

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-069

████████████████████
██████████ OS1

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the completed application on January 26, 2018, and assigned it to staff attorney ██████████ to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated December 7, 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 former Operations Specialist First Class who was separated from the Coast Guard on June 30, 2015, asked the Board to correct his record by taking the following actions:

- Remove the Officer Evaluation Report (OER) dated January 31, 2010;
- Remove the Special Officer Evaluation Report (SOER) dated February 4, 2010;
- Remove the two non-selections for promotion to Lieutenant (LT);
- Appoint the applicant as a permanent officer in the Coast Guard;
- Convene a Special Selection Board (SSB) to determine if the applicant would have been promoted to LT with a corrected record; and
- Award all appropriate back pay and allowances.

The applicant claimed, through counsel, that he is entitled to the requested relief because he “was not afforded a fair and accurate appraisal period” and because the disputed OERs caused his military record to be incomplete before the LT selection boards, causing him to be non-selected for promotion.

The applicant explained that in his first duty assignment as an officer from June 13, 2007, to July 2, 2009, he received OERs that “were nothing short of exemplary,” particularly the OER

dated July 2, 2009, and he was awarded the Coast Guard Commendation Medal for his performance during that tour of duty. On July 3, 2009, however, he reported for duty aboard a cutter where he encountered poor leadership which led to his unfavorable OERs, he asserted. His direct supervisor was LT Y and his Reporting Officer was Lieutenant Commander (LCDR) M, “both of whom were deficient in certain leadership areas.” The applicant claimed that his leadership failed to ensure that he “had the support necessary to qualify as a Deck Watch Officer.” The applicant asserted that this claim is directly supported by the affidavits he submitted to the Board by several of his shipmates and by LCDR M himself.

The applicant argued that the OERs he received aboard the cutter “were inapposite to those he received in his previous billet.” He refuted that notion that he was “apathetic,” as described in the OERs. The applicant asserted that after he was relieved of his duties and sent on temporary duty to another command, the OERs he received after the two aboard the cutter were “inapposite to the two authored by LT [Y] and LCDR [M].” He stated that his later OERs included “break out comments” that were much more representative of his true abilities as an officer.

On June 22, 2010, the applicant began his next assignment as an officer aboard a different cutter. He stated that, although he did not qualify as a Deck Watch Officer aboard this cutter either, “his strengths within the intelligence community were recognized, and he was recommended for promotion and billets within the intelligence community.” The applicant stated that he was unable to qualify due to the stressors associated with moving so soon after being assigned to the cutter and being concerned “that if he did not succeed aboard [his next cutter] his career as an officer in the Coast Guard would be over.”

The applicant asserted that he also received “solid” OERs at his final command from February 1, 2011, to January 31, 2012. The applicant stated that despite recommendations for promotions from his other assignments, the negative OERs from the first cutter “resulted in him being passed over for selection to LT.” As a result, he was not offered a permanent officer appointment and he was reverted back to his enlisted rank of Operations Specialist.

The applicant argued but for LT Y’s and LCDR M’s lack of leadership, he “would not have suffered so poorly” aboard the cutter and his OERs would have been more positive. Therefore, the OERs would have been more reflective of the “officer he truly was, and his military personnel file could have been ‘complete’ for purposes of permanent appointment and the LT selection board.” The applicant also argued that the purpose of having a probationary period for temporary officer appointments is to give time to assess the officer in “a spectrum of duties.” This way, if an officer shows weakness in one area, he has time to improve and demonstrate competency in another area. The applicant argued that this intent was not satisfied in his case. He asserted that LT Y and LCDR M admitted themselves that they did not treat him in a fair and supportive manner. Therefore, the applicant claimed, the error in his record is clear: LT Y and LCDR M did not provide him with a fair and accurate probationary period, which resulted in derogatory OERs, “which then had a direct impact on him not being offered a permanent appointment and being passed over for promotion to LT.” He asserted that the only action that can remedy this error and injustice is to grant his requests. He stated that but for the inadequate leadership of LT Y and LCDR M, he would still be serving as an officer in the Coast Guard “with well-deserved retirement eligibility.”

