

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-072



FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on February 27, 2019, and assigned the case to the Deputy Chair to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated February 11, 2022, 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 Lieutenant (LT/O-3) on active duty, asked the Board to correct her record by—

- Changing the following marks on her Officer Evaluation Report (OER), covering her work from June 1, 2016, to May 31, 2017:
 - Changing the mark for “Teamwork” in Section 3.b., Leadership Skills from a 2 to a 5 (on a scale from 1 (worst) to 7 (best)),
 - Changing the mark for “Professional Presence” in Section 3.c., Personal and Professional Qualities from a 3 to a 5,
 - Changing the Section 5.b., Comparison Scale mark from the second mark (of seven), denoting a “Marginally performing officer,” to a mark in the fourth spot, denoting “One of the many high performing officers who form the majority of this grade,”
 - Changing the Section 5.c., Promotion Scale mark from the second mark (of six), denoting “Promotion potential,” to a mark in the third spot, denoting “Promote.”

- Removing the following comments from the same OER:

- Section 3.b., Leadership Skills: “Displayed difficulties working with EST [Exercise Support Team] team members; on numerous occasions demonstrated a complete lack of emotional self-control and inability to cooperate with EST team members. Actions were a detriment to team effectiveness; resulted in removal from team but given second opportunity as EST ADMIN Team Leader, once again failed to manage group conflict in a professional manner.”
- Section 5.d., Reporting Officer Comments: “Leadership potential is limited by difficulties in cooperatively working with others and maintaining a professional demeanor when engaging teammates and subordinates. Due challenges [sic], assigned and completed several Skillport videos/courses on emotional intelligence and interacting with others during the marking period. Not ready for promotion to O4.”

The applicant first argued that the disputed OER is erroneous because it was improperly influenced by events that occurred outside of the reporting period. Specifically, the applicant argued that issues regarding her performance occurred in May 2016. However, she stated that her performance issues were excluded from her 2015-2016 OER because they had occurred too late in the reporting period. The applicant argued that any issues that occurred in May 2016 should have been included in the previous OER and should not have affected the disputed OER.

The applicant also argued that the disputed OER is unjust because she was not properly counseled as to her performance issues. The applicant stated that in December 2016, she received mid-period counseling. She stated that the counseling went well and that she was not counseled on any performance issues. The applicant alleged that it was not until after she departed the unit in June 2017 that she was informed by her Supervisor that certain performance issues came to light. Given the lack of counseling, the applicant argued that she was not provided an opportunity to correct issues addressed in the disputed OER.

The applicant argued that her mark for “Teamwork” should be changed from a 2 to a 5. To support her allegation, the applicant referenced the Coast Guard Achievement Medal that she received for her performance from December 2013 to June 2017. Specifically, the citation to accompany the award stated: “[The applicant] seized the initiative to complete the first-ever fiscal year review of After Action Reports covering four critical Coast Guard contingency mission areas, heading a team to analyze 200 reports and over 250 documented lessons learned; her efforts generated interest at the highest levels of the Coast Guard and provided preparedness products of superior quality in the field.” According to the applicant, the fiscal year review of After Action Reports was completed between September 2016 and January 2017.

The applicant argued that her mark for “Professional Presence” should be changed from a 3 to a 5. The applicant stated that during the evaluation period, she supervised three members. She also reiterated that she led a team of four members in completing the first-ever fiscal year review of After Action Reports which was reviewed at the highest levels of the Coast Guard. The applicant stated that throughout the project, she worked closely with the customers to ensure they received the product that met their needs.

Lastly, the applicant argued that the identified comment in the Leadership Skills section is erroneous and should be removed. The applicant argued that the comment is erroneous because she was not removed from the Exercise Support Team due to her bad behavior. To support this assertion, the applicant stated that she served as a member of the Exercise Support Team for two months of the reporting period. During this time, she alleged that she performed two trips with her assigned team with no reported issues. Then, in August 2016, the applicant argued that she was transferred to the Administrative Team because she was pregnant. She stated that she had to be transferred because traveling was a major aspect of the Exercise Support Team, and members were unable to travel once they reached 28 weeks pregnant. The applicant acknowledged that she did not reach 28 weeks in her pregnancy until November 2016. However, the applicant argued that she transferred early because there was not much work for the Exercise Support Team. Finally, the applicant argued that team members rotated each year to better diversify their experiences, and that being assigned to a new team was nothing new or unexpected.

SUMMARY OF THE RECORD

The applicant was appointed as a cadet in the Coast Guard Academy on June 28, 2004. On May 21, 2008, she graduated from the Coast Guard Academy and was commissioned as an ensign.

