

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

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 2000-162

FINAL DECISION

[REDACTED]

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14, United States Code. It was docketed on July 17, 2000, upon the Board's receipt of the applicant's complete application for correction of her military record.

This final decision, dated May 17, 2001, is signed by the three duly appointed members who were designated to serve as the Board in this case.

Request for Relief

The applicant, prior to reverting to her permanent enlisted status in 1999, had served as a temporary commissioned officer, holding the rank of lieutenant junior grade (LTJG). She is currently a [REDACTED] pay grade E-6) on active duty. She asked the Board to correct her record by removing an officer evaluation report (OER) for the period February 2, 1996 to June 30, 1996 (disputed OER) and by replacing it with a report for continuity purposes only. She requested reinstatement to the grade of LTJG with no break in her officer status. She also asked the Board to remove her 1997 and 1998 failures of selection for promotion to lieutenant (LT), with two additional opportunities for promotion to that grade. If she is selected for promotion to LT, she asked for an adjustment to her LT date of rank once promoted to that grade, with back pay and allowances.

EXCERPTS FROM RECORD AND SUBMISSIONS

Disputed OER

The disputed OER is adverse because the applicant was given an unsatisfactory mark of 1 (on a scale of 1 to 7, with 7 being highest) in block 12. Using this block, the reporting officer compared the applicant with other LTJGs that he has known during his military career.

In the supervisor's portion of the disputed OER, the applicant received marks of 4, except for marks of 3 in "operational/specialty expertise", and "directing others." The supervisor provided mostly favorable comments with respect to the applicant's performance. However, there were several criticisms of her performance. The supervisor wrote the following in the performance comments section: "Did not meet

deadlines consistently but never stopped trying. After being counseled for not ensuring department damage control checks were complete, stayed late to personally ensure that they were done Never grasped basic concepts critical to safe shiphandling such as steering on ranges, use of proper bridge commands, & relationship between speed over ground to amount of rudder to use."

In the leadership skills section of the OER, the supervisor wrote in pertinent part that the applicant "lacked ability to recognize strength and weaknesses of subordinates." In the communication skills section of the disputed OER, the supervisor wrote: Sometimes had difficulty listening . . . on some critical occasions misunderstood supervisors comments & directions: Misconstrued CO's departing comments at quarters as a personal attack & blamed supervisor for giving poor direction when project deadline was not met on important drug incident investigation."

In his portion of the OER, the reporting officer gave the applicant one 6 (dealing with the public), three 5s (health and well being, military bearing and professionalism) one 4 (initiative), one 3 (stamina), and two 2s (judgment and responsibility).

In the personal qualities section of the OER, the reporting officer wrote:

Questionable judgement in difficult situations; blindly followed steering casualty check-off list . . . when drill scenario allowed for exploring other options including diver assistance; extremely poor judgment in fabricating a story about how she obtained evidence of a UCMJ violation . . . I lost all faith in this officer during the period; every single time that the XO or I counseled her on performance issues, including making a false written statement, she offered excuses or blamed someone else; she also told me that the reason she finally provided a true statement was because "her roommate had told the XO the truth", not because it was the right thing to do. . . Did not handle criticism or adversity well, became so upset in counseling session on priorities that I couldn't satisfactorily finish the conversation with her, left work early at least once due to stress; complained of severe stress resulting from relatively minor incidents. . . Still a role model in practicing/promoting wellness.

In the leadership and potential section of the OER, the reporting officer wrote:

I gave [the applicant] my unconditional support throughout this final marking period, intervening on her behalf with her supervisor, peers & subordinates, so that she might successfully complete this difficult assignment as an OPS officer afloat. I was rewarded this period with obstinacy, excuses and finally a lie regarding an allegation of a serious UCMJ violation. [The applicant] should perform well and may excel in an administrative assignment ashore but she did not perform satisfactorily as my Operations Department Head.¹ I do not recommend [the applicant]

¹ In the previous OER for the period August 1, 1995 to January 31, 1996, the reporting officer wrote that the applicant "has not excelled as Operations Officer, but she has become proficient in all areas of evaluation and she has demonstrated an extraordinary depth of character along the way." In the leadership and potential section of previous OER, he wrote that "[a]lthough I cannot recommend [the

for positions of greater responsibility, promotion or retention in the officer corps.

The applicant submitted a reply to the disputed OER. Of particular note is the fact that she stated that she signed a false statement about how she learned of a UCMJ violation involving two enlisted members.

