

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2021-078


LT (O-3) (Former)

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 May 12, 2021, and assigned the case to the staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision dated October 11, 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 former Lieutenant (LT/O-3) on active duty, asked the Board to correct her record by removing her Officer Evaluation Report (OER) for the June 1, 2018, through April 30, 2019, rating period. The applicant further requested that her PY2021 and PY2022 non-selections¹ for Lieutenant Commander (LCDR) be removed from her record; that she be provided a Special Selection Board (SSB) for her PY2021 non-selection; and that, if non-selected by the PY2021 SSB, she be provided with a subsequent SSB for her PY2022 non-selection, as authorized by 14 U.S.C. § 2120.

The applicant explained that she is contesting her June 1, 2018, through April 30, 2019, OER because the OER erroneously, inaccurately, and unjustly reported on her potential as a Coast Guard officer and her performance as a Command Duty Officer (CDO) within her District's Command Center. The applicant claimed that this OER should be removed from her record for three specific reasons; first, because she was regularly subjected to bullying, humiliation, and intimidation by members of a "clique" comprised of people from her chain of command; second, because the OER in question is an extension of the prohibited behavior and a product of vindictive personal bias that contorted the OER's fairness and accuracy; and third, because the OER will

¹ The applicant only requested that her PY2021 non-selection be removed from her record. However, since her application was submitted, she was subsequently non-selected for LCDR and separated pursuant to Coast Guard policy.

continue to undermine her promotion potential and career prospects, which was the intention of her chain of command and the aggressors. The applicant alleged that the Command had full knowledge of the derogatory behavior, which was later confirmed by an investigation, yet continued to enable it, while failing to intervene and stop the behavior, especially as it pertained to her 2019 OER.

Allegations about Bullying

The applicant stated that she first encountered bullying by District officers after she transferred there in 2015 to serve a tour of duty as an environmental specialist. In the summer of 2017, she reported bullying by her supervisor at the time, LCDR M, to her Commanding Officer (CO), CAPT C. However, the applicant alleged, LCDR M was a member of a powerful “clique” of officers working at the District, and no action was taken against him or to correct his behavior, which allowed it to continue and increase. The applicant claimed that in 2018, as a result of her complaint and in retaliation from LCDR M, she was isolated and involuntarily and spitefully uprooted from her position while deployed to be placed under the supervision of LCDR S in the Command Center. According to the applicant, LCDR M’s move was intended to punish the applicant because he knew that LCDR S had demonstrated a pattern of unprofessionalism and hazing. The applicant alleged that LCDR M also retaliated by colluding with others to ensure that she was “discarded” and transferred to the District Command Center when her tour of duty ended, despite many other suitable alternatives. The applicant explained that LCDR M’s actions ensured that she was reverted to a professional development milestone that she had already achieved in a prior tour of duty in order to hinder her career progression and competitiveness for promotion. The applicant noted that one of her subordinates stated that her transfer to the Command Center was “pernicious.”

The applicant stated that under the supervision of LCDR S at the Command Center, the bullying worsened. She alleged that during one of her first meetings with LCDR S, LCDR S made an insidious declaration that she would “hold me accountable” in a vindictive manner as if to settle a score. According to the applicant, this occurred even though she was told she was being given a clean slate, and the bullying, humiliation, and intimidation were meant to silence, discredit, and undermine her. On many occasions, LCDR S would—unprovoked—stand over her, put her hand in the applicant’s face, speak loudly, and aggressively state, “I DON’T CARE” when the applicant would attempt to speak during interactions with her. The applicant explained that on a consistent basis her supervisor would ask her a question, and when the applicant would attempt to answer, her supervisor would loudly and aggressively interrupt her, repeating this behavior over and over, until the applicant would eventually stop trying to answer. To put it plainly, the applicant stated that she was her supervisor’s verbal punching bag. However, the applicant stated, she was determined to maintain her professionalism and would humbly acknowledge what her supervisor was communicating at the time. According to the applicant, her supervisor’s demeanor and rhetoric were often unacceptable and intentionally demeaning with no professional relevance or quality. The applicant alleged that usually, upon the conclusion of her supervisor’s bullying and intimidation, she was dismissed like a dog. The applicant stated that LCDR S was out of control and repeatedly violated the Discipline and Conduct Manual’s prohibition on hazing and bullying.

The applicant alleged that during another incident in January 2018, shortly after LCDR S became the applicant's supervisor, the applicant and LCDR S were having an after-hours conversation about the applicant's eligibility for a temporary separation from the service. The applicant explained that in accordance with the Officer Evaluations Systems Procedures Manual, PSCINST M1611.D, she requested mid-period counseling and guidance on administrative and procedural conflicts to better inform her decision. Instead, the applicant alleged, LCDR S interrupted her, speaking aggressively, and got into the applicant's face and screamed, "You think I'm f**king stupid, don't you?!" The applicant claimed that LCDR S repeated this over and over again and began attacking her character simply for asking questions. The applicant stated that she was bewildered by what triggered the outburst and so did not reply to prevent further provocation. The applicant claimed that LCDR S's behavior was part of a disingenuous and condescending pattern of behavior toward the applicant that continued throughout her time at the District and was intentionally used to distort and undermine her OER. The applicant stated that LCDR S's vendetta against the applicant unjustly and intentionally carried over into her OER.

The applicant explained that in accordance with Article 1 of the Officer Evaluation Systems Manual, PSCINST M1611.1D, she verbally requested multiple mid-period counseling sessions that were convoluted, violated the anti-bullying policy, and lacked appropriate professional substance. The applicant alleged that she did not receive appropriate feedback that is required to substantiate the fairness, accuracy, and validity of the evaluation. The applicant claimed that she was confronted with unprofessional bullying, degrading language, and an insurmountable bias that often manifested through aggression, humiliation, intimidation and bullying.

The applicant alleged that during an incident in January 2019, she was openly and unnecessarily berated, demeaned, and humiliated by LCDR S in front of a large group of people. The applicant claimed that in order to diffuse the situation, she requested a private audience with LCDR S. According to the applicant, when she met privately with LCDR S, LCDR S told the applicant the public display was intended to punish and humiliate the applicant. To overcome the situation, the applicant explained that she requested mid-period counseling to better understand LCDR S's outburst, prevent future occurrences, and obtain timely performance feedback in accordance with PSCINST M1611.1D. The applicant claimed that during this conversation LCDR S immediately made mocking and demeaning gestures, rolled her eyes, and stated with disgust, "I dunno know, you're just like 'eugh' and whatever."

The applicant explained that LCDR S could not articulate any violations of policy, prohibited behavior, or actionable professional growth points missed by the applicant. The applicant alleged that she apparently irritated LCDR S and the other members of the "clique." The applicant claimed that the counseling opportunity was twisted into unbecoming personal bias, with LCDR S making statements like, "you're just irritating, frustrating, and annoying," without providing the applicant with reasonable context or examples. The applicant further claimed that the date of the alleged counseling session, January 3, 2019, was falsely and erroneously used in order for LCDR S to meet the mid-period counseling requirements mandated by PSCINST M1611.1D. The applicant explained that these instances of unwelcomed bullying, berating and humiliation are supported by the numerous coworkers' statements submitted with her application for relief.

Allegations about the Disputed OER

The applicant alleged that during one bullying encounter, LCDR S referred to the OER process as an “enjoyable game” and that LCDR S used it to reiterate the imbalance of power, crush the applicant’s spirit, and humiliate her. The applicant claimed that LCDR S’s approach to her 2019 OER led to a biased evaluation and so the OER should be permanently removed from her record. The applicant explained that the OER is a key component in determining an officer’s suitability for promotion and that her recent failure to promote to LCDR was due to her biased chain of command intentionally sabotaging her OER in order to undermine her promotability. The applicant stated that she is confident that she would have been selected for LCDR, but for this erroneous OER.

The applicant alleged that in addition to the substantiated bullying by LCDR S, her Reporting Officer, who was LCDR S’s supervisor, CAPT C, and OER Reviewer did not acknowledge or intervene to stop the blatant policy violations committed by LCDR S. The applicant claimed that LCDR S stated that she had superior knowledge of the OES and promotion manual, which allowed LCDR S to purposefully include “underwhelming” comments for several of the performance dimensions on the OER, despite the proven valor and merit of the applicant’s actions. The applicant alleged that her Reviewer, CAPT C, knew the immense impact of the applicant’s contributions and deliberately ignored the blatant numerical discrepancies. The applicant stated that she was never given a voice and was at the mercy of untrustworthy, false stewards of the Coast Guard’s organizational core values of Honor, Respect and Devotion to Duty—values the applicant claimed were constantly betrayed. The applicant pointed out specific parts of the disputed OER that, she alleged, demonstrate intentional oversight and inconsistencies between the comments and the numerical marks, which were meant to deliberately undermine her evaluation of her potential and performance:

- The applicant noted that she received a numerical mark of 4 out of 7² for “Planning and Preparedness,” with the following comment “Exercised regional concurrence protocol for non-compliant vessel near Int’l border, SNO informed drill procedure changes.” However, the applicant claimed, on her Officer Support Form (OSF), she had listed well-known and impactful examples of her performance that showcased her abilities and potential, which were not mentioned in the OER. The applicant claimed that LCDR S’s comment significantly downplayed a real-world scenario in which she helped coordinate the interception and boarding of a vessel that was suspected of smuggling drugs across the United States border. According to the applicant, she directly organized a joint operation between the United States and foreign law enforcement officials and also led flag-level briefings to advise legal decisions with international implications. The applicant stated that this “superb” example of her performance helped shape relevant revisions to “Statement of No Objection” (SNO) policy gaps, which were later validated through follow-on drills and exercises. The applicant argued that the examples of “Planning and Preparedness” she listed on her OSF more closely align with the description specified for a numerical mark of 6 or 7, rather than the mark of 4 she received.

² On an OER form, officers are evaluated in 18 “performance dimensions” on a scale from 1 (worst) to 7 (best). A “standard” mark of 4 is the level of performance expected of all officers. A mark higher or lower than a 4 must be supported by a written comment citing a specific example of performance that supports the mark.

The applicant stated that an additional noteworthy example was the leadership she demonstrated during an incident of national significance. The applicant claimed that she expertly coordinated and postured Coast Guard, Department of Defense (DoD) F-15C aircraft and Federal, State and local assets for response to an airborne commercial plane stolen from an international United States airport by an unqualified airport employee. The applicant explained that she initiated critical incident protocols, communicated maritime impacts, devised mitigating factors, and helped inform senior leadership decisions. The applicant argued that her efforts ensured that the inexperienced operator landed the aircraft away from a very dense urban population, which ultimately minimized property damage and loss of life. In addition, the applicant stated that timely communication with the Department of Justice helped to rule out terrorist activity. The applicant argued that this example of her performance during the rating period more closely aligns with the description specified for a numerical value of 6 or 7. Furthermore, the applicant argued that her supervisor's comments in her OER do not accurately document her legitimate performance or potential.

- Third, regarding the “Looking Out for Others” performance dimensions, the applicant stated she was again assigned a mark of 4 out of 7, and her supervisor's comment “Drafted EPOY [Enlisted Petty Officer of the Year Award] member selected,” downplayed her contributions and performance. She stated that receiving an EPOY Award is a significant and difficult achievement for enlisted personnel as it highlights the contributions and merit of one petty officer in each District out of thousands of eligible personnel. The applicant stated that she enthusiastically took pride and joy in helping others and worked diligently to help recognize a well-deserving member who was subsequently selected. The applicant argued that it is astonishing that proper documentation of her efforts was impeded and overlooked. The applicant stated that her OSF and military record provide additional examples of her consistent dedication to looking out for others, with no recognition or reciprocation.

The applicant alleged that before completing the disputed OER, LCDR S stated, “The EPOY is great and all, but I heard that you weren't helpful, so I intend to mark you down in that [Looking Out for Others], you can count on that.” The applicant stated that when LCDR S made this remark, she did not identify any situations or provide context about the accusation that she was not helpful, and for all she knows, it could have been fabricated by LCDR S to justify her wrongful actions. The applicant stated that unfortunately, because of the intimidation, bullying, and toxic work environment, she was prevented from having a meaningful conversation with LCDR S.

- For the performance dimension “Initiative,” the applicant stated that the mark of 4 she received did not accurately reflect her professional initiative during the rating period. According to the applicant, she recognized a substantial lack of personnel knowledge, understanding, and familiarity with critical career enhancing procedures such as records management and documentation, which are key elements to ensure success. The applicant alleged that she took the initiative to research, develop training, provide resources, and routinely answer questions for the betterment of those she worked with. The applicant argued that although these duties were the responsibility of her supervisor, LCDR S made no effort to contribute or prioritize any such effort for her subordinates. The applicant

explained that in the absence of adequate leadership, she took on the responsibility. The applicant argued that this performance example demonstrates that her performance and potential were better aligned with the description specified for a mark of 6, not a 4.

