

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2020-106

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LCDR

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 application upon receiving the applicant's completed application on March 17, 2020, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 22, 2022, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant, a lieutenant commander (LCDR/O-4) on active duty in the Coast Guard at the time of application, asked the Board to reevaluate her performance based on her evidence and to correct her record by either amending or removing her second annual Officer Evaluation Report (OER) for her service as a Comptroller and Base Operations Officer (CABO) from May 1, 2017, to April 30, 2018. The applicant also asked the Board, if she is selected for promotion to CDR/O-5 after the correction is made, to reinstate her to her "original lineal order in the Register of Officers," presumably by backdating her CDR date of rank to what it would have been had she been selected for promotion in 2019; to award her back pay and allowances; and to upgrade the Commendation Medal she received for her tour of duty as the CABO to a Meritorious Service Medal.

The applicant contested the validity of the marks and comments in sections 2, 3, and 5 of the disputed OER. She summarized her claims about the disputed OER as follows:

- (1) Block 2 of the OER, Description of Duties, misstates both the number of days that she served as the Acting Executive Officer (XO) of her unit and the number of days that she served as the Acting Commanding Officer (CO).
- (2) Most of the marks and comments assigned by her Supervisor, the Executive Officer (XO) of the Base, in Block 3 of the OER and the marks on the Comparison Scale and Promo-

tion Scale assigned by her Commanding Officer (CO) in Block 5 do not accurately reflect her performance during the year-long reporting period. Many marks should be raised to top marks of 7 and the corresponding supporting comments should be revised.

- (3) The numerical mark of 5 (above standard) that she received for “Writing” does not match the supporting comment in the 3a comment block: “Outstanding written work resulted in sub’s approved reenlistment waiver; & ROO’s selection for interview w/Regional White House Fellowship panel.”

All pertinent parts of the disputed OER have been duplicated below. The requested numerical marks are highlighted.

DISPUTED OER DATED APRIL 30, 2018							
2.a. Primary Duty: COMPTROLLER/BASE OPS DEPT HEAD b. PAL Title: COMPTROLLER/BASE OPS DEPT HEAD							
Responsible for all aspects of Finance, Accounting, Logistics, Food Services & Security ISO 24 tenant cmds & visiting cutters w/in [region]. Cmd’s principal advisor on fiscal policy, budget development & funds execution IAW CFO directives. Oversees \$2.3M/yr budget (13 lines of accounting); manages [District’s] property portfolio for 85+ units. Supervises 4 divs & 43 pers: 1 CWO, 30 enlisted, 5 civ, 7 reserve; incl SFLC asset material management ISO ops & depot-level maint. Acting XO: 38 days.							
3a. PERFORMANCE OF DUTIES	1	2	3	4	5	6	7
a. Planning/Preparedness	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
b. Using Resources	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
c. Results/Effectiveness	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
d. Adaptability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
e. Professional Competence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
f. Speaking & Listening	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
g. Writing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Provided inputs to strategic plans for contingency response, org changes, & increased mission support scope; aligned resources to requirement ISO new FRC arrivals, disaster/contingency response plan, & [District] financial mgmt/property. Planned/executed logistics for regional FBI event hosted on facility; support broadened existing partnership/cooperation. Careful stewardship of resources; successfully advocated/executed 60% incr above budget to improve security/safety/health for local units; leveraged intern opportunity for incr work output & recruiting. Passed FORCECOM, Security, & FSAT inspections w/no major discreps; provided best-practices implemented at other units. Remarkable flexibility mitigating impacts during furlough, complex contract negotiations & lengthy dept pers shortages; maintained support to tenants/visitors. Field SME to SILC-8 & BPR team; reviewed FMPS prgm docs for improved processes. Poised & articulate in formal presentations & venues; served as MC for CCG visit, retirements & special events. Listened to/conveyed subs’ concerns to cmd cadre w/sound recommendations. Outstanding written work resulted in sub’s approved reenlistment waiver; & ROO’s selection for interview w/Regional White House Fellowship panel.							
3b. LEADERSHIP SKILLS	1	2	3	4	5	6	7
a. Looking Out for Others	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
b. Developing Others	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
c. Directing Others	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
d. Teamwork	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
e. Workplace Climate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
f. Evaluations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Compassionate, fair advocate; solved challenging passport issue for funeral in foreign country. Coached subs/peers into selection for highly competitive programs: CWO/OCS. Provided complex, tiered leadership training; developed strong E6/LPOs to fill critical vacancies w/continued hi-performance. Clearly articulated vision/goals to allow subs to manage responsibilities; inspired dept to exceed expectations w/challenging goals & BPR implementation, coordination/support during contingency responses, & regional partnerships. Led collaborations w/diverse partners incl FBI, NOAA, USN, LAPD, fed prison; improved cooperation [unreadable] logs rqmts for mission planning/execution. Oversaw inception of regional Active Shooter team w/port partner participation. Fair, positive environment thru mentoring & deft mgmnt of sensitive issues incl medical/admin. Advocated/coached pers on work-life svcs; care provided & mbr retained. Subs’ evals submitted w/good quality. Spvr directed ROO mid-term counseling.							

3c. PERSONAL & PROF'L QUALITIES	1	2	3	4	5	6	7
a. Initiative	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
b. Judgment	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
c. Responsibility	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
d. Professional Presence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
e. Health and Well-Being	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Innovative leader; dev'd/procured "go-kits" w/food&equip ISO mbrs deploying for hurricane relief. Coord'd initial accountability ofpers during [regional] fires; dev'd/implemented tracking system & info network. Sound judgment on diverse issues as Acting XO; actions on complex safety, security & pers issues mitigated impacts, weighed risks/challenges to find best solution. Earned trust of subord's, peers, & cmd w/minimal oversight; outspoken providing insights/opinions ISO Org policies/unit initiatives, new financial mgmt & procurement process required persuasive logic, enthusiasm, problem-solving to meet org goals. Poised & compassionate; skillfully resolved complex disciplinary actions w/challenging pers, enabled immediate solutions w/solid way forward. Conscientious support of wellness prgms; updated gym w/new equip, installed earthquake nets to prevent fall hazards.							
SUPERVISOR AUTHENTICATION: [Base XO e-signed as Supervisor on May 7, 2018]							
5. REPORTING OFFICER AUTHENTICATION: a. Evaluation <input checked="" type="radio"/> Concur <input type="radio"/> Do not concur <input type="radio"/> RO is Supervisor							
b. Comparison Scale: Compare this officer with others of the same grade whom you have known in your career.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
	Unsatisfactory	Marginally performing officer	One of the many high performing officers who form the majority of this grade		One of few distinguished officers	Best officer of this grade	
c. Promotion Scale	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	Do not promote	Promotion potential	Promote	Promote w/top 20% of peers	In-zone reorder	Below zone select	
d. Reporting Officer Comments: A well rounded officer who has exhibited ample understanding of mission support field ops, consistently conveying key parameters to consider during development of enterprise initiatives such as FMPS-BPR facilitating implementation. "Always ready", coordinated outstanding support to our partners & customers especially during emergencies/contingency response, enabling mission execution & strengthening partnerships. An officer w/ability to function well in hi-demanding ops, such as surge staffing positions. Has also displayed qualities to succeed performing duties w/increased responsibility such as OPM/EPM, CG-82/83, DCMS 82/83, Service Center/Area/District resources/budget office, Base/WMEC XO assignments. A good fit for senior financial management, SSS, & fellowship programs. Highly recommended for promotion to CDR w/top 50% of peers.							
[Base CO e-signed as Reporting Officer on May 30, 2018]							
6. REVIEWER AUTHENTICATION: [CO of the Finance Center e-signed as Reviewer on June 4, 2018]							
7. REPORTED-ON OFFICER: I understand my signature does not constitute agreement or disagreement. I acknowledge I have reviewed the report. [e-signed by the applicant on June 14, 2018]							

The applicant stated that as the CABO from July 2016 through August 2018, she headed a department with four divisions, each of which had passed inspections "with flying colors" and was sometimes declared "the best in the Coast Guard." In July 2017, the Chief Financial Officer (CFO) of the Coast Guard notified her that she had been nominated for an individual CFO award for excellence in financial management, and only her CO could have nominated her for that award. The applicant further stated that during the evaluation period, she was "one of a few key leaders developing and implementing a complete reorganization of Coast Guard business and financial processes called Financial Management and Procurement Services (FMPS) and Business Process Reorganization (BPR)" because the Coast Guard was switching to a new financial and accounting system. She stated that the BPR required many changes in logistics, accounting, budgeting, management, procurement, contracting, inventory handling, and mail processing. Nevertheless, she and her team succeeded in implementing BPR, but then the entire BPR project effort was "scrapped." She stated that implementing BPR was a significant accomplishment because at least two Coast Guard units had failed to do so.

