

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-023



FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. After receiving the completed application on January 23, 2015, the Chair docketed the case and assigned it to staff members [REDACTED] to prepare the decision as required by 33 C.F.R. § 52.61(c).

This final decision, dated December 11, 2015, 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 asked the Board to make extensive corrections to two annual Officer Evaluation Reports (OERs) covering his service as a Deputy Sector Commander from April 1, 2012, through April 30, 2013 (OER1), and from May 1, 2013, through April 30, 2014 (OER2). The applicant's requested changes include raising most of the numerical marks by a point or more,¹ significantly improving the supporting comments, and raising the marks on the officer comparison scales from the fourth, middle spot ("A good, solid Captain ...") to the sixth spot ("Recommended for flag selection at a future board"). The applicant's specific requests for each OER were included in Attachments #30 and #32 to his application, which are incorporated in this decision along with the disputed OERs by reference only.

The applicant argued that the OERs should be revised because his supervisor during the reporting periods for the two OERs, Captain X, who was the Sector Commander, created a negative command climate that detrimentally affected all personnel, including him. The applicant also alleged that Captain X provided "false and misleading" information to the flag officers who served as his Reporting Officer and Reviewer for the two disputed OERs, which negatively affected the marks and comments they included in the OERs.

¹ On an OER form (CG-5310D), Coast Guard officers are rated in eighteen different performance categories, such as "Adaptability," "Professional Competence," "Teamwork," and "Judgment" on a scale of 1 (worst) to 7 (best). A mark of 4 means that the officer has met the expected standard of performance.

The applicant explained that he served as the Deputy Sector Commander of a Coast Guard Sector from July 2012 to June 2014. Captain X served as the Sector Commander from May 2011 to July 2014 and signed both disputed OERs as the applicant's supervisor. Rear Admiral (RADM) X, the District Commander, was the applicant's Reporting Officer and Reviewer for OER1, dated April 30, 2013, and the next District Commander, RADM Y, was the applicant's Reporting Officer and Reviewer for OER2, dated April 30, 2014.

Interactions Between Sector Commander and Sector Personnel

The applicant alleged that he was approached on several occasions by military and civilian personnel to discuss their frustrations with Captain X. During these discussions, the applicant claimed, he attempted to give the individuals pointers on how best to work and interact with Captain X. The applicant alleged that he met with Captain X on August 15, 2013, to advise him about the concerns of Sector personnel. Specifically, he discussed how members were "frustrated, had difficulty communicating with him and had a hard time understanding [his] expectations." According to the applicant, Captain X became angry and demanded the names of the individuals who had spoken to him. However, the applicant refused to tell him.

The applicant alleged that he also had discussions with Command Master Chief (CMC) M and the Sector's new chaplain regarding Captain X's leadership and the effect it was having on the unit. According to the applicant, CMC M expressed concerns about Captain X's leadership, and the chaplain informed the applicant and CMC M that he had been approached by several members who expressed concerns and frustration with Captain X and the "detrimental effect on them and their families."

The applicant stated that when RADM Y and District CMC G visited the Sector in August 2013, he contemplated telling RADM Y about the command climate issue. However, he decided not to do so because he "thought there was a chance the Sector Commander would realize his error."

The applicant alleged that at a Unified Command meeting in August 2013, which was attended by several senior leaders from the Department of Homeland Security (DHS), Captain X was so disrespectful and argumentative with two members at the meeting that the Sector's attorney, who was present, expressed his concerns to the applicant that "Captain X was damaging the Coast Guard's relationship with other law enforcement partners." The applicant stated that he encouraged the affected Unified Command meeting members to express their concerns directly to Captain X, who eventually apologized to the members. However, the applicant alleged, Captain X's leadership style and interactions with personnel did not improve.

According to the applicant, he worked with CMC M and the Sector chaplain to schedule a meeting with senior staff and Captain X to discuss his leadership style and the command climate. As a result, in early October 2013, Captain X met with all department heads and CMC M to get their feedback on his leadership style and the command climate. However, the applicant stated that on October 18, 2013, he and CMC M met with Captain X again about the negative command climate.

The applicant claimed that he confirmed the concerns of the department heads, adding that he advised Captain X that “his treatment of the Sector personnel was destructive and undermining the ability of the personnel to perform the mission.” The applicant alleged that after the October meetings, he began to see a positive change in Captain X’s leadership and management style.

Interactions Between the Sector Commander and the Applicant

The applicant described several significant accomplishments he achieved during the reporting periods for the disputed OERs, as well as a number of interactions between himself and Captain X:

- The applicant stated that in September 2012, it became difficult to communicate with Captain X. The applicant alleged that his supervisor’s demeanor towards him changed for the worse and he became critical of the applicant’s input and recommendations.
- The applicant stated that on October 19, 2012, his supervisor’s treatment of him continued to deteriorate following a visit by the Commandant. The applicant alleged that Captain X would set expectations and then change them, which was confusing to the applicant and department heads. The applicant described in detail several instances in which Captain X changed his mind after projects had been essentially completed in accordance with his prior instructions and the detrimental effect of these changes on morale.
- The applicant stated that on October 23, 2012, his supervisor “blew up” at him as he discussed Captain X’s impatience with him. The applicant claimed that Captain X advised him that “he couldn’t do anything right” and that he “did not see him as a Captain.”
- The applicant stated that on December 11, 2012, Captain X advised him that he needed to be more aggressive and show “more initiative” instead of asking for the captain’s permission in certain instances.
- The applicant alleged that in January 2013, after he returned from leave, he noticed when briefing or talking to Captain X, he would ask “loaded questions on various topics, ask several repetitive questions and would always have a condescending tone.” The applicant claimed that Captain X would change the expectations for projects and when the applicant sought clarity on an issue or change in expectations, Captain X would become defensive and ask the applicant if he was paying attention.
- The applicant alleged that on February 13, 2013, Captain X yelled at him for failing to stay on top of arrangements related to a Vice Admiral’s visit to the Sector.
- The applicant stated that on April 9, 2013, Captain X advised him that certain members were complaining to him about the applicant’s leadership and management. The applicant stated that he met with the department heads to find out where improvement

was needed and was advised that the department heads had no problems with his leadership or management style.

