

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2021-085

██████████ ██████████ ██████████
CDR (Retired)

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 28, 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 November 3, 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 retired Commander (CDR/O-5), challenged her annual Officer Evaluation Report (OER) for the period April 1, 2018, through March 31, 2019, when she was serving as the commanding officer (CO) of a Strike Force Team (SFT). She also challenged her subsequent non-selections for promotion to Captain (O-6). Specifically, she asked the Board to correct her military record by:

- 1) Changing the following numerical marks¹ on her March 31, 2019, OER:
 - a) her “Workplace Climate” mark from 5 to 6,
 - b) her “Responsibility” mark from 5 to 6, and
 - c) her “Comparison Scale” mark to “One of Few Distinguished Officers”;
- 2) Reverting the OER to the draft “Reporting Officer Comments” with one change, adding a recommendation for National Strike Force Commander;
- 3) Removing all prior non-selections for promotion to Captain (CAPT) from her record; and

¹ On an OER form, an officer is evaluated by his or her Supervisor in 18 performance dimensions on a scale from 1 (worst) to 7 (best). In addition, the Reporting Officers (normally the Supervisor’s Supervisor) assigns the officer a mark on an officer Comparison Scale and a mark on a Promotion Scale.

- 4) Providing her with a Special Selection Board (SSB) to reconsider her non-selections following the corrections made by this Board.

The applicant stated that she believes perceptions of her performance by her rating chain and the Sector leadership were based on erroneous information. According to the applicant, despite evidence to the contrary, these negative perceptions colored opinions of her, eventually influencing her OER and resulting in an evaluation that did not reflect her true performance or potential. The applicant argued that based on the many conversations and emails that she exchanged with her rating chain concerning her 2019 OER, her evaluation was influenced by two primary factors: 1) Sources of information that should not have been used in her OER, such as Organizational Climate Surveys and investigations that were either invalidated by her Sector or resulted in “no final action”; and 2) Negative perceptions of her leadership abilities by senior Sector leadership that were based on one-sided or erroneous sources of information and permeated down from her Sector Commander and OER Reviewer to influence her Reporting Officer and Supervisor in their assessment of the applicant.

The applicant alleged that the events that impacted her 2019 OER began in January 2018, with her unit’s annual climate survey, the Defense Organizational Climate Survey (DEOCS). The applicant claimed that the survey led to a long and convoluted situation. She explained that while the DEOCS signaled a problem within the Strike Force Team, a cascade of events resulted in a unit investigation in November 2018, which resulted in the Sector’s Investigating Officer (IO) recommending that the applicant be relieved of her command. The applicant claimed that despite repeated attempts to review the investigation or be provided a summary, she was denied any opportunity to see it. The applicant further claimed that this forced her to rely on her rating chain to recall items from the investigation that generated a recommendation that she be relieved of her command. However, the applicant alleged, despite her inability to review the investigation or have her rating chain provide specific details, the IO’s recommendation is cited as reasons justifying her OER marks and comments.

The applicant claimed that, for each example of poor leadership that her rating chain mentioned, she has proven that the information and comments are inaccurate. The applicant stated that although she attempted to engage with her OER Reviewer before her OER was finalized, she was unsuccessful until early July 2019, after she had already received a validated copy of her OER. The applicant alleged that when she was finally able to connect with her Reviewer, the Reviewer attributed additional behaviors about her that were inaccurate.

The applicant explained that the initial recommendation that she be relieved of her command was forestalled somewhat by unit visits by her Supervisor and Reporting Officer in July 2018 and February 2019. Although they both submitted positive reports on unit climate after these visits, Sector leadership continued to have a negative perception of her performance. According to the applicant, this negative perception resulted in the decision for an early change of command and lower than usual entries on her OER.

The applicant explained that she continued to engage with her Supervisor, Reporting Officer, and Reviewer in an attempt to gain insight into the decisions made about her but was consistently told that the Sector Commander wanted her relieved of her command. The applicant

stated that she believes the negative perception of Sector leadership was the result of documents and reports in which only one point of view was presented. The applicant alleged that her Reporting Officer attempted to provide an opposing opinion and advocate for her, but he lacked the necessary details to properly explain the series of events. For example, the applicant explained, a Coast Guard Investigative Services (CGIS) investigation into a sexual assault reported on March 19, 2018, by a member of her unit included a lengthy statement from the victim. She stated that a significant portion of the victim's statement made accusations about the applicant that were unrelated to the events leading up to or including the sexual assault. The applicant alleged that the accusations involved secondhand information about situations which did not involve her and were not witnessed by the victim. In addition, the applicant claimed that she was never questioned by CGIS or provided an opportunity to refute the accusations, yet the entire one-sided statement provided by the victim was reviewed by her Sector's leadership.

The applicant explained that a 2017 DEOCS signaled that there were problems within her command because the survey contained negative comments about the unit climate. The applicant stated that anonymous comments, offered without context, needed to be addressed and, upon receipt of the DEOCS report, she engaged her Executive Officer (XO) and the Chief Petty Officer's Mess to further explore the issues cited in the comments of the survey. The applicant stated that following addition consultation with her Supervisor, she initiated an Anti-Harassment and Hate Investigation (AHHI) into her Operations Officer (OPS) in order to gather information into the exact nature of some of the comments found in the survey. The applicant explained that unfortunately, the AHHI investigation was put on hold by a sexual assault accusation and investigation involving the same OPS, and she was never able to properly identify and take action to correct the behaviors. The applicant claimed that the AHHI investigation was terminated, and she was directed to take no actions to counsel the member on any of the concerns raised in the DEOCS to ensure that she did not interfere with a CGIS investigation initiated as a result of sexual assault allegations.

The applicant contended that Sector leadership reviewed the DEOCS and the CGIS investigation and used these anonymous and one-sided comments as the basis for her OER. The applicant argued that this became obvious after she recognized erroneous examples provided in her OER by her rating chain. The applicant further argued that DEOCS reports are not to be used for disciplinary or management decisions.

The applicant explained that a true test of leadership is how a leader responds to a situation: how they assess information, weigh decisions, seek guidance, and take appropriate action. The applicant claimed that as the CO of an SFT, she understood the burden of command—that she was responsible for what happened at her unit. The applicant alleged that she was never afforded the opportunity to investigate and take actions to mitigate the issues at her unit, and her leadership abilities were largely judged on the perceptions of the issues at her unit. The applicant claimed that her actions to address the issues were ignored or halted due to outside influences.

The applicant alleged that due to circumstances that evolved shortly after the release of the DEOCS—the sexual assault charges—she was stripped of all flexibility to confront the issues as a leader and was relegated to simply managing the fallout. The applicant explained that despite her limited ability to adjudicate workplace climate issues as a result of the sexual assault

allegations, meeting with her crew did not result in any negative feedback during three separate unit visits by Captains from the Sector and the National Strike Force. According to the applicant, reports from these senior officers indicated that overall the crew seemed content. The applicant claimed that her assessment is further supported by the December 2018 DEOCS, which generated an unprecedented 95% participation from the crew and showed marked improvement, with an overall positive unit climate. Despite this, the applicant stated, her Sector leadership clung to the November 2018 recommendation to relieve her of her command.

The applicant alleged that discussions with her rating chain have pointed to documents that she was told could not be used as factors in her evaluation and that her Supervisor and Reporting Officer continually referred to influences beyond their control when evaluating her. The applicant claimed that her Supervisor and Reporting Officer referenced the Reviewer, Sector Leadership, and the Sector Commander as those responsible for the contents of her OER, which is a direct violation of Article 1.A.4.b.3. of the Coast Guard Evaluation Systems Procedures Manual, PSCINST M1611.1D. The applicant further claimed that throughout the course of events, she was told by her Reporting Officer that her Sector's leadership did not care about her and that their only concern was the crew. The applicant argued that this meant the documented steps she took to deal with the climate issues were not relevant to her Sector.

The applicant alleged that she was told by her Sector's legal team, after following all of their advice in the adjudication of the sexual assault charges, that their responsibility was to protect her Sector and the Coast Guard, they were not there to advise her in a charge of retaliation. The applicant further alleged that the Sector legal team had no recommendations as to who could offer her legal advice. The applicant claimed that her leadership abilities were found to be lacking because it was believed she did not acknowledge the burden of command, but those superior to her relied on anonymous and unsubstantiated documentation to form their opinion of her leadership abilities and decide her fate, and then made it clear that her welfare was unimportant.

The applicant stated that because the DEOCS and November 2018 investigation were prohibited from being used as factors in her evaluation, the foundation of her OER appears to be based off of citations of incidents that are inaccurate and influences of Senior Sector leadership. The applicant claimed that while the OER Reviewer was aware that these documents were used to form the basis of her OER, he failed to take adequate measures to correct her Supervisor's evaluation, as was his responsibility pursuant to PSCINST M1611.1D. In accordance with this same manual, the applicant alleged that she went above and beyond to gain insight into the factors used in her 2019 OER, through necessary performance counseling, but her rating chain violated policy by using an investigation as a basis for her evaluation. According to the applicant, the common theme was that she should be satisfied that she was not relieved of her command and should just accept her evaluation, despite documented evidence that much of the information contained in these investigations was inaccurate or prejudicially one-sided.