On December 27, 2013, the applicant reported for duty as a member of the Exercise Support Division. She received her first OER in this billet for the period of December 7, 2013, to May 31, 2015. For the sections evaluating her Performance of Duties, Communication Skills, and Leadership Skills, she received ten excellent marks of 6 and three exceptional marks of 7. For the section evaluating her Personal and Professional Qualities, she received one above-standard mark of 5 and four marks of 6. When compared to other officers in the same grade, the applicant received a mark for “Excellent performer” in the fifth of seven possible marks ranging from “Performance Unsatisfactory for Grade or Billet” to “Best Officer of this Grade.”

The applicant received a second OER as a member of the Exercise Support Division for the period of June 1, 2015, to May 31, 2016. For the sections evaluating her Performance of Duties, Communication Skills, and Leadership Skills, she received five marks of 5, six marks of 6, and two marks of 7. For the section evaluating her Personal and Professional Qualities, she received one mark of 5 and four marks of 6. When compared to other officers in the same grade, the applicant received a mark for “Excellent performer.”

On May 11, 2016, the applicant’s Reporting Officer emailed the applicant’s Supervisor. He had identified a number of great opportunities for the applicant to complete on Skillport. The applicant’s Reporting Officer stated that he would like to see the following training assigned to the applicant as part of her Individual Development Plan:

Video—Emotions are more important than Facts
-Responding to Feedback

Courses—Receiving Feedback and Criticism
-Dealing with Conflict in the Workplace
-Building Better Work Relationships

Challenges—Giving Feedback to Coworkers

-Giving Appropriate Feedback

Also on May 11, 2016, the applicant sent an email to members of her team in which she apologized. She acknowledged that she had been “less than easy” to work with lately and that her behavior had made it difficult for the team to perform its mission and provide the best support possible to the customers. The applicant stated that she was working on particular issues and that she was aware that she needed to change. She concluded by stating that she hoped that she had not burned bridges beyond repair.

Disputed OER

The applicant received a third and final OER as a member of the Exercise Support Division, for the period of June 1, 2016 to May 31, 2017, which is the disputed OER in this case. For the section evaluating her Performance of Duties, she received one mark of 5, four marks of 6, and two marks of 7 for “Planning and Preparedness” and “Writing.”

For the section evaluating her Leadership Skills, she received one very low mark of 2 for “Teamwork,” two standard marks of 4, and three marks of 5. The comments for this section were as follows:

Successfully mentored a Cadet Candidate attending the Naval Academy Preparatory School (NAPS) resulting in acceptance to CG Academy. As supervisor to 3 division members, ensured needs were met to facilitate quality work-life balance; encouraged telework. Successfully trained unit members in complex survey collateral; drafted step-by-step procedure guide resulting in a smooth transition of duties and ensured consistency & maintenance of the critical feedback system. Advocated for member to attend exercises for professional development. Displayed difficulties working with EST team members; on numerous occasions demonstrated a complete lack of emotional self-control and in inability to cooperate with EST team members. Actions were a detriment to team effectiveness; resulted in removal from team but given second opportunity as EST ADMIN Team Leader; once again failed to manage group conflict in a professional manner. Completed marks for E5/E6; submitted data for own OER.

For the section evaluating her Personal and Professional Qualities, she received one below-standard mark of 3 for “Professional Presence,” one mark of 5, and three marks of 6. The comments for this section were as follows:

Exceptional willingness and ability to take on additional responsibilities. Expertly served as Project Officer for high visibility, extensive review and analysis of Lessons Learned from FY16 for four major mission area exercises and real-world events. Exceptional ability to focus on key issues and most relevant information resulted in identifying recurring trends in strengths and areas of improvement for CG and port partners aided in increased mission readiness. Championed new method for processing survey data through shared email in-box and new tracking system ensuring continuity and consistency, improved timeliness in distribution of surveys, increased response rates and significantly improved FC-ES products and services. On several occasions lost composure in low stress environment projected a poor image of a CG officer in front of enlisted and civilian employees.

