

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-173



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 July 11, 2019, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated March 23, 2023, 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 Commander (LCDR/O-4) on active duty, asked the Board to correct her record by correcting her Officer Evaluation Reports (OERs) for the periods June 1, 2016, to May 31, 2017 (OER1), and June 1, 2017, to May 18, 2018 (OER2), and by elevating the Coast Guard Achievement Medal she received on June 23, 2018, to a Coast Guard Commendation Medal.

With regard to OER1, the applicant asked the Board to remove Captain (CAPT) K's signature in the Reviewing Officer's Signature block and replace it with CAPT W's signature. The applicant alleged that OER1 is erroneous because CAPT K should not have signed the OER as the Reviewing Officer. She claimed that CAPT K did not take over as Sector Commander from CAPT W until mid-June 2017 and that he therefore was not present during the reporting period and should not have signed her OER.

With regard to OER2, the applicant specifically asked the Board to make the following corrections:

- Raise the mark she received for the “Results/Effectiveness” performance dimension from a 6 to a 7.¹
- Raise the mark she received for the “Adaptability” performance dimension from a 5 to a 7.
- Raise the mark she received for the “Teamwork” performance dimension from a 6 to a 7.
- Raise the mark she received for the “Responsibility” performance dimension from a 6 to a 7.
- Raise the mark assigned to her in the Promotion Scale from “Promote” to “Promote w/top 20% of peers.”
- Update the Reporting Officer Comments to state the following:

Exceptional performing ofcr instrumental to Sector OPS. Expertly filled role of Intel Department Head on numerous occasions leading the department to success. Stellar ability to nurture key external partnerships with DHS, DOJ leaders, SOUTHERN & NORTHERN COCOMs. Mbr’s exquisite work ethic & attention to detail resulted in impeccable intel and collateral work that informed tactical decision makers. Superb initiative & dedication supporting evacuated Sector personnel clearly showcased mbr’s servant & selfless leadership. Highest recommendation for hi-vis assignments of increased responsibility including Sector IMD & Enforcement Chief, Crypto Unit Command Cadre, Congressional Affairs, OPM/EPM, MIL Asst/EA, Attache/CGLO assignments as well as Post Grad in Intel and Human Resources. Based on proven leadership, ROO has my highest recommendation for promotion to O4.

Finally, the applicant asked the Board to correct her record by elevating the Coast Guard Achievement Medal (CGAM) she received on June 23, 2018, at the conclusion of her assignment to a Coast Guard Commendation Medal (CGCM) and to correct the verbiage on the citation for the award to the following:

[The applicant] is cited for outstanding achievement from July 2015 to June 2018 while assigned to the Sector [redacted] Intelligence Staff. Exhibiting impeccable competence as the senior Intelligence analyst, she produced trend analysis of over 300 active vectors of illicit activity, and shared the intelligence with the [redacted] Interagency Group agency directors, which proved critical for the planning and execution of several surge operations. She led Sector [redacted]’s Watch Staff in the monitoring and dissemination of 1,995 illegal smuggling cases, which led to the interdiction of 1,474 migrants, 20,508 lbs of marijuana, and 34,685 kgs of cocaine valued at over \$900 million. She closely monitored a counterdrug case off the coast of [redacted] in support of Operation [redacted] resulting in the interdiction of 4.2 metric tons of cocaine valued at \$125 million, the largest maritime seizure in the [redacted] since 1999. She coordinated the commissioning ceremonies of two Fast Response Cutters within a three-month period, managing a \$40,000 budget for over 350 guests including a United States Congressman, United States Coast Guard Vice Commandant, Deputy Commandant for Mission Support, and [redacted] District Commander. Additionally, she extended her servant leadership in [redacted] to support over 500 evacuees from [redacted] impacted by Hurricanes [redacted]. [The applicant]’s dedication, judgment, and devotion to duty are most heartily commended and are in keeping with the highest traditions of the United States Coast Guard.

¹ On an OER form, CG-5310A, the Supervisor evaluates a Coast Guard officer in 18 performance categories on a scale from 1 (worst) to 7 (best). A mark of 4 denotes the “standard” level of performance expected of all officers. The Supervisor also adds comments citing examples of performance that support the numerical marks. The officer’s Reporting Officer (usually the Supervisor’s Supervisor) then indicates whether he or she concurs with the Supervisor’s marks and comments, adds his or her own comments, and assigns the officer marks on a Comparison Scale and a Promotion Scale. The OER Reviewer has the option of concurring with the OER as submitted or adding comments to provide a significantly different perspective.

The applicant and her spouse, who was also an active duty officer at the time, were both on assignments in a region that was impacted by a powerful hurricane in September of 2017. The applicant served as part of the Intelligence staff, while her husband was assigned to the Sector Command Center. At the time of the hurricane, the couple had children aged 9 years old and 10 months old. On September 19, 2017, the Sector Commander issued a mandatory evacuation order to all Coast Guard dependents. The applicant evacuated to a Safe Haven with the two children, while her husband stayed behind to work in the Command Center. Before the hurricane, the applicant's youngest child was scheduled for developmentally necessary surgery at a local hospital. However, because the storm disrupted local medical services and other critical infrastructure, the applicant and her children were authorized to stay at the Safe Haven following the evacuation to facilitate surgery and follow-up appointments. Beginning September 21, 2017, the applicant was placed on Temporary Duty (TDY) orders for 110 days to the Family Support Unit (FSU) at the Safe Haven. The evacuation order for all Coast Guard dependents was lifted on January 8, 2018.

The applicant argued that the marks she received for the "Results/Effectiveness," "Adaptability," "Teamwork," and "Responsibility" performance dimensions and for the Promotion Scale on OER2, for the period June 1, 2017, to May 18, 2018, were erroneous and unjust because they were based on events that were out of her control. She claimed that her Supervisor, Lieutenant (LT) P, and the Sector leadership used her time on TDY assignment to the FSU at the Safe Haven against her when assigning her marks. The applicant further argued that her marks were unjustly impacted by an incident in which, while assigned to the FSU, she raised question in a public forum when the Sector Commander pushed for all active duty members at the Safe Haven to return to their duty stations in October of 2017.

The applicant also argued that OER2 was erroneous and unjust because her Sector Commander was biased against dual military families. She claimed that the Sector Commander knew that it was not safe for children to return to the area when they singled out active duty women and asked them to return to the Sector before lifting the evacuation order for all dependents.

The applicant argued that OER2 was adversely impacted by LT P's discrimination against her based on her status as a female officer married member-to-member with young children. She stated that she had received lower marks on OER2 as a form of reprisal for filing an Equal Employment Opportunity (EEO) complaint. She claimed that LT P had treated her differently and avoided her altogether after he received informal counseling as a result of the EEO complaint.

The applicant also argued that LT P did not provide counseling on OER2 as required by Coast Guard policy. However, the applicant also asserted in her application that she was "told during the mid-period counseling that [she] would receive lower ratings because of a hurricane that I had no control over."

The applicant also argued that she should have received a CGCM but received CGAM instead. The applicant opined that the CGAM was erroneous because she had drafted a citation for a CGCM and provided it to LT P, and that the CGAM she ultimately received did not accurately reflect everything that she accomplished during her three-year assignment. She also claimed that the citation reads as though it were for a CGCM as opposed to a CGAM.

In support of her application, the applicant attached written statements from her husband, who is also a LCDR, and other officers and members of the Coast Guard in the applicant's Sector. The statement from the applicant's husband described the errors he perceived in his own 2018 OER and detailed the process he went through with his chain of command to have it revised. A Chief Warrant Officer (CWO) R wrote the following:

One day I was walking on base at Sector [redacted], when I ran into Captain [K], the Sector Commander. Captain [K] asked when my spouse [another CWO] was going to come back to [the Sector office]. I explained that she was [at the FSU] taking care of our two young children (4) (6). Captain [K] began to tell me that he does not like Co-Lo's ([collocated members or] member to member) due to one of the two seem to always get out of work. I explained that we had no other option for the safety of our young children, and the response was, "that is not my problem". Following this conversation, I knew we did not have the command support in this situation.

At the end of [October], we received notification that all COLOs will return to the island, even after the have stated it is still not safe for children. This order came just one week after my wife received authorization to work TDY at [a Sector on the West Coast], where she would have support of family. Deciding not to challenge the command, we reluctantly brought our family back to [the Sector office]. After we had made arrangements to bring the family back, [the District] overturned the order and stated that the COLO families could stay in their safe locations.

The Sector's Planning Section Chief, LCDR D, alleged that the Sector Commander was biased against member-to-member families. LCDR D also claimed that LT P had told him that the applicant was not needed at her duty station because intelligence operations were slow in the aftermath of the hurricane.

The applicant also included a statement from Culinary Specialist Second Class (CS2) J, a member on active duty who also evacuated with her children due to the hurricane. CS2 J's son also had medical needs that required her to stay at the Safe Haven for an extended period. However, CS2 J described feeling constant pressure from her chain of command to return to her duty station despite her son's health concerns.

A statement from CAPT H, the head of the FSU that the applicant supported while on TDY, described the role the applicant played at the Safe Haven and the tension between the applicant and her Sector Commander, CAPT K, when he insisted that active-duty members return to their duty stations. CAPT H also stated that the Sector Commander "seemed to single [the applicant] out" and that she got the impression that the Sector Commander might make things difficult for the applicant when she returned. CAPT H described the situation as follows:

[The applicant] requested I provide a statement regarding events surrounding Hurricane [redacted] evacuation (Sep - Nov 2017) and interactions with her command during that time.

My involvement: My role during Hurricane [redacted] was the head of the Family Support Unit (FSU) located in [redacted]. This was the designated site, safe haven, for all evacuees. I was responsible for the teams aiding all evacuated active duty and civilian employees as well as their families (including pets). I was the liaison for [the District Command and Base] to the impacted units regarding any issues/concerns.

Background: There were many military members evacuated. Those evacuated were mainly from [two islands] but included some from [redacted] such as pregnant members, single parents and member to ember (one spouse evacuating with their dependents). Evacuations were directed by the command since there was

significant infrastructure outages and damage that were not going to be repaired in any reasonable timeframe. It was unsafe for dependents to remain in housing both on and off base. No schools or childcare were available. Roads were blocked and no reliable hospital services.