In support of his application, the applicant provided copies of official records which are described below in the Summary of the Record. He also provided several affidavits:

- Former LCDR M, Reporting Officer—LCDR M stated that he was the Executive Officer aboard the cutter in question and was responsible for overseeing the applicant’s “development as a Junior Officer and fulfillment of all duties, including collaterals and his primary duty as a Deck Watch Officer.” LCDR M stated that it was his opinion that it was the applicant’s failure to “qualify in his primary duty as Deck Watch Officer” that led to his removal from his primary duties. When asked if he believed there was also a leadership failure on the part of LT Y, LCDR M stated he believed that LT Y’s “poor leadership directly contributed to [the applicant’s] struggles” on the cutter. He stated that the applicant’s time aboard the cutter “was marked with overt and continuous conflict with LT [Y]. Their relationship was both distracting and counter-productive.” LCDR M stated that he did not place blame on the applicant for this relationship because LT Y “was a poor leader with communication issues who over delegated with little or no guidance given to subordinates.” When asked if he believed if the applicant had not been relieved of his duties early and been given enough time to develop if he would qualified, LCDR M stated that he firmly believed that if LT Y had not been “interfering” with the applicant’s learning opportunities and he worked for another capable officer then the applicant would have qualified as Deck Watch Officer. He stated that this opinion was based off of twelve years of operational experience. When asked if he believed removing the applicant was premature, LCDR M stated that he did believe it was premature. He stated that he wished the applicant would have had a “better opportunity to succeed.” He stated that the CO was “very quick to judge” the applicant in what was a training billet. LCDR claimed that he regretting “not being able to do more to prevent the actions taken to remove [the applicant].”
- LT G—In an affidavit dated August 29, 2016, LT G stated that he worked onboard the cutter in question with the applicant from August 2009 to March 2010. He stated that he frequently observed the applicant’s work performance on the cutter and described him as “fairly motivated and ... a hard worker.” When asked if he believed if the applicant was apathetic, LT G stated that he did not find the applicant to be apathetic. LT G stated that the applicant worked hard and “his performance results may not have always been indicative of his effort.” LT G stated that he observed the applicant to be “very unsupported” by LT Y and LCDR M. LT G claimed that while the applicant was struggling to qualify as a Deck Watch Officer, the “chain of command did very little to help him.” LT Y was also LT G’s supervisor during this period, and he stated that he directly experienced her being “extremely poor at setting expectations.” He stated that LT Y was “a poor manager, and did nothing to help [the applicant], when she was uniquely suited to as his direct supervisor.” When asked if the applicant would have been removed from his position if he had had a different supervisor, LT G stated “not as quickly as he was.” LT G stated that the applicant struggled with “the extreme demands placed on a shipboard officer” but he believed with coaching and mentor, he potentially could have been a productive crew member.

- LCDR W—In an affidavit dated July 24, 2017, LCDR W stated that she worked with the applicant onboard the cutter in question when she was the Engineering Officer and the applicant was a junior officer in the Operations Department. When asked if there was a discernable difference in the treatment of officers who were Coast Guard Academy graduates and officers who were not, LCDR W stated that the environment on the cutter “was not very welcoming to those who did not fit the mold that was expected by the Executive Officer at the time, LCDR [M].” She stated that he made the wardroom uncomfortable for minorities, women, and non-Academy graduates. The applicant was the only junior officer aboard the cutter at the time who was not an Academy graduate and LCDR W stated that LCDR M “made it okay to ostracize him.” LCDR W stated that she believed this environment had an impact on the applicant’s ultimate removal because it was as if he “was not given a fair chance.” She stated that if the applicant had been “given an opportunity under the leadership and guidance of a different Executive Officer, [he] would have gotten the mentoring and training opportunities he needed to flourish as a junior officer.”
- LT Y, Supervisor—In an email dated June 18, 2010, with the subject line “OER Blocks 1 & 10,” LT Y wrote the following to the applicant:

I appreciate the candor. I understand that sometimes people go through a rough patch, we all hit them. I apologize for not being as patient with you. Even under the most trying of times I should not have allowed my frustration with the situation dictate my reactions. The collective wardroom climate was not the best and I hope that you will not be met with the same immaturity at your next ship.

