

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-176

██
██████████ LTJG

FINAL DECISION

This is a proceeding under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the applicant’s completed application on July 10, 2018, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated November 22, 2019, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

SUMMARY OF APPLICANT’S REQUEST AND ALLEGATIONS

The applicant, a lieutenant junior grade (LTJG) on active duty, asked the Board to remove from her record a Special Officer Evaluation Report (SOER) dated August 18, 2016, and a Punitive Letter of Reprimand dated August 30, 2016, which document her receipt of non-judicial punishment (NJP) and an “alcohol incident.”¹ She stated that these documents should be removed because at the time, she was then an ensign with minimal experience and did not have a supportive command. She stated that there was a negative command climate aboard the fast response cutter (FRC) where she was serving as the First Lieutenant (head of the Deck Department) and a Deck Watch Officer, and it caused the circumstances that resulted in these documents being entered in her record.

The applicant stated that she reported for duty aboard the cutter as a new ensign in June 2015. She was one of three officers and the only female officer assigned to the cutter. She “did not have much support from my fellow officers, especially since they were the top two in command,” and in the months leading up to August 2016 she was “struggling with a negative command climate.” She felt very stressed but was “uncomfortable approaching the XO (LTJG) and CO (LT)” because she thought it would jeopardize her OER. However, she reached out to

¹ Article 1.A.2.d.(1) of COMDTINST M1000.10 defines an “alcohol incident” as “[a]ny behavior, in which alcohol is determined, by the commanding officer, to be a significant or causative factor that results in the member’s loss of ability to perform assigned duties, brings discredit upon the Uniformed Services, or is a violation of the Uniform Code of Military Justice, Federal, State, or local laws. The member need not be found guilty at court-martial, in a civilian court, or be awarded non-judicial punishment for the behavior to be considered an alcohol incident.” An officer is processed for separation if he or she receives more than one alcohol incident. *Id.* at Art. 2.B.8.

officers and senior enlisted members at the local Sector office for advice. She also asked “two chiefs onboard several times to talk to the command because [she] was not comfortable doing so.” She stated that she believes that the command became angry after the chiefs approached them a few times, and she “felt like [she] was walking on egg shells” and like nothing she did was right. She stated that experiencing this negative command climate for a year led her “to lash out.”

The applicant explained that the command climate was so bad that she “sought ways to be off the ship” by volunteering to run errands and work at other sites. When she learned that the cutter was going to be under maintenance for three months, she volunteered to go on patrol on another FRC where she could continue to try to qualify as an underway Officer of the Deck (OOD). Aboard this other FRC, the “XO and CO were supportive, understanding, and helpful as [she] continued [her] underway OOD training. They gave [her] all the tools [she] needed to succeed.” She stated that if the command of her own cutter had been so positive and helpful, she would not have “lash[ed] out at them after being annoyed and intoxicated.”

The applicant stated that her command did not support her or provide mentorship or good leadership. The CO “had arguments with many onboard, even the chiefs.” But she believes that she was targeted because another ensign who was assigned to the FRC the following year did not experience the same treatment “as if they noticed how [she] was treated and did not want to repeat the behavior with the new ENS.”

The applicant stated that after the NJP, the command climate became even more negative. She almost asked to leave the FRC but did not because her chief told her that it would make it look like she could not “handle things.” She also did not know about her options to appeal the SOER, and if she had known, she would have been too scared to exercise those options while still assigned to the cutter lest her work environment and OER marks got even worse.

The applicant stated that after she completed her tour of duty aboard the FRC and transferred to another unit, she found great mentors at her new unit and learned that she could appeal the SOER. She concluded by repeating her claim that but for the negative command climate, she would not have lashed out at her superiors and received the SOER and NJP.

