

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

---

Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2016-102**



---

**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 April 14, 2016, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated July 27, 2018, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST AND ALLEGATIONS**

The applicant, a [REDACTED] in the regular Coast Guard, asked the Board to remove from his record an Officer Evaluation Report (OER) covering the period June 1, 2012, to May 31, 2013, and replace it with a Continuity OER.<sup>1</sup> The OER covers his first year as the Operations Officer of a Maritime Safety and Security Team (MSST). Because the disputed OER was in his record when it was reviewed for promotion, he also asked the Board to remove his non-selections for promotion to lieutenant commander (LCDR) in 2014 and 2015 and to direct the Coast Guard to convene one, and if necessary two, Special Selection Boards (SSBs) to consider him for promotion and to backdate his date of rank and award him back pay and allowances if he is selected for promotion to LCDR by either SSB. Finally, he asked the Board to void his discharge and reinstate him on active duty if he is discharged as a result of being non-selected for promotion.

The applicant stated that after he was non-selected for promotion in August 2014, he applied to the Personnel Records Review Board (PRRB) in February 2015. On June 5, 2015, the PRRB granted partial relief by raising three marks from 4s to 5s.<sup>2</sup> Nevertheless, he was again

---

<sup>1</sup> A Continuity OER includes only a description of duties in block two and no numerical marks or comments.

<sup>2</sup> On an OER form, officers are rated in eighteen performance dimensions on a scale from 1 (worst) to 7 (best) based on written descriptions for each dimension. A "standard" mark of 4 means that the officer achieved "the high level

not selected for promotion to LCDR by the selection board that convened in August 2015. The applicant argued that because the disputed OER had not yet been corrected by the PRRB in August 2014, his first non-selection should be considered void and he is entitled to at least one SSB based on the PRRB's action alone even if the BCMR makes no other corrections to the OER. However, the applicant argued, the Board should grant full relief by removing the entire OER and both non-selections for the following reasons:

- The commanding officer (CO) of the MSST, who signed the OER as the applicant's Reporting Officer<sup>3</sup> and was responsible for some of the marks and comments in the OER, had been at the MSST for less than four months. The CO assumed command on February 11, 2013, and the evaluation period ended on May 31, 2013, which was just 29% of the annual evaluation period. Therefore, the applicant argued, the CO had had limited opportunity to observe his performance and "relied almost exclusively" on the XO's comments when evaluating the applicant, which gave the XO an "unfair influence" over the OER. He claimed that this unfair influence is apparent in the CO's declaration in response to his PRRB application which shows that the CO thought that the standard used by the XO to evaluate the applicant was unfair. The applicant also alleged that, instead of drafting his part of the OER, the CO used "nearly verbatim" the comments and marks recommended by the XO in the draft OER. Therefore, the applicant concluded, the CO failed to fulfill his duty to return the OER to the XO for correction, as required by Article 5.A.2.e.(2)(c) of the Officer Manual. Because of the XO's unfair influence on his OER, the applicant stated, he was passed over for promotion in both 2014 and 2015.
- The Executive Officer (XO), who drafted the OER as his Supervisor, had been promoted to lieutenant on December 17, 2008, and was considered for promotion in 2014. The applicant argued that because the XO was also in the zone for promotion in 2014, he had an incentive in 2013 to hold the applicant "to the strictest standard in order to appear excessively more favorable for promotion" than the applicant in 2014. In addition, he noted that the XO served as the Acting CO for two and one-half months before the new CO assumed command and so filled the role of his Reporting Officer during that period even though he was not at least two year groups ahead of the applicant, as required by COMDTINST 1000.3 (hereinafter, "Officer Manual").
- Because the prior CO of the MSST had been relieved of command "for cause" in November 2012, he was unable to provide feedback on the applicant's performance in accordance with Article 5.A.2.g.(2)(b) of the Officer Manual. The applicant argued that his OER was unjustly prejudiced by the fact that the prior CO was removed after almost half of the evaluation period had passed.
- The applicant alleged that the OER marks are erroneously low because the MSST's overall successes measurably increased after his arrival in June 2012. Under his leadership as the Operations Officer, the MSST scored 93% during a Ready for Operations inspection,

---

of performance expected of all Coast Guard officers." Article 5.A.1.c.(2)(c) of COMDTINST M1000.3 (hereinafter, "Officer Manual").

<sup>3</sup> An OER is normally signed by "rating chain," including a Supervisor, who assigns the marks for the first thirteen performance dimensions with supporting comments; a Reporting Officer, who assigns the marks for last five performance dimensions and the officer comparison scale with supporting comments; and a Reviewer, who reviews the OER for consistency.

which was “well above the Coast Guard average for similar units.” He stated that the MSST also “excelled in mission execution, leading 2012 UNGA security operations in New York, Super Storm SANDY relief efforts in New Jersey, the swift response to the 2013 Boston Marathon bombing, as well as other operations detailed” in the record. He argued that these accomplishments merited above-average marks across all eighteen performance dimensions on the OER.

- The applicant pointed out that there are no adverse entries, such as a Punitive Letter of Censure, in his record to show that his performance did not meet or exceed the written performance standards on the OER form. And he claimed that when providing performance feedback, the XO “did not reference specific evaluation marks during the evaluation period nor offer [him] recommendations to improve.” He pointed out that the CO admitted in his declaration to the PRRB that he had not received mid-period or other formal counseling and that the MSST did not have a unit officer evaluation instruction. The applicant stated that the only documentation of his performance provided by his rating chain was the disputed OER, which he did not see till August 28, 2013, which was much later than the thirty-day deadline prescribed by the Officer Manual. During this OER counseling session, the applicant alleged, the XO failed to provide specific examples of his performance that warranted standard marks of 4. He stated that the XO provided only informal, general counseling that was nonspecific, entirely unsupported, and contradicted by his accomplishments. The applicant stated that their discussion during the OER counseling session was “intense,” he “felt unjustifiable pressure” to acknowledge the OER with his signature, and he feared reprisal if he refused to sign it. Moreover, the applicant alleged, the preparation of the OER was delayed because the CO consulted an enlisted member—the Command Senior Chief, who was the Senior Chief Machinery Technician in the Engineering Department—about his performance. The applicant submitted a statement from the Senior Chief, who wrote that as part of his duties in advising the CO at the MSST, he was asked about the applicant’s performance in July 2013, when the OER was being prepared.

