

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-188

██████████
██████ LT

FINAL DECISION

This proceeding was conducted according to 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the application upon receipt of the applicant's completed application on August 1, 2018, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 6, 2019, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant asked the Board to correct an Officer Evaluation Report (OER) dated June 19, 2015, which she received upon completing a tour of duty at a Sector command, by raising the mark for the performance dimension "Looking Out for Others" from a 6 to a 7 (on a scale of 1 to 7) and by raising the marks for "Writing," "Adaptability," and "Teamwork" from 5s to 6s. She also asked that the associated comments be revised as shown in a replacement OER that her rating chain prepared and signed in July 2018 (see below). The only explanation she provided is, "My chain of command for that OER has agreed that an error was made during the original OER process. The report was redone and signed by the chain of command [from the Sector]."

SUMMARY OF THE RECORD

The applicant accepted a Reserve appointment as an ensign on February 7, 2007, and began serving on extended active duty. She was initially assigned to a large cutter, received good OERs, and was promoted to lieutenant junior grade on June 15, 2008.

On July 20, 2009, the applicant reported for duty as a Law Enforcement Duty Officer and Command Center Controller. She received very good OERs at this assignment with marks of primarily 5 and 6 in the performance dimensions, and she was recommended for promotion. She was promoted to lieutenant and integrated into the regular Coast Guard on February 7, 2011. The applicant was awarded an Achievement Medal upon completion of this tour of duty.

On July 28, 2012, the applicant reported for duty as a Command Duty Officer and Law Enforcement Officer at a Sector Operations Center, where she led a six-member watch section and facilitated interagency responses to events. On her first OER in this billet, dated March 22, 2013, her Supervisor assigned her one mark of 4, two marks of 5, and ten marks of 6 in the various performance dimensions. Her Reporting Officer assigned her two marks of 5 and three marks of 6 in the performance dimensions and a mark in the fifth spot (of seven) on the officer comparison scale, denoting an “excellent performer.” He wrote that she had his “strongest recommendation for promotion to O4 w/best of peers.”

In her second OER for this assignment, dated March 11, 2014, the applicant’s Supervisor assigned her eight marks of 6 and five marks of 7 in the various performance dimensions. Her Reporting Officer assigned her four marks of 6 and one mark of 7 in the performance dimensions and another mark in the fifth spot on the comparison scale. He wrote that she had his “strongest recommendation for promotion to O4 w/ best of peers.”

The third and final OER that the applicant received at the Sector, dated June 19, 2015, is the disputed OER in this case. The Supervisor who signed this OER is the same officer who signed her 2013 and 2014 OERs and was the Chief of the Operations Center, but the Reporting Officer, who was the Deputy Sector Commander, and the Reviewer, who was the Sector Commander, are different. In comparison with her 2014 OER, nine of the marks are one place lower. Upon her departure from the Sector, the applicant was awarded a second Achievement Medal for her tour of duty.

In assigning the disputed marks on the OER, the rating chain used the written standards on the OER form, which appear on pages 12 and 13, below. Below is a side-by-side comparison of the marks and comments in the disputed OER and in the proposed replacement OER that the rating chain signed in July 2018. There are numerous editorial changes in sentence construction, verb tense, capitalization, and abbreviation, but those changes that could possibly be considered substantive (words subtracted, added or changed) are highlighted.

DISPUTED OER	
Planning/Preparedness	6
Using Resources	6
Results/Effectiveness	6
Adaptability	5
Professional Competence	6
<p>Exceptional foresight & professional acumen; demo'd outstanding ability to lead and coordinate the CC watch in a multitude of cases including 100+ pollution incidents, 15 marine casualties, 3 military outloads & 40+ SAR cases; resulting in assisting/saving 60 lives & \$20M in property. Adept & innovative use of resources; launched Naval Air Station ... helo on 3 different occasions for urgent cases of people in the water to supplement CG resources; one case resulted in Navy helo hoisting a person from the water concurrently while the CG helo was engaged in hoisting another. Exemplified decisive & insightful initial actions when responding to a 72 ft yacht located 6 NM off the coast of ...; skillfully orchestrated the response with a HH-65 & a 47 MLB saving two lives when both persons were</p>	

PROPOSED REPLACEMENT OER	
Planning/Preparedness	6
Using Resources	6
Results/Effectiveness	6
Adaptability	6
Professional Competence	6
<p>Exceptional foresight & professional acumen; demo'd outstanding ability to lead and coordinate the CC watch in a multitude of cases including 100+ pollution incidents, 92 multi-mission cases, 3 Military Outloads & 40+ SAR cases; resulting in assisting/saving 60 lives & \$20M in property. Innovative use of resources; launched Naval Air Station ... helo on 3 different occasions for urgent SAR cases of people in the water to supplement CG resources & CG helo capabilities; one case resulted in Navy helo hoisting a person from the water concurrently while the CG helo was engaged in hoisting another. Achieved outstanding results when responding to a 72 ft yacht located 6 NM off the coast of ...; skillfully orchestrated the response with a HH-65 & a 47 MLB saving two lives when both persons were</p>	

