

**DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction of  
Coast Guard Record of:

BCMR Docket  
No. 2001-133

**FINAL DECISION**



This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on September 27, 2001, upon the BCMR's receipt of the applicant's complete application for correction of her military record.

This final decision, dated February 19, 2003, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant asked the Board to correct her record by removing an officer evaluation report (OER) for the period October X, XXXX, to March XX, XXXX (disputed semi-annual OER) and a special OER for the period October XX, XXXX to January XX, XXXX (disputed special OER). In addition she requested the removal of a letter of reprimand dated January XX, XXXX, and an administrative remarks (page 7) dated January XX, XXXX, revoking her authorization to wear the cutterman insignia and carry small arms. She further requested to be reinstated on active duty<sup>1</sup> and to be promoted to the rank of lieutenant junior grade (LTJG).

The applicant began active duty on January 8, 1998. She reported to the cutter on XX X, XXXX, where she received the disputed OERs. She was honorably discharged on XXXX XX, XXXX, due to miscellaneous/general reasons.

**EXCERPTS FROM RECORD AND SUBMISSIONS**

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<sup>1</sup> The 1999 lieutenant junior grade (LTJG) selection did not select the applicant for promotion and recommended that the Commandant revoke her commission because her service in the grade of ensign was unsatisfactory. The Commandant revoked the applicant's commission under Article 12.A.13.b. of the Personnel Manual. This provision states that the Commandant may revoke the commission or vacate the temporary appointment of an ensign serving in his or her first three years of commissioned service who has failed to be selected for promotion to LTJG and whom the selection board determines to be serving in an unsatisfactory manner.

The applicant alleged that during her time aboard the cutter, the CO who was also the reviewer for the disputed OERs, created a hostile working environment. She stated that he treated the female junior officers differently than the male officers. She stated that the CO repeatedly subjected her to discriminatory conduct from mid XXXXXXXXXX until XXXXXXXXXX, the date she was removed from the XXXX. She asserted that as a result of the hostile atmosphere on the XXXXX, she felt isolated and desperate. She acknowledged that in late December XXXX and mid-January XXXX she became involved in an unduly familiar relationship with a second class petty officer but believes this would not have happened if she had not been subjected to a hostile, isolated environment. She offered the following as examples of the CO's hostile and discriminatory treatment:

a.) "[The CO] openly exhibited before command personnel his patriarchal behavior especially through his religious beliefs, to include his perception of divorce, motherhood, and where a female belonged . . . [The CO] condemned me repeatedly for what he considered my lack of knowledge and further subjected me to questions and suggestions as to how I ate and what I should eat, how often I ate . . . and how I worked out."

b.) The CO subjected her to degrading sexual comments, such as: "Do I need to come over there and change your diapers?" "Do I need to come up there and change your diapers?" or "Do you want me to change your diapers?" She claimed that the environment created by the CO encouraged enlisted members to be disrespectful to her. As an example, she stated that a chief petty officer told her on the bridge that she was "lower than whale s---." She stated that she received no support from the command. She stated that in September XXXX, a male officer was sent to a Law Enforcement Officer Boarding School course that she had been scheduled to attend.

c.) She was required to work under extremely difficult conditions, frequently working 18 hours per day as well as maintaining a 1 in 3 duty rotation both inport and underway. She claimed that she stood duty longer than anyone else on board because she graduated from officer candidate school (OCS) rather than having graduated from the Coast Guard Academy.

### **Non-Judicial Punishment (NJP)**

On January XXXXX, the applicant was charged with a violation of Article 134 (fraternization)<sup>2</sup> of the Uniform Code of Military Justice (UCMJ) and Article 92 (fail-

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<sup>2</sup> This charge read "In that [the applicant], did, at . . . on or about 1/18/99, knowingly fraternize with [an enlisted male], on terms of military equality, to wit: They were seen hanging out together at the Navy Lodge during the evening, and were later found alone in the same room after midnight."

ure to obey a general regulation)<sup>3</sup> of the UCMJ. On the same date, the CO ordered a preliminary NJP investigation to determine the circumstances of the applicant's alleged involvement with a petty officer of her division (hereafter referred to as PO-1). The executive officer (XO) was appointed as the investigating officer (IO). The IO reported his opinion that the applicant had fraternized on terms of military equality with the PO-1. He recommended that the charges be disposed of at NJP.

The IO attached to the investigative report a statement from a chief petty officer stating that he and the command master chief had counseled the applicant earlier about spending too much time with another second class petty officer not in her division (hereafter referred as PO-2) and about the policy prohibiting fraternization. The IO also attached to the investigative report two interviews he conducted with the PO-1 and his NJP representative. The PO-1 admitted in these interviews that he and the applicant had contact on several occasions in December XXXX and January XXXX. This contact included kissing on one occasion and some additional romantic behavior on another occasion. The PO-1 also indicated that he and the applicant had planned in advance for one of these encounters. The PO-1 admitted that he and the applicant were discovered together in a Navy lodge room on or about January 18, XXXX, during patrol break. (The PO-1 received NJP for his part in this prohibited relationship.)

On January XX, XXXX, the applicant was taken to NJP for engaging in and maintaining a prohibited relationship with an active duty enlisted member of her division. As punishment she received a punitive letter of reprimand (LOR) dated X XXXX, which has been included in her military record.<sup>4</sup> The LOR reads as follows:

You are hereby reprimanded for your conduct during [the cutter's] inport from XXXXXX through XXXXX, and subsequent deployment and mid-patrol breaks from XXXX through XXXXXX. During this time period you engaged in and maintained a prohibited relationship with an active duty Coast Guard petty officer . . . assigned to your division [on the cutter]. When questioned about your personal relationship with the petty officer, you initially deceived the command by denying the relationship, when you were actually involved in a prohibited romantic relationship with that service member. On XXXXXX, while the ship was in Curacao for a patrol break, you had sexual contact with this petty officer at a local hotel. Furthermore, on XXXXXX while on

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<sup>3</sup> This charge read "In that [the applicant], did, at . . . on or about 1/18/99, fail to obey a regulation, to wit: Section 8.H., U. S. Coast Guard Personnel Manual, date 9/14/98, by having an inappropriate personal relationship with [an enlisted male]."

<sup>4</sup> The CO also included as punishment the removal of the applicant's temporary cutterman insignia; the removal of her small weapons qualifications; a recommendation that she be evaluated for retention in the service; and her removal from the ship.

liberty . . . you went to the Navy Lodge on base and spent time alone in a room with the same member, engaged in fraternizing behavior.

