


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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2021-081


LTJG (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 27, 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 27 10, 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 Junior Grade (LTJG/O-2), who was discharged on June 20, 2021, after twice failing to be selected for promotion to Lieutenant (LT/O-3), asked the Board to correct her record by removing two Officer Evaluation Reports (OERs). The first disputed OER evaluates her performance from October 1, 2017, through January 31, 2018, and the second evaluates her performance from February 1, 2018, through June 25, 2018. The applicant further requested that a Special Selection Board (SSB) be convened to determine if she would have been selected for LT had the disputed OERs not been in her record. If an SSB determines she would have been selected, the applicant requested that her date of rank be backdated and that she be awarded backpay and allowances.

The applicant explained that upon graduating from the Coast Guard Academy in May 2016, she was a motivated and excited junior officer (JO) who wanted to serve her country wholeheartedly, while continuing to expand her leadership skills to grow into a person of high respect and moral character. For her first tour of duty, she was assigned to a 154-foot cutter as a Deck Watch Officer. However, the applicant alleged that some unfortunate experiences tarnished her previous optimistic nature during her second year aboard the cutter.

The applicant explained that in 2017, a new command took over the cutter. According to the applicant, the new command consisted of an LT/O-3 as the commanding officer (CO) and an

LTJG/O-2 as the executive officer (XO). Both were male. The applicant alleged that as a JO under their leadership, she relied on them to be mentors and leaders whom she could learn from and depend on. However, the applicant claimed that their mistreatment of her in the workplace demonstrated callousness, not only of a subordinate, but a human being. The applicant further claimed that the workplace victimization and prejudicial behavior that took place not only affected her mental health, but also hindered her career progression. The applicant alleged that due to her command's treatment and reprisal through her OERs, she was twice passed over for promotion to LT and so, under 14 U.S.C. § 2142,¹ was required to be separated from the Coast Guard. The applicant stated that as a result, she was also ineligible to conduct an inter-service transfer due to her non-promotion and current status as an "involuntary" discharge.

The applicant argued that what she experienced aboard her cutter was unjust and that she did not deserve such treatment. The applicant alleged that there had been many instances where prejudice took place which ranged from discriminatory questions about her nationality to a tremendous lack of concern for her medical well-being when she was in need of urgent medical assistance. The applicant claimed that the most egregious act committed by both her CO and XO was not taking her medical emergency seriously. She explained that one night when her cutter was on patrol, she began feeling unbearable pain in her abdomen. She was in her rack tossing and turning, trying to find a position to relieve the pain, but she was unable to do so. She claimed that she got out of bed feeling faint due to the continued pain and went to the dining room to get a Gatorade/Powerade in hopes that drinking electrolytes would help ease the pain, but it did not help. The applicant stated that she then went to seek assistance from the Office on Deck (OOD), who contacted the Emergency Medical Technician (EMT), who diagnosed her the best he could. The applicant claimed that when she was with the EMT, she remembers the OOD contacting the CO and XO, yet despite her being in excruciating pain, they both stayed in bed. The applicant explained that she felt neglected and unsupported because neither the CO nor XO came to assist her in the distressing situation.

The applicant further explained that as soon as the EMT was done obtaining the relevant information, he contacted the flight surgeon, and a medevac was ordered so that she could head toward land and go to the nearest hospital. The applicant alleged that the OOD once again contacted the CO and XO, but both still remained in their beds. The applicant further alleged that there seemed to be no sense of urgency to head closer to shore, despite this being a medical emergency. According to the applicant, as time passed, the CO and XO eventually made their way to where she was, but neither of them spoke to her or expressed any concern for her well-being. The applicant claimed that as she was disembarking the cutter, her CO yelled at her, "You can get NJP'ed for malingering." The applicant stated that her chain of command did not provide her with an escort to go to the hospital, nor did they give her any words of encouragement.

During the time, the applicant stated that she experienced not only severe physical pain, but intense psychological and emotional pain as well. The applicant further stated that the

¹ Each officer of the Regular Coast Guard appointed under section 2101 of this title who is serving in the grade of lieutenant (junior grade) and who has failed of selection for promotion to the grade of lieutenant for the second time, shall:

(1) be honorably discharged on June 30 of the promotion year in which his second failure of selection occurs;

circumstances that surrounded this event were traumatizing, and left her paralyzed and unable to express her thoughts in a timely manner. The applicant explained that she was ultimately sent for emergency surgery and that had not she undergone that surgery, she didn't think she would be here today. The applicant stated that she was alone and scared, but luckily when she awoke the next morning her father was there. The applicant explained that had her father not taken leave to be with her, she would have been alone, with no one to check her out of the hospital.

The applicant explained that she believed a major violation of professionalism and sense of duty to others transpired during her emergency care. The applicant claimed that her command failed to show her empathy and respect because of their indifference to her suffering and their accusations of malingering. The applicant alleged that since this incident, she felt personally attacked as the subject of unfair treatment. The applicant further alleged that her command treated her like she was a whistleblower because the parent command initiated an investigation into her medical evacuation. The applicant claimed that due to her paralyzing trauma and mental anguish, she was unable to speak up for herself, partly because she did not want to revisit that night. The applicant alleged that she was traumatized by the lack of care and empathy displayed toward her and the fact that the emergency surgery would affect her for the rest of her life.

The applicant explained that after the investigation was initiated, she did not want to take part in it, but the parent command insisted that she take part and write a personal statement on the events that transpired that evening. According to the applicant, she did what she was told, but it was too sensitive for her to remember that night in great detail. The applicant stated that the results of the investigation and the words of her CO to the crew during the debriefing of the event really affected her. The applicant claimed that the CO seemingly placed the blame on her for the medical emergency, which left her feeling completely defeated. The applicant explained that she felt insignificant, and her CO's actions demonstrated that her well-being was not a priority to him. The further explained since these events transpired, it has been very difficult to work in such a toxic environment with superiors who treated her like she was dirt. The applicant alleged that she had always worked hard, placing 100% of her effort towards inspections, and did her best to lookout for others, even though no one was looking out for her. The applicant explained that on a daily basis, her command made her feel lesser than she was. The applicant alleged that her command treated her differently compared to other JOs and several other crewmembers. The applicant claimed there was neither mentorship or guidance and that her command did not engage her in any meaningful personal or professional conversations.

The applicant further claimed that her command did not care about her, and without her knowledge, they found ways to try and end her Coast Guard career. According to the applicant, her command demanded that she undergo a mental health check, and that while undergoing the mental health check, her psychiatrist told her in confidence that her boss was just "trying to get rid of me." The applicant stated that nothing came from the mental health checks, so her command discreetly sabotaged her career by marking her lower on one OER, and then giving her 3s for her last OER even though supporting documentation did not support those marks.

