

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2022-061


LCDR/O-4

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on July 13, 2022, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision dated October 3, 2024 is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant, a Lieutenant Commander (LCDR/O-4) on active duty, asked the Board to correct his record by making the following corrections:

1. Removing an April 9, 2021 negative CG-3307 Administrative Remarks Page ("Page 7");
2. Removing his Officer Evaluation Report (OER) for the May 30, 2020 to May 30, 2021 rating period; and
3. Upgrading his Coast Guard Achievement Medal to a Coast Guard Commendation Medal.

SUMMARY OF THE RECORD

The applicant was commissioned on July 23, 2009.

The applicant was promoted to Lieutenant Commander (LCDR) on March 1, 2021.

On July 16, 2018, the applicant was assigned as his unit's Command Duty Officer (CDO).

On November 3, 2020, the applicant's supervisor, LCDR L, sent the applicant an email. The content of the email is as follows:

Per our conversation last week I just wanted to follow up with you on concerns that multiple SMCs have brought to my attention in regards to your ability to execute cases while standing watch with you as CDO.

Multiple CDO [sic] have expressed concerns of losing [sic] confidence in your ability to stand CDO watch. Multiple SMCs who had stood watch with you over a two plus month period during the months of June thru August observed behaviors that was concerning to them. You and I discussed certain cases/instances that the SMCs used as examples when bringing this to my attention. You informed me I [sic] that this was your first time being told of the majority of these performance discrepancies from the SMCs while standing CDO watch. As of now there has not been any situations reported from any SMC in over a month. We discussed mitigating actions to ensure that there are no miss [sic] communications between SMCs going forward when standing the CDO watch. SMCs have collectively expressed the COA of taking your CDO qualification if such performance began to arise again. This email is to recap our previous conversation from Friday 31,2020 and to ensure you have a clear understanding of ramifications if problems begin to reoccur.

On November 19, 2020, the applicant's Sector Commander, Captain (CAPT) S, issued a memorandum, "Suspension of Command Duty Officer Qualification" wherein the applicant was notified that his CDO qualification had been suspended. The relevant portions of this memorandum are recorded below:

1. As result of several concerns brought to my attention, I am hereby suspending your Command Duty Officer (CDO) qualification until such time that full confidence in your performance is restored.
2. Over the last six months, you periodically failed to properly execute your role as CDO during several search and rescue (SAR) cases. In particular, you displayed deficiencies in applying proper analytical thought and providing valid recommendations. During these cases, SAR Mission Coordinators (SMCs) had to prompt you on basic SAR operational planning actions expected of a CDO. Subsequently, you also received verbal feedback from SMCs and your supervisor on areas of improvement. Although your performance improved immediately following feedback, it was not consistently maintained. Examples include an overdue Jet Ski case in May 2020 and an uncorrelated (UNCOR) Mayday case in August 2020, where you hastily deemed the search areas as unreasonable and communicated to the SMCs that you did not know how to proceed with the search planning efforts. In other instances, when you were faced with degraded SAR readiness from a SAR ready cutter, and/or a remote fixed facility experiencing casualties, you did not exercise proper critical thinking or leverage additional resources to provide sufficient risk-mitigation strategies, but rather you relied on the SMC to develop their own solutions. In some of the aforementioned situations, the SMC had to inquire with the Operations Unit who ably communicated a plan, indicating an apparent disconnect between you and the watch team.
3. Most recently, you failed to notify the SMC of a possible person in the water case involving a local police officer, because in your opinion, there was limited information and too much time had passed between the incident and Coast Guard notification. A MISLE notification of the report was not created, and you did not properly brief the SMCs and oncoming watch of recently suspended cases. The absence of these expected CDO response actions are concerning.
4. In order for you to re-certify as a CDO, you must successfully complete the following:
 - a. Stand a minimum of three (3) break-in Operations Unit (OU) watches.
 - b. Stand a minimum of seven (7) break-in CDO watches.
 - c. Prosecute a minimum or IO SAR cases IAW reference (a), to include briefing the SAR SMC. While the type of SAR cases prosecuted cannot be controlled, you should leverage every opportunity for professional growth.
 - d. Successfully pass an oral qualification board as defined in reference (b) to include all Sector SMCs. The goal of the qualification board is to evaluate your practical application of knowledge.

...

On March 4, 2021, the applicant was given an oral qualification board but the applicant failed to demonstrate the necessary improvement in watch management, critical thinking, and maximizing resources/bias for action.¹ After this failure the applicant was given an additional three weeks to stand more frequent break-in watches while following a structured plan designed to aid in building the applicant's proficiency. This plan included SAR case study reviews, reflection papers, and completion of SAR Optimal (SAROPS) drift scenarios with written justifications for his decisions. It was noted that although the applicant made progress over the three week period, did not satisfactorily demonstrate the ability to apply lessons learned from his case study reviews or feedback provided by the SMCs.

On March 23, 2021, the Chief of Incident Management, LCDR M, emailed the applicant regarding concerns he had after his most recent conversation with the applicant. Specifically, LCDR M stated the following:

I am following up with you per our conversation yesterday. As discussed, when reviewing MISLE case# [redacted] (the case you were CDO for and ref in your reflection paper), I was not able to pinpoint your lessons learned. I believe the intent of the reflection piece is to identify areas of improvement, particularly personal improvement as a CDO.

Today, I read your second submission and your critiques are pointed at the B/I OU, qual'd OU, and a CDO not associated with the case. This leaves me concerned you did not personally reflect on your performance during the case.

On March 25, 2021, the applicant responded to LCDR M's March 23, 2021 email with the following:

Good Afternoon,

I apologize if my submissions have painted the picture that I have not reflected on or considered areas for my personal improvement as a CDO. That certainly is not the case.

In each of the areas I identified for improvement in my MISLE cases there was also a failure on me as the CDO. As the CDO I'm responsible for the overall conduct of my watch team. It falls on me to ensure that each case is prosecuted and documented correctly. If a QRC is missing or not filled out, it's my fault as the CDO for not verifying that my watchstanders were utilizing the QRC as they worked through the case (per policy) or that they get scanned into the case at its conclusion. If a narrative or time line does not paint a clear and concise picture of how the case progressed it's my fault for not looking through the case more closely while it was being prosecuted to ensure that the timeline entries are correct/complete because if they aren't that could point to bigger issues than just poor information gathering (could possibly point to task saturation or loss of situational awareness).

I think, in both MISLE cases, the overarching theme for my own improvement is that I need to be/should have been more scrutinizing of my watch team and been more involved during the case's prosecution. As a leader I strive to trust that my watch team is competent in their watch positions and are doing their job accordingly. In my experience there's a fine line between the perception of just verifying that things are getting done correctly and micromanagement. I have always been very careful to not cross the line into

¹ The phrase "bias for action" is often used to describe the proactive and decisive nature of the U.S. Coast Guard decision-making skills. This concept emphasizes the importance of taking initiative and making swift decisions, especially in critical situations. The Coast Guard's commitment to this principle is evident in their readiness to respond to emergencies, conduct search and rescue operations, and ensure maritime safety.

micromanagement however, in these cases I believe I allowed myself to trust my team too much and didn't verify that everything was being completed correctly.

On April 1, 2020, Commander (CDR) B, the Lead SAR Mission Coordinator, submitted a memorandum, "Suspension of Command Duty Officer Qualification," wherein he provided an update on the applicant's CDO qualifications. The following statements contained in the memorandum are pertinent to the applicant's case:

1. While LCDR [Applicant] demonstrated marked improvement since the requalification board in regard to effort and ownership, there are still a few areas of concern and he did not satisfactorily meet all the elements of the CDO SAR Proficiency Work Plan (Enclosure 1). The work plan was specifically designed to address the shortcomings identified in reference (a) that led to the temporary suspension of LCDR [Applicant's] CDO qualification on 19 Nov 2020 and that were still evident during his re-qualification board on 4 Mar 2021.

2. LCDR [Applicant] was evaluated on three primary factors: watch management, critical thinking, and maximizing resources/bias for action.

a. Watch Management. LCDR [Applicant] documented serving as break-in CDO for seven cases. Six of the seven cases were minor as defined by reference (b) and five of the seven cases self-resolved. In his week 1 reflection paper (16 Mar 2021), LCDR [Applicant] identified the importance of accurate MISLE casework. In his e-mail response to LCDR [M's] feedback (25 Mar 2021), he identified his responsibility as CDO for ensuring accurate MISLE casework. In his summary of a taking on water case on 26 Mar 2021 (week 3), LCDR [Applicant] stated he ensured a survivor debrief was conducted by the [redacted] Sheriff's Office; however, this element of the SAR case was not documented in the MISLE chronology (chapter 3.9.4.4 of reference b). LCDR [Applicant] failed to take action on lessons learned during self-reflection and feedback he received from an SMC by not updating, reviewing, or validating the MISLE casework for the only major case he had in the course of his three-week assessment period.

b. Critical Thinking. LCDR [Applicant] was provided verbal feedback on 22 Mar 2021 followed by an e-mail documenting the feedback provided. The SMCs collectively were unable to pinpoint LCDR [Applicant's] lessons learned in his reflection papers for week 1 and 2. In particular, it seemed LCDR [Applicant] failed to take ownership and instead placed blame on the SMC, the break-in and qualified OUs, and his watch relief with little introspection on his own areas for improvement. On 22 Mar 2021, LCDR [Applicant] was provided this feedback verbally and via e-mail; he was told the intent of the reflection paper was to identify areas of improvement, particularly personal improvement as a CDO. LCDR [Applicant] responded accepting full responsibility as the CDO without comprehensively evaluating the process and his role in the process; this was evident in his self-reflection and SAROPS drift scenario for week 3.

i. Self-reflection. LCDR [Applicant] selected his overdue jet ski case for reflection. Throughout case prosecution, LCDR [Applicant] consistently referred to an unreasonable search area, which only applies to uncorrelated Mayday cases per Chapter 3.4.9.5 of reference b). Following the case, LCDR [Applicant] received verbal feedback. The case shortcomings were also documented in reference (a). However, in his reflection paper (week 3) LCDR [Applicant] did not reflect on his lack of application of SAR policy as a lesson learned, but rather incorrectly applied the term again in describing another lesson learned.

ii. SAROPS drift scenario. The SAR program goal is to achieve optimal effectiveness in saving lives and property in distress or at risk of injury or damage. LCDR [Applicant] provided a search pattern for the HH-65 that did not maximize probability of containment (and thereby probability of success) for an initial search (Enclosure 2). Given the accuracy of the initial flare report (CG reporting source, clear description of meteor flare, three

flares) the search planner should focus valuable search time on the location most likely to contain the search object.

c. Maximize Resources/Bias for Action. There was little data to evaluate LCDR [Applicant's] performance in this dimension. However, the aforementioned SAROPS drift scenario does not maximize the HH-65 as a SAR resource.

