

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2015-214**



**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 September 30, 2015, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated October 14, 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**

The applicant is [REDACTED] and prior enlisted [REDACTED] [REDACTED] who was mandatorily retired from the Coast Guard on June 30, 2015, as a result of two non-selections for promotion to commander. He asked the Board to remove from his record a Special Officer Evaluation Report (SOER) covering the period May 1, 2011, to May 16, 2012, when he was removed from his primary duty as the [REDACTED] the [REDACTED] of a Sector Prevention Department. The applicant alleged that the SOER is erroneous and unjust and caused his non-selections and mandatory retirement. He asked the Board to direct the Coast Guard to remove the SOER, his non-selections, and his mandatory retirement from his record, to reinstate him on active duty, and to promote him to commander or to convene a special selection board to determine whether he would have been selected for promotion in 2013 or 2014 if the erroneous SOER had not been in his record.

The disputed SOER, which was prepared to document the applicant's removal from his position, contains mostly excellent marks of 6 (on a scale of 1 to 7) in the various performance categories but a mark of "marginal performer; limited potential" on the officer comparison scale, a recommendation against promotion, some "standard" marks of 4 and low marks of 2 and 3 in the performance categories Teamwork, Workplace Climate, Judgment, Responsibility, and Professional Presence. These low marks are supported by the following comments:



- “Rushed to judgment re: PSC Branch climate, held meeting to correct perceived problems; instead used mtg to make disrespectful & inappropriate comments to subords, undermining chain of command & team spirit. Demo [redacted] [redacted] aging numerous subords; attempted to foster “us” vs. “them” mentality for personal gain; actions eroded team effectiveness & morale. Behavior created en [redacted] midation & discrimination; subordinates feared retribution if they disagreed w/ [the applicant]; non-MSTs perceived adverse bias after [the applicant] openly disparaged other professional [redacted] meeting.”
- “Demo[nstrated] significant lack of judgment; undermined & misled cmd by filtering or distorting key info in emergent ops & personnel briefs; facts filtered to make [himself] look good or cover up mistakes, rather than promoted informed cmd decisions. Openly disparaged cmd to groups of subords in effort to enhance own influence [redacted] [redacted] core values; disobeyed Deputy Sector Cdr’s direct order not to contact personnel who expressed concern about [the applicant’s] behavior in checkout mtgs, then denied same when questioned.”
- “Not recommended for promotion at this time. Recent conduct indicates officer is not prepared at this point in time to assume duties with increased responsibilities.”

The SOER documented the applicant’s removal from his position and so is considered “derogatory.” Therefore, he was authorized to submit an addendum to the SOER for entry in his record, and his rating chain had to endorse the addendum with or without comments.

In his addendum to the SOER, dated June 25, 2012, the applicant described his hard work and numerous achievements as [redacted] [redacted] [redacted]. He stated that he was not provided any negative feedback about his performance until April 2012, six weeks before his scheduled transfer. He stated that [redacted] the Port State Control Branch had complained after a meeting with the branch leadership in which he had tried to promote a positive workplace climate and handed out two essays he had written on leadership. He argued that if he had truly demonstrated a pattern of disrespectful or inappropriate comments, members of other branches of his division would also have complained. He stated that in discussing the issues with his chain of command, he had chosen to accept responsibility for the perceptions of others, which were based on misunderstandings, misconstrued words, and conver- [redacted] [redacted] but he did not believe that the SOER was justified. The applicant alleged that if the complainants had just discussed the issues with him, they would have been resolved [redacted]

Regarding the SOER comment that he had disobeyed a direct order of the Deputy Sector Commander, the applicant stated that he learned in June 2011 that someone had criticized him in exit interview and he was told that the Deputy Sector Commander would talk to him about it. Thereafter, but before his meeting with the Deputy, he asked two outgoing members if they had said anything, which they denied. He met with the Deputy about two months later, and the Deputy did not discuss specifics but stated that a member had expressed concerns about reporting of Advanced N [redacted] [redacted] to the command. The applicant told the Deputy he would “continue to conduct thorough briefings.” Almost a year later, he was asked if he had



contacted anyone about the exit interviews after he met with the Deputy, which he had not. The applicant stated that because he had questioned the two outgoing members before the Deputy met with him, the claim in the SOER that he had failed to follow a direct order is untrue.

In his endorsement to the addendum, the applicant's Supervisor, who was [REDACTED], stated that personnel from other branches in addition to the Port State Control Branch had submitted statements revealing "a pattern of behavior from [the applicant] contrary to Coast Guard core values. Although the majority of personnel in Domestics provided neutral or positive statements, one member did provide a statement that [the applicant] made disparaging remarks about the Command Staff to the [REDACTED]."

In his endorsement to the addendum, the applicant's Reporting Officer, who was Chief of the Prevention Department, wrote the following:

Through completion of a broad and thorough standard investigation, [the Sector] found that [the applicant] demonstrated a pattern of making disrespectful comments to subordinates, fostering an environment of intimidation toward junior officers and petty officers, and misleading and undermining the chain of command throughout the marking period.

While general concerns about [the applicant's] leadership and character were identified much earlier in the marking period (at which time he was counseled by the Deputy Sector Commander), specific shortcomings were unfortunately not definitively identified until approximately six weeks prior to his scheduled AY 2012 departure, at which point the command took immediate action.

