

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-138

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case on June 1, 2007, upon receipt of the completed application, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated March 13, 2008, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant, a lieutenant commander (LCDR) in the Coast Guard Reserve, asked the Board to correct his officer evaluation report (OER) for the period June 1, 2005, to May 31, 2006, by

- adding his days of active duty and number of inactive duty drills performed during the reporting period to the "Description of Duties" in the disputed OER;
- removing four derogatory sentences in block 5 of the OER;
- raising his mark for "Workplace Climate" from 4 to 5;¹
- raising his mark for "Evaluations" from 3 to 4;
- removing a sentence included by his Reporting Officer that refers to the low marks and negative comments of the Supervisor; and
- removing his OER Reply and his rating chain's endorsements thereto as well as any other documentation concerning the disputed OER.

In the alternative, the applicant asked that the entire OER be removed from his record and replaced with one prepared by an alternative rating chain.

¹ Coast Guard officers are rated in numerous categories of performance on a scale of 1 to 7, with 7 being best. A middle mark of 4 is the "expected standard of performance." Personnel Manual, Art. 10.A.4.c.4.g.

The applicant further asked that his failure of selection for promotion to LCDR in August 2006 by the promotion year 2007 (PY07) inactive duty promotion list (IDPL) LCDR selection board be removed from his record and that his LCDR date of rank—stemming from his selection for promotion in August 2007 by the PY08 IDPL LCDR selection board—be backdated to what it would have been had he been selected for promotion by the PY07 IDPL LCDR selection board. He also asked to be awarded corresponding back pay and allowances.

SUMMARY OF THE APPLICANT'S RECORD

On [REDACTED], the applicant, who had served as an enlisted reservist since 1988, was appointed an ensign in the Reserve and began serving full-time on active duty for special work (ADSW). From [REDACTED], he served as a program analyst for the Reserve xxxxxxxxxxxxxxxx. The applicant received three OERs during this period with very high marks (primarily marks of 5 and 6) in the performance categories, marks in the fifth and sixth spots on the comparison scales,² and strong recommendations for promotion. The first two OERs are noted to be “concurrent” OERs, and the last is noted as a “detachment of officer” OER. The applicant’s record also contains an “annual/semiannual” OER for the period June 26, 1997, through September 30, 1998, which states that it was “[s]ubmitted for continuity purposes. Officer assigned to the IRR [Individual Ready Reserve],” and has every performance category marked “not observed.” However, the applicant was serving on active duty during this period and so was not actually in the IRR.³ The applicant was promoted to lieutenant junior grade on [REDACTED]

On June 30, 1999, the applicant was released from active duty. He was a member of the IRR from July 1, 1999, to February 15, 2000, and his record contains an IRR continuity OER for that period.

From February 16, 2000, through July 31, 2002, the applicant served on inactive duty at a harbor defense command as a member of the Selected Reserve.⁴ He initially worked as an [REDACTED]. In his three OERs covering this period, he received primarily marks of 5 and 6 in the performance categories, marks in the fourth and fifth spots on the comparison scales,⁵ and strong recommendations for promotion. The applicant was promoted to lieutenant on [REDACTED]

² The comparison scale on an OER is not actually numbered but there are seven possible marks. A mark in the fifth spot on a junior officer’s OER comparison scale means that in comparison with all the other officers of the same rank/grade whom the reporting officer has ever known, the applicant was deemed to be one of the best “of the many competent professionals who form the majority of this grade.” A mark in the sixth spot indicates that the applicant was an “Exceptional Officer.”

³ Article 1.C.2.b.(1) of the Reserve Policy Manual provides that members of the IRR may perform drills voluntarily but not for pay and that a reservist is not a member of the IRR while performing long periods of ADSW. The BCMR staff asked the JAG whether the applicant was actually in the IRR during the period covered by the continuity OER, and the JAG replied that the applicant was not in the IRR at the time and that the IRR continuity OER was an administrative error that would be fixed by the Coast Guard Personnel Command (CGPC).

⁴ Article 1.C.2.a. of the Reserve Policy Manual provides that members of the Selected Reserve (SELRES) are assigned to reserve billets and drill regularly for pay.

⁵ See footnote 2 above. A mark in the fourth spot on the comparison scale meant that the applicant was a “Good performer; give tough, challenging assignments.”

The applicant's OER for the period August 1, 2002, to May 31, 2004, shows that he served as a watch officer and a [REDACTED] on both active and inactive duty in the SELRES. The OER erroneously shows his date of rank as a lieutenant to be [REDACTED]. He received one mark of 4 (for "Evaluations"), eight marks of 5, and nine marks of 6 in the various performance categories, but a mark in the fourth spot on the comparison scale.⁷ However, he was "highly recommended for promotion w[ith] peers."

From January 5, 2004, through October 31, 2005, the applicant served on active duty as the [REDACTED]. On his OER for the period June 1, 2004, through May 31, 2005, the applicant received primarily marks of 6, with a few 5s and 7s, in the performance categories; a mark in the fifth spot on the comparison scale;⁸ and his reporting officer's "strong recommendation for promotion w[ith] peers."

The disputed OER covers the applicant's service as [REDACTED]

[REDACTED] Block 2 of the OER does not show how many days of active duty or how many drills the applicant performed during the period. It does show that the applicant received an Achievement Award for his period of extended active duty ending on October 31, 2005. The Supervisor for the OER, who was the Chief of the Contingency Planning Staff, assigned the applicant a low mark of 3 for "Evaluations"; a mark of 4 for "Workplace Climate"; marks of 5 for "Planning and Preparedness," "Results/Effectiveness," "Adaptability," "Speaking and Listening," "Looking Out for Others," "Developing Others," "Directing Others," and "Teamwork"; and marks of 6 for "Using Resources," "Professional Competence," and "Writing." Many of the Supervisor's comments concerning the applicant's leadership skills are positive, but he also included the following comments in support of the mark of 3 for "Evaluations" and, presumably, in support of the mark of 4 for "Workplace Climate," although a mark of 4 is not a negative mark:

ROO [reported-on officer] did not provide Supervisor with requested information/clarification for own OER. ROO then bypassed Supervisor to complain about that request. ROO was asked to attend a scheduled meeting with the unit Commanding Officer and was reminded of the meeting time. Member was late for the meeting and publicly derided superiors for failing to notify them.

The applicant's Reporting Officer, who was the Senior Reserve Officer for xxxxxxxxxxxx, wrote in another comment block on the disputed OER that he concurred with the Supervisor's part of the evaluation but that the "Supervisor's comments in Section 5 regarding ROO's behavior surrounding a meeting reflect an isolated incident." The remainder of the Reporting Officer's comments are very positive, and he "highly recommended [the applicant] for promotion and most challenging assignment." The Reporting Officer assigned the applicant a mark of 4 for "Health and Well-Being"; a mark of 5 for "Judgment"; marks of 6 for "Initiative," "Responsibility," and "Professional Presence"; and a mark in the fifth spot on the comparison scale.

⁶ When the BCMR staff asked about the conflicting LT dates of rank shown on the applicant's OERs, the JAG stated that the date of rank on this OER was erroneous and that the administrative error would be fixed by CGPC.

⁷ A mark in the middle, or fourth, spot on a comparison scale means that in comparison with all the other lieutenants whom the reporting officer had known, the applicant was deemed to be a "Good performer; give tough challenging assignments."

⁸ See footnote 2 above. A mark in the fifth spot on the OER comparison scale meant that in comparison with all the other lieutenants whom the reporting officer had known, the applicant was an "Excellent performer; give toughest, most challenging leadership assignments."

The disputed OER was entered in the applicant's record on [REDACTED] Thereafter, the PY07 IDPL LCDR selection board did not select him for promotion to LCDR.

On February 13, 2007, the applicant submitted an OER Reply to the disputed OER.⁹ The Reply states the following in pertinent part:

3. This OER does not reflect my reserve participation during the evaluation period, as is standard per [the Personnel Manual] on all Reserve OERs. During this period, I performed 153 days of Title 10 and 20 IDT drills. Absence of this information prevents a board from determining the type or amount of participation during the time period, including whether I met even the minimum standards. Though I provided this information in my draft OER "Description of Duties" input, submitted on 04 JUN 06, it was omitted from the validated version of my OER.

4. Comments in Section 5 state: "ROO did not provide Supervisor with requested information/clarification for own OER. ROO then bypassed Supervisor to complain about that request." These comments are without merit for the following reasons:

a) Background information: On 22 MAY 06, I sought guidance from my supervisor regarding OER expectations but received no response. On 04 JUN 06, with no previous guidance from my supervisor, I submitted my draft IER test to my entire rating chain. On 07 JUN 06, my supervisor encouraged me via e-mail to submit bullets but stated he would work with what I had provided to date if not.

b) On 12 JUN 06, my supervisor demanded, via e-mail copies to the entire rating chain, that I provide OER bullets within 24 hours or face implied consequences. My "complaint" was a Reply-All message stating that due to various circumstances I would not be able to meet the 24-hour deadline. As a result, the Reviewing Officer intervened and instead of the 24-hour deadline set by the supervisor, requested I submit bullets "in a reasonable time" when able.

c) The claim that I did not provide the requested information is false: I provided the information on 20 JUN 06, two weeks before my supervisor signed my OER on 03 JUL 06.

d) My supervisor delegated his OES responsibilities to a YNC from another division, who completed my OER. My final OER supervisor section is nearly verbatim to the draft I submitted on 04 JUN 06. Aside from the negative comments addressed herein, the content was trimmed or removed only in order to delete or expand generally accepted abbreviations.