The applicant stated that in July 2017, one year after she began working as the CABO, she received “performance counseling” from the XO, who was critical of her work, told her she “was spending too much time on BPR,” and claimed that she and her staff “should spend essentially no time on BPR because [her] first priority was the Base.” She told him that the BASE CO “had signed an agreement with [the District] on behalf of all the operational units, and [with the senior command], that all personnel under the BPR structure should spend approximately 80% of their time on BPR work.” She stated that she and her staff were already unable to meet the 80% goal because of their regular Base work. And her “financial policy and BPR program supervisors” told her that the XO was wrong because “the CO had agreed to the work split.” Therefore, she decided to “focus on mission success” and not mention the time requirements.

The applicant stated that in addition to the counseling session in July 2017, the XO required all the Base Department Heads to schedule “mid-period” performance counseling in Fall 2017. The applicant decided not to schedule a mid-period counseling session with the XO, however, because she was suffering symptoms of Post-Traumatic Stress Disorder (PTSD) “related to an incident at my prior command where the Sector CO used performance counseling to threaten me if I did not have sex with him.”¹ She noted that she had also not requested mid-period counseling the previous year (Fall 2016) and had told the XO during her annual performance review in the Spring of 2017 why she had not requested it. Yet at her annual performance review in the spring of 2018, “the XO spoke with great derision of the fact that I did not schedule mid-period counseling” and said that if she had scheduled mid-period counseling, she “could have met the command’s performance expectations for higher marks.”

The applicant alleged that in late 2017, because the CO was slated to transfer in the summer of 2018, the XO submitted a request to Headquarters to “fleet up” to be the next Base CO and asked the applicant to submit a request to “fleet up” to his own XO position. He told her that she “clearly had the makings of an excellent XO” and he told her that the CO would endorse such a request. The applicant stated that she was reluctant “about continuing to attempt to work as a team with the XO” but was also afraid that he might retaliate against her if she did not submit the request. After reflecting on her many good working relationships at the Base, however, she decided to submit her request to be the next XO. She stated that the XO’s and CO’s support for her fleeing up to be the next XO was inconsistent with the disputed OER that they gave her just a few months later.

Allegations About the Number of Days Served as Acting XO and CO

Regarding the first alleged error, the applicant explained that although Section 2 of the disputed OER states that she served as Acting XO for 38 days, her own records show that she performed the duties of Acting XO for 71 days and the duties of Acting CO for 2 days during the evaluation period for the OER. The applicant stated that she submitted the latter numbers with her OER input, but her Supervisor, the XO, changed the entry to 38 days as Acting XO and none as Acting CO. She claimed that her “contemporaneous documents” show that the XO’s numbers are wrong. She theorized that the XO may not have counted the weekend days on either side of his leave days, but nevertheless she had taken “all XO-related phone calls and actions at his

¹ The applicant stated that the Sector CO, a Captain, was forced to retire as a result of this incident.

direction, regardless of his official leave status” during those weekends. She also thinks that the XO did not count 16 days when the XO was the Acting CO because the CO was away. She stated that those 16 days should count because at one point the XO told her not to travel to an important BPR meeting because “he could not spare [her] and needed [her] as Acting XO.” The applicant stated that in addition to the 71 days when she was officially the Acting XO, there were many days when she fulfilled XO responsibilities in response to an urgent request from the Officer of the Day (OOD) when the XO was busy or could not be found, so she would improvise and respond to whatever situation the OOD had presented in his place.

Regarding the two days that she noted as having served as Acting CO, the applicant explained that at least twice, while the XO was on leave, the CO traveled away from the Base to attend a conference in another location or to visit another unit. On one of those occasions, she had to step up and deal with a swarm of bees close to some people who were allergic to bees, and on the other, she had to deal with a suspicious package. However, the CO did not follow the formal procedures to designate her as the Acting CO on those occasions even though the CO was far from the Base and could not be contacted.

To support her claims the applicant submitted the applicant submitted photocopies of a calendar. The entries on the calendar are faint and almost completely illegible except for a circled entry at the end of each month which states a total number of days as Acting XO or Acting CO, including 9 days as XO in July 2017; 9 days as XO and 1 day as CO in August 2017; 8 days as XO in September 2017; 17 days as XO and 1 day as CO in October 2017; 3 days as XO in November 2017; 9 days as XO in December 2017; 5 days as XO in February 2018; and 11 days as XO in March 2018. These numbers total 71 days as Acting XO and 2 days as Acting CO.

Allegations About the Disputed Numerical Marks on the OER dated April 30, 2018

The applicant stated that many of the numerical marks on the disputed OER are inaccurately low. She asked the Board to reassess her performance and raise her marks based on the following information from her Officer Support Form (OSF) for the OER, which is the form officers complete to provide input about their own performance to their rating chain:

- **“Planning and Preparedness” above-standard mark of 5:** The applicant requested the top mark of 7.² She called it inaccurate and noted that she has a master’s degree in busi-

² On an OER form, CG-5310A, officers are evaluated on a numerical scale from 1 (unsatisfactory) to 7 (best) in 18 performance “dimensions.” The pdf form includes drop-down written descriptions of how each “dimension” is defined, as well as written requirements for marks of 2, 4, and 6 for each dimension. To receive a “standard” mark of 4, for example, the officer is supposed to meet all of the written requirements for a mark of 4 in that dimension. To receive a mark of 5, the officer is supposed to meet all the requirements for a mark of 4 and at least one but not all the requirements for a mark of 6. A mark of 7 indicates that the officer has exceeded the requirements for a mark of 6.

The OER form states, for example, that the “Planning and Preparedness” dimension assesses an officer’s “Ability to anticipate, determine goals, identify relevant information, set priorities and deadlines, and create a shared vision of the unit’s and Coast Guard’s future.” The description for a low mark of 2 in this dimension states, “Got caught by the unexpected, appeared to be controlled by events. Set vague or unrealistic goals. Used unreasonable criteria to set priorities and deadlines. Rarely had plan of action. Failed to focus on relevant information.” The requirements for a mark of 4 state, “Consistently prepared. Set high but realistic goals. Used sound criteria to set priorities and dead-

ness and logistics from a highly rated state university. She claimed that “logistics planning and preparedness is one of [her] strengths.” She stated that she was an outstanding, major contributor to the implementation of BPR in the District and influenced policy throughout the Coast Guard. She further explained that she “spearheaded and led” BPR’s storekeeper reserve initiative by rolling out a local test program for future implementation across the Service. She stated that she was responsible for oversight of her department’s planning for the arrival and expansion of Fast Response Cutters and Off-Shore Patrol Cutters and provided information on personnel needs and expected increases in spending on utilities. She “continued major preparations for Base emergencies,” such as disaster preparations and active shooter drills, and provided disaster supplies and kits for each member of the Base.

