

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2021-074

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Lt./O-3t

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 29, 2021, 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 July 15, 2022 is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT’S REQUEST AND ALLEGATIONS

The applicant, a Lieutenant (LT./O3) on active duty, asked the Board to correct her record by removing all derogatory documentation regarding her Non-Judicial Punishment (NJP), a Punitive Letter of Reprimand,¹ a negative Officer Evaluation Reports (OER) documenting the NJP dated February 9, 2019, and a negative OER dated August 14, 2019, that documented her Permanent Removal for Cause as the Engineering Officer of a cutter.

The applicant, through counsel, alleged that her former Commanding Officer (CO) wanted to “rid himself of a female department head” by laying a foundation for her removal from command by issuing her an Administrative Letter of Censure and administering NJP, as well as issuing a referral for the applicant to undergo a mental health evaluation.

The applicant claimed that by 2018, she was an excelling officer in the Coast Guard’s Engineering community, who had been successful at her duty stations. The applicant further claimed that up until her difficulties with her former CO, all of her OERs were glowing, with recommendations for promotion and greater responsibility. The applicant alleged this changed

¹ There are two types of Letter of Censure. A Punitive Letter of Censure is entered in an officer’s record as the only form of punishment permitted at NJP. An Administrative Letter of Censure is a confidential personal from the CO to the officer and is not entered in the officer’s personnel file.

when she found herself assigned as the Engineering Officer of a cutter with a CO who believed women should not be on a ship. She alleged that as the highest-ranking female crewmember aboard the cutter, she began to receive her CO's "ire."² She alleged that during a patrol,² she was told at least twice by the CO that she did not belong on a ship as a woman or an Engineering Officer. The applicant also alleged that she was explicitly told she was not allowed in in the engine room, despite being the Chief Engineering Officer of the ship.

Counseling and Administrative Letter of Censure

Regarding counseling she received, the applicant claimed that she often spoke with fellow crewmembers, either in passing or in the stateroom, as she had an "open door policy" because she "genuinely cared how people were doing" and took measures to ensure they were taken care of. When she checked in aboard the cutter, she sought to be a mentor to female enlisted members of the crew. According to the applicant, as the highest-ranking female officer, she would often get the female enlisted personnel together to see if they had concerns that were not being addressed with their supervisors or chain of commands, and have any issues raised smoothed over. The applicant stated that her efforts and interactions with the junior female enlisted members were some of the reasons behind the subsequent issuance of her Administrative Letter of Censure.³ The applicant claimed that neither her CO nor XO provided her with any kind of warning or counseling that her conduct might be considered inappropriate.

According to the applicant, her efforts to assist junior enlisted members with problems they may be encountering was not received well by the male enlisted members in her department. The applicant claimed that their complaints were handled swiftly by the CO without giving her any warning or informal counseling. The applicant claimed she would frequently utilize the Chief's Mess for guidance, both for her own benefit and to help bring headstrong and wayward members in-line within the Engineering Department. Specifically, the applicant alleged she needed guidance with the "gentlemen's club atmosphere" created by her Main Propulsion Assistant (MPA) and other senior E-6s because they were content with not standing watch or doing maintenance. The applicant further alleged that once she started implementing changes, she began "ruffling feathers" which meant "some of these members were not on my side."

The applicant claimed it was these interactions that led to her getting an Administrative Letter of Censure from the CO in September 2018 with no prior warning or verbal counseling about inappropriate and unprofessional conduct with senior chiefs and enlisted personnel. The applicant claimed this letter forbade her from entering the engine room, Chief's Country, the mess deck, or the fantail because it was "inappropriate" for an officer to be in those locations. According to the applicant, no other officer was cited for such "inappropriate behavior."

The applicant further alleged that she was berated by her CO in front of her and referred to as "stupid" and "incompetent." According to the applicant, a fellow officer and O-3 onboard the vessel recalled being pulled aside many times for verbal counseling or correction but was never given an Administrative Letter of Censure. The applicant argued that issuing the Administrative Letter of Censure was an extreme measure, especially when other officers were being treated

² The applicant did not provide the dates of this patrol.

³ Because an Administrative Letter of Censure is a private written warning from the CO, it is confidential and never entered in the officer's record.

differently. The applicant quoted the former Operations Officer of the cutter (OPS), who said, “Lt. [applicant] wasn’t given the professional opportunity to meet command expectations like I was but jumped straight to administrative accountability for minor issues.”⁴

The applicant claimed that after the results of a Command Climate Investigation were released in the fall of 2018, she became the scapegoat for the low morale and any other problems that arose on the cutter. Then in early 2019, according to the applicant, the Executive Officer (XO) of the cutter launched an investigation into her response to an onboard electrical fire that occurred while they were in dry dock. The investigation led to the applicant receiving NJP with the Punitive Letter of Reprimand. The applicant claimed that after the NJP she “bounced back” but was constantly harassed by leadership while other Department Heads were given a pass for their discrepancies. The applicant alleged that the harassment and bullying culminated when the CO ordered her to undergo a mental health evaluation in the summer of 2019 and recommended that she be relieved of her duties.⁵ The applicant claimed that after she was removed from the cutter, she was ultimately found fit for duty and began to thrive at her new temporary duty post, where she received accolades and Letters of Commendation (LOC). The applicant claimed she excelled before she was stationed aboard the cutter and after she left, which she argued supports her claims of gender discrimination, harassment, and bullying.

The applicant alleged that her time aboard the cutter began with being told by the CO that she did not belong there as the Chief Engineering Officer (EO) or as a woman. The applicant claimed that soon after arriving aboard, she received an Administrative Letter of Censure for mentoring junior enlisted females. The applicant alleged that she never received any verbal caution or warning from either the XO or CO before receiving the Administrative Letter of Censure.⁶ The applicant alleged that after she received the Administrative Letter of Censure, her XO displayed a romantic interest in her. The applicant alleged that the XO began asking her out on dates, using his position as leverage over her, but she rebuffed his efforts. The applicant claimed that she would make sure other officers were around to avoid being alone with her XO. The applicant further alleged that after her repeated rejections, the XO’s professionalism towards her began to sour.

Allegations about NJP

The applicant claimed that while the cutter was in drydock, an electric fire erupted but put itself out. According to the applicant she informed the CO and XO and contacted the Damage Control Assistant (DCA) to ensure the space had been properly cleared. The applicant claimed she contacted the Engineer of Watch (EOW) to ensure that proper equipment was available for the DCA to clear the space and make it safe, and then she reported the progress to the CO and XO. According to the applicant, the morning after the fire during a conversation with the DCA, she learned that he had not cleared the space. She claimed she then order the DCA to clear the space and proceeded to inform the CO of the incident, at which point the CO recommended the applicant reevaluate the ship’s gas free procedures. While still in drydock, the applicant claimed, a MISHAP investigation was conducted concerning the electric fire. The investigation did not assign fault to

⁴ Letter of reference from a previous coworker.

⁵ According to the applicant, she had never had any outbursts or any other indications of mental health breakdowns while aboard the vessel. For example, she had never made any threats to harm herself or others.

⁶ The applicant was also counseled for conversing with a Chief Petty Officer and her lack of communication with Command.

anyone, but instead blamed the fire on faulty equipment. The applicant stated that she reevaluated the gas free procedure and submitted a policy update, which was signed by the CO.

The applicant claimed that not long after leaving dry dock, the vessel received the results of a Command Climate Investigation. The applicant argued that the results of the investigation were unfavorable to the CO, XO, and Command Chief. The applicant claimed the investigation exposed a toxic work climate, but also had unflattering things to say about her, which led the XO to investigate the applicant's actions during the fire. The investigation was assigned to a Chief Warrant Officer (CWO) and led to the applicant receiving NJP for her handling of the situation. The applicant alleged that she was not permitted to review the information the CO relied on to justify the NJP, nor was she permitted access to counsel prior to the Mast. The applicant stated that during the mast proceeding, she disputed the facts of her handling of the fire. Specifically, she disputed her actions regarding ensuring the area was safe and gas free. The applicant claimed the DCA denied that she called him but admitted that she did send text messages to him concerning the fire. According to the applicant, despite evidence to the contrary, the CO substantiated the charge of dereliction of duties and gave her a Punitive Letter of Reprimand as NJP. The applicant subsequently received the negative OER documenting the NJP dated February 9, 2019. The applicant claimed that after Mast, she was required to stand for all watches and was admonished for her lack of communication with leadership. The applicant alleged that she complied and stood for all watches and ensured she communicated with both the CO and XO on a daily basis. The applicant alleged that despite her efforts, she was faulted for any problems that arose in the Engineering Department.

According to the applicant, she was blamed for not having trained watch-standers for important evolutions despite her request for more time to train. She claimed that when she requested more time for training, she was told by the XO she would not be given additional time. The applicant alleged that when she pushed back against the XO's response, she was accused of being unprofessional and counseled by the CO. The applicant alleged that when a discrepancy was discovered in the Training Management Tool System (TMT), which was used for training and certification, she was accused of hiding the fact that no one on her crew was certified or qualified in their respective duties. However, she claimed that she personally observed the training and certification of her personnel but was accused of lying because she could not immediately produce written verification of her subordinates' up-to-date certification. In contrast, the applicant alleged that when it was discovered that one of the Landing Signal Officers (LSOs) did not have proper paperwork to support his qualification, the responsible officer for the LSO was not chastised or counseled, nor did he receive any other adverse consequences, but was instead allowed to backdate his qualifications.

The applicant concluded that the February 2019 Captain's Mast proceeding where she received NJP was nothing but a subterfuge. She further claimed her CO used her as a scapegoat for the poor command climate and to support her removal for cause in August 2019 and then held her to a higher standard, blaming her for any problems that arose.