- The applicant stated that on April 16, 2013, Captain X called him into a meeting and informed the applicant that “he had not accomplished anything of any significance since reporting onboard.” The applicant claimed that he challenged Captain X’s assertion by listing his accomplishments and Captain X recanted his statement. Furthermore, Captain X allegedly acknowledged that his leadership style could be “abrupt” and stated that the applicant was “well on track” with regard to his performance and upcoming OER. The applicant noted that he almost called the District Chief of Staff to pass on his concerns about Captain X’s leadership style but opted not to because Captain X seemed to recognize that he had “treated the applicant badly and would be making a change.”
- The applicant stated that on June 13, 2013, he raised concerns with Captain X about his harsh treatment of unit personnel. The applicant alleged that Captain X advised him that “officers with the applicant’s background were not used to this type of operational environment since they were never placed in any real demanding situations.”
- The applicant stated that on August 5, 2013, he met with Captain X to advise him that six personnel had come to the applicant with frustrations about communicating and working with Captain X. According to the applicant, Captain X became angry and demanded the names of the individuals that spoke to the applicant. The applicant refused to name them.

In support of his allegations, the applicant submitted copies of three Sector-wide surveys conducted in 2011, 2013, and 2014:

- In the 2011 survey, conducted shortly after Captain X assumed command and before the applicant reported aboard, most of the hundreds of comments are positive but there are many complaints about the lack of adequate scheduling causing disruption, hardship, and low morale. One comment states, “The Sector Commander appears to enjoy embarrassing his subordinates. He also appears to be reluctant to accept advice from his staff.” Another states that his direct supervisor was either uncomfortable taking problems to the command or had decided to hide them. And a third states that “there is a need for expectation clarification” because “direction that applies at one point does not apply to the next similar case.”
- In the 2013 survey, there was a slight decline in a few of the numerical measurements of organizational commitment, job satisfaction, and leadership cohesion. In this survey, there are several negative comments about the command climate, micromanagement, the attitude of “upper level management,” constantly changing procedures, and problems with the relationship and flow of information between the Sector and subordinate unit and between Sector departments.
- The following comments appear in the 2014 survey, which was conducted a few months after the applicant and Captain X left the Sector:
 - “[L]eadership was not properly exercised under the previous Sector Commander and some of his staff. Now, with a new Sector Commander things seem to be changing.”

- “I think the unit is observing the positive changes that the new command has brought in. (Specifically – approachability and genuinely caring about people) and morale has increased as a reflection of that.”
- “I believe that some members of this command are VERY cynical. It may be due to the last Command, but many people just have a bad taste in their mouth ...”
- “The new Command Cadre has seemed to boost morale.”
- “I think the major issues we have had have already been tremendously approved [sic] by the new command.”
- “I think the command climate has drastically improved” since the new command arrived.
- “[B]efore the change of command in 2014 this was the worst command climate I have experienced in the Coast Guard. The Sector Commander was a tyrant who knew little but pretended to know it all and had a completely dysfunctional relationship with the Deputy that was apparent to everyone. They would roll their eyes at one another in public and made others feel uncomfortable in their presence. He ran our cutters into the ground, treated our people terribly, and did investigation after investigation on our members ... He refused to award members for work above and beyond expectations, but then created animosity by awarding (MSM) [to] our logistics officer who was likely the second largest factor leading to our command climate issues and who was directly responsible for having all the officers OERs posted in the Sector Public files.”
- “The change of the Command Cadre this past summer has made a great difference at Sector.”
- “Many people are holding onto the problems of the previous command.”
- “... how sickened I was by the unchecked command climate issues we had here last year.”
- “My first year (‘13) [at the Sector] was the first time in my career I wasn’t sure I wanted to be in the CG any longer. A lot of it was based on witnessing poor leadership from the O5 and O6s. It was READILY apparent that the previous Sector CO and Deputy could not stand each other, almost to the point of watching it at meetings made me uncomfortable. This Sector operated under an umbrella of ‘favoritism’; and it was entirely clear who the Cmd favored. For the rest of my career I will use 2013 as my definition of ‘bad command climate.’”
- “With the recent change of command I feel we are drastically improving, but with the years of failed attention to [Commandant] policy it will likely take years to recover.”
- “The Command has changed drastically in the last couple months, this has helped the health and well-being of XXX members. Before, feelings of inadequacy and discrimination were pretty common but now there is more of a team feeling.”
- “Compared to the last command climate, this place has taken a turn for the better (extreme better)! The new command tries really hard to make people feel valued and wanted, genuinely.”

- “The change of leadership this year was a breath of fresh air as it reduced a good deal of the toxicity surrounding the entire Sector.”

The applicant also submitted twelve witness statements with his BCMR application package to corroborate his claims that Captain X’s leadership and management style created a negative command climate and that Captain X dealt with the applicant harshly.

Statement #1, BMCM G

BMCM G provided a statement concerning the command climate at the Sector from July 2012 through July 2014. He wrote that the “levels of inconsistency in command expectations, steady command direction and unprofessionalism became apparent and clearly noticeable throughout the Chief’s Mess and tenant commands.” BMCM G noted that the levels of inconsistency were “detrimental to good order and discipline” and that Captain X’s leadership style was “more based on seniority, fear and personal interest rather than understanding the entirety of the situation.” He alleged that “it was difficult for any member to gain a clear understanding of the Sector Commander’s expectations due to the inconsistencies of his interpretations of policy and regulations. Many members experienced a ‘fear of approach’ mentality when interacting with the Sector Commander...the implications of this approach impacted the decision making process in both officers and enlisted personnel.” Furthermore, he claimed, the applicant “was a very professional officer, support[ed] the Sector Commander, maintained a professional work relationship with all and did his best to alleviate the tense and negative work climate.”

