

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2010-110

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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 case upon receipt of the applicant's completed application on February 20, 2010 and subsequently prepared the final decision for the Board as required by 33 CFR § 52.61(c).

This final decision, dated December 3, 2010, 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 her record by removing an officer evaluation report (OER) for the period February 1, 2007, through March 31, 2008 (disputed OER). She alleged that the OER is not an accurate reflection of her performance, but rather "the result of a poorly managed personality conflict between two commanders with very different backgrounds and skill sets." In this regard she stated that the disputed OER was "not about my performance but about my unwillingness to, as . . . the commanding officer (CO) asked me, 'help the XO [executive officer] do his job.'" The XO, a commander, was the applicant's supervisor for the disputed OER.

The applicant alleged that neither the CO nor the XO counseled her during or after the marking period about specific actions she could have taken to improve her performance. She stated that she received the disputed OER three months into the next reporting period and that it was left on her desk without any comment. She stated that she spoke to the CO about the OER and he told her that he needed to get her attention because her negative relationship with the XO was hurting the unit. She stated that the CO did not provide any specific feedback on how she could improve her relationship with the XO, but she admitted that she "ambushed" the CO and "barged into [his] office as he was getting ready to go TAD and wanted to know how he could sign off on what was basically the worst OER I had received since I was a lieutenant." She stated that she apologized to the XO and after discussing the OER with him, he raised some of the original marks but still did not offer any specific examples for why he assigned the marks or

how she could attain higher marks in her next evaluation. She stated that the XO noted that she was “already doing better.”

The applicant stated that in earlier discussions with the CO and XO about OERs for the junior officers, they all agreed that marks of 4 were not good marks.

The applicant offered a summary of events during the evaluation period. She stated that this was her first tour in intelligence and she was working hard to understand her job, but the command climate issues, inconsistency, and lack of direction from the XO were distracting for her. She stated that in August 2007, she expressed her concern to the CO, who was the reporting officer for the OER, about the XO’s inability to do his job. She stated that the CO asked her to help the XO do his job, to which she replied that “an O-5 command cadre billet was not a training billet. I did however assist the logistics officer and other division officers as best I could.” The applicant stated that in October 2007 she put her concerns in writing and asked to be short-toured. She submitted an email from the XO to her dated October 13, 2007 wherein the XO questioned some marks she had assigned to a LT. The applicant submitted an email dated October 13, 2007 addressed to the CO complaining about the email that she received from the XO. She stated in that email to the CO that she had not received an email like the one from the XO since she was a boot lieutenant. She told the CO that she did not trust the XO. She stated that he had a LCDR doing his administrative work because he did not know how to do it. She stated that the XO was keen on taking credit for other’s work when it was good, but he was not keen on making tough decisions and taking responsibility. The applicant further stated that she could not respect a man “who says he wants his objectives to be hard for us when he has an O-4 doing much of his job. [The XO] has zero credibility with me.” She asked for a transfer.

The applicant stated that in December 2007, the XO asked her what was wrong, but their discussion did not include any of the XO’s concerns about her performance. She stated that she told the XO she would try to be more helpful in passing on information that she became aware of from the deck-plate level. She stated that when she reported the results of the conversation she had with the XO to the CO, he replied “I want more,” but he never told her exactly what he expected from her in covering up the XO’s incompetence.

The applicant stated that in March 2008, the XO became upset with her for sending an email to the CO recommending reorganization of the unit to include the elimination of the XO’s position. The XO told her that she was not a team player. In retrospect, the applicant stated that this could have constituted counseling. She stated, “I have never counseled anyone in anger, or, been counseled in anger and since the words, ‘this will be in your OER’ were never mentioned and I was not told how to improve, I figured that the XO was venting because he thought I was provoking him.”

The applicant stated that in June 2008, three months into the next reporting period, she received the disputed OER, which was left on her desk without any comment. She stated that in August 2008, she had a discussion with the CO about her perception that he had different expectations for active duty officers and Reserve officers. She said that her request for the CO’s help in obtaining a transfer was reasonable since he had assisted in resolving another personality conflict by moving one of the participants, apparently a civilian, to another position. The

applicant stated that the CO told her that he thought about calling the Commander, Coast Guard Personnel Command about transferring her but did not do so because he did not want to be seen as transferring a problem. The applicant stated that the CO agreed to support her request for a transfer if she could find the right job.