5. Further comments in Section 5 state: "ROO was asked to attend a scheduled meeting with the unit Commanding Officer and was reminded of the meeting time. Member was late for the meeting and publicly derided superiors for failing to notify them (sic)." These comments are false for the following reasons:

a) The "meeting" referred to was my CG Achievement Award presentation/ceremony on 31 OCT 2005. The description of this event as a "meeting with the unit Commanding Officer" or a "meeting" is objectively misleading.

b) I never "publicly derided superiors." None of my comments to my supervisor were inappropriate and few overheard our discussion. No other personnel were involved: the use of "superiors" (plural) is a misrepresentation of fact and is objectively misleading.

⁹ The applicant submitted a delivery confirmation from the U.S. Post Office indicating that he first submitted his OER Reply on October 25, 2006. When submitted in accordance with Article 10.A.4.g. of the Personnel Manual, an OER Reply and the endorsements of the rating chain become a permanent part of the OER filed in the officer's personal data record.

c) My award presentation was hastily scheduled on the same day it occurred, and not confirmed until 24 minutes before, when my supervisor sent a time correction e-mail to a distribution list that did not include me. My supervisor never personally notified me about any meeting or presentation, nor reminded me of the time. He claimed to have delegated those tasks to others, one of whom specifically informed me that this was untrue. When I specifically asked my supervisor why he didn't notify me, he stated he "was in the middle of 6 or 7 other things."

d) I was not late to my own CG Achievement Award ceremony. I arrived at the presentation site within minutes of the last-minute confirmed start time.

6. On 03 DEC 05, I met with the xxxxxxxxxxxx Deputy Commander and put my supervisor on report for his conduct during 31 OCT 05 and the previous two months.

On April 11, 2007, the applicant's Supervisor submitted his "First Endorsement" to the OER Reply with the following comments in pertinent part:

2. In regards to paragraph 3 [of the OER Reply], ROO was on Title 10 Active Duty for an extended period, 153 days of the period. His IDT drills were erroneously not stated on his OER.

3. According to paragraph 4(a), ROO admitted that he did not approach his supervisor until nine days before the end of the reporting period, well after the 21 days required by [the Personnel Manual, Article] 10.A.2 f. This alone justifies the 3 in Evaluations. In regards to paragraph 4(d), this statement is untrue. The Command desires that all OERs be administratively reviewed and proof-read prior to submission. ROO's OER was directed to the Chief, Logistics and then Chief, Personnel Support Branch for processing (dates, spelling and format accuracies). I had a YNC who is well versed with OER process check the OER for spelling and grammatical errors.

4. In regards to paragraph 5, there was a meeting scheduled with the Sector Commander on 31 OCT 05 in the command conference room. This meeting was delayed due to the Sector Commander's schedule. I asked my Assistant Chief, Planning Staff to locate ROO and remind him about the meeting. Initially, ROO could not be found, two secondary searches were conducted by an Ensign and Senior Chief in which ROO was found conversing with shipmates. He was told that his presence was required in the command conference room. The Sector Commander arrived and ROO was not in the room, which reflects his tardiness. Because ROO was not at the meeting on time the Commander stepped back into his office and said "call me when everyone is assembled." I intercepted him [presumably, the applicant] prior to entering the conference room and told him that it was inappropriate to keep the Sector Commander waiting. ROO entered the conference room where three senior officers, two junior officers, and a variety of Senior/Junior enlisted personnel were waiting. When I entered the conference room, ROO was voicing his dissatisfaction to an O4 about how he was being singled out for being late. He was speaking in a loud enough voice that everyone in the conference room heard his comments. I told ROO to stop. He ignored me and continued his conversation with the O4. I then walked directly in front of ROO and told him to stop again. ROO replied, "I don't know what this is about, I am being unfairly singled out." I replied that his comments were inappropriate and that we would finish this conversation in my office after the ceremony.

5. I was not aware that ROO had met with anyone about the incident on 31 OCT; therefore it could not have caused bias on my part.

The Reporting Officer endorsed the OER Reply with the following comments:

a. As the senior reserve officer in this reserve officer's OER chain, I received the active duty Supervisor's (SUPV) draft of the OER after the Reviewer (RE VW) (the active duty Deputy Commander) had already seen it, and the RE VW expressed concern about its content at that time. My

recollection is that the original draft contained three marks of “3” in Sect. 8, in the categories of “Judgment,” “Responsibility,” and “Professional Presence.” There were several negative comments drafted by the SUOV to explain that I, as the Reporting Officer (RO), was responsible for the marks on page 3 and all the text in Section 7, 8, and 10. Regardless, I explained that I “did not concur” with his marks and negative comments. In that meeting, he verbally described the events surrounding the award presentation which occurred on 31 OCT 05 I was not at xxxxxxxx on 31 OCT 05, and I did not have any knowledge of the award or the ceremony. The details verbally provided by the SUPV seem to support the draft negative comments, at the time of our discussion. After a second meeting with the SUPV to discuss the OER, I received what the SUPV stated was his final draft. His final version was significantly different than his first submission and addressed most of my concerns. After I had expended significant effort to get the SUPV to reflect on his portion of the evaluation and the need for totality of balanced assessment, I “concurred” with the SUPV’s evaluation. However, I did decide to specifically state . . . it was likely an “isolated incident.” I strongly believed that it was not representative of ROO’s overall performance or behavior during the marking period. I also stated in Sect. 7 that ROO’s “ability to work with others was above average.” Now, after revisiting this OER as RO due to this OER reply, I feel I was in error to change my original assessment of “do not concur” to “concur.” Because it took a good deal of “leadership and counsel” to try to get the SUPV to address the entire evaluation in a balanced perspective, I believed at that time that the OER reflected such balance when I finally submitted it to the REVW. Since then I have learned of other perceptions of the events leading up to, during, and after the awards ceremony of 31 OCT 05, from other individuals directly involved in those events. I seriously question whether the ROO’s actions were so egregious and whether they should have been singled out as a serious measure of [his] performance assessment over the entire marking period (153 days of Title X and 20 IDT drills in a 365 day period). It is worth noting that the ROO earned a CG Achievement Medal during the Period of Report. If I was asked today to concur with the Supervisor’s marks and comments in Section 5 of the OER, I would not do so, even after the SUPV revised the narrative.

b. [Regarding the timing of the applicant’s OER input], I do not have any first hand knowledge regarding what OER input was submitted by [the applicant], and the timing of such submission(s). I was a drilling reservist, normally performing IDT drills on nights and weekends. The first time I saw any OER text was when I was given the draft [OER form] sometime in June or July 2006.

On April 18, 2007, the Reviewer endorsed the OER Reply with the following comments in pertinent part:

a. As noted by the SUPV, the OER in question should be corrected to reflect the categorization of service for the period encompassing the evaluation (Title 10, IDT, ADT, etc.).

b. In regards to the Section 5 f. of the evaluation, the assignment of “3” is justified, as the ROO did not meet own OES responsibilities as the ROO. The “burden of responsibility” is clear [with respect to] the OES, and an experienced member should be intimately familiar with the requirements and the importance to the evaluation system to have timely and substantial supporting information.

c. As the RO discussed in his endorsement . . . , significant care, time and attention was brought to bear on this OER. As REVW I exercised my leadership role in the system to encourage the other members of the rating chain to serve the process well and ensure a balance and representative evaluation of the ROO’s performance for the entire period. I had initial concern because I saw the initial draft before the RO did, since the RO was a reserve officer and I wanted to make sure he properly received it and addressed it in a timely fashion. As the RO states, I wanted him to work with the SUPV on the content of the draft OER as I felt it was not the standard of quality and balance that would allow me to sign as REVW. I had knowledge after the fact [with respect to] the reported “clash” between the SUPV and ROO [with respect to] the award presentation, and various reports on how that was observed and perceived have been passed to me afterwards. I was not able to attend the award presentation, and the CO at the time . . . (retired) did not relate any issues or dif-

difficulties about that presentation. It was only through the read of the SUPV's draft of the OER that I became initially aware of the negative impact of that event and relative interaction. Nevertheless, the RO has stated that he did not concur initially with the draft OER (which was shared with me at that time). Now upon further reflection, the RO states that he still does not concur, and should have maintained that position in hindsight, even though he "concurred" after the second revision. Considering such a critical statement and impact to the process, I recommend that the OER be corrected by the RO accordingly, and re-signed by the RO and REVW. If this is not allowable or possible, then the ROO should pursue a review board correction.

d. I do not agree or confirm the ROO's statement [about putting the Supervisor on report]. He did not put his Supervisor on report (I never received a CG-4910, or specific written or oral complaint of misconduct). The ROO did make strong statements about his dissatisfaction relating to his time as the SUPV's subordinate, but he did not charge him with anything that was in violation of the UCMJ, core values or good order and discipline. The ROO never expressed dissatisfaction to me about receiving a CG Achievement Medal for his performance, however, even if so, I would not have changed my award recommendation endorsement.

On September 1, 2006, the applicant reported to an Integrated Support Command to serve as a Readiness Liaison Officer. On his OER for the period June 1, 2006, through May 31, 2007, the applicant received marks of 6 and 7 in the performance categories; a mark in the sixth spot on the comparison scale, meaning that he was "strongly recommended for accelerated promotion"; and the Reporting Officer's written comment, "Promote this Officer to O4."

