

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2012-227**

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**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 upon receipt of the applicant's completed application on September 6, 2012, and subsequently prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated January 7, 2014, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST AND ALLEGATIONS**

The applicant, a lieutenant (O-3) on active duty at the time of application,<sup>1</sup> asked the Board to remove her 2009 annual officer evaluation report (OER1, Attachment A) from her record and replace it with a Continuity OER,<sup>2</sup> to raise the assigned numerical marks in two subsequent annual OERs for 2010 and 2011 (OER2 and OER3, Attachments B and C), to remove her failures of selection for promotion to lieutenant commander (LCDR), to promote her to LCDR as of the date she would have been promoted had she been selected by the board that convened on [REDACTED] and to award her back pay and allowances. She also asked the Board to void her separation and return her to active duty if she has been separated from active duty by the time the Board's decision is issued.<sup>3</sup>

*Allegations about OER1*

OER1 (Attachment A) covers the applicant's service from May 31, 2008, to May 31, 2009, when she was assigned to be the [REDACTED] and

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<sup>1</sup> The applicant was discharged from active duty on [REDACTED] because she had twice been passed over for selection for promotion.

<sup>2</sup> A Continuity OER is one that contains a description of the officer's assigned duties but no numerical marks or other comments. Personnel Manual, Article 10.A.3.

<sup>3</sup> Pursuant to 14 U.S.C. § 283(a), a lieutenant with fewer than 18 years of active duty must be discharged by the June 30<sup>th</sup> following the second annual selection board that fails to select the lieutenant for promotion to lieutenant commander, unless the lieutenant is selected for retention for a specific period pursuant to § 283(b).



the [REDACTED]  
[REDACTED] She alleged that this position is normally a billet for a lieutenant commander (O-4).

OER1 contains eleven marks of 5 and seven marks of 6 in the performance dimensions,<sup>4</sup> many positive supporting comments, a mark in the fifth spot on the comparison scale,<sup>5</sup> and a strong recommendation for promotion. However, the applicant alleged that OER1 was prepared by an officer, [REDACTED] who was not her supervisor<sup>6</sup> in violation of the Personnel Manual.

The applicant alleged that her actual supervisor, [REDACTED] provided her with direction, guidance, and performance feedback throughout the reporting period for OER1 and so should have prepared OER1. Instead, OER1 was prepared by [REDACTED] who was the [REDACTED]. The applicant alleged that [REDACTED] was supposed to serve as her reporting officer, not as her supervisor. However, on April 21, 2009, [REDACTED] argued about OER1. [REDACTED] wrongfully directed [REDACTED] not to give the applicant any OER mark higher than a 5. [REDACTED] objected because she knew how much work the applicant was doing, but [REDACTED] then claimed that he would prepare the entire OER as both supervisor and reporting officer for the applicant.

The applicant further alleged that by regulation, [REDACTED] could not serve as both her supervisor and reporting officer because [REDACTED] was not her immediate supervisor. Ultimately, [REDACTED] signed OER1 as supervisor, in lieu of [REDACTED] and another officer signed OER1 as the reporting officer. The applicant argued because OER1 was not prepared by her designated rating chain, it should be removed from her record. The applicant alleged that she discovered this error in July 2011, when she sought clarification on the roles and responsibilities of the supervisor and reporting officer.

### *Allegations about OER2*

OER2 (Attachment B) covers the applicant's service from June 1, 2009, through May 31, 2010, in the same assignment within the [REDACTED]. The applicant alleged that it is adversely affected by a significant omission and two marks of 5 for the performance dimensions "Speaking & Listening" and "Looking Out for Others," which should be raised to 6s.

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<sup>4</sup> Coast Guard officers are evaluated in 18 different performance categories, such as "Teamwork" and "Judgment," on a scale of 1 (worst) to 7 (best). A middle mark of 4 means that the officer's performance met the expected high standards of all Coast Guard officers for that category.

<sup>5</sup> On an OER comparison scale, the reporting officer assigns a mark by comparing the reported-on officer to all other officers of the same grade whom the reporting officer has known throughout his or her career. Although the marks on the scale are not numbered, there are 7 possible marks, which range from a low of "performance unsatisfactory for grade or billet" for a mark in the first spot on the scale to a high of "BEST OFFICER of this grade" for a mark in the seventh spot. A mark in the fifth spot on the scale denotes the officer as an "Excellent performer; give toughest, most challenging leadership assignments."

<sup>6</sup> A Coast Guard officer is normally evaluated by a "rating chain" of three superior officers, including a supervisor, who completes the first 13 marks on the OER; a reporting officer, normally the supervisor's supervisor, who completes the rest of the OER; and an OER reviewer, who reviews the OER for consistency and comportment with regulations. The system provides for "multiple evaluators and reviewers who present independent views and ensure accuracy and timeliness of reporting." Personnel Manual, Article 10.A.2.a.



Regarding the significant omission, the applicant alleged that either the Description of Duties in block 2 or the reporting officer's comments in block 7 should mention the fact that she was assigned to an O-4 billet even though she was still an O-3. She alleged that it should have been mentioned to provide perspective on her job performance since she was doing work normally assigned to a more experienced, higher ranking officer.