In support of these allegations, the applicant submitted copies of the disputed documents and the following:

- A chief warrant officer who was the Engineering Officer of the cutter stated that the applicant approached him

on numerous occasions in regards to feeling treated unfairly by the command. She frequently discussed how this treatment caused high levels of stress and the feeling of not being included. I also talked to the command regarding [the applicant] on mentorship and inclusion following most of these conversations. I believe this particular situation occurred due to the commissioning program for the new FRCs. While the crews are constantly attending training and learning all the new innovative and complex equipment the FRCs provide, it hinders our ability to give new members to the cutter the time needed to properly train, mentor and mold into strong leaders. This was evidence when a new Ensign arrived a year after the commissioning of the cutter. The crew was established, qualified and proficient with the operations, machinery and evolutions the cutter sup-

ports. This allowed the crew and command the time needed to properly train and mentor this new officer. Unfortunately [the applicant] was not afforded the same opportunities due to the extremely busy training schedule for Post Dry Dock Availability and Familiarization training at the yard, which caused her to have a rough start on the cutter. Though she eventually established herself with the help of the crew, it was evidence how stressed she was on the cutter and still approached the Chiefs for advice and mentorship routinely throughout her tour onboard.

- A chief boatswain's mate (BMC) who was the Operations Petty Officer on the cutter from January 2015 to June 2017 stated that he mentored the applicant in the performance of her duties as a Deck Watch Officer and head of the Deck Department. Upon reporting aboard, she "quickly integrated with the crew in all training and pre-commissioning preparations," but she "encountered many challenges as expected" for an ensign assigned to an FRC. The BMC stated that the applicant "had many struggles with her interactions with the command. On routinely basis she sought counseling and support from the MKC [Engineering Petty Officer] and myself in regards to her conflicts with the commanding officer. Our CO was highly demanding and my relationship with him was strictly professional. His interactions with the crew [were] always operational oriented." The BMC stated that he believes that the applicant "had consistently given her best effort to fulfill her duties but rarely got praised for her accomplishments. Many times I did experience hostile language between her and the CO and often in the presence of junior enlisted crewmembers." He stated that the applicant's "experience on board the cutter was not pleasant" and he believes that her misconduct was "a reflection of all the tension and stress" with the command. The BMC stated that he informally counseled her about the incident, and she knew the consequences of her actions, but "we all have our limits and seems to me that the venue she chose to ventilate such stress was inappropriate but could've been worse." The BMC stated that she has "unlimited potential and the drive to succeed as an officer and leader."
- A chief warrant officer (CWO) assigned to the local Sector command from February 2015 to June 2017 stated that part of his duties included conducting ready for operations (RFO) deck readiness inspections and drills for the cutters based in the Sector. He stated that the applicant came to his office a few times to talk about "how to approach the Command Cadre on certain items of concern. She was very familiar with utilizing her chain of command, however, she seem[ed] not to be very comfortable (feared) with directly approaching the Executive Officer (XO) on matters she felt needed to be addressed. This fear also reflected toward the Commanding Officer (CO)." The CWO stated that when he suggested she talk to the CO about not being able to approach the XO, she expressed "extreme fear/concern of retaliation." She was also afraid to talk to the CO's supervisors for fear of retaliation. As an example, the CWO stated, the applicant once told him that she wanted to ask the XO about "Open Brow" privileges.² She felt like she was being "held to a different standard than others assigned to the cutter." He recommended that she review the Cutter Standing Operating Procedures and see if they matched the XO's expectations of her. And when she said that she wanted to ask the XO about OER marks and comments that she was unhappy with, he recommended that she gather all of her accomplishments during the period and send the XO an email asking to discuss the OER. The CWO stated that based on his conversations with the

² "Open brow privileges" are given to senior members of a crew to allow them to freely go ashore and conduct personal business at will.

applicant, “it seemed as though she was under some extreme[ly] stressful command climate concerns, had fear to approach the cadre on cutter matters that needed to be addressed, and had several instances of not being treated with respect or marked fairly for her good performance.”

- A lieutenant commander (LCDR) who worked with the applicant during an emergency response to a cruise ship fire in 2016 stated that her drive and passion for her work were refreshing. Through conversations, he learned that she was having a difficult time aboard the FRC and

came to understand and believe that she was not being treated properly, and there are numerous instances of her leadership and shipmates creating a hostile environment for her, and withholding information from her so that she would have a more difficult time navigating the challenging matriculation of development as a junior officer. Coping with the lack of leadership, plus the obscurity of being very junior and alone in many circumstances led to a situation that could have easily been avoided with just the slightest of positive example present, which she had none at the time.

Therefore, the LCDR decided to “mentor her and fill in the gap that was not being filled by her command. Her previous command was not making any use of her natural leadership ability and bias for action. She loves being in the Coast Guard, and it would be a shame to lose her to such circumstances.”