The applicant alleged that her request for relief before the Personnel Records Review Board (PRRB) was denied, but Coast Guard policies regarding the PRRB were not followed and administration of the process was poorly executed. For example, the applicant explained that:

1. U.S. Coast Guard policy, Correcting Military Records (COMDTINST 1070.1) states that the board members should be senior to the applicant, and if this is not feasible, a reason shall be given. I am an O5,

date of rank 01Sep2014. None of the board members were senior to me. While CDR Galliard is an O5, his date of rank is 01Jul2015. The O4 and O3s are junior to me. The board members were drawn from USCG Headquarters which houses countless officers senior to me. Yet no reason for this deviation from policy was provided in the final memo from Personnel Service Command.

2. The Employee ID number on the reply is incorrect. My EMPLID is [redacted].
3. The “sworn” statement submitted by CAPT [R] is not signed.
4. The date of CAPT [R’s] statement in his text is listed as 24April2020, but is cited in the reply memo as 27April2020.

The applicant claimed that the statements provided by CAPT R and CAPT S to the PRRB continue to demonstrate the prejudicial bias influencing her evaluation. The applicant explained that CAPT L had since retired from the Coast Guard and was not involved in a review of her PRRB package. The applicant alleged that a review of the documentation provided in the PRRB package revealed that her Supervisor used the November 2018 investigation and DEOCS results as a basis for her OER. The applicant argued that the Reviewer should have performed his duties to ensure her OER adhered to proper content and timeliness and by his own admission, those items should not have been used in the determination of her evaluation. Accordingly, the applicant requested that the Board provide her with the requested relief.

To support her application, the applicant submitted 48 enclosures which included a detailed timeline, emails, Coast Guard policies, a CGIS investigation, and DEOCS reports. Those items deemed relevant to the applicant’s claims and allegations will be summarized below in the Summary of the Record section of this decision.

SUMMARY OF THE RECORD

The applicant was commissioned on April 1, 2000, and entered active duty as a Lieutenant Junior Grade (LTJG/O-2). She served in various operational billets, including strike teams, and was regularly promoted until June 23, 2016, when she became the CO of an SFT.

On December 2, 2016, six months after the applicant took command of the SFT, she received a DEOCS report which indicated the unit had an overall positive view of the command climate. Specifically, the report showed that there were zero servicemembers who reported experiencing sexual harassment. The report also showed that the applicant’s SFT had a higher satisfaction rating in the “Zero Perceived Barriers to Reporting Sexual Assault” when compared to the Coast Guard as a whole—60.71% compared to 39.4%. The report further showed that the applicant’s unit scores in the “Publicity of SAPR [Sexual Assault Prevention and Response],” “Unit Reporting Climate,” “Unit Prevention Climate,” and “Restricted Reporting Knowledge” were all above the Coast Guard’s service average. For “Trust in Leader” under the “Organizational Effectiveness Factors” the applicant’s unit received an above average score, when compared to the Coast Guard as a whole. Out of the 20 “Unit Summaries” the applicant’s unit received 18 above average scores, and only 2 scores of “Near Service Average” which were in “Exhaustion” and “Disability Discrimination.”

On February 24, 2018, as CO, the applicant received the results of a new DEOCS report. The report revealed that unlike the 2016 report, the applicant's unit suffered from poor command climate and low morale. Specifically, the applicant's unit scored "Adequate" in 13 out of 16 "Unit Summaries," and "Caution" in 3 out of the 16.² Those areas where "Caution" was received were "Senior Leadership," "Organizational Processes," and "Inclusion at Work." The Board notes that in this report, the applicant's unit scored below the service average in 15 out of the 16 "Unit Summaries", including "Sexual Harassment," "Sexual Assault Prevention Climate," "Sexual Assault Response Climate," "Sexual Assault Retaliation Climate," "Sexual Harassment Retaliation Climate," "Senior Leadership," and "Trust in Leadership." These were markedly lower than in the 2016 report. The following comments submitted by members of the applicant's crew are relevant:

- As adversely impacted home life. Command has sacrificed people for the professional status and promotion of top members (CAPT [S] and COs).
- The OPTEMPO has destroyed my family. I am considering a divorce at the moment.
- OPTEMPO is extremely high and has caused immense strain at home. Command is unsympathetic to entire crew. CO/XO/OPS are all more concerned with their own personal plights and fatigue. Intentionally delayed confirmation of Christmas leave until most crew members could no longer plan personal trips or afford trips (did not approve until very last minute). All other STs [Strike Teams] approved leave several weeks earlier.
- It has significantly and negatively impacted my personal life and family.
- Extreme lack of leadership from CO/XO/OPS and inability for crew to voice feedback/concerns. Command is unapproachable and retaliation absolutely occurs. Also does not seem like [redacted] cares—concerns have been voiced up via chief's mess with no response.
- The unit needs morale in general. The last morale function held was poor quality and little participation. Maybe have a morale function away from the unit.
- There is no morale. No morale days in my last few years with unit. ATC and Sector both had 3 weeks of rolling 72s, meanwhile holiday leave at [SFT] was not approved by CO until last second and rolling 72s only lasted 2 weeks. Adversely impacted my family/kids. Could not plan anything for holidays. This unit is textbook hostile. Unwritten rule that JO's work until XO leaves, concerning to chief's mess. Civilians are given too much authority slash ability to have a voice and impact military personnel. IH is absolutely disrespectful, and CO/XO/OPS allow him to act that way without intervention. IH forces all members to stand during trainings until they answer questions correctly—humiliation factor. Command requires members to meet with IH for qualification sign offs, but many are afraid of/uncomfortable around him, making this process incredibly painful.
- Being a part of the [SFT] should be a fun, rewarding assignment but it truly has not been for a while now. It's hard to be passionate about a job when the operations officer has created such a hostile work environment in the front office. He has openly spoken down about his fellow officers to enlisted members of the crew on multiple occasions and has also on a number of occasions told members of the crew that he hopes certain members of the team will fail. During BMC [S'] retirement, OPS was so impaired by alcohol that [redacted]

² Between 2016 and 2018, the way the DEOCS report provided results changed. In the 2016 report, results were provided in three separate colors: "Red—Below Service Average;" "Blue—Near Service Average;" and "Green—Above Service Average." The 2018 report provided results in four separate colors: Red indicates "Improvement Needed—Below 50% Favorable Responses;" Yellow indicates "Caution—Between 50%-69% Favorable Responses;" Blue indicates "Adequate—70%-89% favorable responses;" and Green indicates "Excellent—90% and above Favorable Response."

wife approached him to get him a ride home, so he didn't have to drive. He declined the kind gesture and instead got behind the wheel of his Jeep and drove himself while intoxicated. This was seen by multiple members of the crew. These are only a few instances related to this one individual and a big reason that morale has all but disappeared.

- I haven't noticed any EO/EO violations that have occurred on the enlisted side of the house. I have on numerous occasions seen male officer/officers publicly demoralize, disrespect, humiliate other female officers.
- LCDR [L] has made sexually suggestive remarks about members of the admin shop behind their backs to members in the unit.
- This is the worst combination of CO/XO/OPS I've ever witnessed—definite hostile work environment. XO is unapproachable. Has door closed almost all the time with sign on door stating knock if you need me. Known to be insensitive and verbally abusive to crew members. OPS has known alcohol issue (admittedly a functioning alcoholic) and is inappropriate with women at unit. Personally witnessed him act inappropriately toward JO, subordinates, and YN1. Also known for mood swings and backstabbing. Has inappropriate relationship with CO. CO seems to hate other women, doesn't want other females to succeed. Only a matter of time before someone has a nervous breakdown or worse. Command climate is horrible.
- Witnessed OPS tell CO to "f*** off" and laugh in front of a bunch of us. CO did nothing to stop him. Those two have created a hostile work environment. It feels like high school—which I didn't enjoy the first time around and have no desire to go through again. It's funny how the "in crowd" is only the "in crowd" because they say they are. These two would never be popular with anyone in the outside world. XO does nothing to intervene and is unapproachable. I do not feel like I could go to any of them with an issue. I cannot wait to transfer this summer.
- Cannot elaborate here because of fear of retribution.
- Sexual assault training seems to be inadequate.
- OPS is known as a predator amongst crew for overuse of alcohol and inappropriate behavior.
- OPS is the worst example at the unit. Between comments he makes about women he knows outside of work and the women at the unit it's terrible. Would not be surprised if he did something to someone. His reputation precedes him everywhere. In [redacted], everyone (people we did not even know) kept apologizing to us for the fact that we have to work for him. A girl from NOAA even told us that she knew him from a previous response and had considered turning him in for harassment.
- Certain members of the "top 3" Command have very apparent issues with alcohol dependency.
- Command turns a blind eye on issues at unit and gossip runs rampant. Specifics on this topic cannot be addressed here due to inevitable retaliation from Command.

On March 14, 2018, the applicant issued a memorandum, "Investigation of Anti-Harassment/Hate Incident (AHHI)," wherein she ordered a Single-Officer Standard Investigation into "[a]ll the circumstances surrounding reports of discriminatory behavior and comments from [SFT's] Operations Officer," LCDR L.