- **“Using Resources” excellent mark of 6:** The applicant requested a mark of 6. She noted that her OSF reflects “[a]stute financial management and communications with resource managers,” which “resulted in the Base executing all baseline funds on schedule and receiving an additional -70% above baseline budget for critical projects and initiatives in Fallout funding.” She stated that her “[o]utstanding management of scarce resources during fiscal closeout, resulted in purchasing critical, sustaining items and services” and that her superb financial managed continued “through periods of great fiscal uncertainty and multiple government shutdowns. She also developed a successful plan for recruiting summer interns and pooled resources with other units, teams, and departments to accomplish resource-limited tasks, such as Service Maintenance Agreements and special events. She stated that her efforts across all areas resulted in hundreds of thousands of dollars of reused/repurposed/realigned savings for the Base and the Coast Guard.
- **“Results/Effectiveness” excellent mark of 6:** The applicant requested a mark of 7. The applicant stated that she planned and orchestrated a highly successful day-long highly complex FBI event involving 300 visitors, high-profile VIPs, and multiple locations. In addition, she was remarkably successful in advocating for new CABO billets to support the new Fast Response Cutters. Previously only one new CABO billet had been contemplated, but later three were approved, including one for logistics, one for the warehouse, and one for finance and accounting. She noted that she was a “major contributor and organizer for BPR” and spearheaded the “first successful full-scale implementation” after BPR had failed in another District and her implementation was “used as the blueprint for subsequent districts.” She also noted that her department “passed all major inspections with few, minimal discrepancies including FORCECOM, Security, and FSAT,” and she assisted several other units with their inspection preparations.
- **“Adaptability” above-standard mark of 5:** The applicant requested a mark of 6. She stated that during the evaluation period, she had shown “remarkable flexibility to respond to evolving demands whether financial, port services, emergency, etc.” She noted that

lines. Used quality tools and processed to develop action plans. Identified key information. Kept supervisors and stakeholders informed.” And the requirements for a mark of 6 state, “Exceptional preparation. Always looked beyond immediate events or problems. Skillfully balanced competing demands. Developed strategies with contingency plans. Assessed all aspects of problems, including underlying issues and impact.” To read the requirements for numerical marks in other performance dimensions, refer to the OER form, which is available online.

extraordinary adaptability had been “required to meet end of fiscal year requirements due to major contract/purchase upheaval.” And she had used feedback from customers during the highly stressful rollout of BPR to improve BPR processes within the District and throughout the Coast Guard.” In addition, as Acting XO, she had “expertly handled numerous unusual challenges like dead seals, a bee swarm, ... suspicious packages, regional wildfires, etc.” She noted that she had also successfully adapted to the “simultaneous, long-term loss in ALL senior personnel in her department ... over the course of five months due to due to injury, illness, family concerns, and professional development.”

- **“Professional Competence” excellent mark of 6:** The applicant stated that she was the Shore Infrastructure Logistics Center’s subject-matter expert (SME) for CABO issues in the field, including ID card system, security contract, BPR, etc.,” and she had been consulted by many personnel from the Area Command, District Command, and Sector Command Center as a finance, logistics, and coordination SME during emergencies, such as the regional wildfires. She had coordinated complex logistics and financial issues outside of her normal responsibilities and served as the District Budget Officer when that officer was absent. She stated that she is “known for professional knowledge and ability to achieve results or provide information rapidly” and was contacted by many regional and Headquarters authorities for this reason. She noted that CAPT Y, who was responsible for the Headquarters BPR team, “frequently asked [her] to review products, suggest solutions, and provide feedback.” The applicant stated that she had also focused on her professional development by completing financial and leadership requirements including Anti-Deficiency Act training, Civilian Personnel Training, Blended-Retirement Leader Training, and an ICS Exercise.
- **“Writing” mark of 5:** The applicant asked for a mark of 6. She stated that the mark of 5 matches neither her performance nor the supporting comment about her writing in the evaluation (“Outstanding written work resulted in sub’s approved reenlistment waiver; & ROO’s selection for interview w/Regional White House Fellowship panel.”). She argued that the supporting comment would support a mark of 6 and that her actual performance also justified a mark of 6. She stated that she provided outstanding written products that were persuasive, easy to understand, and accurate. She mentored many members for their writing skills, particularly in drafting OERs, resumes, and award citations.
- **Supporting Comments in Block 3a:** Based on the above requests for raised marks, the applicant asked the Board to revise the supporting comments in block 3a to state the following:

Superb vigorous long-range planning/or emergencies, org changes, & increased mission support scope; resulted in add’l PAL billets for FRC support, disaster/contingency response capability, & improved [District]-wide financial mgmt/property. Successfully planned/executed major regional FBI event in complex logs & security environ’t. Careful steward of resources; successfully advocated & expended 60% incr above budget to improve security/safety/health for local units. Developed robust intern program; resulted in incr work output & 2 CG recruits. Passed FORCECOM, Security, & FSAT inspections wino major discreps; provided best practices implemented at other units. Remarkable flexibility mitigating 2 gov’t shutdowns, complex contract negotiations & lengthy dept pers shortages; maintained support to tenants/visitors. Field SME to SILC ... & BPR team; led CG Reserve SK initiative, implemented regional test solns. Poised & articulate in formal

presentations & VIP meetings; served as MC/or CCG, retirements & special events. Listened to/conveyed subords' concerns to senior leaders w/solutions & recs. Outstanding written work resulted in reenlistment waiver for subordinate & selection to highly competitive Regional White House Fellowship panel.

- **“Looking Out for Others” excellent mark of 6:** The applicant requested a top mark of 7. She stated that she was a strong advocate for members during meetings and discussions and she focused on raising awareness and developing solutions to issues/concerns. She noted that she made herself available “night and day for members and division heads to contact”; visited members in the hospital on multiple occasions; drove a disabled members’ kids to and from school; and, when a member’s grandfather died overseas, used her resources to help him get a new passport issued in less than 24 hours, which enabled him to attend the funeral. She also helped members resolve financial issues that could have impacted their security clearances, persuaded members to seek treatment for health issues, and mentored many personnel of various pay grades. The applicant stated that she also helped members get recognized by drafting and submitting an award nomination for the BPR team, as well as award nominations for her subordinates for Dining Facility of the Year and Enlisted Person of the Year. She also chaired the Base Awards Board.
- **“Developing Others” excellent mark of 6:** The applicant requested a top mark of 7. She stated that she had “provided extensive, daily mentorship and counseling, particularly (though not exclusively) to division chiefs, fellow department heads, and department members, etc.” She detailed some of those efforts and noted that her efforts had improved their performance, morale, and attitudes. She stated that her mentoring of a civilian employee at nearby Coast Guard Base had improved the employee’s attitude and performance and resulted the employee receiving an award. And she had worked weekends to help reservists. The applicant stated that she had engaged the Reserve Force Master Chief Culinary Specialist to visit the Base for a week to train regional their galley staff in advanced culinary skills, and most other Bases with galleys do this now. She also “ensured, through significant effort, all tenant commands and even visiting units were provided training and assistance upon request or when we noticed they were struggling. For example, we frequently provide training on financial systems and BPR processes, outside of our normal requirements.”
- **“Directing Others” excellent mark of 6:** The applicant requested a mark of 7. She stated that she had “provided [a] clearly articulated vision and expectations for [her] department and division heads; [and] ensured alignment with command and Coast Guard priorities, even when unpopular (like BPR).” She stated that she used persuasion, logic, and a positive attitude to motivate her peers and subordinates and had created an encouraging atmosphere. She also “sought buy-in and input when possible: and “[e]mpowered subordinates to manage situation[s] with less oversight, yet provided guidance, mentoring, and leadership, when necessary to meet objectives.” She adapted quickly to several difficult personnel situations and managed her top performers differently than more challenging subordinates, while ensuring fair treatment of all.
- **“Teamwork” excellent mark of 6:** The applicant requested a mark of 7. She cited her outstanding use of teams to improve customer service and strengthen interagency partner-

ships, including for the FBI All-Hands event; an Active Shooter training event; NOAA vessel; Navy special forces evolutions; Fleet Week; and CSMR training support. She stated that she had coordinated communications with CGIS and the civilian police, which had facilitated a false distress call prosecution. In addition, she had “[c]oordinated many cross-departmental initiatives to maximize utility and results”; was a major contributor to the BPR implementation across the Coast Guard and the District and supported partner organizations’ trainings and nonprofit organizations; assisted in the galley for Reserve and Auxiliary events; and managed and improved many package-delivery and payment issues.