On August 2, 2007, the applicant was selected for promotion by the PY08 IDPL LCDR selection board. On February 22, 2008, the Commandant issued ALCGPERSCOM 014/08, which authorized the applicant's promotion to LCDR as of March 1, 2008.

APPLICANT'S ALLEGATIONS

Allegations and Evidence About the Award Ceremony

The applicant alleged that the mediocre mark of 4 he received for "Workplace Climate" in the disputed OER is erroneous and unjustly based on a single incident—his own award ceremony—that was not his fault. He alleged that the OER unjustly characterizes the award ceremony, during which only he was to receive an award, as a "meeting" with the commanding officer (CO). He alleged that the ceremony was "scheduled less than half an hour before it occurred and [the applicant himself] was not informed—either in person or via e-mail—of the time of the ceremony. ... In fact, his name had been left off the e-mail distribution list of the message sent out at 1306 hours by [the Supervisor] advising other members of the command of the 1330 hours time of the ceremony." The applicant stated that he learned of the timing of the ceremony just minutes before 1330 and completely by chance when LCDR P, to whom he was speaking, told him about it. The applicant stated that upon hearing of it from LCDR P, he immediately went to the conference room and found "some of his colleagues already assembled and others still filing into the room." The CO had not yet arrived. However, the Supervisor came up to him and scolded him for being late. When the applicant respectfully defended himself by telling the Supervisor that he "had never been informed of the ceremony in the first place," the Supervisor began scolding him again, telling him "to 'stop it' or 'drop it,' to which [the applicant] repeatedly stated that he did not understand" what the Supervisor wanted him to stop or drop. The applicant stated that his conversation with the Supervisor was "frustrated" but he was not disrespectful in any way although the Supervisor raised his voice and became "inappropriately loud in his public

censure” of the applicant. The applicant alleged that no superior officers were involved in or overheard their conversation, and he never “derided his superiors” or anyone else. Then the CO arrived and said, “Good, [the applicant] is here so we can get started” and began the ceremony. After the ceremony, the Supervisor ordered the applicant to his office and “they had a loud conversation behind closed doors.”

In support of these allegations, the applicant submitted a copy of an email message that his Supervisor addressed twice to “xxxxx – Officers; xxxxx - Officers” on October 31, 2005, at 1:06 p.m. The subject line of the email is “Time correction to AWARD presentation.” The text announces that the applicant is completing his Title 10 service that day and “will be receiving recognition today @ 1330 in the CO’s conference room. ... If attending, please be in the CO’s conference room at 1325 hrs.”

The applicant also submitted a copy of two email messages from a Reserve officer, LT C, who wrote that after returning from lunch on October 31, 2005, he received the above email from the Supervisor, which corrected the time of the award ceremony provided in a prior email. He saw the applicant talking to LCDR P a few minutes later, and the applicant began talking to LT C about reserve billets and movement of personnel. At the end of their discussion, LT C told the applicant he would see him downstairs in a few minutes, and the applicant asked him what he was talking about. LT C was not sure he should respond in case the award was supposed to be a surprise, but since it was almost time for the ceremony, LT C told him about the email. LT C went directly downstairs to the conference room, and the applicant took a different staircase so that he could pass by his office to “find out more about the ceremony.” When LT C got into the conference room, he stopped near the door and began talking to another officer. Therefore, he partially overheard a discussion between the applicant and the Supervisor a few minutes later. As soon as the applicant came in, the Supervisor approached him and asked where he had been as he was supposed to have been there earlier. The applicant told the Supervisor that he had not known about the ceremony. “[A]fter several exchanges [the Supervisor] began saying, ‘Drop it, not now, this is not the time or the place,’ or words to that effect. [The applicant] was saying, ‘Drop what, Sir? I don’t understand, drop what?’ [The Supervisor] was holding out his hand, palm forward in a ‘stop’ gesture, saying ‘Just drop it’ and he was shaking his head right and left as if to indicate ‘no.’ I was only able to observe this because of my position. The discussion was in quiet tones and to my knowledge there was no disturbance that involved or came to the attention of others in the room.”

The applicant also submitted a statement signed by LTJG H, who worked in the Planning Department with the applicant. LTJG H stated that a day or two before October 31, 2005, the applicant told him that he might be receiving an award at the 8:00 morning briefing. On October 31, 2005, the Supervisor approached LTJG H prior to 8:00 a.m. and asked if he had seen the applicant. When LTJG H denied having seen the applicant, the Supervisor walked toward the CO’s office, presumably for the morning briefing. A few seconds later, LTJG H saw the applicant in his own office, which was directly beside the Supervisor’s office. LTJG H asked him if he was going to the morning briefing to get his award, and the applicant said that “no one had called him or stopped in to tell him to be at the meeting, so he wasn’t going. This seemed a reasonable assumption given that the award being given at the morning briefing had, to my knowledge, not been confirmed, and the morning briefing was only for the [CO] and Department Heads, so it would have been inappropriate for him or anyone else to go the briefing without

having been told to do so. Both of us assumed at that point that the award would be given at a different time.” After lunch that day, a senior chief told LTJG H that there would be a ceremony for the applicant later that afternoon. The senior chief showed him the email from the Supervisor announcing that the ceremony would occur, but LTJG H never got that email, “which was odd since I worked the most closely with [the applicant] and [was] the only one directly in his department. [The applicant] was not on the email list and there was no mention in the email that anyone should tell him to be at the ceremony.” LTJG H asked the senior chief if the applicant knew about the ceremony and was told that the senior chief did not know. Therefore, LTJG H went looking for the applicant to see if he knew about the ceremony, which was supposed to start in about 15 minutes. By the time he found the applicant, someone had already told him about the ceremony and he and other officers were headed downstairs to the conference room. LTJG H walked down to the conference room with the applicant and several other officers. When they got there, the CO was not present and people were still arriving. The applicant met the Supervisor in the hallway and they entered the conference room together with other officers coming in behind them. The applicant and the Supervisor began talking and “appeared to be agitated.” The Supervisor approached LTJG H and asked him if he had told the applicant about the ceremony. LTJG H told him that he had only just learned about the ceremony himself and had not informed the applicant. A few seconds later, the CO walked in “right on time” and the ceremony began. The CO was jovial and did not appear to be agitated. LTJG H stated, “At no time after the ceremony did I hear that the CO believed anyone was late to the ceremony or that he had been kept waiting.” After the ceremony, the applicant told LTJG H that the Supervisor claimed to have told LTJG H to inform the applicant about the time and place of the ceremony. “This was completely untrue, as I did not receive the email and was never told anything by [the Supervisor], or anyone else, regarding the ceremony [in advance]. ... The Supervisor never approached me again on this topic.”

The applicant also submitted an email from LCDR P, who stated that on the afternoon of October 31, 2005, the applicant was in LCDR P’s office when he received a telephone call from the CO’s yeoman, who informed him that his presence was expected in the conference room immediately to witness an award ceremony for the applicant. LCDR P asked the applicant if he knew he was supposed to be down in the command conference room getting an award. “From the look on [the applicant’s] face, it was evident to me that he didn’t know he was supposed to be downstairs receiving his award at that time. We both then went directly to the command conference room. ... I did not witness nor hear any verbal confrontation or harsh words exchanged between [the applicant and the Supervisor]. Nor did I witness or hear [the applicant] being disrespectful to anyone. The phone call from the yeoman was the first notice I received of the fact that [the applicant] was receiving an award and the time of its presentation.”

CDR T, who worked at xxxxxxxxxx and knew both the applicant and his Supervisor, stated that a couple of minutes before the ceremony was to begin, the applicant stopped by her office to say goodbye since it was his last day on active duty. Since she had recently received an email about the award ceremony, she told him he should probably be downstairs in the conference room, but he did not seem to understand her and she did not explain because she thought the award might be a surprise. Nevertheless, the applicant arrived in the conference room just a few minutes after she did. CDR T further stated,

[a]lthough he may have technically been a few minutes late to the ceremony, it was not noticeable as others were still arriving and we were all still awaiting the Captain. ... I noticed that after [the applicant] entered the room, he began talking with [the Supervisor]. I did not see [the applicant] speak to anyone else. All I could hear was [the Supervisor] saying something to the effect of, "You just have to stop," and [the applicant] replying repeatedly, "I don't understand, Sir, what do I have to stop?" This exchange ended when [the Supervisor] left the room, saying loudly over his shoulder, "You just have to stop." I did not see or hear [the applicant] act or speak in any way disrespectful to [the Supervisor] at that or any other time, nor did I later hear of any disrespectful act or words by [the applicant]. It seemed to me that [the Supervisor] was making a loud fuss over nothing and [the applicant] did not understand what was going on.

The CO, who presented the award to the applicant and has since retired signed, a statement saying that he "do[es] not recall that [the applicant] was late for that event or that there was any commotion in my presence at the ceremony. ... Had there been any egregious episode in that context, I believe I would remember it, or at least, I would have made note of it in my logbook," which he did not do.

Applicant's Allegations About Complaints Against the Supervisor

The applicant stated that because his Supervisor's treatment of him regarding the ceremony and several other, unrelated incidents caused him concerned, the applicant met with the Sector Deputy in December 2005 to voice his concerns, especially his concern that his Supervisor would not accurately evaluate him on his next OER. The Sector Deputy assured him that the OER would be properly reviewed and processed. The applicant stated that he was also concerned about the Supervisor's treatment of other officers and his tendency to try to get other people to do his work for him.