The applicant argued that these examples illustrate the deeply rooted bias, bullying, humiliation, and intimidation that she endured. She stated that these calculated efforts to misrepresent her performance and “punish” her and the effect they had on her life and career continue to have unjust personal and professional impacts. The applicant further argued that she was regularly subjected to this toxic work environment and behavior that was a gross violation of Coast Guard’s anti-bullying policy and Core Values. Moreover, the unbecoming misconduct of her supervisor, LCDR S, was known to be taking place and was enabled by her chain of command. The applicant claimed that her supervisors knowingly violated the OER process when they purposely failed to provide her with a fair and accurate OER in accordance with Coast Guard policy, in order to intentionally and vindictively misrepresent her actual performance during the rating period. The applicant explained that this derogatory and improper behavior was part of a pattern of bullying, humiliation, and intimidation by LCDR S that she barely survived.

Allegations about LDAC

The applicant alleged that her Command and her OER Reviewer were made aware of the bullying taking place by her supervisor and had full knowledge of the toxic work environment, including the “clique” that had developed in her unit, but failed to intervene or take any corrective action. The applicant explained that as the Leadership and Diversity Advisory Council Chair (LDAC), she administered her District’s Organizational Climate Survey Report for 2018, for which the identity of the participants is intentionally masked to ensure anonymity and encourage participation. The applicant explained that upon conclusion of the survey, the LDAC hosted follow-up peer breakout sessions to further discuss the report and devise solutions. The applicant stated that her Reviewer, CAPT C, and the Command Staff reviewed the report in its entirety and were briefed about the peer breakout discussions. The applicant further stated that during these peer breakout sessions, members at various levels in the chain of command agreed that the following comments pertained to CAPT C and the “clique” of officers he supervised:

- Any sort of harassment should not be tolerated.
- Bias and favoritism by leaders should be emphasized as unacceptable. Conversations/informal training regarding this management topic amongst officers should be arranged.
- Appearance of favoritism and “cliques.”
- I feel that a specific person in a specific rank tends to use that position for power/intimidation rather than help. He always claims to be there “for his subordinates” but his actions speak a lot louder than his words. Communication and treat everyone the same. Everyone is on your team and act like you have a vested interest in all those people the same.
- Treat each success or failure for EVERY task/assignment as a shared responsibility instead of putting the sole blame on one person and capitalizing on it to make yourself look better. Perception is reality and so is coming to work in a toxic environment where you know you aren’t a valued member of the team, especially when everyone else on the team can see and perceive that too.

The applicant alleged that these alarming comments were ignored by CAPT C and the Command. She explained that during an initial LDAC debriefing about the survey, the LDAC was discussing the concerning comments to further understand how to address them, when CAPT C asked the LDAC how many negative comments were submitted? According to the applicant, an LDAC member responded by stating, “There did not seem to be that many at first glance.” To which CAPT C stated, “Well, if there’s only one or two [negative comments], we should just tell them to shut the hell up.” The applicant noted that the following statement from the LDAC Co-Chair, which she submitted, highlights the unprofessional and atrocious behavior by CAPT C:

At several of the LDAC meetings many ideas presented by LT [Applicant] were dismissed or shut down before they were even completely heard out ... we were discussing the results of the DEOMI survey and how we want to move forward for more clarification and feedback from the crew. During this meeting it was brought up that there were a few derogatory comments toward specific command members. When this was mentioned the command representative (CAPT [C]) made a comment to the effect of “tell them to shut up.” This caught us all off guard. This is also how a lot of things went at [the District]...When LT [Applicant] shifted to working in the Command Center it became more apparent how they isolated her ... It was a toxic environment that [the] leadership created ... [Applicant] worked extremely hard and had to overcome a lot while at [the District]. She always remained respectful and a hard worker through it all.

The applicant further alleged that an enlisted member on her staff at the time, regularly attended LDAC meetings, but ultimately separated from the Coast Guard due to the toxic work environment she endured while at the District. In a statement submitted on the applicant’s behalf, regarding her claims of harassment, intimidation, and bullying, the enlisted member stated the following:

[Applicant], an LDAC Co-Chair, encouraged me to attend meetings to help mold me into future leader ... However during multiple LDAC meetings, I witnessed LT [Applicant] being spoken over and overpowered as she attempted to make points and encourage engagement. Witnessing senior officers disregard LT [Applicant’s] opinions when she was the lead LDAC member caused me to stop attending because I hated seeing the way she was being treated. Ultimately, [the District] was not a kind place to LT [Applicant] her direct supervisor [and] senior officers ... did her a complete disservice.

Regarding the applicant’s treatment by her senior leaders, a former CDO for the District and the applicant’s previous supervisor on a Strike Team, stated the following:

The workplace climate at this unit [District] was less than favorable ... the workplace climate caused me to lose confidence in being an effective leader ... I dreaded reporting for duty each day ... Throughout my career, I was bombarded with how important the Coast Guard core values of Honor, Respect, and Devotion to Duty were. Yet, it seemed that the core values were either not important or did not apply to some of the senior officers I interacted with and served under ... I felt that because of my rank, I would be retaliated against ... did not believe that I would be taken seriously if I had filed a complaint ... [or] issue[s] would not have been handled in a fair manner ... I had the privilege of working with LT [Applicant]...Her work ethic was nothing short of superior. She did an outstanding job in performing her duties and responsibilities and consistently demonstrated excellent leadership. She is well-spoken and exhibited a mature and professional attitude at all times.

The applicant also submitted a statement from a CDR B, who in addition to highlighting the applicant’s noteworthy performance and contributions that made the applicant stand out amongst her peers, stated the following:

There appeared to be a “clique” of officers that engaged in a campaign of what could best be described as hazing. My own experience with this group and conversations that I’ve had about their behavior included allegations that they over complicated qualification processes for some and not others, engaged in public “dress downs,” [humiliation] and that they implemented unrealistic standards for individual marks [evaluations/OER] and awards. Due to its influence, this clique’s behavior had direct impacts on the careers of officers.

Allegations about the Anti-Harassment and Hate Investigation

The applicant stated that in June 2020, she filed an Equal Employment Opportunity (EEO) complaint and worked with a CAPT N, who was her District’s Command Representative for the EEO pre-complaint process. The applicant alleged that during their negotiations, CAPT N examined the applicant’s report of incidents and agreed to reconcile her EEO pre-complaint requests, which she had filed against members of her chain of command. The applicant claimed that through this process, her District acknowledged that LCDR M and LCDR B had intentionally thwarted and downgraded the award the applicant received upon her 2019 departure from the unit. The applicant further claimed that in July 2020, CAPT N recognized the applicant’s contributions, retroactively awarded her a higher recognition award, and further agreed to provide her with a copy of the full Anti-Harassment and Hate Investigation (AHHI), which was underway, for consideration for her BCMR application.

The applicant explained that in July 2020, her District Commander initiated an AHHI and reconciled the applicant’s EEO pre-complaint grievances. The applicant further explained that as the designated Command Representative, CAPT N, verbally notified the applicant of the District’s investigative findings and assisted the applicant with resolving her EEO pre-complaint negotiations. The applicant claimed that during her phone conversation with CAPT N, CAPT N stated that the District Commander had confirmed that members of the applicant’s chain of command had facilitated or engaged in a pattern of bullying, humiliation, and intimidating behavior against her and that her coming forward had helped to expose the scale and magnitude of their misconduct.

The applicant explained that the AHHI investigation concluded in August 2020, but upon its finalization, the District staff refused to release the full investigative report to the applicant. Therefore, in December 2020, she filed a request under the Freedom of Information Act (FOIA). According to the applicant, in March 2021, after several months and exceeded deadlines, the District only provided the applicant with an abbreviated findings and final action memorandum, neither of which adequately addresses the misconduct that took place by her chain of command. In addition, the applicant stated that the documents she was provided did not require any corrective or disciplinary action or accountability for her aggressors, despite clear violations of the Coast Guard Discipline and Conduct Manual. To date, the applicant explained that her District’s Civil Rights Service Provider (CRSP) is working to confirm if her District forwarded the investigation to the BCMR, as agreed upon during the EEO pre-complaint process.

To support her application, the applicant submitted 9 character references and personal statements confirming the applicant’s claims that she was often berated and humiliated by her supervisor, LCDR S. These references spoke of the applicant’s unceasing professionalism, exceptional performance, outstanding achievements, and friendly can-do attitude. One writer stated that the applicant was a compassionate professional, who was well-liked and respected by

all who stood watch with her. This same writer described the applicant's command climate as brutal and stated that she had witnessed LCDR S humiliate and belittle the applicant in front of their entire watch team for unjust reasons that made absolutely no sense. This writer also stated that remarkably, the applicant always maintained her professionalism and never argued or fought back. The applicant was described as an excellent Coast Guard officer and a person with the highest moral character. One character reference stated that while the applicant was an incredibly strong performer on and off duty, the applicant was mistreated by their command. The writer recalled a night watch where he was set to relieve the applicant when their supervisor, LCDR S, had taken offense to how the applicant had prosecuted a case. The writer recalled that instead of allowing the applicant to go home and get some sleep before having to address the matter, LCDR S insisted the applicant remain and discuss the matter, pulling the applicant into her office for over an hour, even though the applicant still had to drive over an hour to reach home. This writer stated that he witnessed LCDR S regularly berate and attack the applicant and her peers on the watch floor, with no regard for the other personnel present. The writer had also witnessed LCDR S "dress down" the applicant, insinuating that the applicant was less of an officer than others and that the applicant was a "sub-par" CDO. Throughout all of these negative encounters, the writer stated, the applicant remained a consummate professional, leader, and role model. Finally, the writer stated that regardless of how many times the applicant was attacked in front of others, the applicant never lashed out or attempted to meet LCDR S's vitriol in kind.³

SUMMARY OF THE RECORD

The applicant graduated from the Coast Guard Academy and was commissioned an ensign on May 19, 2010.

From April 2014 through May 2015, the applicant served as Command Duty Officer (CDO) for a District Command Center.

On July 13, 2015, the applicant received her annual OER for the July 1, 2014, through May 31, 2015, rating period. The applicant received two marks of 5 (out of a scale of 1 to 7, with 1 being the lowest mark and 7 being the highest possible mark), eight 6s, and eight 7s. The applicant also received a mark of 5 ("Excellent Performer: give toughest, most challenging leadership assignments") out of 7 on the Comparison Scale.

On June 17, 2015, the applicant executed Permanent Change of Station (PSC) Orders to a District's Incident Management Branch.

On July 11, 2016, the applicant received her annual OER for the June 1, 2015, through May 31, 2016, rating period. The applicant received one mark of 5, ten 6s, and seven 7s. The applicant also received a mark of 5 ("Excellent Performer: give toughest, most challenging leadership assignments") out of 7 on the Comparison Scale.

³ For efficiency, all of the applicant's character reference will not be summarized here. However, the Board will note that almost all of the character references stated that they personally witnessed the applicant being "dressed down," berated, and humiliated in front of junior personnel, by her supervisor LCDR S. The writers of these references also testified to the fact that the applicant never lashed out or disrespected LCDR S, despite LCDR S obvious attempts to provoke the applicant and humiliate the applicant.

On July 13, 2017, the applicant signed her annual OER for the June 1, 2016, through May 31, 2017, rating period. The applicant received one mark of 4, one 5, twelve 6s, and four 7s. The applicant received a mark of 5 out of 7 (the highest mark on the “One of many higher performing officers who form the majority of this grade”) on the Comparison Scale, and a mark of 4 out of 6 (“Definitely Promote”) on the Promotion scale.

In January 2018, the applicant was moved from her current District’s Incident Management Branch, under the supervision of LCDR M, and became a CDO again in the District’s Command Center under the supervision of LCDR S.

On July 10, 2018, the applicant received her annual OER for the June 1, 2017, through May 31, 2018, rating period.⁴ The applicant received four marks of 5, eleven 6s, and three 7s. The applicant received a mark of 5 out of 7 (the highest mark on the “One of many higher performing officers who form the majority of this grade”) on the Comparison Scale, and a mark of 4 out of 6 (“Promote w/top 20% of peers”) on the Promotion scale.

