

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2020-108

██████ ██████ ██████
YNC

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 April 30, 2020, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated April 21, 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 Yeoman (YNC/E-7) on active duty, asked the Board to correct her record by upgrading her June 20, 2018, to September 30, 2019, Enlisted Evaluation Review (EER) to change:

- The Conduct mark from Unsatisfactory to Satisfactory,
- To upgrade her future potential to reflect that she was Recommended for advancement, and
- To upgrade the mark of 3 that she was assigned for the “Accountability and Responsibility” competency dimension to a 6.¹

The applicant also asked the Board to correct her record by reinstating her in her prior position on the Promotion Year (PY) 2019 Chief Warrant Officer (CWO) eligibility list and offer her a CWO commission effective June 1, 2020.

The applicant argued that her performance during the marking period clearly demonstrated that the marks provided by her command on the disputed EER were erroneous. She referenced

¹ On an EER, enlisted members are evaluated in numerous performance competencies on a scale from 1 (worst) to 7 (best). They also receive a recommendation regarding advancement and a Conduct mark.

her performance as the Recorder for an Administrative Separation (ADSEP) Board for which she assembled all required documents and briefed the board members on procedures after having only had a week to prepare herself. The applicant also highlighted her efforts to organize the Chief Petty Officers Association's 50th annual gala that had a budget of over \$50,000. She also noted that during the reporting period, she was on temporary duty (TDY) orders from August 2019 to February 2020, and that she "skillfully managed over 100 critical solicitations for worldwide deployments for [the Sector] and their 13 subunits." Finally, the applicant highlighted assistance she provided to an officer stationed in Europe by coordinating support for the officer's legal and administrative questions.

The applicant also argued that her supervisors did not communicate their expectations for her performance and that she was not "provided the information to improve." She noted that her supervisor counseled her about the performance expectations of her position in October 2018, about four months after she reported to the unit and after her interim security clearance was denied. The applicant claimed that during the meeting, her supervisor did not tell her that the denial of her interim clearance would adversely impact her EER or provide her with any advice on how to proceed. She asserted that she did not learn about the negative impact that her credit history and the denial of the interim clearance would have on her EER until she received the EER via email and that she was "in shock." The applicant also appeared to allege that she received inconsistent explanations for the marks and comments in response to her requests for reconsideration.

The applicant also argued that mid-period counseling was not completed. She alleged that her chain of command did not communicate to her that there would be any adverse impacts on her EER following receipt of the May 2019 memorandum from the Coast Guard Security Center (SECCEN) expressing intent to revoke the applicant's security clearance. The applicant noted that she had applied for and was recommended for CWO in February 2019, "...well after the interim clearance denial." She also stated that she was not provided with any guidance on how to remedy the situation with her security clearance until she arrived at the TDY location she was assigned to by her permanent duty Command in May 2019. According to the applicant, after her TDY leadership advised her of the meaning of the SECCEN memorandum regarding her security clearance, she immediately sought financial counseling and took action to satisfy delinquent debts that had resulted from her divorce. She noted that as of the date of her application, she had paid off and satisfied four of the five debt items of concern and the remaining debt was on track to be paid off by August of 2020.

The applicant also argued that she was able to perform all of her duties as an Administrative Yeoman at her permanent duty station regardless of the status of her security clearance. She asserted that she was able to assist with several morale events, including a Christmas party, while her clearance was inactive pending her appeal.

The applicant also alleged that her Command had made several erroneous statements. First, she disputed her Command's claim that she was informed that she would no longer be recommended for CWO. Instead, the applicant claimed that she did not learn that her recommendation had been withdrawn until the Executive Director at her TDY assignment informed her in October of 2019. She also disputed several statements in the EER itself.

- The applicant pointed to the following statement in her EER: “IAW COMDTINST M1000.2B a history of financial irresponsibility requires an Unsatisfactory Conduct Mark. Financial irresponsibility was revealed during a recent personnel security investigation through SECCEN.” In contrast, the applicant argued that SECCEN and DHS ultimately determined that she was not financially irresponsible when her clearance was reinstated. She also argued that the delinquent debts were from six years prior to the reporting period and that her current payments are made on time. The applicant asserted that a history of financial irresponsibility is defined as a “member having current recent debts or mortgages that are continuously late and not making any efforts to rectify their situation.” She went on to say that there is ambiguity in how financial status should be considered in a marking period, specifically what should be considered as “history” and how that should be defined.
- The applicant also disputed the following statement in her EER: “YNC Has [sic] shown a history of failure to meet financial obligations and not satisfying debts. Member does not hold self-accountable for actions. Per SECCEN memo dated 15 July 2019, security clearance has been revoked.” The applicant argued that the July 15, 2019 SECCEN memo only expressed an intent to revoke her security clearance, and was not a final determination. She stated that after the appeal process and further investigation, she was able to maintain her clearance. The applicant also argued that if “history” was intended to include debt incurred six years prior to the reporting period, members of the Coast Guard would never be able to “recover from life events.” She reiterated that she has consistently met her financial obligations in recent history.

The applicant also argued that her performance has always been exemplary. She stated that she never had the intent to do any wrong during her career. The applicant explained that she “went through a tough divorce with financial consequences, had a lack of understanding of how to read a credit report, and had not pulled one in over 5 years.” She asserted that her financial situation had improved since the divorce and was satisfactory at the time of her application with all debts paid on time and her dependents supported adequately as required by the Coast Guard. The applicant also argued that the debts were incurred while she was assigned to a different duty station and that her Command there was aware of the situation and “did not believe it was necessary to allow it to reflect [sic] my EERs and recommended me for advancement.”

The applicant also argued that the Coast Guard’s policy “on handling financial situations is unclear.” She claimed that there is a disparity in how financial problems are addressed in EERs between units and ranks. The applicant provided an example of a fellow member who she claimed had not paid their rent for six months during a marking period but still received recommendations for advancement and satisfactory performance. She argued that she was recommended for advancement during the marking period when she had accumulated the bad debt. However, six years later, while actively working to correct the situation and two months after being recommended for appointment to CWO, she was unjustly not recommended for advancement and marked as Unsatisfactory on the disputed EER.

The applicant also argued that the Board should consider the “poor treatment” she received from her Command during her assignment. She stated that she felt like an outsider when she first reported to the duty station and that her supervisor never made an attempt to meet her until six

weeks after her arrival. The applicant also claimed that she made several attempts to ask for training and administrative work to occupy her time while she did not have a clearance, but she was ignored. She also argued that she was informed the day of multiple morale events, which made her feel as if she was not part of the team. The applicant claimed that this mistreatment took place before there was any issue with her security clearance.

The applicant asserted that the context of the unpaid debts should be noted because her Command did not afford her an opportunity to explain her situation. She stated that after her divorce, she intended to start over and try to rebuild her credit, resiliency, and focus on her career once her family was stable. The applicant also emphasized the impact that several events that took place at her prior duty station had on her personal life and professional career. During her assignment, two of her shipmates were murdered and another two committed suicide. The applicant also referenced challenges in her personal life including her divorce that required her to pay her ex-husband alimony and sensitive hardships with one of her children.