Your conduct was contrary to service custom, unit command philosophy, Coast Guard policy, and good order and discipline in the armed forces -- especially considering you are a commissioned officer and were the senior person in this relationship. In addition, you set a poor example for your shipmates. Your unsatisfactory conduct resulted in non-judicial punishment (NJP) for violation of Article 134 [Uniform Code of Military Justice (UCMJ)] (fraternization).

The applicant claimed that the LOR is erroneous and should be removed from her record because it is dated January XX, XXXX but reprimands her for conduct occurring through October XXXX. She denied that she had sexual intercourse with PO-1. She acknowledged that she displayed inappropriate conduct by being with the PO-1 on or about XXXXX, and XXXXXX.<sup>5</sup> She denied that she fraternized between October 16, 1998 and December 11, 1998 or between December 12, 1998 and December 23, 1998.

The applicant claimed that during the NJP proceedings, the CO required all officers and chiefs to attend the proceeding, except for the two male officers who were also accused of fraternizing. She stated that the CO violated the privacy act by inappropriately referring to her marital status and speaking about her family.

The applicant stated that the CO treated her case differently than he did two male officers who had fraternized with enlisted women. She stated she learned that the CO instructed the entire crew not to have any contact with her but did not demand the same for the two male officers. She stated that both of the male officers were given the opportunity to continue on with their careers after NJP, but the CO was determined to end her career.

## **Special OER**

Subsequent to the NJP, the applicant was given a special OER. She alleged that it should be removed from her record because the rating chain members were "disqualified" from carrying out their OER responsibilities on the ground that they

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<sup>5</sup> The applicant's military record contains a page 7 dated June 11, 1998, reminding the applicant, who had just reported to the cutter, about the Commandant's policy (Article 8-H of the Personnel Manual) with respect to interpersonal relationships. She acknowledged the following entry: "a. Romantic relationships between crewmembers are inappropriate, unacceptable, and not allowed under Coast Guard policy when members are assigned to the same cutter. Romantic relationships outside of marriage between commissioned officers and enlisted personnel [are] prohibited and are punishable in accordance with the UCMJ. b. Personnel finding themselves involved in or contemplating an unacceptable relationship should report the situation and seek early resolution from their supervisor, commanding officer, command enlisted advisor, or chaplain."

were interested parties to the preliminary NJP investigation, rendering them unable to provide a fair, unbiased, and accurate evaluation of her character and performance. She stated that the problems identified with her performance in the OER were not documented or substantiated and that she had received no written counseling sessions.

The special OER was derogatory with a mark of 1 (on a scale of 1 to 7, with 7 being the highest) in block 9; marks of 2 in professional competence, adaptability, developing others, directing others, workplace climate, judgment, responsibility, and professional presence; and marks of 3 in looking out for others and teamwork. The applicant challenged the following italicized portions of the comments on the special OER as being inaccurate.

[Block 3 comments] Taken to Captain's Mast in accordance with Article 15, UCMJ and awarded non-judicial punishment for violation of Article 134 (fraternization). *Over the period of the last three months, [the applicant] carried on a prohibited sexual/romantic personal relationship with a TC2<sup>6</sup> who was a mbr of her division. Non-judicial punishment imposed as follows: Punitive Letter of Reprimand, removal of qualification for temporary cutterman's pin, removal of small arms qualification, immediate relief of all assigned duties (including Communications, Officer, NAFA officer, and Official Mail Manager) and removal from the ship. [Member's] professional competence was compromised by failure to adapt to and comply with CG regulations despite repeated indoctrination and counseling. Failed to modify personal behavior to comply with CG policy [with regard to] interpersonal relationships. Failed to comply with fundamental [requirement] to abstain from inappropriate romantic relationships [with] members of opposite sex at same unit [in accordance with Chapter] 8-H of the [Personnel Manual]; used position to pursue relations w/two married enlisted crewmembers. Lack of credibility exacerbated by failure to qualify as inport or underway OOD [officer of the deck].*

[Block 5; Leadership skills - comments] *Demonstrated poor judgment and negative leadership qualities by pursuing a romantic relationship w/subordinate. Failed to notify appropriate authority when wrongdoing occurred, and when caught, sought to hide the truth. Instead of providing appropriate guidance to subordinate petty officer suffering marital difficulties, she exploited his troubles as a foundation to engage in an inappropriate relationship; resulted in the petty officer receiving non-judicial punishment (including reduction in rate.) Allowed her close personal relationship with this subordinate to interfere with her division's chain of command by working directly with this junior mbr of division, effectively keeping her chief in the dark. Failed to consider*

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<sup>6</sup> The terms TC2 and PO-1 are used interchangeably in this decision and refer to the same individual.

negative impact of her fraternization on the good order and discipline of this unit. Contributed to atmosphere of distrust and deception by attempting to collaborate with the subordinate on a story of denial; *truth only surfaced when the subordinate came forward.*

[Block 8; Personal and Professional Qualities - comments] *Disgraced service, unit, and self by placing desire for personal emotional/physical gratification above compliance w/Service policy and customs, and welfare of the crew. Deceived supervisor and reporting officer; stated she understood & was in compliance w/COMDT policy on interpersonal relationships; led dept head to believe relationship w/TC2 was strictly professional. Despite attending 8.H. training 5 days earlier, engaged in physical, sexual intimacy w/TC2 - admitted she knew this was wrong. Failed to notify chain-of-command of feelings toward TC2 as required by Coast Guard policy. Despite stern warning from CO concerning 8.H. issues, and advice from Department Head to "stay out of trouble" proceeded to rendezvous w/TC2 that same evening; created major disruption for command; lowered crew morale. When nature of relationship discovered by command continued to & attempt deceit, until confronted w/truth by TC2 and command. Security Clearance suspended due to evidence of unreliability, immaturity, and possible moral turpitude.*

[The applicant's] eligibility and qualification to serve in the USCG are absolutely compromised by severe lack of judgment and irresponsible actions. She has shown a serious inability to adhere to CG policy and service [requirements with respect to] inappropriate relations and fraternization. Do not promote. Behavior warrants consideration of revocation of commission.

The applicant stated that the italicized comments are inaccurate. She stated that at no time was a sexual and/or romantic relationship carried on for a period of three months with the PO-1. She alleged that the statement that she pursued relationships with two enlisted crewmembers is unsubstantiated and unjust because she was taken to NJP for involvement with one person not two.

With respect to her failure to qualify as inport or underway OOD, the applicant stated that a hostile work environment created by the CO hampered her progression toward OOD qualification. She stated that she had worked 18 hours a day and stood 1 in 3 duty rotations both inport and underway since her arrival on the cutter.