Statement #2, LT J

LT J provided a statement regarding interactions between Captain X and Sector personnel that he had personally witnessed. LT J described a tense atmosphere during morning briefings with Captain X. According to LT J, Captain X would ask “belittling” questions and come across in a “condescending manner.” He alleged that “not a single person within the command center looked forward to the briefing, interacting or calling Captain X.” On the contrary, when the applicant handled the morning briefs, instead of Captain X, the staff “was invigorated and enjoyed/welcome[d] their interactions with the command cadre.”

LT J also described a Wardroom funding incident where Captain X attempted to have the Wardroom fund a dedication event at the Sector. He stated that Captain X was advised that the Wardroom had limited funding authority of up to \$250 per event and could not cover the full cost of the event, which exceeded \$700. When Captain X was advised that the Wardroom voted to limit the contribution to the authorized maximum of \$250, Captain X became angry and demanded to know the names of the individuals that voted against covering the full amount. LT J refused to provide the names to Captain X.

Statement #3, Response Department Head N

Department Head N provided a statement describing command climate issues that he witnessed. He noted that during his last tour at the Sector from 2012 to 2014, there was a

“marked increase in the level of stress and pressure” that was not there during his previous tours. Furthermore, the morning, night, and weekend briefing sessions were very tense. Not long after Department Head N’s arrival, Command Duty Officers (CDOs) began to confide in him about their “intense and uncomfortable” interactions with Captain X. Department Head N alleged that when something did not go as planned or in accordance with policy, they would typically ask him to brief Captain X because “they did not feel comfortable and did not want to feel the wrath of Captain X.”

Department Head N alleged that in September 2013, he met with Captain X, along with the Sector CMC and the applicant, to discuss why the CDOs were avoiding Captain X. He advised Captain X that due to the “intense pressure and hostility he created,” the CDOs did not feel comfortable briefing him. He stated that Captain X seemed surprised but receptive and there was some adjustment to his approach and the briefing sessions did improve. However, at a later date, he was asked to participate in a follow up meeting with Captain X, the applicant, and CMC M to once again discuss climate command issues related to briefings and operations. Department Head N stated that he reiterated many of the same concerns to Captain X, who did not necessarily agree but did make an adjustment to his approach that resulted in an improved command climate until Captain X’s change of command.

Statement #4, Sector Command Master Chief (CMC) M

CMC M alleged that Captain X complained to him about the applicant. According to CMC M, Captain X disliked the applicant and made it impossible for the applicant to succeed. He also stated that he believed the negative command climate was caused by Captain X’s leadership and management. CMC M stated that he met with Captain X on September 25, 2013, to discuss the climate command issues. He advised Captain X to meet with each Sector department head to discuss their concerns about his approachability and the command climate. CMC M claimed that each department head advised Captain X that they felt they were being micromanaged and they felt he was unapproachable and did not listen. After the meeting, Captain X did make some changes to his demeanor that positively impacted the command climate.

CMC M also claimed to have witnessed Captain X talking negatively about the applicant to other personnel, such as the Logistics Officer. He stated that Captain X’s expectations were not consistent and often evolved with each scenario. CMC M, however, did offer his own opinions of the applicant. CMC M stated that he was impressed with the applicant’s handling of the command climate situation. He also noted that the command climate improved greatly after Captain X retired.

Statement #5, District Command Master Chief (CMC) G

CMC G stated that while he served as the District Gold Badge Master Chief, he had numerous conversations with CMC M regarding the command climate issues at the Sector. He stated that CMC M advised him on several occasions how poorly Captain X treated the department heads and officers. CMC G also noted that CMC M advised him about Captain X’s demeaning treatment of the applicant. He admitted that he did not have first-hand knowledge of

these allegations and provided his statement based entirely on his conversations at the time with CMC M.

Statement #6, CWO L

CWO L provided a statement regarding his opinion and experiences with the applicant from July 2012 to July 2014 at the Sector. The CWO stated that the applicant “displayed genuine care and concern for the members.” He appreciated the visits the applicant made to the Coast Guard cutter he commanded. According to the CWO, “although [the cutter’s] homeport is [the Sector], it was a rare sight to see anyone from the command beyond the applicant and CMC M aboard ... for visits.” The CWO also stated that “during periods when the applicant was the acting Sector Commander, I observed a strong commitment to ensuring adherence to established guidelines, policies and procedures which made for a seamless transition.” He concluded his statement by noting that he believed that “without question, the applicant exemplified the character and leadership competency expected of his position.”

Statement #7, Army Lt. Colonel S (Retired)

Lt. Col. S was employed as an Intelligence Operations Specialist at the Sector during the applicant’s tour and presented intelligence briefings to the Sector leadership, as well as members of the Unified Command (UC). He recounted his interaction with Captain X at an August 2013 OCG tactics meeting. During his presentation, he stated, he was interrupted by Captain X, who then publicly challenged the accuracy of the information being provided. Captain X then engaged in an argument with another member of the UC that many meeting participants “perceived to be challenging and definitely unnecessary.” The applicant came to discuss the incident with him after the meeting and suggested that he discuss his concerns directly with Captain X. Lt. Col. S stated that he did meet with Captain X and Captain X acknowledged that “he could have handled the situation better.” Captain X apologized to him privately and then again at the next UC meeting.

Statement #8, USCG Commander B

Commander (CDR) B stated that he has known the applicant since 1987. He and the applicant both attended the Massachusetts Maritime Academy and joined the Coast Guard in 1992. CDR B and the applicant were both stationed at Coast Guard Headquarters together and the applicant was his supervisor during the last year of CDR B’s tour at the Sector, which ended in July 2013. During his last year at the Sector, it seemed “apparent that there was a misalignment between Captain X and the applicant.” CDR B claimed that the previous CMC (CMC S) told him that the command climate at the unit had declined over the past year (2012 – 2013). CDR B stated that during his individual “check out” discussions with Captain X and the applicant, he expressed his observations about the misalignment between them and how that misalignment presented challenges for the Sector staff. He closed by stating that he had the “utmost respect for the applicant, both as a Deputy at the Sector and as a Marine Safety Professional.”