- **“Evaluations” standard mark of 4:** The applicant requested a mark of 5. She admitted that she submitted the evaluations for her E-6 subordinates three months late but stated that at that time she was dealing with the prolonged absence of five of the six most senior personnel in her department and so was doing large portions of their jobs, as well as her own. She also stated that she had received a traumatic brain injury (TBI), which had “significant medical effects for six months including frequent and serious headaches, difficulty focusing and reading, trouble sleeping, nausea, etc.” In addition, she stated, the XO required her to submit “the equivalent of a Page 7” in written comments to justify awarding her E-6 a top mark of 7 on their evaluations.³ The applicant stated that she also counseled her subordinates verbally and “made sure no one’s evaluation delay had an impact on their ability to seek higher rank or apply for special positions.” Furthermore, the applicant stated that she “[s]pent significant effort mentoring subordinates on evaluations - both their own and writing them for their subordinates.” She frequently returned evaluations for revision to improve their quality and she provided both the required mid-period counseling and more frequent informal feedback sessions.” She noted that she was responsible for the evaluations of a diverse population, including civilians, reserves, active duty enlisted, and a CWO. She prepared evaluations for multiple Officer Candidate School panels and trained panel members in interview techniques and evaluation writing. She also helped the unsuccessful candidates improve their interview skills and submissions. packages and interview skills.
- **Supporting Comments in Block 3b:** Based on the above requests for raised marks, the applicant asked the Board to revise the supporting comments in block 3b to state the following:

³ Article 4.D.2. of COMDTINST M1000.2 in effect in 2017 required all marks of 1, 2, or 7 on an enlisted member’s evaluation to be supported by written comments, as follows:

- (1) Specific comments that paint a succinct picture of the evaluatee’s performance and qualities allow the reader to determine what or how they exceeded or failed to meet the standards and may reduce or even eliminate subjectivity and interpretation.
- (2) Specific comments also convey to the reader the performance picture observed daily. This is difficult because the reader does not see the evaluatee in action and cannot read into a general comment what the evaluator sees every day and takes for granted. If the reader cannot form a clear performance picture, the human tendency is to disregard or assign a lesser value to the comments. This collective group of words could be the deciding factor in today’s competitive environment for choice assignments.

Compassionate, fair advocate; solved challenging passport issue for funeral in foreign country. Provided complex, tiered leadership training w/support; developed strong E6/POs to fill critical div leadership vacancies w/continued high performance. Clearly articulated vision/goals to allow subordinates to manage responsibilities; inspired dept & unit to exceed challenging goals like superb implementation of BPR, coordination/support during natural disasters, & regional partnerships. Led collaborations w/diverse partners incl FBL NOAA, USN, [police], fed prison; resulted in more robust missions/plans. FBI partnership resulted in training for members at 3 CG units. Oversaw inception of regional Active Shooter team w/port partners. Fair, positive environment thru mentoring & deft management of sensitive issues incl medical/admin. Coached retention of victim of violence who intended to leave service. Excellent, fair evals & endorsements resulted in members' selections to highly competitive programs/assignments: CWO/OCONUS/OCS.

- **“Initiative” excellent mark of 6:** The applicant requested a mark of 7. She stated that during the evaluation she developed and implemented a robust summer intern program for two interns, one of who decided to apply to Officer Candidate School. After a few devastating hurricanes, on her own initiative, she “developed robust disaster response ‘go-kits’ for deploying members to ensure they had appropriate gear for unknown deployment situations on very short notice.” She stated that during regional wildfires she developed a method to track area units took responsibility for making daily checks on them. She also suggested, researched, procured, and planned the delivery of masks for operational units due to the heavy amounts of ash in the air and did the same to provide disaster supplies to Base personnel. She developed robust metrics that helped convince Headquarters that her department would need more staff to assist with the new Fast Response Cutters.
- **“Judgment” above-standard mark of 5:** The applicant requested a mark of 7. She stated that she had shown “[i]mpeccable, astute, trusted judgment, analysis, and counsel” frequently and under challenging circumstances throughout the evaluation period. She stated that she had also deftly handled multiple concerning security situations as Acting XO or CO, including personnel situations, administrative problems, “suspicious packages, gate runners, Base access situations, etc., with sound and fair judgment.” She had “appropriately analyzed situations, weighed risks, and applied reasonable solutions or recommendations, without unfairly burdening others.” In performing her duties as CABO, the applicant stated, her thorough understanding of Coast Guard and government financial processes had resulted in improved management of funds, fallout requests, compliance with requirements, etc.”
- **“Responsibility” mark of 5:** The applicant requested a mark of 7. She stated that her command “[c]ompletely trusted [her] to manage significant amounts of money, resources, property, personnel, etc., without fear of misuse or exploitation.” And her management had met or exceeded the requirements of her command, Coast Guard policies, and law. Despite extraordinary resistance from both customers and service providers, her department had completed the first successful year of BPR. She had met with customers on an individual basis so they understood Base would help them overcome obstacles. The applicant stated that she had routinely showed commitment to the Base, her command, and the Coast Guard through unimpeachable integrity and willingness to put the greater good above expediency or personal security.

- **Supporting Comments in Block 3c:** Based on the above requests for raised marks, the applicant asked the Board to revise the supporting comments in block 3c to state the following:

Innovative leader; developed/procured in 2 days “go-kits” w/food & gear for mbrs deploying to unknown conditions in wake of 3 hurricanes. During [regional] fires, developed/implemented tracking system/or regional units upon failure of CGPAAS. Impeccable judgment on diverse issues as Acting XO incl complex safety, security & pers issues. Managed stolen GV/AWOL case w/legal/safety concerns, weighed risks/challenges to find best soln. Unimpeachable integrity earned trust of crew/cmd/[District] units; used trust to support cmd initiatives and vision. BPR required persuasive logic, enthusiasm, problem-solving to meet org goals. Poise, compassion, & intellect when confronted w/ challenging pers enabled immediate solns & long-term system fixes. Conscientious about health & safety; renovated gym with \$65K of equip for 15 tenant cmds. Installed earthquake nets to prevent fall hazards.

- **Officer Comparison Scale in Block 5b:** The applicant stated that if her numerical marks had not been erroneously deflated, instead of receiving a mark of at the top end of “One of the many high performing officers who form the majority of this grade,” she would have received a mark of “One of few distinguished officers” or even “Best officer of this grade” from her CO. Therefore, she asked the Board to raise this mark.
- **Officer Promotion Scale in Block 5c:** Likewise, the applicant argued that if her numerical marks had not been erroneously deflated, instead of receiving a mark of “Promote” on the Promotion Scale, her CO would have assigned her at least a mark of “Promote w/top 20% of peers,” if not “Below zone select.”
- **Reporting Officer Comments in Block 5d:** The applicant also asked the Board to rewrite her CO’s comments regarding her leadership and potential to state the following:

[The applicant’s] exceptional strategic vision & organizational understanding were consistently demonstrated while conveying field concerns to CG leaders and developing/implementing District and CG-wide projects. Well-known & trusted/or responsiveness, candor, transparency, and fairness, she was routinely sought as advisor or mentor on complex technical & leadership issues. Her poise, knowledge, and trustworthiness earned my strongest recommendation for CCGIVCG aide, flag EA, OPM/EPM. CG-82, or externally at DHS, Congressional Affairs, or OMB. Based on expertise, intellect, and judgment, particularly as Acting XO, she earned my highest recommendation for senior finance positions like CG-83 & Base/MECINSC command cadre posns; select for Sr Service School & fellowship prgms at earliest opportunity. Strongest recommendation for promotion to CDR ahead of peers.

Allegations About her Commendation Medal

The applicant stated that her Commendation Medal should be upgraded to a Meritorious Service Medal (MSM). She stated that her performance merited the higher award, as proven by the citations for the MSMs received by her XO and CO when they also transferred from the Base in the summer of 2018. The applicant stated that when her CO was transferred from the Base to be Co of the Base’s parent command in the summer of 2018, he received a Meritorious Service Medal (MSM) as a departure award, and “of the eleven bullet points listed in the award justification, [she] personally performed or substantially contributed to the actions reflected in eight of

the bullet points.” She noted that he also received credit for implementing BPR in the award justification.

The applicant noted that the XO also received an MSM upon his departure from the Base in the summer of 2018. And either she or her staff “were partially or completely responsible for the actions that resulted in 12 of the 17 bullet points used to justify the award of the MSM, including implementation of the BPR, even though “(a) he had literally nothing to do with it; (b) he had limited knowledge about the effort; and (c) he actively opposed my spending time on the BPR even though [the CO] had signed an authorization for the time to be spent.”

The applicant stated that upon her departure from the Base, the new CO, a Commander, recommended her for an MSM too, but she received the Commendation Medal instead. She stated that her prior CO—who had just received an MSM before his departure and transfer to be the CO of their senior command—downgraded the new CO’s request.