The applicant stated that the comment "Demonstrated poor judgment . . . truth only surfaced when the subordinate came forward" is unjust. She stated that she had a legal right not to make a statement and at no time did she interfere with the chain

of command. She also stated that good order and discipline on the ship were already a mess.

With respect to the statement "Disgraced service, unit, self by placing desire for personal emotional/physical gratification above compliance w/Service policy and customs," the applicant stated that her relationship was strictly professional until December 23, 1998. In addition, she stated that the CO's comment violated Article 10.A.4.f. of the Personnel Manual by mentioning alleged "emotional" and "physical" gratification.

With respect to the remaining disputed comments in the special OER, the applicant stated that the warning for her to stay out of trouble was not related to fraternization. She stated that she was never confronted by the PO-1. She also stated that her security clearance was never suspended but rather adjudicated.

### **Annual/Semi-Annual OER**

The annual/semi annual (disputed) OER covers the period October 1, 1998 to March 31, 1999 and is derogatory because the applicant was marked unsatisfactory (a 1) when compared with others of the same grade whom the reporting officer has know in his career. She received marks of 2 in teamwork and responsibility, marks of 3 in planning and preparedness, result/effectiveness, adaptability, professional competence, looking out for others, developing others, directing others, workplace climate, initiative, and professional presence. She challenged the following comments and provided an explanation as to why she believes the comments are inaccurate.

Comment: "Required significant counseling, guidance & prompting to progress professionally. Was unprepared for opportunity to anchor ship during patrol - reluctant to proceed." The applicant admitted that this was her first anchoring evolution and she was nervous. She stated that the OER fails to mention that she was "the conning officer for a swept channel, Loss of Gyro, into a precision anchoring, into a Dredged Anchor evolution, to mooring the ship into Gitmo," scoring higher than anyone else the previous year.

Comment: "Required frequent prompting to make routine daily reports to supervisor on time." She stated that like every other junior officer on board, she missed a couple of evening reports. She questioned the placement of this comment in her OER and doubted that such a comment was placed in the OERs of other junior officers.

Comment: "Failed to conduct required trng/record keeping for visual comms; required signif[icant] effort/guidance to clear training-restrictive discrep[ancies]." The applicant stated that although she was identified as visual comms coordinator, she received no official training to be a visual comms coordinator. She stated this

was not a performance issue but a lack of training issue. She stated that the problems mentioned in this comment occurred after she had been relieved of the job.

Comment: "Failure to modify behavior to comply w/Comdt 8-H policy & ignored guidance & orders; taken to mast for violation of Art. 92, UCMJ (fraternization)." She stated that she was taken to captain's mast for violation of Article 134 not Article 92. She stated that from the mast proceeding she understood that the Article 92 violation was incorporated into the Article 134 and would not be addressed separately.

Comment: "Given extra ship handling opportunities in an effort to speed quals and learning." The applicant admitted that she had several opportunities on watch, but because she was a graduate of officer candidate school and not an Academy graduate she was not give as many opportunities as the academy graduates to gain OOD qualification.

Comment: "Failure to qualify as a result of slow progress on PQS and lack of confidence in abilities of command." The applicant stated that she was making progress and was not taking any longer than other junior officers. She stated that she had been recommended for the inport board on two occasions but was not given one because of the hostile environment and because the CO was punishing her for having left a Cosmopolitan magazine, which he considered to be pornography, in the wardroom. She said the CO constantly referred to her reading material as pornography.

Comment: "Slow to progress w/professional quals . . ." The applicant stated the only thing holding up her qualifications was the failure of the CO to schedule a qualifications board. She stated that it takes OCS graduates longer than Academy graduates to qualify as OOD. In addition, she blamed the CO for the hostile environment that existed on the cutter.

Comment: "Overstepped bounds and took misguided initiative by attempting to provide marital counseling to subordinate without including [the chief and subordinate] in the process." The applicant denied that she provided or attempted to provide marital counseling to this individual at any time.

Comment: "Failed to use chain-of-command on numerous occasions; often failed to keep supervisor informed, or seek input before going up the chain on issues." The applicant denied she failed to use the chain of command. She stated that she did as directed by the XO and/or the CO.

Comment: "Inappropriate relationship poisoned atmosphere . . ." The applicant stated that this comment is inappropriate and has no corroboration.



Comment: "Failed to seek counseling concerning OER . . ." The applicant stated that she did not have the opportunity to seek counseling and her supervisor provided none.

Comment: "Despite several warnings [from] supervisors, took on inapprop[riate] role in attempting to counsel petty officer from other dept who was undergoing marital difficulties." The applicant denied that she attempted to counsel this petty officer and that she received no counseling on the matter from her command.

Comment: "Repeatedly lied to & deceived seniors concerning compliance with 8-H policy." The applicant stated that she should not suffer adverse consequences because she invoked her right against self incrimination.

Comment: "When caught chewing gum/eating at inappropriate times & places, she attempted to justify behavior, or argue for change in policy rather than comply." The applicant stated that she was not aware that eating while on watch was prohibited. Neither was she aware that there was a rule against chewing gum.

Comment: "Exercised poor grooming & personal hygiene practices; Sent off of bridge to fix hair properly." She stated that her hair was within regulation although it was not to the CO's liking. She further stated that a problem with her hair does not equate to poor hygiene.

Comment: "Poor initiatives and progress toward qualification in primary duties of Officer of the Deck." The applicant stated that her efforts in this regard were thwarted by the command.

The applicant stated that the rating chains for the disputed OERs violated the Personnel Manual by emphasizing the applicant's gender <sup>7</sup> in referring to the opposite sex of the PO-1. She further stated that the OER's reference to a third party and gender violated the prohibition against placing emphasis on a third party by name, gender, religion, color, race, or ethnic background. <sup>8</sup>

The applicant claimed that comments were attached to the special OER after she had reviewed and declined to comment on it. She stated the annual/semi-annual OER was submitted to a selection board without adequate time for her to review it. She stated that she did not receive a copy of the OER for approximately 30 days after

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<sup>7</sup> Article 10.A.4.f.7. of the Personnel Manual states that members of the rating chain shall not "Expressly evaluate, compare, or emphasize gender, religion, color, race or ethnic background."

<sup>8</sup> Article 10.A.4.f.7.8. states that the members of the rating chain shall not "[p]lace emphasis upon a third party by name, gender, religion, color, race, or ethnic background (e.g., Catholic lay minister, wrote award recommendation for African-American civilian, praised by RADM Smith, was a female role model)."

it had been submitted. She claimed that her supervisor for the annual OER would not include any of her TAD accomplishments in the OER.