### SUMMARY OF THE RECORD

The applicant attended a maritime academy and was appointed an ensign in the Coast Guard Reserve on [REDACTED]. He served on extended active duty, specializing in port and waterway safety and security, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

When he was promoted to lieutenant in [REDACTED] the applicant was assigned as a District Command Center Duty Officer, overseeing daily operations throughout a busy district while on watch, and he was a designated search and rescue mission coordinator. On his OER dated April 30, 2010, he received primarily excellent marks of 6 (out of 7) in the eighteen performance dimensions and a mark in the fifth spot (out of 7) on the officer comparison scale, denoting an “excellent officer.” On his OER dated May 31, 2011, he received nine marks of 6 and nine marks of 7 in the performance dimensions and another mark in the fifth spot on the comparison scale. On his final OER at this assignment, dated May 31, 2012, he received eight marks of 6 and ten marks of 7 in the performance dimensions and another mark in the fifth spot on the comparison scale. He was also “strongly recommended for promotion with the very best of peers.”

On June 1, 2012, the applicant reported for duty at the MSST. As the Operations Officer, he oversaw and coordinated the team's daily operations and supervised two officers and forty-eight enlisted members. The applicant received three annual OERs while assigned to the MSST. The first, dated May 31, 2013, is the disputed OER in this case (enclosed). The OER shows that the applicant initiated it and submitted his input on the final day of the reporting period, May 31, 2013. The XO signed the OER as Supervisor on August 1, 2013, the CO signed as Reporting Officer also on August 1, 2013, and the Chief of the Area Deployable Forces signed as the Reviewer on August 2, 2013.

In the Supervisor's section of the OER, the XO assigned the applicant five standard marks of 4, six above-standard marks of 5, and two marks of 6. The XO's supporting comments provide specific examples of the applicant's performance.

As the Reporting Officer, the applicant's CO concurred with the XO's evaluation and noted that the applicant was an

[e]nthusiastic officer who demo'd steady progress adapting to MSST scope of work during 1<sup>st</sup> OER is DSF community. Ability to balance multiple tasks greatly enhanced; superior capacity to improve. Took on all tasks w/ commitment & embraced new challenges as opportunities to learn/develop; clearly dedicated to the CG. Excellent attitude and response to last min sked changes. Always willing to assist individuals w/ personal & professional issues. Dedicated to health/well-being of self and unit. Exceptional 'no quit' attitude. [A]ways highly responsive in supporting deployed crew.

The CO assigned the applicant two marks of 5, two marks of 6, and a mark of 7 for Health and Well-Being, and a mark in the fourth spot on the comparison scale, denoting a "good performer." The CO's supporting comments provide specific examples of the applicant's performance. The CO also wrote the following about the applicant's leadership and potential:

Recommend on-time promotion w/ peers to O4. Continues to show improvement in decision-making ability during stressful situations and in environments of complexity & risk including operations, training, and personnel matters. Ultimately succeeds in all challenging roles. Possesses great commitment to assist all unit mbrs w/ prof development as a department head - reflecting true devotion to others. Strongly recommended for challenging assignments within Sector/District Response and Command Center positions, and District/HQ staff positions. Solid candidate for post-graduate program of ch... in...

The applicant's next OER at the MSST, May 31, 2014, was signed by the same officers. In the Supervisor's section of the OER, the XO assigned him two marks of 4, seven marks of 5, and four marks of 6. The CO concurred with the XO and assigned the applicant two marks of 5, two marks of 6, and another mark of 7 for Health and Well-Being. The CO also assigned him a mark in the fifth spot on the comparison scale, denoting an "excellent officer" and recommended him for "on time promotion w/ peers."

In August 2014, the applicant was "in the zone" for promotion to LCDR but was not selected for promotion.







timely submitted his own input for the OER and that there were basic mistakes on his OER input, such as the start and end dates for the evaluation period and his primary duty.

The PRRB concluded that “there is clear and convincing evidence to overcome the presumption of regularity” with respect to the marks for Planning and Preparedness, Directing Others, and Initiative and so raised those three marks from 4s to 5s. The PRRB found that the applicant had not shown that the other marks or the contested comments were erroneous. Below is a chart showing the numerical marks in XO’s original draft of the disputed OER, the OER as originally signed by the rating chain in 2013, and the OER as amended by the PRRB in June 2014. The marks in the XO’s section are shaded blue, while those in the CO’s section are shaded gold.

	Planning/Preparedness	Using Resources	Results/Effectiveness	Adaptability	Prof. Competence	Speaking & Listening	Writing	Looking Out for Others	Developing Others	Directing Others	Teamwork	Workplace Climate	Evaluations	Initiative	Judgment	Responsibility	Professional Presence	Health & Well-Being	Coma/Incon Scale
XO's draft OER	3	4	4	5	4	3	3	6	4	4	6	6	3	4	5	6	5	7	3
Original signed OER	4	4	5	6	4	4	4	5	5	4	6	5	4	4	5	6	6	7	4
PRRB amended OER	5	4	5	6	4	4	4	5	5	6	5	4	5	5	6	6	7	4	

In August 2015, after the disputed OER was amended pursuant to the order of the PRRB, the applicant was again considered for promotion to LCDR but was not selected. Having been twice non-selected for promotion, the applicant would normally have been discharged from active duty on June 30, 2016. But he was selected for continuation on active duty for another two years by a continuation board in April 2016. Therefore, the applicant was again considered for promotion in 2016 and 2017. Although he received excellent OERs at his next duty assignment, he has not been selected for promotion.