Disputed OER

On June 20, 2019, the applicant received her annual OER for the June 1, 2018, through April 30, 2019, rating period. The applicant received three marks of 4, twelve 5s, two 6s, and one 7. The applicant received a mark of 4 out of 7 on the Comparison Scale, and a mark of 3 (“Promote”) out of 6 on the Promotion Scale. The applicant received the following comments:

Performance of Duties: Exercised regional concurrence protocol for non-compliant vessel near I’ntl border, AAR informed SNO drill procedure changes. Leveraged watchstander expertise to resolve unregistered & ambiguous EPIRB distress alerts prior to resource launch; extensive investigation - partnered with foreign & adjacent RCCs, AFRCC & local PD, reviewed databases & utilized state DF capabilities to confirm non-distress; prevented high risk nighttime helo searches. CDO during simultaneous offshore MEDEVAC response & high risk CD boarding - facilitated development & execution of ops plans - met SMC/TACON mission objectives; 1 life saved & recovered 3K lbs of liquid narcotics w/ \$50M+ street value - largest maritime drug seizure in [District] history. Evaluated inland SAR assistance request & adjusted op plan for changing wx conditions to meet partner agency capability needs. Met requirements for OAR-11 SAR Planning/Coordination, OAR-10 Ops Ashore, OAR-13 MLE/PWCS ops, OAR-14 Boat Forces and OAR-16 IMD & Preparedness codes & pursued FOSCR qual – 80% & ICS LOFR cert - 75%. Delivered daily ops brief & facilitated VIP visitor AREA FAM/ 101 briefs; informed senior staff decisions/increased awareness of unique [District] op environment/resource challenges.

Leadership Skills: Drafted EPOY nomination, mbr selected. Chaperoned C-27 area fam flight for apprentice watchstanders; executed logistics plan, facilitated completion of learning objectives and drafted AAK improved mission planning thru enhanced crew understanding of MPA capabilities. Provided TACON support for offshore LMR cutters; relayed patrol tasking/TOI position updates, directed vsl/crew screenings & facilitated vsl terminations & safe to sail waiver approval; ensured CFV compliance. CDO during prosecution of 685+ multi-mission incidents; application of policy/procedures & mgmt of watch teams/subunits to meet ops objectives – early engagement w/ SAR Chain enabled interventions - represented SC interests & reduced risk exposure; saved/assisted 740 lives & preserved \$50M+ in property. Promoted unit & CG-wide LDAC goals & growth; recruited t.l.ent & diversity, bolstered DEOMI survey participation & briefed CG-1 on local issues; EEO/SAPR rating above CG average & informed future program decisions.

⁴ The applicant was reassigned halfway through the rating period, at which point, LCDR S became her direct supervisor. However, LCDR M remained the applicant’s rating supervisor for this rating period.

Personal and Professional Qualities: Participated in collaborative effort to develop records management training; researched key processes & facilitated best practices discussion timeline/routing procedures for specialty codes, e-PDR & CG-4082 review/update and adding education; crew better prepared for promotion boards/assignment panels. Oversaw maritime response coordination for rogue aircraft/airspace incursion; initiated CIC protocol, tracked FAA/DoD posture & positions for optimal asset staging; timely safety zone stand-up/enforcement following crash minimized public risk. Prepped ACTS US briefs for SMC review facilitated eval of search efforts/risk vs. gain decisions. Championed NIMS & emphasized importance of ICS proficiency; engaged coach conducted PQS training & one-on-one board prep w/ crew; enhanced org preparedness & endurance during emergency response thru increased unit bench strength.

Reporting Officer Comments: Recommended for promotion w/peers. High op-tempo assignment to PAC Strike Team will provide opportunity to exercise ICS skill set & rapidly improve IMD proficiency in prep for follow-on Sector Response Division/DSF positions. Highly intelligent & demonstrates potential to be successful in future positions of greater responsibility w/continued PROD EV & leadership growth. Competent CDO w/ solid grasp of fundamentals; recommend continued assignment in Shore-Forces Response (SEC IMD/ENF/CC & CPFR div & DSF) centric billets to mature experience/application of competencies. Very articulate w/ strong interpersonal skills; performs extremely well in public facing & partner agency coordination/liaison roles NIMS/ICS & is currently pursuing Emergency & Disaster Management degree on own time 3.7 GPA. Recommended for Industry Training/Emergency Mgmt PG.

In July 2019, the applicant transferred to a new billet at a different command. On June 9, 2020, the applicant received her annual OER for the May 1, 2019, through May 31, 2020, rating period.⁵ The applicant received fourteen marks of 6, and four 7s. The applicant received a mark of 5 out of 7 (the highest mark on the “One of many higher performing officers who form the majority of this grade”) on the Comparison Scale, and a mark of 4 out of 6 (“Promote w/top 20% of peers”) on the Promotion scale.

EEO Complaint and AHHI Investigation

On June 24, 2020, the applicant contacted her local Civil Rights and Civil Liberties Office to initiate an EEO Anti-Harassment and Hate complaint.

On July 9, 2020, a District Captain, CAPT D, issued a memorandum, “Investigation into Alleged Prohibited Harassment,” wherein he appointed an Investigating Officer (IO) to conduct a single-officer standard investigation into a report of alleged prohibited harassment and bullying. The IO was ordered to submit an Investigative Report, but was prohibited from drafting opinions and recommendations, including whether or not he believed harassment or bullying occurred.

On July 9, 2020, CAPT D, issued a second memorandum, “Acknowledgement of a Report of Potential Harassment,” wherein he notified the applicant that an administrative investigation had been initiated and that he would make efforts to report his findings to the Civil Rights Directorate within 30 days of the receipt of the initial report of harassment. CAPT D also informed the applicant of her right to initiate a complaint of harassment under the EEO/EO complaint, negotiated grievance, merit system protection board appeal, Whistleblower Protection Act, or other statutory grievance procedures.

⁵ This is the first OER the applicant received after leaving the supervision of LCDR S.

On August 31, 2020, a Coast Guard Rear Admiral (RADM) issued a memorandum, “Findings and Outcome on Report of Bullying.” The contents of the memorandum are as follows:

1. In accordance with reference (a), [Applicant’s District] convened an administrative investigation on 7 July 2020 following allegations of prohibited harassment (addressed in a separate memo per reference (b)) and bullying (originally reported as prohibited harassment) by a prior member of the staff (female, African American O3) (hereafter “complainant”) while assigned at [Applicant’s District] from February 2016 to July 2019. The investigation was completed on 7 August 2020. After carefully reviewing the investigation, this memorandum is provided in accordance with Section 3.C.1.iv. of reference (a).

2. The appointed investigator examined all allegations of bullying in accordance with references (a) and (c) and the found the following:

a. The complainant alleged several instances of bullying (verbal, intimidating or humiliating conduct) by her supervisor (female, Caucasian O4)(hereafter “alleged offender”) while working in the [District] Command Center ([District] CC). All incidents occurred in the [District] CC while members were on-duty. The alleged offender is no longer assigned to [District] but was the [District] CC Supervisor during this time.

b. The complainant claimed that the alleged offender yelled at her when discussing temporary separation. The alleged offender does not recall yelling during the interaction and remembers it being a counseling opportunity. No additional evidence was found indicating bullying.

c. The complainant claimed an incident occurred in January 2019 regarding a “first light search.” During this incident, complainant felt that the alleged offender berated her in front of others in the [District] CC to humiliate her. The incident was witnessed by two other [District] CC members. The alleged offender stated she was trying to address the proper way to handle a first light search in her role as the [District] CC Supervisor. No additional evidence was found indicating bullying.

d. The complainant claimed that the alleged offender yelled at her in response to an Officer Support Form (OSF) that she submitted for an OER. The alleged offender stated that the OSF did not provide her with much support to write complainant's OER and that she was trying to address this point. No additional evidence was found indicating bullying.

e. Six members that worked in the [District] CC with the complainant during the time of the allegations were interviewed. Four members in the [District] CC, in addition to the complainant, felt they had been treated poorly (specifically, humiliated) at times by the alleged offender in the [District] CC. No additional evidence was found indicating bullying.

f. Bullying is defined as “abusive conduct by a military member or members which harms a military member or any other persons, either physically or psychologically, without a proper military or other governmental purpose and with the intent to exclude the member” per section 3.B.3 of reference (a).

3. I concur with the findings of the appointed investigator and find the evidence supports a determination of bullying not based on one of the protected statuses pursuant to reference (a) under a preponderance of the evidence standard, While the alleged offender may have believed her actions served a proper military or governmental purpose, I find that in isolated incidents she exceeded acceptable counseling standards and her behavior crossed the threshold into verbal abuse including humiliating and intimidating. Despite indications of being an otherwise high performing Coast Guard Officer, I find the alleged offender’s decision to publicly address perceived performance deficiencies in front of the complainant's peers and subordinates in the manner that she did raises concerns from a leadership perspective. In accordance with reference (d), leading others includes “showing respect for others, using effective communications, influencing others, working in teams, and taking care of one's people.” I recommend the alleged offender takes the time to read and understand reference (d) and receives counseling regarding ways to potentially improve her leadership style.

The following interview summaries, gathered during the course of the administrative investigation, were provided by the IO:

- I conducted an interview with LCDR [S] on 31 July 20 as part of my investigation into LT [Applicant's] report of alleged prohibited harassment. Due to COVID-19 and related travel and social distancing restrictions, all interviews were conducted over the phone.

In a report made to [redacted] on 9 July 20, via email, LT [Applicant] alleges discrimination based on race, gender, and age. LT [Applicant] is African American, female, and 33 years old. In addition, LT [Applicant] alleges complicit retaliation, bias and punishment disguised accountability after approaching a higher level supervisor with concerns. She claims a higher level of documented performance prior to the timeline and incidents outlined below.

I interviewed LCDR [S] with respect to an incident of verbal abuse that reportedly happened in Jan 19. And I asked her if there were any other times he could remember verbal abuse.

1. Are you familiar with COMDINST M16000.2, Discipline and Conduct Manual and the policy regarding the prohibition on Bullying?

Yes.

2. Prior to becoming LT [Applicant's] supervisor, did you and LCDR [M] have any discussions regarding LT [Applicant] and her caliber as a person, work ethic, and performance?

Yes. LCDR [M] was working with LT [Applicant] regarding substandard performance, under the supervision of CAPT [C]. CAPT [C], LCDR [M], and LCDR [S] collaborated to transfer LT [Applicant] to the CC for professional development as she was having performance problems at the DRAT. So from that standpoint, her work ethic and performance were discussed. LCDR [S] thought that it would be a value add because LT [Applicant] already had a Command Center qualification and would only need to recertify. This plan involved swapping LT [redacted] to LT [Applicant's] position and vice versa. The swap was vetted swap thru OPM. LT [Applicant] did not object.

3. Did you scream at LT [Applicant] OOA Jan 2018 and accuse LT [Applicant] of thinking you were stupid? This incident reportedly happened during a discussion where she was engaging you regarding the Temporary Separation program. If so, why did you scream at her vice other less confrontational options? Were you trying to intimidate her?

No. LCDR [S] does not recall that exchange taking place. LCDR [S] remembers working on the temp separation though. And she remembers other senior officers (CAPT [H] and CAPT [C]) desiring to speak with LT [Applicant] regarding temporary separation to ensure she was fully informed prior to making a decision.

4. In June 2018, did you wave your hands in LT [Applicant's] face during a discussion regarding her security clearance renewal and her reportedly late SF-86? Did you loudly try and shut-down the conversation by loudly saying, "I don't care, I don't care."

No. LCDR [S] does not recall ever doing that. She has no recollection of ever putting her hands in LT [Applicant's] face or screaming at her. LCDR [S] vaguely remembers hearing from CSO that LT [Applicant] was not completing her SF86 on time or something to that effect. LCDR [S] remembers addressing the matter with her as she needed to be responsive to the CSO, but not in the manner in which LT [Applicant] claims.

5. In Jan 2019, did you berate LT [Applicant] in the command center, with others around, following a SAR discussion and policy surrounding first light searches? Did you "go off" on her in a demeaning and condescending way? In a private meeting after, did you mock LT [Applicant] by saying, "Whatever, Whatever," and cocking your head? Did you tell her the verbal counseling in the command center was designed to humiliate her and make an example of her as punishment?

Remembers having a discussion regarding first light policy, with the intention to learn because the case was not appropriately handled. It was concerning, and LCDR [S] wanted to address it. She never spoke in a condescending way or used condescending body language, but not sure if a private meeting occurred. She never said discussion or counseling was designed to humiliate her and make an example of her as punishment.

6. In April of 2019, did you criticize LT [Applicant's] caliber as a person and state that she should "go do something else" and asked, "why are you even here?" This reportedly happened after LT [Applicant's] OSF was reportedly submitted late and when she didn't write her own OER, even though she was told that was an optional requirement.

