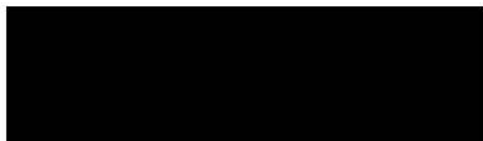


**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-136



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. The Chair docketed the application upon receipt of the applicant's completed application on November 20, 2015, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated August 5, 2016, 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 remove from his record a special Officer Evaluation Report (SOER) covering the period June 1, 2011, through May 24, 2012, when he was working as the Operations Officer (department head) for a Maritime Safety & Security Team (MSST) with 39 subordinate junior officers and petty officers and six response boats, as well as other vehicles and weaponry. The SOER documents his removal from his primary duty after approximately one year on the job (see attached) and includes below standard marks of 3 (out of 7) for Professional Competence, Workplace Climate, Initiative, Judgment, Responsibility, and Health & Well-Being.

The applicant alleged that he was unjustly removed from his position and unfairly marked in the SOER. He stated that as the Operations Officer, he led and managed more than 60 members through various deployments, operations, and events, and the MSST earned an award for readiness and easily passed inspections. He alleged that the MSST "successfully completed every mission with utmost professionalism and zero security or safety violations ... there was not a single incident that would lead anyone to question my leadership or competency."

The applicant alleged that even before he reported to the unit, he was warned that the commanding officer (CO) of the MSST had created "negative documentation" and/or counseled four other officers in the past two years. He alleged that one incident created a divide between his CO and himself. In this incident, a petty officer solicited a woman to come to his hotel room,

where she stole a crewmate's wallet. The petty officer then drove a government vehicle to a border town and paid \$200 to get the wallet back, but when the crewmate discovered fraudulent charges on one of his cards, the petty officer admitted to what had happened. The applicant alleged that he intended to charge the petty officer and send him home, but the CO insisted that he would counsel the petty officer on a Page 7 instead. In another incident, the CO insisted that a member who had made inflammatory and inappropriate comments about his supervisors and the officer corps on social media be counseled verbally instead of receiving a Page 7. Thus, the applicant argued, the CO constantly undermined the authority of the department heads and "Friday workdays became one of the few corrective tools afforded to Supervisors."

The applicant alleged that the CO's "misaligned discipline" led to a stressful workplace climate, which became evident during a unit climate survey. The applicant wrote in response to the survey about not being able to discipline subordinates and, as one of only two lieutenants on the MSST, it must have been obvious that he had contributed the comments. The applicant stated that soon thereafter, the MSST Executive Officer (XO), who was his supervisor, begrudgingly informed him that he was being relieved of his primary duties. The applicant alleged that the CO retaliated and scapegoated him for providing negative feedback in the command climate survey. The applicant noted that the climate survey report does not mention any specific person, other than the CO, and refers to every other supervisor, from E-6s to O-3s, as "middle management."

The applicant alleged that the SOER paints a disjointed picture of his performance as he is commended for compassion in one section and admonished as being intimidating in another. He alleged that he is inconsistently accused of both micromanagement and threatening behavior but also being incapable of controlling his subordinates. He alleged that it is also inconsistent to call him passive and hesitant but also hasty and rash and then to say he has "unwavering professional presence."

The applicant objected to being called an "average speaker" in the SOER even though the CO never heard his presentations, he is a qualified instructor who has taught thousands, and he has briefed and received accolades from flag officers and foreign officers.

The applicant alleged that the timing of his removal—just after the climate survey—is highly suspect because if he was truly detrimental to the unit, as the SOER indicates, "it should not have taken nearly a year to determine my unsuitability. The CO waited until the timing was perfect for him which was just in time for his [own] transfer, immediately after a negative climate survey, and in time for my regular OER. The fact of the matter is that the CO never observed an incident that would justify my removal." The applicant alleged that the CO must have used negative feedback directed toward the CO himself in the climate survey to justify the applicant's removal.

The applicant alleged that other MSST officers also had issues with the CO, because he would not discuss matters with them. Instead, the CO would meet with groups of enlisted members—such as all the E-6s—and admonish the officers based on feedback [redacted] from them. When a lieutenant junior grade (LTJG) complained during an [redacted] CO [redacted] take decisions "without [redacted] the facts from the deckplate," the CO counseled the [redacted]

The LTJG stated that he, the applicant, the MSST's Training Officer, and others met with the CO in March 2012 to propose reorganizing the unit to create a Training Division to ensure that newly reported personnel were trained to the same standard. The CO stated that it was an "open forum" and invited them to speak freely. When the CO asked the LTJG "about how [he] felt concerning a few decisions [the CO] had made in the previous couple of weeks," the LTJG stated his opinion and "voiced facts the CO was not aware of" although he had believed that the CO was aware. The CO invited the LTJG to his office to discuss the matter, where the LTJG convinced him of the correct facts. The CO praised his confidence but questioned whether the LTJG should have raised the matter at the meeting. Later, the applicant told the LTJG that the CO was considering removing the LTJG from his position. The LTJG stated that the applicant "was resolute in supporting me despite the added pressure that was placed on him by CO. Throughout our time working under [the CO], [the applicant], BMC and I all believed that we were going to be removed from our positions but never received any specific feedback as to what any of us had done wrong." He alleged that the CO consistently communicated different expectations to the applicant, himself, and the crew and would have closed-door meetings with groups of enlisted members. The LTJG stated that after one such meeting, the CO said they did not need a training plan but then reprimanded the applicant when there was none during their next deployment. The LTJG stated that it "was very frustrating and stressful to work under [the applicant] because every small decision seemed to be second guessed by CO. From the date I reported to the date I left, I did not observe an incident or failure that would put [the applicant's] leadership in question."