Allegations about Mental Health Evaluation and Removal

The applicant claimed that during her final months aboard the vessel she accidentally slammed her hand in a watertight door, which she did not report to her CO or XO. As a result of

her failure to report the incident, her CO questioned her mental state and fitness and referred her for a mental health evaluation, which violated her civil rights. According to the applicant, the Command's justification for ordering the mental health evaluation was her, "lack of interest to seek higher level of medical care after potentially breaking her hand in a watertight door until directed by her chain of command, mood swings and unwarranted frustration regarding minor issues and on August 14, 2019, she disclosed that unspecific drama occurred to her during a previous CG tour which is resulting in nightmares. [sic]" According to the applicant, the CO's explanation was a subterfuge. The applicant alleged that the CO created an environment of harassment and humiliation and then used the applicant's behavior under this mistreatment to justify this Command-directed mental health evaluation, which ultimately found her fit for duty.

Regarding her subsequent removal from her primary duties aboard the cutter on August 14, 2019, the applicant alleged that she was never given counseling or warning that her CO was not pleased with her work. She claimed she had no idea her chain of command believed she was performing poorly. The applicant alleged that her rights were violated when her CO ordered her to undergo a Command directed mental health evaluation. According to the applicant, the Coast Guard Medical Manual requires that an escort be provided to a service member who is undergoing a Command directed mental health evaluation and she was not provided one. The applicant alleged that she was not informed her departure from the vessel would be a full relief from her duties until two days before the cutter pulled into port. The applicant claimed that she was then alienated from the officers, and the chiefs refused to talk to her. The applicant alleged that upon arrival in port, she met with the CO, who told her that his goal of getting her off the ship had been successful and that it was his intent that she would never return. The applicant further alleged that the CO told her, in front of the XO, that he would bury her career and to try to fight it would be pointless.

The applicant claimed that after being cleared by the psychiatrist, she filed a whistleblower complaint with the Department of Homeland Security (DHS). She claimed retaliation by the CO, who she alleged covered up a lack of Landing Signal Officer qualifications and abusing government assets when he refused orders that led to the deaths of migrants onboard. The applicant also filed an Equal Employment Opportunity (EEO) complaint and Anti-hazing Harassment/Bullying complaint with her regional EEO office. The applicant argued in her EEO complaint that the CO had singled her out for being a female, treated her differently than her counterparts, harassed her at meals, called her names, berated her in public, and threatened her and her career. According to the applicant, she followed up with the EEO office for several months and heard nothing, until she was informed in May 2020 that her case had been dismissed because her claims were found to be unfounded and that she "had been making it up." The applicant alleged that the same thing happened when she complained to her congressman, who was "stonewalled" when trying to contact with the CO and XO regarding the treatment the applicant had received.

The applicant argued that she had been an instrumental team member who received recognition for her performance in a high visibility commissioning of a Coast Guard cutter but was unfortunately singled out because of her gender by her cutter's CO. The applicant alleged that the CO took extreme measures against her from the beginning of her tour that ultimately led to her being relieved of her duties as the EO. The applicant stated she understands that a CO has broad discretion when addressing issues that arise on his watch, including the discipline of his crew. However, the applicant argued that the actions he took against her constituted a clear case of abuse of discretion. The applicant alleged that after she went through the Captain's Mast, her actions

were constantly questioned and any explanation she provided was not accepted. She alleged she was accused of lying and being unprofessional

The applicant further alleged that her proven track record supports her arguments that she was bullied. According to the applicant, her career prior to her assignment aboard the cutter was stellar, and despite the bullying she had suffered on the cutter, her performance at her next assignments was outstanding. The applicant argued that she had no communication issues prior to her tour aboard the cutter and no communication issues since. The applicant also argued that she received awards for her leadership before and after her cutter assignment, which leads to only one reasonable explanation for her previous experience—toxic leadership. The applicant alleged that the toxic leadership and environment of harassment did not go unnoticed, and her arguments are substantiated in the Command Climate Investigation. To support her arguments, the applicant quoted the following anonymous statement from a service member aboard her vessel submitted for the Command Climate Investigation at the time:

The extremely evident incompetence and lack of trust of the EO. There is zero room for her to breathe and it makes it extremely difficult for the Engineers to get things done when everything is 20 questions on why its [*sic*] done that way, and what is the next step after his, and how much time do you need for the repair, all within in the first 30 seconds of a casualty. Then this information gets relayed incorrectly and the cycle begins again. So either the CO needs to back off of her to allow her to actually get in stride to function as a normal officer and trust in her people, or get a new EO because the current situation creates a lot of frustration and fragmenting in an already high stress environment when trying to keep the ship operational. The current situation cannot continue if there is to be any growth by her or by the department. A choice needs to be made.

The applicant argued that the frustration expressed by the crewmember corroborates both her and the OPS's complaint of disparate treatment. The applicant further argued that the crewmember's response demonstrates that she was never permitted to get into "battle rhythm" within her department. The applicant alleged that she was barraged by questions which in turn flowed to her department so that she could answer her CO. According to the applicant, the response in the Command Climate survey demonstrates the negative affect the CO's public admonition and questioning of her at mast had on her crew and her ability to lead within her department.

The applicant argued that the CO seemingly wanted to see her fail by setting unreasonable conditions for her to work in and then undermined her ability to lead her department. The applicant argued that she had previously demonstrated an ability to lead and operate in high stress environments. She claimed her inability to get her stride aboard her previous vessel was directly related to the CO's lack of trust or faith in his female EO. The applicant alleged that her CO singled her out as his only senior female officer, treated her with contempt, and sought to build a case of incompetence to remove her from the cutter.

The applicant argued that her NJP and negative OERs were the result of toxic leadership and discrimination based on her gender and should be removed from her record.

To support her application, the applicant submitted copies of some of her official records, which are included in the Summary of the Record below, and a letter of support for the applicant from a Lieutenant was the Operations Officer (OPS) of the cutter. The OPS agreed with the applicant that she had been treated unfairly and prejudicially by the CO and XO of the vessel. According to the OPS, he was never pulled aside or

corrected in public the way the applicant was. He was never punished or reprimanded as she was. The OPS claimed that when the command questioned his reports or updates, it was done in a mentorship role and always in private. The OPS claimed that the CO's and XO's interactions with the applicant were always harsher and more confrontational, and the applicant was questioned on the veracity of nearly all the information she provided. The OPS alleged the CO and XO would question the applicant in front of junior members of the crew to undermine the applicant within her own department.⁷

SUMMARY OF THE RECORD

The applicant graduated from the Coast Guard Academy and was commissioned an Ensign in the Coast Guard on May 18, 2011. She was promoted to Lieutenant Junior Grade on November 18, 2012, and to Lieutenant on January 12, 2016. She served at various shore units and then was assigned to Duty Under Instruction to study Naval Engineering from August 2016 to May 2018.

On May 29, 2018, the applicant executed a Permanent Change of Station (PCS) to be the Engineering Officer (EO) of a cutter.

According to the Administrative Letter of Censure, on August 12, 2018, the applicant was counseled by her Command regarding the amount of time she spent with junior enlisted personnel.

Administrative Letter of Censure

On September 5, 2018, the applicant received an Administrative Letter of Censure for what her CO called her substandard performance from June 2018 through August 2018. Specifically, the letter listed issues relating to "Relations with Junior Crew Members," "Communications," "Critical Thinking & Problem Solving," and "Personnel Issues." The letter stated that the applicant had been counseled on two previous occasions regarding maintaining appropriate relationships with junior crew members. She was counseled for spending too much time in the mess hall playing games with junior personnel in addition to an unusual amount of time with a Petty Officer. The applicant was also counseled for failure to communicate equipment casualties on several occasions and leaks in the Auxiliary Saltwater System. The CO stated the applicant avoided making regular reports to him regarding the status of the engineering department, and only provided updates when directly asked. The applicant was also counseled for failing to consider the implications of all aspects of a problem, or at some points failing to offer solutions at all. Finally, the applicant was counseled for her failure to utilize the experience of her senior enlisted team and her division officer. As an Administrative Letter of Censure, this letter was a private communication from the CO to the applicant and was not entered in the applicant's personnel file.

On October 25, 2018, there was a class "C" fire⁸ onboard the cutter while in drydock.

On January 17, 2019, a Defense Equal Opportunity Management Institute (DEOMI) Organizational Climate Survey (DEOCS) conducted aboard the cutter in November 2018 was finalized. Survey comments revealed, "After working hours there was a fire in an AUX1 electrical

⁷ Many of the OPS's statements appear to be hearsay and are not summarized here.

⁸ A "C" fire is a fire of flammable gases.

panel, the panel was isolated, and the fire was put out. The import EOW requested the EO come in to be gas free engineer and certify the space as safe, instead EO chose to try and talk to an unqualified member through the gas free process over the phone.”⁹

After the DEOCS revealed that the applicant’s account of the events of the fire differed from her subordinates’ account, the XO was asked by the CO to open an investigation into the applicant’s actions after the October 25, 2018, “C” fire. Specifically, the CO wanted to know why the applicant directed an unqualified petty officer to conduct post-fire Gas Free Engineer procedures. After the investigation concluded and the XO reviewed the case package, he recommended that the applicant be relieved of her primary duties. The CO disagreed with the XO’s recommendation and instead ordered a mast proceeding and NJP for the applicant.

NJP and Punitive Letter of Reprimand

At the mast on February 9, 2019, the applicant was found guilty of violating 92(3) of the Uniform Code of Military Justice (UCMJ) “Failure to Obey a Direct Order or Regulation by Dereliction of Duties” for failing to ensure proper GFE procedures were completed following the October 25, 2018, “C” fire.

On February 19, 2019, the applicant received a written Punitive Letter of Reprimand (LOR) which stated, “You neglected your duties by failing to ensure proper post-fire atmospheric testing was completed in the Auxiliary Machinery Space following a class “C” fire. Instead of conducting atmospheric testing yourself or directing your subordinate to do so immediately, you directed them to gas-free the space the following morning allowing over four hours to elapse before the space was certified safe.” This LOR was entered in the applicant’s personnel file.