Applicant's Allegations and Arguments

During the period covered by the disputed OER the applicant performed duty as the operations officer aboard a cutter. The disputed OER was the last evaluation she received while assigned to that command. She claimed the disputed OER violates Article 10.A.1b.(1) of the Personnel Manual, which states "[e]ach commanding officer must ensure that accurate, fair, and objective evaluations are provided to all officers under their command."

The applicant claimed that the disputed OER is unfair and improper because it accuses her of a criminal offense of which she has never been charged. She alleged that the disputed OER accuses her of making a false official statement and lying about an allegation of a serious UCMJ violation that occurred on the cutter. According to the applicant, the CO's erroneous comments about her involvement in this situation (and not her performance) were the basis for the mark of 1 she received in block 12 of the disputed OER. The applicant claimed the CO's comments are unfair because she was not afforded the protections she would have received if she had been taken to non-judicial punishment (NJP) or court-martial. She claimed that while these comments questioned her integrity as an officer, she was denied the opportunity to examine the witnesses against her and to present a defense to an impartial tribunal, etc.

The applicant claimed that it is unclear from the reading the comments, as they appear in the OER, whether the reporting officer is accusing the applicant of having committed an offense or whether someone else is being accused of the misconduct. She claimed that the reporting officer's statement describing the alleged offense as a serious UCMJ violation is inconsistent with disposing of the matter at NJP.²

The applicant further alleged that the reporting officer failed to reflect in the disputed OER the dilemma she faced about divulging how she learned of the misconduct. In this regard, she stated that she had promised her roommate, Ensign R, that she would not reveal that she learned of the inappropriate relationship between a SN and HS2 from the roommate, and she also was concerned that the SN might commit

applicant] for the next stop in an OPS afloat career path, XO of a WLB, she has clearly demonstrated her value to the officer corps and her potential for positions of greater responsibility. On this OER, the applicant's marks were 4s and 5s.

² The alleged misconduct involved an inappropriate relationship between a SN and a HS2. The applicant had been told of the relationship, but was not honest about how she gained knowledge of the inappropriate relationship until her roommate, an ensign, informed the XO that the applicant learned of the relationship from the ensign. The applicant had signed a statement that she learned of the relationship when she heard it being discussed on the mast deck.

suicide if the matter were not handled delicately. According to the applicant's then-roommate, Ensign R, the SN had stated to Ensign R that she had thought about suicide. The applicant alleged that the reporting officer punished her by placing comments in her OER that she signed a false statement and lied to the reporting officer, while Ensign R was only counseled. (Ensign R was aware of the inappropriate relationship and revealed her knowledge of it only when she was assigned to investigate it.)

The second argument advanced by the applicant is that the disputed OER was written in retaliation for her confronting the reporting officer about comments he made at her farewell ceremony, which she considered offensive and inappropriate. The applicant alleged that the reporting officer made the following comments at her departure ceremony: "[the applicant] should never have left her desk job to come to a ship, and . . . I guess we'll have to let her come back and visit us, even if we don't want to, she'll be working for our boss."

The applicant's third argument is that the disputed OER is unfair because it contains an evaluation of performance in a job to which she should not have been assigned. She stated that her assignment as the operations officer (during the previous reporting period) was improvident because at the time of assignment she had not qualified as an underway officer of the Deck (OOD (u)). The applicant claimed that her assignment as OPS (operations) officer, before she had qualified as OOD (u) was an assignment for failure,³ particularly in light of the fact that she had had no other seagoing assignments and was not an Academy graduate. The applicant qualified for OOD(u) on 13 November 1995, prior to the beginning of the reporting period under review.

The last allegation raised by the applicant with respect to the disputed OER is that "it is unfair because [the applicant] was treated abusively by the reporting officer during her tour aboard the [cutter]." She alleged that the reporting officer would discredit her judgment in front of enlisted personnel. In one instance, she stated that the reporting officer ordered her off the bridge in front of enlisted personnel, to her great embarrassment. The applicant alleged that the reporting officer would yell and use offensive language quite frequently. She also stated that "whenever one of the new junior officers had an opportunity to drive [conn the ship], the CO frequently unleashed an earful of curse words and yelling in the presence of enlisted personnel."