- A lieutenant stated that the applicant was his supervisor for almost a year at the MSST and that the applicant showed "leadership acumen and genuine care" for his subordinates. He praised the applicant for providing tips and lesson plan templates for a deployment before reporting aboard the MSST, showing support by loading small-arms magazines to facilitate more efficient training, and leading an effort to create a new team-member accession process to facilitate readiness.
- A lieutenant who worked as the Readiness and Assessment Branch Chief at the Deployable Operations Group (DOG) stated that whenever he needed help, the MSST was always able to provide it. The applicant "found a way to provide evaluators," which "paid dividends for the unit as they were able to view inspections and use that knowledge to prepare for their own assessment," during which they earned 47 out of 50 points for the Waterside Division. He stated that the MSST "has earned an excellent reputation for its willingness to help and share knowledge" and that he attributed this to "having good managers in the Operations Department," including the applicant.
- The chief warrant officer (CWO) who was the MSST's Waterside Division Officer for most of the reporting period stated that the applicant was a very involved Operations Officer who "constantly sought feedback and supported decisions made by his subordinates and peers. At no time under his leadership did the MSST fail to meet an expectation or put anyone in harm's way." The applicant "pushed to establish a unit training division, which greatly streamlined the qualification process and improved the performance of our newly reported personnel." The CWO stated that he discussed with the applicant his "concern for an apparent lack of accountability and discipline" because "those that [redacted] sions weren't held accountable." He stated that the applicant's [redacted] line "led to a percep[redacted] romanager," but he was not a pot stirrer or a

headhunter. Instead, he “showed empathy and a great deal of compassion for our shipmate’s personal well-being.” The CWO stated that the CO was “quick to admonish the Junior Officers and it seemed as if [the applicant] took the brunt of it.” The CWO found it a pleasure to work for the applicant, who “was always optimistic and continually looked for opportunities to improve the way we did business.” The CWO stated that he “was a bit surprised” that the CO removed the applicant from his position and that the applicant was fully capable of doing the job of Operations Officer and did it.

- Five chief and senior chief petty officers assigned to the MSST stated that at no time did they say that the applicant had used language that was perceived to be intimidating or borderline threatening. They stated that the applicant “always used appropriate language, no matter what the circumstance to communicate and get his point across” and that he was “an extremely approachable individual” who “was always supportive of the crew and interested in seeing that all individuals at the unit succeeded.”

Workplace Climate Survey

The applicant also submitted a copy of the executive summary of the MSST’s climate survey, dated May 20, 2012, which noted that focus groups had been held to gain clarity on some of the survey results. The summary stated that poor communication was a problem that was causing confusion. “When information is passed up the chain, it is not clear if items make it all the way up. Members feel that there is a disconnect with the communications between middle and upper management.” Decisions had been made and punishment had been issued “without all of the knowledge” and junior members had to get permission from middle management before speaking to senior leadership. The survey stated that “[c]ommunication and coordination surrounding mission preparation seems to be an area that could be improved. There seems to be a perception that leadership waits until the last minute to begin preparing for missions. This affects the mission and those providing support. There is a perception that people do not understand the amount of work that goes into the logistics and support of deployments and that logistics are always a last minute afterthought.” The crew requested both enforcing communications through the chain of command and allowing the crew to use the chiefs to communicate with the CO.

The survey stated that the crew were concerned that the command cared more about the mission than about personnel as deployment schedules were not adjusted to accommodate personal issues. Also, “[t]he crew has some concerns regarding the leadership and operational competency of middle management” and asked that junior officers show stronger leadership skills. The survey states that the crew felt untrusted and unvalued by middle management and felt like they were being micromanaged. The crew complained that the CO was making decisions without enough input and was not open to change. “The perception is that supervisors are afraid to empower their people because they do not want to look bad if a mistake happens.”

SUMMARY OF THE RECORD

The applicant accepted a Reserve appointment as an ensign on [REDACTED]. He was first assigned as a deck watch officer of a large cutter and [REDACTED]. On his first OER, [REDACTED] the applicant received primarily marks of 5

(out of 7) in the various performance categories and a mark in the fifth spot (of seven) on the comparison scale, denoting one of the better of the “many competent professionals who form the majority of this grade.” His second OER, dated [REDACTED], was similar. On his third OER, dated [REDACTED] he received primarily marks of 6 in the various performance categories and a mark in the sixth spot on the comparison scale, denoting “an exceptional officer.” The applicant received a Letter of Commendation for his tour of duty on the cutter, and the Navy awarded him an Achievement Medal for his performance [REDACTED]

In [REDACTED], the applicant was transferred to a training center to serve as a deployable team leader and instructor. On his OER dated [REDACTED] he received primarily marks of 5 in the various performance categories and another mark in the fifth spot on the comparison scale. He was strongly recommended for promotion to LT. On his OER dated [REDACTED], he received primarily marks of 5 and 6 in the various performance categories and another mark in the fifth spot on the comparison scale. On his OER dated [REDACTED], he received primarily marks of 6 in the various performance categories and a mark in the sixth spot on the comparison scale, denoting “an exceptional officer.” On his OER dated [REDACTED] he received primarily marks of 6 and another mark in the sixth spot on the comparison scale.