In October 2008, the applicant stated that she was being considered for a special assignment which required that she submit her most recent OER. She sent the reviewer for the OER, an admiral, an email seeking an audience to discuss the OER. The applicant wrote to the reviewer that she was never counseled by the CO and that she had expressed her concerns to the CO in writing about the XO's trustworthiness and competence and had asked for a short-tour. She stated that the CO asked her twice to help the XO do his job, to which she replied that she did not think an O-5 command cadre billet was a training tour. In the email to the reviewer, the applicant also stated the following:

I am convinced that this OER was not about my performance, but, rather the result of a mismanaged personality conflict between two commanders with completely different career backgrounds (mine . . . active duty, legacy [operational] ashore, progressive leadership positions in my community and a couple of fairly [high-visibility] staff tours, [versus] a legacy . . . reserve officer.

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Admiral, I realize this was a mistake, and take responsibility for not following the CO's order. However I think it was unfair to ask that of me as I am new to intel and was trying to learn my own job and the intel community. Also, I don't think it's fair if this was what caused so many low marks and wishy-washy comments, because I was not given specific actions to take, or told what specifically was not getting done and how the command was being hurt because I refused the CO's request.

The XO did counsel me, but his feedback was not appropriate to the 4s he gave me, except in workplace climate. I will admit his credibility with me is so low that his feedback is not well received. I am trying to improve in that area.

I did apologize to the XO for the stress I caused him.

The applicant stated she told the reviewer that she wanted a transfer and reviewer comments attached to the OER to address some input that had not been included in the OER. She stated that the reviewer said "I should have been more helpful to the XO" and that "you will do great in your assignment at DHS."

The applicant concluded by stating that the workplace climate at the unit was hostile at best and that she went on temporary assignment in October 2008 and did not return to the unit until both the CO and XO had left. The applicant stated that the CO's comment that he used the OER to get my attention was an inappropriate use of the OER and it does not belong in her record. The applicant is now on terminal leave, after which she will be officially retired.

Pertinent Excerpts from other Emails Submitted by the Applicant

In a September 30, 2007 email to the CO, the applicant suggested a reorganization of the unit that included changing the XO's position into a logistics officer position. In responding to the XO's statement to her that the two of them needed to talk more and "be joined at the hip", the applicant wrote in the email: "I thought about why I don't talk to [the XO] regularly. Aside from the fact I am in complete disagreement on many of his leadership and management philosophies, I see no need to talk to him routinely because if I have a question about intel I go to TD . . . If I have an issue about cross division events, I go to MB. If I have an issue or question about personnel or logistics, I go to S. . . If I want to be mentored, I end up in your office."

In an October 13, 2007 email, the applicant told the CO that his command was not big enough for two O-5s with their personality and experience differences. She expressed her distrust of the XO and her disagreement with the assignment of his "alleged" administrative tasks to a LCDR.

In a December 4, 2007 email to the CO, the applicant wrote that she did not have the discussion with the XO that the CO wanted them to have, but she did agree to keep the sniping out of the CO's office. The applicant also wrote: "I also acknowledge that it may appear I don't support [the XO], and I said I would work on the perception. That is the best I can do for you at this time given my background and expectations. I will also work more on caring less that I am right about much of what sets me off, and take care of watch div[ision] as best I can. I will be a retired commander in 970 days, and I would like to get there without ruining any more teeth, and I certainly don't need the constant low grade headaches that have migraine potential either."

The applicant also submitted a June 10, 2008 email expressing her disagreement with the performance evaluation. In an earlier email that day, the applicant told the CO that she thought he had different standards for reservists and active duty members. The CO responded to this email by stating that he did not tell the applicant that he agreed that the OER did not reflect her performance. He stated that his disagreement was that the applicant's negative relationship with the XO and her disenchantment with the Coast Guard would bring us to this point. He told the applicant that he valued her skills but needed her to channel them in all command areas. The CO noted that he had asked the XO to be receptive to any amplifying information the applicant chose to present in her meeting with the XO, and the three of them would have a follow-up meeting.