On March 21, 2018, a CGIS Investigation was opened as a result of allegations of sexual assault against the applicant's SPO coming to light during the Standard Investigation opened by the applicant. The CGIS report stated that on March 21, 2018, CGIS investigators met with LCDR A regarding his appointment as the Investigating Officer (IO) for the AHHI. LCDR A explained

that on March 14, 2018, he began conducting his first round of interviews and during an interview with LT H, it was disclosed that LT H had been sexually assaulted by LCDR L while at a pool party during a recent deployment. Specifically, LT H alleged that while at a pool party, LCDR L had become intoxicated, approached LT H from behind, reached around her body with both hands, and placed his hands in her front pockets. LCDR L then pulled LT H's body close to his and attempted to make out with her. LT H pulled her face away, but LCDR L kissed her on the face instead. At that point, LT H asked a nearby witness to get LCDR L away from her, and the two were separated. LCDR A stated that immediately upon learning about the alleged sexual assault, he stopped conducting interviews and notified his Command of the matter, who then notified CGIS. Additional CGIS interviews were conducted, including an interview of a civilian, CIV S, who revealed that she had also been sexually assaulted by LCDR L at the same pool party as LT H. According to CIV S, LCDR L had inserted himself into her dancing and while dancing with CIV S, LCDR L had grabbed her butt. A few days later, CIV S alleged that LCDR L had shown her pictures of a nude woman whom he claimed to be dating. Finally, CIV S alleged that while on an outing with other co-workers, LCDR L had kissed her on the back of the neck and told her, "you like the attention." Of the 15 individuals interviewed, 6 of the individuals stated that they were either sexually assaulted or harassed by LCDR L or had witnessed LCDR L sexually assaulting or harassing women.³

On April 4, 2018, the applicant emailed CGIS Special Agent (SA) K and informed him that because she had not received any advice telling her not to formally counsel LCDR L on the hostile work environment issues, she planned to proceed with her current course of action. On that same date, SA K responded to the applicant's email and told her not to speak with LCDR L because any discussion with him could lead to LCDR L asking questions pertaining to the active CGIS investigation. SA K further informed the applicant that if she had any reason to believe there was a distinct safety issue between him and particular members of the unit, to inform CGIS so that the issues can be addressed separately.

On April 5, 2018, the applicant issued a memorandum, "Investigation Referred to CGIS," wherein she noted that the Command was alerted to possible harassment through the results of the DEOCS report, and in response to these allegations, an investigation was initiated. However, the applicant stated that her investigation was suspended by CGIS on March 20, 2018, after a report of a sexual assault was filed against LCDR L. Finally, the applicant stated that on April 3, 2018, she was notified by the Civil Rights Directorate to terminate the AHHI investigation. Accordingly, the applicant closed out the AHHI to avoid conflict with the ongoing CGIS investigation.

On April 6, 2018, the applicant's supervisor, CAPT S, visited the applicant's unit and met with members of the crew to get a sense of the command climate.

³ The applicant provided 8 pages of rebuttals to the comments and claims made by the victims of LCDR L throughout the CGIS investigation. However, the Board did not record the applicant's statements in the decision because the Board found them to be irrelevant to the applicant's claims of error or injustice, which are isolated to her OER and subsequent non-selections for promotion, not the specifics of the sexual assault allegations or alleged violations with the CGIS investigation itself.

On May 3, 2018, the applicant's supervisor, CAPT S, issued a memorandum wherein he ordered an administrative investigation be conducted into the command climate within the applicant's unit.

On June 7, 2018, the applicant issued a memorandum, "Removal From Primary Duties," wherein she notified LCDR L, the Operations Officer, that he was being removed from his primary duties.

On June 18, 2018, the Investigating Officer (IO) submitted a memorandum wherein he provided his investigative "Findings," "Opinions," and "Recommendations" into the command climate within the applicant's unit. In summary, the IO concluded that "at its core the command climate at the [SFT] reached its low ebb in the early months of CY 2018 and could have been described as poor or below average. Since then and to the conclusion of this investigation there have been some improvements to the overall command climate. There are multiple factors that have played a part in the issues with the command climate to greater and lesser extents. The command climate has also had differing gradation effects on parts of the crew or individuals however, the principle issues seem to be coming from the front office and radiate outward and down through the unit." Opinions from the IO relevant to the applicant are recorded below:

9. By virtue of having the responsibility, authority and accountability associated with being the Commanding Officer of the [SFT], CDR [Applicant] by definition plays a role in any discussion of command climate. I have found no malicious intent on the part of CDR [Applicant] towards members of her command or action which has directly caused the command climate issues at the [SFT]. In fact, several members of the crew had positive things to say with regard to the recent direction of efforts by CDR [Applicant] to correct some of the command climate issues. I do believe however, that some lack of cognizance in recognition of the key issues at play on her behalf has allowed the conditions both in term of environment and personnel issues to be present whereby the faltering command climate was able to progress to such a state. To be sure CDR [Applicant] has been deployed away from the [SFT] a significant amount of time over the past year due to hurricane response activities. However, procedural, organizational and cultural aspects of the [SFT] could have been adjusted and may have assisted in mitigating some of the command climate issues. Additionally, greater care in building, maintaining and enforcing the careful professional interactions specifically at the senior levels of the [SFT] would have had solid results in both reality and perceptions by the whole of the command, which would have been beneficial. (Findings 2-4 & Exhibits 1-3, 7, 8, 11-16, 19, 20, 24-28, 30-38).

10. I have found no evidence of an inappropriate relationship between CDR [Applicant] and any member of her crew. However, extra attention in understanding of perceived interactions should have been reviewed more carefully. Most specifically the overly casual relationship with LCDR [L] described by both CDR [Applicant] and LCDR [L] as "maybe crossed the line a bit" and "probably crossed [the] line; too friendly; too many open door meetings." No matter the reality or perception of reality it had an effect of significantly impacting crew perceptions of the command. For such a small unit there are too many communications gaps, too many layers of organization and bureaucratic process and too little transparency. There is a general sense of the majority of those interviewed and feeling from my visit to the command that progress is being made and improvements to many of these areas are happening. (Findings 2-4 & Exhibits 1, 2, 7, 8, 11-16, 19, 20, 24-28, 30-38).

On August 31, 2018, LT H, the SFT's Assistant Operations Officer (AOPS), requested an expedited transfer from the unit due to claims of retaliation as a result of the CGIS and Command Climate Investigations and due to the continuing command climate issues.

Between September 19, 2018, and October 10, 2018, the applicant was deployed to an Incident Command Post (ICP) for hurricane pollution response efforts. During the applicant's deployment she had a disagreement with a civilian employee over assigning district personnel as resources to the response efforts. In response to the disagreement, CDR W visited the ICP and noted that there were absolutely no command climate issues to be concerned about and that Sector leadership had a high level of confidence in the response efforts.

On October 23, 2018, a Sector leader, CAPT V, arrived at the applicant's unit to conduct a retaliation and command climate investigation, prompted by LT H's allegations.

On November 5, 2018, the applicant received her evaluation for her work at the ICP. The evaluation was completed by CAPT S, Sector Commander. The applicant received the highest mark of 5—"Exceeded Expectations"—in every area except "Communication Skills" where she received a mark of 4.

On December 18, 2018, the applicant received her third DEOCS report on her unit's Command Climate. The report revealed marked improvements, especially in the areas of the sexual assault/harassment parameters. For example, on the previous DEOCS report, the applicant's unit received a 78% in the "Sexual Assault Response Climate," but on this report, the applicant's unit received a 91%. In addition, on the previous report, the applicant's unit fell behind the Coast Guard average in almost every Unit Summary, but on the new report, the applicant's unit either surpassed the Coast Guard's average or was equal to the Coast Guard's service-wide average. However, there were still a number of written comments that reflected an atmosphere where crewmembers felt the new OPS, LT L, who replaced LCDR L, was unapproachable and a poor leader who frequently yelled at crewmembers and treated them with disrespect.

On February 7, 2019, the applicant's supervisor, CAPT S, and the applicant's Reporting Officer, CAPT L, visited the applicant's unit again. During this visit, CAPT S and CAPT L informed the applicant that CAPT V's investigation concluded that there had been no retaliation against LT H. However, Sector leadership had still recommended that the applicant be relieved of her command.⁴

On May 14, 2019, the applicant received an email regarding her upcoming OER from her supervisor, CAPT S. The contents of the OER are summarized below:

[Applicant]

Attached is your OER for review period please let me know if you have trouble viewing it.

I call your attention to section 3.b., 3.c., and five. I offer the following to amplify the decisions related to the marks.

⁴ In a timeline of events provided by the applicant, the applicant alleged that her relief of command was pushed back in order to await the results of another DEOCS report. This report showed marked improvements in the applicant's unit command climate, so instead of being relieved of her command, the applicant was allowed to request an early change of command, which CAPT L considered a compromise to a formal relief of command.

In Section 3.b. – I gave you a 5 in “Workplace Climate.” The CO is ultimately responsible for the climate of the unit whether present or deployed (leading through those back at the unit). This is a point that [redacted] leadership feels that you need to better understand, and accept. I feel you have made strides here, but will need to embrace this as you seek out future Command opportunities in the future. Knowing this, you can work on your leadership style to ensure that you are coaching and leading your leadership team even while you are away. With this said, I do not discuss the negative aspects of the climate issues in detail or the bit about ultimate Command responsibility. Instead, I focused the comments on the positive aspects of your efforts to improve the climate issues once they were identified. Clearly, the unit was in a much better place upon change of command.

