

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-161



FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on December 10, 2018, and assigned the case to the staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision dated December 2, 2022, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant, a Boatswain's Mate, First Class (BM1/E-6), asked the Board to correct his record by granting the following requests:

- Removal of a January 12, 2017, negative CG-3307 ("Page 7");
- Removal of a May 28, 2017, negative Page 7;
- Removal of a May 31, 2017, negative Page 7;
- Removal of a September 11, 2017, negative Page 7;
- Removal of a September 8, 2017, Permanent Relief for Cause (PRFC) memorandum effecting his removal from his position as an Executive Petty Officer (XPO), second in command of an Aids to Navigation unit;
- Removal of a May 31, 2017, Enlisted Employee Review (EER) and reversal of the non-recommendation for advancement in that EER;
- Restoration to his former position on the Chief Boatswain's Mate (BMC) advancement list;
- Removal of a September 9, 2017, EER; and
- Restoration of his BMOA, BMOB, BMOC, BMOD qualifications in the Direct Access database with initial qualification dates of April 4, 2016.

The applicant alleged that he was relieved for cause as the XPO of his unit for his alleged failure to perform adequately as a member of the command cadre. According to the applicant, he was specifically targeted by the Officer in Charge (OIC) for relief just one week after he arrived at the unit in June 2016 for reasons that were never fully explained. The applicant claimed that he brought charges against the OIC on April 13, 2017, for falsifying official reports that led to him receiving Non-Judicial Punishment (NJP) and being relieved for cause (RFC) from his position as the XPO. Prior to this date, the applicant stated that he only had one negative Page 7 in his record and positive EERs with recommendations for advancement. However, after that date, he was issued two negative Page 7s, threatened with multiple CG-4910 (NJPs), and not recommended for advancement. Finally, the applicant alleged that an impartial party was assigned as the temporary OIC, who within three weeks informed the applicant that he would be recommending the applicant's permanent relief. According to the applicant he requested to resign his position under Article 1.F.4.a of the Military Assignment and Authorized Absences Manual, COMDTINST 1000.8A, but was wrongfully removed under Article 1.F.4.b. of the same manual.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on September 17, 2002, and attended Boat-swain's Mate "A" School to become a BM3. He was assigned to various cutters and shore units and advanced to BM2 in 2007 and to BM1 in 2011.

On January 12, 2017, the applicant received a negative Page 7 for failing to disclose and document a discrepancy. According to the Page 7, on December 27, 2016, the applicant was notified that a lighthouse light had been extinguished by the unit watch stander. The applicant assumed that the discrepancy had already been reported and failed to have the watch stander verify the information in the aid folder, or take the necessary steps to respond to the discrepancy as required by Coast Guard policy and procedures. On December 28, 2016, the applicant contacted his OIC to report that the discrepancy message was on the message board, but the applicant still had not taken steps to verify if it was a new discrepancy or a second report of an already existing discrepancy. The applicant was admonished because he had assumed it was an existing discrepancy. According to the OIC, the applicant did not pull the folder to take any initial actions to confirm the status of the discrepancy until after being told it was a new discrepancy. The OIC stated that the applicant's delay in notification resulted in the required ATON Discrepancy message being sent out more than 24-hours past the required deadline and thus delayed the physical response to correct the discrepancy due to significant changes in the weather, sea state, and crew availability.

On February 13, 2017, the applicant and his OIC, a Senior Chief Petty Officer, both signed a memorandum with the subject line "Command Expectations of the Executive Petty Officer," in which the OIC gave the applicant fourteen performance directives, including the following:

- a. Get qualified. Your first and most important role at the ANT is to be fully qualified in the billet you fill. ...
- b. Take ownership of your sphere of influence ...
- c. Be proactive. ...
- d. Be a mentor in job skills. ...
- e. Hold your people accountable. ...
- f. Know your people. ...
- g. Be candid. ...

On May 18, 2017, the applicant received a second negative Page 7 because he had failed to comply with prescribed Temporary Duty (TDY) travel administrative procedures. Specifically, the applicant was counseled for failing to abide by the Pay Personnel and Procedures Manual, PPCINST M1000.2, which requires that travel claim settlements be submitted for approval within three business days of completion of official travel. According to the applicant's OIC, the applicant was on official travel from May 2, 2017, through May 7, 2017, but he failed to submit the travel settlement claim as required by policy. The Page 7 further stated that in February 2017, the applicant had been verbally counseled regarding his personnel and administrative responsibilities as the cutter's assigned Personnel Petty Officer for travel claim processing.