On June 11, 2008, the applicant told the CO that she was not comfortable meeting with the XO to discuss the OER without a neutral party present.

On June 25, 2008, the applicant sent the CO an email stating that she thought it best to have a neutral party at the meeting with the XO. She also asked for clarification on the CO's expectations for the meeting. In this regard, she stated that she asked the XO upon reporting about OERs, and he told her that they write their own. So, she wrote and submitted her own on March 7. She stated that she wrote her branch chief's OERs to the 6 block for nearly every category with minimal revision from either the CO or XO. She stated that at no time between the submission of her OER and the signed copy appearing on her desk on June 10 did the XO ask

her for additional information. The applicant stated that during the marking period, the XO counseled her in two areas: writing and teamwork. She stated that at no point during the marking period did the XO indicate that she was not exceeding the 4 criteria in the using resources, adaptability, professional competence or workplace climate categories. She stated that she was not advised that the CO was unhappy with her judgment, responsibility, or professional presence. She also wanted to discuss with the CO his comment about using the OER to get her attention and his comment about how her negative relationship with the XO has hurt the command.

On June 25, 2008, the CO replied to the applicant's email of the same date. He offered the following:

Traditionally, one approaches their CO with a request to discuss their OER and an appropriate time is set aside. Since you chose a more aggressive method as I was leaving for the airport, you necessarily received a shortened counseling session.

I appreciate that this is not a superlative OER, but neither is it negative. The officer evaluation system does not assume that a mark of "6" is the baseline. Nonetheless, I asked the XO to withdraw it from CG-2 processing cycle long enough for you and he to discuss it, then come see me on Monday, 16 June. You are continuing to put conditions on how you will work with the XO. I urge you again to sit down with the XO and explain to him why you deserve higher marks in certain areas. I'll wait until next Thursday until I process the OER through the reviewer.

On June 25, 2008, the applicant sent the XO an email stating that she was at a loss as to what additional information she was expected to provide. She wrote that "I will, however, apologize for causing you stress."

The applicant submitted an email from her to the XO and the XO's reply in which he noted their discussion on June 27, 2008 about the OER and that she had submitted supplemental material. The XO stated that in light of that discussion and supplemental material he raised her marks from 4 to 6 in using resources and from 4 to 5 in professional competence. The reporting officer raised one mark from 5 to 6 in judgment.

Disputed OER

The disputed OER states that the applicant reported to the unit on June 8, 2007, as the Chief of the Intelligence Division. On the OER, which is in the applicant's record, her marks were 4s in adaptability, writing, teamwork, workplace climate; 5s in results/effectiveness, professional competence, directing others, responsibility, professional presence; 6s in planning and preparedness, using resources, speaking and listening, looking out for others, developing others, evaluations, initiative, judgment, health and well-being; and a mark in the middle block of 7 (with 7 being highest) on the comparison scale. The mark in the middle block on the comparison scale described the applicant as an "excellent performer; highly recommended for positions of increased responsibility. The comments supporting the marks were not unfavorable.

Statements Submitted by the Applicant

1. The applicant submitted a statement from a SK1 who worked for the XO during his tenure at the unit. She stated that many of the duties she performed were above those of her rate and were the responsibility of the XO. She listed eight functions that she handled that should have been handled by the XO.

2. The applicant also submitted a statement from LCDR B who was assigned as the logistics division officer during the period covered by the disputed OER. He stated that he reported directly to the XO, as did the applicant. He stated that the applicant was respected by ICC personnel; that she was extremely knowledgeable; and that she freely counseled others. He also stated that “[t]he workplace climate not only drastically improved in . . . [the] watch division, but also improved between [the intelligence coordination center] and [the] office of Naval Intelligence directly resulting from [the applicant’s] extraordinary leadership, professionalism, and dedication to duty.