Regarding the mark of 5 she received for "Speaking & Listening," the applicant alleged that it is erroneously low, inconsistent with her performance, and failed to take into account all of the accomplishments she provided in her OER input. The mark of 5 is supported by the comment, "Outstanding speaker & facilitator; promoted USCG [REDACTED]"

[REDACTED] She complained that the comment "makes it appear as if my only contribution to the [REDACTED] program was limited to my involvement with the [REDACTED]" and fails to mention presentations she made to industry, various working groups, the Admiral, and a university. She alleged that her input for this performance dimension "met all the requirements for a [mark of 6]." She asked the Board to raise this mark to a 6.<sup>7</sup>

Regarding the mark of 5 she received for "Looking Out for Others," her supervisor told her she did not receive a mark of 6 because although she did "a lot, the rating chain did not see [her] unit involvement." She pointed out that, as noted in her input for OER2, she was co-chair of the Morale Committee and so responsible for all of the unit's morale events. Her supervisor told her "he must have missed this" but would remember and give her a mark of 6 on her next OER. She asked why the mark of 5 could not be corrected on OER2, and he told her that it was because the reporting officer had left. Therefore, the applicant argued, her rating chain failed to use her OER input properly. Moreover, she alleged, the supporting comments in block 5 of OER2 do mention her leadership of the Morale Committee and so support a mark of 6 for this performance dimension.<sup>8</sup>

### *Allegations about OER3*

OER3 (Attachment C) covers the applicant's service in the same position from June 1, 2010, through May 31, 2011. The applicant alleged that it is adversely affected by the omission of the fact that she was assigned to an O-4 billet as an O-3 and by four erroneously low marks for the performance dimensions "Professional Competence," "Writing," "Looking Out for Others," and "Directing Others." The applicant alleged that she had requested and received mid-point counseling, at which time she was told that she was "tracking" for 6s. She alleged that she should have been informed when her performance began to fail to meet the written standards for 6s.

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<sup>7</sup> On an OER form, the supervisor and reporting officer assign numerical marks by comparing the officer's observed performance against the written standards provided for marks of 2, 4, and 6 on the form. The written standard for a mark of 6 for "Speaking and Listening" is "Clearly articulated and promoted ideas before a wide range of audiences; accomplished speaker in both formal and extemporaneous situations. Adept at presenting complex or sensitive issues. Active listener; remarkable ability to listen with open mind and identify key issues."

<sup>8</sup> On an OER form, the written standard for a mark of 6 for "Looking Out for Others" is "Always accessible. Enhanced overall quality of life. Actively contributed to achieving balance among unit requirements, professional and personal responsibilities. Strong advocate for subordinates; ensured appropriate and timely recognition, both formal and informal."



Regarding the mark of 5 for “Professional Competence,” the applicant alleged that because she had received 5s for this performance dimension on OER1 and OER2, receiving another mark of 5 for this dimension in OER3 made it appear, erroneously, as if she had not learned her work and improved her competence at all during her three years in her position. She also alleged that her reporting officer, [REDACTED], improperly lowered her supervisor’s mark in this category from a 6 to a 5. The applicant submitted the bulleted OER input that she provided to her rating chain and alleged that the input shows how her performance met the written requirements for a mark of 6.<sup>9</sup> She also complained that her supervisor’s supporting comments did not paint a succinct picture of her performance in this category.

The applicant noted that in response to her application to [REDACTED] Personnel Records Review Board (PRRB) for correction of OER3, the reporting officer, [REDACTED] had claimed that she did not receive a mark of 6 for “Professional Competence” because she was “generally not considered the go to person that possesses expertise, great breadth or depth of knowledge in marine safety issues”; she did not lead any projects; and she failed to recognize that comments submitted by an industry safety association for one rulemaking she was working on also applied to another rulemaking she was working on. [REDACTED] alleged that her lack of expertise had caused extra work for others. The applicant alleged that these were not the reasons her supervisor told her she failed to receive a mark of 6 and that [REDACTED]’s claim that she was not the “go to” person was untrue since she was the “go to” person for [REDACTED] and for [REDACTED] too whenever her supervisor was out of the office. She also alleged [REDACTED] was “the lead for the [REDACTED] on several projects” since she represented the office on several committees, led a working group to modify a form, and an alternative group, although [REDACTED] had removed her as lead of the [REDACTED]. The applicant also objected to [REDACTED]’s characterization of her handling of the regulatory comments and detailed her actions and responsibilities. She alleged that her performance met the written standards for a mark of 6 for “Professional Competence.” [REDACTED]

Regarding the mark of 5 for “Writing” on OER3, the applicant alleged that her rating chain [REDACTED] to make use of her bulleted OER input in assigning the mark and that the comments do not paint a succinct picture of her performance, as required by the regulations. She provided the bulleted list of the writing she performed during the reporting period. She alleged that during her OER counseling, she was told that the [REDACTED] reporting officer had given everyone a 5 in that category, but she later learned this was not true. She also alleged that [REDACTED] statement to the PRRB that her writing did not warrant a mark of 6 because she had not shown the “ability to clearly and persuasively express complex or controversial issues” is false.