Finally, the applicant argued that “everything” in her EER should be null and void because she has paid her debts and the Department granted her appeal and reinstated her security clearance.

To support her request, the applicant provided records that are included in the Summary of the Record, below, and statements from other members who attested to her character, work ethic, and performance. The applicant also included a statement from a former co-worker who was a Coast Guard civilian employee. She attested that the applicant’s Supervisor for the disputed EER did not make an effort to introduce himself to the applicant when she first reported to the duty station. The applicant’s former co-worker stated that she “thought it was a bit strange that [the Supervisor] would come to the Command and not stop to see someone who would be working for him, but I just dismissed it.”

SUMMARY OF THE RECORD

The applicant enlisted in the regular Coast Guard on July 20, 1998, and attended YN “A” School. Her early records show that she received NJP twice and a few negative Page 7s, but she also received a nomination for a Sailor of the Quarter award, three Meritorious Unit Commendation Medals, a Meritorious Team Commendation Medal, two Letters of Commendation, and two Achievement Medals. She advanced from YN1 to YNC in 2012.

The applicant received a positive Page 7 entry from a former Commanding Officer on March 23, 2018, in anticipation of an upcoming CWO selection board. She was recognized for excelling at managing pay and administrative duties while handling unique challenges that arise when stationed overseas. The applicant was also recognized for her “extensive knowledge of travel regulations,” “maturity,” and “willingness to take on more responsibilities.”

On June 11, 2018, the applicant was awarded a third Coast Guard Achievement Medal for superior performance of duty from July 2014 to June 2018. The applicant was recognized for navigating “complex information technology and budget rules to facilitate procurement and support of critical computer and telecommunications equipment, providing vital capabilities for watch standers, trial attorneys and command staff.” The applicant also received a Page 7 on the

same date recognizing that she “enthusiastically volunteered” from 2015 to 2018 to be on the local Federal Campaign Committee.

On June 20, 2018, the applicant reported for duty to a new position at Coast Guard Headquarters.

Security Clearance History²

On January 7, 2014, a Security Clearance Determinations with Conditions Memorandum was issued due to the applicant’s financial issues.

A Letter of Intent to Revoke Security Clearance was issued on July 16, 2014, due to the applicant’s failure to comply with the conditions in the January 7, 2014, memorandum, the accumulation of additional financial issues, and the applicant’s failure to respond to the Letter of Intent.

On September 30, 2014, a Final Decision to Revoke Security Clearance was issued due to the applicant’s failure to respond to the Letter of Intent. The final decision to revoke the applicant’s security clearance was upheld on November 13, 2014, due to the applicant’s failure to respond to the Letter of Intent. However, on December 9, 2015, the revocation was reconsidered and the applicant was granted a Secret clearance with a letter of caution.

On June 20, 2018, the applicant received an assignment that required her to work in a Sensitive Compartmented Information Facility (SCIF). In order to physically enter the SCIF, the applicant was required to possess a TS/SCI security clearance. The applicant was also required to possess a TS/SCI clearance in order to attend workplace briefings that involved classified information.

On May 13, 2019, the applicant was issued a SECCEN Letter of Intent to revoke her top secret security clearance. The letter identified five delinquent debts totaling \$8,968.00. The letter also stated that the applicant had failed to disclose two of the delinquent debts when applying for her security clearance. The letter also recognized that when completing her Standard Form (SF 86) Questionnaire for National Security to obtain her security clearance, the applicant had pulled her credit report while completing the form. The letter stated that the applicant’s credit report would have listed the two delinquent debts that the applicant failed to disclose. Therefore, SECCEN stated that the failure to disclose was a “deliberate omission, concealment, or falsification of relevant facts.” In addition to the applicant’s prior history of investigations and determinations concerning her security clearance discussed above, the letter also noted that the applicant had filed a Chapter 7 Bankruptcy Case in May of 2002 that was discharged in August of 2002. The applicant acknowledged receipt of the Letter of Intent and indicated that she would respond within 30 days.

² The information pertaining to the adjudication of the applicant’s security clearance in 2014 is derived from the May 13, 2019, SECCEN Letter of Intent to Revoke Security Clearance and Deny SCI Eligibility. The corresponding documents were not provided by the applicant and were not included in her personnel record.

On May 14, 2019, the applicant's Command requested the involuntary removal of the applicant from the PY 2018 and PY 2019 CWO Eligibility List due to "security concerns and clearance revocation."

Due to the clearance requirement for her to enter her workplace, the applicant was reassigned to a temporary duty (TDY) station following issuance of the Letter of Intent.

On July 15, 2019, SECCEN notified the applicant of its final decision to revoke her security clearance. In the decision, SECCEN provided that the applicant's response to the Letter of Intent "failed to sufficiently mitigate [her] Financial Considerations and Personal Conduct." The Final Decision also noted that the applicant's security clearance had been reinstated on December 9, 2015, and that in less than three years, the applicant had acquired additional "substantial delinquent debt." The Final Decision explained that the applicant's actions indicated a "possible failure to live within one's means, satisfy debts, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about an individual's reliability, trustworthiness, and ability to project [sic] classified or sensitive information." The applicant acknowledged receipt of the Final Decision and indicated that she would appeal within 30 days to the Personnel Security Appeals Board (PSAB).

On November 6, 2019, the PSAB notified the applicant of its determination to maintain the revocation of her security clearance and notified her of her right to appeal the decision to the Department of Homeland Security (DHS) Appeals Board (SAB).³

The applicant appealed to the DHS SAB on December 6, 2019.⁴ On February 28, 2020, the Administrator of the SAB notified the applicant that her eligibility to access classified information had been reinstated with condition. The SAB concluded that the applicant had met the standard for access to classified national security information as it pertains to judgment, reliability or stability. However, as a condition, the applicant was required to continue making reasonable progress on the discharge of her outstanding debts and prohibited from becoming delinquent in paying any new debts. The Coast Guard Personnel Security Appeals Board was directed to review the applicant's credit history six months from the date of the letter to ensure that the applicant had indeed made reasonable progress on discharging her outstanding debts and that she had not become delinquent in paying any new debts.

Disputed EER

On October 2, 2019, the applicant received her EER covering the reporting period from June 20, 2018, to September 30, 2019. She received superior marks of 7 for the "Partnering" and "Chief's Mess Leadership" competency dimensions. The applicant received excellent marks of 6 for the "Military Bearing," "Initiative," and "Respect for Others" competency dimensions. She received above average marks of 5 for the "Customs Courtesies Traditions," "Quality of Work,"

³ The applicant did provide a copy of the PSAB determination with her application. A copy of the PSAB determination is also not included in the applicant's personnel file.

⁴ The applicant did provide a copy of her appeal documentation to the SAB with her application. A copy of the applicant's appeal to the SAB is not included in the applicant's personnel file.

“Technical Proficiency,” “Strategic Thinking,” “Military Readiness,” and “Self Awareness” and “Learning” competency dimensions. The applicant was assigned average marks of 4 for the “Decision Making Problem Solve,” “Workforce Management,” and “Effective Communication” competency dimensions.

