

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2020-014**



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**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 January 6, 2023, 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 Chief Petty Officer (BMC/E-7) on active duty, asked the Board to correct his record by removing a March 28, 2018, negative Administrative Remarks CG-3307 (“Page 7”) that documented his Relief for Cause (RFC)<sup>1</sup> as the Executive Petty Officer (XPO) of a Coast

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<sup>1</sup> The Military Assignments and Authorized Absences Manual, COMDTINST M1000.8A, Article 1.F.1. provides the necessary guidance on a Relief for Cause (RFC):

1.F.1.a. Relief for Cause. 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.

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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:

(1) Unsatisfactory Conduct. Any act of civil or military misconduct in accordance with Article 2.A. of reference (f), Discipline and Conduct, COMDTINST M1600.2 (series) or Article 5.B. of reference (i), Enlisted Accessions, Evaluations, and Advancements, COMDTINST M1000.2 (series), may form the basis for RFC. Only in unusual instances will the permanent relief authority approve RFC by reason of misconduct without disciplinary action taken or in progress. If the command takes no disciplinary action, they must attach

Guard station. He also asked the Board to remove a December 11, 2017, unscheduled, disciplinary Enlisted Employee Review (EER) that was issued in conjunction with his RFC and to reinstate his qualifications as an Officer in Charge (OIC) ashore and float.

The applicant alleged that he was issued a negative Page 7 as a punitive action documenting the final disposition of his RFC as the XPO of his station. The applicant argued that the actions for which he was removed, even the unfounded accusations against him, did not meet the Coast Guard's definitions of hazing, bullying, or harassment because they were never for the purpose of inclusion or exclusion or based upon a person's protected category. The applicant stated that he understands that determining whether the Coast Guard's hazing and bullying policies were violated requires using a person's perceptions and feelings in the absence of definitive or physical actions, but he also understands that there must also be an intent behind the violator's actions. The applicant alleged that he never had the intent required to substantiate the charges, and in the absence of any opportunity to defend himself against these accusations, he was erroneously and unjustly relieved for cause, which was documented on the negative Page 7. The applicant further alleged that despite his punishment being in direct conflict with the recommendation of his Station's Commanding Officer (CO), CWO B, the current and previous Chief Engineering Officers (EPOs), several subordinate petty officers, and even the Preliminary Investigating Officer (PIO) who had investigated the allegations against him, he was still permanently relieved for cause.

According to the applicant, the Coast Guard recognizes that the CO is the best person to determine a person's mental, moral, physical, and professional qualifications for the appointment to Chief Warrant Officer, for reenlistment or extension of service, and for advancement, which is not appealable to a higher authority. With that in mind, the applicant claimed that his CO, CWO B, presented facts that contradicted the opinions derived from the incomplete, improperly conducted, and extremely one-sided investigation. The applicant alleged that his CO stated that the applicant's dedication to the Coast Guard, the unit personnel, and to the CO himself were always good and that the CO had never had any reason to counsel the applicant for anything.

The applicant stated that at the time of the RFC, he had recently passed his OIC review board and achieved his qualifications as an OIC for both the multi-mission ashore and afloat, and he was eligible to compete for advancement to Senior Chief. The applicant noted that he had also submitted an application for appointment to Chief Warrant Officer (CWO). The applicant alleged that given his experience and performance ratings in the pre-screening process, it was anticipated that he would be a strong competitor. The applicant argued that the RFC action taken against him mirrored that of a guilty verdict through judicial or non-judicial punishment (NJP) yet denied him due process and the ability to present information challenging the opinions and findings contained within the investigation. The applicant alleged that the Coast Guard's actions resulted in significant career impacts and will almost certainly ensure his selection for non-continued service when reviewed by the Senior Enlisted Continuation Panel.

The applicant alleged that the actions taken against him were the result of administratively assigning discipline, without due process, in an effort to bring swift closure to the entire investigation. The applicant also alleged that at one point he was presented with the idea of

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an explanation of why disciplinary action is not warranted to the required documents accompanying the recommendation for permanent RFC.

disposing of his case through NJP over a month after the completion of the two-month long PIO's investigation. The applicant stated that he declined this option, but he did not receive the court-martial proceeding that he requested because he desired to see his situation reviewed by a fair and unbiased authority.

The applicant further alleged that the investigation into his actions was initiated after the Sector's Command Senior Chief (CSC) requested to visit the unit as a result of numerous emails he had received from subordinates raising issues with the applicant's unit. The applicant claimed that many of the facts and opinions contained in the PIO's investigation were derived from these emails without statements or summaries of interviews submitted by the PIO to corroborate these stories. The applicant alleged that the investigation included third-hand accusations and accounts not corroborated by the alleged witnesses in their own statements or in the summaries of interviews actually submitted by the PIO. According to the applicant, in some cases, not only was there no confirmation of these stories, but there were contradictory information and opinions throughout the investigation.

In addition to these inaccuracies, the applicant alleged that there were multiple accusations made within these emails that were determined to be factually incorrect, unfounded, and the result of rumors, but the credibility of these emails was given a higher level of credibility than the sworn statements of multiple personnel, including every senior member of the unit. The applicant alleged that almost all of the complaints against him came from a single duty section under the leadership and supervision of two of the most "defiantly challenging" senior petty officers. He alleged that senior petty officers within the duty section had manipulated others' feelings and incidents, as well as information being passed down through the chain of command and that the emails were read and altered by these same few individuals prior to being forwarded to the Sector CSC. The applicant claimed that this is easily verified by the almost verbatim consistencies found throughout the emails by members, who in some cases were not even present for the events or comments surrounding the accusations.

The applicant stated that on the day he was temporarily relieved for cause, he asked the Sector Commander, "When do I get to speak with you?" to which the Sector Commander replied, "You don't." The applicant also alleged that the Sector Commander told him that he had made his decision and now the applicant needed to write his appeal. According to the applicant, the Sector Commander told him that if the Chief of Enlisted Personnel Management at Coast Guard Headquarters did not effect the relief for cause and the applicant was returned to the station, if anyone called the Sector Commander or the CSC, regardless of motive, "You know what I'm going to do don't you?" The applicant allegedly responded with, "You're going to relieve me." The applicant asked the Board how he could place his trust and confidence in the Sector CO to be fair in his decision after nearly a month and after having been told by the District Command Master Chief (CMC) and the Sector CSC that they were no longer considering NJP but were instead looking at a non-punitive, administrative transfer. The applicant alleged that he had to believe that the NJP was initiated to substantiate unsatisfactory conduct as the basis for his relief for cause, which meant that there was a predetermined outcome. The applicant explained that he had refused NJP and demanded trial by court martial in hopes of receiving a fair and unbiased decision, based upon facts and the opinions of those who worked with him every day.

The applicant alleged that the Coast Guard's characterization of his leadership of his subordinates as being violations of the hazing and bullying policies is not only a stretch, but an abusive application of the policies. The applicant reiterated that his intentions in encouraging increased operations were always to increase the effectiveness and efficiency of the unit. The applicant explained that as an operational unit, the station regularly received and reported statistics that were communicated up and down the chain of command. As the statistics were gathered and evaluated, the numbers were communicated to subordinate commands, which were expected to increase operations, change their areas of operations, change the times of operations, and change the types of target vessels. One example of this was a competition that was carried out almost immediately after his arrival. The applicant stated that this competition was the idea of some of the crew members as a way to incentivize an increase in operations through friendly competition. The applicant alleged that he communicated his concerns that a few members of the unit had identified the most efficient use of their time and effort in an attempt to win was quantity over quality. The applicant further alleged that he, along with other command members, did communicate that they needed to ensure that they were not only continuing to complete quality inspections, including the proper and timely processing of paperwork, but that they also needed to ensure that they did not neglect other mission areas in an attempt to win the competition. According to the applicant, his message during and after the competition was that his expectations were based on increasing effectiveness and efficiency.

The applicant explained that throughout the morning passdowns or change out, he would ask questions to determine what had really happened during a duty period. The applicant further explained that often during a 72-hour duty period, two units would manage ten vessel inspections and ten underway hours. After these long duty periods, the applicant would ask what was done and by whom. The applicant alleged that he would often learn that all of the ten inspections were handled by one unit, which was only staffed by three service members. Although this is only an example, the applicant stated it is a pretty accurate example of the climate he was combatting.

The applicant admitted that he made mistakes but stated that he strives to lead by example and holds himself to a higher standard than those around him. The applicant alleged that his use of inappropriate language occurred in isolated events and was not typical of his routine behavior or communications to the crew. In addition, his inappropriate language was not directed at any one person, nor intended to belittle or shame.

To support his application, the applicant submitted the following documents:

- Ten personal statements wherein the writers expressed their disagreement with the applicant's RFC, including the way the investigation was handled. Ultimately, the writers concluded that the applicant's RFC was extreme and inappropriate. One of the chief complaints found within these personal statements was that the investigation did not include a fair and impartial selection of crew members but was conducted with those who had questionable motives. The personal statements questioned the accuracy of the testimony, claiming that some of the accusers were coerced into complaining. Another complaint raised within the personal statements was that when others attempted to discuss the matter with the Sector Commander, their attempts were dismissed. Specifically, the applicant's CO objected to the applicant's RFC and attempted to discuss the matter with

the Sector Commander, but the CO stated that the Sector Commander was dismissive of the CO's facts and opinions. The applicant's supporters stated that the applicant was extremely dedicated to the Coast Guard and was a professional and hardworking Chief who went out of his way to develop his subordinates. They stated that while they did not condone the applicant's behavior, they believe that some of the applicant's actions were exaggerated or taken out of context. The universal opinion was that the applicant had not violated the Coast Guard's bullying and hazing policies.<sup>2</sup>

- The applicant submitted past and present EERs wherein he consistently received marks of mostly 6s (Excellent) and 7s (Superior).

### **SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard on October 9, 2001, and entered the Boatswain's Mate rating, where he continued to advance to Chief Boatswain's Mate.

On June 24, 2016, the applicant reported for duty as the XPO of a Coast Guard station. On October 16, 2017, in response to emails received at the station's Sector Command, the Sector Commander issued a memorandum wherein he assigned a Preliminary Investigative Officer (PIO) to conduct a preliminary inquiry into allegations of a hostile work environment and the possible maltreatment of subordinates by the applicant. The Sector Commander informed the PIO that while specific allegations had been made against the applicant, the PIO should extend his inquiry to other members of the applicant's command, addressing their knowledge, sanctioning, and/or participation in the applicant's alleged behaviors.

#### ***Report of Investigation***

On November 30, 2017, the PIO issued his preliminary findings of fact and opinions. The report included the following findings and opinions:

#### **ALLEGATIONS OF CHEATING ON QUALIFICATION TEST**

[Paragraphs 5 through 8 concern an allegation of cheating by a BM3, who claimed that he had overheard the CO and the applicant discussing the online Boarding Officer Practical Course (BOPC) and having a BM2 assist two other BM3s pass the online course. The parties involved denied the allegation, and the PIO concluded that the allegation was unsubstantiated.]

#### **BULLYING**

9. FN [G] of Station [redacted] stated, on 8 July 20 17, during Station [redacted] open house, FN [G] did not leave his dewatering pump demonstration station during the open house for fear of getting in trouble by BMC [applicant]. This resulted in FN [G] not having any food or water for 8 hours. FN [G] stated that he was yelled at by BMC [applicant] while he was eating his breakfast at 0830 and told to go outside and set up for the open house. Exhibit (05).

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<sup>2</sup> The applicant submitted similar statements with his response to his temporary RFC notification, which are recorded in full in the Summary of the Record.