The applicant also included a paragraph about the command climate at the Base:

Base [redacted] received a negative Command Climate performance review based on a routine survey of Base personnel. The XO explained to me that he considered the command’s negative result on the survey to be my fault. *He told me he knew I was trying to cause a mutiny.* First, this false accusation is completely inconsistent with everything said about me by the 17 people who provided letters of support, some of whom specifically discussed my support of the command. Second, it does not jibe at all with [the XO]’s later request that I should be his XO if he should fleet up to CO. I cannot explain why [the XO] accused me of that except that most members of the Base liked me and many did not like him because of his leadership approaches. I worked daily to support the efforts of the XO and CO in both word and deed. The Command Senior Chief and other Department Heads asked me to speak to the XO to help him understand how his interactions with crewmembers and customers were frequently poorly received. With the Command Senior Chief present, I tried to assist the XO in understanding issues which caused trouble in the unit. Apparently, our efforts in meeting with the XO were poorly received, as well. As the senior department head and next senior person to the XO, there was, to my knowledge, no stronger advocate of the XO and CO to the rest of the command and our customers than me.

To support these claims, the applicant also submitted statements from the following 17 personnel, who expressed shock and dismay that the applicant had not been selected for promotion and highly praised her myriad aspects of her work, including her professional expertise, performance, leadership, teamwork, initiative, and judgement:

- A retired Navy Commander, President of a Defense Company, and Past President of the White House Fellows Foundation and Alumni Association, who highly praised the applicant and stated that he had helped select her for the program.
- A Captain who became the Commanding Officer of the Coast Guard Finance Center after serving as the Deputy of the Financial Management Services Integration Team from August 2016 to June 2018 who highly praised the applicant’s work, expertise, and teamwork during the implementation of the BPR.
- A civilian who served as the Supervisory Financial Manager, currently the Chief, Asset Logistics Division for the Shore Infrastructure Logistics Center, stated that the applicant served as an effective and dedicated Comptroller. He stated that she was an excellent

communicator and that he was never aware of any concerns regarding her performance or of any friction between her and the Base CO or XO.

- A Chief Warrant Officer who was a contracting specialist for the District praised the applicant's work, especially her work on the implementation of BPR, and expressed shock at her non-selection for promotion.
- A civilian contracting officer highly praised the applicant's work ethic, dedication, and professionalism, as well as her management and flexibility in implementing BPR.
- A civilian serving as the Base's Deputy Comptroller and Budget Analyst highly praised the applicant's expert management of the department, as well as a respected and compassionate leader.
- A Chief Storekeeper who was the supervisor of an Aviation Detachment.
- A civilian who was Employee Assistance Program Administrator highly praised the applicant's intelligence, resourcefulness, and judgment.
- A lieutenant who was the Base Personnel Support Department Head praised the applicant's work and stated that she was the best LCDR he had ever worked with.
- A retired Chief Warrant Officer serving as the Executive Assistant to the Base Command praised the applicant's work and noted that she was the only Department head trusted to serve as the Acting XO. She also stated, "I believe the failure to promote LCDR [REDACTED] was not related to her performance, but rather a bias from one person, who's [sic] personal management style differed from hers. I believe this personal opinion was not based upon verifiable performance and reflects an inaccurate assessment of her value to the service, and constituted an injustice."
- An Asset Material Manager at the Base stated that, "[w]hile under her leadership. the Comptroller Department excelled in all aspects of expectations and responsibilities" and her work was "substantially above average."
- The Base Food Service Officer highly praised the applicant and stated that she was one of the most exceptional officers he had worked with.
- The Base Galley Manager stated that the applicant was knowledgeable, easy to work with, an exemplary leader, and noticeably above average in her position.
- Two CGIS agents stated that the applicant was very helpful to the local CGIS office and highly praised her organization, helpfulness, and judgment.
- A Commander and Logistics Chief stated that as the CABO, the applicant was an excellent and conscientious officer.
- The Sector Finance and Supply Officer highly praised the applicant's work ethic and adaptability in the implementation of BPR.

The applicant submitted her OSF and the draft OER she had submitted with her OSF. On the draft OER, she claimed to have served 66 days as Acting XO (none as Acting CO) and requested nine marks of 7 and nine marks of 6 in the various performance categories; a mark of "One of the Few Distinguished Officers" on the Comparison Scale; and "In-Zone Reorder" as a

Promotion Scale mark. She also submitted copies of successful inspection reports, many laudatory notes of thanks for her professional and personal assistance, and other evidence of her successes as the CABO.

Finally, the applicant submitted copies of the award justifications submitted for the CO's and XO's MSM awards, which show that most of the justifications either directly involved the work of her department or could not have been accomplished without her department's help.

SUMMARY OF THE RECORD

After graduating from the U.S. Naval Academy, the applicant was appointed an Ensign in the Coast Guard Reserve on May 28, 2004. She signed an extended active-duty contract and began serving as a Deck Watch Officer on a cutter. She was promoted to Lieutenant Junior Grade on November 28, 2005, and integrated into the regular Coast Guard. She then served as the Executive Officer of a cutter and was promoted to Lieutenant on May 28, 2008.

From June 2008 through May 2010, the applicant was assigned to Duty Under Instruction to study financial management at a Business School. After receiving a Master's degree, she served as a financial analyst at Coast Guard Headquarters for three years.

In April 2013, the applicant reported for duty as the CO of a cutter. In January 2014, she was transferred to be CO of a different cutter. After that cutter went into drydock, she became the CO of a third cutter and was promoted to Lieutenant Commander on July 1, 2015.

On July 12, 2016, the applicant reported for duty as a Base CABO. On her first annual OER in this assignment, dated April 30, 2017, the applicant received one mark of 7 ("Looking Out for Others"), sixteen marks of 6, and one mark of 5 ("Workplace Climate"). Her CO concurred in those marks and assigned a mark in the fifth spot on the Comparison Scale (the highest of three "One of the many high performing officers who form the majority of this grade" marks) and a mark of "Definitely promote" on the Promotion Scale.

The second annual OER that the applicant received as the CABO, dated April 30, 2018, is the disputed OER in this case. Although her new CO nominated her in 2019 for a Meritorious Service Medal for her tour of duty as the CABO, the prior CO who had become the CO of the Base's parent command disapproved that level of award. The applicant received the next highest award instead, a Commendation Medal.

The applicant was not selected for promotion to Commander in 2019 or 2020 and so was separated from active duty for failure of selection.

VIEWS OF THE COAST GUARD

On October 12, 2020, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief and adopting the findings and analysis of the case provided in a memorandum signed by Commander, Personnel Service Center (PSC).

The JAG stated that “[a]s explained in *Hary v. United States*, the Applicant must do more than merely allege or prove that an OER seems inaccurate, incomplete, or subjective in some sense. She must demonstrate, by competent evidence (1) a misstatement of a significant hard fact, (2) clear violation of specific objective requirement of statute or regulation, or (3) factors adversely affecting the ratings which had no business being in the rating process. See *Hary v. United States*, 223 Cl. Ct. 10, 18, 618 F.2d. 704, 708 (1981). The JAG argued that the applicant has not met any of these three prongs:

Applicant has not alleged a misstatement of a significant hard fact in her 2017-18 OER, or provided any evidence of such. While there is disparity between Applicant and her rating chain as to days served as Acting Commanding Officer and Executive Officer, both Supervisor and Reporting Officer stand by the figures presented in the OER. While Applicant makes repeated efforts to show a different scale of import and consequence of her accomplishments, the OES Procedures Manual permits the Supervisor to draw on “observations” and “other information” and the Reporting Officer to provide “judgment.” [footnote redacted] The judicial system has recognized that the evaluation system is not a clinically objective one. [footnote redacted] As such, Applicant supplies only an allegation that members of her rating chain marked her unjustly and states no definitive reason. Applicant has provided extensive statements from colleagues, customers, and subordinates from her Base [redacted] assignment that speak highly of her character and work ethic. However, for the most part, these merely regret her non-selection rather than point to any definitive injustice at the Base.

The JAG also noted that the applicant had failed to take advantage of three potential remedies. First, she did not file an OER Reply to be included in her record with the OER. Second, she did not apply to the Personnel Records Review Board (PRRB) within a year of receiving the OER. Third, she did not submit a timely request for a review by Commander, PSC and a Special Selection Board (SSB).

The JAG emphasized that the rating chain continues to support the accuracy of the disputed OER as shown in affidavits gathered by PSC. The JAG also noted that the level of an end-of-tour award is properly determined by the member’s CO and the applicant has not shown that her CO erred by approving a Commendation Medal instead of a Meritorious Service Medal.