Statement #9, Chief of Prevention at the Sector

CDR B, the Chief of the Sector's Prevention Department, stated that he was invited to participate in a meeting with Captain X, CMC M, and the applicant. He stated that the purpose of the meeting was to inform Captain X of the significant tensions among staff created by his communication with and management of them. The Chief noted that he personally informed Captain X that his prevention staff often attempted to avoid having Captain X review their paperwork. In one example provided, the Chief stated that his staff contacted him while he was away on a Temporary Duty Assignment for permission to use the Chief's stamp to avoid having to route the paperwork to Captain X for signature.

Statement #10, Sector Attorney S

Attorney S stated that he regularly attended meetings where federal and local partners coordinated law enforcement activities for the Sector's area of responsibility. The attorney attended the August 2013 meeting and witnessed Captain X's hostile interaction with a Border Patrol Agent in Charge. He stated that he thought Captain X's actions were "counterproductive to our Command's best interest" and he raised his concerns regarding Captain X's behavior with the applicant. He stated that the applicant suggested that he meet with Captain X directly to discuss his concerns. Attorney S claimed that he met with Captain X to discuss his concerns and Captain X acknowledged that "he may have been somewhat out of line." Captain X publicly apologized to the Border Patrol Agent at the next meeting.

Statement #11, LCDR F

The LCDR provided a statement acknowledging his participation in a meeting with Captain X, the applicant, and CDR N to discuss the difficulties that the Sector's CDOs were having with Captain X's leadership and management style.

Statement #12, Captain H (Retired)

CAPT H stated that he has known the applicant since 2007 and supervised him during the applicant's tour at another Sector. CAPT H stated that he was "always very impressed with his [applicant's] operational knowledge, ability to perform the mission and the way he led and managed personnel." He stated that the applicant informed him in September 2012 of the difficulties he was having with Captain X. According to CAPT H, the applicant sought advice on how to handle the situation and also advised the CAPT H that Captain X would treat the applicant in a "demeaning manner, yell/snap at him and would continuously change his mind or expectations for ongoing projects." The applicant also informed him that he was working with CMC M and the Sector chaplain to engage Captain X about his leadership style. CAPT H noted that the applicant planned to alert the District if the "intervention" was not successful. CAPT H also stated that the applicant shared the email he found between Captain X and command leadership regarding the applicant's performance. The CAPT H stated that "based on my prior experience working with the applicant and what I have been told about his experience at [the Sector], I assess that the applicant's current OER (May 1, 2012 through April 30, 2014) is inaccurate and if not corrected, will significantly harm his career."

Applicant's Allegations Regarding the Disputed OERs

According to the applicant's narrative of events, on March 27, 2013, he provided bullets for the first disputed OER (OER1), covering April 1, 2012, to April 30, 2013, to Captain X. The applicant alleged that Captain X did not provide any feedback to him regarding his OER at that time and on April 16, 2013, he was advised by Captain X that "he was well on track concerning his OER and performance." Therefore, he was surprised by the marks he received on OER1 and he scheduled a meeting with Captain X. The applicant stated he then met with the District Chief of Staff and explained his frustration regarding interactions between him and Captain X. The applicant claimed that the Chief of Staff recommended that he "find a better way to have a more positive work relationship and better communications" with Captain X.

The applicant stated that on November 5, 2013, he received a call from Captain X, just prior to his mid-period performance review conversation with the Chief of Staff and RADM. According to the applicant, Captain X advised him that his next OER (OER2, for the period May 1, 2013, to April 30, 2014) would be "much better than the previous OER and would include a strong recommendation for Sector Commander and continuation." The applicant stated that he submitted his input for OER2 to Captain X on April 10, 2014, and it included the following bullet concerning their meetings about the command climate:

- "Engaged Sector Commander when several personnel (military/civilian) expressed difficulty in communicating with Sector Commander, under expectations, this allowed Sector Commander to talk with these personnel, discuss leadership style, stopped the festering of negative perceptions, issues resolved enhancing operations and morale."

The applicant noted that the bullet was intended to show that he was supportive and provided Captain X with the necessary feedback to correct the negative command climate. According to the applicant, Captain X never discussed the OER or bullet with him. The applicant alleged that Captain X had a follow-up conversation with him on June 13, 2014, regarding his recently submitted OER. The applicant claimed that during that discussion that Captain X advised him that he had had no contact or discussions concerning the applicant's OER with anyone at the District after his OER was submitted to the Chief of Staff. The applicant claimed that later on June 16, 2014, Captain X modified his statement and advised the applicant that he had a follow-up discussion with the Chief of Staff regarding the bullet pertaining to the command climate issue. The applicant alleged that Captain X said that he had provided some additional clarification on the intent of the bullet and advised the Chief of Staff that he (Captain X) was fine with the bullet drafted by the applicant. The applicant then alleged that Captain X attempted to get him to agree to a revised version of events that minimized the negative command climate and ultimately requested that the applicant only discuss the OER with the Chief of Staff and nothing that happened prior to the OER with the RADM.

According to the applicant, a Freedom of Information Action (FOIA) request was submitted on his behalf in an effort to obtain email communications between Captain X and other command members concerning his performance. The applicant stated that the FOIA request

produced three emails² between Captain X and command leadership regarding his performance, which someone placed in his office chair on June 17, 2014. One email, dated May 2, 2014, was correspondence from Captain X to the Chief of Staff and contained “false and misleading information” on his performance and his potential to RADM Y. Specifically, the applicant stated that Captain X “went to great lengths...to explain away the OER Bullet concerning the negative command climate”; “went to great lengths to explain away the negative command climate situation at the unit at the applicant’s expense”; and provided his opinion of the applicant’s performance during his tour at the Sector. The applicant alleged that this email was in conflict with the statements made by Captain X that he had no conversations with the Chief of Staff or anyone at the District about the applicant’s OER and (later) that he had in fact had a clarifying conversation with the Chief of Staff about the applicant’s OER bullet relating to the workplace climate at the Sector. In addition, the applicant submitted a statement from an officer who strongly denied having made negative comments about the applicant’s performance that Captain X claimed he had made in one of his emails to the Chief of Staff.

