

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 2002-076

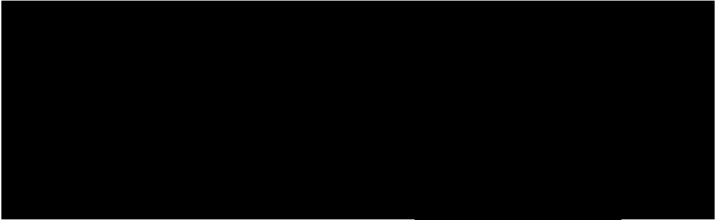
DECISION OF THE DEPUTY GENERAL COUNSEL
ACTING UNDER DELEGATED AUTHORITY

_____ I approve the recommended Order of the Board.

_____ I disapprove the recommended Order of the Board.

X
_____ I concur in the relief recommended by the Board.

Date: 1/23/03


Rosalind A. Knapp
Deputy General Counsel
as designated to act for the
Secretary of Transportation

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

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FINAL DECISION

██████████ Chair:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on March 22, 2002, upon the BCMR's receipt of the applicant's complete application for correction of his military record.

This final decision, dated January 16, 2003, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a lieutenant commander (LCDR) on active duty, asked the Board to correct his record by modifying his officer evaluation report (OER) for the period from May 1, 1998 to April 30, 1999 (disputed OER). He further requested that the Board remove his 1999, 2000, and 2001 failures of selection for promotion to commander (CDR) and "afford him an additional opportunity for promotion to commander on a within-the-zone basis, with provision, if he is selected, for back pay and date of rank as if he had been selected in 1999, 2000, or 2001, depending on whether he is selected on his first, second or third consideration following the Board's decision."

Subsequent to filing his application with the Board, the applicant was selected for promotion to CDR by the 2002 CDR selection board. He stated his selection for promotion to CDR in no way moots his case.

EXCERPTS FROM RECORD AND SUBMISSIONS

The applicant received the disputed OER while serving as the executive officer (XO) of a cutter. He requested that the disputed OER be modified by raising the marks of 4 to at least a 5 in blocks 4.b. (writing) and 5.f. (evaluations). He requested that the following comments be deleted:

[Block 4] Decent writer; personal talent to produce fine quality work, however, not a forte. Subord[inates'] work of mixed qual[ity]; worked hard to improve, institute proof reader [program], resulted in dramatic reduction in errors.

[From block 5 comments the underlined phrase] 13 OERs produced, req'd some add'l [work] . . . [Enlisted performance evaluations forms] on time, none returned, all w[ith] excel[lent] docum[entation].

The applicant's commanding officer (CO)¹ served as both the supervisor and reporting officer for the OER under review, as permitted by the Personnel Manual. The applicant stated that a rating chain normally consists of three individuals, a supervisor, reporting officer, and a reviewer. However, for XOs like the applicant, the commanding officer is normally both the supervisor and the reporting officer. He argued that while this is permissible under the Personnel Manual, the fact that the same person wears two hats has repeatedly (and properly) been taken into account in deciding whether, along with other factors, a case raises "serious and substantial questions regarding the validity of the OER and of the evaluation process itself." See BCMR No. 411-91. He stated that the lack of a full rating chain makes it particularly appropriate for the Board to cast its net perhaps more broadly than it might otherwise do in testing the accuracy and fairness of an OER and in deciding whether the usual presumption should apply.

The applicant stated that the evidence shows that the reporting officer's preparation of his OER was influenced by a variety of factors, including the reporting officer's personal difficulties and obsessiveness, a personality conflict between the applicant and reporting officer, and retaliation for the applicant having objected to improper conduct on the part of the reporting officer. In this regard, the applicant claimed that the CO harbored hostility against him because of the applicant's resistance to the CO's efforts to direct the manner in which the applicant and other supervisors and reporting officers on the cutter rated their subordinate officers. He alleged that due to this hostility, the CO planted "career-ending 'faint praise,'" and "zinger[s]" in an otherwise seemingly fine OER. In addition, the applicant stated that it fell to him to discuss with the CO, the CO's inappropriate behavior by engaging in a wrestling and grabbing match with a female junior officer on the bridge shortly after the applicant had reprimanded a senior enlisted member and a junior officer for a fraternization incident. According to the applicant, the CO was not happy about being questioned about his actions.