To date, [the applicant] remains unable or unwilling to acknowledge and understand his significant leadership shortcomings, and the adverse impact they have on those that serve with him.

The applicant also submitted an SOER Reply, dated August 14, 2012, in which he described examples of strong performance that could support higher marks in each of the performance categories for which he had received a standard or low mark.

### **APPLICANT'S ALLEGATIONS AND EVIDENCE<sup>1</sup>**

The applicant stated that he served as the [REDACTED] of the Sector Prevention Department from July 2009 to June 2012 and excelled in the position. He supervised up to 85 active duty, Reserve, and civilian personnel and oversaw three branches: the Port State Control (PSC) Branch, the Domestic Inspections Branch, and the Commercial Fishing Vessel Safety Branch. The applicant stated that he received stellar annual OERs in April 2010 and 2011 and his performance was also exemplary in his third year, but a few subordinates jumped the chain of command and made false accusations against him.

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<sup>1</sup> This summary incorporates the allegations an [REDACTED] applicant submitted with his 2013 application to the Personnel Records Review Board.



The applicant stated that he performed his work with the utmost care and commitment as a leader. He served others with excellence, humbleness, and a positive attitude. He worked hard to help others succeed and make a positive influence on their lives. He periodically held motivational meetings to reinforce these ideals and received positive feedback.

The applicant explained that in April 2012, he held a meeting of the PSC Branch to promote a positive workplace climate particularly because he was about to transfer to another unit and a new [REDACTED] was coming aboard. He handed out two essays on leadership, which he had written in 2003 and 2004, and spoke about them.<sup>2</sup> He spoke about the principles of leadership, how investing in the crew was a recipe for a positive workplace climate, and offered examples from his past experience about the pitfalls that could erode workplace climate. The applicant alleged that the meeting ended with the members agreeing to follow the principles, but for reasons that were never explained to him, some PSC members later complained. They “turned my messaging around and complained about the meeting completely distorting the message, making defamatory remarks about me, and mischaracterizing the discussion.”

The applicant stated that one junior officer in PSC, LT R, had a history of “blow[ing] what was said out of proportion.” He submitted a series of emails sent in January 2012. In the first, a CWO sent LT R this message, which was cc’ed to the applicant and others in the chain of command:

Sir,

Your paperwork was not completed during annual verification ending 30NOV. If you do not complete your paperwork, your BAH will stop on 15 JAN until you complete the discrepancy. Please contact YN2 ... ASAP.

In reply, LT R wrote the following:

I will like to address two issues I have with your email.

- 1) If you need paperwork from me or another Commission Officer I will expect you as a Chief Warrant Officer to be a bit more respectful and tactful when addressing a superior officer. The same courtesy you will expect from me or my peers I expect from you. Especially when sending these types of email and blasting an Officer with erroneous information in front of his/her supervisors.
- 2) As a Chief Warrant Officer I will expect you to get your facts straight before making any accusations against an Officer in matter relating to responsibility, tardiness or just plain simple conduct.

DO NOT FORGET: You are still in the military and your rank is below all those Commissioned Officers who have [sworn] an oath to serve in the US Coast Guard.

I will like for you to read the attachments as those are prove that I have done my best to ensure all my paperwork is in order so you and your staff have a successful audit. If your personnel [have] failed to performed their duties maybe you have some leadership and responsibility issues that you need to address within your shop.

If you need to be train on that aspect I will be more than glad to provide you with some counseling, leadership and let’s not forget some military bearing training.

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<sup>2</sup> The applicant submitted copies of these two documents, which are essays on servant leadership.



In reply, the CWO's supervisor, another lieutenant, apologized for the miscommunication and noted that annual verifications, which drive BAH, are different from the original documents that LT R had submitted. He also noted that "Email is not an ideal forum. We don't want our members losing out on pay or benefits and sometimes urgency and brevity gets the better of us. That said, I know CWO ... and I know that no disrespect was intended. I've worked [REDACTED] [REDACTED]s always been extremely respectful."

The applicant sent an email to his Supervisor and Reporting Officer stating that he was disappointed with the tone and content of LT R's email lecturing the CWO on respect and suggested discussing it with LT R. In reply, the Re [REDACTED] the applicant's Supervisor, [REDACTED] had already spoken to LT R about it but that "a follow-up from you wouldn't hurt. Go for it." The applicant alleged that he spoke to LT R about his email, and LT R maintained that the CWO's email was very disrespectful, even though it was not. The applicant stated that this email string shows "how a benign message can be turned completely around" by someone, who may have a personal bias or hidden agenda.

The applicant stated that the allegations were false and "no one has brought to my attention anything I've done or said that was even remotely interpreted as disrespectful" or intimidating. Nor has he ever been aware of misleading or undermining the command. However, in response to the complaints, the Sector Command convened an investigation in which members were asked about whether he had a habit or pattern of making disrespectful comments to subordinates, whether he had fostered an environment of intimidation toward junior officers and petty officers, and whether he had misled and undermined his own chain of command. As a result of the investigation of their false accusations, he was removed from his position and given the SOER, which prevented his selection for promotion and caused his mandatory retirement.