The applicant explained that she was a young JO who experienced unfathomable trauma that she subsequently affected every facet of her life, for the rest of her life. The applicant stated that as a former athlete, she trained to be resilient and grow through adversity, and that she never

wanted to relive the past. She further stated that she was raised to be strong and have true grit by immigrant parents, but after deep contemplation and processing of the traumatic events, she believes now is the best time for her to speak up, especially given the current societal climate we live in. The applicant stated that her past is still following her, and the feeling of worthlessness still lingers inside of her. The applicant explained that she is a hard worker, who cares for the people she works for, and is committed to doing her best every day. She argued that her OERs for the previous three years showed progression, stellar performance, and positive contributions to her unit and the Coast Guard. She argued that she performs and leads as well, if not better, than her peers with whom she graduated from the Coast Guard Academy. The applicant claimed that both her current CO, who is an O-5, and her XO, who is an O-3, both believed that she deserved the promotion, in addition to the other individuals she worked for and with.

The applicant argued that her character is absolutely suited for the Coast Guard and the rank of LT, which she argued she deserves. She argued that she demonstrated this through everyday service. To support her claims, the applicant explained that she continued to serve her unit despite having enough sick days to start terminal leave, and that she is still putting in 110%, looking out for others, and not neglecting her duties.

To support her application, the applicant submitted medical records and two letters of reference from a CDR D and LT S.

The relevant portions of CDR D's letter of recommendation are as follows:

2. My first interaction with LTJG [Applicant] involved preparations for the unit change of command in July 2019. As an incoming Commanding Officer, I am already assessing the strengths and weaknesses of the wardroom and felt reassured by LTJG [Applicant's] attitude and correspondence prior to my arrival [redacted]. Since the superb change of command ceremony she planned and executed, this officer continues to show an uncompromising sense of dedication, professionalism, and confidence at a fast-paced Deployable Specialized Forces unit. She is responsible for over \$10 Million in boats, law enforcement equipment, and weapons along with supervision and training of a 36-member department. She recently completed a 30-day deployment conducting operations on the Big Island of Hawaii where there is a near complete absence of Coast Guard infrastructure and the results earned her the commendation of the Captain of the Port of [redacted]. These responsibilities eclipse my own assignment as an O2 and she is unequivocally showing the ability and leadership of an O3/Lieutenant.

3. Junior officers must be permitted room for growth and mistakes. LTJG [Applicant] encountered difficult and unforgiving leadership in the past, but as a strong junior officer, she adapts and improves to avoid pitfalls in the future. Her performance at MSST [redacted] exhibits someone of impeccable moral character and a rigorous desire to continue professional growth. Please consider allowing this officer to continue a successful path in the Coast Guard. If you have any further questions or desire any correspondence on behalf of LTJG [Applicant], I can be reached at [redacted].

The relevant portions of LT S's letter of recommendation are as follows:

2. Upon arrival to MSST [redacted], LTJG [Applicant] immediately showed a passionate attitude toward balancing multiple new responsibilities and qualifications. Or if she was falling behind due to operations, she would quickly communicate updated timelines to me. When it was time to write her first Officer Evaluation Report (OER) I was surprised when I reviewed her last OER from her previous unit. When I read the OER and saw the two marks of three and the writeup, I immediately called her into my office to discuss the OER. When I asked her about the OER she became very emotional, to the point of physically shaking. During our conversation she mentioning [*sic*] two disturbing instances, which I would state verged on the edge of

harassment, and threatening behavior. During the conversation she cried as she told one instance that left a deep emotional scar by a member of her command. In addition, how the initial emotional scar was revisited by her command in a very humiliating manner. Due to these negative interactions from her command, Ms. [Applicant] mentioned that she would wake up crying due to nightmares caused by her experiences on the cutter. As she talked, I thought to myself that in my 16 years on active duty in the Coast Guard I have come across members who have had bad experiences, but none that left so traumatized. I told Ms. [Applicant] that based on what she has told me that she should challenge the OER. Ms. [Applicant] at the time said she would rather not relive what she went through and wanted to move on. Since that conversation and her time at the unit, LTJG [Applicant] has been a fantastic Junior Officer. Which her OERs from two different COs will confirm.

3. LTJG [Applicant] proved she was ready to move on from her experience at her previous unit because she has performed above and beyond her peers who are station at a Sector due to the vast amounts of operations, deployments and intense requirements of a Future Operations Officer. As Future Operations she planned multiple deployments, provided detailed spend plans, and necessary logistical needs for complex deployments to [redacted], [redacted], [redacted], and [redacted] with little to no support. Also, she earned qualifications including Deployable Team Leader and led teams on missions to [redacted] and the [redacted]. Due to her work ethic I requested that the Office of Personnel Management select Ms. [Applicant] as the unit's Operations Officer who oversees all the training and certifications for 30 members. In addition to her regular duties she volunteers at a local animal shelter, is highly involved in the unit's LDAC, and is the driver of the Morale Committee. She is also the unit member to look to for physical fitness standards and is the person to beat in the 1.5 mile run during the quarterly fitness test.

4. Officers like LTJG [Applicant] are officers the Coast Guards needs to retain. In addition, I know that if Ms. [Applicant] is given another opportunity by BCMR she will succeed in any position she is assigned. Due to the fact she is a well-rounded officer who has grown from a LTJG into an officer ready for promotion to LT.

SUMMARY OF THE RECORD

The applicant graduated from the Coast Guard Academy and was commissioned an ensign on May 18, 2016.

On June 22, 2016, the applicant executed Permanent Change of Station (PCS) orders to the unit at issue in her OER, where she was assigned as the Deck Watch Officer (DWO).

For the May 18, 2016, through March 31, 2017, rating period, the applicant received a regular semiannual OER from her supervisor LT D, who was the CO at the time, and a CDR P, who was the CO's supervisor and the applicant's Reporting Officer (RO). For this OER, out of 18 separate evaluation categories, the applicant received sixteen 4s and two 5s. She received a mark of 4 out of 7 on the Comparison Scale, which indicated that she was "One of the many high performing officers who form the majority of this grade."

For the April 1, 2017, through September 30, 2017, rating period, the applicant received an OER from her supervisor LTJG P, who was the XO of the cutter, and LT O, who was the applicant's CO and RO. For this OER, out of 18 separate evaluation categories, the applicant received five 4s, eight 5s, four 6s, and one 7. She received a mark of 4 out of 7 on the Comparison Scale, which indicated that she was "One of the many high performing officers who form the majority of this grade."

On September 27, 2017, the Log-Remarks Sheet shows that at approximately 12:30 a.m., while underway, the applicant began complaining of severe abdominal pain. The CO (LT O) and the EMT were notified and at approximately 1:10 a.m., the EMT contacted the CO and recommended calling the flight surgeon and having the applicant medevaced. Approximately 15 minutes later, the flight surgeon recommended the applicant be medevaced and notified the CO of the recommendation. The applicant's cutter was originally supposed to rendezvous with one ship, but at approximately 1:50 a.m., the cutter was redirected to rendezvous with another ship. It was at this point that the applicant's CO came up to the bridge, and the cutter began making way toward the rendezvous position. At approximately 3:30 a.m., the applicant was transferred to a smaller boat from which she underwent a transfer to the station and then to Emergency Medical Services (EMS). The applicant's medical notes show that she underwent emergency surgery for an Ovarian Torsion,² that ultimately resulted in the applicant losing her right fallopian tube. The applicant was given four weeks of light duty with no sea duty.