10. According to a statement from Auxiliarist [G<sup>3</sup>] who is with [redacted], on 8 July 2017, during the Station [redacted] open house in July, Auxiliarist [G] witnessed two [redacted] members who did not leave their exhibit for food and water because they did not want to get in trouble with BMC [applicant]. Auxiliarist [G] felt the need to intervene and ask BMC [applicant] if they could have food and water. Exhibit (06).
11. According to BM3 [H], FN [G] told him that BMC [applicant] yelled at him for getting a water bottle after being at the dewatering pump demonstration station for five hours, even though at the time there were no visitors observing the demonstration. Exhibit (01).
12. BM1 [K], stated that he attended Station [redacted] open house event on 8 Jul 2017 with his wife. He walked around and asked FN [G] and BM3 [H] how they were doing and believed that they seemed happy. Later on, BM1 [K]'s wife commented that they [had] talked like robots. Exhibit (3).
13. According to unit records in FY 2017, Station [redacted] completed 1382 boardings. When the duty boat crews returned from their patrols, BMC [applicant] constantly questioned the duty boat crews regarding how many boardings were conducted. According to statements from various crew members, the number of boardings was never enough and no gratitude was given by BMC [applicant]. Furthermore, the crew members consistently heard complaints from the community for stopping them numerous times. Exhibits (07), (08), (09), (10), and (11).
14. According to statements from various members of the unit the number of vessels that are boarded has a significant impact on the morale and welfare of the crew. Exhibit (02), (12), (13).
15. MK3 [W] has observed unit members being angry, depressed, and dread going through the gates of the unit. He believes unit members feel justifiable that there is no amount of work that can be accomplished to satisfy the command's insatiable desire to have the most boardings in the Coast Guard. Exhibit (14).
16. According to a statement from BM2 [A], who departed the unit July 2017, he stated that as the Officer of the Day, he was terrified of off going days due to the constant feeling of, "did his section do enough boardings." Sections that did not perform enough boardings within that duty period were looked down upon and belittled by BMC [applicant] in front of his peers due to lack of performance. BMC [applicant]'s "sweet spot" for number of boardings seemed to be 5-10 boardings during the week and 10-20 on the weekends. Exhibit (15).
17. BMC [N], a reservist at the unit, stated that an issue was brought to him from a reserve E6 that BMC [applicant] had questioned him about the number of boardings they did and stated, "all they were doing was cutting holes in the water then come back, why aren't you doing any boardings and earning the dollar?" Exhibit (16).
18. According to MK2 [S], a member of Station [redacted], BMC [applicant] has consistently belittled everyone, their profession, their education, and their life goals. MK2 [S] stated that BMC [applicant] would belittle unit members in front of their subordinates. For example, BMC [applicant] stripped the Master at Arms (MAA) collateral duty away from MK2 [S], not because MK2 [S] was doing a bad job, but because, according to BMC [applicant], he had a lot of "shitbag" BM2s that didn't have anything else to do. MK2 [S] also stated that BMC [applicant] has called unit members "thieves" for not paying for meals. Furthermore, MK2 [S] stated that BMC [applicant] is never appreciative of the hard work that goes [on] around the station and at multiple times has called members lazy and unproductive. Exhibit (17).
19. According to MK1 [D], who reported to the unit in July 2017, BMC [applicant] is stern, belittling, a negative influence, and expects a lot and gives little to no positive feedback. MK1 [D] believes that members at the unit are burnt out. Exhibit (18).

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<sup>3</sup> An auxiliarist is a civilian volunteer member of the Coast Guard Auxiliary, which helps the Coast Guard during events such as regattas and parades.

20. According to SN [R] she heard BMC [applicant] state that there was a morale problem at the unit, and it was because, BMC [applicant] stated "All the crew cared about was, what's for chow, when they can work out, and when they can jerk-off." Exhibit (19).

21. BM2 [B], a member who has been at the unit for over 3 years, stated that while moving furniture, BMC [applicant] said there was a morale problem at the unit, and it was because all the crew cared about when they go through the gates was, "what's for chow, when they can workout, and when they can jerk-off." Furthermore, BM2 [B] has witnessed a steep decline in unit morale and an ever widening disconnect between the command and he has constantly been or been witness to shipmates being belittled, shamed, and degraded by the command. Exhibit (09).

22. BM2 [W] who has been a member at the unit for 3 months stated that when he was breaking in coxswain on the 47 MLB with BMC [applicant] onboard for the first time, BM2 [W] was unfamiliar with the area he was transiting so he was going at slow bell. BMC [applicant] told him to come up in speed to get to the vessel they were going to board a lot faster. BM2 [W] was looking over the chart plotter to check the water depth and course. BMC [applicant] then told him again to come up in speed and that it "wasn't his qualification letter that was in jeopardy if the vessel ran aground." BM2 [W] felt pressured from BMC [applicant] for being overly cautious while handling the vessel in an unfamiliar area. Exhibit (20).

23. FN [R] who reported to the unit on 03 AUG 17, his first unit out of basic training, stated he heard BMC [applicant] say "buddy f\*\*kers" during morning quarters. He believes when the command is present, the unit is a toxic work environment and that driving to the unit is like "driving into the gates of hell." He is surprised that no disciplinary action has been taken against BMC [applicant], based on some of the comments that he has heard. Buddy f\*\*ker is about unit members not watching out for each other, i.e. turning off the lights after taps to help out the OOD with securing lights. Exhibit (21).

24. SN [J] who has been at the unit for little over a year stated that he also has heard BMC [applicant] call members at the unit "buddy f\*\*kers" and "thieves" during quarters. Thieves is members not signing up for meals. Exhibit (22)

25. BM3 [H] also heard BMC [applicant] call members at the unit "window lickers" and "thieves" during quarters. Window licker is a derogatory term for a mentally disabled person. BM3 [H] also stated that BMC [applicant] called him a "f\*\*king child" or an "irresponsible f\*\*king child" after BMC [applicant] saw him doing something that he didn't agree with. Exhibit (01).

26. According to MK3 [M], MK3 [W], and MK2 [S], during quarters BMC [applicant], who was attempting to promote the unit members' education, asked who was planning to take or already taking college courses. Those members with plans told BMC [applicant] their educational goals. BMC [applicant] responded by providing a negative opinion and laughed at some of their educational goals. For example MK3 [W] told BMC [applicant] that he planned to pursue a degree in Political Science, and BMC [applicant] scoffed at his plan and asked the others if there was anyone pursuing a degree plan that made sense. MK2 [S] stated that BMC [applicant] told BM3 [H] that pursuing a Criminal Justice degree and a career in Law Enforcement after the Coast Guard was pointless and to not waste his time. Each member who was criticized felt that BMC [applicant] was trying to humiliate them and their educational goals rather than support them. Exhibit (10), (14), (17).

27. FN [S], who has been at the unit for three years, stated that he discussed his career goals with BMC [applicant]. FN [S] removed his name from the MST "A" School list, since he wanted to finish his enlistment, and then pursue a career as a Game Warden for the state of [redacted]. BMC [applicant] told him that his plan was a pretty dumb idea and told him that he would not last in the civilian world. FN [S] has also stated that he has heard BMC [applicant] call members of the unit during quarters "buddy f\*\*ker," "thieves," and "window lickers." Exhibit (12).

28. According to a statement from MK2 [F], a reservist at the unit for the last 5 years, BMC [applicant] is not a good leader, he is a difficult person, and this has taken a toll on unit morale. He believes that BMC [applicant] is the worst executive petty officer at the station since he was assigned there and he needs to act

more like an adult. MK2 [F] believes that BMC [applicant] pushes them to do too many boardings, which causes the community to complain since they feel that they get boarded every time they go out; people consider it harassment. Exhibit (13).

29. HS1 [redacted] at Sector Field Office [redacted], stated that she has had multiple crewmembers go to her office and cry due to the stress that they specifically state that BMC [applicant] causes them. Multiple members have commented that they feel they are walking on eggshells when at the station and can literally feel a weight off their shoulders when he is on leave. Two members have gone to counseling from the stresses at the unit and [stated] he is one of the main problems as to why. Exhibit (23).

#### **OTHER STAFF OBSERVATIONS AT STATION [REDACTED]**

30. BM2 [L] has been at the unit for 3½ years with 10 years in the Coast Guard. BM2 [L] stated that during the leadership of CWO [B, the Station CO] and BMC [D] (prior to Chief [B]'s arrival), he didn't want to stay in the Coast Guard, he didn't care at all. At the station there was a laidback atmosphere, BMC [D] did not have a lot expectations and he was not challenged. With [the CO] and BMC [applicant], there are high expectations at the station and some members have trouble with meeting the expectations. BMC [applicant] wants medical readiness to get better and a lot of people are in the red and he [is] constantly telling people to get it done; dental and PHAs. The operational tempo has changed since [the CO] took over. There are more Living Marine Resource (LMR) Boardings. At first, BM2 [L] didn't like doing LMR boardings, but now he enjoys it. [The CO] has assigned him the collateral duties of the Rescue and Survival Petty Officer and also as liaison with the local Fire Departments; this has helped him improve his public speaking skills. BM2 [L] now feels challenged and confident as a 2nd class. According to BM2 [L], the XPO is a little abrasive but you do what he tells you to do. Exhibit (24).

31. MKC [G], who was stationed at the unit as an MK1 and experienced two different commands at the station, stated that during his year with BMC [applicant], he quickly noticed that BMC [applicant] would always put the crew first, constantly suggesting different morale ideas such as a trip to New York City, and suggested they take the GV and park it at the recruiting office so that the crew didn't have to pay for parking. The command under BMC [applicant] made multiple changes to benefit the crew such as boat check schedules change, duty section changes, providing 24-hour lighting for the station flag pole so that the crew did not have to do colors, especially during the winter. MKC [G] observed and heard rumblings in the passageway from the E-5s who constantly complained down the chain of the command. According to MKC [G], the lack of leadership at the E-5 level has resulted in junior members, fresh from boot camp, to become displeased with the command. The E-5s constantly complained to MKC [G] about working conditions and the standards that were placed upon them. From the conversations he had with them, and talking to the command he realized the E-5s were mainly unhappy for being held accountable for not managing their crew's time better. BMC [applicant] for the longest time was trying to teach the section leaders how to manage the sections' time better, he did this by holding the E-5s accountable. Exhibit (25).

32. MKC [V], Engineering Petty Officer of Station [redacted] who reported to the unit July 2017, stated that several members at the unit told him that they disliked BMC [applicant]. According to MKC [V], the members who disliked BMC [applicant] were upset about BMC [applicant's] micromanagement of the unit. MKC [V] also stated that CS3 [B] was approached by a senior BM2 and ask[ed] to write a negative statement against BMC [applicant]. CS3 [B] told the BM2 that he would not write a statement and that the only reason that CS3 was advancing was because of the effort of BMC [applicant]. Exhibit (26).

33. According to [the CO], BMC [applicant] assisted CS3 [B] with getting his Rating Performance Qualifications (RPQs) completed so that the member was able to sit for the Service Wide Exam (SWE). CS3 [B]'s supervisor was not providing him with professional development so BMC [applicant] stepped in and made CS1 [A] develop a departmental training schedule to prepare CS3 [B] for the SWE. When CS1 [A] did not follow through with the training schedule, BMC [applicant] contacted CSC [B] who worked with CS3 [B] to get all of his RPQs completed prior to the SWE cutoff date. CS3 [B] took the SWE and is now above the cut for advancement to CS2. Exhibit (04).



34. BM1 [F], the Operations Officer and Deck Department Head who has been at the unit since December 2014, stated that BMC [applicant] has high expectations and does not give a lot of positive feedback/reinforcement. BM1 [F] felt that the crew focuses on BMC [applicant's] negative feedback. Exhibit (27).

35. MKC [V], stated that BMC [applicant] assisted SN [S], who recently reported to the unit from basic training, find funding to return home since his father was diagnosed with terminal cancer. BMC [applicant] reached out to the Chiefs Mess and got SN [S]'s airplane fare covered so that SN [S] wouldn't face financial distress coupled with emotional distress. Exhibit (24).

36. [The CO] stated that when CS3 [S] reported aboard in July 2017 from the CGC [redacted] located in [redacted] she was inappropriately counseled on her PCS move by the Navy Travel Management Office (TMO). CS3 [S] was told she would not receive any PCS entitlements and that she would not be reimbursed for the personally procured move she arranged. BMC [applicant] assisted CS3 [S] by working with the Navy TMO and CG-PSC to get reimbursement for all of her travel expenses. Exhibit (04).

37. [The CO] stated that BMC [applicant] got CSC [B] to come down from Sector [redacted] to help CS1 [A] while she was on maternity leave. During this time, they audited the galley records and submitted a report that was due for CS1. During their audit, they found several mistakes in the paperwork that caused the unit to owe money to FINCEN totaling over \$3,200. Both Chiefs corrected all of the mistakes, and upon her return, gave CS1 an expectation letter so that this would not happen again. Exhibit (04).

38. [The CO] stated that BMC [applicant] assisted MK2 [S] when he was going through his divorce and had custody of his child. BMC [applicant] provided multiple last minute liberty and leave opportunities to deal with his situation and connected MK2 [S] with CG SUPRT and [L.S.] with work life. Exhibit (04).

39. [The CO] stated that he knew prior to the investigation that the crew had expressed that they were tired and felt underappreciated. The command cadre and first class has looked for ways to remedy the situation. They have put a lot of effort to make sure they are properly planning the daily routines to capture training, maintenance and operations without overloading the crew. The command has been working with the E5s to be better leaders by providing opportunities to lead their subordinates by taking care of functions such as travel claims, leave and liberty requests, medical and dental readiness, daily routine issues, operational planning. BMC [applicant] has put in a lot of effort to develop the ESs through verbal counseling sessions and train them on EER's, procurement, and travel regulations and has become frustrated in their unwillingness to apply his teachings and take care of their subordinates. Exhibit (04).