When compared to other officers in the same grade, the applicant received a mark for “Marginally Performing Officer” in the second of seven possible marks. On the promotion scale, the applicant received a mark for “Promotion potential” in the second of six possible marks ranging

from “Do not promote” to “Below zone select.” The Reporting Officer’s comments were as follows:

[The applicant] is an extremely hard working officer. Assigned as a project manager on numerous high visibility and large scale projects. [The applicant] excelled when working on solo projects producing high quality work products. Superb writing skills and great attention to detail would benefit any District or AREA staff. Experience gained in exercise planning, execution, and drafting of AARs will greatly aid [the applicant] in next assignment in Sector Contingency Planning and Force Readiness (CPFR) position. Leadership potential is limited by difficulties in cooperatively working with others and maintain a professional demeanor when engaging teammates and subordinates. Due challenges [sic], assigned and completed several Skillport videos/courses on emotional intelligence and interacting with other during the marking period. Not ready for promotion to O4.

Before preparing the memorandum in this case, the JAG obtained the following statements from the applicant’s Supervisor and Reporting Officer regarding the disputed OER.

- On March 31, 2019, Mr. G, who served as the applicant’s Supervisor during the reporting period, provided a declaration under penalty of perjury. Mr. G, the Chief of the Exercise Support Branch, served as the applicant’s Supervisor from December 27, 2013, to May 31, 2017. He stated that he retired as a Commander after more than thirty-one years in the Coast Guard, and that he returned a short while later as a civilian supervisor in 2015. Mr. G first addressed the applicant’s performance in the months preceding the disputed OER. He stated that in March 2016, the team leader of the Exercise Support Team had a heart attack, so another team member was tentatively put in his place. Mr. G stated that the applicant had a difficult time accepting the change in leadership and often fought with the new team leader. He stated that in May 2016, the applicant’s behavior became so bad that it was detrimental to the team’s ability to succeed. Specifically, he stated that the applicant’s unprofessional behavior and lack of emotional control was affecting her team’s ability to successfully deliver products to customers. However, Mr. G stated that he did not want two months of poor behavior to override the applicant’s otherwise positive performance on her 2015-2016 OER. Instead, he and his supervisor, Mr. H, decided to assign some Skillport videos to improve the applicant’s ability to work in a team. Mr. G stated that in his opinion, he gave the applicant better marks than she deserved on her 2015-2016 OER.

Mr. G then addressed the applicant’s performance during the reporting period of the disputed OER. He stated that the disputed OER accurately reflects the applicant’s performance. Specifically, Mr. G stated that the applicant’s low marks in the performance dimensions of “Teamwork” and “Professional Presence” accurately reflect her inability to work with others to produce a positive outcome. He stated that in June and July 2016, the applicant traveled with the Exercise Support Team but continued to have problems working with team members. For example, he stated that the applicant displayed disruptive behavior and lacked emotional control. Mr. G stated that he had the applicant and her team leader in his office for counseling sessions at least two or three times a week. During the counseling sessions, he stated that the applicant openly admitted that she had had issues working with others during her career. Despite the counseling sessions, Mr. G stated that support to the customers was suffering and he had no other option but to remove

the applicant from the Exercise Support Team. For her next assignment, Mr. G stated that he wanted to choose a position in which the applicant could improve in the performance dimensions of “Teamwork” and “Professional Presence.” As such, he assigned the applicant as team leader of the Administrative Team. Mr. G stated that he thought giving the applicant a chance to lead a team instead of being a team member might help her to overcome some of her performance issues. He said that for a couple of months, the applicant did well in her new position. However, he stated that overtime, the applicant began micro-managing one of her team members, a Yeoman (YN2), and their professional relationship began to fail. Mr. G described the YN2 as an exceptional performer who was fully capable of completing work assignments with little supervision. Despite the YN2’s performance, Mr. G stated that the applicant treated him with no respect. He recalled one occasion in which the applicant was berating the YN2 for not keeping the shared calendar up to date. Mr. G stated that when the YN2 tried to explain himself, the applicant replied: “You are lucky I even let you talk.” At that point, the YN2 ran out of the counseling session and directly to Mr. G’s office where he stated: “Book me, bust me down a paygrade, do anything to me but please make her stop.” He stated that after the applicant’s last failure to control her emotional behavior and professional demeanor, he removed her as a supervisor and had her concentrate on division projects. Mr. G stated that when the applicant worked on her own, she was a high performer who turned in quality work in a timely manner. He stated that he wanted to ensure that the applicant was recognized for her positive performance, so he submitted an achievement medal as her end of tour award. Mr. G concluded by addressing the applicant’s assertion that she was not counseled regarding her performance. He denied that the applicant was unaware of her behavioral issues. In fact, Mr. G stated that he counseled the applicant multiple times on working with teammates and controlling her emotions.