I wish you the best in your next tour afloat.

- Former LCDR M, Reporting Officer—In an email dated January 18, 2013,¹ LCDR M wrote the following:

Hey [applicant], how’s it going? It’s hard to know where to begin on this email. Seems like we have a common thread now. I was saddened to see you were reverted back to an OS but I hope you have found peace with it. I’m facing a similar situation but having nothing to fall back to. I’d like to tell you about it, you may actually be able to help. Believe me, I have a whole new perspective of things now, including how your final days on [the cutter] played out. I often wonder if we did the right thing, given what I know now. I guess I wouldn’t blame you if you told me to jump off a bridge but I hope you hold no ill feelings towards me. If you do, I am sorry for them. I’ve been called many things over this time period, but a liar is not one of them. If you want some ground truth and to hear how our common thread tanked another career besides yours, give me a call. My cell is Take care shipmate.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on January 21, 1997, and became an Operations Specialist. He subsequently attended Officer Candidate School and received a temporary appointment as an ensign on June 13, 2007.

¹ By this date the applicant had reverted back to his enlisted rank.

The applicant's first OER was for the reporting period of June 13, 2007, through March, 31, 2008. He was in an "Admin & Coordination for Assistant Commandant for Operations" assignment. In the eighteen performance categories on a scale from 1 (worst) to 7 (best), he received twelve 4s and six 5s. He received an average mark in the fourth spot of seven on the officer comparison scale indicating a "good performer, give tough, challenging assignments." All of the comments were positive, including "intelligent new officer w/ great potential," "performed adequately in stressful job," "superior technical aptitude," and "demonstrated passionate commitment to CG mbrs & core missions." His second OER in this assignment was dated September 30, 2008. He received eight 4s and ten 5s. He received another mark in the fourth spot on the officer comparison scale and was recommended for promotion. All of the comments were positive, including "displayed strong work ethic & drive necessary in demanding afloat tour," "superb judgment," "excellent CG rep," and "outstanding ability to work through complex, often contentious issues." The applicant was promoted from Ensign to Lieutenant Junior Grade on December 13, 2008.

On his third OER working for the Assistant Commandant for Operations, dated January 31, 2009, the applicant again received eight 4s and ten 5s, another mark in the fourth spot on the comparison scale, and positive comments. In addition, he was "highly recommended for promotion" to Lieutenant. The applicant's last OER at his first assignment is dated July 2, 2009. He received one 4, seven 5s, and ten 6s. He received a mark in the sixth spot on the comparison scale, indicating "an exceptional officer." All of the comments were positive, including "absolutely prepared for demanding operational tour afloat," "totally committed to achieving organizational goals over personal goal," "continued excellent performance throughout fast-paced period in h-viv position," and "recommended for promotion with peers." He also received a Coast Guard Commendation Medal for outstanding achievement during this tour of duty from June 2007 through June 2009.

The applicant's next assignment was as a Deck Watch Officer aboard a cutter. The first disputed OER is for the reporting period from July 3, 2009, to January 31, 2010. LT Y was the applicant's Supervisor and LCDR M was his Reporting Officer on this OER. The CO signed as the Reviewer. He received three marks of 2, nine 3s, five 4s, and one 5 in the various performance categories and a mark in the second spot on the comparison scale, indicating a "qualified officer," from LCDR M. He received some positive comments, such as "coordinated successful ammo offload," "professional competence satisfactory," "public speaking skills satisfactory," "organized and ran successful Casino night; 75% crew participation, greatly enhanced morale and camaraderie," "did some things very well," and "highly capable in areas involving deliberation and administrative acumen such as intel or information technology." However, his rating chain noted that he was only "progressing towards DWO and HCO quals," and he received many negative comments, such as "apathetic attitude towards most assignments," "poor prep despite 3 months notice," "mismanaged time," "often offered cryptic responses to probing questions," "highly argumentative," "unable to resolve conflict and facilitate teamwork," "demeanor on watch often alienated fellow watchstanders," "spirit of entitlement evident in several public and private counseling sessions," "offered numerous collaterals in attempt to find niche," "not currently recommended for promotion to LT," and "unable to balance various short fused obligations simultaneously."