40. According to the statement from MKCS [M], formerly Engineering Petty Officer at the unit and departed in July 2017. He stated the command of CWO [W] (former CO) and BMC [D] (former XPO) was very laid back with minimal requirements and expectations. CWO [W] wanted to give the crew a break because of the previous command. There was a lack in professional growth, responsibility, military bearing, and leadership skill set. When [the CO] assumed command, he was operationally focused with expectations to improve the number of boardings and fulfill the CG Mission. When BMC [applicant] assumed the position as Executive Petty Officer (XPO), he held the crew accountable for the proper wearing of uniforms, required administrative paperwork to be completed accurately, required time management accountability in way of utilizing and providing plan of the day for duty sections and for the duty section leaders to take responsibility of their sections and their subordinates. He expected the plan of the day to be carried out and completed and did not accept poor time management as a valid reason. BMC [applicant] is very smart and is well versed on policy in a wide range of subjects and may seem intimidating. If someone was to debate him, that person would have to come prepared, not because he will belittle or insult you, but because he knows so much in so many areas that it's not very often that he is not sure of something or does not know it. Exhibit (28).

41. According to BMC [applicant] he identified overall complacency, lack of military discipline and respect with unit members. along as problems that needed to be addressed when he first reported to the unit. He took a hands on approach to correcting issues at the unit. For example, he identified an overall failure of the unit's training program to develop members and a failure of senior and qualified members in devoting time and

effort in helping their subordinates attain their qualifications. He required supervisors to take ownership of their subordinates and invest in them time and effort to achieve success. Exhibit (29).

42. BMC [applicant] stated that he admits he needs to work on personal recognition. He provides positive feedback and recognition through evaluations, Sailor of the Quarter nominations, and awards. Since reporting to the unit he has submitted three unit SOQs for the [redacted] Sailor of the Quarter, MK2 [S], BM2 [A], and BM2 [L]. Exhibit (29).

43. BMC [applicant] stated that unit had received the Meritorious Unit Commendation for the accomplishments in the previous year right after he reported to the unit. He believes that several of the unit members that are unhappy with the work environment were ungrateful and publicly dismissive of that recognition as it had no value to them. He spent a significant amount of time with the E5s, to try to see what exactly they valued for recognition, and found that they don't want anything that can be given to them by this command. They don't value public recognition because it doesn't last, they don't value formal recognitions unless it comes in a form of award points for advancement. Exhibit (29).

44. According to BMC [applicant], he assisted BM1 [F] with many issues from placing him on weight probation on 2 separate occasions and then assisting him significantly in the successful completion of each of those, completing the Physical Fitness requirements to some significant family and marriage issues, and his preparation for the Officer In Charge review board process. He has watched him grow as a person and as a coast guard leader under his leadership and direct supervision. Exhibit (29).

45. According to BMC [applicant], he assisted three candidates for the Sector [redacted] Officer In Charge review board with positive results and the candidates also were successful and passed the District board last two boards, in the last two boards, with both time and resources. Exhibit (29).

46. According to BMC [applicant], he has spent countless hours working with BM1 [K] to help him understand his position as unit Training Petty Officer and an E-6 in a leadership position. BMC [applicant] believes that BM1 [K] did not have an understanding of his leadership position and his responsibilities to ensure the junior members were successful developing in meeting both their personal and professional goals. It was a slow process for BM1 [K] but BMC [applicant] has seen progress and was given a positive review for the application process for Officer Candidate School. Exhibit (29).

47. According to a statement from CSC [B], a reservist stationed at Sector [redacted], she stated that she visited Station [redacted] numerous times from 2014-2017 assisting in the galley while members were at training, medical leave, professional development of unit members, along with auditing the galley. Most recently while she was at the unit in August 2017, she did not notice any issues with the crew and she attended two morale events. She believes that all the crew were getting along well, no one spoke to her privately about any issues that they were having at the unit. She ate with the crew on a couple occasions and nothing seemed to be amiss. Exhibit (30).

48. According to a statement from [the CO], he has put more emphasis on Law Enforcement Operations since he assumed command of Station [redacted] in 2015. He has verbalized often that he does not believe in quotas; quotas send the wrong message about what the unit is trying to accomplish which is boating safety and law enforcement. He tells the crew to do the best they can and whatever the results happened to be, he will be ok with it. Exhibits (04).

49. Station [redacted] has had a significant increase of Law Enforcement boardings from FY 2014 to FY 2017, an increase of 300%. In FY2017 the station averaged almost four (3.78) boardings per day compared to a little over one (1.19) per day in FY 2014.

A. FY 14: 435 B. FY 15: 1003 C. FY 16: 1373 D. FY 17: 1382

The six (6) other stations: [all redacted] have averaged between 300 - 600 boardings from FY 14 to FY 16. Exhibits (07), (31).

50. In July 2017, Sector [redacted] (SLIS) granted a request waiver to exceed boat program underway hour (PUH) limits for the 29265 [boat] and 29266 [boat] to Station [redacted]. SLIS granted 150 hours to each asset; hours were taken from [three nearby Stations]. Exhibit (32).

51. Section II of BMC [applicant's] service record, does not contain any negative remarks regarding his character since 28 Mar 2008, when he was an E-5. Exhibit (33).

### OPINIONS

1. BMC [applicant] did not take BM3 [P]'s online BOPC test for him or help anyone cheat on the test. Findings (06), (07), (08).

2. BM3 [P] and BM3 [G] passed the BOPC online test unassisted. Findings (6).

3. According to ref. (d)<sup>4</sup>, Bullying is threatening, humiliating, or intimidating. Bullying can also be work interference, undermining performance, or verbal abuse. Individuals are often targeted because they may be perceived to be weak, different, or pose a threat to the bully. Bullying may also be described as psychological abuse, psychological harassment, 'status-blind' harassment, and mobbing. It often involves an imbalance of power between the aggressor and the victim.

BMC [applicant] has violated the Coast Guard Hazing and Bullying Policy by being intimidating and verbally abusive. During the unit's Open House on July 8, 2017, BMC [applicant] failed to ensure the junior members had sustenance and his abrasive demeanor earlier in the morning caused members to be intimidated and prevented them from requesting assistance for fear of getting in trouble. BMC [applicant] continuously questions the duty crew and communication watchstanders [*sic*] about the number of boardings conducted; the crew interprets the inquiries as the boarding numbers are never enough for the XPO since he never shows any gratitude for what they have accomplished. BMC [applicant] has also stated, "all they were doing was cutting holes in the water then come back, why aren't you doing any boardings and earning the dollar," regarding unit reserves. He also has stated that all the crew cared about was what's for chow, when they can workout and when they can jerk-off. He verbally has said negative comments to unit members and about their peers regarding their performance, educational goals, and words with negative connotations. He has said phrases such as "shitbags"- when referring to other BM2s, "irresponsible f\*\*king child"- when he saw a member do something he didn't agree with. During quarters members have heard him say "window licker", "buddy f\*\*ker", and "thieves". BMC [applicant] has provided negative feedbacks for their college plans of pursuing degrees in Political Science, Criminal Justice, and Law School or pursuing a law enforcement career after the CG, stating what they were pursuing was not making any sense or not to waste their time since their career goal was pointless when members informed him of their personal educational goals. Members of the unit are depressed, stressed, angry, and have feelings of dread as they report for work. Findings (09), (10), (11), (13-28) and (29).

4. Station [redacted] was understaffed during the 8 Jul 2017 open house at Station [redacted] and did not have extra bodies to relieve members at their stations. Finding (12).

5. BMC [applicant] is extremely knowledgeable at his rate. He has utilized his knowledge and expertise in assisting unit members in personal and work-related matters along with other members of Sector [redacted]. Findings (31), (32), (33), (35)-(39), (40), (44), (45), and (46).

6. BMC [applicant] reported to Station [redacted] as Executive Petty Officer where he is required to enforce Unit and Coast Guard policies along with ensuring that members of the unit develop professionalism as expected of all CG members, improve/learn responsibilities, leadership, and have personal growth. When he reported, he found Station [redacted] had a lot of room for improvement and published standards were not being enforced. The unit had a laidback atmosphere, expectations were lowered, members were not challenged, and training was not being executed properly. He found members lack simple administrative knowledge such as processing travel claims, leave chit requirements, ordering equipment He took a direct

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<sup>4</sup> ALCOAST 008/17; Duty to People-Coast Guard Hazing and Bullying Policy

approach to solving these problems and went to the E5s instead of down the chain to the E6s to resolve issues. He held the crew accountable for completing tasks and required E5s to take responsibility of the junior members in their duty sections to assist them in their qualifications. BMC [applicant] is dedicated to the success of the members of Station [redacted] that when they fail/or come short, he verbally shows his frustrations. He allows his emotions to cloud his judgment. Finding (30)-(34), (39), (40), (41).

7. [The CO and the applicant] have instilled confidence and responsibility with the crew. BM2 [L] is more confident with public speaking through his experience with the fire department, he is also confident as CG47 coxswain and conducting Fisheries Boarding. BM1 [K] has improved his leadership skills and understands his responsibilities to the unit and has received a positive endorsement for his Officer Candidate School application. Finding (30), (46).

8. The members of Station [redacted] are exhausted and feel underappreciated and a significant reason for this is the operational tempo of the unit. In FY2017 the unit conducted 1382 boardings; approx. 4/per day and a 300% growth since FY2014. In the beginning of July 2017, the unit was granted a waiver to exceed boat program underway hour (PUH) limits for the 29265 and 29266 and given 150 hours each to their CG29s. Station [redacted] has surpassed all the other 6 small boat stations in Sector [redacted] AOR by approximately 700 boardings. The community complains of harassment from the crew for stopping/boarding them numerous times throughout the season while at the same time the XPO [applicant] questions the crew about the number of boardings being conducted. Finding (28), (40), (48), (49), (50) and (51).

9. BMC [applicant] did not provide a lot of positive verbal feedback, but he did so administratively through evaluations and awards. Finding (42).

10. There is a senior E5-BM2 that despises BMC [applicant], and he requested CS3 [B] to provide negative remarks against BMC [applicant]. Finding (32).

### **RECOMMENDATIONS**

1. I recommend an Administrative Remark (CG-3307)-P&D 7 Negative, be issued for BMC [applicant] for failing to look after his crew during the open house, communicating in a language that is unbecoming someone of his position and expectations of a Chief Petty Officer. Opinion (3), (4), (5), and (6).

2. I recommend Station [redacted] decrease the number of boardings from 1300 down to 900 for the fiscal year to ensure the crew is not burned out and prevent the community from verbalizing their discontent with the unit on the crew members. Opinion (8).

3. I recommend E6s to be utilized more by BMC [applicant] to complete tasks. Opinion (6).

4. I recommend MKC [V] or SLIS CEA meet with each pay grade quarterly to assess crew concerns. Opinion (3), (6), (8).

5. I recommend BMC [applicant] attend additional leadership and sensitivity training. Opinion (3), (4), (6), (8).

6. I recommend an Administrative Remark (CG-3307) P&D 7 Negative, be issued to the senior E-5/BM2 for soliciting negative remarks from an E-4 against BMC [applicant]. Opinion (10).

### ***Temporary RFC Notification***

On December 11, 2017, the applicant's Sector Commander, a Captain, issued a memorandum, "Temporary Relief for Cause (TRFC)," wherein the applicant was notified of his TRFC. The Sector Commander explained that the basis for the TRFC was a loss of confidence in the applicant's ability to satisfactorily perform his responsibilities due to unsatisfactory conduct,

specifically due to substantiated violations of the Coast Guard's Hazing and Bullying policies. He acknowledged that the applicant's station's performance had been exemplary, but also stated that the applicant had threatened, intimidated, and belittled his subordinates as a means to accomplish mission goals, a methodology contrary to the Coast Guard's core values and inconsistent with behavior that he demanded from those in senior leadership positions. The Sector Commander further noted that the applicant's use of crude and degrading sexual terminology, revealed during the investigation, was in no way appropriate in the workplace, and was potentially a violation of the Coast Guard sexual harassment policy. He explained that what was particularly troubling was that the applicant's inappropriate behavior began prior to his time as the station's XPO, which indicated a troubling pattern. He noted a 2004 NJP the applicant had received for Assault Consummated by a battery, and Cruelty and Maltreatment. The Sector Commander stated that although these offenses had happened 13 years earlier, the fact that the applicant continued to exhibit this type of questionable behavior indicated that the applicant had failed to incorporate the lessons he should have learned from his prior performance issues. Finally, the applicant was warned not to make any contact with any members of his previous station.

On December 11, 2017, the applicant acknowledged receipt of the TRFC memorandum, and indicated he wished to consult with an attorney, as well as make a statement.

#### *Applicant's Response to the TRFC Notification*

On December 21, 2017, the applicant submitted a statement regarding his TRFC wherein he stated the following:

1. In this statement I'd like to appeal my Temporary and potential Permanent Relief as the XPO of Station [redacted]. I'd like to return to Station [redacted] with no other actions taken. I realize the potential leadership challenge of continuing to serve as XPO but I am confident that under the guidance and direction of [the CO] I can successfully meet this leadership challenge. If you determine the best course of action is to remove me from the unit I ask that I be transferred in lieu of relief with the opportunity to grow from this experience and continue to serve the Coast Guard to the best of my ability.

2. The administrative investigation began after the Sector Command Senior Chief (CSC) Senior Chief [H] was invited to come to the unit and received complaints from the crew.

...