On February 25, 2019, the applicant received and signed a disciplinary OER for the day of February 9, 2019, to document the NJP. The applicant received two poor marks of 2 for the performance categories “Judgement” and “Responsibility.” (The others categories were marked “not observed” due to “the limited scope of the report.”) The following comments were included in the OER:

Demonstrated questionable and indecisive judgment by not directing timely post-fire atmospheric testing following a fire in a machinery space, provided unclear and improper guidance to Engineer of the Watch & Damage Control Assistant that delayed proper gas-free of the space until 4-hours after the incident occurred...actions created a potentially dangerous situation for crew members & left the command misinformed of the adequacy of follow-up actions. Showed a gross lack of responsibility for completing assigned duties and indifference to following proper procedures ... apathetic response to fire set a poor example for subordinates and eroded confidence in ROO's reliability as a department head. Found to have committed the following offense...Article 92, Derliction [*sic*] in the Performance of Duties; resulted in award of a punitive letter of reprimand.

On May 31, 2019, the applicant received her first annual OER for her service as the EO of the cutter. She received primarily marks of 5 (“above standard”) in the various performance categories, a middle mark in the fourth spot on the officer comparison scale, and a recommendation for promotion “with peers.”

⁹ DEOCS, Page 33

On June 22, 2019, the applicant's vessel began another deployment.

Mental Health Evaluation and Removal from Primary Duties

On August 28, 2019, the applicant underwent a mental health evaluation at the order of her CO. The mental health provider found the applicant to be fit for duty. The applicant was subsequently administratively assigned to a temporary duty assignment until June 8, 2020.

In a memorandum dated August 29, 2019, the CO informed the applicant that she was being relieved of her primary duties under COMDTINST M1000.8A.¹⁰ According to the August 14, 2019, OER leading up to the applicant's Relief from Primary Duties (RPD), she had a series of avoidable mistakes which included the following: failing to properly fuel the cutter due to miscalculating fuel projections resulting in the vessel leaving port with only 85% fuel; incorrectly estimating fuel projections while in a second port resulting in a \$17K back haul charge; and failing to properly "blow down" a fuel line and enforce the use of PPE for fueling team while in port resulting in a 10 gallon fuel spill into the water and an E-4 being sprayed in the eyes with fuel. After each of these events the CO stated, he provided the applicant with counsel and feedback. According to the CO, the event that finally led to the applicant's RPD was a core values issue that was brought to light during an August 14, 2019, Aviation Standardization meeting while the vessel was on day 54 of an Eastern Pacific counter drug patrol with an attached HITRON AVDET onboard. The Aviation Standardization inspection was scheduled for August 29, 2019. During the August 14, 2019, meeting it was revealed by the Project Officer, who was responsible for verifying aviation qualifications, that their vessel did not meet the threshold for qualified firefighting hose team members. At the time, the CO claimed the vessel only had five out of the six billets filled with qualified personnel. When the CO, the XO and the applicant met afterwards to discuss the discrepancy, the applicant did not deny that she was aware of the issue. The CO claimed this discrepancy forced him to cancel all operations, including flight operations, until he was able to ensure his personnel were qualified. According to the CO in his memorandum initiating the RPD, the applicant was aware of the lack of qualified personnel but chose not to communicate the issue to her command staff, so they were unknowingly placing the ship, helicopter, and crew at risk until it was discovered by a third party.

The applicant was subsequently administratively assigned to a temporary duty assignment until June 8, 2020. On September 6, 2019, and September 16, 2019, the applicant reported to Coast Guard Atlantic Area (Area) that she believed she had been harassed and/or subjected to a hostile work environment while stationed aboard her previous vessel for a period of a year and one month by members of her chain of command based on her gender.

On October 31, 2019, the applicant received the negative OER documenting her RPD. It covered the period of June 1, 2019, to August 14, 2019, which was the date her removal from

¹⁰ Military Assignments and Authorized Absences Manual (COMDTINST M1000.8A), Chapter 1.F.2.a. **Removal of Primary Duties.** All officers are assigned to positions accompanied by a set of primary duties. Under exceptional circumstances, normally due to the officer's inability to adequately perform those duties, the officer may be formally removed from his/her primary duties and transferred to another permanent duty station. This is different than a commanding officer's relief for cause (RFC) as detailed in Article 1.F. of this Manual. A RPD will not be confused with an RFC, and an RPD will not be employed in lieu of an RFC.

primary duties was approved. The area of “Performance of Duties” the applicant received one low mark of 3, three “standard” marks of 4, and three marks of 5.¹¹ The supervisor cited the same performance issues as those highlighted above and described in the memorandum for RPD. In the area for “Leadership Skills,” the applicant received five 4s and one 5. The supervisor cited the following concerns,

“[D]id not support continuing E-leave for senior dept mbr; did not grasp impacts of an early recall recommendation during trying time for mbr's family. Inconsistent workplace climate w/in depa1lment, limited pro relationship & mistrust w/ senior mbrs of eng dept. ROO was counseled for openly making disparaging remarks about senior enlisted in Wardroom; climate resulted in tension between eng dept & ROO, effectiveness of dept not fully maximized. Completed 5 OERs & 22 EERs for dept this period; marks submitted on time.

For the area of “Personal and Professional Qualities,” the applicant received two 2s, one 3, one 4, and one 5. The supervisor cited the following concerns:

Poor judgment & lack of personal responsibility: 54 days into a JIATF-S patrol w/ attached HITRON, it was discovered during a routine meeting that T AHOMA did not meet CMDT requirements of 6 qual'ed flight deck fire team hose mbrs. ROO did not inform command until discovered by 3rd party. Decision placed unqual'ed junior personnel in hann's way risked lives of A VDET & Cutter crew; resulted in Cutter ceasing *CJD* ops until quals were correctly achieved. ROO did not take ownership of problem & deflected to 0-1. Awareness of safety issue, coupled w/ inability to take responsibility when confronted resulted in loss of confidence by CO. Unprofessional language & attitude towards XO during dept head meeting when it was discovered the ROO was requiring eng dept mbrs to awake early for drills during heavy op temp period against command's direction.

The applicant’s CO concurred with the supervising officer’s evaluation and further marked the applicant as a “Marginally Performing Officer” and recommended that she not be promoted. The CO also provided the following statements:

ROO is not recommended for promotion. Core value concerns, poor communication & unwillingness to take responsibility for a major safety issues indicates this Officer is not a good fit for a department head onboard [redacted]... This Officer was given a 2nd chance following an rocky 1st year onboard which cumulated in NJP however after an incident involving unqual'ed flight deck fire teams, I have unfortunately lost trust & confidence in this Officer which cannot be regained; potentially different outcome had ROO taken ownership of safety issue & informed me prior to discovery, lack of responsibility unacceptable. ROO's keen interest in naval engineering would be a good fit for HQ program staff, Base naval eng & product line positions. Not recommended for future leadership positions with increased responsibilities.

The applicant refused to sign this negative OER.

On November 29, 2019, the Office of the Inspector General (IG) received a complaint alleging, among other things, that the applicant was relieved of her primary duties due to mental health issues, not due to performance failures. In response, the Area Command conducted a preliminary inquiry between April 6 and 10, 2022, and found the applicant’s allegations to be unsubstantiated. The preliminary investigating officer (PIO) found that the applicant was removed from primary duties due to “failures in the officer’s own performance, judgement, responsibility, and for no other purpose.”

¹¹ Officers are evaluated in 18 performance categories on a scale from 1 (worst) to 7 (best). A mark of 4 is considered “standard.”

On December 3, 2019, the applicant submitted a two-page addendum to her RPD OER. She responded to the disparaging comments found in the OER with the following statements:

1. The applicant alleged that the fuel back charge mentioned in the OER was not due to her miscalculations, but due to the fact that she calculated her fuel needs based on the vessel going 3-4 knots over a two-day period, but twelve hours after she submitted her estimates, the vessel slowed down. According to the applicant, the Supply Officer was notified more than 24-hours in advance of pulling in that more fuel had been ordered than the ship could take on and was asked to adjust the fuel order to accommodate the new loading condition.¹² Upon arrival to the port the applicant claimed she reiterated the changing fuel needs, but learned the Supply Officer had not adjusted the order.
2. Regarding the missed fuel calculations from the week prior, the applicant stated that she based her calculations off of the fact that the vessel was burning 2% to 4% fuel per day, which was supported by the sounding sheets from June 11 to 16, 2019. However, the applicant learned later that the crewmembers responsible for “sounding the tanks”¹³ had not been doing “soundings” every morning, but had instead been using “tank level indicators” to gauge the fuel levels each morning. The applicant claimed that after learning of the discrepancy, she reported to her CO and XO and they discussed the potential impact the discrepancy would have on operations. The applicant claimed she met with the fueling team and informed them they needed to do “soundings” daily moving forward.
3. Regarding the alleged improper valve alignment resulting in a fuel spill, the applicant alleged the system was properly aligned and its alignment was verified several times by several members of the fuel team, including two qualified FOWKs. The applicant claimed she halted the fuel evolution to have the fuel contractors correct a leak at the hose connection. The applicant alleged that the contractors were told to blow down the line to remove the fuel and relieve the pressure to address the leak. The applicant claimed she believed the hose had been blown down, but instead the system remained pressurized, so when the system was “broken open” it resulted in a fuel spill that happened to get in the eyes of a crewmember who was wearing glasses at the time.¹⁴
4. With regard to keeping the command updated on engine status, the applicant alleged the engines ran consistently through the entire patrol, and the XO explicitly informed me to avoid providing updates about plant status. The applicant claimed she provided updates daily regarding planned maintenance, unplanned maintenance, and information regarding Product Line logistics or support. The applicant claimed she stopped by the XO’s and CO’s staterooms, “gave up the sanctity of meals to provide updates and explanations,” and provided status during evening reports and OPS/Weather and Intel reports during the evenings.