- On March 21, 2019, Mr. H, who served as the applicant’s Reporting Officer during the reporting period, provided a declaration under penalty of perjury. Mr. H, a retired Commander, served as the applicant’s Reporting Officer from December 27, 2013, to May 31, 2017. He stated that while the disputed OER includes marks that are significantly lower than marks on her previous OER, the disputed OER accurately reflects the applicant’s performance during the reporting period. Mr. H stated that on May 11, 2016, he became aware that the applicant was having significant interpersonal problems with fellow members. He stated that during a very emotional counseling session, the applicant indicated a lifetime challenge with interpersonal relationships. Mr. H stated that while this information came to light too late to be reflected in the applicant’s 2015-2016 OER, it was discussed with the applicant during a counseling session on July 7, 2016. He stated that he is completely confident that at the beginning of the reporting period for the disputed OER, the applicant understood that her interpersonal skills and teamwork ability had to improve to be considered at an acceptable level. To help the applicant develop appropriate behavior, Mr. H directed her to watch two videos and complete three courses from the Skillport section of the Coast Guard’s Training Portal. He stated that this training was assigned to the applicant and completed during the reporting period of the disputed OER. Mr. H stated that unfortunately, the training did not have a positive impact on the applicant’s performance. He stated that in June and July 2016, there were continued reports of conflict between the applicant and other members of the Exercise Support Team.

Specifically, Mr. H stated that the applicant so badly damaged relationships with at least three members of the team that they could no longer work together. As a result, he stated that the applicant was removed from the deploying team to reduce conflict and make optimum use of personnel. Mr. H stated that once she was removed from the deploying team, there was again significant conflict involving the applicant, this time between her and a very high performing enlisted member. Mr. H concluded by stating that while the applicant produced high quality work when she worked alone, her behavioral problems indicated that she was not ready for promotion.

On July 5, 2017, the applicant was awarded the Coast Guard Achievement Medal for her superior performance from December 2013 to June 2017.

VIEWS OF THE COAST GUARD

On July 16, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC argued that the applicant failed to provide evidence that the Coast Guard committed an error or injustice regarding the disputed OER. To support her request to amend the disputed OER, the applicant submitted her Coast Guard Achievement Medal. However, PSC argued that end of tour awards describe a member's best work and should not be confused with a performance evaluation. Further, PSC argued that the evidence shows that the applicant's team succeeded in spite of her. Specifically, PSC argued that the sworn declarations provided by the applicant's Supervisor and Reporting Officer extensively outline a history of the applicant's inability to work with or lead others.

The JAG first argued that the applicant failed to show that the Coast Guard included events in the disputed OER that occurred before the reporting period. The JAG acknowledged that while the applicant's behavioral issues began in May 2016, the issues continued into the reporting period for the disputed OER. The JAG pointed to the affidavits submitted by the applicant's Supervisor and Reporting Officer which attest to her behavioral issues continuing into the autumn of 2016.

The JAG also argued that the applicant was properly counseled regarding her performance. Specifically, the JAG stated that the applicant received mid-period counseling in December 2016. The JAG acknowledged that there is no evidence of what was or was not said during the counseling session. However, at that time, the applicant had been twice removed from her positions due to conflict with her team members. The JAG argued that regardless of what was said during the mid-period counseling, it is disingenuous for the applicant to allege that she was unaware of her continued personality problems leading to low marks on the disputed OER.

Finally, the JAG argued that the applicant failed to show that the Coast Guard committed an error or injustice in assigning her low marks on the disputed OER. First, the JAG argued that the applicant properly received low marks because she had difficulty working with others. The JAG argued that the applicant was counseled on her behavior, on several occasions, and was ordered to take specialized training to improve her behavior. Despite receiving counseling and

training, the JAG stated that the applicant was removed from the Exercise Support Team in July 2016 due to a lack of interpersonal skills. The JAG stated that the applicant was then provided an opportunity for leadership with the Administrative Team, but she was also removed from that position. Second, the JAG reiterated PSC's assertion that the applicant's Coast Guard Achievement Medal is not evidence that her low marks are erroneous. The JAG noted that the applicant's end of tour award covers more time than the disputed OER. In fact, the JAG stated that the applicant's entire time at the unit, which spanned from December 2013 to June 2017, was considered when she was issued the Coast Guard Achievement Medal. The JAG stated that the applicant's first two OERs at the unit establish that she was a high performer. The JAG argued that the applicant's CO, presumably, chose to disregard the final months of her time at the unit when he decided to award her with the Coast Guard Achievement Medal. Finally, the JAG noted that OERs are inherently subjective evaluations. However, the JAG argued that the applicant's marks are neither arbitrary nor capricious. The JAG argued that the written comments in the OER, as well as the affidavits from the applicant's Supervisor and Reporting Officer, provide clear, succinct bases for the applicant's low marks.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 26, 2019, the Chair sent the applicant a copy of the Coast Guard's views and invited her to respond within thirty days. In her response, through counsel, the applicant maintained that the disputed OER should be amended.