LCDR [S] remembers discussing the lack of effort by LT [Applicant] on her OER input. LCDR [sic] [Applicant's] input was incomplete and LCDR [S] had a discussion with LT [Applicant] regarding lack of effort and the importance of the evaluation process. LCDR [S] wanted to better understand LT [Applicant's] motivation. LT [Applicant] was not interested in the work, supporting her peers, or team, and those were consistent themes on the watch floor, award writing, or any type of tasking. LCDR [S] hopes the discussion would re-calibrate LT [Applicant] to perform better. LCDR [S] does not know the exact language that was used, but it was the same discussion LCDR [S] would have had with any other LT who needed the counseling.

7. In May of 2019, did you state that "you were going to hold LT [Applicant] accountable" when presenting her OER? Did you shrug and say, "well maybe you had a bad year."

LCDR [S] does not recall using that language. LCDR [S] did counsel provided OER counseling to LT [Applicant] and had notes and talking points prior to meeting with her, and she still has the notes. LT [Applicant's] OER was noticeably lower than her previous OER. It's possible, according to LCDR [S], that from the standpoint LCDR [S] was making the point that LT [Applicant] can recover from this OER, then perhaps she said that "this was a bad year."

There was context. LCDR [S] simply wanted to highlight that, "this is what you earned, and this is how we move forward."

8. In May or June of 2019, did you route LT [Applicant's] OSC's to CAPT [B] with the caveat that they were "low priority, an admin drill, with no need for a quick turnaround?"

LCDR [S] does not know. She doesn't know why she would ever do that. She would have remembered the circumstances, the timeline, etc.

9. Date not provided: Did you ever dress LT [W] down on the Command Center floor, in the presence of junior enlisted and civilian employees, and demand to know "if you needed to pull LT [W's] qualification?"

Does not recall that discussion or event.

10. Did you frequently respond to LCDR [F's] questions, while she was in a break in status in a snide or sarcastic way in front of others? Did you ever criticize her in front of others for asking too many questions or not enough questions?

No.

11. OOA December 2018, did you reportedly tell LCDR [F] that there was "no way in hell you would let her brief an O6 by herself" during a SAR case? Did you later apologize to the chain of command for the break-in process slowing things down?

LCDR [S] remembers the incident and remembers telling LCDR [F] that she wanted to be on the line for the brief. She recalls LCDR [F] eventually making the brief, but does not recall and doesn't know if she ever apologized for the slow process.

12. Did you, in a dismissive, aggressive, and condescending way refuse to help LCDR [F] with a Station Optimization project she was working on?

No. LCDR [S] had specific assignments outlined in the Station Optimization charter and the charted outlined responsibilities and who was going to do what. LCDR [S] does recall LCDR [F] approaching her and crying because she felt overwhelmed. LCDR [S] was never dismissive or condescending when LCDR [F] asked for help.

13. Did you ever make the comment to LCDR [F] that you had friends that were passed over that could run circles around LCDR [F]? Did you ever exclaim wonder to LCDR [F] how LCDR [F] was selected for O4? Did you ever state to LCDR [F] that because she's an Academy Graduate, everything is handed to her? Did you ever tell LCDR [F] that she was lazy, incompetent or stupid, and not trusted by CAPT [C]?

LCDR [S] does not know if she made those comments. LCDR [S] admitted that LCDR [F] and she got to a point where they did not get along. CAPT [C] would be the best person to speak to regarding the relationship. She remembers having a difficult interpersonal relationship and equally difficult conversations with her. Possibly could have said those things. LCDR [B] offered advice to LCDR [S] on how to best communicate with LCDR [F]. They didn't work together often, didn't click, and LCDR [F] did not speak highly of LCDR [S] to LCDR [M] or to LCDR [B]. LCDR [S] never stated that LCDR [F] got everything handed to her. As a point of fact, LCDR [S] noted the she herself was passed over for O4.

LCDR [S] never said LCDR [F] was lazy, incompetent or stupid, and that perhaps LCDR [F]'s recollections of the conversations are much more different that LCDR [S]. LCDR [S] concluded that she did nothing in a vacuum. She communicated everything with CAPT [C]. LT [Applicant] did have performance issues throughout her time at [District].

- I conducted an interview with CAPT [C] as part of my investigation into LT [Applicant's] report of alleged prohibited harassment. Due to COVID-19 and related travel and social distancing restrictions, all interviews were conducted over the phone.⁶

...

2. Did you ever state to LCDR [S] that you didn't trust LCDR [F]? Were you aware that LCDR [F] accused LCDR [S] of telling her she didn't trust you?

CAPT [C] does not recall saying he didn't trust LCDR [F]. LCDR [F] and LCDR [S] had a less than ideal relationship and there was plenty of friction. CAPT [C] mentioned that he had high hopes for LCDR [F] as she was in high demand and had a solid Coast Guard reputation. However, CAPT [C] became quickly unimpressed with LCDR [F]'s performance after she reported to the District staff. He surmised that LCDR [F] didn't understand that expectations increase when you make O4. He understood this was her first staff tour and he tried to help, but frankly she just "didn't get it." LCDR [F] was not a solid performer on the team and never really meshed with the other team of O4s on the District staff. CAPT [C] attributes the friction between LCDR [F] and LCDR [S] to challenges LCDR [F] was having during her SMC qualification, but there was also other constructive feedback from other qualified SMCs. CAPT [C] feels like LCDR [S] is over blamed for problems that were really LCDR [F]'s. When approached by LCDR [F] regarding whether or not she had CAPT [C]'s trust, he responded, "[LCDR F], you would know if you didn't have my trust, and you wouldn't be doing some of the things you're doing now if you didn't have my trust." CAPT [C] told her that she was progressing, but not at the rate she needed to and certainly not at the O4 level.

⁶ Some of CAPT C's interview statements and opinions were also summarized in his sworn statement provided in support of the Coast Guard's advisory opinion. Therefore, the Board found them unnecessarily redundant and did not summarize them again here.

CAPT [C] demanded mutual respect between LCDR [F] and LCDR [S] during counseling sessions with the both of them.

3. Can you speak to the performance and leadership style of LCDR [S]?

CAPT [C] noted that LCDR [S] has a leadership style similar to his. LCDR [S] is direct and has high standards, and she's not afraid to hold people accountable. CAPT [C] stated that the Coast Guard needs more people like her. CAPT [C] was so impressed by LCDR [S] that he nominated her for the 2018 Captain Dorothy Stratton Leadership Award, and CAPT [C] challenged that he could find just as many folks out there with great things to say about LCDR [S] as there are to those who say otherwise. He's not surprised if there were negative comments from the CC Master Chief or LT [W], and not surprised if they received lower evaluations.

LCDR [S] went out of her way to help people and in one case, personally packed up LT [W's] ex-wife's belongings after a messy divorce. She gave him some grace afterwards, but held him accountable to his performance after it appeared he may have been using his anguish as a crutch which prohibited solid work performance. CAPT [C] mentioned that LT [W] wanted an endorsement for a STA CO position in [Another District] that was open, but CAPT [C] declined to endorse him due to his performance. He feels LT [W] probably held that against him.

CAPT [C] noted that when you're the command center chief, things happen that require fixing. At times, things needed to get fixed, and CAPT [C] assumed they were done in a professional manner. CAPT [C] noted that LCDR [S] was an avid counselor of folks in private and not afraid to provide constructive feedback.

For himself, CAPT [C] was a big proponent of mid-period counseling, and had frequent conversations regarding ownership with LCDR [F].

CAPT [C] thinks very highly of LCDR [S] and sees complaints against her coming from disgruntled underperformers.

With respect to LT [Applicant], CAPT [C] thought that she was only unhappy with how she was marked, particularly with OER. CAPT [C] never perceived an adversarial relationship with LCDR [S] and LT [W] and LT [Applicant], but there was one between her and LCDR [F].

CAPT [C] noted the timing of LT [Applicant's] recent complaint noting that about a month ago she reached out to him to update her record in advance of the PY21 O4 board. Apparently, there was an award missing. When CAPT [C] offered to resubmit it and reach out to RADM Butt to sign, she never got back with him.

5. Can you speak to the overall climate in the CC?

The climate was content, cohesive.

- I interviewed LCDR [F] with respect to an incident of verbal abuse that reportedly happened in Jan 19. And I asked her if there were any other times she could remember verbal abuse.

1. Do you recall an incident in January 2019 where LCDR [S] was condescending/demeaning to LT [Applicant]?

LCDR [F] does not recall this incident, and she's not even sure if she was present. LCDR [F] is not surprised that the above incident could have happened.

2. In general, do you recall any incidents of unwelcome conduct towards LT [Applicant] due to her protected status? Note: I referenced the definition of prohibited harassment from COMDTINST M53050.4D.

No.

3. Do you feel this incident meets the definition of bullying, and do you recall any bullying incidents against LT [Applicant] in general? Note: I referenced the definition of bullying from COMDTINST M1600.2 when I asked the question.

No, not the specific incident. Never witnessed a bullying incident w/ LT [Applicant]. LCDR believes they could have happened and would not be surprised.

LCDR [F] reported to [District] IM was directed by CAPT [C] to work/learn from peers to include LCDR [S]. During the first 6 months of working with LCDR [S] as a break-in SAR Mission Controller, LCDR [F] recognized that LCDR [S] was difficult to work with. So much so, that after the first 6 months, LCDR [F] did everything she could to stay [away] from her and only to engage in professional matters when necessary.

Some examples include the following:

a) Regularly, LCDR [S] would respond to LCDR [F]'s questions during her break-in period in a sarcastic and snide way in front of other watch standers. LCDR [S] would exclaim that LCDR [F] was asking too many questions and get angry, and read her the "riot act." When LCDR [F] chose to not ask questions, LCDR [S] would accuse her of not progressing fast enough in her qualification. Junior personnel were often on hand to witness this, and LCDR [F] was incredibly embarrassed and humiliated that junior personnel would ask her "how she was doing." LCDR [F] reported the treatment to CAPT [C] and was told to just work it out, but he also let LCDR [F] know that he's heard that she (LCDR [F]) was not a team player. LCDR [F] admittedly did not give CAPT [C] all the details of her interactions with LCDR [S]. That was hard to get over b/c she felt like it was a "me" problem. LCDR [F] felt like she could never do anything correct.

b) In December 2018, LCDR [F] was attending a Christmas party at the [District] CoS residence on [redacted] when she took a call from the command center, as a break-in SMC, regarding a SAR case. When discussing the case with LCDR [S] over the phone, LCDR [F] offered to brief the chain of command since they were all in attendance at the party. LCDR [S] reportedly stated, "There's no way in hell I want you to talk with O6 by yourself." When LCDR [S] later briefed the chain of command, she apologized for the break-in process "slowing things down." So even though LCDR [F] was denied the opportunity to brief the case, she was also, in her view, blamed for slowing it down. In LCDR [F]'s mind, she was put in an impossible situation.

c) Fall 2018, LCDR [F] was working on a Station optimization project and had to work with LCDR [S] regarding SAR impacts and asked for her help. In a dismissive, aggressive, and condescending way, LCDR [S] told LCDR [F] she was not interested in helping and cut off the conversation.

In general, LCDR [F] carried a lot of anxiety anytime she would have to talk to or work with LCDR [S]. So much so that she would hyperventilate and have nightmares.

In one instance, LCDR [S] made the comment to LCDR [F] that LCDR [S] had friends that were passed over that could run circles around LCDR [F], and she didn't understand how LCDR [F] made O4, but attributed it to that fact LCDR [F] was a CGA grad and had everything handed to her. LCDR [S] told LCDR [F] that she was lazy, incompetent or stupid, and she told LCDR [F] that she was not trusted by CAPT [C]. When LCDR [F] approached CAPT [C] regarding that statement, he reportedly denied knowing anything about it. Still, LCDR [F] did not know what she did wrong. And she was completely taken aback by the treatment given the fact she had a successful STA CO tour prior.

LCDR [F] has 8 pages of notes regarding interactions with LCDR [S], but did not want to share them with me. Also, LCDR [S]⁷ reports that she sought the informal guidance of someone at DL at some point but declined to share when and with whom she spoke to at DL.

⁷ The Board believes that what the IO meant here was that LCDR F sought informal guidance from someone at DL, not LCDR S. There were several errors of wrongfully identified individuals in the interview summaries that were easy to discern and were therefore changed accordingly. However, the Board is uncertain as to the exact officer being identified here, so the name remains as written in the summary.

4. Do you think there was a bad climate issue in the Command Center?

Yes. LCDR [S] was the reason. There were probably some people that she was fine with. She seemed to have a soft spot for enlisted people and males, w/ exception of LT [W].

- I interviewed OS1 [B] with respect to an incident of verbal abuse that reportedly happened in Jan 19. And I asked him if there were any other times he could remember verbal abuse.