### **Statements Submitted by the Applicant**

1. A male officer stationed on the cutter with the applicant wrote the following:

During my assignment to the cutter I had a relationship with a female Petty Officer outside of my division that was also assigned to [the cutter]. The relationship was against the rules outlined in the Uniform Code of Military Justice (UCMJ). I notified the [CO] of my unauthorized relationship and I was taken to Captain's Mast for Non-Judicial Punishment. I was charged with Fraternization and as a result of the mast I received a punitive letter of reprimand, poor performance evaluations, and restrictions for a 30-day period while at homeport. The Petty Officer was removed from the ship for an unrelated incident and eventually discharged from the Coast Guard.

Following NJP I lost the trust of all officers and subordinates and struggled to gain trust back before my departure. Previously scheduled to take Officer of the Deck qualifications board I was no longer allowed to. The punitive letter of reprimand has followed me through to my new assignment preventing me from applying for special assignments in the local area and places my chances of promotion in jeopardy.

2. A female officer wrote that she filed a discrimination complaint against the CO because his discriminatory actions against females created a hostile work environment. She claimed that the CO was verbally abusive and treated her with less respect, dignity, and fairness than her male counterparts. She stated that the applicant "was subjected to and bore the brunt of similar behavior from the [CO] until her departure from the ship."

3. The PO-2 wrote that the CO accused him of having a sexual relationship with the applicant, which he denied. He stated he told the CO that he thought of the applicant as a sister. He stated that the CO told him that the applicant had been investigated and that she had been married twice and had a child. "[The CO] then informed me that [the applicant] was a "sexual predator" and that by associating with such a person, I created a "perception" that there was a sexual relationship. " The PO-2 stated that his association with the applicant in no way affected his relationship with his spouse or family.

4. The applicant submitted several letters attesting to the excellent quality of her work while assigned TAD to another command and attesting to her good character.

### **Applicant's Subsequent Submissions**

On XXXXXXXX, the applicant submitted a supplemental statement repeating her earlier allegations. She also submitted four additional statements from other individuals. They are discussed below:

1. The cutter's female combat information center officer (CICO) wrote a statement in which she claimed that the CO equated female officers with little girls and thought that females should not participate in combat. She stated that CO commented to her in conversation that "he would be proud to have his sons fight for their country, but his "little girls" were sweet and innocent and should not be exposed to that type of violence." She complained that during combat drills she had to wear special gear that was too large because it was the same gear that had been worn by the previous male CICO. She stated that she felt degraded by the CO's comment that she looked like a little girl in the shirt. She said the junior female officers were forced to apologize for leaving a Cosmopolitan magazine in the wardroom, even though some male officers had read it. She said the CO described this magazine as pornography.

This individual stated that the CO frequently criticized and teased the applicant for bringing various condiments to the wardroom table, which bothered the applicant. This individual stated that the applicant told her on several occasions that she was waiting for an OOD qualification board. She also stated that the applicant was progressing on her underway qualification, but she did not know how far along the applicant was in that process. She acknowledged that eating on the bridge had been permitted at one time, but the rule was changed to prohibit eating on the bridge.

This individual stated that her OERs were lower under the CO, but she cannot attribute the lower OERs to her gender.

2. A lieutenant commander, who was head of the Coast Guard's work-life program at the time, wrote that the applicant came to him in the fall of XXXX about problems with her CO. He stated that the applicant told him that she was being singled out for leaving a Cosmopolitan magazine in the wardroom, because she was a female, and because she did not adopt the CO's religious beliefs. The lieutenant commander said that the applicant told him that the CO tied his evaluation of her OOD skills to his perception of her values. This individual stated that the applicant was not the only female member of the ship to complain to him about the atmosphere on board the cutter.

3. The XXXXXXXX for the XXXXXXXXXXXX who had responsibility for the Coast Guard exchange store stated that the exchange sold Cosmopolitan magazines and it was not considered a pornographic magazine. He stated that the exchange does not sell adult or pornographic material.

4. A petty officer second class wrote that in late XXX the CO announced that drinking sodas or having candy on the bridge were prohibited. He stated that in XXXX he witnessed "the new female operations officer " crying after a meeting with the CO.

### **Views of the Coast Guard**

On September 27, 2002, the Board received an advisory opinion from the Chief Counsel of the Coast Guard recommending that the Board grant partial relief to the applicant, as discussed below.

With respect to the special OER the Chief Counsel recommended that the comment "Lack of credibility exacerbated by failure to qualify as inport or underway OOD," be removed from the OER. The Chief Counsel stated that this comment should not have been included in the special OER because it was not related to the conduct that precipitated the special OER. The special OER was written as a result of the applicant having been awarded NJP for a violation of the UCMJ, Article 134 (fraternization).

The Chief Counsel also recommended the removal of the reviewer comments in their entirety from the special OER. He stated that these comments should be removed because they were added after the applicant had reviewed and declined to comment on the derogatory OER. The Chief Counsel stated before the OER was placed in her record, the applicant should have been given another 14 days to reply to it after the reviewer comments were added.

With respect to the semiannual OER, the Chief Counsel recommended that the reviewer comments be removed from the OER because they were placed in her record before she was given an opportunity to comment on them. He also recommended that the comment, "taken to mast for violation of Art. 92, UCMJ (fraternization)" be changed to indicate that Article 134, rather than Article 92 was the punitive article for which the applicant received punishment.

The Chief Counsel stated that although he has recommended some corrections to the OERs in question, they should be corrected and not removed from the applicant's record. He stated that the Board has previously ruled that "an OER will not be ordered expunged unless the Board finds that the entire report is infected with the error or injustices alleged; unless the Board finds that every significant comment in the report is incorrect or unjust; or unless the Board finds it impossible or impracticable to sever the incorrect/unjust material from the appropriate material." The

Chief Counsel stated that the OERs, notwithstanding the corrections noted above, are in substantial compliance with the Personnel Manual. He stated that the recommended corrections could be made without removing the entire OERs.

The Chief Counsel stated that the Coast Guard takes allegations of retaliation and bias very seriously and it has a full set of administrative processes through which claims of discrimination can be made. He stated that the applicant did not avail herself of these avenues. The Chief Counsel stated that the applicant has failed to prove that she suffered from a hostile environment on board the cutter. In this regard, he stated that while there is some evidence that some personnel may have experienced some harassment, the applicant has not provided any evidence that she herself was subjected to a pattern of sexual discrimination or harassment.