PSC provided sworn declarations from the XO, who was the Supervisor; the CO, who was the Reporting Officer; and the OER Reviewer, which are summarized below. Based on those statements, PSC stated that the record shows that the disputed OER was completed in accordance with policy. Therefore, PSC recommended that the Board deny relief.

Declaration of the Base XO

Commander G, who was the Base XO and prepared and signed the disputed OER as the applicant’s Supervisor, wrote the following:

I have reviewed all 228 pages of this BCMR request #2020-106 and provide the following information for consideration. In summary, I do not concur with the requested changes or allegations as outlined in this BCMR and reaffirm that my assessment of [the applicant’s] performance is accurate as documented in her 30 Apr 2018 Officer Evaluation Report (OER). Furthermore, a vast majority of support documentation contained within this BCMR appears to be focused on her non-selection to CDR during the PY20 CDR Selection Board in 2019 vice the actual OER. [The applicant] received a very good OER accurately reflecting her performance and accomplishments that

included a recommendation for promotion w/top 50% of peers which demonstrates she is performing above average and competitive for promotion. The promotion board is a separate process that is highly competitive, especially at the 05 grade, which many good performing officers are non-selected. This is a fair process that considers all information within an officer's official personnel file which includes all OER's. While unfortunate [the applicant] was not selected, this non-selection does not substantiate this OER was inaccurate or unjust.

[The applicant] was counseled regarding this OER on 13 June 2018 and all her concerns were carefully considered contrary to the allegations referenced in paragraph 11 of this BCMR. If the OER was truly inaccurate or unjust, the request should have been made through the Performance [sic] Record Review Board (PRRB) process upon discovery and not subsequent to a promotion board non-selection (reference BCMR paragraph 12).

I do not see any error in this officer's records that substantiate a BCMR request with regards to a departure award (reference BCMR Paragraph 10). This award recommendation was processed after my departure. However, I do support the DOL awards board process and level of recognition (CGCM) as it accurately reflects this officer's accomplishments.

Regarding the entry in Block 2 stating that the applicant had served 38 days as Acting XO (and none as Acting CO), the XO stated that the entry is accurate as to how many days the applicant served as Acting XO in an official capacity. He stated that the applicant may be counting days when he himself was serving as Acting CO (46 days) while the Base CO was deployed across the country for hurricane response efforts. The XO stated that while the applicant "was of great value during these periods assisting with some XO related duties, official capacity and responsibility were retained. Additionally, there was never a period when the CO & XO were both inaccessible or out of the area of responsibility that would require [the applicant] to serve in an official capacity as acting CO."

The XO then reviewed a few of the applicant's specific complaints, including her complaint about the mark on the Comparison Scale, and reaffirmed his support for the accuracy of the disputed OER. To support his statement the XO submitted notes of his July 7, 2017, counseling session with the applicant, which she acknowledged with her signature. The notes show that she was counseled about increased passive-aggressiveness (indirect resistance to orders; insubordination; procrastination), divisiveness ("commiserating in negativity"), and leadership vs. followership.

Declaration of the Base CO

The CO stated that he had reviewed the applicant's BCMR application and did not agree with her requests. He explained the following:

a. [The applicant] claims acting as Base [redacted] Commanding Officer (CO) for 2 days. [She] did not act as CO during my tenure. During my tenure only the Base [redacted] Executive Officer (XO) acted as CO during my absences. Further, approval from CG Director of Operational Logistics (DOL) would be required to have both Base CO and XO absent or unreachable at the same time, such request was never made or needed.

b. [The applicant] indicates that an FMPS-BPR agreement dictated a requirement of 80% of the time to be dedicated to this endeavor by all team members. The number is actually 75%, however this notional target apportionment was set for general awareness to those team members assigned to supported units (SU). The concept established that these members needed to dedicate approxi-

mately 75% of their time/effort to Technical Authority/FMPS requirements and 25% of their time/effort on assignments/collateral duties from respective SU. [The applicant] worked for Base [redacted], not a SU, thus the time apportionment is not applicable.

c. [The applicant] states that a DEOCS survey revealed a negative Command Climate; while the survey did provide some improvement recommendations in certain areas, the survey did not reveal a poor command climate. [She] also states that the climate drove 6 department heads to transfer early. 4 out of 7 Department Heads departed in 2018, with 3 departing before tour completion. One due to medical reasons and the other two to accept golden opportunities at other locations to wit: [the applicant] to White House Fellow tour and the other member accepted an opportunity to fill new billet at the member's dream location.

d. [The applicant] claims that [a Commander] directly requested DOL to upgrade her departure award back to Meritorious Service Medal after being downgraded by me to a Commendation Medal. This is inaccurate, [the Commander] initially submitted the award directly to DOL for approval. However, due to a change in policy the award required the review from the parent command, thus DOL returned it for my review/endorsement before their consideration. After review of the award, [the Commander] concurred with the downgrade and issued accordingly after my signature.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 28, 2020, the applicant submitted her response to the advisory opinion. She stated that the disputed OER came as a surprise because she had not been regularly counseled. She stated that when she had dealt with poor performance in the past, she would sit down with them on a biweekly basis, but her CO and XO did not do that for her. She also argued that her OER marks were inconsistent with their recommendations for her to be a White House Fellow.

Regarding the XO, the applicant stated that he "seemed to take a perverse pleasure in making me feel uncomfortable whenever possible" despite knowing that she was suffering from PTSD as a result of a counseling session with a prior CO. She noted that she had avoided mid-term counseling the prior year (Fall 2016) because of her PTSD and was not criticized for it, but her decision to do so again in the Fall of 2017 was used against her.⁴ She alleged that the XO maliciously used it against her only after she told him that she suffered from PTSD regarding performance counseling sessions.

The applicant also complained that in the XO's affidavit he claimed that the OER reflected her *excellent* performance, with the exception of one mark of 4, but also stated that it was a *very good* OER, which proves his inconsistency and the OER's inaccuracy. She also stated that the marks in the disputed OER were lower than her marks in her first OER as the CABO, which, she alleged, shows that he must have known that it was not even an above-average OER. The applicant attributed the XO's actions to his (1) trying to avoid the counseling and feedback requirements, while also (2) trying to "communicat[e] strongly his biased opinion to future assignment officers at OPM and promotion and special selection boards." The applicant stated that the disputed OER is actually derogatory for the purposes of selection boards even if not

⁴ The requirement for documented midperiod counseling for officers went into effect with Change 6 to COMDTINST M1000.3A, issued on November 28, 2016. Article 5.B.5.g. of COMDTINST M1000.3A states that COs must require that officers undergo mid-period counseling. Article 5.C.2. states that "[t]he Reported-on Officer is responsible to ensure this session takes place and is documented."

according to Coast Guard policy. She noted that the opportunity for selection by the O-5/CDR selection board was 75% in 2019 and 72% in 2020:

This means I was in the bottom 25% and 28% respectively. The XO claimed he considered me an average performer for a LCDR. Even if I were only an average performer, I should have promoted with either a 75% or 72% opportunity of selection. Given his 31 years in the Coast Guard (including prior enlisted service), he knew that his marks were actually below average. Even if they were not technically derogatory, they, coupled with his comments, which were worse than his numeric marks, indicate that he knew he was giving me a sub-par evaluation.

Regarding the CO's and XO's claims about her not serving as Acting CO, the applicant claimed that her contemporaneous calendar refutes their claims and shows that she was Acting XO or Acting CO for nearly one-third of the evaluation period. She also stated the following:

[The CO] claimed that because it was against policy and practice for him to be away without permission, particularly with the XO gone; that, therefore, he had not done it. I assert that he knew he would not receive permission, so he simply left both times and hoped he would not be caught if nothing bad happened. Bad things did happen, but I dealt with these issues in place of the CO and XO, so superior commands never learned of the incidents.

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[The XO] explicitly told me he needed me to serve as Acting XO during the two weeks the CO deployed to Puerto Rico for hurricane response. He would not allow me to travel for even one day to conduct an important inspection in [a nearby city], that was relevant to my normal duties as Comptroller. I had to perform his responsibilities, in addition to my own. However, those two weeks were not the only days that comprised the 71 days as Acting XO, as documented by my evidence in the original submission. They trusted me to manage the Base with senior leader responsibility, but did not give me credit for it.