Outlook for repairs were looking at months versus days. It was significant enough that we, as the support unit, looked for alternative and more permanent solutions for housing and education in [the FSU area] to support those evacuated. At some point in the operations, when we were a bit more settled and we had a bit more understanding of how long repairs would take on the islands, we began to look at long term options for the civilian and military members. We were very careful in trying to balance evacuee needs, policy and military mission. Adding complexity to the situation was the Command's vague evacuation direction. It was not clear and did not set expectations from the start. This resulted in some members not remaining at the safe haven site and taking their family to other states. Hence, when looking at options we had to recall those members. Those that had stayed at the FSU were assigned to assist with local operations at [the Base], Sector, an a few stations in the local area. Those that departed to other states were recalled back to the FSU or directly to Sector [redacted]. The real challenge came with pregnant members and member to members with dependents.

Situation involving [the applicant]: [The applicant] fell into this latter category of evacuees (member to member). She appropriately evacuated with her dependent whereas her spouse remained on island to support ongoing operations. When the order came to return military members, we worked with [the District staff] to evaluate member-to-member options. The challenge was how could we justify sending back members with their dependents when no infrastructure was there to support them. We were realistic and recognized members would not return without their dependents. That said, we were able to come up with a compromised solution to have military members with dependents take over the roles that reservists were doing to support dependent families at the FSU. We could then relieve those reservists to go home or downrange to support the Sector Commander. Pregnant members would stay stateside and work at the closest supporting unit (we approved some to work closer to home to be near families for support). Again this was done since due to lack of proper medical treatment facilities, many were in the late stages of their pregnancy. This plan was vetted with [the District Commander] and approved.

[CAPT K], Sector Commander [redacted], apparently did not like the plan. He made it clear he wanted his people back regardless. He went a step further and made it a point with [the applicant] that she needed to return immediately. Even when we confronted him with the facts surrounding the degraded infrastructure situation, he did not back down. He stated that he wasn't asking for the dependents to return, just the member. We advised that we understood he wants his members, but the members are in a tough position. They are not inclined to leave their dependents behind especially for an unknown extended time period. That would ultimately force them to bring their children back into a hazardous situation we already deemed unsafe for other dependents. He commented that he didn't care, they should have a family plan and not bring their children; it wasn't his problem. He justified it as others have done it.

After unsuccessful soft approaches with [CAPT K], we ([the District staff]) realized [CAPT K] was dug into his position and we needed to have a more pointed discussion. We pulled him into a conference room with me, [the District] Chief of Staff (CoS) [CAPT redacted], [District] Command Master Chief, Master Chief Petty Officer [redacted], Base [redacted] Master Chief Petty Officer [redacted], and [District] legal (CAPT [redacted]). We advised him that his stance was unreasonable and falls in the spirit of not taking care of his people. I specifically asked him, if the shoe was on his foot, would he leave his infant/toddler alone with a stranger. Note, his wife and young toddler son was one of the evacuees. He said he is not in that situation and therefore he can't, so it doesn't apply. I repeatedly asked him this question in different ways with the same result. It was clear he was not open to placing himself in another person's position to gain a different perspective. I asked him whether he would bring back his dependents to the island at this moment in time. He said no. I ask him why. He said it isn't safe. I proceeded to ask why he would expect that [the applicant] to bring her child back when he wouldn't ask for other dependents back. He said again, he is not asking for the child just [the applicant]. I proceeded to ask him what he expects her to do with her child in less than a week (he made comments that he would write up members if they did not report in a week and had some of his officers reiterate the same message). He stated she should hire an Au Pair. I asked him if that is something he would do. Would he interview and hire an Au Pair in less than a week then leave his young child (under

1 year of age) with this new stranger while he departed to an island with very no stable communications? He said no, but he isn't in that situation. Again, he could not put himself in the shoes of his members. [The District Chief of Staff] and MCPOs also interjected that it was not reasonable. CoS asked the MCPOs their thoughts. They agreed this is a unique environment and situation; they would not do that. They did not support [CAPT K's] position. [CAPT K] again said they should have a family plan and leave their child with a family member. He did not seek to find out or understand whether that was even an option for the [applicant's] family nor any other family. I asked what if they don't have extended family that has the capacity to care for a child for an extended period. He stated it doesn't matter, it is policy so therefore she should have something set. To test his stance on policy, I asked him whether he was going to then bring back the animals [pets] via CG aircraft once the event is over. He said yes. I advised that is against policy so what makes that ok and this not. The [District] team reiterated this was an unprecedented event and not one we've ever had to deal with, so all of this is new to everyone. We have to be reasonable and take care of our people first and foremost. We have options to get someone to backfill as needed. CoS interjected showing his agreement with me and stating that he wouldn't even do that with his kids especially for an extended period. Wartime is one thing, but this is an unplanned, unexpected event with no infrastructure. Eventually, after much round about, I advised him that [the applicant] will remain here with me and will work at the FSU. We will execute on the approved plan. [The District] CoS concurred.



Later that day, we had an all hands. At the all hands, the [CAPT K] passed an update and asked if anyone had questions. [The applicant], unaware of any of our conversations, had asked him about having member come back to the unit especially those with dependents. He answered her question. Afterwards, he made a comment to me that he was disappointed that his member was in civilian clothes and had the boldness [to ask] him that kind of question. I made it clear to him that most of the military members were in civilian clothes for the all hands. Many were in civilian clothes for much of the time at the FSU since they evacuated quickly and could not go to their homes to get military gear, especially those on [islands]. Their homes were devastated. Some evacuees arrived with only the clothes on their back and we had to help get them the essentials. Military members did eventually get a chance to on base to get uniforms. This was only after we were able to resolve many of the pay issues, get them mutual assistance loads, etc. The challenge was many members had banks on island so even if they received their pay, they couldn't get to it. I didn't know if that was her case and I knew she had many medical appointments with her son. Her son needed surgery for his feet (thought possibly his hands as well), which is also why it made sense for her to remain at the FSU. He still did not hold back his displeasure to me. I did caution him on singling her out as there are others in the same situation. I told him you can't beat up the messenger. [The applicant] was only trying to do what is best for her family and looking out for others facing the same situation who were too afraid to speak up. That courage shouldn't be punished. I'm not sure that it hit home, and whether he was able to recognize his bias in his attitude towards her at that moment. I'm sure he wasn't too pleased with me either, so my advice may have fallen on deaf ears. Regardless, as a Sector Commander, the expectation is for him to put those emotions aside and treat all fairly and honestly based on their performance.

Closing: Throughout this evolution, [CAPT K] seemed to single [the applicant] out and I'm not exactly sure why other than she was "the voice" he heard. The countering of his direction was not [the applicant's] fault or doing but rather she just fell perfectly in a contentious situation; her concern was for her family and others. It was a really the meeting of the minds with [District] leadership in trying to do what was right for members across the board. As stated previously, I was not on board with [CAPT K's] stance with [the applicant] at that time, hence my comment cautioning him. It appeared to me, with everything that was said during my interactions with him, that he was placing this squarely on her and it had the appearance he might make things difficult for her on her return. I couldn't be certain, but I had some trepidation that either [CAPT K] or one of his fellow officers would retaliate in some way, be it assignments or evaluations. However, I gave him the benefit of the doubt that cooler heads, emotions and egos would prevail once the dust settled. A lot was going on at a quick pace and people were tired, irritated, and more. As far as [the applicant's] performance at the FSU, she was an outstanding performer, consummate professional and phenomenal team player. I would not hesitate to recommend her for high risk or level positions.

Yeoman Master Chief Petty Officer (YNCM) N worked with the applicant at the Safe Haven and attested to the support the applicant provided at the FSU. YNCM N also described the

health problems that the applicant's son needed to have addressed before they could return to the applicant's duty station.

In addition to the written statements, the applicant submitted copies of many texts, emails, and other records, which are included in the Summary of Record below. The applicant also included copies of the Coast Guard's 2017 Hurricane Evacuation Policy, the Coast Guard's Evacuation Entitlements for Military Personnel, and information on creating Family Care Plans.

As evidence of the caliber of her accomplishments as an officer in the Coast Guard, the applicant submitted five emails. The first, dated October 24, 2017, notified the applicant of an opportunity for selection for a position at the Coast Guard Academy. The second, dated October 25, 2017, notified the applicant that she was on a short list for selection as Special Assistant to the Secretary of Homeland Security. The third email, dated November 13, 2017, was from CAPT H, the leader of the Safe Haven, describing the accomplishments of the Family Support Unit. The fourth, dated February 6, 2018, notified the applicant that she was on a short list for selection as Deputy Commandant for Mission Support Aide. Finally, the fifth email, dated February 16, 2019, was from Rear Admiral V, thanking her participation in the DARE program.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard Reserve through the Delayed Entry/Enlistment Program on May 11, 2010, as an E-3. On June 8, 2010, the applicant was discharged from the Delayed Entry/Enlistment Program and enlisted in the Regular Component of the Coast Guard.

On December 7, 2011, after attending Officer Candidate School, the applicant was commissioned as an Ensign (O-1).

While assigned to a cutter as a Deck Watch Officer, the applicant received her first OER for the period December 7, 2011, to September 30, 2012. She received ten standard marks of 4 and eight above-average marks of 5. On the Comparison Scale, the applicant's Reporting Officer at the time rated her as "One of the many competent professionals who form the majority of this grade" in the fourth of seven possible marks ranging from "Unsatisfactory" to "A Distinguished Officer." The Reporting Officer noted that the applicant should be promoted to O-2 with her peers.

On December 6, 2012, the applicant was recognized for completing one cumulative year of sea duty and was authorized to wear the Coast Guard Sea Service Ribbon.

The applicant received her second OER, dated March 31, 2013, while serving on board the cutter as the Communications Officer. She received five excellent marks of 6 and thirteen marks of 5. On the Comparison Scale, the applicant's Reporting Officer rated her as "One of the many competent professionals who form the majority of this grade" in the fifth of seven possible marks ranging from "Unsatisfactory" to "A Distinguished Officer." At the time, the applicant had recently been selected for promotion.

On June 28, 2013, the applicant received a Letter of Commendation for her performance of duty while serving onboard a medium endurance cutter as the Communications Officer.

The applicant was next assigned to the Coast Guard Counterintelligence Service as a Counterintelligence Analyst. She received an OER for the reporting period April 1, 2013, to January 31, 2014, and was assigned three marks of 6, eleven marks of 5, and four marks of 4. On the Comparison Scale, the applicant's Reporting Officer rated her as "One of the many competent professionals who form the majority of this grade" in the fifth of seven possible marks ranging from "Unsatisfactory" to "A Distinguished Officer." The Reporting Officer highly recommended the applicant for promotion to O-3.

On May 28, 2014, the applicant received a Coast Guard Meritorious Team Commendation for her service on the Commandant's Change of Command Planning Team from January 2014 to May 2014.