The Coast Guard submitted a 44-page advisory opinion, incorporated herein by reference, addressing in detail each of the applicant's allegations with respect to the alleged erroneous comments in the OERs. With respect to each, with the exception of those mentioned above, the Chief Counsel stated that the applicant had failed to rebut the presumption of regularity or to prove that the comment was inaccurate. The Chief Counsel noted that each member of the rating chain stood by his evaluation of the applicant's performance.

The Chief Counsel asserted that none of the rating chain members were disqualified from carrying out their OER responsibilities. He stated that the regulations governing the officer evaluation system provide that where a supervisor, reporting officer, or reviewer is disqualified from carrying out his or her rating chain responsibilities, the CO or the next senior in the chain of command is required to designate an appropriate substitute who is capable of evaluating a reported-on officer. Article 10.A.2.g.1 of the Personnel Manual. A disqualified person includes one relieved for cause due to misconduct or unsatisfactory performance, "being an interested party to an investigation or court of inquiry," or "any other situation in which a personal interest or conflict ... raises a substantial question as to whether the Reported-on Officer will receive a fair, accurate evaluation." See Article 10.A.2.g.2. of the Coast Guard Personnel Manual. The Chief Counsel stated that the applicant's conclusion that her rating chain was disqualified because they were interested parties to the investigation is incorrect. He stated that to be a party to an investigation means that the individual is the subject of the investigation or that they share culpability or risk of punishment as a result of the activities. He stated that the applicant has not provided any evidence that the rating chain members were parties to the investigation. According to the Chief Counsel, the fact that the rating chain members were called upon by their duties to conduct the investigation or provide statements to the investigating officer does not make them parties to the investigation. "Members of a unit's command cadre are routinely called upon to investigate an individual's actions, "adjudicate" the case by [NJP] or administrative action, and then evaluate the individual. Doing so in no way makes them a party to the investigation."

The Coast Guard obtained statements from the supervisor, reporting officer, and the reviewer for the disputed OERs.

1. The supervisor for the disputed OERs was also the operations officer. He declared under penalty of perjury that he stood by his evaluation of the applicant's performance, which was based on his direct observation. With respect to her performance he stated as follows:

As her department head and the Senior Watch Officer, I monitored [the applicant's] progress toward professional qualifications closely. She failed to show initiative in pursuing the activities necessary to obtain these qualifications. When presented with opportunities to complete required training evolutions she was either unprepared, or unmotivated to take advantage of them [The applicant] received extensive counseling, advice and assistance in her efforts to qualify from all levels of the command and her peers. Her failure to make acceptable progress in qualifying at her primary duties as Deck Watch Officer, led the command to delay, and eventually cancel, her orders to Boarding Officer School.

[The applicant] may not recall having her security clearance suspended because it occurred in the wake of her being caught in an inappropriate relationship and going to Captain's Mast. She left the ship shortly thereafter. As Command Security Officer, I made the recommendation to the CO, who concurred.

The supervisor stated that the applicant was provided the same opportunities as every other junior officer that he supervised during that period and she was held to the same standards. Each of the five junior officers he supervised was evaluated based solely on their performance. He stated that he was not forced to alter marks or insert comments on any officer's record.

The supervisor stated that in XXXX, XXXX Area conducted a command climate assessment on the cutter in response to allegations that there may have been a bias against female officers or crewmembers. According to the supervisor, this assessment concluded that there was no evidence of bias and that the command had an excellent climate that did not tolerate sexual discrimination or harassment.

2. The executive officer (XO), who was the applicant's reporting officer, stated under penalty of perjury that there was sufficient evidence in the command preliminary investigation to satisfy him that the applicant had a sexual/romantic relationship with the PO-1. He stood by his statements that the applicant had a relationship with two married enlisted members, one of whom was the individual she was romantically involved with. The other was an enlisted petty officer that had some marital difficulty. He stated that she was observed carrying on frequent one-on-one

conversations with PO-2. When questioned about these conversations, the applicant stated she was providing marriage counseling. The XO stated that such counseling was done completely outside the chain of command and no one in PO-2's chain of command was aware that the applicant was providing counseling to this enlisted member.

The XO agreed with the supervisor's assessment of the applicant's performance with respect to her progress toward obtaining inport and underway OOD qualifications. He agreed that the semiannual OER should state she was punished at NJP for violation of Article 134 and not Article 92.

In a supplemental statement, the XO stated that the PO-1 involved in the situation for which the applicant received NJP admitted to the XO in the presence of his NJP representative that he was involved in prohibited relationship with the applicant. The XO stated that the applicant had denied that she was involved in a prohibited relationship with this individual until she realized that the PO-1 involved had admitted to the relationship.

3. The CO, who was the reviewer for the disputed OER, wrote the following under penalty of perjury:

I continue to stand by the facts stated in [the applicant's] OERs and in the punitive letter of reprimand of 21 January 1999. [The applicant] was taken to mast for violations of Article 92 and 134, and found to have committed both for which she received punishment . . . The Narrative in the OERs and [punitive letter of reprimand] are consistent with the disciplinary action taken.

### **Applicant's Response to the Views of the Coast Guard**

On November 18, 2002, the Board received the applicant response to the views of the Coast Guard, disagreeing with them except for the recommendations for some corrections to the disputed OERs. The applicant continued to alleged that the CO maintained a hostile environment aboard the cutter that interfered with her ability to perform. She alleged that she was also subjected to retaliatory conduct from supervisors, which began in October soon after the Cosmopolitan incident, due to her complaints about the command environment to her supervisor, to the officer-in-charge of the work-life office, and to a chaplain.

The applicant claimed that her OOD PQS (professional qualifications standards) had been completed, but she was not scheduled for a qualification board. She stated that by not being given a board, she was required to work longer hours than anyone else while inport. She claimed that the ship's instruction for qualifications set a maximum 12-month period to become qualified. She stated that she completed her inport qualifications in 4 months and had almost completed her underway OOD

qualifications by the end of the 7th month. The applicant asserted that "[t]he hostile environment did not allow progression of her boards, despite the fact that [she] had completed [her] inport OOD qualification requirements and had almost completed her [underway qualifications]."

The applicant stated that her abilities and qualifications were clearly demonstrated at her TAD command. She submitted her concurrent OER for the period January 1, XXXX to March 31, XXXX, which contained no marks lower than 4 and contained very favorable comments. The applicant also stated that she has been a valued civilian employee of the Coast Guard since XXXX and that she would be an asset to the Reserve.