- A senior chief stated that the applicant sought advice from him when her NJP was pending. He stated that she clearly understood the mistake she had made. However, he stated, the “NJP was avoidable if the command cadre would have stepped in and prevented a shipmate from going down the wrong road. This incident occurred at a unit function and not one shipmate looked out for her.” The senior chief stated that he attended the mast and as the CO (presumably the Sector Commander) awarded punishment, he stated, “This incident should have never happened.” The senior chief stated that this meant that the applicant’s XO and CO had failed her, and he concluded that they “didn’t have her best interests in mind.” The senior chief stated that the applicant had “owned her mistake and continued with her strong work ethic” and that she could provide mentorship to other female officers and deserved the chance to be promoted.

SUMMARY OF THE RECORD

The applicant graduated from the Coast Guard Academy and was commissioned an ensign on May 20, 2015. She reported for duty aboard the FRC as the First Lieutenant and Deck Watch Officer on June 19, 2015.

On the applicant’s first OER, dated March 31, 2016, the XO assigned her nine “standard” marks of 4 (on a scale from 1 (worst) to 7 (best)), six above-standard marks of 5, and three excellent marks of 6 in the eighteen performance categories. The CO assigned her a mark in the fourth (of seven) spots on the officer comparison scale, denoting a “good performer,” and a recommendation for promotion to LTJG “with peers.”

On August 18, 2016, the applicant was punished at mast by the Sector Commander for violating three articles of the Uniform Code of Military Justice (UCMJ). The Court Memorandum documenting the NJP states the following:

Offense Narrative:

Article 89 [Disrespect to Superior Officer], [the applicant], on active duty, did, at or near ... on or about 5 June 2016, behave herself with disrespect toward [her XO], her superior commissioned officer, then known by the accused to be her superior commissioned officer, by saying to him she could “fucking take care of herself” or words to that effect, and contemptuously and repeatedly arguing with [his] orders to return to [the FRC] due to her intoxicated state.

Article 133 [Conduct Unbecoming an Officer and Gentleman/Lady], [the applicant], on active duty, was, at or near ... on or about 5 June 2016, in a public place, to wit: Yelling she was “an officer in the Coast Guard” or words to that effect in a drunken manner; calling a group of U.S. Army soldiers “jar heads” or words to that effect; being disrespectful to her superior commissioned officer, [her XO]; and drunk and disorderly, to the disgrace of the Armed Forces.

Article 134 [Drunk and Disorderly], [the applicant] on active duty, was, at or near ... on or about 5 June 2016, drunk and disorderly, such conduct being to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

Sentence Narrative:

Member issued a letter of reprimand.

The Punitive Letter of Reprimand, which was entered in the applicant’s record as NJP, is dated August 30, 2016, and signed by her and the Sector Commander. It states the following:

1. On 18 August 2016, at a proceeding held under [Article 15 of the UCMJ], I found that you violated Article 89 of the Uniform Code of Military Justice (UCMJ): Disrespect Toward a Superior Commissioned Officer; Article 133 Conduct Unbecoming an Officer and Gentleman; and Article 134 Disorderly Conduct, Drunkenness. You are accordingly REPRIMANDED for your disorderly and drunken conduct, as well as your blatant disrespect towards your Executive Officer and Commanding Officer on the evening of 05 June 2016 while at a liberty port call [overseas].
2. You behaved in a reproachable manner while on liberty in a foreign port when you consumed alcohol irresponsibly, became significantly intoxicated in a public setting, and exhibited behavior inconsistent with the Coast Guard’s core values. Furthermore, you demonstrated a complete lack of respect by raising your voice and using profanities when addressing your Executive Officer and Commanding Officer when they tried to assist you back to the cutter. These actions were carried out in plain sight of crewmembers from several allied and partner nation vessels, causing great embarrassment to yourself, your Command, and the U.S. Coast Guard while deployed at an international training exercise. Your abuse of alcohol and subsequent misconduct are extremely concerning to me, as it is conduct that I would not expect of any member of the U.S. Coast Guard, particularly a member of your pay grade.
3. A copy of this letter will be placed in your official file at Coast Guard Headquarters. You are advised of your right to appeal. If you so choose, you may appeal to Commander, Coast Guard ... District, in accordance with [COMDTINST M1600.2].