¹² The applicant alleged that normally a fuel order can be adjusted at least 24 hours in advance.

¹³ The Fuel, Oil and Water Kings (FOWKs) rotate regularly to allow the off-going FOWK to go back into a watch-standing rotation. According to the applicant, a different FOWK completed the soundings on July 16, 2019, when it was discovered that the vessel actually had less fuel than calculated. This error, according to the applicant, was not due to her miscalculations, but due to the fueling team failing to daily “sound” the tanks as required by policy.

¹⁴ The applicant did not specify if the crewmember was wearing protective glasses or prescription glasses.

5. With regard to the OER comment about her “not supporting continuing E-leave for member” the applicant claimed she voiced concerns with needing her Main Propulsion Assistant (MPA) back for patrol to run and manage the division and provide senior technical support for the department. This was especially true considering the fact the vessel was already missing so many personnel and being backlogged personnel who needed to be qualified. The applicant claimed she also voiced concerns that if she was unable to have the member back, he was approaching the 30-day E-leave and would need to take leave. The applicant further claimed she was informed the member at issue was specifically not getting charged any leave or going TDY and was not necessary for extended operations.

6. With regard to the OER comment about her “open and disparaging remarks,” the applicant claimed she does not make disparaging remarks about other personnel and maintained a professional appearance and working relationships consistent with Core Values. The applicant alleged she had no recollection of what comments the OER referred to, nor was there ever a counseling session as claimed in the OER. The applicant alleged she resolved conflict professionally and would have open conversations with people for being unprofessional, or for treating others poorly in the engine room. According to the applicant, she ensured these conversations occurred in private, pulling senior officers and enlisted personnel aside for using unprofessional language or demeanor when training, ensuring they understood the impact of their actions.

7. With regard to flight deck operations, according to the applicant, the vessel had a minimum of 6 qualified flight deck personnel, though the TMT records did not reflect their qualification and other members could not produce their qualifications or “letter” at the time. The applicant alleged there was never unqualified personnel on the flight deck. The applicant claimed there was always a “break-in” for every flight deck fueling evolution. The applicant further alleged that there was a lack of visibility across the board of all flight positions of who was qualified, and TMT records were not accurate, from the Landing Signals Officer to the Tiedowns. However, she claimed she had six personnel qualified crewmembers, even if the TMT record did not reflect the fact.

8. With regard to the OER comment about her “unprofessional language and attitude,” the applicant alleged she never used unprofessional language in any situation in a professional setting, nor was she unprofessional to the XO. The applicant claimed that the standard during the entire patrol for doing Basic Engineering Casualty Control Exercises (BECCEs) was running them from 0800-1100 when the vessel was patrolling set areas for illicit activity, and while running a minimal propulsion plant. During patrol, the applicant alleged she coordinated with MKC to prioritize personnel for training and qualification. According to the applicant she told she could only have one hour before or after lunch to train her team. The applicant further alleged that when she inquired as to the change, the XO told her that engineers were being pulled off sleep to complete BECCEs, to which she replied she was not aware engineers were not getting enough sleep but informed the XO she would look into the matter, which she argued the XO took as unprofessional. The applicant claimed the XO told her one hour was sufficient to train and qualify over 15

personnel on plant operation, or the training could be completed during flight operations or scheduled small boat training. The applicant stated she told the XO she could not provide hands-on training for starting/shutting down equipment in an hour, or when the full plant was required, and restricted maneuvering was in effect. This, the applicant claimed, the XO took us unprofessional.

Findings and Outcome of Report of Harassment Memorandum, dated March 31, 2020

The investigation, which was concluded by Captain G. on October 8, 2019, determined that “[t]he allegations of unlawful and prohibited harassment and bullying based on gender (female) are unsubstantiated.” Captain G stated the following:

The overarching behavior complained of—frequent public and aggressive questioning and/or criticism—was consistent with behaviors of others in the crew. In particular, a number of her junior-officer peers encountered similar treatment, irrespective of gender. Where alleged treatment was specific to [the applicant] (e.g. CO being less jovial around her; questioning her about trouble with her previous command) there was no evidence that such treatment was gender based. As to command actions taken with respect to performance (Captain’s Mast; relief from primary duties), there was no evidence that gender played any role in initiation or execution of such actions.

As to the allegations against her first XO for sexual harassment, the Captain found the following:

Unsubstantiated. Outside of a vague allegation—unsupported by reference to any timeframes, places, conversations—there was no evidence that the Former XO had attempted to initiate any social relationship whatsoever with [the applicant]—other than approaching her to ensure that she felt welcome to attend organized group outings with [redacted] officers.

Regarding the complicity that the applicant accused the XO of having in the gender discrimination, the Captain found the following:

Unsubstantiated. As noted above, there was no evidence that gender played a role in the command actions taken against [applicant]. The investigation further revealed that, contrary to her claims, the current XO proactively assisted [applicant] in attempting to rectify noted deficiencies in her performance and in completing relevant training/qualification requirements among her staff; the investigation uncovered no evidence that he acted unethically in doing so.

Preliminary Inquiry into Inspector General Complaint Regarding the Cutter

On November 29, 2019, the Office of the Inspector General received a complaint from an Air Force Member, alleging that the CO of the applicant’s vessel, neglected training of its members, preventing key qualifications to be met, causing the ship to sail without 15-20 qualified personnel in June 2019. The complaint avers that because the vessel sailed without qualified personnel, the unit was unable to effectively deploy its helicopter in support of search and rescue (SAR) operation where one of the survivors perished. The Air Force member also complained that the applicant was removed from primary duties due to mental health issues and not due to performance failures.

The Preliminary Inquiry Officer (PIO) found these allegations to be unsubstantiated. The PIO found that in most instances, conducting qualification-training activities while underway and

enroute to the OPAREA is commonplace throughout the fleet. This is especially true when assigned a helicopter since it is not organic to the ship.

According to the applicant's CO, he was of the understanding that the ship would be fully mission capable for helicopter operations by the time the ship received the assigned helicopter. Once the CO became aware of the certification shortcomings, he immediately ceased flight operations, notified TACON/OPCON and directed that training be completed. The PIO found that this discovery, combined with other events, contributed to the applicant be RPD'd. Specifically, the CO found the EO to have been at fault for failing to ensure the flight deck crew was trained and for allowing untrained members to conduct flight operations. The PIO found the applicant was PRD'd due to failures in the officer's own performance, judgement, responsibility and for no other purpose.

VIEWS OF THE COAST GUARD

On November 18, 2021, a Judge Advocate (JAG) for 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 Personnel Service Center. The Coast Guard stated that relief should be denied for the following reasons:

a. The Applicant Has Not Met Her Burden of Production or Persuasion to Show That She Was Sexually Harassed by Her Commanding Officer of Her Executive Officer.

The JAG argued that the applicant's claims that she was subjected to sexual harassment and sexual discrimination by her commanding officer and executive officer are without merit. The JAG further argued that applicant has not provided any evidence to support her claims of sexual harassment and sexual discrimination and her claims are explicitly rejected by the executive officer. Finally, the applicant's allegations of disparate treatment were investigated and found to be unsubstantiated.

b. The Applicant Has Not Met Her Burden of Production or Persuasion to Show That She Was Subject to Erroneous or Unjust Disparate Treatment by Her Command.

The JAG argued that the applicant's allegations that she was subject to disparate treatment while aboard her previous vessel and that the disparate treatment was based on her gender as a woman. The JAG further argued that while the applicant may have been treated differently than other department heads while aboard her previous vessel, she has failed to prove that her NJP and Reprimand were based on her gender and not the result of issues she was having while onboard. According to the JAG, the record and evidence shows that the actions taken by Command against the applicant, if different at all, were not based on the applicant's gender, but were the result of specific actions taken by the applicant that the command was attempting to correct after she arrived onboard. The JAG argued that the treatment the applicant received cannot be compared to other officers onboard to show disparate treatment because the applicant has failed to show that the other officers onboard faced the same issues and circumstances as the applicant. Therefore, the applicant's comparisons are inequitable and inaccurate. As such, the JAG argued that any comparisons between the applicant's actions and other officers onboard who may have been treated differently should not be considered persuasive.

c. There Was No Error or Injustice in the Award of Non-Judicial Punishment Including the Letter of Reprimand and the Officer Evaluation Report.

The JAG argued that although the Board may review the imposition of NJP for correction of error or injustice, in doing so, it should recognize that the commanding officer is the official responsible under statute and regulation for conducting the proceedings and determining an appropriate punishment. As such, according to the JAG, the commanding officer's decisions and findings are entitled to substantial deference. The JAG claimed that absent proof that the CO's determinations were clearly erroneous, or that a substantial right of the applicant's was materially prejudiced, the CO's decision should be upheld.

The JAG argued that under Article 15 of the Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 815, NJP is a congressionally established administrative means for military commanders to deal with minor violations, as an essential part of their responsibilities in order that they might preserve discipline and promote behavioral changes in members without exposing them to the stigma of a court martial conviction.¹⁵ The JAG argued that the UCMJ and service regulations commit authority to commanding officers and designated appeal authorities to determine whether an offense occurred, and if so, the appropriate punishment for that offense. To prove error before the BCMR, the JAG argued that the applicant must overcome a strong presumption that military officials performed their duties correctly, lawfully, and in good faith.¹⁶ The JAG claimed that an applicant seeking relief from NJP must first prove: 1.) the CO's determination regarding the commission of an offense was clearly erroneous; 2.) the accused suffered material prejudice due to clear procedural error; and 3.) the punishment imposed was a clear abuse of the broad professional discretion afforded to military commanders under Article 15 of the UCMJ.