On April 9, 2021, the applicant received a "Performance and Discipline" Administrative Remarks Page ("Page 7") wherein CAPT S rescinded the applicant's CDO qualifications.

On June 2, 2021, the applicant signed his OER for the May 30, 2020 through May 30, 2021 rating period wherein the applicant received one mark of 4 (on of a scale of 1 to 7, with 1 being the lowest mark and 7 being the highest possible mark), five marks of 5, eleven marks of 6, and one mark of 7. The applicant also received a mark of 4 ("One of the many high performing officers who form the majority of this grade") out of 7 on the Comparison Scale. The applicant received the following comments:

Performance of Duties: Exceptional strategic planner; revised all unit CCIRs, Sector CO (SC) Standing Orders, & Cmd Ctr (SCC) SOP for 2021 STAN assessment. Ensured all instructions aligned w/COMDT policy & met SC expectations. Coordinated day-to-day Sector response operations as CDO; networked/collaborated w/ 10+ gov agencies to prosecute 71 SAR cases; 145 lives & SIM in property saved or assisted; annual results include over 7000 small vessel boardings, 2000+ commercial vessel inspections & over 500 maritime environmental response cases. Quickly adapted to loss of Rescue 21 high-site following landfall of Hurricane [redacted]; mitigation strategy utilized multiple cutters & two AIRSTAs to monitor 100 sq mile coverage gap for approx 72 hrs; resulted in zero loss of SAR coverage and minimized impact to CG response capabilities. Leveraged prior instructor experience & assisted sector's Boat Forces College. Earned OAR-11 competency. Drafted exquisite departure award for attached CBP officer; accurately captured achievements & lauded success of inter-agency partnership. Skillfully penned 35 Hurricane awards in recognition of SCC mbrs for their efforts during the 2020 record breaking storm season; routine written correspondence always with little to no revisions.

Leadership Skills. Unwavering commitment to shipmates' well-being a top priority; provided aid to injured mbr until EMS arrived when a fellow watchstander was experiencing heart attack like symptoms while on duty, rapidly engaged spouse & command, arranged early watch relief & ensured mbr received needed medical care promptly w/no effect to the watch. Champion for others' professional growth; volunteered time off duty to coach fellow JO in drafting their OSF/OER & met w/ visiting Officer Candidates to discuss various career tracks and expectations. Displayed adept leadership in orchestrating a multi-agency response to a 68' commercial fishing vessel taking on water; leveraged CG, LA Fish and Game & local parish deputy assets to assist in rescue saved 3 lives. Prioritized healthy work/life balance w/in the SCC while operating under COVID-19 restrictions; encouraged use of work-life/chaplain services & open comms between supervisors/subordinates; visibly reduced junior members' stress while on watch.

Personal and Professional Qualities. On own initiative, directed case review of SCC response to major facility fire; thorough review accurately captured best practices & lessons learned; used results to recommend stand-down and improve overall watch effectiveness. Actions greatly assisted in prosecution of a multi-day search for a missing commercial fishermen; managed search planning for state, local, federal & CG assets; efforts ensured optimal effort, best use of resources & raised next of kin confidence in search effort. Sought opportunities for increased responsibility; acted as SCC Chief in absence of supervisor & volunteered on multiple occasions to provide formal & informal training for those seeking Boat Forces qualifications. Consummate professional at all times; leveraged instructor /ops experience for boat forces college. Promoted healthy lifestyle amidst COVID-19 pandemic, achieved own goal of losing 10 lbs.

Reporting Officer Comments: Highly intelligent and motivated officer. Well-deserved recent promotion to O4. Coordinated responses to a myriad of diverse missions as at one of the largest and most dynamic Sectors,

during the most active hurricane season on record, and during the COVID-19 pandemic environment. ROO has the maturity and introspect to overcome Command Duty Officer qualification challenges presented during this period. Diverse background/experience in LE, SAR, and training sets ROO on right track to be a successful well-rounded Response Officer. Ready for challenging assignments with greater responsibility. A perfect match for MSST CO, MFPU XO, MSRT AOPS positions. Well-qualified & would excel in joint operations environment; NORTHCOM/SOUTHCOM/JITF tour. Strong candidate for, and desires: DCO, Congressional Affairs fellow, or SAR School Branch Chief.

On December 15, 2021, the applicant applied to the Personnel Records Review Board (PRRB) and requested removal of the April 9, 2021 Page 7 and his OER for the May 30, 2020 through May 30, 2021 rating period claiming they were untrue and unjustly issued. The applicant further alleged that the OER contained “internally inconsistent ratings.” The applicant also requested that his Coast Guard Achievement Medal be upgraded to a Coast Guard Commendation Medal, alleging that the award was improperly and unjustly reduced. The PRRB denied the applicant’s request for relief, and provided the following Opinions, Conclusions, and Recommendations:

OPINIONS:

1. There is no action that can currently be taken on the Applicant's disputed Administrative Remarks and Award since they are not matters of record.
2. No “improper comments” or “inconsistent ratings” were identified within the OER in question. The Rating Chain performed of their OES duties in accordance with policy.
 - a. Applicant asserts that LCDR [L] (Supervisor) was instructed by CAPT [D] (Reporting Officer) to reduce the rating of Professional Competence to the mark of a ‘4.’ Applicant did not provide clear and convincing evidence that would overcome the presumption of regularity on this assertion.
 - b. Applicant asserts there is a lack of explanation for the ‘4’ in Professional Competence. Supporting comments are only required for the mark of 1, 2, 3, and 7.
 - c. Applicant refers to the OER in question as a derogatory report and cites Removal from Primary Duties (RPD) and Relief for Cause (RFC) OER policy to articulate basis for relief. The OER in question is neither derogatory in nature nor an RPD or RFC OER, and therefore the policy does not apply. In accordance with OER Reply policy, a Reported-on Officer may reply to any OER; applicant did not utilize this option to dispute his OER.
 - d. Applicant cites prohibited comments policy to articulate ... “improper comments” contained in the OER in question, particularly the phrase “qualification challenges.” Commenting on weaknesses or adverse information does not make an OER derogatory. No investigation was conducted by the unit into the Applicant’s qualification removal, and therefore could not have been referenced, and there is no direct mention of an investigation in the OER. No prohibited comments exist in the OER in question.

CONCLUSIONS:

1. After a thorough review of the application, supporting documents, and additional documents to include declarations obtained by the Board, the Applicant has not provided clear and convincing evidence that the ratings indicated on the OER with a period of report ending on 30May2021 do not accurately reflect his performance during the period of report.
2. The Applicant has failed to provide clear and convincing evidence to overcome the presumption of regularity with respect to the disputed OER, and fails to substantiate any alleged error or injustice.

RECOMMENDATIONS:

1. The PRRB recommends granting no relief for the applicant.

On March 23, 2022, the Director of Military Personnel approved the PRRB's recommendations.

APPLICANT'S ALLEGATIONS

Through counsel the applicant explained that during his August 20, 2020 through November 15, 2020 rating period he received a Coast Guard Letter of Commendation from his Sector Commander, CAPT S. However, the applicant alleged that during this same rating period, on November 3, 2020, the applicant's supervisor, Lieutenant Commander (LCDR), confronted the applicant about reports of poor performance from certain Search and Rescue (SAR) Mission Coordinators (SMC). The applicant stated that in a November 3, 2020 email from his LCDR L, LCDR L acknowledged that this was the first time the applicant had ever been informed of negative feedback of his performance from anyone. The applicant further explained that the SMCs had ongoing complaints about the applicant's performance over the period of time for which the applicant would later be awarded the Letter of Commendation. The applicant contended that despite the SMCs concerns, none of the SMCs ever raised their concerns with the applicant or anyone else until November 2020.

The applicant stated that following the November 3, 2020 email, something happened that formed the basis of suspending his CDO qualifications. According to the applicant, he was accused of having failed to notify the SMS of an incident. The applicant claimed that he fully explained his actions, including providing supporting regulations, and the concurrence of his actions from other CDOs in an email to LCDR L. Yet despite this supportive evidence, the applicant explained that on November 19, 2020 his CDO qualifications were suspended by his Sector Commander, CAPT S. The applicant further explained that the basis of the suspension was that "over the last six months, you periodically failed to properly execute you role as the CDO during several search and rescue cases." The applicant claimed that the most recent case—failing to notify an SMC of an incident that occurred—was specifically identified as a basis for the suspension. The applicant claimed that the allegations contained in the suspension package directly contradict his noted accomplishments in the Letter of Commendation he received for the same rating period. The applicant stated that inexplicably CAPT S was the same Sector Commander who authored both documents.