The applicant’s “alcohol incident” is documented in her record on a CG-3307 (“Page 7”) dated August 18, 2016. It is signed by the Sector Commander and the applicant and states that her abuse of alcohol had been a significant or causative factor in her violation of the three articles of the UCMJ. It states that at a bar in an overseas port on June 5, 2016, “two petty officers from different commands had to intervene when your drunken behavior was bringing

discredit to the U.S. Coast Guard. When your Executive Officer ordered you back to the cutter, you responded in a disrespectful manner and created a scene in front of U.S. armed forces and foreign naval personnel.” The Page 7 states that the applicant had been counseled on alcohol policies, would be screened for alcohol abuse or addiction, and would be processed for separation if she incurred another alcohol incident.

The disputed SOER is a special, disciplinary OER documenting the applicant’s receipt of NJP and an “alcohol incident,” as required by Article 5.A.3.e.(2)(b) of COMDTINST M1000.3A. Her supervisor, the XO of the FRC, assigned her below-standard marks of 3 for the performance categories Judgment, Responsibility, Professional Presence, and Health and Well-Being and marked the rest as “not observed.” Her CO assigned her a mark in the third spot on the officer comparison scale, denoting a “fair performer.” The corresponding comments state the following:

[The applicant] displayed poor judgment, lack of commitment to Coast Guard core values, and blatant disrespect toward senior officers after irresponsible and excessive consumption of alcohol during a liberty port call. This misuse and abuse of alcohol resulted in misconduct that occurred in front of several foreign military services during Operation ..., causing embarrassment for the Command and U.S. Coast Guard. [She] was found to have committed the following UCMJ offenses at NJP: Article 89 Disrespect Toward a Superior Commissioned Officer, Article 133 Conduct Unbecoming an Officer and Gentleman, and Article 134 Disorderly Conduct, Drunkenness, resulted in award of a punitive letter of reprimand and first Alcohol Incident.

[The applicant] has been selected and remains recommended for promotion to O2. At this time, not recommended for high visibility assignments or positions requiring significant responsibility. With improved performance, and no further setbacks, [she] can earn my recommendation for positions of increased responsibility such as IMD/ENF division officer or Command Duty Officer (CDO) positions.

On her next semiannual OER, covering the period April 1 through September 30, 2016, the applicant received nine marks of 4, six marks of 5, and three marks of 6 in the performance categories; a mark in the fourth spot on the comparison scale, denoting a “good performer”; and her CO’s comment that she had been “selected for promotion to O2 and working towards rec for continued promotion to O3.”

On November 20, 2016, the applicant was promoted to LTJG. Her semiannual OER dated January 31, 2017, shows that she had been appointed by the CO to serve as the FRC’s Operations Officer. She received seven marks of 4, four marks of 5, five marks of 6, and two marks of 7 in the performance categories; a comparison scale mark in the fourth spot; and a (new) promotion scale mark of “recently promoted.” Her CO noted that she had recently been promoted to LTJG and was “progressing towards recommendation for promotion to O-3.”

A Page 7 dated February 15, 2017, notes that the applicant had undergone alcohol screening and should report the results to her future commands and Command Drug and Alcohol Representatives. It also states that she was counseled about alcohol policies and support plans.

The applicant’s final OER from the command of the FRC marks her transfer to another unit on March 4, 2017. She was still the Operations Officer of the cutter, and the marks and comments are very similar to those on her prior OER, except that the XO raised two marks from 4s to 5s.

In May 2017, the applicant was transferred to a District Command Center to serve as a Command Duty Officer. At this unit, her OER marks have gradually risen and she has been recommended for promotion to lieutenant “with peers.”

VIEWS OF THE COAST GUARD

On February 11, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum submitted by Command, Personnel Service Center (PSC).