Statements Submitted by the Applicant

1. The applicant submitted a statement from LT C, a female officer who served aboard the cutter from September 1996 to July 1998. (These dates indicate that this individual was not assigned to the cutter during the period covered by the disputed OER.) She stated that the CO and XO made her tour onboard the cutter miserable. She

³ Section G-4-1 of Coast Guard Regulations describe the duties of the OPS officer as follows: "The [OPS officer] shall be head of the operations department. In addition to those duties prescribed elsewhere in these regulations for the head of a department, the operations officer shall be responsible for the collection, evaluation, and dissemination of operational and combat information required for the assigned missions and tasks of the vessel, and, except as maybe [sic] the responsibility of another officer, for all matters related to the operations of the vessel and designated airborne aircraft."

stated that she had heard from another female officer, Ensign R, prior to reporting to the cutter, how the CO had mistreated the applicant and that the male officers on board were treated better than the female officers. She stated that she did not believe these allegations and did not challenge her orders to the cutter. She stated that in retrospect, this was a huge mistake. LT C provides no direct observations of mistreatment of the applicant by the reporting officer. She reported that she heard from others that the reporting officer ordered the applicant off the bridge. With respect to the reporting officer's alleged use of foul language LT C stated the following: "Whenever one of the new junior officers had an opportunity to drive, the CO would frequently unleash an earful of curse words and yelling in the presence of enlisted personnel. I hated when it was my turn to drive because I knew the yelling and profanity would come . . . To give an example, he frequently used the words "god damn it" and "f---" when he got upset . . ." LT C stated "[the cutter] was an abusive command."

2. The applicant submitted a statement from a chief warrant officer (CWO) who served on board the cutter from February 1996 to June 1998 as the first LT. He offered the following:

[The applicant] was serving as the administrative assistant when I first arrived and later was assigned to be the operations officer. . . . I inferred that the CO was unhappy with [the applicant's] performance during the entire period. He often made openly critical comments about decisions she made or actions she took. At times this criticism occurred in hearing of enlisted members of the crew. On at least two separate occasions that I recall non-rated personnel from the Deck Department expressed discomfort at being present when the CO was chastising [the applicant]. I would say some of the criticism was accurate, she did appear to struggle with her duties as operations officer.

The most disturbing event was the farewell speech given by the CO on [the applicant's] last day on board. He spoke openly of [the applicant] having barely made it through her tour and mentioned that some people were not cut out for sea duty. I never observed anything that gave me cause to believe [the applicant] was singled out because of gender. [The reporting officer's] criticisms of his officers were evenly distributed among both male and females.

I was uncomfortable with the openly hostile atmosphere both in the wardroom and out, tensions were fairly high. In general, I would characterize the [cutter] as a difficult place for an officer to learn or develop new skills. There was little tolerance for error and often the slightest deviance resulted in a sharp response from the CO, privately and publicly.

3. The applicant provided a transcript of Ensign R's sworn telephonic interview with the applicant's counsel. Ensign R stated that it was not a good decision to have made the applicant the operations officer because her boat experience was minimal. Ensign R stated that the applicant tried to do her job but did not have the necessary

background to succeed. She stated that it was her opinion that a non-certified OOD (u) should not be placed in the job of operations officer.

Ensign R stated that the female officers on the cutter were treated differently than the male officers. She offered the following example of this difference in treatment: When she and a male officer, both academy graduates, reported to the cutter, the male was allowed to break in as conning officer and deck officer and she was required to break in as a quartermaster of the watch, which she alleged is an enlisted persons duty. (This individual stated that she was delayed in reporting to the cutter for health reasons. She did not state that her male counterpart was delayed in reporting to the cutter.) Ensign R stated that the applicant was also required to break in as a quartermaster of the watch, but the three male officers were not required to do this duty.

Ensign R stated that she told the applicant about the inappropriate relationship between the SN and the HS2. She stated that she and the applicant discussed the applicant's plan to tell the XO about the relationship and the applicant's plan to say that she overheard a conversation about the inappropriate relationship on the mast deck, rather than having found out about it from Ensign R. According to Ensign R, a potential conflict of interest arose for her when she was assigned to conduct an investigation into the inappropriate relationship between the SN and the HS2. She told the XO that she had been the source of the applicant's knowledge about the inappropriate relationship and that the SN had confided in her. Ensign R stated that the XO counseled her on her lack of judgment, but the applicant was counseled on her lack of honesty.