On May 31, 2017, the applicant received a third negative Page 7 for his failure to comply with underway policies and procedures in accordance with Coast Guard Navigation Standards, COMDTINST 3530.2; ANTMINST 3530.2; COMDTINST M16534.1A; and ALMIS Policies and Procedures. The Page 7 states that on May 25, 2017, the applicant had signed out and proceeded to get CG26141 (a boat) underway with ET support staff to verify the electronic navigation system and to identify a possible error in the installed Magnetic Compass. However, when the applicant signed the boat out, he acknowledged that the navigation kit was onboard, even though it was not, which was a violation of Coast Guard and unit operational policies. According to the Page 7, the applicant was underway for 1.8 hours, in an area where all of the aids in the river had recently been relocated or converted from fixed structures to floating aids to navigation and were therefore not accurately displayed on the boat's installed navigation system. The OIC noted that the applicant had been verbally counseled roughly two weeks prior, along with the other qualified coxswain, that he must have the corrected paper chart for local operations as a reference due to the significant changes in the locations of and types of several aids to navigation. The OIC stated that the applicant's failure to have the corrected charts on board not only violated Coast Guard policy but left the applicant with no way of verifying compass courses. Nor was there a way to verify headings or course over ground.

On May 31, 2017, the applicant received an annual EER wherein he received the following marks: nine 4s (Average), ten 5s (Above Average), five 6s (Excellent), and one 7 (Superior). The mark of 7 for "Evaluations" and a mark of Not Recommendation for Advancement were supported by the following comments:

Evaluations: BM1 [applicant] provided several timely detailed evaluations of personnel during enlisted regular marking periods. He clearly identified when administrative documentation in the form of CG-3307s was required to ensure member compliance with both CG and unit standards. This attention to detail ensured that members remained in compliance with both CG and unit standards. As the units Personnel Petty Officer, BM1 ensured Department Supervisors continually monitored performance of assigned personnel and completed all required counseling timely and accurately including mid-marking periods and required IDPs. In addition BM1 provided quality career counseling to all junior personnel when considering further CG career opportunities.

Recommendation for Advancement: BM1 [applicant] is not capable of satisfactorily performing the duties and responsibilities of the next higher paygrade. During this marking period, BM1 [applicant] has not consistently displayed the traits, leadership ability, responsibility, or decision making ability expected of a Chief Petty Officer. BM1 received three CG-3307 Administrative Remarks documenting poor decision making in regards to poor ATON and vessel operations and inadequate support of personnel IAW published policies. His failure to respond to an extinguished Major Aid Lighthouse in a timely manner resulted in a prolonged discrepancy due to the unit's inability to successfully meet the required DRF time established by CODS SOP.

As the Certified Coxswain, he launched the 26' TANB for a compass MPC evolution without having the required charts onboard. After acknowledging that all unit charts were being corrected during the pre-mission crew brief, he chose to elevate the GAR score for the missing crewman that was correcting the charts but failed to identify the charts were not present or available. Subsequently, he failed to request a restrictive waiver IAW the Boat Operators Handbook and had no ability to verify any charting information. Additionally, he was counseled for his failure to process his personal travel claim within the required timeframe and provide approved orders to a Crewmember prior to performing travel. BM1 [applicant's] certification as standard boat coxswain was delayed due to his subpar operational navigation and crew management abilities as evidenced by requiring three separate coxswain check rides to meet the minimum standard. BM1 has failed to consistently demonstrate sound followership when interacting with his direct supervisor and leadership when interacting with his subordinates. He was verbally counseled on his responsibilities as a member of the command cadre by the Sector CMC and A TON Officer with no apparent improvement of performance. His direct supervisor received several comments from other Sector and subunit personnel that interacted with BM1 regarding administrative and logistics who formally commented about his conduct and demeanor in a negative light. In order to earn a recommendation, BM1 must consistently adhere to all established timelines and administration and operational requirements as set forth in Commandant Instructions and District ..., Sector ..., and unit policies, including the timely response to unit projects. BM1 must demonstrate improved methods of communications focusing on professionalism throughout the chain of command and respect towards others' workload and responsibilities. BM1 must improve routine communications between himself and his Officer in Charge, unit Department Heads, and assigned Boat Crewmembers, especially the timely passing of information affecting their daily routine. He must improve operational skills in the utilization of installed navigation equipment and application of operational decision making concepts. BM1 needs to improve his time management and planning, identifying operational priorities by ORF, Aid Criticality, and planned long term waterway improvements as addressed by unit operational planning. Additionally, he must embrace all collateral duties and the responsibilities associated with them. BM1 needs to more readily identify when he is struggling and communicate this with his supervisor. He must also improve his timely follow-up of routine tasks and overall project management.

