

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2008-018

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

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 the case on October 26, 2007, upon receipt of the completed application, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated July 24, 2008, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant, an aircraft commander and lieutenant commander (LCDR/O-4), asked the Board to remove from his personnel record a special officer evaluation report (SOER)¹ for the period May 31, 2005, to February 2, 2006, which contains low marks of 2² for the performance categories "Results/Effectiveness," "Professional Competence," "Judgment," and "Responsibility"; a low mark of 3 for "Initiative"; and a low mark in the second spot on the comparison scale,³ indicating that the applicant was a "marginal performer [with] limited potential." The SOER documented the applicant's removal from the Navy's Fixed-wing Instructor Training Unit (FITU), which trains aircraft commanders to become instructor pilots (IPs). The applicant alleged that the SOER is erroneous and unjust because, during the evaluation period covered by the SOER,

¹ Under Article 10.A.3.c.1.a. of the Personnel Manual, an SOER may be prepared "to document performance notably different from the previous reporting period, if deferring the report of performance until the next regular report would preclude documentation to support adequate personnel management decisions, such as selection or reassignment."

² Coast Guard officers are rated in numerous categories of performance on a scale of 1 to 7, with 7 being best. A middle mark of 4 is the "expected standard of performance." Personnel Manual, Art. 10.A.4.c.4.g.

³ The comparison scale on an OER is not numbered, but there are 7 possible marks with written descriptions ranging from "performance unsatisfactory for grade or billet" to "BEST OFFICER of this grade." The OER form instructs the Reporting Officer to complete the comparison scale by comparing the Reported-on Officer with all of the other officers of the same grade whom the Reporting Officer has known throughout his career.

- all of his academic grades were “90% or higher”;
- all of his FITU flights were rated as satisfactory or better;
- the executive officer (XO) of his squadron had a personal vendetta against him and wanted “to attrite [the applicant] from his squadron, XXX”; and
- the commanding officer (CO) of the XXX squadron,⁴ who never flew with the applicant and did not know him personally, nevertheless labeled him as unfit to be an instructor pilot on the SOER.

In support of his allegations, the applicant submitted the following statement signed by CDR Y, who is a standardization instructor at the FITU:

... I am familiar with the circumstances leading up to [the applicant’s] attrition [from the FITU]. Additionally, having flown a syllabus event with him and spoken with other FITU instructors who have flown with him, I have a sense of his capabilities as an aviator.

Before discussing [the applicant’s] individual circumstances, it is important to understand a little about the FITU. The FITU prepares fleet aviators to become primary flight instructors in one of 3 squadrons at NAS xxxxxxxxxxxx. The FITU is staffed by experienced instructor pilots (IPs) from each squadron. Much of the training in the FITU is peer-to-peer; the IP and Instructor Under Training (IUT) have similar rank and fleet experience. As such, the FITU has developed a corporate culture of pulling punches when it comes to documenting substandard performance. The “norm” in the FITU is to call any flight in which the IUT’s performance is not up to standard a warm-up in lieu of a failure. It is generally understood that some IUTs will need more flight time than others to meet the same standard of performance. Before [the applicant’s] attrition, it had been over 3 years since an IUT had washed out of the FITU. During that period, hundreds of IPs went through training. A review of all instructor training jackets over that period would reveal countless warm-ups that were not attributable to excessive time out of the cockpit. In short, [the applicant’s] attrition from the FITU was extremely unusual.

At first, this seems to indicate that [the applicant’s] performance was exceedingly poor. In fact, his performance was simply average. In my opinion, [he] was attrited because he was not well liked by his Commanding Officer. While personality plays an important role in any professional relationship, I find it regrettable that [the applicant’s] attrition is being linked to poor performance instead of his CO’s lack of confidence in him.

Within the FITU, there are a few instructors who have a reputation of being more demanding than others. They expect more from the IUTs and hold them to a higher standard than most. The first time [the applicant’s] performance was deemed substandard was when he flew with one of these instructors, [CDR X]. Unfortunately for him, his very next flight was with [CDR X], and his performance had not improved. This is a situation where “strength of an idea” probably doomed the flight from the start. [The applicant] had clearly not impressed the IP on his previous flight, so it would be natural for [CDR X] to have low expectations on the next sortie. It would also be understandable for [the applicant] to be under more stress than usual and not achieve his best performance. The sortie played out as expected. It is important to note that [the applicant] had already been successful in the NATOPS phase of training with no previous indications of substandard performance.

⁴ XXX is a training squadron in which student pilots receive primary flight instruction from instructor pilots (IPs), including about 67 hours of instructional flight time in a T-34C aircraft and 21 hours in a simulator. To serve as an IP, an aircraft commander must first complete training as an instructor under training (IUT) at the FITU. Both XXX and the FITU are subunits of Training Air Wing Xxx, but each IUT at the FITU is permanently assigned to one of the training squadrons, such as XXX, where he or she may eventually work as an IP. The squadron is headed by a CO and XO, whereas the FITU is headed by an Officer in Charge (OIC).

As luck would have it, one of the next flights [the applicant] flew was with the wing Standardization Officer, [LT X]. [LT X] is another IP with very high standards and [the applicant] failed to meet those standards. At this point, the officer in charge of the FITU realized that there was a problem and called [the applicant] in for counseling. After counseling, [LCDR X] developed a plan for remediation. [The applicant] was to fly 2 simulator flights to get him up to standard and then fly a warm-up in the aircraft before reattempting the flight he had failed. During a meeting with the staff IPs, [LCDR X] addressed [the applicant's] situation. Several IPs who had flown with [the applicant] commented that they had been pleased with his performance when he flew with them and did not think he was a below-average IUT. The FITU standardization officer, [CAPT K], was assigned to monitor [the applicant's] performance in the simulator. I spoke with [CAPT K] afterwards and he commented that [the applicant] flew the simulator very well.

Unfortunately, news of [the applicant's] flights with [CDR X] had already reached the CO and XO of XXX, [the applicant's] parent squadron. It turns out that neither had much cared for [the applicant's] attitude when he checked into the squadron several months earlier and this information further eroded their confidence in him. They called the Coast Guard Liaison Officer, [CAPT L], and spoke with him about this lack of confidence. [CAPT L] made some informal calls to get a more complete picture of [the applicant] and not everything he heard was complimentary. When this information was passed to the CO and XO of XXX, they decided that they didn't want [the applicant] in their squadron even if he were able to successfully complete the FITU. As such the ball was set in motion to attrite [the applicant] even before he had completed the remedial training [LCDR X] had designed. His remediation was suspended and the FITU was directed to attrite him.