The applicant alleged that the November 19, 2020 Notice of Suspension also contradicts the November 3, 2020 email from his supervisor, LCDR L. The applicant stated that the Notice of Suspension from CAPT S stated "you also received verbal feedback from SMCs and your supervisor on areas of improvement," which was false as evidenced in the November 3, 2020 email from LCDR L. The applicant claimed that the emails clearly shows that the November 3, 2020 email was the first anyone had approached him about reports of poor performance. The applicant contended that further contradicting the allegations contained in his CDO suspension are the eye-witness accounts of his performance of duty.

The applicant explained that he was given a specific recertification plan within the November 19, 2020 Notice of Suspension, a plan that concluded with a recertification board required by policy. The applicant stated that the Qualification Exam Board (QEB) member were appointed by memorandum on August 18, 2020, which included CAPT S as a non-voting member of the board. The applicant claimed that none of the members appointed to the QEB were a Prevention Department Head or their representative as required by policy. The applicant alleged that there is a checklist required to be filled out by all QEBs but the QEB failed to fill out the checklist.

The applicant alleged that a SAR Proficiency Work Plan was established and that he complied with the workman milestones, but despite these accomplishments, on April 1, 2021 the QEB determined that while the applicant made improvements he failed to meet the standards required. His CDO qualification was suspended, which the applicant alleged was based on his responses to the SAR Proficiency Plan. The applicant pointed to a memorandum from Mr. B, a SAR Specialist and subject matter expert, wherein Mr. B reviewed the three cases that were the subject of the applicant's suspension and concluded the in all three cases the applicant's conduct and actions looked appropriate, thereby contradicting the findings of the QEB.

The applicant claimed that upon the completion of his tour he was recommended for a Commendation Medal but that the Commendation Medal was not approved and was resubmitted in the form of an Achievement Medal instead. The applicant claimed that the CG-1650, Award Recommendation Form, contains the wrong Employee ID and inexplicably contains both wet and digital signatures. The applicant stated that it appears that the form was signed out of order, with CAPT D providing a wet signature on May 20, 2021, while the originator's signature was dated May 25, 2021. The applicant contended that on its face, the citation is not derogatory, however, the reduction of the award from a Commendation Medal to an Achievement Medal is obviously based on the unjust conclusions of the QEB. The applicant alleged that LCDR L refused to participate in his request for relief to this Board out of fear of reprisal but did validate that this reduction occurred because of the QEB.

The applicant alleged that for his May 30, 2020 through May 30, 2021 OER, LCDR L initially provided the applicant with marks of 5s, 6s, and 7s, but was later instructed to reduced his rating by the Reporting Officer (RO), CAPT D. The applicant claimed that his rating for "Professional Competence" was reduced to a mark of 4, yet his LCDR's comments reflect that there were no performance or competence deficiencies at all during the rating period that would warrant such a low rating in that performance dimension. The applicant alleged that this inconsistency can be explained by the fact that LCDR L was instructed to reduce the rating by the RO, but never changed the corresponding narrative. Again, the applicant alleged that LCDR L refused to participate because he was afraid of reprisal but confirmed that these acts did occur. The applicant stated LCDR L refused to provide a copy of the original OER.

The applicant explained that upon issuing its final decision, the PRRB the contested negative Page 7 was not addressed because it was not yet showing in his permanent record but was only in his local file. However, he stated that the negative Page 7 is in his permanent military record and asked that it be removed based on error and injustice.

The applicant alleged that the QEB was defective because its members were not qualified under policy and it failed to follow required procedures. The applicant claimed that LCDR M, a QEB member, was not designated as a member in accordance with regulation. The applicant contended that Coast Guard policy requires that all members be properly appointed by memorandum and specifically states that “no other substitutes or alternates are authorized.” The applicant claimed that LCDR M was a member of the QEB with no designation in direct violation of policy. The applicant further claimed that policy requires that the QEB included a Prevention Chief, yet none of the six members of his QEB were Prevention Chiefs, which was a direct violation of Coast Guard policy. The applicant alleged that Coast Guard policy requires that use of the QEB Candidate Evaluation Checklist, but it was not used. The applicant further alleged that the QEB failed to reference or evaluate the Performance Qualification Standard (PQS) during the hearing or in its decision and it was required to do so.

The applicant argued that these failures clearly prejudiced his right to a properly conducted and fair evaluation. The applicant further argued that when his conduct and performance were evaluated by an independent subject matter expert, the expert found no deficiencies in the applicant’s conduct that warranted revocation of the applicant’s CDO qualifications. The applicant contended that when the subject matter expert’s statements are combined with the additional letters he has submitted in support of his application, joined with his Letter of Commendation, it is clear that the QEB results were unjustifiable and unsupported by the evidence in the case. Furthermore, the applicant explained that he spent six months breaking in under other qualified CDOs prior to his qualifications being pulled, and that every decision he made was certified by a qualified member. The applicant claimed that he was the only one to lose his qualifications, a conflict the applicant cannot be reconciled other than to conclude that he was treated unfairly and endured bias throughout the decertification process. The applicant argued that because of these errors and injustices the negative Page 7 should be removed from his record.

Regarding his OER, the applicant alleged that the OER contains two factual errors. First, he alleged that the OER contained improper comments and second the OER contained inconsistent ratings.

The applicant claimed that the RO’s comment “ROO [Reported-on Officer] has the maturity and introspect to overcome Command Duty Officer qualification challenges presented during this period,” was improper because this comment can only be interpreted to reference the negative Page 7 and decertification process. The applicant further claimed that his RO should have made this OER a Derogatory OER so that he could have had the opportunity to respond to the OER. According to the applicant, by referencing his CDO “qualification challenges” that can be nothing other than an investigation that this refers to. The applicant contended that this statement was not referring to the underlying conduct. The applicant claimed that by making this comment the RO was clearly communicating that there was an investigation and revocation of his CDO qualifications. The applicant alleged that this comment is a violation of Coast Guard policy because it is a prohibited comment. The applicant further alleged that by making this comment in the OER, the OER becomes a Derogatory OER because it is referencing adverse performance of duty and the removal of the CDO qualification. The applicant claimed that this comment appears to be an attempt to backdoor adverse information into his OER without making it a Derogatory

OER, which requires higher scrutiny from the Officer of Personnel Management (OPM) and allowing the applicant the opportunity to rebut the information contained therein.

The applicant pointed to the PRRB's finding that the comment was not improper and argued that the PRRB minimized the comments and attempted to classify the comments as pertaining to his weaknesses. The applicant contended that the PRRB's argument fails because having "certification challenges" that are directly linked to the negative Page 7 is clearly not a weakness. The applicant claimed that there is no way for a certified officer to have "certification challenges" other than through the decertification process. Accordingly, the applicant argued that the remarks are improper.

The applicant claimed that there were inconsistent ratings in his contested OER. According to the applicant, the rating and supporting narrative in block 3.a. are internally inconsistent and the rating was changed after improper influence by the RO. The applicant alleged that his supervisor, LCDR L, has an original copy of the OER with his original rating that he sent to the RO, but LCDR L has refused to provide a copy of that original OER or memorialize what occurred in writing, despite verbally informing the applicant of what happened. The applicant contended that if the narrative in block 3.a. are compared to the ratings in block 3.a. the rating are clearly inconsistent. In particular, the applicant claimed that the mark of 4 for Professional Competence is not explained anywhere in the comments, but the comments make it clear that he was an exceptional performer. Likewise, the applicant claimed that LCDR L's comments do not reflect the RO's comment about CDO qualification challenges. The applicant argued that the internal inconsistencies demonstrate an obvious manipulation of this rating. For these reasons, the applicant argued that the OER should be removed from his record.

The applicant claimed that the PRRB failed to provide any reasoning as to why it concluded that the rating were not inconsistent.

Regarding his downgraded Commendation Medal, the applicant alleged was a clear result of the negative Page 7 that received documenting his suspended CDO qualifications. The applicant contended that while issuance of an award is a discretionary matter, the denial of an award based on an improper revocation of the CDO qualification is an abuse of discretion. The applicant claimed that fundamentally, there is an inexplicably conflict between the Letter of Commendation and the denial of the Commendation Medal of the same period. The applicant claimed that the award itself was initially submitted as Commendation Medal and that the original submission is not available to him because like the OER, members are fearful of retaliation for assisting him in his request for relief. The applicant alleged that the Commendation Medal was denied based on the issuance of the revocation of the CDO qualifications, not based on the strength of the citation and was subsequently submitted as an Achievement Medal.

Finally, the applicant claimed that the initial award for the Commendation Medal was submitted by LT P as the originator, to whom the applicant forwarded his departing award bullets for use in drafting the award citation on April 1, 2021. The applicant alleged that the record of that award submission from LT P were never provided to him and the award's originator was changed from LT P to LTJG L, which resulted in his bulleted accomplishments never having been forwarded to her.

To support his application, the applicant submitted three letters from individuals who worked with the applicant as a CDO. These letters included accusations against the applicant's command and those responsible for the applicant's recertification process. The letters repeated the applicant's allegations and accused the applicant's command of personality conflicts and failing to follow procedure. These letters attested to the applicant's conduct and performance as a CDO, with one individual claiming that the applicant had a personality conflict with another commander and another one stating that the applicant was "singled out" but the individual had no idea why. The letters referenced a command climate survey which suggested one of the applicant's leaders was not liked.