The applicant returned to full duty aboard the cutter in November 2017.

On November 18, 2017, the applicant was promoted to LTJG.

On December 12, 2017, the applicant's XO submitted a "Memorandum to File - Counseling for LTJG [Applicant]," wherein he noted a counseling session that he and the Command Chief had had with the applicant. The XO stated that the nature of the counseling session was to ensure that the applicant was aware of resources and was able to get whatever help she needed, whether for medical or other things, due to her medical condition and the medical procedures she underwent in October 2017. The XO's notes are as follows:

2. This counseling was prompted by a series of observations of the member's significant negative trend in attitude, demeanor, and apparent emotional well-being since the member's return to full duty status in mid-November, most significantly during the time the cutter was underway or in Bravo status from mid-November through early December 2017. Although the member has been known for not hiding the member's emotions, this apparent trend in attitude and demeanor was deemed significant by the Commanding Officer, Executive Officer, and Command Chief.

a. These observations include a general negative attitude towards subordinates, peers, and superiors, specifically noting a significant disrespectful attitude towards superiors on a number of occasions during this underway period.

b. On one occasion, when the member, as the Officer of the Deck, was ordered by the Commanding Officer during a mooring evolution to move the cutter forward, the member looked the Commanding Officer in the eye, then turned away from the Commanding Officer to ask the Conning Officer whether the Conning Officer wanted to move the ship forward or backward.

c. On one occasion, during a drill at general emergency, the member was asked by the Executive Officer, at the time acting as the Onboard Training Team leader, if the member was about to erase a damage control plot. The member replied "yes, because it is wrong," then turned away from the Executive Officer and proceeded to erase the plot. The member had previously been advised by the Executive Officer never to erase damage control plots during or after any drills because any plots in an actual emergency must be preserved.

² An Ovarian Torsion is when the ovary, and sometimes the fallopian tube, become twisted and cut off blood supply. Surgery is the only way to treat an ovarian torsion.

d. On one occasion, the member was reported to have told a number of shipmates on the mess deck, "I hate you all" or "I hate all of you." It is unknown if the member intended this statement as a joke, but other crewmembers were taken aback by this and the Executive Officer observed that crewmembers were still talking about this incident in the days following this incident.

e. On a number of occasions the member exhibited a disrespectful attitude and actions towards the Commanding Officer during discussions, training, or while being tasked by the Commanding Officer. These actions included eye-rolling, nonverbal utterances, and on a number of occasions walking away while the Commanding Officer was still talking.

3. During this counseling, the member disclosed that the member had recently seen a medical specialist outside the normal Coast Guard medical process at the member's own cost. The member did not provide any further information, and both BMC [M] and LTJG [P] specifically did not ask the member to provide any further information regarding this medical specialist. The member did not disclose anything else to BMC [M] or LTJG [P] regarding needs not being met and stated that the member was looking forward to taking leave over the holidays and would be fine after that.

4. It was reiterated to the member the variety of support options Coast Guard members have at their disposal, including the Chaplain, Coast Guard Medical, and CG Support. It was further reiterated that the member can approach the Command Chief, Executive Officer, Commanding Officer, Sector [Redacted] Command Master Chief, or any other leader for help and that any requests for help would be taken seriously.

5. LTJG [P] reiterated to the member that the member's attitude, judgment, and attention to detail had obviously declined October, that this was obvious to the rest of the crew, and that this was not only having a negative effect on the member's own performance as a junior officer but also having a negative effect on the member's relationship with the rest of the crew. LTJG [P] reiterated to the member that he could not tell the member what to do to get help, but that the member needed to recognize the need for help and use the resources available to Coast Guard members to bring the member's attitude and performance back to a positive level.

On December 13, 2017, a Captain with the applicant's Sector issued a memorandum, "Investigation Into the Circumstances Surrounding LTJG [Applicant's] Transfer from CGC [Applicant's Cutter] Due to Medical Issues on 27 September 2017," wherein he ordered an administrative investigation into "all the facts and circumstances surrounding the transfer" of the applicant due to medical issues.³

On January 5, 2018, the applicant's XO submitted a "Memorandum to File – Behavior of LTJG [Applicant]," wherein the XO noted the following:

1. The following recent observations of unacceptable behavior on the part of LTJG [Applicant] were observed by LTJG [P], Executive Officer, CGC [Applicant's Cutter].

2. On or about Wednesday 3 January 2018, a brief meeting of all underway OODs and QMOWs was held in the pilothouse. At this meeting, which only lasted a few minutes, I instructed all bridge personnel to ensure [that] upon taking the watch that the current approved track line or overlay being used for navigation on Seawatch had also been copied over and entered into the backup VEGA-ECS systems, as this had not been normal procedure for bridge personnel prior to that time. After I finished saying this, LTJG [Applicant] walked up to the Seawatch screen, wrote down information about the current overlay, entered the overlay into the VEGA-ECS system, then announced to all personnel at the meeting in loud, sarcastic tone words to the effect of, "LOOK EVERYONE, I KNOW HOW TO MAKE A SHAPE NOW!"

³ The Board requested a copy of this investigation from the Coast Guard, but was told the investigation could not be found.

3. On 5 January 2018, I instructed LTJG [Applicant] to calculate the total distance traveled by the cutter during the evasion from Hurricane [redacted] in September. I had earlier instructed LTJG [Applicant] to provide written bullet points of specific details and accomplishments during that time, and that morning I had received LTJG [Applicant's] bullet points, which I found poorly thought out and insufficiently detailed, prompting me to seek additional details. After telling LTJG [Applicant] to find and provide this information, I overheard LTJG [Applicant] proceed onto the mess deck and talk about the amount of work it would take to find this information. I heard her state that she didn't want to go through all of the logs from that period to find the information. I further overheard her state that she could just guess the total distance based on the general geographical areas the cutter had traveled to during that time. Only a few minutes later, LTJG [Applicant] reported to me that the answer was 2,800 NM [Nautical Miles]. When I asked LTJG [Applicant] how she calculated that answer, she stated that she "went through the logs." To calculate that number, someone would have to add up all 24 hourly distance traveled entries in each daily weather log for each day from 7 September to 29 September. In my opinion, there is no reasonable way a person could have opened all these 23 daily files and made all these calculations in the few minutes between hearing LTJG [Applicant] talking to crewmembers on the mess deck to reporting the answer to me.

On February 7, 2018, the applicant's XO submitted a "Memorandum to File – LTJG [Applicant]," wherein he noted that on that date he became aware that the applicant had circumvented the chain of command to enter an unapproved training request for a member. The XO claimed that he received the request routed in a standard folder in his inbox outside of his stateroom, signed by the member up the chain of command through the applicant for his signature and approval. The XO explained that when he attempted to enter the request into Direct Access, the system notified him that the member had already had a training request entered for that specific course. The XO stated that because the applicant was TDY, he contacted her by phone to confirm that she had submitted the request without his approval. According to the XO, the applicant was aware that the XO's approval was necessary for the training course, and the applicant's actions constituted a willful circumvention of the chain of command.