The momentum to attrite [the applicant] was built within days, or possibly even hours. By the time I got word from the FITU Officer in Charge, it was already too late. [The applicant] had absolutely no clue that anything was amiss when I ran into him a few days after his remedial simulator flights. He indicated he had been studying hard and felt confident that he would do well on his next flight. When I informed him that he was about to be attrited, he was completely shocked. In other words, at no time was he led to believe that his future as an instructor and possibly as an aviator was in jeopardy.

I do not desire to cast aspersions on the professionalism and judgment of [CDR X and LT X]. I'm sure their evaluations of [the applicant's] performance are accurate. I would only point out that the majority of the FITU instructors were not enforcing those same standards. If all IUTs were held to [CDR X's] high standards, the FITU would attrite instructors as a matter of routine. At the time [the applicant] was attrited, there were at least 2 other IUTs whose performance was significantly worse, yet neither of those IUTs was targeted for attrition. [The applicant] was an average IUT. He demonstrated solid performance on many flights, but didn't do as well on others. He should have been given the opportunity to demonstrate his ability to meet the prescribed standards after his remedial training was complete. By failing to give him that opportunity, the leadership at XXX and Trawing-X treated [him] unfairly.

In my 19 years of experience as a CG aviator, poor performance on a training flight or even multiple training flights has never led to a derogatory officer evaluation report. Not everyone can assimilate information at the same speed. As a result, training programs are designed to allow for remediation. Even if [the applicant] had been allowed to continue remediation and subsequently failed to meet the required performance standard, I would not expect him to receive a derogatory OER.

SUMMARY OF THE APPLICANT'S RECORD

On October 4, 1990, the applicant enlisted in the Coast Guard Reserve. He attended Officer Candidate School; received a Reserve commission on February 22, 1991; and completed Navy flight training with high scores to become a co-pilot in May 1995. He was integrated into

the regular Coast Guard as a lieutenant junior grade on April 7, 1995, and was promoted to lieutenant August 22, 1995. After completing on-the-job aviator training, he was upgraded to first pilot in 1997 and to aircraft commander in 1998. The applicant received very good OERs while working at an air station in xxxxxxxxxx and was awarded an Achievement Medal. He also received very good OERs at his next unit, an air station in xxxxxxxxxxxxxx, and his annual OER in 2003 noted that he “led pilots in productivity.” On July 1, 2003, the applicant was promoted to lieutenant commander (LCDR). On December 20, 2003, the applicant was awarded a fourth Letter of Commendation for piloting a helicopter during a rescue mission when a small boat full of immigrants grounded in the surf. The Letter of Commendation praises the applicant’s “precise hovering and superb hoisting” and states that he “immediately prepared the crew for a series of rescue swimmer hoists followed by multiple basket recoveries of the people in the water. You kept a mental count of the victims needing hoisting and when one came up missing, you diligently combed the shoreline and located a group of good Samaritans motioning toward another victim. Your quick actions, diligent search efforts, and professionalism resulted in 19 hoists and eight lives saved.”

On the applicant’s final OER at the air station in xxxxxx, which covered his service from May 1, 2004, to May 30, 2005, he received ten marks of 5, six marks of 6, and two marks of 7 in the various performance categories and a mark in the fifth spot on the comparison scale, which described him as an “excellent performer; give toughest, most challenging leadership assignments.” His Reporting Officer stated that the applicant’s “professional expertise, sound judgment, and resource management skills make him an invaluable asset to the Coast Guard” and recommended that he be “promote[d] to Commander with the best.”

On May 31, 2005, the applicant was transferred to a naval air station in xxxxxxxx to attend FITU to become an instructor pilot. His aviation training jacket contains the following:

- A record of his classes, lectures, and exams, indicating grades of 94, 93.3, 97.5, 93.3, 90, 96, 94, 100, 100, and 98.
- A Cockpit Procedure Aviation Training Form (C6001) dated September 12, 2005, indicating that the applicant was well prepared for the test of his basic cockpit knowledge and had “good knowledge and understanding of the checklist items.”
- A cockpit training form (C6002) dated September 13, 2005, indicating that he performed all normal and emergency procedures in accordance with NATOPS and FTI.
- A cockpit training form (C6003) dated September 13, 2005, indicating that he executed all required maneuvers at or above minimum standards.
- A NATOPS Aviation Training Form (I6001) dated September 14, 2005, stating that the applicant was “a bit surprised at what it took to keep the shiny side up” during a simulator flight, but he “started to get the hang of it as the hop progressed. New [aircraft], stiff wing vs. floppy wing and single piloted environment was an eye-opener. Need to review the basic instrument [power] & attitude settings so as to have a baseline to work with, and study general NATOPS procedures for instrument approaches & VOR holding. Good attitude – hit the books – very receptive to instruction.” He received a passing grade.
- A NATOPS training form (I6002) dated September 14, 2005, stating that the applicant was well prepared for a simulator flight and showed “excellent knowledge of all required procedures.”

- A NATOPS training form (C7001) dated October 18, 2005, stating “not bad for a first effort back in the plane” and “solid back in the saddle for IUT.”
- A NATOPS training form (C7003) dated October 19, 2005, stating “a real eye opener for [the applicant]. ... All under bag and flown with the appropriate humility. Keep up the good work.” The applicant received a passing grade.
- A NATOPS training form (C7002) dated October 20, 2005, completed by CDR X, with an incomplete grade and many negative comments, such as “a very dismal flight ... performance today was not at an acceptable level and therefore the flight could not be completed. Procedural knowledge in flight was below average! His approach in the brief appeared to be very nonchalant, almost ‘flighty’—have some concerns on his credibility before [student naval aviators]. ... minimal effort was put forth into preparations for this event and it was expected I would either spoon-feed him or accept a mediocre effort ... Probably one of the worst prepared early NATOPS events I’ve flown. Needs to get into the NATOPS/ FTI ASAP! Maneuver procedures almost non-existent – claimed getting through the 3 C’s hampered him! ... My impression is that this IUT can fly – his ability to perform the HAPL/LAPL indicates that – what I’m not sure of is his efforts to know the procedures. ...”
- Another (C7002) NATOPS training form, dated October 21, 2005, with a passing grade but the comment that the applicant showed “improvement in knowledge and procedures, but IUT still lacks critical knowledge of preflight, systems and limits. IUT did not know how to properly preflight [oxygen] mask and regulator system.”
- A NATOPS training form (C7004) dated October 25, 2005, with some criticisms of the applicant’s performance in a T-34C plane, but a passing grade.
- A NATOPS training form (C7005) dated October 28, 2005, indicating that the test was “incomplete due to IUT [the applicant] needing high spins.”
- Another (C7005) training form, dated October 31, 2005, with some criticisms of the applicant’s performance in a T-34C plane, but a satisfactory passing grade.
- A NATOPS training form (C7190) dated November 2, 2005, with some criticisms of the applicant’s performance in a T-34C, but a satisfactory passing grade.
- A Basic Instruments (BI) Aviation Training Form (I4001) dated November 7, 2005, stating that the applicant was well prepared and showed good knowledge of procedures in the simulator.
- Another BI training form (I4002) dated November 7, 2005, indicating that the applicant performed all maneuvers in the simulator in accordance with the training guidelines.
- A Radio Instruments (RI) Aviation Training Form (I4101) dated November 8, 2005, indicating that the applicant completed all required items and was very well prepared.
- An RI training form (I4102) dated November 8, 2005, indicating that the applicant completed all maneuvers in accordance with the training guidelines.
- An RI training form (I4201) dated November 9, 2005, indicating that the applicant was well prepared, had good knowledge of GPS procedures, and passed the test.
- A BI training form (I5001) dated November 23, 2005, indicating that the applicant performed excellently on basic instruments airwork in a T-34C and passed the test.
- Another BI training form (I5002) dated November 23, 2005, indicating that the applicant flew well and passed the test.
- An RI training form (I5101) dated November 29, 2005, stating that it was a good flight with “all SSR accomplished” and that the applicant had passed.