VIEWS OF THE COAST GUARD

On December 21, 2022, a Judge Advocate (JAG) for the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

The JAG argued that the applicant failed to produce sufficient evidence to support his claim that the information contained within the April 9, 2021 Page 7 was erroneous or unjust. The JAG further argued that absent strong evidence to the contrary, government officials are presumed to have carried out their duties correctly, lawfully, and in good faith.² Here, the JAG explained that despite the applicant's contentions that the recertification board was illegally convened, the evaluation that the applicant received was not a full qualification evaluation board. According to the JAG, the applicant evaluation was a limited reevaluation of a particular subset of the applicant's knowledge regarding Search and Rescue. Therefore, the JAG argued that the policy cited by the applicant was not applicable. Furthermore, the JAG argued that as noted by the Page 7 and his chain of command, while the applicant now alleges that the makeup of the board was erroneous, the applicant did not raise any issues with the composition of the board at the time and welcomed the makeup of the evaluators. The JAG stated that the applicant failed to prove that the April 9, 2021 Page 7 contains any erroneous information that would entitle the applicant to its removal.

The JAG further argued that the applicant failed to provide sufficient evidence to meet the standard for correction of an OER. The JAG explained that pursuant to *Hary v. United States*,³ the applicant must do more than merely allege or prove that an OER seems inaccurate, incomplete, or subjective in some sense, but must demonstrate, by competent evidence that the OER contained 1) a misstatement of significant hard fact, 2) a clear violation of specific objective requirement of statute or regulation, or 3) factors adversely affecting the ratings which had no business being in the rating process.

In this case, the JAG argued that the applicant failed to sufficiently prove that there are any statements contained within the OER that are demonstrably false. The JAG stated that while the applicant may disagree with how his actions throughout the rating period were rated numerically, this is insufficient to prove a misstatement of significant hard fact. The JAG argued that the applicant has not identified any statements within the comments of the OER that he claims are

² *Arens v. United States*, 969 F. 2d 1034, 1037 (1992).

³ *Hary v. United States*, 223 Cl. Ct. 10, 18,618 F.2d. 704, 708 (1981).

misstatements and he failed to offer sufficient evidence to disprove any comments contained within the OER. Therefore, the JAG contended that while the applicant may disagree with his rating chain's observations and numerical assessments of him during the period, he failed to provide sufficient evidence to demonstrate that any comments were misstatements of significant hard fact as required for the first *Hary* prong.

The JAG argued that applicant invoked the second *Hary* prong when he alleged a violation of the Officer Evaluation System Procedures Manual, PSCINST M1611.1D because his chain of command included prohibited comments and that the ratings and narrative were internally inconsistent. However, the JAG explained that pursuant to policy, the OER did not contain any prohibited comments. Although the applicant claimed that his rating chain violated policy when it used the words "qualification challenges," the JAG argued that the applicant argument fails because there was no investigation into the applicant's qualification challenges or removal, so the cited reference was not prohibited by policy.

Regarding the third *Hary* prong, the JAG explained that the applicant is required to present evidence of factors that adversely affected the rating which had no business being in the rating process. The JAG stated that case law is relatively sparse on enumerating what particular "factors" count for purposes of this prong; however, at least one case has stated that bias and personal animosity are such factors.⁴ In this instance, the applicant fails to raise such arguments or present sufficient evidence of any adverse factors. Therefore, the applicant failed to prove that the comments or marks that he challenges were the result of bias, personal animosity, or other factors which had no business being in the rating process.

Finally, regarding the applicant's Achievement Medal, the JAG claimed that the applicant failed to provide sufficient evidence to prove error or injustice. The JAG stated that it should first be noted that the applicant himself admitted and recognized that the issuance of an award is discretionary. The JAG explained that the issuing authority has the final determination of the level of the award, regardless of what was originally submitted. The JAG stated that one of the applicant's claims is that because he received a Letter of Commendation during the same rating period, this is evidence that he should have received a end-of-tour Commendation Medal, however, as stated by the applicant's chain of command, the issuing authority did not believe that the applicant's achievements during the period warranted a Commendation Medal. Additionally, the JAG stated that the applicant's Letter of Commendation was for a particular event, outside of the applicant's normal duties, and did not offset his Search and Rescue performance challenges, which ultimately resulted in the revocation of his qualifications. The JAG argued that while the applicant's supervisor may have submitted the applicant for a higher award than what he ultimately received, that decision was rightfully within his command's discretion and was not erroneous or unjust.

For the reasons outline above, the JAG argued that the applicant's request for relief should be denied.

⁴ *Guy v. United States*, 221 Ct.Cl. 427,433 (1979) ("The process of evaluating officers by other officers is an inherently subjective process which neither the military boards nor this court will interfere with unless there is clear and convincing evidence of factors adversely affecting the ratings which had no business being in the rating process. Though the bias and personal animosity of rating officers are such factors...")

To support its advisory opinion, the Coast Guard submitted the following sworn declarations from the applicant's chain of command:

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

...

2. I was LCDR [Applicant's] direct supervisor as Command Center Chief of Sector [redacted] from 11 July 2020-30 May 2021.

3. To the best of my recollection Search and Rescue (SAR) Mission Coordinators (SMC) confronted me with concerns of LCDR [Applicant's] judgement in regards to the execution of some of his past SAR cases late October. I counseled LCDR [Applicant] on the concerns that had been brought to my attention. After counseling LCDR [Applicant] on reports of his performance he informed me that this was the time he was hearing or being counseled on his performance. I went back to the SMC in regards to this new information and they stated that they had counseled LCDR [Applicant] verbally in the form of coaching and mentoring for development for multiple cases in which a majority of those cases LCDR [Applicant] owned up to making poor judgement calls in regards to cue execution. In the case of the 3 November 2020 incident LCDR [Applicant] failed to notify the SMC in regards to a SAR that had a maritime nexus being conducted by one of our local Law Enforcement agencies looking for one of their missing officers. The CG was notified late and made no specific request for assistance. Due to the potential optics and it being a Law enforcement officer in distress it had the potential to become a big case and no one knew until the on-duty SMC was receiving the Digital Voice log (DVL) and randomly discovered the phone call between LCDR [Applicant] and the local agency. This was another instance where LCDR [Applicant's] judgement was put into question [and] cause[d] the SMC to lose confidence in LCDR [Applicant's] ability to make the correct calls when necessary. Following that LCDR [Applicant] was placed on performance probation where we [sic] was required to stand supervised watches with other members until the SMC we [sic] regained confidence [and could] have a sit down review [of] his progression. At the end of this process LCDR [Applicant] failed to gain the confidence of the SMCs also with the attendance of the Commanding Officer (CO) as there were personality differences that were involved. The CO agreed that LCDR [Applicant] did not meet the intent of the requirement set before him and extended his performance probation for an additional three weeks with a new set of guidelines that he also failed to meet. At the end of this entire ordeal LCDR [Applicant] had his qualification revoked and a negative 3307 issued. Upon departing I drafted his final OER trying to do damage control but in regards to this periods [sic] performance his marks would be affected and I was a straight shooter with him [so that he would] not to be surprised being that his judgement being the key factor of him losing his qualification it was reflecting [sic] of this marking period to lower his Judgement bullet from a 5 to 4. LCDR [Applicant's] chain of command when executing SAR cases are CDO his position who reports directly to SMC who reports directly to the CO who has ACTSUS. So any changes made to his OER. where justified as Deputy is SMC and in his direct rating chain.

In reference to his departing awards I submitted him in for a Coast Guard Commendation Medal which was lowered to an Achievement Medal in which I was not in agreeance [sic] with but it goes to the awards board who collectively has the final say. Over all [sic] LCDR [Applicant] had [a] personality a [sic] conflict with a SMC with the collaboration of his peers on the watch floor who also have had issues with this SMC I feel he got hung up with his personal dislike with that person. LCDR [Applicant] never took ownership of his situation or the real reason behind his short coming in regards to his judgement there was always and [sic] alternate reason why he failed to meet his mark.

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

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

1. My present assignment is Deputy Sector Commander, Sector [redacted], and I served as Reporting Officer for LCDR [Applicant].

2. LCDR [Applicant] worked as Command Duty Officer (CDO) in the Sector [redacted] Command Center (SCC), until transferring in June 2021. I have overseen the SCC, a function of my Deputy Sector Commander responsibilities, from July 1, 2020 to present.

3. LCDR [Applicant's] CDO qualification was suspended because of a continued lack of bias for action while prosecuting Search and Rescue (SAR) cases. These shortcomings were independently communicated and verified by three of the unit's SAR Mission Coordinators (SMCs), and prompted the Command to question his judgement on SAR cases. Outside of SAR, LCDR [Applicant] competently performed CDO duties for other Coast Guard mission sets. Prior to the suspension of LCDR [Applicant's] CDO qualification, and up through his transfer, I personally spoke to LCDR [Applicant] on several occasions and offered him informal personal and career counseling.

4. The Command's decision to attend [sic] LCDR [Applicant's] recertification board was to help ensure fairness, and eliminate any perception of bias against him during the board. My recollection is that, at least prior to it, LCDR [Applicant] welcomed the presence of the Command on his board. As I had become involved with counseling LCDR [Applicant], the decision was also made that it would be best for Captain [S] to sit on the board instead of me, so as to also prevent any concerns of bias in LCDR [Applicant's] favor. Although I do not have first-hand direct knowledge of his performance during the qualification board, it was conveyed to me that LCDR [Applicant] did not perform well on this board, as witnessed first-hand by Captain [S]. Despite an additional chance after the board to show improved performance, he still did not take the adequate initiative towards his own professional development, and he was unable to regain the command's confidence for prosecuting SAR cases. Based on his performance, he was not able to regain his CDO qualification. Several common threads throughout this process appeared to be LCDR [Applicant] not taking full accountability of his own actions, not learning from his mistakes, and not taking the proper measures to improve his performance and overcome his shortcomings.

5. LCDR [Applicant's] supervisor and I did have several conversations regarding the best way to ensure LCDR [Applicant] was held accountable in his OER for losing his CDO qualification, while still giving him room to redeem his career if he put forth the right effort in future assignments. I do not consider my comments derogatory, and there was never an "investigation" surrounding the suspension or revocation of LCDR [Applicant's] qualification. In fact, my intent was to convey perspective that LCDR [Applicant] could still overcome this situation with improved performance in the future.