The applicant stated that he was not told the names of his accusers and so could not address the matter with them to resolve it. Instead, the personnel were allowed to jump the chain of command and slander him, and his rating chain believed them despite his exemplary performance, allowed them to remain anonymous, and unjustly removed him. He alleged that he performed all of his duties in an exemplary manner and did not fail in any way that would warrant a derogatory SOER or removal from his position. He noted that the low marks and negative comments are very inconsistent with the marks and comments in all of his other OERs.<sup>3</sup>

The applicant noted that his rating chain did not actually observe the alleged poor performance themselves but received false information from a few of his subordinates and acted on it. He stated that he has submitted more than fifty statements [REDACTED] [REDACTED] and with him during the reporting period and who attest to his outstanding leadership, performance, and character and describe him as totally respectful, approachable, easy to talk to, hard-working, and supportive of the command. He stated that he has never before been accused of being intimidating, disrespectful, or unsupportive and yet his rating chain allowed a few false allegations to end his 27-year military career.

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<sup>3</sup> The applicant received excellent OERs as the [REDACTED] in 2010 and 2011 and even higher marks (mostly 7s) on his OERs in 2013, 2014, and 2015.



The applicant also addressed specific marks and comments in the SOER:

- Regarding the standard mark of 4 for Speaking & Listening, the applicant noted that he had previously received a 6 in this performance category and continued to demonstrate excellent speaking and listening skills during the reporting period for the SOER, as shown in his own input for the SOER, which he submitted. He noted that he was the command's "frontline vessel inspections representative for the [REDACTED] [REDACTED] [REDACTED] [REDACTED] planning process and represented the Sector on two task forces and as a keynote speaker at two Veteran's Day events. He also served on various boards and panels, listening attentively to presented information. In addition, he alleged, he was not counseled on any decline in his performance in this category during the period, and the statements and notes of appreciation he submitted show that he is an exceptional listener and communicator.
- Regarding the above-standard mark of 5 for Looking Out for Others, the applicant stated that his performance rated a mark of 7, just as he received in his previous OER. He cited his accomplishments listed in his OER input and the many examples of how he looked out for others cited in his witnesses' statements. He also noted that he was not counseled about a decline in his performance in this category.
- Regarding the standard mark of 4 for Directing Others, the applicant alleged that this mark should be at least a 6 as in his previous OER and as supported in his OER input. He noted that his witnesses' statements also reflect his excellent performance in this category.
- Regarding the mark of 2 for Teamwork, the applicant stated that he should have received at least a 6 as in his prior OER and that no one counseled him about a decline in his teamwork. The applicant stated that this mark is supported by the "Rushed to judgment" comment, which is false because he did not rush to judgment and the meeting was a positive one in which he intended to reinforce positive leadership values, which he tried to do at all branch meetings he held. The applicant also denied making "disrespectful and inappropriate comments" during the meeting. He stated that he emphasizes the same leadership principles at every meeting and had never been accused of being disrespectful. The applicant alleged that this mark and comment are refuted by his witnesses' statements. Moreover, he noted, the SOER comment indicates that the mark of 2 is based on his conduct during a single meeting, which is not a pattern and would not warrant a mark of 2 even if the allegations were true. He also alleged that the results of the PSC Branch's October 2011 climate survey, which shows improvement in "team building," rebuts the mark of 2.<sup>4</sup>
- Regarding the mark of 3 he received for Workplace Climate, the applicant stated that his evidence shows that the workplace climate in the PSC Branch improved under his leadership and that his witnesses' statements show that his influence on the workplace climate was outstanding. He argued that this is irrefutable, ironclad evidence that he promoted a positive workplace climate with outstanding results, which warranted a mark of 6, not 3. He alleged

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<sup>4</sup> A Port State Control Branch semiannual climate survey dated October 1, 2011, shows that a survey of the 20-member staff showed improvement in all nineteen categories, such as followership, health & well-being, technical proficiency, influencing others, team building, taking care of people, mentoring, decision making, creativity & innovation, and vision development & implementation.



that the accusations against him arose from the single April 2012 meeting, which contradicts the use of the word “pattern” in the SOER.

- Regarding the mark of 2 for Judgment, the applicant stated that he should have received at least a 6 in this category, as he did in his previous OER. He stated that [REDACTED] counseled about a decline in his judgment, and his OER input proves that he exercised exceptional judgment. The applicant alleged that the supporting comment for this mark of 2, which claims that [REDACTED] the command by filter [REDACTED] information, is false and should be removed. The applicant also described several examples of his performance that could support a higher mark for Judgment.
- Regarding the mark of 2 for Responsibility, the applicant stated that the supporting comment about disparaging the command is false and should be removed and [REDACTED] is [REDACTED] to at least a 6 since he received a mark of 7 in this category on his prior OER. He stated that he was never counseled that his performance in this performance dimension was declining. The applicant pointed to examples of his responsibility in his OER input and described incidents in which he performed duties responsibly. He noted that his witnesses’ statements and other submissions show that he frequently worked overtime to get the job done and was highly responsible in the performance of his duties.
- Regarding the mark of 3 for Professional Presence, the applicant stated that it should be raised to at least a 6, which is the mark he received in his prior OER. He stated that no one ever counseled him that his performance [REDACTED] was declining and pointed out examples of his performance in this category cited in his OER input and the witnesses’ statements, thank-you notes, and letters of appreciation he submitted, which reflect well on his professional presence. [REDACTED]
- The applicant stated that the comment supporting the mark of 2 about not adhering to core values and disobeying an order not to contact [REDACTED] criticized him during their exit interviews and then denying that he had [REDACTED] be removed. The applicant explained that in June 2011, he was told that someone had said something about him during an exit interview and that the Deputy Sector Commander would discuss it with him. The applicant was perplexed and asked two people who had had recent exit interviews if they had said anything about him, and they denied it, but he later learned from the investigator that they had both said something about him. He stated that an exit interview should be an opportunity to offer feedback on ways to improve operations, not an opportunity to jump the chain of command and make false accusations about him. The applicant stated that about [REDACTED] months later, the Deputy Sector Commander held an impromptu meeting with him about the two exit interviews but only spoke in generalities, not specifics. The applicant pointed out that without specifics, he could not respond to specific concerns, and the Deputy Sector Commander acknowledged that but only spoke in general terms.