<p>evacuated from the vsl minutes before it sank. Demonstrated exceptional versatility & initiative; aggressively pursued & obtained an opening in the highly sought after Pollution Responder course; passed course & subsequently obtained the qual. Immediately put new qual to use; managed a contentious pollution case by requesting & ensuring local auths conduct daily vsl checks due to the owner making attempts to unsafely lift the sunken vessel despite a COTP order requiring an approved plan. Exemplified attention and responsiveness to possible dangers; notified owner of possible federal penalties; prevented further unsafe efforts and ensured a proper removal was completed.</p>	
Speaking & Listening	6
Writing	5
<p>A composed & articulate speaker; delivers clear & concise briefings on the phone for all maritime cases up through the chain of command. Gave numerous tours of ... to an array of military & civilian visitors; accurately conveying an average day of CG cases in the ... Skillfully crafted, gave numerous morning briefs for Sector CoC and drafted solid command written briefs of all cases. Reviewed and ensured accuracy of numerous COTP/LODs. Well drafted/timely submission of pos 3307 & 3 awards; created ... stat sheet for use by civ press, praised by</p>	
Looking Out for Others	6
Developing Subordinates	7
Directing Others	6
Teamwork	5
Workplace Climate	5
Evaluations	5
<p>Well respected, conscientious leader; effectively managed 10 CDOs as the watch position supervisor; training, mentoring, creating the schedule and managing CDO leave requests, balancing the watch schedule in ever changing environment. Actively sought opportunities to better self/others; trained three new CDOs, ensuring members were well prepared, administered successful qualification boards; resulting in a highly qualified CDOs for the unit. Actively encouraged & supported junior members' development; encouraged and reinforced efforts on the watch floor to study for SWE & STAN tests that culminated in three advancements and the unit's highest STAN test scores. Mentored, guided & assisted enlisted mbr's pursuit of becoming an officer; reviewed member's written application to OCS, editing, made recommendations for stronger application, wrote endorsement and conducted a mock board interview; mbr accepted to OCS. [Applicant] actively promoted & created an inclusive climate; worked to enhance understanding between IMD & ... by relaying both division roles/requirements & how the divisions can better serve one another in pollution case prosecution, improving team performance. Open and approachable manner contributed directly to a positive and productive workplace environment. Own OER submission timely and well documented.</p>	
<p>Reporting Officer Comments: [Applicant] continues to set an excellent example and provide needed watch floor leadership within the command center, expecting and attaining high levels of performance of self and other members. An ardent advocate for junior members and actively mentors within the command center division,</p>	

<p>lifted from the vsl minutes before it sank. Demo'd exceptional versatility & adaptability; aggressively pursued highly sought after Pollution Responder course; worked tirelessly for 2+ mos in IMD to learn and achieve pollution responder qual. Immediately put new qual to use; managed a contentious pollution case by requesting & ensuring local auths conduct daily vsl checks due to the owner making attempts to unsafely lift the sunken vsl despite COTP order requiring an approval plan. Exemplified attention & responsiveness to possible dangers; prevented owner from unsafe salvage operations, possible federal penalties, and ensured safety of man/family; vsl properly/safely removed.</p>	
Speaking & Listening	6
Writing	6
<p>A composed & articulate speaker; delivers clear & concise briefings on the phone for all maritime cases up through the chain of command. Gave 6+ tours of ... to an array of military & civilian visitors due to numerous weekend watch standing; conveying an average day of CG cases in ... Gave numerous morning briefs for CoC and skillfully drafted 200+ written briefs & texts for all cases. Reviewed and ensured accuracy of numerous COTP/LODs. Well drafted/timely submission of pos 3307 & 3 awards; created ... stat sheet for civ press, praised by Drafted 40 NOFI ltrs.</p>	
Looking Out for Others	7
Developing Subordinates	7
Directing Others	6
Teamwork	6
Workplace Climate	5
Evaluations	5
<p>Well respected, conscientious leader; supported junior mbr dealing w/ unique family issue; directed mbr to resources; eased mbr's stress. Effectively managed 10 CDOs as the watch posn sup; trained, mentored, created watch schedules & managed lv requests; passed watch sup role to new watch sup & assisted in transition. Actively sought opportunities to better self/others; trained 3 new CDOs, ensured mbrs were well prepared, administered successful qual boards; resulted in highly qualified CDOs for the unit. Actively encouraged & supported jr mbrs' development; reinforced efforts on the watch floor to study for SWE & STAN tests that culminated in 3 advancements and unit's highest STAN test scores. Mentored, guided & assisted enlisted mbr's pursuit of becoming an officer; reviewed mbr's written application to OCS by making edits, recommendations for a stronger application, wrote endorsement & conducted a mock board interview; mbr accepted to OCS. Actively promoted & created an inclusive climate; worked to enhance understanding between IMD & ... by relaying both division roles/requirements & how the divisions could work together in pollution case prosecution; improved team performance. Worked seamlessly across fed/state/lcl gov and private sector to protect port environ as pollution responder. Own OER submission timely and well documented.</p>	
<p>Reporting Officer Comments: [Applicant] continues to set an excellent example and provide needed watch floor leadership within the command center, expecting and attaining high levels of performance of self and other members. An ardent advocate for junior members and actively mentors within the command center division,</p>	

routinely spending extra time to assist/look out for command center members. Highly respected, professional CDO with great attention to detail that directly led to lives saved & successful SAR cases. Noted as knowledgeable, trustworthy CDO who is an invaluable asset to CC & unit.	
Initiative	7
Judgment	6
Responsibility	7
Professional Presence	6
Health and Well-Being	6
Dedicated & highly motivated officer; acquired pollution responder qualification while working in Incident Mgmt Div. for 2+ mos while maintaining CDO qualification. Life g learner ; during off time completed 55-credit PG degree in Criminal Justice at ... Univ. Sound, insightful judgment; depended upon by the Command for consistently giving keen recommendations to both Response and Prevention staffs during marine incidents including the case of a 750-foot commercial vessel that lost propulsion while transiting into the ... Quickly & confidently made the decision to launch an emergency tug from nearby port to assist the vsl to set up a dead ship tow & safely bring vessel to shore where repairs on engine were made; lauded by Cmd for excellent decision. Received report of struggling kayakers, but all made it ashore, realized report wasn't quite right, used OGA to clarify; ID'd 3 more kayakers in group still missing, found all 3. Upheld unpopular policy changes on the watch floor; ensured new policy followed, bridged gap between supervisors & watch; explained reasoning to the watch, obtained buy in. Consistently set example; uniform immaculate & worn w/ pride. Enthusiastically advocated healthy lifestyle; another mbr quit smoking; strong pers workout regime .	
Comparison Scale	5
Strongly recommended for continued promotion with peers. Outstanding leadership potential demonstrated by the highest commitment to excellence in the performance of SAR, LE, HLS, & Marine Safety missions. Judgment and responsibility and desire to excel in all endeavors make this member ready for challenging positions of increasing responsibility and leadership roles. Highly recommended for Sector Enforcement Chief, Cmd Center Chief, and IMD Chief. Superb choice and highly recommended for CG liaison positions due to prior CG experience at U.S. Embassy & Spanish proficiency. Strongly recommended for Naval War College, PG in Int'l Affairs , or other Advan Ed program.	

