

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2006-003

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

FINAL DECISION

AUTHOR: Andrews, J.

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed it on October 7, 2005, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated July 21, 2006, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant asked the Board to correct his record by removing a derogatory special officer evaluation report (SOER)¹ he received for the period May 1 to September 22, 2004, when he was serving as a Deputy Group Commander on Xxxxxxxx. The Group Commander, his commanding officer (CO) had him removed from his duties as Deputy Group Commander on September 22, 2004. The CO served as both the applicant's supervisor and reporting officer for the SOER.²

The applicant alleged that the SOER "contains inaccuracies, inconsistencies, partial and false statements, negative exaggerations, and a lack of performance trend data." He alleged that the SOER was prepared due to "professional differences" in leadership styles and that the comments in the SOER are either unfounded or unrepresentative of

¹ Coast Guard officers are evaluated in a variety of performance categories on a scale of 1 to 7, with 7 being best. A mark of 1 in any category makes an OER "derogatory," and entitles the reported-on officer to attach an addendum. Article 10.A.3.c.1.a. of the Personnel Manual allows a command to prepare an SOER to document performance that is notably different from the officer's prior performance.

² An officer's rating chain normally consists of three members: supervisor, reporting officer, and reviewer. However, if a unit CO is an officer's direct supervisor, the CO may serve as both supervisor and reporting officer.

his overall performance and had no impact on the Group's operations. He submitted survey charts showing that Group members' opinions of many aspects of their work improved between 2002 and 2004. The applicant's more specific allegations appear below.

SUMMARY OF THE RECORD

On November 16, 1987, the applicant enlisted in the Coast Guard, having previously served in the Army for two years. He attended Office Candidate School and on February 22, 1992, was appointed an ensign in the Coast Guard Reserve. He began serving on an extended active duty contract at the Headquarters Logistics Management Division. On August 22, 1992, he was promoted to lieutenant junior grade.

From June 21, 1993, through June 6, 1996, the applicant served at a Group as, serially, the Administration and Supply Officer, the Special Operations Officer, the Law Enforcement Officer, and finally the Assistant Operations Officer. He received very high marks (primarily marks of 6) on the OERs he received from this Group command, was rated an "exceptional officer" in the sixth spot on the comparison scale, and was strongly recommended for promotion. On April 3, 1995, the applicant was integrated into the regular Coast Guard. On August 22, 1995, he was promoted to lieutenant. On his final OER at this Group, dated June 6, 1996, the Deputy Group Commander wrote that the applicant "is a superb junior officer whom I trust implicitly to do any job."

From June 7, 1996, through May 31, 2000, the applicant served as a quality performance consultant, ensuring that field units implemented leadership and management models and advising and training them about work performance and workplace climate. He received very high marks on his OERs in this position and was strongly recommended for accelerated promotion. On three of these OERs, a Rear Admiral who served as the OER reviewer added a page of comments to the OER seconding the reporting officer's assessment of the applicant. The words used to describe the applicant in these OERs include "visionary," "innovator," "leadership laureate," "contagious can-do spirit," "mature," "instant rapport with [diverse] people," "exuding goodwill and diplomacy," "self-disciplined," "self-sufficient," "mission-oriented," "efficiency lauded by all," "on the top of the performance charts," "excelled in a job that would have frustrated less capable people," and "capable of getting positive results in a wide range of operational and managerial areas."

From June 2000 to June 2002, the applicant served as the commanding officer of a training center. On the two OERs he received in this position, he was assigned very high marks and strongly recommended for promotion. The written comments commend him for "superlative planning and use of resources" and "outstanding results" and describe him as "ever progressing and improving" and "extremely well qualified for command cadre ashore positions." The applicant was promoted to lieutenant commander on August 1, 2001.

On June 17, 2002, the applicant began serving as the Deputy Group Commander for a Group on Xxxxxxxx, Xxxxxxxx. As such, he was second in command at a Group with xxx active duty members and xx reservists serving at xx search and rescue (SAR) stations, an aids to navigation team (ANT), a patrol boat, and xxxx smaller boats, as well as the Group staff. As Deputy Group Commander, the applicant was the Group Executive Officer (XO), and served as the primary human resource manager for the Group staff, and secondary human resource manager for the subordinate units, the Safety Officer, the Medical Officer, the Mutual Assistance Representative, the "mayor" of the Coast Guard housing, and the chair of the various training and awards boards.

On his OER dated April 30, 2003, the applicant received two marks of 5, fifteen marks of 6, one mark of 7 (for "Looking Out for Others"), and a mark of "excellent performer; give toughest, most challenging leadership assignments" in the fifth spot on the comparison scale. The Group Commander recommended the applicant for promotion and wrote that he "influences others, maintains high expectations, performance & mission-focused results & is also a natural catalyst for the integrity-based decisions of crewmbrs. HR specialist, systems thinker, & professional relationship builder."

On his OER dated July 31, 2003, the outgoing Group Commander assigned the applicant one mark of 5, thirteen marks of 6, four marks of 7 (for "Planning and Preparedness," "Results/Effectiveness," "Looking Out for Others," and "Responsibility") and a mark in the fifth spot on the comparison scale. He also strongly recommended the applicant for promotion and for a Group Commander assignment.

On his OER date April 30, 2004, the new Group Commander (CO), who like the prior Group Commander served as both supervisor and reporting officer, assigned the applicant two marks of 4 (for "Planning and Preparedness" and "Initiative"), eight marks of 5, five marks of 6, three marks of 7 (for "Looking Out for Others," "Workplace Climate," and "Health and Well-Being"), and a mark in the fifth spot on the comparison scale. The CO also included the following comments to support the marks:

Strategic thinker; developed holistic contingencies to respond to Hurricane xxx; incorporated lessons learned into updated hurricane plan. Ensured base, units & housing residents had backup energy Key player in [the District's] efforts to align GPs & MSOs into Sector Commands ... Used available resources when responding to [anthrax, lead, and asbestos problems]. Despite major changeover in sr. personnel, required very little guidance to ensure GP support met needs of subunits; corporate knowledge alleviated potential mistakes; used green/amber/red ... model to measure GP's subunit satisfaction levels w/ med, admin, & supply shops; feedback used to alleviate short-comings. Provided sound input into operations; ensured aids position was verified after commercial vsl grounding ... Skillfully adapted [to] SAR cases, ..., etc. Demonstrated superior expertise re personnel issues; acted as sounding brd for COs/OICs/XPOs; tightened relationships. ... Provided crewmembers chance to give training. ...

Leadership autodidact; conducted 2 leadership self-assessments; measurable results fm 360-degree analysis showed "effective, self-actualizing leader" w/ followers having

"high level of satisfaction & high productivity"; ID'd areas for improvement (AFIs) under transformational leadership characteristics; linked AFIs to specific unit needs. 2nd assessment described leader w/ "idealized influence" over subordinates' "trust, faith & respect" who is "role model"; assessments supported by visible relationship w/ crew, teamwork & workplace climate; vision reinforced during mbr inbriefs. Treated mistakes as learning opportunities; led to development & continuous performance improvements; prepared mbrs for future success. Took swift, appropriate action after housing residents voiced concern re suspected pedophile; maintained privacy, dignity of mbr; defused situation discreetly. Interactions w/ 2 estranged spouses objectively guided by policy; issues resolved IAW regs. ... Interviewed mbr w/ +cocaine urinalysis; uncovered more potential users; launched CGIS investigation; led to 4 discharges. Accessible XO w/ sought-after perspective; counseled jr mbrs. Evals well-supported by 1st-hand knowledge of performance/potential.

I continue to be impressed by [the applicant's] insightful human resource skills & the professional relationship that has naturally emerged w/ the crew. The initiative to conduct a self-assessment of leadership skills is merely one aspect of [his] drive to understand personal & position power & the resulting effects of a leader's actions. An officer w/ a positive outlook & an effervescent spirit, [the applicant] not only has a finger on the pulse of the GP, but also knows when & how to regulate that pulse. ...

Provided diversity mngmnt to crew; well-rcvd as "best trng"; initiated "Ready for Admin" (RFA) prgm to prep units for upcoming MLC compliance visit; ID'd shortcomings in time to alleviate gigs. Worked w/ cmd sr. chief to formalize Employee Problem Informal Review Board (EPIRB) into a Chief's Council; added leadership option to address crew issues. Turned 4910 charges into a plan to help mbr w/ indebtedness; mbr back on career path w/ clean record. Took appropriate steps when mbr blew a .096 breathalyzer ... Worked w/ subunits to alleviate perf. problems in operational arena; admin assigned mbrs to GP for discharge processing or perf. turnaround; worked closely w/ D1(d1) to ensure all avenues were considered. Conducted investigation into mbr's phenobarbital + urinalysis ... Solved issue re community use of gov't water at housing; created good neighbor environment while maintaining high ethical standards of self & F&S dept head. ... Fitness champion; ran routinely ...

Qualified as Group Commander; Acted as CO for 38 days; Met all requirements w/ professional sound judgment. Previous Boat Forces experience combined w/ prior consultant work w/ D8 [Marine Safety Offices] make [the applicant] a qualified trailblazer to serve in a senior cmd billet at a sector. [He] has reapplied for the USMC Cmd/Staff College; As the first alternate 3 years ago & based on continued performance, [the applicant] rates & is highly recommended for selection. Highly recommended for jobs that require an expertise in HR and/or leadership, based on practical leadership experience and ongoing doctoral studies. Recommended for Group Commander and promotion to O-5.

The CO counseled the applicant about this OER and about his expectations of the applicant. The CO's written "OER Feedback" concerning the applicant's strengths and weaknesses cited areas in which the CO wanted the applicant to improve, including updating the CO regularly about the status of projects; tracking work, awards, and personnel issues; and "demonstrat[ing] greater operational involvement" by "making substantial progress toward your boat forces pin," "participat[ing] in the RFO program," "getting underway with our units on a periodic (monthly) basis," and "participat[ing] in wet drills."

On May 19, 2004, the CO provided the applicant with another detailed list of expectations concerning how he should relate to and represent the CO; display leadership; maintain a calendar of events; process awards and arrange award presentations; handle personnel matters; and inspect materiel and resolve discrepancies, including twelve "immediate" maintenance projects on the Group's property, such as washing windows, replacing carpet, trimming hedges, and clearing and straightening storage space, to be done before the CO's materiel inspection on June 16, 2004.

After the CO took a week of leave from June 28 to July 2, 2004, he gave the applicant a page of written feedback about work that was not accomplished or was inadequately planned or performed during his absence.

On August 13, 2004, the CO wrote a letter to the applicant, stating the following:

[Y]ou still have a ways to go to meet my expectations. ... If your performance improves, you can continue on in the job and have prospects for a bright future. If your performance does not improve, I may be in the unfortunate position of having to write a special OER and to revoke my recommendations for post-graduate programs, command, and promotion. As it stands right now, I cannot recommend you for any one of those three. In a worst case scenario, I may be forced to relieve you of your duties as deputy group commander. Although I am not presently satisfied with the quality of your work, I still have confidence that you can perform the job in a way that will meet my expectations. I encourage you to continue to make improvements in initiative, decisiveness (directing others), planning, and the overall thoroughness of your work.