[REDACTED] regarding the mark of 6 she received for “Looking Out for Others” on OER3, the applicant alleged that it should be raised to a 7. She stated that she had mentored seven junior and petty officers, helped several junior officers prepare their resumes and OERs, and provided substantial, ongoing support and counseling to a suicidal chief warrant officer undergoing court-

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<sup>9</sup> On an OER form, the written standard for a mark of 6 for “Professional Competence” is “Superior expertise; advice and actions showed great breadth and depth of knowledge. Remarkable grasp of complex issues, concepts, and situations. Rapidly developed professional growth beyond expectations. Vigorously conveyed knowledge, directly resulting in increased workplace productivity. Insightful knowledge of own role, customer needs, and value of work.”



martial. The applicant stated that she should have received a 7 because her efforts exceeded the standards for a mark of 6 in this category.<sup>10</sup> She stated that she had spent large quantities of her own time on weekends and evenings helping the chief warrant officer with her preparations for court-martial and ensuring that she did not commit suicide. However, during her OER counseling, ██████ refused to raise the mark to a 7 or to explain why the applicant's extraordinary effort did not warrant a mark of 7. ██████

Regarding the mark of 5 for "Directing Others" in OER3, the applicant alleged that it is unjustly low, that her rating chain failed to make use of her OER input, and that the supporting comments fail to paint a succinct or accurate picture of her performance. She explained in detail why she believes the guidance she provided to field units and industry meets the written standard for a mark of 6 in this performance dimension.<sup>11</sup> She noted that ██████ had told the PRRB that, while she mentored junior officers, she was not a supervisor and ██████ there was no evidence that she was an inspirational leader that motivates others to achieve results that are not normally attainable." The applicant alleged that ██████ comment was false because she mentored a ██████ who was selected to attend Officer Candidate School, which has a very low selection rate, and she provided direction to many others in various capacities even though she was no one's direct supervisor for OER purposes. ██████

#### *Allegations about Undue Influence* ██████

The applicant alleged that ██████ violated policy by directing ██████ to lower her marks. She alleged that after being told at the mid-point that she was on track for 6s, she was very disappointed when her supervisor showed her ██████ with marks of 5 in some critical areas. ██████ expressed her disappointment with the reporting officer, ██████ and then told her that to receive higher marks she would have to submit more OER input that would justify higher marks. However, after she submitted more OER input to justify higher marks, ██████ told her that her marks would not be raised. ██████ told her she did not get higher marks because she had not assisted another officer with e-crimes, but no one had ever suggested she do so. ██████ told her she would not raise the applicant's marks despite the extra OER input that the applicant submitted but later told the PRRB that the applicant could receive higher marks if she submitted input justifying higher marks. She later had another conversation with her supervisor about the OER, and he told her that ██████ was the boss and that "at the end of the day," he had to do what the boss wanted. When she showed her supervisor ██████cy stating that a reporting officer cannot direct a supervisor to assign particular marks, her supervisor said he was unaware of that provision. The applicant alleged that the numerical marks assigned by her supervisor on both OER2 and OER3 were improperly lowered by either her reporting officer (██████) or the OER reviewer, contrary to policy.

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<sup>10</sup> See note 6 above (written standard for a mark of 6 in "Looking Out for Others" on an OER form).

<sup>11</sup> On an OER form, the written standard for a mark of 6 for "Directing Others" is "An inspirational leader who motivated others to achieve results not normally attainable. Won people over rather than imposing will. Clearly articulated vision; empowered subordinates to set goals and objectives to accomplish tasks. Modified leadership styles to best meet challenging situations."



████████████████████ motion ██████████

The applicant noted that selection boards are instructed to make their selection based on the officer's performance in the next higher pay grade. However, because none of the disputed OERs mention that it was an O-4 billet, the selection board members could not know that she had satisfactorily performing in the next higher pay grade for three years.

*Applicant's evidence* ██████████

In support of her allegations, the applicant submitted many documents including the following:

- Orders dated March 2008, assigning her to [redacted] at [redacted] Job Description from the Coast Guard [redacted] show [redacted] designated as an O-4 billet.
- A department chart [redacted] that most of the positions in the applicant's department were [redacted] the applicant and a [redacted] were assigned to billets designated for higher ranked O-4 billets.
- A statement from [redacted] the applicant's supervisor, who stated that in April 2009, just [redacted], she told [redacted] that she thought that [redacted] applicant could handle her duties until the officer replacing her arrived. [redacted] disagreed and [redacted] that the applicant's OER would reflect that fact.
- A "Work Log" in which the applicant described [redacted] and [redacted] September 20 [redacted] indicate that [redacted] request to telecommute in October 2008 because she thought that the applicant socialized during work too much (although her coworkers' visits were work-related and her supervisor told her she disagreed with [redacted]); was rarely at her desk (only because she attended [redacted] meetings because she represented [redacted] several working groups); focused on voluntary work too much (such as the [redacted] in [redacted] of the office's work; and had not broadened her expertise, although she had become [redacted] to this criticism by telling colleagues to email her instead of visiting her desk even for work-related conversations [redacted]ference from her desk when [redacted] work, [redacted] said that she stayed in her cubicle too much and needed to get out more. The log indicates that the applicant wondered after her initial request to telework was denied in October 2008 whether [redacted] was racially biased against her and often felt that she was being criticized contrarily for doing opposite things. For example, sometimes she was reminded to use the chain of command, but [redacted] she used the chain of command, [redacted] she had not [redacted] applicant felt that [redacted] failed to appreciate the [redacted] expertise and gave her inconsistent advice about



increasing. In addition, [redacted] advised her that her manager [redacted] that she was a “solid performer” and so she should not worry so much about being selected for promotion. When the applicant was not selected [redacted] notion in [redacted] expressed shock but failed to acknowledge that the lack of improvement shown in certain performance dimensions on her most recent OERs caused the applicant's non-selection.

- An [redacted] from a colleague praising the applicant's [redacted] work and stating that she was definitely the “go to” person for [redacted] issues.

[redacted] gave to her, with marks of 6 for “Professional Competence,” [redacted] and “Directing Others,” and a mark of 7 for “Looking Out for Others.”