During the CSC's visit, we invited him to talk to the crew during an all-hands gathering. Before the all hands [the CO] and I told the CSC of the concerns that he may hear from the crew. During the CSC's command debrief he stated that our knowledge of the crew was right in line with what they told him. He then told me that they were particularly upset with me and that I should use my BM1s more to handle the day to day stuff.

3. Prior to the meeting with the CSC, these members never came to me directly, brought their concerns to the attention of the CO. nor used the Civil Rights Complaint process. Since the complaints centered around the same situations and not one member of the crew ever brought a complaint or even mention of there being a concern I felt ambushed and a little concerned that a few poor performers were tainting the process.

4. As identified in the investigation my leadership style is significantly different from the previous XPO and even more different than the interim XPO that bridged our relief, but that doesn't make mine wrong. I set high standards, articulate those standards, and then hold people accountable for failing to meet those expectations. My method of accountability is mainly non-punitive, verbal counseling; I search for the root cause of non-compliance such as verifying whether personnel have a willingness or ability problem and ensure they have the right tools to be successful. My supervisor has never counseled me that he found my

standards to be too high or told me that my approach to accountability was out of line. Additionally, I was never approached by any member of the crew nor counseled by my supervisor concerning my language or behavior. This is because I regard the position of Commanding Officer with the upmost respect and understand the gravity of my position in support of that Commanding Officer. I have kept [the CO] abreast of all of my intentions, efforts, and the responses and results of those efforts since reporting aboard. I recognize there are barriers to leadership and I am happy to try to do things differently moving forward, but it seems contrary to the good order and discipline of the US Coast Guard that in the face of substandard performance I accept it because those that refuse to support the directions and efforts of their senior leadership might conspire, actively campaign, find an alternate avenue to be heard, and launch claims to defame my character.

5. As I read the RFC memo it says that I repeatedly and regularly communicate to the crew in- an unprofessional manner, using inappropriate language. This simply is not true. The couple incidents listed as examples of a pattern of conduct are in fact the only times that I recall having used inappropriate language during my 18 month tour. I can see how someone could move at this determination based upon the sheer number of statements contained within the investigation, but in reality these are the same incidents repeated by different individuals over multiple statements. I understand that there are better ways to express myself. I recogniz[e] the inappropriateness of the comments made and will not argue to that at all, however I don't feel that these isolated instances are so severe as to negate the positive career that I have had or the positive influence that I have on this unit and its personnel. As leaders we too make mistakes and if given the opportunity to do things again I would choose to do some things differently. In addition, I know that moving forwarding I will be a leader who is even more aware of the need to hold accountable and praise simultaneously.

6. My previous and current EPOs; MKCS [M], and MKC [V]; the CO, CWO3 [B]; the previous AEPO, MKC [G]; and several other members of the crew, whom are leaders at the unit and constantly interact with me as well as the members of the unit, disagree with the accusation of this being representative of my routine conduct. I respectfully request the convening authority of this relief for cause speak with these individuals to receive a balanced perspective of my leadership and professionalism. These are the individuals who occupy the offices surrounding my own, are in attendance during the morning passdowns, counseling of crew members, and all hands quarters. In reality their opinion is quite the opposite of what was stated in the RFC. These people comment on my ability to maintain a professional demeanor in the midst of challenging situations. I am not walking the halls of this unit or in meetings of any size, belittling people or using inappropriate or degrading language of any kind and I feel confident, if asked, the Station's leadership would agree.

7. With that being said, please know that I take the accusation that members of my crew feel I am acting in a threatening, intimidating, and belittling manner very seriously. I have stopped and reflected on my time at Station [redacted]. I see places that I can grow as a leader but I also see where youth, inexperience, and lack of understanding of the role of leadership by some members of the crew has played a part in this discussion. Unfortunately, those that are the most vocal about the constant micromanagement, belittling, and the lack of appreciation of efforts are in fact the people that I, along with unit leadership, have been expending the most effort on, as they are in positions of leadership and responsibility and have not been doing their jobs. I feel my leadership style is one of direct feedback to the crew. This is especially true to the 2nd class petty officers when dealing with their performance or lack of performance, holding themselves and their subordinates accountable, personal responsibilities of military readiness, and the accomplishment and support of the Coast Guards missions, the District's emphasis, the Sector's initiatives and the unit's policies. I believe that under the engaged supervision of [the CO] I was doing my job to develop these individuals into tomorrow's leaders and this effort was not positively received by those just wanting to get by and earn a check.

8. It is also important to note that 11 of the 18 individuals that felt dissatisfied with my leadership are from a single duty section under the supervision and leadership of two of our most challenging 2nd class petty officers. In addition, as found in the investigation, one of these members "despises [me], and requested CS3 [B] to provide negative remarks against [me]" (Finding 32). This active campaigning against me resulted in the solicitation of statements from people that were not present for many of the incidents contained within their statements, which shows that these two people are, and have for some time, been complaining openly

and down the chain of command. Two other second class petty officers within this duty section, BM2 [G] and BM2 [W], have since reported, one to the EPO and the other to myself during and following their recent EER counseling that there are two members of this unit that are constantly negative, and how they allowed themselves to get caught up in the negativity of those two members. After the inception of this investigation when asked to get underway for operations one of the negative second class officers responded with comments of "Why? They aren't making us get underway." BM2 [G] responded with "We still have a job to do", and then got underway without him.

9. As a leader, prior to these allegations, on a few occasions I did talk to and with the senior members of the unit about the station OODs. Specifically, how they were very inefficient and ineffective with their time management and as a result the entire duty sections were often unemployed or underemployed. As a result, the training and development of the unit's personnel, the operational output, and the unit material condition suffered. The successes in any or all of these areas came only with a significant amount of oversight, effort, and consistent follow through from E6 and above to include and especially from the CO and myself.

10. I also want to describe the events of the Open House. First I am genuinely sorry and embarrassed that members of my unit, especially those most junior, would ever think that I'm not concerned about their general wellbeing. That again could not be further from the truth but I see how my specific interactions with some of the crew members that day created the situations described by them and influenced their feelings and decisions throughout the day.

11. Specifically, in preparation for the units hosting of the CO Auxiliary's annual open house the children's activities were tasked to BM3. As he stated I continued to monitor his preparation efforts to host this event which was attended by over 1000 people, because leading up to the event his particular part was not making any progress. As indicated in his statement, BM1 [F] did state, "we had an effort problem" and this was another example of such. Unfortunately, BM3 [H]'s work ethic has forced me to expect little effort from BM3 when it comes to any tasking that he doesn't want to do or can't delegate to a non-rate. The idea that while on duty, presence alone is not enough, does not resonate with him. My oversight was to ensure the job was done and to provide assistance and guidance where necessary, to allow BM3 [H] to succeed. The morning of the event, when I arrived around 0730 I asked the OOD why no one was up and he explained that he had a plan for the day which included waking the crew at 0900 for the 1000 event. After careful consideration, including the fact that 20 plus Auxiliarists were working to finalize the event, I instructed him to wake the crew at 0800. Once the crew awoke they gathered on the messdeck to wait for the breakfast they ordered from out in town, even though the Auxiliarists had provided breakfast for the crew. I found this to be both disrespectful to the Auxiliary members as well as a waste of time so I commented on their behavior. At no point during this open house evolution did I intend to make the crew feel unappreciated, belittled or unable to get sustenance. In the end I am ultimately responsible for ensuring that everyone within the unit has their basic needs taken care of, I take that responsibility very seriously, and am constantly reminding the petty officers here of their responsibility to the members junior to them. I didn't personally check with each individual throughout the day, other than asking how they were doing from time to time. I expected the chain of command take care of their crew and address concerns appropriately. Looking back, I wish I had asked more specific questions, including have you had a break or is there anything you need.

12. As to the unit's reservist's cutting holes in the water. Yes I said that in response to an E6 reservist who, on occasion, would be underway for sometimes nearly 8 hours with no operational results, and even moor up and continue to rack up U/W hours on the unit's assets while tied to the pier. I absolutely had conversations with the leadership of the reserve force concerning this type of behavior. This situation is a perfect example of my efforts and intentions being ill received by a "that's the way it's always been," attitude. Because of this, I am viewed as the bad guy and I don't hide from the negative perception because it's the right thing to do and I constantly keep my supervisor informed of my efforts, challenges, solutions, and intentions.

13. One of the most disturbing comments in the relief memo is the reference to my NJP from 2004. This incident took place 13 years ago. At the time I was an E3 and I took complete responsibility for the role that I played in the situation. Nothing in my career points to a pattern of inappropriate behavior. My EERs, recommendations for multiple command assignments, and performance over my entire career is representative of my continued pattern of positive behavior. I ask that you review my EER and speak with

the individuals I have worked for before you reduce my career to an incident when I was an E3. The comments on my EERs represent the opinion of the people that entrusted me, not just to get the mission accomplished but to take care of their people. Most recently I have been an XPO for 3.5 consecutive years at two different units taking care of over 20 people during my tour onboard the COC [redacted] from 2014 thru 2016 and over 60 active duty and reserve personnel here at Station [redacted] thus far.

14. I do not come to work each day hoping to be best friends with the junior members of my command. I understand, as do most leaders, that junior people will be a little hesitant to speak openly and candidly with their superiors regardless of how open, accepting, and approachable I make myself. However, I do work towards ensuring that they understand that I am always here for them, that I work for them, I am here to assist them with accomplishing the CO missions with the CG resources to the best of their ability. I try to foster relationships that allow members to bring issues through their chain of command. There is a chain of command and I know there are times that I can do a better job utilizing that chain but above all I care about my people and training them to be future leaders within the Coast Guard and their communities.

15. As stated in the beginning, I desire first and foremost to return to Station [redacted] and continue to serve the personnel there. Only if you determine it is in everyone's best interest for me to leave do I then desire an expedited transfer. Normal transfer season is upon us and as my professional knowledge, performance, ability, and dedication to the Coast Guard are not in question here, I would wish to have the opportunity to compete for assignments.

16. I do admit that, once or twice, I used inappropriate language to bring severity to those isolated and specific issues and to hold those unsatisfactory performers accountable to the unit and their subordinates as described above. If given the opportunity to do over I would choose a different path, but it was never with the intention to bully, intimidate, maltreat, or sexually harass anyone. Furthermore as I use non-punitive verbal counseling to correct deficiencies of my subordinates, I would hope/wish that I would be given the same opportunity to correct mine. My Commanding Officer has faith in my ability and desire to continue to develop as a leader and serve in this capacity. He has never had cause to question my dedication to the Coast Guard, the unit, or the personnel assigned, to include the almost six week time period that passed during the investigation or the two weeks since I was relieved as I continued to assist the unit in the completion of financial and administrative responsibilities.

17. If necessary, I have not sought out any additional statements and have only included those that have been offered to me but if these aren't enough please I implore you to reach out to people at the unit not included in this one sided investigation. BM1 [F], SK1 [C], BM2 [A] (departed COC [redacted]), SK1 [G] (departed CGC [redacted])

18. I additionally recognize the changing generational expectations, attitudes, and behaviors and my need to develop the leadership skills and capacity to keep up. I am pursuing the options of Coast Guard LDC courses and other commercially available courses to challenge myself and continue to develop as the leader the Coast Guard and my subordinates expect me to be as our workplace dynamics changes.

19. Thank you for your consideration.

In addition to his personal statement, the applicant submitted four statements written by the Station's CO, EPO, EPO ANT (a collocated unit), and an MK2:

- ***Statement of CW03 B, the CO of the Station***

Administrative Investigation: It is evident by the sheer volume of complaints about BMC [applicant] in the investigation that several people are not happy with their perception of his leadership tactics and/or verbal expressions. They have used trigger words such as bully, harassment, and belittlement, all of which can have serious repercussions. I have drawn conclusions through my interpretation of the investigation and my first hand knowledge and interactions with the complainants and BMC [applicant]. It is hard to dispute that BMC [applicant] utilized inappropriate words in the form of dysphemisms, however the intent of these expressions



were not sexual in nature with the purpose of harassment, nor were they abusive conduct with the intent to exclude anyone. I feel these inappropriate expressions were used to deliver a well intended point (i.e. the expression 'buddy f\*\*kers' was not intended to mean have sexual relations with your buddy, it was intended toward Petty Officers to mean don't break the Aids-to-Navigation Team's pressure washer that we were borrowing and to teach junior personnel how to use this equipment and what PPE to wear to keep our members safe). I think it is important to note that the majority of complaints are from the starboard duty section and there are a significant amount of those complaints that don't involve firsthand knowledge of the subject complaint. What I interpret this to mean is that the mid-level managers, meaning E-5s, that were the subject of this performance counseling from the XPO, including the inappropriate expressions, did not bring these issues up the chain of command to me and instead complained down to their subordinates and fostered insubordination and a poor work climate, hence how the junior members knew about the complaints. Additionally, it was noted in the investigation that some of these E-5s were asking for others to write statements against BMC [applicant] which may explain the lack of firsthand knowledge, explain the sheer quantity of complaints, and explain why the statements are mainly negative in context. If it was asked to write positive statements for BMC [applicant], then I assume the context of those statements would be possible. To tie in my point about the background statement and climate above, the same group of OOD's that were mismanaging their duty sections and in turn received (micro) management from BMC [applicant] are the same group of E-5s that are now trying to lobby against him. In closing on the investigation, the statements portray BMC [applicant] to be a tyrant but that couldn't be further from the truth. I personally know that he cares about everyone at the unit as documented in my statement from the investigation. I believe that his intentions are always in good order but that he may from time to time resort to inappropriate talk. I do realize that the number of positive actions can never outweigh any negative action but I want to ensure the punishment fits the crime. As for the perception of maltreatment at the Open House, I discussed this with BMC [applicant] and he stated he never said that FN [G] could not have food or water for the entirety of the event. I personally know how busy and hectic the Open House is because I managed it the year prior. It is likely that a meal/break rotation plan did not exist to ensure everyone was hydrated and fed. But this is a communications failure of the entire crew, including BMC [applicant], working that day if they did not look after or speak up for one another.