The applicant was also assigned a below standard mark of 3 for the “Accountability Responsibility” competency dimension. The applicant’s Supervisor explained in the comments accompanying this mark that the applicant had “poorly managed finances and intentionally failed to disclose such information during SSBI process. Mbr was denied TS/SCI clearance and revoked SECRET as a result of this.” In addition, the applicant’s “Conduct” mark was Unsatisfactory and she was not recommended for advancement. The supporting comments provided by the applicant’s Supervisor explained that she “demonstrated a history of financial irresponsibility that was discovered during a recent investigation for TS/SCI clearance. SECCEN revoked SECRET clearance.” The applicant’s Supervisor also stated that the applicant needed to show more responsibility by satisfying debts and meeting financial obligations and that she currently was unable to perform at the next higher paygrade due to “unsatisfactory conduct given for financial irresponsibility. Mbr has shown a lack of judgement and responsibility not meeting financial obligations and failure to live within one’s means. Mbr deliberately excluded this information from SF86.”

In terms of the applicant’s “Future Potential,” her Supervisor stated that the applicant needed to “take care of financial obligations and show more responsibility towards meeting and satisfying debts and demonstrate personal accountability before taking on new leadership roles.” Her Supervisor noted that the applicant had the potential to excel in the service as her past performance was strong, but the “recent findings by SECCEN are an unfortunate hurdle in the [applicant’s] professional and personal development.” With regard to the applicant’s “Advancement Potential,” her Supervisor remarked that the applicant was not recommended for advancement to “the next higher paygrade due to a history of financial irresponsibility” consistent with Coast Guard policy.

On October 2, 2019, the applicant emailed her rating chain to dispute her EER. She stated that she “wholeheartedly disagree[d] that [her] conduct and advancement potential should be affected in any way by [her] security clearance (still in process and not required to be a Yeoman) and was unaware that the command had made any type of determinations regarding misconduct/unsat conduct when it came to the situation.” The applicant argued that the debt was from a previous marriage that had ended almost seven years earlier and that the comments in her EER did not provide an accurate description of her financial situation. She asserted that there were “specific details with mitigating circumstances currently under review by SECCEN.” The applicant pointed to her recommendation for CWO and stated that she did not believe the EER was a fair and accurate depiction of her contributions during the marking period. She also claimed that the comments and “personal derogatory ratings” reflected her Supervisor’s personal opinion regarding her financial management. The applicant requested that her Supervisor reconsider the

marks and comments assigned for the “Accountability Responsibility,” “Conduct,” “Future Potential,” and “Advancement Potential” dimensions.

On October 3, 2019, the applicant’s Supervisor responded to the applicant’s request for reconsideration by email. Her Supervisor explained that the Unsatisfactory Conduct mark was based on Chapter 4 of the Coast Guard Enlistments, Evaluations, and Advancements Manual, COMDTINST M1000.2B. Specifically, the applicant’s Supervisor pointed to Chapter 4.b. which provides that the “rating chain must assign an Unsatisfactory mark in Conduct whenever any of the following occurs ... financial irresponsibility.” The applicant’s Supervisor noted that SECCEN identified financial irresponsibility on the part of the applicant while completing her clearance investigation. Her Supervisor argued that the determination was not his personal opinion, but factual information presented by the adjudicator at SECCEN. The Supervisor went on to state that whether the applicant had mitigating information or not, the fact was that she had been found financially irresponsible and that had to be properly noted in her EER pursuant to Coast Guard policy.

In terms of the applicant’s recommendation for CWO, her Supervisor acknowledged that she had been recommended as eligible for appointment to CWO in December of 2018 “before the financial irresponsibility issue came to light.” Her Supervisor asserted that the applicant was no longer eligible for appointment to CWO pursuant to Chapter 8 of the Appointing Warrant Officers Manual, COMDTINST M1420.1.⁵ The applicant’s Supervisor also asserted that the applicant should not have been surprised by the contents of her EER because she had previously been denied tuition assistance due to financial irresponsibility. Her Supervisor also stated that he counseled the applicant regarding her removal from the CWO eligibility list following the issuance of the “clearance revocation memo” in late April or early May 2019. The applicant’s Supervisor concluded by stating that her “contributions are one thing, but [her] conduct has not been up to par of what is expected from a Chief Petty Officer.”

On October 7, 2019, the applicant responded to her Supervisor by email. She argued that by stating that the applicant was financially irresponsible, her rating chain was implying that she was not paying her credit card bills, utilities, mortgage, and rent, and was not taking care of her dependents. The applicant argued that was not accurate and that all of her bills were paid as required and that she provided SECCEN with a budget worksheet. The applicant also argued that her Supervisor should take into account the conditions that SECCEN applies as mitigating factors, including divorce or separation and the amount of time that had passed since the financial problems occurred. She reiterated that the debt had been incurred during her divorce in 2012/2013 as a result of the financial strain caused by the alimony payments she was required to make to her ex-husband. The applicant alleged that an attorney told her at the time that she should only ensure that she made the alimony payments and not to worry if “a couple of credit card bills went to collections.” She also claimed that when she reviewed her credit report, she did not understand what a “charge off”

⁵ Page 8-1 of COMDTINST M1420.1 provides that “[i]t is the responsibility of each officer in the chain of command to notify Commander (CG-PSC-OPM-1) or Commander (CG PSC-RPM-1) if the candidate has become disqualified after publication of the final eligibility list. A disqualification as used herein is deemed to be any circumstance which casts doubt on the moral or professional qualifications of the member concerned for the appointment contemplated or an unsatisfactory mark in conduct for any subsequent period.”

notation meant and assumed that she was no longer responsible for paying the debt. The applicant argued that once she realized that she was in fact responsible for paying those amounts, she paid them off.

Finally, the applicant emphasized that the SECCEN adjudication process was ongoing and that her appeal had not been finalized. She acknowledged that her Supervisor informed her of her removal from the CWO eligibility list, but stated that she believed that the removal would not happen until her appeal of SECCEN's determination was complete. The applicant also argued that at the time she was denied tuition assistance, she did not request an explanation for the denial due to time constraints. She renewed her request for reconsideration of her EER and reiterated that the financial issues had occurred more than six years prior to the marking period.

The applicant was provided with a final copy of her EER on October 9, 2019. Although the marks remained unchanged, the applicant's Supervisor did revise the supporting comments. For the "Adaptability Responsibility" dimension, the applicant's Supervisor revised the supporting comment to state that the applicant had "shown a history of failure to meet financial obligations and not satisfying debts. Member does not hold self-accountable for actions. Per SECCEN memo dated 15 July 2019, security clearance has been revoked." The applicant's Supervisor also explained that the applicant was not recommended for advancement pursuant to COMDTINST M1000.2B due to her Unsatisfactory mark for "Conduct" and her history of financial irresponsibility. The applicant's Supervisor explained that the applicant had future potential, but noted that:

[The applicant needed to] take care of financial obligations and show more responsibility towards meeting and satisfying debts and demonstrate personal accountability before taking on new leadership roles. Once YNC's personal financial obligations are resolved, YNC has the potential to excel in the service. Based on past performance, YNC has been a strong performer. The recent findings by SECCEN are an unfortunate hurdle in the YNC's professional and personal development.