#### OF THE RECORD

The applicant enlisted in the Coast Guard in [redacted], attended Officer Candidate School, and was [redacted] began serving on extended [redacted] duty and was assigned to a training center as a [redacted]

On her first [redacted] OER, she received primarily marks of 4 with a few 5s in the performance dimensions [redacted] mark in the middle (fourth) spot on the comparison scale. A few months into this tour of duty, she was reassigned to be the [redacted]. On the two [redacted] she received in this position, [redacted] marks were primarily 4s and 5s and she again received marks in the fourth spot on the comparison scale. The applicant was recommended for promotion on these OERs, and she was promoted [redacted] on [redacted]

From [redacted], the applicant [redacted] duty as a first tour [redacted] first semiannual OER in this position, dated January 31, [redacted], she received mostly marks of 4 with a few 5s and a mark in the fourth spot on the comparison scale. On her [redacted] third semiannual OERs in this [redacted], she received primarily marks of 5, some 6s, and marks [redacted] spot on the comparison scale. On [redacted] the applicant was integrated from the Reserve into the regular Coast Guard. On her [redacted] OER in this position, [redacted] a [redacted] fifth spot on the comparison scale. The applicant was recommended for promotion on these OERs [redacted]

From [redacted], the applicant served as a [redacted] of a [redacted]. On her two annual OERs in this position, she received primarily marks of 6 with some 5s and 7s in the performance dimensions and marks in the fifth spot on the comparison scale. She was strongly recommended for promotion and received a Commendation Medal for service to the Sector.

On [redacted] the applicant was transferred to [redacted] to serve as the [redacted]. The program [redacted] was her supervisor, the [redacted] was her reporting officer, and [redacted] the



[REDACTED] served as her OER reviewer. On her OER for this service, dated [REDACTED] 1, 2008, she received six marks of 5, eleven marks of 6, one mark of 7, and a mark in the fifth spot on the comparison scale. She was highly recommended [REDACTED] notion with her peers [REDACTED].

**Dispute [REDACTED]**

As a result to the applicant, a restructuring and reallocation of Coast Guard billets in 2008 caused her to have to move to [REDACTED] billet or submit a resume [REDACTED] a [REDACTED] position. She elected to seek a new position [REDACTED] was assigned to an empty O-4 billet [REDACTED] program manager for [REDACTED]. OER1, the first disputed OER (Attachment A), covers her first year [REDACTED] position from June 1, 2008, through May 31, 2009. It states that she was responsible for maintaining [REDACTED] and providing [REDACTED] to [REDACTED]-related inquiries, and reviewing [REDACTED] actions and [REDACTED]. As a colleague [REDACTED], she served as the [REDACTED].

[REDACTED], signed OER1 as supervisor [REDACTED] assigned the applicant eight marks of 5 and five marks of 6. [REDACTED] [REDACTED] officer, concurred [REDACTED]'s marks and assigned the applicant three marks of 5, two marks of 6, and a mark in the fifth spot on the comparison scale in the reporting officer's section. He also strongly recommended her for promotion to [REDACTED]. The [REDACTED] policy served as the OER reviewer.

OER2 and OER3, dated May 31, 2010 and 2011, respectively, cover the applicant's service as the [REDACTED] for [REDACTED]. They show that she helped administer [REDACTED] for all of [REDACTED], reviewed all [REDACTED] [REDACTED], analyzed [REDACTED], and continued to [REDACTED].

The [REDACTED] signed OER2 and OER3 as the applicant's supervisor. On OER2, the supervisor assigned the applicant six marks of 5 and seven marks of 6 in various performance dimensions in the supervisor's section. On OER3, the supervisor assigned the applicant five marks of 5 and eight marks of 6.

[REDACTED] OER2 and OER3 as the reporting officer. On OER2, she concurred with the supervisor's marks and assigned the applicant two marks of 5, one mark of 6, and one mark of 7 (for "Professional Performance") [REDACTED] on the comparison scale, and a strong recommendation for promotion with peers. On OER3, she concurred with the supervisor's marks, noted that the applicant was working on a Master's degree, and assigned the applicant one mark of 5, three marks of 6, and one mark of 7 in the performance dimensions, a mark in the fifth spot on the comparison scale, and her "highest recommendation for promotion to O4 [with] peers."

[REDACTED] served as the OER reviewer for both OER2 and OER3. [REDACTED]



The applicant could have but did not file an OER Replies for inclusion in her record with the OERs.

According to the applicant, [REDACTED] recommended that she receive a Commendation Medal for her service in the [REDACTED] in the spring of [REDACTED], but she was awarded a (lower) Achievement Medal instead following review by the [REDACTED] Medals and Awards Board.

In [REDACTED], a LCDR selection board convened, and 290 of 387 eligible LTs were selected for promotion to LCDR. The applicant was not on the list of those selected. (It is not clear from the record whether she submitted a letter to the selection board.)

The applicant continued serving in the same position in the [REDACTED]. She received her Master's degree in [REDACTED]. On her next annual OER, dated [REDACTED] which is not disputed, her supervisor assigned her two marks of 5, ten marks of 6, and one mark of 7 (for "Developing Others") in the performance dimensions. [REDACTED] served as her reporting officer and assigned her four marks of 6, one mark of 7 (for "Initiative"), and another mark in the fifth spot on the comparison scale. He also gave her his "highest recommended [sic] for promotion to O4 [with] best of peers." The [REDACTED] served as the OER reviewer.