On March 19, 2018, an EMC within the applicant's unit submitted a "Memorandum to File – LTJG [Applicant]." The EMC stated that on that date the applicant had shown an "attitude issue." According to the EMC, the applicant lashed out at him on two separate occasions because she said no one was telling her anything since coming back from school, which took place in front of a temporarily assigned non-rate. The EMC explained that when the applicant returned, he told her that she needed to go and see the First Lieutenant, at which point she lashed out and began yelling that no one was communicating anything to her. The EMC claimed that this was not the first time an issue like that had come up. The EMC stated that over the previous few months, he had observed a big change in the applicant's attitude and moods, and things only seemed to be getting worse.

On March 19, 2018, the applicant's XO submitted a "Memorandum to File – LTJG [Applicant]," wherein he noted the following:

1. On this date I was approached by LT [O], Commanding Officer, and ENS [K] regarding LTJG [Applicant]. ENS [K] was extremely concerned over the behavior of LTJG [Applicant]. I was informed by LT [O] that while I had recently been TDY away from the unit, ENS [K] had recently approached him concerned and upset over the LTJG [Applicant's] erratic behavior and the way that LTJG [Applicant] had been lashing out at ENS [K] and many other members of the crew. LT [O] told me during my absence he had also spoken with EMC [L] regarding LTJG [Applicant] and that EMC [L] shared similar concerns over LTJG [Applicant's] increasingly erratic behavior.

2. ENS [K] stated that just on this date, LTJG [Applicant] had screamed at her in public in front of junior enlisted personnel for not informing her ahead of time that a member from another unit would be reporting

TDY to work with this unit. ENS [K] further informed me that LTJG [Applicant] threw papers at her on another occasion on this date.

3. ENS [K] stated that this behavior had been going on for some time, and that ENS [K] had been able to handle it and maintain an outwardly positive relationship with LTJG [Applicant], but that the behavior was becoming worse and more erratic. ENS [K] further stated that she had finally spoken directly to LTJG [Applicant] regarding her behavior and the way she treated people. ENS [K] stated that this conversation was not in an accusatory manner, but that she provided numerous specific examples of how LTJG [Applicant] was creating a hostile work environment. ENS [K] stated that she noted a number of specific incidents of LTJG [Applicant's] interactions with crewmembers. Many of these incidents were either observed directly or heard about from other crewmembers by myself, LT [O], ENS [K], and/or EMC [L]. However, ENS [K] stated that when she brought up such specific incidents with LTJG [Applicant], LTJG [Applicant] became angry and denied that these incidents ever happened.

4. EMC [L] stated that he was becoming concerned with LTJG [Applicant's] behavior and interactions with crewmembers both superior and subordinate. EMC [L] stated that LTJG [Applicant] had lashed out at him earlier on this date, then apparently after having been confronted by ENS [K], approached EMC [L] and broke down in tears, and then when EMC [L] stated to LTJG [Applicant] that her behavior is a problem, LTJG [Applicant] became angry and lashed out again.

5. The observations that were brought to my attention by ENS [K] and EMC [L] on this date continue the concerning trend of erratic behavior by LTJG [Applicant] that I have observed. My first interaction with LTJG [Applicant] on this date, which due to my absence from the unit, and her extended absence from the unit both due to TDY training assignments, resulted in her lashing out angrily and disrespectfully at me because I had asked her if there was a printout in the printer under the desk where she was sitting. Counseling about behavior provided by myself and BMC [M] on multiple occasions, and strong encouragement for LTJG [Applicant] to seek whatever help she needed from the Coast Guard's many sources for help does not seem to have been effective.

6. I am now seriously concerned about LTJG [Applicant's] mental health. LT [O] and I had been discussing for several months now how best to deal with LTJG [Applicant's] performance and behavior, given the member's circumstances and the overall situation at the unit. Behavior, discipline, and performance issues remain to be addressed, but I strongly believe LTJG [Applicant] may need a medical evaluation.

On March 23, 2018, LT O issued a memorandum, "Command Referral for Mental Health Evaluation of [Applicant]," wherein he stated that in consultation with CAPT S, due to the applicant's concerning behavior observed by himself, as well as numerous other service members of various ranks and assigned positions within the unit, he requested a mental health evaluation of the applicant. LT O stated that his request is based upon the applicant verbally lashing out at subordinates, superiors, and peers, in addition to her dramatic and erratic mood swings, emotional breakdowns, aloof disposition, lack of attention to detail, difficulty in following repeated instructions from supervisors, and a deterioration in performance. According to LT O, on several occasions, the applicant repeated what others had said to or in front of her as if it were her own original thought, leading LT O to believe that the applicant was either not fully "present" and attentive, or that she mistakes statements spoken by others as her own thoughts.

On March 23, 2018, the applicant was notified that LT O was referring her for a mental health evaluation because of the behavior she had exhibited since October 2017 through March 2018. The applicant was informed of her right to speak to a civilian attorney of her choosing and at her expense; to submit a complaint that the mental health evaluation was a reprisal for making or preparing a protected communication; to be evaluated by a mental health care provider of her own choosing and at her own expense; to communicate with an Inspector General (IG), Attorney,

member of Congress, or others about her mental health referral; and except in emergencies, to have at least two business days before the scheduled mental health evaluation in order to meet with an attorney, IG, Chaplain, friend, or family member.

On April 9, 2018, the applicant signed her semi-annual OER for the October 1, 2017, through January 21, 2018, rating period. The applicant received six 4s, seven 5s, and five 6s. The applicant received a mark of 3—the lowest of three middle marks denoting “One of many high performing officers who form the majority of this grade”—out of seven possible marks on the Comparison Scale, and a mark of “Recently Promoted” on the promotion scale.

For “Performance of Duties,” the applicant’s received the following comments:

Continued to demonstrate professional expertise & superior quality of work in financial mgmt responsibilities normally assigned to more experienced mbrs; expert oversight ensured legality & propriety of \$25k in unit expenditures. Effectively delegated responsibilities while maintaining thorough oversight; responded to short notice financial inspection to improve knowledge & implement records-keeping improvements, sought outside SME guidance fm Sector when necessary; resulted in inspection score improvement from 55% to 95.5% in one quarter. As trng Officer, ensured completion & records for 42 unit-level drills; accomplished 98.7% completion of CY2017 rqmts; managed qualification currencies for 26 crew. Outstanding adaptability; oversight of aggressive LE pgm combined with mbr’s willingness to stand extended watches overnight enabled highly successful LMR enforcement patrol w/20+ F/Vs boarded, enforcing correction of 10+ safety violations & detaining 2 fugitives. Proactive planning & preps for ship’s 1st dry dock; sought guidance from units w/1st-hand experience; demo’d foresight, good planning for personnel transfers; ID’d extended trng requirements for new purchase cardholders & began training at earliest opportunity.