...

My perception of BMC [applicant]: BMC [applicant] is extremely loyal and dedicated toward me, this unit and the Coast Guard. His *[sic]* has proven to me that he has genuine care and concern for the crew. I have addressed in my statement for the administrative investigation that there are many example where he went above and beyond the expectations of the XPO in getting assistance for the crew. Is he a flawless leader? The answer to that along with everyone else is no. To a fault, he never turns a blind eye to any issue. What I mean is that he addresses discrepancies on the spot sometimes to the detriment of being in front of other people. There is an accusation that he belittles BM1 [T] in front of the crew. I have been present for several of these occasions that are being perceived as belittling. Junior members cannot differentiate between correcting things on the spot or false statements and being yelled at or demeaned. On occasion at quarters, BM1 [T] has misinterpreted my intent or COMDT policy when addressing the crew and has been corrected for it immediately by BMC [applicant]. On one hand, the crew sees this as belittling, on the other, it ensures the right message is being relayed and the crew doesn't get bad information.

#### RELEVANT QUESTIONS AND MY RECOMMENDATION:

Was there unsatisfactory conduct by the XPO? It is my opinion that BMC [applicant] likely did make statements such as "buddy f\*\*ker" that are not in alignment with good leadership practices and lack respect which is a core value violation.

Was the conduct severe enough to lose confidence in his ability to serve in a leadership position? I do not feel as though the unsatisfactory conduct was severe enough to compromise his leadership ability. I still have confidence that BMC [applicant] can be successful as the XPO of my unit. His intentions have always been good.

Was he afforded an opportunity to correct the deficiency or behavior? Prior to the investigation, I have never had just cause to counsel BMC [applicant] on any unsatisfactory conduct so he has never had an opportunity

to correct this behavior. I do not think his actions were severe enough to not warrant an opportunity to be counseled and demonstrate a change in behavior. Will his return be prejudicial to the good order of my unit? I think given the totality of the circumstance, several members of the crew that have negative perceptions of BMC [applicant] would be displeased with his return. It would be a leadership challenge to re-integrate him in the crew but I think he deserves the chance and I know he has the capacity to accomplish a successful integration I welcome the leadership challenge as an opportunity for everyone to learn and grow from this experience and work to improve communications. I also think a viable option would be to conduct no-fault and non-punitive relief. There are other methods to deal with inappropriate actions such as counseling, administrative documentation, and evaluations, rather than jumping to a permanent RFC which carries significant career consequences.

There are other unintended consequences of a permanent relief. My OPS, AOPS, TPO, both duty section leaders, and I are all departing this coming summer. The additional loss of the XPO would set the unit back within the community, with our local partners both fire departments and police departments, and with local knowledge such as my significant AOR shoaling concerns. Additionally, my TPO (BM1 [T]) stated this relief is why he doesn't want to be an XPO or OIC. Despite BM1 [T]'s thoughts on BMC's leadership style, he thinks he was doing everything right and because a few people dislike BMC [applicant] and foster hate and discontent down the chain of command to an entire duty section, he may lose his job over it.

- ***Statement of BM2 C***

I am a day working BM2 stationed at [redacted], so I see things that a regular duty stander would not. From a leadership perspective I thought BMC [applicant] had great ideas and was misrepresented by the crew. BMC was always trying to make the most out of every opportunity, and sometimes the crew would take that as micromanaging. Was he the most cheerful person, no but show me a BMC that is. From my perspective of seeing both sections and how he interacted with each section, BMC treated both equal and fair. He was the kind of guy that would take duty so someone didn't have to come in on their off time or pay for a no rates plane ticket when he didn't have enough money to go see his dying father. From my opinion one section was more or less trying to rebel against BMC and it started with the second classes. I would hear the second classes giving junior crew bad information about what the command expectations were and making almost like a smear campaign against BMC. From what I could see, to me it looked like BMC would hold the underperforming second classes accountable or at least try to understand why they didn't do something and they would take it as he was picking on them or singling them out and made the crew think he was out to get them. From a leadership standpoint, I never saw any wrongdoing or any inappropriate behavior. I saw a crew that was being led to revolt and it started with one section's underperforming second classes and manifested to the other sections' junior personnel.

- ***Statement of BM1 T***

BMC [applicant] has been an instrumental asset to Station [redacted] from the day he reported. He came in, surveyed the unit and its members then made adjustments that benefited not only the unit but also its personnel. His dedication to the unit has being demonstrated through his early mornings and late evenings. He has taught us about being "Efficient" and "Effective" with our time, something that I believed that the unit was not utilizing properly. As a supervisor, he was one person that I could go in his office and talk to about any problem that arise and not be judged based on my actions. During one of our EER counseling sections, I asked for ways to improve as an E6 Petty Officer, not only did he tell me but offer resources that could help and frequently provided positive feedback. BMC [applicant] demonstrated proficiency in his craft as a Boatswain mate in which he constantly tries to assist his subordinates in improving and to always aim to achieve the highest standard. BMC and I have had many conversations and not one day has he made an inappropriate statement to me that would make me feel uncomfortable. He's very knowledgeable about his job and I have learned a lot from him. Station [redacted] needs more people like BMC [applicant].

- ***Statement of BM2 L***

BMC [applicant's] leadership has helped me a lot during my time at Station [redacted]. I feel like his thoroughness and attention to detail has made me a far better boatswain's mate than had been in the past. I have never had any issues with him as a leader. I have done what he has asked me to do and had a lot of success. From what I stated during the investigation there are a few people at this unit (some of the most vocal people during the investigation) who just don't want to do their job. When they are held accountable by the XPO they mistake being held accountable as a hostile work environment. These people in turn will walk around the unit saying how awful the place is and will blame the XPO when in retrospect they just didn't do what they were supposed to do. I haven't witnessed BMC [applicant] make any inappropriate comments towards the crew at Station [redacted]. I think certain people at this unit want a pat on the back for doing a mediocre job and when that doesn't happen it turns into inappropriate comments made by the XPO. BMC [applicant] hasn't done anything out of the ordinary from my point of view. I also don't think that all E-5 and below at Station [redacted] can sit there and point the finger at one person without honestly looking at themselves and be able to say that they have done everything in their power to make Station [redacted] a better place.

- ***Statement of BMC V***

First, I would like to say that I have been station at CG Sta [redacted] since July 10<sup>th</sup> 2017 and can only speak to my experiences and interactions from that point on. After reading the report and I looking at the sheer volume of complaints I realized that a person that is reading the investigation for the first time would most likely think that the XPO is a Tyrant, Bully, Martinet or Megalomaniac. I want to be very clear these handful of events that are gathered in these statements are isolated events. What I mean by this is that the multiple repeats of the same event give volume to the complaint, but more important than that is that this is not how the XPO conducts himself on a day to day basis. While on board the unit I spend about 70% of my time either around the XPO or within an ear shot away from him considering we share a wall of our offices and that we are constantly working on unit issues together. Also I have been present for about 90% of the quarters held at the unit and for the 10% that I have not been at I know that my Commanding Officer, BOSN3 B is present. I say this to bring up the fact that during my tenure at the station the XPO is very rarely ever on his own. Furthermore I have been there for some of the situations that have been brought up against the XPO and I wholeheartedly can say that some of these situations were blown out of proportion, misconstrued, distorted, or a stretch of the truth while others given the situation and knowing the other side of the story and what happened leading up were warranted or justified. I will not spend my time disproving, explaining, justifying every single allegation made against the XPO, but instead focus on a couple of events to explain some of the behavior as well as some things that didn't make the report because they were either omitted or happened after the investigator came to the unit and hopefully overturn the thought of bullying, hazing or sexual harassment.

The first event that I would like to bring to light is a situation that happens prior to the investigation starting but had a great effect/influence on the investigation. After the Command Senior's MECS [H] visit to the unit he unbeknownst and hidden from the command asked member of the unit to email him statement of concerns that they had at the unit. When MECS [H] described his experience at Station [redacted] with another fellow Senior Chief of the Sector [redacted] Chiefs' Mess he stated that the whole sit down with him by the crew seem orchestrated and very well planned out. The way that members left the room without being asked to and only having the E5's sitting in the room was very weird to him. This was turned into a witch hunt by a couple of the BM2's at the unit putting more effort into this than anything that I have seen them do. The command was approached by CS3 [B] and told that he was approached by one of the BM2's and was told that he need to provide a NEGATIVE statement against the XPO so that they could turn them all in. CS3 [B] replied that he would not be providing a NEGATIVE statement because he did not have anything bad to say about the XPO. To the contrary the XPO was the reason CS3 would be making CS2 soon and the [*sic*] he has also help CS3 in his time of need and so he refused to write a NEGATIVE statement. This is important to note because members of the unit were influenced by senior BM2's that are section leaders to write negative statement, and targeted members that they knew could be influenced because they were in their own section. This is evident when you look at the statement; they all except for one come from one duty section. Also they

are all negative because that is what they were asked to write, if someone asked for only positive statements then they would have written positive statements and instead should just been asked to write statements on their daily interactions with the XPO. If this was the approach that was taken then there would have been both negative and positive statements for the XPO from everyone not just members that were influenced to write negative things.

The next thing that I would like to bring up is the fact that several members wrote in their statements that they didn't feel that the XPO could be approached with their problem. BM2 [B] even went as far as sayings that he didn't even want to get a piece of paper from the printer because didn't want to walk by the XPO's office. Yet I have seen that BM2 [B] come by my office and to the XPO's office on several occasion under his own accord. Both him and MK2 [S] have sat down with the XPO for career advice to figure out what was the best way for them to move forward with their careers. The XPO went as far as assisting MK2 with writing member comment to give him a better chance to explain his situation in order to get his desired location given his current situation. Recently I was approached by MK2 [S] and he was very happy because he got orders and they were exactly what he wanted for his career and family. Furthermore he expressed to me that he wanted to thank the XPO formally because if it was not for him he wouldn't have gotten what he needed.

In an effort to raise morale and help member of the unit with educational goals the XPO and myself came up with an idea. We could hold a college course here at the unit as long as we had enough members that are interested in taking the same undergraduate class to further our educations and be one step closer to a degree. When the XPO presented the idea at quarters and asked anyone that was interested to raise their hands. We got about 75% of the crew with their hands up. The XPO followed up with the members that had their hands rose how many were already taking college courses. The reason he asked this was to figure out if it would be worthwhile for these members to take an extra course or if they were much further in their education. This would mean that this class would not be beneficial to these members. A couple of members did keep their hands raised specifically MK3 [W] and BM3 [H]. The XPO asked both members what their educational idea/goals are. MK3 [W] said that he want to eventually leave the Coast Guard to become a lawyer and is currently taking courses in Political Science in order to pursue a legal degree. BM3 [H] said that he wanted to pursue a degree in the field of Criminal Justice because his plan was to get out of the Coast Guard. To him this educational degree along with his Coast Guard experience would be the proper recipe to get himself into a Law Enforcement career back home in [redacted]. After hearing other members' plans the XPO gave them his opinion on their current plans. He told MK3 [W] that it would be dumb, stupid, or waste of his time to take any of the courses that we would have here at the unit. Then he turned his attention to BM3 [H] and told him that most law enforcement agencies are not looking to hire people with a degree in Criminal Justice and that it would also be a waste of his time to follow a degree in that field. He advised him to follow a different educational path because that would give him a better chance at getting a job later down the road. That conversation that was had between the XPO and those members was flipped, misconstrued, and just plainly taken the wrong way by other members of the crew. These members made MK3 [W] think that the XPO called him stupid, dumb and that he was just wasting him time with trying to get an education in law. When in fact the XPO and I have had several conversations about MK3 [W], where he praises him for being one of the smartest and financially responsible members at the unit. As for BM3 [H], the XPO was just trying to educate him on what he believes would set him up for a better opportunity to get a job after the Coast Guard in a career of his choice. Again he was not calling either member dumb, stupid or a waste of time but instead that taking the course here at the unit would be dumb stupid and a waste of time for them.