The applicant also addressed the JAG's claim that her application had failed to meet the standards of the *Hary* test. She stated that her calendar proves that the OER statement about the number of days she served as Acting XO and Acting CO is a misstatement of significant hard fact. She stated that the XO and CO failed to counsel her as require by policy and added comments that are inconsistent with the mark of 5 for Writing. And she stated the following about the JAG's statement that the applicant provided only an allegation of an unjust OER with no explanatory reason:

This disingenuous characterization of my request ignores the reality of being a female Comptroller and Base Operations Officer at Base [redacted].

- i. While it is true that the XO never explicitly told me, in a crowded room, that he "hates uppity women in the workplace," he made that inference clear through weird, petty, and cruel treatment along the way.
- ii. As I explained in paragraph 3.a.(1).(a), the XO only behaved maliciously and punitively towards me regarding mid-period counseling after he learned that I suffered from PTSD regarding sexual harassment during performance counseling at my previous billet. Before that, he did not mention performance feedback at all.
- iii. As explained in my original request (ref. [e], p. 10), the XO mocked me for, and ignored, the debilitating, extended consequences of a traumatic brain injury (concussion), which resulted from a command sports event. I only participated because I was pressured to represent the senior com-

mand. This was consequent to a serious concussion I had suffered playing rugby at the Naval Academy. I have tried to avoid this kind of exposure since that earlier serious incident.

iv. The XO often referred to my high intelligence in a derogatory fashion, as in “you’re very intelligent, but...” He even did this in front of others. While he did not directly explain why, I was the only subordinate officer who was not prior enlisted and the only officer on the entire Base to attend a service academy.

The applicant also alleged that the XO told her soon after she arrived at the Base that he would never eat at a restaurant with her without other Coasties present because of his wife.

i. The XO took every opportunity to demonstrate subtle, petty, tyrannical behavior towards me, in particular. For example, upon his departure, the XO insisted I was the one he wanted to read his award at the unit departure ceremony. However, he refused my request to allow me to read over the award before I read it in front of the audience of 200 people. I only learned the content of the award as I read it out loud. The award reflected, almost in its entirety, the work of me and my division. He did this after I had received the disputed OER. There is a clear inference that he intended to fluster me and embarrass me in front of the entire unit by not allowing me to see the award beforehand. I infer that his insistence that I was the only person he wanted to read the award was because I was the one who had done the work after receiving the disputed evaluation. After the ceremony, at least ten people walked up to say they thought the award unjustly took credit for the work of me and my department.

ii. These are just a few illustrative examples of the XO’s biased, troubling, unjust, weird, and inconsistent behavior that casts strong doubt on his ability to fairly, justly evaluate my performance without cognizable error.

The applicant disputed the CO’s claim that the new Base CO had ultimately concurred in his decision to recommend her for a Commendation Medal instead of the MSM. She stated that the Commander had expressly told her that he disagreed with the prior CO’s decision and had shown her the recommendation form he had signed. She stated that the fact that she ultimately received a Commendation Medal does not prove that the Commander changed his mind.

The applicant also disputed the CO’s claim that the command climate report was not bad. She claimed it was one of the worst she had ever seen and showed that many areas were “in the red” because of the XO’s and CO’s management style and behavior. She stated that the XO’s criticism and treatment of her stemmed in part from her “being repeatedly asked by subordinate members and officers, including the Command Senior Chief, [a senior chief], to intervene with the XO on behalf of their complaints related to his authoritarian management style. Despite deep reservations, given the XO’s temperament, I did sit down with him and the Senior Chief to try to improve the bad situation. XO held this against me.”

Regarding her alleged failure to exhaust her administrative remedies, the applicant stated that (a) filing an OER Reply is viewed negatively by selection boards and cannot result in the removal of the disputed OER; (b) during the one-year window she was allowed to apply to the PRRB, she was told to focus on the future because a PRRB application would “almost certainly fail”; and (c) she could not request an SSB unless her record was materially incomplete or erroneous and since the OER was in her record, her record was automatically considered complete and correct.

The applicant alleged that the reason none of the affidavits she submitted expressly criticizes either the CO or XO is because the members knew that they would be shown her application, including the affidavits, and they feared the XO's "vindictive, overbearing, petty, and cruel temperament." She also noted that one of her affiants stated the following:

I believe the failure to promote [the applicant] was not related to her performance, but rather a bias from one person, who's [sic] personal management style differs from hers. I believe this personal opinion was not based on verifiable performance and reflects an inaccurate assessment of her value to the service, and constituted an injustice.

OER POLICIES

Article 4.E.2. of the OER manual then in effect, PSCINST M1611.1C, states the following about how a Supervisor should prepare an OER:

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. After determining which block best describes the Reported-on Officer's performance and qualities during the marking period, the Supervisor selects the appropriate circle on the form. Refer to Table 4-2 below and Chapter 19 in determining the appropriate mark to assign to each performance dimension. Inflationary markings dilute the actual value of each evaluation, rendering the OES and the OER itself ineffective.

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h. Comments required for CG-5210A and CG-5210C

[1] In the "comments" block following each evaluation area, the Supervisor includes comments citing specific aspects of the Reported-on Officer's performance and behavior. Well-crafted comments may apply to more than one dimension. Decreased comment space will require concise yet readable supporting verbiage and allow more flexibility to comment on significant performance. The Supervisor draws on their observations, those of any secondary Supervisors, and other information accumulated during the reporting period.

[2] A mark of four [4] represents the expected standard of performance. ... Those assigned the superlative mark of seven should have specific comments demonstrating how they exceeded the six "above standard" block.

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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. Mere repetition or paraphrasing of the standards is not sufficient narrative justification for below or above standard marks.

The Medals and Awards Manual includes the following eligibility requirements for the MSM:

[An MSM may] be awarded by the Commandant in the name of the President to any member of the Armed Forces of the United States or to any member of a friendly foreign nation's armed force, who distinguish themselves by outstanding meritorious achievement or service to the United States. To justify this decoration, the acts or services rendered by an individual, regardless of grade or rate, must be comparable to that required for the Legion of Merit, but in a duty of lesser

degree than the Coast Guard Medal, and single acts of merit under operational conditions may justify this award. When the degree of meritorious achievement or service rendered is not sufficient to warrant the award of the Meritorious Service Medal, the Coast Guard Commendation Medal, when appropriate, should be considered.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on the applicant's military record and submissions, the Coast Guard's submissions, and applicable law:

1. The Board has jurisdiction concerning this matter under 10 U.S.C. § 1552. The application was timely filed within three years of the alleged error or injustice.⁵

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.⁶

3. The applicant alleged that her OER dated April 30, 2018, and subsequent non-selections for promotion to Commander are erroneous and unjust. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information 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.⁷ Absent specific evidence to the contrary, the Board presumes that the members of an applicant's rating chain have acted "correctly, lawfully, and in good faith" in preparing their evaluations.⁸ To be entitled to relief, the applicant cannot "merely allege or prove that an [OER] seems inaccurate, incomplete or subjective in some sense," but as noted in *Hary v. United States*, 618 F.2d 704, 708 (Ct. Cl. 1980), must prove that the disputed OER was adversely affected by a "misstatement of significant hard fact," factors "which had no business being in the rating process," or a prejudicial violation of a statute or regulation.⁹

4. The JAG argued that the applicant has not shown that the disputed OER should be corrected under any of the *Hary* standards. In her response to the Coast Guard's advisory opinion, the applicant argued that she has proven that the disputed OER is erroneous and unjust under all three standards. For the reasons stated below, the Board agrees with the Coast Guard:

- a. **Was the OER adversely affected by a "misstatement of significant hard fact"?**
The applicant submitted a lot of evidence of her overall excellent performance and many successes as the Base CABO. But even this evidence does not prove that the applicant was entitled to higher marks than those she received in the various perfor-

⁵ 10 U.S.C. § 1552(b).

⁶ *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).

⁷ 33 C.F.R. § 52.24(b).