For “Leadership Skills,” the applicant received the following comments:

Caring, compassionate leader not afraid to step up for subordinates; demonstrated commitment to work-life balance & enhancing quality of life for shipmates with families. Volunteered to take on additional duties & stand extra watches both I/P & U/W to relieve crew fatigue; assisted peers and subordinates alike during difficult times. Mentored & encouraged others; assisted 1st-yr ENS with platform familiarity & U/W OOD qualification, as well as with 1LT & Weapons Officer duties & responsibilities. Effectively delegated duties to more jnr personnel; QMOWs received experience w/ message drafting. As AO, demo’d superior teamwork managing financial procedures through purchase cardholders across 3 depts; effective delegation to cardholders enabled mbr to lead short notice overhaul of over 700 transaction records; praise rcv’d fm Sector SK shop reflected highly upon unit. Some Enlisted Evaluations submitted late, though accurately reflected subordinates’ performance & required. minimal edits.

For “Personal & Professional Qualities,” the applicant received the following comments:

Mbr displayed outstanding initiative in implementing financial inspection procedures; held all mbrs accountable for thorough completion of records; significantly improved accuracy of financial readiness & ensured readiness for inspections. Proactively researched assignment & transfer options & alternatives for pregnant mbr; enabled the mbr to continue to receive medical care while ensuring unit was slated for replacement personnel. Superior health & fitness; significant commitment to staying fit u/w; mbr represented unit at Sector-wide race, placing 3rd; organized unit participation in Keys 100 relay race, encouraging mbrs to improve cardio fitness. Identified mbr’s eligibility for EMT recert course, eliminating 7 weeks of redundant training. Conveyed positive CG image within local community; regularly volunteered w/ animal shelter & hurricane [redacted] disaster recovery efforts.

For “Reporting on Officer Comments” the applicant received the following comments:

LTJG [Applicant] continued to be a goal-oriented JO committed to helping and looking out for shipmates and subordinates. RO strove for excellence in collateral duties, including 14 days as acting XO, and has played leadership role in unit’s major operational shift from migrant interdiction operations to Living Marine Resource enforcement. Member strongly desires and has my recommendation for future tours in Sector Enforcement or Command Center positions. Currently attending BO school to acquire skills/knowledge necessary for anticipated BO certification. Demonstrated grasp/acumen for financial mgmt make a fine candidate for Post-graduate/Advanced Education programs: Financial Accounting/Financial Mgmt. Recently promoted to O-2, member is expected, with continued development at the O-2 level, to earn recommendation for promotion to O-3 with peers.

On August 9, 2018, the applicant signed a Detachment/PSC OER for the February 1, 2018, through June 25, 2018, rating period. The applicant received two marks of 3, six 4s, eight 5s, and two 6s. The applicant received mark of 3—lowest mark on the “One of many high performing officers who form the majority of this grade”—out of 7 on the Comparison Scale, and a mark of 2—“Promotion Potential”—out of 6 on the promotion scale.

For “Performance of Duties,” the applicant’s received the following comments:

As Training Officer, ensured development & continual monitoring of unit training plans, track & documenting completion of 47 required unit-level drills, contributing to readiness for unit’s first-ever Tailored Ship’s Trng Availability (TSTA), resulting in overall score over 96% on 35 ATO-evaluated ship-wide drills, above fleet-wide average; prioritized & managed mbrs’ qualifications, training, & courses to help manage significant 60% transfer season. Put in time & effort to improve own proficiency in damage control procedures; resulted in singular praise fm TSTA inspectors for performance on multiple DC drills. Continued expertise & attention to detail in mgmt of unit financial responsibilities normally assigned to more experienced personnel; oversaw legality & propriety of more than \$53k in official purchasing; effective delegation, adaptability & attention to detail resulted in praise fm Sector Supply staff & highest semiannual financial inspection score out of all 9 operational units in AOR. With prompting, planned for continuity of procurement mgmt during 5-wk absence for C-school; no lapse in unit’s ability to procure critical materials. Sometimes went outside established comms channels for routine matters and requests; left own unit in dark.

For “Leadership Skills,” the applicant received the following comments:

Unhesitatingly supported work-life balance, quality of life, and concern for peers and subordinates; demonstrated commitment to subordinates, going the extra mile to counsel, develop, motivate, & understand needs of every subordinate; provided counseling & leadership to CG members in need regardless of unit; consistently stood extra watches during ongoing LE & AMIO operations to ease burden on members involved in physically demanding evolutions. Mentored & guided 1st-yr ENS to ensure development & success in taking on more advanced responsibilities. Mbr made strides recognizing own shortcomings, correcting mistakes, & improving relationships with peers and subordinates, providing a positive impact to professional climate. Most evaluations submitted in relatively timely manner; own OER supporting documentation expected to improve with further counseling, & professional development; some Enlisted Evaluations submitted late, though accurately reflected subordinates’ performance.

For “Personal & Professional Qualities,” the applicant received the following comments:

Consistently demonstrated superior commitment to own health and fitness, completing personal fitness goals and receiving praise from outside personnel for performance at fitness events and readiness for physical training at BO school; performance and dedication inspired commitment to fitness in shipmates despite difficult underway schedule. Displayed initiative in preparing for Cutter Assessment of Readiness & Trng (CART)/TSTA; with overall responsibility for 40% of unit’s checklists, contributed to nearly 50% improvement in checklist scores and unit’s overall CART scores of 95%. Continued to positively represent

Coast Guard values across community boundaries; participated in multiple Sector-level events to represent Coast Guard presence in local community; volunteered consistently with church and other local efforts; contributed leadership role in hometown schools.

For “Reporting on Officer Comments” the applicant received the following comments:

LTJG [Applicant] continued to demonstrate character as a leader willing to look out for both peers & subordinates; further continued to demonstrate excellence in collateral duties, most notably financial management responsibilities normally assigned to more experienced personnel. Demonstrated attention to detail & acumen in this regard make member a good candidate for Post-graduate/Advanced Education programs in Accounting & Financial Management. Member recently successfully completed BO school & is anticipated to earn BO qualification in future marking period at next unit. Member strongly desires & has my recommendation for future Response Ashore tours, including Sector Enforcement & Command Center positions. With continued development/mentoring at the O-2 level & successful 2nd JO tour, should earn recommendation for promotion to Lieutenant.

The applicant went before the PY2020 and PY2021 Lieutenant Selection Board and was non-selected in both selections. In accordance with applicable regulations and policies, on June 30, 2021, the applicant was separated from the Coast Guard for twice failing to promote.

VIEWS OF THE COAST GUARD

On December 16, 2021, a Judge Advocate (JAG) for the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the PSC.

The JAG argued that while the applicant did not specifically aver that liberal consideration should be applied in her case, she did check the boxes on her application for relief for Post Traumatic Stress Disorder (PTSD) and other mental health issues. However, the JAG stated that the applicant has failed to show evidence to support her claims that she has PTSD or other mental health issues. The JAG claimed that the medical documentation provided by the applicant specifically states that “Based on my evaluation, I couldn’t assess any major MH problems...I couldn’t pinpoint...any major MH diagnosis.” Besides checking the boxes on her application, the JAG argued that the applicant has failed to provide any evidence to support a diagnosis of PTSD or other mental health issue connected to military combat or military sexual trauma that would warrant liberal consideration in her case.