**VIEWS OF THE COAST GUARD**

On November 3, 2016, a Staff Judge Advocate submitted an advisory opinion in which he stated that based on the PRRB’s decision, the applicant has shown that there was a prejudicial error when his record was reviewed by the LCDR selection board in 2014. He stated, however, that the applicant has already received the relief he was entitled to under *Engels v. United States*, 230 Ct. Cl. 465, 468 (1982), as a result of the PRRB’s decision. He explained that the disputed OER was amended pursuant to the PRRB’s decision before the LCDR selection board convened in 2015, but the applicant was not selected. Then after being selected for continuation, the applicant was again non-selected in 2016 and 2017. Therefore, he argued, the applicant is not entitled to additional relief based on the PRRB’s decision.

The Staff Judge Advocate also adopted comments provided in a memorandum on the case submitted by the Personnel Service Center (PSC). PSC stated that the applicant has not shown that the disputed OER, as amended by the PRRB, was erroneously prepared or is erroneous or



unjust. PSC stated that a Reporting Officer is supposed to rely on input from others in preparing an OER and so the CO's reliance on performance input and recommended marks and comments from the XO was proper. PSC noted that it is customary for a Reporting Officer to rely on information from the Supervisor in preparing an OER, and the record shows that the CO amended some of the marks and comments that the XO had recommended in the draft OER. PSC also noted that the record shows that the CO concluded that the XO had strictly interpreted the written standards on the OER form, but this is not evidence that the XO lowered the applicant's marks to benefit himself comparatively.

PSC noted that the applicant complained that his prior CO could not provide performance input for the OER because he had been relieved of command for cause. PSC stated that pursuant to Article 5.A.2.g.(2)(b) of the Officer Manual, a CO who has been relieved for cause is disqualified from participating in the evaluation of prior subordinates and so it would have been inappropriate for the applicant's rating chain to consult the prior CO.

PSC argued that the applicant has not shown that the disputed OER, as amended by the PRRB, is erroneous or unjust. PSC noted that he did not submit additional evidence showing any additional errors in the OER.

Regarding the applicant's complaint about a lack of formal counseling, PSC noted that the XO's declaration shows that the applicant received feedback throughout the reporting period. PSC also noted that the Officer Manual places the onus for learning expectations, managing one's performance, and receiving feedback on the officer. PSC argued that the applicant has not shown that he received inadequate feedback.

Regarding the late preparation of the OER, PSC stated that although the rating chain did not meet the schedule provided in the Officer Manual, the late submission of the OER does not invalidate it.

Regarding the applicant's claim that he felt forced to sign the OER and feared reprisal, PSC stated that pursuant to Article 5.A.4.c.(1)(b) of the Officer Manual, the reported-on officer is supposed to review and sign an OER after it has been completed by the Reviewer and before it is forwarded to PSC for entry in the record. PSC stated that the reported-on officer's signature indicates only that he has reviewed it, and the applicant has not shown that he would have experienced retaliation if he had not signed the OER.

PSC concluded that no further relief is warranted because the applicant has not shown that the OER, as amended by the PRRB, is erroneous or unjust, and his record has been reviewed by at least two LCDR selection boards since the OER was amended by the PRRB.

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

The applicant disagreed with the views of the Coast Guard and averred that the disputed OER is erroneous in comparison to his performance during that period and his entire performance record.

The applicant argued that he has submitted evidence showing that the disputed OER is still erroneous and that his marks should be higher. He also alleged that he was entrusted with responsibilities beyond his pay grade and that a few times, he served as both Acting CO and XO when those officers were absent, and shortly after the reporting period, he served as Acting XO for more than thirty days while the XO was away in addition to serving as the Operations Officer. He argued that such responsibility contradicts the OER.

The applicant stated that the Coast Guard has failed to acknowledge that the XO had a conflict of interest in evaluating him. He stated that the Officer Manual requires Reporting Officers to be at least two year groups apart from the Reported-On Officer but does not address Acting Reporting Officers. However, he argued, the policy is clearly in place to avoid the type of conflict of interest that the XO had in preparing his OER.

The applicant pointed out that nothing in the Officer Manual states that the Supervisor should provide a draft OER to the Reporting Officer, as the XO did, and it clearly provides that the last six marks and comment blocks on the OER are the Reporting Officer's responsibility. He also noted that PSC failed to address the fact that the CO had consulted the Command Master Chief about his performance even though the Command Master Chief was not a member of the applicant's rating chain. He argued that an enlisted member should not have any influence on an officer's OER unless the officer's performance has had an impact on the well-being or stature of the enlisted member. He also stated that the Command Master Chief "was not directly involved" in the applicant's duties as the Operations Officer but supported enlisted members in the Operations Department and provided engineering support for operations under the applicant's control.

The applicant stated that because the Staff Judge Advocate did not address all of the arguments and evidence he has submitted, he believes that PSC did not provide it.<sup>4</sup> He argued that if his submissions were not properly reviewed, it might have adversely affected the Staff Judge Advocate's recommendation.

The applicant also alleged that in April 2015, the CO revealed to him that he had recommended that the XO be relieved of his duties sometime in 2014. The applicant stated that the MSST's command climate surveys showed that the XO's leadership was detrimental to the unit, but the Area Commander refused to relieve the XO of his duties. Instead, the XO was allowed to transfer early and "continue his career without blemish." He also complained that both the CO and XO called the marks on his prior, 2012 OER "grossly inflated" without having any factual basis for saying so.