Throughout the investigation many of the statements read that the XPO had been heard calling others Buddy F\*\*ker, window licker and thieves. I have heard the XPO use the words buddy f\*\*ker and thieves but I have never heard him call anyone a window licker. Furthermore I believe it would be very uncharacteristic for him to use that term. This is mostly due to his home life, his wife's profession is to teach and work with mentally handicapped children. The XPO has gone as far as assisting her with the children she teaches by planning out and taking her class to Coast Guard units for a visit providing them with a unique experience that they will remember for the rest of their lives. "Buddy F\*\*ker" is a term that I have heard throughout my 18 year Coast Guard career and is meant as an analogy to make sure that your actions aren't screwing over your ship mates. For example when the XPO stood up at quarter explaining to the crew that we just damaged a \$700 power washer because we did not teach junior members how to check oil. He followed up by saying "Please let's not be "buddy f\*\*kers" to the ANT [redacted] by borrowing their power washer and not checking the

oil as well.” He was not directly calling anyone a buddy f\*\*ker and just wanted to ensure that we didn't make the same mistake again with equipment that didn't belong to us. Buddy F\*\*ker is used just as the words Bus Driver, or One way mentality are used they aren't literal and have a completely different meaning from their literal writing. In accordance with COMDINST M4061.5 A “*Any attempt to defraud the Government through misrepresentation may be tried under the Administrative Investigations Manual, COMDTINST M5830.1 (series), and/or the Uniform Code of Military Justice.*” This exact verbiage is required to be posted in all galleys throughout the Coast Guard. So with that said when the XPO walks into the mess deck and sees a bunch of people eating and no one has signed up for the meal he very politely will say “please don't [be] thieves sign up for your meals,” or when he sees people eating fruits, snack bars, pastries, drinking coffee or juice, or taking anything from the galley that has been left out for members that paid for a meal for that day, he will again go in and tell people “please don't [be] thieves sign up for your meals.” This method of talking to people might not be popular or seen as mean by some members, but it is what keeps our galley from going over \$2000 into the negative again.

...

In conclusion I hope that I have shed some light and provided a different point of view from what is depicted in the investigation which seem to be one sided to say the least. More to the point is that the command was approached by several members and told that they really didn't want to write a statement but felt like they had to because they had a higher ranking person requested a statement from them. It is also my opinion based on my day to day dealings with BMC [applicant] that his actions don't meet any of the definitions for Bullying, Hazing, or Sexual Harassment. Instead I believe that he is truly a CHIEF and cannot sit idle when he see someone doing something that just isn't correct. He challenges the status quo at all times with very high standards. More importantly than all that is that he wants to make sure that members at Coast Guard Station [redacted] are earning their pay checks not just coming to work and laying around. He like the CO just want[s] members to come in and try to do their best at Operating, Training, and Maintaining at the unit. This statement is true to the best of my knowledge and belief.

On January 19, 2018, the applicant's Sector Commander charged the applicant with violating Article 92(3) of the UCMJ, Dereliction of Duty, for failing to comply with Coast Guard Hazing and Bullying policy.

On January 23, 2018, the applicant was offered a mast proceeding for potential NJP. He acknowledged his rights and rejected NJP to demand trial by court-martial.

### ***Permanent RFC***

On February 13, 2018, the applicant's new Sector Commander submitted a memorandum to Coast Guard Headquarters, “Request for Permanent Relief for Cause of Executive Petty Officer,” wherein he requested that the applicant be permanently relieved for cause due to the Sector Commander's loss of confidence in the applicant. The Sector Commander wrote the following:

In considering BMC [applicant's] statement and demand for court martial, after careful deliberation, counsel from legal advisors, and consultation with senior staff at Sector [redacted] and District [redacted], it is not necessary nor advisable to pursue disciplinary action through court martial. Of foremost importance to this decision is my desire to pursue a prompt resolution to enable all involved parties to focus their attention towards their primary goal of meeting operational priorities without the ever-present distraction of a court martial hanging over the unit for several months. Secondly, while BMC [applicant] has demonstrated poor judgment and significant leadership deficiencies, seeking a resolution which would include the lifelong adverse consequences associated with a court martial conviction would be excessive based on the nature of the offenses. I believed NJP was, and continues to be, the appropriate forum to dispose of this issue, both to permit BMC [applicant] an opportunity to present his side of the story as well as offering an appropriate range of punishments in the event I determined his conduct merited punishment.

Accordingly, I am requesting a final decision regarding this request for PRFC [Permanent RFC] without disciplinary action having been taken.

The Sector Commander also stated that an administrative investigation had revealed that on numerous instances the applicant had belittled and humiliated crewmembers through frequent use of inflammatory, derogatory, and inappropriate language. The Sector Commander highlighted the PIO's findings that the applicant's actions had violated the Coast Guard Bullying and Hazing policy and that the applicant's manner of leadership and treatment of subordinates was contrary to the guiding principles of leadership and the Coast Guard Core Values. The Sector Commander stated that of significant concern was the applicant's failure to acknowledge the detrimental effect that his manner of communications and conduct, in addition to his abrasive and demeaning behavior, had had on the unit. He explained that the applicant's relief was not due to substandard performance, but rather due to his abusive treatment of his subordinates, in addition to the manner in which he conveyed his expectations to his subordinates. The Sector Commander determined, after reviewing all of the evidence, including 29 witness interviews and statements, that the applicant had routinely engaged in conduct that violated Article 92(3) of the UCMJ.

On February 22, 2018, the applicant submitted a memorandum, wherein he stated he was humbled by the PRFC process and the Sector Commander's loss of confidence in him. The applicant noted that in his first appeal he had expressed regret for his actions. The applicant stated that he had refrained from making a public statement because he thought it would be inappropriate and had the potential of being received badly by all those involved. The applicant then alleged that the only opportunity he was afforded to openly discuss his regrets and desires to improve was during his first and only interview with the PIO. Finally, the applicant cited comments from his CO as to why he believed the applicant should remain at his unit. Specifically, that the applicant's intentions "have always been good" and that he has "genuine care and concern for the Coast Guard, the unit, and his personnel."

On March 20, 2018, the applicant's PRFC was approved at Coast Guard Headquarters.

### ***Disputed Page 7***

On March 28, 2018, the applicant received a negative Page 7 to document his PRFC. The Page 7 stated the following:

The request for relief for cause was based on substantiated allegations of verbal abuse and maltreatment directed towards numerous subordinate petty officers at Station [redacted]. The administrative investigation convened to examine the initial complaints detailed your frequent use of inflammatory, derogatory, and inappropriate language in your regular communications to the crew. Your treatment of members under your leadership had an extremely detrimental impact on the unit cohesiveness and command climate, and falls short of what is expected from leaders within our organization. Based on my review of the evidence, based on a preponderance of the evidence, that the manner and content of your communications violated the Coast Guard Hazing and Bullying Policy.

In conjunction with this determination, pursuant to paragraph 4.C.2.c.(8) of COMDTINST M1000.2B, an additional Enlisted Evaluation Report will be entered into your record within 30 days of the final approval action of the permanent relief for cause request. It is recommended you engage PSC-epm to facilitate your reassignment to a new duty station. Since this matter is officially closed, the prohibition against you from communications with members attached to Station [redacted] is formally rescinded. However, you are

directed to abstain from taking any action or initiating any communications with parties associated with this investigation that could be construed as either harassment or retaliation against those members. Any violations of this order may be considered a violation of UCMJ Article 92, and may be addressed through administrative or disciplinary action.

### ***Disputed EER***

As a result of the PRFC, the applicant also received an unscheduled EER dated December 11, 2017, on which he received below-standard marks of 2 or 3 (on a scale from 1 (worst) to 7 (best)) for the performance categories Setting an Example (3), Human Relations (3), Respecting Others (2), Communicating (3) and Directing Others (3). He also received an Unsatisfactory conduct mark and a mark of Not Recommended for Advancement. The low mark of 2 for Respecting Others and the conduct and advancement marks were supported with the following comments:

[The applicant], on more than one occasion, displayed blatant disregard for the subordinates he was charged with leading, mentoring, and motivating to accomplish training and operations at Station [redacted] which ultimately had a negative impact on the unit's effort to accomplish assigned tasks in a cohesive manner. On multiple occasions he made inappropriate comments to junior personnel and demonstrated a clear lack of respect for others. Ultimately he did not treat members of the Station [redacted] crew with appropriate dignity and respect, his actions are a violation of Coast Guard Hazing and Bullying Policy. [His] actions demonstrated a character flaw of using his positional power to be insensitive and disrespectful toward his subordinates, regardless if the motive was to do the right thing by holding others accountable.

These are required comments to support an adverse [conduct mark] for [the applicant]. An administrative investigation revealed that [he] utilized inappropriate language on several occasions directed towards members of the crew which created a volatile working environment. These actions fail to conform to appropriate military leadership standards. This member was permanently relieved for cause as the Executive Petty Officer of Station [redacted] and received negative administrative remarks CG-3307 in his service record.

Per COMDTINST M1000.2, section 4.D.4, a permanent RFC requires the removal of a recommendation for advancement. In order to earn a recommendation for advancement, [the applicant] must display positive leadership qualities to motivate his subordinates and comply with the Coast Guard Hazing and Bullying Policy. [The applicant] has the potential to learn from his mistakes and to grow into a strong leader capable of future assignment to challenging positions of increased responsibility.

Following his RFC, the applicant was reassigned as the Operations Petty Officer of a cutter, where he continued to receive strong EERs. According to the applicant, his qualifications as an underway and ashore OIC were removed.

### **VIEWS OF THE COAST GUARD**

On May 20, 2020, 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 allegations that the administrative investigation leading to his PRFC was incomplete, improperly conducted, and biased are not supported by sufficient evidence. Regarding the applicant's allegations that his PRFC was unjust because of pervasive bias throughout the process, the JAG argued that a review of the administrative

investigation reveals that the PIO's report was in substantial compliance with the Administrative Investigations Manual, COMDTINST M5830.1A. The JAG also argued that the investigation was an impartial inquiry that included statements from numerous witnesses, the CO, and the applicant. The JAG stated that although at first sight, the applicant's additional evidence submitted in response to TRFC, supported a conclusion that his subordinates manipulated information to portray him negatively, the Sector Commander acknowledged the applicant's evidence, including the applicant's personal statement, weighed the evidence, and offered the applicant an opportunity to provide additional evidence to support his allegations. The JAG argued that ultimately, the applicant's evidence did not sufficiently address the conduct he alleged took place, leading the Sector Commander to request a PRFC.

The JAG explained that there was a change in the Sector's leadership between the applicant's TRFC and his PRFC. The Sector Commander who initiated the applicant's TRFC, was himself removed for cause before he could seek the applicant's PRFC. The JAG addressed the applicant's allegations that the Sector Commander being removed for cause tainted his judgement and intentions towards the applicant, by stating the applicant had the benefit of another, presumably more independent officer, not colored by his own PRFC, but the new Sector Commander also reviewed the evidence and still chose the same course of action against the applicant. Put differently, the JAG argued that after reviewing the evidence both the old and new Sector Commanders had lacked confidence in the applicant's ability to lead as XPO. According to the JAG, there is no evidence to suggest that the first Sector Commander or the PIO were biased, or that the Sector Commander's own investigation and pending PRFC directly interfered with the disposition of the applicant's case. For these reasons, the JAG argued that there is insufficient evidence to support a finding that an error or injustice took place during the course of the investigation or the PRFC process.

The JAG further argued that applicant was not denied his due process rights after he demanded trial by court-martial but was instead administratively relieved for cause. The JAG stated that based on the findings in the investigative report, the Sector Commander followed the correct procedure as the convening authority. Once the decision was made to seek a TRFC, the applicant had an opportunity to make a statement in writing. According to the JAG, under the Military Assignments and Authorized Absences Manual, COMDTINST M1000.8A, PRFC policies afford the applicant the right to make a statement, challenge evidence, and present his own evidence, which he did in his December 21, 2017, memorandum. The JAG noted that the applicant is also taking advantage of his rights through the BCMR process. The JAG argued that the Military Justice Manual provisions indicate that the applicant's decision to demand trial by court-martial over NJP did not require the Command to pursue criminal charges in order to give the applicant a day in court. The JAG further argued that the applicant's choice to reject NJP and elect trial by court-martial meant that the applicant would not have the opportunity to be heard in court if the Sector Commander elected to pursue adverse administrative action in lieu of disciplinary action. The JAG stated that ultimately the applicant was not disciplined for the conduct that served as the basis for his PRFC, although it may feel that way given the negative impact the PRFC may have on his career. For these reasons, according to the JAG, the applicant was afforded every due process to which he was entitled, and the applicant provided insufficient evidence of an error or injustice on his claims.