1. Do you recall an incident in January 2019 where LCDR [S] was condescending or demeaning to LT [Applicant]?

OS1 vaguely remembers the incident. He doesn't remember yelling or screaming from LCDR [S], but the tone from LCDR [S] was surprising and it was confrontational. The interaction left OS1 feeling like what did we do wrong, or did we miss something? OS1 remembers being on watch the next day or so with LT [Applicant] and the confrontation was a topic of a brief conversation and LT [Applicant] was still upset.

2. Do you recall any incidents of unwelcome conduct towards LT [Applicant] due to her protected status? Note: I referenced the definition of prohibited harassment from COMDTINST M530050.4D.

No. Not towards anyone. OS1 felt like everyone worked well with her. In his view, she had a great working relationship with the civilians and E6 watchstanders.

3. Do you recall any bullying incidents? Note: I referenced the definition of bullying from COMDTINST M1600.2 when I asked the question.

OS1 never observed LT [Applicant's] and LCDR [M's] interactions. He never saw bullying between LT [Applicant] and LCDR [S]. Perhaps LT [Applicant] and LCDR [S] did not see eye to eye on some things. In general, there may have been a little more stress within the O2 and O3 ranks with LCDR [S]. LCDR [S] had a different leadership style and was more hands on. OS1 had a good working relationship with both LT [Applicant] and LCDR [S].

4. Do you think there was a bad climate issue?

No. There [were] peaks and valleys during his time there, but things were better towards the end under LCDR [S's] leadership.

- I interviewed LT [Z] with respect to an incident of verbal abuse that reportedly happened in Jan 19. And I asked her if there were any other times she could remember verbal abuse.

1. Do you recall an incident in January 2019 where LCDR [S] was condescending/demeaning to LT [Applicant]?

LT [Z] vaguely remembers this incident. She remembers feeling like the dialogue coming from LCDR [S] was excessive, but cannot remember what was exactly said. She does recall LT [Applicant] feeling embarrassed, though. LT [Z] remembers LT [Applicant] having a private meeting with LCDR [S] after the incident for over an hour, and felt this was an unnecessarily lengthy discussion given the fact LT [Applicant] was coming off a 12-hour overnight watch and was probably tired and ready to be home.

When asked if LT [Z] felt as those this incident represented unwelcome conduct due to her protected status, LT [Z] answered no. Note: referenced the definition of prohibited harassment from COMDTINST M53050.4D.

2. In general, do you recall any incidents of unwelcome conduct towards LT [Applicant] due to her protected status? Note: I referenced the definition of prohibited harassment from COMDTINST M53050.4D.

No.

3. Do you feel this incident meets the definition of bullying, and do you recall any bullying incidents against LT [Applicant] in general? Note: I referenced the definition of bullying from COMDTINST M1600.2 when I asked the question.

LT [Z] did feel that LT [Applicant] was bullied by LCDR [S] because the incident in January 2019 was berating to LT [Applicant] and she was left embarrassed. She does not recall another instance where LCDR [S] bullied LT [Applicant], but there were other times when LCDR [S] publicly challenged others. In one case, she reportedly berated LT [W] regarding an issue over his leave, and in another case she berated LCDR [F] during discussion within earshot of LT [Z]. LT [Z] notes that, in general, LCDR [S] was passionate and not afraid to let you know when she wasn't pleased. LT [Z] stated that you always knew how she felt about everyone, good, bad, or indifferent.

4. Do you think there was a bad climate issue in the Command Center?

LT [Z] said that there was 100% a climate issue. She noted that LCDR [S] was frequently vocal and critical of the JOs. So much so that LT [Applicant], LT [W], and LT [Z] had formed an informal support group. LCDR [S] seemed to have a good relationship with the E6 watchstanders.

- I interviewed LT [W] with respect to an incident of verbal abuse that reportedly happened in Jan 19. And I asked her if there were any other times she could remember verbal abuse.

1. Do you recall an incident in January 2019 where LCDR [S] was condescending/demeaning to LT [Applicant]?

LT [W] couldn't speak to that specific incident, but wouldn't find it to be untrue based on his experience.

2. In general, do you recall any incidents of unwelcome conduct towards LT [Applicant] due to her protected status? Note: I referenced the definition of prohibited harassment from COMDTINST M53050.4D.

There was no unwelcome conduct towards LT [Applicant] based on her protected status.

3. Do you feel this incident meets the definition of bullying, and do you recall any bullying incidents against LT [Applicant] in general? Note: I referenced the definition of bullying from COMDTINST M1600.2 when I asked the question.

LT [W] could not say for sure with regards to the January 2019 incident. However, LCDR [S] would often explode on the watch floor and counsel Command Center staff in public in an aggressive way. This happened to multiple JOs, including LT [W].

On one occasion (date could not be recalled), LT [W] called LCDR [S] regarding a SAR case to discuss multiple COAs. The call was made in the middle of the night. The next morning, LCDR [S] dressed LT [W] down in the presence of Petty Officers and civilian employees; exclaiming "I don't understand, do I need to pull your qualification" when challenging LT [W] on the SAR case. After, LT [W] asked to speak with LCDR [S] privately regarding the public reprimand. She listened to LT [W] and dismissed him to go home with no further discussion on the matter. LT [W] felt like he couldn't do anything right despite being picked for other projects, flag letters, etc. LT [W's] last evaluation dropped significantly even though he received praise from the senior staff.

4. Do you think there was a bad climate issue in the Command Center?

There was a climate issue that was driving LT [W] to want out of the [District] CC as soon as possible. LCDR [S] was the main reason and the catalyst for a poor climate. LT [W] noted there were a few people (LT [Applicant], LT [W], LT [Z], and LT [J]) that seemed to always be on her bad side. As a group or one on

one, they would seek guidance from Ms. [L] who was a prior CC chief and good mentor, and currently employed in the Command Center as a civilian.

- I interviewed Ms. [L] with respect to an incident of verbal abuse that reportedly happened in Jan 19. And I asked her if there were any other times she could remember verbal abuse.

1. Do you recall an incident in January 2019 where LCDR [S] was condescending/demeaning to LT [Applicant]?

Ms. [L] recalls LCDR [S] berating or publicly reprimanding LT [Applicant] on more than one occasion, but she doesn't necessarily recall the specific incident that occurred in Jan 2019. These type incidents happened many times, but Ms. [L] could not give specific dates or incidents. Ms. [L] said that she'd probably remember specifics if it happened once or twice, but because it happened frequently, all the incidents just blend together. She did not feel the negative relationship had anything to do with LT [Applicant's] protected status nor did it meet the standard of unwelcome conduct.

2. In general, do you recall any incidents of unwelcome conduct towards LT [Applicant] due to her protected status? Note: I referenced the definition of prohibited harassment from COMDTINST M53050.4D.

No.

3. Do you feel this incident meets the definition of bullying, and do you recall any bullying incidents against LT [Applicant] in general? Note: I referenced the definition of bullying from COMDTINST M1600.2 when I asked the question.

Yes. At times, LCDR [S] seemed to humiliate on purpose during public berating. Ms. [L] could not refer to a specific example.

4. Do you think there was a bad climate issue in the Command Center?

Yes, between LCDR [S] and the Master Chief did not produce a good climate. LCDR [S] would get mad at [K] and [N], but they didn't give her the reaction she was looking for. Everything was always tense, ramped up. There was a lot of anxiety. LCDR [S] was frequently referred to as Hurricane [LCDR S]. There was a noticeable change after she departed.

Ms. [L] mentioned that in her view, LT [Applicant], LT [Z], and LT [W] were her primary targets and that she pretty much had her mind made up about those three. Ms. [L] has been at [District] for 13 years and mentioned LCDR [S]' tenure there as a "hell of a three years." It was mostly equal opportunity public reprimanding for those three. No matter what they did, they could not do anything right.

On July 1, 2021, the applicant signed her OER for the June 1, 2020, through May 31, 2021, OER.⁸ The applicant received twelve marks of 6, and six 7s. The applicant received a mark of 6 out of 7 ("One of few distinguished officers) on the Comparison Scale, and a mark of 4 out of 6 ("Promote w/top 20% of peers") on the Promotion scale.

The applicant went before the PY2021 and PY2022 LCDR selection board and was non-selected for promotion during both boards. As a result, the applicant was separated from the Coast Guard for twice being non-selected for promotion. The applicant subsequently enlisted in the Coast Guard Reserve and was promoted to LCDR in the Reserve Component.

⁸ This is the second OER the applicant received after leaving the supervision of LCDR S.

VIEWS OF THE COAST GUARD

In the current case, the Coast Guard submitted a split decision to the Board, where the Personnel Service Center (PSC) recommended the Board grant relief, and the JAG recommended the Board deny relief.

PSC recommended the Board grant relief by removing the applicant's contested OER for the June 1, 2018, through April 30, 2019, rating period due to substantiated claims of bullying by the applicant's rating supervisor, LCDR S. PSC argued that because the applicant's claims of bullying by LCDR S were substantiated, the substantiated claims could constitute a bias against the applicant by LCDR S and render the OER unjust. PSC further recommended that the Board direct the Officer of Personnel Management (OPM) to re-evaluate the applicant's record for promotion once the erroneous and unjust OER is removed from the applicant's record.

The JAG argued that the applicant failed to provide sufficient evidence to meet the standard for the correction of an OER. The JAG stated that pursuant to *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. According to the JAG, the applicant must demonstrate, by competent evidence that the OER contained (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.⁹

The JAG stated that in the instant case, the applicant appeared to imply a misstatement of a significant hard fact based on the applicant's claims that her supervisor purposely underwhelmed her accomplishments in the OER, compared with the accomplishment laid out in the applicant's OSF. However, the JAG argued that the applicant failed to prove that her supervisor's comments were misstatements of significant hard fact and not simply a disagreement as to the significance of the events. The JAG claimed that the applicant and her supervisor disagreeing as to the significance of a particular event and what it should be rated as or be written as, is not a misstatement of a significant hard fact. In addition, the JAG stated that the applicant failed to take advantage of the administrative remedies afforded to officers who disagree with their OER such as submitting a Reported-on Officer Reply or applying for relief before the Personnel Records Review Board (PRRB). Furthermore, the JAG stated that the applicant did not contest the OER until almost six months after she signed it. The JAG argued that the applicant's failure to timely complain about the content of the evaluation or to apply for other administrative remedies is substantial evidence that when the applicant received her OER, she accepted it as valid, even if she did not like it.

Regarding the second *Hary* prong, the JAG stated that first the applicant alleged that there were multiple violations of the Officer Evaluation Systems Manual (OES) because she was not provided with "appropriate" mid-period counseling as required by the OES manual. However, the JAG stated that the applicant did not directly allege that she was not provided with mid-period counseling all together, but characterizes the counseling(s) as "convoluted, violat[ing] the anti-bullying policy...and lack[ing] appropriate professional substance." The JAG claimed that the applicant supported her assertions by stating that the date that is specified on her OER as the date

⁹ *Hary v. United States*, 223 Cl. Ct. 10, 18, 618 F.2d. 704, 708 (1981).

her mid-period counseling took place was actually the date she was “berated, demeaned and humiliated in front of a large group by [her] supervisor,” and a separate instance of alleged counseling where her supervisor made “mocking and demeaning gestures” and told the applicant “you’re just irritating, frustrating, and annoying.” The JAG explained that the failure of the applicant’s supervisor to provide mid-period counseling may have deprived the applicant of necessary information to correct any areas the supervisor may have found that the applicant was deficient in. However, the JAG further explained that unfortunately, while the investigation did substantiate instances of conduct that falls under the definition of bullying, and shows that the applicant may have had a difficult marking period, that is not sufficient evidence to substantiate the claim that she was not provided appropriate mid-period counseling.

Regarding the applicant’s claims that her Reviewer violated policy in the OES manual because he failed to return her OER to her Reporting Officer “to correct...inconsistencies between the evaluation and written comments, the JAG argued that the applicant’s claims are insufficient to prove that the second prong of the *Hary* test had been violated. The JAG explained that the Reviewer is supposed to return an OER if the comments do not match the marks, however, as the applicant argued in her application, the comments were allegedly “purposely underwhelmed” on several performance dimensions. The JAG stated that these were the performance dimensions that the applicant received marks of 4, but by the applicant’s own arguments, while she believed that the comments were inaccurate as written, because they were purposely underwhelmed, underwhelmed comments would support the low marks and therefore the Reviewer would have had no reason to flag any of the comments in the applicant’s OER. While the applicant alleged that her Reviewer “[k]new the immense impact of my contributions and deliberately ignored the blatant discrepancies,” the JAG argued that the applicant’s claims are not supported by the record. According to the JAG, in the Reviewer’s own sworn declaration, the Reviewer did not acknowledge having any knowledge of the applicant’s accomplishments during the marking period, and only speaks to the bullying.