The applicant suggested that the CO's questionable behavior during the reporting period might have been negatively influenced by the considerable personal stress that he was under. The applicant stated that the CO's wife "was having a second difficult pregnancy . . . [he had become] increasingly withdrawn . . . he was preoccupied with the 100-year old home he had purchased, . . . and perhaps above all he was confronting what seems to have been (in his eyes) the traumatic event of impending retirement."

The applicant stated that the CO was a poor communicator and indecisive about how and what he wanted to say in a written communications. The applicant stated that the CO required endless revisions of written work resulting from his own indecision rather than any shortcoming on the applicant's part. According to the applicant, as well

¹ The CO and reporting officer are used interchangeably throughout this decision.

as others, the CO's standards were always changing. In this regard, a chief petty officer wrote "Even though the CO would return items to us it wasn't for errors but for modification because we never knew what he would want to change. This was a nightmare." Another senior chief stated that the CO's "expectations were a moving target." He further stated, "We never knew what he really wanted and it remained a mystery despite our frequent queries. Correspondence and message traffic was returned numerous times for adjustment, yet after changes were made, [the CO] decided that the first draft was better anyway. It was not uncommon [for the CO] to make so many changes to a letter that the final copy . . . looked and read very much like the original."

The applicant's previous CO for an approximately 60-day period did not complete an OER on the applicant, but stated that the written work prepared for him by the applicant was excellent, thoroughly researched, well constructed and succinct. This CO noted that even the current CO in his first OER on the applicant had only fine things to say about the applicant's writing. The immediate prior CO stated that a personality conflict existed between the applicant and the reporting officer. See the summary of this CO's statement infra.

The immediate subsequent OER to the one in question written by a different reporting officer noted the applicant's fine writing skills. That reporting officer gave the applicant a 6 in writing the next subsequent OER. In a statement to the Board, this CO wrote that "[w]ritten correspondence that [the applicant] gave to me was always well thought out and flawlessly formatted. It was obvious to me that he was strong in those areas and I knew I would not have to send written work back for revisions." The applicant's writing marks as a LCDR (with the contested mark bolded) are 6, 4, NOB, 5, 4, 6, 6, and 6.

The applicant stated that the record confirms that he was an expert in the evaluation of personnel -- a performance dimension that overlaps with writing. In this regard, the applicant stated that he had worked in the Headquarters office responsible for OERs. The applicant's evaluation marks as a LCDR (with the contested mark bolded) are 5, 5, NOB, 4, 4, 6, 5, and 5.

The applicant argued that the inaccuracies in the disputed OER caused his failures of selection for promotion to CDR. He stated that, had the disputed comments not been in the OER and had either of the corresponding marks been higher, his military record would have been stronger when he came before the promotion boards in 1999, 2000, and 2001. He invited the Board's attention to a statement by a Coast Guard captain, who has supervised the Evaluation, Assignment, and Status/Promotion Branches and was Chief of the Officer Personnel Management Division at Coast Guard Headquarters, which read in pertinent part:

Based on my collective [footnote deleted] experience, a best-qualified selection board would obviously focus on both the mark and the comments [concerning writing] and both would undoubtedly be construed in a negative manner. Given the keen competition for

promotion, the OER as written (with the present writing mark and comments) makes [the applicant's] selection to O-5 unlikely.

The applicant stated that nothing in his military record, other than the disputed OER, ruled out his promotion. He stated that he has an outstanding record, except for the disputed comments and marks.

Other Statements Submitted by the Applicant

The applicant submitted numerous other statements in support of his application. Those considered relevant to the issues involved in this case are discussed below.

1. The applicant's immediate previous CO wrote that he and the applicant worked together for two months prior to his departure. He stated that the applicant demonstrated to him in that short time that he would be an outstanding future XO, quickly assessing the strengths and weaknesses of the wardroom, chief's mess and the crew. This individual stated that it was clear to him that the applicant was an accomplished sailor, administrator and leader. He stated that his relief in command (the reporting officer) was less of a sailor or leader than the applicant. He stated that he believed the reporting officer's resentment of the applicant began before he departed the ship. He offered the following reason for his conclusion that the reporting officer resented the applicant:

One evening during relief week, without either my or [the applicant's] knowledge, [the reporting officer] called an unscheduled meeting of my department heads in the wardroom. I happened to walk in on the meeting and was appalled that [the reporting officer] chose to sit in the Captain's chair, a chair that was still mine. A relieving CO should never seek or assume those amenities or privileges, which are the prerogative of the incumbent, until he or she is relieved and has departed. . . . Rather than conform [the reporting officer] in front of his future wardroom, I retired to the cabin. [The applicant] stopped in and when he learned how upset I was he took it upon himself to speak with [the reporting officer]. As a professional [the reporting officer] should have taken this in the helpful way it was intended, I doubt he did so.