⁸ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

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

mance dimensions. To assign the marks, the Base XO was required to read the written standards for each dimension and numerical mark; compare what he knew of the applicant's overall and specific instances of performance throughout the evaluation period to the written standards; and select the mark with the standard that best described the applicant's performance and qualities during the marking period.¹⁰ Although the applicant's submissions prove that her performance was excellent and even exceptional in many respects, none of her affiants had the responsibility or broad perspective of the XO. And their high praise of the applicant's performance does not prove that the XO picked the wrong OER marks, especially given that personnel evaluations are inherently subjective. Likewise, the CO's selection of marks on the Comparison Scale and Promotion Scale are inherently subjective. Nor has the applicant shown that any of the supporting comments are factually inaccurate.

The applicant alleged that Block 2 of the disputed OER is inaccurate because it states that she served 38 days as Acting XO and none as Acting CO. She stated that the OER fails to report all of the days she performed one or more duties of either the XO or CO as days serving as Acting XO (71) and Acting CO (2). The applicant submitted copies of her calendar, which are largely illegible except for the circled tallies she added at the end of each month. She alleged that the calendar shows the days she performed one or more duties normally performed by the CO or XO. The draft OER she submitted to her rating chain with her OSF shows that she originally claimed she had served 66 days as Acting XO. The Board finds that the applicant has not shown that standing in for the CO or XO for certain duties they normally perform legally constitutes or equates to being designated the Acting CO or Acting XO and having all the applicable duties and authorities for that day. The Board finds that the applicant has not submitted sufficient documentation to prove by a preponderance of the evidence that Block 2 of the disputed OER is inaccurate in reporting that she had served as the Acting XO for 38 days during the evaluation period (and for no days as the Acting CO).

Therefore, the Board finds that the applicant has not proven by a preponderance of the evidence that the disputed OER contains a misstatement of significant hard fact.

- b. **Was the OER adversely affected by a factor “which had no business being in the rating process”?** The original application in this case was nearly devoid of any claim that the OER was adversely affected by an improper consideration, such as prejudice or bias. The applicant mentioned an adverse command climate report but said nothing negative about how she was treated by the XO or CO except to complain that the XO unjustly criticized her for refusing to schedule mid-period performance counseling. She claimed that he derisively criticized her about it only after she told him that she suffered from PTSD, whereas he had not criticized her for not requesting mid-period counseling in 2016, when he did not know about her PTSD. But as a LCDR receiving annual OERs on April 30 each year, mid-period counseling during her first year as

¹⁰ PSCINST M1611.1C, Article 4.E.2.f. and Table 4-2 (The table shows that an officer may only receive a mark of 4 or 6 if they meet all of the corresponding written requirements, or standard, for those marks and may only receive a mark of 5 or 7 if they exceed the written standard for a mark of 4 or 6 in some way, respectively.)

CABO would have occurred on or about October 31, 2016. On that date, mid-period counseling was not required because Change 6 to COMDTINST M1000.3A had not yet been issued. By October 31, 2017, however, Change 6 had been issued, and the new policy placed the responsibility for ensuring that mid-period counseling took place on the applicant as the Reported-on Officer.¹¹ Therefore, the XO's criticism of the applicant's avoidance of counseling in Fall 2017 was presumably based on the new requirement and not maliciously motivated, as the applicant alleged.

In her response to the Coast Guard's advisory opinion, the applicant changed her allegations significantly. She claimed that the XO "seemed to take a perverse pleasure in making me feel uncomfortable whenever possible" and "took every opportunity to demonstrate subtle, petty, tyrannical behavior towards me." She did not support these claims with substantial evidence, however. She cited the statement of the command's Executive Assistant, but the Executive Assistant mentioned only that someone—presumably the XO or CO—had "bias" against the applicant because he did not like her "management style." There is no evidence supporting the applicant's claim that she was targeted due to gender bias or any other impermissible basis.

Therefore, the Board finds that the applicant has not proven by a preponderance of the evidence that the OER was adversely affected by a factor that had no business being in the rating process.

- c. **Was the OER adversely affected by a prejudicial violation of a statute or regulation?** The applicant alleged that this standard applies because the above-standard mark of 5 she received for "Writing" is inconsistent with the corresponding comment: "Outstanding written work resulted in sub's approved reenlistment waiver; & ROO's selection for interview w/Regional White House Fellowship panel." To assign a mark of 5 in this dimension, the XO must have found that the applicant met all the criteria for a mark of 4 ("Written material clear, concise, and logically organized. Proofread conscientiously. Correspondence grammatically correct, tailored to audience, and delivered by an appropriate medium. Subordinates' material reflected same high standards.") and at least one but not all of the criteria for a mark of 6 ("Clearly and persuasively expressed complex or controversial material, directly contributing to stated objectives. Written or published material brought credit to the Coast Guard. Actively educated subordinates in effective writing.").¹² Then, the XO had to add a written comment to support the above-standard mark. According to Article 4.E.2.j. of PSCINST M1611.1C, a supporting comment 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.

¹¹ COMDTINST M1000.3A, Article 5.C.2.

¹² PSCINST M1611.1C, Table 4-2.

To support the mark of 5 for “Writing” the XO chose to highlight two specific documents the applicant wrote that were successfully persuasive, and persuasiveness is one part of the criteria for a mark of 6 in “Writing.” But the Board cannot conclude thereby that the applicant’s overall written work necessarily met all of the criteria for a mark of 6. The XO’s comment provides two examples of how the applicant exceeded the standard for a mark of 4 in “Writing,” and the Board finds that the comment is sufficiently specific and consistent with a mark of 5.

The applicant also alleged that her rating chain violated policy by failing to counsel her because the marks she received surprised her. However, the XO’s notes, signed by the applicant, show that on July 7, 2017—two months into the evaluation period—he counseled her about increased passive-aggressiveness (indirect resistance to orders; insubordination; procrastination), divisiveness (“commiserating in negativity”), and leadership vs. followership. The applicant admitted and the OER shows that the applicant refused to schedule mid-period counseling, as required, and the XO had to order it.¹³ The applicant complained both about a lack of counseling and about being forced to attend counseling despite her PTSD. Given the evidence of record, the Board finds that the applicant has not shown that she was erroneously or unjustly deprived of counseling and feedback during the evaluation period.

The applicant argued that the OER comments violate policy because they are incomplete in that they do not reflect all her successes throughout the evaluation period. However, as noted in Article 4.E.2.h. of PSCINST M1611.1C, the space for comments on an OER form is quite small. At most there is room for one or two comments to support the mark for each performance dimension. And so OERs are not expected or required to mention everything the officer worked on. Instead, the comments support the marks by citing an aspect or two of the officer’s work that is consistent with the chosen mark. The brevity of OER comments does not violate any law or policy known to the Board, and the applicant did not cite one.

The applicant has not proven by a preponderance of the evidence that the disputed OER was adversely affected by a prejudicial violation of a statute or regulation.

5. The applicant argued that the CO’s decision to recommend only a Commendation Medal for her, instead of the MSM, even after the new Base CO recommended her for an MSM, was erroneous and unjust. She noted that the justifications for the XO’s and CO’s end-of-tour MSMs cited numerous accomplishments that could be attributed in whole or in part to her department. Given that as CABO, the applicant oversaw the Base finance, accounting, and logistics offices, and just about everything the Coast Guard does requires funding and logistics, it would be surprising if her department had not contributed significantly to all of the successful projects and operations at the Base. But the Board cannot conclude that she should therefore receive the MSM simply because the XO and CO received the MSM and her department’s work contributed largely to their successes. The Board finds that the applicant has not proven by a preponderance of the evidence that she is entitled to an MSM for her service as the CABO.

¹³ PSCINST M1611.1C, Article 4.E.2.j.

6. The applicant has not proven by a preponderance of the evidence that the disputed OER was adversely affected by a “misstatement of significant hard fact,” factors “which had no business being in the rating process,” or a prejudicial violation of a statute or regulation.¹⁴ Nor has she proven by a preponderance of the evidence that the Commendation Medal she received for her work as the CABO, in lieu of an MSM, is erroneous or unjust. Therefore, the Board finds that the applicant has not proven by a preponderance of the evidence that her record contained a material error when it was reviewed by the CDR selection boards in 2019 and 2020. Accordingly, she is not entitled to a Special Selection Board pursuant to 14 U.S.C. § 2120, and her requests for relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

¹⁴ *Hary v. United States*, 618 F.2d 704, 708 (Ct. Cl. 1980), cited in *Lindsay v. United States*, 295 F.3d 1252, 1259 (Fed. Cir. 2002).

ORDER

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

September 30, 2022

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