Ensign R also spoke about the reporting officer's comments during the applicant's departure ceremony. She stated that she thought the reporting officer's comments were inappropriate. She also stated that the applicant was in tears after the ceremony and discussed the situation with the reporting officer. According to Ensign R, the reporting officer, the XO, and the HS2, have all steadily progressed in their careers. Ensign R, herself, has been promoted to LT.

4. The applicant submitted a copy of an email message from a rear admiral to another officer requesting assistance in obtaining a waiver for the applicant to take the enlisted service examination for advancement to chief yeoman (YNC). The admiral wrote that "[the applicant] was not selected for LT and had to revert to enlisted status. Non-selection was due, in my opinion, to a hostile work environment on the ship. Has a civil rights complaint in and believe she is working on a BCMR."

5. The applicant submitted a statement from a Professor of Philosophy at a University. Based upon her review of the evidence she concluded that the reporting officer exhibited poor leadership. She further concluded that the reporting officer created a hostile work environment aboard the cutter. She indicated that the applicant did not succeed in her assignment due to this hostile work environment.

Views of the Coast Guard

On February 13, 2001, the Board received an advisory opinion from the Chief Counsel of the Coast Guard. He recommended that the Board grant partial relief "by redacting the phrase 'misconstrued CO's departing comments at quarters as a personal attack &' in block 6 (the supervisor's portion of the OER). Additionally, the Board should expunge all marks and comments from sections 8, 9, 10, 11, and 12 (the reporting officer's portion of the OER). Finally, the Board should expunge the Reporting-on Officer's addendum, all endorsements, the 'x' in block 14, as well as the Reviewer comments." In recommending that relief be granted, the Chief Counsel stated that the applicant has proved her reporting officer was biased against her and, therefore, should have been disqualified from the rating chain. He stated that the applicant had failed to prove that her supervisor's remarks, with a minor exception in block 6., were not a fair and accurate evaluation of her performance. The Chief Counsel also recommended the following additional relief:

1. Reappoint the applicant to the grade of LTJG [Footnote omitted]. Instead of continuity reports, the applicant's enlisted performance marks from the time of her reversion shall remain in her record.
2. Remove the applicant's failures of selection for promotion to [LT] and place her officer record in-zone before the next LT selection board. At the next promotion board, ensure the applicant's enlisted status and record is not disclosed to the Board members and provide instructions to the Board members that they are not to draw any negative inferences or conclusions from the redacted OER or the time gap in the applicant's record.
3. If selected by the first board to consider her for promotion to LT based on a corrected record, the applicant's LT's date of rank should be adjusted appropriately with back pay and allowances. Also, if the applicant is selected, her reverted enlisted record shall be replaced with officer continuity reports.

The Chief Counsel stated that to establish that an OER is erroneous or unjust, the applicant must show a misstatement of a significant hard fact or a clear violation of a statute or regulation. Germano v. United States, 26 Cl. Ct. 1446 (1992). He stated that the applicant must overcome the strong, though rebuttable, presumption that rating officials acted correctly, lawfully, and in good faith in executing their duties. Arens v. United States, 969 F. 2d 1034, 1037 (Fed Cir. 1992). In the absence of such evidence an OER will not be ordered expunged unless the Board finds that the entire report is infected with the error or injustice alleged; unless the Board finds that every significant comment in the report is incorrect or unjust; or unless the Board finds it impossible or impracticable to sever the incorrect or unjust material from the appropriate material. See BCMR No. 151-87.

The Chief Counsel stated that the applicant has proved by clear and convincing evidence that her reporting officer was biased and should, therefore, have been

disqualified from her rating chain. In reaching the conclusion that the reporting officer was biased against the applicant, the Chief Counsel offered the following:

1. The applicant was often subjected to ridicule and embarrassment by the reporting officer to the point of tears. In one instance, the reporting officer summarily ordered the applicant off the bridge in a manner that elicited laughter from the crew. On at least two occasions, enlisted members expressed their discomfort at being present when the reporting officer chastised the applicant.
2. The applicant was subjected to verbal nagging.⁴ The applicant was also subjected to frequent offensive and distasteful language, including words such as "f---" and "god dam it". The reporting officer's constant berating of his officers created a hostile working environment that interfered with their professional development. The reporting officer made inappropriate and disturbing remarks about the applicant's departure from the cutter.
3. The reporting officer acted capriciously and arbitrarily toward his junior officers. The reporting officer required junior female officers to break in as quartermaster of the watch prior to becoming a DWO, but not the males.
4. The reporting officer writes repeatedly in the first person, rather than writing in an objective and detached tone. The reporting officer's comments in the disputed OER are unreasonably harsh and unbalanced in light of the supervisor's section. The reporting officer's highly opinionated comments indicate that personal factors entered his evaluation process that do not belong in the OER.