[A] few months later . . . I was invited [back to the cutter]. . . . I was appalled at how the atmosphere aboard the ship had changed. The crew was wound tight and based upon my few short hours aboard . . . everything pointed to the CO.

2. The applicant's immediate subsequent CO wrote that the written correspondence that the applicant gave to him was always well thought out and

flawlessly formatted. "It was obvious to me that [the applicant] was strong in these areas and I knew I would not have to send written work back for revisions." This individual further stated that the applicant's "evaluation reports were thorough, complete, and on time." This CO gave the applicant a 6 in both the writing and evaluations categories on his next OER.

3. A CDR who was serving as CO of another cutter during the period of the disputed OER stated that during visits to the applicant's cutter, he had an opportunity to observe the working relationship between the applicant and the reporting officer. He stated that, knowing the personalities and leadership styles of both individuals, it was not surprising that there were challenges in their working relationship. He stated that it was abundantly clear to him that the success of the ship's performance and welfare of the crew was due to the efforts of [the applicant].

4. The CO of a different cutter wrote that he and the reporting officer assumed their commands about the same time and were neighbors. He stated that it was clear during conversations with the reporting officer that he was not happy with the applicant's performance. According to this individual, the reporting officer thought the applicant was too much of a "people-person." He stated that there was "a disconnect" between the reporting officer and the applicant on many topics, particularly the handling and leadership development of junior officers. He stated that the applicant provided his newly assigned XO with counseling and that his XO would present correspondence to the applicant for review before sending it to him. This CO stated, "through these interactions . . . [he] saw [his] XO grow with leaps and bounds in all areas, in particular with his administration abilities and leadership."

The applicant submitted several statements from officers and enlisted members assigned to the cutter at various times during the applicant's and reporting officer's time together. Each of these individuals indicated that they held the applicant in the highest esteem and that his guidance and training had enhanced their careers. These statements provided the following information.

5. The engineering officer, a LT, wrote that he served as acting XO in the absence of the applicant and he also assisted the applicant in the preparation of OERs and correspondence. He stated that he witnessed the reporting officer's "tinkering with OERs" and "his unending changes to the ship's correspondence." This individual stated that the reporting officer, over the applicant's objection, directed the applicant to lower grades in the supervisor's portion of the engineering officer's departing OER. According to this LT, the reporting officer did not appreciate the applicant's objection to being ordered to lower grades on the LT's OER or the applicant's discussion with the reporting officer about his inappropriate behavior with a junior officer. He stated that valuable time was wasted when routine correspondence was changed again and again. He stated that although he never saw the reporting officer's medical record, he strongly suspected that he had a serious bout with depression.

6. The damage control assistant, a LT, wrote that the applicant provided him with clear and accurate guidance on preparing both enlisted and officer evaluations. "While I felt confident that we had submitted a good product, it was always returned

with changes that were to be made before the CO would sign it. This included lowering marks in the Supervisor's section of the OER, where the applicant was the supervisor." He stated that the applicant had excellent writing skills.

7. The 1st LT wrote that the reporting officer's overemphasis on writing ability resulted in wasted resource hours. This LT stated, "it was normal to have routine message traffic returned ten to fifteen times for corrections." This individual stated that the reporting officer had an ever-changing style and took valuable time to make the XO change his already outstanding correspondence." He stated that the reporting officer seemed to make changes for the sake of change and lost his overall focus. He stated that as operation officer, he helped the applicant write OERs for the new junior officers and in his opinion these OERs were well written and well documented. He stated that the applicant, who had worked at OPM, taught him to write high quality OERs. He stated that the reporting officer returned all OERs to have marks lowered and comments changed that did not match the reporting officer's opinion and writing style. He stated that the applicant told him that the reporting officer would get upset anytime the applicant discussed the inappropriateness of the reporting officer's directing changes to OERs that were the responsibility of other members of the rating chain.