6. As the Sector's Awards Board President, I vet and have discretion on all awards that come through the chain of command for signature. In reviewing his citation, it was apparent to me that many actions listed in it were provided directly by LCDR [Applicant] himself, as no one else at the unit had a first-hand account of his performance during the contingency/overseas deployments referenced. My signature on the CG-1650 also had no nefarious intent. I hand-sign hard copies of all CG-1650s that come across my desk. As my handwriting could at times be rushed, I can also reasonably see why my 6 might appear to look like a "0" on the date line.

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

Executed this 13th day of January, 2022.

- I, Captain [S], United States Coast Guard, declare as follows, pursuant to Title 28 United States Code § 1746:
 2. My present assignment is Sector Commander, Sector [redacted] and I served as the Reviewer for LCDR [Applicant] from June 2020 to June 2021.

3. As the Sector Commander I routinely interact with the Command Duty Officers which I see as a critical position, responsible for representing me and overseeing all operational missions within the AOR [area of responsibility]. LCDR [Applicant's] primary duty was CDO under my command.
4. Below is my input in regards to LCDR [Applicant's] PRRB application dated 27OCT21.
5. The claim in para 4.c that none of the SMC's concerns were ever raised with him until 03NOV21 is untrue. LCDR [Applicant] was informally counseled by then CDR [B] and then LCDR [D] on performance issues regarding an overdue Jet Ski case and an unconfirmed PIW case in early 2021 and 2020.
6. The claim in para 4.e that the Notice of Suspension contradicts the Letter of Commendation is inaccurate. The qualification was suspended specifically for LCDR [Applicant's] poor performance with his SAR duties, yet the Letter of Commendation was given for his work in setting up additional phone lines to support a hurricane call center. LCDR [Applicant's] specific achievements during hurricane preparation does not offset his SAR related performance challenges throughout the marking period.
7. The comments noted in para g are opinions from LCDR [Applicant's] colleagues and subordinates. The Administrative Remarks, OERs, and Awards referenced in this PRRB application reflect LCDR [Applicant's] performance as witnessed by his Chain of Command who have additional information regarding the circumstances referenced in these documents that colleagues and subordinates were not privy to.
8. The claim in para 4.i-k and 5.a that the recertification board was unfair and with bias is untrue. The board was not a full CDO qualification board but a board focused solely on LCDR [Applicant's] SAR duties as CDO. Since the board was intended to focus only on SAR there was no reason to assemble all QEB members to include Chief of Prevention. LCDR [M] was fully qualified to be on the board as he was one of unit's three SMCs (other two were on the QEB) and the former Command Center Chief. Additionally, I joined the board to witness LCDR [Applicant's] performance and to ensure the board was fair. It is of note that I personally spoke with LCDR [Applicant] prior to the board regarding my attendance for this purpose and he welcomed the make-up of the board. Following the board, I immediately saw firsthand LCDR [Applicant's] performance challenges; his knowledge was extremely sub-par for what is expected of a CDO.
9. I will defer comment on the claims in para 4q, 5b-c, and 7 with regards to LCDR [Applicant's] OER to the Supervisor and Reviewing Officer, however based on his performance, and as noted with my signature as Reviewer, I fully support the marks and believe they are an accurate reflection of LCDR [Applicant's] for this marking period.
10. The claims in para 4.p, 6.b-g, and 8 are unwarranted. COMDTINST M1650.25E Section B.8 notes that military decorations are awarded in recognition of individual service above and beyond what is ordinarily expected. While LT [P] and LTJG [L] may have nominated LCDR [Applicant] for specific recognition further review by the chain of command, Awards Board, Awards Board President (CAPT [D]) and myself as Commanding Officer verifies if the award level is accurate. In this case, I fully agree that LCDR [Applicant's] achievements did not warrant a Commendation Medal. There does appear to be a typo with the members EMPLID however the date of signature from CAPT [D] appears to match my signature as Commanding Officer, both look like there were signed 5/26/21, regardless I do not believe neither of these points entitle LCDR [Applicant] to an award upgrade.
11. The claim in para 6.g and elsewhere that infers that LCDR [Applicant] was treated unfairly and with bias is unfounded. The 6 months of additional training allowed by LCDR [Applicant's] Chain of Command and the SMC's dedicated attempts to get him-back on track was well above and beyond, especially for someone in his rank and position. All these additional efforts were only to give LCDR [Applicant] the benefit of the doubt. Over and over again he demonstrated an inability to effectively learn the subject matter, lack of bias for action, insufficient commitment to the training plan, and not taking accountability for his actions. He was the only CDO with challenges in the position.

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

Executed this 07 day of February, 2022.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 17, 2023 the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited him to respond within thirty days. The Chair received the applicant's response on July 9, 2023.

Through counsel the applicant stated that the Coast Guard's advisory opinion's claim that the PRRB denied the applicant's relief is misleading and demonstrates that the author of the advisory opinion did not read the PRRB decision. The applicant explained that the PRRB denied substantive relief only as it pertains to the issues contested in his OER. However, regarding the Page 7 and his award, the applicant stated that the PRRB declined to make any substantive analysis or decision because at the time of the PRRB's final decision, these records were not yet included in his permanent record. The applicant argued that no general deference should be given to the PRRB. The applicant contended that this Board is obligated to make an independent (de novo) decision on the merits of the claims.

On the matter of his Page 7, the applicant alleged that his chain of command failed to follow required procedure as outlined in COMDTINST M3120.20A. The applicant claimed that the advisory opinion takes conflicting positions regarding the applicability of this regulation.

First, in paragraph 6.a. of the advisory opinion, the applicant stated that the Coast Guard attempts to conclude that "the policy [COMDTINST M3120.20A] cited by the applicant was not applicable" to the reevaluation board that was conducted and was the subject of the Page 7. The applicant alleged that the Coast Guard took this position because of the statement from CAPT S that was included in the advisory opinion. However, the applicant contended that CAPT S does not say that the regulation does not apply, rather, he stated that there was no reason to follow the regulation. The applicant further contended that there was no other policy cited by CAPT S or the advisory opinion as a policy that would have controlled the reevaluation board. According to the applicant, if there was no policy that governed the reevaluation board then the procedure was facially improperly, therefore, COMDTINST M3120.20A controlled.

Next, the applicant claimed that the advisory opinion implicitly conceded that the policy did in fact apply and stated that the applicant failed to raise his objections to the violation of the policy at the time of the reevaluation board. The applicant argued that that comment was taken out of context. The applicant explained that while he did not object to the individuals on his board at the time he never waived his rights to a proper board composition, which is a significant difference. The applicant contended that for the Coast Guard to suggest that an off the cuff comment made to an observer on the board, CAPT S, that he did not believe the board members were personally biased did not relieve the Coast Guard of following the regulations that it is required to follow. The applicant claimed that the clear requirements of COMDTINST M3120.20A were not followed for the board composition as articulated in the initial appeal. The applicant argued that relief is warranted on that basis.

On the matter of the OER, the applicant argued that the comment “qualification challenges” was a prohibited comment, despite the Coast Guard’s position that it was not a prohibited comment because no investigation was conducted. The applicant stated that the Coast Guard reasons that if an investigation would have been conducted, that it would be specifically referenced in the OER, but where no investigation is referenced, the implication is that there were none that were conducted and therefore concluded that the comment was not prohibited. The applicant contended that the Coast Guard’s argument fails because based on the Coast Guard’s own logic, this comment conveys that an investigation was conducted. According to the applicant, that is the exact comment by the command—to imply that there was an issue and denigrate the applicant’s performance in the OER. The applicant claimed that this is the exact type of language trickery that the Officer Evaluations Systems Procedure Manual, PSCINST M1611.1D attempts to prevent by prohibiting certain comments. The applicant argued that it is patently unfair to not conduct an investigation and thereby deny an officer the ability to defend himself, but then deliberately imply that there was an error or misconduct in the rating period. For that reason, the applicant claimed that relief on the OER is warranted.

Finally, on the matter of the award, the applicant alleged that the advisory opinion provides no useful analysis or response to his position stated in the initial appeal. The applicant claimed that the advisory opinion rests on the fact that the award was discretionary, however, the fact remains that the process used to downgrade his award, the evidence of influence and manipulation, and the failure to conduct an awards board demonstrate that the award was downgraded because of the improper revocation of his CDO qualification not because of merit and therefore relief is warranted.

APPLICABLE LAW AND POLICY

The U.S. Coast Guard Addendum to the United States National Search and Rescue Supplement, COMDTINST M16130.2G, provides the following guidance on the goals and procedures of the Coast Guard’s Search and Rescue Mission:

Preface.

...

4. Statutory Authority and Responsibility. The statutory authority for the U. S. Coast Guard to conduct SAR missions is contained in Title 14, Sections 102, 521, and 701 of the U.S. Code. *The code states that the Coast Guard shall develop, establish, maintain and operate SAR facilities and may render aid to distressed individuals and protect and save property on and under the high seas and waters subject to the jurisdiction of the United States.* It also states that the Coast Guard **may** use its resources to assist other Federal and State entities. Thus, Coast Guard performance of SAR is essentially permissive in nature. Search and Rescue activity may be considered a mandated function, but no specific level of performance has been cited under the legislative authority. *Nevertheless, judicial rulings have made it clear that once the Coast Guard undertakes a particular mission, we must conduct that mission with due diligence, we must not worsen a situation by our actions, and we must meet a reasonable standard of performance.* Moreover, it is within our service’s own ethos to carry out each mission to the best of our ability.