The applicant also submitted four significant new statements from other officers and argued that they prove that his rating chain either overlooked or downplayed his performance and achievements:

- A captain who retired from the Coast Guard in 2007 stated that the disputed OER does not align with the applicant's performance as he observed it while serving as a civilian GS-12 port security specialist in the same city. He stated that he had regular contact with

---

<sup>4</sup> Pursuant to 33 C.F.R. § 52.42, the BCMR staff provides the JAG's office with a complete copy of every application, and the JAG's office scans the application so that it can be accessed by PSC.

the applicant as they worked together on security for the city's fireworks on July 4, 2013; a port assessment visit that same summer; and an exercise involving a hypothetical threat against a nuclear power plant in 2014. He stated, with respect to the fireworks, that the applicant attended several meetings with law enforcement partners to ensure that the MSST's capabilities were included in their security plans, which resulted in "a well-coordinated, incident-free weekend, which went a long way toward restoring public trust in the wake of the marathon attack."

The captain also stated that he has extensive experience in preparing OERs and believes that the OER contains "material errors" that prejudiced the applicant's chances of being promoted. The captain claimed that it contains "serious overstatements, understatements, and gross omissions" and that the applicant should have been rated as an outstanding performer, instead of just a good performer. He stated that the OER comments are a "mere grocery list of accomplishments" without "value judgments or statements of impact," which undermined the applicant's "superlative and exhaustive efforts." He noted that as the applicant and other members of the MSST stood watch during the Republican National Convention, the "candidates and attendees were protected from terrorist attack while other millions of Americans watched at home on TV. In other words, lost in the minutia, this OER does not connect [the applicant's] accomplishments to the big picture." The captain alleged that the OER lacks "any substantive statement regarding his performance of duty," which makes it problematic and inaccurate. He stated that the comments do not properly credit the applicant "for what he did right, as well its value to his unit and to the CG as a whole. These things not said by his supervisors lead inadvertently to ho-hum instead of to: wow! promote this officer immediately." He alleged that the applicant's supervisors failed to capture the most positive aspects of his performance.

The captain also alleged that the OER fails to evaluate and describe the applicant's communications skills accurately. He called the applicant a "poised and professional speaker and communicator" who writes and thinks very well and on a par with or exceeding many lieutenants whom he has supervised. The captain stated that the comments about the applicant's written work needing revision "are unnecessarily damaging and misleading in two ways: first, they are not specific and may be more a matter of the XO's taste rather than any writing flaw; and, second, they do not reflect the significant improvement [the applicant] made in this area during the marking period." He also stated that mentioning the problem twice in the OER "seems excessive to me."

The captain stated that he sees no evidence of malice but believes that the XO was a "novice in writing OERs as an XO" and "trying to be tough" because it was the applicant's first OER at the unit. He also stated that MSSTs are elite units and so the XO may have judged the applicant by a higher standard than officers at other units are judged. The captain stated that the OER does not take into account the applicant's "plethora of flawless operations, his long hours and sacrifices in support of MSST deployments during a high op-tempo period, and customer relation activities in support of his unit and the CG as a whole." He stated that he believes that the applicant "ranks among the very best LT's I have ever seen and should have received much better comments and grades." He stated that the mark in the fourth spot that the CO assigned the applicant on the comparison scale does the applicant "a great disservice." He believes

that “the difference between ordinary and exceptional is a matter of heart. In everything I ever observed in what [the applicant] said or did I saw a good, true, CG heart; someone who loved the mission and recognized the great gift given to him to be a member of the CG. ... Love of the CG was always my yardstick in measuring the performance of those who worked for me, and recognition of the love that [the applicant] brought to his duties is the central missing element in his OER. His supervisors did not observe, did not discern, did not value, and did not appreciate the love that [the applicant] puts into his work.” He concluded that the applicant should be promoted to LCDR.

- A lieutenant who was also a department head at the MSST stated that the applicant expertly managed and relied heavily on his team leaders “to take decisive action in both operational planning and execution. His ability to delegate this authority and follow up allowed [the MSST] to seamlessly transition between” major operations. She stated that while the MSST was tasked with leading Hurricane Sandy relief operations,” the applicant “continued to lead the Operations Department through the then Commanding Officer’s Relief for Cause and the standing down of the MLE/FP [maritime law enforcement/force protection] team.” However, she stated, the applicant’s “management abilities propelled [the MSST’s Operations Department] through tumultuous times to achieve sustained operational success and re-instatement of the MLE/FP team to a fully operational status.” She stated that the applicant “achieved his DTL [deployment team leader] certification days after the end of reporting period and within the Commanding Officer’s timeline expectations.” He also “demonstrated notable expertise in marine safety and response operations” and shared his knowledge with others. She stated that “[a]s a credible and respected specialist, he led the presentation of MSST capabilities and associated legal authorities to ... legal interns. His routine interaction with multiple layers, including senior officers, within the Coast Guard and other Government Agencies improved operational planning and execution and partner agency inoperability.” She also praised his leadership in the preparation of members’ evaluations and holding subordinates accountable for timely submissions. She stated that the applicant showed unwavering compassion for his subordinates, worked overtime to ensure his department excelled without overburdening his subordinates, and epitomized servant leadership. She concluded that while “some elements of this OER are reflective of his performance as a developing Operations Officer, it fails to reflect the many contributions to the unit and the U.S. Coast Guard. She recommended that the applicant be promoted to LCDR.

- A lieutenant who was assigned to the Sector and supervised a vessel boarding team during the reporting period for the disputed OER stated that he worked regularly with the applicant, and he attributed the success of several operations to the applicant’s “subject matter expertise and exceptional leadership of his crew.” He stated that the applicant “seamlessly directed his entire crew in the flawless execution of all mission objectives and provided a critical force multiplier” to the Sector, and the working relationship between the MSST and the Sector improved. He described the applicant as an exceptional officer who excels at rallying others to achieve a common goal.
- A petty officer (ME1) who served as a Maritime Law Enforcement/Force Protection (MLE/FP) Lead Petty Officer at the MSST from January 2012 through June 2015 stated

that the applicant’s contribution to the MSST was unequaled and that he strongly deserves better marks. The ME1 stated that the applicant daily inspired him with his performance, work ethic, judgment, and leadership. He noted that following the marathon bombing, the applicant ensured that the waterside and MLE/FP divisions of the MSST were on-scene within 90 minutes, and he “seamlessly led the entire Operations Department in the defense and protection” of the harbor.