Following "feedback sessions" between the applicant and the CO on August 13, 19, and 30, and September 7 and 13, 2004, the CO gave the applicant short lists of "things that went well" and long lists of "things that did not go well." The applicant submitted written responses to several items on the CO's lists. For example,

- The CO complained that a letter regarding a member's discharge did not indicate whether he had submitted a statement or waived his right to do so. The applicant responded that the member had submitted an incomplete statement and that "[t]he letter was for your signature, so if you needed that statement put in, it was an easy fix, not a performance issue."
- The CO complained that the applicant had asked him to sign a letter verifying that an inventory had been conducted without showing him documentation of the inventory. The applicant responded that he was "used to working in an environment where my character is trusted, and I trust my department heads ... But again, if you wanted to see the inventory, it was an administrative issue, not a performance issue."
- The CO complained that he had to call the applicant at home one evening to find out whether the CO or the applicant would be attending a Sector meeting. The applicant responded that the CO had left the office first and left before the applicant received

the answer to that question from the District. When the CO called him, the applicant told him he had nothing to report because the District did not respond to their query until Thursday.

- The CO complained that a form was missing from an award recommendation. The applicant responded that at the time, the form “was on its way over” from the member’s subunit.

- The CO complained that he saw a message from the District Chief of Staff requiring an EEO report by September 1, 2004, and that the CO did not know if anyone was taking action on the report. The applicant responded that the “CRO had it for action, and we met the deadline.”

- The CO complained that he had not been briefed about a member being discharged due to his second alcohol-related incident. The applicant stated that the CO was misinformed because the member had not had a second “alcohol incident” and was not being discharged. Therefore, “there was nothing to brief you on re this (non)incident.”

- The CO complained that the Group still had no ball caps although they had run out more than five weeks previously. The applicant responded that the Morale Officer had not alerted him and that he had ensured that new ball caps were ordered as soon as he discovered the problem. Moreover, the applicant stated that a ball cap is only a token and that his staff used other ways to “incorporate new members into the fold.”

- The CO complained that he had not been briefed about something on the calendar. The applicant responded that this complaint contradicted a prior statement by the CO that he had been briefed.

- The CO complained that a FedEx package for an administrative investigation into a mishap did not contain finalized radio logs, as the applicant had promised the investigator. The applicant responded that the oversight had been corrected by the Operations Division.

- The CO complained that, two months earlier, he had asked the applicant to mediate a conflict between two subordinate officers and that the applicant had delayed doing so until the CO reminded him in writing. The applicant responded that he had “engaged” both officers promptly but that their operational and annual leave schedules had not permitted them to meet together for mediation for several weeks. The applicant stated that the CO’s written reminder had not affected the timing of the mediation.

- The CO complained that neither he nor the Engineering Officer knew about the conflict until they read a monthly report. The applicant stated that the situation was

handled at a lower level and was properly communicated to the CO through the monthly report.

- The CO complained that when he returned from a week's leave, the applicant did not present him with a list of things that had occurred in his absence "as almost anyone would do for his boss." The applicant responded that the CO had been absent for 58 days during the prior year and had never yet requested such a list. Instead, there was a "staff brief" the morning the CO returned and the applicant and each department head orally briefed the CO.

- The CO complained that before going on a week of leave, he gave the applicant a list of questions and concerns but that the applicant did not respond until four days after the CO returned. The applicant responded that their "scheduled status update" had been delayed from Tuesday to Thursday due to the CO's own busy schedule upon returning from leave and that Thursday was the "earliest break in the catch-up schedule." The applicant stated that if the CO had requested an earlier briefing, the applicant would have provided one.

- The CO complained that although before he left he had prepared a comprehensive list of things that needed to be done concerning a certain seaman, he had received no update upon his return. The applicant responded that that seaman's situation was being handled by the subunit chain of command and that the applicant did "not expect my Commanding Officer to doubt the effectiveness of the chain of command in handling an E3's performance issues, and therefore did not provide you, or think you expected, an update."

- The CO complained that planning for the Coast Guard Day picnic had only begun after the CO reminded the applicant and just two days before the event. The applicant responded that planning had begun three months early.

- The CO complained that after asking the applicant to make repairs of obvious materiel discrepancies a top priority and mentioned the lack of "non-skid" on some steps, the steps were not fixed during the week and the CO was embarrassed when his supervisor noted the condition of the step when she visited the following week. The applicant responded that there was a "manpower issue," that the non-skid had been removed because the step had been repaired and needed to be painted.

- The CO complained that although they had two months' warning of the departure of an ensign, there was no one qualified to fill his duties as EKMS alternate. The applicant responded that he and the Operations Officer "had this under control with a plan to get the EKMS alternate identified well before [the ensign's] departure." The applicant stated that "it appears as if your negative opinion of me and my abilities preempted a discussion that would have alleviated your concern not only in the handling of a personnel issue, but in my personal ability to handle my responsibilities."

- The CO complained that the applicant botched a drug-use investigation by failing to read a member his rights “even though [the applicant] suspected [the member] of a UCMJ offense. The applicant stated that he did not suspect the member of anything but, with a witness present, was merely counseling a member “who was having problems at home,” when the member “confessed ... that he had a positive drug urinalysis.” The applicant had the member clarify what he had said and then stopped the interview.
- The CO complained that the applicant had not included a retirement party that was mandatory for all hands on a “plan of the week.” The applicant stated that he did include it but that the person who wrote up the plan overlooked it.

From September 14 to 16, 2004, the Maintenance and Logistics Command conducted an Administrative and Financial Compliance Inspection at the Group for the first time in five years. The Group’s financial, administrative, and personnel programs were found to be satisfactory. The inspector reported that no follow-up reports were required because the Group’s “evaluation in each area was satisfactory or better and you are compliant in all areas.” The inspector also noted that the morale account was not ready for inspection because the newly appointed (September 8) Morale Officer was away due to operational commitments and had not had time to prepare for inspection.

On September 22, 2004, the CO removed the applicant from his position. To document this event, the CO prepared the SOER as follows:

MARKS AND COMMENTS IN DISPUTED SOER

(The bold numbers inserted in the text refer to correspondingly lettered allegations and supporting evidence below.)

#	CATEGORY	MARK	WRITTEN COMMENTS
3a	Planning and Preparedness	3	Weak planning/preparedness: [1] despite frequent prompting, did not initiate tickler for tracking assignment/due dates, resulting in missed deadlines (late OERs, evals, hurricane plan, training); [2] instituted command calendar, worklist, personnel tracking system, awards tracking, only after supervisor directed/provided model; [3] virtually unresponsive to materiel discrepancies; [4] 1 yr to complete fitness trail, [5] 2 fences falling down, weeds, painting, dilapidated floating docks; [6] not prepared for quarters—left mess for EO, resulting in EO/CO embarrassment in front of crew; [7] MLC Compliance criticized urinalysis program for lack of year-round testing; [8] no one available to present morale account to inspectors, resulting in lenient “not ready for inspection” result; [9] ill-prepared for transfer season (no unit ball caps, no plan for comms watch rotation, last minute/ late awards), [10] no plan developed for departure of LTJG (EKMS relief, morale); [11] released “possible compromise” message without briefing CO. [12] Failed to adapt/ respond: in midst of difficult fatality case/mishap, relieved as President, Local MAB (failed to pull radio tapes, develop inventory, or provide investigator with comprehensive evidence package); [13] even after red-flag warning by admin officer for morale 1 month in advance, account in poor shape for MLC inspector; [14] neglected to pass written MI discrepancies from CO to department heads; [15] unresponsive to clear guidance by CO after frequent oral & written feedback.
3b	Using Resources	4	
3c	Results/ Effectiveness	3	
3d	Adaptability	3	
3e	Professional Competence	4	
4a	Speaking and Listening	5	Entertaining speaker w/ keen, multi-layered sense of humor; addressed issues facing unit COs/OICs; advice was clear/supportive of policy/well-rcvd; w/ short notice, cancelled his leave & presided over BM1 retirement ceremony; speech was lauded by mbr, family, guests. Drafted endorsements, memos, ltrs; edited awrds; used measures system for 3-wk period that revealed 96% signature-ready rate on documents; drafted STA change of cmd speech for CO; e-mails; helped subordinates tailor correspondence (fit school/OCS requests); edited SRO’s war college application.
4b	Writing	5	
5a	Looking Out for Others	5	Focused inbrief msg on mbr ownership & development; attended trng sessions w/ crew; demonstrated commitment to unit’s work climate; challenged officers w/ transactional leadership styles to be more inspirational than directive; w/out imposing will, demonstrated skills as coach. Separated person fm performance; counseled mbrs on personal & professional issues; supported personal needs of 2 mbrs facing courts martial; maintained mbrs’ dignity; effort kept both engaged in daily work; worked with ISC to get mbr a domestic violence assessment. Teamed w/ YNCS & YN1 to help F&S w/ contracting background acclimate to admin supervisory duties, CWO showed exponential growth in admin world of work. Worked w/ two estranged spouses after a/d mbr admitted to adultery; ensured child support req’s were met; ensured extra duty/ restriction was executed. Helped STA process mbr for discharge after admitting to bisexual activities; ensured mbr got legal counseling re admin discharge brd. Took fast, appropriate steps to work w/ unit cmds; processed personnel issues (alcohol, performance, police charges, drug incidents, etc); policy-guided; description of Group as “support unit” appreciated by unit cmd cadres. [16] OER’s submitted in good quality, but some late due to poor tracking; [17] enlisted evals accurate, requiring minor changes, but Group staff E-6 marks 45 days late.
5b	Developing Others	5	
5c	Directing Others	4	
5d	Teamwork	4	
5e	Workplace Climate	6	
5f	Evaluations	3	
6	Signed by the CO on September 22, 2004, as supervisor		
7	Reporting Officer’s Comments	NA	[18] [The applicant] has been passively stubborn in not adjusting to or meeting my expectations for my Deputy Group Commander. [19] Despite frequent and forthright feedback (both oral and written), [he] has been slow or unresponsive to tasking, deadlines, and expectations. [20] He is good at responding to crises, but not at planning to prevent them, turning normal military events into fires to put out (awards, personnel transfers, reports, evaluations, District Commander visit). [21] Chooses “inspirational” leadership model, but lacks ability to adapt where it falls short.
8a	Initiative	3	[22] Lacked initiative/career development: [23] did not set foot on a CG boat during entire reporting period; [24] did not participate in Ready for OPS (RFO)/STAN visits; [25] took no steps to develop plan for himself or subordinates to earn boat forces pin; [26] took no remedial area familiarization action when, as acting CDO, did not know location of Xxxx xxxx (xxx Group is located on); [27] failed to flag important message traffic while CO on leave (COMDT Sector impl., D1(dcs)). At times, demonstrated sound judgment: acting CO for 20 days (18 during busy SAR season) while CO TAD/leave; acting CDO 5 days; worked w/ GDOs to ensure cases ran smoothly; responded well to complicated family case at housing; formal actions ensured mbrs’ safety/accountability; de-escalated spouse’s anger w/ calm demeanor; worked w/ family advocate to defuse/rectify source of family disturbance. Always looked good in uniform, established “best boot Tuesday,” inspiring members to polish boots; [28] sponsored fancy work contest; rendered proper military courtesies. Excellent physical shape; regular distance runner; rated excellent in physical fitness assessment; planned physical fitness assessment for entire Group staff to encourage overall well-being.
8b	Judgment	4	
8c	Responsibility	4	
8d	Professional Presence	5	
8e	Health & Well-Being	6	

9	Comparison Scale	1	[Performance unsatisfactory for grade or billet.]
10	Potential	NA	[29] While he was successful as the personnel officer in many respects, he failed to grasp the breadth of his duties as the Deputy Group Commander, falling short on operational matters, accountability, and unit planning. [30] As a result, I can only recommend him for administrative positions. [31] He possesses an extensive educational background and concern for junior members that should be considered in the assignment process. With enhanced dedication and an opportunity to perform in a non-operational assignment, he has the potential to earn a recommendation for promotion to O-5 at a later time.
11	Signature of the CO dated September 22, 2004, as reporting officer		
12	Signature of the Chief of the District Search and Rescue Branch dated September 28, 2004, as reviewer		

Because the OER was derogatory, the applicant was entitled to submit an addendum. He wrote simply, "I stand by my record, my experience, my understanding of leadership, my reputation, and my adherence to the organization's emphasis on people." This addendum was forwarded by the rating chain without comment.