The applicant received another OER for her performance as a Counterintelligence Analyst for the reporting period February 1, 2014, to June 30, 2014. She was assigned eight marks of 6 and nine marks of 5. On the Comparison Scale, the applicant's Reporting Officer rated her as "One of the many competent professionals who form the majority of this grade" in the fifth of seven possible marks ranging from "Unsatisfactory" to "A Distinguished Officer." The Reporting Officer highly recommended the applicant for promotion to O-3 with her peers.

The applicant's next OER as a Counterintelligence Analyst covered the reporting period July 1, 2014, to January 31, 2015. She was assigned one outstanding mark of 7, sixteen marks of 6, and one mark of 5. On the Comparison Scale, the applicant's Reporting Officer rated her as "One of the many competent professionals who form the majority of this grade" in the fifth of seven possible marks ranging from "Unsatisfactory" to "A Distinguished Officer." The Reporting Officer noted that the applicant had recently been selected for promotion to O-3.

The applicant received another OER in her position as Counterintelligence Analyst for the reporting period February 1, 2015, to June 18, 2015. She was assigned five marks of 7, twelve marks of 6, and one mark of 5. On the Comparison Scale, the applicant's Reporting Officer rated her as "One of the many competent professionals who form the majority of this grade" in the fifth of seven possible marks ranging from "Unsatisfactory" to "A Distinguished Officer." The Reporting Officer noted that the applicant was performing at the O-3 level.

The applicant reported to an overseas assignment on July 3, 2015. Her first OER as the Intelligence Division Deputy and Intelligence Watch Stander for the Sector was completed for the reporting period June 19, 2015, to May 31, 2016. She was assigned one mark of 7, eleven marks of 6, including in the performance dimensions of "Results/Effectiveness," "Teamwork," and "Responsibility," and six marks of 5, including in the performance dimension for "Adaptability." On the Comparison Scale, the applicant's Reporting Officer rated her as an "Excellent performer; give toughest, most challenging leadership assignments" in the fifth of seven possible marks ranging from "Performance unsatisfactory for grade or billet" to "Best officer of this grade."

On December 2, 2016, the applicant received a Coast Guard Meritorious Unit Commendation for meritorious service for the unit's response to an out of control fire aboard an oceangoing ferry loaded with more than 500 passengers.

First Disputed OER

The applicant received OER1 for the reporting period of June 1, 2016, to May 31, 2017. She was assigned three marks of 7, including in the performance dimension of “Teamwork,” fourteen marks of 6, including in the performance dimensions of “Results/Effectiveness” and “Adaptability,” and one mark of 5. On the Comparison Scale, the applicant’s Reporting Officer rated her as “One of the many high performing officers who form the majority of this grade” in the fifth of seven possible marks ranging from “Unsatisfactory” to “Best officer of this grade.” On the Promotion Scale, the applicant was assigned a mark of “Definitely promote.” OER1 was signed by LT P as Supervisor; by CAPT R, the Deputy Sector Commander, as Reporting Officer; and by CAPT K, the Sector Commander, as Reviewer.

Evacuation/TDY Orders

On August 23, 2017, the applicant’s youngest child was approved for treatment by a hand surgeon located in the vicinity of the applicant’s duty station.

On September 19, 2017, the applicant’s Sector Command decided to evacuate dependents and advised that priority would be given to dependents with special needs, infants/newborns, pregnant personnel/dependents, and those with children four years of age and below.

The applicant submitted a screenshot of a text message exchange that she says reflects a conversation between her and her Supervisor, LT P. On September 19, 2017, at 12:05 p.m., there is an outgoing message that notified the recipient of the applicant’s decision to take one of the evacuation flights to take her children stateside. A subsequent incoming message, that does not have a visible stamp for the time it was received, simply says “Rgr.” On October 11, 2017, an incoming message from the same contact requested copies of the applicant’s evacuation orders for the purpose of tracking the status of intel staff. The applicant replied that she had just received her orders on Monday and that she would send them to the recipient that day.

The applicant received a Military/Civilian Temporary Duty (TDY) Travel Order dated October 8, 2017, which authorized the applicant’s TDY status beginning as of September 21, 2017, with “To Be Determined” as the end date. On October 9, 2017, a Memorandum amended the TDY Orders to authorize a start date of September 19, 2017.

The applicant submitted another screenshot of a text message conversation that appears to be between the applicant and LT P. On October 27, 2017, an incoming message was received that stated that the District had decided to bring all evacuated active duty personnel back to their permanent duty station in one week. The sender asked the applicant to let him know if she wished to take leave beyond a week or if she had any questions concerning school, utilities, or childcare. The applicant acknowledged the message and noted that there were ongoing discussions about her return from the Safe Haven due to her youngest child’s pending surgery that could not move forward at her permanent duty station due to the hurricane aftermath.

At some point during this time period, a Town Hall was held at the Safe Haven during which the Sector Commander, CAPT K, spoke with the dependents and active duty members present. According to the applicant, CAPT K described poor living conditions at the duty station in the aftermath of the hurricane and indicated that dependents should not return at that time. According to her application, the applicant asked why active duty members were being asked to return given the conditions that were unsuitable for dependents. According to the applicant, CAPT K stated that the matter was under further consideration. Ultimately, the Sector Command allowed the active duty members who had evacuated to the Safe Haven to remain there until conditions improved.

On October 30, 2017, the applicant's youngest child was approved for evaluation and treatment by a pediatric orthopedic surgeon near the Safe Haven.

On November 15, 2017, the applicant corresponded with a representative from Tricare to confirm that her youngest child had been evaluated by the specialist and that his surgery was scheduled for November 28, 2017.

On December 6, 2017, the Logistics Department Head for the Sector sent out a notification that Tricare had completed an assessment of the Access to Care at the applicant's permanent duty station and determined that primary care for dependents was operational and available. They also reported that 12 of the 14 hospitals in the area were fully functional, and they were confident that specialty services could also be delivered for active duty members and their dependents.

On December 7, 2017, CAPT K notified members of the Sector that the evacuation order for the applicant's duty station would be lifted on January 8, 2018. All dependents were expected to return by that date unless other arrangements had been made.

The applicant's youngest child had a follow up medical appointment scheduled for December 17, 2017. She stated in her application that she returned to her duty station after the evacuation order was lifted on January 8, 2018.

Initial Discrimination Claim

The applicant initially contacted the Civil Rights Directorate on March 7, 2018, regarding a "Civil Rights issue" at her Sector. She described her time on TDY orders at the Safe Haven and detailed the tension between the active duty evacuees who felt that the Sector was unsafe for their dependents and the Sector Command which wanted the active duty members to return to their duty stations. The applicant claimed that the Sector Command wanted the dual military families to "figure it out, drop their kids off with someone, and get back to [the duty station]" regardless of the conditions. She recalled speaking up during a Town Hall meeting at which the Sector Commander, CAPT K, was present to encourage him to allow active duty members to remain at the Safe Haven with their children until it was safe for all dependents to return. The applicant also claimed that CAPT K and CAPT R and other Sector leaders made negative comments about dual military families contemporaneously to other members while at the permanent duty station.

The applicant claimed that she was actively being targeted in her upcoming OER for being a dual military spouse. She said that her Supervisor had told her during mid-period counseling on March 6, 2018, that it had been a “slap in the face to leave” the duty station and that her failure to adapt had left the division in a hardship. He had also accused her of not being a team player. The applicant reiterated that she texted her Supervisor when she made the decision to evacuate and that he replied “roger.” She claimed that she anticipated receiving lower marks because of a hurricane that she had no control over and that she was being punished for evacuating as authorized. The applicant also alleged that her Supervisor was considered “questionable” by two commands and that some of his actions had been brought to the attention of the Sector Commander. The applicant stated that she overall felt discriminated against because of the personal opinions of her Supervisor and Sector Commander regarding women in dual military marriages. She said she felt discriminated against while at the Safe Haven due to the comments from leadership and did not believe that the hurricane was a valid reason to lower her OER marks because she was only away for three and a half months of the twelve-month reporting period. The applicant argued that if her four months of maternity leave did not count against her, her time on TDY assignment should not count against her either.

On the same date, March 7, 2018, an Equal Employment Manager responded to the applicant’s initial email and notified her that the applicant had entered the 15-calendar day Military Equal Opportunity (MEO) process and that her command had been notified.

On March 15, 2018, the applicant emailed CAPT K and thanked him for talking to her earlier that day regarding LT P. She stated that she wanted to ensure that her OER would not be impacted due to her authorized TDY orders due to the hurricane. The applicant asked for CAPT K to follow up with her after his conversation with LT P.

On March 21, 2018, CAPT K emailed the applicant and the Equal Employment Manager concerning CAPT R’s conversation with LT P. He offered to sit down to discuss the conversation further, if needed. CAPT K assured the applicant that her OER would be “fair, thorough, and honest.” He also stated that he could not ensure anything other than that because he had not seen the final product and that OER policy prohibits the discussion of certain items. CAPT K noted that as the Reviewer, he would have the opportunity to make comments if he chose to, and he also pointed out that CAPT R would also be able to make comments with regard to whether he agreed or disagreed with the assessment provided by LT P. He noted that the applicant’s involvement with intel should provide her OER with “lots of great info.”

Disputed Coast Guard Achievement Medal

On April 4, 2018, before completing her tour of duty at the overseas command, the applicant submitted a draft citation to accompany a Coast Guard Commendation Medal for her performance. On June 20, 2018, she reported for duty at a new duty station as a Mission Support Program Officer.

On June 23, 2018, the applicant received a Coast Guard Achievement Medal for superior performance of duty from July 2015 to June 2018. The accompanying citation stated the following:

[The applicant] is cited for superior performance of duty from July 2015 to June 2018 while assigned to the Sector [redacted] Intelligence Staff. She produced trend analysis of over 300 active vectors of illicit activity, and shared the intelligence with [redacted] Interagency Group agency directors, which proved critical for the planning and execution of several surge operations. She led Sector [redacted]'s Intelligence Watch Staff in the monitoring and dissemination of 1,995 illegal smuggling cases, which led to the interdiction of 1,474 migrants, 20,508 lbs of marijuana and 34,685 kgs of cocaine valued at over \$900 million. She monitored a counterdrug case off the coast of [redacted] in support of Operation [redacted] resulting in the interdiction of 4.2 metric tons of cocaine valued at \$125 Million, the largest maritime seizure in the [redacted] since 1999. Despite her heavy workload, she coordinated the commissioning ceremonies of two Fast Response Cutters within a three-month period, managed a \$40,000 budget for over 350 guests including a United States Congressman, United States Coast Guard Vice Commandant, Deputy Commandant for Mission Support and [redacted] District Commander. She expertly coordinated bi-weekly meetings with the [redacted] District Staff, to provide updated to 500 evacuees while assigned on temporary duty to the Safe Haven located in [redacted] in support of post Hurricane [redacted] Operations. [The applicant]'s diligence, perseverance, and devotion to duty are most heartily commended and are in keeping with the highest traditions of the United States Coast Guard.