In accordance with the National Search and Rescue Plan, the Coast Guard is responsible for organizing available SAR facilities in Search and Rescue Regions (SRRs) as defined in the National SAR Supplement. These waters generally include all navigable waters subject to the jurisdiction of

the United States, but also include international waters stretching far into the Atlantic and Pacific Oceans and the Gulf of Mexico.

...

6. SAR Program Goals, Objectives, Standards and Requirements:

a. SAR Program Primary Goal. The ultimate goal of the Coast Guard's SAR program is to prevent loss of life in every situation where our actions and performance could possibly be brought to bear. Our success in meeting this goal is the result not only of how well the SAR system responds to maritime SAR incidents, but also the efforts of other maritime safety programs, including recreational boating safety and commercial vessel safety. Success reflects how these combined efforts provide mariners with seaworthy craft, proper equipment, necessary knowledge, training, and information to operate safely in the maritime environment, and to take the correct actions when faced with a distress situation.

b. Program Objectives. Four general objectives provide direction for the SAR Program:

- (1) Minimize loss of life, injury, and property loss and damage in the maritime environment;
- (2) Minimize crew risk during SAR missions;
- (3) Optimize use of resources in conducting SAR; and
- (4) Maintain a world leadership position in maritime SAR.

...

Article 1.3. Professional Requirements. Training and experience are crucial to proper SAR response. Training combined with a demonstrated ability to perform the required tasks can lead to certification by the command that the individual is ready, willing, and able to assume SAR watchstanding duties. ...

For purposes of this instruction, all references to the SAR watchstander are intended to address the Command Duty Officer and Operations Unit watchstanders. Likewise, SAR watchstander qualifications apply to all SAR watchstanders at the Area, District, and Sector levels. [Emphasis Added.]

...

1.3.3. Certification. *After completing qualification procedures, personnel must be certified in writing by their command prior to being assigned RCC, RSC, or Sector Command Center SAR watchstanding duties. This is where the individual's maturity and judgment are taken into account. Recertification procedures must also be documented and signed by the command.*

1.3.3.1 Annual Recertification. *Annual recertification shall be completed by SAR watchstanders to validate that quarterly and annual training requirements have been met within the training cycle. The Command Center Chief shall review and validate that annual certification requirements have been met at the conclusion of the training cycle with documentation in TMT.*

1.3.3.2 Recertification Process Outside of Annual Training Cycle. The requirement to recertify outside of the training cycle is normally a result of watchstanders not maintaining currency (not meeting currency training or watch frequency requirements) or having their certification removed due to poor performance. For poor performance, commands have discretion to set the level of actions required to be reinstated as a watchstander within the range of actions: the minimum for poor performance being recertification, the maximum to complete the full qualification/certification process. *Each command shall establish a recertification process that at a minimum:*

(a) Includes a period of supervised watches until recertified. The minimum standards are listed in Table 1-5. These represent only the minimums; in some regions the complexity of operations and corresponding complexity present in the command center watch may call for a greater number of supervised watches to bring an individual back up to proficiency. The supervision of the watches should be conducted by experienced watchstanders (i.e. not by recently qualified watchstanders).

(b) Includes meeting the training currency requirements in 1.3.2.4 (knowledge requirements in Table 1-3).

(c) Includes a command formal re-certification board. Number of board members and composition should be flexible and reflective of the reason for recertification (e.g. for a lapse < 30 days an interview with the command center supervisor may be adequate; for lapse > 90 days a full board similar to the initial qualification board may be appropriate).

(d) Documentation via a re-certification letter.

...

Article 5 of the U.S. Coast Guard Command Center Manual, COMDTINST M3120.20A, provides the following guidance on Watchstander (which included Command Duty Officers) qualifications:

5.G. Qualification. This section provides the overview of the qualification process.

1. General.

a. CC personnel require thorough training to function as a safe and effective team. All individuals specifically assigned to a CC staff billet shall undergo a qualification process in order to certify at a CC watch position.

...

c. The CC Chief is responsible for establishing a qualification process that requires completion of the CC Personnel Qualifications Standards (PQS), area familiarization, the required number of supervised watches, and a qualification examination board (QEB).

...

2. Watch Positions. Commands shall maintain a qualification process for the following CC watch positions.

a. Command Duty Officer (CDO).

...

7. Qualification Examination Board. *Prior* to becoming a certified watchstander, a Qualification Examination Board (QEB) shall evaluate a prospective watchstanders. The primary function of the QEB is to conduct comprehensive knowledge evaluations and recommend prospective watchstanders for certification for CC watch positions. The CC QEB is responsible for the administration of these comprehensive knowledge evaluations. A CC QEB serves as the quality control for CC watchstanders. (Emphasis added.)

a. General. Units shall establish and maintain a CC QEB for each CC watch position. CC QEB's shall:

- (1) Evaluate the candidate's leadership, ability, judgment, maturity, and knowledge.
- (2) Evaluate the candidate's knowledge regarding policies, procedures, local knowledge, application of team coordination, and risk management standards and concepts.
- (3) Verify all requirements of the qualification process have been successfully completed in the manner prescribed by qualification guides, PQS, and this manual.
- (4) Make recommendations for certification to the Operational Commander.
- (5) Provide guidance to the member for additional training, if needed.
- (6) Advise the Operational Commander on matters pertaining to the qualification process.
- (7) Evaluate the full scope of the CC PQS during the QEB process.

b. Designation.

- (1) The CC Chief shall be the chairman of the QEB.
- (2) QEB members shall be designated in writing by name and position/title.
- (3) QEB members shall be designated for each CC watch position (i.e., CDO, OU, SU, etc.)

c. Board Composition. Table 5-2 provides the minimum composition for each QEB. **QEB membership, including one experienced alternate to the Chief of Prevention & Chief of Response, shall be pre-designated by name in writing. No other substitutes are authorized.**

d. Checklists. The QEB should prepare and use standard QEB checklists to assess the required knowledge and skill identified in the PQS for each given CC watch position. The use of QEB checklists during the board ensures the board is consistently and uniformly evaluating prospective watchstanders.

e. Recommending Certification. Once a candidate has completed the QEB, the board shall document the results in the E-Training System. If the QEB does not recommend the prospective watchstander for certification, the QEB shall state why and what areas of knowledge/performance were not acceptable. The QEB should discuss specific recommendations for increased training and/or practical experience for the prospective watchstander.

5.H. Certification. The certification process is where the Operational Commander takes an individual's maturity and judgment into account. The Operational Commander shall consider members for certification for a CC watch position only after they have successfully completed the qualification process (i.e., applicable PQS, area familiarization, the required number of supervised watches, a knowledge evaluation by the unit QEB, and been recommended by the appropriate QEB).

(Emphasis added.)

...

3. Revoking Certifications.

- a. The Operational Commander shall rescind certification when members do not maintain Commandant or CC standards for certification, or fail to meet currency training minimums.
- b. The Operational Commander has the authority to revoke the certification(s) of any individual attached to the CC. The Operational Commander shall rescind certification upon loss of trust or confidence in the member’s ability to perform assigned duties.

...

5.I. Currency.

1. General.

- a. The CC Chief shall ensure that all watchstanders complete the currency requirements outlined in this manual.
 - b. All CC watchstanders, including CC Supervisory Staff, shall maintain currency through performance during normal operations or dedicated training operations for their certified CC watch position.
- ...
- d. The active CC training program is the primary means of completing individual currency requirements annually in order to maintain currency as a certified watchstander.
 - e. In addition to the position specific currency requirements contained in this manual, Operational Commanders have the authority to impose additional currency requirements.
 - f. If an individual fails to meet the prescribed currency requirements for their CC watch position, he/she shall be required to recertify per Section J of this Chapter.

...

2. Currency Requirements.

- a. General. CC currency requirements include Individual Currency Requirements and CC Currency Requirements.
- b. Individual Currency Requirements. Each certified watchstander shall complete Individual Currency Requirements on an annual basis (unless otherwise specified). Individual currency requirements shall include a review of updated policy guidance for each area identified below (e.g., for SAR, this shall include a review of updated policy guidance from HQ, SAR School/CCST, Areas, and Districts).

...

(2) SAR Proficiency Requirements. Per the Professional Requirements chapter of Reference (n), Command Center Chiefs, Supervisors, and Watchstanders shall maintain “proficiency” in the following knowledge areas **or risk losing their certification.** Reference (n) defines “proficiency.”

...

g. Decertification.

(1) General. Decertification shall occur if the minimum currency requirements listed in this chapter are not satisfied.

(2) Auto Decertification. AOPS/TMT notifies the Operational Commander (via email) whenever the system decertifies a member for failure to meet currency requirements.

(3) Recertification. If a member is decertified, then the member shall complete the recertification process per Section J of this chapter.

...

5.J. Recertification.

...

2. Recertification Outside of Annual Training Cycle.

a. Recertification can only occur for a CC watchstanding position for which the member has been previously certified.

b. The requirement to recertify outside of the training cycle is normally a result of:

...

(4) Watchstanders having their certification removed due to poor performance.

c. To recertify watchstanders that fail to complete watch frequency requirements, currency requirements, or have their certification revoked for poor performance, each command shall establish recertification processes that include the requirements outlined in this chapter.

...

5. Documentation Requirements.

...

b. Loss of Certification. Any loss of certification should be documented in TMT [Training Management Tool]. Failure to certify within the prescribed time frame should be documented by other administrative means.

5.K. Training Management Tool.

1. Introduction. The TMT application is a tool used to create, assign, track, and report training competencies and associated tasks for Coast Guard members. References (r) and (s) provide an overview of each feature available in TMT, as well as detailed instructions on how to perform functions within the TMT application.

2. Documentation Requirements. Any failure to maintain currency requirements should be documented, delineating the areas of improvement required prior to qualification or recertification, and entered into the member's TMT record.