The applicant stated that the Deputy never called the meeting “counseling” and never said that the applicant had done anything wrong or shown substandard performance. The Deputy would not name the persons who had spoken about him and told the applicant “that he would appreciate it if [he] didn’t try and find out.” The applicant stated that this was not a “direct order” as the SOER indicates and, in any case, the applicant did not try to find out. The



Deputy stated that one member had expressed concern about the division's reporting of [REDACTED] information, and the applicant explained that "if an operational matter met a briefing threshold then it was briefed up," and he assured the Deputy that "all briefing thresholds were being met." The Deputy concluded the discussion by noting that the applicant's latest OER had been outstanding, by stating that he "hoped it would remain as high the next time," and by reminding the applicant that "one bad mark can ruin a career" and that "one bad supervisor can ruin a career as well." Then in April 2012, he was asked if he had spoken to anyone after he spoke with the Deputy about the exit interviews, and he honestly answered no because he had not. He also clearly explained that he had asked two members about it before the Deputy spoke to him, but not after.

- The applicant alleged that his Reporting Officer's comments recommending against promotion and claiming he assumed responsibilities he did not have are inaccurate and unjust as they are based on the false accusations of others. In addition, he argued, the comment about his alleged "flagrantly disrespectful & inappropriate comments to subordinates" has been thoroughly refuted in his witnesses' statements.
- Regarding the mark of "marginal performer" in the second spot (of seven) on the officer comparison scale, the applicant noted that he had received a mark of "strongly recommended for accelerated promotion" in the sixth spot on his prior OER. He stated that at no time did anyone counsel him that his overall performance was declining. He argued that the mark is not based on any performance actually observed by his superiors but on the false allegations of a few subordinates.

The applicant noted that the SOER also states that his performance was noticeably different from before, but he was never counseled about the alleged poor performance during the reporting period. He alleged that he was told by his Supervisor and Department Head in February 2012 that he was on track to receive a Commendation Medal for his performance and was advised to submit input for it, which he did.<sup>5</sup> In addition, based on his consistently exceptional performance, he had received transfer orders to become [REDACTED]

The applicant stated that he has provided a mountain of evidence that thoroughly refutes the comments in the SOER. However, in 2013 the Personnel Records Review Board (PRRB) denied his request to remove the SOER in a decision that failed to address his arguments and evidence.<sup>6</sup> He noted that the PRRB found that his rating chain had been unaware of his

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<sup>5</sup> The applicant submitted the agenda of an offsite Prevention Department meeting dated February 16, 2012, which shows that the timeline for award submissions was discussed, and his draft for the citation for a Commendation Medal, which he was asked to submit.

<sup>6</sup> The PRRB decision, dated July 9, 2013, includes declarations signed by the applicant's rating chain, which are summarized with the Coast Guard's advisory opinion herein. Based on these declarations, the PRRB found that several credible sources had expressed concerns about the applicant's conduct and that an investigation had "found instances of intimidation, false reporting of operations, and the making of disparaging comments about both senior and junior personnel. While the Applicant did display strong leadership attributes, as evident by the supporting statements he provided and those included within the OER, several matters contrary to CG Core Values were revealed during the informal investigation." The PRRB stated that "the rating chain responded to serious accusa-



“substandard performance and/or conduct” and yet allowed his rating chain to end his career based on hearsay that he had thoroughly refuted. He also argued that this finding shows that his Supervisor’s claim that the SOER was based on “observed performance” is refuted. Therefore, he argued, the PRRB, like his rating chain, based its decision on hearsay gathered during an insufficient investigation and disregarded his overwhelming evidence.

In support of his allegations, the applicant submitted numerous memoranda and other documents showing the type and quality of his work as the [REDACTED], including numerous thank-you notes and notes of appreciation he had received. He also submitted copies of his military records and forty supportive witness statements from subordinates and others who worked at the Sector for or with him. For brevity’s sake, only the first ten of the forty, which are all highly laudatory of the applicant’s leadership, will be summarized here:

1. A chief warrant officer (CWO4) who worked in the Prevention Department in 2011 and 2012 stated that he got to know the applicant in 2006 and found him to be an inspirational officer who had a great work ethic and led by example. The CWO4 stated that while assigned to the Prevention Department, the applicant commonly worked after hours and on weekends. The applicant transformed a Sector office building, which had been a shambles, with new carpets, furniture, lighting, etc. He stated that the applicant bent over backwards every day to make sure people had what they needed to get the job done and that he “empowers people.” The CWO4 questioned whether the investigator had sought positive comments on behalf of the applicant and whether the applicant had received due process. He alleged that the applicant’s accusers worked only half as hard as the applicant did. He claimed that the applicant had “never instructed anyone, anytime or at any place to do anything that would undermine the command structure.” He noted that the applicant had helped many others by, for example, arranging a transfer and orchestrating the promotion of a chief petty officer to CWO. The CWO4 stated that he honestly cannot believe the allegations against the applicant or the command’s decision to derail his career after he had worked so hard for the command. The CWO4 stated that the applicant was treated terribly.
2. A lieutenant (LT W) who was Chief of the [REDACTED] stated that the applicant had been “the greatest mentor, leader, and shipmate that I’ve ever worked with in my 17 years in the Coast Guard.” LT W stated that the applicant provided him with clear expectations and stressed the importance of taking care of people. The applicant demonstrated positive leadership values on a daily basis. LT W attributed the success of his unit to the