The applicant was [REDACTED], [REDACTED]. On his OER dated [REDACTED], he received primarily marks of 5 and 6 in the various performance categories and another mark in the fifth spot on the comparison scale, denoting an “excellent performer.” On his OER dated [REDACTED], he received primarily marks of 6 in the various performance categories and another mark in the fifth spot on the comparison scale. He completed his tour of duty in the summer of [REDACTED] and received a Commendation Medal as an end-of-tour award for his work as an instructor and team leader at the training center.

On June 13, 2011, the applicant reported aboard the MSST as the Operations Officer. On February 10, 2012, the CO of the MSST gave the applicant an Administrative Letter of Censure,¹ which states the following in pertinent part:

... Specifically, officers at the O3 level should be demonstrating competence and proficiency within their specialty and as leaders. As per [an email from the CO dated December 5, 2011], your performance in the areas of 1) Fundamental Knowledge, Skills & Abilities; 2) Program Management; and 3) Effective Communication over the previous seven months has been **unsatisfactory** compared to your peers in your pay grade and position. In accordance with [various policy manuals], I am placing you on performance probation. Although specific deficiencies were addressed during many verbal counseling sessions and in [the email on December 5, 2011], the primary reason for being placed on performance probation is that your efforts to improve your performance have been very inconsistent. Small periods of success surrounded by repetitive failure to execute the most basic of tasks is not acceptable performance of any Coast Guard officer, let alone the Current Operations Officer of a Deployable Specialized Forces unit. As a result of your inconsistent performance, my trust and confidence in your abilities to lead and manage the Current Operations Department is waning. Sustained growth and solid performance is the key. I urge you [to] take stock of your actions that have caused this situation to develop and take corrective action.

¹ An Administrative Letter of Censure is not included in an officer’s personnel data record but the CO provided a copy to the Personnel Records Review Board when the applicant applied to that board.

Your performance **must improve** over the next four months or further administrative action will be considered.

The disputed SOER in this case, dated May 24, 2012, documents the applicant's removal as Operations Officer of the MSST (attached). The applicant submitted an addendum, in which he disputed the low marks, provided numerous examples of positive performance, and claimed that his removal came as a complete surprise because he had "received positive feedback from my supervisors and peers with a marked increase in performance for the last 3 months" and had received positive feedback from the CO less than a month earlier. His Supervisor and Reviewer forwarded the addendum without comment, but his Reporting Officer, the CO added a page of comments.

Following his removal from the MSST, the applicant was assigned as a watchstander at the National Command Center. On his OER dated May 31, 2013, the applicant received primarily marks of 6 in the various performance categories and a mark in the sixth spot on the comparison scale, indicating that he was strongly recommended for accelerated promotion. The applicant's annual OERs dated May 31, 2014 and 2015, are similar. However, he was not selected for promotion by the LCDR selection boards that convened in 2014 or 2015.

Personnel Records Review Board

The applicant challenged the SOER by applying to the Personnel Records Review Board (PRRB), which consisted of two lieutenants, a lieutenant commander, and a commander. The applicant submitted the statements signed by his Supervisor, the XO, and by the five chiefs and the executive summary of the unit's workplace climate survey. The PRRB gathered statements from the XO, CO, and Reviewer, which are summarized below:

The XO, who as the applicant's Supervisor prepared the marks and comments in blocks 3, 4, and 5, of the disputed SOER, wrote two statements to the PRRB. In one, he wrote that he "stand[s] by the OER that was written in the sections I was responsible for. ... After [he signed the SOER and the applicant] was removed there were numerous conversation with myself and the Chief's Mess. It appeared that they didn't agree with the CO's recommendation or agree with his comments regarding his performance." The XO also wrote another statement in which he recommended raising some of the marks of 3 and 4 in his part of the SOER to marks of 5. He stated that he thought there was a miscommunication about the meaning of "middle management" in that the workplace climate survey in that it referred to it as E-7 through O-4 but in the small group discussions, he thought it was meant as E-5 and E-6. He stated that the felt the "majority of the criticism directed at [the applicant] was not warranted." He also stated the following:

I feel [the applicant] is a fine officer in the Coast Guard and has made tremendous improvements. The OERs received since departing from the MSST clearly demonstrates [sic] his ability to make solid decisions and be a leader in the Coast Guard, especially being praised by Senior Officers. I'm responsible for the supervisor portion of the OER and did not write or provide input on the remaining sections. I request this OER be stricken from the member's record so he can continue to be of value in this organization.

The CO, who as the Reporting Officer prepared the last five performance marks and comments in the SOER, as well as the comparison scale mark and comments on potential, wrote in his statement to the PRRB that he has ten years of experience with deployable specialized forces and had been assigned to an MSST in a command cadre position for six years. The CO stated that much of the applicant's success or progress was directly attributable to the CWO's "constant mentorship and consistent follow-up/accountability" by the XO and the CO. He stated that throughout the marking period, the XO and he discussed the applicant's performance and "concluded that a continued, significant commitment of time and attention coaching and guiding him would be necessary for his progress. Taking into account that both [the CWO] and I were transferring in AY 2012, the Current Operations Department went through a major reorganization in March/April 2012, and the uncertain future of [the MSST] within the Deployable Operations Group, the responsibility to assist [the applicant] would fall primarily on [the XO] and the incoming [CO and CWO]; a significant distraction to key positions within the unit responsible for leading the unit through 'uncertain and stormy seas.'"