Second Disputed OER

Also before leaving the overseas duty station, on April 2, 2018, the applicant had submitted input for her upcoming annual OER (OER2) to her Supervisor.

OER2 covered the reporting period of June 1, 2017, to May 18, 2018. It was signed by the same officers who signed OER1, and it shows that midperiod counseling had occurred on March 6, 2018. The applicant was assigned two marks of 7, fourteen marks of 6, including in the performance dimensions of "Results/Effectiveness" and "Teamwork," and two marks of 5, including in the performance dimension of "Adaptability." On the Comparison Scale, the applicant's Reporting Officer, the Deputy Sector Commander, CAPT R rated her as "One of the many high performing officers who form the majority of this grade" in the fifth of seven possible marks ranging from "Unsatisfactory" to "Best officer of this grade." On the Promotion Scale, the applicant was assigned a mark of "Promote."² CAPT R wrote the following for the Reporting Officer Comments:

A talented & motivated officer. Enthusiastically led an array of Sector intel initiatives that enhanced operations. Excelled in high-vis/high-optempo AOR. Strong analytic skills produced cohesive reports/assessments & bolstered unified efforts for intel collection to maximize mission success. Expertly filled role of O-3 Department Head on multiple occasions. Superb initiative & leadership supporting evacuated Sector personnel; led morale committee organizing, sports events, & fundraising activities; fostered positive command climate. ROO is well suited & highly recommended for selection for post-graduate school in desired fields of intel or Int'l Affairs. A perfect candidate & a wise investment for the CG Intel program. ROO is also an ideal candidate for high profile intel liaison positions, Attaché, & Cyrpto [sic] unit Command Cadre. Highly recommended for promotion to O4.

The applicant received OER2 from her Supervisor by email on October 11, 2018. He asked her to sign the document and let him know when she had time for counseling.

On December 10, 2018, after returning to her new unit from maternity leave, the applicant emailed her CAPT R, the new Sector Commander at her prior overseas unit, to discuss "a couple

² Insert an explanation for the difference in OER forms between the first disputed OER and second.

of items” that she wanted her former Supervisor’s (LT P’s) feedback on. She noted that after she filed the EEO complaint, she was informed by CAPT K that OER2 would not be impacted by the hurricane. However, she claimed that the “Adaptability” and “Teamwork” performance dimensions had been impacted because she was assigned one mark lower in each performance dimension compared to her prior OER. She also argued that the comments supported higher marks. She also asked CAPT R to revise the comment block addressing her potential so that it would reflect the assignments that she planned to apply for in the future. In addition, the applicant noted that the District Equal Opportunity Office had recommended that she proceed with filing her EEO complaint if she received marks that were lowered due to her TDY assignment at the Safe Haven.

On December 14, 2018, the applicant emailed her former Supervisor, LT P, to express her concern about OER2. She claimed that OER marks should “go up/improve,” but instead, her marks in OER2 appeared to be going backwards and the comment blocks did not match the actual marks provided. With regard to the “Results/Effectiveness” performance dimension, the applicant argued that the comments supported a mark of 7. For the “Adaptability” performance dimension, the applicant argued that her mark should not have been lowered from a 6 on her prior OER to a 5. She acknowledged that she had left her duty station but argued that she had quickly adapted to the administrative and logistical setting at the Safe Haven and coordinated with higher ups at the District to ensure that dependents and members were taken care of until they returned to their duty stations. The applicant argued that a mark of 7 would be appropriate to recognize her ability to “champion” tasks for which she had no prior experience.

Concerning the “Teamwork” performance dimension, the applicant argued that her teamwork was evident at the Safe Haven and that it was unjust for her to receive a lower mark of 6 compared to the 7 she had received on her prior OER. She claimed that her position as a watchstander at the Safe Haven had required her to fully focus on teamwork and that she had also covered for another member when he need to attend to personal matters. The applicant also addressed the “Judgment” and “Responsibility” performance dimensions and claimed that the comments supported a mark of 7 for both. She argued that she has always demonstrated commitment to taking care of other members and that she had spoken up for others at the Safe Haven. Finally, she requested that the Reporting Officer’s comments regarding her potential as an officer be edited to reflect the assignments that she was interested in applying to in the future.

On January 7, 2019, the applicant followed up with her former Supervisor as he had not yet responded to her December 14, 2018, email.

On January 10, 2019, the applicant followed up with CAPT R as he had also not yet responded to her earlier email regarding OER2. In that email, the applicant told CAPT R that she had contacted LT P and voiced her concerns, as CAPT R had recommended. She explained that she had emailed LT P on December 14, 2018, and followed up on January 7, 2019, but still had not heard back.

On the same date, CAPT R replied to the applicant and told her that he would discuss the matter with CAPT K within the next few days and would most likely engage with LT P directly to resolve it.

On January 30, 2019, LT P replied to the applicant's December 14, 2018, email. He stated that he understood the applicant's concerns. However, LT P said that OER2 had been discussed with the command several times and that he and the command had concurred with the marks. LT P said that he and the command believed the evaluation is fair and accurate based on the applicant's performance during the reporting period. He asked the applicant to sign OER2 and noted that her signature was needed only to confirm that she had reviewed the completed OER and would not mean that she agreed or disagreed with the content of the OER.

Renewal of Civil Rights Complaint

On January 30, 2019, the applicant re-engaged with the Civil Rights Directorate to proceed with filing her EEO complaint. She updated the Equal Employment Manager on the contents of her OER and stated that "the two areas that [she] was told would be impacted were in fact impacted..." The applicant also claimed that CAPT R had told her that CAPT K did not want to revise OER2 even though he had agreed to revise two other members' OERs who were both male. As a result, she alleged that both her Supervisor and CAPT K had engaged in discriminating against her.

The Equal Employment Manager replied to the applicant on the same date and indicated that because the applicant had been reassigned to a stateside unit, she would need to contact the region responsible for processing EEO complaints for that location. A short while later, another Civil Rights Service Provider notified the applicant that her email had been received and asked to speak with the applicant in person the following morning. It is unclear from the documentation provided whether a meeting occurred.

On February 10, 2019, the applicant received an email from Commander (CDR) C, a Deputy Staff Judge Advocate for the applicant's former District. CDR C stated that the District Chief of Staff had received a report from the Office of Civil Rights that the applicant had initiated an EEO complaint process based on an allegation that her former rating chain had discriminated against her based on her gender. He noted that the applicant had specifically claimed that LT P and CAPT K gave her lower marks in certain areas of her OER based on her gender and that she was seeking to have the marks raised as the appropriate remedy. CDR C stated that he had spoken with LT P, CAPT R, and CAPT K about the process used to draft her OER and asked the applicant to speak with him about her allegations and discuss a possible way forward.

According to the Counselor's Report prepared in response to the applicant's EEO complaint, the applicant elected Alternative Dispute Resolution (ADR) on February 27, 2019. The Report also indicated that the applicant was informed on March 15, 2019, that mediation was unsuitable for her complaint in accordance with the Civil Rights Manual.³ The Report noted that "[o]nly the Board of Corrections for Military Records may alter records for military personnel."

³ The Counselor cited Chapter 4.A.4.h. of the Coast Guard Civil Rights Manual, COMDTINST M5350.4C, which provides a non-exhaustive list of factors that may aid in determining whether ADR is appropriate for a particular disputed. Two of the factors identified as suggesting that ADR is inappropriate are: (1) when the relief requested is inconsistent with applicable laws, regulations, and Coast Guard policy, and (2) when none of the relief requested is administratively practicable. *Id.*

The Report also advised that,

In order for the [applicant] to receive consideration to have her OER changed, she would have to utilize the process described in COMDTINST 1070.1, Correcting Military Records. Specifically, it was suggested to the [applicant] that she submit an application for a correction to her military record through the Personnel Records Review Board (PRRB) or the Board for Correction of Military Records (BCMR).

The Counselor's Report was signed on March 28, 2019. As noted above, the applicant's application to the Board was docketed on July 10, 2019.

Subsequent OERs

The applicant's first OER at her new unit covered the reporting period of May 19, 2018, to May 31, 2019. The applicant received eleven marks of 7, including in the performance dimensions of "Results/Effectiveness" and "Teamwork," and seven marks of 6, including in the performance dimension of "Adaptability." On the Comparison Scale, the applicant's Reporting Officer rated her as "One of few distinguished officers" in the sixth of seven possible marks ranging from "Unsatisfactory" to "Best officer of this grade." On the Promotion Scale, the applicant was assigned a mark of "Promote w/top 20% of peers."

On the applicant's second OER as a Mission Support Officer Program Manager, dated May 31, 2020, she received thirteen marks of 7, including in the performance dimensions of "Adaptability" and "Teamwork," and five marks of 6, including in the performance dimension of "Results/Effectiveness." On the Comparison Scale, the applicant's Reporting Officer rated her as "One of few distinguished officers" in the sixth of seven possible marks ranging from "Unsatisfactory" to "Best officer of this grade." On the Promotion Scale, the applicant was assigned a high mark of "In-zone reorder."

In August 2020, with the disputed OERs in her record, the applicant was selected for promotion to LCDR.

The applicant's 2021 OER shows that she had been assigned to a regional leadership position at her new command. She received sixteen marks of 7, including in the performance dimensions "Results/Effectiveness," "Adaptability," and "Teamwork," and two marks of 6. On the Comparison Scale, the applicant's Reporting Officer rated her as "One of few distinguished officers" in the sixth of seven possible marks ranging from "Unsatisfactory" to "Best officer of this grade." On the Promotion Scale, the applicant was assigned a mark of "Already selected to next pay grade."

The applicant was promoted to LCDR (O-4) on January 1, 2022.

The applicant's most recent OER in the record covered the reporting period from June 1, 2021, to April 30, 2022. She received fifteen marks of 7, including in the performance dimensions "Results/Effectiveness" and "Teamwork," and three marks of 6, including in the performance dimension "Adaptability." On the Comparison Scale, the applicant's Reporting Officer rated her

as “One of few distinguished officers” in the sixth of seven possible marks ranging from “Unsatisfactory” to “Best officer of this grade.” On the Promotion Scale, the applicant was assigned a mark of “Recently promoted (<12 months in rank annual; <6 months in rank semi-annual).”