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tions from several credible sources concerning the Applicant’s alleged misconduct. After a thorough informal investigation, the Commanding Officer decided to remove the Applicant from his primary duties due to patterns of intimidation, false reporting, and making disparaging comments about others.” The PRRB noted that a rating chain is permitted to rely on statements of other members made pursuant to an investigation when writing an SOER. The PRRB noted that the SOER is derogatory by definition because he was removed from his primary duties. The PRRB noted the applicant’s complaint that he was not counseled about his performance but found that his “substandard performance and/or conduct was unknown to the rating chain until the informal investigation was completed.” The PRRB concluded that the applicant’s rating chain had acted correctly and that the SOER did not contain substantive errors and “presented an accurate reflection of the rating chain’s view of the Applicant’s performance/conduct during the period of report.” The PRRB denied relief because the applicant had “failed to substantiate any error or injustice and has not provided clear and convincing evidence that overcomes the presumption of regularity with respect to the contested OER.”



applicant's visionary leadership, dedication, and tireless efforts. He stated that the applicant "took care of the personal and professional needs of all those in his charge, and was often sought out by personnel throughout the Sector for guidance [redacted] as a kind, caring, compassionate, and selfless leader who would always go the extra mile to support others." He stated that the applicant met regularly with the [redacted] staff to reinforce the importance of teamwork, positive leadership, and appreciation for hard work and high performance. LT W stated that he had never observed the applicant ever being disrespectful [redacted] of the command and [redacted] [redacted] cant to be respectful, considerate, approachable, helpful, and supportive of the command. LT W stated that the applicant represented the command "with distinction" and "motivate[d] and [brought] people together making the command look good at all times."

3. A lieutenant junior grade (LTJG L) stated that she worked in the [redacted] [redacted] from July 2010 to July 2012. The applicant was very supportive of her career and was "always sticking his neck out for me" and sticking up for her. LTJG L stated that the applicant was selfless and always willing to take the time to help others before helping himself. In two years, she "never observed anything but him being respectful and kind to his superiors as well as to junior personnel in the office." The applicant was always looking out for others and keeping morale high and the staff motivated. LTJG L stated that the applicant was "always very approachable" and willing to stop and lend an ear. She stated that he is "an exceptional officer."
4. LTJG H, who joined the Pre [redacted] [redacted] 010, stated that the applicant frequently took time out of his days, nights, and weekends to help him and others. The applicant set an example of hard work and dedication. LTJG H stated that he provided a statement for the investigation in which he denied ever hearing or seeing the applicant behave in the alleged manners. [redacted]
5. LTJG S, who worked for the applicant in the [redacted] [redacted] from July 2010 to June 2012, stated that the applicant shown an "irre [redacted] unwavering commitment to his people," which "fostered an outstanding work environment that inspired the highest performance." The applicant had shown him "the value of leadership by investing in your people and of selfless service to others." The applicant led by example and ensured that LTJG S had the time, information, tools, training, and support to complete assignments successfully. The applicant inspired him and invested in him. The applicant "knew the value of supporting his people and maintaining morale and it showed through the high performance and dedication of those he managed." He "exhibited a profound degree of commitment to his st [redacted]
6. LTJG N submitted his emailed statement for the investigation, in which he wrote that the applicant "is one of the few approachable senior officers at this unit. He called the allegations defamatory and disheartening. Regarding the alleged "habit or pattern of making disrespectful comments to subordinates," LTJG N stated that the applicant goes out of his way to get to know his subordinates and keep track of their progress and worked to create "the best working environment possible." Regarding the allegation that the applicant had fostered "an environment of intimidation toward junior officers and petty officers," LTJG N stated that the applicant "is the most approachable officer I've met." The applicant worked







the success of all those in charge. ... His leadership style is one of selfless service to others. ... [He] is the most approachable, involved, and caring leader I've had the pleasure of working with in my career." He stated that the applicant "always [redacted] f [redacted] [redacted] aging them to grow and excel" and "is a great leader and performer."

Of the forty members who wrote statements on behalf of the applicant, ten had worked in the PSC Branch:

- 1) An LTJG who was the Assistant Chief of the PSC Branch through June 2011;
- 2) An MST1 who left in June 2011;
- 3) An MST1 who left in 2010;
- 4) An MST2 who left in May 2011;
- 5) An MK2 who left in June 2011;
- 6) An MST2 who was present throughout the reporting period for the SOER;
- 7) An MST3 who was present throughout the reporting period for the SOER;
- 8) A Reserve LT who was attached to the branch throughout the reporting period;
- 9) A Reserve MST1 who was attached to the branch throughout the reporting period; and
- 10) An MST1 who transferred from the PSC Branch to another branch in January 2011.