The CO stated that the XO had supported the decision to remove the applicant. The CO stated that he decided to remove the applicant based on "the potential risk to [the MSST] by keeping him in his assigned position. My trust and confidence in his abilities 'waned' during the marking period, the likely risk to the unit's success by keeping him in his position was great, and feedback from [the XO and Command Senior Chief], regarding [the applicant's] perceived negative/intimidating leadership techniques all contributed to my decision," as stated in his comments on the applicant's SOER addendum.

The CO stated that he was surprised by the XO's statements and the Command Senior Chief's signature on the chiefs' statements in the PRRB application because "their input and perspectives were influential in the final decision" to remove the applicant. The CO stated that he stands by his decision to remove the applicant. He noted that the applicant "is a very capable officer and continues to excel in his career, however, I do not feel he was suited to be the Current Operations Officer during that time period." The CO attached to his statement to the PRRB the following:

- An email from the CO to the applicant dated December 5, 2011, documents counseling concerning the applicant's fundamental knowledge and skills as the Operations Officer, including needing to learn the manuals, instructions, and standard operating procedures, and to use common sense; the need to relay information better starting immediately; and the need to focus on the operational readiness of the unit, including maintaining situational awareness, developing routines and checklists, reviewing the entries of the Assistant Operations Officer, renewing certain qualifications, and preparing reports and projections of operational readiness, boat status, and personnel availability.
- An email from the CO to the applicant and the Future Operations Officer dated Sunday, January 1, 2012, stating that he had learned that although the current operations was ending on Monday, there was no demobilization plan and that they had told the Sector that a "demob plan" would be developed on Tuesday. The CO stated that "the com [redacted] was to develop demob plans in addition to the training/predeplo [redacted] wait in limbo not kn [redacted] step is [is] unacceptable as leaders – we can-

not allow this to continue. Although you are responsible to get the job done, I do not expect you to personally do all the work – you have staffs and should be delegating/directing them so you can keep the big picture to ensure our normal deployment processes are followed or common sense is used when cook book recipes do not apply. Figure things out and provide the XO and I a detailed plan of action for 1) demob of the crew and 2) updates for the arrangements to conduct training in prep for the next mission and 3) predeployment preps (our typical processes) for the next mission. Provide this to the XO and me at 1630 our time on Monday, 02 Jan. Call if you have questions.”

- An email from the XO to the CO, dated January 12, 2012, stating that he had discussed a lack of gear for upcoming training with the CWO, who stated that he thought the gear had been purchased and that they had left some gear in Hawaii. The XO stated that the CWO and chiefs “think money is no object” and complained about someone having to fly out today and fly back tomorrow to assist in a staging. The XO stated that “we talked for like 25 minutes and then [the applicant] jumped on just to ensure I could open [another officer’s] OER. He told me nothing about [an LTJG and CWO] staying, nothing about him going back on Tuesday, nothing about who is in charge as of tonight of WSS or person that is accountable? Assumptions perhaps. Only reason I could see him not briefing me is due to you being there but that is still unacceptable.” The CO replied, “Just one word re [the applicant] – speechless (more to follow). I do not have complete [situational awareness] on all of the details. [The CWO] provided some, nothing from [the applicant] (guess he is intimidated by me). My intent is to let [the CWO] run the deployment, brief you and me as appropriate/required. I keep iterating to him to contact you – sounds like someone follows orders.”
- On January 18, 2012, the CO sent the Personnel Service Center (PSC) a request to discuss the fact that the applicant would likely be receiving a mediocre OER. An officer at PSC replied referencing a telephone conversation with the CO and the policies regarding removing an officer from primary duties.
- An email from the CO to XO dated February 1, 2012, stating that because certain members were not currently qualified on weapons, two tactical crew members and one tactical coxswain—an entire operational tactical boat crew—were “lost.” The CO stated, “Enough talking, time for accountability (up and down the chain). I’m sensitive to not making an example out of everyone in front of the crew, but this has got to stop.”
- An email from a Navy Operations Officer to the applicant and another lieutenant sent on February 9, 2012, and cc’ed to the XO, asks them to contact the DOG to re-verify that an exercise involving vertical insertions of personnel by rope from a helicopter was “still a ‘go’” and noting a lack of required training. The XO replied about 30 minutes later that he had forwarded the email to the DOG for approval. The applicant replied later that day, cc’ing the CO and XO, and stating that the DOG was requiring “some form of ‘tower’ training on the ship before getting into the helo. ... A minimum of 3 reps per jumper is required. ... Once the training is done, please let me know right away so I can notify [someone at the DOG] and he can breathe a little easier. As far as work ups go, it is imperative that you follow COMDT VI-IC protocol.” In response, the CO replied to the Navy officer, stating that the training evolution had not yet been approved. The CO replied separately to the applicant, stating, “We NEED to discuss protocol and chain of command on this.” The CO also replied to the applicant on September 1, 2011, stating, “All [redacted] vertical insertion procedures. The applicant replied stating that the Pacific Area Tactical Law Enforcement Team’s Operations Officer had

“no problem with the training taking place” and that he had sent the Navy officer “an email detailing what is expected of him as well as apologizing for my tone. Upon reading the email again, I can see what you meant for sounding brash.” The CO thanked him for the follow-up and noted that a final decision would be made the next day.