- An RI training form (I5102) dated November 29, 2005, stating that it was a good flight with “all SSR accomplished” and that the applicant had passed.
- An RI training form (I5103) dated December 12, 2005, with some criticisms of rough air-work but a passing grade.
- An RI training form (I5286) dated January 9, 2006, indicating that the applicant’s performance was good in the simulator but they were “unable to fly due to warmup requirements” because it had been more than three weeks since the applicant’s last flight.
- Another (I5286) RI training form, dated January 10, 2006, completed by LT X, with many criticisms of the applicant’s performance in the T-34C, an unsatisfactory grade, and a “Warm Up” stamp.
- A third (I5286) RI training form, dated January 11, 2006, completed by CDR X, with many criticisms of the applicant’s procedural performance and an unsatisfactory grade.
- An RI training form (I4186 (I4102)) dated January 17, 2006, and stamped “Warm Up” with both nice and critical comments about the applicant’s performance on a simulator.
- Another (I4186 (I4102)) RI training form, dated January 18, 2006, and stamped “Warm Up” with nice and critical comments about the applicant’s performance on a simulator.
- A letter dated January 20, 2006, from the Officer in Charge (OIC) of the FITU to the Commodore stating that on January 6, 2006, the applicant had been counseled about “his lack of standardization of NATOPS procedures, INAV FTI procedures, and his actions necessary to improve standardization. It was determined that he would be provided the opportunity to remediate his standardization to the required level. ... He will be provided two supervised simulator events to improve INAV procedures. This action was completed on 17 and 18 JAN 2006. In addition, he will be provided three supervised warm-up IUT flights prior to resumption of syllabus. In the event [he] does not show improvement, he will be referred to your office and recommended for discontinuation of IUT syllabus.

On February 2, 2006, the applicant was removed from the FITU before completing the training. The disputed SOER covers his IUT training at the FITU from May 31, 2005, through February 2, 2006. Most of the performance categories on the SOER are marked “not observed,” but the low marks of 2 for “Results/Effectiveness” and “Professional Competence” are supported by the following comments by the XO of the XXX squadron, who was the applicant’s Supervisor:⁵

Relieved of primary duty as a flight instructor pilot due to unsatisfactory performance in the Fixed-wing Instructor Training Unit (FITU) instructor training syllabus, a demonstrated lack of standardization, and an attitude not conducive to instructing in a military training squadron. Following a flight terminated for substandard performance on October 20, 2005, a veteran instructor and former training squadron CO record performance as “A VERY DISMAL flight” and “one of the worst prepared early NATOPs events I’ve flown.” This flight was nearly two months after starting the syllabus, which was ROO’s only assigned duty. ROO’s attitude during this flight was described as “very nonchalant, almost ‘flighty’.” Following this event, ROO was counseled on the requirement to be fully prepared for each flight and to be absolutely standard in accordance with

⁵ Each officer is evaluated by a rating chain of three superior officers, including a Supervisor, who is usually the person to whom the officer reports on a daily basis and who completes the first 13 performance category marks on an OER; a Reporting Officer, who is usually the Supervisor’s supervisor and who completes the last 5 performance category marks on an OER and also the comparison scale mark; and a Reviewer, who reviews the OER for accuracy, consistency, and compliance with regulations. Personnel Manual, Art. 10.A.2.

NATOPs and Flight Training Instructions (FTI), which detail maneuver procedures. On Jan. 10, 2006, another flight was deemed unsatisfactory due to lack of procedural knowledge. Given the same flight the very next day, performance was also graded as unsatisfactory due to "INABILITY TO CONFORM TO NATOPs and FTI standardization and procedures!"

In block 7 of the OER, the CO of the XXX squadron, who was the applicant's Reporting Officer, explained why he concurred with the XO's comments:

Because no amount of oversight on my part can cover every situation that my Instructor Pilots may face on a daily basis, I must have complete and unfettered trust in their ability to make good decisions at all times and do the right things on each and every flight. [The applicant's] unsatisfactory performance in the FITU and cavalier attitude towards his assigned duties have made it clear that he has not met these demanding requirements, and I have no confidence in his ability to ever meet these responsibilities.

The CO assigned the applicant a mark of 3 for "Initiative" and marks of 2 for "Judgment" and "Responsibility" in the SOER and supported these low marks with the following comments:

Displayed poor initiative, judgment, and responsibility by inadequately preparing for instructor syllabus training flights. Counseled about performance and need to adhere to standard procedures for Naval Training Command instructor pilots with only a marginal improvement in performance. ROO's sole duty was to prepare for an complete the Fixed-wing Instructor Training syllabus, yet he reported for instructor training flights unprepared.

The CO assigned the applicant a mark in the second spot on the comparison scale, denoting a "marginal performer," and added the following comments about his potential to assume greater leadership roles:

My limited observation of [the applicant] has only proven to me that he would be a poor instructor pilot and that he will likely always struggle with standardization in any environment. [He] performed no other duties or responsibilities that would allow me to comment on his potential in any other area and, therefore, I cannot make a promotion recommendation.