The applicant stated that although the supervisor stated that he witnessed no command bias, she as well as other junior officers reported such bias. She further claimed that the rating chain exaggerated the situation between PO-1 and herself. She described the situation as a kiss between the petty officer and herself.

The applicant submitted several statements in support of her application, which are discussed below.

1. An individual under whom the applicant occasionally trained for break-in inport OOD duties wrote that to the best of his knowledge the applicant's progression toward OOD inport qualification was normal.

2. A chief petty officer who was the senior food service specialist and assistant master-at arms wrote that he was in charge of all the messes and staterooms. He stated that a part of his job was checking personal hygiene daily with the mess cooks and other food service specialist. "Not one time can I recall, when [the applicant's] personal hygiene was ever in question and her stateroom was always immaculate. He stated that the applicant was groomed and her uniform was always immaculate.

3. The PO-2 who allegedly received marital counseling from the applicant denied that he had a sexual relationship with the applicant. He stated that at no time did the applicant provide him with marital counseling. He stated that a conversation he had with the applicant about a sick child might have been interpreted erroneously by the command as marital counseling.

4. A retired captain with many years of experience in Coast Guard operations wrote that

Academy Graduates are afforded more training in their curriculum, and arrive onboard a ship "light years" ahead of their non-prior Coast Guard OCS Graduate counterparts. It is not uncommon for an Academy Graduate to arrive to a ship with his or her PQS already completed



and subsequently complete OOD qualifications much more expeditiously. This is a disadvantage, and is symptomatic of the system.

The applicant also submitted the following notes of the supervisor's counseling sessions with her, although she stated she did not agree with some of them.

"XXXXX Held brief performance rvw. Provided guidance on what she needed to do to get i/p OOD board."

"XXXX late w/muster rpt."

"XXXX . . . Discussed her relationship [w/PO-1] -- cautioned her to keep it purely professional. . . . [The applicant] stated that she found some of the things [the CO] said offensive. I suggested [the applicant] speak w/the CO about it before it created a barrier to her gaining the CO's trust. Specifically, the CO's language which addressed her like a child was brought up. Comment's like do I need to change your diaper? was mentioned. I told her that to get treated as a professional she needed to act like one. Discussed specific examples: messy rack, messy hair, food on bridge, where her behavior was more like a child than a professional."

"XXXX 18:13 Met w/CO and [the applicant] to discuss her performance. CO provided feedback on: Inport/underway qual expectation. See supervisor for OER review. Eating on bridge - reaction to getting caught. Relations w/enlisted men. . . Be ready for anything, i.e., anchoring. Develop discipline to get qualified and get the job done. Work through TCC in dealing w/comms division."

## FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction of this case pursuant to section 1552 of title 10, United States Code. The application was timely.
2. The applicant requested an oral hearing. The Chair, under section 52.31 of title 33, Code of Federal Regulations, recommended disposition on the merits without a hearing. The Board concurred in that recommendation.
3. The applicant has presented insufficient evidence to establish that the CO created and/or fostered a hostile work environment on the cutter. The applicant failed to submit corroboration for her allegations that during her closed door counseling sessions with the CO, he interrogated her about her religious beliefs, the literature she read and certain aspects of her personal life, her lack of knowledge and her diet. There is some corroboration in the counseling notes of the supervisor that the

applicant complained that the CO made a comment to her like "Do I need to change your diaper." However, there is no clear evidence in the record how often such statements were made and/or whether they were made in front of other individuals.

4. Although two other female officers submitted statements on behalf of the applicant, neither provided detailed specific examples of what the CO did to create a hostile environment or how he treated the male officers differently than the female officers. The statement that the CO created a hostile environment by expressing the opinion to a female officer in a conversation that females should not be assigned to combat is not corroborated and there is no evidence that female officers were prevented from obtaining the necessary training that would allow them to be assigned to combat should the need arise. In addition, the statement that the CO thought of female officers as little girls because he commented to this female officer that she looked like a little girl when she wore work gear sized for a male is not persuasive evidence that the CO created or harbored a hostile work environment. Moreover, these alleged comments were not made to the applicant or in her presence and therefore their relevance to her claim is minimal. Another female officer wrote that she had filed a discrimination complaint against the CO for creating a hostile work environment. However, the supervisor wrote in his affidavit that as a result of discrimination complaints a climate assessment of the cutter was done by the Atlantic Area command in 1999. According to the supervisor, the assessment revealed that there was no evidence of bias, sexual discrimination, or harassment. The applicant offered nothing to show that the supervisor's statement in this regard was incorrect or false.

5. The applicant's claim that the CO refused to schedule an inport qualification board for her because he blamed her for leaving a magazine that he considered to be pornography in the wardroom is not supported by the evidence in the record. There is no evidence that the CO ever stated to her or anyone else that the applicant would not receive an inport qualification board because she read this particular magazine or left it the wardroom. The CO certainly has the right to determine what is appropriate for the wardroom. Although several individuals offered their opinions that the applicant had progressed to the point of being ready for a qualification board, they never stated that she was not scheduled for a board because of the magazine incident.

6. The applicant's claim that she was forced into the prohibited relationship with the enlisted male due to her feelings of isolation and desperation created by the alleged hostile and discriminatory treatment is not persuasive. Even if the allegations of abusive treatment by the CO were true, there were other avenues the applicant could have taken without entering into the prohibited relationship with an enlisted male of her division. There were female officers on the cutter that she could have and did consult with, as well as the officer-in-charge of the work-life office, and a chaplain. She has failed to explain how having the inappropriate relationship with the enlisted member of her division helped her cope with or resolve the alleged hos-

tile work environment. The applicant exercised poor judgment by becoming involved in this prohibited relationship.

7. The applicant's claim that she and other females on the cutter were treated differently than the male junior officers fails for lack of proof. The supervisor rebutted her claim that her assignment to boarding school was taken away and given to a male because of the CO's alleged discrimination against females. The supervisor wrote in his statement "[the applicant's] failure to make acceptable progress in qualifying at her primary duties as Deck Watch Officer, led the command to delay, and eventually cancel, [the applicant's orders] to Boarding Officer School."

8. The applicant's claim that a male officer who was also involved in a prohibited relationship was treated differently than she was by the CO is groundless. This officer wrote in a statement submitted by the applicant that he confessed his involvement with the enlisted member to the CO for which he was punished at NJP. He received a letter or reprimand, restriction to the ship for 30 days, and poor performance evaluations. He further stated that he was denied an OOD qualification board. The CO treated the male officer and the applicant the same for their misconduct. It wasn't necessary for the CO to remove the male officer from the ship because the enlisted member with whom he had the inappropriate relationship was removed from the ship and discharged from the Coast Guard for unrelated reasons. This officer spoke about the CO's and the other officers' loss of trust in him, the negative impact the letter of reprimand has had on his career, and his expectation that it will hamper his promotion opportunity.