In Section 3.c. – in this section you had more 7s On the 2018 OR. This is mostly a function of more opportunity in 2017 than in 2018. I see 6s and 7s as interchangeable in some years you may get all 7s or all 6s or a mix without a substantial difference in performance. With that said, I gave you a 5 in “Responsibility.” This mark coincides with the “Workplace Climate” discussion above. The CO is ultimately responsible for everything that goes on at the unit whether present or not. Learn and embrace this concept and you will be ready for your O6 Command. Here again, my comments do not focus on the negative aspects of this discussion. Instead, I chose to focus on the positive things that you did with your XO and Command Chief to identify and correct the issues that led to the “Workplace Climate” issues, and the various investigations and personnel actions.

In Section 5 – [Redacted] has you in the block “One of the many high performing officers who form the majority of this grade,” and “Promote with tope 20% of peers.” In the context of O6 promotion this is very competitive, and gives you credit for taking a high risk Command position. In addition, you will find in the written text that he uses “highest recommendation for promotion w/best of peers.” this may be pulled out because we feel it is redundant and takes up space on the new form. If it is removed it is because of this point. You will note that he recommends you for Deputy Sector Commander, but not NSF Commander – NSF CO. This links to the theme regarding the ultimate responsibility of command. This does not preclude you from earning the recommendation from your next chain of command, and/or upon selection for O6. These are the high points. I am happy to answer any questions. [Redacted] now needs to defend the marks, comparison scale, promotion recommendation and narratives. I will update you when I hear something.

A May 14, 2019, email chain between the applicant’s Supervisor and Reporting Officer, wherein the two discussed their opinions on what marks they believed the applicant deserved to see on her upcoming OER. The applicant’s Reporting Officer stated, “Outstanding work in striking the right balance here. I made a slight tweak in verbiage on one or two spots and added written promotion recommendation, but left the marks as they are. I will push for 3 and advocate for this. I will be asked about a couple of things like the ‘top 20% of peers recommendation’ and maybe some of the marks. I will argue the top 20% applies because of her CO responsibilities, willingness to make the changes she did and operational results. The drop of two areas from 7/6 to 5 and no mention of future command in this OER is enough...”

On June 11, 2019, the applicant received and signed her OER for the April 1, 2018, through March 31, 2019, with CAPT S as her supervisor and CAPT L as her Reporting Officer. 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), seven 6s, and nine 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. In addition, the applicant received the following comments:

Performance of Duties: Impeccable foresight: recharged unit readiness after challenges of 2017 hurricane season, galvanized NSF qual process to recoup shortages, maximized procurement of enhanced PPE/equipment to support missions; responders trained/equipped to expertly respond for 1,191 days to 4

major hurricanes in 2018. Superior resource brokering: generated optimal results as IC for Hurricane [redacted] Support Function (ESF10) response, masterfully coordinated w/[redacted] state agencies to develop response procedures despite lack of state legal framework, proactively engaged w/agency directors/legal staff to ID roles/responsibilities; used federal authorities/state enforcement officers to rapidly commence displaced vessel pollution assessment/recovery on 362 vsls. Highly nimble: in preparation for/response to shifting forecast for Hurricane [redacted] deployed ready teams for catastrophic incident SAR & pollution response; mbrs able to shift between roles to support 2 Sectors, assisted 78 citizens, assessed 1,000+ miles for pollution. Nationally recognized oil/HAZMAT response expert: precise explanation to CCG on ESF10 actions landed by executive staff. Gifted communicator: top quality briefs, written/oral; guest presenter at NOAA's Science of Oil Spills course.

Leadership Skills: Compassionate leader: dedicated to crew welfare during lapse in approps, intrusive leadership to rapidly pinpoint issues, engaged chain of cmd to resolve crew inquiries; promoted work-life balance to max personal/unit readiness. Tirelessly reviewed/edited 500 personal awards. Superb coach/director: id'd significant personnel/climate issues, worked w/XO/Chiefs & employed advice from CGIS/Service Legal/Work Life prog in developing strategies to help unit members & restore positive workplace climate, empowered XO/Chiefs to identify/correct systematic issues while elevating personnel issues; efforts vastly improved satisfaction. Highly influential: led 120 responders during stand-up of Hurricane [redacted] ICP, implemented mgmt/operations priorities/objectives, empowered ICP staff, developed response oversight/crew welfare procedures. Dynamic team builder: orchestrated a unified cmd w/CG/FBI/BCP/Civil Support Team during 2 multi-agency terrorism exercised; executed joint response actions.

Personal and Professional Qualities: Highly innovative: vigorous proponent of NSF's alpha/bravo/charlie model for team reconstitution following unprecedented OPTEMPO of 2017 storm season; catalyzed [SFT's] first-time implementation to capitalize on training/crew rest periods while maintaining national response posture. Masterful coordination w/MSRT/Sector plng cell to develop multi-day full scale exercise scenario to test [SFT's] offshore response capability/invoke full COTP authorities w/potential terrorist threat; advice preserved CG roles/highlighted MSRT capabilities/engaged appropriate federal partners. Working with XO/Command Chief analyzed [SFT's] procedures for improvement – empowered Chiefs Mess to lead/manage enlisted workforce, strengthened oversight of OPS function, increased morale events, held focus groups, & prioritized direct crew engagements/accessibility – climate vastly improved.

Reporting Officer Comments: An extremely innovative Commanding Officer who demonstrates remarkable ability to bring order out of chaos, operational skill & adaptability in leading a high-functioning hazardous materials/oil spill response team for demanding tactical missions thruout the [redacted] & to meet operational commanders' emergent needs world-wide. Strong recommendation for promotion alongside peers;⁵ decisive/action-oriented style and outstanding organizational abilities balanced with a nationally-recognized mastery of emergency management skills are attributes that earn member my highest recommendation for most challenging positions requiring public-private partnerships, and an ideal choice for the upcoming assignment coordinating inter-agency efforts for CG—[redacted]. An excellent candidate for and has my full recommendation for Deputy Sector Commander.

On July 3, 2019, the applicant's supervisor, CAPT S, emailed the applicant's Reviewing Officer and informed him that the applicant's Reporting Officer, CAPT L, may be reaching out to discuss the applicant's OER. CAPT S explained that the applicant was revisiting the "Reviewer's Comments" and the two marks of 5 in "Workplace Climate" and "Responsibility." CAPT S stated that he provided the applicant with additional counseling on the "Command Climate" mark, and felt strongly that given the totality of the situation, a mark of 5 was fair. That same day, CAPT R responded and told CAPT S that if he desired to change his marks to let him know so that he could

⁵ The applicant's draft OER language was slightly different. In the draft OER, the Reporting Officer stated, "Highest recommendation for promotion w/ best of peers," instead of the final draft which stated, "Strong recommendation for promotion alongside peers."

arrange to have signatures made quickly. CAPT R stated that his sense was the OER was accurate, however, the marks were CAPT S' not his.

On August 1, 2019, the Captain (O-6) selection results were released, and the applicant learned that she was not selected for promotion to Captain.

On March 17, 2020, the applicant applied for relief to the Personnel Records Review Board (PRRB) claiming that her April 1, 2018, through March 31, 2019, OER was "based on erroneous information." The applicant alleged that the OER contained sources of information that should not have been used in her OER. Specifically, DEOMI survey results, an NSF initiated investigation that was deemed invalid by the applicant's Sector and a Sector initiated investigation that was ended with "no final action." The applicant further alleged that her rating chain developed negative perceptions of her based on "one-sided or erroneous sources of information," and certain high-level officer at her Sector exercised undue influence in order to "influence the Reporting Officer/Supervisor" responsible for her OER. The applicant requested the same relief as she has requested with this Board. The PRRB denied the applicant's request concluding that after a thorough review of the applicant's PRRB package, the applicant failed to provide clear and convincing evidence that the ratings in her OER did not accurately reflect her performance during the aforementioned time period. The PRRB also found that the applicant failed to provide clear and convincing evidence demonstrating undue influence from her Reviewer upon the Reporting Officer. Finally, the PRRB found that the applicant's rating chain performed their Officer Evaluation System Procedures Manual, PSCINST M1611.1C, duties in accordance with policy. Included in the PRRB final decision were two statements submitted by the applicant's Supervisor, CAPT S, and Reviewing Officer, CAPT R.