In support of this allegation, the applicant submitted a copy of an email he sent to the Sector Deputy on the evening of October 31, 2005, in which he asked to meet with him, when convenient, because the applicant was "concerned and bothered by some very unprofessional behavior that was directed at [LCDR G, LTJG H,] and me over the past few months." The Sector Deputy replied that he would meet with the applicant. Other emails indicate that the applicant tried to schedule a meeting with the Sector Deputy to discuss his concerns about the Supervisor in November and ultimately met with him on December 3, 2005. In addition, in January 2006, the applicant sent the Reporting Officer an email, stating that he had discussed his concerns about how the Supervisor was treating himself and others with the Sector Deputy and had "expressed serious concern about proper treatment for my next OER." The Reporting Officer replied that he and the Reviewer would ensure that the applicant got a fair evaluation. However, in March 2006, the applicant again emailed the Reporting Officer, stating that he was "passively being pushed out" of the Planning Department and asked to be transferred to another unit.

Allegations and Evidence About the OER Input

Regarding his OER input, the applicant alleged that on May 22, 2006, he asked the Supervisor for guidance on what format he should use in submitting his OER input. However, the Supervisor did not respond. Therefore, on June 4, 2006, since the deadline for OER input had passed, the applicant submitted his input in the format of a draft OER, which is how Reserve officers commonly submit their input, and emailed it to his chain of command. On June 7, 2006, the Supervisor sent him an email saying that he wanted the OER input in bulleted format, instead

of draft OER format. Therefore, the applicant sent him his notes, and the Supervisor said he would work with them. The applicant alleged that this was the Supervisor's "FIRST communication ... to me regarding my OER." However, on June 12, 2006, the Supervisor sent another email saying that he needed the applicant's OER input in bulleted format within 24 hours. Because the applicant's wife had recently given birth and because of the demands of his civilian job, the applicant replied that the 24-hour deadline was impossible. He cc'ed this email to the Sector Deputy because of "his ongoing concerns about his treatment" by the Supervisor. The applicant argued that cc'ing an email cannot be considered "bypassing" his Supervisor as stated in the disputed OER. In addition, he argued that his email about the 24-hour deadline could not be considered a "complaint." In response to his email, however, the Sector Deputy scolded them both and told the applicant to submit his bulleted input within a "reasonable" amount of time. The applicant submitted his input in the requested format eight days later on June 20, 2006.

When the Sector Deputy received the Supervisor's first draft of the applicant's OER, it contained three low marks of 3 and many derogatory comments. The Sector Deputy therefore asked the Senior Reserve Officer, who would serve as the applicant's Reporting Officer, to discuss the OER with the Supervisor. The Reporting Officer told the Supervisor to review the OER again and considered whether it was inaccurately negative. After the Supervisor revised the OER, the Reporting Officer and Sector Deputy (who served as the Reviewer) concurred and signed it. The OER was then expedited and put in the applicant's record before the IDPL LCDR selection board convened in August 2006. As a result, the applicant was not promoted.

In support of these allegations, the applicant submitted a copy of the June 4, 2006, email by which he emailed his original OER input, in the form of a draft OER, to his rating chain. On June 7, 2006, the Supervisor replied by email, "Where are your bullets? And send them directly to me, I will review and forward to all in the chain." The applicant replied the same day that he did "not have a bullet list: I converted my bullets into the text for the OER. I was not sure what format you wanted my OER in. In the past, I've submitted written version many more times than I've submitted bullet lists." The Supervisor replied that "along with a draft OER, all of our officers provide supporting bullets per the OER criteria." On June 12, 2006, the Supervisor emailed the applicant again saying that he had reviewed the applicant's OER input, and consulted with other OER administrators, and "strongly suggest that you take the time to provide bullets that document specific instances with resulting cause and effect. As per Command guidance, officers will not write their own OER. ... This is the second time that I am formally asking for your OER support information. If you choose not to provide the requested bullets in 24 hrs, I will complete and forward as I see fit upon what was presented." The applicant replied, cc'ing his email to the rating chain and the CO, that since he had a civilian job, an 11-day-old baby, two other small children, and a wife recovering from a C-section, "there is absolutely no way that I will have this to you within 24 hours. Therefore, I have no choice but to let you proceed as you plan." The Reviewer replied to both, "Cease and desist with whatever the tensions here on this issue. Do the right thing, the right way, for the right reasons. [Applicant] provide the supporting bullets when you are able to submit in a reasonable time. If you choose not to do so, please let us know."

The applicant also submitted a statement from his CO, who wrote that he had no direct knowledge of the matter but that he "recall[ed] in general [that the Supervisor] sometimes had trouble getting things done in a timely manner which came to my attention on more than one

occasion.” The CO further stated that the 3 that the Supervisor had assigned the applicant “is the ‘kiss of death’ for promotion purposes.”

The applicant’s Reporting Officer submitted a statement in which he said that the emails he was cc’ed regarding the applicant’s OER input was his first indication that there was friction between the applicant and his Supervisor. He stated that it was standard practice for Reserve officers to submit their OER input in the form of a draft OER but that the applicant could have responded to the Supervisor’s emails more diplomatically. The Reporting Officer stated that when the Reviewer handed him the Supervisor’s first draft of the applicant’s OER, the Reviewer said he was very concerned about the content and asked the Reporting Officer to discuss it with the Supervisor. On the draft OER, the Supervisor had assigned the applicant low marks of 3 in the categories “Judgment,” “Responsibility,” and “Professional Presence,” which marks are the purview of the Reporting Officer, not the Supervisor, and the Supervisor had included negative comments which concerned the applicant’s alleged behavior at the time of the award ceremony. The Reporting Officer’s own interactions with the applicant led him to believe that the draft OER was not objective. When the Reporting Officer discussed the OER with the Supervisor and pointed out that the Supervisor had completed the Reporting Officer’s part of the OER as well as his own, the Supervisor justified the low marks and negative comments with passionate allegations about the applicant’s behavior before and after the award ceremony. Since the Reporting Officer had heard nothing about the award ceremony, he gave the Supervisor the benefit of the doubt about his allegations but still told him that he did not concur with the marks and asked him to reconsider whether the OER was excessively negative given the applicant’s performance throughout the whole evaluation period. The Supervisor’s second and final draft of the OER “appeared to be more balanced,” and he concurred because he relied on the Supervisor’s description of the applicant’s behavior; because he thought he could minimize the impact of the low marks and negative comments with his own comments; and because of pressure from the Reviewer to get the OER completed.

The Reporting Officer also wrote that he now regrets having concurred with the revised version of the OER and does not believe it is fair or balanced. He noted that in the Supervisor’s first draft of the OER, he assigned the applicant a mark of 4 for “Evaluations” and only lowered it to a mark of 3 in the final draft after the Reporting Officer refused to assign the applicant marks of 3 in his own part of the OER. The Reporting Officer also wrote that he has received information from other officers contradicting the Supervisor’s characterization of the applicant’s behavior before the award ceremony. Contrary to what the Supervisor had told him, the ceremony was not a pre-scheduled meeting; the date and time were changed on very short notice; the applicant was not notified of the time of the ceremony in advance; and the CO did not think that the applicant arrived late.

The Reporting Officer concluded that the Supervisor’s four negative sentences should be removed from the OER and replaced with more accurate comments; that the mark of 3 for “Evaluations” should be upgraded to a 4; and that the mark of 4 for “Workplace Climate” should be upgraded to a 5.

The applicant also submitted statements from LCDR G, LCDR D, and CDR T who each described two or three interactions with the Supervisor which led them to discount the Supervisor’s responsibility and/or honesty.

Allegations About the OER Reply

The applicant stated that he submitted an OER Reply on October 25, 2006, by U.S.P.S. Express Mail, and received confirmation of delivery. However, when he inquired about the status of his OER Reply in late December 2006, CGPC told him that the Supervisor denied having received it. Later, CGPC advised him to resubmit it, and he did so on February 13, 2007, by email, to the Supervisor, the other members of his rating chain, and CGPC. The Supervisor's first endorsement was rejected by CGPC. The applicant alleged that the first endorsement contained many false statements about his alleged behavior outside of the evaluation period and was rejected by CGPC. When the applicant saw the Supervisor's revised endorsement, which was accepted by CGPC, it still contained false statements, but he cannot disprove them easily because the Supervisor did not name any of the allegedly numerous witnesses to the applicant's alleged misbehavior. In addition, the Supervisor persisted in characterizing the incident at issue as a "meeting" and falsely indicated that the applicant was informed of the time in advance.

In support of these allegations, the applicant submitted copies of emails indicating that the Supervisor denied having received the applicant's first OER Reply. He also submitted a delivery confirmation from the U.S. Post Office showing that his Express Mail package was delivered on October 25, 2006, to the Sector office and signed for by a yeoman and an email from the yeoman dated January 8, 2006, saying that she believes she gave the Express Mail package to the Supervisor.

The applicant also submitted a copy of the Supervisor's first draft of his endorsement, which was rejected by CGPC. The Supervisor stated that the Personnel Manual requires an officer to submit his OER input 21 days before the end of the evaluation period, but the applicant did not contact him about the OER input until 9 days before the end of the evaluation period. He stated that he does not remember receiving any request for guidance from the applicant about his OER input. The notes that the applicant sent him when he first requested bulleted information were "inadequate to judge his performance" and some concerned work the applicant had performed during a prior evaluation period. When the Supervisor asked for improved input within 24 hours, and the applicant objected to the deadline in an open email, the Reviewer "found it unprofessional and inappropriate of the [applicant] to deal with this issue in an open email communication." The Supervisor also stated that the applicant's submission of the bullets eight days later was "well past the time required" by the Reviewer's extension.