On October 22, 2004, the applicant submitted an OER Reply in which he alleged that the CO provided no "command vision" and may not have understood his "transformational leadership approach [which] is not understood or readily accepted in traditional (transactional) units, but it is tactically based on the Commandant's diversity policy and its support of 'people first' initiatives to maintain retention while balancing work life." The applicant alleged that it was "a personality-driven evaluation conducted in a transactional, throw-back environment that allowed [him] to go from 'Qualified as Group Commander' to not being recommended for graduate school or promotion in 145 days." He pointed out that during the evaluation period, he was a "doctoral student in organizational development, but [he] 'did not set foot on a CG boat,' so [the CO wrote that he] 'lacked initiative/career development.'"

On October 29, 2004, the CO forwarded the OER Reply to the reviewer. The CO wrote that the SOER was not "personality-driven" and "was based solely on performance."

On November 10, 2004, the reviewer forwarded the OER Reply to the Coast Guard Personnel Command (CGPC). He noted that the applicant had submitted a memorandum requesting redress against his CO under Article 138 of the UCMJ but that it was returned to him because he had not first sought redress directly from the CO and because the "redress of an OER is not cognizable under Article 138." The reviewer further stated that he was "confident that the [SOER] was based solely on observed performance."

On November 22, 2004, CGPC rejected the applicant's OER Reply because of the comments concerning interpersonal relationships and his opinion of the abilities or qualities of the CO, which are not permitted in an OER Reply under Article 10.A.4.g.2. of the Personnel Manual.

On December 1, 2004, the applicant submitted a revised OER Reply with a bulleted list of 36 projects or tasks he had completed or contributed to during the evaluation period. Most of those listed are included with his allegations summarized below.

On December 21, 2004, the CO forwarded the OER Reply to the reviewer, stating that he was aware of all of the performance documented therein and took it into account when preparing the SOER. However, he stood by the SOER. He wrote, "Although I agree that [the applicant] performed the tasks listed in his OER Reply, I don't think they paint a complete picture of his performance. For example, regarding the bullet about 'admitted drug possession/use,' [the applicant] neglected to read the member his rights before questioning him, and we were unable to use his confession for a discharge. The member remains on active duty at this time."

On June 10, 2005, the PRRB denied the applicant's request to have the SOER removed from his record. The views of the PRRB are summarized with the applicant's allegations below.

VIEWS OF THE COAST GUARD

On February 22, 2006, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request for lack of merit, except to the extent of removing the SOER comment about the fancy work contest.

The JAG argued that the applicant failed to submit "clear and convincing evidence to overcome the presumption of regularity afforded rating officials." The JAG also argued that the record before the Board "clearly establishes that the [SOER] was properly prepared in accordance with the Personnel Manual; that it represents the honest professional judgment of the group commander; and that it accurately reflects Applicant's actual performance during the period of the report." The JAG attached to and adopted as part of his advisory opinion a memorandum on the case prepared by the Coast Guard Personnel Command. CGPC argued that each of the disputed comments, except the date of the fancy work contest, are supported in the record. CGPC's findings regarding specific disputed comments are summarized below with the applicant's specific allegations.

Regarding the applicant's allegations about professional differences and leadership styles, CGPC stated that transformational leaders typically have great passion and confidence but sometimes "passionately lead their followers to ruin" and are "apt to spend most of their energy and attention selling the big picture while overlooking management of the details." CGPC stated that the applicant's

stubborn insistence that his own leadership style was the far more superior style and/or more successful way to lead the unit was not convincing. The Applicant's opinions on leadership styles are trivial compared to the inescapable fact that Commanding Officers are uniquely qualified for command, are hand-selected by higher authority, and are the sole legitimate command authority. Executive Officers are bound by CG Regulations to implement the CO's vision in the most effective manner, not to supplant it with their own vision. Furthermore, Applicant's supporting documentation and numerous admissions paint a credible picture of deliberate discord on the part of the Applicant towards the Group Commander's leadership. It is clear that professional differences existed between the Applicant and the Group Commander, but mostly (if not solely) due to misplaced leadership arrogance on the part of the Applicant.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 20, 2006, the applicant responded to the views of the Coast Guard. The applicant objected to CGPC's "tirade explaining leadership styles" as it was flawed in several respects and did not focus on his actual performance. The applicant argued that he could not implement the CO's "vision" because the CO had not provided one. Therefore, he continued "perpetuating the vision of reciprocal leadership and ownership among the crew," for which the CO had praised him in his prior OER. The applicant stated that to his own misfortune, the CO "measured all others by his own model, ... did not make his expectations clear for the first ten months of his tour, and ... *never* formulated a vision for his command."

The applicant stated that he understood that the CO had an "absolute right to ask for things to be done differently, and by all evidence I incorporated those changes (tickler files)." However, within 145 days, the CO was busy creating a "paper trail." The applicant alleged that "nowhere in that paper trail are there redundancies. In other words, there was never a defined deficiency that had to be corrected more than once." Therefore, he argued, the CO was documenting mere "one-time events" with no adverse impacts simply because he was personally affronted that the applicant had deviated from the way the CO would have handled a particular task.

SUMMARIES OF EVIDENCE AND ARGUMENTS ABOUT SOER COMMENTS

The following summaries group (a) the applicant's evidence and allegations concerning each of the negative comments in the disputed OER with (b) any statements by the CO or reviewer regarding disputed comments, (c) the findings of and statements considered by the PRRB, (d) the opinions of CGPC in the advisory opinion, and (e) the applicant's responses.

COMMENT [1]: "despite frequent prompting, did not initiate tickler for tracking assignment/due dates, resulting in missed deadlines (late OERs, evals, hurricane plan, training)"

Applicant's Arguments

The applicant alleged that "he did not miss deadlines because of weak planning." He stated that he "used the Coast Guard Personnel Manual which clearly outlines a 'tickler' for on-time submission for OERs and evaluations. ... I used the tickler already provided by the organization thus reducing redundancy." Moreover, the applicant stated, the Group's OER initial and due dates were included on the Group Worklist, which was generated in response to the CO's request. He provided a copy of the Group Worklist dated September September 17, 2004, which shows OER entries with initial and due dates included. He also alleged that there had been a 100% turnover on the administrative staff, and the new staff had to "come up to speed."

The applicant stated that he had three "direct reports," and of those officer's OERs, he signed only one late and its delay was not due to lack of a tickler list but to the fact that it was that officer's first OER, and the applicant had to help him document his performance. Moreover, he stated, the CO himself signed all three of the OERs late. Therefore, he argued, his CO arbitrarily held the applicant to a higher standard than the standard to which he held himself, in violation of Article 138 of the Uniform Code of Military Justice (UCMJ).

The applicant stated that all other OERs and enlisted evaluations were submitted on time, except those of for E-6s, which were submitted late "by design." He referred to his arguments regarding comment [17] (below). In addition, the applicant submitted a copy of a Coast Guard publication, which stated that in 2004 only 45% of all OERs were submitted to CGPC timely within the 45-day deadline.

Regarding the hurricane plan, the applicant stated that there was one in place and that it was reviewed annually upon receipt of an official hurricane message. He stated that having a tickler would therefore have been redundant. However, in response to "the CO's request, a worklist was generated, and the hurricane plan was added." The applicant alleged that the CO slowed down review of the plan by rejecting his suggestion that the CO review it concurrently while others reviewed it because he "wanted everyone to see it before he did."

The applicant stated that the Group training officer provided an annual training plan and posted it on the bulletin board. He submitted a copy of a training schedule for FY2004, which shows the title, date, and instructor's name for twenty training sessions offered at the Group throughout that fiscal year.

CO's Arguments

The CO stated that during the evaluation period, only two of eight members of the administrative office were transferred out and replaced. He stated that both he and the District expected the hurricane plan to be revised prior to the season, but it was not

done. Regarding training, the CO stated that the applicant “assumed no responsibility for developing a plan to train and certify the junior officers as comms/controller/CDO/ boat crew/BTM/BO. He did not monitor the operations department training, [which is] perhaps the most important training on the Group staff, and he provided no oversight of reserve training.”

COMMENT [2]: “instituted command calendar, worklist, personnel tracking system, awards tracking, only after supervisor directed/provided model”

The applicant alleged that this comment is analogous to “answered the phone only after it rang” because his three prior OERs “reflect positive actions and accountability without having a piece of paper to track deadlines.” He stated that he generated the lists for the CO’s use, not his own, when the CO requested them ten months after he took command. The applicant stated that he himself had “operated successfully for two years without these tickler systems” but that he generated the lists mentioned in this comment in May and June 2004, when the CO asked for them, and updated them weekly until he was removed in September. Therefore, he promptly responded to the CO’s request during the evaluation period, and the tickler lists were in place for the majority of the marking period. For example, “the awards tracking model was in place in May, and 31/32 awards (97%) were delivered to the receiving members before they departed.

In support of his allegations, the applicant submitted copies of a “personnel issues” spreadsheet, a Group Worklist, an Award Status spreadsheet, and a nine-page materiel discrepancy list with (very few marked as “completed”), all of which the CO authorized a Group staff member to email the applicant on December 27, 2004.

The CO stated that “after months of us failing to meet deadlines, I tasked [the applicant] with developing and maintaining a tickler system. ... He did not develop them; I did” by providing templates.

COMMENT [3]: “virtually unresponsive to materiel discrepancies”

Applicant’s Arguments

The applicant stated that he “delegated the materiel discrepancies to the Engineering Officer,” in accordance with the CO’s expectations. He stated that the Engineering Officer was not unresponsive but was busy providing support for the operational units. The applicant pointed out that the evaluation period happened during the Group’s busy SAR season and that he therefore “prioritized the discrepancy list accordingly with plans to correct the discrepancies after the search and rescue season.” He stated that in August 2004, the engineering staff had to perform 450 hours of unscheduled boat maintenance, which was more important than whether a step was painted or a hedge trimmed.

The applicant submitted a copy of the discrepancy list, generated three months after his departure, and pointed out that all 19 of those discrepancies accounted for on the list had been handled before his departure and that nothing had been done since his departure. Therefore, he argued, the CO was holding him to a higher standard than he held himself.