On July 24, 2017, the applicant forwarded a typewritten letter of resignation to the Sector Commander and Deputy Sector Commander, wherein he stated that it was obvious he could no longer serve as the Executive Petty Officer (XPO). The applicant stated that the negative energy he brought was not healthy to the crew or to the unit. The applicant explained that the negative energy he brought was the result of his frustrations with his inability to perform at the level expected of an XPO. The applicant further accepted his shortcomings and the attitude that he portrayed towards the crew and surrounding units and stated that it was not reasonable to hold up the unit's progress because of him. The applicant also admitted that his lack of self-confidence had eroded his command presence to an unacceptable level. The applicant requested to be reassigned to a unit where he could go back to being a simple Boatswain's Mate, where the skills that he has can be put to good use, while also improving on his shortcomings.

On July 31, 2017, the Sector Commander replied to the applicant's resignation via a Memorandum, "Notification of Temporary Relief for Cause...", wherein the applicant was notified of his temporary relief of duties due to his "[c]onsistent struggle to manage the daily work routine, failure to grasp administrative requirement, and lack of leadership necessary for an XPO."

On August 7, 2017, the applicant acknowledged the Sector Commander's Temporary Relief for Cause, and included an additional statement that read in part:

I recognize with clarity and understand that the subsequent relief for cause was based solely on my actions and performance of duties during my tenure at [redacted]. It is with sincere remorse that I apologize for my actions and lack of performance in meeting the service's expectations. With genuine humility, I hope that the Coast Guard will provide me with the opportunity to learn from this experience and progress forward toward

a positive resolution in the future. I will actively work to improve my current shortcomings in regard to administrative processes and leadership practices. Again, I earnestly offer my sincere apology for this unfortunate situation and I look forward to learning and growing from this experience and emerging a stronger, more prepared leader for future endeavors.

On August 9, 2017, the Sector Commander issued a memorandum notifying the applicant that he intended to seek PRFC. The applicant was informed of his right to counsel and acknowledged receipt the same day. The applicant stated that he did not wish to consult with an attorney and would submit a written statement on his own behalf.

On August 16, 2017, the applicant provided a written response to the Sector Commander's August 9, 2017, memorandum. The statement reads as follows:

I, BM1 [applicant], do hereby accept my notification of permanent relief for cause as XPO of [redacted]. I accept my notification with a heavy heart as I try and salvage some of my career and show the leadership, integrity, and humility that it takes to look in the mirror, face the facts of life, and make the hard choices. I respectfully request my relief be completed in accordance with section 1.F.1.e.3.b of ref (a).

In June of 2016 I was assigned as the XPO of [redacted]. After thirteen months I submitted a request to resign. My resignation request was submitted without any steps to relieve me. I took this step because I felt that I needed a different place to improve my craft and leadership skills. Upon tendering my resignation I was informed, by legal, that a permanent relief for cause was the only way to effect a resignation. As a result of this advice we are at this point. If I am honest, my first week aboard [redacted] was the beginning of my journey to this point.

The cause is really quite simple: BMCS [redacted]. Senior Chief [redacted], who has since been relieved of his command at [redacted], was a text-book example of a tyrant. He created a hostile work environment, and I was on the front lines of this behavior. From my very first week of reporting, Senior Chief [redacted] was trying to build a case for my removal. Instead of taking a new XPO under his wings and trying to help me grow into the position, he criticized my OIC qualifications. He created no room for mentoring and growth; anything less than perfection was failure.