Regarding the events of October 31, 2005, the Supervisor wrote in his first draft of the endorsement, that it was a "meeting scheduled with the Sector Commander" that was first expected to occur mid morning but was delayed because of the Sector Commander's schedule. Prior to the ceremony, he asked his Assistant Chief to find the applicant, who could not be found. He then asked LTJG H and a senior chief to find him, and the applicant was found "conversing with his shipmates" and told that he was needed in the conference room. "The person who found [the applicant] reported back to me that he continued conversing despite this." When the CO first arrived, the applicant

was not in the room, which reflects his tardiness. Because [the applicant] was not at the meeting on time the Commander stepped back into his office and said "call me when everyone is ready."

The applicant came walking down the passageway approximately one minute later. I intercepted him prior to entering the Commander's front office and told him that it was inappropriate to make the Sector Commander wait, as well as be late for a meeting and his own award ceremony. ... When I entered the conference room [after informing the Sector Commander that the applicant had arrived, the applicant] was voicing his dissatisfaction to [an unnamed LCDR] about how he felt that he was being singled out for being late. He was speaking in a loud enough voice that I and many others overheard his conversation. The Senior Chief was just about to remove his junior personnel from the Conference Room because of the inappropriateness of the conversation. I told [the applicant] to stop. He ignored me and continued his conversation with the O4, who looked at me. I then walked directly in front of [the applicant] and told him to stop again. [The applicant] replied, "I don't know what this is about. I am being unfairly singled out." I replied that his comments were inappropriate and that we would finish this conversation in my office after the ceremony. ...

Throughout the writing of his OER and during this Reply process, [the applicant] has shown a blatant disregard for the chain of command. He was counseled several times by the Sector Deputy on his chain of command and how to use it. The Deputy counseled him twice to use the Personnel Manual process. He contacted several personnel, including a Senior Chief Petty Officer and a junior officer to try to get them to write statements regarding this process. Again, it shows his complete disregard for the chain of command and this process.

Allegations About Interference with Witnesses

Finally, the applicant alleged that when he tried to get statements from those present at the award ceremony and other potential witnesses, many of them refused, saying that they were not allowed to provide statements because they were not on the applicant's rating chain. Contrarily, Sector Deputy refused to provide a statement on the basis that he was a member of the applicant's rating chain. The applicant alleged that his attorneys complained about this problem to the Office of the Judge Advocate General (JAG) and that an officer was assigned to investigate, but the applicant was never informed of the outcome of the investigation.

In support of these allegations, the applicant submitted copies of email messages dated September 25 and 26, 2006. In the first, the applicant informed the Reviewer that he was going to file an OER Reply and then contest the OER through the BCMR. He stated that the negative comments in the OER are "not gross exaggerations" but "blatant misrepresentations of facts." He asked the Reviewer if he would submit a written statement on the applicant's behalf. The Reviewer replied that the applicant should "follow the established process. I was the Reviewing Official so I should not comment at this point in the process." The applicant then asked the Reviewer in reply whether he would be willing to provide a statement after the OER Reply procedures were complete. The Reviewer replied, "again, as stated, it is inappropriate for me to comment due to my role in the process."

In her statement for the applicant, CDR T stated that she was submitting it several months after she had intended to do so because, when she first mentioned it to her own supervisor, he "told me in no uncertain terms not to submit the statement or to have any further contact with [the applicant or his attorney]. Now that I no longer work for [that supervisor] I feel I can submit a statement without repercussions for doing so."

The applicant also submitted email correspondence between his attorney and CDR M dated November 21, 2006. In response to a request that he call the attorney, CDR M provided his own telephone number and wrote, "As I warned [the applicant], I have very little of substance

to offer; but I'll certainly tell you what I can within the proper constraints." When the attorney replied that she would call him at a certain time, CDR M wrote back that he "ran this by my chain of command to ensure I wasn't going where I shouldn't & was advised that any communications regarding [the applicant's] evaluation or circumstances that led to a particular mark on an evaluation must go through the BCMR process. I'm afraid I'm going to have to decline any interviews. Sorry."

The applicant submitted an email from LCDR H to his attorney dated November 30, 2006, in which LCDR H stated that she had "been advised that since I was not in [the applicant's] chain of command or OER rating chain that I should not have provided you a statement or speak to you. I was told that I should have referred your call to [CGPC] for any information regarding this issue which is outlined in the Personnel Manual for BCMR/PRRB requirements/deadlines. My phone conversations and emails to you have now placed myself in a compromising position where I may be officially counseled for my actions. I ask that my emails to you as well as any statements made to you not be used. I am sorry but I must follow the protocols which have been put in place."

The applicant also submitted an email from a chief yeoman dated November 22, 2006, who stated, in response to the attorney's request that she call her, "I am not in [the applicant's] chain of command. Please follow the appropriate BCMR process."

On December 11, 2006, the Deputy JAG of the Coast Guard responded to the applicant's attorney that the Coast Guard did not require members to route statements through their commands, legal officers, or CGPC. "The CG's position is one of neutrality – we neither encourage nor discourage people from submitting statements on behalf of BCMR applicants. I'm told that the CGPC personnel who handle BCMR's do not discuss cases with the field although they take calls from time to time regarding the process. Anecdotally, I'm told that when advice is sought, CGPC recommends that people be accurate about what they're saying and one way to ensure accuracy is to coordinate within their command." On December 15, 2006, the attorney emailed CDR B, offering to provide any information he needed to inquire into their complaint about the command's interference with the applicant's attempt to get witnesses' statements. On January 8, 2007, CDR B replied that he did not want to name names to the command in order to avoid "salting the earth" but that if the attorney called him "we can deconflict this and get you appropriate access" to the witnesses.

The applicant concluded that the OER should be corrected because he has submitted evidence that directly refutes the derogatory comments and because his Reporting Officer has admitted that he should not have concurred in the Supervisor's comments and marks. The Reporting Officer's statements show that if he had known in June 2006 what he knows now, "the OER would not have been validated as written." He argued that the unfair mark of 3 he received in the "Evaluations" category "is the 'kiss of death' for promotion purposes."

The applicant alleged that the Board should find the Supervisor's statements untrustworthy because he falsely depicted the award ceremony as a meeting; "irresponsibly mischaracterized his own mismanagement of [the applicant's] OER input"; and falsely denied having received the applicant's OER Reply in October 2006. In addition, the Supervisor wrongly

attempted to use his endorsement to the OER Reply as an opportunity to make even more false allegations about the applicant's performance.

VIEWS OF THE COAST GUARD

On October 18, 2007, the Judge Advocate General (JAG) of the Coast Guard recommended that the Board grant partial relief in this case. The JAG stated that the Board should correct the disputed OER as follows:

- Correct the block 2, the "Description of Duties," on the disputed OER to include the number of drills attended by the applicant.
- Remove "the last four [sic] sentences" in block 5 of the OER: "ROO then bypassed Supervisor to complain about that request. ROO was asked to attend a scheduled meeting with the unit Commanding Officer and was reminded of the meeting time. Member was late for the meeting and publicly derided superiors for failing to notify them."
- Revise the sentence "ROO did not provide Supervisor with requested information/clarification for own OER" to read, instead, "ROO failed to submit requested OER input on time," or words to that effect.
- Upgrade the mark of 3 for "Evaluations" to a mark of 4.
- Remove the following sentence from block 7: "Supervisor's comments in Section 5 regarding ROO's behavior surrounding a meeting reflect an isolated incident."
- Remove the applicant's OER Reply and the rating chain's endorsements thereto.

The JAG did not recommend backdating the applicant's date of rank as a LCDR or granting any further relief. To support his recommendation, the JAG submitted three signed declarations from the applicant's rating chain (summarized below).

Declaration of the Supervisor

The Supervisor stated that the applicant "let his emotions get the best of him when he inappropriately made statements towards [the Supervisor] and was held accountable for the consequences of his actions, as well as failure to submit timely OER input." The Supervisor alleged that the applicant was upset about not being retained on active duty and about the level of the award he received and that the Supervisor "became the primary focus of his frustrations and negative feelings toward the Coast Guard. Instead of demonstrating mature communication, leadership, and judgment skills, he chose to bypass me multiple times and inappropriately complain [to the Reviewer] about me as a supervisor." The Supervisor further stated that

[e]vents finally culminated at the presentation of his departure award where he was late to the presentation. I counseled him on his behavior and he did not like being held accountable for his actions. Subsequently he sought out peers, reservists who were not there, and long-time social acquaintances in his reserve chain of command and one disgruntled active duty officer to attempt

to build a case that he was unfairly singled out. [The applicant] is a smart officer who let his emotions cloud his judgment. Thus he did not have the support of the active duty chain of command due to the immature way he handled himself during the period.

Throughout this BCMR process, [the applicant] continued to demonstrate his immaturity by defying the Deputy Sector Commander On more than one occasion, he was counseled about contacting individuals at xxxxxxxxxxxxxx, instead of following the BCMR process as per the Personnel Manual. . . .

The Supervisor also stated that he had asked LTJG H to find the applicant and tell him about the ceremony; that he properly told the applicant to stop when the applicant “verbally lash[ed] back” at him prior to the award ceremony; and that a senior chief petty officer “removed his junior enlisted personnel from the command conference room because he thought the situation with [the applicant] was uncomfortable.” Regarding the applicant’s submissions, the Supervisor stated that CDR T was motivated to attack his character and performance because she had failed of selection for promotion and because he himself received two significant assignments that she had wanted to improve her “promotability.” In addition, he denied that LCDR D’s OER was not completed on time.