PRRB's Arguments

The PRRB argued that materiel discrepancy list submitted by the applicant supports this comment because the list indicates that only 21 out of the 415 discrepancies shown were completed.

CO's Arguments

In his declaration for the PRRB, the CO stated that due to the lack of a materiel discrepancy list, he had scheduled a CO's materiel inspection, but the applicant "took virtually no steps to prepare for that inspection. ... [He] had clearly told [the applicant] that [he] expected him to ensure the unit was ready for [him] to inspect." "The goal was for him to generate the list and fix/improve as many things as possible so I could walk around and compliment the crew on their good work. Instead, the list was generated during my inspection. The [Engineering Officer] played a big part in generating this list, partly because [the applicant's] hands were full of trash that he was picking up during the inspection."

Reviewer's Comment

In a declaration for the PRRB, the reviewer wrote that he learned from the CO during their telephone conversations over the summer that the applicant "paid insufficient attention to detail and missed several deadlines. We specifically discussed late enlisted evaluations and OERs, lack of ballcaps for newly arrived members, and delayed awards. ... [The CO] was typically disappointed that [the applicant] had not adequately prepared for an awards ceremony or all hands meeting. ... [The CO] was also disappointed in the material condition of the Group and expressed his frustration to me several times that [the applicant] was not working quickly enough to correct discrepancies." The reviewer stated that the positive comments of the District Commander in the inspection log were simply "to raise crew morale [and] not necessarily intended to convey the material condition of the unit."

Applicant's Rebuttal

The applicant submitted a statement by a member of the Group, who stated that the Group's materiel inspection process involved the XO inspecting one department each week for safety and structural integrity and general cleanliness. The administra-

tive staff would prepare a list of each discrepancy found and forward the list to the department head. Throughout the month, the XO would follow up with the department head "to ensure the items were being rectified," and the XO would re-inspect those discrepancies the following month. The member stated that the XO would report any urgent problems or safety issues to the CO.

COMMENT [4]: "1 yr to complete fitness trail"

The applicant stated that the fitness trail was completed in the summer of 2003, before the CO's arrival, and was used until May 2004, when it was "rearranged into a fitness pod." The rearrangement was delayed due to a "water line that had to be fixed" and frozen ground that prevented digging. The applicant stated that he discussed the matter with the CO, who agreed with his proposed layout, and alleged that it should not be a point of criticism. He alleged that the CO first criticized the trail during his inspection on June 16, 2004.

In support of his allegations, the applicant submitted a statement signed by the Group Corpsman, who said that in June 2003, the fitness trail ran along the Group's perimeter fence. In the summer of 2003, the fitness equipment was moved beside a volleyball court, and plans were made to lay a path between the trail and the equipment. However, when the stones were delivered, the delivery truck broke a water main under the site where the path was to be, which delayed the building of the path. However, the fitness trail continued to be usable, and he himself used it several times a week until he left the Group in May 2004.

The CO stated that he defined "finishing the trail" to include installing equipment, borders, and signs; putting down gravel; and cleaning up. He wrote that the applicant "knew [the CO] was not satisfied with the condition of the fitness trail, even if he was."

COMMENT [5]: "2 fences falling down, weeds, painting, dilapidated floating docks"

The applicant stated that four fence posts in all were repaired during the evaluation period although they were not on the discrepancy list. In addition, he alleged, fence rails fell down "anytime the unit dog ran under the rails." He alleged that the weeds were taken care of as "grounds maintenance was a steady occurrence in the summer." However, the weeds were on the discrepancy list because inclement weather had prevented weed treatment during the spring. The applicant stated that the painting "was going to require funding that the Admin officer could not identify until the end of the Fiscal Year so it was prioritized as a discrepancy to complete later." The dilapidated docks were not on the discrepancy list and were discovered late in the summer. When he noted the Search and Rescue Detachment, whose docks they were, that detachment "promptly disposed of the docks." Finally, the applicant alleged, the District Commander "remarked that the base was 'well-maintained' ... during his visit"

on September 13 and 14, 2004. He submitted a copy of the District Commander's note in the Group's inspection log.

COMMENT [6]: "not prepared for quarters—left mess for EO, resulting in EO/CO embarrassment in front of crew"

The applicant alleged that he was always prepared for quarters (the weekly staff meeting). He complained that the word "mess" is subjective. He submitted a copy of a letter from a crewmember, who stated that on the morning awards were handed out, everything and everyone was in place for the ceremony. In support of his allegations, the applicant submitted a statement from a lieutenant commander, who wrote that the applicant invited him to attend quarters at the Group on July 2, 2004, to receive a Commendation Medal from the Group Commander. He arrived just five minutes before quarters and was greeted by the CO and the applicant. The applicant had to leave to attend a meeting in the CO's stead so that the CO could present the awards. Therefore, the Engineering Officer read all the award citations while the CO pinned on the medals. The lieutenant commander stated that, "In my opinion, the entire day was well planned, well coordinated and the Command had no reason to be embarrassed."

The CO stated that he came to the Group while on leave to present awards and found that the applicant was not prepared to conduct quarters and "with only five minutes notice he dumped the presentations on the [Engineering Officer]." The applicant had known about the routine teleconference well in advance but made no prior arrangements to have someone else conduct quarters. The applicant asked the CO, who had come in just to present the awards, if he wanted to handle the teleconference instead. In addition, there was no inscription at all on a plaque intended as the Sailor of the Quarter award.

The CO alleged that "on numerous occasions, quarters did not go smoothly. New members would be in the audience and we would be surprised by that fact and would have no ballcap to present. We would have awards to present that weren't mounted for presentation, didn't have "o" devices attached, and were not engraved. In addition, we had no Officers Call so no one knew what anyone was going to [say]."

In rebuttal, the applicant alleged that the "CO came in off leave with what was evidently an unrealistic expectation of quarters." He alleged that he was prepared for both quarters and the teleconference but the CO, who came in because of the large number of awards being presented, was not prepared to conduct quarters. The applicant also stated that he personally put the "o" devices on the awards.

COMMENT [7]: "MLC Compliance criticized urinalysis program for lack of year-round testing"

The applicant submitted the MLC Inspection Report, which contains a recommendation that the Group conduct one-quarter of its annual allotment of urinalysis testing each quarter of the fiscal year. The applicant also submitted a copy of an email showing that the Group's urinalysis program met 131% of its goal in FY2004, up from 119% the year before, even though they had no health services technician until late June. The applicant argued that the CO chose to take the recommendation as criticism.

The CO stated that in the fall of 2003, a few crewmembers had tested positive for drug use so he "tasked [the applicant] with pursuing the urinalysis program aggressively." He stated that this SOER comment was based on the MLC Compliance team's verbal outbrief on the urinalysis program, which was more critical than the final report, which recommended spreading out urinalyses as only a recommendation. The report showed that the Group's urinalyses had been "crammed" prior to the inspection as 42% of the samples were collected during the month before, while during the prior five months, only three samples had been collected.

The applicant alleged that the verbal outbrief was not more critical than the written report.

COMMENT [8]: "no one available to present morale account to inspectors, resulting in lenient 'not ready for inspection' result"

The applicant stated that at the time of the inspection, the morale officer was attending very important training out of state and could not present the paperwork. The applicant stated that "[a]dmittedly, there had been shortfalls in the morale account, but the morale officer relief had been conducted and the paperwork and the account funds were all in order." He submitted copies of the paperwork. Although the Group's Administrative Officer was ready to present that paperwork, because of the morale officer's absence, the inspector "decided it was more efficient to give a 'not ready for inspection due to operational commitments'" rating. The applicant stated that the CO "had received three briefs on the shortcomings of the morale account" and that five of the documents the inspector could not locate were on the CO's desk awaiting his signature.

The CO stated that the applicant had been XO for two and one-half years at the time of the MLC inspection and that the records were in such poor shape that the inspector could not "make sense of them." The CO stated that there "was no accounting of funds coming from the coffee machine" and "no budgetary breakdown by unit, allowing the Group staff to spend money that rightfully belonged to our subordinate units." In addition, the morale officer had "bounced a check" written to a subordinate unit. The CO stated that if morale-related paperwork was in his in-box during the inspection, the applicant should have asked him to sign the paperwork before the inspection.

The PRRB argued that the MLC Compliance Inspection Report verified this comment.

COMMENT [9]: “ill-prepared for transfer season (no unit ball caps, no plan for comms watch rotation, last minute/ late awards)”

The applicant stated that during the transfer season, he was “fully engaged” and worked with the Operations Officer “to ensure departmental manpower shortages were addressed.” In addition, he “monitored situation and worked w/ OS assignment officer to consider all possible resources” and “to ensure we got relief as timely as possible.” Regarding the awards, the applicant stated that he personally processed 32 awards for departing staff and that 31 were delivered before the staff members left the Group. Only one had to be mailed to the member’s new unit. The applicant alleged that such mailings are so common that he did not even consider criticizing the person from one of the Group’s subordinate units who submitted the award late. Regarding the ball caps, the applicant stated that the Coast Guard Exchange System had ball caps that referred to their unit as “Station XXXXXXXX,” rather than “Group XXXXXXXX,” even though there is no “Station XXXXXXXX.” As soon as he learned of the problem, he ensured ballcaps were ordered and “by September every new member had a new cap and there were twelve more in stock.” He submitted an email from second class petty officer regarding the problem with the Exchange.

The CO stated that the applicant’s planning was inadequate. The ballcaps were delayed and there was “no planning for going-away get-togethers.” In addition, there were “last minute awards (a couple signed within 15 minutes of presentation).”

The PRRB argued that the documentation of the “feedback sessions” shows that the CO “had provided clear, written expectations and that Applicant failed to meet those expectations.”

COMMENT [10]: “no plan developed for departure of LTJG (EKMS relief, morale)”

Applicant’s Arguments

The applicant stated that “the initial plan was for morale to go to an Ensign on staff.” However, a new chief petty officer took over morale, instead, before the LTJG left. Moreover, the applicant stated, there was a plan in place for the Operations Center supervisor to become the EKMS alternate. Therefore, the applicant alleged, this SOER comment is false and punishable under Article 107 of the UCMJ.

In support of his allegations, the applicant submitted a statement signed by the Operations Center Supervisor, who wrote that when the EKMS alternate was selected

for flight school in August 2004,³ the Operations and Communications Centers were understaffed and so no one could attend EKMS manager school to qualify as the alternate EKMS manager. Moreover, the Group was “unable to obtain an emergency quota to [have someone at the Group attend] EKMS manager school.” Therefore, before the EKMS alternate left, he himself “began the process of learning the EKMS alternate position by both completing training on the EKMS computer system self study guide and beginning the completion process of the JQR instruction.” So that he could balance that self study with his regular SAR duties, the applicant and the CO agreed to request a waiver contingent upon him completing the JQR instruction by October 15, 2004. The waiver was requested before the EKMS alternate left but granted by Headquarters afterward.

The CO stated that because the applicant did not plan adequately the relief for these positions did not go smoothly. He stated that the “reliefs were haphazard and reactionary.”

The PRRB argued that the state of the morale account documents submitted by the applicant, the MLC Compliance Inspection Report, and the documentation of the feedback sessions show that the applicant failed to meet the CO’s clear, written expectations with respect to relief of departing personnel.

