proof that the supervisor was biased against the applicant. Moreover, the reporting officer wrote that she was aware of the applicant's performance deficiencies during the period. She stated that she, not the supervisor, revoked the applicant's qualifications because the applicant failed the standard team evaluation (STAN) examination and because the applicant, as assistant operations officer, did not provide the reporting officer with accurate details on several operational missions. The reporting officer stated as a result of these events, she lost confidence in the applicant's ability to prosecute maritime search and rescue, law enforcement, and homeland security cases. Therefore, the reporting officer had personal knowledge of the applicant's performance and was not totally reliant on the supervisor for such information. The reviewer also stated that he saw the STAN test results and noted that the applicant's performance on the examination was inadequate. Even if the supervisor made reports to the reporting officer about the applicant, such would not be a violation of the Personnel Manual. In fact, Articles 10.A.4.c.4.d. and 10.A.4.c.7.d. of the Personnel Manual state that the supervisor and reporting officer shall draw on their observations, those of any secondary supervisors, and other information accumulated during the reporting period. Therefore, the reporting officer's reliance on information received from the supervisor, if any, and the STAN examination results were appropriate for consideration in evaluating the applicant's performance.

10. The applicant argued that the supervisor's description of her job in a posting on match.com is proof that the supervisor was not in the mindset to give fair, objective, and accurate feedback to the applicant about her performance. Apparently, the supervisor's profile on match.com compared her duties as XO to those of an adult day care director, but the supervisor also stated that she loved the Coast Guard. While the adult day care comment does not place the supervisor in the most positive light and is somewhat disrespectful to those she supervised, it is not proof that the supervisor failed to perform the duties expected of her as Deputy Group Commander. In this regard, the Board notes that she has been promoted to Commander (CDR), which indicates that the Coast Guard found her performance of duty satisfactory.

11. The applicant also suggested that the awards she received from various organizations and a Coast Guard team award were not mentioned in the disputed OER. First she presented no evidence that she submitted OER input asking to have certain awards mentioned in her OER. Even if the applicant had requested to have such commendatory material mentioned in the OER, whether to do so was discretionary with the rating chain. Article 10.A.3.b. of the Personnel Manual states that “[t]he Reported-on officer, and other officers or officials outside the Reported-on Officer’s normal rating chain, may submit to the supervisor or reporting officer letters, certificates, citations . . . Supervisors and Reporting Officers may use or cite such reports in the OER comments blocks, but shall not attach them to the OER. “ Second, only personal military decorations issued in accordance with Article 1.A.17 of the Medals and Awards Manual may be attached to an OER. *Id.*

12. The Board notes that the applicant’s prior and subsequent OERs are excellent and very complimentary. She had served as assistant operations officer prior to the assignment as the head of administration. However excellent previous or subsequent performance evaluations are not proof that the applicant performed in a similar manner for the period covered by the disputed OER.

13. The applicant has failed to prove error or injustice in this case and her request for relief should be denied.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The application of XXXXXXXXXXXXXXXX, USCG, for correction of her military record is denied.

Donna M. Bivona

Diane L. Donley

Richard Walter