The Chief Counsel stated that notwithstanding his conclusions with respect to bias on the part of the reporting officer, the comment with respect to the applicant's dishonesty is accurate and should be reflected in the applicant's record. He stated that the applicant admitted in her application to the Board that she was not truthful about the origins of her knowledge about an inappropriate relationship between two enlisted individuals of unequal ranks. By removing the reporting officer's section of the OER and all attachments, the fact of the applicant's dishonesty will be removed from her record. To prevent this from happening, the Chief Counsel recommended that the Board add the following comment to block 8. (personnel and professional qualities/comments): "Noteworthy example of poor judgment by providing false written statement to XO during investigation of inappropriate relationship between two enlisted [members] of crew. Eventually told truth when it was clear she would be caught in the lie."

In recommending that the supervisor's portion of the OER remain in the applicant's record, the Chief Counsel stated that the applicant has offered no evidence to rebut the factual assertions and conclusions of her supervisor's comments, which are generally positive with the exception of narrowly drafted statements regarding the applicant's shiphandling skills. The Chief Counsel further stated that the applicant

⁴ Verbal nagging is a violation of Coast Guard Regulations, COMDTINST M5300.3B, Article 8-2-1-A(4). ("Persons in the Coast Guard shall not nag a junior, while in the performance of duty or at other time, by petty annoyances and fault finding, or the employment of improper language giving and enforcing commands.")

failed to present any evidence that a personal conflict existed between her and her supervisor, nor does she assert that her supervisor was biased against her. He also stated there was no evidence that the reporting officer improperly influenced the supervisor's evaluation of the applicant's performance.

The Chief Counsel stated that if the reporting officer's section of the disputed OER had not been in the applicant's record, she might have been competitive for promotion to LT. He stated the Board should remove the applicant's failures of selection for promotion to LT.

Attached to the advisory opinion was a statement from the reporting officer. He stated as follows:

I assigned [the applicant] as the Operations Officer, even though she was not qualified Underway Officer of the Deck . . . because she was the most qualified Deck Watch Officer onboard to assume the duties as Operations department Head when the incumbent was transferred in the spring of 1995. . . . I was counting on [the applicant's] considerable leadership experience as a prior service petty officer. I was not confident in the only other candidate who was an ensign, a full year junior to [the applicant]. I clearly communicated to [the applicant] . . . that highest priority and most critical area of evaluation was her leadership role as a Department Head. I told [the applicant] that I was more interested in continual improvement as an OOD than a specific date for qualification. I personally mentored and coached [the applicant] on operational and leadership tasks. She progressed during the initial marking period, performed at an acceptable level and then declined noticeably during [the period covered by the disputed OER].

The reporting officer stated that the applicant never informed him about the SN's threat to commit suicide. He stated the applicant misconstrued his comments at her departure ceremony due to a failure to listen attentively, which he indicated had been a problem during the marking period. He stated that he did not believe that he had a short fuse or openly berated junior officers for minor incidents. He stated that he used the words "damn" and "hell" and probably some other profanity, but he consciously tried to limit the profanity where it was not appropriate. He further stated that his policy was to "avoid words and terms that could be insulting for religious reasons, that were sexual in nature, or that were personally demeaning."

Applicant's Reply to the Views of the Coast Guard

On April 5, 2001, the Board received the applicant's response to the views of the Coast Guard. She disagreed with the recommendation of the Coast Guard that the supervisor's portion of the OER should remain in her record. With respect to this issue, she stated as follows:

The Coast Guard has failed to take account of the fact that the environmental conditions created by the commanding officer rendered the supervisor's portion of the OER unfair, even if that portion was accurate.

- 10 -

The CO necessarily sets the tone, and if the tone was abusive and unfair, the effect on subordinates' performance of duty cannot be ignored. [I was] surprised to see that the Coast Guard had effectively disavowed Rear Admiral [A's] description of the cutter as a hostile work environment.