Because the SOER was "derogatory" under Article 10.A.4.h. of the Personnel Manual,⁶ the applicant was permitted to add a written addendum before it was forwarded to the Reviewer. His addendum, dated March 3, 2006, states the following:

This derogatory OER is based solely on 2 flights that I had with [CDR X] USN and does not take into account my entire training jacket. My academic grades are 90% or better and my flight performance was solid. The only problems that I encountered were when I flew with [CDR X]. His evaluations are not consistent with all the other write-ups and indicate a personality conflict. The following are my academic and flight grades taken directly from my Aviation Training Jacket:

<u>ACADEMIC PERFORMANCE</u>					
T-34C Aircraft Systems	94%	09 Sep	INAV (jetlog)	96%	12 Dec
Aero Exam	93.3%	26 Sep	NAV Exam	94%	23 Nov

⁶ Article 10.A.4.h. of the Personnel Manual, states that an OER is "derogatory" when it "documents adverse performance or conduct that results in the removal of a member from his or her primary duty or position." Before forwarding a derogatory OER to the Reviewer, the Reporting Officer provides a copy of it to the Reported-on Officer who may submit a written addendum. The addendum is forwarded up the rating chain, and the Supervisor and Reporting Officer who prepared the OER are allowed to address matters raised in the addendum. The Reporting Officer forwards derogatory OER to the reviewer, who may attach a comment page with a separate comparison scale.

Emergency Procedures	97.5%	04 Oct	Safe for Solo	100%	10 Nov
Flight Rule & Regs	93.3%	22 Sep	Spin Exam	100%	23 Sep
Instrument Exam	90.0%	01 Dec	VTCR Exam	100%	03 Oct

FLIGHT/PRACTICAL PERFORMANCE

C6001 – Well prepared, solid flight. C6002 – Well prepared. C6003 – Solid flight, all maneuvers at or above min. standard. I6001 – Good Attitude. I6002 – Well prepared, excellent knowledge. C7001 – Solid first flight in T-34 as IUT. C7002 – Dismal flight. C7003 – Good work. C7004 – Average flight. C7005 – Average. C7190 – Satisfactory Natops check. I4001 – Well prepared. I4002 – Completed all maneuvers. I5101 – Nice flight. I5102 – Good flight. I5103 – Average flight. I5201 – Good flight, 21 day warm-up. I5202 – Warm-up, behind aircraft I5202 – Unsatisfactory.

On 20 Oct. 2005, I had my second Natops “standardization” syllabus flight as an “IUT” Instructor Under Training with [CDR X] USN. He was late for the brief and I waited in the ready room until he arrived. Approximately one hour later he arrived and we started our brief. Midway through the brief, I had to use the head so I respectfully asked if we could take a 5-minute break. He found this quite comical and as I went to the head I heard him make an unprofessional comment in the passageway about how he scared the “explicative” out of that Coastie. Right away I realized we had a serious personality conflict.

I flew the syllabus flight and for my second flight in a T-34C in 12 years thought I did fair. My procedural knowledge was a little slow, but not unsafe or blatantly disregarded. When I tried to correct myself I was inundated with negative criticism. My previous instructor spent more time with me on flying the maneuvers rather than briefing them over and over again. With [CDR X], I felt I was being harassed and not allowed to learn in a productive manner. After that flight I never wanted to fly with [CDR X] again. I inquired with other IUTs and squadron instructor pilots and they all agreed that they did not like to fly with him. I continued on my Natops phase of the training syllabi and satisfactorily passed my Natops check ride.

There are approximately 58 IUTs in the “FITU” Fixed Wing Instructor Training Unit and approximately 12 “IPs” instructor pilots. It was normal to fly only once a week and some weeks I didn’t fly at all due to non-availability of IPs. On 10 Jan 2006, after 3 weeks of leave, I flew an INAV phase flight I5202 with [LT X]. To this point I had not flown any night familiarization flights. The procedures for this flight required that I talk through everything including real ATC radio calls, simulated radio calls, local traffic advisory calls, student ATC request calls and detailed explanations of all maneuvers flown including holding, arcing, instrument approaches, etc. We took off at night in hazy conditions. As the flight progressed I became more comfortable and proficient at my required tasks. The overall grade of the flight was satisfactory, but I failed the arcing departure and was hence given a warm-up.

On 11 Jan. 2006 I was scheduled to fly with [CDR X]. He was late for the brief. We briefed and the flight brief went well. At this point we should have gone straight to the plane, but [he] delayed ½ hour to have a private conversation with his friends. I found this to be quite unprofessional. On take-off, my TACAN failed which delayed some of my simulated ATC radio calls as I troubleshot the TACAN equipment. Once I received my TACAN/DME Distance Measuring Equipment, I proceeded on course. I executed and explained my required maneuvers. As I proceeded through Area 2F, an area I had never been in before, I made the mistake of giving myself an unnecessary descent for practice holding and a practice approach. Before I could correct my mistake, I received a 20-minute lecture from [CDR X]. He inquired, “What is your purpose?” I explained that this was a training flight and I was learning how to be an instructor. He refused that comment. He badgered me for about 15 more minutes and then explained that my purpose was to act as lookout. I have flown Coast Guard and civilian aircraft for nearly 12 years and [CDR X’s] “CRM” cockpit resource management is the poorest I have ever experienced. I told him I was not learning anything from him with his demeaning techniques and at that point we should just fly back to xxxxxxxxxxxx. He insisted on continuing the flight.

I'm the first to admit I have made mistakes, but this punishment doesn't fit the offense. Anything I did that was not standard when I flew with [CDR X] was due to personality conflict, nervousness and being new to the training environment as an instructor. [CAPT K] USAF flew with me 4 times and said I flew better than 90% of IPs. [CDR Y] USCG told me I was not better or worse than any of the other IUTs. I was told by [LCDR K], the FITU OIC, that I would be given a warm-up flight, that I would not be scheduled to fly with [CDR X] and that I would re-fly the INAV 5202 syllabus flight. I was never given that opportunity.

I feel that the personality conflict I had with [CDR X] led to a "witch hunt" and that I was attrited unfairly for reasons other than my ability to be an Instructor Pilot. My academics and overall flight performance are not consistent with the evaluations made by [CDR X]. I feel that this OER is unjustly based on my flights with [CDR X], rather than objectively including my entire training jacket.

On March 10, 2006, the squadron XO, who served as the Supervisor for the SOER, forwarded the applicant's addendum with the following response for inclusion in the record:

[The applicant's] Addendum Comments center on the perceived personality conflict between himself and [CDR X], USN. To be sure, [CDR X] is a knowledgeable and exacting instructor, but I have found him to be fair and reasonable in my frequent dealings with him. [CDR X] once commanded a VT squadron, is currently the Training Wing's second-in-command, and is regarded as a seasoned veteran. When reviewing training jackets of instructor's graduating the Fixed-wing Instructor Unit (FITU), I often look to [CDR X's] write-ups knowing he will most likely "tell it like it is." However, I had never received a call from him concerning the performance of one of our instructors until after he flew with [the applicant] for the first time. He was concerned over [the applicant's] cavalier and nonchalant attitude. [The applicant] admits that his "laid back" demeanor sometimes comes across as having a "surfer dude" personality. Beyond the perceived attitude, however, [CDR X] was deeply concerned about [the applicant's] lack of procedural knowledge and his nonstandard procedures. After counseling [the applicant] on the need to be absolutely standard, he stated he could be the standardized instructor he needed to be. He continued to run into trouble.