Last, this LT offered his perception that the reporting officer was extremely judgmental towards the applicant due to the dissimilarities in personality traits and that the reporting officer's feelings against the applicant seemed to intensify during the last month of the reporting officer's command. He stated that the applicant tried everything to please the reporting officer but was penalized for it.

8. A LT who reported to the cutter in 1998 stated that the reporting officer was very difficult to work for and nothing pleased him no matter the quality. He stated that the documents he saw the applicant send to the reporting officer were clear and concise, but were changed by the reporting officer only for the sake of change. This LT offered his opinion that the applicant was an expert at writing OERs.

9. A LT who served aboard the cutter from May 1996 to June 1998 stated that she worked closely with the applicant as the 1st LT and as his administrative assistant. She expressed the same opinion of the reporting officer's obsession with writing as the other LTs. She stated that the applicant and she developed a sample correspondence manual with message templates to eliminate any errors in the drafting of messages. In addition, she stated that the applicant was an expert in the evaluations process for both officers and enlisted members.

10. A LT junior grade (LTJG) stated that, after a year aboard the cutter with the reporting officer, she decided that she did not want to be in the Coast Guard past her five-year commitment. She described the atmosphere aboard the cutter as one of "uncertainty and hesitancy." She stated "every piece of correspondence that [she] submitted, using the formats and templates (from the correspondence binder) provided to [her], was turned around at the CO level with various changes." She stated that the reporting officer never spelled out his desires and expectations, which changed so frequently that it was impossible to pinpoint what he wanted. She stated that it was not uncommon for him to make so many changes to a letter that the final copy looked and

read very much like the original. She stated that the reporting officer directed that her rating chain lower their marks in one of her OERs, in violation of the Commandant's policy.

This LTJG stated that it was "crystal clear [to her] that [the reporting officer] resented [the applicant], his strong command presence and his passion to do the right thing in following Coast Guard regulations. [The reporting officer] simply could not be pleased." She further stated that based on her observations, living near both the applicant and the reporting officer, she realized "how unstable the [reporting officer] was when it came to making decisions."

11. Another LTJG, who was the combat information center officer and served as the applicant's administrative assistant, stated that towards the end of the reporting officer's tour, she noticed that he became increasingly stressed and preoccupied with a number of things -- namely retirement, change of command, his wife's condition, and purchasing a new home. According to the LTJG, there was a general feeling that the applicant was trying to take the load and pressure off the CO and make things perfect during this period.

12. A former LTJG, who served as the supply officer and as administrative assistant to the applicant described the reporting officer in the following manner:

[The reporting officer] did not project a very positive attitude about anything, choosing instead to focus on the negative. He did not connect well with his crew, did not get involved with many morale events, and seemed to resent people relaxing and having a good time. [The reporting officer] would rarely leave the ship in foreign ports, opting instead to stay in his cabin. He was often sullen, seemed unhappy and looked upset much of the time. His attitude seemed to get worse as his tour went on, and was most noticeable in the last few months before his Change of Command and Retirement Ceremony. We felt like we were walking on eggshells around him, not wanting to do anything to upset him. If it had not been for [the applicant's] influence, the crew would have found [the reporting officer's] tour much harder to take.

13. A senior chief petty officer stated that he reviewed much of the correspondence for the chiefs and junior officers. "[The reporting officer] was an unusually difficult CO to please, not because his standards were too high, but because they were always changing." This individual stated that he was impressed by the applicant's sharp administrative capabilities and trusted his input on correspondence he prepared. He also stated that a personality conflict existed between the applicant and the reporting officer because of the applicant's fantastic rapport with the crew and the reporting officer's lack of rapport. He stated he viewed the applicant as the "CO and XO combined."

14. A chief boatswain's mate wrote that the reporting officer as CO "did not look the role, lead in his position and resented all of the responsibilities as the CO. Additionally, he suffered from physical and mental ailments that he alluded to on

several occasions and lacked the endurance to adequately handle shipboard life, which contributed to his resentment and mistreatment of [the applicant]." He also stated that the reporting officer became very distant from the crew toward the end of his tour. He attributed the cutter's success to the applicant.

The applicant also submitted statements from other Coast Guard officers who were not assigned to the cutter but had some knowledge about the applicant's performance.