The applicant stated that the relief recommended by the Coast Guard (modification of the OER) fails to meet the make-whole standard that "undergirds" section 1552 of title 10 of the United States Code. She stated that where as here, the commanding officer failed to display the kind of fairness and objectivity prescribed by the Personnel Manual and customary in the Coast Guard, it is unrealistic to suggest that the supervisor, a subordinate of the reporting officer, whose own OERs are themselves prepared by the commanding officer, would not be influenced by his superior's views. She also objected to the Coast Guard's recommendation that language pertaining to the applicant's dishonesty be added to the disputed OER, if the reporting officer's portion of the OER is removed by the Board.

The applicant agreed that her failures of selection for promotion should be removed and she should be reinstated to her officer status with no break in that status with back pay and allowances subject to an offset of her enlisted pay, whether or not she is selected for promotion to LT. The applicant argued that the enlisted marks in her record after her reversion to enlisted status should be removed from her record once she is reinstated to officer status and a memorandum directed by the Secretary should be placed in her record explaining the reason for the gap in her OERs. She also argued that if she is selected for promotion to LT and if she receives an adjusted LT date of rank, that her record not be placed before the lieutenant commander selection for a period of four years after her selection for promotion to LT. She argued that this period of time is necessary for her to build a record of performance before the LCDR selection board.

Additional Comments From the Coast Guard

On the issue of relief to be awarded to the applicant, the Chief Counsel disagreed with the applicant on the following particulars. 1. He maintained his position that only the reporting officer's portion of the disputed OER should be removed. 2. The exact wording on any continuity OER should be left to the Coast Guard, not the applicant. 3. The applicant should received an adjustment to her date of rank only if she is selected by the first LT board to consider her on the basis of a corrected record. The Chief Counsel stated that to adjust her date or rank after a failure of selection based on a corrected record would "violate the legal basis underlying nexus presumption." 4. The Chief Counsel stated that the applicant's request not to be considered by the LCDR selection board for four years after her selection to LT would violate subsections (a) and (c) of section 257 of title 14 of the United States Code. The Chief Counsel stated that when read together these subsections require the applicant to be considered for promotion based on her date of rank. He stated that under section 257(c) of title 14 of the United States Code, no officer junior to the applicant can be considered for promotion until the applicant is considered for promotion. Therefore, her position on the ADPL would block other offices junior to her from being promoted. The Chief Counsel suggested that the applicant could request a later LT date of rank, giving her

more time to earn performance evaluations before being considered for promotion to LCDR.

Applicant's Reply to the Additional Comments from the Coast Guard

The applicant maintained her position that the entire report should be removed and not just the reporting officer's portion. She also objected to leaving the wording to be included on the continuity OER to the discretion of the Coast Guard. She further stated that contrary to the Chief Counsel's argument she can waive consideration for promotion to LCDR. She stated that section 257(c) states that no one can be eligible for consideration for promotion until those senior to them are eligible for promotion. She stated that the Board remedial power under section 1552 of title 10 United States Code is broad enough to support a remedy that would delay her consideration for promotion to LCDR for approximately four years after her promotion to LT.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction of the case pursuant section 1552 of title 10, United States Code. The application is timely.
2. The applicant requested an oral hearing. The Chairman, under section 52.31 of title 33, Code of Federal Regulations, recommended disposition on the merits without a hearing. The Board concurred in that recommendation.
3. The Board finds that the evaluation of the applicant's performance in the disputed OER constitutes an injustice, since the applicant was ill-prepared to become the operations officer. She had not qualified as OOD(u), she was not an academy graduate, and she had had no other sea billets. Moreover, her enlisted experience as a yeoman had not prepared her for an operational sea billet. Therefore to assign her to such a demanding job at that point in her career was unfair to the applicant. The Board concludes that after an initial honeymoon period, the reporting officer expected a caliber of performance from the applicant that she could not provide due to a lack of training and experience. Therefore, the Board will order the disputed OER removed from her record. Having reached this finding it would be inconsistent to leave the supervisor's portion of the OER in the applicant's record, as suggested by the Coast Guard.
4. In light of the Board's finding in No. 3 above, it is not necessary to reach findings with respect to the applicant's other allegations. Nor do we regard those allegations as proven.
5. With respect to the removal of the applicant's failures of selection for promotion to LT, the Board finds that a nexus exists between the applicant's failures of selection for promotion and the adverse disputed OER. Her record certainly looks better without the adverse OER. In addition, the Board finds that it is not unlikely that

she would have been selected for promotion to LT without the disputed OER in her record. Therefore, the applicant's failures of selection for promotion to LT should be removed from her record.