PSC noted that the applicant did not file an OER Reply to be included in her record with the SOER and did not apply to the Personnel Records Review Board (PRRB) to remove the disputed documents. PSC submitted sworn declarations from the CO and XO of the FRC, which are summarized below. Based on those declarations and the applicant’s military records, PSC stated that the applicant’s own actions, including her consumption of alcohol to the point of intoxication and use of profanities towards superior officers, caused the disputed entries in her record. PSC stated that the applicant had failed to submit substantial evidence showing that a poor command climate caused her misconduct on June 5, 2016. PSC also noted that Article 5.A.3. of COMDTINST M1000.3A requires a command to prepare an SOER whenever an officer receives NJP. Therefore, PSC recommended that the Board deny her request.

Declaration of the CO

The CO stated on June 5, 2016, he and the XO were involved in removing the applicant from the bar and returning her to the cutter, where her yelling of profanities at the XO continued. Therefore, and because of the applicant’s “personal attacks” on the XO, he asked the Sector Command to conduct an impartial investigation of the incident when the FRC returned to its homeport a few days later. He also encouraged the applicant to contact the chaplain because he knew that the investigation and any NJP would be stressful for her. The CO noted that the applicant had

5. ... numerous underlying performance challenges onboard [the cutter] prior to and following this incident. Such challenges included numerous security related incidents involving classified material, division and collateral duty mismanagement requiring Executive Officer intervention, and below average qualification progress. In all these cases we provided [her] actionable feedback and steps for improvement. Unfortunately, she largely interpreted this guidance as a personal attack rather than constructive feedback and, in the case of security incidents, required documentation. Throughout her time onboard she was very vocal, both to the Command and Crew, of her dislike of cutters and afloat operations. She expressed this in person and in writing, to include lengthy emails to the Executive Officer and I about her background, her reasons for joining the Coast Guard, and her regrets. In reading her submission regarding her OER, I do not believe [she] hesitated at any time to approach us with concerns.

6. We afforded [the applicant] maximum opportunity to succeed both with shipboard qualification and her career track interests. Onboard we allowed her two opportunities to pass Inport Officer-of-the-Deck qualification, three opportunities to pass Boarding Officer qualification, and TAD time on a [nearby] FRC to develop underway skills. From my afloat experiences I am confident [the applicant] was given above average opportunities to succeed after qualification failure. Additionally, post NJP we sent her to Basic Boarding Officer School and allowed her to remain in her primary duty, opportunities not usually provided to junior officers

following NJP. Knowing that [she] was not interested in pursuing a career afloat we supported her collateral duty work at Sector ..., Sector Command Center watch standing break-in, and assignment ashore to the incident command following [the cruise ship fire].

7. In her statement, [the applicant] makes mention of challenges associated with being the only female officer onboard. Beginning with crew formation I did my best to ensure diversity and mentorship at the unit. During pre-commissioning our crew was slated to receive male Ensigns. Since our initial crew was also assigned two junior female enlisted members (and no enlisted female members above the rank of E-4), I requested that OPM shift our male Ensign positions to female, which they did. I wanted to develop mentorship and have positive officer role models for our junior enlisted. In discussions with [the applicant], I recommended that she find a female mentor at Sector ... and provided her with specific recommendations. Several times we hosted female officers aboard TAD to fill personnel gaps or to facilitate professional development. Being more senior afloat officers, I asked those members to share their experiences with [the applicant] so she could gain a diverse perspective.

8. All hands onboard were provided the opportunity to comment on command climate via Sector ... DEOMI Survey as well as the USCG All Hands DEOMI Survey (targeted to personnel of units under 25 members) per ALCOAST 028/16. We received no indication of command climate issues onboard the cutter from these sources, command open door policy onboard, or supervisor observation during regular inspections.

Declaration of the XO

The XO disagreed with the applicant's claim that there was a negative command climate aboard the FRC. As her supervisor, he knew that she "struggled with her assigned duties on board," which likely contributed to her stress. But while she may have felt stressed and uncomfortable in her role, the XO stated, she "was treated fairly, with professionalism and respect in all interactions." The XO stated that engaging in personal misconduct is not an appropriate or acceptable way to deal with difficult professional challenges, and such challenges do not excuse misconduct.

The XO stated that after the incident on June 5, 2016, he and the CO discussed the matter and decided to ask the Sector to investigate. The investigator concluded that the applicant should be punished at mast and, after reviewing the investigation, the Sector Commander agreed.