In the instant case, the JAG argued that the applicant was awarded a Letter of Reprimand (LOR) and subjected to NJP proceedings because the applicant had violated of Article of 92 of the UCMJ. According to the JAG, the applicant's contentions that her handling of the "C" fire was investigated based on gender bias and retaliation for comments found in the Climate Survey are unsupported by evidence. The JAG argued that the personal statements provided by the applicant and the OPS that assert she was treated differently on the basis of gender are uncorroborated by the evidence in record. The JAG pointed to declarations made by the XO and the CO under the penalty of perjury, which claimed the applicant and the OPS' statements mischaracterize the applicant's interactions with Command and fail to address the fact that the applicant was repeatedly counseled and given the opportunity to address and correct her actions prior to receiving any adverse discipline. In addition, the JAG argued that both the applicant and the OPS' personal statements fail to rebut the Command's assertion that there was an articulable, non-gender based, reason for their decision to impose NJP. Ultimately, according to the JAG, the Command's decision to bring the applicant to Mast was not based on the applicant's gender, but on facts that came to light during an investigation into her past actions during the "C" fire.

¹⁵ *Cochran v. United States*, 1 Cl Ct. 759 (Cl.Ct. 1983), *reh. denied*, 3 Cl.Ct. 3 (Ct.Cl. 1983), *aff'd*, 732 F.2d 168 (Fed. Cir. 1984), *cert denied*, 469 U.S. 853; *Dumas v. United States*, 223 Ct.Cl 465, 620 F.2d 247 (Ct.Cl. 1980).

¹⁶ *Arens v. United States*, 969 F.2d 1034, 1037 (1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

The JAG further argued that the applicant mischaracterized the general tenor of the statements found in the Climate Survey. The JAG conceded that there were comments in the Command climate that the applicant should not be onboard, but the Command initiated the investigation and ultimately NJP as a result of comments found in the Survey that provided new information into the applicant's alleged mishandling of the "C" fire. The JAG also conceded that the applicant is correct that the "C" fire took place before the Climate Survey, and the NJP and LOR took place after the Survey, the investigation was not initiated due to "complaints in the Command Climate Survey that [she] should not be onboard..." According to the JAG, the comments that precipitated the investigation and subsequent NJP, were not that the applicant should not be onboard, but were specific comments about her handling of the "C" fire, comments that made the Command question the applicant's truthfulness about her handling of the incident. The JAG argued that the timing of the investigation and the subsequent NJP were not retaliatory or pretext, but were justified by the need to further investigate and hold the applicant accountable based on new information discovered in the Command Climate Survey. The JAG claimed it was the investigation into the applicant's handling of the "C" fire revealed discrepancies between the applicant's account of events from those of the DCA's account. The JAG argued that based off of the results of the investigation, the CO decided to refer the matter to NJP. The JAG further argued that pursuant to the Military Justice Manual (MJM), COMDTINST 5810.1G, the CO had the authority to dispose of the matter through NJP proceedings, and because the CO had the necessary authority, the applicant has failed to show that the Coast Guard committed an error or injustice.

The JAG argued that the applicant's claims that Coast Guard procedures were not followed are without merit. Specifically, the JAG argued that the applicant's comments that procedures were not followed because was not "permitted to review the information the CO would rely on at Mast," "not permitted to seek legal counsel prior to Mast," and "was not allowed to talk to a lawyer during the proceedings" and unsupported by facts and/or policy. The JAG claimed that the applicant has failed to demonstrate where in policy the command was required to allow her to review the investigation prior to referring her to NJP. The JAG pointed to the declarations from the applicant's CO and XO to demonstrate that according to the CO and XO, the applicant was permitted to review the investigation and associated documents prior to the proceedings, which is what is required by policy.¹⁷ The JAG also claimed the applicant failed to point to a specific policy that required she be given legal representation for her Mast hearing. On the contrary, the JAG argued that policy states that legal representation is not afforded to members for Mast proceedings, but they are allowed Mast representatives which the applicant had.¹⁸ The JAG stated that members are, at Command discretion, afforded the chance to speak with counsel prior to NJP. According to the declarations from the CO and XO, the cutter was underway, and the applicant was afforded that opportunity to communicate off-ship prior to proceedings, via phone, if she so chose, but the Command is unsure whether or not the applicant utilized her opportunity to confer with counsel.

The JAG argued that the punishment the applicant received was not erroneous or unjust and was within the realm of punishments available—the CO did not exceed his authority in the type of punishment awarded—and was specifically tailored to the offenses committed. According to the JAG, a written LOR is an authorized NJP punishment. The JAG argued that the CO found that the applicant had been derelict in her duties when failing to timely gas free the space where

¹⁷ Article 2.J.1. of the Military Justice Manual, COMDTINST M5810.1G.

¹⁸ *Id.*

the “C” fire had occurred, ultimately putting the vessel and crew in danger. The JAG further argued that because there was no misstatement of fact nor were there any comments that had no business being in the written LOR, the applicant has failed to show error or injustice with the imposition of the NJP and the issuance of the LOR. In addition, the JAG argued that the applicant has also failed to prove that there has been a clear legal or factual error, a clear abuse of the broad discretion accorded to commanding officers, or material prejudice to the applicant’s rights as a result of such errors.¹⁹

Regarding her request to remove the documentation of her NJP, the JAG argued that the applicant failed to prove any error or injustice with this OER which would entitle her to relief. Specifically, the JAG argued that the applicant has failed to overcome the specific *Hary* factor that require the applicant prove 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.” The JAG claimed the CO determined at Mast that the applicant failed to ensure atmospheric testing in the machinery space for at least four hours following a fire. The JAG argued that the applicant and OPS’s personal statements do not adequately rebut the Command statements justifying their comments and marks found in the disciplinary OER. The JAG claimed that the applicant’s disciplinary OER was specifically the result of her NJP which was not based on gender but on an investigation into her actions regarding her handling of the “C” fire. The JAG argued that following the imposition of NJP on an officer, policy dictated that the applicant receive an OER documenting the NJP, which then needed to be validated by CG-OPM to ensure the OER was issued within policy guidelines. The JAG highlighted the fact that the applicant was informed of her ability to appeal her NJP, but has failed to provide any evidence that she took advantage of the appeal process available to her. The JAG also noted that the applicant failed to appeal her OER to the Personnel Records Review Board (PRRB), which was another administrative remedy available to the applicant that she did not use.

d. There Was No Error or Injustice in the Applicant’s Removal from Primary Duties, Including the OER Documenting the RPD.

The JAG argued that just as the applicant’s previous arguments on gender discrimination have failed, they also fail here. According to the JAG, the applicant has failed to prove that the Coast Guard erred when it removed her from her primary duties after a loss of confidence. The applicant relies on her own personal statement and that of the OPS as evidence, but these personal statements are uncorroborated and unsupported by other evidence. In addition, the applicant failed to address the fact that there were articulable, nondiscriminatory reasons for her RPD. Specifically, the JAG argued the applicant was removed from her primary duties not because she was a woman, but because her chain of command lost confidence in her as a result of her mishandling of qualifications, in addition to previous concerns CO addressed with her. The JAG stated that while the issues with non-qualification were not the core reason for the applicant’s RPD, the issues with non-qualification of the staff arose after numerous other issues and Command ultimately lost confidence her ability to remain in her position. The JAG argued that the applicant has failed to prove an error or injustice and her requests to remove the RPD memorandum from her record should be denied.

¹⁹ *Cochran v. United States*, *supra* note 38.

The JAG also claimed that the applicant has failed to prove that the OER which resulted from the RPD was adversely affected by “misstatements of significant hard fact,” or factors “that had no business being in the rating process,” or a prejudicial violation of regulation or statute.²⁰ The JAG argued that the addendum submitted by the applicant in an attempt to explain the issues raised in the OER, does not adequately rebut the statements provided in the OER and the declarations provided by the CO and XO. Regarding factors that have no business being in the rating chain, the JAG claimed the applicant once again alleged that the RPD and the subsequent OER were the result of gender discrimination, but she has failed to prove this. The JAG further argued that the applicant has failed to prove a prejudicial violation of statute or regulation. According to the JAG, the OER that resulted from the RPD was issued according to policy and did not contain any prohibited comments. The JAG stated that following an RPD, policy dictates that a service member receive an OER documenting the action. The JAG noted that the applicant failed to avail herself of the administrative remedy allowing service members the opportunity to apply to the Personnel Records Review Board to challenge the OER. As a result, the JAG argued the applicant failed to overcome the presumption of regularity afforded to Coast Guard officers and has failed to prove an error or injustice with regard to her RPD and the subsequent OER. Therefore, the JAG argued the applicant’s requests, in their entirety should be denied.

In support of his advisory opinion, the JAG provided the following documents:

- A sworn declaration from the applicant’s now retired former Commanding Officer. The CO of the cutter refuted the applicant’s claims that his treatment of her was the result of gender discrimination and that he expressed contempt for women being in the service. The CO claimed he fully supported the applicant while she was aboard his vessel and still desire to see her succeed. The CO further refuted the applicant’s allegations of gender discrimination by referring the Board to previous evaluations of the applicant where he gave her high marks and recommended her for advancement.

The CO contended that the applicant’s account of “C” fire was not what the investigation later discovered. According to the CO, the investigation into the applicant’s handling of the “C” fire revealed that she instructed an unauthorized crew member to gas free the space and not the DCA. It was this misinformation provided to Command by the applicant that led to her being sent to Mast. The CO claimed that the Area legal and cutter forces were continuously briefed on the situation and the vessel’s actions were in line with the Area’s recommendations. The CO also stated that the applicant’s claims that she was refused access to the investigation documents and counsel are false. The CO claimed the applicant signed paperwork regarding counsel and was given a copy of the report and allowed to read it.

The CO claimed that there were “many” concerns raised by crew members regarding the applicant’s knowledge and engineering decisions she was making that were contrary to standard engineering practices. The CO further claimed that it was he who went against other senior enlisted members and asked that they help teach the applicant and catch her up. According to the CO, senior enlisted members requested the applicant be removed from duties earlier, but he believed she just needed an opportunity to learn.