VIEWS OF THE COAST GUARD

On July 7, 2015, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he adopted the facts and analysis provided by the Commanding Officer, Coast Guard Personnel Center (PSC). PSC and the JAG recommended that the Board grant the applicant alternative relief.

PSC reviewed the Sector’s command climate surveys for 2011, 2013, and 2014,³ and noted that the comments are from members at every unit within the Sector, such as cutters and other units, not just those in immediate working proximity to the Sector Commander and the applicant. According to PSC, the surveys for 2011 and 2013 did not support the applicant’s allegations of negative command climate. The latter survey was taken during the time period of the applicant’s disputed OERs. However, the 2014 climate survey reflected numerous comments from members regarding the previous command cadre’s interpersonal conflicts and the existence of a negative atmosphere.

PSC noted that most comments from the 2014 climate survey did not specifically reference the Sector Commander. However, there were three comments that pertained directly to the Sector Commander and two that mentioned the troubled relationship between the Sector Commander and the applicant. Based on its review, PSC was unable to determine if the conflict and negative climate were solely due to the Sector Commander, to the applicant, or to both. PSC did note, however, that the Sector Commander has acknowledged in a declaration that he had been approached and provided feedback regarding “his negative influence on others.” The Sector Commander stated that he took action and corrected his behavior and this was corroborated by a statement from the Command Master Chief.

Regarding the twelve statements provided by the applicant, PSC noted that the witness statements only provided one point of view (that of the applicant) but that it was “telling” that so

² The emails were dated May 8, 2014, June 16, 2014 and June 23, 2014. The emails can be found in attachments 16, 17 and 18 of the applicant’s BCMR application package.

³ No survey was conducted in 2012.

many members would be willing to come forward with statements in support of the applicant. Additionally, PSC acknowledged that there did appear to be interpersonal conflict between the Sector Commander and the applicant, as well as command climate issues.

PSC also noted that the applicant failed to alert his rating chain to the negative command climate that he believed impacted his OERs. PSC alleged that as an O-6 Deputy Commander, the applicant had a duty to take action to alert his rating chain to ensure his fair and accurate evaluation and to ensure fair and accurate evaluations for other members. According to PSC, the applicant had a duty to report the Sector Commander's behavior in accordance with the Coast Guard Regulations Manual (COMDTINST M5000.3B). Additionally, the applicant did not report the perceived negative command climate up the chain of command and he did not seek to have the Sector Commander removed from his rating chain. PSC also noted that the applicant did not file OER replies to the disputed OERs, did not challenge the OERs through the Personnel Records Review Board (PRRB), and waited until 2015 to dispute the two OERs. According to PSC, these actions lead PSC to believe that the applicant accepted the disputed OERs as fair and accurate at the time they were given.

PSC argued that although there is evidence to suggest that there were interpersonal problems between the Sector Commander and the applicant, it is not clear that these problems negatively affected the applicant's evaluations. However, both Rear Admirals who served as the Reporting Officer and Reviewer for the disputed OERs have reviewed the applicant's submissions and submitted statements offering changes to the OERs to address the applicant's concerns. PSC noted that RADM X, the applicant's 2013 OER Reporting Officer and Reviewer, stated that he was not aware of the applicant's allegations. He noted that he would have directed an inquiry if he had been made aware of the issues at the time of his review. RADM Y, the applicant's 2014 Reporting Officer and Reviewer, concluded, after reviewing "all of the information" concerning the events, that the 2014 OER was not a true reflection of the applicant's performance.

PSC noted, however, that the Sector Commander's OER marks were supported by comments and the applicant provided no evidence with his application to support the higher marks he requested. PSC raised concerns that if granted, the applicant's requested mark and comment changes would offer a disproportional advantage. Additionally, PSC noted, the requested changes were not endorsed by either RADM X or RADM Y in their declarations, which are summarized below. PSC concluded that there are several possible outcomes in this case:

Since the RO/Reviewers indicate that the OERs may not be accurate, both disputed OERs could be replaced with continuity OERs. Alternatively, the Supervisor sections of both OERs could be redacted, and the RO sections changed. Neither of these outcomes would serve the Applicant fairly since the upcoming Captain Continuation Board would not have ample information on the Applicant's performance. However, the Applicant's requested changes are not reasonable, nor supported - either through adequate supporting evidence, or by the OER RO/Reviewers. If full relief were granted, the OERs would likely not offer

fair and accurate evaluations of the Applicant's performance, and the Applicant could be advantaged beyond justice.

5. Recommendation: PSC recommends granting partial relief:

- a) In regards to the Applicant's 30 Apr 2013 OER, recommend the following:
- i) Increase the mark of '5' in Block 8.a., Initiative, to a '6'. (As per RO/Reviewer's recommendation.)
 - ii) Increase the mark of '5' in Block 8.d., Professional Presence, to a '6'. (As per RO/Reviewer's recommendation.)
 - iii) Change the Block 9, Rating Scale, selection from *"A good, solid Captain. Skilled in management and leadership. Respected/or views and ability to contribute to the CG and its work"* to *"Has flag POTENTIAL. Should be given challenging assignments and considered with peers."* (As per RO/Reviewer's recommendation.)
 - iv) Redact the comment *"Recommended for MSU or similar prevention command position"* and replace it with *"Recommended for Sector Command"* in Block 10, Potential. (As per RO/Reviewer's recommendation.)
- b) In regards to the Applicant's 30 Apr 2014 OER, recommend the following:
- i) Increase the mark of '5' in Block 5.e., Workplace Climate, to a '6'. This is a dimension that the Applicant provides a significantly different comment of support. Recommend leave the original comment as it is positively worded. The offered replacement cannot be ascribed to the Supervisor. If a change is made, recommend full redaction of this dimension's supporting comment.
 - ii) Increase the mark of '6' in Block 8.b., Judgment, to a '7'. (As per RO/Reviewer's recommendation.)
 - iii) Increase the mark of '6' in Block 8.c., Responsibility, to a '7'. (As per RO/Reviewer's recommendation.)
 - iv) Increase the mark of '5' in Block 8.d., Professional Presence, to a '6'. (As per RO/Reviewer's recommendation.)
 - v) Change the Block 9, Rating Scale, selection from *"A good, solid Captain. Skilled in management and leadership. Respected for views and ability to contribute to the CG and its work"* to *"Has flag POTENTIAL. Should be given challenging assignments and considered with peers."* (As per RO/Reviewer's recommendation.)
 - vi) Redact any negative commentary from Block 10, Potential, and allow current verbiage to remain that the Applicant supports. Final version would read, *"Capably addressed unique support challenges and gained substantial international and interagency experience. Well deserving of Ch, Traveling Inspectors assignment, will make extensive pos impact on CG & US/inter maritime industry. Recommended for continuation."*