The applicant acknowledged receipt of her revised EER on October 11, 2019, but noted next to her signature that she planned to appeal. The applicant appealed her EER on October 24, 2019. She asserted that Coast Guard policy prohibited her from appealing her Supervisor's recommendation for advancement and Conduct mark. The applicant only requested that the mark of 3 that she was assigned for "Accountability and Responsibility" be raised to a 6 based on her performance during the reporting period. The applicant also argued that her supervisors did not communicate her performance responsibilities and did not notify her that the denial of her interim clearance would have an adverse impact on her EER. She also argued that mid-period counseling was not completed as required. The applicant claimed that between the time that she received in the Letter of Intent in May of 2019 and the completion of her EER in September of 2019, she was not provided with any formal or informal indication that her "security clearance situation" would have a negative impact on her EER, and her Command did not provide her with any guidance or advice on how to address the situation. The applicant asserted that she did not receive guidance on how to remedy the situation and took "immediate action" to satisfy the delinquent debts. She also emphasized that her performance was exemplary and that the delinquent debts were the result of difficult family and personal situations that she overcame at her previous assignment. The applicant asserted that she intended to fight the security clearance adjudication and that she would

seek relief from the Board once the appeal process of her security clearance determination had been exhausted.

An Endorsement of the applicant's appeal was submitted by her Command on November 7, 2019. Her Commanding Officer found her appeal to be unfounded and recommended denial. The Endorsement noted that the Executive Officer, Logistics Officer, and Administrative Officer had heard the applicant's arguments supporting her request to raise her mark for Adaptability Responsibility from 3 to 6 and determined that a mark of 3 was appropriate based on the facts discovered during the applicant's security clearance adjudication process. The Endorsement also noted that the applicant's security clearance had been revoked due to a history of indebtedness that first came to light during the applicant's security clearance investigation in 2014. The applicant was ultimately granted a Secret clearance with a Letter of Caution. When the applicant reported to her current assignment, an interim TS/SCI clearance was requested but denied due to her history of indebtedness. The Endorsement noted that the applicant claimed to have reviewed her credit report while preparing her SF-86 and that had she done so, she would have identified the delinquent debts. However, the applicant did not identify the debts on her SF-86 and appeared to deliberately violate the disclosure requirement.

In terms of the applicant's Unsatisfactory Conduct mark, the Endorsement disputed the applicant's claim that Coast Guard policy did not permit her to appeal it. The Endorsement indicated that the recommendation for advancement was not appealable, but that she was permitted to appeal the Conduct mark. However, the Commanding Officer determined that the Conduct mark issued by the rating chain was appropriate due to financial irresponsibility. The Endorsement acknowledged that the applicant claimed to have taken positive steps to resolve the debts but concluded that the applicant had not practiced self-accountability or responsibility to address her indebtedness in a timely manner. The Endorsement also noted that the applicant blamed "bad guidance" that she was allegedly given by a legal representation. However, the Commanding Officer argued that five years after the applicant was first notified of security concerns regarding her indebtedness, the applicant had had her security clearance revoked again for financial irresponsibility and she had failed to hold herself accountable and responsible, causing her duty station to go without a YNC for "an indeterminate amount of time" because she could not enter the SCIF.

On November 21, 2019, the Commandant (CG-2) denied the applicant's appeal of her EER. CG-2 found that the applicant's appeal documentation did not adequately address the particular circumstances and performance issues cited by her Command as the basis for her marks. CG-2 determined that the record provided ample evidence of financial irresponsibility during the EER period. Specifically, CG-2 pointed to the several accounts against which collection actions had been initiated/reported or where the credit had charged off the debt as evidence of the applicant's ongoing financial irresponsibility. CG-2 determined that the evidence provided a reasonable basis for a mark of 3 in the "Accountability and Responsibility" competency, "particularly in light of a documented history of financial issues affecting [her] clearance." CG-2 also stated that Coast Guard policy expressly provides that financial irresponsibility required an Unsatisfactory Conduct mark. Therefore, in denying her appeal, CG-2 concluded that the applicant's mark of 3 for "Accountability and Responsibility" was not based on incorrect

information, prejudice, discrimination, and was not disproportionately low in light of the particular circumstances.

VIEWS OF THE COAST GUARD

On November 17, 2020, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which he 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 failed to provide sufficient evidence to meet the standard for correction of an evaluation report outlined in *Hary v. United States*.⁶ The *Hary* standard requires a showing by competent evidence of (1) a misstatement of a significant hard fact; (2) a clear violation of specific objective requirement of statute or regulation; or (3) factors adversely affecting the ratings which had no business being in the rating process.⁷ As to the first prong, the JAG noted that in asserting that her rating chain acted erroneously, the applicant had relied on the February 28, 2020, DHS SAB decision and had characterized its determination as finding no financial irresponsibility. The JAG argued that the applicant mischaracterized the SAB determination and stated that “[t]hough they may relay [sic] on the same body of facts, the EER and its appeal process and the security clearance review and its appeal process are separate and distinct.” Therefore, the JAG argued, that the DHS SAB’s determination did not change the underlying indebtedness that prompted the applicant’s rating chain to assign certain marks on her EER. The JAG asserted that the “facts of the indebtedness, as further bolstered by the prior 2014-2015 incident, were sufficient proof for [redacted] to find financial irresponsibility on the part of the [a]pplicant and reflect as much in her EER for the period.”

As to the second prong of the *Hary* standard, the JAG disputed the applicant’s assertion that Coast Guard policy does not treat members equally based on rank. The JAG pointed to Article 2.D of the Coast Guard Discipline and Conduct Manual, COMDTINST M1600.2, which provides that “all members have a military duty to meet their financial obligations,” including “private claim[s] of indebtedness.” The JAG argued that the applicant’s reporting, and possibly misreporting, of her personal financial obligations as part of her security clearance review gave rise to SECCEN’s notice of revocation and ultimate revocation. The JAG asserted that because the applicant’s Command found that she was financially irresponsible, Coast Guard policy clearly mandated that the applicant’s rating chain assign specific marks on the applicant’s EER. The JAG also noted that Coast Guard policy permitted the rating chain to reflect the conduct in other applicable competencies, and here, the applicant’s rating chain did so by assigning a mark of 3 in the “Adaptability and Responsibility” competency dimension.

Finally, as to the third prong of the *Hary* standard, the JAG argued that the applicant did not provide any proof of or avail herself of the available methods to substantiate her claims of “poor treatment” by her Command. The JAG also addressed the applicant’s argument that prior commands were more understanding of her family situation and financial difficulties. The JAG argued that having a security clearance was not as important at her prior duty stations because of their mission sets or workplace access. The JAG argued that the applicant’s inability to enter the

⁶ 223 Ct. Cl. 10, 18, 618 F.2d 704, 708 (1981).