16. The assistant to the Director of the Atlantic Area's Major Cutter Forces stated that his primary duties were 1) primary staff point of contact with the Forces XO's and 2) OER reviewer for all OERs that came from those cutters for the ranks of Ensign through LT. He stated that he worked closely with the applicant during the period in question. According to this individual, early in the applicant's assignment to the cutter, he sought advice on writing OERs, unlike other XO's who either waited to get advice until they were struggling with an OER or until they were late in submitting an OER. "The OERs that I reviewed . . . during [the applicant's] entire tour were timely and well written. . . . [O]ther paper work . . . such as awards, letters and messages were of the highest quality; a direct reflection of the XO's writing and admin skills."

17. A retired LCDR, who currently teaches in various settings and also taught at the Coast Guard Academy, stated that he served as the applicant's mentor while assigned to a command and staff college. "I found [the applicant] to be a superior writer who had a keen ability to organize and express complex ideas in an easy to understand manner . . . [H]is dissertation was so superb that it was reviewed only once by his review board."

Views of the Coast Guard

On August 27, 2002, the Board received an advisory opinion from the Chief Counsel of the Coast Guard, which included an enclosure from the Commander, Coast Guard Personnel Command (CGPC). He recommended that the Board deny relief in this case and called the reporting officer's statement in support of the applicant's application unreliable since it was made three years after the fact.

The reporting officer wrote in an undated statement that an officer at Coast Guard Headquarters contacted him about the disputed OER. He stated that he had reviewed his comments and the marks in question and has serious reservations about their accuracy, even saying they were wrong. He stated that his judgment could have been impeded by the stress he was under particularly during his last year of command. He stated that he had a sick wife and three small children; he had to purchase a house without his wife's help due to her condition; and he had been on sea duty for five straight years and was mentally fatigued. He further stated as follows:

Work was taking its toll on both [the applicant] and me. Our Operations Officer had a breakdown before our last patrol and we had to replace him with an Ensign. The MLC Compliance Inspection and TISTA Training Readiness Evaluation (TRE) were back on either side of my Change of

Command. The MLC Inspection would normally have been offset from the TRE but it had been delayed for a year through no fault of our own. We were swamped and we knew it.

. . In November 1998, I brought [the cutter] in to Panama for refueling. The port of Colon was the exact same place that I fought during the Panama Invasion. I earned the Combat Action Ribbon there but it did not come free. The flashbacks that the port call brought back were not pleasant and that caused me tremendous stress. I would like to note that after my retirement I was awarded a 30% Veterans Administration disability for combat related Post Traumatic Stress Disorder (PTSD). . .

I firmly believe that all of these issues were contributing factors toward me making comments and assigning marks in the sited areas that make no sense to me looking at it from today's prospective.

The reporting officer stated that he did not concur with the questioned comments or mark in the writing category and that they are in error. He stated that he cringed at the comment that writing was not the applicant's forte and he "meant to say that [the applicant] was doing a great job, despite the worst of circumstances, when writing was not his main expected job skill." He stated that his comment in this regard appears to be very insulting. He further stated "I surmise that because I wrote the whole OER myself, and therefore had no proof reader, I inadvertently left in place markers for future comments and forgot to round out the phrases to reflect my true judgment." He recommended deleting the disputed comment and raising the mark to at least a 5.

With respect to the mark in evaluations and the challenged comment, the reporting officer stated that they are incorrect. He recommended removing the phrase "req'd some add'l work" from the OER and raising the mark in the evaluations category to 6. He stated that the comment that the OERs prepared by the applicant required some additional work was supposed to be connected to the very next comment, which would then have read, 13 OERs produced, required some additional work, coordinated extensive junior training to improve quality. He stated many of the OERs submitted by the junior officers required additional work, which is the reason the applicant set up the training program. He stated that the comments with the deleted phrase clearly rate a 6.

The reporting officer stated that symptoms of PTSD interfere with one's ability to focus and he believes that his medical condition caused him to make errors in the applicant's OER.

Notwithstanding the reporting officer's statement in support of the applicant, the Chief Counsel argued that the reporting officer's declaration and the other statements submitted by the applicant are insufficient evidence to support changing the applicant's marks in the writing and evaluations categories. He stated that the integrity of the officer evaluation system (OES) depends on the accuracy of the reporting officer's contemporaneous assessment of the performance of the reported-on officer, and permitting such a change after three years would dramatically compromise that system.