**APPLICABLE LAW AND POLICY**

*Officer Evaluation Policies*

Article 5.A.1.b. of COMDTINST M1000.3, the Officer Manual in effect in 2013, states the following:

- (1) Commanding Officer Responsibility. Commanding officers must ensure accurate, fair, and objective evaluations are provided to all officers under their command. To that end, performance evaluation forms have been made as objective as possible, within the scope of jobs and tasks performed by officers. In using the Officer Evaluation Form, Form CG-5310, strict and conscientious adherence to specific wording of the standards is essential to realizing the purpose of the evaluation system.
- (2) Officer Responsibility. Individual officers are responsible for managing their performance. This responsibility entails determining job expectations, obtaining sufficient performance feedback, and using that information to meet or exceed standards.

Article 5.A.1.c.(5) states that “[n]o specific form or forum is prescribed for performance feedback. Performance feedback occurs whenever a subordinate receives advice or observations related to their performance in any evaluation area. Performance feedback can take place formally (e.g., during a conference) or informally (e.g., through on-the-spot comments). Regardless of the forum, each officer should receive timely counseling and be clear about the feedback received. If feedback is not fully understood, it is the Reported-on Officer’s responsibility to immediately seek clarification and the rating chain’s responsibility to provide it.”

Under Article 5.A.2.c.(2), an officer normally initiates preparation of his own OER by submitting performance input to the Supervisor “not later than 21 days before the end of the reporting period.” [REDACTED]

[REDACTED] Officer reports on a daily or frequent basis. The Supervisor is “normally senior to the Reported-on Officer.” The Supervisor provides direction, guidance, and “timely performance feedback to the Reported-on Officer upon that officer’s request during the period, at the end of each reporting period and at such other times as the Supervisor deems appropriate.” The Supervisor evaluates the Reported-on Officer and completes the Supervisor’s section of the OER.

Under Article 5.A.2.e., the Reporting Officer is normally the Supervisor of the Supervisor. Unless serving as a CO, the Reporting Officer “will normally be” at least two year groups higher than the Reported-on Officer. The Reporting Officer completes the Reporting Officer’s section of the OER and bases his evaluation on direct observations, input from the Reported-on Officer and the Supervisor, and “other reliable reports and records.” The Reporting Officer holds

the Supervisor accountable for timely and accurate evaluations and “shall return a report for correction or reconsideration if the Supervisor’s submission is found inconsistent with actual performance or unsubstantiated by narrative comments.” The Reporting Officer also provides performance feedback.

Under Article 5.A.2.f., an OER Reviewer is not a specific individual but a “position designated by competent authority” for ensuring that an OER “reflects a reasonably consistent picture of the Reported-on Officer’s performance and potential.” The Reviewer ensures that the Supervisor and Reporting Officer have adequately executed their duties and forwards the OER to PSC within 45 days of the end of the reporting period.

Under Article 5.A.2.g., an officer who has been relieved for cause due to misconduct or unsatisfactory performance is disqualified from carrying out rating chain responsibilities.

Article 5.A.4.c.(4) states the following about a Supervisor’s preparation of an OER (similar instructions are provided for Reporting Officers in Article 5.A.4.c.(7).):

(b) For each evaluation area, the Supervisor shall review the Reported-on Officer’s performance and qualities observed and noted during the reporting period. Then, for each of the performance dimensions, the Supervisor shall carefully read the standards and compare the Reported-on Officer’s performance to the level of performance described by the standards. The Supervisor shall take care to compare the officer’s performance and qualities against the standards—not to other officers and not to the same officer in a previous reporting period. After determining which block best describes the Reported-on Officer’s performance and qualities during the marking period, the Supervisor selects the appropriate circle on the form.

(c) Where the Supervisor has insufficient information to provide a mark or if observations are believed inadequate to render a judgment, the “not observed” circle shall be used. The reason for the “not observed” must be briefly stated in the “comments” blocks or Section 2.

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

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

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

(h) Citing weaknesses does not make the OER derogatory unless the OER contains a derogatory mark in accordance with Article 5.A.4 h. of this Manual.

(i) All comments shall be confined to the space allotted to the Supervisor. No comments shall be continued from one comment block to another.

Article 5.A.4.c.(8) states that the Reporting Officer completes the comparison scale on an OER by choosing the mark “that most closely reflects the Reporting Officer’s ranking of the Reported-on Officer relative to all other officers of the same grade the Reporting Officer has known.” But the Reporting Officer may choose to make no mark “if there were insufficient opportunities to make a judgment.”

### *Promotion Zones*

Under Article 3.A.4. of the Officer Manual, a lieutenant may not be considered for promotion to LCDR until he has completed three years of service as a lieutenant. Before each selection board, the Secretary determines the number of lieutenants to be selected for promotion to LCDR based on the number of current and expected vacancies. The Secretary also establishes a promotion “zone” from the lieutenants eligible for promotion. The number of officers “in the zone” for promotion—whose records will be considered by the selection board—is based on the needs of the Service, the “estimated number of vacancies available in future years to provide comparable opportunity to promote officers in successive year groups,” and the “extent to which current terms of service in that grade conform to a desirable career promotion pattern. However, such number of officers shall not exceed the number to be selected for promotion divided by six-tenths (0.6),” which makes the opportunity for selection at least 66%.