VIEWS OF THE COAST GUARD

On June 18, 2010, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief to the applicant, as recommended by the Commander, Personnel Service Center (PSC) in a memorandum attached to the advisory opinion as Enclosure (1). In recommending denial, PSC stated that the applicant admitted in her statement that she refused to support her supervisor, the XO, and routinely reported directly to the CO. In this regard, PSC noted that the applicant told the CO that she resented working for a Coast Guard Reserve officer whose administrative skills were not commensurate with her own abilities; the applicant sent an email directly to the CO proposing to reorganize the unit’s leadership and management structure and converting the XO position into a logistics position; the applicant told the CO that even though she did not have “the discussion” with the XO that he wanted, she would keep sniping out of his office and attempt to work on the perception that she did not support the XO; and the applicant told the CO that his command was not large enough for two O-5s with their personality and experience differences.

In regard to the above, PSC stated that the role of any subordinate in a military organization is to assist the supervisor in meeting unit goals and objectives and there is nothing in regulations that prohibits a reservist from supervising active duty personnel. PSC stated that proposing reorganization is not unusual, but bypassing your immediate supervisor is poor protocol in any situation, especially considering the XO is responsible for providing comment and forwarding such requests to the CO for consideration. PSC noted that the reporting officer wrote in a declaration that the applicant was never able to give more and her actions led to a schism, leading some junior officers to take sides. PSC further stated the following:

The applicant alleges the personality conflict between her and the executive officer was the primary reason for her lower than normal OER. Demonstrative of her inability to work with the [XO], the applicant provided the [CO] with several reasons why she was unable to be joined at the hip to the [XO]. The applicant

cites her general mistrust, disagreement with his leadership and management philosophies, and her ability to successfully complete her job and obtain mentoring without the [XO's] assistance. The reporting officer generally concurs with this assessment and points to the personality conflict as a factor that reduced her performance below what he expects from a senior Coast Guard officer. [PSC] believes the applicant's unwillingness to work with the [XO] was a leadership issue perpetuated by the applicant despite the [CO's] attempts to mentor her.

Upon conclusion of the reporting period and before the OER was signed by the reviewer, the applicant expressed to the reporting officer her dismay with the draft OER. Per policy, the applicant should have sought counseling from the supervisor, but instead she pursued the reporting officer who coordinated a counseling session between the applicant and the supervisor. The applicant during this OER counseling session presented additional performance that she felt needed to be documented in the OER.

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Though this report was not a "glowing" evaluation [as denoted by the reporting officer] the reporting officer and supervisor exercised due diligence when formulating their respective sections. Per policy, the reviewer had the option to return the OER to the rating chain for correction, but the reviewer instead certified the report as an accurate assessment. CG PSC believes the rating chain exercised due diligence by taking actions to ensure all performance was considered and the applicant was evaluated against the standards . . .

The applicant provides past evaluations as evidence the disputed OER was less about performance and more about a personality conflict. CG PSC avers that supervisors and reporting officers are instructed under policy to "compare the officer's performance against the standards—not to other officers and not to the same officer in a previous reporting period." Each evaluation is a stand alone document designed to capture performance within a prescribed time frame. CG PSC believes the OER content presents a factual account of the performance that occurred during the period.

The submission requirements surrounding this OER indicate the rating chain's failure to adhere to promulgated submission timelines. The OER was dated as received by CG PSC-opm on 27 January 2009, nearly 232 days later than the required submission date. Though an important point, the failure to submit on time does not in the present case diminish CG PSC's opinion that the 31 March 2008 OER is valid.

PSC concluded by stating that the rating chain carried out its responsibilities in accordance with the Personnel Manual; the applicant provided no information that merits the

removal of the disputed OER; and the applicant provided no evidence that indicated the conflict with the XO manifested itself in the disputed OER.

Rating Chain Statements

1. In a statement obtained and submitted by PSC, the supervisor for the disputed OER wrote that he remains satisfied that the OER accurately reflects the applicant's performance. He stated that the rating chain was provided with all of the applicant's OER input for consideration as the OER went forward for signature. He stated that the applicant met with the reporting officer and reviewer to discuss her performance and the evaluation. He stated that he sees no basis to conclude that an administrative or substantive error occurred in the preparation, review or approval of the disputed OER.