COMMENT [11]: “released ‘possible compromise’ message without briefing CO”

The applicant stated this was a one-time event that the CO apparently took as a usurpation of his authority rather than a pragmatically efficient show of initiative on the applicant’s part. The applicant stated that his action “followed [the District] security manager’s guidance” and that there was no “evidence of operational impact or importance.”

The CO stated that he had no problem with the applicant releasing the message as he had “by direction” authority to do so but that the applicant failed to brief him first. “In other words, my boss at the District would know that I had a possible compromise of classified material at my unit before I did.”

In rebuttal, the applicant stated that although he “did not brief the CO, [he] was under the impression that the Chief had briefed him.” Therefore, it was an issue of miscommunication and “not a usurpation of the CO’s authority.”

COMMENT [12]: “Failed to adapt/respond: in midst of difficult fatality case/mishap, relieved as President, Local MAB (failed to pull radio tapes, develop inventory, or provide investigator with comprehensive evidence package)”

³ However, in written feedback dated August 13, 2004, the CO noted that the officer had been selected for flight school “[a]most two months ago.”

Applicant's Arguments

The applicant stated that he was first to debrief the members involved in the mishap. Moreover, following the mishap, he personally conducted a full inventory and did most of the work himself, and the CO used this fact to relieve him as president. The applicant stated that he had the tapes copied as soon as manpower was available but "had to actually intervene and point out to the CO that we were operating dangerously close to missing distress calls because the tapes were being pulled in the Operations Center." Even after he was relieved as president, the Mishap Analysis Board (MAB) got everything they needed from him.

In support of his allegations, the applicant submitted a statement signed by the commander appointed by the Commandant to serve as president of the MAB. He wrote that the applicant "provided me excellent support with all administrative issues and requirements. Upon arriving at the Group office, I was met with a complete package of all related material regarding this mishap. Statements, radio logs, Group/Sta Chrono Logs, press releases, pictures and local coast pilot information were all gathered, neatly packaged and awaiting my arrival. During my time at the Group, I was provided all the support I requested by [the applicant] immediately upon my asking. The on-site investigation went very well, in large part, [due] to the organization and initiative demonstrated by [the applicant]. ... His support was always very timely, very professional and greatly appreciated." The applicant also submitted a letter from the District Commander to the Commandant stating that in July 2004, the Group's "pre-mishap plan worked exceptionally well during this mishap."

CO's Arguments

The CO stated that he removed the applicant as president of the MAB because the applicant failed to collect all required blood samples; notified the Safety Officer but told him not to come to the office; had no emergency child care plan, contrary to the CO's direction and so had to bring his pre-school children to the office; waited until the morning to collect urine samples and sent them directly to the lab, instead of holding them for the investigating officer, so no subsequent testing could be done; failed to pull the DVL (radio) tapes in accordance with standard practice; did not prepare an inventory of evidence until the CO called him several days later at home about it; left the office on the day of the mishap without checking in with the CO; failed to delegate tasks so that he photocopied hundreds of pages himself and "sat in the pump house by himself filling out an inventory sheet"; did not keep the CO adequately informed; did not timely issue a required 72-hour report; and failed to check the radio logs before a package was sent to the investigator. The CO stated that ultimately the evidence was in good shape for the safety investigator because the administrative investigator "spent about a week at the unit collecting data and interviewing people."

Reviewer's Comment

The reviewer stated that following a mishap, the local MAB was supposed to gather evidence and data to hand over to a Commandant-appointed MAB when it arrived. On the day after the mishap, the CO "reported that [the applicant] had been unable to devote his full attention to the MAB duties overnight because he was simultaneously caring for his children while his wife was away." The CO later told him that he had replaced the applicant as MAB president because the applicant "had not performed all of the duties expected of the MAB president and particularly that he had not secured the radio tapes or developed a chain-of-custody inventory of the mishap evidence." The applicant later assisted the officers appointed to conduct the administrative and mishap investigations, "using evidence that both he and [the officer the CO chose to replace him] had collected during their respective periods as MAB president."

CGPC's Comment

CGPC states that the commander who wrote on behalf of the applicant did not arrive at the Group until several weeks after the mishap occurred and so could not address the reasons for the applicant's removal as president of the MAB.

Applicant's Rebuttal

The applicant stated that he did not immediately order blood tests because Headquarters told him that it "was not so much an issue and that the urine would tell them the same information." He stated that he could not hold onto the urine specimens because the Group did not have anywhere to store them. He stated that he told the safety officer that he would check the mishap plan to see if he needed him and later had the safety officer come in to assist. The applicant stated that he "did not delegate [MAB duties such as photocopying] because [he] wanted to keep positive control" and he did not report back to the CO because the CO had told him they would keep the MAB duties and SAR duties, which the CO was overseeing, separate and the applicant "had no reason to believe that autonomy had been rescinded."

In support of these allegations, the applicant submitted a statement from the Reserve captain who took over as president of the MAB at the direction of the CO. The captain stated that the mishap occurred on a reserve drill weekend. As president of the MAB, the applicant was busy "preparing for the arrival of the Headquarters-assigned MAB, making copies, organizing manuals, [and performing inventory on] the contents of the boat." The CO, however, did not think that the applicant was working fast enough or delegating enough work or was in full control. When the CO asked the captain's opinion, the latter stated that he thought "everything was going just fine" but he "accepted the challenge" when the CO later asked him to take over. Therefore, he stayed on active duty for an extra four days, though he "honestly did not see the need,"

and the applicant helped him whenever he asked for assistance. The captain stated he does not believe that he himself “added any significant value to the process” because the applicant “had compiled most of the information himself.” He stated that he admired the applicant’s willingness to assist and stoic and pragmatic reaction to being relieved as MAB president. He stated that both the applicant and the CO were very fine officers who “did not get along.”

COMMENT [13]: “even after red-flag warning by admin officer for morale 1 month in advance, account in poor shape for MLC inspector”

The applicant stated that the “red flag” was that “the units were not keeping records of their sales.” Therefore, in accordance with guidance from the District, he stopped all sales and had the subordinate units’ morale officers collect and account for funds. Further, he argued, since the morale account was “not ready for inspection,” there is no documentation that it was actually in “poor shape for MLC inspector.”

The CO stated that the account was in poor shape if it was “so disorganized [that] the MLC inspector [could not] make sense of it.” He also noted that cups of quarters from the coffee machine sat in the applicant’s office for a couple of weeks.

COMMENT [14]: “neglected to pass written MI discrepancies from CO to department heads”

The applicant alleged that the Engineering Officer kept the discrepancy list and that he himself “started using the CO’s work list as a notification tool for tasks/actions required by department heads.”

The CO stated that this was a list of immediate repair issues that he had given the applicant on May 19, 2004. He did not expressly tell the applicant to pass the list to the department heads but assumed that he would as there was no other way to accomplish the tasks. However, about a month later, the Engineering Officer, who was responsible for many of the items on the list, had not received it from the applicant.

In rebuttal, the applicant stated that he did not pass any of the information in the CO’s written feedback dated May 19, 2004, to the department heads but that they “were directed to conduct a thorough cleanup of their respective areas.”

COMMENT [15]: “unresponsive to clear guidance by CO after frequent oral & written feedback”

The applicant submitted an email from the CO in which the latter wrote, “you were acting Group Commander last week and held down the fort well in my absence.” He further stated that the CO’s “written feedback and counseling sessions” started on August 13, 2004, just forty days before he was relieved as XO. The applicant submitted

two "feedback sheets" he received from the CO. He stated that when he tried to explain the circumstances around certain matters listed on those sheets, the CO was not interested in "the full story" and formed negative opinions of his performance and responsiveness instead of acquiring "a comprehensive understanding of the situations."

The CO stated that he gave the applicant "frequent oral and written feedback" and submitted copies of some of his written feedback.

COMMENT [16]: "OER's submitted in good quality, but some late due to poor tracking"

The applicant referred to his arguments concerning comment [1] above. He stated that his tracking was not poor and did not cause any OERs to be late, since he "knew exactly where [the] OERs were and why they were there." He repeated his allegation that during his entire time at the Group, only one OER for which he was responsible was late and that was because he had to help the reported-on officer prepare his documentation as it was that officer's first OER.

The CO stated that, according to the District, thirteen OERs for officers working at the Group or its subunits arrived late during the evaluation period. The CO stated that while he himself is "solely responsible for this miserable record," the applicant "never seemed to assume ownership for all OERs (active and reserve)."

The applicant stated that he was not responsible for any OERs but the three he mentioned but still put the other officers' OERs on the Group Worklist "as a reminder for those responsible for their submission."

COMMENT [17]: "enlisted evals accurate, requiring minor changes, but Group staff E-6 marks 45 days late"

Applicant's Arguments

The applicant stated the CO had told him that "it was acceptable for things to be late as long as [he] provided an explanation" but that the CO provided him with "no adequacy measure" to determine whether his explanations would be acceptable. The applicant further stated that he was neither the supervisor nor marking official for any E-6, but simply reviewed the E-6 evaluations prior to putting them on the CO's desk for signature as the approving official. He stated that he "knew the evals were late, but it was more important to follow the Commandant's Standing Orders and 'lean forward' and 'take risks' for the professional growth of our people (specifically, the new YNC who needed to get onboard and learn the in-house process of routing evaluations), and in this case, for the benefit of the unit's automated process. No E-6 lost any professional opportunities because of the slow routing of the evaluations."

In support of his allegations, the applicant submitted a statement by a senior chief yeoman, who wrote that when he was preparing to leave the Group in May 2003, he and the applicant discussed how he would turn over his duties to the new chief yeoman (YNC). They discussed how the “enlisted evaluation tracking spreadsheet ... was an effective and innovative tracking system to ensure that 100% of the evals were tracked and properly accounted for. ... [The applicant] and I had agreed to let the new YNC handle the May E-6 evals since it was close to his report date Also, I was there to assist to launch the process with him. I had understood that [the new] YNC understood the program. However, as with any new program, it may have prolonged its completion since he was still learning it.”

CO's Arguments

The CO stated that while the applicant may have agreed to a delay in the E-6 evaluations, he himself had not agreed to any such plan. He further stated that he does not see what leaning forward and taking risks have to do with late performance evaluations. The CO submitted copies of memoranda showing that the evaluations were late due to “1) input from departments; 2) hand off of YNC(S) duties; 3) familiarization w/ [Group] process for YNC.”

PRRB's Arguments

The PRRB stated that the senior chief yeoman’s statement “is verification that the marks were submitted late” and that therefore the comment is supported.

Applicant's Rebuttal

The applicant stated that he had been granted autonomy in such matters for eleven months and had not been told that his autonomy was rescinded.

COMMENT [18]: “[The applicant] has been passively stubborn in not adjusting to or meeting my expectations for my Deputy Group Commander.”

Applicant's Arguments

The applicant argued that the CO had no basis for this comment since he met all of the written expectations provided to him by the CO on May 19, 2004. The applicant stated that he developed all of the tickler lists and status sheets as soon as the CO requested them; used “empowerment initiatives [which] led to positive results/significant change in every area of [the] Organizational Assessment Survey”; and “[r]esourcefully captured Active Duty/Reserve/Auxiliary capabilities to finalize CO’s concept of a seasonal mobilization plan.” The applicant stated that he himself completed and prioritized an SAR response plan conceived by the CO and yet he was unfairly criticized for not being aware of or overseeing SAR.