routinely spending extra time to assist/look out for command center members. Highly respected, professional CDO with great attention to detail that directly led to lives saved & successful SAR cases. Noted as knowledgeable, trustworthy CDO who is an invaluable asset to CC & unit.	
Initiative	7
Judgment	6
Responsibility	7
Professional Presence	6
Health and Well-Being	6
Dedicated & highly motivated officer; acquired pollution responder qual while working in Incident Management Division (IMD) for 2+ mts while maintaining CDO qualification. During off time, completed 55-credit second master's degree in Criminal Justice at ... Univ. Sound, insightful judgment; depended upon by the Command for consistently giving keen recommendations to both Response and Prevention Staff during marine incidents including the case of a 750-foot commercial vsl that lost propulsion while transiting into the ... Quickly & confidently made the decision to launch an emergency tug from nearby port to assist the vsl to set up a dead ship tow; safely brought vsl to shore where emergency repairs on engines were made; lauded by command for excellent decision. Received report of struggling kayakers that made it ashore; realized report wasn't quite right, used OGA to clarify; ID'd 3 more kayakers in group still missing & found all 3. Upheld unpopular policy changes on the watch floor by ensuring new policy was followed; bridged gap between Sups & watch; explained reasoning to the watch & obtained buy in. Consistently set example; uniform immaculate & worn w/pride. Enthusiastically advocated healthy lifestyle & convinced another member to quit smoking.	
Comparison Scale	5
[Applicant] has my strongest recommendation for promotion to O4 w/best of peers . Outstanding leadership potential demonstrated by the highest commitment to excellence in the performance of SAR, LE, HLS, & Marine Safety missions. Judgment, responsibility and a desire to excel in endeavors make this member ready for challenging positions of increasing responsibility and leadership roles. Highly recommended for Sector Enfor Chief, Cmd Center Chief, and IMD Chief. Superb choice and highly recommended for CG liaison positions due to prior CG experience at U.S. Embassy & Spanish proficiency. Strongly recommended for Naval War College or other Advan Ed program.	

On July 31, 2015, the applicant reported for Contingency Planning Duty at a District office. On her first OER in this assignment, dated May 31, 2016, the applicant received primarily marks of 6 and 7 in the performance dimensions and a mark in the sixth spot on the comparison scale, which denotes being “strongly recommended for accelerated promotion.” Her Reporting Officer wrote that she had his “strongest recommendation for accelerated promotion to LCDR.” And she was awarded her third Achievement Medal in February 2016. However, the applicant was not selected for promotion in August 2016.

On her second OER at the District, dated May 31, 2017, the applicant received all marks of 6 and 7 in the performance dimensions; another mark in the sixth spot on the comparison

scale; a mark of “definitely promote” on the new promotion scale; and her Reporting Officer’s “absolute highest recommendation for promotion to LCDR with the very best of peers.” However, the applicant was not selected for promotion in August 2017 and so was subject to discharge no later than June 30, 2018.

The applicant stated that she was offered continuation on active duty despite her non-selections but at some point chose to “quit” active duty. Her records show, however, that she has remained on active duty. The applicant’s OER marks through 2017, when she had twice failed of selection, appear in the table below, and the disputed marks are shaded.

APPLICANT’S MARKS IN THIRTEEN OERs FROM 2007 THROUGH 2017

CATEGORY	DWO on Large Cutter				LEDO & CDO at District CC				CDO at Sector CC			District Staff	
	Sep. 2007	Mar. 2008	Jan. 2009	July 2009	Jan. 2010	Jun. 2010	Jan. 2011	May 2012	Mar. 2013	Mar. 2014	Jun. 2015	May 2016	May ^c 2017
Planning/Preparedness	4	5	6	6	6	6	6	6	6	6	6	7	7
Using Resources	4	5	5	5	5	5	5	5	6	6	6	6	6
Results/Effectiveness	4	5	6	6	6	6	6	6	6	7	6	6	7
Adaptability	5	5	6	5	5	6	6	7	6	6	5	6	6
Professional Competence	4	4	6	6	5	6	6	6	6	7	6	7	6
Speaking & Listening	5	5	5	6	5	5	5	5	6	7	6	6	7
Writing	4	5	6	6	4	5	5	5	5	6	5	5	6
Looking Out for Others	4	5	6	5	5	5	5	6	6	7	6	6	6
Developing Subordinates	5	5	5	5	5	5	5	5	6	7	7	7	6
Directing Others	4	5	5	5	5	5	5	6	6	6	6	7	6
Teamwork	5	5	6	6	5	6	6	6	6	6	5	6	7
Workplace Climate	5	5	5	6	5	5	5	6	5	6	5	6	6
Evaluations	4	5	5	5	4	5	5	5	4	6	5	6	6
Initiative	4	5	5	6	5	6	6	7	6	7	7	6	6
Judgment	5	5	6	5	5	6	5	6	6	6	6	6	6
Responsibility	5	5	6	5	5	5	5	6	6	6	7	7	6
Professional Presence	4	4	5	7	5	6	5	6	5	6	6	6	6
Health and Well-Being	5	5	5	6	5	5	5	5	5	6	6	6	6
Average Mark ^a	4.44	4.89	5.5	5.61	5.00	5.44	5.33	5.78	5.67	6.33	5.89	6.22	6.22
Comparison Scale ^b	4	5	5	5	5	5	5	5	5	5	5	6	6

^a The average marks for the OERs do not include the comparison scale marks. The averages have been rounded.