The applicant first argued that the affidavits provided by her Supervisor and Reporting Officer are inappropriate and should not be considered by the Board. She argued that there is no opportunity or allowance for the Coast Guard to provide evidence *sua sponte* in support of its position. Instead, the applicant argued that the disputed OER should be supported solely by documents in existence at the time she received it.

The applicant reiterated her allegation that her command erroneously included her conduct from the previous reporting period in the disputed OER. She argued that the disputed OER should not be penalized because her command did not want to address her behavioral issues in a timely and appropriate manner. To support her assertion, the applicant pointed to three pieces of evidence. First, the applicant argued that her Supervisor's affidavit makes it clear that her behavioral issues occurred in May 2016. Second, the applicant argued that she was assigned the Skillsoft videos on May 11, 2016, as evidenced by her Reporting Officer's email. However, the disputed OER states the following: "Due challenges [sic], assigned and completed several Skillport videos/courses on emotional intelligence and interacting with others during the marking period." The applicant argued that this is evidence that the disputed OER directly comments on her performance in the previous reporting period. Finally, the applicant argued that her Supervisor relied on an email that she sent on May 11, 2016, to justify her low marks. In her email, the applicant apologized to her team for her behavior. The applicant argued that her Supervisor's reliance on the email is evidence that her marks were based on her performance in the previous marking period.

The applicant argued that the disputed OER is erroneous because her low marks are not properly supported. The applicant stated that according to the Coast Guard Officer Evaluation Manual, numerical marks of 1, 2, 3, or 7 must be supported with comments. The applicant argued

that the comments to support her low marks for “Teamwork” and “Professional Presence” are superficial in nature and devoid of any true support. Specifically, the applicant argued that the comments fail to provide concrete examples of the behavior that led to the marks. The applicant argued that such low marks warrant specificity and objectivity, especially in the absence of any documentation throughout the reporting period.

Finally, the applicant argued that the disputed OER is erroneous because she was discriminated against due to her pregnancy. The applicant stated that courts have recognized that concrete evidence of discrimination is often nonexistent. Therefore, she stated that it is permissible to draw inferences from the totality of the circumstances and to rely on circumstantial evidence to show discrimination. The applicant argued that her previous OERs are sufficient evidence to substantiate an inference of discrimination in the disputed OER. The applicant stated that her previous OERs were exceptional and demonstrate that she was a high performing officer. Then, in early July 2016, she stated that she informed her command of her pregnancy. The applicant argued that it is inconceivable that she would have such a drastic reduction in performance over such a short period of time. Specifically, the applicant noted that in her 2015-2016 OER, she received a mark of 5 for “Teamwork” and a mark of 6 for “Professional Presence.”

To support her application, the applicant provided several pages of emails between her and her Supervisor. She argued that the emails show three things. First, the applicant argued that the emails show that her Supervisor was well-informed of her relationship with her team. Second, the applicant argued that the emails show that her Supervisor felt that she and her team were doing a great job. For example, the applicant received an email from Mr. G on September 28, 2016, that stated that she was doing a great job as a supervisor. Specifically, Mr. G praised the applicant for taking the lead on multiple projects which significantly reduced his workload. Finally, the applicant argued that the emails show that her Supervisor was aware of the conflict between her and a YN2. The applicant stated that the conflict between her and the YN2 occurred because she held her team accountable and enforced Coast Guard work hours and leave policy. However, the applicant alleged that she did so in a tactful and professional manner.

APPLICABLE LAW AND POLICY

33 C.F.R. § 52.42 discusses the submission by the Coast Guard regarding BCMR cases in relevant part:

- (a) The Board shall transmit to the Commandant of the Coast Guard or his or her delegate a copy of each application for relief submitted and docketed under subpart C of this part, together with any briefs, memoranda, and documentary evidence submitted or obtained in the case.
- (b) The Commandant of the Coast Guard or his or her delegate may forward to the Board a written advisory opinion presenting the views of the Coast Guard on any case before the Board.
- (c) An advisory opinion furnished by the Coast Guard under this section shall not be binding upon the Board, but shall be considered by the Board, along with all other information and material submitted in the particular case, if it is received by the Board within 135 days of the date the application is complete. The Chair may, in his or her discretion, grant the Coast Guard an extension of the time provided for submitting the advisory opinion.