VIEWS OF THE COAST GUARD

On January 27, 2020, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief in this case.

The JAG argued that the applicant’s rating chain did not commit an error or injustice by providing her above-average marks and a Promotion Scale score of “Promote” on OER2. The JAG first noted that the applicant did not allege a misstatement of a significant hard fact or provide any evidence of such. Instead, the JAG argued that the applicant alleged that members of her rating chain had marked her unjustly based on bias against her as a female officer married member-to-member with dependents and because she had spent 110 days away from her duty station on TDY orders following the hurricane. The JAG also stated that the applicant’s argument that her performance during reporting period before and after the disputed OER should have any effect on that evaluation is contrary to Coast Guard policy.

The JAG stated that the applicant did not take certain steps afforded by policy to challenge the OER. Specifically, the JAG noted that the applicant did not request a rating chain exception to be evaluated by someone else during the reporting period or within 30 days after the end of the period, even though she was allegedly informed by her Supervisor that her marks would be lower. The JAG also noted that the applicant did not submit a Reported-on Officer Reply as authorized by policy, which would have provided her with an opportunity to express a view of performance which may differ from that of a rating official. Finally, the JAG also pointed out that the applicant did not submit an application to the Personnel Records Review Board (PRRB) within a year of the disputed OER as authorized by policy.

The JAG also argued that there is no clear violation of a specific objective requirement of a statute or regulation to establish that the marks in OER2 are unjust. The JAG pointed to documents that the applicant submitted with her application reflecting other members’ success in having the same rating chain change their OERs. The JAG argued that the documents showed that the rating chain was receptive and willing to make changes when warranted. The record shows that the Supervisor, Reporting Officer, and Reviewer for OER2 considered the applicant’s requests but affirmed that the OER should remain as written. The Reviewer, CAPT K, assured the applicant that her OER would be “fair, thorough and honest” after her Supervisor received informal counseling due to the applicant’s EEO complaint. The JAG also pointed to the Reporting Officer, CAPT R’s Declaration dated November 6, 2019. While CAPT R stated that he would be amenable to raising the applicant’s mark for the “Adaptability” performance dimension from a 5 to a 6 due to the applicant’s efforts following the aftermath of the hurricane, the JAG argued that he was not authorized to raise the mark since that performance dimension was assigned to the Supervisor for completion. Additionally, CAPT R stated that he had considered all the facts and circumstances during the reporting period and believed the OER marks and content to be fair as written. Therefore, the JAG argued, there is insufficient evidence to show that OER2 was in error or unjust.

The JAG admitted that CAPT K clearly felt that members married member-to-member “should have a family plan,” and were obliged to report to their primary duty station even if the island was not yet safe for dependents. The JAG also agreed with the applicant that the Coast Guard is not included in the Department of Defense (DoD) family plan requirements, which the applicant submitted with her application, but the JAG emphasized that the Coast Guard has its own policies given that it is a part of the Department of Homeland Security and not DoD. The JAG argued that Coast Guard policy required the applicant and her husband to have a contingency plan to be ready for exigent circumstances, and that the fact that the applicant provided links to family care plans proves that she was aware of the resources available to her but had failed to plan accordingly. Given the location of the applicant’s primary duty station, the JAG asserted that the applicant should have anticipated hurricane response operations during the summer and fall considering that the Coast Guard exists, in part, to respond to such contingencies and that its ability to do so hinges on members’ preparedness and resilience.

The JAG also addressed the applicant’s claim that she was not needed at her primary duty station because she was part of the intelligence staff. The JAG admitted that the Coast Guard’s focus shifted from intel-driven efforts to life-saving and humanitarian efforts in the aftermath of the hurricane but that the applicant surely could have found some way to be helpful to the remaining residents at her permanent duty station and her fellow members on-island. The JAG also claimed that the applicant had failed to report for duty when directed and that her conduct at a town hall meeting had bordered on insubordination and might not have been the appropriate forum to address her concerns. The JAG empathized with the applicant’s concerns for her children and her desire to remain at the Safe Haven with them. However, the JAG also noted that Coast Guard policy emphasizes that COs and Officers in Charge should insist on unrestricted availability for regular duties and watches for all members. Moreover, the JAG argued that, even if the applicant was in fact told by her Supervisor that her marks for “Teamwork” and “Adaptability” were impacted by her evacuation during the hurricane as she claims, the applicant could have been counseled for not being fully available for duty due to inadequate dependent care arrangements. Instead, the JAG asserted, the applicant apparently earned an above-average mark of 5 instead of a 6 in “Adaptability,” a 6 instead of a perfect mark of 7 in “Teamwork,” and “Promote” instead of “Promote with top 20% of her peers.” The JAG argued that the Coast Guard can insist upon, and does need, its active duty members available for world-wide deployment.

The JAG also argued that the applicant is not entitled to an upgrade of her end-of-tour award to a Coast Guard Commendation Medal, and that there is no evidence of an error or injustice in the issuance of her Achievement Medal. The JAG argued that personal awards are not required, and that COs have the discretion to determine whether a member’s performance meets the requirements for a personal award. The JAG asserted that the applicant’s allegation that the draft citation she provided was for a Commendation Medal and that the citation she received reads like a Commendation Medal despite being an Achievement Medal does not demonstrate an error or injustice in the decision to award the applicant an Achievement Medal.

Finally, the JAG argued that the applicant has failed to provide evidence that would demonstrate an error or injustice with respect to her rating chain for her June 1, 2016, to May 31, 2017 OER (OER1). The JAG stated that Coast Guard policy provides that rating chain designations are made by position and not by name. CAPT K was the Sector Commander at the time the OER was

routed to his office for review, even if he himself was not in that position during the period of report. Therefore, the JAG argued, it was appropriate for CAPT K to sign OER1 as the Reviewer.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 6, 2020, the Chair sent the applicant a copy of the Coast Guard's views and invited her to respond within thirty days. The applicant submitted a response dated March 13, 2020. In her response, the applicant opposed several allegations set forth by the JAG.

OER1

The applicant disputed what she perceived as the JAG's argument that she should have raised her concern about CAPT K serving as the Reviewer on OER1 within 30 days after the end of the reporting period. She stated that Coast Guard policy afforded her with 60 days to raise any issues and that she did not receive OER1 until 72 days following the end of the reporting period. The applicant also asserted that she did not know that CAPT K would be the Reviewer because the typical practice was for the previous command to complete OERs initiated prior to the change in command. Finally, the applicant argued that a rating chain exception was not possible here because Coast Guard policy only permits rating chain exceptions where the Supervisor, Reporting Officer, or Reviewer is unavailable due to illness, death, prolonged absence, separating from service, retirement or other circumstance that substantially hinders their ability to carry out their responsibilities.

OER2

The applicant disputed the JAG's assertion that the applicant could have been separated for unavailability because of her evacuation with dependents during the hurricane. The applicant argued that her evacuation was authorized pursuant to the TDY orders and that separation was never mentioned as a possibility. She also argued that neither she nor her husband were instructed upon their arrival at the Sector that they would need to plan for additional care for their children. The applicant argued that Coast Guard policy permitted her to take up to four months away from duty to resolve difficulties due to inadequate dependent care. She further asserted that she was authorized to depart and remain at the Safe Haven per her TDY Orders for 110 days, which she emphasized was less than four months. She also argued that she was never counseled about any problems with her approved status on TDY orders to the Safe Haven until her mid-period counseling with LT P, when he informed her that her OER marks would be negatively impacted.

The applicant also disputed the assertion that she did not submit a reply to the OER. She pointed to the email she sent to LT P and CAPT R in which she provided comments and input as to why she believed she should have received higher marks based on her performance. The applicant stated that she then followed the steps to request a correction of her record from the Board. She also argued that she was not required to apply to the PRRB and that Coast Guard policy permitted her to apply directly to the BCMR.

The applicant also disputed the JAG's assertion that CAPT R was unable to upgrade the mark of 5 for "Adaptability" as the Reporting Officer. The applicant argued that Coast Guard

policy provides that the marks and comments on an OER belong to the Supervisor and the Reporting Officer, meaning that CAPT R had the ability to change any of the marks and comments. She also argued that it was clear that CAPT K unduly influenced her OER contrary to Coast Guard policy because CAPT R specifically told her that he would speak directly with CAPT K to address the concerns she raised via email about her OER. The applicant also noted that two other male minority officers who disputed their OERs stated that they had spoken with CAPT K before he signed their updated OERs. She noted that CAPT K had informed one of the officers that he did not agree with the updates, even though that officer had been told by CAPT R that it was imperative for him to speak with CAPT K before receiving a revised OER.

The applicant also argued that she followed Coast Guard policy governing contingency plans for her children and that she only provided information on DoD family care plan requirements because she came across it while preparing her application to the Board. She also argued that Coast Guard policy includes a “significant gray area” that requires members to determine the best course of action for their families on their own. The applicant argued that the hurricane was a natural disaster that presented a unique situation unlike a deployment. She also noted that the screening process that she had to complete, along with her husband, before receiving their overseas assignments required the approval of a family plan. The applicant did not provide any details about the nature of that plan.

The applicant also disputed the JAG’s assertion that she was needed at her duty station to assist with hurricane relief efforts. The applicant pointed to LCDR D’s statement in which he recounted asking LT P if the applicant was needed, and LT P said she was not. The applicant also claimed she informed the leadership at the FSU that she could do her Intel duties remotely since she relied on unclassified emails and phone calls to do so, but the Sector Command did not want her to do so. She also highlighted the poor living conditions in the vicinity of her duty station that persisted for several months and prompted members to share Coast Guard housing. The applicant noted that members “were unable to get appropriate amounts of sleep thus hindering their ability to perform operations” and that they “questioned how they were going to safely continue operations without adequate rest.” She stated that had she returned to her duty station immediately after the hurricane, she “would have been just like the other Coast Guardsmen [at the duty station].”

The applicant also disputed the JAG’s assertion that she failed to report for duty because, if that were accurate, her Supervisor and Command could have held her accountable in accordance with the Uniform Code of Military Justice (UCMJ). She claimed that that did not happen because she did not violate any policy or order. The applicant also argued that the JAG’s “insubordination claim” lacks evidence because she addressed CAPT K at the Town Hall in a respectful manner despite her fear of reprisal. She again argued that the lack of pursuit of punishment pursuant to the UCMJ indicated that she was not insubordinate.