2. The CO who was the reporting officer wrote in his statement that he reviewed Coast Guard officer evaluation policy before signing the disputed OER and he reviewed it again after the applicant complained. He stated that he complied with Coast Guard policy. The CO also stated the following:

2.b. While [the applicant] is a very competent officer, her contributions to the command were limited by a negative relationship with the [XO]. I spent a significant amount of time trying to improve this relationship through counseling and mentoring of both parties. [The applicant] contends that this OER resulted from a poorly mismanaged personality conflict, but refused then and today to accept any responsibility for it. Although she claims to have received little counseling or feedback, the documentation that [the applicant] submitted . . . alludes to many discussions. . . . During our post OER discussions, [the applicant] refused to accept that any of those discussions were counseling sessions appropriate to senior officers. She did not request a formal counseling session during the evaluation period. Additionally, I instructed the [XO] to meet with her on numerous occasions and he provided me with verbal feedback of the meetings. I also asked my GS-15 Technical Director to counsel [the applicant] on several occasions and he provided me with verbal feedback.

c. Early in the evaluation period, [the applicant] made it very clear to me that she resented working for a supervisor who was a Reserve Officer and did not have the administrative knowledge that she had acquired as a Deputy Group Commander. She also repeatedly expressed disenchantment with the Coast Guard since Sector implementation dissolved the boat forces career track and removed any chance of her becoming a [CO]. She constantly referred to her approaching retirement in 2010. She stated during one counseling session that she should be a Group Commander and that taking a Sector Division Officer was demeaning.

d. The negative relationship with the [XO] caused a schism within the command with many junior officers taking sides. [The applicant] used minor mistakes to embarrass the [XO] and undermine him within her division. Several junior

officers from other divisions were uncomfortable and talked directly to me about it.

e. While this OER is not a negative evaluation, I recognize that it is not the glowing affirmation that Coast Guard officers seek. After the [XO] forwarded [the applicant's] OER to me, I reviewed Coast Guard OER policy then scheduled a discussion with him to walk me through each of the marks. He was able to present ample information to convince me that the marks were justified. . . . The [applicant] and I talked about the OER twice, then I asked the [XO] to meet with her and stretching OER fairness to the limit, determine if there was additional information not contained in [his] OER submission package that would change any of his supervisor's marks. After he met with [the applicant], [the XO] and I met again and discussed new information that would support changing several marks. Again, I reviewed Coast Guard policy and determined that it was appropriate for me to accept the adjusted supervisor marks and adjust my reporting officer marks.

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3. I considered [the applicant] to be a talented officer who had the ability to perform at high levels and be recognized with appropriate evaluations. Unfortunately, she allowed a personality conflict to reduce her performance below that expected of a commander.

3. The reviewer for the disputed OER wrote that the OER reflects a reasonably consistent portrayal of the performance and potential of [the applicant]. The numerical scores are consistent with the performance evaluation standards and fully supported by the written comments.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 6, 2010, the Board received the applicant's response to the views of the Coast Guard. She did not agree with them. In this regard, she offered the following:

There was a personality conflict between me and [the XO] and [the CO] was aware of it and did nothing to help either of us. The stress was taking its toll on me physically, I mentioned in an e-mail to the CO that I was having headaches and grinding my teeth. I asked [the CO] for help in a reassignment, but he never responded to that e-mail. [The CO] says he counseled me, he did not. He did tell me to help the XO do his job. [The CO] says the Technical Director . . . counseled me, he did not. [The technical director] did, however, agree I should seek reassignment as soon as possible and he was the architect behind my moving to the National Maritime Intelligence Center Staff. . . [The XO] counseled me twice, once when he asked me to keep the conflict out of the CO's office, and the second time when he lost his temper with me regarding an e-mail I sent to the CO

regarding reorganizing the unit. [The XO] never said anything else about any of the performance dimensions on my OER.

I found the OER signed by [the XO] and [the CO] under some folders on my desk. There was no note to come discuss, there were no comments on the input I provided. [The XO] and [the CO] did not make any effort to schedule a meeting with me, and yes, I blew it off because their credibility with me was so low, any meeting would have been a charade just to say it happened. My apology to [the XO] for causing him stress was sincere, I did not know until that spring he was in counseling.