Article 1.A.1.b. of the Coast Guard Officer Evaluation System Procedures Manual, PSCINST M1611.1C, states the following regarding a Reported-on Officer in relevant part:

Be responsible for managing their performance and requesting mid-term counseling from their rating chain. This responsibility entails determining job expectations, obtaining sufficient performance feedback from the Supervisor during the period, and using that information to meet or exceed standards. Request an appointment with the Supervisor at the beginning and during each reporting period, if clarification of duties and areas of emphasis is needed.

Article 4.B.11. of the Coast Guard Officer Evaluation System Procedures Manual, PSCINST M1611.1C, states the following regarding comments that a member's rating chain is prohibited from including in relevant part:

Discuss Reported-on Officer's performance or conduct which occurred outside the reporting period except as provided in Article 5.E.7. and 5.F.3. of Reference (a) and Chapter 10 and Chapter 15 of this Manual.

Article 7.d.5. of COMDTINST 1000.9, regarding pregnancy in the Coast Guard, discusses performance evaluations as follows:

Commanding officers and officers in charge shall ensure that pregnant service members do not receive adverse evaluation reports strictly as a consequence of pregnancy. Weight standards exceeded during pregnancy and/or nursing are not cause for adverse OERs or evaluations. Details regarding this policy are found in reference (g).

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on 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.
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.¹
3. The applicant alleged that her performance evaluation for the period June 1, 2016, to May 31, 2017, should be corrected because it is erroneous and unjust. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed evaluation 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 it 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, and in good faith" in preparing their evaluations.³ To be entitled to relief, the applicant cannot "merely allege or prove that an [evaluation] seems inaccurate,

¹ *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).

² 33 C.F.R. § 52.24(b).

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).

incomplete or subjective in some sense,” but must prove that the disputed evaluation 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

4. The applicant did not challenge the disputed OER by filing a reply as allowed by Article 17.A. of the Coast Guard Officer Evaluation System Procedures Manual or by applying to the PRRB within a year of receiving the OER. Her failure to avail herself of these ways to challenge the accuracy of the OER is evidence that she accepted the evaluation as fair and accurate at the time.

5. The applicant argued that the Coast Guard improperly provided declarations from her chain of command as part of its advisory opinion. She argued that there is no opportunity or allowance for the Coast Guard to provide additional evidence in support of its position. To support this assertion, the applicant cited 33 C.F.R. § 52.42(a), which discusses the documents that the Board is required to transmit to the Coast Guard. However, this section is irrelevant to the applicant’s argument. Instead, 33 C.F.R. § 52.42(c) states that the Coast Guard is permitted to submit an advisory opinion with “other information and material” for the Board to consider. Further, the Board is required pursuant to 33 C.F.R. § 52.12 to consider “all pertinent records and any submission received from the Coast Guard” with the application. Therefore, the Board finds that the Coast Guard did not act outside of its authority by providing declarations from two members of the applicant’s chain of command as part of its advisory opinion.

6. The applicant argued that the disputed OER is erroneous because it was improperly influenced by events that occurred outside of the reporting period. Specifically, the applicant argued that the behavioral issues she exhibited in May 2016 improperly influenced the disputed OER. The Board disagrees. First, the applicant argued that her Supervisor’s affidavit makes it clear that her behavioral issues occurred in May 2016. While the applicant’s Supervisor and Reporting Officer acknowledged in their affidavits that they became aware of the applicant’s interpersonal problems with fellow Coast Guard members in May 2016, their affidavits clearly show that the issues continued through the reporting period of the disputed OER. For example, Mr. G stated that in June and July 2016, the applicant displayed disruptive behavior and lacked emotional control. Consequently, the applicant was removed from the Exercise Support Team and assigned to the Administrative Team. Soon thereafter, Mr. G stated that the applicant had significant conflict with members of her team, notably a YN2, and was once again removed from her position. Second, the applicant argued that an email from Mr. H on May 11, 2016, shows that she was assigned Skillsoft videos based on her behavior from the previous reporting period. In the email, Mr. H directed Mr. G to assign the applicant several Skillsoft videos as part of her Individual Development Plan. Mr. H confirmed in his affidavit that the trainings were assigned to the applicant and completed during the reporting period of the disputed OER. While the applicant was assigned Skillsoft videos based on her behavior from the previous reporting period, the trainings were nonetheless assigned and completed during the reporting period of the disputed OER. This is accurately reflected in the section regarding the Reporting Officer’s comments of the disputed OER: “Due challenges [sic], assigned and completed several Skillport videos/courses on emotional intelligence and interacting with others during the marking period.” Finally, the applicant argued that her Supervisor relied on

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).

an email that she sent on May 11, 2016, to justify her low marks. In the email, the applicant apologized to her team for her behavior. However, the applicant failed to submit any evidence that her email influenced the disputed OER. In fact, Mr. G discussed several examples of the applicant's conduct that justified her low marks, and the apology email dated May 11, 2016, was not one of them. Therefore, the applicant has not proven by a preponderance of the evidence that the disputed OER was improperly influenced by events that occurred outside of the reporting period.