Finally, the applicant disputed the JAG’s characterization of the disputed OER marks as “above-average.” She argued that the mark of 5 she was assigned for “Adaptability” is considered “standard” pursuant to Coast Guard policy. The applicant argued that her record and promotion potential were “significantly impacted” due to the personal views of LT P and CAPT K and that other members felt harassed and bullied by LT P and CAPT K.

Achievement Medal

The applicant reiterated that it was her opinion that she had received the Coast Guard Achievement Medal with a watered-down citation in order to make her performance seem less impressive. She believed this to be the result of reprisal for her EEO complaint against LT P and her efforts at the Town Hall to speak up on behalf of other active duty members and their children.

APPLICABLE LAW AND POLICY

Chapter 1.A.5. of the Coast Guard Military Assignments and Authorized Absences Manual, COMDINST M1000.8A, states the following regarding members' availability for unrestricted assignments in relevant part:

a. Policy

It is a long-standing feature of military service and the Commandant's policy that all Coast Guard members be available for unrestricted duty assignment worldwide. To achieve this responsiveness level, each Coast Guard member must make and maintain suitable arrangements to care for dependents.

c. Fair Implementation

It is manifestly unfair to implement the Commandant's unrestricted duty assignment policy differently among service members. If for any reason a member is not available for unrestricted assignment for an appreciable period, the usual solution is separation from service. When it appears the member can resolve the problem, the Commandant grants a reasonable time for the member to return to availability for fully duty through a humanitarian assignment.

d. Command Expectations

Sponsors must understand they are responsible for arranging care for their dependents. The Coast Guard has the right to expect sponsors' status will not interfere with performing duty fully. Commanding officers (COs) and officers-in-charge (OICs) should counsel single parents or military couples with dependents who fail to make adequate dependent care arrangements and then request exception from normal job requirements. While COs and OICs should show sympathy and compassion for their members' problems, they also should insist on unrestricted availability for regular duties and watches.

f. Officers Unavailable for Full Duty

COs should counsel officers not fully available for duty due to inadequate dependent care arrangements as noted above and grant a reasonable time, not to exceed four months, to resolve their difficulties. If the officer cannot resolve the problem locally, they should write to Commander (CG PSC-OPM) through the chain of command, outlining the circumstances involved and seeking resolution on grounds acceptable to them and the service. Commander (CG PSC-OPM) evaluates the merits of each situation individually and directs appropriate action. If the officer continues to be unavailable for unrestricted assignment after taking the recommended steps, Commander (CG PSC-OPM) processes the officer for separation under Article 1.A.14 of reference (b), Military Separations, COMDTINST M1000.4 (series).

Chapter 1.A.4. of the Coast Guard Accessions, Evaluations, and Promotions Manual, COMDTINST M1000.4A, states the following about the role and duties of an OER Reviewer:

4. Reviewer.

- a. Designation. The Reviewer is normally the Supervisor of the Reporting Officer. While the Supervisor and Reporting Officer are specific individuals, the Reviewer is a position designated by competent authority, which in certain circumstances may be junior to the Reporting Officer. The officer occupying that position has a definite OES administrative function and may perform an evaluative function. ...
- b. Responsibilities. The Reviewer shall:
- [1]. Ensure the OER reflects a reasonably consistent picture of the Reported-on Officer's performance and potential.
 - [2]. If necessary, add comments, using the Reviewer Comments block on Form CG-5310 (series). These comments should only be submitted to comment on performance and/or potential which is significantly different than the Supervisor or Reporting Officer. These comments can be positive or negative in nature.
 - [3]. Ensure the Supervisor and the Reporting Officer have adequately executed their responsibilities under the OES and meets all submission schedules. The Reviewer shall return an OER to the Reporting Officer to correct errors, omissions, or inconsistencies between the evaluation and written comments (as applicable). However, the Reviewer shall not direct in what manner an evaluation mark or comment be changed unless it is prohibited by Article 5.I. of reference (a) and Article 4.B. of this Manual.

Chapter 1.A.1. of the Coast Guard Officer Evaluation System Procedures Manual (OER Manual), PSCINST M1611.1C, states the following regarding the responsibilities of the Reported-on Officer in relevant part:

k. Assume ultimate responsibility for managing their own performance, notwithstanding the responsibilities assigned to others in the rating chain. This includes ensuring performance feedback is thorough, and that OERs and associated documentation are timely and accurate.

...

g. Inform Commander (CG PSC-OPM-3) or (CG PSC-RPM-1) directly by written communication (e.g., e-mail) if the original validated OER has not been received six months after the end of the reporting period.

Chapter 1.A.2.b. of the manual states the following regarding the responsibilities of the Supervisor in relevant part (emphasis added):

[1]. Evaluate the performance of the Reported-on Officer in the execution of their duties.

...

[4]. Encourage the use of the Officer Support Form (OSF), Form CG-5308, ([sic] required for ensigns and lieutenants (junior grade) or other appropriate means, to note important aspects of the Reported-on Officer's performance during the reported period. Significant events, problems, achievements, shortcomings, or personal qualities should be noted.

Chapter 1.A.3.b. of the OER manual states the following regarding the responsibilities of the Reporting Officer in relevant part (emphasis added):

[1]. Evaluate the Reported-on Officer based on direct observation, the Officer Support Form (OSF), Form CG-5308, other information provided by the Supervisor, and other reliable reports and records.

[2]. Prepare Reporting Officer section of the OER and describe the overall potential of the Reported-on Officer for promotion and special assignment such as command.

[3]. Ensure the Supervisor fully meets responsibilities for administration of the [Officer Evaluation System]. Reporting Officers are expected to hold designated Supervisors accountable for timely and accurate evaluations. The Reporting Officer shall return a report for correction or reconsideration, if the Supervisor’s submission is found inconsistent with actual performance or unsubstantiated by narrative comments (if applicable). The Reporting Officer shall not **direct** that an evaluation mark or comment be changed, unless the comment is prohibited under Article 5.I. of reference (a) and Article 4.B. of the Manual.

Chapter 1.A.4.a. of the OER manual states the following regarding designation of the Reviewer in relevant part:

The Reviewer is normally the Supervisor of the Reporting Officer. While the Supervisor and Reporting Officer are specific individuals, the Reviewer is a position designated by competent authority, which in certain circumstances may be junior to the Reporting Officer.

Chapter 4.B.11. of the OER manual 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.

Chapter 4.E.2. of the OER manual states the following regarding Supervisor comments in relevant part:

f. 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.

...

j. 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 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.

Chapter 4.F. of the OER manual states the following regarding Reporting Officer comments in relevant part:

3. Section 5, Reporting Officer Comments

a. This section provides an opportunity for the Reporting Officer to comment on the Supervisor’s evaluation. Reporting Officers are encouraged to cite other information and observations they may have which would confirm or provide another perspective of the Reported-on Officer’s performance and qualities demonstrated during the reporting period. By doing so, the Reporting Officer gives a more complete picture of the Reported-on Officer’s capabilities.

...

d. No specific comments are required to support the Reporting Officer's judgment for the Comparison, Promotion, and Rating Scales.

e. Comments in this section reflect the judgment of the Reporting Officer and may include, but are not limited to, the following:

[1]. Qualification to assume the duties of the next grade.

[2]. Specialties or types of assignment, such as command, or post-graduate education for which the Reported-on Officer is qualified or shows aptitude.

[3]. Special talents or skills (or lack of) such as military readiness and warfare skills, seamanship or airmanship, etc., as applicable.

Chapter 4.G. of the OER manual concerns the role of the OER Reviewer. Chapter 4.G.1. states that the Reviewer's role is limited as follows:

a. REVIEWER COMMENTS. Reviewer must select 'Concur' or 'Comments regarding performance and/or potential significantly different than Supervisor or RO'. If 'Concur' is selected no additional comments are allowed. If 'Comments regarding performance and/or potential significantly different than Supervisor or RO' is selected, the Reviewer has five lines of text to provide comments. These concise comments must be of a value-add nature, and can be positive or negative. Refer to Chapter 5 of this Manual for additional guidance.

b. SIGNATURE. The Reviewer's signature verifies completion of their OES responsibilities, the evaluation is fair and accurate, and they attest that their comments are their own and reflect the Reported-on Officer's performance during the period of report. ...

Chapter 17.A. of the OER manual states the following regarding Reported-on Officer replies to OERs in relevant part:

1. The Reported-on Officer may reply to any OER. Replies provide an opportunity for the Reported-on Officer to express a view of performance which may differ from that of a rating official. A Reported-on Officer OER reply does not constitute a request to correct their record.
2. Content of Replies. Comments should be performance-oriented, either addressing performance not contained in the OER or amplifying the reported performance. Restrictions outlined in Article 5.I. of Reference (a) and Article 4.B. of this Manual apply. Comments pertaining strictly to interpersonal relations or a personal opinion of the abilities or qualities of a rating chain member are not permitted.
3. Submission of Replies. Reported-on Officer's OER Reply must be submitted to CG PSC-OPM-3 or CG PSC-RPM-1 via the original rating chain.
4. Timeline for Submission of Replies to Supervisor. Replies must be submitted to the Supervisor within 21 days from receipt of the validated OER from CG PSC-BOPS-C-MR, Military Records Section. Replies based upon receipt of local copies will not be accepted.

Chapter 17.B. of the OER manual states the following regarding the format of Reported-on Officer replies to OERs in relevant part:

1. Follow the Memorandum format as per the Coast Guard Correspondence Manual, COMDINST M5216.4 (series). A sample is provided in Appendix E of this Manual. Reported-on Officers must limit their OER Reply to a maximum of two single-spaced pages (8½" x 11", 1" margins, font Times New Roman, minimum 12 point font size) typed on one side with no enclosures.

2. Each rating chain member responding to the Reply limits their endorsement to a maximum of one single-spaced page (8½" x 11", 1" margins, font Times New Roman, minimum 12 point font size) typed on one side with no enclosures. If a rating chain member elects not to respond with an endorsement to the Reply, they must initial and date in the thru block of the Reply, and forward through the rating chain.

Chapter 1.G.1 of the Coast Guard Military Medals and Awards Manual, COMDTINST M1650.25E, states that a commanding officer, officer-in-charge, or any E-7 or above senior to the individual being recommended may initiate a recommendation for the award of a military decoration. The originator, if other than the commanding officer or officer-in-charge of the individual concerned, must forward the recommendation to the appropriate commanding officer for comment and/or endorsement prior to forwarding via the chain of command.