The applicant stated that he “looked to the CO for more visionary leadership, but what [he] got was ‘pull the prongs out on the presentation medals.’ Which ... he did. With the lack of communication re his command vision, [the applicant] continued [his] leadership initiatives seeking unit transformation base on crew ownership. [The CO saw that as passive stubbornness not to adjust to his expectations, and could not see the positive outputs the crew was producing for him.”

CO's Arguments

In his declaration to the PRRB, the CO provided numerous documents concerning feedback he had provided the applicant during the reporting period. He stated that he provided the applicant with “a great deal of feedback in hopes that [his skills] would change. I needed improvement in his performance, but his performance remained virtually unchanged.” The CO noted that during a counseling session in August 2004, the applicant had told him that the counseling was “of no use and [that he] saw no reason to continue.”

The CO further stated that the applicant frequently spoke of himself as a “transformational leader.” The CO, however, “did not care about his methods as much as I cared about results. When [the applicant] clearly knew that I wanted things to get done and he would not get them done, I viewed his actions as stubborn. ... [H]e was stubborn about meeting only his own expectations and not mine.” The CO stated that during their counseling session on May 19, 2004, “[i]nstead of saying that he would buckle down and get the job done, [the applicant] said that if necessary, he would ‘take the hit.’ This does not sound like a Deputy Group Commander who is interested in getting the job done.”

Reviewer's Comment

In his declaration for the PRRB, the reviewer stated that he “would use the same phrase to describe [the applicant]. ... His resistance to change was especially evident in [his] unwillingness to become more involved in the operational aspects of Group [The CO] was extremely involved in Group Xxxxxxxx’ operations and saw that as the key function of the Group. He told me that in order to be an effective Deputy (and potential Acting CO), [the applicant] also needed to be more involved in Group operations. Station OINCs and XPOs were required to spend some time each month underway on their small boats and [the CO] asked for the same commitment from [the applicant]. However, [the applicant] espoused his belief that the Group was ‘non-operational’ and evidently saw his role as purely administrative. [The CO’s] continued attempts to gain his participation in underway operations and RFO/Stan visits were unsuccessful.”

Applicant's Rebuttal

The applicant stated that the reviewer never once spoke to him about his performance or relief as Deputy Group Commander. Therefore, the applicant alleged, it is not surprising that the reviewer echoed the CO since the reviewer and CO had worked together at the District for some time.

COMMENT [19]: "Despite frequent and forthright feedback (both oral and written), [he] has been slow or unresponsive to tasking, deadlines, and expectations."

The applicant stated that this comment is false since he fulfilled each of the CO's requests during the evaluation period. He stated that he discussed the deadlines on the work list with the CO, who "said they would/could slide, but the important issue was to capture the tasks" and acknowledged that everyone in the chain of command would need the timelines to be adjusted. The applicant complained that when he responded to the CO's feedback, the CO did not listen or respond. Moreover, "[t]here were no recurring issues in any of the feedback. Each feedback session was a new list of the CO's perceived shortcomings."

The CO stated that his written feedback to the applicant shows that the applicant was not meeting his expectations.

COMMENT [20]: "He is good at responding to crises, but not at planning to prevent them, turning normal military events into fires to put out (awards, personnel transfers, reports, evaluations, District Commander visit)."

The applicant stated that 31 of 32 awards were delivered to the member before departure, that personnel transfers that summer "had no detrimental impact on mission capability," and that all reports were submitted on time. Regarding the District Commander's visit, the applicant alleged that it was "not a crisis situation" even though they were given only four days' notification and that he made positive comments about the Group.

The CO stated that the applicant did not hold regular meetings of department heads or have "officers call prior to quarters. ... Consequently, the staff did not have coordinated, planned direction. We got things done, but frequently it was reactive, not pro-active."

COMMENT [21]: "Chooses 'inspirational' leadership model, but lacks ability to adapt where it falls short."

The applicant alleged that "there is no evidence of instances where [his] leadership fell short." He noted that in prior OERs, he had been commended for his leadership style. He submitted a copy of the results of the Group's Organizational Assess-

ment Survey, which, he alleged, “show the value a transformational/inspirational leadership style can provide a unit (i.e., results and effectiveness). The across-the-board improvements in the OAS results are a direct indication of the work climate [the applicant] built in [his] two years [at the Group] through [his] leadership, initiative, and planning.”

The CO stated that, while he likes inspirational leadership, “at times, the XO needs to be tough on the crew. Not once did I see [the applicant] be tough on a crew-member” during the evaluation period.

COMMENT [22]: “Lacked initiative/career development.”

Applicant’s Arguments

The applicant stated that this comment is false. He pointed out that he was taking classes towards a doctoral degree that summer and received a 3.85 grade point average. He alleged that this comment is indicative of the CO’s “under-appreciation and/or lack of understanding for the working environment and the effort it takes to make it optimum.” He stated that his “boat forces days” and “operational expertise” were acquired as a junior officer and that his career path is “human resource and organizational development.” Therefore, while being on the boats it fun, it was not necessary since that department was being managed well and did not need to be micro-managed, although the CO “obviously expected” it. Instead, he focused his efforts and initiatives on “[r]etention, morale, rewards and recognition, people first initiatives and stewardship [which] were all being pointed out as organizational leadership concerns, needing local intervention.” The applicant alleged that his initiatives “were simply not recognized as such.”

CO’s Arguments

The CO stated that he had spelled out both verbally and in writing to the applicant that he expected the applicant to be able to assume his operational duties in his absence. The CO stated that such directions are usually unnecessary because most XOs want to become COs and so seek skills in operational areas. The CO had told him to have a plan for emergency child care when his wife was out of town on long business trips, but the applicant did not do so. The CO further argued that he “should not have had to tell [the applicant] to read a member his rights”; “should not have had to provide him with templates for ticklers and worklists”; “should not have had to conduct a materiel inspection”; and “should not have had to conduct weekly feedback sessions with an O-4.” Therefore, the CO stated, “I stand by my comment that [the applicant] lacked initiative. Further, he took few steps to improve himself professionally on the operational side. I recognize that he had given up on the operational mission, but since he was acting CO in my absence, I could not allow him to stop learning about the operational mission.”

Applicant's Rebuttal

The applicant alleged that "by making and maintaining his assumption [that the applicant wanted to command], the CO ... totally discount[ed] my aspirations. Having already been a commanding officer, I was not interested in the CO's recommendation for command, and told him that in many of our discussions. My career aspirations are toward assignments in Human Resources and leadership policy, but the CO considered my career intentions invalid, and used his own aspirations to evaluate my initiative and career development plans."

COMMENT [23]: "did not set foot on a CG boat during entire reporting period"

The applicant stated that this comment is a false exaggeration as he did a "bow-to-stern inventory" onboard the boat involved in the mishap on July 20, 2004. Moreover, he argued, the busy SAR season, which the SOER covered, is hardly the time to ask the Operations Division to take the Group XO (himself) on a boat ride, as it was not a responsibility or expectation that he (or any XO) do so. Getting on a boat that summer would not have developed his career "in a way that can't be done through communicating with crews, Officers-in-Charge, and [subordinate] unit COs ... which [he] did routinely." The applicant stated that this SOER comment "does not support any performance dimension or any organizational expectation/standard and does not support a mark of three in initiative." He argued that there was no need for him to step on a boat and that whether he did so that summer is irrelevant to whether he showed initiative and interest in his career development.

The applicant also argued that he showed initiative during the evaluation period by "[c]oordinating an workplace climate diagnosis w/ George Washington University and STA OIC [the Station Officer in Charge] based on symbolic space and power theory to help OIC institutionalize professionalism."

The CO stated that his "OER feedback" to the applicant in early May 2004 stated the expectation that the applicant "get underway with our units on a periodic (monthly) basis." The CO stated that setting foot on a boat that has capsized in the surf "is not the type of operational involvement that I expect from my deputy. I prefer operational leadership to prevent mishaps, not to investigate them."

COMMENT [24]: "did not participate in Ready for OPS (RFO)/STAN visits"

The applicant stated that there "was no expectation presented for [him] to conduct any aspect of the Ready for Operations program" and that he trusted the Operations Officer to do his job. He argued that whether he participated in the RFO/STAN visits is irrelevant to whether he showed initiative and interest in his career development and that his decision not to participate in the visits did not support a mark of 3 in

the performance dimension "Initiative." He argued that his participation would have been a "wasteful use of human resource capacity." However, he edited the RFO result letters sent back to the subordinate units and therefore gained operational readiness oversight through routine interactions with the unit command cadres.

The "OER feedback" counseling that the CO provided to the PRRB indicates that he told the applicant in May 2004 pursuant to his prior OER that the applicant was expected to "participate in the RFO program."

COMMENT [25]: "took no steps to develop plan for himself or subordinates to earn boat forces pin"

Applicant's Arguments

The applicant alleged that during the evaluation period, he drafted a memorandum to have the CO authorize officers and chiefs to sign off on boat forces qualifications standards; he got a chief boatwain's mate and a chief machinery technician to prepare the curriculum; and he laid the "groundwork to develop a block of instruction for boat forces qualifications to be implemented after SAR season." Therefore, the comment that he "took no steps" is absolutely false. The applicant further stated that he was the only officer on staff who was eligible for the boat forces pin because he had served at a boat force unit for at least five years. The applicant submitted a copy of a memorandum from the CO dated June 15, 2004, in which he designated the Group's officers and chiefs as "instructor[s] authorized to verify certification of members working on the Boat Forces" qualifications. The letter also states that "[a]s a designated instructor, you will prepare blocks of instruction and present the information to boat forces personnel. ... The Deputy Group Commander will prepare a training/presentation schedule and will help you prepare your respective training blocks."

In support of his allegations, the applicant also submitted a statement from a chief boatswain's mate (BMC), who wrote that to the "best of my recollection, [the applicant] and myself did in fact have conversations pertaining to the construction and implementation of a boat force qualification process at Group Soon after I checked in on July 01, 2004, [the applicant] discussed using my experience as a Boatswain's Mate to come up with a formal training program for those members wishing to qualify as boat crew and compete for the Boat Forces Pin. On a separate occasion, we revisited this idea and decided to set it aside until the Ready For Operations season on the 47 MLB was complete."

CO's Arguments

The CO stated that his OER feedback to the applicant in early May included "mak[e] substantial progress toward your boat forces pin." The CO stated that although he signed the designation letter that the applicant prepared, nothing

happened thereafter, and he believes that the applicant “was simply trying to placate me.” The CO stated that after he signed the letter “there was not one step forward on quals or PQS toward the boat forces pin [for the applicant and four other officers assigned to the Group] with the exception of a comms/controller qual” for one lieutenant junior grade.

CGPC’s Comment

CGPC noted that there is no evidence that the applicant followed through on the directions given him in CO’s designation letter.

Applicant’s Rebuttal

The applicant stated that none of the four officers mentioned by the CO had time that summer to qualify for a Boat Forces Pin, so he took steps to have the training conducted in the fall. The applicant submitted an email from a BMC who wrote that he had brought the boat crew guide to the applicant and explained to him that most of the qualifications could be done in the office. An email from another BMC states, “I remember that you were in the process of crewman qualification.”