The Chief Counsel stated that the applicant's basic application is in conflict with the reporting officer's statement in that the applicant attributed the alleged erroneous marks to the existence of a personality conflict with the reporting officer while the reporting officer attributed them to stress and the symptoms of PTSD. The Chief Counsel argued that the reporting officer provided appropriate comments in support of the marks of 4. Therefore, the Chief Counsel concluded that the reporting officer's judgment was not so clouded by PTSD as to prevent him from properly supporting the marks he assigned to the applicant.

In the CGPC memorandum attached as Enclosure (1) to the advisory opinion, CGPC stated that there is evidence in the record supporting the reporting officer's statement that he was suffering from stress and anxiety. CGPC further stated that the reporting officer's November 30, 1998 retirement request does coincide with his declaration that he began experiencing flashbacks associated with PTSD after a port visit in November 1998, which may have prompted him to request retirement. CGPC stated, however, that there was no evidence that the stresses the reporting officer experienced negatively impacted his ability to perform his operational duties. The stresses from which the reporting officer suffered drew neither the attention of the cutter's crew or that of the reporting officer's superiors. In this regard, CGPC noted that the reporting officer received the Meritorious Service Medal as an end of tour award, denoting a highly successful two-year tour of duty. CGPC argued that since the reporting officer was capable and qualified to exercise proper judgment to successfully command an afloat unit, it stands to reason that he was also capable of completing an OER accurately. CGPC stated that the reporting officer's retrospective review of the situation, which has allowed him to re-think the words he wrote in this evaluation and now deem them as unfair, does not override the presumption of regularity.

With respect to the allegation that the reporting officer directed the applicant to assign certain marks in the supervisor's portion of OERs, CGPC stated as follows:

The rating chain members signed the portions of the OER for which they were responsible. If, at the time, they felt as strongly about the "manipulation" of the OERs stated in their declarations they should have objected to signing the OERs. . . . All officers in the rating chain including [the] Applicant should have upheld their responsibility per the [Personnel Manual] and refused to sign evaluations that they did not agree with or support. Rather, the opinions expressed [by the officers who submitted statements] appear to be a retrospective review of the events of several years ago supporting Applicant whom they greatly respect and who they may be able to assist at this time in Applicant's career.

Applicant's Response to the Views of the Coast Guard

On September 30, 2002, the Board received the applicant's response to the views of the Coast Guard. The applicant stated that whether the cause of the unfairness and inaccuracy of the OER was a psychiatric condition suffered by the reporting officer or simply otherwise unexplained malevolence or the lack of objectivity, the fact is that the

reporting officer was not behaving and rating the applicant with the measure of fairness, accuracy, and objectivity required by the Personnel Manual. He argued that it is immaterial that he was not aware of the reporting officer's diagnosis when he filed his BCMR application, because whatever the etiology, the reporting officer was not doing his job properly when it came to the applicant's OER. The applicant further stated as follows:

[I]t fell to the [reporting officer] to function as both Supervisor and Reporting Officer on [the applicant's] OER. As a result, a key check that the officer evaluation system ordinarily provides is not present. This is a factor that should certainly be taken into account in determining whether, in light of the entire record, both with and without [the reporting officer's] PTSD disclosure, the OER should be corrected.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction of this case pursuant to section 1552 of title 10, United States Code. It was 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 applicant has established by a preponderance of the evidence that the disputed marks and comments are not an accurate representation of his performance in the writing and evaluations categories. In this regard the Board is satisfied that the applicant has produced the necessary evidence to rebut the presumption that the reporting officer discharged his duty correctly, lawfully, and in good faith with respect to the disputed OER. The Board notes that the reporting officer himself admits that his judgment was impaired due to the stresses of having a sick wife and three small children, purchasing a home without his wife's assistance, his pending retirement, and his suffering from PTSD at the time he prepared the disputed OER. He stated that PTSD interferes with one's ability to focus and believes that this medical condition caused him to make errors in the applicant's OER. He stated with respect to the writing and evaluations categories of the subject OER that he "inadvertently left in place markers for future comments and forgot to round out the phrases to reflect his true judgment." He admitted in his written statement that the challenged comments and marks as written are in error.