9. Considering all of the circumstances in this case, the Board is not persuaded that the applicant has presented sufficient evidence to establish that the CO created a hostile work environment aboard the cutter or that he discriminated against females in favor of males. The evidence does not satisfy the Board that the applicant suffered discrimination because of her gender. Nor is the Board satisfied that the evidence establishes that the CO's alleged utterance(s) about changing her diapers was of such severity that it created a physical or emotional threat or that it occurred with such regularity for the Board to conclude that this comment alone amounted to the creation of a hostile work environment, although it could have been offensive.

10. The LOR of reprimand will not be removed from the applicant's record. It is there legitimately. Article 10.A.4.c.3. (2) states "copies of punitive letters of censure . . . shall be referred to and appended to the OER once the proceedings, including reviews and appeal, are completed." The applicant did not appeal the NJP and declined to comment on the special OER to which the letter of reprimand was attached. Now she complains about minor discrepancies in the letter of reprimand, which could have been cured by the NJP appeal authority or by the rating chain, if she had appealed the NJP or filed a reply to the special OER.

11. The applicant claims that the sentence in the LOR "You are hereby reprimanded for your conduct during [the cutter's] inport from 16 XXXX through 11 December XXXX, and subsequent deployment and mid-patrol breaks from 12 December XXXX through XX October XXXX" -- contains several errors. First, the Board agrees that the October XX, XXXX date is obviously incorrect and should read January XX, XXXX. Second, although the applicant denied that she fraternized between October XX, XXXX and December XX, XXXX or between December XX, XXXX and December XX, XXXX, evidence of her involvement with PO-1 during these periods was included in the preliminary NJP investigation, which is a part of unit punishment book. Moreover, the applicant admitted to having an inappropriate relationship with the PO-1, then a member of her division on December XX, XXXX and January XX, XXXX. The Board finds based on the evidence of record that it is unlikely that these were isolated occurrences. Even if the dates in the challenged sentence were erroneous, the most that this Board would do is modify the LOR not remove it. The NJP and LOR should be a part of her record. Accordingly, the Board finds that there is no need under the circumstances to correct the letter of reprimand.

12. Turning to the OERs, the rating chain members were not interested parties to the preliminary investigation and therefore they were not disqualified from performing their OER responsibilities. Article 10-A-2(g)(1) of the Personnel Manual defines disqualified as "being an interested party to an investigation . . . or any other situation in which a personal interest or conflict on the part of the [s]upervisor, [r]eporting [o]fficer, or [r]eviewer raises a substantial question whether the [r]eported-on [o]fficer will receive a fair and accurate evaluation." Article 1.F.2.G. of the Administrative Investigations Manual places responsibility on the CO of a unit for initiating an investigation into an incident arising within his command. The convening of such investigations does not make the CO an interested party to an investigation. To raise a question as to disqualification the applicant needed to present some evidence that the CO's decision in convening the investigation was of a personal rather than an official nature. The applicant has not shown that the CO had a personal interest in the outcome of the investigation. This CO was not accused of any wrongdoing at the time of the investigation and to the Board's knowledge he has not been so accused to this date.

13. The XO, who was also the reporting officer for the disputed OERs, was the preliminary investigating officer for the applicant's NJP. Again, because he participated in the investigation does not render him an interested party to the investigation. The subject of the investigation was not the applicant's performance but rather her involvement in a prohibited relationship. While the applicant may have preferred that someone other than a member of her rating chain had conducted the investigation, the XO's involvement does not violate the Personnel Manual or the Administrative Investigations Manual.

14. The applicant's supervisor did not conduct the investigation but was listed as a witness for the NJP. The Board is not aware of any regulation that states being listed as a potential witness makes one an interested party to an investigation.

15. The special OER was prepared pursuant to Article 10.A.3.c.1.b. of the Personnel Manual. A special OER is required when an officer receives non-judicial punishment, which is not subject to appeal. This Article also states "The reporting period for this special report will be the time frame during which the officer's conduct prompting the report occurred." The special OER shall state the nature of the proceedings, the punishment imposed, and any other information as necessary to accurately reflect the performance being evaluated. The Coast Guard recommended and the Board finds that the reviewer comments attached to the special OER should be removed from the OER because the applicant was not given an additional 14 days to file a reply after the reviewer comments were added to the OER, as required by the Personnel Manual.

16. With respect to the comments in the special OER, the Coast Guard recommended and the Board finds that the comment -- "Lack of credibility exacerbated by failure to qualify as inport or underway OOD" -- should be removed from the special OER because it does not belong there. The Personnel Manual states that the special evaluation "shall be limited to those areas affected by such conduct, since all other dimensions will be evaluated in the regular OER.

17. The Board finds no basis to remove any of the other challenged comments from the special OER. Although the applicant denied that she had a sexual or romantic relationship with the PO-1 over a three-month period, she admitted that she "displayed inappropriate conduct by being with him on or about XX December XXXX and XX January XXXX." She did not describe this inappropriate conduct, but the CO was convinced based on the preliminary NJP investigation, which included the investigating officer's interview with the PO-1 in the presence of his NJP representative, that he had a romantic/sexual relationship with the applicant over a period of three months. The applicant has the burden of proof in this case and her denial alone is insufficient to establish that the rating chain's comment is inaccurate.

18. The applicant denied that she had pursued inappropriate relationships with two enlisted married members of her unit, the PO-1 and PO-2. She stated that she was taken to mast for having an inappropriate relationship with the PO-1. As discussed in Finding 15, the special OER not only reports the NJP but also covers the period "during which the officer's conduct prompting the report occurred." Therefore it was appropriate for the CO to comment on other related conduct that occurred during this period. Both the applicant and PO-2 denied there was a romantic relationship between them. However, the comment characterizes their relationship as inappropriate. There is evidence establishing that there was an overly familiar relationship between them, in violation of Article 8.H.2.c. of the Personnel

Manual.<sup>9</sup> A chief petty officer stated that the applicant had been counseled about the amount of time she had been spending with this PO-2 and how it appeared to the command. The applicant should have ceased her interaction with this petty officer after receiving counseling about it.