Article 5 of The Coast Guard Officer, Accessions, Evaluations, and Promotions Manual, COMDTINST M1000.3A (January 2018), provides the following guidance on OERs:

5.A.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.

...

5.B. Roles and Responsibilities.

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

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

...

5.E. Occasions for Regular OERS. A regular OER is a report that qualifies for continuous chronological coverage of the reported-on officer's commissioned service. All OERs listed are Regular OERs.

...

5.H. Derogatory OERs. A derogatory OER is any regular or non-regular OER that indicate the reported-on officer has failed in the accomplishment of assigned duties.

1. Derogatory reports are only those OERs which:

- a. contain a numerical mark of one in any performance dimension, and/or
- b. contain an "unsatisfactory" mark by the reporting officer in comparison scale or rating scale, and/or
- c. documents conduct or performance which is adverse or below standard and results in the removal of a member from their primary duty or position.

...

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 or Removal from Primary Duty 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.

...

5.J. Required Comments.

1. The rating chain must support any mark of 1, 2, 3, and 7. Comments with 4, 5, or 6 do not require support.

...

5.K. Replies to OERs. The reported-on officer may reply to any OER. Replies provide an opportunity for the reported-on officer to express a view of performance which may differ from that of a rating official.

...

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record. The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

2. The application was timely 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 alleged the April 9, 2021 negative Page 7 was erroneous and unjust because the QEB that led to the Page 7 was defective in membership and procedure. The applicant further alleged that his OER for the May 30, 2020 to May 30, 2021 rating period was erroneous and unjust because it contained prohibited comments and inconsistent marks. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in the military record, and the applicant bears the burden of proving, by a preponderance of the evidence, that the disputed information is erroneous or unjust.⁵ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."⁶ 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."⁷

4. Background. The Board's review of the record shows that the applicant was a certified Watchstander and held the position of a Search and Rescue Command Duty Officer for his Sector's Search and Rescue Command Center from July 2018 until March 2021. The record further shows that on November 3, 2020 the applicant received an email from his supervisor,

⁵ 33 C.F.R. § 52.24(b).

⁶ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁷ *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).

LCDR L, wherein LCDR L followed up on a conversation he had with the applicant the previous week regarding concerns multiple SMCs had regarding the applicant's performance of his CDO duties. Following this email, on November 19, 2020, after the applicant failed to make the necessary progress and exhibit accountability, the applicant's Sector Commander, CAPT S, suspended the applicant's CDO qualification.

Specifically, CAPT S addressed the applicant's deficiencies in applying proper analytical thought and providing valid recommendations. CAPT S stated that during certain SAR cases, SMCs had to prompt the applicant on basic SAR operational planning actions expected of a CDO. CAPT S noted that after verbal feedback, the applicant's performance would immediately improve, but was not consistently maintained, as evidenced by an overdue Jet Ski case in May 2020 and an uncorrelated Mayday case in August 2020, where the applicant hastily deemed the search areas as unreasonable and communicated to the SMCs that he did not know how to proceed with the search planning efforts. The applicant was cited for his inability to exercise proper critical thinking or leverage additional resources to provide sufficient risk-mitigation strategies, but instead relied upon the SMCs to develop their own solutions. Finally, the applicant was admonished for failing to notify the SMC of a possible person in the water case involving a local police officer, because it was the applicant's opinion that there was limited information and too much time had passed between the incident and Coast Guard notification. A MISLE notification of the report was not created and the applicant failed to properly brief the SMCs and oncoming watch of recently suspended cases. These instances resulted in the Sector losing confidence in the applicant's ability to adequately perform his duties as the Search and Rescue Command Duty Officer.

5. Administrative Remarks Page. The applicant alleged that the negative Page 7 was erroneous and unjust because the Coast Guard failed to follow Coast Guard QEB policies, because he did not receive counseling prior to the November 3, 2020 email, and because independent reviews by other SMCs found his actions acceptable. For the following reasons, the Board disagrees:

- a. QEB. The Board finds the applicant's contentions regarding the QEB unpersuasive and unsupported by policy. Article 5.G.7. of the U.S. Coast Guard Command Center Manual, COMDTINST M3120.20A, states, "**Prior** to becoming a certified watchstander, a Qualification Examination Board (QEB) shall evaluate a prospective watchstanders. The primary function of the QEB is to conduct comprehensive knowledge evaluations and recommend prospective watchstanders for certification for CC watch positions." The QEB is for initial watchstander qualifications not recertifications due to poor performance and loss of confidence. Further guidance can be found in Article 5.I.1.f. of the same manual which states, "If an individual fails to meet the prescribed currency requirements for their CC watch position, he/she shall be required to recertify per Section J of this Chapter." Section 5.J.2.c. states, "To recertify watchstanders that fail to complete watch frequency requirements, currency requirements, or have their certification revoked for poor performance, each command shall establish recertification processes that include the requirements outlined in this chapter."

This is further supported by Article 1.3.3.2. of the U.S. Coast Guard Addendum to the United States National Search and Rescue Supplement, COMDTINST M16130.2G, which states that when a service member is required to recertify due to poor performance, the commands have discretion to set the level of actions required to be reinstated as a watchstander within the range of actions: the minimum for poor performance being recertification, the maximum to complete the full qualification/certification process. This Article further states that each command shall establish a recertification process that at a minimum includes a period of supervised watches until recertified, meeting the training currency requirements in 1.3.2.4 (knowledge requirements in Table 1-3), and a command formal re-certification board. Regarding the composition of the recertification board, Article 1.3.3.2.c. states, “The number of board members and composition should be flexible and reflective of the reason for recertification (e.g. for a lapse < 30 days an interview with the command center supervisor may be adequate; for lapse > 90 days a full board similar to the initial qualification board may be appropriate).”

Furthermore, the contested Page 7 does not mention a QEB but states that the applicant’s CDO qualification was rescinded after careful review of the collective input and recommendations from the team of SMCs. Article 5.H.3.a. of COMDTINST M3120.20A requires Operational Commanders to rescind a member’s certification when the member does not maintain Commandant or CC standards for certification, or fails to meet currency training minimums. Article 5.H.3.b. of the same manual states, “Operational Commanders have the authority to revoke the certification(s) of any individual attached to the CC. The Operational Commander shall rescind certification upon loss of trust or confidence in the member’s ability to perform assigned duties.” The record shows that the applicant failed to maintain the standards of a CDO and therefore CAPT S, the Operational Commander, was mandated to rescind the applicant’s CDO qualification after his loss of confidence in the applicant’s abilities to perform his duties as a CDO. The requirement to rescind the qualification is mandatory not permissive.

Accordingly, despite the applicant’s contentions to the contrary, the policy is clear that there is no requirement that a full QEB be readministered for recertification after a service member fails to meet certification requirements. Therefore, the requirements outlined for a QEB were not applicable to the applicant’s recertification and the Board will not address each individualized claim made by the applicant regarding the board’s failure to follow QEB guidelines. The Board finds that the applicant has failed to prove, by a preponderance of the evidence, that the negative Page 7 wherein his CDO certification was rescinded was erroneous.

- b. Failure to Previously Counsel. According to the applicant, the Page 7 was erroneous because prior to the November 3, 2020 email from LCDR L, he had never been counseled on poor performance. However, the applicant failed to point to one Coast Guard policy, and the Board could find none, that required the applicant to be counseled prior to having his CDO certification suspended. Moreover, despite the applicant’s claims, the record shows that the applicant had received verbal counseling from several SMCs prior to the SMCs bringing their concerns to the applicant’s supervisors. It was only after the applicant failed to respond to the verbal counseling that the issues were escalated to the applicant’s

chain of command. As explained more thoroughly in subsequent findings, the Coast Guard plays a critical role in search and rescue missions, a role that comes with serious liability if not performed adequately. Because of the severity of search and rescue missions, Coast Guard policies mandate that all SAR commanders ensure that all individuals involved in the SAR process are adequately performing their duties and to act promptly when SAR members are not performing their duties in accordance with SAR policy. The record shows that the applicant's chain of command followed appropriate procedures when they were informed of the applicant's performance deficiencies. The fact that the applicant may not have been formally counseled before the suspension of his certification does not render the suspension or the Page 7 erroneous.

- c. Independent Review. In support of his application, the applicant submitted letters from individuals who either had direct knowledge of the applicant's situation or who reviewed the applicant's files and found his actions acceptable under policy. The Board finds the applicant's reliance on these letters misplaced. To begin, none of the individuals who drafted these letters were in the applicant's chain of command or responsible for the outcome of the applicant's failure to fulfill his CDO duties. The responsibility to hold the applicant accountable and ensure the Coast Guard was performing their duties fell to the applicant's chain of command, not the drafters of these letters, which is admitted to by one of the drafters who stated, "I am simply stating what I saw as a member outside the chain of command..." Moreover, the record before this Board contradicts the drafters' claims that the applicant was a "by the books watchstander," that "a personality conflict with [Applicant]" and a disagreement were utilized to "initiate the suspension of [Applicant's] CDO certification," and that the applicant's suspension was not "authorized per the Command Center Manual and Coast Guard SAR Addendum." The record supports a finding that the applicant was failing to fulfill his duties as a CDO. Moreover, it was not just one SMC who took issue with the applicant's performance, but three SMCs. Finally, as already discussed in Finding 5.a. above, the applicant's suspension was permitted by policy, contradicting the claims of the drafters that his suspension was against policy. Furthermore, the fact that an independent SMC with extensive SAR experience reviewed the applicant's file and based off what he read, found the applicant's decisions to have been within policy, is not evidence that the applicant was not failing to perform his duties. As stated by CAPT S, the Sector SAR Commander, in his sworn declaration to this Board, these individuals were not privy to all of the information that led to the applicant's CDO qualification suspension. CAPT S's statement is supported by the fact that the drafters' statements are contradicted by the record and policy. For these reasons, the Board finds the letters unpersuasive and unsupported by the facts and records in this case.
- d. Injustice of Page 7. Under 10 U.S.C. § 1552(a), the Board may "remove an injustice" from a member's record, as well as correct an error in the record. The Board has authority to determine whether an injustice has been committed on a case-by-case basis.⁸ Therefore, the Board must consider whether the Coast Guard's decision to rescind the applicant's

⁸ Decision of the Deputy General Counsel, BCMR Docket No. 2001-043. According to *Sawyer v. United States*, 18 Cl. Ct. 860, 868 (1989), *rev'd on other grounds*, 930 F.2d 1577, and *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976), purposes of the BCMRs under 10 U.S.C. § 1552, "injustice" is "treatment by military authorities that shocks the sense of justice."

certification was an injustice. In order to render an appropriate analysis on the issue of injustice, the Board must first note the critical role the Coast Guard plays in search and rescue missions around the United States and the significant consequences that can flow from these missions if the Coast Guard fails to perform these mission in accordance with policy. The “Preface” of the U.S. Coast Guard Addendum to the United States National Search and Rescue Supplement, COMDTINST M16130.2G, states that although the Coast Guard’s performance of SAR is permissive, judicial proceedings have made it clear that, “[o]nce the Coast Guard undertakes a particular mission, we must conduct that mission with due diligence, we must not worsen a situation by our actions, and we must meet a reasonable standard of performance.”