Declaration of Captain X, Sector Commander

Captain X stated that the disputed OERs are accurate records of the applicant's performance. He noted the applicant's complaints about the command climate and stated the following:

Command climate was always on my radar. Over my thirty year career my personal moral fiber to treat each and every person in the same manner that I would hope to be treated was always at the forefront. That fiber did not include becoming an ever popular leader, but rather one who treated everyone fairly and earned respect by setting the example as a professional, engaged, hands-on leader who appreciated the efforts of all. ... While positive feedback was always my goal, I also ensured it wasn't overused and that sub-par performance was properly documented and managed. I endeavored to praise in public and provided less than positive feedback in private. ... During my time with [the applicant] it's my belief that the overwhelming majority of the Sector ... team embraced and enjoyed my approach to leadership. ...

I humbly believe that if each Coast Guardsman assigned to Sector ... during my tenure was asked to provide a statement in the same manner as the handful that [the applicant] collected, a clearer picture of the actual command climate and my humble servant leadership style would be available to the Board. ...

... I don't recall any of the [command climate] surveys indicating my leadership style was impacting any aspects of the Sector's efforts. By the time the ... Area survey was completed, I was truly confident that Sector ... Command Climate was sound. ...

From all my efforts and the limited feedback I received, I had no concerns that my leadership style was creating a detrimental command climate at Sector ... I did receive feedback that the crew was aware of a strained relationship between myself and [the applicant].

Captain X stated that after their meeting about the command climate with CMC M, he "did a 360 review of myself by engaging my entire senior staff as well as many of our Command Duty Officers and senior civilians. I made adjustments based on what I had learned. My view at the time and still today of what was occurring differs significant from what is being portrayed in [the] application."

Regarding the applicant's performance, Captain X stated that the applicant arrived at the Sector "as a frocked O-6 with no XO experience if I recall correctly. ... The previous Deputy was very adept at leading and managing the staff. I realized [the applicant] would need to develop his ability to lead the staff. Captain X stated that he told the applicant that he "still needed to develop his ability to effectively lead the Sector staff since it was my belief that there was still room for improvement in this area." Captain X stated that as the Deputy, the applicant "did an adequate job [but] he often struggled as he worked to lead the staff. I saw these struggles first hand as well as from feedback provided to me by our Command Master Chiefs, O-5

Department heads, senior civilians, inter-agency partners as well as our Chaplain. I gave [the applicant] every opportunity to excel along with feedback and counseling on areas I thought needed improvement to achieve a more glowing performance evaluation.” Captain X concluded by stating that the applicant was a capable officer with adequate performance and reaffirming his belief that the disputed OERs are accurate.

Declaration of RADM X, Reporting Officer for OER1

RADM X stated that the marks and comments he entered in OER1 are based on his direct observations, the Sector’s performance, and input from the applicant, Captain X, and the District Chief of Staff. RADM X stated that after OER1 was completed, he received adverse information about the command climate at the Sector. He stated that had he known about the command climate at the Sector when he was District Commander, he would have initiated an investigation. After reviewing the applicant’s application and proposed corrections to OER1, RADM X stated, that he does not think that he “would have rated him as high as he requests.” However, RADM X stated that he thinks he would have assigned the applicant marks of 6, instead of 5, in the performance categories “Initiative” and “Professional Presence.” In addition, he would have assigned the applicant a mark in the fifth spot on the officer comparison scale (“Has flag POTENTIAL. Should be given challenging assignments and considered with peers.”), instead of the fourth, middle spot (“A good, solid Captain. Skilled in management and leadership. Respected for views and ability to contribute to the CG and its work.”). RADM X stated that he cannot say for certain whether he would have recommended the applicant for a Sector Commander position in OER1, because it would have depended on the result of the command climate investigation, but that it is likely he would have made this recommendation.

Declaration of RADM Y, Reporting Officer for OER2

RADM Y stated that after Captain X left the Sector, he received new information concerning Captain X’s leadership. He learned how Captain X had treated the applicant in front of other personnel and that Captain X had been verbally abusive to others inside and outside the command. He stated that he learned that “the command climate was adversely affected by fear and intimidation due to inconsistencies in expectations on the part of Captain [X].” He learned that the applicant and CMC M had advised Captain X about the negative effects of his leadership style. RADM Y stated that this new information “was validated by numerous sources and brought into question what had been communicated to the previous Chief of Staff, ... and me by Captain [X] concerning [the applicant’s] performance as the Deputy Sector Commander.” At the time, he relied on Captain X’s characterizations of the applicant’s performance because his own direct observations of the applicant’s performance had been extremely limited. RADM Y stated that after reviewing all of the information, he believes that OER2 “is not a true reflection of [the applicant’s] performance or potential.” Given what he knows now, RADM Y stated, he would have assigned the applicant marks of 7 (highest) for “Judgment” and “Responsibility” instead of marks of 6 and a mark of 6 for “Professional Presence” instead of a 5. In addition, like RADM X, he would have assigned the applicant a mark in the fifth spot on the comparison scale, instead of the fourth spot.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 10, 2015, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to submit a response within 30 days. On August 14, 2015, the applicant submitted his response to the Coast Guard's advisory opinion, wherein he provided documentation from his original application to the Board to disprove points made in the advisory opinion.