^b The comparison scale is not actually numbered but there are seven spots on the scale associated with written descriptions that vary according to the officer’s rank. Reporting Officers are instructed to compare the reported-on officer with all other officers of the same rank whom they have known throughout their careers.

^c In 2017, the Promotion Scale was introduced, and the applicant received a mark of “definitely promote” from among these possible marks: Do Not Promote; Promotion Potential; Promote; Definitely Promote; In-Zone Reorder; and Below Zone Select. Marks of “Recently Promoted” and “Already Selected to Next Pay Grade” are also possible.

On her next OER at the District, dated April 15, 2018, the applicant received two marks of 5, six marks of 6, and ten marks of 7 in the performance dimensions; another mark in the sixth

spot on the comparison scale; and a mark of “promote with to 20% of peers” on the promotion scale. And she was “[h]ighly recommend[ed] for promotion to LCDR/O4 with best of peers.”

VIEWS OF THE COAST GUARD

On February 1, 2019, a judge advocate (JAG) submitted an advisory opinion in which she adopted the findings and analysis provided in a memorandum on the case submitted by the Personnel Service Center (PSC) and recommended that the Board grant relief.

PSC based its recommendation for relief on the three statements from the applicant’s 2015 rating chain summarized below. PSC wrote the following with regard to the proposed revision:

PSC agrees that an error occurred; however, it was the Applicant who erred by providing inadequate supporting documentation to her rating chain. It can be assumed the Applicant would not have contested her OER had she been selected for lieutenant commander in 2016. Since the Applicant’s entire 2015 rating chain approved the updated OER given the newly provided information, PSC believes their request should be honored in order to provide a more accurate representation of the member’s performance. No other relief should be granted.

Declaration of the Supervisor

The applicant’s Supervisor for her 2013, 2014, and 2015 OERs was Chief of the Sector’s Operations Center. She stated that she based the ratings in the disputed OER “on personal observations of her performance as a watchstander and the written input she provided in June of 2015.” The Supervisor stated that she provided mid-period counseling to the applicant and five other junior officers. She had them prepare OER bullets to discuss, further organize, and identify any gaps that needed to be filled. She was “explicit in this process” as that was how the Reviewer had conducted her own mid-period counseling and she found it to be “very beneficial to my OER supporting documentation.”

The Supervisor noted that during the reporting period, the applicant had requested and successfully completed a Pollution Responder training course and obtained her PR qualification when she returned to the Sector by working in the Incident Management Division. They allowed her to complete this qualification while standing the minimum required watches—two per month—to retain her CDO qualification. The applicant worked diligently, obtained her PR qualification in three or four months, and returned to the Operations Center as a full-time CDO. At the end of her tour, the applicant was allowed to go on leave for a month and travel overseas, and upon her return, she reported to her next unit. Therefore, the OER was sent to her by email. Although the Supervisor offered to discuss the OER with her, the applicant declined. She stated that this was the last direct communication she had had with the applicant until 2018.

In December 2016, the Supervisor stated, she was contacted by the OER Reviewer, who stated that the applicant had been passed over for promotion and, although the proceedings of selection boards are secret, had been counseled by someone at PSC that the disputed OER was the cause of her non-selection. The applicant had asked the Reviewer if the rating chain would consider changing the OER. The Supervisor told the Reviewer that she was

open to the idea of potentially changing the OER, pending new information. He agreed and communicated that back to [the applicant]. He did not hear anything back from her, so he reached out to the Captain she worked for at [the District office] to learn if she would be pursuing changes to her 2015 OER. [The OER Reviewer] was told no, which he relayed to me.

... In approximately late May/early June 2018, [the OER Reviewer] notified me that [the applicant] did, in fact, want to pursue changes to her 2015 OER and provided new supporting documentation to justify higher marks/improved comments. He also contacted [the Reporting Officer]. The three of us conducted a conference call and decided to honor our December 2016 offer to review any new documentation and compare her original input with the new input provided—potentially resulting in raising marks and/or adjusting comments. I went through and compared her original with the newly submitted support form and identified enough new information was included [sic] to warrant increasing marks for *Writing, Adaptability, and Team-Work* from a “5” to a “6” and *Looking Out for Others* from a “6” to a “7”. In addition, some minor edits to the comments were made to reflect this new information. I proposed these changes to the two Captains and we all agreed that they were justified, given the new information. We signed the updated OER and sent it to her in July 2018.

Declaration of Reporting Officer

The Reporting Officer, who was the Deputy Sector Commander in 2015 and is now the CO of another unit, stated that he concurred with the proposed changes to the OER. He alleged that the applicant “provided additional information to the chain of command after the marking period that supports the proposed changes.”

Declaration of Reviewer

The Reviewer, who was the Sector Commander in 2015 and is now the Executive Assistant to the Vice Commandant, stated that he recommends that the applicant’s marks be corrected as she requested and that the comments be updated. He stated that he recommended “these changes based on additional and much more detailed information [the applicant] recently provided that supported increasing these four marks and revising these comments. These changes provide a more accurate documentation of [her] performance during this period of time.”

JAG’s Conclusion

The judge advocate concluded that because the applicant “obtained a prepared and signed OER from her 2014-2015 rating chain that all believe accurately reflects her scores and should replace the one currently on file ... [i]t would be unjust to preclude her from obtaining the marks that her entire 2014-2015 rating chain believe Applicant earned.”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

The applicant requested and was granted an extension of the time to reply to the Coast Guard’s advisory opinion and submitted her response on April 5, 2019.

The applicant added to her request for relief by stating that because the disputed OER was in her record when it was reviewed by the selection boards in 2016 and 2017, the Board

should direct the Coast Guard to convene two Special Selection Boards to determine whether she should be promoted. She noted in this regard that the Coast Guard had pointed out that she “would not have contested my OER if I was not under the impression that it prevented me from promotion to LCDR.”