### *Decision of the PRRB*

On April 23, 2012, the PRRB issued a decision denying the applicant's request to have the four disputed numerical marks in OER3 increased.<sup>12</sup> In reaching this decision the PRRB found that the applicant's evidence regarding the numerical marks and her allegations about [REDACTED] undue influence did not overcome the presumption of regularity.

Regarding the allegation of undue influence, the PRRB found that under Article 10.A.2.e.2.c. of the Personnel Manual, while the reporting officer and OER reviewer may not direct a supervisor to assign particular marks, they are required by OES policy to return draft OERs for correction or reconsideration if they believe the evaluation is inconsistent with actual performance or if the assigned marks are unsubstantiated by supporting OER comments. The PRRB found that declarations submitted by the rating chain, which are summarized below, show that while the OER was returned to the supervisor, he was not directed to assign particular marks to the applicant.

Regarding the assigned marks and comments in OER3, the PRRB found that the applicant's evidence did not prove that the disputed marks were erroneous, that the comments met OES requirements by being consistent with the marks and painting a succinct picture of her performance in each performance dimension, and that the record showed that her rating chain had evaluated her correctly in accordance with policy and had based their evaluation on all available information, including her OER input, and the totality of her performance.

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<sup>12</sup> By December 2011 when the applicant submitted her application to the PRRB, it no longer had jurisdiction over OER1 or OER2 because its jurisdiction over military records ends one year after the document is entered in the member's record.



Regarding the applicant's allegation that she was not selected for promotion in [REDACTED] because her OERs did not show her performance improving in certain critical categories, such as "Professional Competence," the Board disagreed and noted that aside from the guidance in the selection board precept, each selection board sets its own criteria for selecting officers for promotion. Therefore, all that can be known for certain from her non-selection in [REDACTED] is that she was one of 98 officers who were not ranked highest according to the selection board's criteria.

In [REDACTED], 268 of 398 eligible LTs were selected for promotion to LCDR, but the applicant was not on the list of those selected. (It is not clear from the record whether she submitted a letter to the selection board.) Therefore and because she has less than 18 years of service, she is scheduled to be mandatorily discharged on [REDACTED] [REDACTED]<sup>13</sup>

### VIEWS OF THE COAST GUARD

On February 8, 2013, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief. In making this recommendation, the JAG adopted the findings and analysis provided in a memorandum submitted by Commander, Coast Guard Personnel Service Center (CG-PSC).

With regard to OER1, CG-PSC alleged that [REDACTED] was the applicant's designated supervisor for OER purposes at the end of the reporting period for which OER1 was submitted. For OER2 and OER3, [REDACTED] was the applicant's reporting officer, and a subordinate LCDR served as the applicant's supervisor.

Based upon declarations signed by the rating chains for the three disputed OERs, which are summarized below, CG-PSC argued that the rating chain members carried out their duties under the Officer Evaluation System (OES) in accordance with policy. In this regard, CG-PSC noted that there is no requirement that the grade of the billet be shown on an OER form even though officers are sometimes assigned to billets in the next lower or next higher grade.

CG-PSC noted that the applicant had questioned whether [REDACTED] was racially biased against her, and so [REDACTED] submitted evidence with her declaration showing that she gave the applicant the same high ratings that she has given other lieutenants during her career.

CG-PSC argued that the disputed OERs were prepared in accordance with OES policy and that the applicant has failed to submit evidence that proves they are erroneous or unjust. CG-PSC stated that the evidence the applicant submitted does not prove that the rating chain for OER1 was erroneous or that she was entitled to the higher marks she requested or to different OER comments. Therefore, CG-PSC argued, there are no grounds for making any changes to the disputed OERs, for removing her non-selections for promotion to LCDR, for directly promoting her to LCDR, or for retaining her on active duty past [REDACTED]

### *Rating Chain Statements*

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<sup>13</sup> 14 U.S.C. § 283(a).



1. [REDACTED] the applicant's supervisor for OER1 and the reporting officer for OER2 and OER3, prepared a declaration for PSC. Contrary to the applicant's contention, [REDACTED] stated that she as [REDACTED] was the applicant's rating chain supervisor for OER1.

[REDACTED] stated that although the billet to which the applicant was assigned for the periods covered by OER2 and OER3 was designated a LCDR billet, the level of projects assigned to the applicant [REDACTED] expectations of her performance were commensurate to that of a LT, not a LCDR. With regard to the matter [REDACTED] the applicant in the dispute [REDACTED] stated the following:

[The applicant] disputes marks of [REDACTED] "6's" in a variety of dimensions . . . A numerical mark [REDACTED] is the standard; it d [REDACTED] all [REDACTED] Guard Officers. Marks above a [REDACTED] be al [REDACTED] relative perform [REDACTED] [The applicant] neve [REDACTED] marks below a "5" while I was in her r [REDACTED] in, and she also received numerous "6's" as v [REDACTED] 7's" ("7" is the high [REDACTED] nu [REDACTED] mark an officer can [REDACTED] 2010, and [REDACTED] Rs are accurate and a fair portrayal of her perform [REDACTED] of her [REDACTED] accomplishments for [REDACTED] nsions she was being evaluated on, she omits shortcomings and ar [REDACTED] ed for improvement that may have been [REDACTED] in her final marks by her rating chain.