The JAG further argued that the applicant's allegations that the adverse administrative action he faced was erroneous or unjust because he lacked intent to bully or exclude others is immaterial because his relief was due to the Sector CO's loss of confidence in his ability to lead, not bullying or hazing. The JAG stated that applicant's PRFC stems from an administrative investigation that found the applicant had been "verbally abusive" to his subordinates. Regarding the applicant's claims that he did not intend to bully his subordinates or single them out on the basis of a protected class, the JAG argued that while the definition of bullying does appear to include an intent element, the definition also says, "bullying includes but is not limited to..." leaving the door open to other interpretations of conduct that may constitute bullying. The JAG argued that regardless, the verbal abuse identified in the investigative report is not in alignment with the Coast Guard's core value of "Respect." The JAG explained that eligibility to serve as an Executive Petty Officer requires, "[p]roven leadership and performance, proper background experience, maturity, dedication, and professionalism."

Finally, the JAG argued that the numerous claims of belittling and derogatory remarks directed toward crew members illustrates several instances where the applicant failed to treat others with respect, negatively impacting good order and discipline within the unit. According to the JAG, the applicant's claims that his actions did not meet the elements of bullying or hazing is inconsequential because he was disrespectful toward his subordinates and crew members to a degree that caused his superiors to lose confidence in his ability to serve as XPO. The JAG argued that because the applicant admitted to using inappropriate language "once or twice," his superiors could have framed his conduct in the PRFC as a violation of Article 92(3) – Dereliction of Duties, Article 93 – Cruelty and Maltreatment, or the general article, Article 134 – Conduct to the Prejudice Good Order and Discipline of the Armed Forces, instead of bullying. The JAG further argued that misconduct under any of these UCMJ provisions would have been sufficient for a PRFC. The JAG explained that policy permitted the applicant's Sector Commander to find that he had committed misconduct without the need for NJP or court-martial. The fact that the applicant was permanently relieved due to a loss of confidence stemming from the applicant's bullying, instead of being relieved for cruelty and maltreatment or some other UCMJ provision, does not shock the sense of justice. The JAG stated that the label assigned to his conduct is immaterial, as the Coast Guard has afforded broad latitude to the TRFC and PRFC authorities to ensure good order and discipline within the service. As such, the JAG stated that the applicant provided insufficient evidence of an error or injustice.

#### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On May 21, 2020, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited him to respond within thirty days. The Chair received the applicant's response on July 31, 2020.

According to the applicant, it is clearly documented in numerous places throughout his record that hazing and bullying was the single pillar to support his relief for cause. The applicant alleged that because there was a predetermined outcome in his case, his Sector Commander was damagingly dismissive throughout the process and purely focused on how to achieve the end result. The applicant further alleged that his point is further supported by this JAG's advisory opinion what stated that the label, or justification, for his relief for cause is immaterial because the Coast

Guard grants broad latitude to its TRFC and PRFC authorities. The applicant stated that taking adverse administrative action with this broad authority when challenged with specific claims of inaccurately portrayed situations and blatant mistruths does shock the sense of justice of everyone who continues to support him in his appeals.

The applicant alleged that his Sector Commander's conclusion that his unit's poor climate was the direct result of his isolated incidents of inappropriate language is more than a stretch; it is another abuse of this "broad latitude." The applicant further alleged that his Sector Commander misrepresented and exaggerated the negative impact his actions had on his unit to support their predetermined outcome. The applicant stated that a command climate survey was conducted in the fall of 2016, only months after his arrival, which indicated that the crew was unhappy, felt overworked, underappreciated, and had several specific issues with senior members of the crew. According to the applicant, there was not a single comment made about him throughout the survey.

The applicant stated that the JAG's advisory opinion used the same exaggerated and inflammatory language that has continued to mask the truth. The applicant alleged that the entire foundation of the Sector Commander's decision has been challenged by multiple senior enlisted members, as well as both past and present members of the unit's Command. The applicant also alleged that many of the accusations relied upon in the JAG's opinion were quickly dismissed as being inaccurate. The applicant stated that what was particularly unfair about the JAG's opinion is that the accusations lobbied against him were the result of rumors from a few members whose intent was to spread hate and discontent. According to the applicant, these few members solicited, pressured, and influenced other members into producing statements that were ultimately altered before being sent to the Sector. The applicant alleged that the PIO never challenged these statements through the investigative process, but had she done so, she would have determined that these statements were not first-person accounts of the alleged events.

The applicant stated that he wanted to be clear about his allegations. Specifically, that the investigation contained multiple statements and opinions that were solicited from junior members by senior petty officers and were made independent of personal facts or knowledge. The applicant alleged that there was no integrity found in his investigation. The applicant further alleged that his BCMR application shows that the inaccuracy of these statements was known to his District Command Master Chief (MCM).

The applicant claimed that the JAG's opinion is misleading and continued to use exaggerated language concerning the number of times he used demeaning and/or derogatory language toward his subordinates. Specifically, the applicant pointed to the JAG's claim of "multiple accusations." According to the applicant, there were only five instances, in a span of eighteen months, where he used inappropriate language and this language was never directed at a person, group of people, or with the intent to bully or harass. The applicant alleged that the statements provided by his accusers were directly challenged by statements submitted to the PIO, to the TRFC and PRFC authorities, and to the BCMR. The applicant further alleged that the only reason they were being so easily dismissed is because they do not support the pre-determined outcome of his previous Sector Commander.

The applicant stated that the JAG's opinion fails to accurately address the definition of "bullying," which has an overarching requirement of "intent" or "for the purpose of exclusion" as quoted in Article 3.A.1.c., of the Discipline and Conduct Manual, COMDTINST M1600.2.

The applicant also argued that the JAG's claim that he had the benefit of two separate Sector Commanders to ultimately review his case is false because the interim Sector Commander was the Deputy Sector Commander throughout the entire investigative process. The applicant claimed that the fact that the then Deputy Sector Commander and the Command Senior Chief were extremely receptive to the information and opinions submitted that contradicted the findings and opinions found in the investigation proves that there was a clear bias throughout the process. According to the applicant, after the previous Sector Commander's own PRFC, he was told in person, both privately and publicly, that his Sector's intentions were to request a transfer and not to seek a PRFC. The applicant alleged that he was told his Sector did not feel that his actions or the totality of the circumstances warranted a PRFC, nor did he deserve the negative repercussions that would result from this action.

The applicant alleged that another inaccuracy contained within the JAG's opinion is her claim that he was afforded the opportunity to present evidence to his Sector Commander. The applicant claimed that he was told by the Sector Commander, prior to his own PRFC, in the presence of the applicant's CO, that he would not be given the opportunity to submit evidence and that the Sector Commander stated he had already made up his mind. According to the applicant, the mentality of his previous Sector Commander is supported by personal statements provided by his CO, who tried to communicate with the Sector Commander in an effort to provide additional facts and opinions derived from personal interactions with the unit's crew members and to provide a different perspective for the period of time between the TRFC and the PRFC. The applicant explained that this alone was enough for him to know that he would not be afforded the opportunity to challenge the investigation or his accusers.

The applicant alleged that his Sector's disconnected decision-making was a gross abuse of the "broad" authority because those who ultimately made the decision on his PRFC were those who were farthest removed from the situation and therefore lacked the knowledge, experience, and facts. The applicant further alleged that his CO felt and continues to feel as though the actions taken against the applicant were disproportionate and did shock the sense of justice. The applicant argued that a CO's viewpoint should carry more weight than the politically charged bureaucratic process of administrative accountability.

Finally, the applicant asked the Board to look to the supporting opinions, submitted in conjunction with his application. The applicant alleged that these supporting opinions come from individuals with firsthand knowledge of his character, leadership, and commitment to the Coast Guard. In addition, the applicant stated that these individuals collectively have over 100 years of Coast Guard service and 30 years of leadership experience. The applicant alleged that this collective group of individuals believe that the action taken against him was disproportionate, unjust, and likely to result in his non-retention in continued service, thus denying him the opportunity to learn and grow.

## APPLICABLE LAW AND POLICY

Chapter 3 of the Discipline and Conduct Manual, COMDTINST M1600.2, in effect in 2017 prohibits bullying. Chapter 3.B.3. defines “bullying” as follows:

Bullying is abusive conduct by a military member or members which harms a military member or any other persons, either physically or psychologically, without a proper military or other governmental purpose and with intent to exclude the member. Bullying is threatening, humiliating, or intimidating. Bullying can also be work interference, undermining performance, or verbal abuse. Individuals are often targeted because they may be perceived to be weak, different, or pose a threat to the bully. Bullying may also be described as psychological abuse, psychological harassment, 'status-blind' harassment, and mobbing. It often involves an imbalance of power between the aggressor and the victim. Bullying includes, but is not limited to:

- (1) Physically striking another in any manner or threatening to do the same,
- (2) Intimidating,
- (3) Teasing,
- (4) Taunting,
- (5) Oral or written berating of another for the purpose of belittling or humiliating,
- (6) Encouraging another to engage in illegal, harmful, demeaning or dangerous acts,
- (7) Playing abusive or malicious tricks; branding, handcuffing, duct taping, tattooing, shaving, greasing, or painting,
- (8) Subjecting to excessive or abusive use of water,
- (9) The forced consumption of food, alcohol, drugs, or any other substance, or
- (10) Degrading or damaging the person or his or her property or reputation.

Chapter 3.C.1. states that a command must investigate any allegations of hazing or bullying and report the allegation up the chain of command and to the civil rights office.

Chapter 3.D.1. states the following about disciplinary actions:

While the Uniform Code of Military Justice (UCMJ) does not specifically address hazing or bullying in the punitive articles, hazing and bullying can, in some cases, serve as the underlying cause in cases of alleged/reported misconduct, including sexual assault and sexual harassment. Similarly, not all cases that may involve hazing or bullying rise to the level of Coast Guard Investigative Service involvement or courts martial. Thus, commands must be familiar with the definitions and reporting requirements described in this policy even if an alleged/reported incident does not extend beyond the unit.

Chapter 3.D.2. states that “[i]n dealing with hazing and bullying, commands have a wide variety of procedures available, depending on an incident’s specific circumstances. One function of command, and a challenge to its leadership capabilities, is to fit the appropriate command response to each particular situation. Available remedies range from counseling to administrative discharge proceedings.”

Chapter 3.D.3. states that bullying may be charged under the following Articles of the UCMJ:

- Article 92: Prohibits disobeying orders and regulations and dereliction of duty.
- Article 93: Prohibits cruelty and maltreatment of a person subject to another’s orders. This offense includes sexual harassment.

- Article 128: Prohibits assault.
- Article 134: Prohibits any conduct prejudicial to good order and discipline, including indecent language and acts. Any other degrading, humiliating, oppressive, etc., conduct could fall under this Article.

The Military Assignments and Authorized Absences Manual, COMDTINST M1000.8A, Article 1.F.1. provides the necessary guidance on Relief for Cause (RFC).

**Article 1.F.1.a. Relief for Cause. 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. Discussion.** (1) The need to relieve for cause may arise when a CO/OIC's, XPO's, EPO's, or CMC/CSC's performance or conduct adversely affects their unit's morale, good order and discipline, and/or mission performance. One of the most severe administrative measures taken against a member in command, an RFC usually has a significant adverse impact on the member's future Coast Guard career, particularly on their promotion, advancement, duty and special assignments, and selection for schools. Therefore, the relieving officer must carefully consider the circumstances' gravity and the potential outcome's total implications before initiating the process.

**1.F.1.c. Authority for Relief for Cause.**

1. Temporary Relief for Cause.

...  
 b. XPO or EPO: Area commanders, sector commanders, and district waterways branch chiefs (dpw) have the authority to temporarily relieve an XPO or EPO.

2. Permanent Relief for Cause.

...  
 b. 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:

1. (1) Unsatisfactory Conduct. Any act of civil or military misconduct in accordance with Article 2.A. of reference (f), Discipline and Conduct, COMDTINST M1600.2 (series) or Article 5.B. of reference (i), Enlisted Accessions, Evaluations, and Advancements, COMDTINST M1000.2 (series), may form the basis for RFC. Only in unusual instances will the permanent relief authority approve RFC by reason of misconduct without disciplinary action taken or in progress. If the command takes no disciplinary action, they must attach an explanation of why disciplinary action is not warranted to the required documents accompanying the recommendation for permanent RFC.

**1.F.1.e. Procedures to Request a Temporary Relief for Cause (RFC).**

(1) Any member of the chain of command may recommend a temporary RFC if warranted in accordance with Article 1.F.1.d. of this Manual. The temporary RFC package will be addressed to the temporary relief authority listed in Article 1.F.1.c.(1) of this Manual and consist of a Coast Guard memorandum containing a detailed summary of the facts surrounding the incident including any disciplinary actions taken and will include the following information and enclosures as applicable:

...

(3) After reviewing the case's circumstances, the temporary relief authority will take one of the following actions.

...

(c) Where grounds for permanent RFC appear substantiated, recommend a permanent RFC per Article 1.F.1.f. of this Manual.

Article 2.H. of the Military Justice Manual, COMDTINST M5810.1G, provides the following guidance on requests for court-martial:

**2.H.3. Effect of Demand for Court-Martial in Lieu of NJP.** A demand for trial by court-martial in lieu of NJP by a member not assigned to or embarked on a vessel does not require that charges be preferred, transmitted, or forwarded. The determination to refer a matter to court-martial resides solely with the Command and superior commanders, despite a member's demand.