The disputed SOER is for the period from February 1, 2010, to February 4, 2010, and documents the applicant's removal from his assigned duty. The applicant had the same Supervisor, Reporting Officer, and Reviewer, including LT Y and LCDR M. He received a mark of "Not Observed" in fourteen of the performance categories. He received a mark of 1 in the categories Teamwork, Initiative, Judgment, and Responsibility and a mark in the first spot on the comparison scale, indicating "Unsatisfactory" performance. The comments supporting the mark for Teamwork by LT Y state: "No longer trusted to manage, lead or participate in teams. All other marking areas not observed." The comments for Initiative, Judgment, and Responsibility assigned by LCDR M state:

Judgment, integrity and responsibility all called into question during [underway] bridge watches; argumentative with qualified personnel including qualified [Officer of the Day] on watch during this period. [Reporting Officer] has lost complete confidence that member will qualify in primary duty position.

Did not put in honest effort to adhere to core values of Honor, Respect and Devotion to Duty or allow core values to guide own Actions with shipmates. Integrity and honor in question. Utter lack of respect for superiors and peers; blatant and visible contempt by body language and actions or inactions shown towards Operations Officer [LT Y] and other evolutions; disrupted good order and discipline amongst department, wardroom, and watch stations. Motive for mbr's contempt are unclear: gender or age bias. Outwardly argumentative w/qualified [Deck Watch Officers] on watch; several arguments escalated into screaming matches on the bridge that jeopardized navigational safety during this marking period. Final removal from primary duties as [Deck Watch Officer] determined on 4 Feb 2010; collective decision that member would never regain the trust and confidence of OPS, XO, and CO and ultimately never achieve qualifications as an underway [Deck Watch Officer].

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. Unable to balance various short fused obligations simultaneously and is best suited for static work environment. Highly capable in areas involving deliberation and administrative acumen such as Intel or Information Technology. Absent strong, consistent work performance, member is not recommended for CG sponsored graduate school at this time but may be a fair candidate for Information Technology or Intelligence graduate DUINS with improved work performance. Not recommended to return afloat in any billet.

The Reviewer added comments to this SOER as well. He stated that he concurred with LT Y's and LCDR M's marks and comments. He added that the applicant's rebuttal comments "did not occur during this marking period." He stated that he "lost all trust and confidence in the abilities" of the applicant. The applicant's "confrontational demeanor, unwillingness to listen, and lack of respect for peers and supervisors have created an atmosphere prejudicial to good order and discipline." The Reviewer stated that the applicant's actions were not consistent with the Coast Guard's core values.

The applicant provided Reported-on Officer comments in reply to the SOER. He provided ten bullets listing his achievements aboard the cutter, such as identifying crew members in need of attending courses, submitting college transcript requests, presenting navigational brief, and developing a tool to track members in need of particular courses. He did not deny any of the events described in the SOER.

Upon his removal from the cutter, the applicant was temporarily assigned as a "District Intelligence Branch (DRI) – Staff Officer." On his OER for the period February 22, 2010, to June 21, 2010, he received twelve marks of 4, five marks of 5, and one 6. He received a mark of four

on the comparison scale. All of the comments were positive, including “demonstrated solid management skills,” “confident speaker,” “solid writing skills,” “showed support for others,” “fostered unit camaraderie,” and “recommended for promotion with his peers & is ready & prepared to take on roles of increased responsibility at the O-3 level.”