⁷ *Id.*

workplace significantly interfered with her ability to perform her managerial oversight and professional development duties at her Headquarters office. The JAG also argued that although the applicant's prompt action to repay the delinquent debts was commendable, the underlying conduct and prolonged inability to perform her primary duties were both legitimate areas of evaluation on her EER. Furthermore, the JAG argued that the marks on her EER did not "shock the sense of justice"⁸ despite her efforts to repay the debt and the eventual reinstatement of her clearance, because her efforts were reflected in the DHS SAB's determination to offer reinstatement of her clearance with conditions.

Finally, the JAG disputed the applicant's argument that her EER was an injustice because her Command never notified her that her marks would be adversely impacted by the security clearance revocation. The JAG argued that pursuant to Coast Guard policy, evaluatees are responsible for managing their performance and requesting feedback, including mid-period counseling as desired from their rating chain. The JAG noted that the applicant was provided with the memorandum dated May 14, 2019, notifying her that she was ineligible for the warrant officer application process because of the revocation of her security clearance. The JAG argued that the applicant should have been on notice to request counseling from her Supervisor concerning her evaluation status and the expectations of her performance.

The JAG argued that the applicant has failed to prove the implication of at least one *Hary* factor and therefore has not sufficiently demonstrated error in her EER. Accordingly, the applicant failed to overcome the presumption that her rating chain discharged their duties correctly, lawfully, and in good faith.

In support of the advisory opinion, the JAG attached a copy of an email exchange dated August 27, 2020, between the applicant's Supervisor and a Lieutenant (LT) E from the Coast Guard Office of General Law regarding the applicant's request for relief from the Board. LT E asked the applicant's Supervisor if a Top Secret (TS) clearance was required for the applicant's position, if the applicant's job was required to be performed in a SCIF, and if so, if she was required to have a TS clearance to enter the SCIF. LT E also asked whether the Supervisor recalled the applicant requesting a formal mid-period counseling. The applicant's Supervisor responded and affirmed that the applicant's position required that she hold a TS clearance and that her job was to be performed in a SCIF that required her to possess a TS clearance. He also responded that he did not recall the applicant requesting formal mid-period counseling.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 15, 2020, the Chair sent the applicant a copy of the Coast Guard's views and invited her to respond within thirty days. In her response, the applicant opposed several allegations set forth by the JAG.

First, the applicant argued that the Unsatisfactory Conduct mark, the Not recommended mark, and the mark of 3 for the "Accountability and Responsibility" competency were all based on financial irresponsibility despite her credit report reflecting no late payments reported as far

⁸ *Knehan v. Alexander*, 566 F.2d 312, 318 n. 14 (D.C. Cir. 1977) (citing *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976)).

back as four years prior to the marking period. The applicant claimed that she did not know about some of her delinquent debt until SECCEN notified her about them and argued that she was the “opposite of irresponsible and took immediate action” to fix the delinquencies. She claimed that she had paid over half of the debt off before the end of the marking period at issue.

Second, the applicant argued that her clearance was never terminated. She reiterated that she was recommended for CWO in December of 2018 and that her recommendation was endorsed by the Commanding Officer on February 28, 2019. The applicant claimed that she was praised for her work during the marking period and reiterated that a security clearance is not required for her paygrade and that it was “a plus” but not “a requirement.” She also argued that most of the marks on the disputed EER are a “good reflection of a job well done.”

Third, the applicant provided emails she claimed showed that she was “very much unaware” of the decision to recommend her removal from the CWO eligibility list until October of 2019. She disputed her Command’s claim that she was notified in May of 2019 and asserted that she was not notified until five months later. The applicant stated that she had “no assumption [her] marks would be effected [sic] simply due to the fact that [she] received a glowing recommendation for CWO” with the Commanding Officer’s endorsement. She also asserted that she had limited to no communication with the unit while she was on TDY at another office and then on a humanitarian assignment, which led her to believe that “things were being sorted out.” However, she argued that her Command took action against her before SECCEN completed its final review.

Fourth, the applicant reasserted that she believed the poor treatment she received from her Command during her tenure with the unit should be considered. She stated that although she could not pinpoint why she was bullied, she surmised that it could have been because she is “a senior black female or because [she has] a transgender daughter.” However, she also admitted that she was “not sure” and “had no solid proof to show any reasoning’s [sic] why[,] only that the examples provided show [she] was ostracized and did not realize the totality of the situation till [sic] [she] was removed from the unit into a different environment.” Because of her legal background and degree in Criminal Justice, the applicant claimed that she would never bring accusations against her Command or her Supervisor unless she had solid proof. She stated that she was “ashamed” that she allowed herself to be bullied for over six months.

The applicant renewed her request that the Board change the Unsatisfactory Conduct mark to Satisfactory, change the Not recommended for advancement mark to Recommended for advancement, and raise the mark of 3 for the “Accountability and Responsibility” competency to a mark of 6. The applicant added a request that the Board to reinstate her position on the CWO list and offer her a commission effective June 1, 2020.

APPLICABLE LAW AND POLICY

Article 3.Q. of the Coast Guard Personnel Security and Suitability Program Manual, COMDTINST M5520.12C, states the following regarding the impact of the termination of a security clearance:

1. The Commanding Officer of a unit grants access to classified information based on a need-to-know, a valid security clearance, a valid investigation, and a properly executed Classified Information Nondisclosure Agreement, SF-312. If a military member’s security clearance is officially terminated for cause by the SECCEN, he/she will be replaced by the appropriate assignment officer only after all appeals have been exhausted. If a military member’s access is removed or suspended, a replacement will not be provided until the SECCEN makes a final determination on the military member’s clearance. Commands should provide documentation via record message to the Commander, Coast Guard Personnel Command (CGPC-epm, or opm or rpm) to verify when a clearance has been terminated.
2. In cases where an individual’s clearance is terminated for cause and he/she is not recommended for separation from the CG, the individual will be reassigned to a rating and a billet that does not require a security clearance.

Article 2.D.1.a. of the Coast Guard Discipline and Conduct manual, COMDTINST M1600.2, states the following regarding the members’ military duty to meet their financial obligations, in relevant part (emphasis added):

Members who fail to meet their financial obligations bring discredit upon the Service, burden the command administratively, and jeopardize their eligibility for a security clearance. Because of this, all members have a military duty to meet their financial obligations and cannot use military status as a pretext to avoid financial obligations.

Article 4.D.2. of the Coast Guard Enlistments, Evaluations, and Advancements manual, COMDTINST M1000.2B, states the following concerning comments that are required for certain marks, in relevant part:

Required Comments. Rating officials must provide required comments for certain marks in accordance with this Chapter.

a. Purpose of Required Comments. These remarks serve as supplemental information on the evaluatee in determining decisions such as officer in charge certification, removal for cause, regular duty assignments, or special duty assignments as a recruiter, instructor, investigator, or command master chief.

b. When Required.

(1) Comments. These comments are required for the following reasons:

...