The Coast Guard says I did not take responsibility for my part in this conflict, and that is not true. I repeatedly accepted my role, but I did refuse to cover up [the XO's] incompetence, missteps were not minor, as [the CO] thinks, but were causing angst and frustration with the crew. [The XO] is a very nice person, and I bear him no ill will, but I found his actions in many areas embarrassing as another commander, and I did not think it was my responsibility to help him be a commander in the Coast Guard.

[The CO] says that the [junior officers] were forced to take sides. He never told me there were issues with the JOs, and I maintain that I was professional and the conflict was not as open as [the CO] claims.

The command climate at the unit was the worst I have seen in all my years of active duty, contractor and civilian turnover was very high. I had already decided to retire . . . and [the CO's] lack of leadership did nothing to inspire me to want to stay in the intelligence community or the Coast Guard . . . I have issues with [the CO] not counseling me, and, admitting that he used the OER to get my attention. . . . [T]hat is not what an OER is for! After the CO made that statement, I discussed the situation with an attorney and considered doing an Article 138 claiming the CO had different standards for active duty and reservists. As the first step in the 138 process, I had a meeting with the CO to address my concerns and he said I did not play well as a victim. He asked me what I wanted and I said I needed to leave. He said he had considered asking his friend, the CO of the Personnel Command to move me, but he did not want to be seen as transferring a problem. He supported my TAD to DHS and to the National Maritime Intelligence Center.

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. The applicant alleged that the disputed OER does not accurately portray her performance, but rather, it resulted from a poorly managed personality conflict she had with the XO. The applicant provided little evidence suggesting that the XO had a problem with her, but significant evidence suggesting that she had a problem with the XO. In this regard, the evidence suggests that the applicant had a problem with the XO because of his Reserve background and, in her opinion, his alleged incompetence. As the Coast Guard stated, the fact that the XO was a member of a Reserve component did not disqualify him from holding an XO assignment on active duty. As the subordinate, it was the applicant's responsibility to adjust to the management style of her supervisor. With regard to the applicant's complaint that the XO was incompetent, the Board notes that her example of the XO's incompetence was that he had "other people" doing his administrative tasks allegedly because he did not know how to do them. Even if true, the lack of familiarity with every aspect of a job does not render one incompetent. As XO, he had the authority to delegate, which appears to be what he did. Further, if the XO was not assigning his administrative tasks to the applicant or to the people who worked directly for her, the Board fails to understand the applicant's problem with the delegations. The CO described the applicant's actions as undermining the XO at every opportunity and using minor mistakes to embarrass him. Therefore, it appears to the Board that the applicant's problems with the XO led to tension between them. However, workplace tension between supervisor and subordinate does not necessarily mean that a supervisor is biased against a subordinate or that the supervisor cannot fairly and objectively evaluate an officer's performance. See BCMR No. 2000-037. The applicant did not offer any specific evidence to prove that her marks should have been higher for the period under review; nor did she present any specific evidence to prove that any of the comments in the OER were inaccurate. The Board finds insufficient evidence that a personality conflict, actual or perceived, caused the rating chain to rate the applicant unfairly in the disputed OER.

4. Even if the applicant had shown that a personality conflict existed, she would still need to show that the personality conflict manifested itself through misstatements or inaccuracies in the OER. In this case, the statement from an SK1 and LCDR B do not prove that the applicant's performance was better than as described in the OER. The SK1 wrote only about the specific tasks she performed for the XO, and LCDR B wrote about the applicant's leadership skills, background, and mentoring skills. However, he never states which marks or comments in the OER he believed were inaccurate or how or why she should have higher marks. On the other hand, the supervisor, reporting officer, and reviewer have reaffirmed the accuracy of the OER. All three members of the rating chain stood by the performance evaluation. Because the applicant's previous and subsequent evaluations were better than the disputed OER does not prove that her performance for the period under review was better than as described in the disputed OER. The applicant has not shown that even if a personality conflict existed with the XO, it resulted in an inaccurate assessment of her performance for the period under review. As stated above, she has not shown how her performance was better than indicated in the disputed OER.