Senior Chief [redacted] was unapproachable and irrational. He provided absolutely no guidance, mentorship, or development. His standards were set high but he did little to nothing to help me reach that level. During my initial check-in with Senior Chief [redacted], when he laid out his expectations of the EPO and I, he told me point blank "I need to know what you don't know." I did not feel comfortable disclosing to my supervisor, during our first conversation, each item that I felt that I was weak in, unsure of, or flat out didn't know. And as the days continued I realized that going to him after the initial meeting with items I didn't know would prove to be impossible. One example regarding the impossible standard set comes with my coxswain check ride. I failed my first coxswain check ride because I was not at all prepared for a navigation drill as per the STAN check sheet. After nearly 10 months at the unit I had never once conducted a navigation drill as per the STAN check sheet. Not once did Senior Chief [redacted] help prepare me for this requirement he just expected me to know how to do it to perfection. I started the navigation drill conducting operations in a fashion similar to how we always conducted operation at the unit; the way that Senior Chief [redacted] observed everyone doing it or did it himself. Not once had he ever said we should be doing it differently. And yet, he failed me. On my second check ride, I again failed to pass because he noted that I did not manage my crew properly. Since this was a drill, the first drill run in months, and a coxswain check ride, the first that they had ever done, my crew didn't know what Senior Chief [redacted] expected and the crew was unsure of how to respond. As a result my crew performed poorly and I was penalized for my crew not taking the initiative. During my second check ride Senior Chief [redacted] also noted that I lacked familiarity with the boats. This was not from a lack of trying. Throughout my tenure I wanted to get underway when the rest of my crew would get underway but I quick I learned that was not the role Senior Chief [redacted] expected me to take. One day when I was putting on my anti-exposure coveralls to go out for a crewman check ride, Senior Chief looked at me and asked what I was doing. I explained that I was going on the check ride. He told me

“You're not getting underway, you're admin b**ch.” From that point forward my role was clear. There wasn't an opportunity to hone my craft.

In addition to Senior Chief [redacted] high standards, he was provided a team with very little ATON experience. Seven of the nine crew members were transferred to ANT [redacted] with no ANT experience. This is a point of frustration that Senior Chief [redacted] openly discussed in front of the crew. Instead of taking the challenge on and teaching a new crew, he created standards that no one could reach without receiving the patience and training necessary to succeed.

Because of the environment that Senior Chief [redacted] created, I became hesitant to reach out to him. Instead of reaching out to him, I would reach out and network with people at the Sector or ship mates at other units to get help. When Senior Chief [redacted] found out that I was asking others for assistance, he became frustrated and told me that I need to go to him first. Unfortunate, even when I did go to him with questions, it always felt like he was making mental note and then the items would be used against me later to show my incompetence.

As the days and months continued, without the guidance of Senior Chief [redacted] I found myself further and further behind my own expectations. I struggled to complete projects on time struggled to familiarize myself with personnel and administrative programs, and started making mistakes in areas that I was intimately familiar. I sacrificed countless hours after the workday and on Saturdays in an effort to get caught up on work and special projects that Senior Chief [redacted] had tasked me with. But it was never enough to satisfy Senior Chief [redacted]. I feel confident that I could have met his expectations if he would have worked with me, instead of against me. After serving thirteen months in this position, I realized that I wasn't growing into the position. I found myself in a position where my supervisor was a terrible leader. As a consequence my confidence in my own abilities has been greatly diminished and my career has been significantly affected.

I take complete ownership of my flaws: my lack of confidence and growth leader. But as I have had time to step away, I realize that I also made a positive impact on [redacted]. Since resigning, members of my crew have reached out to me and reminded me that I was the leader they needed to get through that negative command climate and hostile work environment. I feel good owing that I was able to get them away from such an awful leader and into a better place even though I sacrificed my career doing it. I also feel encouraged that I did show leadership potential and with a little guidance and mentorship, I can be a strong XPO.

Moving forward, I look forward to learning and growing from this experience and emerging a prepared leader. I request to be reassigned somewhere in the ATON afloat community. In such a position, I feel I will be able to best serve by passing on the knowledge that I have while improving my leadership skills and building back up the things that I need to be a successful XPO and OIC in the future.

Thank you for your consideration.

On August 18, 2017, the applicant's Sector Commander filed his official memorandum, wherein he requested that the applicant be permanently removed from his position as XPO. In support of his request, the Sector Commander referenced the applicant's request to be relieved of his duties, in addition to the applicant's admission that he struggled with managing the administrative workload and leadership responsibilities required of an XPO. The Sector Commander also stated that the applicant had been counseled both verbally and administratively on three separate occasions for performance deficiencies by the former OIC (who had been relieved for cause), in addition to being verbally counseled twice by the new, temporary OIC. According to the Sector Commander, since the applicant arrived at the unit on June 3, 2016, he had struggled to develop an effective understanding of administrative procedures and budget tools for both finance and property accountability. The Sector Commander also highlighted the applicant's struggles with obtaining his necessary qualifications.

On August 24, 2017, the District Rear Admiral signed a First Endorsement, concurring with the Sector Commander's recommendation for PRFC.