[CDR X] was not the only instructor who graded [the applicant's] performance as unsatisfactory. In January, after receiving a warm-up flight following leave, he flew with the Wing Standardization Officer. His flight was completed and graded "Unsatisfactory" for the "need to get into the FTI for procedural details." Although the somewhat reduced frequency of FITU flights for instructors was not ideal, it was still cause for concern that after nearly five months on board, with his only assigned duty that of an instructor under training, he was not following some fairly basic procedures. What magnified the concern still further was [his] vast flying hours and experience, which would normally spell success in the instructor syllabus.

Following the unsatisfactory flight with the Wing Stan Officer, [the applicant] was given another chance to pass the flight. His instructor was [CDR X]. [CDR X] again found his performance so alarmingly poor he sought us out to debrief the performance. His main concern was [the applicant's] lack of standardization. [LCDR X] (USCG), as the FITU OIC, proposed a training regimen to bring [the applicant] up to speed. This is to be expected, since his job is to train instructors. It was at this point, however, that the squadron and the Wing had lost confidence in [the applicant]. Each instructor here is absolutely entrusted to be the epitome of standardization and professionalism while operating in a demanding training environment, out of view of supervision. The future of military aviation and the safety of each day's flight depend greatly on the professionalism and example presented to Student Naval Aviators. [The applicant's] actions caused the squadron to doubt his ability to carry on this high calling.

On March 13, 2006, the squadron CO, who served as the Reporting Officer for the SOER, forwarded the applicant's addendum and the XO's comments to the Reviewer along with his own response to the addendum:

I have reviewed [the applicant's] rebuttal to the OER that I signed on 16 Feb 2006 regarding his performance at the Training Wing XXX Fixed Wing Instructor Training Unit. While his situation is truly unfortunate, it was substantiated by repeated instances of questionable performance in the aircraft. While I cannot answer definitively as to whether or not there was some sort of personality conflict between [the applicant] or any other flight instructor, including [CDR X] who has significant experience as a flight instructor, I do know that there is sufficient indication that [the applicant's] performance as a flight instructor may be in question. As Commanding Officer, I have lost confidence in his ability to perform to the highest standards and safeguard the well being of the student aviators under the difficult conditions faced during primary flight training. I am therefore left with little choice other than to deny [his] accession into the command and respectfully suggest his return to the Coast Guard where he may be better able to apply his aviation skills.

The Reviewer of the SOER, who was the Coast Guard Liaison Officer at the naval air station, attached a comment page⁷ on which he assigned the applicant a mark in the lowest spot on the comparison scale, which denotes "performance unsatisfactory for grade or billet." The Reviewer wrote the following comments:

[The applicant's] rating chain has been fully briefed on and they completely appreciate the Coast Guard Officer Evaluation System standards. It should be noted that while the applicant was assigned to a Navy command, his Supervisor (XO of the Training Squadron) is a Coast Guard O-5 [commander].

I completely concur with the Supervisor and Reporting Officer. [The applicant's] responsibilities as an Instructor-pilot Under Training (IUT) only involved studying procedures and flying his IUT syllabus flights. Yet, he would not devote the time required to properly perform the required procedures. He was given repeated counseling to improve his performance as an IUT with apparently little effect. His rating chain examined the possibility that human factors might have been involved to explain his unsatisfactory performance, but human factors proved not to be the issue. It is quite clear that [the applicant] struggles with procedural standardization and conformity. His ability to operate the aircraft and manipulate the controls was never questioned. It was the method in which he did so that caused so much concern. As a Naval Flight Instructor, one must be a paragon of standardization for all the students they come in contact with, an example for the flight students to emulate. [The applicant] presented the antithesis of this standard to those instructors charged with his training and certification.

I am deeply troubled by the fact that an officer with [the applicant's] seniority and aviation experience would not apply himself to satisfactorily perform such minimal responsibilities. I completely agree with the Reporting Officer concerning [the applicant's] limited potential. While [the applicant] is not recommended for promotion at this time, he may possibly improve his performance in a different setting where he may gain such a recommendation.

It is unfortunate, but [the applicant's] performance in this billet as a Navy Flight Instructor was unsatisfactory and that performance must be evaluated as such.

⁷ Under Article 10.A.2.f.2.b. of the Personnel Manual, a Reviewer must add a comment page with an additional comparison scale mark when the Reporting Officer for the OER "is not a Coast Guard commissioned officer, member of the Coast Guard Senior Executive Service (SES), or a USPHS flag officer serving with the Coast Guard."

Following his removal from the FITU, the applicant was assigned to an air station in xxxxxxxx. On his regular OER for the period February 3, 2006, through April 30, 2007, the applicant received one mark of 4 (for "Writing"), eight marks of 5, and nine marks of 6 in the various performance categories; a mark in the fourth spot on the comparison scale, which denotes a "good performer; give tough, challenging assignments"; and his Reporting Officer's recommendation that he be promoted to commander (CDR/O-5).

VIEWS OF THE COAST GUARD

On March 12, 2008, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion adopting the findings and analysis provided in a memorandum on the case prepared by the Coast Guard Personnel Command (CGPC), which recommended that the applicant's request be denied.

CGPC stated that during the period covered by the disputed SOER, the applicant "was assigned as a T-34 Aircraft Commander and designated Instructor Pilot in Primary Flight Training Squadron X (XXX)." CGPC noted that the applicant did not apply to the Personnel Records Review Board for correction of the SOER. CGPC submitted affidavits about the SOER and the applicant's performance from the Supervisor and Reporting Officer (see below) and stated that the Reviewer is no longer available but that his views may be determined from the comment page that he attached to the SOER.

CGPC stated that, while the applicant may have received high academic grades on his written tests, but such scores do not establish that the SOER is erroneous. CGPC stated that the SOER is "a snapshot of all performance and the rating chain is not required to limit itself to academic performance." CGPC stated that although the applicant claimed that all of his FITU flights were satisfactory or better, his flight jacket, which the applicant himself provided, contradicts this claim in that on October 20, 2005, CDR X wrote that the applicant's "performance today was not at an acceptable level and therefore the flight could not be completed."

CGPC stated that the applicant presented nothing to support his claim that the XO had a personal vendetta against him, and that the XO has denied having such a vendetta. CGPC stated that the applicant has also submitted no evidence to support his claim in the SOER addendum that he had a personality conflict with CDR X.