6. The applicant's reversion to enlisted status resulted from her failures of selection to LT. The Board has determined that those failures were due in part to the erroneous disputed OER. Accordingly, the applicant's reversion to enlisted status, which was based on those failures, must also be removed from her record. The applicant should be restored to officer status with no break in that status. Once restored to her officer status, the applicant is entitled to back pay and allowances subject to appropriate off-sets.

7. The applicant should receive two additional opportunities to be selected for promotion to LT. If selected for promotion by the first board to consider her based on a corrected record, the applicant's LT date of rank once promoted shall be the date she would have received if she had been selected by the 1997 LT selection board. The Board will not order an adjustment to the applicant's date of rank if she is not selected by the first board to consider her based on a corrected record. If the applicant is selected by the first Board to consider her based on a corrected record, the Board presumes that she would have been selected for promotion as an in-zone officer in 1997. Accordingly, she would be entitled to relief in this regard. However, if she fails of selection based on a corrected record, and is subsequently selected, the Board presumes that it was her overall record that caused her initial failure and not the disputed OER.

8. The Board will not grant the applicant's request that she not be considered for promotion to LCDR for four years after her selection for and back dating of promotion to LT. The Board finds that the applicant is asking it to speculate about a future event at a time when she has not even been selected for promotion to LT. Even if the Board wanted to order such relief, we have no way of knowing what amount of time would be necessary for the applicant to "build a record" that would provide her a fair opportunity for selection for promotion to LCDR. We have no way of knowing what, if any, events may intervene prior to any consideration by a LCDR selection board. Anything that the Board would order about the applicant's opportunity for selection for promotion to LCDR at this point would be speculative. Therefore, this portion of the applicant's request is denied. The better practice here is for the applicant to file another application with the Board at the appropriate time if some error exists in her record with respect to her opportunities before the LCDR selection board.

9. However, a current solution exists for the applicant's problem. If she is concerned about building a record for promotion to LCDR, she can forgo her request for back dating of her LT date of rank, if she is selected by the first board to consider her based on a corrected record, and accept the date she would have received if she had not been placed before the first LT selection to consider her based on a corrected record as an in-zone officer. She would then have a more recent LT date of rank and have the necessary time-in-grade remaining as a LT to build a record for promotion to LCDR. The Board will direct in its order that the applicant be given this option.

10. Accordingly, the applicant is entitled to relief.

[SIGNATURES AND ORDER ON NEXT PAGE]

- 14 -

ORDER

The application of [REDACTED] for the correction of her military record is granted. Her record shall be corrected in the following manner.

The disputed OER for the period from February 2, 1996 to June 30, 1996 and all attachments shall be removed from her record and replaced with a report for continuity purposes only. This continuity OER shall contain the following information:

Substantive OER is unavailable due to administrative error. No adverse inference is to be drawn from the absence of a substantive OER for this period. This continuity OER is filed by order of the Commander, Coast Guard Personnel Command.

The applicant's 1997 and 1998 failures of selection for promotion to LT shall be removed from her record.

The applicant shall be reinstated to her former rank of LTJG with back pay and allowances as if she had not been reverted to pay grade E-6, i.e., her record shall be corrected to show no break in officer status. The orders directing her discharge from officer status shall be removed from her record.

The Coast Guard should place in the applicant's record a continuity OER covering the period from the date of her discharge from officer status (July 1, 1999) to the date of her restoration to officer status. The continuity OER shall contain the following explanation:

Substantive OERs are unavailable due to administrative error. No adverse inference is to be drawn from the absence of substantive OERs for those periods. This continuity OER is filed by order of the Commander, Coast Guard Personnel Command.

The applicant shall be given two opportunities for selection for promotion to LT. She will be considered as an in-zone officer by the first LT selection board to consider her based on a corrected record. If she is selected by the first board to consider her based on a corrected record, her date of rank shall be adjusted to the date she would have received if she had been selected by the 1997 LT selection board. However, the applicant shall be given the option of accepting a more recent date of rank based on the date she would have received if she had not been placed before the selection board as an in-zone officer.

The applicant's enlisted marks earned since her reversion to enlisted status shall not be maintained in her officer record or presented to any officer selection boards. These marks may be retained in her enlisted record provided such record is not presented to the promotion selection boards.

The applicant shall receive back pay and allowances, accordingly.

All other requests for relief are denied.