7. The applicant argued that the disputed OER is unjust because she was never counseled about her performance. The applicant alleged that she was not notified of any issues regarding her performance until she received the disputed OER for signature. Contrary to the applicant's assertion, her rating chain stated that she was verbally counseled multiple times on working with teammates and controlling her emotions. In fact, Mr. G stated that in June and July 2016, he had the applicant and her team leader in his office for counseling sessions at least two or three times a week. Further, as noted by the JAG, the applicant was removed from two positions within the reporting period. According to Article 1.A.1.b. of the Coast Guard Officer Evaluation System Procedures Manual, it was the applicant's responsibility to manage her performance. The applicant should have reached out to her command to determine job expectations and obtain sufficient performance feedback in order to meet or exceed standards. Therefore, the Board finds that the applicant has failed to prove by a preponderance of the evidence that she was denied adequate performance feedback during the reporting period.

8. The applicant argued that her marks for "Teamwork" and "Professional Presence" should both be increased to 5. To support her assertion, the applicant argued that her marks are inconsistent with her end of tour award. The Board disagrees. The applicant received the Coast Guard Achievement Medal, which praised her performance from December 2013 to June 2017. The only achievement mentioned in the citation that the applicant alleged occurred during the reporting period of the disputed OER was the review of the After Action Reports. Specifically, the citation stated that the applicant: "headed a team to analyze 200 reports and over 250 documented lessons learned; her efforts generated interest at the highest levels of the Coast Guard and provided preparedness products of superior quality in the field." Contrary to the applicant's assertion, her performance regarding the After Action Reports is not inconsistent with the disputed OER. For instance, the applicant received the highest possible marks in the performance dimensions of "Planning and Preparedness" and "Writing." Further, the citation did not specifically include achievements regarding the applicant's teamwork abilities and professional presence. Therefore, the Board finds that the applicant's marks are not inconsistent with her end of tour award.

9. The applicant argued that her marks for "Teamwork" and "Professional Presence" should be increased because they are not properly supported. Specifically, the applicant argued that the comments supporting the marks are superficial in nature and devoid of any true support. Article 4.E.2.j. of the Coast Guard Officer Evaluations System Procedures Manual states that comments "should identify specific strengths and weaknesses in performance. Comments must be sufficiently specific to accurately portray the officer's performance and qualities which compares reasonably with the standards defined and marked on the performance dimensions in the evaluation area." The comment space on an OER is quite limited, however, and OER comments are not intended to document all aspects of a member's performance. Instead, the rating chain must use

the comment space to enter at least one comment with an example of performance supporting the assigned numerical marks that are better or worse than a standard mark of 4.⁵ To support a mark of 2 in the performance dimension of “Teamwork,” the comment states the following:

Displayed difficulties working with EST team members; on numerous occasions demonstrates a complete lack of emotional self-control and an inability to cooperate with EST team members. Actions were a detriment to team effectiveness; results in removal from team but given second opportunity as EST ADMIN Team Leader; once again failed to manage group conflict in a professional manner.

According to the manual, the definition of “Teamwork” includes the ability to manage, lead and participate in teams, encourage cooperation, and develop esprit de corps. The comment used to support the applicant’s mark of 2 for “Teamwork” directly pertains to the applicant’s inability to participate in a team because of her lack of emotional self-control. Further, the comment addresses the applicant’s failure to lead a team because she could not mediate conflict. To support a mark of 3 in the performance dimension of “Professional Presence,” the comment states, “On several occasions, lost composure in low stress environment projecting a poor image of a CG officer in front of enlisted and civilian employees.” According to the manual, the definition of “Professional Presence” includes the ability to bring credit to the Coast Guard through one’s actions, competence, demeanor, and appearance. In this case, the comment addresses how the applicant failed to bring credit to the Coast Guard on several occasions because she lost her composure. Therefore, the Board finds by a preponderance of the evidence that the comments are sufficiently detailed to support the applicant’s marks for “Teamwork” and “Professional Presence.”