Regarding the two-year delay between when she first discussed changing the OER with the Reviewer in December 2016 and when she provided supporting documentation for higher marks, the applicant stated that she had been told that “no marks would be changed because too much time transpired, but in April 2018 she wrote the Reviewer an email about how she felt that she had been “treated as a female in the Coast Guard.” At the time, the Reviewer was working on increasing female retention, and he wrote her back to say that “he was going to look at the marks and stated I was the one that no longer wanted to pursue it.”

Regarding her rating chain’s statements, the applicant stated that she was confused by how the Supervisor claimed that she based the marks on observations, while the Reporting Officer, the Reviewer, and PSC claimed that her marks dropped because she had submitted insufficient supporting documentation. She stated that the Supervisor’s declaration “makes it sound like I was punished for working on a pollution qual and taking leave between duty stations.” She stated that the Supervisor called her when she emailed the OER and asked her to sign it and return it as soon as possible. The applicant did so the next day when she reported to her new unit. She alleged that the “only opportunity that was provided to discuss the OER was in an email.”

The applicant stated that although she was not selected for promotion, she was offered continuation on active duty as a lieutenant, and because she decided to accept continuation, she “wanted to change these marks to have a chance at LCDR.” So she called the Reviewer in May 2018 and told him that she “wanted all nine marks to go up since they were unjust” and that because she had accepted continuation, she would again be eligible for promotion to LCDR. After trying to persuade her that too much time had passed, the Reviewer told her to send him documentation, so she sent him numerous emails and new documentation, which was forwarded to her Supervisor and Reporting Officer, who agreed to raise four of the nine marks and wrote stronger comments.

The applicant stated that she “quit as an Active Duty Coast Guard officer since I knew I had no chance of promoting because of this OER. I did not get opportunities that are offered to other officers that aren’t passed over.”¹ Therefore, she argued, she deserves to have the new, replacement 2015 OER entered in her record and to have her record considered by two Special Selection Boards pursuant to 10 U.S.C. § 14502.

In support of her allegations, the applicant submitted the following documents:

¹ Although the applicant may have submitted a letter of resignation, she presumably withdrew it because she remains on active duty.

- In an email dated July 30, 2015, the applicant's Supervisor forwarded to her the disputed OER and stated, "Please review, sign and let me know if there's anything you want to discuss. Then I'll make sure it gets to OPM."
- In an email to the Reviewer dated January 26, 2017, the applicant thanked him for reviewing her OER but stated that she had "decided to not pursue a change to the OER is question anymore." She explained her decision as follows:

I truly appreciate your willingness to review but I think too much time has transpired. While I was told by my supervisor a couple of marks would be lowered, I was definitely not expecting a nine point reduction. Evaluations should never be a surprise and I was surprised by this OER. I should have noticed sooner and accept responsibility for that. Yes, it hurts and is hard but perhaps a more direct and clear mid-period counseling would have prevented this. In the end, I worked hard at [the Sector], earned two additional quals, completed a second master's degree, and choose to believe I did a good job at [the Sector] all three years.

Sorry I didn't e-mail sooner but it took me awhile to reach this decision. I still remember checking out with you and your encouragement to go for O5 and beyond. This is why I reached out to you and want to thank you again for taking the time. It is compassionate leaders like you that make me want to stay in the Coast Guard and succeed.

- The Reviewer responded to the applicant on February 15, 2017, noting that he had been out of the office in the interim. He wrote that he understood her decision and was "sorry there was the confusion when you were counseled here on your OER. You have a lot to be proud of from your time at [the Sector] and I hope this doesn't impact your memories. ... As you look forward to your upcoming selection board, I encourage you to make sure your next OER documents all that you are doing and it strongly makes the case for your selection. These days the O4 board is highly competitive and what is a non-select one year can be a shoo-in the next."
- In an email dated June 22, 2017, the applicant wrote the following to the Supervisor:

I am standing an augmented watch in the [District] command center for [a storm] and it's been a quiet watch. ... I noticed that you will be advancing in two weeks to CDR-Congratulations!

The real reason I'm writing is because I never called when I should have. ... [Her CO] realized that I had nine marks go down on a departing CDO OER. I know it's been two years now and I shouldn't care, but I don't remember hearing anything from you except a quick talk where you stated "a few marks will go down because you worked fewer cases this year." You didn't make it sound like it was anything to worry about and you were really nice. I only remembered that because [her new CO] didn't understand how marks going down could be a surprise to me. [He] ended up calling [the Reviewer] and to make a long story short, [the Reviewer] let me know that he checked with you and that you stated that I deserved those marks, no mistake was made, and that I was counseled. Only because I am a human being and have feelings, I need to tell you that I really wasn't counseled.

I don't remember hearing that I was a poor performer or you correcting my briefing or work. I could get all paranoid and be like clearly everyone hated me and conspired against me and [the Supervisor] didn't tell me because she didn't want to hurt my feelings and so on and so on, but no. I also choose to believe that my Supervisor didn't hate me, just didn't know how to develop me to make me better. I told [her new CO] that I complained about a Chief a lot and that I eventually realized that it made you mad. I still think he worked the system and took advantage of a nice

boss, but I believe I stopped complaining when you told me to do so. I know the [big sporting event] thing was an issue, but I wish you would have told me that marks would go down because of it, if that's why. I did end up standing that watch.

I worked really hard in IMD that year and even missed my half brother's funeral when I was at PIR school. My mom said that she wanted me to stay at school because she knew that it was a great opportunity for my career. I'm not sure why I was given a great opportunity for my career if my marks would ensure not having a career. It hurts to see that you changed my OER to say "obtained an opening in the highly sought after Pollution Responder course; passed course & subsequently attained the qual." I worked really hard for that qual and had the duty phone almost every day and most weekends. I hate the white space,² I hate looking at it now and seeing the spite you must have had for me. To be honest, I don't know any LT that has had so many marks go down, including one with an alcohol incident. I understand now that you believed that I didn't deserve an opportunity to make O-4, but why not tell me so that I didn't put [the District office] down on my dream sheet? I was naïve enough to think that going to [the District] would be good for my career and I told you as much. I'm sure you're aware that passed over LTs don't get a move and now I need to figure out how to get all our stuff back to the west coast. I know, #first world problems, but I miss my apartment on the lake and the move is going to be really expensive. Prices in [city] have gone up by hundreds, as I'm sure you're aware. I am sorry for having performed so poorly that my marks dropped in: results/effectiveness, adaptability, professional competence, speaking & listening, writing, looking out for others, teamwork, workplace climate, and evaluations. I do have to take responsibility for that because I don't think you would have lowered those marks if you didn't really feel it was just and right, but it shouldn't have been a shock.