The XO alleged that he and the CO provided the applicant with "every opportunity ... to succeed." After the NJP, they did not cancel her upcoming orders to attend Boarding Officer School, as would normally happen to a member after receiving NJP. Instead, they allowed her to remain behind during the next deployment so that she could complete her alcohol screening and "shadow" personnel in the Sector Response department before attending Boarding Officer School since Response Operations Ashore was her desired career track.

The XO stated that the applicant's "struggles were amplified after her NJP" as she increased her time at the Sector, "often at the expense of her duties on board [the FRC]." The XO noted that in both December 2016 and January 2017, he had to counsel the applicant about missing work to attend Sector events—exercising "open brow privileges"—without notifying him and despite having "overdue work pending." One of those occasions was an all-hands meeting for the crew, which was unacceptable for her to miss as head of the Deck Department. Of all the chiefs and officers on board, he said, "she was the only one to struggle with this concept." The XO alleged that the applicant often "failed to exhibit professionalism and focus on the

bridge,” “requir[ed] explicit coaching for simple tasks, and had difficulty with the security protocols for classified material and communications equipment.” He stated that these deficiencies led to counseling and coaching, which might have caused her stress “but is not indicative of negative command climate or bias.” The XO stated that the applicant was “struggling to manage the normal pressures and stresses of being a Junior Officer on a Coast Guard Cutter,” but there was no negative command climate. He concluded that the applicant’s conduct, the NJP, Letter of Reprimand, and SOER were handled appropriately and fairly.

JAG’s Arguments

The JAG noted that the applicant asked that the Letter of Reprimand be removed but did “not contest the award of NJP” and implicitly admitted to the offenses for which she was punished. The JAG stated that issuing the applicant a Punitive Letter of Reprimand was appropriate in light of her offenses, and she did not appeal the NJP. Even if she was too fearful to exercise her right to appeal, that would not excuse her failure to avail herself of the available remedies, the JAG argued.

The JAG stated that there is insufficient evidence supporting the applicant’s claim that she was subject to a negative command climate aboard the FRC, and even if there had been a negative command climate, that would not have excused her misconduct. The JAG noted that the applicant submitted letters from members supporting her request but that only a couple of them had the opportunity to observe the command climate aboard the FRC. And those that did only confirmed that there were ongoing issues between the applicant, the XO, and the CO, which they have admitted. The JAG noted that the XO stated that the applicant had been coached and counseled about those issues.

The JAG noted that except for those officers assigned to the cutter, the applicant’s affiants based their statements on what the applicant told them. One stated that he repeatedly counseled her about her options for addressing her concerns, and she declined to avail herself of them. Moreover, the JAG stated, even if there had been a negative command climate, that would not have excused the applicant’s misconduct. And the disputed SOER was required by policy to document her receipt of NJP. Therefore, the JAG recommended denying relief.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 14, 2019, the Chair mailed a copy of the Coast Guard’s advisory opinion to the applicant and invited her to respond within thirty days. No response was received.

FINDINGS AND CONCLUSIONS

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely filed.

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

3. The applicant alleged that the SOER dated August 18, 2016, and Punitive Letter of Reprimand dated August 30, 2016, in her record are erroneous and unjust. In considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in her record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁴ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."⁵ In addition, to be entitled to removal of an SOER, an officer cannot "merely allege or prove that an [SOER] seems inaccurate, incomplete or subjective in some sense," but must show that the disputed SOER 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.⁶

4. The applicant alleged that there was a negative command climate aboard the cutter and that the disputed SOER and letter should be removed from her record because she would not have "lashed out" on June 5, 2016, if she had not been subject to the negative command climate. The applicant has not, however, submitted sufficient evidence to show that there was a negative command climate aboard the FRC. The CO mentioned two DEOMI Surveys of the crew conducted while the applicant was aboard, but the applicant did not submit them. Regarding the statements she did submit, the Board finds that they do not support her claim that there was a negative command climate:

- The FRC's Engineering Officer stated that the applicant complained to him frequently about being treated unfairly, and he noted that the FRC had a particularly rigorous training schedule that year. But the Engineering Officer did not state that he witnessed or knew of any mistreatment of the applicant, that there was a negative command climate aboard the cutter, or that she was treated unfairly by the XO or CO.
- The FRC's Operations Petty Officer stated that the applicant "encountered many challenges as expected" for an ensign aboard a cutter and frequently sought his advice about struggles and conflicts with the command. He stated that he heard "hostile language" between her and the CO many times, including in the presence of enlisted members, but he did not state that there was a negative command climate or that the applicant was unfairly treated.
- The CWO at the Sector Command stated that although the applicant knew how to use her chain of command, she often asked him for advice about how to approach the XO about

³ *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

⁴ 33 C.F.R. § 52.24(b).