4. CGPC admitted in their submission that the reporting officer's statement about his mental health and other stresses is corroborated by various statements from officers who served with the applicant at the time. Statements from two different LTJGs commented on the reporting officer's disposition, stating that "he became increasingly stressed and preoccupied" and "was sullen . . . unhappy . . . upset . . . [h]is attitude

seemed to get worse as his tour went on, and was most noticeable in the last few months before his change of command." A LT and a chief boatswain's mate wrote that they believed that the reporting officer suffered from physical and mental ailments that contributed to his lack of endurance and inability to handle shipboard life. One LT stated that the reporting officer was extremely judgmental toward the applicant and that his feelings in this regard intensified toward the end of his two-year tour of duty. The reporting officer's statement that the questioned marks and comments do not accurately reflect the applicant's skills is corroborated by statements from individuals who worked with the applicant, and from those he counseled and consulted with assigned to various other commands. These individuals stated that the applicant was an excellent writer and had expert knowledge of the evaluations process. They stated that the problem was with the reporting officer's inability to make decisions and/or articulate any writing standards.

5. Accordingly based on the above, the Board finds that the reporting officer had impaired judgment, particularly with respect to the applicant, which resulted in his inability to accurately, fairly, and objectively evaluate the applicant, a violation of the Personnel Manual. Article 10.A.1.b.(1) of the Personnel Manual states "[e]ach commanding officer must ensure that accurate, fair, and objective evaluations are provided to all under command." In light of the above discussion, the Board finds that the applicant has rebutted the presumption of regularity in this case.

6. Having determined that the applicant has rebutted the presumption of regularity, the Board further finds that he has shown by a preponderance of the evidence that the challenged marks and comments on the disputed OER lack credibility and reliability and are therefore in error. In this regard the applicant has shown that his marks in the writing and evaluations categories, as well as the related disputed comments, were probably "influenced by 'factors adversely affecting the ratings which had no business in the rating process.'" See Hary v. United States, 618 F.2d 704, 708. The reporting officer's resentment of the applicant and his obsession with written work negatively influenced his ability to objectively evaluate the applicant's performance. The reporting officer's resentment of the applicant is well established through the statements from officers who worked with the applicant or had an opportunity to observe the interaction between the applicant and the reporting officer. The applicant's previous CO noted that the reporting officer's resentment of the applicant began before the reporting officer officially assumed command because the applicant brought to his attention that the then CO felt slighted by the reporting officer's holding of a meeting aboard the cutter without first consulting with the then CO. Several officers stated that the personality conflict arose because the applicant found it necessary to counsel the reporting officer about the inappropriateness of wrestling with a junior female officer on the bridge, much to the dislike of the reporting officer. Still others attributed the personality conflict to the fact that the applicant resisted the reporting officer's efforts to direct changes to OERs that were the responsibility of other members of the rating chain. A CO of a different cutter observed "a disconnect" between the applicant and the reporting officer with respect to the training of junior officers and stated that the reporting officer thought the applicant was too much of a people-person.

7. The crewmembers described the relationship between the applicant and the reporting officer as not just "a disconnect," but as resentment because of the applicant's strong command presence and passion to do the right thing. A senior chief petty officer wrote, "a personality conflict existed between the applicant and the reporting officer because of the applicant's fantastic rapport with the crew and the reporting officer's lack of rapport." Accordingly, the Board is satisfied that there was a personality conflict between the reporting officer and the applicant exacerbated by the CO's obsession with and indecision about written work and his inability to be objective due to PTSD.

8. The Board finds that this personality conflict and perceived writing failures, in addition to the reporting officer's mental state, probably interfered with his objectivity where the applicant was concerned. In this regard, the Board notes that several of the LTs and the chief petty officers stated that the applicant was an excellent writer. Moreover, the CO of a different cutter stated that he referred his new XO to the applicant for counseling and his new XO would have his correspondence reviewed by the applicant before submitting it to him. In the reporting officer's first evaluation of the applicant he was very complimentary of the applicant's writing skills. However, in the disputed OER he stated that writing was not the applicant's forte, without explaining how the applicant's writing fell short. The reporting officer's failure in this regard coincides with his statement and those of others indicating that toward the end of his tour he seemed depressed, moody and unfocused.

9. With respect to the applicant's writing skills, several of the LTs on the ship stated that the applicant had an excellent handle on writing and processing OERs. Although the reporting officer returned many OERs, the evidence is overwhelming that they were returned because the CO was substituting his judgment for that of the supervisors and reporting officers responsible for the OERs and not because of errors. In addition, the Assistant to the Director of the Atlantic Area's Major Cutter Forces, who served as the reviewer for junior officer OERs stated that the OERs he reviewed from the applicant's command were timely and of the highest quality, as was other correspondence.