## 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>5</sup>
3. The applicant alleged that the OER dated May 31, 2013, which documents his first year of service as the Operations Officer of an MSST, is erroneous and unjust and should be removed from his record in its entirety. In considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant’s OER 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 OER is erroneous or unjust.<sup>6</sup> 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.”<sup>7</sup> In addition, to be entitled to correction of an OER, an applicant must prove by a preponderance of the evidence that the disputed

---

<sup>5</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>6</sup> 33 C.F.R. § 52.24(b).

<sup>7</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).

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>8</sup>

4. Based on the evidence of record, the Board finds that as an operations duty officer standing watches at a District Command Center from 2008 to 2012, the applicant received increasingly excellent OERs. In the summer of 2012, both he and the XO reported for duty at the local MSST, where the applicant served as the Operations Officer, reporting to both the XO and CO. Following the MSST’s involvement in the response to Superstorm Sandy in October 2012, the CO of the MSST was removed for cause in November 2012 and there was a “stand down” of the MSST’s maritime law enforcement/force protection team. The XO was the Acting CO until a new CO assumed command in February 2013. Following the marathon bombing in April 2013, the MSST responded to the scene within 90 minutes. The OER credits the applicant with “prudent task delegation” for operations during the response to the storm and the bombing, three National Special Security Events, local operations, and seven tactical trainings, as well as other accomplishments during the reporting period. The applicant received no formal counseling during the reporting period, but he received substantial informal feedback. In particular, his written work was frequently returned for correction. After the applicant submitted his own OER input on the last day of the reporting period, May 31, 2013, the XO drafted an OER recommending three low marks of 3 and a mark in the third spot on the comparison scale, denoting a fair performer, but also three excellent marks of 6 and one top mark of 7. The CO and XO deliberated the OER marks together, and the CO consulted the Command Master Chief about the applicant’s performance. In the original OER signed by the XO and the CO on August 1, 2013, the draft marks of 3 were raised to 4s but two draft marks of 6 had been lowered to 5s. In the Reporting Officer’s section of the OER, the CO modified some of the comments drafted by the XO, raised one of the recommended performance marks, and raised the recommended comparison scale mark to the middle spot, denoting a good performer. The CO also concurred in the marks and comments in the XO’s section of the evaluation. The applicant did not file an OER Reply for entry in his record. In the next reporting period, his performance improved, and the XO and CO both assigned him significantly better marks on his May 31, 2014, OER. Both the XO and the applicant were “in the zone” for promotion in August 2014, and the XO was selected, but the applicant was not. When the applicant challenged the disputed OER through the PRRB in 2015, the XO confirmed its accuracy, but the CO claimed that three marks in the XO’s section and one of his own should be raised. The CO did not cite any new information about the applicant’s performance during the reporting period but noted that the applicant had failed of selection and opined that the XO had “strictly” applied the written standards on the OER form to the applicant’s performance. The CO confirmed the accuracy of the remaining marks and all the comments, however. In response, the PRRB raised two of the XO’s marks and one of the CO’s marks but left the mark for Professional Competence as a 4. Nevertheless, the applicant was not selected for promotion in 2015 or in subsequent years.

5. The applicant alleged that the XO marked him erroneously low on his May 2013 OER because the XO surmised that they would both be in the zone for promotion in August 2014 and marked him low to attain an unfair competitive advantage. The Board notes, however, that (a) the XO might well have guessed but could not have known for certain in 2013 that they

---

<sup>8</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).



would both be “in the zone” for promotion in 2014 as their dates of rank were months apart and the size of the zone varies from year to year; (b) the applicant has not challenged the accuracy of his May 2014 OER, which the XO also signed; (c) the applicant has submitted no evidence whatsoever to show that the XO would have acted so dishonorably to gain an advantage over a single fellow lieutenant out of hundreds of candidates; and (d) the XO himself was being evaluated in his own OERs on the accuracy of his evaluation of the applicant. The Board finds that the applicant has not overcome the presumption of regularity or proven by a preponderance of the evidence that the XO consciously or unconsciously downgraded him based on an expectation that they would be competing for promotion to LCDR at the same time.

6. The applicant alleged that the new CO failed to adequately perform his duties as a Reporting Officer in preparing the 2013 OER and so the XO had an undue influence over it because the XO provided the CO with a draft of an entire OER—not just the Supervisor’s section; because the prior CO had been removed for cause in November 2012, and so was properly prohibited from evaluating the applicant;<sup>9</sup> and because the new CO had been present at the MSST only since February 11, 2013. Pursuant to Article 5.A.2.e. of the Officer Manual, the Reporting Officer is supposed to base his evaluation on input from the Supervisor, as well as on direct observations and other reliable reports. In addition, it is neither prohibited nor uncommon in the Coast Guard for a Supervisor to provide a Reporting Officer with a draft of an entire OER, showing the marks and comments that the Supervisor recommends that the Reporting Officer assign in the Reporting Officer’s section of the OER, as a way of providing that input to the Reporting Officer. The CO was present at the MSST for half of February and all of March, April, and May 2013 and was able to observe the applicant’s performance as the Operations Officer on a daily basis during significant operations in that period. Under the OER rules, the CO could have elected to assign “not observed” marks if he believed he did not have a sufficient basis for evaluating the applicant.<sup>10</sup> The CO’s decision to assign marks shows that he felt that he had sufficiently observed the applicant’s performance to evaluate him. The record also shows that the CO properly considered other reliable reports, in particular by consulting the Command Master Chief, whose role is in part to advise the CO. The preponderance of the evidence shows that the CO carefully deliberated the OER and elected to amend both marks and comments that had been recommended by the XO. The Board therefore finds that the applicant has not proven by a preponderance of the evidence that the CO failed to perform his duties properly as a Reporting Officer in 2013 or that the XO had an improper or undue influence on the OER.