For the applicant’s next tour of duty, he was again assigned aboard a cutter as a Deck Watch Officer. His first OER on this cutter is for the marking period June 22, 2010, to January 31, 2011. He received one 3 (in Professional Competence), eleven 4s, and six 5s. He received positive comments such as “generally prepared,” “consistently strived to produce better product & briefs,” “mentored & directed junior div personnel,” “enthusiastic & capable CG rep,” “typically exercised sound judgment,” and “rec’d for promotion to LT.” He also received negative comments such as “unable to qualify as inport and underway OOD after 6 months onboard & over 150 days underway,” “required significant oversight & considerable instruction,” “enthusiasm for intel related tasking resulted in distractions from qualification in key watch positions,” “unable to qualify as Helicopter Control Officer (HCO), inport OOD or u/w OOD,” “unable to qualify at key watch positions,” and “not recommended for further assignments afloat.”

The applicant’s next OER, dated June 30, 2011, was from a different command where he was a “Contingency Preparedness Planner.” He received twelve 4s, five 5s, and one 6 in the performance categories and a mark in the fourth spot on the comparison scale. All of the OER comments were positive, including “good preparation and planning,” “actively pursuing qualifications and cross training,” “championed needs of others,” “demonstrated good aptitude for contingency planning,” “self starter,” and “recommended for promotion to Lieutenant.” The applicant’s next OER from this command is dated January 31, 2012. He received one 4, thirteen 5s, and four 6s in the performance categories and another mark in the fourth spot on the comparison scale. All of the comments were positive, including “excellent planner,” “exceptional speaker/listener,” “work needed little/no corrections,” “strong leadership attributes & desire to help others excel,” “solid work ethic and positive attitude fostered teamwork within department,” “remarkable initiative,” and “strongly recommended for promotion to Lieutenant.”

The applicant was twice non-selected for promotion to LT and, in lieu of being discharged, elected to revert to his permanent enlisted grade on July 1, 2012.

The applicant was honorably discharged on June 30, 2015, for completion of required active service. He had served a total of eighteen years, five months, and eleven days of active duty service. The reason for his discharge is not in the record before the Board.

VIEWS OF THE COAST GUARD

On June 12, 2018, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case. In doing so, he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC stated that the application is timely and therefore should be considered on the merits. PSC noted that while the applicant did submit an addendum for the February 4, 2010, SOER, he

did not submit an application to the Personnel Records Review Board (PRRB) to challenge either of the disputed OERs.

PSC argued that the applicant failed to substantiate his claim that either of OERs are erroneous or unjust because he did not present evidence to overcome the presumption of regularity. While the applicant blamed his chain of command on the cutter in 2009 and 2010 for a lack of support and training, PSC noted that the applicant was unable to qualify as Deck Watch Officer on the next cutter he was assigned to as well. In response to the applicant's claim that his OERs for his first tour of duty show that the disputed OERs were not consistent with his performance, PSC stated that while his other OERs do indicate "improved performance, many are mediocre" and his OERs aboard his second cutter refute his claim that the OERs aboard the disputed cutter was an anomaly. PSC argued that even if the applicant's command could have been more supportive, the applicant's actions (such as getting into a screaming match on the bridge and leaving port after explicitly being told not to do so) are a result of his own poor choices and not the command climate. Therefore, PSC recommended that the Board deny relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 27, 2018, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. After several extensions, the applicant, through counsel, replied on August 27, 2018, and stated that he disagreed with the Coast Guard's advisory opinion.

Regarding his failure to qualify for Deck Watch Officer on the second cutter, the applicant stated that the fact that he was unable to qualify on the second cutter "underscores the lack of support and training he received." He claimed that PSC's argument fails to take his very argument into account, which was that the "unsupportive, toxic, and destructive leadership he suffered aboard the [cutter] handicapped his future success." He stated that an officer's first duty assignment is a crucial time for learning and developing. The applicant argued that if he had been provided with proper training and opportunities, "then he would have undoubtedly been successful" at his next assignment. He argued that the Coast Guard's insinuation that he was passed over for promotion because of his failure to qualify was "not supported by the regulations." He argued that according to the Coast Guard Deck Watch Officer Examination Program, there is no specific time limit placed on officers in which to qualify. He stated that there is a requirement to qualify "if going afloat or to serve in certain billets, but even then, the exam must be taken every so many years." He stated that if he was assigned to one of the positions recommended in his last assignment's OER he would not have been required to qualify.