[REDACTED] stated that the applicant's request for a change in her 2011 marks [REDACTED] nined. However, both [REDACTED] and the applicant's supervisor sat down with the applicant and discussed her final ma [REDACTED] bmi [REDACTED] did the applicant indicate that she was sig [REDACTED] ER under d [REDACTED] the applicant [REDACTED] ed for pro [REDACTED] cate that she want [REDACTED]

2. [REDACTED] he was the applicant's reporting officer for OER1, and the reviewer for OER2 and OER3. [REDACTED] stated that contrary to the applica [REDACTED] her marks were not low and properly reflected her performance. He stated that the applicant received [REDACTED] 5's which [REDACTED] 6's and [REDACTED] 7's [REDACTED]

[REDACTED] also stated the following:

[The applicant] contends that her OERs should have reflected that she was filling a LCDR [REDACTED] ve brought her favorable co [REDACTED] First and foremost, it is not uncommon for LTs to fill LCDR billets in Headquarters. OPM endeavors to match rank with available billets, but that is not always possible. Expectations of performance are normally based on the experience (rank) of the member, not the rank of the billet they are occupying. I would say that sustained exceptional performance as a LT [REDACTED] rim [REDACTED] consideration by the LCDR select [REDACTED] LTs [REDACTED] ed for LCDR in a "best qualified" system.



3. [REDACTED] stated that he was the applicant's reviewer for OER1 and had been in the position only 26 days of the marking period. He stated that given the short [REDACTED] of his involvement [REDACTED] heavily on the supervisor and reporting officer for input on the applicant's performance. He stated from information provided to him and his more than a decade of reviewing [REDACTED]s, he found the comments supported the marks, the marks reflected the comments, and the comments and marks were appropriate.

**APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

[REDACTED] to the views of the Coast Guard. Attached to her response were numerous statements from individuals who worked with the applicant. Each praised [REDACTED] character and the high [REDACTED] of the applicant's [REDACTED] performance.

[REDACTED] applicant also submitted a statement from [REDACTED] who the applicant claimed was her supervisor for OER 1. [REDACTED] stated that she performed [REDACTED]s and responsibilities of a supervisor [REDACTED] on the OER of a LT M [REDACTED] stated that she does not recall all of the details at [REDACTED] of OER1 [REDACTED] Coast Guard [REDACTED] she completed a draft OER on the applicant's performance and submitted that to [REDACTED]

[REDACTED] in her initial application. Specifically she asserted there were errors and injustices in her record due to omissions and [REDACTED] violations of the OER [REDACTED]tion.

**SUPPLEMENTAL VIEWS OF [REDACTED]**

[REDACTED] advisory opinion contained new evidence (numerous statements from individuals who worked with the applicant) and was therefore referred to the Coast Guard [REDACTED] advisory opinion. On July 18, 2012, the Board received the supplemental advisory opinion from [REDACTED]. He stated that the additional input [REDACTED] applicant failed to provide any new evidence to support her request for removal or correction of any OER or for promotion to LCDR [REDACTED]

[REDACTED] her member in her office on a regular basis that did not make that individual a supervisor. The JAG stated that the applicant's off [REDACTED] while there were change [REDACTED] changes did not mean that the rating chain was incorrect.

The JAG stated that the applicant provided various testimonials, all of which indicate that the applicant did her job. The JAG noted that the applicant was given good marks reflecting that [REDACTED] and [REDACTED] stated that there is nothing in the [REDACTED] that the applicant [REDACTED] than in complete [REDACTED] compliance with established [REDACTED]



**APPLICANT'S REPLY TO SUPPLEMENTAL VIEWS OF THE COAST GUARD**

On [REDACTED] 013, the Board received the applicant's response to the supplemental views of the Coast Guard. She stated that the primary issue with regard to OER1 is that CDR W did not [REDACTED] any supervisory responsibilities as required by Article 10.A.2.d.2. of the Personnel, which list the duties and responsibilities of the rating chain supervisor. The second issue is that since [REDACTED] did not perform the roles and responsibilities of a supervisor, she should never have signed OER1 as the supervisor. [REDACTED] asserted that she was told that [REDACTED] supervisor and she should report to [REDACTED]. The applicant further asserted that [REDACTED] was told that she [REDACTED]. [REDACTED] contended that she did not receive any direction or tasking from [REDACTED].

[REDACTED] focus [REDACTED] between the supervisor and the reporting officer and OER3, [REDACTED] not a violation [REDACTED] regulation for the supervisor. [REDACTED] the reporting officer that the comment [REDACTED] supports the recommended marks, it is a violation for the supervisor to solicit observations from reporting officers that are unknown to the supervisor. [REDACTED] observations should not be [REDACTED] part of the consideration for the assignment of marks. [REDACTED] the reporting officer for OER3 provided observations that were unfounded and baseless causing the supervisor to lower her marks for the two OERs. The applicant contended that because the reporting officer for OER2 and OER3 provided [REDACTED] observations that were included in the disputed OERs, the applicant should not have an independent review by all parties involved in preparing the OER as required by Article 10.A.2.a. of the Personnel Manual. The applicant reasserted her claim that the reporting officer [REDACTED] influence [REDACTED] sign or to change certain marks on the OER [REDACTED] the reporting officer [REDACTED].

[REDACTED] position that she is not suggesting or arguing that her marks on the disputed OERs were not good ones, but rather that she did not receive the marks that she deserved. [REDACTED] of her marks were unjustly lowered. The applicant also continued to argue that her OERs should [REDACTED] contained a notation that she was [REDACTED] job and responsibilities of a LCDR.

**APPLICABLE REGULATIONS**

Article 10.A.1.b.1. of the Personnel Manual in effect in 2007 states that COs "must ensure accurate [REDACTED] provided to all officers upon [REDACTED] [REDACTED] must "designate and publish the command's rating chains."