²⁰ *Hary v. United States*, 223 Cl. Ct. 10, 18 (1980)(quoting *Guy v. United States*, 608 F.2d 867, 870-871 (Cl. Ct. 1979).

The CO mentioned the first DEOMI survey and acknowledged that there were things he could have done differently and that the crew was extremely unhappy. However, the CO argued that the second DEOMI survey showed improvements aboard the vessel, that the crew members were in better spirits, but this survey also indicated how much happier members were that the applicant was no longer onboard the vessel.

The CO contended that there was significant documentation and counseling provided to the applicant that outlined the concerns Command had and how she could improve in those problem areas. The CO claimed the applicant was always told her Command was there to help and support her, and these statements of support were put in writing.

The CO argued that the applicant's allegations for sexual harassment and gender discrimination were investigated by the Area Command and found to be unsubstantiated. The CO stated that he took offense to the applicant's allegations considering all he and his other commanders tried to do to help her.

- A sworn declaration from the applicant's former Executive Officer (XO). The XO stated that he stood by both the February 9, 2019, OER and the September 5, 2018, Administrative Letter of Censure signed by the applicant's CO. The XO claimed that the applicant displayed odd behavior almost immediately upon her arrival aboard the vessel. The XO alleged that on her first day, while eating lunch with the former CO, XO, and other junior officers, the applicant accused her former unit of mistreating her and trying to ruin her career. The XO stated that the timing and audience of the applicant's "tirade" made for an awkward first impression. The XO claimed that upon his initial check-in with the applicant, he explained to her that he understood she had faced professional challenges at her previous unit, but he was committed to ensuring she did not have a similar negative experience on his vessel.

The XO stated that he became aware early on that the applicant lacked the competency, leadership skills, and professionalism to be an effective Engineer Officer (EO). The XO claimed that the applicant demonstrated a lack of fundamental shipboard engineering knowledge. This was evidenced by her inability to provide clear reports on engineering casualties or outline repair plans. According to the XO, the applicant's communication with her subordinates and other crew members was strained. In addition, the XO claimed the applicant was very indecisive. The XO further claimed the applicant's friendships with junior officers and a Chief Petty Officer set a bad example for other officers onboard.

The XO alleged that despite his concerns, he did his best to support the applicant and help her grow into a department head, but unfortunately that never happened. The XO claimed that anytime he tried to counsel or advise the applicant, she would twist his words and misrepresent what he said to others, while continuing to make the same mistakes she was counseled on. For example, the XO stated that he told the applicant that she needed to spend less time playing games on the mess deck and more time completing her administrative work. The XO also told the applicant that when she encountered casualties, she needed to brief her commanding officers, making logistical arrangements for repairs,

and not linger at the sight of the casualty. The XO alleged that after he provided her with this guidance, she told a colleague at the Surface Force Logistic Center that she was prohibited from entering certain areas of the ship. In addition, the XO alleged that the applicant repeatedly failed to brief both himself and the CO on engineering casualties or develop repair plans.

The XO claimed that as the applicant's supervisor, he was invested in her success and viewed her performance issues as a direct reflection of his leadership abilities.

Regarding the allegations the applicant made against the CO, the XO stated that he found the CO to be difficult to work for. The XO claimed at times the CO was anxious, overbearing, and asked a lot of questions. In his opinion, the XO stated that he believed the CO would ask questions in order to gauge the knowledge of junior officers, which made many of them uneasy. The XO alleged that early after the CO's arrival he discussed his concerns with the CO on how the CO interacted with officers onboard, including the applicant. The XO claimed the CO acknowledged his concerns and seemed to change his approach with the junior officers. The XO alleged that the CO's communication with the applicant was always strained, which led him to meet with both the applicant and CO separately in an effort to get them to communicate better with one another.

According to the XO, during a 2019 winter patrol, the CO began to engage in the aforementioned behavior again, which caused a growing disharmony in the wardroom. The XO alleged that he held a meeting with the entire wardroom, to better understand their concerns. The XO claimed he asked the CO not to attend the meeting to encourage the junior officers to speak freely. He took the concerns raised by the junior officers to the CO, at which point the XO alleged, he became the recipient of the CO's heightened anxiety. The XO stated that he did not like the CO's leadership, but from his perspective, the CO tried to make changes when the XO addressed concerns with him. The XO stated that based on his observations of the CO's behavior, the weak leadership the CO displayed towards junior officers was not based on creed, gender, or race. According to the XO, the CO did not discriminate. The CO had exacting standards for all those onboard his vessel.

Regarding the applicant's allegations that the CO made discriminatory and unprofessional comments towards her, the XO alleged he never heard the CO tell the applicant she did not belong aboard the vessel as an engineer or as a woman. Furthermore, the XO stated that based on his observations of the CO, he finds it very unlikely that the CO would have said that to anyone. In addition, the XO alleged that neither he nor the CO ever told the applicant she was not allowed in the engineering room. The XO also stated that he never heard the CO making fun of the applicant for her weight. According to the XO, the CO did have a tendency to "task" the department heads and himself during meals, which he spoke to the CO about and requested that he stop doing that. Although the XO requested the CO stop "tasking" or asking questions to junior officers during meals, he would not be surprised if the CO continued to do so to some extent.

In response to the applicant's allegations that she did not receive counseling prior to receiving her Letter of Censure, the XO simply stated that it's not true. The XO claimed

the applicant received numerous “cautions” on her poor performance before she received an Administrative Letter of Censure. The XO alleged that during the applicant’s first patrol aboard he spoke with her daily on how she could carry out her duties and grow as a leader.

The XO disputed the applicant’s claims that the Letter of Censure forbade her from going into certain areas of the ship and that she was given the Letter of Censure because she was mentoring junior enlisted females. The XO claimed the applicant was counseled for spending an inordinate amount of time on the mess deck playing games and neglecting her responsibilities, in addition to other performance shortfalls. According to the XO, during the applicant’s first patrol she spent her time playing games on the mess deck while her junior officers were standing watch and completing administrative tasks. The XO alleged that the applicant developed, what he perceived to be, an inappropriate relationship with a Chief Petty Officer outside of her department. The XO alleged that while on a logistics stop the applicant and the Chief Petty Officer stood in the shade idly chatting, while almost everyone else on the vessel was engaged in loading fuel and stores.

The XO also disputed the applicant’s claims that she was told if she did not sign the Letter of Censure she would be masted. The XO alleged this statement is just simply untrue. According to the XO, neither he nor the CO ever told the applicant she would be masted because refusing to sign a Letter of Censure is not punishable under the UCMJ.

Regarding the applicant’s allegations that the XO treated her differently because she rebuffed his advances, the XO once again claimed that those allegations are categorically untrue. The XO claimed that because he was concerned with the inappropriate relationships that the applicant was forming with junior service members, he encouraged her to “go out with the wardroom, as a group,” but he claimed he never suggested the two of them should go out anywhere alone together.

Regarding the “C” fire, the investigation that followed, and the resulting NJP proceedings, the XO claimed that the applicant’s account of things is untrue and unsupported by evidence. Regarding the applicant’s claim that she called the XO after the fire broke out, he alleged he did not remember receiving a call from the applicant as he was on leave at the time of the fire. After reviewing the comments provided for in the DEOMI service the CO asked the XO to look into why the applicant directed an unqualified petty officer to conduct the post-fire Gas Free Engineer procedures. When the XO questioned the applicant, she told him it was the DCA who ordered the petty officer to conduct the gas freeing procedures, not her. The XO claimed that he found this statement highly unusual given that the DCA is a stickler for following regulations. The DCA was questioned and denied the applicant’s claims that he ordered the petty officer to gas free the space. When a meeting between the CO, the DCA, the applicant and himself, was held to clear up the confusion, the applicant “said nothing during the conversation.” The XO stated that he believed the applicant was lying about her handling of the “C” because she did not offer a rebuttal to the DCA’s account and further alleged that the applicant had a history of dishonesty.

After the meeting the XO claimed that he asked the applicant why her account and the DCA's account were so different. The XO also stated he asked the applicant if she wanted to rescind her statement or elaborate on the details, but he claimed at no point did he tell her to change her story. Instead, he alleged that he told her it was not a good situation, but if she were honest, they could work through it. He alleged he appealed to her one final time to be honest about what happened, but ultimately had to open an investigation given the discrepancies between the applicant's detail of events and the DCA's.

According to the XO, he never told the applicant she would get "masted or kicked out for being a liar." The XO alleged that the applicant asked him what was going to happen to which he replied by telling her that because there were inconsistencies in her story, he would have to open an investigation. He stated that he told her he didn't know what would happen, but remembered going through a list of possible outcomes if the investigation discovered that she lied or was negligent, but he alleged it was a statement of fact not a threat. In fact, according to the XO he does not have the authority to convene NJP proceedings or separate an officer from the Coast Guard. The XO stated that contrary to the applicant's beliefs, he did not want to open an investigation, but he felt he had no choice. According to the XO, the applicant, in an attempt to deflect blame, she lied about the incident and then implicated a subordinate, which the XO found unsettling.

After the investigation found that the applicant had lied, the XO stated he recommended she be removed from her primary duties. He claimed he found no benefit in JNP, but the CO decided against his recommendation and instead order the applicant be sent to Mast and retained her as the Engineering Officer.

The XO stated that the applicant's claims that she was prohibited from seeing the preliminary investigative report prior to her NJP is false. The XO alleged that it is standard procedure for members to review the investigation prior to NJP, which the applicant and her Mast representative were permitted to do. The XO stated that he specifically remembers providing the document to the applicant and her Mast representative in the Mast Representative's Stateroom prior to the proceedings. In addition, the XO stated that the applicant's statement that she was not permitted to seek legal counsel prior to her NJP is not entirely correct. According to the XO, while there is no legal representation for NJP proceedings for members attached to afloat units, he claimed he did offer the applicant use of the ship's satellite phone to speak with someone off the ship, which she accepted, though he is unsure if she spoke with anyone.