On September 8, 2017, the applicant's Sector Commander issued a memorandum, "Permanent Relief for Cause," wherein he notified the applicant that he was permanently removed for cause. In conjunction with this memorandum, on September 11, 2017, the applicant received a negative Page 7, documenting his permanent relief for cause and informing the applicant that his Officer in Charge competencies had been removed from his service record.

On September 9, 2017, the applicant was issued an Unscheduled EER as a result of his PRFC, wherein the applicant received the following marks: two 3s (Below Average), fifteen 4s (Average), seven 5s (Above Average), and one 6 (Excellent). The applicant also received a "Satisfactory" mark and a mark of "Not Recommended for Advancement." The applicant also received the following comments:

Setting an Example: BM1 [applicant] failed to project a professional and positive attitude during daily interactions with crew members and was counseled multiple times on setting an example expected from a command cadre member. His continued deficiency of displaying positive judgment led to additional counseling following his temporary relocation to another operational unit during this period.

Respecting Others: BM1 [applicant] was counseled at two different units by supervisors during this period regarding his lack of consistency in treating others in a courteous and respectful manner. These traits are expected of BM1 in a supervisory position and his demonstrated lack thereof is contradictory to the Coast Guard's core values.

Recommendation for Advancement: BM1 [applicant] is not capable of satisfactorily performing the duties and responsibilities of the next higher paygrade. His inability to manage an administrative workload and display necessary leadership skills directly led to his permanent relief for cause of his duties of Executive Petty Officer of ANT [redacted]. BM1 [applicant] has not consistently displayed the traits, leadership ability, responsibility, or decision making ability expected of a Chief Petty Officer. He has failed to consistently demonstrate sound leadership and followership when dealing with his direct supervisor and subordinates. In order to earn a recommendation, BM1 must take stock of his leadership and decision making deficiencies to display consistent judgment and ability to perform at a Chief Petty Officer level. He needs to continue to improve external methods of communications focusing on professionalism and respect towards others. BM1 must develop self management practices to consistently function in leadership positions and meet workload expectations and responsibilities.

On September 11, 2017, the applicant received a Page 7 documenting his PRFC. The applicant was informed that his OIC competencies had been removed from his service record and that he would be reassigned from his temporary duty location based on the needs of the Service.

VIEWS OF THE COAST GUARD

On November 21, 2019, a Judge Advocate (JAG) for the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the PSC.

The JAG argued that the applicant's contention that it was erroneous for the Coast Guard to relieve him for cause under Article 1.F.4.b. of the Military Assignments and Authorized Absences Manual, COMDTINST M1000.8A, instead of Article 1.F.4.a. of the same manual are

without merit because as the temporary relief authority, the Sector Commander had the discretion to recommend the applicant be permanently relieved for cause, or transferred. According to the JAG, based on the applicant's own admission, the Sector Commander had grounds to permanently remove the applicant for cause under Article 1.F.4.b. of the Military Assignments and Authorized Absences Manual, due to the Sector Commander's loss of confidence in the applicant's ability to serve as XPO. The JAG argued that although the applicant requested reassignment under Article 1.F.1.E.3.b., the Sector Commander was not obligated to process his request in the exact manner sought by the applicant. In addition, the JAG argued that it would have been disingenuous for the applicant's Command to consider a request for reassignment because the applicant had established grounds for PRFC in his personal statement to Command.

The JAG further argued that the applicant's claims of reprisal or that he was target by his former OIC are not supported by the evidence. The JAG stated that the applicant has failed to provide any evidence to support his allegations that his former OIC retaliated against him after the applicant reported the OIC for falsifying evidence. According to the JAG, even if the applicant had submitted evidence of retaliation, that alone would not have been enough to support the applicant's allegations that his PRFC was the result of retaliation. Once again the JAG argued that the applicant's three separate statements submitted during the PRFC process were sufficient on their own to establish that the applicant did not suffer an injustice at the hands of his former OIC. In regard to the applicant's second OIC, the evidence shows that it was the applicant that requested his own PRFC, not the second OIC. The JAG argued that if the applicant felt aggrieved by his OIC, he had other avenues of redress, which the applicant chose not to take at the time. The JAG stated the applicant instead took responsibility for his actions and ultimately requested his own PRFC.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 22, 2019, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited him to respond within thirty days. As of the date of this decision, no response was received.