The applicant stated that the forty statements show that when working with subordinates and speaking at meetings he was "nothing but positive, motivational, respectful, supportive of the command, and presenting and reinforcing positive leadership principles." He stated that his meeting with the PSC Branch in April 2012 was no different, but his words were misconstrued. As a result he was unjustly removed from his position and received the defamatory SOER with numerous false statements and unjustly low and inaccurate marks.

**VIEWS OF THE COAST GUARD**

On February 17, 2016, a Staff Judge Advocate submitted an advisory opinion in which he adopted the findings and analysis provided in a memorandum on the case submitted by the Coast Guard Personnel Service Center (CGPSC) and recommended that the Board deny the applicant's request for relief.

CGPSC submitted copies of the rating chain's declarations about the SOER and a copy of [redacted] [redacted] by the command. CGPSC noted that the rating chain "stands by their assessment of the applicant's performance and conduct in that he did not promote an environment of involvement, innovation, open communication and respect." CGPSC also noted that the rating chain did acknowledge that certain aspects of the applicant's leadership were excellent but found that "significant and repeated leadership failures superseded the positive performance, did not meet the minimum expected performance standards, and were appropriately documented in the Special OER." CGPSC concluded that the applicant has "failed to produce clear and convincing evidence that overcomes the presumption of regularity with respect to the contested record; therefore no action is warranted to correct an error or injustice."

[redacted]



*Declaration of Supervisor*

The applicant's Supervisor, a commander who was [REDACTED] [REDACTED] wrote that following a meeting the applicant held with the PSC Branch—

[REDACTED]  
a couple of members approached me concerned about the tone and intent of the staff meeting. Upon looking into the matter and having discussions with the witness [REDACTED] Department Head [the Report [REDACTED] [REDACTED] incidents of gross misconduct by [the applicant] were revealed. We immediately met with [the applicant] to let him know there were serious accusations made concerning his conduct to which he denied entirely.

Due to the high level of trust and credibility of the reporting source [REDACTED] [REDACTED] was briefed to the Command and turned over to an informal investigation to resolve the issues. After an investigation into the conduct of [the applicant], he was relieved of duties on May 15, 2012, due to a loss of confidence and assigned to [another office until his transfer]. The preliminary investigation included interviews with 22 Sector ... personnel, both past and present that clearly revealed an ongoing pattern of behavior by [the applicant] contrary to Coast Guard core values. [He] did read the Findings of Fact from the investigation report that clearly recorded the behaviors of intimidation, false reporting of emergent operations to the command, and disparaging comments about superior officers to junior personnel. I believe there were other issues noted in the investigation that I cannot fully recall.

As the inflammatory meeting [REDACTED] [REDACTED] of the marking period, [the applicant] was not counseled prior to the investigation on the incidents as they were not made known [REDACTED] and before this time. [He] did display several strong leadership qualities as evident by the many supporting statements he provided and comments included in the OER but he also proved to be a toxic leader in other areas that were brought out in the investigation. The [SOER] is accurate and reflects the observed performance over the reporting period.

[REDACTED] BCMR application, the Supervisor signed a second declaration confirming the first declaration.

*Declaration of Reporting Officer*

The Reporting Officer, who was head of the Prevention Department, stated that he is—

not surprised by the supporting statements from persons [the applicant] has worked with. Such statements are consistent with [the applicant's] strong work ethic and high level [of] professional competence, characteristics that were appropriate [REDACTED] [REDACTED] as well as previous OERs. However, despite his work ethic, professional expertise, and dedication to the mission, I stand by my



statement in the Special OER that [he] “demonstrated a pattern of assuming responsibilities he does not have, making flagrantly disrespectful and inappropriate comments to subordinates, fostering an environment [redacted] in [redacted] junior officers and petty officers, and misleading and undermining the chain of command.” Indeed the marks and comments in this Special OER [redacted] and appropriately reflect his performance during the marking period.

The Reporting Officer [redacted] SOER is supported by [redacted] thorough standard investigation” dated April 20, 2012, “which revealed significant and repeated leadership failures on the part of [the applicant].” He stated that because many of the witnesses expressed fear of retribution, the Sector Commander decided not to share their names and statements with the applicant, but he was allowed to review a redacted version of the report of the investigation. [redacted]

The Reporting Officer also confirmed the declaration he had provided to the PRRB, in which he stated that the applicant’s shortcomings were not “definitely identified” until six weeks before the end of the reporting period, at which point the rating chain took immediate action. The Reporting Officer stated that he and the Supervisor “immediately confronted him with the allegations made against him and offered him an opportunity to respond. He completely denied all of them and asked to know the source so he could attempt to resolve the issues. Given the serious nature of the allegations, conflicting accounts of the facts between him and those that came forward, as well as the limited time available to achieve resolution, an investigation was deemed the most appropriate way [redacted]. The Reporting Officer stated that the applicant was not provided with the names of those who had complained because multiple personnel had expressed fear of retribution. However, the applicant sought out and confronted personnel he suspected of having spoken ill of [redacted].”

The Reporting Officer stated that the [redacted] at despite his strong work ethic and positive influence on a large number of personnel, there was another side to [his] leadership which was wholly inconsistent with Coast Guard core values, compromised the workplace climate, undermined the chain of command, and was contrary to good order and discipline. This wide range of observed performance is accurately captured [in the SOER].”