The applicant stated that multiple claims made in the Coast Guard's advisory opinion were contradicted by evidence he had submitted with his original petition, and he enumerated the inconsistencies by quoting specific sentences from the advisory opinion and listing particular lines in witness statements, email correspondence, and the command climate surveys. The applicant also submitted some new evidence including emails supporting his claims and showing that he had sought advice from the District Chief of Staff about how Captain X treated him.

The applicant also submitted a statement signed by the Sector chaplain, who wrote that while the applicant was the Deputy Sector Commander, they had multiple conversations about the command climate "as well as professional difficulties between himself and [Captain X]." The applicant told him he felt marginalized by Captain X and the only advice the applicant received from the District Chief of Staff about this problem was to "give it more time." The chaplain stated that during Captain X's tenure at the Sector, the chaplain, the applicant, and CMC M all received complaints and feedback about the command and leadership issues. The chaplain stated that he received no complaints about the applicant, however. The chaplain stated that the applicant and CMC held a few meetings with Captain X in 2013 about the command climate, after which there were fewer complaints.

In addition, the applicant submitted a citation for a Meritorious Service Medal "for exceptionally meritorious achievement and superior performance of duties" that RADM Y awarded to him in April 2015 for his service as Deputy Sector Commander from July 2012 to June 2014. The citation notes that the applicant had served as the Acting Sector Commander for more than five months and had "adroitly manag[ed] all operations within Sector's 1.3 million square mile area of responsibility. With superlative leadership, he skillfully guided over 1,045 active duty, reserve, civilian and auxiliary personnel during a period of intense multi-faceted operations. ..."

The applicant argued that the disputed OERs should be corrected as he requested. However, he stated, if the Board decides instead to replace the OERs with Continuity OERs, he would want the following comment added to Block 3 of the Continuity OERs:

Applicant's Personnel Data Record includes Officer Evaluation Reports prepared for continuity purposes only for his active duty service from [dates of OER]. His record has been corrected by the Secretary in accordance with 10 U.S.C. § 1552, due to the determination that the OER Supervisor provided false and misleading information on his performance outside of the Officer Support Form to the OER Reporting Officer and Reviewer. This false and misleading information negatively influenced the decisions of the OER Reporting Officer and Reviewer as it relates to the drafting of the comments, the assignment of marks and providing recommendation for future assignments within the OER. No adverse

inference of any kind is to be drawn from the lack of more substantive Officer Evaluation Reports for this period.

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 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.⁴

3. The applicant alleged that his 2013 and 2014 OERs are erroneous and unjust because his supervisor created a very poor command climate and mischaracterized the quality of the applicant's performance in communications to the District Commander and Chief of Staff. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed OERs in an applicant's military record are correct and fair, and the applicant bears the burden of proving by a preponderance of the evidence that the OERs are erroneous or unjust.⁵ 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.⁶ 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.⁷ For the reasons discussed below, the Board finds that the applicant has proven by a preponderance of the evidence that the supervisor's portions of the disputed OERs are in error or unjust.

4. The applicant alleged that Captain X caused a negative command climate at the Sector by setting continuously changing expectations for projects and being harsh and condescending with Sector personnel and with the applicant in particular. While the applicant worked to fix the command climate, he alleged, Captain X held it against him and did not make significant improvements in how he conducted business. The applicant also alleged that Captain X acted dishonestly and duplicitously towards him and with regards to the applicant's OER input and OERs. To support his claims, the applicant submitted numerous statements from other Sector officers and chiefs who corroborated his claims about the command climate and about how Captain X treated the applicant and others. The 2014 survey that the applicant submitted

⁴ *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

⁵ 33 C.F.R. § 52.24(b).

⁶ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁷ *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).

also strongly supports his claims regarding Captain X and the command climate. In addition, the Reporting Officers for both OER1 and OER2 have stated that after the OERs were completed, they received reports from multiple sources of a very poor command climate that should have been investigated.

5. The disputed OERs do not contain any negative or even mediocre marks or comments, and in his declaration, Captain X strongly supported the accuracy of his ratings. Nevertheless, given the many witness statements and the 2014 survey comments supporting the applicant's claims, as well as the Rear Admirals' statements, the Board finds that the applicant has proven by a preponderance of the evidence that the supervisor's portions of OER1 and OER2 and certain marks in the Reporting Officers' portions were adversely affected by the very poor command climate Captain X primarily created—a factor “which had no business being in the rating process”⁸—and by inaccurate reports about the applicant's performance that the Reporting Officers had received.

6. The applicant has asked that the disputed OERs be amended in accordance with his specific requests for higher marks and more laudatory comments. Officers may not rate themselves, however, and RADM X expressly cast doubt on whether the applicant's performance actually warranted the amendments he requested. While the evidence shows that the applicant helped persuade Captain X to alter his leadership style and thus its negative impact to some extent, the 2014 survey shows that the command climate remained bad until both he and Captain X had left. The Board is not persuaded that the applicant could not have done more to improve the command climate.

7. Because the Reporting Officers no longer concur with Captain X's ratings and recommended changes to their own portions of the OERs, the Board finds that the Reporting Officers' portions of the OERs should be amended as RADM X and RADM Y indicated and as the Coast Guard recommended. The Coast Guard noted that removing the supervisor's portion of each OER would remove substantive comments about the applicant's work from his record. However, the Board finds that the applicant's evidence has cast sufficient doubt on the reliability of Captain X's evaluation of him that removal of Captain X's marks and comments is warranted. Although the applicant asked the Board to include an explanation in block 3 casting aspersions on Captain X if the marks and comments were removed, the Board finds that a more generic explanation should be included.

8. The Board notes that for OER1, PSC provided RADM X's statement with the recommended changes to the marks and the comment that he would likely have recommended the applicant for a Sector Command if he had known then what he learned after the fact. For OER2, PSC provided RADM Y's statement with recommended changes to the marks but no indication of whether he would have recommended the applicant for a Sector Command, instead of an MSU Command, which is sometimes an O-4 or O-5 billet. Such recommendations are very important for a captain's career, and so the Board will direct the Coast Guard to inquire of RADM Y if he is willing to add another recommendation to OER2, especially concerning the

⁸ *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).

applicant's future assignments, and if so, the Coast Guard should add it to the comments in block 10.