Declaration of the Reporting Officer

The Reporting Officer stated that he regretted having concurred in the OER as the result of “an intense and time consuming personal investigation conducted after I received post-OER information from first-hand sources that the Supervisor’s OER marks and negative comments were not justified.” The Reporting Officer also stated that after reviewing the applicant’s performance record, he believes that the negative marks and comments in the disputed OER caused the applicant to fail of selection in 2006.

Declaration of the Reviewer

The Reviewer stated that the mark of 3 for “Evaluations” could be justified based on the applicant’s late submission of OER input alone. He noted that the applicant’s inquiry about OER input on May 22, 2006, was made after the deadline for OER input. He stated that since the applicant was being considered for promotion that summer, he should have submitted very thorough supporting information for his OER input prior to the deadline provided in the Personnel Manual in addition to the draft OER. The Reviewer strongly denied that the Supervisor had any sort of “track record” for pushing his work onto others or for being dishonest.

The Reviewer denied having exercised improper influence to deter members from signing statements for the applicant. He stated that when he heard that the applicant and his attorney were contacting other members of the command, he stressed “that they need to understand their role in the process and exactly what they were providing information for, and not to confuse content issues (especially commenting on his OER) to ensure ‘administrative process discipline.’” He alleged that he never told anyone that they could not make a statement for the applicant and is unaware of anyone else in the command having done so. He stated that he felt it was very important to remain neutral due to his position of authority and that he is “extremely glad that [the applicant] has pursued this BCMR action, as I recommended.”

Based on these declarations, the OER Reply and endorsements thereto, and the applicant's other submissions, the JAG stated that there was clearly significant tension between the applicant and the Supervisor. The JAG stated that the record shows that the Supervisor initially assigned the applicant a mark of 4 for "Evaluations" but lowered the mark to a 3 after the Reporting Officer returned the OER to the Supervisor and pointed out the "Section error" (the Supervisor had completed the Reporting Officer's section of the OER by filling in low marks of 3 in three categories). Therefore, although the mark of 3 could be justified on the basis of the applicant's late submission of his OER input, the JAG recommended that the mark of 3 be raised to a 4 based on the preponderance of the evidence in the record. The JAG argued, however, that the applicant has not proved that the mark of 4 for "Workplace Climate" is erroneous or unjust.

The JAG further argued that, whereas the first disputed sentence in block 5 of the OER states that "ROO did not provide Supervisor with requested information/clarification for own OER," the record shows that the applicant did in fact submit the requested information to the Supervisor, albeit late. Therefore, the JAG recommended that the Board correct the disputed sentence to state simply that the applicant's OER input was submitted late.

The JAG attached to his advisory opinion a memorandum on the case prepared by CGPC. CGPC stated that block 2 of the disputed OER should be corrected to reflect the applicant's participation during the evaluation period since he is a reservist.

CGPC stated that the last three sentences in block 5 of the OER should be removed because they "do not coincide with any Leadership Skills factors and are not sufficiently supported by statements provided." CGPC stated that the Reporting Officer's comment in block 7 about the Supervisor's comments being based on a single incident should be removed because the last three sentences of block 5 are being removed.

CGPC objected to the applicant's request that a new OER be prepared by an alternative rating chain because it would be contrary to Coast Guard policy. CGPC argued that the designated members of the rating chain were in the best position to observe and evaluate the applicant's performance. CGPC also did not recommend upgrading either the mark of 3 for "Evaluations" or the mark of 4 for "Workplace Climate."¹⁰ Regarding the applicant's request to backdate his promotion, CGPC stated that "there is insufficient evidence to support that the applicant was unduly disadvantaged by the PY07 LCDR selection board. As the criteria and deliberations of promotion board are not disclosed, ... it cannot be determined how or if the marks and comments in the disputed OER made a difference in the [selection] board's final determination. However, the applicant was selected by the PY08 LCDR selection board ... with the same OER intact in his record, which supports that the applicant's disputed OER may not have been a factor contributing to his original non selection."

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On November 5, 2007, the Chair received the applicant's response to the views of the Coast Guard. The applicant stated that "because the Coast Guard has conceded significant relief,

¹⁰ The JAG did not agree with or adopt the part of CGPC's memorandum that dealt with the mark of 3 for "Evaluations" in the disputed OER.

the Board need not resolve every factual dispute (although we do think it should direct that the mark in block 5e (Workplace Climate) also be increased to a 5 based on the evidence presented).” However, the applicant objects to CGPC’s recommendation against backdating his date of rank. The applicant argued that under *Engels v. United States*, 678 F.2d 173 (Ct. Cl. 1982), and *Frizelle v. Slater*, 111 F.3d 172 (D.C. Cir. 1997), the law entitles him to the backdating of his date of rank because his record was clearly prejudiced by the errors in the disputed OER and because the Coast Guard has not shown that the applicant would not have been promoted in any event. The applicant argued that the Coast Guard has pointed to nothing in his record that would have precluded his selection for promotion by the PY07 LCDR selection board.

APPLICABLE REGULATIONS

Article 10.A.1.b.1. of the Personnel Manual provides that “[c]ommanding officers must ensure accurate, fair, and objective evaluations are provided to all officers under their command.”

Article 10.A.3.a.1. provides that Reserve lieutenants on the IDPL will receive OERs on the last day of May biennially (every other year), except that if they are in or above a promotion zone, they must receive an OER on the last day of May unless they have received an OER within the previous six months.

Under Articles 10.A.4.c.2. and 10.A.4.c.1.c., block 2 of each OER, which contains the “Description of Duties,” should also contain the following information for a Reserve officer: “IDT Drills Scheduled/Attended: XX/XX; ADT: XX Days; ADSW: XX Days. Enter number of drills and days even if zero. The drills/days should reflect the number completed within the period of report, NOT the number completed during the anniversary year.”

Article 10.A.2.c.2. includes the following among an officer’s responsibilities regarding his own performance and performance evaluations:

- d. Prepares OER Section 1, Administrative Data, and Section 13, Return Address (found on page 4 of the OER form), and forwards the OER with proposed OER attachments to the Supervisor not later than 21 days before the end of the reporting period.
- e. May submit to the Supervisor not later than 21 days before the end of the reporting period a listing of significant achievements or aspects of performance which occurred during the period. Submission is at the discretion of the Reported-on Officer, unless directed by the Supervisor. . . .
- j. Reviews COMDTINST 1401.4 (series), COMDTINST 1401.5 (series) and COMDTINST M1500.10 (series) and manages performance to ensure that OERs are not delayed when eligible for promotion or applying for advanced training.
- k. Assumes ultimate responsibility for managing 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 10.A.4.c.4. provides the following instructions for Supervisors completing the first 13 numerical marks on an OER form (similar instructions are provided for Reporting Officers, who are responsible for the last 5 numerical marks, in Article 10.A.4.c.7.):

- b. For each evaluation area, the Supervisor shall review the Reported-on Officer’s performance and qualities observed and noted during the reporting period. Then, for each of the performance dimensions, the Supervisor shall carefully read the standards and compare the Reported-on Officer’s performance to the level of performance described by the standards. The Supervisor shall

take care to compare the officer’s performance and qualities against the standards—not to other officers and not to the same officer in a previous reporting period. After determining which block best describes the Reported-on Officer’s performance and qualities during the marking period, the Supervisor fills in the appropriate circle on the form in ink.



d. In the “comments” block following each evaluation area, the Supervisor shall include comments citing specific aspects of the Reported-on Officer’s performance and behavior for each mark that deviates from a four. The Supervisor shall draw on his or her observations, those of any secondary Supervisors, and other information accumulated during the reporting period.

e. Comments should amplify and be consistent with the numerical evaluations. They should identify specific strengths and weaknesses in performance. Comments must be sufficiently specific to paint a succinct picture of the officer’s performance and qualities which compares reasonably with the picture defined by the standards marked on the performance dimensions in the evaluation area. Mere repetition or paraphrasing of the standards is not sufficient narrative justification for below or above standard marks.



g. A mark of four represents the expected standard of performance. Additional specific performance observations must be included when an officer has been assigned a mark of five or six to show how they exceeded this high level of performance. Those assigned the superlative mark of seven should have specific comments demonstrating how they exceeded the six standard block.

Article 10.A.4.c.8.a. states that on the comparison scale in an OER, a Reporting Officer “shall fill in the circle that most closely reflects the Reporting Officer’s ranking of the Reported-on Officer relative to all other officers of the same grade the Reporting Officer has known.”

Article 10.A.4.g. allows an officer to submit a written OER Reply within fourteen days of receiving any OER in order to “express a view of performance which may differ from that of a rating official.” The OER Reply must be “performance-oriented” and may not address interpersonal relations or include “a personal opinion of the abilities or qualities of a rating chain member.” An OER Reply is forwarded to CGPC through the rating chain, whose endorsements may include comments about the OER Reply.