#### ***Declaration of the Reviewer***

The Sector Commander, who served as the Reviewer of the SOER, stated that she had reviewed the applicant’s BCMR application and concurred with the declarations of the Supervisor and Reporting Officer and continues to believe that the SOER is accurate and appropriately documents the applicant’s performance. In her declaration to the PRRB, the Sector Commander noted that the applicant’s numerous supporting statements reflect his strong work ethic. However, she stated, the information in the report of the investigation “revealed significant and repeated leadership failures on the part of [the applicant]. It was those failures that compromised the workplace climate and undermined the chain of command. I fully concur with the PRRB declarations offered by [the Supervisor and Reporting Officer] and find that [the SOER] is accurate and appropriately reflects [redacted] performance.”







ance from the Port State Control Branch and Vessel Traffic Service.” A few stated that the applicant had failed to inform the command about a recommendation concerning a vessel’s oily water separator case. [REDACTED]

Several witnesses’ statements in the ROI support a finding that [REDACTED] did not inform or misinformed the Command staff “on matters that required higher authority, approval, or concern.” The ROI also found that the applicant had “engaged in questionable practices in re [REDACTED] and purchase request pro [REDACTED], [REDACTED] much on office rehabilitation, that he had “moved money within divisions to facilitate purchase requests,” and that he had ordered a member “to use an improper accounting string to facilitate purchase requests.”

One witness stated that after the applicant’s meeting with the Deputy [REDACTED] in the summer of 2011, the applicant was “very upset and incredulous about the meeting and he said he had to contact the people that had just transferred out and find out who had said something about him and why. He picked up the phone and I believe contacted ... at her new duty station and asked her if she said anything negative on her exit interview.” The investigator stated that when questioned about this, the applicant initially denied contacting those who had exit interviews in the summer of 2011 about what they had said, but then he stated that he could not recall whether he contacted them before or after his meeting with the Deputy Sector Commander. The applicant told the investigator that he had called one of them about an outstanding purchase request and that the member’s exit interview “came up in the conversation.” The two members who had exit interviews in the summer of 2011 stated that the applicant called them and questioned them about statements they had made during their exit interviews. One stated that the applicant “yelled and screamed at him, saying things like [he] had misunderstood or misinterpreted [the applicant’s] actions and [REDACTED].” [REDACTED]

The ROI noted that the staff of the [REDACTED] had provided either positive or neutral statements. [REDACTED]

The ROI concluded that the evidence established that the applicant had demonstrated a pattern of making disrespectful and inappropriate statements to and about the PSC Branch staff and other subordinates, in violation of Article 133 of the Uniform Code of Military Justice (UCMJ); that he had created an environment of intimidation within the PSC Branch, but not the [REDACTED]; that he had misinformed and misled the Command, a dereliction of duty in violation of Article 92 of the UCMJ; that he had disobeyed a direct order of the Deputy Sector Commander, in violation of Article 92; that he had undermined the authority of the Command and PSC Branch staff, in violation of Article 133; that he had engaged in questionable budgeting, funding, and purchasing practices; and that he was “unaware of the effects of his actions and behaviors and is out of touch with the state of affairs within the Port State Control Branch.”

The investigator attached approximately thirty statements and summaries of interviews with many details and allegations to the ROI, as well as “neutral and positive character statements from [REDACTED].” The investigator recommended that the applicant not be reinstated in his position and that disciplinary action be taken against him.



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

In response to the advisory opinion, the applicant stated that it “does not address the overwhelming amount of evidence I submitted that totally refutes how I was characterized and marked [in the SOER].” The applicant stated that the witnesses’ statements in the ROI are completely false. He stated that his “mountain of evidence” totally refutes the vicious attacks on his character, performance, and leadership. He stated that the SOER is a result of just a few personnel, who never confronted him, maliciously and anonymously complaining behind his back. He claimed that the statements against him in the ROI lack credibility because they are “false, hearsay, have virtually no context, and ... were never mentioned to me.”

The applicant repeated his allegations about his “servant leadership” and support of others. He alleged that the witnesses against him were projecting their own shortcomings onto him. He argued that it was unjust that his career was ended by a few subordinates complaining about him behind his back.

The applicant stated that either what the witnesses for the ROI said about him was true or what the overwhelming majority of his subordinates who wrote statements on his behalf was true—one or the other. He noted that his statements outnumber those collected by the ROI and that the quality of his performance record shows the type of officer he has been. He argued that the majority of the evidence before the Board reflects his outstanding character, performance, and leadership and shows that his leadership was positive, encouraging, engaging, inclusive, approachable, and selfless.

### 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.<sup>7</sup>
3. The applicant alleged that the SOER documenting his removal as [REDACTED] and consequent non-selections and mandatory retirement are 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.<sup>8</sup> Absent evidence to the contrary, the Board

<sup>7</sup> *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).

<sup>8</sup> 33 C.F.R. § 52.24(b).



presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”<sup>9</sup> 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.<sup>10</sup>

4. As the applicant claimed, he has submitted a “mountain of evidence” supporting his allegations that his leadership and performance as [REDACTED] were excellent. [REDACTED]

[REDACTED] It is his leadership of the PSC Branch that is primarily criticized in the ROI, and most of the witnesses against him worked in that branch. The character of his leadership of the PSC Branch would not necessarily be known to members assigned to other branches.