COMMENT [26]: “took no remedial area familiarization action when, as acting CDO, did not know location of ... Xxx (xxx Group is located on)”

The applicant stated that when he was asked where a particular xxx was, he knew and stated its general location only. He stated that the Group is always referred to as being located on the bay itself, not the xxx. Moreover, the CO’s question was not related to any case, and as Command Duty Officer, he always “use[d] the local Marine Atlases to ensure [he] was well-informed during the prosecution of operational cases.”

The CO stated that the point of this comment was that the applicant knew he was not familiar with the geography of the area and “should have had the initiative and sense of responsibility to review his area fam.” The CO’s feedback notes dated August 30, 2004, indicate that the issue arose when the applicant informed the CO that the police had reported that a man had committed suicide by “walking off a dock in Xxx xxx.” The applicant pointed west and “said it was somewhere near the Forge River.” The CO pointed out that “[i]f the crew took three steps backward at quarters, they would fall into Xxx xxx. The fact that you did not know that is disconcerting. I attribute that lack of knowledge to your lack of underway time.”

In his declaration, the reviewer stated that the applicant’s “lack of familiarity with the Group xxxxxxxx area of responsibility, including the name of the body of water that the Group offices are located on, called into serious question his ability to perform as Acting CO. Although administrative and personnel functions are certainly

primary duties for an XO, I do not believe that a Deputy Group Commander should exclude himself from the reason that a Group exists: to execute operational missions.”

In rebuttal, the applicant claimed that there “was no expectation for me to have any area familiarization” and that it was his practice to rely on the GDOs and the maritime atlas.

COMMENT [27]: “failed to flag important message traffic while CO on leave (COMDT Sector impl., D1(dcs))”

The applicant stated, “I have no proof that he told me not to, but he told me not to.” The CO had told him to “stand down from the practice,” which was in place and his standard practice when the CO first took command. The applicant submitted a statement from the prior Group Commander who wrote that during his tenure, “it was common practice for [the applicant] to flag important messages for me while I was away from the office. This was initiated by the two of us, and was in place when I left. I cannot speak to any conversations that went on between [the applicant and the next Group Commander/CO] after the change of command, but [the applicant] was in the practice of ensuring the CO was informed of important messages upon returning to the office while I was the Group Commander.”

The CO stated that he verbally directed the applicant to flag important message traffic and “should not have even needed to say it.”

COMMENT [28]: “sponsored fancy work contest”

The applicant alleged that this contest happened during the previous evaluation period and so should not have been mentioned in the SOER. The CO stated that he cannot remember the date of the contest. The JAG and CGPC recommended that the Board remove this comment from the SOER since the CO does not remember.

COMMENT [29]: “While he was successful as the personnel officer in many respects, he failed to grasp the breadth of his duties as the Deputy Group Commander, falling short on operational matters, accountability, and unit planning.”

Applicant’s Arguments

The applicant stated that he took advantage of a storm warning to test and improve the Group’s hurricane plan; that he was first to debrief members after a boat mishap; that he personally conducted the inventory following the mishap and worked with Navy personnel to have the data on the radio tapes transferred to a CD; and that he “captured lessons learned to improve [the Group’s] mishap plan.” The applicant alleged that “[a]ll unit plans were in place, and the hurricane and MISHAP plans were put to use/tested during this period. [He] was engaged with the breadth of [his] XO

duties, but [he] did not have to duplicate the work of the Operations Officer (i.e., conduct RFO, get underway, etc.) to show that [he] was maintaining [his] competencies that were documented in three previous OERs in the XO role.”

In support of his allegations, the applicant submitted a statement from the prior Group Commander, who wrote the following:

[The applicant] did an exceptional job as Deputy Group Commander during my time as Group Commander He consistently exemplified outstanding leadership as Deputy and is the primary reason that we not only improved readiness in my last year but improved morale dramatically as well. His creative leadership and focus on encouraging the crew to assume ownership of our successes led to numerous personnel turnarounds [H]is performance and sound judgment provided me the utmost confidence in his abilities to run the group in my absence—which he successfully did on numerous occasions. Based on a little over a year with him, I came to the conclusion that he was qualified ... to be successful as a Group Commander ... [H]is innovative leadership and skill at utilizing the expertise of those around him, combined with his robust enthusiasm/engagement on operational issues reflected the maturity and judgment of someone with far more operational experience than he had upon arrival. In addition, I ensured that he was involved with or briefed thoroughly on every operational issue I dealt with to guarantee he had the depth of knowledge necessary to be successful in that role. I had no reservations at that time and have no knowledge of any information that would change that opinion today. ...

CO's Arguments

The CO stated that the applicant “viewed his responsibilities as extending only to the Group staff and not the six subordinate units. At times, he even viewed his duties as solely those things that came across his desk. In other words, because there was an operations officer, he was not responsible for operations. As the Deputy Group Commander, he was responsible for all the missions and people of Group XXXXXXXX, whether he felt that way or not.”

The CO stated that while the applicant called the Group a “non-operational unit,” this perception was wrong as the CO made decisions “about launching boats and aircraft, directing searches, making risk assessments, and making next-of-kin notifications.” The CO stated that the applicant’s divergent views and priorities “ultimately led [the CO] to relieve him of his duties and write a derogatory OER.” The CO also alleged that before the applicant interviewed the member who confessed to drug use, the applicant knew that there was a drug-use allegation against that member.

Reviewer's Comment

In a declaration for the PRRB, the reviewer stated that he did not directly observe the applicant’s performance during the evaluation period. However, when he visited the Group in mid May, he “had an in-depth discussion with [the CO] concerning [the applicant]” and that he spoke with the CO over the phone about the applicant many

times that summer. Following that meeting, the CO gave the applicant clear, written expectations as well as verbal feedback. The CO “sought [his and others’] advice for ideas on improving [the applicant’s] performance.” Based on those conversations with the CO, the reviewer stated that he does not believe that personal feelings affected the SOER or the decision to relieve the applicant. He alleged that the CO “worked hard to share his performance expectations, to mentor his Deputy, and to raise [the applicant’s] performance to an acceptable level. In the end, he concluded that Group ... would be best served with a more competent XO, so he relieved him.” The reviewer wrote that even after reviewing all of the applicant’s rebuttals to the SOER, he does “not think that personal feelings biased the [SOER], and [he] believes that it accurately portrays [the applicant’s] performance during the period of that report.”

Applicant’s Rebuttal

The applicant alleged that this comment is contradicted by the fact that he received a mark of 4 for the performance category “Professional Competence,” since a mark of 4 is supposed to signify that the officer has shown the “high level of performance expected of all Coast Guard officers.”

COMMENT [30]: “As a result, I can only recommend him for administrative positions.”

The applicant stated that the “majority (if not all) of the XO’s day-to-day job is administrative” and that many of the criticisms in the SOER concern administrative matters. He stated that this comment therefore contradicts the rest of the OER.

The CO stated that “[b]ased on [the applicant’s] performance, I could not recommend him for any operational positions.”

COMMENT [31]: “He possesses an extensive educational background and concern for junior members that should be considered in the assignment process.”

The applicant argued that this comment unreasonably suggests that the Group had no need for someone with “an extensive educational background [or] concern for junior members.” The CO responded that he values education but “being educated does not negate the need to perform.”

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction over this matter pursuant to 10 U.S.C. § 1552. The application was timely.

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

3. Article 10.A.1.b.1. of the Personnel Manual provides that “Commanding officers must ensure accurate, fair, and objective evaluations are provided to all officers under their command.” The applicant alleged that the SOER is erroneous and unjust and asked the Board to remove it from his record. To establish that an OER is erroneous or unjust, an applicant must prove that the challenged OER was adversely affected by a “misstatement of significant hard fact,” factors that “had no business being in the rating process,” or a “clear and prejudicial violation of a statute or regulation.”⁴ The Board must begin its analysis by presuming that the disputed SOER is correct as it appears in the record, and the applicant bears the burden of proving by a preponderance of the evidence that it is erroneous or unjust.⁵ Absent evidence to the contrary, the Board presumes that the applicant’s rating officials prepared the SOER “correctly, lawfully, and in good faith.”⁶ With these standards in mind, the Board has carefully considered all of the evidence presented regarding the SOER disputed in this case and draws the following conclusions with respect to the evidence:

a. **COMMENTS [1] & [2]:** The applicant has not proved by a preponderance of the evidence that these comments are false or unjust. He has not proved that poor tracking on his part did not cause certain deadlines to be missed. The fact that the CO may himself have signed OERs late does not disprove these comments. The applicant has not proved that given the number of missed deadlines, he did not unreasonably delay using “ticklers” and lists to help prevent missed deadlines. Although the record shows that, after the CO provided templates for such tools, the applicant did develop them during the evaluation period, the applicant’s ultimate preparation of the ticklers and lists does not persuade the Board that the CO’s criticism and implication that they were needed earlier is inaccurate or unfair. The Board notes that the CO did not mention missed deadlines in the applicant’s prior OER, but his silence on the matter in the prior OER may have been a matter of forbearance and does not disprove Comments [1] and/or [2].

b. **COMMENTS [3], [4], [5], & [14]:** The record indicates that on May 19, 2004, the CO provided the applicant with a list of twelve “immediate” materiel discrepancies that he wanted fixed. He also forewarned the applicant that he would be

⁴ *Germano v. United States*, 26 Cl. Ct. 1446, 1460 (1992); *Hary v. United States*, 618 f.2d 704 (Cl. Ct. 1980); CGBCMR Dkt. No. 86-96.

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 (Cl. Ct. 1979).

conducting a CO's inspection and asked him to have things ready for inspection. The applicant admitted that he did not forward the list of twelve discrepancies to the department heads who would have ensured that the repairs were performed. The CO stated that very little was done to prepare for his materiel inspection on June 16, 2004. In addition, the Board notes that very few of the discrepancies that were identified during that inspection and included on the discrepancy list were completed during the evaluation period. Likewise, the applicant has not proved that maintenance issues such as falling fences, weeds, painting, and dilapidated docks were promptly taken care of under his direction or that, although the fitness trail was apparently usable, he ensured timely completion of the associated amenities in accordance with the CO's request. The applicant stated that he planned to wait and have many or most of the discrepancies corrected in the fall after the busy SAR season. This plan was obviously contrary to the CO's clear request and expectations that materiel discrepancies be addressed. The description of his weekly XO's inspections and purported responses does not explain the extensive list of unaddressed discrepancies he submitted. The Board is not persuaded that Comments [3], [4], [5], and/or [14] are erroneous or unjust.

c. **COMMENT [6]:** The applicant alleged that he was prepared for quarters. However, the record shows that he asked the Engineering Officer to take his place at quarters just before it began even though he was previously aware that he had a scheduled conference call during quarters. In addition, the CO stated that some of the awards were unfinished in significant ways that made it very difficult for them to conduct the ceremony smoothly. The fact that one of the honorees submitted a statement indicating that he did not notice a problem and thought that the event was well planned does not disprove the difficulties encountered by the CO and the Engineering Officer. The Board finds that the applicant has not proved by a preponderance of the evidence that Comment 6 is inaccurate or unfair.