The XO alleged he reviewed the Acknowledgement of Rights – Acceptance of NJP for (CG-5810D) with the applicant, which she signed with a witness present. The XO claimed that the CG-5810D, along with the CG-4910, case package and court memorandum were later filed in the vessel's unit punishment log. The XO admitted that during the NJP proceedings, the CO did refer to the applicant's lack of competence but alleged that the CO did not say anything about her not being fit as an officer or a woman. The XO stated that it was a closed Mast at the request of the applicant. Those in attendance were the applicant, the CO, the applicant's representative, and the XO. According to the XO, after the NJP proceedings were complete he informed the applicant that although he his recommendation

was that she be relieved of her duty, because she was not, he would continue to support her and help her overcome this career setback.

The XO stated that although the DEOMI survey results and comments were not favorable to the CO, the Command Chief and himself, the applicant's statement that the survey only "mentioned" her was a gross understatement. The XO drew attention to the negative comments made about the applicant in the DEOMI survey. The XO stated the applicant received negative comments from coworkers regarding her poor performance and leadership skills. According to the XO, upon further review of the DEOMI survey comments, it shows that the majority of the negative comments were related to the applicant.

Finally, in addressing the applicant's allegations that she was "specifically told" training was not important, the XO stated these allegations were untrue. The XO alleged that the CO was a strong proponent of training. The XO stated that as the XO, his duties were to create the daily schedule and supervise all training onboard. The XO alleged that the vessel had "a lot" of opportunities to train during patrol following their dry dock, because he does not remember it being an operationally intensive patrol. The XO alleged it was the applicant's lack of foresight regarding training, in addition to the fact that most of her requests for training were at the last minute, but were rarely, if ever, denied.

- A signed sworn statement from the Commanding Officer ("Commander") of Area Cutter Forces, who signed the applicant's "Removal from Primary Duties" OER as the reviewer.

The Commander stated that he did not have any direct personal interactions with the applicant during the period of performance. As reviewer for RPD OERs, it was his job to ensure the evaluations are fair and accurately reflect the Reported-on-Officer's performance based on the input provided by the Supervisor and Reporting Officer. The Commander claimed that the only personal interaction he had with the applicant was on or about March of 2020 to assist her and her command with some of the concerns as to the applicant's entitlements while she was temporarily assigned to a different duty location.

Based on the guidance from OPM-3, the Commander provided Reviewer comments to the applicant's August 14, 2019, OER, documenting the fact that she refused to sign the OER. The Commander also stated that he reviewed the applicant's addendum and responses from those in her rating chain and concluded that her rating chain adequately addressed the issues raised in the applicant's addendum. The Commander stated he concurred with the applicant's commander's assessment of her performance. The Commander claimed that until receipt of the BCMR application, he was unaware that the applicant was claiming sexual harassment and sexual discrimination.

- The applicant's second XO, who took over as XO of the cutter on June 9, 2019, submitted a rebuttal to the applicant's response to the negative OER she received for a reporting period of June 1, 2019 through August 14, 2019. XO2 claimed that the 17K haul-back fee the applicant's vessel was forced to cover was the result of the fuel team "cracking" the

fuel truck to take a sample. Because the fuel truck was “cracked,” the vessel was required to pay for the entire amount of fuel in the truck.

XO2 further claimed that because the vessel’s crew failed to follow fuel sounding procedures, it resulted in the vessel unloading less fuel than expected. This led to a two-week leg of patrol with 10% less fuel than planned, making fuel conservation a high priority.

XO2 claimed that the service member who was sprayed in the face with fuel was not wearing safety goggles, but only prescription glasses which did not provide adequate protection from the spraying fuel. The supervisor stated that he addressed this incident with the applicant.

In response to the applicant’s claims that he told her not to brief the CO on engine plant status, XO2 argued that one of his top priorities while aboard a vessel was and continues to be increasing communication up and down the chain of command, and as such does not remember ever telling the applicant not to brief or communicate with the CO about the engine plant status.

XO2 alleged that while in the wardroom the applicant spoke poorly about a Chief stationed on the vessel. According to XO2, the applicant stated the Chief was “just a bad chief.” XO2 stated that because the applicant had only been aboard just a few weeks, he was surprised a department head would speak that way about a chief that way to the new XO. XO2 alleged that he “corrected” the applicant by saying something along the lines of “do not talk about crew members like that in an open space like the wardroom.”

XO2 further alleged that there were five members, including himself and the applicant, present at the Aviation Standardization inspection meeting when the lack of qualified deck fire teams was discovered, and each member submitted written statements. With the exception of the applicant, XO2 claimed that these statements do not support a claim that the lack of qualified personnel was a data entry issue. XO2 alleged that when he and the applicant met with the CO later that day, he does not recall the applicant telling the CO that the lack of qualified personnel was a data entry issue or the result of a lost qualification letter.

XO2 alleged that during evening reports, the applicant became disrespectful to him in the presence of other department heads after it was determined that she was requiring engineers to awake before reveille²¹ for engineering training. The XO2 further alleged that the CO was briefed on the flight deck that evening as to how the applicant spoke to him. The XO2 also claimed that he counseled the applicant as well, explaining to her that while he appreciated open dialog, she cannot talk or act the way she did and that her conduct was unprofessional.

²¹ Reveille is the wake-up call or the early morning call.

APPLICABLE LAW AND POLICY

Article 1.F.2.b. of the Military Assignments and Authorized Absences Manual, COMDTINST M1000.8A, discusses the circumstances that warrant removal of a commissioned officer from his primary duties as follows:

An officer may be considered for permanent removal from primary duties under the following circumstances:

- 1) The officer fails to perform primary duties such that their performance significantly hinders mission accomplishment or unit readiness, or
- 2) After an adequate amount of time at the unit (normally at least six months), it becomes clear to the command that the officer has neither the ability nor desire to perform assigned duties, or
- 3) The officer's actions significantly undermine their leadership authority.

Article 1.F.2.d. of Military Assignments and Authorized Absences Manual discusses the process of removing an officer from their primary duties as follows:

- 1) At the time's discretion, an officer may be temporarily removed from primary duties at any time. Upon determining that an officer meets the requirements of Article 1.F.2.b. of this Manual for permanent removal from primary duties, the command will submit an OER in accordance with Article 5.A.3.c. and 5.a.4.h. of reference (q), Officer Accessions, Evaluations, and Promotions, COMDTINST M1000.3 (series). That command should inform the officer of the RPD process and way forward.
- 2) After the OER is routed to Commander (CG PSC-OPM-3) or (CG PSC-RPM) per Article 5.A.2.i. of reference (q), Officer Accession, Evaluations, and Promotions, COMDTINST M1000.3 (series), Commander (CG PSC-OPM) or (CG PSC-RPM) will review and make the final decision on removal from primary duties.

Article 5.A.1.C.1.d.1. of the Officer Accessions, Evaluations, and Promotions Manual, COMDTINST M1000.3A, discusses performance feedback as follows:

Performance feedback occurs whenever a subordinate receives advice or observations related to their performance in any evaluation area. Performance feedback can take place formally (e.g., during a conference) or informally (e.g., through on-the-spot comments).

Article 5.A.2.d. of the Officer Accessions, Evaluations, and Promotions Manual discusses the responsibilities of the Reported-on Officer in relevant part:

c. Individual officers are responsible for managing their performance. This responsibility entails determining job expectations, obtaining sufficient performance feedback from the supervisor during the period, and using that information to meet or exceed standards.

...

k. Assume ultimate responsibility for managing their own performance, notwithstanding the responsibilities assigned to others in the rating chain. This includes ensuring performance feedback is thorough, and that OERs and associated documentation are timely and accurate.

Article 5.A.3.e.(1)(b) of the Officer Accessions, Evaluations, and Promotions Manual in force at the time, COMDTINST M1000.3A, states the following about Special OERs:

A special OER shall be submitted to permanently remove an officer from primary duties as a result of conduct or performance which is substandard or as directed by the permanent relief authority's final action on a permanent relief for cause request per by Article 1.F. of reference (q), Military Assignments and Authorized Absences, COMDTINST M1000.8 (series)). The OER will be defined as derogatory and shall follow the procedures for derogatory OER submission in accordance with Article 5.A.7.c. of this Manual. This OER will count for continuity.

...

The Military Justice Manual, COMDTINST M5810.1G provides the necessary guidance on Non-Judicial Punishment. In relevant part:

2.H.2.c. Consultation with an Attorney. The command may, in its sole discretion and if it will not unreasonably delay the proceedings, arrange for the member to consult with a military attorney or provide the member the opportunity to consult with a civilian attorney at the members own expense prior to imposing NJP to allow the member to obtain information about the NJP process.

...

2.I.3. No Right to Consultation with Counsel for Members Attached to or Embarked on A Vessel. A member attached to or embarked in a vessel has no right to demand trial by court-martial in lieu of NJP or, consequently, to consult with a military or civilian attorney prior to NJP regarding the option to demand trial by court-martial. However, a commanding officer, at his or her discretion, may permit the member to consult with an attorney. Facilitation of the consultation with an attorney can be accomplished by contacting the command's servicing legal office for the appropriate contact information.

...

2.K.7. Burden and Standard of Proof. The standard of proof required in order to award punishment at NJP is a preponderance of evidence. This standard means that before NJP may be awarded, the commanding officer must determine it is "more likely than not" that the member committed an offense defined by the UCMJ. Each element of each offense as defined in the MCM must be supported by a preponderance of the evidence (i.e., it is "more likely than not" that the element occurred). This standard is more rigorous than a "probable cause" standard of proof used by law enforcement to obtain a warrant, but a lower standard of proof than the "beyond a reasonable doubt" standard used at a court-martial.