Chapter 1.G.3 of the manual states that all personal award recommendations must include more than three endorsements for the award.

Chapter 1.I. of the manual states that the first flag-level officer in the chain of command will establish an Awards Board which meets to evaluate the recommendations for medals and awards received from subordinate commands and to make recommendations to the awarding authority regarding whether to approve the recommendation, upgrade the proposed award, downgrade the proposed award, return the recommendation for revision, or deny the award.

Chapter 2.A. of the manual states the following regarding the Coast Guard Commendation Medal and the Coast Guard Achievement Medal in relevant part (emphasis added):

13. Coast Guard Commendation Medal (CGCM).

- a. Eligibility Requirements. May be awarded by the Commandant, to a person who, while serving in any capacity with the U.S. Coast Guard, including foreign military personnel, distinguishes him or herself by heroic or meritorious achievement or service. To merit this award, the acts or services must be accomplished or performed in a manner above that normally expected and sufficient to distinguish the individual above others of comparable grade or rating performing similar services, as set forth in the following:
 - 1) For acts of heroism worthy of special recognition, but not to the degree required for the Bronze Star Medal when combat is involved; or the Coast Guard Medal or Meritorious Service Medal when combat is not involved;
 - 2) For meritorious achievement that is outstanding and worthy of special recognition, but not to the degree required for the Bronze Star Medal or Air Medal when combat is involved; or the Legion of Merit, Meritorious Service Medal or Air Medal when combat is not involved. The achievement should be such as to constitute a definite contribution to the Service, such as an intervention or improvement in design, procedure, or organization;
 - 3) For meritorious service that is outstanding and worth of special recognition, but not to the degree required for the Bronze Star Medal or Air Medal when combat is involved; or the Meritorious Service Medal or Air Medal when combat is not involved. The award may cover an extended period of time during which another award may have been recommend or received for a

special act or acts. The criteria, however, should not be the period of service involved, but rather the circumstance and conditions under which the service was performed. The performance should be well above that usually expected to commensurate with an individual's rank or rate. *If the meritorious service is not sufficient to warrant the award of a Commendation Medal, the Coast Guard Achievement Medal should be considered.*

14. Coast Guard Achievement Medal (CGAM).

- a. Eligibility Requirements. May be awarded to a person who, while serving in any capacity with the Coast Guard, including foreign military personnel, distinguishes themselves for professional and/or leadership achievement in a combat or non-combat situation based on sustained performance or specific achievement of a superlative nature which must be of such merit as to warrant more tangible recognition than the Commandant's Letter of Commendation Ribbon, but which does not warrant a Coast Guard Commendation Medal or higher award.
- 1) Professional Achievement. To merit the award, professional achievement must clearly exceed what is normally required or expected, considering the individual's rank or rate, training and experience, and must be an important contribution that is beneficial to the United States and the United States Coast Guard.
 - 2) Leadership Achievement. To merit the award, leadership achievement must be noteworthy and sustained or, if for a specific achievement, be of such merit as to earn singular recognition; and reflect most creditably on the individual's efforts towards mission accomplishment.

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. The application was timely filed.⁴

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.⁵

3. The applicant alleged that OER2 for the reporting period June 1, 2017, to May 18, 2018, OER1 for the reporting period June 1, 2016, to May 31, 2017, and her June 23, 2018 Coast Guard Achievement Medal should be amended because they are 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.⁶ Absent specific evidence to the contrary, the Board presumes that the members of an applicant's rating

⁴ 33 C.F.R. § 52.22.

⁵ *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).

⁶ 33 C.F.R. § 52.24(b).

chain have acted “correctly, lawfully, and in good faith” in preparing their evaluations.⁷ In addition, to be entitled to correction or removal of an OER, the applicant cannot “merely allege or prove that an [evaluation] seems inaccurate, 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.⁸

4. The JAG argued that, with regard to the OER ending May 18, 2018 (OER2), the applicant did not submit a Reported-on Officer Reply as authorized by Coast Guard policy to express a differing view of her performance from that of her rating chain.⁹ Although the procedure and format for submission of a Reported-on Officer Reply were not followed as dictated by Coast Guard policy,¹⁰ the Board notes that the applicant did submit a detailed response to her Reporting Officer and Supervisor on December 10 and 18, 2018, respectively. In both emails, she expressed concern about OER2 and identified the specific performance dimensions that she believed needed revision based on her performance.

The applicant did not challenge OER2 by applying to the PRRB within one year after receiving it. However, the applicant did re-engage with the Civil Rights Directorate to proceed with filing her EEO complaint on the same date that she was informed by LT P that no changes would be made to OER2. Subsequently, in March of 2018, the applicant was advised during the informal EEO resolution process that she would need to submit an application for a correction to her military record through the PRRB or the Board, “[i]n order [] to receive consideration to have her OER changed.” She submitted her application to the Board approximately four months later. Therefore, although the applicant did not request relief from the PRRB, the Board will not view this as evidence that the applicant agreed with her rating or failed to seek timely relief to change it.

With regard to the disputed OER ending May 31, 2017 (OER1), the applicant did not file an OER reply as permitted by Coast Guard policy¹¹ or apply 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 valid at the time.

5. The Board finds that the applicant has demonstrated by a preponderance of the evidence that the marks she received for the “Adaptability” and “Teamwork” performance dimensions on OER2 were adversely affected by factors that had no business being in the rating process.¹² In this case, the applicant argued that the mark of 5 for “Adaptability” and 6 for “Teamwork” were the direct result of her Supervisor’s desire to penalize her for evacuating before the hurricane and remaining at the Safe Haven until after the Evacuation Order was lifted. She asserted that her Supervisor specifically told her during her midperiod counseling session that her

⁷ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁸ *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).

⁹ Article 17.A. of the Coast Guard Evaluation System Procedures Manual, PSCINST M1611.1C.

¹⁰ Article 17.B. of the Coast Guard Evaluation System Procedures Manual, PSCINST M1611.1C.

¹¹ Article 17.A. of the Coast Guard Evaluation System Procedures Manual, PSCINST M1611.1C.

¹² *Hary*, *supra* n. 8.

marks for those two performance dimensions would be lowered due to her decision to evacuate and remain at the Safe Haven for 110 days.

The applicant's claim is supported by contemporaneous documentation. The applicant contacted the Civil Rights office on March 7, 2018, the morning after her midperiod counseling with LT P, and stated the following (emphasis added):

My supervisor counseled me during mid-period counseling and stated several negative things to me in regards to me leaving the island, that it doesn't matter if you're dual military, that I cannot adapt, that I left the division in a hardship, and that I'm not a team player. My last OER I received a 6 in **Adaptability** and a 7 in **Teamwork** (7 is the highest rating to receive). However, now I'm being told **I'm going to receive lower ratings** because of a hurricane that I had no control over.

On October 11, 2018, the applicant received OER2. In OER2, the applicant did in fact receive marks for "Adaptability" and "Teamwork" on OER2 that were exactly one level lower than the marks the applicant had received from the same rating chain for those performance dimensions on OER1, which immediately preceded OER2. The marks for "Adaptability" and "Teamwork" were the only marks that changed between OER1 and OER2. Of course, an officer's performance and OER marks can easily change from one year to the next. But in this case, the only changes in the applicant's marks were in the areas that LT P allegedly raised in the midperiod counseling. This lends credence to the applicant's account of her midperiod counseling with LT P.

On January 30, 2019, the same day that LT P informed the applicant that he was not going to revise her OER2 as requested, the applicant renewed her EEO complaint and informed the Civil Rights office that "the two areas that [she] was told would be impacted were in fact impacted..." Even though the correspondence took place approximately one year apart, each time the applicant initiated contact with the Civil Rights office, her statements were consistent. She repeatedly specifically identified the "Adaptability" and "Teamwork" performance dimensions as the two areas that LT P had told her would be adversely affected by her evacuation and TDY assignment. Additionally, the applicant attempted to resolve her complaint about the marks informally by email promptly after she received it.

It is notable that the applicant's rating chain had multiple opportunities to dispute the applicant's claim that her marks for "Adaptability" and "Teamwork" were lowered due to her evacuation and duration at the Safe Haven, but they did not do so. Never once did they deny her claim that they had held her evacuation period pursuant to lawful TDY orders against her in assigning those two marks. In response to the applicant's concerns about her marks, on January 30, 2019, LT P simply stated that he and his command believed the evaluation to be fair and accurate based on the applicant's performance. In the declaration provided to the JAG dated November 6, 2019, CAPT R stated that he believed the marks and content of OER2 to be fair and accurate. However, he also stated he would support changing the applicant's mark for "Adaptability" from a 5 to a 6 due to the applicant's "efforts dealing with a very difficult situation upon her return to [her duty station] in the aftermath of the Hurricanes."

The statements in the record that speak to the applicant's performance during the reporting period support the conclusion that the applicant performed at a high level. According to CAPT H

and YNCM N, who both observed the applicant's performance while on TDY at the Safe Haven, the applicant was an "outstanding performer" and "phenomenal team player." CAPT H also spoke to the applicant's "courage" for "looking out for others" who were also active duty members who evacuated with their dependents. In his November 6, 2019, declaration, CAPT R described the applicant as "hardworking, intelligent and [an] extremely capable officer." Moreover, the applicant evacuated consistent with Sector Command's instructions and remained at the Safe Haven for 110 days pursuant to a lawful TDY Order.

In light of the above, the Board finds that the preponderance of the evidence shows that the applicant's marks for "Adaptability" and "Teamwork" on OER2 were adversely affected by her decision to evacuate and remain at the Safe Haven until after the evacuation order was lifted. The preponderance of the evidence supports the applicant's claim that LT P held the evacuation and TDY assignment against her. There was no proper basis for LT P to penalize the applicant when marking her performance in those two dimensions because the applicant's actions were consistent with the instructions and orders from her Command.

However, the applicant has not provided any evidence to support her request for the mark of 5 for "Adaptability" be raised to a 7, which is one mark higher than the mark she received for the same performance dimension on OER1.¹³ Therefore, the Board finds that the mark for "Adaptability" should be raised for a 5 to a 6 and the mark for "Teamwork" should be raised from a 6 to a 7 on OER2.