- I, Captain [S], United States Coast Guard, declare as follows, pursuant to Title 28 United States Code § 1746:
 1. My current assignment, and assignment at the time of observation, is/was Commander [SFT]/Commanding Officer [redacted] Coordination Center ([redacted]CC). At the time of observation I was the Supervisor of the Applicant.
 2. Commander [Applicant's] unit, the [SFT], was/is an element of the [redacted]. As Commander of the [SFT], I was Commander [Applicant's] direct supervisor for the period of the report, 01April2018 to 31March2019.
 3. Commander [Applicant] alleges that her validated OER for the period 01April2018 to 31March2019 is erroneous, was unduly influenced by personnel within and outside of her rating chain, and that it does not reflect her performance or potential. As her Supervisor, I worked with her Reporting Officer and Reviewer to ensure that the OER CDR [Applicant] received was fair. Though there was dialogue among the rating chain and the [Sector] Command Staff in their exercise of Commanding Officer oversight of the Officer Evaluation System (OES), I did not see any evidence to support CDR [Applicant's] assertion that the OER was based upon erroneous information or unduly influenced. The "5" marks that I gave to CDR [Applicant] in Workplace Climate and Responsibility were my marks. I assigned these marks in consideration of the totality of the situation. No one event., source or input was used as the basis of these marks, and they were not changed from the draft OER to the final OER.
 - 3.a. As her higher Commander, I exercised oversight, consistency, and fairness over the [redacted] OES in accordance with the Commanding Officer responsibilities outlined in Commandant Instruction (COMDTINST) Manual M1000.3(A). Section 5.8.5.

3.b. In addition, I observed that my higher commander, the [Sector] Commander, exercised oversight, consistency, and fairness of the [Sector] OES in accordance with the Commanding Officer responsibilities outlined in COMDTINST MI 000.3(A), Section 5.8.5.

3.c. As her Supervisor, I executed my responsibilities as a member of her rating chain as outlined in Personnel Service Center Instruction (PSCINST) Manual M1611.1 D, Chapter 4. I completed comments and marks for sections 2, 3a, 3b, 3c., and I signed and dated Section 4. I gave her 2 marks of 5, 7 marks of 6, and 9 marks of 7. In giving her these marks, I considered the entire period, and gave her credit for positive actions that she took to improve the climate at the unit while also considering input from customers, members of her command, and the chain of command. I also provided draft comments for Section 5 to her Reporting Officer.

3.d. Captain [L] ([redacted]) served as her Reporting Officer (RO). From my perspective, he executed his responsibilities consistent with the [Sector] OES Instruction and COMDTINST M 1000.3(A), Chapter 4. He completed and signed Section 5.

3.e. CAPT [R] ([redacted]), served as the Reviewer. From my perspective, he executed his responsibilities consistent with the [Sector] OES Instruction and COMDTINST M1000.3(A), Chapter 4. CAPT [R] completed and signed Section 6 as Reviewer.

3.f. I did not directly observe the internal [Sector] efforts in administering the overall [Sector] OES.

3.g. Throughout the evaluation period, and in the writing of the OER, I did have regular conversations with the RO about CDR [Applicant] including her performance, the unit challenges, her personal challenges with other personnel outside the chain of command, and her OER. Despite these conversations, and receiving input from many sources, the marks that I gave CDR [Applicant] are my own, and they were not changed by the RO or the Reviewer from the draft OER to the final OER.

3.h. Likewise, I had many conversations with CDR [Applicant] throughout the evaluation period about her performance and leadership. During these conversations we discussed the challenges that she was having with personnel in her command, and we regularly discussed the command climate. We also discussed the challenges that [District] had with her personal interaction with one of their employees during Hurricane [redacted]. At her request, I provided CDR [Applicant] a copy of the draft OER before forwarding it through the rating chain. The marks that I provided her at that point were the same as the final marks. The marks of 5 that I gave CDR [Applicant] in Workplace Climate and Responsibility were an overall assessment of the situation. No one event, source, or input served as the final basis.

3.h. CDR [Applicant] did call me after she received the final OER, and asked me to reconsider my marks. I said that I would think about changing the Responsibility mark based upon our conversation, but I did not make any guarantees. In the end, I decided not to change my marks.

3.i. After that conversation, I let CAPT [R] know that CDR [Applicant] wanted to talk to him about the OER, and that she was thinking about asking PSC-OPM about having her marks changed.

3.j. CAPT [R] reinforced the fact that the marks are mine.

3.k. I did not communicate with anyone about the conversation that CAPT [R] and CDR [Applicant] had about her OER.

3.l. CDR [Applicant] emailed me asking for a statement about how CAPT [R] unduly influenced the marks in her OER. In my reply, I emphasized that I reconsidered my marks and decided not to change them.

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

Executed this 27th day of April 2020.

- As I, Captain [R], United States Coast Guard, declare as follows, pursuant to Title 28 United States Code §1746:⁶
 1. I am currently the Chief of Staff at Coast Guard [Sector]. During the period in question I was the Chief of Operations, Coast Guard [Sector]. In the latter role I was the Reviewer for 60 OERs, the Supervisor for 5 OERs, and the Reporting Officer for 7 OERs. I was the Reviewer for CDR [Applicant's] OER.
 2. I have reviewed the electronic package and documents forwarded to me by Coast Guard Headquarters. I have reviewed CDR [Applicant's] allegations and perspective. I have reviewed CDR [Applicant's] OER and consider the marks assigned by the Supervisor and Reporting Officer to be very generous given my understanding of CDR [Applicant's] performance while in command during the period of the report.
 3. I conducted my responsibilities as Reviewer in accordance with PSCINST M1611.1D. Per policy. Had I disagreed with the Supervisor and/or Reporting Officer remarks I would have used Block 6 to indicate the points of disagreement. As required, I ensured the OER reflected a reasonably consistent picture of CDR [Applicant's] performance and potential. Further, I ensured the Supervisor and Reporting Officer executed their responsibilities per policy. I recall returning the OER to the Reporting Officer at various times and discussing the nature of the comments related to proposed marks and sought to ensure clarity between proposed marks and potential inconsistencies. I provided my experience, advice, and writing skills to offer the Supervisor and Reporting Officer alternate potential wording for their sections. In my experience, this is typical in the OER writing process and the input and insight is always advice and never direction to change. I did not, nor have I ever in my role as Reviewer, directed or ordered the changing of any mark against the will or judgement of a Supervisor or Reporting Officer. I provide attachment (1) which is an email between the Supervisor, and I dated July 2019 that clearly displays my consistent approach to OERs. The Supervisor clearly states CDR [Applicant's] marks were accurate, and I offered an opportunity to consider adjustments if warranted while reiterating that the marks were the Supervisor's alone.
 4. CDR [Applicant] provided a written statement with perceptions that in my view are not wholly in context. In one example of several, CDR [Applicant] refers to a call with me, which I only partially recall, and indicated my perception that the Commander took 30-days of leave at some point, which Direct Access shows did not occur. Regardless, if this was my perception in the conversation at all, it is still not relevant as I did not mark the officer and did not direct a change of marks by the Supervisor or Reporting Officer.
 5. There were discussions at senior levels about relieving CDR [Applicant] of command. Though ultimately CDR [Applicant] was not relieved, it is not unreasonable to believe that the underlying concerns related to a potential relief present a broad, holistic view of CDR [Applicant's] performance in command. Notably, CDR [Applicant's] OER recognizes technical performance at a high level. It is important to note that conversations regarding relief of command were not tied to discussions related to the performance evaluation.
 6. Clearly, CDR [Applicant's] Supervisor and Reporting Officer chose not to add any mention of the negative command climate indicated in the DEOCS nor the investigation of command climate that strongly recommended relief for cause. Though the Area Commander was involved in conversations regarding a potential relief for cause, I do not have knowledge or indication that the Area Commander reviewed CDR [Applicant's] marks let alone indicated changes were required.
 7. In summation, CDR [Applicant] is dissatisfied with a generous evaluation that gives the officer all marks 5 or higher, the highest mark possible in the section rating the officer against peers, a recommendation to promote with the top 20% of peers, a recommendation for promotion, and a recommendation to a command cadre position at a Sector.

⁶ As noted by the applicant, CAPT R's sworn declaration was in fact never signed. However, because the applicant relied on CAPT R's sworn declaration in her reply to the Coast Guard advisory opinion, the Board has recorded CAPT R's sworn declaration here.

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

Executed this 24th day of April 2020.

VIEWS OF THE COAST GUARD

On December 23, 2021, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC). The JAG recommended the Board deny relief in this case. The JAG provided the following analysis:

The JAG argued that the applicant has not provided sufficient evidence to meet the standard for correction of her OER for the April 1, 2018, through March 31, 2019, rating period. According to the JAG, under *Hary v. United States*⁷, the applicant must do more than merely allege or prove that an OER seems inaccurate, incomplete, or subjective in some sense. He must demonstrate, by competent evidence that there was: 1) A misstatement of a significant hard fact; 2) A clear violation of a specific objective requirement of statute or regulation; or 3) Factors adversely affecting the rating which had no business being in the rating process.⁸

The JAG argued that regarding the applicant's April 1, 2018, through March 31, 2018, OER, the applicant failed to identify any specific misstatement of significant hard fact. The JAG explained that while the applicant seems to challenge particular statements that the rating chain made in declarations and their justifications of the marks, the applicant's challenges are not specific misstatements of significant hard fact. The JAG further explained that even if she had identified specific statements of significant hard fact, the applicant failed to take certain key steps afforded by policy to challenge the comments and marks contained within this OER. Specifically, the JAG claimed that the applicant failed to submit a Reported-on Officer (ROO) Reply as authorized by policy. The JAG stated that pursuant to Article 5.A.7.e. of the Officer Accessions, Evaluations and Promotions Manual, COMDTINST M1000.3A, the ROO Reply provides an opportunity for the ROO to express a view of her performance which may differ from that of the rating official.