Here, the applicant’s inability to adequately perform his duties as the SAR CDO could have resulted in significant loss of life or property. The applicant was given an additional six months to try and solidify the knowledge and skills necessary to perform his CDO duties but despite the additional training and time, he was unable to consistently employ the knowledge and skills learned. When the applicant provided his command with reflection papers on break-ins that he had taken part in or observed, his command was often unable to discern what the applicant had learned and the applicant would often fail to take ownership of his mistakes, but would instead place the blame on other members of the SAR team. These troubling attributes only exacerbated his command’s reluctance to trust the applicant and what ultimately led to the applicant’s loss of certification. Given the importance of the applicant’s role in the Coast Guard’s SAR missions and the applicant’s inability to perform his duties without exposing the Coast Guard to liability, the Board finds that the applicant’s Sector’s decision to rescind the applicant’s was not unjust.

6. OER. The applicant alleged that his OER was erroneous and unjust because it contained prohibited comments, was derogatory in nature, and had inconsistent ratings. For the following reasons, the Board disagrees:

- a. Prohibited Comments. The applicant claimed that the comment, “ROO has the maturity and introspect to overcome Command Duty Officer qualification challenges presented during this period” was prohibited under Coast Guard policy because “qualification challenges” can only be referring to an investigation. According to the applicant, by making this comment, the Reporting Officer is clearly communicating that there was an investigation and revocation of his CDO qualification. However, the applicant failed to point to one policy, and again the Board could find none, that makes this a prohibited comment. Article 5.I.1. of The Coast Guard Officer, Accessions, Evaluations, and Promotions Manual, COMDTINST M1000.3A (January 2018), states only that the OER cannot “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 or Removal from Primary Duty OER.” The comment makes no reference to the proceedings outlined in this policy, and despite the applicant’s contentions, the comment does not infer that an investigation was completed. Moreover, policy does not require that an investigation be

completed to suspend CDO qualifications so there would be no reason to infer that an investigation had been completed. Therefore, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that the contested comment was a prohibited comment under Coast Guard policy.

- b. Derogatory OER. The applicant claimed that this comment made the OER derogatory in nature and therefore should have been drafted as a Derogatory OER. According to the applicant, had he been given a derogatory OER, he would have been given the opportunity to respond to the OER. Again, the applicant's contentions are misplaced and unsupported by policy. Article 5.H.1. of COMDTINST M1000.3A states that derogatory reports are only those OERs which: a.) contain a numerical mark of one in any performance dimension, and/or, b.) contain an "unsatisfactory" mark by the reporting officer in comparison scale or rating scale, and/or c.) documents conduct or performance which is adverse or below standard and results in the removal of a member from their primary duty or position. The applicant did not receive a mark of 1, a mark of unsatisfactory on the Comparison Scale, and the applicant was not removed from his primary duties. In fact, the lowest mark the applicant received was the mark of 4 in "Professional Competence." There was nothing derogatory about this OER as alleged by the applicant. Finally, the applicant's OER did not need to be derogatory for the applicant to submit a reply to the OER. Article 5.K. of COMDTINST M1000.3A states, "The reported-on officer may reply to any OER. Replies provide an opportunity for the reported-on officer to express a view of performance which may differ from that of a rating official." Therefore, regardless of the type of OER, the applicant still had the right under Coast Guard policy to respond to the OER, he simply chose not to exercise that right.
- c. Inconsistent Ratings. The applicant claimed that the comments and marks in Block 3.a. are inconsistent. According to the applicant, when the narrative of the supervisor's comments in Block 3a are compared to the ratings in Block 3a, the ratings are clearly inconsistent. The applicant contested the fact that the mark of 4 in "Professional Competence" is not explained anywhere in the comments. However, a mark of 4 is not required to be explained under Coast Guard policy. Article 5.J.1. of COMDTINST M1000.3A states, "The rating chain must support any mark of 1, 2, 3, and 7. Comments with 4, 5, or 6 do not require support." Therefore, despite the applicant's contentions to the contrary, his Supervisor was not required to support the mark of 4 in the comment section of the OER. The fact that the applicant's Supervisor chose to focus on the applicant's marks of 5s and 6s in the comments section was to the applicant's benefit not detriment. Therefore, the applicant has failed to prove, by a preponderance of the evidence, that the marks contained in his contested OER were inconsistent.
- d. Undue Influence. The applicant alleged that his Supervisor, LCDR L, was unduly influenced by the chain of command to change the applicant's ratings. The applicant further alleged that LCDR L refused to submit a sworn statement attesting to this fact because he was worried about retaliation. However, LCDR L did submit a sworn declaration in response to the applicant's application for relief and it contradicts the applicant's claims of undue influence. Specifically, LCDR L stated that upon drafting the applicant's final OER, he tried doing damage control, but the applicant's marks were ultimately affected by his

performance during the rating period. LCDR L further stated that he believed the applicant got hung up on a personality conflict he had with another SMC and never took ownership of his failures or the real reasons behind his shortcomings which led to his inability to meet the “mark.” LCDR L made no claims that the marks the applicant received were not supported by the applicant’s performance during the rating period or that he was unduly influenced by the rating chain. Other than the applicant’s claims, there is no evidence to support the allegation that the applicant’s OER was the result of undue influence.

7. Coast Guard Commendation Medal. The applicant alleged that his command erroneously and unjustly downgraded his Coast Guard Commendation Medal to a Coast Guard Achievement Medal. According to the applicant, the fact that he received a Letter of Commendation during the same rating period is evidence that his Commendation Medal was erroneously and unjustly downgraded. The Board disagrees. As argued by the Coast Guard, the Letter of Commendation the applicant received was for specific actions taken during a specific event that were outside the applicant’s normal duties. The fact that the applicant received a Letter of Commendation for his role on his Sector’s Incident Management Team from August 20, 2020 through November 15, 2020 does not entitle the applicant to a Commendation Medal for his end-of-tour award. Furthermore, the fact that the applicant received a Letter of Commendation is not evidence of error or injustice, nor is it evidence that his end-of-tour award was downgraded without good cause.

Article 2.A.13.a. of the Military Medals and Awards Manual, COMDTINST M1650.25E, provides that the Coast Guard Commendation Medal:

May be awarded by the Commandant, to a person who, while serving in any capacity with the U.S. Coast Guard, including foreign military personnel, distinguishes him or herself by heroic or meritorious achievement or service. To merit this award, the acts or services must be accomplished or performed in a manner above that normally expected and sufficient to distinguish the individual above others of comparable grade or rating performing similar services, as set forth in the following... (Emphasis added.)

As outlined above, there is nothing in the eligibility requirements that entitle any officer to be issued a Coast Guard Commendation Medal regardless of whether he was nominated for the award by his supervisors or not. Furthermore, the denial of a Commendation Medal was supported by CAPT S and CAPT D (the Awards Board President), who both stated that the applicant’s performance did not rise to the level of a Commendation Medal. Specifically, CAPT D stated that, “In reviewing [Applicant’s] citation, it was apparent to me that many actions listed in it were provided directly by LCDR [Applicant] himself, as no one else at the unit had a first-hand account of his performance during the contingency/overseas deployments referenced.”

CAPT D believed the applicant’s request for a Commendation Medal was not supported by the applicant’s record of performance during his tour. The applicant and his supervisors were free to submit a draft version of the award they believed the applicant was entitled to, but the responsibility for approving the award fell to Coast Guard flag officers, not solely the applicant’s chain of command, as outlined in Table 1-1 of COMDTINST M1650.25E, and those reviewing officials were free to deny the recommendation. The Board finds that the fact that the applicant was not awarded the Coast Guard Commendation Medal indicates that the Coast Guard reviewed his record and determined his service did not rise to the level that justified issuing him such an

award. The applicant's service records are presumptively correct, and the applicant has failed to prove that the Coast Guard's decision not to award him the Commendation Medal was erroneous or unjust. His request for relief should therefore be denied.

8. For the reasons outlined above, the applicant has not met his 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.⁹ He has not proven, by a preponderance of the evidence, that the Coast Guard erroneously or unjustly issued him a negative Administrative Remarks Page, issued him an OER that was plagued by undue influence and inconsistent ratings, or downgraded his end-of-tour award. Accordingly, the applicant's requests should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁹ *Muse v. United States*, 21 Cl. Ct. 592, 600 (1990) (internal citations omitted).

ORDER

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

October 3, 2024