(b) For any marks of 1, 2, 3, or 7[;]

(c) When the member is not ready or not recommended for advancement per Article 4.D.3. of this Manual; and

(d) EERs that result in assignment of an unsatisfactory conduct mark per Article 4.D.4. of this Manual.

[1] This entry must either state an NJP, CM, civil conviction, or low factor mark occurred or gives specific examples of financial irresponsibility, non-support of dependents, alcohol incidents, and nonconformance to civilian and military rules, regulations, and standards that discredited the Coast Guard. For NJP, CM, or civil conviction, the comments must specifically state what actions resulted in the disciplinary action to include the articles violated of the UCMJ, and what punishment was imposed.

...

c. Specificity of Required Comments. Specific comments that paint a succinct picture to the reader of the evaluatee’s observed performance and qualities allow the reader to determine how the evaluatee exceeded or failed to meet the standards and will reduce or eliminate erroneous interpretations. These comments are critical to the reader being able to ascertain an accurate portrayal of the evaluatee’s daily performance; if a reader cannot form a clear picture of the performance, the human tendency is to disregard or assign a lesser value to the comments.

...

Article 4.D.3. of the manual states the following regarding the determination of the advancement recommendation, in relevant part (emphasis added):

a. Basis for the Advancement Recommendation. While the rating chain must consider past performance, it must also consider and base the advancement recommendation on the member’s potential to perform satisfactorily the duties and responsibilities of the next higher pay grade, qualities of leadership, personal integrity, and adherence to the Service’s core values. The approving official’s recommendation for advancement (to include change in rating by participation in the [Service Wide Examination] SWE) is valid only for a specific competition and must be renewed for each succeeding competition. Thus the rating chain must address this independent Section every time they complete an evaluation report.

b. Guidelines for the Advancement Recommendation.

...

(3) Not Recommended. Assign this mark if, in the view of the rating official, the individual should not be advanced to the next higher grade, regardless of qualification or eligibility, due to negative conduct or poor performance, **including an unsatisfactory conduct mark**, or good order and discipline issues.

...

g. Finality of the Advancement Recommendation. The approving official’s decision on the advancement recommendation is final and may not be appealed. However, if the approving official learns new information and decides to change the recommendation, they must follow the procedures in Article 4.E.2. of this Manual.

h. Mandatory Withdrawal of the Advancement Recommendation. **An advancement recommendation of not recommended will be given to members who receive an unsatisfactory conduct mark**, NJP punishment, court-martial conviction, civil conviction, or permanent relief for cause. When applicable, notify Commanding Officer ([Pay and Personnel Center] ([Advancements, Service Validation and Personnel Data Corrections])) to invalidate the recommendation for advancement of the candidate.

...

Article 4.D.4. of the manual states the following regarding the assignment of an unsatisfactory mark, in relevant part (emphasis added):

a. General. **An unsatisfactory conduct mark** on the EER **is required** when a member fails to meet the standards of conduct prescribed by this Article and **requires an advancement recommendation of not recommended**. The EER must contain required comments as prescribed by Article 4.D.2 of this Manual.

b. Circumstances That Require an Unsatisfactory Conduct Mark. The rating chain **must** assign an unsatisfactory mark in conduct whenever any of the following occurs:

(4) **Financial irresponsibility;**

...

...

c. Impact of Unsatisfactory Conduct Mark

- (1) Advancement. Assigning an unsatisfactory conduct mark will negatively impact advancement to the next higher pay grade, change in rate, or participation in the SWE.

...

Article 3. of the Enlisted Evaluation System Procedures manual, PSCINST M1611.2A, states the following regarding the evaluatee’s role in the preparation and processing of EERs, in relevant part:

B. Evaluatee Responsibilities.

- 1. Obtains sufficient feedback or counseling and uses the information in adjusting, as necessary, to meet or exceed the standards. An evaluatee’s understanding of a superior’s performance expectations is vital to prevent unexpected evaluation results. **The evaluatee has a responsibility to ask the supervisor if clarification of expectations are needed**, whether during mid-period counsel (if requested/required) or at any time during the evaluation period.

...

C. Supervisor Responsibilities

...

- 2. Conducts mid-period counseling to the evaluatee, if required by the rating chain **or requested by the evaluatee.**

Article 1.D. of the Officer Accessions, Evaluations, and Promotions manual, COMDTINST M1000.3A, governs the appointment of Chief Warrant Officers from the enlisted ranks. Article 1.D.3.b(2) states that one factor to be considered in deciding whether to recommend a member for appointment to CWO is the member’s financial responsibility. Article 1.D.10.a(2) states the following about removing a member from a final eligibility list for appointment to CWO:

Removal from the Final Eligibility List. A candidate's name shall be removed from the final eligibility list upon receipt of adverse information by a commanding officer within the candidate's chain of command or Commander (CG PSC-C), which casts doubt on a candidate's moral or professional qualifications for appointment as a chief warrant officer. When adverse information is received that casts doubt on a candidate's moral or professional qualifications for appointment as a chief warrant officer, a candidate's current commanding officer, any commanding officer in the candidate's chain of command, or Commander (CG PSC) has the authority to remove the candidate's name from the final eligibility list by notifying Commander (CG PSC-OPM) to remove the candidate's name from the final eligibility list. The removal from the final eligibility list may be initiated via memo or message to Commander (CG PSC-OPM). Conviction by a court martial, conviction by a civil court, receipt of non-judicial punishment, or **receipt of an unsatisfactory mark in conduct after the candidate has been recommended by the chief warrant officer appointment board is normally to be considered adverse information which casts doubt on the candidate's moral or professional qualifications for appointment as a chief warrant officer.** [Emphasis added.]

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. The application was timely filed.⁹

⁹ 33 C.F.R. § 52.22.

2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.¹⁰

3. The applicant alleged that her June 20, 2018, to September 30, 2019, EER should be upgraded and that she should be retroactively promoted to CWO because the disputed EER is erroneous and unjust. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed evaluation in an applicant's military record is correct and fair, and the applicant bears the burden of proving by a preponderance of the evidence that it is erroneous or unjust.¹¹ Absent specific evidence to the contrary, the Board presumes that the members of an applicant's rating chain have acted "correctly, lawfully, and in good faith" in preparing their evaluations.¹² In addition, to be entitled to correction of an evaluation, the applicant must prove that the disputed evaluation was adversely affected by a "misstatement of significant hard fact," factors "which had no business being in the rating process," or a prejudicial violation of a statute or regulation.¹³

4. The applicant argued that her performance during the marking period clearly demonstrated that the marks provided by her command on the disputed EER are erroneous. However, the applicant herself admitted that most of the marks on the disputed EER are a "good reflection of a job well done." Although the applicant identified specific accomplishments she believes reflect strong performance, she did not explain why those accomplishments justify raising her mark for "Adaptability and Responsibility" from a 3 up to a 6.¹⁴

5. Alleged lack of opportunity to improve. The applicant also argued that her supervisors did not communicate the expectations for her performance and that she was not "provided the information to improve." However, in so arguing, the applicant misconstrues Coast Guard policy. The burden is on the evaluatee to obtain feedback and sufficient counseling to meet or exceed standards.¹⁵ The evaluatee, not the supervisor or any other member of the rating chain, is responsible for asking for clarification of expectations, if needed.¹⁶ Nor does the Board believe that the applicant was unaware of the requirement to pay debts and maintain her security clearance. Therefore, the applicant has failed to demonstrate that the disputed EER was erroneous or unjust due to her supervisor's alleged lack of communication of his expectations of her performance in that regard.