Regarding the second *Hary* prong—proving that there was a clear violation of a specific objective requirement of a statute of regulation—the JAG argued that the applicant alleged that multiple emails are evidence that her Reviewer and Sector changed the comments contained in Block 5 of her OER. However, the JAG argued that the applicant's Reviewer expressly states that he did not, nor has he ever, directed or ordered the changing of any mark, but instead provided experience and advice to the applicant's Supervisor and Reporting Officer for alternate potential wording. The JAG argued that this is not a violation of policy and the applicant's rating chain, including her Supervisor and Reporting Officer, are given the presumption of regularity that they performed their duties correctly and lawfully, and the applicant's evidence is insufficient to overcome this presumption.

⁷ *Hary v. United States*, 223 Cl. Ct. 10, 18, 618 F.2d. 704, 708 (1981).

⁸ *Id.*

The JAG explained that the applicant also alleged that her rating chain utilized information from an investigation that was deemed invalid, an investigation where no final action was taken, and the DEOCS report, which was in violation of policy. However, the JAG argued that the applicant's claims are unsupported by the evidence. The JAG stated that first, the applicant failed to show that the allegedly invalid investigation was actually invalidated. Next, the JAG argued that the applicant failed to show where in OER policy it prohibits utilizing the underlying facts of an investigation just because no final action was taken. Furthermore, the JAG argued that the applicant failed to prove that her rating chain used the information from either investigation or the DEOCS report when giving her a mark of 5 on "Workplace Climate," and "Responsibility" or in the block 5 comments not recommending her for an O-6 Command position. According to the JAG, the facts introduced by the applicant show that both her Supervisor and Reporting Officer made two different trips out to her unit to observe the command climate first-hand. Accordingly, the JAG argued that the Supervisor and Reporting Officer had sufficient knowledge to evaluate the applicant, without utilizing the DEOCS report or other investigations. In addition, the JAG claimed that even if the applicant's command had utilized these reports in evaluating the applicant, they were not prohibited from mentioning the underlying conduct identified within either investigation, only from mentioning the investigation itself. Because the applicant's OER does not mention the DEOCS or the investigations alleged by the applicant, there are no prohibited comments or information and no violation of policy.

Regarding the applicant's claims that her PRRB was incorrectly comprised because the board members were not senior to her, the JAG argued that the board members not being senior to the applicant is not a violation in policy. According to the JAG, the PRRB policy is discretionary, evidenced by the language in policy that states the PRRB members *should* be senior to the applicant, not that they must be. Furthermore, the JAG explained that court decisions make it clear that with regard to the second *Hary* prong, a violation of any regulation is not enough, but instead the violation must be "when preparation of the [report] violated an applicable statute or regulation."⁹ The JAG argued that with this clarification, it is plain that the violation must be of a policy governing the preparation of the applicant's OER or related to the preparation of the OER, which the applicant has failed to prove. Accordingly, the JAG argued that the applicant has failed to prove a prejudicial violation of a regulation or statute.

The JAG explained that the third *Hary* prong requires the applicant to present evidence that her rating chain used factors that adversely affected her rating which had no business being in the rating process, but the applicant has failed to prove such a violation occurred. The JAG argued that the applicant's claims that her Sector's negative perceptions of her were a bias that negatively influenced her OER, are unsupported by the evidence. The JAG pointed to the sworn statements submitted by the applicant's rating chain, specifically by CAPT S, who stated, "...I did not see any evidence to support CDR [Applicant's] assertion that the OER was based upon erroneous information or was unduly influence. The '5' marks that I gave to CDR [Applicant] in "Workplace Climate" and "Responsibility" were my marks." In addition, the JAG argued that the emails submitted by the applicant wherein the applicant claims that undue influence is established do not prove undue influence, nor do they prove a bias or personal animosity against the applicant. The JAG stated that the applicant's claims that her Sector leadership harbored bias against her is speculative. Consequently, the JAG explained that the applicant has failed to prove that any of the

⁹ *Collins v. United States*, 24 Cl. Ct. 32, 39 (1991).

Hary prongs were violated or that any of the Coast Guard officials—her rating chain—failed to discharge their duties in evaluating the applicant correctly, lawfully, and in good faith. Accordingly, the JAG argued that because the applicant has failed to prove, by a preponderance of the evidence, that her OER was erroneous or unjust, the applicant is not entitled to an SSB, and her requests should be denied.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 24, 2022, the Chair sent the applicant a copy of the Coast Guard’s views and invited her to respond within thirty days. The Chair received the applicant’s response on June 22, 2022.

Regarding the Coast Guard’s claim that the applicant failed to submit a Reported-on Officer (ROO) Reply, the applicant explained that she did not file a ROO Reply for four reasons. First, she claimed that there was less than 30 days between receipt of her final OER and the deadline for candidates for the Captain selection boards to ensure that their records were accurate and contained all of the pertinent documents. Second, the applicant alleged that she had been previously advised by her Supervisor, a former Assistant Officer in the Personnel Service Center (PSC), that it was inadvisable to submit a ROO Reply because it tended to call the promotion board’s attention to the negative details in the OER. Third, she claimed that due to the sheer volume of documentation she needed to provide in support of her position, her ROO Reply would not have met the constraints set forth by PSC because her ROO Reply would have either left her challenge unsupported or caused the selection board to have more questions that would have gone unanswered. Finally, the applicant explained that a ROO Reply is not required in order to submit an application to the PRRB.

Regarding the Coast Guard’s claim that the applicant failed to identify a specific misstatement of significant hard fact in her contested OER, that applicant explained that while that claim is accurate, the problem is that OERs do not report on “hard fact.” The applicant stated that if OERs did rely on “hard fact” they would contain fewer adjectives and adverbs. According to the applicant, OERs are in fact, subjective evaluations where one human evaluates another, where personal biases, past experiences, and external influences impact a supervisory rating chain’s completion of an OER. The applicant asked the Board to consider the human element and the influence it has on OERs. The applicant claimed that the barrage of negative information against her Sector leadership, frequently from anonymous and/or one-side sources, proves by a preponderance of the evidence that their opinions of her were influenced by outside sources and those negative perceptions spilled over into her OER.

The applicant argued that her allegations that her Reviewer made changes to the comments in her OER were based off the differences in the draft OER and the final copy she received. She alleged that her claims also stem from contents of the email communications between her Supervisor, CAPT S, and her Reporting Officer, CAPT L, which stated that there would be a need to “advocate” for the drafted version of the OER. The applicant contended that the “hard fact” is that this email, coupled with her phone call with the Reporting Officer and Supervisor where they told the applicant they would get the “highest marks they could,” establishes that her Supervisor

and Reporting Officer colluded to draft an OER that would gain the approval and signature of the Reviewing Officer.

The applicant explained that in accordance with the OES, PSCINST M1611.1D, supervisors evaluate officers based on their assessment of the ROO and if a Reporting Officer disagrees with the Supervisor's assessment, they have two options: 1) check the "do not concur" box in block 5.a. of the OER and include Reporting Officer comments; or 2) hold the Supervisor accountable in the Supervisor's OER. The applicant claimed that the same is true for the OER Reviewer, who ensures that the evaluation process is completed in accordance with established policy, which includes verifying no prohibited comments or references were used. According to the applicant, if the Reviewer does not agree with the marks or comments in an officer's OER, the Reviewer can check the box in 6.a. and complete a CG-5315 "Reviewer Comments" form to include his/her own comments and assessments. However, the applicant alleged that the Reviewer is not permitted to direct a change to the OER unless it falls within the purview of prohibited comments. The applicant claimed that comments in the email between the Supervisor and the Reporting Officer, as well as the discrepancy between the draft OER and the final OER, make it clear that the Reviewer influenced her OER.

The applicant explained that in his email dated May 14, 2019, her Supervisor, CAPT S, stated that a 5 in "Workplace Climate" is based on the Commanding Officer's responsibility whether at the unit or deployed and "is a point that [Sector] leadership feels that you need to better understand, and accept." The applicant alleged that this statement is clear evidence that her Sector leadership influenced her OER. The applicant contended that her position is further supported by the following statements made by CAPT S' to CAPT L, her Reporting Officer:

- "[CAPT L] now needs to defend the marks, comparison scale, promotion recommendation and narratives" and
- "I will push up to 3 [Sector, CAPT [R], Reviewer] and advocate for this. I will be asked about a couple of things, like 'top 20% of peers recommendation' and some of the marks. I will argue the top 20% applies because of her CO responsibilities, willingness to make changes, and operational results."
- "In my comments and numbers, I tried to capture the essence of your thoughts."

The applicant argued that these statements are in direct violation of Coast Guard policy, where the roles and responsibilities of each rating chain member are clearly outlined. According to the applicant, pursuant to Coast Guard policy, the Reporting Officer should not have to "advocate" for marks. The applicant claimed that the process allows for a Reviewer to provide comments if he/she does not concur with the evaluation submitted by the Supervisor or Reporting Officer.