I really don't want an email back, I only hope your future Jos don't feel the way I do, or maybe I was just an anomaly. Despite everything, I am proud of my time at [the Sector] and like the people I worked with. I got a CDO qual in record time and never lost it, a boat crew qual, a PIR qual, a second master's from a great school, & a Div/Grp Sup qual. [The Reviewer] also said that I should be proud of the work I did there. Now that's off my chest, I do with you the best.

- In an email to the Reviewer dated March 27, 2018, the applicant wrote the following:

I just wanted to reach out one more time in case you are part of the RAND study, or talk about retaining females in the CG as a senior leader. I want you to know that my story counts. I hear people all the time tell me that I am getting out to have a family or whatever. Of course I am very fortunate that I was passed over the first time because I realized how this organization works and the very few opportunities that I was given. I know that had I advanced I would have been given jobs that I wouldn't want. Being a prior civilian female left me with many fights and few friends in this cutthroat organization. I want you to know that I didn't mess up any cases or lose a qual, I achieved a PR qual and a second master's degree that no one else did, but somehow [the Supervisor and Reporting Officer] decided to make it impossible for advancement. I want you to know that I probably didn't catch it right away not because I am slow, but because they did it in a way to make me feel like everything was fine. When ignorance is bliss, right? I didn't even get the marks until a day before reporting to [her next unit] and I was asked over the phone how my month long trip through Asia was. There is a depth of cruelty in the way she did that that I will never understand. I get wanting to destroy my opportunities of advancement because I didn't go to the Academy and complained about a Chief that didn't work or whatever, but supervisors should at least tell the member. When [her current CO] told me that you mentioned how I waited a year to try to change marks, I realized again how I don't belong here. Either way, I would rather speak up and let a Supervisor know that a Chief is taking advantage of her and his role in this organization than get good marks. I really have no idea why [the Reporting Officer] hated me. I

² "White space" on an OER normally refers to a lack of comments resulting in empty space in the comment blocks on an OER form, but the comment blocks are full on the disputed OER.

will admit that he did make things awkward, us CDOs always felt like we couldn't please him and I probably didn't brief him very well. I was sad when I heard that he lowered [another lieutenant's] marks when he departed as well, a year after me. I'm glad I found my voice because when I tell people that my last unit didn't like me, my last unit should know why I say that.

APPLICABLE LAW AND POLICIES

Officer Accession, Evaluations, and Promotions Manual, COMDTINST M1000.3A

Article 5.A.2.c.(1) of the manual in effect in 2015 states that a Commanding Officer must “ensure accurate, fair, and objective evaluations are provided to all officers in their command.”

Article 5.A.2.d.(1)(c) states that individual officers “are responsible for managing their own performance. This responsibility entails managing their job expectations, obtaining sufficient performance feedback, and using that information to meet or exceed standards.”

Article 5.A.2.d.(2)(b)[5] states that the Supervisor must provide “timely performance feedback to the Reported-on Officer at the officer's request during a reporting period, at the end of each period, and at such other times as the supervisor finds appropriate.”

Officer Evaluation System Procedures Manual, PSCINST M1611A

Article 2.E.4. of the OES Manual, PSCINST M1611.1A, states the following about how a Supervisor should prepare an OER (similar instructions are provided for the Reporting Officer in Article 2.F.2.):

b. For each evaluation area, the Supervisor reviews the Reported-on Officer's performance and qualities observed and noted during the reporting period. Then, for each of the performance dimensions, the Supervisor must carefully read the standards and compare the Reported-on Officer's performance to the level of performance described by the standards. The Supervisor must 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. Refer to Table 2-2 Performance Dimension Marking below in determining the appropriate mark to assign to each performance dimension. Inflationary markings dilute the actual value of each evaluation, rendering the OES and the OER itself ineffective.

• • •

d. In the “comments” block following each evaluation area, the Supervisor includes comments citing specific aspects of the Reported-on Officer's performance and behavior for each mark that deviates from a four (if applicable). The Supervisor draws on their 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 (if applicable). 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.

Written Standards on OER Form CG-5310B

Adaptability: The applicant asked that the mark of 5 be raised to a 6. To receive a mark of 5 for Adaptability on an OER in 2015, an officer had to meet all of the written criteria for a mark of 4 and at least one of the criteria for a mark of 6. To receive a mark of 6, the officer had to meet all of the criteria for a mark of 6:

- **Criteria for a 4:** “Receptive to change, new information, and technology. Effectively used benchmarks to improve performance and service. Monitored progress and changed course as required. Effectively dealt with pressure and ambiguity. Facilitated smooth transitions. Adjusted direction to accommodate societal trends or political realities.”
- **Criteria for a 6:** “Rapidly assessed and adjusted to changing conditions, political realities, new information and technology. Very skilled at using and responding to measurement indicators. Championed organizational improvements. Effectively dealt with extremely complex situations. Turned pressure and ambiguity into constructive forces for change.”

Writing: The applicant asked that the mark of 5 be raised to a 6. To receive a mark of 5 for this performance dimension on an OER in 2015, an officer had to meet all of the written criteria for a mark of 4 and at least one of the criteria for a mark of 6. To receive a mark of 6, the officer had to meet all of the criteria for a mark of 6:

- **Criteria for a 4:** “Written material clear, concise, and logically organized. Proofread conscientiously. Correspondence grammatically correct, tailored to audience, and delivered by an appropriate medium. Subordinates’ material reflected same high standards.”
- **Criteria for a 6:** “Clearly and persuasively expressed complex or controversial material, directly contributing to stated objectives. Written or published material brought credit to the Coast Guard. Actively educated subordinates in effective writing.”