APPLICABLE LAW AND POLICY

Article 1 of the Military Assignments and Authorized Absences Manual, COMDTINST M1000.8A provides the following guidance on Officer in Charge Certifications and Permanent Relief for Cause:

1.C.6.g.5. OIC certification remains permanent unless removed as the result of a permanent relief for cause per Article 1.F. of this Manual. A command may request that a member serving in a non-command position have their OIC competency removed for the reasons listed in Article 1.F.1.d. following the process found in Article 1.F.1.e. and 1.F.1.f. of this Manual.

...

1.C.6.k.5. The removal of an OIC for substandard performance may be effected by the Commandant at the recommendation of the chain of command. If a commanding officer considers a member not qualified due to performance deficiencies or disciplinary action, a request for removal will be submitted to Commander (CG PSC) via the chain of command. Removal from an OIC position will be in accordance with Article 1.F.1.d. of this Manual.

...

1.F.1.a. General. A relief for cause (RFC) is the administrative removal of a commanding officer (CO), officer in charge (OIC), executive petty officer (XPO), engineer petty officer (EPO), or a designated full-time command master/senior chief (CMC/CSC) from their current duty assignment before the planned rotation date. It normally consists of a two-step process:

- (1) Temporary relief for cause, and
- (2) Permanent relief for cause

...

1.F.1.b.3. Discussion. It is not mandatory to temporarily relieve a member for cause if they are under investigation. The following administrative actions can be taken during the course of the RFC investigation: Retain the investigated member in his/her current position; reassign the investigated member to a temporary duty assignment; and/or effect a temporary RFC while the investigation continues. The command should carefully consider and affirmatively exclude the first and second options before exercising the third. Factors to consider in reaching this decision include: the severity of the alleged misconduct or unsatisfactory performance, the allegations' credibility, and their impact on the unit's morale, good order and discipline, and mission performance. A CO/OIC, XPO, EPO, CMC/CSC subject to a temporary RFC normally does not return to their command.

...

1.F.1.c.2.b. Authority for Relief for Cause: Permanent Relief. XPO or EPO: Commander (CG PSC-EPM) can order a permanent relief for cause of an XPO or EPO.

...

1.F.1.d. Basis for Relief. The loss of confidence in the judgment and ability of members serving in the positions identified in Article 1.F.1.a. of this Manual is grounds for a temporary and/or permanent RFC. An articulated, fact-supported package must be prepared based on one of the following root causes of the loss of confidence:

...

2. **Unsatisfactory Performance.** One or more significant incidents resulting from gross negligence or substantial disregard of duty may provide the basis for RFC. Substandard performance of duty over an extended period of time may also provide the basis for RFC, but only after the command has taken corrective action such as command counseling, guidance, training and appropriate use of performance evaluations, which have proved unsuccessful.

...

1.F.4. Reassignment from Positions Requiring Special Screening. Screening procedures for various assignments throughout Chapter 1 of this Manual are designed to select only the highest caliber of individuals capable of fulfilling the demanding duties associated with the assignment. Despite the most stringent screening processes, isolated cases of assignment of members who are unsuited for such duty will occur. Members considered unsuitable (as identified and determined by the command, program manager, or Commander (CG PSC-EPM-2)) for such duty fall into one of two distinct categories indicated below:

...

1.F.4.a. Recommendation for Reassignment

When a member is considered unsuitable for special duty, they will be so advised and required to sign a [Page 7]. A recommendation letter ... for reassignment from such duty will be submitted to Commander (CG PSC-EPM-2) via the chain of command ...

- (b) Those members considered unsuitable for continued duty as a result of their own actions (e.g., poor performance, lack of leadership, misconduct, lack of interest, poor attitude, or other similar reasons).

Article 3 of the Enlisted Accessions, Evaluations, and Advancements Manual, COMDTINST M1000.2B, provides the following rules regarding advancement:

- Article 3.A.4.b.(3) states that “[t]he CO/OICs recommendation for advancement is the most important eligibility requirement in the Coast Guard advancement system. Although

minimum performance factors have been prescribed to maintain overall consistency for participation in SWE, the CO/OIC will be personally satisfied that the member's overall performance in each factor has been sufficiently strong to earn the recommendation.”

- Article 3.A.6.a.(a) states that “[m]embers recommended for advancement to chief petty officer, senior chief petty officer, and master chief petty officer must be superior in leadership, military characteristics, technical knowledge, and performance of duty. They must be professionally qualified to fill any chief petty officer billet of their rating.”
- Article 3.A.13.b. states that “[m]embers whose commanding officer has withdrawn their advancement recommendation are not eligible to advance. Commanding officers will contact Commanding Officer (CG PPC (ADV)) copying Commander (CG PSC-EPM-1) or (CG PSC-RPM) as information addressee, to remove from the current advancement eligibility list any member meeting this criteria [sic].