- An email from the XO to the applicant dated February 14, 2012, regarding the applicant’s request to attend water survival training the next day. The XO replied that it “makes more sense for you to come in to the office. There are a lot of admin items that need your attention. WST will always be available in the future.” The CO noted that it showed that the applicant’s priorities were not aligned even after receiving the Administrative Letter of Censure.
- An email from the XO to the applicant dated February 17, 2012, directing him to find out what was causing a delay, which the XO followed with an email to the CO noting that he had instructed the applicant to make the call and brief him on the delay and asking the CO, “Do you think he will.”
- Emails to the applicant that the XO wrote and forwarded to the CO dated January 16 and 22, 2012, and that the CO re-sent to himself on May 18, 2012. In the first, the XO complains to the applicant about his failing to do certain work for members who have been deployed for more than five months and are returning. The XO stated that the officer in charge apparently did not trust the applicant because he was emailing the XO and not keeping the applicant in the loop. He acknowledged that most of the problems were “XO problems” but stated that many concerned matters of equipment or personnel that the applicant needed to be aware of. The XO said, “I could go on. Maybe I need to cc you on all emails but here’s the deal, if you are worried more about getting qualified verse having a real pulse on your departments let me know. You may be cc on a lot of emails but you never respond, as a [department head] you need to weigh in, especially as ops. Call me if you want to discuss, either way we will talk tomorrow.” In the second, the XO complained that “as of yesterday not one hotel has been reserved for any members in [Honolulu] for the follow-on mission. Absolutely unacceptable. I ensured the follow-on mission lodging was taken care of. Didn’t know I needed to handle the other stuff. They have known since what date that the potential was there yet no hotels arranged. Thinking the sector is taking care of it is ridiculous, because if that is the case ops would not be asking OSC in the final hours. Seriously no hotels as of yesterday morning and all members [returning to base] in like a day. What if OSC didn’t answer his phone???? Also if we were not in desperate need for weapons quals, all mbrs could have remained at current position and enjoyed R&R and save[d] TONS OF MONEY. But now they have to head back to maintain quals. [The CWO] had some interesting comments about ops and being a DTL.”

The Reviewer of the SOER, who was Chief of Domestic Operations for the DOG, wrote in a statement for the PRRB that the CO informed him of his intent to remove the applicant “citing an abusive work climate and ineffectiveness as an Operations Officer.” The CO reported that the applicant was not meeting the requirements of his position despite regular guidance in the form of weekly meetings with the XO and biweekly meetings with the CO for more than four months. The Reviewer reported that “[s]eeing no improvement and ru [redacted] [the CO] said he wanted to complete the relief process before his [redacted] [redacted] ldn’t linger and affec [redacted] He told the CO that “if his report was accu-

rate, [he] could see no other recourse but to pursue relief. After conferring with DOG legal and the command staff, [he] supported [the CO's] action.”

On January 3, 2014, the PRRB issued a decision denying the applicant's request. The PRRB stated that the evidence showed that the rating chain's duties included providing a “fair and accurate evaluation” of the applicant and that the record showed that the rating chain had fully performed their duties in preparing the SOER. The PRRB noted that the Supervisor's statements are contradictory in that he stood by the part of the SOER that he was responsible for, which included the low marks of 3 for Professional Competence and Workplace Climate, but also signed a statement highlighting the applicant's strengths and successes and asking that the SOER be removed so that the applicant could remain in the Coast Guard. The PRRB stated that although the Supervisor supported removing the SOER, he never claimed that the marks and comments in it were erroneous. The PRRB found that the conflicting nature of the Supervisor's marks and comments invalidated all of his statements.

The PRRB noted that the CO, as Reporting Officer, admitted that the applicant had a strong work ethic but suffered “repeated leadership failures.” The PRRB stated that the failures are supported by the series of emails that the CO submitted and the Administrative Letter of Censure. The PRRB found that the applicant had not provided sufficient evidence to overcome the presumption of regularity accorded the SOER.

VIEWS OF THE COAST GUARD

On November 13, 2015, a Staff Judge Advocate submitted an advisory opinion in which she adopted the findings and analysis provided in a memorandum on the case submitted by the Personnel Service Center (PSC) and recommended that the Board deny the applicant's request for relief.

PSC stated that although the applicant alleged that he received the SOER for comments he made during a unit climate survey, he submitted no evidence to support this claim, and the record shows that he was “coached and mentored” about his performance throughout the period. PSC stated that in response to the PRRB application, the CO submitted evidence showing that the applicant's performance had been substandard, which resulted in mid-period counseling in December 2011 and an Administrative Letter of Censure in January 2012.