9. Given the Coast Guard recommendations and the fact that the Rear Admirals' declarations, the 2014 climate survey, and the witnesses' statements have cast significant doubt on the reliability of the Supervisor's marks and comments in the disputed OERs, the Board finds that the disputed OERs should be corrected as follows:

- a) For both disputed OERs, (i) remove all the Supervisor's comments from blocks 3, 4, and 5; (ii) change the Supervisor's numerical marks in blocks 3, 4, and 5 to marks of N/O (not observed); and (iii) enter the following explanation in block 3:

The Secretary has corrected [the applicant's] record by removing the Supervisor's marks and comments from this OER in accordance with 10 U.S.C. § 1552. No adverse inference of any kind is to be drawn from the lack of substantive Supervisor's marks and comments.

- b) For the Reporting Officer's portion of OER1, (i) correct the mark of "concur" in block 7 to "do not concur"; (ii) correct the mark of 5 in block 8.a., Initiative, to a mark of 6; (iii) correct the mark of 5 in block 8.d., Professional Presence, to a mark of 6; and (iv) correct the rating scale mark in block 9 from the fourth spot ("A good, solid Captain ...") to the fifth spot ("Has flag POTENTIAL ..."). In addition, correct the Reporting Officer's comments in block 10 to read as follows (additions italicized; redactions struck out):

New O-6 growing into his role as Deputy Commander of an exceptionally complex sector with authorities, int'l responsibilities & support challenges not seen anywhere else in the CG. Rapidly gaining interagency expertise. Developing the necessary response expertise as well as the servicewide & strategic perspective necessary to be a future Sector Commander or member of the CNO SSG. ~~Recommended for MSU or similar prevention command position as well as demanding prevention or incident mgmt staff assignments.~~ *Recommended for Sector Command or similar, demanding positions.* Recommended for continuation. *Has flag potential.* ~~Will develop flag potential with additional growth at Sector ... and appropriate challenging follow on assignments.~~

- c) For the Reporting Officer's portion of OER2, (i) correct the mark of "concur" in block 7 to "do not concur"; (ii) correct the mark of 6 in block 8.b., Judgment, to a mark of 7; (iii) correct the mark of 6 in block 8.c., Responsibility, to a mark of 7; (iv) correct the mark of 5 in block 8.d., Professional Presence, to a mark of 6; and (v) correct the rating scale mark in block 9 from the fourth spot ("A good, solid Captain ...") to the fifth spot ("Has flag POTENTIAL ..."). In addition, correct the Reporting Officer's comments in block 10 to read as follows (additions italicized; redactions struck out):

Capably addressed unique support challenges and gained substantial international and interagency experience. ~~A sound and maturing O6, ready for challenges of~~

~~MSU command or command of a unit requiring sound technical marine safety background, including the Marine Safety Center. As a Type II Incident Commander, he would also be a good fit for command of the Incident Management Assist Team.~~ *Should-Well deserving of and will excel as the Chief of the Traveling Inspectors to advance Commercial Vessel Safety and casualty investigation effectiveness. Will make extensive positive impact on CG & US/international maritime industry. Has flag potential. Recommended for continuation. [And at RADM Y's discretion, an additional recommendation.]*

(ORDER AND SIGNATURES APPEAR ON PAGE)

ORDER

The application of [REDACTED] USCG, for correction of his military record is granted in part. The Coast Guard shall make the following corrections to his OERs for the periods April 1, 2012, to April 30, 2013, and May 1, 2013, to April 30, 2014:

- a) For both OERs, remove all the Supervisor's comments from blocks 3, 4, and 5; change the Supervisor's numerical marks in blocks 3, 4, and 5 to marks of N/O (not observed); and enter the following explanation in block 3:

The Secretary has corrected [applicant]'s record by removing the Supervisor's marks and comments from this OER in accordance with 10 U.S.C. § 1552. No adverse inference of any kind is to be drawn from the lack of substantive Supervisor's marks and comments.

- b) In the Reporting Officer's part of the OER for the period April 1, 2012, to April 30, 2013,
- correct the mark of "concur" in block 7 to "do not concur";
 - correct the mark of 5 in block 8.a., Initiative, to a mark of 6;
 - correct the mark of 5 in block 8.d., Professional Presence, to a mark of 6;
 - correct the rating scale mark in block 9 from the fourth spot ("A good, solid Captain ...") to the fifth spot ("Has flag POTENTIAL ..."); and
 - correct the Reporting Officer's comments in block 10 to read as follows: "New O-6 growing into his role as Deputy Commander of an exceptionally complex sector with authorities, int'l responsibilities & support challenges not seen anywhere else in the CG. Rapidly gaining interagency expertise. Developing the necessary response expertise as well as the servicewide & strategic perspective necessary to be a future Sector Commander or member of the CNO SSG. Recommended for Sector Command or similar, demanding positions. Recommended for continuation. Has flag potential."
- c) In the Reporting Officer's part of the OER for the period May 1, 2013, to April 30, 2014,
- correct the mark of "concur" in block 7 to "do not concur";
 - correct the mark of 6 in block 8.b., Judgment, to a mark of 7;
 - correct the mark of 6 in block 8.c., Responsibility, to a mark of 7;
 - correct the mark of 5 in block 8.d., Professional Presence, to a mark of 6;
 - correct the rating scale mark in block 9 from the fourth spot ("A good, solid Captain ...") to the fifth spot ("Has flag POTENTIAL ...");
 - correct the Reporting Officer's comments in block 10 to state, "Capably addressed unique support challenges and gained substantial international and interagency experience. Well deserving of and will excel as the Chief of the Traveling Inspectors to advance Commercial Vessel Safety and casualty investigation effectiveness. Will make extensive positive impact on CG & US/international maritime industry. Has flag potential. Recommended for continuation."; and

- ask RADM Y if he will add a recommendation for future assignments to block 10 of this OER and, if so, add his recommendation to the comments in block 10.

December 11, 2015