Article 4 of COMDTINST M1000.2B provides the necessary guidance on disciplinary EERs. The pertinent policy is as follows:

4.C.2. Unscheduled Enlisted Evaluation Reports. While the EES focuses on regular evaluation reports, occasionally an unscheduled evaluation report is in order. Use the following to determine whether to complete an unscheduled evaluation report.

...

c. Performance Based. The following events require an unscheduled enlisted evaluation report, regardless of the time since the last evaluation report.

9. Relief for Cause. A disciplinary enlisted evaluation report is required for a member who is relieved for cause in accordance with Reference (j), Military Assignments and Authorized Absences, COMDTINST M1000.8 (series). The enlisted evaluation report must be completed within 30 days of the permanent relief authority’s final approval action of the permanent relief for cause request. The effective date of the relief for cause EER must be the date the member was temporarily relieved for cause; if a temporary relief for cause was not executed, the effective date of the relief for cause EER must be the same as the permanent relief authority's final action date.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on the applicant’s military record and submissions, the Coast Guard’s submission and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. The application was timely because it was filed within three years of the applicant’s discovery of the alleged error or injustice in the record, as required by 10 U.S.C. § 1552(b).

3. 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.¹

4. The applicant alleged that he timely requested removal under Article 1.F.4.a. of the Military Assignment and Authorized Absences Manual but was instead erroneously removed under Article 1.F.4.b. When 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 the military record, and the applicant bears the burden of proving, by a preponderance of the evidence, that the disputed information is erroneous or unjust.² 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."³

5. The applicant alleged that the disputed documents listed on the first page of this decision are erroneous and unjust and should be amended or removed from his record. For the following reasons, the Board disagrees:

- a. **Page 7s.** The applicant alleged that his OIC retaliated against him after he brought charges against the OIC for falsifying official records, which resulted in him receiving multiple negative Page 7s. However, the applicant submitted no evidence to support his claim that he had charged either OIC with falsifying official records. In addition, the record shows that the applicant was indeed struggling in his role as XPO, a fact that the applicant himself later admitted to. The record further shows that the applicant received multiple Page 7s as a result of his struggle to perform at the level expected of an XPO. By the applicant's own admission, the energy he brought forth was not healthy for the crew or the unit, which he claimed was the result of frustrations with his own inability to perform at the level expected of an XPO with twelve months of experience.
- b. **May 31, 2017, EER and Removal from Advancement List.** The applicant alleged that his loss of his command's recommendation for advancement on his EER dated May 31, 2017, and his consequent removal from the BMC advancement list were erroneous and unjust. He asked that the EER be removed and that his name be returned to the 2017 BMC list. Article 3.A.4.b.(3) of the Enlisted Accessions, Evaluations and Advancements Manual, COMDTINST M1000.2B, states that to recommend someone for advancement, the OIC or CO must be "personally satisfied that the member's overall performance in each factor has been sufficiently strong to earn the recommendation." Article 3.A.6.a.(a) states that "[m]embers recommended for advancement to chief petty officer, senior chief petty officer, and master chief petty officer must be superior in leadership, military characteristics,

¹ *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).

² 33 C.F.R. § 52.24(b).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

technical knowledge, and performance of duty. They must be professionally qualified to fill any chief petty officer billet of their rating.” And Article 3.A.13.b. states that “[m]embers whose commanding officer has withdrawn their advancement recommendation are not eligible to advance. Commanding officers will contact Commanding Officer (CG PPC (ADV)) copying Commander (CG PSC-EPM-1) or (CG PSC-RPM) as information addressee, to remove from the current advancement eligibility list any member meeting this criteria [sic].” In light of the negative Page 7s in the applicant’s record, the Board cannot conclude that his command erred in denying the applicant a recommendation for advancement and informing PSC that his name should be removed from the BMC advancement list.

Moreover, Article 3.A.25.f. of COMDTINST M1000.2 states, “An individual’s name may be removed by Commander (CG PSC) as a result of disciplinary action, or for other good and sufficient reasons, whereby the individual is no longer considered qualified for the advancement for which previously recommended. Commanding officers shall withhold any advancement under such circumstances and advise Commander (CG PSC) of their intentions relative to removal from the list.” The record shows that the applicant had been counseled on multiple occasions for his shortcomings as an XPO. As discussed above, by the applicant’s own admission he was struggling as an XPO, which ultimately led him to try to resign from his position. Therefore, even if the applicant had not been properly removed from the advancement list pursuant to his May 31, 2017, non-recommendation for advancement, he would have been removed upon his relief for cause and receipt of a disciplinary EER.