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 argued that all derogatory information contained in her record that resulted from her time onboard the cutter should be removed because she was subjected to disparate treatment by her CO, who she alleged did not believe women should be in the military or onboard military ships, and because she faced backlash for rebuffing her XO's sexual advances. Under 10 U.S.C. § 1552(a), the Board may "remove an injustice" from a service member's record,

as well as correct an error in the record. The Board has authority to determine whether an injustice has been committed on a case-by-case basis.²² Therefore, the Board must consider whether the applicant's Letter of Reprimand, NJP, removal from primary duties and the subsequent negative OERs constitute an injustice. 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.²³ 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.²⁴ To be entitled to relief, the applicant cannot "merely allege or prove that an [evaluation] seems inaccurate, incomplete or subjective in some sense," but 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.²⁵

4. The applicant argued that because she received awards before and after her previous assignment, the only reasonable explanation for her NJP, poor OERS, and removal from primary duties was toxic leadership. However, the applicant has not shown how the alleged toxic leadership led to her inappropriate working relationships, her failure to communicate, her unprofessionalism, her dereliction of duties, her lack of full disclosure regarding her handling of the "C" fire, her failure to adequately calculate the amount of required fuel, or her failure to ensure the ship had the necessary qualified flight deck personnel. The applicant has provided no evidence to counter any of these claims, other than one letter from a coworker. In addition, the fact that the applicant received better OERs and commendations before and after the reporting periods for the disputed OERs is not evidence that they do not accurately reflect her performance during the reporting periods.²⁶

5. The applicant argued that her permanent removal from primary duties was unjust because she was never counseled regarding her performance before her removal. However, this is untrue. The preponderance of the evidence shows that the applicant was counseled for her poor performance, inappropriate relationships, leadership, communication, dishonesty, and other factors throughout her time onboard the vessel. This counseling can be found in her Administrative Letter of Censure, Punitive Letter of Reprimand, NJP, and subsequent negative OERs. The applicant was given her Administrative Letter of Censure on September 5, 2018. This Letter of Censure counseled the applicant for "specific instances of performance concerns observed since you [the applicant] reported." Namely: Relationship with Junior Crew Members; Communication;

²² Decision of the Deputy General Counsel, BCMR Docket No. 2001-043. According to *Sawyer v. United States*, 18 Ct. Cl. 860, 868 (1989), *rev'd on other grounds*, 930 F.2d 1577, and *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976), purposes of the BCMRs under 10 U.S.C. § 1552, "injustice" is "treatment by military authorities that shocks the sense of justice."

²³ 33 C.F.R. § 52.24(b).

²⁴ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

²⁵ *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).

²⁶ *Grieg v. United States*, 226 Ct. Cl. 258, 271 (1981) ("[T]he fact that this fine officer had better ratings before and after the challenged OER is of no legal moment nor of probative value as to the rating period covered by the one OER with which he is dissatisfied.").

Critical Thinking and Problem Solving; and Personnel Issues. The applicant was encouraged by her CO to “take stock in your actions,” and remember that as a department head, she had significant influence over the most junior personnel. The CO admonished the applicant to quickly take action to remedy these performance issues. Prior to this, the applicant had received at least one verbal counseling on August 12, 2018, for spending too much time with junior personnel.²⁷

In addition, the applicant was further counseled on February 10, 2019, via Non-Judicial Punishment proceedings, and on February 12, 2019, via a Punitive Letter of Reprimand for dereliction of duties as a result of her handling of the “C” fire on October 25, 2018. The record shows that the applicant’s decisions continued to harm her cutter’s mission. For example, the applicant failed to accurately calculate the vessel’s necessary fuel, required the ship to pay for unnecessary fuel, and failed to adequately ensure she had properly trained and certified flight deck personnel. In all of these shortcomings and operational failures, the applicant apparently refused to take “stock” in her actions as requested by her CO in his initial Administrative Letter of Censure. The Board therefore finds that the applicant has failed to prove, by a preponderance of the evidence, that her Command failed to provide her with the necessary counseling before removing her from her primary duties. As such, her request for relief should therefore be denied.

6. The applicant alleged that her CO singled her out as his only female officer, treated her with contempt, and sought to build a case of incompetence in order to justify removing her from the ship. However, the applicant has failed to show that the CO had any such motivations or intentions. As noted in the sworn declaration by the applicant’s first XO, he recommended that the CO remove the applicant from command for making a false official statement. The CO decided against that and instead allowed the applicant to remain in her position and receive further training in her post. If the CO had wanted to see the applicant removed because she was a woman, and did not believe women should be aboard military vessels, he arguably would have done so at the first available opportunity, i.e., at the time of the Captains Mast when the XO recommended her removal. In an attempt to support her arguments that she was treated differently because she was a woman, the applicant submitted a letter of support from the male Operations Officer, who claimed the applicant was treated differently from him because when he was counseled, his counseling always took place in private rather than in a public setting like the applicant’s was. In addition, the OPS stated that he also never received an Administrative Letter of Censure after receiving counseling. However, both the applicant and OPS have failed to show that the OPS’s verbal counseling was the result of the same quality of performance as the applicant’s or that the OPS’s poor performance continued in the same manner, without the necessary correction, as the applicant’s apparently did. The fact that the OPS never received an Administrative Letter of Censure tells the Board only that his performance issues were not as bad as the applicant’s. Therefore, the Board finds the letter from the OPS in support of the applicant’s argument for disparate treatment to be unpersuasive and unsupported by the evidence.

The applicant also alleged that she was unable to get into a stride because of her CO’s lack of trust and faith in his female EO. However, the investigation into the applicant’s allegations of disparate treatment showed that the CO was generally distrusting of everyone onboard his vessel, not just the applicant. The investigation concluded that the applicant’s claims of disparate

²⁷ The Letter of Censure stated the applicant was counseled on two previous occasions, but the CO provided only one date for the previous counseling sessions provided to the applicant.

treatment were unsubstantiated, and the case was closed. In addition, the record shows that the applicant's CO and XO were both encouraging and supportive of her role as the vessel's EO and wanted to see her succeed. The preponderance of the record shows that it was not until after multiple failed attempts to counsel and correct the applicant's behavior, in addition to her refusal to take responsibility for her actions, that the applicant was ultimately removed from her command. The applicant has failed to show that the treatment she received was because she was female or that the CO's distrust of her was based on her gender rather than on the numerous shortcomings the applicant exhibited early on in her tour of duty aboard the ship. Therefore, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that she was removed from her command because she was a female or that she was treated differently from her male counterparts because of her gender. As such, her request for relief should be denied.

7. The applicant alleged that after the electrical fire was investigated, the CO and XO were briefed and took no action against her. She further alleged that it was not until after the Command Climate Investigation that the CO authorized the investigation into her handling of the "C" fire. However, the applicant failed to acknowledge that her lack of forthrightness regarding her handling of the "C" fire was not discovered until after the Command Climate Investigation was completed, which is why the applicant's conduct was not initially investigated. Evidence shows that the investigation into her handling of the "C" fire was initiated as a result of discrepancies in her own statements made to the CO and XO which were discovered only after the results of the Command Climate Investigation were released. The Board therefore finds that the applicant has failed to prove, by a preponderance of the evidence, that the investigation into her handling of the "C" was initiated for a reason other than the discovery of discrepancies between her own report of how she handled the fire and her subordinates' reports. Her request for relief should therefore be denied.

8. The applicant alleged that her "open-door" policy, desire to mentor subordinate female crewmembers, and implementation of department changes is what led to her receiving an Administrative Letter of Censure. This was a private letter that was never entered in her record. Therefore, although in written format, the letter is evidence of counseling about the command's concerns about her conduct, but no relief can be considered or granted regarding this letter because it is not in her record.

9. The applicant alleged that the Administrative Letter of Censure forbade her from going into the engine room, Chief's Country, the Mess Deck, or the fantail because it was inappropriate for an officer to be in those locations, which inhibited her from doing her job. However, this is false. Nowhere in this letter was the applicant forbidden from entering these locations. The letter merely counsels the applicant from continuing her conduct of maintaining relationships with junior crew members. The CO reminded the applicant that she was previously cautioned about spending too much time on the Mess Deck playing games with junior personnel, in addition to the "unusual amount of time you [the applicant] spent associating with GMC [redacted]." The CO counseled the applicant that such interactions were inappropriate for an O-3 Department Head. The following statements from the Administrative Letter of Censure are quite informative as to the CO's intent:

As a member of the Command, it is important for you to avoid any misperceptions of favoritism. By continuing to associate with junior personnel, you are undermining your standing as an officer and bringing

you impartiality into question. Furthermore, the Mess Deck is a place for enlisted crewmembers to relax. Having someone of our rank consistently loitering on the Mess Deck outside of meal hours may make crewmembers feel uncomfortable, even if they do not explicitly say so. You need to realize your continued interactions with junior personnel are disruptive and detrimental to good order and discipline.

Reviewing the entirety of the document, the Board finds that there is no mention of the applicant being forbidden from entering any of the areas alleged by the applicant. As such, the applicant has failed to prove, by a preponderance of the evidence that the CO forbade her from entering certain areas of the ship, inhibiting her from doing her job or intentionally stifling her efforts as the EO because she was a woman.

10. The applicant alleged that after she rebuffed her first XO's sexual or romantic advances, his professionalism towards her changed. However, an investigation into these allegations was conducted and her allegations were found to be unsubstantiated. The applicant has failed to prove, by a preponderance of the evidence, that her XO sexually harassed her or made sexual or romantic advances towards her.

11. The applicant made many allegations regarding the actions and attitudes of her CO, XO, and other crewmembers. Those allegations and arguments not specifically addressed above are considered to be unsupported by substantial evidence sufficient to overcome the presumption of regularity and/or are not dispositive of the case.²⁸

12. The applicant has not proven by a preponderance of the evidence that the Letter of Reprimand she received at NJP is erroneous or unjust or that the two disputed OERs were 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.²⁹ Therefore, her requests for relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

²⁸ 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").

²⁹ *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).

ORDER

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

July 15, 2022

[REDACTED] [REDACTED] Digitally signed by [REDACTED]
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