Next, the applicant pointed to CAPT R's sworn declaration, submitted in response to the applicant's PRRB application, wherein CAPT R stated that in his role as the applicant's Reviewer, he "ensured the OER reflected a reasonably consistent picture of CDR [Applicant's] performance and potential." However, the applicant claimed that CAPT R had met her once, at a change of

command five years prior and he never visited her SFT during her assignment, never engaged in a phone call with her prior to her call with him on July 1, 2019, and they had no email communications. The applicant explained that she would like to know the basis for CAPT R's ability to determine a consistent picture of her performance and potential other than through secondhand information, various investigations, surveys containing one-sided and anonymous comments, and conversations about her unit among senior Sector leadership.

Regarding the investigation that led to recommendations that the applicant be relieved of her command, the applicant stated that she was never afforded an opportunity to review the investigation, in whole or in part, and her rating chain failed to provide any insight into the reason(s) behind the recommendation for her relief other than statements based on erroneous information or blatantly false mischaracterizations of her and her actions. The applicant stated that a cardinal rule of leadership and evaluation is to ensure that the person being evaluated is aware of the areas of concern and that blanket statements like "crew welfare," "judgment," and "unit climate" used as reasons behind the ratings and comments in her OER do not provide context nor demonstrate specific performance issues. The applicant argued that they do, however, point to the negative influences of unsubstantiated sources and the pressure from senior Sector leadership to hold her accountable for something, anything.

As to the Sector Commander, the applicant explained that her contention is that the entirety of her Sector leadership understood that he wanted her held accountable, which was established by multiple conversations with her Supervisor and Reporting Officer. The applicant alleged that it was made clear to her that that evaluation of her performance was influenced by the Sector Commander, which culminated in the investigation conducted by CAPT V, who recommended her relief, but for reasons no one in her chain of command could, or would explain to her. The applicant argued that contrary to CAPT R, who claimed the applicant was dissatisfied with a generous evaluation, what she is dissatisfied with is her rating chain's inability to provide real information regarding the basis for the recommendation that she be relieved of her command and the resulting OER. The applicant alleged that despite repeated requests for additional information, she was provided with no justification for the recommendation that she be relieved.

The applicant questioned how one is able to account for the change in tone of the comments in the draft OER from the final OER, in addition to various phone and email communications with her rating chain about her Sector leadership's poor opinion of her, without arriving at the conclusion that her OER was influenced by the Reviewing Officer, CAPT R. The applicant claimed that the only two people who knew her by more than just a handshake, her Supervisor and Reporting Officer, communicated to her that they were attempting to draft an OER they believed would capture the views of higher authorities within their Sector leadership. According to the applicant, during a July 3, 2019, conversation with her Reporting Officer, she was specifically told that the Sector Commander would not allow her to be recommended for command. The applicant explained that it was not that the Reporting Officer felt as though she should not be recommended, but that the Admiral made it clear that it was not going to happen.

The applicant alleged that many of the lines of evidence the Coast Guard argued she failed to provide were summarized from conversations she had with members of her rating chain. The applicant explained that she took notes during many of her conversations, which she referred back

to in order to ensure she followed the guidance and directions she was given, but also in drafting the summaries of the conversations she provided with her application to this Board. The applicant claimed that these conversations included being told by her Supervisor that the Command Climate Investigation was deemed invalid by Sector Legal because the sexual assault victim claimed that the applicant “had a personal relationship” with the IO, who the applicant claimed she had only met once. The applicant alleged that her supervisor told her that invalidated investigation was the reason CAPT V’s investigation included unit climate rather than just an examination of the claims of retaliation.

The applicant claimed that her Supervisor was the one who told her that he used the February 2018 DEOCS report to justify a mark of 5 in “Workplace Climate.” The applicant further claimed that this was revealed during a May 14, 2019, email she received from her Supervisor, wherein he attached the draft OER. The applicant explained that she called her Supervisor to ask why she was receiving 5s in “Workplace Climate” and “Responsibility” and the Supervisor stated that he was basing his marks on the 2018 DEOCS report. The applicant alleged that when she asked her Supervisor how he could use the 2018 DEOCS report as support when it took place outside of the reporting period, she was told it could be used because the report initiated a subsequent investigation by CAPT V, which did take place within the reporting period. The applicant further alleged that when she called CAPT R on July 1, 2019, he told her that her rating chain should not have used CAPT V’s investigation or the DEOCS report as a basis for her OER marks. The applicant claimed that within a six week period, she had her Supervisor and Reviewer telling her two very different things. The applicant alleged that in his sworn declaration to the PRRB, her supervisor does not deny that he used CAPT V and the DEOCS’ report as sources for evaluating the applicant, but instead attempted to highlight other areas of the applicant’s performance he believed were issues, areas he never discussed with the applicant.

The applicant explained that she agrees with the Coast Guard that she did not provide written evidence regarding several of her claims, but that is because many of the conversations took place over the phone. However, the applicant alleged that she recalled her conversations vividly and relayed them as accurately as she could in various enclosures attached to her original application. According to the applicant, both CAPT S and CAPT R had the opportunity to review all of the evidence she submitted with her application, and of all the details summarized, CAPT R only called into question a conversation wherein the applicant claimed that she was told that taking 30 days of leave during a hurricane season was one of the factors for her being recommended for relief. According to CAPT R, he did not recall telling that to the applicant. The applicant explained that she did not take any such leave, which is supported by the evidence she submitted to this Board.

The applicant explained that while it is true that her Supervisor and Reporting Officer visited her unit on February 7, 2019, it is the height of absurdity to think that a one day visit would be enough to observe unit climate and make an informed decision. In addition, the applicant stated that while there was opportunity for a senior officer to meet with members of the crew, broken into groups by rank, she was never apprised of any pertinent information provided to either the Supervisor or Reporting Officer. The applicant claimed that she asked after each meeting and visit if there was anything she needed to know or if there were any issues she needed to address, but each time she was told that it was a good conversation with the crew/Chiefs Mess/Wardroom, but

they had nothing related to unit climate or workplace issues they needed to pass along. The applicant alleged that after each visit, the Supervisor and Reporting Officer said the crew was in a good place. The applicant argued that for the Coast Guard's opinion to be that this one-day interaction with her crew, under constructed circumstances, was enough to hold her accountable for the entire year-long reporting period is naïve and counter to all policy on the OER's role in measuring performance throughout the period. The applicant further argued that it was known that the Command Master Chief (CMC) wanted her held accountable because he was reportedly very concerned with crew welfare, but the applicant claimed that the CMC never made a visit to her unit and had limited conversations with her crew during the entire 16-month period at the root of his concerns.

Regarding the applicant's claims that the PRRB was not convened according to policy, she argued that she was not using that as a means to justify changing her OER. The applicant claimed that she was simply relaying the fact that she followed the process of submitting a PRRB application, but the Coast Guard did not follow its own policy in assembling the Board. The applicant explained that policy requires that the majority of the Board should be comprised of members senior to the applicant, but if they are not, PSC *shall* notate why it did not have members senior to the applicant. The applicant alleged that Coast Guard Headquarters has the largest assemblage of O-6s and above, yet PSC could not identify at least one to participate in the PRRB's review of her application?

Finally, the applicant stated that although she has not provided any evidence of personal animosity or bias on the part of her rating chain, she asked the Board again to consider the human nature and the subjectivity of personnel evaluations. The applicant asked the Board to keep in mind that in all of the communication summaries she provided to this Board, only one was refuted by her rating chain. Accordingly, the applicant argued that she has presented a fair and accurate accounting of events and comments shared by her rating chain concerning the sentiment of the Sector leadership.

APPLICABLE LAW AND POLICY

Article 5 of The Coast Guard Officer, Accessions, Evaluations, and Promotions Manual, COMDTINST M1000.3A (June 2017), provides the following guidance on the Officer Evaluation System (OES):

Article 5.A. Overview. This Chapter states policies and standards for conducting performance evaluations for Coast Guard officers.

1. Purpose. The Officer Evaluation System documents and drives officer performance and conduct in accordance with Service values and standards. This information is used to support personnel management; primarily selection boards and panels, retention, and assignments.

...

Article 5.I. Prohibited Comments. The rating chain must not:

1. Mention a judicial, administrative, or investigative proceeding, including criminal and non-judicial punishment proceedings under the Uniform Code of Military Justice, civilian criminal proceedings, Personnel Records Review Board (PRRB), Coast Guard Board for Correction of Military Records (BCMR), or any other investigation (including discrimination investigations) except as required by a non-regular OER. Referring to the fact conduct was the subject of a proceeding of a type described above is permissible when necessary to respond to issues regarding that proceeding first raised by an officer in a reply under Article 5.K. of this Manual. These restrictions do not preclude comments on the conduct that is the subject of the proceeding. They only prohibit reference to the proceeding itself.

...

Article 1 of the Officer Evaluation System Procedures Manual, COMDTINST M1611 (December 2016),¹⁰ provides the following guidance on the roles and responsibilities of the Reviewing Officer:

1.A.4. Reviewer.

a. Designation. The Reviewer is normally the Supervisor of the Reporting Officer. While the Supervisor and Reporting Officer are specific individuals, the Reviewer is a position designated by competent authority, which in certain circumstances may be junior to the Reporting Officer. The officer occupying that position has a definite OES administrative function and may perform an evaluative function.