PSC noted that since preparing and signing his part of the SOER, the XO has submitted contradictory statements both supporting and denying its accuracy. PSC noted that the XO did not deny some of the supporting comments he entered in the SOER, such as “Slow to come up to speed as an Operations Officer of a MSST & often reactive to the unit's multi-mission tasking: unreliable in operational issues placing risk to safety and well-being of the crew.” PSC stated that these and other comments entered by the XO in the SOER are presumably fair and accurate, and his contradictions appear to be a result of retrospective reconsideration based on regret that he was unable to get the applicant to succeed as Operations Officer and on how the applicant has performed since he left the MSST, which is not relevant. PSC stated that [REDACTED] to the BCMR application, they asked the XO to clarify the contradictory [REDACTED] the SOER. [REDACTED] and his subsequent signature [REDACTED] received no answer. PSC concluded that in

light of the contradictions in the XO's recent statements and the apparent influence of retrospective reconsideration without new information, his recent statements should be considered unreliable.

PSC noted that the CO has consistently maintained the accuracy of the SOER. PSC stated that the leadership failures that caused the CO to remove the applicant are well documented in the record. PSC stated that the record further shows that the CO had significant concerns for the continuing welfare of the unit's mission execution if the applicant remained in place and that his decision to remove the applicant was "well founded and adequately documented." PSC concluded that the SOER accurately reflects the applicant's performance during the marking period and should not be removed.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

The applicant requested and was granted an extension of the time to reply to the Coast Guard advisory opinion to gather more statements in support of his allegations. He submitted his response on February 23, 2016.

The applicant complained that the Coast Guard "disregarded statements in the package that proved the inaccuracy of my [S]OER." He alleged that the results of the climate survey and his own voicing of concerns regarding the command's shortcomings led the CO to remove him from his primary duties. The applicant argued that the CO's decision "had nothing to do with my actual or perceived performance. Ultimately, I believe I became a scapegoat for the negative feedback intended for the command that became apparent in the [climate] survey results."

The applicant alleged that the negative climate was actually caused by the CO's refusal to hold junior members accountable for offenses. The applicant stated that he used the climate survey "to bring to light" the fact that the CO had not authorized NJP and instead had authorized only a negative Page 7 for a member who had violated the unit's alcohol policy, solicited a prostitute, lied to a petty officer, misappropriated a government vehicle, and traveled to a restricted area. The applicant alleged that the "E-6 mess and above perceived this lack of discipline as carte blanche permission for junior members to do as they wished."

The applicant stated that as the Operations Officer, it was his "job to ensure the unit maintained readiness and performed to the highest possible standard. With the lack of support from the command, I was forced to use Friday liberty as leverage to ensure the crew maintained the appropriate levels of performance." The applicant alleged that because he was the unit's "sole disciplinarian," he fell out of favor with the CO, and the animosity intensified when he did not concur that the LTJG serving as the Waterside Division Chief should be removed after just a month on the job.

The applicant alleged that by forwarding a copy of the Administrative Letter of Censure to the PRRB and the BCMR, the CO and PSC had violated Article 1.G.1.d. of the Military Justice Manual, which states that "[n]onpunitive letters of censure are private [redacted] than administrative letters of censure issued by the Commandant, shall not be [redacted] of [redacted] personnel, quoted in, or appended to [redacted] performance reports, included as enclosures to inves-

tigative reports, or otherwise included in official Coast Guard records of the recipient.” The applicant argued that the Administrative Letter of Censure he received from his CO should not be considered by the Board because he “did not have the opportunity to refute it.”

The applicant alleged that he committed no criminal offenses, no deviations from core values, or anything else that should have resulted in negative documentation. He stated that because of the Administrative Letter of Censure, he was required to update the XO weekly regarding his progress on projects, and he exceeded this requirement by engaging with the XO daily. He alleged that he received only positive feedback from the XO and so it was a “complete shock” to be removed from his primary duties. He stated that he only realized that his removal coincided with his CO’s first opportunity to relieve him after receiving the climate survey report months after the fact.

The applicant stated that the statement signed by the chiefs at the MSST directly refutes the CO’s comment in his response to the applicant’s SOER addendum that “[r]ecent observations of the Chief’s Mess and the Executive Officer regarding [the applicant’s] handling of recent personnel issues indicate the use of language that was perceived to be intimidating/borderline threatening. This was reinforced by discussions with the local OPCs that yielded crew comments affirming the use of negative/intimidating leadership techniques by [the applicant].” The applicant argued that this comment has been refuted by the Chief’s Mess and the XO.

The applicant complained that despite the support he had received from the XO, the Chief’s Mess, and other officers, PSC has considered the CO’s testimony to be “the only reputable source.” He argued that the preponderance of the evidence shows that the SOER “was grossly inaccurate and should be removed from my record.”

The applicant also submitted another statement signed by the XO. The XO stated that his failure was that he did not speak up when the applicant was being counseled. He regrets having concurred with the CO’s action without dissenting. He alleged that neither he nor the Chief’s Mess had any issues with the applicant’s leadership or performance. He attributed the CO’s assertion in his endorsement to the SOER addendum that they had raised concerns about the applicant being threatening or intimidating to a “miscommunication.”

The XO alleged that only the CO gave the applicant any negative feedback and that the applicant kept the XO informed of all MSST operations. Sometimes the applicant was reprimanded for actions that the XO had approved in the absence of the CO. The XO alleged that there was “a pattern of [the applicant] receiving negative feedback for any shortcoming observed throughout the entire unit,” especially after the climate survey results were reported.