The JAG argued that the applicant has adequately supported her claims that there were violations of Coast Guard regulations, but court decisions make it clear that simply violating a regulation is not enough, but that it must be “when preparation of the [report] violated an applicable statute or regulation.”¹⁰ With the clarification in mind, the JAG argued that there must be a violation of some policy governing the preparation of the applicant’s OER or related to the preparation of the OER, which the JAG claimed the applicant has not sufficiently proven. Accordingly, the JAG stated that while the applicant has proven that her supervisor committed isolated instances of conduct that violated the Discipline and Conduct Manual, these violations are insufficient to satisfy the *Hary* prong.

The JAG explained that to satisfy the third *Hary* prong, the applicant is required to present evidence that her supervisor used factors that adversely affected the rating process which had no business being in the rating process. Here, the JAG claimed that this prong is most strongly implicated by the applicant’s allegations of multiple instances of bullying by her supervisor and rating officer. The JAG stated that case law is relatively sparse on enumerating what particular “factors” count for purposes of this prong, but at least one case has stated that bias and personal

¹⁰ *Collins v. United States*, 24 Cl.Ct.32, 39 (1991).

animosity are such factors.¹¹ The JAG argued that while the applicant made claims that LCDR S had a bias against her, the “isolated instances” of bullying, substantiated by the applicant’s District’s memorandum, do not *per se* equate to bias or personal animosity. As explained above, the JAG stated that the substantiated report is evidence that the applicant’s supervisor violated policy contained within the Discipline and Conduct Manual, and that the supervisor had issues with her leadership style, this report is not sufficient evidence that the isolated bullying demonstrated a bias or personal animosity that affected the applicant’s OER. In addition, the JAG stated that the findings and outcome memorandum found that “[f]our members in the [District] CC, in addition to the complainant, felt they had been treated poorly (specifically humiliated) at times by the alleged offender in the [District] CC,” and therefore the supervisor’s actions did not target the applicant specifically.

The JAG argued that the applicant has also failed to prove her allegations of collusion between her former supervisor LCDR M and her then supervisor, LCDR S. The JAG argued that although the applicant claimed that her initial complaint against LCDR M was the precipitating event that led to the vindictive bias by LCDR S, there is no evidence to support the applicant’s claim. The JAG explained that although the applicant supposedly complained about LCDR M in the summer of 2017, and was subsequently transferred to the Command Center in January 2018, LCDR M was still the applicant’s rating supervisor for her May 31, 2018, OER. The JAG argued that despite the applicant’s claims that LCDR M was disgruntled, having a vindictive bias against the applicant, and colluding with LCDR S in order to hold the applicant accountable, LCDR M was still able to evaluate the applicant in an objective manner, which was not offensive to the applicant. The JAG claimed that this is substantial evidence against the applicant’s claim that LCDR M and LCDR S were conspiring against her. The JAG argued that though the applicant’s new work environment under LCDR S may have been challenging for her and others in the Command Center, the applicant failed to sufficiently prove that she was sabotaged or otherwise unfairly prevented from performing her duties properly. The JAG further argued that while the Reporting Officer may have had his faults in the way that he addressed critiques in the unit, the applicant failed to prove that the Reporting Officer was also colluding or in a “clique” that would undercut his reliability of his declaration or overcome the presumption of regularity. Moreover, the JAG stated that while the Reviewer acknowledged the substantiation of bullying and recommended that the applicant’s OER be removed, he did not state that the instances of bullying affected the applicant’s evaluation or that the evaluation was not objective regarding the applicant’s performance. Instead, the JAG stated that the Reviewer seemed to suggest that the substantiated allegations of bullying were *per se* evidence of improper lowering of marks, but that is not the standard. Accordingly, the JAG argued that the applicant failed to prove that the isolated instances of bullying, which may have made her work environment more challenging at times, resulted in her lower marks and evaluation.

To support his advisory opinion, the JAG submitted the following sworn declarations:

¹¹ *Guy v. United States*, 221 Ct. Cl. 427, 433 (1979) (“The process of evaluating officers by other officers is an inherently subjective process which neither the military boards nor this court will interfere with unless there is clear and convincing evidence of factors adversely affecting the ratings which had no business being in the rating process. Though the bias and personal animosity of rating officers are such factors...”).

- I, CAPT [C], United States Coast Guard (retired), declare as follows, pursuant to Title 28 United States Code § 1746:

1. I retired from the Coast Guard in July 2019 and no longer have access to many of my records. However, I was the [District] Chief, Incident Management and Reporting Officer on the applicant's OER at the time in question.

2. I first met [Applicant] when I arrived at [District] in August 2015 – she worked for LCDR [T] in the District Response Advisory Team (DRAT). I was LCDR [Ts] direct supervisor. During LCDR [T's] one-year tenure with me, the DRAT was very outward facing and spent a great deal of time traveling and participating in conferences, exercises and training sessions. [Applicant] excelled during this period and was highly regarded for her public speaking and interactions. During the summer of 2016, LCDR [M] arrived and took charge of the DRAT. LCDR [M] had just come from a Sector Incident Management position and believed the DRAT needed to focus more time and energy on supporting our three Sector Incident Management staffs and let them take on more of the outward facing interactions in their particular AOR. [Applicant] did approach me and express dissatisfaction with this new arrangement and her new supervisor – we had several conversations both in my office and at the coffee shop across from the building. However, not once was bullying or any sort of bullying behavior discussed and not once did I witness bullying or any sort of bullying behavior from LCDR [M]. I listened to [Applicant's] issues and worked behind the scenes with her supervisor to ensure he knew my expectations – which aligned directly with Coast Guard expectations – especially regarding respect in the workplace. I did tell [Applicant] I concurred with LCDR [M's] intent and I expected her to support her boss and the new direction. I also stated she was a junior officer and I expected her to work with her boss and to figure out an appropriate way ahead. Furthermore, I gave her some strategies to help her deal more effectively with her new supervisor. In addition, I made phone calls to several people I respect to see if LCDR [M] had any previous leadership issues. I learned LCDR [M] was not just a good leader, but a distinguished leader at his previous unit. That fact was further reinforced by subsequent subordinates and a previous subordinate that arrived at [District].

3. I reaffirm and uphold my signature as the Reporting Officer on the 01JUN18 – 30APR19 [Applicant] OER in question. Moreover, I firmly believe [Applicant's] 67-Page deposition is inaccurate, misleading and, in many cases, simply false. The bottom line is [Applicant] was at-best an average junior officer – she either did not complete assigned work or completed it with minimal effort to a poor standard. [Applicant] absolutely had sparks of success – showing us her full potential (her [redacted] Sea Fair coordination efforts come to mind), but she could never muster the sustained effort and consistent performance we sought. This was a recurring theme with both supervisors. [Applicant] was well spoken and well liked – I am not surprised a few peers came to her defense in this effort. However, I do not see how their comments or criticisms could be construed as cogent arguments to counter the OER marks and comments provided. The conclusion paragraph from Mrs. [P] is a perfect example:

A distinguished colleague Ms. [P] and former civilian at [District] stated: “I can absolutely and without reserve endorse [Applicant's] outstanding achievements and professionalism ... [Applicant's] exceptional communication skills, team-work approach and warm friendly personality were a constant source of inspiration. [Applicant] always looked out for her shipmates, making sure everyone on the team had what they needed to excel...Without reserve I highly recommend [Applicant] to receive all appropriate recognition for her sustained excellence in serving with honor and in the highest traditions of the U.S. Coast Guard.

This is very pleasant, flowery language – addressing none of the performance deficiencies leading to the OER results she is contesting. I see nothing in [Applicant's] package to refute the bottom line fact – [Applicant] did not complete assigned work or completed it with minimal effort to a poor standard. In addition, Ms. [P] was not a Coast Guard civilian during this OER period and thus cannot even provide an anecdotal account of [Applicant's] performance during this period.

4. The saddest part of her discourse is she does not accept responsibility for her shortcomings, but instead blames her mediocre performance on the people who tried diligently to mentor her. Each of these people went out of their way and acted selflessly to try to turn her around and save her declining career. The decision

to move her from the DRAT to the Command Center was not made flippantly – nor was it forced upon her – it was an option she chose and embraced when it was presented. Moreover, the plan was vetted with both the [District] Chief of Staff and OPM before it was offered or implemented. All parties socialized and acknowledged there would be a slight learning curve involving AOR nuances, but [Applicant] was previously qualified as a Sector Command Center COO and she would be expected to perform collateral duty administrative work. Unfortunately, her poor attitude and performance continued after this change of venue and supervisor.

5. I acknowledge making a comment at an LDAC meeting while reviewing OEOM survey data similar to “some people need to shut up.” The context of the comment was along the lines of people sometimes using the DEOMI survey as a means for anonymous attacks on staff members. Regardless, looking back, this comment was inappropriate and unprofessional – I regret it.

6. Please note – [Applicant’s] supervisor during her tenure in the Command Center, LCDR [S], [District] Command Center Chief, was the [District’s] 2018 CAPT Dorothy Stratton Leadership Award nominee. While three members of the Command Center staff contributed to [Applicant’s] 67-page request – twenty to twenty-five others did not.

Conversely, numerous [District] Command Center personnel came out in support and provided examples for LCDR [S’s] Inspirational Leadership award package. I would suggest the Board read this document (attached).

7. I noted both of [Applicant’s] Command Center climate witnesses (LT [W] and LT [Z]) were two other poor performers from the watch floor who were also held accountable for poor performance and were not satisfied when given negative endorsements for follow-on assignments. It seems strange to me that the other twenty to twenty-five members of this work area made no statements.

8. The OSF submitted in the 67-page package was not the version originally received in the OER package – the original version was a source of frustration for the OER chain. She was asked to resubmit another OSF – this may have been the revised version.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 28th day of June 2021.

- I, CAPT [B], United States Coast Guard, declare as follows, pursuant to Title 28 United States Code § 1746:
 1. I am currently the Commodore at Coast Guard Patrol Forces [redacted] ([redacted]). During my previous assignment, I served as the Chief of Response for Coast Guard [District], and as such, I served as Reviewer for [Applicant’s] OER with End of Period 30 Apr 2019.
 2. I was three levels senior to [Applicant] as Chief, Response Division, from January 2019 to end of period 30 Apr 2019. Prior to my taking over these duties, [Applicant] had been reassigned from the DRAT branch under LCDR [M] to the Command Center under supervision of LCDR [S].
 3. While I did not witness or hear of any indications of a bullying or adversarial relationship within the Command Center during the time indicated in [Applicant’s] BCMR application, I was made aware of similar allegations upon the departure of LCDR [S] in July of 2019. While discussing command climate with members of the Command Center in regards to another member’s complaint, I was informed that “cliques” existed and that LCDR [S’s] pervasive confrontational personality was incredibly detrimental to the cohesive environment and likely focused upon several individuals. I cannot attest to the specific incidents identified in [Applicant’s] BCMR request, but I can say with some confidence that the allegations appear to coincide with similar reports that I heard with members of the Command Center watch and that were further investigated during the subsequent AHHI investigation.

4. In my opinion, given that the atmosphere of bullying and poor leadership that was pervasive within the Command Center during the 01 June 2018 to 30 April 2019 period, I would recommend that [Applicant's] OER for that period be removed from her record and that a special board consider her record for promotion.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 21st day of June 2021.

- I, Commander [S], United States Coast Guard, declare as follows, pursuant to Title 28 United States Code § 1746:

1. I was [Applicant's] direct supervisor as Chief, [District] Command Center during the Officer Evaluation Report (OER) period 01 June 18 to 30 Apr 19.

2. I strongly non-concur with [Applicant's] allegations that the OER for this period was erroneous, inaccurate, and/or unjustly evaluated her performance. [Applicant's] OER for the period 01 June 18 to 30 Apr 19 fairly and accurately reflects her performance during that time, and was completed in accordance with all applicable policies and procedures. I recommend the OER for the period 01 June 18 to 30 Apr 19 remain in [Applicant's] record.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 28th day of June 2021.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 8, 2022, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited her to respond within thirty days. The Chair received the applicant's response on May 3, 2022.

The applicant stated that her appeal for relief is based on substantiated bullying and prohibited harassment that she endured by her then supervisor, LCDR S (now CDR S). The applicant alleged that this derogatory behavior was tolerated by a senior member of her Chain of Command, CAPT C, who willfully encouraged these practices, through his own example.

The applicant argued that in the Coast Guard's advisory opinion, despite substantiated bullying and prohibited harassment, the Coast Guard astonishingly recommends that the Board deny relief in her case. The applicant stated that first, the Coast Guard denied that personal bias or animosity adversely affected her evaluation, and second, the Coast Guard claims that she failed to establish that her OER warrants removal because the applicant failed to carry her burden. The applicant steadfastly disagreed with the Coast Guard's conclusion.