6. The applicant's argument that the "Adaptability" and "Teamwork" performance dimensions on OER2 were adversely affected by her evacuation and duration at the Safe Haven are further supported by the evidence of bias amongst the Sector leadership toward dual-military families, and the applicant herself. As the OER Reviewer, CAPT K was not responsible for assigning any of the marks and comments on OER2 and was prohibited from directing her Supervisor and Reporting Officer to lower her marks.¹⁴ LT P and CAPT R assigned all of the marks and comments in OER2. However, the record reflects that CAPT K was an active participant in consideration of the applicant's request to revise her OER2. In denying her request on January 30, 2019, LT P stated that the applicant's OER2 had been discussed with the command several times and that he and the command concurred with the marks. In his January 10, 2019, email response to the applicant, CAPT R told her that he would discuss her concerns about her OER2 with CAPT K in the next few days before engaging with LT P directly.

The Board finds that the applicant has submitted persuasive evidence of CAPT K's bias against members married to other members and of his irritation with her in particular because of a question she asked him during a Town Hall. According to CAPT H, the question was reasonable and respectful. Furthermore, the applicant included statements from CWO R, LCDR D, and CAPT

¹³ A mark of 7 in the "Adaptability" performance dimension is warranted when an officer exceeds the level of performance required for a mark of 6. As specified on the Coast Guard Officer Evaluation Report form, a mark of 6 is warranted when an officer has met the following level of performance: "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."

¹⁴ Article 1.A.4.b.3. of the Coast Guard Accessions, Evaluations, and Promotions Manual, COMDTINST M1000.4A.

H who all claimed that CAPT K and other unidentified Sector leaders had expressed displeasure with dual-military spouses remaining at the Safe Haven with their children. According to CWO R, CAPT K said that he did not like dual-military families because one of the two members was “always get[ting] out of work.” LCDR D stated that CAPT K and other senior command staff were upset about dual-military families where one member had evacuated. He also stated that “some” senior command staff accused the spouses who evacuated of being lazy and failing to have a family plan. And CAPT H indicated that the District staff could not persuade CAPT K to have empathy for the evacuated children of married active duty couples and so the District overruled him by allowing the applicant to remain at the FSU.

7. The Board is not persuaded that the “Results/Effectiveness” and “Responsibility” performance dimensions on the applicant’s OER2 were similarly adversely impacted by the applicant’s evacuation and TDY assignment. It appears that the crux of the applicant’s argument as to why the marks for “Results/Effectiveness” and “Responsibility” were erroneous and unjust is that the marks conflict with the OER comments entered by LT P. However, the applicant’s argument is a misapplication of Coast Guard policy. OERs are not prepared by selecting numerical marks that are consistent with the written comments. Instead, the numerical marks are selected after comparing the officer’s performance to the prescribed standards for the marks printed on the OER form, and then a comment with one or more examples of performance showing why the numerical mark was selected is added to the comment block below the mark.¹⁵ Furthermore, the applicant did not identify either performance dimension in her initial correspondence with the Civil Rights office, and there is no other indication that LT P ever told the applicant that her marks for those performance dimensions were lower than in her previous OER as a result of her evacuation and tenure at the Safe Haven. Therefore, the applicant has not demonstrated by a preponderance of the evidence that the marks assigned for the “Results/Effectiveness” and “Responsibility” performance dimensions were erroneous or unjust.

8. Similarly, the Board is not persuaded that the mark the applicant received on the Promotion Scale or the Reporting Officer Comments on OER2, both of which were completed by the Reporting Officer, CAPT R, were impacted by the applicant’s evacuation and TDY assignment. The applicant never claimed that CAPT R said his evaluation of her would be negatively affected by her evacuation. Instead, the applicant’s argument relies on her assertion that OERs should only improve over time and that the mark she received on the Promotion Scale and the Reporting Officer Comments did not accurately reflect her potential. However, this Board has long held that the fact that an applicant received better OERs before or after the reporting period for the disputed OER is not evidence that the disputed evaluation does not accurately reflect her performance during the reporting period.¹⁶ Furthermore, Coast Guard policy recognizes the subjective nature of the Reporting Officer’s section on OERs by permitting the Reporting Officer is permitted to provide his or her judgment on the Reported-on Officer’s skills or special talents, or lack thereof.¹⁷ Therefore, the applicant has not demonstrated by a preponderance of the evidence

¹⁵ OER Manual, PCSINST M1611.1A, Article 4.E.2.b. & d.

¹⁶ *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.”).

¹⁷ Article 4.F.3.e.3. of the Coast Guard Officer Evaluation System Procedures Manual, PCSINST M1611.1C.

that the applicant's Promotion Scale mark or Reporting Officer Comments on OER2 were erroneous and unjust.

9. The Board finds that the applicant has not proven by a preponderance of the evidence that the disputed marks on OER2 constituted retaliation for her EEO complaint. The applicant did not identify any evidence in the record to support that claim. Instead, the record shows that after the applicant initially contacted the Civil Rights Division, her Supervisor received informal counseling from the Sector Commander, who assured the applicant that her OER would be fair and accurate. The applicant alleged that LT P treated her differently and stopped interacting with her altogether after he was counseled. Assuming, *arguendo*, that LT P did behave differently after receiving EEO counseling, the applicant has not put forward any argument that his change in behavior had any impact on OER2. Furthermore, there is no indication in the record that the applicant's communication with the Civil Rights Division had any adverse impact on LT P or the other members of her rating chain. Nor did the applicant request disqualification of her rating chain even though, when an officer is concerned that a member or members of her rating chain may be biased against her or retaliate, the officer may request disqualification of the rating chain member(s).¹⁸

10. The applicant also argued that LT P did not provide counseling on the disputed OER ending May 18, 2018. However, in arguing that her OER is erroneous and unjust, the applicant heavily relied on LT P's statement that her marks would be lowered because of her evacuation to and duration at the Safe Haven. According to her application and her March 7, 2018, email to the Civil Rights Directorate, that statement was allegedly made during her mid-period counseling. The applicant also signed the OER ending May 18, 2018, which indicated that she had received counseling from LT P on March 6, 2018. Therefore, the Board finds that the record reflects that the applicant received mid-period counseling consistent with that required by Coast Guard policy.

11. In her response to the JAG's advisory opinion, the applicant also appeared to argue that CAPT R, as the Reporting Officer, could have revised the mark of 5 for "Adaptability" without input from LT P. However, Coast Guard policy dictates otherwise. The Reporting Officer is responsible for ensuring that the Supervisor fully meets responsibilities for administration of the Officer Evaluation System.¹⁹ Reporting Officers are also expected to hold Supervisors accountable for accurate evaluations.²⁰ However, Reporting Officers are prohibited from *directing* that an evaluation mark or comment be changed, unless the comment is prohibited by policy.²¹ Accordingly, it was not within CAPT R's authority to unilaterally raise or lower the applicant's mark for "Adaptability."

¹⁸ Article 1.B.2.b. of the Coast Guard Officer Evaluation System Procedures Manual, PSCINST M1611.1C, states that an officer may request that a superior officer be disqualified from serving on the officer's rating chain and defines "disqualified" as including "relief for cause or removal from primary duties due to misconduct or unsatisfactory performance, being an interested party to an investigation or court of inquiry, or any other situation in which a personal interest or conflict on the part of the Supervisor, Reporting Officer, or Reviewer raises a substantial question as to whether the Reported-on Officer will receive a fair, accurate evaluation."

¹⁹ Article 1.A.3.b.3. of the Coast Guard Officer Evaluation System Procedures Manual, PSCINST M1611.1C.

²⁰ *Id.*

²¹ *Id.*

12. With regard to OER1, dated May 31, 2017, the applicant argued that it is erroneous because CAPT K did not assume the role as Sector Commander until after the reporting period ended. However, Coast Guard policy states that unlike the Supervisor and Reporting Officer, who are specific individuals, the Reviewer is a position designed by competent authority.²² “The Reviewer is normally the Supervisor of the Reporting Officer. While the Supervisor and Reporting Officer are specific individuals, the Reviewer is a position designated by competent authority.”²³ As the Sector Commander, CAPT K was the appropriate authority to serve as the Reviewer for the OER ending May 31, 2017, because by the time the OER reached the Sector Commander’s office in August 2017, CAPT K had filled that position. Coast Guard policy did not require CAPT K to have been in that position during the reporting period in order to serve as the Reviewer. Nor has the applicant shown that having CAPT K sign OER1 prejudiced her in any way. Therefore, the Board finds that the applicant failed to show that OER1 was erroneous or unjust due to CAPT K serving as the Reviewer.

13. The applicant also argued that the Coast Guard Achievement Medal that she received on June 23, 2018, is erroneous because her performance and the citation supported the award of a Coast Guard Commendation Medal instead. However, the applicant did not present any evidence supporting her claim that the Coast Guard Achievement Medal does not accurately reflect her accomplishments during her three-year assignment. Nor does the content of the citation accompanying the award *per se* prove that the applicant exceeded the criteria for the Coast Guard Achievement Medal.

Furthermore, Coast Guard policy states that a commanding officer, officer-in-charge, or any E-7 or above senior to the individual being recommended may initiate a recommendation for the award of a military decoration.²⁴ In addition, policy also states that any award recommendation must be accompanied by three endorsements.²⁵ In this case, someone senior to the applicant must have recommended that she receive a medal for her professional achievement; the recommendation must have received three endorsements before being forwarded to the District Awards Board for review;²⁶ and the District Commander approved the medal for the applicant. The applicant’s chain of command presumptively followed these procedures and the result was an Achievement Medal for the applicant’s performance during her three year assignment at the Sector. Accordingly, the Board finds that she has failed to prove by a preponderance of the evidence that the procedures followed by the Coast Guard in determining which award she should receive resulted in an erroneous or unjust outcome.

14. Accordingly, partial relief should be granted by raising the mark assigned on OER2 for “Adaptability” from a 5 to a 6, and the mark for “Teamwork” from a 6 to a 7. Her other requests for relief should be denied.

²² Article 1.A.4.a. of the Coast Guard Officer Evaluation System Procedures Manual, PSCINST M1611.1C.

²³ *Id.*

²⁴ Chapter 1.G.1 of the Coast Guard Military Medals and Awards Manual, COMDTINST M1650.25E.

²⁵ Chapter 1.G.3 of the Coast Guard Military Medals and Awards Manual, COMDTINST M1650.25E.

²⁶ Chapter 1.I. of the Coast Guard Military Medals and Awards Manual, COMDTINST M1650.25E.

ORDER

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

The Coast Guard shall correct her OER dated May 18, 2018, by raising her mark for “Adaptability” from a 5 to a 6 and by raising the mark for “Teamwork” from a 6 to a 7. The remainder of her requests for relief are denied.

March 23, 2023

(recused*)
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]

*The member recused himself. Pursuant to 33 C.F.R. § 52.11(b), two members of the Board constitute a quorum.