10. The Board further questions the ability of the reporting officer to accurately evaluate the applicant in the areas of writing and evaluations due to his own indecisiveness of what he wanted or expected in a written document. Evidence in the record states that the reporting officer had an ever changing style; that he made so many changes to a document that the final copy would sometimes look and read very much like the original; and that his expectations were moving targets. One LT wrote that it was normal to have routine message traffic returned ten to fifteen times for corrections. This individual also stated that the reporting officer lost his overall focus, which corroborates the reporting officer's statement that PTSD interfered with his ability to focus.

11. In light of the above evidence, the Board is persuaded that the challenged marks and comments are not trustworthy and are in fact erroneous. The Board will direct that the 4s in both writing and evaluations be raised to a 5 and the challenged comments be deleted from the OER, since the applicant and the reporting officer agree that these marks should have been, at a minimum, 5s. Because the reporting officer also

served as the supervisor for this OER, there was a lack of the checks and balances normally present in the evaluation process. The Deputy General Counsel ruled in Docket No. 411-91 that "the absence of a second review, while not an injustice *per se*, may be considered in determining whether an injustice has occurred." Had this OER been subjected to normal checks and balances, the accuracy of the applicant's performance in the writing and evaluations categories would not be as questionable.

12. With respect to the Coast Guard's argument that permitting a change in an OER after three years will dramatically compromise the officer evaluation system, the Board finds that if the applicant proves the existence of a prejudicial error or injustice in his record, he is entitled to have that error corrected. The applicant has done so in this case.

13. The Board is not persuaded by the Coast Guard's argument that since the reporting officer was capable and qualified to exercise proper judgment to successfully command a cutter, it stands to reason that he was capable of completing an OER accurately. The evidence in this case is overwhelming that he did not accurately evaluate the applicant's performance in the disputed OER. Moreover, in more than one of the statements submitted by the applicant, the individuals stated that the applicant, as XO, was the main reason for the success of the cutter.

14. The Board is not convinced that the reporting officer's statement is retrospective reconsideration. Although written subsequent to the OER and the applicant's failures of selection, the reporting officer clearly states that the marks and comments in the writing and evaluations categories are in error because he "inadvertently left in place markers for future comments and forgot to round out phrases to reflect [his] true judgment." More importantly, the reporting officer admitted that his judgment was impaired due to an inordinate amount of stress and the symptoms of PTSD. In addition, officers on the cutter as well as others who had an opportunity to observe the reporting officer and the applicant corroborated much of what the reporting officer wrote in his statement.

14. With respect to the removal of the applicant's failures of selection for promotion to CDR, the Board finds that a nexus exists between the applicant's failures of selection for promotion and the challenged comments and marks. His record certainly looks better with higher marks and the comments deleted from the OER. In addition, the Board finds that it is not unlikely that he would have been selected for promotion to CDR in 1999 with a corrected OER in his record. Therefore, the applicant's failures of selection for promotion to CDR should be removed from his record. The Coast Guard offered no arguments or evidence to the contrary, in contrast with a statement offered by the applicant from a Coast Guard captain with selection board experience.

15. The Board notes that the 2002 CDR selection board selected the applicant for promotion to CDR with the disputed OER in his record. However, the Board finds that the applicant's recent selection was the result of having earned additional strong OERs since 1999 and the diminishing negative impact of the disputed OER.

16. Accordingly, the applicant is entitled to relief.

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted. The OER for the period May 1, 1998 to April 30, 1999 shall be corrected as follows:

The mark in block 4.b. shall be raised to 5 and the following comment shall be deleted from the block 4 comments: "personal talent to produce fine quality wrk. However, not a forte. Subord wrk of mixed qual; worked hard to improve, instituted proof reader prgm, resulted in dramatic reduction in errors."

The mark in block 5.f. shall be raised to 5 and the following phrase shall be deleted from the block 5 comments section: "req'd some add'l work."

The applicant's 1999, 2000, and 2001 failures of selection for promotion to CDR shall be removed from his record. The applicant, having been selected for promotion to CDR by the 2002 CDR selection board, shall have his date of rank adjusted to the date he would have received if he had been selected by the 1999 CDR selection board. However, the applicant shall be given the option of accepting a date of rank based on a selection by the 1999, 2000, 2001, or 2002 CDR selection boards to allow him an opportunity to build a record as a CDR before being placed before the captain selection board.

The applicant shall receive back pay and allowances, accordingly.