19. The applicant complained that the paragraph containing the comment "truth only surfaced when the subordinate came forward" blames her for exercising her right to remain silent. However, a reading of the paragraph reports only what happened during this course of events. It includes information that she failed to notify superiors of the relationship, which is a requirement of Article 8-H of the Personnel Manual; allowed her close personal relationship with this subordinate to interfere with her division's chain of command; contributed to an atmosphere of distrust and deception by attempting to collaborate with the subordinate on a story of denial; and truth only surfaced when the subordinate came forward. The Board finds no error or injustice with respect to the comments in this paragraph.

20. The applicant stated that her security clearance was never suspended only adjudicated. According to her supervisor, the applicant's security clearance was suspended on his recommendation, which the CO approved. However, the letter from the Commandant suggests that the final determination for removal of a security clearance rested with him. He took no action on the recommendation of the CO for the removal of the applicant's security clearance. Under the circumstances of this case, the Board finds that the comment as written is not inaccurate.

21. With respect to the disputed semi-annual OER, the Coast Guard recommended that the reviewer comments be removed because the applicant was not given an opportunity to comment on them before they were placed in her record. The Board agrees with the Coast Guard's recommendation and will order the reviewer comments removed from the disputed semiannual OER. The Coast Guard also recommended that the comment -- "taken to mast for violation Art. 92, UCMJ (fraternization)" -- be modified to read -- "taken to mast for violation of Article 134 (fraternization)" and the Board will order this modification. This is an immaterial change, since the applicant was accused of violating both Articles 134 and 92 at her NJP hearing and could have been punished for either, because each prohibits the same conduct.

22. The applicant also challenged approximately 17 other comments on the disputed semiannual OER. The Board will only address the disputed comments in which there is some evidence to corroborate the applicant's allegation. The applicant challenged all comments stating or indicating that she was slow in making progress

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<sup>9</sup> This provisions states "Service custom recognizes that personal relationships, regardless of gender, are acceptable provided they do not, either in actuality or in appearance: 1. Jeopardize the members' impartiality, 2. Undermine the respect for authority inherent in a member's rank or position, 3. Result in members improperly using the relationship for personal gain or favor, or 4. Violate a punitive article of the UCMJ."

toward her OOD inport and underway qualifications. The applicant claimed that although she had obtained all the necessary signatures on her OOD professional qualification standards, the CO failed to schedule a qualification board for her because of his bias against her. An individual wrote that the applicant occasionally trained under him as break-in OOD and that she progressed normally toward her OOD qualification. Another female officer wrote that as a qualified OOD herself, she thought the applicant was ready to go before a qualification board.

23. The applicant and these other officers gloss over the fact that it is the CO who has the responsibility for determining when an officer is ready for an OOD qualification board. The supervisor's notes submitted by the applicant indicate she was counseled on what she needed to do to obtain a qualification board. In addition, the supervisor and reporting officer must not have been satisfied that the applicant was ready for a qualification board because each wrote such comments in the semi/annual OER. The supervisor wrote as much in his recent affidavit. The comments in the supervisor's portion of the OER that the applicant was given extra ship handling opportunities in an effort to speed up her qualification and learning and that she was unprepared for an opportunity to anchor the ship during patrol -- strongly suggest to this Board that in the judgment of her rating chain she was not ready for an OOD qualification board. The applicant did not deny these statements but instead offered an explanation. She stated that she had been given these opportunities but because she was an OCS graduate she was not given as many opportunities as the Academy graduates. She admitted that when offered the opportunity to anchor the ship she was nervous because it was her first anchoring evolution. Her "nervousness" could very well have appeared to the rating chain as a lack of preparation, since the supervisor's counseling notes stated that she needed to be prepared when called on to anchor the ship. The evidence offered by the applicant in this regard is insufficient to prove the supervisor's and reporting officer's comments with respect to her slowness in gaining OOD qualification are erroneous.

24. The applicant alleged that the comment that she was providing marriage counseling to the PO-2 is erroneous. The XO stated in his affidavit that when the applicant was questioned about her conversations with the PO-2 she stated that she was providing him with marriage counseling. The denials of the applicant and the PO-2 that she did not provide the PO-2 with marriage counseling does not rebut the XO's statement that at the time of his inquiry the applicant stated that she was providing marriage counseling to the PO-2.

25. The other comment that the Board needs to address is the one stating -- "Exercised poor grooming & personal hygiene practices; Sent off of bridge to fix hair properly." A chief petty officer who was the chief food service specialist stated that the applicant never had a problem with hygiene and that she was always well groomed and her uniform was always flawless. However, the supervisor notes that were submitted by the applicant stated that the applicant was counseled about her messy rack, messy hair, and having food on the bridge. Based on the evidence

submitted in this case, the Board is not persuaded that this comment is incorrect. The Board will not change or remove an OER comment unless the applicant has provided a preponderance of evidence that some aspect of that OER is erroneous or violates the Personnel Manual.

26. The Board will order the relief discussed above. These corrections will not enhance the applicant's record because it still contains the letter of reprimand, the derogatory special OER, and the derogatory semi/annual OER. In addition, the Board finds it is not likely that she would have been selected for promotion to LTJG with these corrections to the OERs. Accordingly, her failure of selection for promotion to LTJG will not be removed and she will not be reinstated to active duty.

27. A review of the applicant's military record reveals that it does not contain a page 7 revoking authorization for her to wear the cutterman insignia or carry small arms. Therefore the Board makes no finding with regard to her request to have this document removed from her record. However, if such a page 7 were in the applicant's record, it would remain there, unless the applicant could produce a preponderance of evidence establishing that such an entry was inaccurate or violated regulations.

28. The Board has considered all of the applicant's allegations. Those not discussed within the Findings and Conclusions are considered irrelevant to the outcome of this case.

29. Except for the partial relief discussed above, the applicant's request should be denied.

**[SIGNATURES AND ORDER ON NEXT PAGE]**



## ORDER

The application of [REDACTED] USCG, for correction of her military record is granted in part and denied in part, as set forth below.

The special OER for the period October XX, XXXX to January XX, XXXX shall be corrected by removing the comment "Lack of credibility exacerbated by failure to qualify as inport or underway OOD," from the disputed OER. The special OER shall be further corrected by completely removing the reviewer comment page and the "X" from block 12.a.

The semiannual OER for the period October XX, XXXX to March XX, XXXX shall be corrected by modifying the comment "taken to mast for violation of Art 92, UCMJ (fraternization)" to read "taken to mast for violation of Art 134, UCMJ (fraternization)" and by completely removing the reviewer comment page.

All other requests for relief are denied.