10. The applicant argued that the negative comment in the Leadership Skills section of the disputed OER should be removed because it is erroneous. Specifically, the applicant argued that she was not removed from the Exercise Support Team due to poor behavior. First, the applicant argued that in August 2016, she was transferred from the Exercise Support Team to the Administrative Team because she was pregnant. The applicant stated that traveling was a major component of the Exercise Support Team, and she could no longer travel once she reached 28 weeks pregnant. The applicant has not submitted any evidence to support the assertion that a woman would be transferred from the Exercise Support Team upon reaching 28 weeks of pregnancy. Further, as the applicant acknowledged, she did not become 28 weeks pregnant until November 2016. Next, the applicant argued that she was transferred early to the Administrative Team because there was not much work for the Exercise Support Team. However, the applicant did not provide any evidence to support this assertion. Instead, in his affidavit, Mr. G stated that the applicant was removed from the Exercise Support Team because her disruptive behavior was negatively impacting the customers. Finally, the applicant argued that members rotated teams each year to better diversify their experience. However, by August 2016, the applicant had been a member of the Exercise Support Team for two and a half years. There is nothing in the record to support the applicant’s assertion that members were rotated on a yearly basis. Therefore, the applicant failed to show by a preponderance of the evidence that the negative comments in the Leadership Skills section of the disputed OER are erroneous.

⁵ Officer Evaluation System Procedures Manual, Articles 2.E.4.e. and 2.F.2.d.

11. The applicant asked the Board to upgrade her marks on the Comparison Scale and Promotion Scale of the disputed OER. However, the applicant did not put forth any arguments to support her request. The Comparison Scale is a highly subjective scale because the Reporting Officer must compare the officer's performance during the reporting period to the performance of all the other officers of the same grade whom the Reporting Officer has known throughout his career.⁶ In this case, the Reporting Officer for the disputed OER was the Chief of the Exercise Support Division who had more than thirty years of management experience in supervising officers. The applicant has not shown that in comparing her performance to that of other Lieutenants on the Exercise Support Team, the Chief erred in assessing her as a "marginally performing officer" rather than "one of the many high performing officers." Further, the Promotion Scale is the Reporting Officer's assessment of the overall potential of the Reported-on Officer for promotion.⁷ In this case, the Reporting Officer did not err in indicating that the applicant had "Promotion potential" rather than indicating that she was ready to promote given her low marks in the performance dimensions of "Teamwork" and "Professional Presence." Therefore, the applicant has not proven by a preponderance of the evidence that her marks on the Comparison Scale and Promotion Scale are erroneous or unjust.

12. Finally, in her response to the advisory opinion, the applicant argued that the disputed OER is erroneous because the Coast Guard discriminated against her due to her pregnancy. The Board disagrees. According to Article 7.d.5. of COMDTINST 1000.9, a pregnant member's chain of command shall ensure that the member does not receive an adverse evaluation report strictly as a consequence of pregnancy. In this case, the applicant failed to show that her low marks and negative comments were strictly a consequence of her pregnancy. First, as discussed above, the applicant's low marks and negative comments were well supported by her inability to work well as a member of a team. In fact, documentation of the applicant's behavioral issues began in May 2016, two months before the applicant allegedly informed her command of her pregnancy. Further, the only evidence the applicant cites to support her allegation of discrimination is that her previous OERs were exceptional and show that she was a high performing officer. However, the fact that the applicant received better OERs before the reporting period for the disputed OER is not evidence that the disputed evaluation does not accurately reflect her performance during the reporting period.⁸ An officer's performance can vary greatly over time for a variety of reasons, and such variation by itself is not sufficient evidence to demonstrate discrimination. Therefore, the applicant has not shown by a preponderance of the evidence that she was discriminated against due to her pregnancy.

13. The applicant has not proven by a preponderance of the evidence that her annual OER covering her performance from June 1, 2016 through May 31, 2017, 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.⁹ Accordingly, her request for relief should be denied.

⁶ PSCINST M1611.1C, Article 4.F.2.

⁷ PSCINST M1611.1C, Article A.3.B.2.

⁸ *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.")

⁹ *Hary v. United States*, 618 F.2d 704, 708 (Ct. Cl. 1980), cited in *Lindsay v. United States*, 295 F.3d 1252, 1259 (Fed. Cir. 2002).

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

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

February 11, 2022

[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

[REDACTED] [REDACTED]
[REDACTED] [REDACTED]