The written standards for numerical marks in the categories “Evaluations” and “Workplace Climate” on an OER form appear as follows:

<p><u>Workplace Climate</u></p> <p>Ability to value individual differences and promote an environment of involvement, innovation, open communication, and respect.</p>	<p>1</p> <p>Intolerant of individual differences, exhibited discriminatory tendencies toward others. Tolerated or contributed to an uncomfortable or degrading environment. Failed to take responsibility for own words and actions and their impact on others. Failed to support or enforce Coast Guard human resources policies.</p> <p style="text-align: center;">○</p>	<p>3</p> <p>Sensitive to individual differences. Encouraged open communication and respect. Promoted an environment which values fairness, dignity, creativity, and diverse perspectives. Took responsibility for own words and actions and their impact on others. Fully supported and enforced Coast Guard human resources policies.</p> <p style="text-align: center;">○ ●</p>	<p>5</p> <p>Excelled at creating an environment of fairness, candor, and respect among individuals of diverse backgrounds and positions. Optimized use of different perspectives and opinions. Quickly took action against behavior inconsistent with Coast Guard human resources policies, or which detracted from mission accomplishment.</p> <p style="text-align: center;">○</p>	<p>7</p> <p style="text-align: center;">○</p>
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<u>Evaluations</u> The extent to which an officer, as Reported-on Officer and rater, conducted or required others to conduct accurate, timely evaluations for enlisted, civilian and officer personnel.	1 ○	Reports were frequently late. Narratives inaccurate or of poor quality. Failed to uphold service performance standards by assigning accurate marks. Reports required revision or intervention by others. Failed to meet own OES responsibilities as Reported-on Officer. ○	3 ●	Reports consistently submitted on time. Narratives were fair, concise, and contained specific observations of action and impact. Assigned marks against standards. Few reports, if any, returned for revision. Met own OES responsibilities as Reported-on Officer. ○	5 ○	No reports submitted late. Narratives were insightful, of the highest quality, and always supported assigned marks. Subordinates' material reflected same high standards. No reports returned for revision. Returned reports to subordinates when appropriate. ○	7 ○
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FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely.

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

3. To establish that an OER is erroneous or unjust, an applicant must prove that it was adversely affected by (a) a “misstatement of significant hard fact,” (b) a “clear and prejudicial violation of a statute or regulation,” or (c) factors that “had no business being in the rating process.”¹¹ The Board begins its analysis in every case by presuming that the disputed OER is correct as it appears in the record, and the applicant bears the burden of proving by a preponderance of the evidence that it is erroneous or unjust.¹² Absent evidence to the contrary, the Board presumes that the applicant’s rating chain prepared the disputed OER “correctly, lawfully, and in good faith.”¹³

4. The applicant alleged that block 2 of his OER for the period June 1, 2005, through May 31, 2006, fails to conform to Articles 10.A.4.c.2. and 10.A.4.c.1.c. of the Personnel Manual by providing information about his drill time and active duty time. No such information appears in block 2 of the disputed OER, and the Coast Guard has conceded that it should under the regulations. Therefore, the OER should be corrected to include the required information about the applicant’s drill time and active duty time during the evaluation period.

5. The applicant alleged that the mark of 3 he received for “Evaluations” on the disputed OER and the following supporting comments for the low mark are erroneous and unjust:

¹¹ *Germano v. United States*, 26 Cl. Ct. 1446, 1460 (1992); *Hary v. United States*, 618 F.2d 704 (Ct. Cl. 1980); CGBCMR Dkt. No. 86-96.

¹² 33 C.F.R. § 52.24(b).

¹³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

“ROO did not provide Supervisor with requested information/clarification for own OER. ROO then bypassed Supervisor to complain about that request.” He alleged that he did supply the OER input, albeit after the deadline provided in the Personnel Manual, and that his decision to send his emails about his OER input to all the members of his rating chain cannot be considered a “complain[t] about that request.” The Coast Guard has conceded that the latter of the two sentences is erroneous or misleading and recommends that the Board remove it. The Board agrees that the sentence is misleading given the apparent initial confusion about what kind of OER input the Supervisor wanted from the applicant; the tone and content of the Supervisor’s email dated June 12, 2006; and the tone and content of the applicant’s own emails regarding his OER input.

6. Since the applicant has admitted that his initial OER submission was made after the deadline provided by Article 10.A.2.c.2. of the Personnel Manual, the Coast Guard recommended that the comment “ROO did not provide Supervisor with requested information/clarification for own OER” be removed and substituted with a comment saying, “ROO failed to submit requested OER input on time,” or words to that effect. The applicant asked that the sentence be removed from the OER. Under Article 10.A.2.c.2.d., the applicant was required to initiate the evaluation by submitting an OER form with block 1, “Administrative Data,” completed to his Supervisor no less than 21 days before the end of the reporting period, May 31, 2006. He clearly failed to do so. Under Article 10.A.2.c.2.e., an officer “may submit to the Supervisor not later than 21 days before the end of the reporting period a listing of significant achievements or aspects of performance.” (Emphasis added.) The record does not show that the applicant was asked to submit such a listing prior to the 21-day deadline, but it is standard practice for officers to do so. The record indicates that the Supervisor first asked the applicant for bulleted OER input in an email dated June 7, 2006. Then on June 12, 2006, the Supervisor asked for bulleted OER input within 24 hours and noted that it was his second request for the input. When the applicant explained why he could not meet a 24-hour deadline, the Reviewer granted the applicant a “reasonable” amount of time given his civilian work and family’s circumstances, and the applicant submitted the bulleted information on June 20, 2006. Therefore, the preponderance of the evidence does not show that the applicant failed to submit any *requested* OER input on time, and under Article 10.A.2.c.2.e., the bulleted input was optional until his rating chain requested it. Because the applicant failed to meet the deadline under Article 10.A.2.c.2.d., rather than Article 10.A.2.c.2.e, the Board finds that the comment “ROO did not provide Supervisor with requested information/clarification for own OER” should be corrected to say “ROO failed to initiate own OER on time.”

7. The Supervisor and Reviewer argued that the mark of 3 for “Evaluations” can be justified based upon the lateness of the applicant’s OER input alone. The JAG, however, has recommended that the Board upgrade the mark of 3 to a 4 based on the evidence of tension between the applicant and the Supervisor and based on the Reporting Officer’s statement that the Supervisor lowered the mark from a 4 to a 3 after the Reporting Officer discussed a “Section error” with the Supervisor and asked him to reconsider the negative marks and comments in his first draft of the OER. In his statement on behalf of the applicant, the Reporting Officer wrote that in that first draft, the Supervisor assigned the applicant a mark of 4 for “Evaluations” but marks of 3 for “Judgment,” “Responsibility,” and Professional Presence,” which three categories are supposed to be completed by the Reporting Officer, not the Supervisor. The Reporting Officer indicated that after he told the Supervisor that he disagreed with those low marks in the Reporting Officer’s section of the OER, the Supervisor lowered the mark for “Evaluations” in his

own section from 4 to 3. In light of this allegation and findings 5 and 6, above, the Board finds that the mark for “Evaluations” in the disputed OER should be raised from 3 to 4.

8. The applicant alleged that the following comments should be removed from block 5 of the disputed OER because they are erroneous and misleading: “ROO was asked to attend a scheduled meeting with the unit Commanding Officer and was reminded of the meeting time. Member was late for the meeting and publicly derided superiors for failing to notify them.” He alleged that the “meeting” was actually an award ceremony for himself; that saying it was “scheduled,” that he was reminded of it, and that he was late is erroneous and misleading since he was not notified of the ceremony until someone who got an email about it happened to mention it to him a few minutes before the ceremony. He also alleged that he never “publicly derided superiors for failing to notify them [him].” The JAG has recommended that these two sentences be removed from the OER based upon CGPC’s finding that they “do not coincide with any Leadership Skills factors and are not sufficiently supported by statements provided.”

9. The Supervisor’s several statements in the record indicate that the two sentences about the applicant being late for a meeting and deriding superior officers are based upon the applicant’s behavior prior to the award ceremony on October 31, 2005. The Supervisor persists in calling the ceremony a scheduled meeting. An award ceremony can certainly be called a “meeting” in that word’s broadest possible sense, but the Board finds that the applicant has proved by a preponderance of the evidence that the Supervisor’s comments calling it a *scheduled* meeting and claiming that the applicant arrived late despite a reminder are misleading and erroneous. The applicant submitted many statements from other officers indicating that, while he knew he had been authorized an Achievement Award, he had been told it would be presented at the morning brief (though it was not) and was visibly surprised to learn just a few minutes before 1:30 p.m. on October 31, 2005, that a ceremony was about to begin in the conference room to present him with the award. The witnesses also indicate that the applicant left the floor above to go downstairs to the conference room for the ceremony as soon as he learned of it and arrived in the conference quickly, entering in the midst of a stream of attendees. The CO has no recollection or record of the applicant being late to the ceremony.

10. To disprove his Supervisor’s allegation that he “publicly derided” superior officers for failing to notify him of the meeting, the applicant submitted several statements from officers who were in the conference room and who observed his entrance and behavior there. The witnesses’ statements show that the Supervisor approached the applicant when he entered the conference room and held a tense conversation with him. Their conversation ended with the Supervisor raising his voice and repeatedly saying “Stop it” or “Drop it” as he walked away from the applicant and the applicant repeatedly responding that he did not understand what the Supervisor wanted him to stop or drop. The Supervisor alleged that he confronted the applicant only because, after the applicant entered the conference room, he began loudly complaining about not having been notified of the ceremony and about having been “singled out” for being late.¹⁴ The Supervisor further alleged that the applicant’s behavior was so poor that one unnamed senior chief petty officer either considered removing his subordinates from the room or actually did

¹⁴ As the Supervisor was apparently the only one who criticized the applicant for being late to the ceremony, it is not clear why the applicant would have been complaining about being “singled out” before the Supervisor approached him.

so.¹⁵ However, none of several witnesses who were in the conference room at the time support the Supervisor's characterization of the applicant's behavior as publicly derisive. None of them report hearing any loud complaints about not being notified or any other disturbance created by the applicant. The CO has no memory or record of the applicant being late or of any problem regarding the ceremony. Therefore, while the applicant's time of arrival and discussion with the Supervisor clearly aggravated the Supervisor for reasons unapparent in the record, the Board agrees with the JAG that the last two sentences in block 5 should be removed from the OER as misstatements of fact.