The JAG further argued that the applicant has failed to provide sufficient evidence to meet the standard required to correct an OER. The JAG argued that pursuant to *Hary v. United States*,⁴ the applicant must do more than merely allege or prove that an OER seems inaccurate, incomplete, or subjective in some sense. Instead, the applicant must demonstrate by competent evidence that there was 1) a misstatement of significant hard fact, 2) a clear violation of a specific objective requirement of a statute or regulations, or 3) factors that adversely affected the ratings that had no business being in the rating process.

The JAG stated that in the applicant’s case, she appears to imply that there was a misstatement of significant hard fact when she said, “[m]y command seemingly discreetly

⁴ *Hary v. United States*, 223 Cl. Ct. 10, 18, 618 F.2d. 704, 708 (1981).

sabotaged my career by marking me low for one evaluation and giving me 3s for my last evaluation, even though the supporting documentation did not warrant those marks.” The JAG claimed that the key word in the previously cited sentence is “seemingly.” The JAG argued that while the applicant stated the marks were not justified based on the supporting documentation she drafted, she failed to provide the “supporting documentation” and failed to specify which comments contained in the OER were misstatements of significant hard fact. However, the JAG explained that even if she had provided the aforementioned evidence, the applicant’s claims of sabotage were based on her own subjective belief that her supporting documentation for these OERs shows a discrepancy with the marks. The JAG argued that other than the applicant’s argument that the marks contained in her OERs should have been higher based on her own personal perceptions of her performance, she failed to provide evidence to show that the evaluations contained misstatements of significant hard fact. The JAG further argued that the fact that the applicant received lower marks in the two contested OERs, than in her previous OERs, does not prove that she met the criteria for higher marks during the reporting periods in question.

In addition, the JAG stated that the applicant failed to avail herself of the administrative remedies afforded to Coast Guard officers such as submitted a Reported-on Officer (ROO) Reply or by timely applying to the Personnel Records Review Board. According to the JAG, because the applicant did not contest the content or facts of her OERs until after she was twice non-selected for LT is substantial evidence that when she received the OERs, she accepted them as valid, even if she did not like them.

Regarding the second *Hary* prong, the JAG stated that the applicant claimed that she was not provided “objective, effective, or timely feedback throughout these evaluation periods.” However, the JAG argued that the applicant provided no evidence to support her allegations, and both OERs contain specific dates that the applicant was counseled and the counselor’s name. Accordingly, the JAG stated that the applicant’s claims are insufficient to overcome the presumption of regularity afforded to her rating chain and command.

Regarding the applicant’s claims that her command violated the rules of professionalism and their duty to others, the JAG stated that the applicant’s claims are insufficient because they do not identify a prejudicial violation of a particular statute or regulation, nor does she offer sufficient evidence to support her claims. Furthermore, the JAG argued that court decisions have made it clear that a violation of any regulation is not enough, but that it must be “when preparation of the [report] violated an applicable statute or regulation. Accordingly, the JAG explained 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 applicant failed to prove. The JAG claimed that all of the applicant’s allegations of her perceived violations are all centered around her command’s actions relating to her medical emergency and evacuation, not in the preparation of her OERs. Therefore, the JAG argued that the applicant’s claims are insufficient to prove policy violations sufficient to overcome the requirements in *Hary*.

The JAG argued that the applicant failed to prove that the third *Hary* prong was violated. The JAG stated that the applicant alleged that her command “[t]hought I was a whistleblower to the parent command because an investigation was initiated for my Medevac,” but the applicant failed to provide sufficient evidence that her contested OERs were retaliatory or had any nexus to

the administrative investigation. The JAG argued that except for the applicant's claims of perceived retaliation, she failed to provide any evidence to support her claims. The JAG further argued that the coincidental timing of the applicant's lower marks following the administrative investigation is not *per se* evidence of retaliation. The JAG stated that the applicant attributed her lower marks to reprisal, but as with the first prong, failed to identify which specific marks did not properly address her performance throughout the marking periods. The JAG explained that following the applicant's return to work after her surgery, her XO observed a "significant negative trend in [Applicant's] attitude, demeanor, and emotions...including a general negative attitude...towards subordinates, peers, and superiors, specifically noting a significant disrespectful attitude towards superiors on a number of occasions." The JAG argued that the applicant's claims that her command treated her differently from other JOs and crewmembers was unsupported by the evidence. The JAG claimed that the applicant failed to sufficiently prove that she was sabotaged or otherwise unfairly prevented from performing her duties properly during these marking periods.

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

- A sworn declaration from LT P, the applicant's XO at the time the alleged events took place, and Supervisor for the contested OERs:

I, LT [P], United States Coast Guard Reserve, declare as follows, pursuant to Title 28 United States Code §1746:

1. I am currently an inactive reservist. At all relevant times I was assigned as Executive Officer, USCGC [Applicant's assigned cutter].

2. I was LTJG [Applicant's] direct supervisor as Executive Officer, USCGC [Applicant's assigned cutter] from 17 Aug 2017 until her departure from that unit.

3. I originally wrote out a narrative describing all the details of my supervision of interactions with, and decisions regarding LTJG [Applicant] in order to explain my decisions and mindset and support the evaluations the CO and I gave her as fair. That narrative extended to eight full pages. I personally felt compelled to refute the member's allegations to the best of my ability. However, after rereading all of my recollections, I don't feel that recounting them in any detail is in the member's best interest. Some of the member's recollections were particularly inaccurate-most notably things that happened or were said during her medical evacuation, but they come from memories of traumatic events that happened years ago that don't need to be rehashed. Instead, I submit only the following.

4. At all times, the CO and I were concerned with the member's personal well-being as well as her professional development. Retaliation or "trying to get at" the member never entered into a single mental process of mine. In fact, I periodically went to bat for the member in front of the CO to give her more leeway and more benefit of the doubt to enable her to start performing at a higher level, rather than to hold the member accountable for specific shortcomings, mistakes, and deficient performance, knowing that she was trying to come back from a very traumatic event in her life. Additionally, when it eventually became apparent to me that it may not be possible to balance both professional development with personal well-being, the member's mental health and personal well-being became my sole concern. The CO came to share this concern as well. If the CO specifically sought retaliation, I was never aware of it.

5. The CO and I regularly met personally with the unit command chief and the Sector Response Department Head—the CO's own supervisor to evaluate the member's needs. Everything we did we did in consultation with them. We also met with the member's peer junior officers, as well as the Sector Medical Officer, Chaplain, and others, in my recollection, in attempts to overcome the negative perceptions the member had

of us and to try to reach the member. I don't recall all the precise details and each person we consulted with, but I felt we were constantly reaching out for help to the point where I thought it reflected poorly on me as a leader, but I felt it was necessary. And I believe any of those people would corroborate how much we worried about helping the member. Ultimately, we took the difficult step of seeking a mental health evaluation. We did this only after consultation and concurrence with all of the above individuals. We knew that the member would inevitably perceive it as an attack on her, that it could have a permanent impact on her career, and that it would permanently damage any relationship we had with the member. But we did it believing it to be in the member's best interests. I did not think we had a choice but to take that course of action.