Looking Out for Others: The applicant asked that the mark of 6 be raised to a 7. To receive a mark of 6, the officer had to meet all of the criteria for a 6, while to receive a 7, an officer had to meet all of the written criteria for a mark of 6 and exceed at least one of them:

- **Criteria for a 4:** “Cared for people. Recognized and responded to their needs; referred to outside resources as appropriate. Considered individuals’ capabilities to maximize opportunities for success. Consistently recognized and rewarded deserving subordinates.”
- **Criteria for a 6:** “Always accessible. Enhanced overall quality of life. Actively contributed to achieving balance among unit requirements, professional and personal responsibilities. Strong advocate for subordinates; ensured appropriate and timely recognition, both formal and informal.”

Teamwork: The applicant asked that the mark of 5 be raised to a 6. To receive a mark of 5 for this performance dimension, an officer had to meet all of the written criteria for a mark of 4 and at least one of the criteria for a mark of 6. To receive a mark of 6, the officer had to meet all of the criteria for a mark of 6:

- **Criteria for a 4:** “Skillfully used teams to increase unit effectiveness, quality and service. Resolved or managed group conflict, enhanced cooperation, and involved team members in decision process. Valued team participant. Effectively negotiated work across functional boundaries to enhance support of broader mutual goals.”
- **Criteria for a 6:** “Insightful use of teams raised unit productivity beyond expectations. Inspired high level of esprit de corps, even in difficult situations. Major contributor to team effort. Established relationships and networks across a broad range of people and groups, raising accomplishments of mutual goals to a remarkable level.”

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 filed.³

2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.⁴

3. The applicant alleged that the OER dated June 19, 2015, is erroneous and unjust. In considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant’s military record is correct as it appears in her record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁵ 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.”⁶ In addition, to be entitled to correction of an OER, which is signed by a rating chain of three superior officers, an applicant must prove by a preponderance of the evidence that the disputed OER was adversely affected by a “misstatement of significant hard

³ *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994) (holding that, under § 205 of the Soldiers’ and Sailors’ Civil Relief Act of 1940, the BCMR’s three-year limitations period under 10 U.S.C. § 1552(b) is tolled during a member’s active duty service).

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

⁵ 33 C.F.R. § 52.24(b).

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

fact,” factors “which had no business being in the rating process,” or a prejudicial violation of a statute or regulation.⁷

4. The applicant did not contest the June 2015 OER before the Coast Guard’s Personnel Records Review Board (PRRB); did not complain about it to her rating chain until after she was not selected for promotion; and did not seek correction of the OER until 2018. The applicant’s failure to timely complain about the OER and to apply to the PRRB is substantial evidence that when she received the OER in July 2015 she accepted it as valid even if she did not like it. In fact, the applicant stated that she decided to contest her 2015 OER only after she was passed over for promotion and someone at PSC told her that the decline in some of her marks on her 2015 OER, in comparison to her 2014 OER, may have caused her non-selection.⁸

5. More importantly, the declarations of the applicant’s raters and emails in the record clearly show that her raters were motivated to reconsider the marks and comments in the OER because the applicant had been non-selected for promotion. According to long-standing case law⁹ and prior BCMR decisions,¹⁰ such “retrospective reconsideration” of an officer’s

⁷ *Hary v. United States*, 618 F.2d 704, 708 (Ct. Cl. 1980), *cited in Lindsay v. United States*, 295 F.3d 1252, 1259 (Fed. Cir. 2002).

⁸ The proceedings of selection boards “shall not be disclosed to any person not a member of the board.” 14 U.S.C. § 2118(d). Therefore, whether the decline in certain marks between the 2014 and 2015 OERs was a contributing or deciding factor in the applicant’s non-selections cannot be known.

⁹ *Paskert v. United States*, 20 Cl. Ct. 65, 75 (1990) (finding that “[a]fter the fact [non-selection] statements by raters contending that they scored the applicants too low on their OER’s are not to be given great weight”), *citing Tanaka v. United States*, 210 Ct. Cl. 712, 713 (1976), *cert. denied*, 430 U.S. 955 (1977) (noting that the raters who submitted letters on behalf of the plaintiff claiming that the marks they had assigned him were too low did not “point out any misstatements of fact in their original OER’s” and offered “only opinions they no longer entertained”); *Remy v. Air Force Board for Correction of Military Records*, 701 F. Supp. 1261, 1271 (E.D. Va., 1988) (noting that “[n]othing could be more inimical to the fair rating system” than allowing *post hoc* judgments years later and after an officer has been non-selected for promotion); *Voge v. United States*, 11 Cl. Ct. 510, 515 (1987), *rev’d on other grounds*, 844 F.2d 776 (1988) (“Nor is it enough to impel us to act that the rater may now say that he scored the claimant too low. In *Tanaka* ... we held that rater’s statement that his opinion has changed and that he would now rate plaintiff higher, absent any misstatements of fact in the OER, did not tender a triable issue on the accuracy of the OER”); *Chronis v. United States*, 222 Ct. Cl. 672, 673 (1980) (holding that “the retrospective statements of plaintiff’s rating officers are insufficient to prove that the AFBCMR acted arbitrarily in refusing to void the challenged OER”); *Reid v. United States*, 221 Ct. Cl. 864, 867 (“The retrospective statements of plaintiff’s rating officers are thus insufficient to prove that the board acted arbitrarily in refusing to void the challenged OER’s.”); *Savio v. United States*, 213 Ct. Cl. 737, 740 (1977) (denying relief despite “after-the-fact letters from rating officers who in retrospect state that in their opinion they rated a particular officer too low”).