5. The applicant's contention that she was not counseled during or after the evaluation period is without merit. She admitted in her submissions that several of her discussions with the CO and XO could be considered counseling. For instance, the CO asked her to work with the XO. Rather than following the CO's direction in this regard, she told the CO that the XO's job was not a training billet, and refused to work with him. Subsequently, the CO told her he wanted more from her when she told the CO that a discussion with the XO led only to her agreement to keep the sniping out of the CO's office. Another time, the XO told her that she was not a team player after she sent an email to the CO, recommending a reorganization of the unit that included abolishing the XO's position. The applicant also admitted in one of her emails that the XO counseled her about her writing (the tone of her emails). These discussions with the XO and CO are considered counseling or feedback because they put the applicant on notice that the command was not pleased with her working relationship with the XO and its potential impact on the unit. Also, contrary to her contention that there was no end of period counseling about the OER, the Board notes there was a discussion with the XO following her receipt of the OER, because the CO directed it, and after that discussion and her submission of additional information, the XO raised a couple of her marks. There was also an end of period discussion with the CO and reviewer. All of the above instances constitute feedback. Article 10.A.1.5. of the Personnel Manual states that no specific form or forum is prescribed for performance feedback and it occurs whenever a subordinate receives advice or observations related to their performance in any evaluation area. This provision further states that if the feedback is not fully understood, it is the reported-on officer's responsibility to immediately seek clarification and the rating chain's responsibility to provide it. Having served as a deputy group commander and other supervisory positions in previous assignments, the Board is persuaded that the applicant understood how to obtain clarification if the counseling or feedback she received was not adequate. Therefore, if the applicant did not understand what the CO meant by "help the applicant do his job" she should have asked. If she did not understand what the XO meant by not being a team player she should have ensured that she understood. If she wanted clear guidance on what she could do to eliminate or minimize the "personality conflict" with the XO (other than a transfer) she could have asked. The applicant was counseled during and at the end of the reporting period.

6. The applicant seems to be most dissatisfied with the marks of 4 in adaptability, writing, teamwork, and workplace climate. Her decision to ignore the CO's direction to work with the XO, the confrontational tone of her emails to the CO and XO, and according to the CO, her constant undermining of the XO suggest that the 4s are not erroneous. Although the applicant complained that the rating chain never told her that she was not performing above a 4 in certain areas, she offered no evidence that she sought any counseling about her performance, but rather her emails show constant complaints about the XO. Further, contrary to the applicant's contention that marks of 4 are not good marks, Article 10.A.4.c.4.g. of the Personnel Manual states, "A mark of 4 represents the expected standard of performance," which is defined as "the high level of performance expected of all Coast Guard officers." See Article 10.A.1.c.2. of the Personnel Manual. As stated above, the applicant offered insufficient evidence that her performance during the reporting period mandated marks higher than those assigned in the disputed OER.

7. The applicant complained that the disputed OER was submitted three months into the next reporting period. While Article 10.A.2.h.2.a. of the Personnel Manual states that the OER

should be received by PSC not later than 45 days after the end of the reporting period, the Deputy General Counsel for the Department of Transportation ruled in Docket No. 84-96 that “simple time delay in submission of an OER does not by itself constitute prejudicial error.” She stated that the question is “whether the delay led to material inaccuracies in the report, or otherwise created errors or injustices.” Since the applicant failed to prove that the disputed OER is inaccurate or that she was not counseled during or at the end of the reporting period, the Board finds that the delay in submitting the OER was not prejudicial.

8. In summary, the applicant cannot “merely allege or prove that an [OER] seems inaccurate, incomplete or subjective in some sense,” but must prove that the disputed OER was adversely affected by a “misstatement of significant hard fact,” factors “which had no business being in the rating process,” or a prejudicial violation of a statute or regulation. *Hary v. United States*, 618 F.2d 704, 708 (Ct. Cl. 1980), *cited in Lindsay v. United States*, 295 F.3d 1252, 1259 (Fed. Cir. 2002). The applicant has not submitted evidence that meets this standard because she has presented insufficient evidence that the marks or comments are inaccurate, or that the alleged personality conflict manifested itself in the OER, and no evidence of a prejudicial violation of statute or regulation.

9. Accordingly, the applicant’s request should be denied because she has failed to prove an error or injustice on the disputed OER.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

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

Lillian Cheng

Randall J. Kaplan

James E. McLeod