7. The applicant complained that while the XO was the Acting CO for over two months during the reporting period, no new rating chain was published. Therefore, he argued, the XO was de facto acting as his Reporting Officer during that time even though the XO was not more than two years senior to the applicant. Article 5.A.2.e.(c) of the Officer Manual states that a Reporting Officer who is not a CO “will normally be” at least two years senior to the Reported-on Officer. But a CO’s removal for cause is not a normal circumstance, the XO was the Acting CO, and the applicant has not shown that the XO actually exercised any of the authorities reserved to a Reporting Officer over him during those months. In addition to preparing the final sections of an OER, a Reporting Officer provides feedback to a subordinate, but so does a

---

<sup>9</sup> Officer Manual, Article 5.A.2.g.

<sup>10</sup> Officer Manual, Articles 5.A.4.c.(7) and (8).

Supervisor. The XO was only a few months senior to the applicant, but he was the Acting CO and there is no requirement in Article 5.A.2.d. of the Officer Manual that a designated Supervisor be senior to a Reported-on Officer. The disputed OER was not prepared until the summer of 2013, and it was properly signed by the CO—the applicant’s designated Reporting Officer—who was more than two years senior to him. The Board finds that the applicant has not shown that the disputed OER was adversely affected by the fact that the XO served as the Acting CO of the MSST for more than two months. Nor has he proven by a preponderance of the evidence that the Coast Guard violated Article 5.A.2.e.(c) of the Officer Manual during the reporting period.

8. The applicant argued that his 2013 OER is erroneous and unjust because he received no formal counseling or documented reprimand during the reporting period. There are no derogatory marks in the OER, however, and no formal counseling or reprimand is required for an officer to receive standard or even substandard marks on an OER. Pursuant to Article 5.A.1.c.(5) of the Officer Manual, no specific form or forum is prescribed for performance feedback, and an officer must request it if he wants more feedback. The preponderance of the evidence shows that the applicant received regular verbal and written feedback, and a lack of formal counseling or documented reprimand is not grounds for removing an officer’s OER.

9. The applicant complained that the 2013 OER was not completed until August 2013. Pursuant to Article 5.A.2.f. of the Officer Manual, the OER Reviewer is supposed to ensure that an OER is sent to PSC within 45 days of the end of the reporting period. Therefore, the OER should have been completed by July 15, 2013, instead of August 2, 2013. The applicant himself, however, was supposed to initiate and submit his input for the OER no later than 21 days *before* the end of the reporting period,<sup>11</sup> but block 1.m. of the OER shows that he did not submit it until the last day of the reporting period, May 31, 2013. However, even if the applicant had initiated the OER timely, the Board has long held that delay *per se* is not a valid reason for removing an OER, and the applicant has not shown that the delay adversely affected the disputed OER. Therefore, the fact that the disputed OER was not completed by the rating chain until August 2, 2013, is not grounds for removing it.

10. The applicant complained that the marks and comments in the disputed OER are inaccurate, but the Board finds that he has not proven by a preponderance of the evidence that the disputed OER contains a “misstatement of significant hard fact.”<sup>12</sup> Both the XO and CO have confirmed the accuracy of the OER comments, and the Board is not persuaded by the statements of other members that either the XO’s or the CO’s marks in the 2013 OER are erroneously low. The CO commented that he now believes that the XO “strictly” evaluated the applicant in comparing the written standards on the OER form to his performance, but that is how the Officer Manual instructs a Supervisor to evaluate subordinates.<sup>13</sup> The applicant submitted statements from (a) a retired captain who praised his performance, provided details of his performance in operations that occurred during the subsequent reporting period, and guessed that he would have written a very different OER; (b) a fellow department head who praised his performance and noted that the applicant had managed the Operations Department through

---

<sup>11</sup> Officer Manual, Article 5.A.2.c.(2).

<sup>12</sup> *Hary*, 618 F.2d at 708.

<sup>13</sup> Officer Manual, Article 5.A.4.c.(4)(b).

tumultuous times, including an operational stand down, had relied heavily on his team leaders, and had qualified as a team leader after the end of the reporting period (but within the new CO's timeline); (c) a lieutenant assigned to the Sector who sometimes worked with the applicant and attributed the MSST's successes to him; and (d) a petty officer who worked for the applicant from 2012 through 2015, called his leadership inspiring, and noted that an MSST team had responded to the marathon bombing within 90 minutes and that the applicant had "seamlessly" ensured the protection of the harbor thereafter. The CO and XO, however, were the officers to whom the applicant reported on a daily basis during the reporting period and who were tasked with overseeing and evaluating all aspects of his work. The record shows that the applicant's performance was clearly improving, which in turn improved the CO's and XO's assessment of his performance in his 2014 and 2015 OERs. His improvement and non-selection have also caused the CO to retrospectively reconsider a few of the marks in the 2013 OER, but retrospective reconsideration is not grounds for amending an OER.<sup>14</sup> An officer's improved performance over time and non-selection for promotion often affect views of past performance, but an officer must be assessed solely on his performance during the reporting period.<sup>15</sup>

11 Accordingly, the Board finds that the applicant has not proven by a preponderance of the evidence that the disputed OER is erroneous or unjust. He has not shown that it was adversely affected by a "misstatement of significant hard fact"; factors "which had no business being in the rating process," such as the XO's allegedly self-serving preparation of the OER; or a prejudicial violation of a statute or regulation.<sup>16</sup> Therefore, the Board finds no grounds for amending or removing the disputed OER.

12. The applicant argued that he is entitled to at least partial relief based on the PRRB's June 2015 decision to raise three of his performance marks in his 2013 OER after the applicant was passed over for promotion in August 2014. The JAG argued that the applicant is not entitled to any additional relief under *Engels v. United States*, 678 F.2d 173 (Ct. Cl. 1982),<sup>17</sup>

---

<sup>14</sup> *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. 2017-161 and 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).