6. Even though as a supervisor and leader I was unable to overcome LTJG [Applicant's] negative relationship with the command and bring her performance up to a higher level, my goal was always to enable her to be successful with a new start at a new unit. Because she was high performing in a number of areas, I believed—or at least hoped—that she would be able to do so. I tried to do this by putting in a good word for the member with the detailer, enabling her to get a waiver to attend Boarding Officer school, and letting her take time away from the unit to go TDY to Sector Enforcement. After reviewing the materials provided to me in conjunction with this request, it sounds like she was indeed successful at her next assignment.

7. If this board requires more detailed recollections, I will submit them if necessary. Otherwise, I submit only the above, which is true and accurate to the best of my knowledge.

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

Executed this 16 day of June 2021.

- A sworn declaration from LCDR O, the applicant CO at the time the alleged events took place, and Reviewing Officer of the contested OERs:

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

1. I am currently serving as Deputy Maritime Security Department Head within the National Maritime Intelligence – Integration Office (NMIO)/National Intelligence Manager for Maritime (NIM-M), under the Office of the Director of National Intelligence (ODNI). During 01 October 2017 – 31 January 2018 and 01 February 2018 – 25 June 2018, the performance evaluation periods relevant to LTJG [Applicant's] application for a Board for Correction of Military Records (BCMR), I was assigned as Commanding Officer, USCGC [Applicant's assigned cutter].

2. As Commanding Officer of USCGC [Applicant's assigned cutter] during the periods of performance relevant to LTJG [Applicant's] BCMR application, I served as the member's Reporting Officer for the Officer Evaluation Report process.

3. Both Officer Evaluation Reports in question are fully aligned with USCG policies and procedures. The numerical assessments and associated remarks contained within both documents fairly and accurately reflect LTJG [Applicant's] observed performance while assigned to USCGC [Applicant's assigned cutter], and were finalized only after several extensive discussions between the member's Supervisor, Reporting Officer, and Reviewing Official. Allegations against the member's chain of command made within the BCMR application were externally investigated thoroughly and exhaustively by USCG Sector [redacted] and found to be unsubstantiated. Furthermore, it is my opinion that the member's portrayal of events and circumstances within the BCMR application are exaggerated, and in several instances are patently untrue. The command cadres of both USCGC [Applicant's assigned cutter] and USCG Sector [redacted] worked closely to maximize LTJG [Applicant's] opportunities for professional success and personal well-being before, during, and following her medical recovery. These opportunities included voluntary assignment to USCG Sector [redacted] Enforcement Division; an action to support the member's health and well-being, as well as broaden her exposure to USCG missions and unit types. Based upon my professional experience as a Coast Guard

officer, to include eight years of sea duty, five years of shore duty, and supervision of approximately 20 officers, there is no sufficient justification for the removal of Officer Evaluation Reports from the military record, nor for either of the member's other two requests.

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

Executed this 26th day of July 2020.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 9, 2022, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited her to respond within thirty days. As of the date of this decision, no response was received.

APPLICABLE LAW AND POLICY

Federal Statutes

Title 14 U.S.C. § 2120 states the following regarding SSBs:

(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.

Coast Guard Regulations

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.A.1.a. Purpose. This Chapter states policies and standards for conducting performance evaluations for Coast Guard officers.

The OES has been designed to:

- (1) Provide information for important personnel management decisions. Especially significant among these decisions are promotions, assignments, career development, and retention,
- (2) Set performance and character standards to evaluate each officer,
- (3) Prescribe organizational values by which each Coast Guard officer can be described, and
- (4) Provide a means of feedback to determine how well an officer is measuring up to the standards.

...

Article 5.A.2 d.1. Reported-on Officer.

...

- (g) Inform Commander (CG PSC-OPM-3) or (CG PSC-RPM-1) directly by written communication (e.g., e-mail) if the original validated OER has not been received six months after the end of the reporting period. The correspondence shall include name, EMPLID, phone number, period of report, and rating chain names with phone numbers.
- (h) Review the accuracy and completeness of the EI-PDR. Ensure that all days of commissioned service are covered by OERs. If an OER is missing or a gap in coverage exists, inform the appropriate rating chain. Through coordination with Commander (CG PSC-OPM) or (CG PSC-RPM-1), the rating chain shall take necessary action to correct the discrepancy.

...

Article 6 of the Officer Accessions, Evaluations, and Promotions Manual, COMDTINST M1000.3A (June 2017), provides the following guidance on convening a Special Selections Board:

6.b.13.f. Prohibition for Convening a Special Selection Board (SSB).

...

- (5) The convening authority determines that the error in the officer's record was immaterial or could have been discovered and corrected prior to board convening.
 - (a) It is the officer's responsibility to review his or her record before the board convenes and take reasonable steps to correct any errors or notify the board, in writing, of possible administrative deficiencies.
 - (b) The omission of letters of appreciation, commendation, or other commendatory data or awards of the Meritorious Service Medal and below from an officer's record does not constitute grounds to initiate SSB action under this Article.
- (6) The officer's record that the board considered was substantially complete and correct, but the content of which, an officer or former officer contends was materially incorrect.

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 her 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 applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.⁵

3. The application was timely because it was 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).

4. The applicant alleged that her OERs dated January 31, 2018, and June 25, 2018, are erroneous and unjust because they did not accurately reflect her performance during the applicable rating periods and because her command used her OERs as a means of retaliation to intentionally sabotage her career. 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.⁶ 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."⁷ 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.⁸

5. The fact that the applicant received better OERs before and after the reporting period for the disputed OER is not evidence that the disputed evaluation does not accurately reflect his performance during the reporting period.⁹

⁵ *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

⁶ 33 C.F.R. § 52.24(b).

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

⁸ *Hary v. United States*, 618 F.2d 704, 708 (Ct. Cl. 1980), cited in *Lindsay v. United States*, 295 F.3d 1252, 1259 (Fed. Cir. 2002).

⁹ *Grieg v. United States*, 226 Ct. Cl. 258, 271 (1981) ("[T]he fact that this fine officer had better ratings before and after the challenged OER is of no legal moment nor of probative value as to the rating period covered by the one OER with which he is dissatisfied.").

6. The Board's review of the record shows that in the early morning hours of September 27, 2017, while the applicant's cutter was underway, the applicant began to experience extreme abdominal pain. As the pain continued, the applicant was medically evacuated, and transported to an emergency facility where she underwent emergency surgery. After the surgery, the applicant was assigned to four weeks of light duty and no sea duty. When she returned to duty, her Sector Commander issued a memorandum wherein he ordered a single-officer investigation into the facts and circumstances of the applicant's medical evacuation. The Coast Guard was unable to provide the Board with a copy of the completed investigation, and there are no records to support a finding that the applicant's chain of command violated any Coast Guard policies in the handling of the applicant's medical evacuation. In addition, in his sworn declaration, the applicant's CO stated that the applicant's claims were thoroughly and exhaustively investigated by the Sector Command and were found to be unsubstantiated. In addition, the record shows that after the applicant's return to the cutter, her CO, XO and other JOs and enlisted members began to see a significant change in the applicant's behavior and treatment of others. These changes in behavior, attitude, and work ethic were documented in various memoranda filed by both officers and enlisted members. As a result of the abrupt change in behavior, the applicant's chain of command referred the applicant to a mental health evaluation. Finally, the Board's review of the record shows that after the sudden change in attitude and work ethic, the applicant's conduct was reflected in her subsequent OERs, which the applicant has contested here.