The applicant explained that bullying and prohibited harassment have no business being the rating process, period. The applicant argued that she has proven, by a preponderance of the evidence, through the AHHI investigation and her original statement, that her OER was adversely affected by personal bias, animosity, and prohibited behavior on the part of her rating supervisor, LCDR S. The applicant further argued that it is unfathomable that the Coast Guard justified the validity of her OER under these circumstances. The applicant alleged that in addition to her daily torment, the abusive behavior was also meant to humiliate her through a derogatory evaluation.

The applicant claimed that her OER was the product of “Low Appraiser Motivation,” intended to devastate any potential for promotion or a future within the organization. The applicant argued that without this Board’s intervention, CAPT C and LCDR S’s intentions will succeed, and their malicious behavior will go unaccounted for, and condone the same discrimination, exclusion, and intimidation toward other hard-working minority females.

The applicant stated that a distinguished officer and colleague, LCDR F, who was also subjected to bullying by LCDR S, directly witnessed the discrimination, bullying and prohibited harassment the applicant endured at the hands of LCDR S. The applicant provided an excerpt from a statement submitted by LCDR F, which reads in part as follows:

[CDR S’s] liberal and frequent use of humiliation was the first indication that she was a toxic leader...[Her] temperament [was] frightening to behold. I’m not sure what the cause of this enmity was for her subordinates, though from my dealings with her, I can attest she had an inferiority complex for other officers whom she thought “did not deserve” to be the rank they were. Subsequent conversations I have had with peers led me to believe her being passed over “negatively impacted” her mindset. The people I am aware of who she was most negative towards are female. Perhaps other women succeeding where she failed, made her harsher on females. As a fellow female officer, I cannot stomach this discrimination; indeed, I have worked to correct the broken people in [CDR S’s] wake in the two years after her departure. Several women told me they were waiting to leave the service as soon as possible due to [CDR S’s] treatment of them, including one member having self-harming thoughts...I followed [Applicant] into the Leadership and Diversity Advisory Council Chair position and found [Applicant’s] legacy thorough and passionate. [Applicant] led meetings [and] improv[ed] diversity and leadership understanding. She was competent and well organized...I can attest that from my perspective, she performed well as the LDAC Chair and as a competent watchstander, having briefed me several times during [Command Center - Search and Rescue] cases...I have been an officer since 2007 and a Commanding Officer to 56 Active Duty, 23 Reserve Coast Guardsmen and Women. I have never seen a more unprofessional environment than the one led by [CDR S]. There were clear lines of delineation between those whom she favored and those she marginalized. I believe [Applicant] to have been one of these that she marginalized.

The applicant stated that although she was denied a copy of the full AHHI investigation, her District’s legal staff told the applicant they would provide a copy to this Board if requested. The applicant reiterated that the investigation and the Coast Guard’s advisory opinion both acknowledge and substantiate claims of bullying. The applicant argued that the evidence also shows that the bullying and harassment occurrences were not isolated or rare. The applicant explained that even though the AHHI investigation denied unlawful harassment, Article 3.D.2 through 4 of the Civil Rights Manual clearly states the following:

Prohibited Harassment – Generally, a single action or utterance...would not be considered severe or pervasive enough to constitute unlawful harassment in violation of federal law. However, it is the Coast Guard’s policy that such conduct, even a single unintentional incident, has no place in the Coast Guard and must be stopped. **Prohibited harassment** includes, but is broader than, those behaviors that amount to unlawful harassment. Unwelcome conduct that unreasonably interferes with work performance or creates an intimidating, hostile, or offensive work environment is prohibited by this policy, even if not based on a protected status. **Prohibited harassment includes bullying.**

Additionally, the applicant stated that Article 3.C.1.3. of the Discipline and Conduct Manual, states:

[t]hose within the CoC who violate this policy by failing to investigate reports of bullying, or implicitly approving it through inaction when they know or reasonably should know such activity is occurring or has occurred must be held properly accountable.

The applicant stated that notably, CAPT C refused to acknowledge and continued to dismiss any wrongdoing by himself or his “clique.” The applicant argued that accountability is required in order to make whole the deliberate failings by her then Chain of Command. The applicant pointed to the statement provided by CAPT B, who was CAPT C’s supervisor, which stated in part:

In my opinion, given the atmosphere of bullying and poor leadership that was pervasive within the Command Center during the 01 June 2018 to 30 April 2019 period, I would recommend that [Applicant’s] OER for that period be removed from her record and that a Special Selection Board consider her record for promotion.

The applicant also referenced VADM V, from Coast Guard PSC, which also recommended the removal of the applicant’s OER due to substantiated claims of bullying, which could constitute bias on the part of the applicant’s supervisor, LCDR S, and render the OER unjust. The applicant explained that Coast Guard PSC, including VADM V’s, responsibility is to support Coast Guard missions through accessing, developing and maintaining the well-being of career progression for all personnel. The applicant further explained that the OES defines and details PSC’s authority, wisdom and expertise to maintain the integrity of the OER system. The applicant stated that the PSC is trusted with validating and processing thousands of OERs each, and also identifies and analyzes trends that jeopardize the integrity of the system such as “factors that can distort OERs.” The applicant argued that Article 19.B. of the OES manual, and the evidence provided, validates that her OER was inaccurate, as described by the following distorting factors:

- (1) Low Appraiser Motivation - The evaluator knows that a poor appraisal could significantly hurt the employee’s future, particularly opportunities for promotion or selection, the evaluator [is] reluctant to give a realistic appraisal.
- (2) Leniency Error & Halo Error – Negative leniency error occurs when an evaluator has their own value system that acts as a standard against which appraisals are made. Relative to the true or actual performance an individual exhibits, evaluators mark low. They evaluate according to their own biases, and NOT rating with established service standards. The “halo effect” or error is a cognitive bias that occurs when one is rated extremely low on all factors based on a [perceived] rating of one or two factors.
- (3) Central Tendency - The evaluator’s ability to appraise objectively and accurately has been impeded and they rate employees as average.

The applicant explained that after reviewing the evidence, prominent senior officials within the Coast Guard organization, CAPT B and RADM V, both recognized the egregious conduct of CAPT C and LCDR S, and acknowledged the incredible injustice that occurred. The applicant stated that both individuals advocated for the accountability of the applicant’s aggressors, and strongly recommended relief to help restore a promising career and maintain the integrity of the vital OER system. Accordingly, the applicant requested that the Board intervene in order to rectify the injustice.

To support her application, the applicant submitted three additional character references. However, these character references were mostly statements pertaining to the applicant’s career achievements after her departure from the District at the center of the applicant’s allegations of

bullying and harassment, and rendered almost no relevant evidence regarding the applicant's allegations of bullying and harassment. Any pertinent information regarding the applicant's allegations of bullying and harassment was already summarized above in the applicant's reply to the advisory opinion. In addition, much of the praise the applicant received in these character references is reflected in the marks received in her subsequent OERs. Accordingly, these character references will not be summarized here.

APPLICABLE LAW AND POLICY

Title 14 U.S.C. § 2120(b) provides the following guidance on Special Selection Boards:

...

(b) Officers considered but not selected; material error.

(1) In general. In the case of an officer or former officer who was eligible for promotion, was considered for selection for promotion by a selection board convened under section 2106, and was not selected for promotion by that board, the Secretary may convene a special selection board to determine whether the officer or former officer should be recommended for promotion, if the Secretary determines that –

(A) an action of the selection board that considered the officer or former officer –

(i) was contrary to law in a matter material to the decision of the board; or

(ii) involved material error of fact or material administrative error; or

(B) the selection board that considered the officer or former officer did not have before it for consideration material information.

(2) Effect of failure to recommend for promotion. If a special selection board convened under paragraph (1) does not recommend for promotion an officer or former officer, whose grade is that of commander or below and whose name was referred to that board for consideration, the officer or former officer shall be considered –

(A) to have failed of selection for promotion with respect to the board that considered the officer or former officer prior to the consideration of the special selection board; and

(B) to incur no additional failure of selection for promotion as a result of the action of the special selection board.

(c) Requirements for special selection boards. Each special selection board convened under this section shall–

(1) be composed in accordance with section 2107 and the members of the board shall be required to swear the oaths described in section 2109;

(2) consider the record of an applicable officer or former officer as that record, if corrected, would have appeared to the selection board that should have considered or did consider the officer or former officer prior to the consideration of the special selection board and that record shall be compared with a sampling of the records of –

(A) those officers of the same grade who were recommended for promotion by such prior selection board; and

(B) those officers of the same grade who were not recommended for promotion by such prior selection board; and

(3) submit to the Secretary a written report in a manner consistent with sections 2117 and 2118.

(d) Appointment of officers recommended for promotion—

(1) In general. An officer or former officer whose name is placed on a promotion list as a result of the recommendation of a special selection board convened under this section shall be appointed, as soon as practicable, to the next higher grade in accordance with the law and policies that would have been applicable to the officer or former officer had the officer or former officer been recommended for promotion by the selection board that should have considered or did consider the officer or former officer prior to the consideration of the special selection board.

(2) Effect. An officer or former officer who is promoted to the next higher grade as a result of the recommendation of a special selection board convened under this section shall have, upon such promotion, the same date of rank, the same effective date for the pay and allowances of that grade, and the same position on the active duty promotion list as the officer or former officer would have had if the officer or former officer had been recommended for promotion to that grade by the selection board that should have considered or did consider the officer or former officer prior to the consideration of the special selection board.

(3) Record correction.--If the report of a special selection board convened under this section, as approved by the President, recommends for promotion to the next higher grade an officer not eligible for promotion or a former officer whose name was referred to the board for consideration, the Secretary may act under section 1552 of title 10 to correct the military record of the officer or former officer to correct an error or remove an injustice resulting from the officer or former officer not being selected for promotion by the selection board that should have considered or did consider the officer or former officer prior to the consideration of the special selection board.

(e) Application process and time limits. The Secretary shall issue regulations regarding the process by which an officer or former officer may apply to have a matter considered by a special selection board convened under this section, including time limits related to such applications. ...

Article 3 of the Coast Guard Discipline and Conduct Manual, COMDTINST M1600.2, provides the following guidance on bullying:

3.A.1.c. Bullying. Subjecting an individual military member to harassment or ridicule for the purposes of “exclusion” is prohibited and will not be tolerated. No service member may engage bullying. Its prevention is an all-hands responsibility.

3.A.1.d. Prevention. Hazing and bullying serve no useful purpose and are contrary to our core values of honor, respect, and devotion to duty and have no place in our organization. The demeaning, abusive activities associated with hazing and bullying inhibit performance, debase personal dignity, and can result in serious injury. To prevent hazing and bullying, we must be aware of what constitutes hazing and bullying and understand these activities’ negative impact. Our success as an organization depends on the positive and productive attitude and performance of our people. A healthy, positive, professional work environment is essential to enable all our personnel to contribute to mission success.

...

3.A.1.f. Investigations and Administrative/Disciplinary Action. The Coast Guard has no place for dehumanizing treatment. Commands must investigate any hazing or bullying incident and initiate appropriate administrative or disciplinary action against the perpetrators and those in the chain of command who are

determined to have tacitly condoned such practices, either by inaction or neglecting to investigate reported incidents.

...

3.B.3. Definition of Bullying. Bullying is abusive conduct by a military member or members which harms a military member or any other persons, either physically or psychologically, without a proper military or other governmental purpose and with intent to exclude the member. Bullying is threatening, humiliating, or intimidating. Bullying can also be work interference, undermining performance, or verbal abuse. Individuals are often targeted because they may be perceived to be weak, different, or pose a threat to the bully. Bullying may also be described as psychological abuse, psychological harassment, ‘status-blind’ harassment, and mobbing. It often involves an imbalance of power between the aggressor and the victim. Bullying includes, but is not limited to:

...

2. Intimidating,
3. Teasing,
4. Taunting,
5. Oral or written berating of another for the purpose of belittling or humiliating,

...

10. Degrading or damaging the person or his or her property or reputation.

Article 5 of The Coast Guard Officer, Accessions, Evaluations, and Promotions Manual, COMDTINST M1000.3A (September 2013), provides the following guidance on the Officer Evaluation System (OES):

Article 5.B.5. For this Chapter, commanding officers include area and district commanders, commanders of logistics/service centers, commanding officers of Headquarters units and subordinate units or organizations, and cutters. Commanding officers must:

- a. Ensure accurate, fair, and objective evaluations are provided to all officers under their command. In using the OER, strict and conscientious adherence to specific wording of the standards is essential to realizing the purpose of the evaluation system.