<sup>15</sup> COMDTINST M1000.3, Officer Manual, Article 5.A.4.f.

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

<sup>17</sup> In *Engels v. United States*, 678 F.2d 173, 176 (Ct. Cl. 1982), the court held that the Board must determine whether an applicant's non-selection should be removed by answering two questions: "First, was [the applicant's] record prejudiced by the errors in the sense that the record appears worse than it would in the absence of the errors? Second, even if there was some such prejudice, is it unlikely that [the applicant] would have been promoted in any event?" When an officer showed that his record was prejudiced before a selection board by error, "the end-burden

because his record, as amended by the PRRB, has since been reviewed more than twice by regular selection boards, and he was not selected for promotion. Since the enactment of the Coast Guard's SSB statute, 14 U.S.C. § 263, however, the question before the Board in cases such as this is whether the applicant has proven by a preponderance of the evidence that he is entitled to an SSB under that statute. In *Richey v. United States*, 322 F.3d 1317, 1324 (Fed. Cir. 2003), the court stated, "In *Porter*<sup>18</sup> we held that once it is determined that the initial selection board's decision 'involved material administrative error,' nothing in this statute [10 U.S.C. § 628, a similar SSB statute that applies to the other military services] requires the Secretary, acting through the Corrections Board, to make a harmless error determination." The court stated that under 10 U.S.C. § 628, if a correction board (of the Army, Navy, or Air Force) finds that an officer's record contained a material error when it was reviewed by a selection board, the correction board should refer the matter to an SSB. Therefore, the *Engels* test should not be applied under these circumstances, and the JAG's argument that the decisions of the subsequent regular selections boards that have not selected the applicant for promotion should stand in lieu of a decision by an SSB is not persuasive because the list of candidates and their records change from year to year.

13. Title 14 U.S.C. § 263(b)(1) applies to cases in which a Coast Guard officer was, like the applicant, considered but not selected for promotion. It states that the Secretary may convene an SSB if the Secretary determines that "(A) an action of the selection board that considered the officer or former officer--(i) was contrary to law in a matter material to the decision of the board; or (ii) involved material error of fact or material administrative error; or (B) the selection board that considered the officer or former officer did not have before it for consideration material information." The Board finds that (A)(i) does not apply because the applicant has not shown that the selection board itself acted in a way that was contrary to the laws governing selection boards. Nor does (B) apply because the applicant has not shown that the selection board did not have before it any material information that should have been in the record before the Board. The only remaining consideration is whether the 2014 (PY 2015) LCDR selection board's decision not to select the applicant "involved material error of fact or material administrative error," pursuant to paragraph (A)(ii). In accordance with Article 6.B.13.e.(4), the Coast Guard must convene an SSB to mimic the August 2014 selection board if the Board finds that his record contained such a material error when it was reviewed by that selection board.

14. The PRRB amended the applicant's 2013 OER in June 2015 by raising three marks. The PRRB's decision appears to this Board to have been based primarily but not entirely on the CO's retrospective reconsideration of the OER—with the hindsight of the applicant's subsequent, improved performance and non-selection for promotion. Although retrospective reconsideration is not a proper basis for amending an OER,<sup>19</sup> the PRRB did conclude that those three marks had been erroneous and raised them, and the PRRB's decision was approved by the Coast Guard's reviewing authority. The amended OER indisputably reflects better on the applicant's

---

of persuasion [fell] to the Government to show harmlessness—that, despite the plaintiff's *prima facie* case, there was no substantial nexus or connection" between the prejudicial error and the non-selection. *Christian v. United States*, 337 F.3d 1338, 1343 (Fed. Cir. 2003), citing *Engels*, 678 F.2d at 175; *Quinton v. United States*, 64 Fed. Cl. 118, 125 (2005).

<sup>18</sup> *Porter v. United States*, 163 F.3d 1304, 1318-19 (Fed. Cir. 1998) (rejecting the "but for" test for deciding whether a non-selection for promotion should be removed).

<sup>19</sup> See note 14 above.

performance than the original OER, and so the Board cannot conclude that the lower marks in the original OER were immaterial to the LCDR selection board's decision not to select him for promotion in August 2014.

15. Accordingly, partial relief should be granted by directing the Coast Guard to convene an SSB to determine whether the applicant's non-selection for promotion in August 2014 should be changed to a selection for promotion. If he is not selected for promotion by the SSB, no further relief is warranted. If he is selected for promotion to LCDR by the SSB, he should be promptly returned to active duty if he has been separated in the interim; his discharge should be voided so that his record will not reflect any separation; he should be appointed to LCDR as soon as practicable and in accordance with the Constitution; and upon promotion, his LCDR date of rank should be backdated to what it would have been had he been selected for promotion in August 2014 and he should receive all back pay and allowances.

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

[REDACTED]

**ORDER**

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

Within 90 days of the date of this decision, the Coast Guard shall convene a Special Selection Board in accordance with 14 U.S.C. § 263 to determine whether his non-selection for promotion in August 2014 by the PY 2015 LCDR selection board should be corrected to a selection for promotion. His OER dated May 31, 2013, that is shown to the Special Selection Board shall be the one currently in his record because it has been corrected by the Personnel Records Review Board.

If he is not selected for promotion by the Special Selection Board, the non-selection shall remain in his record and no further relief is granted.

If he is selected for promotion by the Special Selection Board, he shall be promptly returned to active duty (if he has been separated) and his discharge shall be null and void so that his record will not show any separation from active duty; his record shall be corrected to show that he was selected for promotion in August 2014 by the PY 2015 LCDR selection board; he shall be appointed to LCDR as soon as practicable and in accordance with the Constitution; and upon promotion, his LCDR date of rank shall be backdated to what it would have been had he been selected for promotion in August 2014 and the Coast Guard shall pay him all due back pay and allowances.

July 27, 2018