¹⁰ 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. 2015-136 (finding that a Supervisor’s statements supporting removal of an OER constituted “retrospective reconsideration,” which “is not grounds for removing” an OER); 2011-179 (denying relief and finding that a CO’s statement constituted “retrospective reconsideration” that did not warrant raising marks on the disputed 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 disputed OER 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).

performance after an officer has been non-selected for promotion is not grounds for removing or raising the marks in an OER. As the court held in *Remy v. Air Force Board for Correction of Military Records*, 701 F. Supp. 1261 (E.D. Va., 1988), “Nothing could be more inimical to the fair rating system”¹¹ than to change or remove an OER based on a rater’s *post hoc* judgment about an officer’s performance years later and after the officer has been non-selected for promotion.

6. Instead, as noted above, to get an OER corrected or removed, an applicant must prove by a preponderance of the evidence that the OER is adversely affected by a “misstatement of significant hard fact,” factors “which had no business being in the rating process,” or a prejudicial violation of a statute or regulation.¹² But the applicant has not shown that the disputed OER is adversely affected by a misstatement of significant, hard fact; a factor that should not have affected the rating process; or a prejudicial violation of a statute or regulation. There is no evidence of bias or a prejudicial violation of law or policy, and the applicant has not shown that any comment in the disputed OER is false. The fact that three years later—after the applicant had failed twice of selection and upon being asked by the Executive Assistant to the Vice Commandant to reconsider the OER—her Supervisor agreed to raise four of the marks she had assigned and replaced a few of the comments in the OER to address different achievements does not persuade the Board that any of the original OER marks or comments are misstatements of significant, hard fact.

7. Although the applicant’s raters stated that they based the changes in the proposed replacement 2015 OER on additional information about her performance, which the applicant provided to them in 2018, her original and additional OER input is not before the Board. Nor did her Supervisor—who is the rater who agreed to raise four marks she had assigned—claim that the additional information was actually unknown to her in 2015, when she assigned the marks and wrote the comments in the original OER. And while the Supervisor and Reporting Officer changed many comments in the proposed replacement OER, most of their changes are purely editorial—changes in sentence construction, verb tense, abbreviation, and capitalization—which make the comments appear different at a glance but are not substantive. Of the few changes that are substantive—in that they mention performance not already mentioned in the original OER—most concern performance that cannot have been unknown to the applicant’s Supervisor in 2015. The Supervisor could not have been unaware in 2015 that the applicant had worked more than two months in IMD to get her pollution responder qualification, stood numerous weekend watches, passed her watch supervisor duties to another officer, and worked with people from the private sector and federal, state, and local governments to protect the port environment. If the applicant failed to mention exact numbers in her OER input in 2015, her Supervisor may not have known the exact number of briefs (200+), “multi-mission cases” (92), and NOFI letters (41) that the applicant had handled, but her Supervisor must have known that during the 15-month reporting period, the applicant had briefed the command on a nearly daily basis; that—given the tempo of operations at the Operations Center—the applicant had handled dozens of “multi-mission cases”; and that the applicant’s responsibilities had included drafting many NOFI letters for signature.

¹¹ *Remy*, 701 F. Supp. at 1271.

¹² *Hary*, 618 F.2d at 708, cited in *Paskert*, 20 Cl. Ct. at 71 and *Lindsay*, 295 F.3d at 1259.

8. The performance newly mentioned in the replacement OER does not show that the original marks and comments are erroneous or unjust. The only new comment about performance that the applicant's Supervisor could have been unaware of in 2015 is the fact that the applicant had "supported" a junior member with a family problem, directed the member to resources, and eased the member's stress. The placement of this comment shows that it was added to support the proposed mark of 7 in "Looking Out for Others" in the replacement OER. Given the written criteria on the OER form for marks of 4 and 6 in the "Looking Out for Others" performance dimension, however, this new comment does not persuade the Board that the original comments or the mark of 6 that the applicant received for "Looking Out for Others" on the disputed OER are erroneous or unjust.

9. The applicant's raters were able to enter a few new supporting comments in the replacement OER by removing or abbreviating original comments, but the lack of these new comments in the original OER does not make it erroneous or unjust. An OER is not supposed to be a compilation of an officer's accomplishments. Given the small space for comments on an OER, the comments are not required or expected to mention every achievement or every aspect of an officer's performance during the rating period. Instead, the raters are required to read the written standards for each performance dimension, compare them to the officer's observed performance, and assign the appropriate mark based on that comparison.¹³ Then, for each assigned mark deviating from a "standard" mark of 4, the rater is required to add one or two comments "citing specific aspects" of the officer's performance to "amplify and be consistent with" the assigned mark.¹⁴

10. The preponderance of the evidence shows that the raters' replacement OER constitutes "retrospective reconsideration," which is not grounds for removing or changing an OER, as explained in finding 5, above. And the applicant has not proven by a preponderance of the evidence that her 2015 OER is adversely affected by a "misstatement of significant hard fact," factors "which had no business being in the rating process," or a prejudicial violation of a statute or regulation.¹⁵ Accordingly, the applicant's request to have the OER corrected or removed and replaced should be denied. Likewise her request for Special Selection Boards must be denied because she has not shown that her record contained a material error when it was reviewed by the selection boards.¹⁶

(ORDER AND SIGNATURES ON NEXT PAGE)

¹³ PSCINST M1611.1A, Articles 2.E.4. and 2.F.2.

¹⁴ *Id.*

¹⁵ *Hary*, 618 F.2d at 708, *cited in Paskert*, 20 Cl. Ct. at 71 and *Lindsay*, 295 F.3d at 1259.

¹⁶ 14 U.S.C. § 2120. The Board notes that even if the Board had replaced the disputed OER, the applicant's request for Special Selection Boards would not be ripe for decision because she did not raise this issue in her original application and so the Coast Guard has had no opportunity to comment on this request for relief, as required by 33 C.F.R. § 52.42.

ORDER

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

September 6, 2019