Article 4.C. of the Enlistments, Evaluations, and Advancements Manual, COMDTINST M1000.2B, provides the following guidance on unscheduled employee evaluation reports:

Article 4.C.2. 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.

a. General Guidance. Complete an unscheduled evaluation report if the rating chain completed a regular or unscheduled evaluation report for a period ending more than 92 days for E-6 and below, 184 days for E-7 and above, or 19 active or inactive duty periods for reservists, in accordance with Reference (e), Reserve Policy Manual, COMDTINST M1001.28 (series) before one of the events listed below.

(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.<sup>5</sup>

4. The applicant alleged that the Coast Guard erred by denying him his due process rights and relieving him for cause without a hearing. According to the applicant, the Coast Guard erroneously relied upon information contained in an administrative investigation that was based on false and biased information. The applicant further alleged that the Coast Guard erred when it found that he had violated the Coast Guard's hazing and bullying policies. 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.<sup>6</sup> 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."<sup>7</sup>

5. The applicant alleged that when the Coast Guard erroneously denied him the right to a court-martial, they simultaneously denied him his right to a hearing and due process. The record shows that the applicant was offered a hearing at mast, which he refused, as was his right under Article 15 of the UCMJ. Under Article 2.H.3 of the Military Justice Manual, CONDTINST M5810.1G, "A demand for trial by court-martial in lieu of NJP by a member not assigned to or embarked on a vessel does not require that charges be preferred, transmitted, or forwarded. The determination to refer a matter to court-martial resides solely with the Command and superior commanders, despite a member's demand." The preponderance of the evidence shows that the applicant's Sector Commander considered his request for a trial by court-martial, but found that such an extreme measure was not in the unit's or the applicant's best interests. The following excerpt from the applicant's February 13, 2018, PRFC memorandum is instructive:

In considering BMC [applicant's] statement and demand for court martial, after careful deliberation, counsel from legal advisors, and consultation with senior staff at Sector [redacted] and District [redacted], it is not necessary nor advisable to pursue disciplinary action through court martial. Of foremost importance to this decision is my desire to pursue a prompt resolution to enable all involved parties to focus their attention towards their primary goal of meeting operational priorities without the ever-present distraction of a court martial hanging over the unit for several months. Secondly, while BMC [applicant] has demonstrated poor judgment and significant leadership deficiencies, seeking a resolution which would include the lifelong adverse consequences associated with a court martial conviction would be excessive based on the nature of the offenses. I believed NJP was, and continues to be, the appropriate forum to dispose of this issue, both to permit BMC [applicant] an opportunity to present his side of the story as well as offering an appropriate range of punishments in the event I determined his conduct merited punishment.

Accordingly, I am requesting a final decision regarding this request for PRFC without disciplinary action having been taken.

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<sup>5</sup> *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).

<sup>6</sup> 33 C.F.R. § 52.24(b).

<sup>7</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

As stated above, the record shows the applicant was afforded the opportunity to present his case before the Sector Commander at mast, but he refused this opportunity and opted instead for a trial by court-martial. However, Coast Guard policy makes it clear that while a service member may refuse NJP and demand trial by court-martial, he or she is in no way guaranteed that a court-martial will be convened. That decision is left solely to a service member's chain of command. The record shows that the Sector Commander carefully considered the applicant's request for a court-martial but found that it was not in the best interest of the Coast Guard or the applicant to pursue that course of action. According to the Sector Commander, he believed that exposing the applicant to the life-long consequences associated with a court-martial was excessive based on the nature of the offenses. The applicant has not proven by a preponderance of the evidence that the Coast Guard denied him due process by not convening a court-martial.

6. The applicant alleged that his RFC was unjust without a hearing, but according to Article 1.F.1.d. of the Military Assignments and Authorized Absences Manual, COMDTINST M1000.8A, when initiating RFC due to unsatisfactory conduct, disciplinary action such as NJP or a court-martial is preferred but not required. Specifically, Article 1.F.1.d. states, "If the command takes no disciplinary action, they must attach an explanation of why disciplinary action is not warranted to the required documents accompanying the recommendation for permanent RFC." As the above cited memorandum shows, the applicant's Sector Commander thoroughly explained why disciplinary action was not being taken against the applicant in his February 13, 2018, memorandum and thereby satisfied the necessary requirements of Article 1.F.1.d. of COMDTINST M1000.8A. Although the applicant contends that his Command was required to take some sort of disciplinary action against him, Coast Guard policy makes it clear that disciplinary action under the UCMJ is not required when seeking a service member's relief for cause due to unsatisfactory conduct. Therefore, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that the Sector Commander committed an error or injustice by following the administrative procedures for RFC, which do not include an in-person hearing, after he rejected NJP.

7. The applicant alleged that the Coast Guard based its decision to permanently relieve him for cause on false and doctored accusations. However, the applicant has failed to provide any substantive evidence to support these allegations of false and doctored statements in the investigation. The fact that many crew members had positive experiences with the applicant and did not have the negative experiences reported by other crew members to the Sector Command and the PIO is not evidence that the negative reports were false. The Sector Commander ordered an administrative investigation, reviewed the PIO's report, and concluded that the applicant had engaged in conduct that was not in line with the Coast Guard's core values or with what was expected of its senior leaders. The record further shows that as a result of the evidence contained within the administrative investigation, the applicant's Sector Commander lost confidence in his ability to lead and initiated his relief for cause.

Article 1.F.1.b. of the Military Manual and Authorized Absences Manual, COMDTINST M1000.8A, states, "The need to relieve for cause may arise when a CO/OIC's, XPO's, EPO's, or CMC/CSC's performance or conduct adversely affects their unit's morale, good order and discipline, and/or mission performance." The record shows that the applicant used inappropriate language while conversing with his subordinates and engaged in other intimidating conduct that



adversely affected his unit's morale. Interviews conducted during the administrative investigation further revealed that the applicant was belittling toward some of his subordinates' professional goals, was aggressive and threatening when he wanted to increase unit operations, and called his subordinates inappropriate names. Although the applicant was dismissive as to the extent of his misconduct, he admitted to using inappropriate language on at least five separate occasions during his tenure at this unit.

To support his application, the applicant submitted multiple personal statements that contradicted the allegations made against the applicant or excused the applicant's behavior altogether. While these statements provided different perspectives of the applicant's behavior, several of them came from individuals who did not have firsthand knowledge of the alleged behavior toward the subordinates and are therefore insufficient to prove that those allegations made against the applicant were manufactured or false. In fact, the applicant's own CO, who strongly supported him and tried to stop the RFC, stated that the applicant had likely made the alleged inappropriate statements at issue here.

Therefore, the Board finds that the applicant has not proven by a preponderance of the evidence that the Sector Commander committed error or injustice in losing confidence in the applicant after finding that the applicant had engaged in conduct that adversely affected his unit's morale and good order. Nor has he shown that he was deprived of his rights in the RFC process. The record shows that the applicant was properly notified of the RFC and allowed to submit a statement and evidence for consideration. Therefore, the applicant has failed to prove, by a preponderance of the evidence, that his relief for cause was erroneous or unjust.

8. The applicant alleged that it was erroneous for the Sector Commander to overrule his CO—who was closer to the situation and more readily able to discern the facts of the case—by requesting the applicant's relief for cause. However, Article 1.F.1.c.(1)(b) of the Military Assignments and Authorized Absences manual, CONDTINST M1000.8A states, "Area commanders, sector commanders, and district waterways branch chiefs (dpw) have the authority to temporarily relieve an XPO or EPO." The record shows that the applicant's Sector Command received multiple emails wherein the applicant's subordinates raised concerns regarding his treatment of them. The record also shows that these concerns were not raised to the applicant's direct chain of command, and as a result, the Sector Commander initiated the administrative investigation. Although the applicant's CO was an authorized authority to initiate RFC, he was not the only authority authorized to do so. Pursuant to Chapter 3 of COMDTINST M1600.2, after receiving allegations of bullying from the applicant's subordinates, the Sector Commander was obligated to investigate the allegations made against the applicant and was authorized to initiate TRFC as a result of the findings in the report of the investigation. Regarding the applicant's PRFC, Article 1.F.1.2.b. of COMDTINST M1000.8A provides that the Commander of Coast Guard Personnel Service Center, Enlisted Personnel Management (PSC-EPM) division, is the authorized authority to approve a PRFC. Here, the record shows that, after reviewing the Sector Commander's memorandum and accompanying evidence, Commander, PSC-EPM found that a PRFC was justified and warranted. Therefore, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that his TRFC and PRFC violated Coast Guard policy and that the Coast Guard erred when it approved the Sector Commander's requests to temporarily and permanently relieve the applicant for cause despite the CO's apparent objection.

9. The applicant alleged that Sector Command erroneously applied Coast Guard hazing and bullying policies when initiating his TRFC and PRFC. He argued that his conduct did not meet the definition of bullying, so he should not have been charged under the UCMJ and should not have been relieved for cause for unsatisfactory conduct. According to the applicant, the conduct revealed by the investigation could not be considered a violation of the bullying policy because he lacked the requisite intent to isolate or exclude any specific member or group of individuals when he engaged in the inappropriate conduct. Although one sentence of the definition of bullying does mention an “intent to exclude the member,” the full definition of bullying in Chapter 3.B.3. of COMDTINST M1600.2 shows that the definition of bullying is broader than that, with many elements, and may include being intimidating, belittling others, and encouraging others to engage in harmful acts—such as prohibiting subordinates from seeking adequate food and water—without an intent to exclude a member.

The record shows that the applicant was relieved for cause due to his Command’s loss of confidence in his ability to lead due to unsatisfactory conduct. Under Article 3.C.1.3. of the Coast Guard Discipline and Conduct Manual, COMDTINST M1600.2, “Commanding officers who receive complaints or information about hazing or bullying must investigate and take prompt, effective action. Unit commanding officers and supervisors must ensure reports of hazing or bullying are promptly and fully investigated and appropriately resolve verified instances of hazing.” As such, the Board finds that the applicant has not proven, by a preponderance of the evidence, that the PIO erred when it found that the applicant had violated the bullying policy by being intimidating and verbally abusive to subordinates. The Board recognizes that that the Sector Commander’s decision to remove an officer is a subjective and discretionary one, but finds that the applicant has not proven, by a preponderance of the evidence, that the Sector Commander abused his discretion when losing confidence in the applicant’s ability to lead.

Furthermore, Article 3.A.1.a. of COMDTINST M1600.2, “Hazing and bullying erodes mission readiness and will not be tolerated. A healthy work environment is free from conduct that unreasonably interferes with an individual’s work performance, or creates an intimidating, offensive, or hostile work environment.” This same article also states, “Treating each other with dignity and respect is an essential element of a healthy work environment, workforce resiliency, morale, diversity & inclusion, retention, and mission effectiveness.” The record shows that the applicant engaged in conduct and language that eroded mission readiness and unreasonably interfered with some of his subordinates’ work performance. He had also failed to treat some of his subordinates with respect. The applicant himself admitted to using language toward his subordinates that was not in keeping with the Coast Guard’s core values. Article 3.D.2. of COMDTINST M1600.2 states that when a member commits bullying, the command may take administrative actions ranging from counseling to initiating an administrative discharge from the Service. Article 1.F.1.e.3.c. of COMDTINST M1000.8A states that when grounds for a PRFC are substantiated, a PRFC should be recommended. The record shows that the applicant’s Sector Commander found that at least some of the allegations against him had been substantiated, and so lost confidence in his leadership and recommended his PRFC. Therefore, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that the Coast Guard committed an error or injustice by relieving him for cause.

10. Regarding the applicant's request to have his unscheduled EER and negative Page 7 removed from his record. The Board finds that the applicant has failed to prove, by a preponderance of the evidence, that his unscheduled EER and Page 7 were erroneous. Article 4.C.2.(9). of the Enlistments, 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." In addition, Article 10.A.1.1. states, "The CG-3307 provides a means of recording miscellaneous entries, which are not recorded elsewhere in a Personnel Data Record (PDR). Administrative Remarks entries are made, to document counseling, or to record any other information required by current directives, or considered to be of historical value." Because the applicant has not proven by a preponderance of the evidence that his PRFC was erroneous or unjust, the Board finds no grounds for removing the Page 7 or the EER documenting his PRFC.

11. The applicant made numerous allegations with respect to the actions and attitudes of various officers and subordinates. Those allegations not specifically addressed above are considered to be unsupported by substantial evidence sufficient to overcome the presumption or regularity and/or are not dispositive of the case.<sup>8</sup>

12. For the reasons outlined above, the applicant has not proven, by a preponderance of the evidence, that his TRFC and PRFC or the Page 7 and EER documenting his PRFC were erroneous or unjust. Accordingly, the applicant's request should be denied.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

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<sup>8</sup> 33 C.F.R. § 52.24(b); *see Frizelle v. Slater*, 111 F.3d 172, 177 (D.C. Cir. 1997) (noting that the Board need not address arguments that "appear frivolous on their face and could [not] affect the Board's ultimate disposition").