CGPC stated that the applicant's rating chain properly carried out its responsibilities under the Personnel Manual and that they were in "the best position to observe the applicant's performance and provide a fair, accurate, and objective [S]OER." CGPC argued that the applicant "has not provided evidence that overcomes the presumption of regularity with respect to the construction or submission of the disputed [S]OER."

Declaration of the Applicant's Supervisor, XO of the XXX Squadron

The XO of the squadron stated that officers assigned to the FITU "are fully engaged in instructor training with no squadron duty assignments or obligations other than an occasional training day or meeting, so my contact with him was quite limited. Overall, I think that [the applicant] is a nice person and he did fly with two very thorough instructors when he encountered

his performance failures, but in the end he was unable to earn the confidence of the Squadron or the Wing to instruct student naval aviators.”

Regarding the applicant’s claim that the SOER is erroneous because all of his grades on written tests were 90% or higher, the XO noted that on a score lower than 80% was a failing grade and that because of the accompanying study guides, “averages of 98% were not uncommon” on these tests. The applicant’s scores, although above 90%, were average to below average among IUTs.

Regarding the applicant’s claim that his FITU flights were all satisfactory or better, the XO concurred with CDR Y’s statement that at the FITU it was “the ‘norm’ to document unsatisfactory events as something else,” such as reporting an unsatisfactory flight as a “warm-up.” However, the applicant’s first flight with CDR X “was terminated because his ‘performance today was not at an acceptable level and therefore the flight could not be completed.’” The XO stated that CDR X recorded the flight as incomplete even though it was terminated early because of unsatisfactory performance. LT X graded the applicant’s flight on January 10, 2006, as unsatisfactory, but “also stamped [it] as a ‘warm-up’ even though [the applicant] had just received a warm-up the day prior. To the best of my knowledge, [IUTs] were not ‘owed’ more than one warm-up.” The XO also noted that the reported reason for the warm-up was the applicant’s “need to get into FTI procedural details” and claimed that “[w]hile airwork may grow rusty from a layoff, procedural knowledge should not.” The XO further noted that the applicant’s final flight with CDR X was clearly graded unsatisfactory.

Regarding the applicant’s claim that the XO had a “personal vendetta” against him, the XO strongly denied ever having a personal grudge against the applicant and claimed that they “had crossed paths several times in the past and were on good terms.” The XO noted that initially the applicant called him by his first name and the XO reminded him to call him “XO,” but the applicant readily complied. The XO stated that the only negative interaction they had prior to the applicant’s attrition from the FITU was in 2000 when the applicant committed a

fairly large procedural error ... on a takeoff check during a [standardization] visit flight check with me ..., which at the time I chalked up to the recent implementation of the challenge-and-response checklist. In fact, I don’t believe I even recorded the miscue and didn’t recall it until [the applicant] brought it up in conversation while in XXX. I was somewhat aware of his fleet reputation as being fairly “laid back” but I did not mention anything to the squadron CO other than “he’s a good stick” prior to [the applicant’s] arrival. And I did not mention anything to the Wing’s Chief Staff Officer, [CDR X]. Before his departure, [the applicant] did mention a comment I made during an initial conversation with him and another Coast Guard [IUT] which he thought was indicative of possible ill will toward him. I told the other new Coast Guard [IUT] present, who was an OSC candidate on a 378’ deployment I was on many years earlier, that I was disappointed he was no longer slated to come to XXX. [The applicant] took this as an insinuation that I would have preferred to have the other [IUT] vice him but the facts were XXX received two Coast Guard [IUTs] that summer. I apologized to [the applicant] for the misunderstanding when he mentioned his feelings; [the comment to the other IUT] was not aimed at him in any way. Finally, in my position as XO during his questioned performance, it was not a decision for me to make. My part in the special OER was mainly documenting quotes from flight writeups and the CO and [the Reviewer] had the remainder of the comments. It boiled down to whether I was willing to go to bat to convince the CO and Wing Chief Staff Officer [CDR X] to keep [the applicant]. Given his unsatisfactory performance in the areas of standardization and procedures despite having an abundance of time to apply himself to improve, I could not justify going to bat for someone in whom my confidence was shaken. The thought of having a senior instructor in the squadron who was prone to cut

corners in the cockpit seemed too much of a threat to the proper professional mentoring of the young, moldable future leaders and flyers of tomorrow.

Regarding the applicant's complaint that the CO removed him from the FITU without actually flying with him, the XO stated that "a senior leader can make such a determination without physically flying with a pilot. A District Commander does not sail with a cutter CO before deciding whether to relieve him for cause. In this case, [CDR X] the second in command at the Wing level, a former VT squadron CO and among the most experienced of instructors gave us his unsolicited and unprecedented feedback; we had no reason to doubt him." The XO further alleged that before making the decision to remove him from the FITU, the Training Wing XXX Commodore asked the applicant to describe himself, and the applicant responded that he was a "cowboy," which in the military denotes a rebel, and this response "certainly convinced the Commodore that [the applicant] should not instruct in Training Air Wing XXX." The XO also stated that the applicant's "demeanor hurt his cause" and left the squadron CO with a negative impression of his professionalism and motivation.

The XO stated that CDR Y's statement on behalf of the applicant "paints a good picture of the FITU environment. Times were, however, changing." He noted that a series of recent mishaps had been blamed on instructor pilots not following procedures and that a fatal mishap in May 2005 "precipitated a change in instructor training mentality. Deviations from the standard were not tolerated. Even prior to the string of mishaps, I believe the Navy placed more emphasis than the Coast Guard on standardization. So [the applicant's] lack of standardization was seen as particularly alarming and the days of the automatic 'warm-up' stamp were coming to a close." The XO noted that shortly after the applicant's transfer, another IUT was not allowed to continue training. Previously, the XO stated, IUTs having trouble in fixed-wing training were transferred to train as helicopter IPs, "but it was decided quickly that to send someone to helicopters because he or she is having standardization and procedural issues in fixed-wing is not an appropriate strategy." The XO stated that the applicant probably could have succeeded at the FITU if he had been given extra instruction and flights but "it was the command's sense that he would not be able to retain an acceptable level of procedural knowledge, standardization, or motivation to instruct while in the demanding role as a squadron instructor with multiple flights per day and collateral duties and virtually no in-flight supervision."

The XO stated that the applicant was progressing very slowly for someone with "a large amount of recent flight experience." Such slow progress is "not ideal in terms of airwork, [but] it does allow for ample preparation and study." The XO noted that the applicant's flight training jacket shows that he stopped filling out his daily tracker after the first five weeks even though it was required. The XO alleged that it "is one thing to be a bit under-prepared when you are flying daily and going through the syllabus quickly, but when you have days on end with no other obligation than to prepare for a single flight, it is difficult to understand a veteran aviator not being prepared." The XO concluded that the applicant's removal from the FITU was justified, and noted that it was not until after the decision was made that the rating chain was informed that they would have to prepare an SOER to document his removal from his primary duty.