Article 10.A.4.c.4. provides the following instructions for Supervisors completing the first 13 marks on an OER (similar instructions are provided for Reporting Officers for completion of the last 13 marks of an OER (Article 10.A.4.c.7.):

[REDACTED]



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 review 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 Reported-on 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 mark best describes the Reported-on Officer's performance and qualities during the marking period, the Supervisor fills in the appropriate mark on the form in ink.

d. In the "comments" block following the evaluation area, the Supervisor shall include comments on specific aspects of the performance that deviates from a four. Draw attention to any secondary Supervisors, and other information accumulated during the reporting period.

Supervisor should identify specific strengths and weaknesses in performance.

g. A mark of four represents the expected standard performance. Additional specific performance observations must be included when an officer has exceeded the high level of performance. ...

Article 10.A.4.c.9 on the OER Reporting Officer "shall fill in the circle that most closely represents the Reported-on Officer's performance and grade the Reported-on Officer's performance as shown.

Article 10.A.4.c.9. states that block 10 on an OER should contain the Reporting Officer's comments on an officer's "potential for greater leadership roles and responsibilities in the Coast Guard" and comments "reflect the judgment of the Reporting Officer.

Article 10.A.4.g. allows an officer to submit, within 21 days of receiving a copy of a validated OER, her own views of her performance for inclusion in her record. Members of the rating chain may attach their own responsive comments to the OER.



## FINDINGS AND CONCLUSIONS

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

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

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. The applicant alleged that three of her OERs are erroneous and unjust. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed OER in an applicant's military record is correct and fair, and the applicant bears the burden of proving by a preponderance of the evidence that the OER is erroneous or unjust.<sup>14</sup> Absent specific evidence to the contrary, the Board presumes that the members of an applicant's rating chain have acted "correctly, lawfully, and in good faith" in preparing their evaluations.<sup>15</sup> To be entitled to relief, the applicant cannot "merely allege or prove that an [OER] seems inaccurate, incomplete or subjective in some sense," but must prove that the disputed OER was adversely affected by a "misstatement of significant hard fact," factors "which had no business being in the rating process," or a prejudicial violation of a statute or regulation.<sup>16</sup>

4. The applicant alleged that the three disputed OERs are erroneous or unjust because the supervisor who signed OER1 was not her supervisor, because OER2 and OER3 contain inaccurate comments and marks, and because the reporting officer for OER2 and OER3 unduly influenced the supervisor to lower the marks that he would have assigned to the applicant in OER3. For the reasons discussed below, the Board finds that the applicant has not proven by a preponderance of the evidence that the disputed OERs are erroneous or unjust.

5. **OER1:** The applicant's allegation that [REDACTED] was not her supervisor for the period covered by OER1 because she received her daily tasking from [REDACTED] is without merit. Article 10.A.2.b.2.c. gives the commanding officer the responsibility for designating and publishing the rating chain. The command's published rating chain for the period covered by OER1 shows that [REDACTED] was the applicant's designated rating chain supervisor. There is nothing from the CO designating [REDACTED] as the applicant's rating chain supervisor in the record.

6. It is clear from the evidence that [REDACTED] had some responsibility for supervising the applicant. However, Article 10.A.2.d.1.a. of the Personnel Manual recognizes that a designated

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<sup>14</sup> 33 C.F.R. § 52.24(b); *see* Docket No. 2000-194, at 35-40 (DOT BCMR, Apr. 25, 2002, approved by the Deputy General Counsel, May 29, 2002) (rejecting the "clear and convincing" evidence standard recommended by the Coast Guard and adopting the "preponderance of the evidence" standard for all cases prior to the promulgation of the latter standard in 2003 in 33 C.F.R. § 52.24(b)).

<sup>15</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

<sup>16</sup> *Hary v. United States*, 618 F.2d 704, 708 (Ct. Cl. 1980), *cited in Lindsay v. United States*, 295 F.3d 1252, 1259 (Fed. Cir. 2002).



██████████ be the one giving the daily direction to the reported-on officer. The provision states that the supervisor is “Normally the individual to whom the Reported-on Officer answers on a daily or frequent basis and from whom the reported-on officer receives the direction and requirements.” [Emphasis added.] By using the word normally, the provision leaves room for those situations in which the designated rating chain supervisor is not the one giving the majority of direction to a reported-on officer. In addition, subsection d. states that when an officer responds to more than a single individual for different functions, the commanding officer shall appoint one individual to the position of supervisor. Again, the provision underscores the fact that a reported-on officer can be supervised by one or more individuals, with one designated as the rating chain supervisor. Therefore, the Board finds that the applicant’s designated rating chain supervisor at the end of the rating period was the individual required by regulation. Moreover, there is evidence in the record that the applicant received input from the reporting officer for supervision during the rating period. The reporting officer provided input to the applicant before she left the command. The record also includes that OER1 was properly prepared and signed by the correct, designated supervisor at the end of the rating period with input from the applicant. Moreover, the applicant has previously stated that her rating would have been higher even if the reporting officer had prepared OER1.

7. **OER2:** The applicant alleged, but failed to prove, that it was an error for the rating chain not to comment in OER2 and OER3 that the applicant was serving in a billet targeted for promotion. The regulation, 48 CFR 1.410-2(a) of the Personnel Manual, requires the rating chain to comment on whether the billet filled by a reported-on officer is targeted for a particular rank. The provision of the regulation states that the supervisor shall write a summary of the most important duties, special projects, key processes, customer assignments, and a description of the applicant’s performance. OER2 and OER3 of the regulation. There is no evidence in the record that the applicant’s current billet was targeted for a promotion.