The applicant asserted that his evidence proves that he "was set up for failure while on the [cutter]." He stated that it was difficult for him to recover from this "as is evidenced by the OER from his time on [the second cutter]." Yet he stated that his success in other assignments proves that his time on the cutter and at his temporary duty assignment was an anomaly. The applicant argued that the Coast Guard based its decision on comments in the very OERs that are being disputed, and so the advisory opinion is unsupported by valid evidence. He complained that the Coast Guard did not even note the affidavits he had collected and stated that this was further evidence that the Coast Guard's opinion should not be considered by the Board. He asked that the Board grant his requests.

APPLICABLE REGULATIONS

The Personnel Manual in effect at the time, COMDTINST M1000.6A, Article 1.A.4.b.1., regarding permanent appointments, states:

Enlisted members and chief warrant officers commissioned as temporary officers after OCS graduation perform duties and enjoy the privileges of Regular commissioned officers. They serve in a probationary period of about four years to ensure a fair, accurate appraisal of their capabilities over two or more types of duty. Probation expires about the time they are considered for promotion to lieutenant, and selection under the “best qualified” system amply indicates their qualification for permanent status. Therefore, their dual status as enlisted or chief warrant officer OCS graduates and temporary officers terminates when they are promoted to lieutenant. These temporary officers shall then follow the procedure below to apply for permanent status.

Article 12.A.13.e. of the manual states that a temporary officer serving as a LTJG who is twice non-selected for promotion to LT is honorably discharged on the next June 30th but “may elect to revert to his or her permanent grade,” in accordance with 14 U.S.C. § 284.

Article 10.A.1.b.1. states that the “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.” Article 10.A.1.b.2. states that individual members are responsible for managing their performance. This responsibility entails determining job expectations, obtaining sufficient performance feed-back, and using that information to meet or exceed standards.”

The Coast Guard Deck Watch Officer Examination Program, COMDTINST 16672.5E, Article 10.a. states that the test is “required for all personnel performing underway (OOD) or coxswain duties.” Article 10.a.(1) states that the initial examination “is required for members who have not previously passed the DWO Examination or have exceeded a period of five years since the date of their last successful examination.” Article 11.A.3. states that officers assigned as DWOs must pass the examination within six months of reporting aboard the cutter.

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 alleged that his OERs dated January 31, 2010, and February 4, 2010, should be removed because they are erroneous and unjust. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed OER in an applicant’s military record is correct and fair, and the applicant bears the burden of proving by a preponderance of the evidence that the OER is erroneous or unjust.² Absent specific evidence to the contrary, the Board presumes that the members of an applicant’s rating chain have acted “correctly, lawfully,

² 33 C.F.R. § 52.24(b).

and in good faith” in preparing their evaluations.³ To be entitled to correction of an OER, the applicant cannot “merely allege or prove that an [OER] seems inaccurate, incomplete or subjective in some sense,” but must prove that the disputed OER was adversely affected by a “misstatement of significant hard fact,” factors “which had no business being in the rating process,” or a prejudicial violation of a statute or regulation.⁴