...

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 over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record. The Board finds that the applicant has exhausted her administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by

the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

2. The application was timely filed within three years of the applicant's discovery of the alleged error or injustice in the record, as required by 10 U.S.C. § 1552(b).

3. The applicant alleged that during the reporting period for the disputed OER, she was subjected to extreme bullying and harassment while under the supervision of LCDR S, who was biased against the applicant and displayed animosity toward her. The applicant further alleged that LCDR S used the applicant's OER to intentionally harm the applicant's career and the OER should therefore be removed from her record. The applicant requested that once the OER is removed from her record, that an SSB be convened to review her promotion to LCDR absent this erroneous and unjust OER. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in the military record, and the applicant bears the burden of proving, by a preponderance of the evidence, that the disputed information is erroneous or unjust.¹² Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."¹³ To be entitled to relief, 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."¹⁴

4. Administrative Investigation into Allegations of Bullying. Article 3.B.3. of the Discipline and Conduct Manual, M1600.2, defines bullying as:

Abusive conduct by a military member or members which harms a military member or any other persons, either physically or psychologically, without a proper military or other governmental purpose and with intent to exclude the member. Bullying is threatening, humiliating, or intimidating. Bullying can also be work interference, undermining performance, or verbal abuse. Individuals are often targeted because they may be perceived to be weak, different, or pose a threat to the bully. Bullying may also be described as psychological abuse, psychological harassment, 'status-blind' harassment, and mobbing. It often involves an imbalance of power between the aggressor and the victim.

The record shows that on July 7, 2020, an Administrative Investigation was initiated into allegations that the applicant had been subjected to prohibited harassment and bullying by her immediate supervisor, LCDR S. The record further shows that on August 7, 2020, after interviewing multiple witnesses, the investigation was concluded, with VADM V issuing a memorandum on August 31, 2020, wherein he concurred with the findings of the IR and found that in "isolated circumstances [LCDR S] exceeded acceptable counseling standards and her behavior crossed the threshold into verbal abuse, including humiliating and intimidating." In support of the IR, the IO submitted interview summaries of those with knowledge of LCDR S's

¹² 33 C.F.R. § 52.24(b).

¹³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

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).

leadership style. Of those interviewed, several individuals, including a civilian, stated that LCDR S would often berate, belittle, and humiliate other officers in front of other, more junior servicemembers. An interview summary was also provided for LCDR S. During her interview, LCDR S either denied the allegations altogether or provided a version of events that contradicted the accounts of those claimed to have been publicly berated and humiliated by her. An interview summary of CAPT C, was also provided. However, CAPT C took no accountability for the bullying that took place under his watch, continued to praise LCDR S, and blamed LCDR S's alleged victims, labeling them as "disgruntled underperformers." The Board finds LCDR S's and CAPT C's accounts unpersuasive given the witnesses' statements and VADM V's findings that LCDR S's actions did in fact "cross the threshold into verbal abuse, including humiliating and intimidating."

Furthermore, in a sworn declaration drafted by CAPT B, who was three levels senior to the applicant at the time of the alleged bullying, CAPT B stated:

While I did not witness or hear of any indications of a bullying or adversarial relationship within the Command Center during the time indicated in LT [Applicant's] BCMR application, I was made aware of similar allegations upon the departure of LCDR [S] in July of 2019. While discussing command climate with members of the Command Center in regard to another member's complaint, I was informed that 'cliques' existed and that LCDR [S's] pervasive confrontational personality was incredibly detrimental to the cohesive environment and likely focused upon several individuals. I cannot attest to the specific incidents identified in LT [Applicant's] BCMR request, but I can say with some confidence that the allegations appear to coincide with similar reports that I heard with members of the Command Center watch and that were further investigated during the subsequent AHHI investigation.

Accordingly, the Board finds that the applicant has proven, by a preponderance of the evidence, that she was subjected to prohibited bullying by her supervisor, LCDR S.

5. Coast Guard Split Opinion. The Coast Guard submitted a split opinion in the applicant's case. PSC recommended that the Board grant relief in this case. According to PSC, the applicant's June 1, 2018, through April 30, 2019, OER should be removed from the applicant's record "based on substantiated claims of bullying behavior, which could constitute bias of the supervisor against the applicant and render the OER unjust." PSC's position was shared by CAPT B, who was three levels senior to the applicant at the time of the contested OER. Not only did CAPT B state that the applicant's allegations coincide with similar reports he had received from other members who served under LCDR S, but he also stated that in his opinion, "[g]iven the atmosphere of bullying and poor leadership that was pervasive within the Command Center during the 01 June 2018 to 30 April 2019 period, I would recommend that LT [Applicant's] OER for that period be removed from her record and that a special board consider her record for promotion."

However, the JAG argued that despite the applicant proving that she was subjected to prohibited bullying, the applicant failed to prove that any of the *Hary* prongs had been violated in the production of her OER. In addition, the JAG pointed to the fact that the applicant failed to take certain key steps afforded by policy to challenge the comments and marks contained within the OER. To further support his position, the JAG submitted a sworn declaration drafted by CAPT C, who declared under penalty of perjury that the marks the applicant received were just and accurate and had nothing to do with any alleged bullying. CAPT C stated that the applicant was "at best an average junior officer" who "either did not complete assigned work or completed it with minimal

effort to a poor standard.” CAPT C further stated, “The saddest part of her discourse is she does not accept responsibility for her shortcomings, but instead blames her mediocre performance on the people who tried to diligently to mentor her.” Throughout his sworn declaration, CAPT C spent much of his time praising LCDR S’s leadership style, while attacking the credibility, integrity, and work ethic of those who accused LCDR S of prohibited harassment and bullying. The JAG also submitted a sworn declaration from LCDR S, wherein LCDR S stated she stood by her marks and comments in the applicant’s contested OER and recommended the OER remain in the applicant’s record.

The Board agrees with PSC and finds that the applicant has proven by a preponderance of the evidence that she was subjected to repeated unprofessional bullying and intimidation by a hostile supervisor. Moreover, the Board finds that the preponderance of the evidence shows that the bullying and intimidation and the supervisor’s hostility were sufficiently severe and pervasive to have reasonably adversely affected the applicant’s performance and the disputed OER. Although CAPT C strongly supported the supervisor in his affidavit, the record shows, evidenced by his own statements, that CAPT C had a general distaste for crewmembers who made complaints and raised concerns, putting the applicant in a no-win situation. This is reflected in CAPT C’s own admission that in response to criticisms from members of the crew regarding poor command climate he stated, “Some people need to shut up,” or words to that affect. In addition, CAPT C repeatedly attacked the credibility and motives of LCDR S’s victims even after VADM V found that LCDR S had engaged in prohibited bullying, including intimidating and humiliating her subordinates. The Board also notes that CAPT C was the applicant’s Reporting Officer on two previous OERs before the contested OER and although CAPT C claimed in his affidavit to the BCMR that the applicant was “at best an average junior officer,” this claim is not supported by his own marks. On the applicant’s two previous OERs, she received praise from CAPT C. Specifically, CAPT C made the following comments:

Tremendously capable officer who understands value of mission planning & execution; demonstrated high aptitude for attaining new skill sets; certified District CDO on own initiative and thriving within ops planning/oversight domain. Deeply committed to empowering/developing self & others; mentored numerous active/reserve mbrs while deployed ISO Hurricane [redacted], effectively leveraged incident for career growth by creating deliberate opportunities for team to gain invaluable experience & earn adv’d JCS quals. Diverse Shore Forces-Response background ideal candidate/highly recommended for Sector ENF/IMD/CPFR Div Chief, CC Chief, Strike Team OPS, Chem Officer positions or high-vis/fast-paced special assignments Flag Aide, OPM, DHS/WH or Cong/External affairs billets. Strongest recommendation for Industry Training. Highly recommended for promotion with peers.

LT [Applicant] is an extremely motivated officer, highly capable of managing special projects in addition to routine DRAT duties; earned an LOC for [redacted] Seafair efforts. LT [Applicant] has an exceptionally broad Response Ashore qual base coupled w/ an eagerness to seek new opportunities; most recently earned both the ICS Division/Group Supervisor & Planning Section Chief certifications. LT [Applicant] would benefit from an assignment with an increased leadership role & the opportunity to further gain experience using the many qualifications within response ashore positions; highest recommendation for Chief, Enforcement or IMD at Sector or MSU, Strike Team Operations or Chemical Officer positions. Highly recommended for Station CO/XO, MSST XO/OPS. Highest recommendation for Post-Graduate Law school. Highly recommended for promotion with the best of peers.

In addition, CAPT C concurred with the applicant’s supervisor, LCDR M, who gave the applicant a mark of “Promote w/top 20% of peers,” and a mark of “Definitely Promote.” These

marks and comments are inconsistent with CAPT C's claim in his affidavit that the applicant was "at best an average junior officer."

Finally, the Board finds that CAPT C's statements further substantiate the applicant's claims that despite reporting her poor treatment under LCDR S to CAPT C, her concerns were disregarded by CAPT C, forcing the applicant to endure the prohibited bullying from LCDR S. Given these circumstances—that the applicant's complaints were ignored by her superiors, specifically CAPT C—it is reasonable that the applicant found that submitting a Reported-on Officer Reply would have accomplished little in her effort for redress and accountability and may even have provoked her bully.

Accordingly, the Board finds PSC's and CAPT B's recommendations and arguments more persuasive when compared to those of the JAG, CAPT C, and LCDR S, and more in line with the records and evidence in this case. Article 3.B.3 of the Discipline and Conduct Manual, COMDTINST M1600.2, states, "[B]ullying can also be work interference, undermining performance, or verbal abuse." Here, the Board finds that the applicant has proven, by a preponderance of the evidence, that LCDR S held a strong bias against the applicant and repeatedly bullied her. The Board is persuaded that the applicant's 2019 OER was adversely affected by her supervisor's unprofessional, severe, and not infrequent bullying. The Board notes in this regard that the marks and comments on the 2019 OER are significantly lower than the marks and comments on her 2018 OER and on the OERs the applicant had previously received as a CDO at another Command Center. Accordingly, the applicant's OER for the June 1, 2018, through April 30, 2019, rating period should be removed from her record and replaced with an OER prepared for continuity purposes only because the OER was adversely affected by a factor "which had no business being in the rating process."¹⁵

6. Special Selection Board. Because the Board has found, by a preponderance of the evidence, that the applicant's 2019 must be removed from her record as an erroneous and unjust product of her supervisor's bullying, the Board also finds that the applicant is entitled to an SSB for the PY2021 and PY 2022 LCDR promotion cycles, in accordance with 14 U.S.C. § 2120.

7. For the reasons outlined above, the Board finds that the applicant has proven, by a preponderance of the evidence, that her June 1, 2018, through April 30, 2019, OER was erroneous and unjust and should be removed from her record. The applicant has also proven that because of this error and injustice she is entitled to an SSB.¹⁶ Therefore, the Coast Guard should remove the applicant's contested OER from her record, replace it with one prepared for continuity purposes only, and order an SSB to evaluate the applicant's record for promotion for PY2021. If the first SSB does not select her for promotion, the Coast Guard should convene an SSB for PY2022 to evaluate her record for promotion.

8. If neither SSB selects the applicant for promotion, no further corrections are warranted. If either SSB selects the applicant for promotion, the Coast Guard should void her separation and work with the applicant to return her to active duty. The Coast Guard should also put her name on the next promotion list for appointment to LCDR and, once she is promoted,

¹⁵ See *Hary*, 618 F.2d 704, 708 (Ct. Cl. 1980).

¹⁶ *Hary*, 618 F.2d at 708.

backdate her date of rank to what it would have been had she been selected for promotion by the original PY2021 or PY2022 selection board, based on her selection by the applicable SSB, and she should receive all due backpay and allowances.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former LT [REDACTED] [REDACTED] USCG, for the correction of her military record is granted. The Coast Guard shall--

- Remove her OER for the period June 1, 2018, through April 30, 2019, from her military record and replace it with a continuity OER;
- After her record is corrected, convene a Special Selection Board to evaluate her record for promotion by the PY2021 LCDR selection board. If that SSB does not select her for promotion, convene a second Special Selection Board to evaluate her record for promotion by the PY2022 LCDR selection board. If neither SSB selects her for promotion, nor further correction of her record shall be made.
- If either SSB selects her for promotion, the Coast Guard shall void her separation; work with her to return her to active duty; place her name on the next LCDR promotion list for appointment to LCDR; once promoted, backdate her date of rank to what it would have been had she been selected for promotion by the original PY2021 or PY2022 LCDR selection board based on which SSB selected her for promotion; and pay her all back pay and allowances due her as a result of these corrections.

October 11, 2023

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