8. The applicant alleged that marks of 5 in “Speaking and Listening” and “Looking Out for Others” in OER2 would have been marks of 6, if the rating chain had not failed to mention certain accomplishments in the OER. For instance, the commentary in OER2 for “Speaking and Listening,” the commentary does not mention the applicant’s presentations to industry, various workshops, and seminars. The applicant argues that the communication skills comments describe the applicant as an “outstanding speaker & facilitator; promoted USCGA PSC efforts and visits by international agencies worldwide.” Including these comments to support the mark of 5 in “Speaking and Listening” was correctly the choice of the supervisor, and the comments are not inaccurate or incomplete simply because the supervisor did not use language desired by the applicant.

9. In OER2 for “Looking Out for Others,” the applicant argued that she would have received a mark of 6 if the rating chain had included the fact that she co-chaired the Morale and Welfare Committee. The Board notes that while the applicant



██████████ed the Morale Committee ██████████ state that she “organized office ██████████ vents; assisted in coordination of Martin Luther King, Jr. Program.” Therefore, the applicant has not proved by a preponderance of the evidence that her supervisor ignored her work ██████████ Morale Committee in assigning her the mark of 5 for “Looking Out for Others.”

10. Regarding the above, the Board finds that even if the comments in OER2 had been written as ██████████ icant desired, there is no proof, except for ██████████ plicant’s statements, that such comments would have resulted ██████████ gh ██████████ marks in the cont ██████████ ed areas. ██████████ ll ██████████ plicant admits that she provided this ██████████ on to the rating chain in her OER i ██████████ nder Articles 10. ██████████ marks are not based on comments since the supervisor and reporting ██████████ st “carefully read the standards and compare the reported officer’s performance to the level of performance ██████████ determined ██████████ bes ██████████ scribes the reported-on officer’s performance in assigning the mark ██████████ reporting officer ██████████ the appropriate circle ██████████ ██████████ ink.” Then the supervisor or reporting ██████████ include comments citing specific aspects of the reported officer’s performance and behavior for a mark that deviates from a four. In ██████████ observations, those of any supervisor, and other information accumulated during the reporting period. There is a ██████████ OER instruction that requires the rating chain to mention a reported-on officer’s accomplishment or task completed during the reporting period, and the limited space on an OER form would not permit it. ██████████ specific aspects of the reported-on officer’s performance for each mark that deviates from a four. (The Board notes that the applicant received no mark lower than a 5 on any of the disputed OERs.) It appears to the Board that the rating chain ██████████ on in ██████████

11. OER2 ██████████ mark of 5 in “Professional Competence,” a 5 in “Writing Reports,” and a 6 in “Developing Others.” The applicant argued that based upon her performance, each disputed mark should have been one number higher. The applicant argued that the reporting officer improperly influenced the supervisor to lower marks he had assigned to the applicant in a draft OER, specifically the “Professional Competence.” The supervisor admitted that he discussed his draft OER with the applicant’s performance with the reporting officer and that the reporting officer had concerns. He subsequently discussed those concerns with the applicant and gave her the opportunity to submit additional input, he (not the reporting officer) assigned the marks. The discussion between the supervisor and reporting officer and the applicant’s additional input. The Personnel Manual states that the “reporting officer shall return a report for correction or reconsideration, if the supervisor’s submission is found inconsistent with actual performance or unsubstantiated by narrative comments. The reporting officer shall not direct that an evaluation mark or comment be changed.” There is no evidence that the reporting officer directed the supervisor to change his marks. The supervisor argued that the marks for the disputed OER(s) ██████████

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[REDACTED] mark in “Professional Com[REDACTED],” the applicant contended that [REDACTED]s of 5 in “Writing” and “Directing Others” should be raised to 6s and her mark of 6 in “Looking Out for Others” should be raised to 7. She alleged that the [REDACTED] chain failed to receive [REDACTED] OER input and therefore the comments do not paint a succinct picture of her performance, as required by regulation. However, as discussed above, there is no requirement under regulation that the rating chain mentions every task completed by a reported-on officer. (In fact, due to the limited space for comments, this would be impossible.) The supervisor [REDACTED] reporting officer assigned marks and comments that in their judgment best reflected the applicant’s performance. [REDACTED] fact that the applicant believed [REDACTED] higher marks and that her rating chain could have made different comments [REDACTED] not make the assessment [REDACTED] able statements from those with whom the applicant worked prove [REDACTED]puted OERs are erroneous. The individuals who wrote statements in support of the applicant were [REDACTED] [REDACTED] [REDACTED] mance. [REDACTED] [REDACTED]

[REDACTED] Board finds that the applicant’s evidence [REDACTED] sufficient to overcome the presumption of regularity with respect to the disputed OER. [REDACTED] Since the applicant has not shown any of the disputed [REDACTED] consider removing the disputed [REDACTED] Nor has she shown that the disputed OERs, which [REDACTED] [REDACTED] promotion. [REDACTED]

14. The applicant [REDACTED] numerous allegations and all have been considered. Those not [REDACTED] not to be [REDACTED] of the issues in this case. [REDACTED]

15. [REDACTED] h she [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] SIGNATURES APPEAR ON NEXT PAGE [REDACTED]

[REDACTED]



**ORDER**

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

January 7, 2014  
Date