3. The applicant claimed that the OERs should be removed because his supervisor and reporting officer aboard the cutter were not supportive and did not provide adequate leadership or training. He submitted three affidavits supporting this claim of poor leadership, including one from his own reporting officer, LCDR M, who blamed the problem on the supervisor and also sent the applicant an email indicating that he was facing similar circumstances—presumably removal from his primary assignment—and wanted to commiserate with the applicant. LCDR W blamed LCDR M for making the wardroom “uncomfortable” for the applicant without providing any specifics, and LT G claimed that LT Y and LCDR M were not *very* supportive and that LT Y was a “poor manager” and “extremely poor at setting expectations.” LT G also noted, however, that the applicant struggled with “the extreme demands placed on a shipboard officer,” that “his performance results may not have always been indicative of his effort,” and that under a different manager, the applicant might not have been removed from his position “as quickly as he was.” The applicant also submitted an email from his supervisor, LT Y—without including all of the emails in the string to show what she was responding to—in which the supervisor apologized for having been impatient with the applicant at some point and noted “immaturity” in the wardroom. Without the rest of this email conversation, the Board cannot conclude that it is evidence of poor leadership. While the applicant has shown that—at least at some point—his supervisor and reporting officer became frustrated with him and did not demonstrate the best leadership, the Board finds that he has not proven by a preponderance of the evidence that he was prevented from performing well and qualifying as a Deck Watch Officer because of their leadership or that they erred in preparing his evaluations. The marks in both OERs are properly supported by comments, and the applicant has not disputed the events described in either the OER or the SOER, much less proven by a preponderance of the evidence that they are inaccurate. LCDR M’s retrospective reconsideration at a time when he was apparently also being removed from his primary duty for reasons not in the record before the Board is not grounds for removing either disputed OER.⁵ The

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁴ *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).

⁵ *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).

Board notes that on the SOER, the CO added comments supporting the marks and stated that he had “lost all trust and confidence in the abilities” of the applicant.

4. The applicant claimed that qualifying as Deck Watch Officer was not a requirement and was not the reason he was passed over for promotion. However, the applicant’s assignment was to be a Deck Watch Officer, and so he failed to qualify to perform his primary duty. Although he blamed his inability to qualify as a Deck Watch Officer on LT Y and LCDR M, the record shows that even when the Coast Guard gave him a second chance to prove his ability aboard another cutter under different leadership, he was unable to qualify. Moreover, the OER and SOER comments show that the low marks were based not only on the applicant’s inability to qualify as a Deck Watch Officer but on his being argumentative, not managing his time well, having an entitled attitude, alienating his fellow watchstanders, and, most notably, getting into “screaming matches” on the bridge. The Board also notes that the January 31, 2010, OER does not support the applicant’s or LT G’s contention that his chain of command did nothing to help him. An OER comment stating that he was “offered numerous collaterals in attempt to find niche” shows that his command tried to help him find his stride and succeed, but he was unable to do so.

5. The fact that the applicant received better OERs in other assignments before and after his assignment to the cutter in 2009 and 2010 is not evidence that the disputed OER and SOER do not accurately reflect his performance aboard the cutter.⁶

6. The applicant’s claims and evidence do not persuade the Board that the disputed OERs were 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 regulations.”⁷ The Board therefore finds that the applicant has not proven by a preponderance of the evidence that the disputed OERs are erroneous or unjust. The applicant has not submitted specific evidence of bias or discrimination by his rating chain. Nor has he shown that any of the specific marks or comments in the disputed OERs are erroneous.

7. The applicant asked that his non-selections for promotion to LT be removed from his record and that the Board convene an SSB to determine if he would have been promoted with a corrected record. However, the applicant has not proven by a preponderance of the evidence that the disputed OERs were erroneous or unjust when they were reviewed by the selection boards. Therefore, the Board finds no grounds for directing the Coast Guard to convene an SSB.⁸

8. Accordingly, the applicant’s requests for relief should be denied. But the Board will grant further consideration if new evidence of error or injustice is submitted.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁶ *Grieg v. United States*, 226 Ct. Cl. 258, 271 (1981) (“[T]he fact that this fine officer had better ratings before and after the challenged OER is of no legal moment nor of probative value as to the rating period covered by the one OER with which he is dissatisfied.”).

⁷ *Hary* at 1259.

⁸ 14 U.S.C. § 263 (requiring “material error of fact or material administrative error” to grant an SSB).

ORDER

The application of former OS1 [REDACTED], USCG, for correction of his military record is denied.

December 7, 2018