¹⁰ *Armstrong v. United States*, 205 Ct. Cl. 754, 76 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

¹¹ 33 C.F.R. § 52.24(b).

¹² *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

¹³ *Hary v. United States*, 618 F.2d 704, 708 (Ct. Cl. 1980), cited in *Lindsay v. United States*, 295 F.3d 1252, 1259 (Fed. Cir. 2002); see *Womack v. United States*, 34 Fed. Cl. 755 (1996) (applying the *Hary* standard to a challenge brought by a former enlisted member of the Navy).

¹⁴ In order for an excellent mark of 6 to be warranted, the evaluatee must consistently have met all the written performance standards for that level and not exceeded any of them. Article 3.D.1.b.(3). of the Enlistments, Evaluations, and Advancements manual, COMDTINST M1000.2B.

¹⁵ Article 3.B.1. of the Enlisted Evaluation System Procedures manual, PSCINST M1611.2A.

¹⁶ *Id.*

6. Alleged lack of knowledge of debts. The applicant also argued that she did not know about some of her delinquent debt until SECCEN notified her about it and argued that she was the “opposite of irresponsible and took immediate action” to fix the delinquencies. However, the SECCEN concluded that the applicant at least should have known of the delinquent debt because she represented on her SF-86 that she had reviewed her credit report. While it is commendable that the applicant has resolved much of her debt in the last few years, the record reflects that the applicant was aware of outstanding debts but failed to take steps necessary to resolve them and may have deliberately failed to disclose some of the debt when applying for her TS/SCI clearance. The SECCEN letter dated July 15, 2019, states that even after having her security clearance removed and reinstated in 2015, the applicant had acquired new “substantial delinquent debt.” Therefore, the Board finds that the applicant has failed to prove by a preponderance of the evidence that she was unaware of her delinquent debts in 2019 or that it was erroneous for her rating chain to consider the delinquent debt as evidence of a history of financial irresponsibility.

7. Alleged lack of counseling. The applicant also argued that mid-period counseling was not completed. She alleged that her chain of command did not communicate that there would be any adverse impacts on her EER following receipt of the May 2019 SECCEN memorandum expressing intent to revoke the applicant’s security clearance. However, the applicant provided no evidence to support this assertion, there is no requirement for documented mid-term counseling,¹⁷ and her rating chain is presumed to have acted correctly.¹⁸ When asked by the Coast Guard Office of General Law, the applicant’s Supervisor represented that he did not recall the applicant ever asking for formal counseling. Even assuming her Supervisor did not mention that her history of unpaid debts and the loss of her security clearance could adversely affect her EER marks, her apparent assumption that they would not was unreasonable given the sensitive nature of her position. Nor would a proven lack of counseling justify changing the applicant’s marks because a member is not entitled to receive a mark of 6 in the “Adaptability and Responsibility” competency dimension, a mark of Satisfactory, or a mark of Recommended if not adequately counseled about poor performance. Accordingly, the applicant has not demonstrated that lack of mid-period counseling justifies changing the disputed marks on her EER.

8. Alleged lack of need for security clearance. The applicant also argued that she was able to perform all of her duties as an Administrative Yeoman at her permanent duty station regardless of the status of her security clearance. She argued that a security clearance is not required for her paygrade and that it was “a plus” but not “a requirement.” However, the JAG confirmed that the applicant was required to possess a TS/SCI clearance to enter her workspace and without one, she was unable to supervise a junior Yeoman as part of her job duties from the TDY location. Therefore, the Board finds that the applicant has not demonstrated that the revocation of her security clearance did not impact her ability to perform her duties.

9. Unsatisfactory Conduct mark. The applicant argued that it was erroneous for her Supervisor to assign her an Unsatisfactory Conduct mark due to financial irresponsibility because SECCEN and DHS ultimately determined that she was not financially irresponsible when her clearance was reinstated. She also argued that the delinquent debts were from six years prior to the

¹⁷ Article 4.A.2.i. of the Enlisted Accessions, Evaluations and Advancements manual, COMDTINST M1000.2.

¹⁸ *Arens* at 1037.

reporting period and that her current payments had been made on time. However, the Board agrees with the JAG's conclusion that the applicant's claim conflates the EER process and the security clearance adjudication process. When the applicant's rating chain completed the disputed EER, the applicant's clearance had been revoked by SECCEN due to the applicant's delinquent debts, some of which she had failed to disclose on her SF-86. Although Coast Guard policy precluded the applicant's Command from replacing her until all appeals were exhausted,¹⁹ Coast Guard policy provided the applicant's rating chain with the discretion to consider SECCEN's July 15, 2019, decision to revoke the applicant's security clearance when determining that the applicant had been financially irresponsible. Having concluded that the applicant had been financially irresponsible, Coast Guard policy did require the applicant's rating chain to assign her the Unsatisfactory Conduct mark.²⁰ Therefore, the applicant has failed to demonstrate that it was erroneous for her Supervisor to assign her an Unsatisfactory Conduct mark due to financial irresponsibility.

10. Removal from CWO eligibility list. The applicant disputed her Command's claim that she was informed that she would no longer be recommended for CWO. Instead, the applicant claimed that she did not learn that her recommendation had been withdrawn until the Executive Director at her TDY assignment informed her in October of 2019. She asked the Board to reinstate her onto the PY 2019 CWO eligibility list for appointment. However, the applicant has not shown that her Supervisor erred by marking her as Not recommended for advancement and assigning her an Unsatisfactory Conduct mark on the disputed EER. Moreover, pursuant to Article 1.D.10.a.(2) of the Officer Accessions, Evaluations, and Promotions manual, the applicant's Commanding Officer was required to notify Commander, PSC about the loss of her security clearance, and an Unsatisfactory Conduct mark normally requires removal of a member's name from a final eligibility list for appointment to CWO:

When adverse information is received that casts doubt on a candidate's moral or professional qualifications for appointment as a chief warrant officer, a candidate's current commanding officer, any commanding officer in the candidate's chain of command, or Commander (CG PSC) has the authority to remove the candidate's name from the final eligibility list by notifying Commander (CG PSC-OPM) to remove the candidate's name from the final eligibility list. ... receipt of an unsatisfactory mark in conduct after the candidate has been recommended by the chief warrant officer appointment board is normally to be considered adverse information which casts doubt on the candidate's moral or professional qualifications for appointment as a chief warrant officer.

Therefore, because the applicant has not shown that the mark of Not recommended for advancement and the Unsatisfactory Conduct mark were erroneous or unjust, she has not proven by a preponderance of the evidence that her name was erroneously or unjustly removed from the CWO eligibility list.