Declaration of the Applicant's Reporting Officer, the CO of the Squadron

The CO stated that at the FITU, the applicant “quickly earned a reputation and demonstrated performance that led me to question his capacity as a military flight instructor” but also stated that the decision to remove the applicant was “far from hastily made.” The CO stated that he became concerned about the applicant during their one-on-one in-brief on the day the applicant arrived at the FITU. The applicant had indicated that his family was living in South America, that he was focused on personally building his own house in Puerto Rico, and that he would live in the barracks while at the FITU. This information made the CO wonder if the applicant’s family was falling apart and if he was having financial problems, which caused the CO to fear that the applicant would be distracted from his mission. The CO was also struck by the applicant’s unusually “casual, laid-back attitude.” Thereafter, the CO was “alerted to some possible problems with [the applicant’s] attention to detail, particularly related to his procedural knowledge and execution,” which caused concern because the applicant’s attitude was also reported to be “almost cavalier.” Several senior IPs reported that the applicant was often seen “hanging around” in a white t-shirt and was heard calling the XO by name, which made them “a bit uncomfortable, especially given the example set for the student aviators.” The XO therefore informally counseled the applicant about his behavior. The CO stated that the applicant’s “laid-back” attitude would not have been a problem “were it not manifest in his performance in the aircraft. However, it apparently did impact his performance such as weak to no systems knowledge on several briefs (and yes, even the really old guys like me *at least* know their systems in the brief, just as we expect our students to know them—cold), and, most importantly, questionable procedural lapses on several flights.”

The CO stated that he himself was responsible for every aspect of the squadron, including the members’ welfare and every aircraft and crew. He stated that his command earned three top squadron awards during his tenure, which is a result of “constant—*constant*—situational awareness of the ‘complete picture’ within the command. What is commonly referred to as ‘command climate’ starts at the top. If the top accepts substandard performance, then substandard performance is delivered, which eventually can lead to certain injury or death in aviation. Every member in my command ... was well aware that I was simply not willing to compromise the safety of any member of my command for substandard performance.”

Regarding the applicant’s claim that the XO had a “personal vendetta” against him, the CO stated that the claim was false and that the XO was “objective, level-headed, and my most trusted confidant in all issues.” The CO stated that the applicant’s attitude and performance in flight caused him “to lose confidence in [the applicant’s] ability to perform to the highest standards and safeguard the well-being of student aviators under the difficult conditions faced during primary flight training. In the end, amidst all the accusations of personality conflicts and false vendettas, the decision to remove [the applicant] was mine. Although I feel personally sorry for [him], I stand firmly behind this important decision.”

APPLICANT’S RESPONSE TO THE COAST GUARD’S VIEWS

On March 13, 2008, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within thirty days. No response was received.

APPLICABLE REGULATIONS

Under Article 10.A.3.a. of the Personnel Manual, lieutenant commanders usually receive a regular, annual OER at the end of April each year. However, under Article 10.A.3.c.1.a., a special OER “may be completed to document performance notably different from the previous reporting period, if deferring the report of performance until the next regular report would preclude documentation to support adequate personnel management decisions, such as selection or reassignment.”

Article 10.A.4.c.4. of the Personnel Manual provides the following instructions for Supervisors completing their section of an OER (similar instructions are provided for Reporting Officers in Article 10.A.4.c.7.):

b. For each evaluation area, the Supervisor shall review the Reported-on Officer’s performance and qualities observed and noted during the reporting period. Then, for each of the performance dimensions, the Supervisor shall carefully read the standards and compare the Reported-on Officer’s performance to the level of performance described by the standards. The Supervisor shall take care to compare the officer’s performance and qualities against the standards—not to other officers and not to the same officer in a previous reporting period. After determining which block best describes the Reported-on Officer’s performance and qualities during the marking period, the Supervisor fills in the appropriate circle on the form in ink.

c. Where the Supervisor has insufficient information to provide a mark or if observations are believed inadequate to render a judgment, the “not observed” circle shall be used. The reason for the “not observed” must be briefly stated in the “comments” blocks or Section 2.

d. In the “comments” block following each evaluation area, the Supervisor shall include comments citing specific aspects of the Reported-on Officer’s performance and behavior for each mark that deviates from a four. The Supervisor shall draw on his or her observations, those of any secondary Supervisors, and other information accumulated during the reporting period.

e. Comments should amplify and be consistent with the numerical evaluations. They should identify specific strengths and weaknesses in performance. Comments must be sufficiently specific to paint a succinct picture of the officer’s performance and qualities which compares reasonably with the picture defined by the standards marked on the performance dimensions in the evaluation area. Mere repetition or paraphrasing of the standards is not sufficient narrative justification for below or above standard marks.

• • •

g. A mark of four represents the expected standard of performance. Additional specific performance observations must be included when an officer has been assigned a mark of five or six to show how they exceeded this high level of performance. Those assigned the superlative mark of seven should have specific comments demonstrating how they exceeded the six standard block.

Article 10.A.4.c.8.a. states that on the comparison scale in an OER, a Reporting Officer “shall fill in the circle that most closely reflects the Reporting Officer’s ranking of the Reported-on Officer relative to all other officers of the same grade the Reporting Officer has known.”

Under Article 10.A.4.h.1. of the Personnel Manual, any OER that documents “adverse performance or conduct that results in the removal of a member from his or her primary duty or position” is a “derogatory” OER and the reported-on officer may respond to the marks and comments of the Supervisor and Reporting Officer in an addendum before the OER is passed to the

Reviewer. Article 10.A.4.h.2.e. allows the Supervisor and Reporting Officer to add written responses to the addendum before forwarding it to the Reviewer.

Article 10.A.4.c.11.g. requires the Reviewer to add a comment page with a separate comparison scale mark “if the Reporting Officer is not a Coast Guard Officer, Coast Guard Senior Executive Service (SES) member, or the USPHS flag officer serving as Chief, Office of Health and Safety, Commandant (G-WK).”