...

b. Responsibilities. The Reviewer shall:

1. Ensure the OER reflects a reasonably consistent picture of the Reported-on Officer's performance and potential.
2. If necessary, add comments, using the Reviewer Comments block on Form CG-5310 (series). These comments should only be submitted to comment on performance and/or potential which is significantly different than the Supervisor or Reporting Officer. These comments can be positive or negative in nature.
3. Ensure the Supervisor and the Reporting Officer have adequately executed their responsibilities under the OES and meets all submission schedules. The Reviewer shall return an OER to the Reporting Officer to correct errors, omissions, or inconsistencies between the evaluation and written comments (as applicable). However, the Reviewer shall not direct in what manner an evaluation mark or comment be changed unless it is prohibited by Article 5.I. of reference (a) and Article 4.B. of this Manual.

...

¹⁰ The Board notes that the applicant cited to PSCINST M1611.1D throughout her application. However, PSCINST M1611.1D was not in effect until December 2021, and was therefore not applicable during the applicant's rating period. Accordingly, the Board will use PSCINST M1611.1C, published in December 2016, and in effect at the time of the applicant April 1, 2018, through March 31, 2019, OER.

The Coast Guard's Manual for Correcting Military Records, COMDTINST M1070.1 (January 2011), provides the following guidance on the composition of PRRBs:

Article 7.c.4. Composition and Procedures of the Board.

a. Under the cognizance of the Director of Personnel Management, the PRRB will consist of at least three ad hoc members. The Deputy Director of Personnel Management or a designee will act as president of the board. A representative of the Judge Advocate General and Chief Counsel (CG-094) will also be a member in all cases. The third member will be from the Coast Guard Personnel Service Center, Officer Personnel Management Division (CG PSC-OPM) if the record of an officer on active duty is involved, the Coast Guard Personnel Service Center, Enlisted Personnel Management Division (CG PSC-EPM) if the record of an enlisted member on active duty is involved, or Coast Guard Personnel Service Center (CG PSC-RPM) if a Reserve record is involved. When a reserve member's record is involved, at least one member of the board will be from the reserve component. There will be a fourth member from the Coast Guard Personnel Service Center, Evaluations Branch (CG PSC-OPM-3) or Reserve Personnel Management Division, OES Manager (CG PSC-RPM-1) if error is alleged in an officer evaluation report (OER). *Normally a majority of the members shall be senior to the applicant, but in cases where this is not practicable, the report of the approving authority shall so indicate.* The recommendations of the board are to be based on a majority vote; minority views may be submitted. No person may be a member in a case in which he or she has been personally involved.

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 application is 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).

3. 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. All Board members concurred in that recommendation.¹¹

4. The applicant argued that her OER dated March 31, 2019, was erroneous and unjust because the Reviewing Officer used undue influence and erroneous information to have the comments in the OER changed, in violation of Coast Guard policy. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed evaluation in an applicant's military record is correct and fair, and the applicant bears the burden of proving by

¹¹ *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).

a preponderance of the evidence that it is erroneous or unjust.¹² Absent specific evidence to the contrary, the Board presumes that the members of an applicant's rating chain have acted "correctly, lawfully, and in good faith" in preparing their evaluations.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

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 her performance during the reporting period.¹⁵

6. Unlawful Influence: The applicant alleged that her OER was erroneous and unjust because her Reviewer and Sector leadership had a negative opinion of her and used undue influence to affect the marks and comments she received in her OER. Article 1.A.4.b.3. of the OER Manual states that an OER Reviewer "shall return an OER to the Reporting Officer to correct errors, omissions, or inconsistencies between the evaluation and written comments" but "shall not direct in what manner an evaluation mark or comment be changed unless it is prohibited by Article 5.I. of reference (a) and Article 4.B. of this Manual." For the following reasons, the Board finds that she has not shown that the OER Reviewer exercised unlawful influence by directing a change in an evaluation mark or comment:

- a. The applicant alleged that her Reviewer, CAPT R, made changes to the comments in her OER. To support her claims, the applicant points to the alleged differences in the draft OER when compared to the final OER that she ultimately received and signed. The Board has reviewed the applicant's draft OER, and found that it is almost identical to the final OER she received and signed. The only changes in the OER were the following sentences:

Draft OER – "Highest recommendation for promotion w/ best of peers."

Final OER – "Strong recommendation for promotion alongside peers."

- b. In addition, the Board finds CAPT S's sworn declaration persuasive. Specifically, CAPT S stated, "The '5' marks that I gave to CDR [Applicant] in 'Workplace Climate' and 'Responsibility' were my marks. I assigned these marks in consideration of the totality of the situation. No one event, source or input was used as the basis of these marks, and they were not changed from the drafting of the OER to the final OER." Moreover, in a July 3, 2019, email between CAPT S and CAPT R, CAPT S stated that he felt strongly that given the totality of the situation, a mark of "5" was fair, to which CAPT R responded and told

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).

¹⁵ *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.").

CAPT S that if he desired to change his marks to let CAPT R know so that CAPT R could arrange to have signatures made quickly. CAPT R further stated that his sense was the OER was accurate, however, the marks were CAPT S's not his. Therefore, a preponderance of the evidence shows that CAPT S's marks were based on his own evaluations of the applicant's performance and were not unduly influenced by the Reviewer, as alleged by the applicant.

- c. In sum, the applicant has not proven by a preponderance of the evidence that the OER Reviewer directed her Supervisor or Reporting Officer to change a specific mark or comment. She has also not shown that her rating chain violated Article 1.A.4.b.3. of the OER Manual.

7. Unlawful Use of DEOCS. Article 4.B.11. of the OER Manual prohibits OER comments and marks from being based on performance that occurred outside the rating period. The applicant alleged that her Sector leadership used one-sided, anonymous comments contained in a DEOCS that was completed outside of the rating period, to arrive at a negative opinion of her, which flowed into her OER. However, the applicant has failed to provide any evidence that her Sector leadership's opinion of her caused her marks to be lowered or that her rating chain relied on the DEOCS to in evaluating her performance. In fact, the applicant has failed to point to a single comment contained in the contested OER that was negative or derogatory or that mentioned the DEOCS or any survey or investigation for that matter. On the contrary, the applicant's OER was extremely positive and did not mention the applicant's role in the poor command climate, but instead, praised the applicant for her efforts in addressing the poor command climate. Although the applicant received marks of 5 for "Workplace Climate" and "Responsibility," her Supervisor still praised her efforts and achievements, describing the applicant as a "Superb coach/director" who "id'd significant personnel/climate issues" and whose "efforts vastly improved satisfaction." There is no mention of any survey throughout the entirety of this OER.

The applicant's OER shows that her supervisors took great care to document what they found to be the applicant's strongest contributions and characteristics during the rating period and the OER was overwhelmingly positive. Accordingly, the applicant has failed to prove, by a preponderance of the evidence, that her March 31, 2019, OER evaluated her performance outside of the rating period or that it was not completed in accordance with Coast Guard policy.

8. AHHI Investigation. The applicant made several allegations and arguments regarding the postponement of the AHHI she initiated against LCDR L. According to the applicant, her chain of command and Sector leadership tied her hands and prevented her from addressing the poor command climate within her unit or LCDR L's conduct toward the crew because of a CGIS investigation into allegations of sexual assault by LCDR L. The applicant alleged that she was prohibited from even speaking with LCDR L regarding the AHHI and his conduct because Sector leadership wanted to preserve the integrity of the CGIS investigation and therefore she could not promptly improve the command climate. The record shows that the applicant was told not to talk to the accused, LCDR L, and to stop the AHHI investigation so as not to interfere with the CGIS investigation. However, there is no evidence that the applicant was penalized in her OER because she was unable to talk to LCDR L and was unable to continue the AHHI investigation. Talking to LCDR L and conducting an investigation were not the only ways to improve the command climate,

and the applicant was credited in the OER with improving the command climate, which was poor at the start of the rating period. Accordingly, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that her OER was negatively affected as a result of her inability to complete the AHHI into LCDR L's conduct.

9. Relief from Command. The applicant alleged that after several investigations and reports into the Command Climate of her unit, members of her Sector's leadership wanted her held accountable and relieved of her command. However, the applicant has failed to provide any evidence that she was recommended for Relief for Cause or that her Sector leadership pushed to have her relieved for cause. Nor would evidence that the Sector Commander considered having her relieved of command be evidence of wrongdoing or evidence that her OER was erroneous or unjust.

10. The applicant made multiple allegations regarding the biases and motives of her chain of command and Sector leadership. 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.¹⁶

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.¹⁷ She has not proven, by a preponderance of the evidence, that her OER was not completed in accordance with Coast Guard policy or that it 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."¹⁸ Because she has not shown that the disputed OER was erroneous or unjust, there are no grounds to raise her marks, to change any of the comments, or to direct the Coast Guard to convene Special Selection Boards to reconsider her non-selections for promotion. Accordingly, the applicant's requests for relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

¹⁶ 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").

¹⁷ *Muse v. United States*, 21 Cl. Ct. 592, 600 (1990) (internal citations omitted).

¹⁸ *Hary*, 618 F.2d 704, 708 (Ct. Cl. 1980).

ORDER

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

November 3, 2023

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