7. Retaliation. The applicant alleged that her rating chain used her OERs as a means of retaliation after an investigation was initiated into their handling of her medical evacuation on the night of September 27, 2017. The applicant further alleged that her chain of command erroneously recommended her for a mental health evaluation and, after nothing came of the evaluation, used her OERs as a means of intentionally sabotaging her career. To support her claims the applicant submitted character references from her subsequent COs who attested to the applicant's work ethic and character. These letters also addressed the allegedly poor leadership aboard the cutter and the emotional scars the poor leadership left on the applicant. However, the Board finds these letters unpersuasive and unsupported by the evidence. The applicant's subsequent COs were not present during the applicant's previous assignment or the mistreatments she allegedly endured, nor were they there to witness the applicant's behavior toward her chain of command and subordinates. In addition, the information they did receive regarding the circumstances surrounding the applicant's time at her previous unit appears to have come directly from the applicant and was not substantiated by other sources. The lack of additional substantiation is confirmed in LT S's reference wherein he states the following:

When it was time to write her first Officer Evaluation Report (OER) I was surprised when I reviewed her last OER from her previous unit. When I read the OER and saw the two marks of three and the writeup, I immediately called her into my office to discuss the OER. When I asked her about the OER she became very emotional, to the point of physically shaking. During our conversation she mentioning [sic] two [sic] disturbing instances, which I would state verged on the edge of harassment, and threatening behavior. During the conversation she cried as she told one instance that left a deep emotional scar by a member of her command. In addition, how the initial emotional scar was revisited by her command in a very humiliating manner. Due to these negative interactions from her command, Ms. [Applicant] mentioned that she would wake up crying due to nightmares caused by her experiences on the cutter. As she talked, I thought to myself that in my 16 years on active duty in the Coast Guard I have come across members who have had bad experiences, but none that left [one] so traumatized. I told Ms. [Applicant] that based on what she was [sic] told me that she should challenge the OER.

Contrary to these character references, and as stated above in finding 5, the record and the preponderance of the evidence shows that it was the applicant's poor attitude and behavior that led to her mental health evaluation and lower OER marks, not retaliation. The record shows that after the applicant returned from light duty, both officers and enlisted members noticed a significant change in the applicant's attitude and behavior. Her CO and XO stated that the applicant exhibited a negative attitude toward subordinates, peers, and superiors, noting a significant disrespectful attitude toward superiors on a number of occasions. In addition, enlisted members also recorded the applicant's poor attitude and aggressive and erratic behavior, stating that she would just lash out and start yelling at her subordinates. Although the applicant has alleged that it was her superiors who were the root cause of her issues, the evidence of record does not support her claims, and her character references and subsequent OERs are not proof that she was subjected to unlawful retaliation.

8. Discrimination & Prejudice. The applicant alleged that she was subjected to many instances of prejudice and discriminatory questions about her nationality. The applicant also alleged that she witnessed major violations of professionalism when her chain of command failed to show her empathy and respect, reflected by their indifference to her suffering and allegations of malingering. However, other than the applicant's own testimony, she has failed to provide any evidence to support her claims of prejudice, unprofessionalism, and accusations of malingering. First, the applicant has not shown that her chain of command violated any Coast Guard policies on the night of her medical evacuation, and the Board could find none in the record. Although the applicant's subjective opinion is that her chain of command failed to show her empathy and respect during her medical emergency, there is no evidence to support these claims. In this regard, the Board finds the applicant's XO's sworn declaration persuasive. The XO attested to the fact that at all times he had the applicant's needs and interests as his focus, and his goal was always to enable her to be successful. Furthermore, the applicant has failed to submit any evidence, sworn declarations or the like, to substantiate her claims that she was accused of malingering or that she was subjected to prejudicial questions regarding her nationality.

9. Hary Standards. As argued by the JAG, to prevail on her claims the applicant must do more than merely allege or prove that an OER seems inaccurate, incomplete, or subjective in some sense. To prevail, the applicant must demonstrate, by competent evidence, that her OER involved 1) a misstatement of significant hard fact, 2) a clear violation of a specific objective requirement of a statute or regulation, or 3) a factor that adversely affected the ratings, which had no business being in the rating process. Here, the applicant has failed to satisfy any of these three prongs in the two contested OERs. The applicant has not pointed to one misstatement of a significant hard fact, a clear violation of a specific statute or regulation, or that there were factors involved in her rating that had no business being in the rating process. The only evidence the applicant has submitted is her personal statement outlining her recollection of events, character references from her subsequent COs, and subsequent OERs. These items are not sufficient to overcome the applicant's burden of persuasion, or the presumption afforded to the Coast Guard and its officials.¹⁰ Furthermore, as noted in finding 5 above, the fact that the applicant received

¹⁰ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

better OERs before and after the reporting period for the disputed OER is not evidence that the disputed evaluation does not accurately reflect his performance during the reporting period.¹¹

10. The applicant made varied allegations and arguments regarding the attitude and treatment she received by her chain of command. Those allegations not specifically addressed above are considered to be unsupported by substantial evidence sufficient to overcome the presumption of regularity and/or are not dispositive of the case.¹²

11. For the reasons outlined above, the applicant has not met her burden, as required by 33 C.F.R. § 52.24(b), to overcome the presumption of regularity afforded the Coast Guard that its administrators acted correctly, lawfully, and in good faith.¹³ She has not proven, by a preponderance of the evidence, that the disputed OERs were not completed in accordance with Coast Guard policy, or that they contained a “misstatement of significant hard fact” or were adversely affected by factors “which had no business being in the rating process,” or “a prejudicial violation of a statute or regulation.” Because she has not shown that the disputed OERs were erroneous or unjust, there are no grounds to have the OERs removed from her record or for directing the Coast Guard to convene a Special Selection Board to reconsider her non-selection for promotion. Accordingly, the applicant’s requests for relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

¹¹ *Grieg v. United States*, 226 Ct. Cl. 258, 271 (1981).

¹² 33 C.F.R. § 52.24(b); *see Frizelle v. Slater*, 111 F.3d 172, 177 (D.C. Cir. 1997) (noting that the Board need not address arguments that “appear frivolous on their face and could [not] affect the Board’s ultimate disposition”).

¹³ *Muse v. United States*, 21 Cl. Ct. 592, 600 (1990) (internal citations omitted).

ORDER

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

October 27, 2023

[REDACTED] [REDACTED] Digitally signed by [REDACTED]
[REDACTED] [REDACTED] Date: 2023.10.30 15:08:58 -04'00'

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[REDACTED] [REDACTED] Date: 2023.10.30 15:48:31 -04'00'