The XO expressly contradicted his own SOER comment by denying that the applicant had been “slow to come up in speed as an Operations Officer.” The XO explained that he himself had not provided the applicant with any expectations when the applicant arrived so the applicant should not have been held accountable. He denied that the applicant’s management of the Waterside and Force Protection Divisions had permitted any safety [REDACTED] which contradicts his own SOER comment that the applicant was “[REDACTED]” [REDACTED] risk to safety and well-being of the [REDACTED].” [REDACTED]

The XO stated that he had numerous conversations about the applicant's performance with the CO, as well as conversations about other subordinates' performance. The XO stated that he agreed with the CO on most matters and issues except for the applicant's performance. When the CO told him, less than a month before the CO's own transfer, that the CO had decided to remove the applicant as Operations Officer, the XO "remember[s] thinking that [the applicant] was not performing at a level in which a relief was necessary; however I did not voice my opinion." The XO concluded by noting that the CO "still stands by his decision to relieve [the applicant] today, even after reading the statements provided by myself and the MSST ... Chiefs Mess."

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.

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.²

3. The applicant alleged that the SOER documenting his removal as Operations Officer of an MSST is erroneous and unjust. In considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.³ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."⁴ In addition, to be entitled to correction of an OER, an applicant must prove by a preponderance of the evidence 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.⁵

4. The applicant alleged that his removal and the SOER were retaliatory because he had complained in the May 2012 unit climate survey about a subordinate not being properly punished for offenses. He submitted a copy of the executive summary of the climate survey but there is no mention whatsoever in the executive summary that any such complaint was made,

² *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).

³ 33 C.F.R. § 52.24(b).

⁴ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁵ *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).

much less reported in a way that revealed the applicant to be the source. The Board finds that the applicant has not overcome the presumption of regularity accorded his CO's intentions and actions, much less proven by a preponderance of the evidence that his removal and the resulting SOER were retaliatory for a complaint. Regarding the preparation of the SOER, the Board notes that pursuant to Article 5.A.3.c.(1) of COMDTINST M1000.3 (hereinafter, "Officer Manual"), preparation of an SOER is required when a CO decides to remove an officer from his primary duties.

5. The record contains numerous contradictory statements by the XO, who as the applicant's Supervisor originally signed the SOER and then signed a statement saying that he stood by the accuracy of his marks and comments in the SOER, but who has more recently signed statements blaming himself, claiming that he did not adequately inform the applicant of his expectations, denying criticizing the applicant's performance (although his emails show otherwise), and stating that in light of the applicant's subsequent OERs, the SOER should be removed or improved so that the applicant can be selected for promotion. Given his contradictory statements, the Board finds that the XO's claims about the SOER are unreliable. In any case, such retrospective reconsideration of an OER is not grounds for removing it.⁶ In addition, pursuant to Article 5.A.1.b. of the Officer Manual, each officer is responsible for "determining job expectations, obtaining sufficient performance feedback, and using that information to meet or exceed standards." Given the inconsistencies in the XO's statements about the SOER, the Board accords them no evidentiary weight.

6. The applicant alleged that the marks and comments in the SOER are erroneous and unjust. Disregarding the XO's unreliable statements, the record contains the following evidence regarding the applicant's performance:

- a) The SOER itself, which was signed by three superior officers, contains detailed comments regarding the applicant's performance, and is presumptively correct. The SOER includes some praise but also describes the applicant's planning and execution of missions as "average" and states that he was "slow to come up to speed," "often reactive," and "unreliable in operational issues placing risk to safety and well-being of the crew." It describes him as an average speaker with lots of experience and an average leader who struggled with readiness. It criticizes him for allowing an "unacceptable climate to develop at unit that unnecessarily put the safety of the crew at risk. Behavior inhibited effective risk management practices."

⁶ *Paskert v. United States*, 20 Cl. Ct. 65, 75 (1990) (finding that "[t]he supporting statement by the senior rater is a case of retrospective thinking motivated by the knowledge of the applicant's non-selection for promotion to major."); *Tanaka v. United States*, 210 Ct. Cl. 712 (1976) (noting that the letters submitted by two members of the plaintiff's rating chain did not identify any misstatements of fact and offered "only opinions they no longer entertained"); Decision of the Deputy General Counsel in BCMR Docket No. 84-96 (denying relief because the CO's statement arguing that the marks should be raised constituted "retrospective reconsideration"); *see also* BCMR Docket Nos. 2011-179 (denying relief and finding that a CO's statement constituted "retrospective reconsideration" that did not warrant changing the OER); 67-96 (denying relief because three statements by the rating chain supporting the application "constituted 'retrospective reconsideration' induced by the applicant's failure of selection"), 189-94 (denying relief and finding that a supervisor's claim that a mark should be raised because the applicant was never counseled about the deficiency constituted "retrospective reconsideration" that did not justify raising the mark); 24-94 (finding that a reporting officer's statement that "had I known then what I know now I would have marked him differently" constituted retrospective reconsideration that did not justify changing the OER).

It states that he had “[e]xperienced significant difficulties [with the] transition to leading large groups of personnel, managing complex projects simultaneously, and maintaining proper situational awareness of assigned duties.” It states that he achieved success with specific tasks that mirrored his duties in his prior assignments and calls him both “passive” in certain respects and criticizes his judgment as “hasty/rash” in others. Finally, it states that he “[d]isplayed difficulty producing consistent positive results [with] multi-tasking, program management, and leadership of extremely dynamic/challenging 30+ person department & responsibilities.” It also acknowledges that he had the “best of intentions,” is “extremely intelligent and sincere,” and is “passionate about welfare of crew.”