11. EER comment about debts. The applicant also argued that the following statement in her EER was erroneous: "YNC Has [sic] shown a history of failure to meet financial obligations and not satisfying debts. Member does not hold self-accountable for actions. Per SECCEN memo dated 15 July 2019, security clearance has been revoked." The applicant argued that the July 15, 2019 SECCEN memo only expressed an intent to revoke her security clearance, and was not a

¹⁹ Article 3.Q.1. of the Personnel Security and Suitability Program Manual, COMDTINST M5520.12C.

²⁰ Article 4.D.4.a. of the Coast Guard Enlistments, Evaluations, and Advancements manual, COMDTINST M1000.2B.

final determination. She also argued that her she did not have a history of failure to meet financial obligations because her credit report reflected no late payments as far back as four years prior to the time of her application. However, the statement in the applicant's EER, "Per SECCEN memo dated 15 July 2019, security clearance has been revoked" is correct. Although the applicant's appeals had not yet been exhausted, as of July 15, 2019, the applicant no longer had access to classified information. The Board also finds the applicant's argument concerning her history of financial irresponsibility unpersuasive. While it does appear that the applicant has made great strides in resolving her delinquent debts, the record reflects that SECCEN notified the applicant in 2014 that her financial history was cause for concern and granted her SECRET clearance with conditions. Despite being on notice of the security concerns, the applicant failed to resolve those concerns over the five years that passed between the provision of her SECRET clearance and the investigation for the applicant's TS/SCI clearance in 2019. The SECCEN letter dated July 15, 2019, states that since the reinstatement of her security clearance in 2015, the applicant had acquired new "substantial delinquent debt." Although the applicant focused on the dates her debts were incurred, the fact that they were incurred before the reporting period for the disputed EER does not mean that they were not delinquent during the reporting period for the EER, as the SECCEN reported. Therefore, the Board finds that the applicant has failed to demonstrate that the disputed statement in her EER is erroneous.

12. Alleged unequal treatment. The applicant also argued that the Coast Guard's policy "on handling financial situations is unclear." She claimed that there is a disparity in how financial problems are addressed in EERs between units and ranks. The applicant's assertion appears to be based entirely on her argument that a fellow member did not receive an adverse EER despite being behind on rent payments. However, the applicant did not provide any evidence to support that claim. On its face, the Enlisted Accessions, Evaluations, and Advancements manual clearly articulates the impact known financial irresponsibility has on the evaluations of all enlisted members regardless of unit and rank. Furthermore, the Discipline and Conduct manual requires all members of the Coast Guard, enlisted persons or officers, to meet their financial obligations. Therefore, the applicant has failed to demonstrate that Coast Guard policy is unclear or that the Coast Guard has applied its policy inequitably.

13. Alleged poor treatment. The applicant also argued that the Board should consider the "poor treatment" by her Command during her assignment. She suggested that she was bullied because she is "a senior black female or because [she has] a transgender daughter." However, the applicant also admitted that she was "not sure" and "had no solid proof to show any reasoning's [sic] why[,] only that the examples provided show [she] was ostracized and did not realize the totality of the situation till [sic] [she] was removed from the unit into a different environment." The applicant did not provide any specific instances in which her rating chain made any statements or took any actions that were discriminatory or hostile toward her. The applicant's argument appears to be based on the statement provided by her former civilian co-worker who confirmed that the applicant's Supervisor failed to arrange a meeting with the applicant when he made a visit to the unit. However, that statement addresses only one instance. The statement does not suggest a pattern of mistreatment, bullying, or any other negative conduct between the applicant and her Supervisor. The record contains no substantial evidence to support her claim of mistreatment. Therefore, the Board will not grant relief on these grounds.

14. Reasons for debts. The applicant also argued that the context of the unpaid debts should be considered, including the impact that her divorce had on her finances as well as the affect that the deaths of four crewmembers had on her during that same time period. The Board recognizes the significant challenges that no doubt had an impact on the applicant's personal and professional life. However, those circumstances do not change the fact that the applicant accumulated delinquent debt that remained unresolved for several years. The record indicates that the applicant was first notified by SECCEN of the impact the delinquent debt had on her ability to obtain a security clearance in 2014, yet by May of 2019, the applicant had accumulated new delinquent debts and had not remedied those concerns. Therefore, the Board finds that the applicant's rating chain had ample evidence to assign a mark of 3 for the "Adaptability and Responsibility" competency, an Unsatisfactory Conduct mark, and a mark of Not recommended for advancement, consistent with Coast Guard policy.

15. Lack of retroactive effect of reinstatement of security clearance on EER. The applicant also argued that the EER comment about her financial irresponsibility being revealed during a recent investigation through SECCEN and, in fact, "everything" in the EER should be null and void because she has paid her debts and the Department granted her appeal and reinstated her security clearance. However, as stated above, the Board agrees with the JAG's argument that the applicant's claim conflates the EER process and the security clearance adjudication process. When the applicant's rating chain completed the disputed EER, the applicant's clearance had been revoked due to the applicant's delinquent debt that was only partially disclosed on her SF-86. The applicant had also been previously granted a SECRET clearance with conditions in 2014 requiring her to resolve the delinquent debt. Based on SECCEN's investigation in 2019, the applicant had not complied with the conditions of her SECRET clearance during the five years that had passed. Those facts provided sufficient evidence for the applicant's rating chain to determine that she was being financially irresponsible and that her EER should reflect same. The SAB's subsequent determination to reinstate the applicant's access to classified information after she began paying off the delinquent debts was not issued until approximately four months after the applicant's disputed EER finalized, and therefore, it could not have possibly informed the preparation of the EER. And even if her clearance had been reinstated during the reporting period, that would not have precluded her financial irresponsibility and the temporary loss of her clearance from being reflected in the EER.

Furthermore, as noted above, the applicant herself acknowledged that most of the marks on the disputed EER are a "good reflection of a job well done." That acknowledgement directly contradicts the applicant's argument that the entire disputed EER was tainted by consideration of the SECCEN determination to revoke her security clearance. Accordingly, the applicant has not demonstrated that the SAB's later determination to reinstate the applicant's security clearance is grounds to render the applicant's disputed EER null and void.

16. The applicant has not proven by preponderance of the evidence that the disputed EER should be corrected due to a misstatement of a significant hard fact, a clear violation of specific objective requirement of statute or regulation, or factors adversely affecting the ratings which had no business being in the rating process.²¹ As a result, the applicant has also failed to

²¹ *Hary, supra* n. 6 at 708.

demonstrate that the Coast Guard erred in removing her name from the PY 2019 CWO eligibility list. Accordingly, the applicant's requests should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

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

April 21, 2023

[REDACTED] [REDACTED]
Digitally signed by [REDACTED]
[REDACTED]
Date: 2023.05.02 14:49:56
-04'00'

[REDACTED] [REDACTED]
Digitally signed by [REDACTED]
[REDACTED]
Date: 2023.05.04 12:03:32
-04'00'

[REDACTED] [REDACTED]
Digitally signed by [REDACTED]
[REDACTED]
Date: 2023.05.02 14:36:09 -04'00'