⁵ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁶ *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).

certain matters. He noted that her inquiry about “open brow privileges” was one such matter. When she claimed that she was being “held to a different standard,” however, the CWO recommended to her that she compare the XO’s expectations of her against the Cutter Standard Operating Procedures. The CWO was not assigned to the cutter and his knowledge of the command climate is based on what the applicant told him. Even then, the CWO did not state that she was subject to a negative command climate.

- The LCDR worked with the applicant away from the cutter and weeks after she committed the misconduct for which she received the NJP and SOER. He did not claim to have any basis for his opinions of the command climate except what she told him.
- A senior chief who did not witness the applicant’s misconduct on June 5, 2016, nevertheless alleged that the command should have prevented her from committing that misconduct and should have avoided having the Sector Commander take her to mast. And because the XO and CO did not prevent her misconduct or avoid her being punished at mast and because the Sector Commander or CO said, “This incident should have never happened,” the senior chief concluded that the XO and CO had failed her and did not “have her best interests in mind.” The senior chief’s allegations and reasoning are unconvincing.

Therefore, the applicant has not proven by a preponderance of the evidence that there was a negative command climate aboard the FRC.

5. The applicant pointed out that she was the only female officer aboard the FRC, but she did not claim that she was subject to gender bias or sexual harassment. The members who submitted statements on her behalf likewise did not say that she complained of gender bias or sexual harassment by the XO or CO. And the regular OER marks that the applicant received from the XO and the CO in 2016 are not inappropriate for an ensign and are not evidence of bias. Ensigns commonly receive a few “standard” marks of 4 in the performance categories on an OER, and marks in the fourth (middle) spot on the officer comparison scale are also common for ensigns. The CO’s refusal to provide an outright recommendation for promotion to lieutenant on her OERs after the NJP is wholly justified by her recent alcohol incident and misconduct and by the fact that she was only promoted to LTJG in November 2016. The declarations submitted by the XO and CO show that she was not happy with her assignment and struggled to meet their expectations, but there is no evidence of bias in this case. And there is strong evidence that they tried to help her: The applicant was not removed from the LTJG promotion list or her primary duties after the NJP and she was allowed to go to Officer Boarding School. Such orders normally would have been canceled after NJP. They also recommended mentors for her, coached her, and assigned her TAD and collateral duties ashore because she had made it clear that she did not like duty afloat. Therefore, the Board finds that the applicant has not proven by a preponderance of the evidence that the disputed documents are a result of any bias on the part of the XO or CO.

6. The applicant’s evidence does show that she felt great stress as the First Lieutenant of the FRC. Sea service can be very stressful—particularly for new ensigns—and the COs and XOs of cutters sometimes shout at their subordinates. But being stressed does not in any way excuse the applicant’s intoxicated misconduct on June 5, 2016. Therefore, the Board finds no grounds for removing the Punitive Letter of Reprimand that she received as NJP from the

Sector Commander on August 18, 2016. She has not proven by a preponderance of the evidence that either the NJP or the Punitive Letter of Reprimand is erroneous or unjust.

7. Article 5.A.3.(e)(2)(b) of COMDTINST M1000.3A requires a command to prepare an SOER whenever an officer receives NJP. Therefore, the XO and the CO were required by policy to prepare the SOER. And the applicant has not overcome the presumption of regularity or proven by a preponderance of the evidence that the SOER is 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.⁷ She has not shown that the low marks are unjustified, that the comments are false, that the SOER was a product of bias, or that it was an unjust consequence of her lashing out under stress because of the alleged negative command climate. The Board finds no grounds for removing the disputed SOER.

8. Accordingly, the applicant’s requests to have the SOER and the Punitive Letter of Reprimand removed from her record should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁷ *Hary*, 618 F.2d at 708.

ORDER

The application of LTJG [REDACTED], USCG, for correction of her military record is denied.

November 22, 2019