- c. ***Letter of Resignation/PRFC.*** The applicant alleged that he should have been allowed to resign after submitting his July 24, 2017, resignation letter in accordance with Article 1.F.4.a. of the Military Assignments and Authorized Absences Manual, COMDTINST M1000.8A, but he was erroneously and unjustly relieved for cause instead under Article 1.F.4.b. of the same manual. Regarding the applicant’s July 2017 letter of resignation, however, he did not cite any article or manual governing enlisted billet resignations, and the Board knows of none. In fact, the word “resignation” appears only once in COMDTINST M1000.8A. as one of the circumstances that requires issuance of permanent change of station orders. Although the applicant expressed a “hope” to be reassigned to a unit where he could return to the more common work of a Boatswain’s Mate, he never explicitly stated that his “resignation” was submitted as a request for reassignment.

In addition, the language of Article 1.F.4.a. of COMDTINST M1000.8A indicates that reassignment proceedings are initiated by the Command, not the service member. Therefore, the applicant’s Command was not required to process or grant the applicant’s request to be reassigned as opposed to being removed for cause. Finally, the applicant requested that he be removed from his duties, which is what initiated the applicant’s removal for cause proceedings. There is nothing in the record that indicates that the applicant’s Command would have initiated permanent removal proceedings in lieu of continued counseling and mentoring had the

applicant not first initiated the process himself. This finding is supported by the August 9, 2017, memorandum, "Notification of Permanent Relief for Cause..." wherein the applicant's Sector Commander stated that he had lost confidence in the applicant after the applicant's admission to him and the acting OIC that the applicant was "unfit to serve in a leadership capacity" and "no longer desired to serve as the XPO." The applicant has failed to provide any Coast Guard policy or procedure that required the applicant's Command to reassign him, as opposed to initiating PRFC proceedings against the applicant. Therefore, he has not proven by a preponderance of the evidence that the documentation of his PRFC, including the Page 7 dated and the EER, is erroneous or unjust.

- d. ***Unscheduled EER.*** The applicant alleged that the Unscheduled EER dated September 9, 2017, was erroneous and should be removed from his record. However, the record shows that the applicant's Command lost confidence in his ability to continue performing his duties as XPO after the applicant submitted a letter of resignation to his Command. Upon receiving the letter and considering the applicant's own concerns, the Command decided to initiate PRFC proceedings against the applicant. The record further shows that the applicant received multiple Page 7s regarding his performance struggles as the XPO, and the applicant's PRFC was supported by the applicant's own admission that he was unable to perform at the level expected of an XPO.

Article 4.C.2.c.9. of the Enlisted Accessions, Evaluations, and Advancements Manual, COMDTINST M1000.2B states:

A disciplinary enlisted evaluation report is required for a member who is relieved for cause in accordance with Reference (j), Military Assignments and Authorized Absences, COMDTINST M1000.8 (series). The enlisted evaluation report must be completed within 30 days of the permanent relief authority's final approval action of the permanent relief for cause request. The effective date of the relief for cause EER must be the date the member was temporarily relieved for cause; if a temporary relief for cause was not executed, the effective date of the relief for cause EER must be the same as the permanent relief authority's final action date.

Therefore, Coast Guard policy required that after the applicant receive the disciplinary EER after he was relieved for cause.

- e. ***Reinstatement of Qualifications.*** The applicant alleged that the removal of his BMOA, BMOB, BMOC, and BMOD qualifications was erroneous and should be reinstated. However, Article 1.C.6.h. of the Military Assignments and Authorized Absences Manual, COMDTINST M1000.8A, states, "OIC certification remains permanent unless removed as the result of a permanent relief for cause per Article 1.F. of this Manual." Therefore, Coast Guard policy required that the applicant's certifications be removed upon his PRFC.

6. For the reasons outlined above, the applicant has not met his burden, as required by 33 C.F.R. § 52.24(b), to overcome the presumption of regularity afforded the Coast Guard that its

administrators acted correctly, lawfully, and in good faith.⁴ He has not proven, by a preponderance of the evidence, that his negative Page 7s, Permanent RFC, 2017 EERs, and his removal from the advancement list were erroneous or unjust. Accordingly, the applicant's request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁴ *Muse v. United States*, 21 Cl. Ct. 592, 600 (1990) (internal citations omitted).