d. **COMMENT [7]:** The MLC Compliance team labeled this issue a "recommendation" in its report rather than a criticism. The CO stated that that the tone of the inspector's verbal outbrief on this subject was more critical than the report. In addition, the record indicates that in the fall of 2003, the CO asked the applicant to conduct the urinalysis program aggressively after some members tested positive for drug use. However, the Group collected 42% of its samples during the last 31 days before the team's inspection. In light of these facts, the Board cannot conclude that Comment [7] is erroneous or unfair even though the Group ultimately conducted more than enough urinalyses to comply with the program requirements.

e. **COMMENTS [8] & [13]:** The record indicates that, though forewarned of the upcoming MLC Compliance inspection, the applicant failed to ensure that he himself or someone else present could explain the morale account documents or that those documents were sufficiently clear for the inspector to understand without verbal explanations. Therefore, the Board finds that the applicant has not proved that Comments [8] and [13] are erroneous or unjust.

f. **COMMENTS [9] & [10]:** The applicant has not submitted proved by a preponderance of the evidence that Comments [9] and [10] are erroneous or unjust. The record indicates that the Group lacked ballcaps during the period they were most needed and that several of the awards were arranged at the last minute or late. While the applicant may have worked with the Operations Officer to cope with manpower shortages, as he alleged, such actions would not disprove the comment that he had no plan for the communications watch rotation at some point when one was needed. In addition, the record supports the allegation that the relief of the morale and EKMS alternate officers were “haphazard and reactionary” as the CO alleged. The Operations Center Supervisor appears to have based his opinion of the timeliness of the applicant’s relief plan on the supposition that the outgoing EKMS alternate was accepted to flight school in August 2004. However, the CO’s written feedback dated August 12, 2004, states that the outgoing EKMS alternate had been accepted to flight school in June.

g. **COMMENT [11]:** The applicant seems to have presented contradictory arguments concerning his release of the message concerning the “possible compromise” of classified information. In his original application, he indicated that his act in releasing the message without discussing it with the CO beforehand was a pragmatically efficient show of initiative on his part. In his response to the advisory opinion, the applicant stated that when he released the message he thought that a chief petty officer had already informed the CO. The applicant has not addressed the CO’s concern that he could easily have been blindsided and embarrassed if someone had called him about the message. The Board finds that the applicant has not proved that Comment [11] is erroneous or unfair.

h. **COMMENT [12]:** The applicant stated and presented supporting evidence to show that the radio tapes were eventually pulled—though not timely and not necessarily by him or at his direction—and that he eventually completed the inventory. He admitted that the first package he sent to the investigator was incomplete. The CO argued that the applicant did not timely pull the tapes in accordance with standard practice or complete the inventory until several days after the mishap and after the CO asked him about it. Although Comment [12] would be more accurate if the word “timely” were included, the Board is not persuaded that it is an inaccurate description of critical deficiencies in his performance during the most critical period—the hours after the mishap. The Reserve captain stated that the CO asked his opinion of the applicant’s performance during the weekend of the mishap, and the captain replied that he thought it was “fine” and did not understand why he was later asked to take over. However, the CO did not relieve the applicant as MAB president until several days after the mishap, when he discovered that the applicant had not pulled the radio tapes or completed the inventory.

i. **COMMENTS [15], [18], & [19]:** The applicant alleged that he always responded to the CO’s guidance and met his expectations but that the CO sub-

mitted new and different expectations each week. He argued that there were no redundancies in the CO's written feedback to him. The Board notes, however, that most of the CO's written criticisms during the evaluation period had common themes, such as inadequate preparation, insufficient attention to detail, failure to timely update the CO, and a lack of involvement in operational matters. The Board finds that the applicant has not proved that Comments [15], [18], and [19] are erroneous or unjust.

j. **COMMENTS [16] & [17]:** The applicant alleged that only one of the three OERs for which he was responsible was late during the reporting period. The CO indicated that several OERs from the subunits were late and that he expected the applicant to track all of the OERs at the Group and so help to ensure their timeliness. The applicant has not shown that as the Group XO with primary responsibility for human resources and administrative matters, it was unreasonable for the CO to criticize him because of late OERs from the Group subunits even if the applicant was not in those officers' rating chains. In addition, although the applicant alleged that the E-6 evaluations were 45 days late "by design," he has not shown why such a long delay was necessary or that it was reasonable for him to make this plan without the CO's agreement. The Board finds that the applicant has not proved by a preponderance of the evidence that Comments [16] and [17] are erroneous or unjust.

k. **COMMENTS [20] & [21]:** The applicant has not proved that Comments [20] and [21] are erroneous or unjust. They echo and elaborate on other comments in the SOER concerning inadequate preparation and results that the Board has already addressed. Although the applicant alleged that the SOER is the result of a conflict in leadership styles rather than of poor performance by him, the Board finds that the CO clearly put the applicant on notice that the applicant's style was not producing the results the CO wanted. The record supports the CO's claim that the applicant failed to adapt his style to ensure those results.

l. **COMMENT [22]:** Although the CO's feedback provided some examples of how the applicant failed to show initiative during the evaluation period, the Board cannot see how the CO concluded that the applicant took no initiative for his "career development" during the period. The applicant was taking classes toward his PhD in organizational development that summer. Although he apparently displayed little initiative to increase his operational skills, the applicant has apparently chosen to pursue a non-operational career. Ignoring the CO's urging to be more involved in operational matters may not have been wise and may have greatly harmed the applicant's career, but that would be because the applicant failed to meet the CO's expectations, not because he was not actively engaged in developing a career path. The Board finds that the applicant has proved that the phrase "career development" in Comment [22] in the SOER is erroneous and misleading and should be removed from his record.

m. **COMMENT [23]:** The CO admitted that, contrary to Comment [23], the applicant did "set foot on a CG boat" during the evaluation period when he

boarded the boat that had capsized to perform inventory. In saying that the applicant “did not set foot on a CG boat,” the CO apparently meant to indicate that the applicant did not get underway on a Coast Guard boat. However, the Board finds that the applicant has proved by a preponderance of the evidence that Comment [23] is a “misstatement of significant hard fact”⁷ that should be removed from the SOER.

n. **COMMENTS [24] & [26]:** The applicant alleged that these comments are unfair because he was not expected to participate in the Ready For Operations visits and that he did not need to be very familiar with the operational area because he could rely on maritime atlases and GPOs when the need arose. In responding to the PRRB, the CO submitted “OER Feedback” indicating that he told the applicant that he was expected to participate in RFO visits and to increase his overall involvement in operational matters. Moreover, the Board is not persuaded that a Deputy Group Commander does not need to be very familiar with the Group’s area of operations. The Board finds that the applicant has not proved by a preponderance of the evidence that Comments [24] and [26] are erroneous or unfair.

o. **COMMENT [25]:** The applicant alleged that he did take steps to develop a plan for himself and others to earn boat forces pins. He submitted statements from members showing that he talked to them about it and that he requested information about it from a BMC. He also admitted, however, that he decided that the training could wait until the fall because he decided that his subordinates did not have time to work on their qualifications that summer. Therefore, it appears that the CO was correct in believing that by drafting the letter, the applicant was “simply trying to placate [him]” and did not intend to prioritize the matter as the CO had directed. Although the applicant may have spoken to BMCs about the CO’s request, the Board finds that he has not proved that he took the actual “steps”—such as preparing a training schedule and making substantial progress toward qualifying himself—that the CO expected and directed. He has not proved by a preponderance of the evidence that Comment [25] is erroneous or unjust.

p. **COMMENT [27]:** The applicant claimed that the CO verbally told him not to flag important messages soon after the CO took command. The CO stated that he expressly asked the applicant to flag important messages while he was away. Recognizing that it is difficult if not impossible to disprove the CO’s allegation, the Board finds that the applicant has not overcome the presumption of regularity afforded the CO with respect to Comment [27].

q. **COMMENT [28]:** The applicant alleged that the fancy work contest occurred during the prior reporting period. The CO admitted that he cannot remember when it occurred, and the JAG and CGPC have recommended removal of

⁷ *Germano v. United States*, 26 Cl. Ct. 1446, 1460 (1992); *Hary v. United States*, 618 f.2d 704 (Cl. Ct. 1980); CGBCMR Dkt. No. 86-96.

this comment. The Board finds that the preponderance of the evidence in the record indicates that Comment [28] is erroneous and should be removed from the SOER.

r. **COMMENTS [29], [30] & [31]:** The applicant's prior OERs as Deputy Group Commander and the declaration of the prior Group Commander show that the prior Group Commander believed that he "did an exceptional job" in that position. It is therefore hard to understand how the new Group Commander could have evaluated the applicant's performance so differently and concluded that the applicant "failed to grasp the breadth of his duties as the Deputy Group Commander, falling short on operational matters, accountability, and unit planning." However, the new Group Commander was entitled to have very different expectations as to what work the Deputy Group Commander would be involved in and how and when he would perform it. The documentation of the CO's feedback in the record shows that he expected more operational involvement by the applicant, which the applicant resisted. The written feedback also shows that the CO was very dissatisfied with some of the results produced by the applicant's administrative efforts. The applicant has not proved that Comments [29], [30] and [31] are products of a personality conflict or clash in leadership styles. Though the CO may have had a very different leadership style, the record supports CGPC's claim that these comments are the CO's honest, professional assessment of the applicant's performance. The Board finds that the applicant has not proved that Comments [29], [30], and [31] are erroneous or unfair.

4. The applicant alleged that the examples of poor performance in the SOER were one-time events rather than performance trends that should have been documented. However, Article 10.A.4.c.4. of the Personnel Manual instructs raters to provide comments that cite "specific aspects of the Reported-on Officer's performance and behavior" and that "identify specific strengths and weaknesses in performance. Comments must be sufficiently specific to paint a succinct picture of the officer's performance and qualities." Therefore, the CO was required to describe specific instances of poor performance, rather than providing only general opinions of the applicant's performance trends. Moreover, the applicant has not proved that the events described in the SOER were atypical of his performance that summer.

5. Therefore, the Board finds that the only relief the applicant is entitled to with respect to the SOER is removal of the phrases "career development: did not set foot on a CG boat during entire reporting period" and "sponsored fancy work contest" from block 8. The mark of 3 that the applicant received for "Initiative" is amply supported by the remaining Comments [24] and [25] and so need not be corrected.

6. The applicant made numerous allegations with respect to the actions and attitudes of his CO and reviewer. Those allegations not specifically addressed above are considered to be not dispositive of the case.

7. Accordingly, the Board finds that the applicant is entitled to only partial relief—the removal of the comments quoted in Finding 5 from the SOER—because they constitute “misstatement[s] of a significant hard fact[s].”⁸ The applicant has not proved that the SOER contains other factual errors or that it was adversely affected by factors that “had no business being in the rating process” or a “clear and prejudicial violation of a statute or regulation.”⁹

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied, except that the Coast Guard shall remove the following phrases from block 8 of the special OER he received for the period May 1 through September 22, 2004:

- “career development: did not set foot on a CG boat during entire reporting period”; and
- “sponsored fancy work contest.”

All other relief is denied.

Toby Bishop

Jordan S. Fried

Nancy L. Friedman

⁸ *Germano v. United States*, 26 Cl. Ct. 1446, 1460 (1992); *Hary v. United States*, 618 F.2d 704 (Cl. Ct. 1980); CGBCMR Dkt. No. 86-96.

⁹ *Id.*