- b) The statement of the CO for the PRRB, who as the applicant’s Reporting Officer worked with him regularly and was responsible for evaluating his performance, explains why he removed the applicant and strongly reaffirms the accuracy of the SOER.
- c) The statement of the Reviewer for the PRRB, who was the DOG Chief of Domestic Operations, shows that he reviewed the SOER and discussed it with the CO, DOG staff, and a legal officer before signing it.
- d) The Administrative Letter of Censure and other evidence submitted by the CO show that the applicant had been counseled about shortcomings in his performance during the marking period. (The Board notes that the applicant has disputed the propriety of the inclusion of the letter in the record but finds that the applicant’s claim that he was completely shocked by his removal clearly warranted his CO’s submission of the letter as rebuttal evidence.)
- e) Emails submitted by the CO reflect apparent criticisms of the applicant’s performance as Operations Officer.
- f) The executive summary of the unit climate survey shows significant dissatisfaction with “middle management” at the unit; that the crew felt that the junior officers, which included the applicant (O-1 to O-3), needed stronger leadership skills; and that there was a significant blockage in the flow of information up to the CO, which the crew thought could be fixed by allowing them to communicate to the CO through the Chiefs’ Mess instead of the junior officers.
- g) The executive summary also contains evidence of weakness in the leadership of the Operations Department, which could reasonably be attributed to the applicant: “Communication and coordination surrounding mission preparation seems to be an area that could be improved. There seems to be a perception that leadership waits until the last minute to begin preparing for missions. This affects the mission and those providing support. There is a perception that people do not understand the amount of work that goes into the logistics and support of deployments and that logistics are always a last minute afterthought.”
- h) The Chiefs’ Mess denied having stated that the applicant used “any language that would be perceived to be intimidating borderline threatening,” which the applicant alleged contradicts the CO’s statement in his endorsement to the applicant’s SOER addendum that “[r]ecent observations of the Chief’s Mess and the Executive Officer regarding [the applicant’s] handling of recent personnel issues indicate the use of language that was perceived to be intimidating/borderline threatening.” While the Chiefs’ Mess has denied [REDACTED] that the applicant used “intimidating/borderline threatening” language [REDACTED] [REDACTED] fully state that the Chief [REDACTED] “intimidating/borderline threatening” language.

Instead, the CO wrote that “recent observations” by the Chiefs and the XO of the applicant’s handling of personnel issues “indicate use of language that was perceived to be intimidating/borderline threatening.” In this comment, the person(s) perceiving the language as being intimidating is/are not identified as the Chiefs and so the Chiefs’ denial does not disprove the comment.

- i) A CWO who was subordinate to the applicant as Chief of the Waterside Division claimed that at no time “did the MSST fail to meet an expectation or put anyone in harm’s way” and that the MSST had “an excellent reputation within the Deployable Specialized Forces community as a team ready and able to answer any call.” The CWO stated that he shared the applicant’s concerns regarding “an apparent lack of accountability and discipline” and that the applicant’s efforts at maintaining discipline “led to a perception of him as a micromanager.” The CWO stated that the CO was “quick to admonish the Junior Officers” and that the applicant “took the brunt of it.” He stated that he “was a bit surprised” that the applicant was removed from his duties because the applicant was fully capable of doing them and was actually doing them.
- j) A lieutenant who worked for the applicant as the Future Operations Department Head and Weapons Officer praised the applicant’s “extremely professional and safe manner” and compassion for subordinates and denied that the applicant created a “hostile work environment.”
- k) An LTJG stated that he was aware that the CO was displeased by the applicant’s performance but was unaware of the reason; that the CO had instructed the applicant and the LTJG to have an operational training plan for deployments and had reprimanded the applicant for not having one during a deployment after the CO had left a closed-door meeting with the E-6s stating that “they didn’t need to do an operational/training plan”; that it was frustrating to work for the applicant because every decision was second-guessed by the CO; that the applicant is an “extremely good communicator” and compassionate leader; and that the LTJG “did not observe an incident or failure that would put [the applicant’s] leadership into question.” The LTJG also stated that the applicant told him that the CO discussed removing him after the LTJG complained about a decision the CO had made, erroneously assuming the CO already knew certain facts that concerned the decision, and that the applicant changed the CO’s mind after discussing the matter with him.
- l) Another junior officer who reported to the applicant stated that the applicant showed “leadership acumen and genuine care” for his subordinates. He praised the applicant for providing tips and lesson plan templates for a deployment before reporting aboard the MSST, showing support by loading small-arms magazines to facilitate more efficient training, and leading an effort to create a new team-member accession process to facilitate readiness.
- m) A lieutenant who worked as the Readiness and Assessment Branch Chief at the DOG stated that when he needed help, the applicant provided personnel as inspectors; that the MSST “has earned an excellent reputation for its willingness to help and share knowledge”; and that he attributed this reputation to “having good managers in the Operations Department,” including the applicant.

7. Several of the applicant’s fellow officers have praised [REDACTED] rship and efforts. However, given the detailed comments in the S [REDACTED] submitted by the CO [REDACTED] in the executive summary of the unit climate

survey that show significant criticism of the leadership of the Operations Department, the Board finds that the applicant has not proven by a preponderance of the evidence that the SOER is 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

8. Accordingly, the applicant’s request to have the SOER removed from his record should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

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).

ORDER

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

August 5, 2016