5. Of the applicant’s forty witness statements, ten are from members who worked at the PSC Branch, but six of these ten, including four MSTs, had left the branch by June 2011 and so were not present during most of the reporting period for the SOER. Of the four who were assigned or attached to the PSC Branch throughout the reporting period, one is an MST2, one an MST3, one a Reserve LT, and one a Reserve MST1. These MSTs and reservists highly praised the applicant’s leadership. On the other hand, the ROI shows that numerous subordinates accused the applicant—who had previously been an MST as an enlisted member—of making “disparaging remarks toward personnel outside the MST rating or with limited/no traditional ‘M’ background, disparaging remarks about the leadership and management of other officers, petty officers, and civilians, and failure to provide all the information or accurate information in regard to several different types of cases.” Specifically, they claimed that the applicant called those outside the MST rating “ship drivers” or “ship riders” who “lacked the professional knowledge and skills” and “lacked or had substandard leadership and management skills.” Numerous subordinates provided statements showing that they had concluded that the applicant “believes that non-MST rated personnel and non-traditional ‘M’ type personnel do not belong in Prevention” and that he discriminates against non-MSTs and against “personnel who disagree with him or appear to stand in his way or vision.”

6. The ROI also shows that the applicant was accused by many members of making disparaging comments about the leadership of other members, officers, and the Command staff. Several members described specific incidents in which the applicant had misinformed the Command staff about operational matters, and others stated that the applicant had “engaged in questionable practices in regard to budgeting, funding, and purchase request protocols.” The Board finds that these statements are sufficiently specific and numerous to be credible, despite the applicant’s forty supporting statements and other evidence of excellent performance.

7. The conduct described in the ROI is substantially supported by the witnesses’ statements. It also justifies the low marks and negative comments in the SOER because it

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<sup>9</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

<sup>10</sup> *Hary v. United States*, 618 F.2d 704, 708 (Ct. Cl. 1980), cited in *Lindsay v. United States*, 295 F.3d 1252, 1259 (Fed. Cir. 2002).



reflects quite negatively on the applicant's performance in the dimensions of Speaking & Listening, Looking Out for Others, Directing Others, Teamwork, Workplace Climate, Judgment, Responsibility, and Professional Presence. In light of the evidence in the ROI, the Board cannot conclude that the Sector command erred by losing confidence in him, finding that his known performance had changed significantly since the prior period, and removing him from his position. Once the command had decided to remove him, a "derogatory" SOER was required.<sup>11</sup>

8. [REDACTED] ant alleged that the SOER comment that he had disobeyed a direct order of the Deputy Sector Commander is false because he contacted the two members who had had exit interviews *before* his meeting with the Deputy Sector Commander. However, one witness told the investigator that he saw that the applicant soon after his meeting with the Deputy Sector Commander and that the applicant was very upset and called one of the members he suspected of complaining about him. The other member whom the applicant suspected told the investigator that the applicant called him, "screamed and yelled at him" about his statements in his exit interview, and accused him of misinterpreting what the applicant had said. The investigator reported that the applicant initially denied having contacted them and then stated that he could not recall whether he had contacted them before or after his meeting with the Deputy Sector Commander. The Board finds that the applicant has not proven by a preponderance of the evidence that the SOER comment stating that he had disobeyed the Deputy Sector Commander's order not to contact those who had complained about him during their exit interviews is erroneous or unjust.

9. The applicant alleged that the SOER is unjust because he was never counseled about his performance, but the record shows that he received a significant warning from the Deputy Sector Commander during their meeting in the summer of 2011. The applicant admitted that he was told in general about what members had said about him in exit interviews and that he was expressly warned about the consequences of getting a low mark on an OER. In addition, witnesses' statements show that the applicant was very upset after his meeting with the Deputy Sector Commander, which strongly suggests that he was counseled. However, the record indicates that the command was unaware of the full extent and nature of the allegations against the applicant until the ROI was completed in April 2012, just a few weeks before the end of the reporting period. The rating chain stated that he was quickly advised of the allegations against him in April 2012 and shown the ROI, albeit without the witnesses' names and statements, when it was issued. In light of this evidence, the Board cannot conclude that the applicant's command unjustly withheld their concerns about his performance or failed to provide timely feedback when his conduct was brought to their attention. Nor can the Board fault the command for refusing to provide him with the names of the witnesses given how he had reacted in 2011 to one of the members he suspected of complaining about him in an exit interview.

10. The applicant's mountain of evidence shows that his performance and leadership were in many ways exceptional, as his rating chain acknowledged. However, in light of the evidence gathered in the ROI, 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

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<sup>11</sup> COMDTINST M1000.3, Article 5.A.7.c.



statute or regulation.<sup>12</sup> Therefore, the Board finds that the applicant has not proven by a preponderance of the evidence that the SOER is erroneous or unjust, and there are no grounds for amending it or removing it from his record.

11. Because the applicant has not proven by a preponderance of the evidence [REDACTED] or unjust, he has not shown that his record contained an error or injustice when it was reviewed by the commander selection boards in 2013 and 2014. Therefore, there are no grounds for removing his non-selections for promotion, for convening a special selection board for him, for voiding his retirement, for reinstating him on active duty, or for promoting him.

12. Accordingly, the application should be denied.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

[REDACTED]

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<sup>12</sup> *Hary v. United States*, 618 F.2d 704, 708 (C [REDACTED] ed in *Lindsay v. United States*, 295 F.3d 1252, 1259 (Fed. Cir. 2002).



**ORDER**

The application of [REDACTED] [REDACTED] USCG (retired) for correction of his military record is denied.

October 14, 2016