11. The applicant asked the Board to raise his mark for "Workplace Climate" from a 4 to a 5. Article 10.A.4.c.4.g. of the Personnel Manual states that "[a] mark of four represents the expected standard of performance. Additional specific performance observations must be included when an officer has been assigned a mark of five or six to show how they exceeded this high level of performance." Article 10.A.4.c.4.d. states that "[i]n the 'comments' block following each evaluation area, the Supervisor shall include comments citing specific aspects of the Reported-on Officer's performance and behavior for each mark that deviates from a four." The negative comments that the Board is removing from the OER pursuant to finding 10, above, could have been used by the Supervisor to justify a low mark of 3 for "Workplace Climate" since they suggest that the applicant did not meet the written standard for a mark of 4: "Sensitive to individual differences. Encouraged open communication and respect. Promoted an environment which values fairness, dignity, creativity, and diverse perspectives. Took responsibility for own words and actions and their impact on others. Fully supported and enforced Coast Guard human resources policies." However, the removal of the negative comments does not persuade the Board that the applicant earned or is entitled to a higher mark for "Workplace Climate." To earn a mark of 5 in this category, a Supervisor must be persuaded that a reported-on officer's performance fully met the written standard for a mark of 4 and also met some of the requirements for a mark of 6: "Excelled at creating an environment of fairness, candor, and respect among individuals of diverse backgrounds and positions. Optimized use of different perspectives and opinions. Quickly took action against behavior inconsistent with Coast Guard human resources policies, or which detracted from mission accomplishment." The Board cannot find, based on the evidence of record regarding the applicant's interactions with his Supervisor and the written standards on the OER form, that the applicant has proved that the mark of 4 he received for "Workplace Climate" is erroneous or unjust.

12. In light of the findings above, the Board agrees with the Coast Guard that the Reporting Officer's comment in block 7 ("Supervisor's comments in Section 5 regarding ROO's behavior surrounding a meeting reflect an isolated incident") and the OER Reply, along with the rating chain's endorsements thereto, should be removed from the disputed OER as they are based on and refer to negative comments that are being removed from the OER.

13. The applicant asked the Board to backdate his LCDR date of rank to what it would have been had he been selected for promotion in August 2006 by the PY07 IDPL LCDR selection board. He argued that given the absence of other negative information in his record, he

¹⁵ In the Supervisor's first draft of his endorsement to the OER Reply, he wrote that an unnamed senior chief petty officer "was just about to remove his junior personnel" from the room, but in his statement for the advisory opinion, the Supervisor wrote that the senior chief petty office did remove them from the room.

would have been selected for promotion by that board if the Supervisor's negative mark and comments had not been in the disputed OER. CGPC¹⁶ argued that it should be denied because "there is insufficient evidence to support that the applicant was unduly disadvantaged by the PY07 LCDR selection board. ... [I]t cannot be determined how or if the marks and comments in the disputed OER made a difference in the [selection] board's final determination. However, the applicant was selected by the PY08 LCDR selection board ... with the same OER intact in his record, which supports that the applicant's disputed OER may not have been a factor contributing to his original non selection."

14. When the PY07 selection board met in August 2006, the disputed OER was the most recent in his record and the OER Reply with its endorsements was not yet attached. The fact that the applicant was selected for promotion the following year, after the OER Reply and endorsements had been attached and after the applicant had received another excellent OER does not persuade the Board that the negative mark and comments in the disputed OER were not critical to his non-selection for promotion in August 2006. Moreover, under *Engels v. United States*, 678 F.2d 173, 176 (Ct. Cl. 1982), when an officer proves that his record contained an error when it was reviewed by a selection board that did not select him for promotion, this Board must answer the following two questions to determine if the applicant is entitled to the removal of his failure of selection: "First, was the [applicant's] record prejudiced by the errors in the sense that the record appears worse than it would in the absence of the errors? Second, even if there was some such prejudice, is it unlikely that [he] would have been [selected for promotion in 2006] in any event?" Furthermore, in considering the second question, "the end-burden of persuasion falls to the Government to show harmlessness—that ... there was no substantial nexus or connection" between the prejudicial error and the failure of selection.¹⁷

15. The low mark of 3 and the negative comments that the Board is correcting and/or removing from the disputed OER clearly prejudiced the applicant's record before the PY07 IDPL LCDR selection board because they made his record "appear[] worse than it would in the absence of the errors."¹⁸ An accusation of having publicly derided superior officers would be very damaging to any officer's record.¹⁹ The fact that the applicant was selected for promotion by the PY08 selection board with the disputed OER in his record does not alter this conclusion because by that time his explanation of events in the OER Reply and the rating chain's endorsements had been added to the disputed OER.

16. Moreover, the Board finds that it is *not* unlikely that the applicant would have been selected for promotion in 2006 had the erroneous mark and comments not been in the disputed OER because there is no negative information in the remainder of his performance record that would have precluded his selection for promotion in any event. The Coast Guard has not

¹⁶ Because the JAG acknowledged but did not comment on this part of the applicant's request for relief and adopted CGPC's recommendations "in part," the Board assumes that the JAG agreed with CGPC's recommendation against removing the applicant's failure of selection and backdating his date of rank.

¹⁷ *Quinton v. United States*, 64 Fed. Cl. 118, 125 (2005), citing *Engels v. United States*, 678 F.2d 173, 175 (Ct. Cl. 1982).

¹⁸ *Engels*, at 176.

¹⁹ See *Frizelle v. Slater*, 111 F.3d 172, 179 (D.C. Cir. 1997) (finding that the BCMR's decision not to remove the appellant's failures of selection for promotion was arbitrary in part because the Board "failed to take into account the particularly damaging effect that disparaging written comments have on an evaluation").

carried “the end-burden of persuasion” by proving that, in the absence of the erroneous mark and comments, it is unlikely that the applicant would have been selected for promotion in 2006.²⁰ Therefore, the Board finds that under *Engels*, the applicant is entitled to the removal of his failure of selection in 2006 by the PY07 IDPL LCDR selection board, to the backdating of his date of rank to what it would have been had he been selected for promotion by that board, and to corresponding back pay and allowances.

17. The Board notes that the applicant has submitted substantial evidence showing that his command actively discouraged other members from communicating with him and his attorney about the underlying facts of his application. It is unclear from the record whether the witnesses and command thought that the statements were being sought for his BCMR application, for the OER Reply, or for some other purpose. According to the JAG, the Coast Guard’s policy regarding BCMR applications is neutral, so no member should ever be discouraged from providing, or be required to provide, a statement to an applicant or attorney in support of a BCMR application. BCMR applicants should be able to request such statements from individual members without interference by their commands, and every member—even a member of an applicant’s rating chain—should be allowed to decide, without any threat or interference, whether he or she will communicate with and provide a written statement to a BCMR applicant or the applicant’s attorney. As allegations of command interference have appeared in several recent applications, the Board strongly recommends that the JAG ensure that all commands are periodically reminded of this neutral policy.

18. Accordingly, partial relief should be granted by correcting the disputed OER by adding information about his drills and active duty time in block 2 in accordance with Articles 10.A.4.c.2. and 10.A.4.c.1.c of the Personnel Manual; (b) raising the mark of 3 for “Evaluations” to a 4; (c) removing the last four sentences in block 5; (d) adding the following sentence to the comments in block 5: “ROO failed to initiate own OER on time”; (e) removing the following sentence from block 7: “Supervisor’s comments in Section 5 regarding ROO’s behavior surrounding a meeting reflect an isolated incident”; and (f) removing the OER Reply along with the rating chain’s endorsements thereto. In addition, relief should be granted by removing his failure of selection by the PY07 IDPL LCDR selection board; by backdating his LCDR date of rank to what it would have been had he been selected for promotion by that board; and by awarding him corresponding back pay and allowances.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

²⁰ *Quinton*, at 125.

ORDER

The application of [REDACTED], USCGR, for correction of his military record is granted as follows:

The Coast Guard shall correct his officer evaluation report (OER) for the period June 1, 2005, through May 31, 2006, by

(a) adding to block 2 of the OER, "Description of Duties," information about his participation in drills and active duty time as required by Articles 10.A.4.c.2. and 10.A.4.c.1.c. of the Personnel Manual;

(b) removing the mark of 3 for the performance dimension "Evaluations" in block 5.f. and replacing it with a mark of 4;

(c) removing the following last four sentences from block 5: "ROO did not provide Supervisor with requested information/clarification for own OER. ROO then bypassed Supervisor to complain about that request. ROO was asked to attend a scheduled meeting with the unit Commanding Officer and was reminded of the meeting time. Member was late for the meeting and publicly derided superiors for failing to notify them.";

(d) adding the following sentence to the comments in block 5: "ROO failed to initiate own OER on time.";

(e) removing the following sentence from block 7: "Supervisor's comments in Section 5 regarding ROO's behavior surrounding a meeting reflect an isolated incident."; and

(f) removing the OER Reply along with the rating chain's endorsements thereto.

In addition, the Coast Guard shall remove from his record his failure of selection by the PY07 IDPL LCDR selection board; backdate his LCDR date of rank to what it would have been had he been selected for promotion by that board; and pay him corresponding back pay and allowances.