FINDINGS AND CONCLUSIONS

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

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

2. The applicant alleged that the special OER (SOER) he received following his removal from the FITU is erroneous and unfair because his academic grades were high, his training flights were satisfactory or better, and his Supervisor, the XO of the training squadron, had a personal vendetta against him. He also argued that the SOER should be removed because it documents the unjust decision of the CO to remove him from the FITU even though the CO had never flown with him and did not know him well. Article 10.A.1.b.1. of the Personnel Manual provides that “[c]ommanding officers must ensure accurate, fair, and objective evaluations are provided to all officers under their command.” To establish that an OER is inaccurate or unjust, an applicant must prove that it was adversely affected by (a) a “misstatement of significant hard fact,” (b) a “clear and prejudicial violation of a statute or regulation,” or (c) factors that “had no business being in the rating process.”⁸ The Board begins its analysis in every case by presuming that a disputed OER 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.⁹ Absent evidence to the contrary, the Board presumes that the applicant’s Supervisor and Reporting Officer prepared the SOER “correctly, lawfully, and in good faith.”¹⁰

3. With respect to the CO’s decision to remove the applicant from the FITU, the Board finds that the applicant has submitted insufficient evidence to prove that the CO failed to use his best professional judgment or to act fairly and properly in removing the applicant. The record indicates that the CO’s decision was based both on the applicant’s performance during training flights, as reported by some of the IPs at the FITU, and on his perceived attitude toward standardization. The SOER explains that even though the applicant was a highly experienced pilot who had many weeks to learn or relearn standard procedures in the T-34C, he “demonstrated lack of standardization, and an attitude not conducive to instructing in a military training squadron.” The Reviewer explained on his comment page in the SOER that, to become an IP, an IUT must be not only a good pilot but “a paragon of standardization for all students they come in

⁸ *Germano v. United States*, 26 Cl. Ct. 1446, 1460 (1992); *see also Hary v. United States*, 618 F.2d 704, 708 Cl. 1980); CGBCMR Dkt. No. 86-96.

⁹ 33 C.F.R. § 52.24(b).

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

contact with, an example for the flight students to emulate. [The applicant] presented the anti-thesis of this standard.” The declarations of the XO and the CO indicate that modeling standardization is a critical safety issue in training new pilots. They also indicate that they and the Commodore of Training Air Wing Xxx spoke with the applicant and had an opportunity to gauge his attitude toward standardization but that the applicant failed to inspire their confidence in his ability and/or willingness to model standardization when training student pilots if he became an IP.

4. The applicant alleged that the CO removed him from the FITU and wrote the SOER without ever flying with him, but COs are allowed to make significant decisions based upon the reports of trusted officers.¹¹ The record indicates that the CO based his decision both on his own assessment of the applicant’s attitude and on the reports of trusted officers. The applicant alleged that his good academic grades disprove the allegations about his inability to demonstrate standardization in flight, but academic performance is not always an accurate indicator of performance in the field (or air). He alleged that all of his FITU flights were rated satisfactory or better, but this allegation is not supported by the documents in his flight jacket.

5. In his addendum to the SOER, the applicant alleged that his removal from the FITU resulted from a “personality conflict” with one of the instructors, CDR X. However, the XO stated that CDR X was “fair and reasonable” and an experienced IP who could be counted on to “tell it like it is.” CDR Y noted that CDR X held IUTs to a high standard but also stated that he believes that CDR X’s evaluation was accurate. The Board notes that the applicant failed to pass the I5286 test flight with LT X before he failed it with CDR X. Therefore, the Board is not persuaded that the applicant’s alleged personality conflict with CDR X caused him to be removed from the FITU. In his application to the Board, the applicant also alleged that the CO’s decision to remove him from the FITU was influenced by the XO, who had a “personal vendetta” against him. However, the applicant provided no grounds for or evidence of the alleged vendetta, and the allegation is strongly denied by both the XO and the CO. The Board concludes that the applicant has failed to prove by a preponderance of the evidence that his removal from the FITU and the resulting SOER resulted from any personality conflict, vendetta, or other sort of bias.

6. The applicant alleged that his performance in standardization was average or above average for an IUT but that the CO’s decision was overly influenced by one particular IP, CDR X, with whom the applicant had a personality conflict. CDR Y, an IP who wrote on behalf of the applicant, stated that CDR X and LT X were two of the more demanding IPs and held IUTs to a higher standard than did other IPs, who had created a “culture of pulling punches when it [came] to documenting substandard performance.” CDR Y stated that he is sure that CDR Y’s and LT X’s evaluations were *accurate*. He speculated, however, that because the applicant did not perform well on his first flight with CDR X, his “very next flight,” which was also with CDR X, was likely “doomed ... from the start” because CDR X would have had low expectations and the applicant would have felt stressed. However, the training forms in the applicant’s flight jacket indicate that his first flight with CDR X, which was rated “dismal,” occurred on October 20, 2005, and he did not fly again with CDR X as the IP until January 11, 2006. The applicant’s performance on January 11, 2006, was unsatisfactory even though it was the third I5286 training form in his record. His flight jacket contains seventeen training forms dated between his first and

¹¹ See, e.g., Article 10.A.2.e.2.a. of the Personnel Manual.

second test flights with CDR X. He received passing grades on all of the seventeen tests that he completed except the last—his second I5286 form—which was conducted by LT X on January 10, 2006, and stamped “Warm Up.” With respect to the applicant’s performance in January 2006, CDR Y alleged that it was common for IPs to award “warm-ups” in lieu of failing grades, but the XO stated that IUTs “were not ‘owed’ more than one warm-up.”

CDR Y stated that the applicant’s performance was “simply average,” that most FITU IP’s “pull[ed] punches when ... documenting substandard performance” by rating unsatisfactory flights as “warm ups,” and that it is “regrettable that [the applicant’s] attrition is being linked to poor performance instead of his CO’s lack of confidence in him.” CDR Y stated that the performance of two other IUTs was worse than that of the applicant and that the applicant should have been allowed to complete the remedial program proposed by the OIC of the FITU. The record indicates that on January 20, 2006, after the applicant had failed the I5286 flight with both LT X and CDR X, the OIC proposed a remedial program of two simulator and three warm-up flights for the applicant before having him resume the usual FITU syllabus. The OIC told the Commodore that if the applicant did not improve, the OIC would recommend that he not continue the IUT syllabus. However, before the remedial program was completed, the applicant’s CO, having been informed of the applicant’s unsatisfactory performance, decided to remove him from the FITU not only because of his performance but because of his perceived attitude toward standardization. The record indicates that the applicant’s attitude toward standardization was of significant concern not only to the CO, but to the Commodore, the squadron XO, and CDR X. As explained by the XO, the applicant was already a highly experienced pilot and his only duty while assigned to the FITU was to study and demonstrate standard procedures, which he failed to do despite having many weeks to study and prepare himself. Although the applicant was not permitted to complete the remedial training program proposed by the OIC of the FITU and both the XO and CDR Y believe that the applicant could have demonstrated standardization if given more time, the Board finds that the applicant has not proved by a preponderance of the evidence that the CO’s decision to remove him from the FITU was erroneous or unjust.

7. The applicant argued that his removal from the FITU should not have been documented in a “derogatory” evaluation. CDR Y stated that in his 19 years of experience, “poor performance on a training flight or even multiple training flights has never led to a derogatory officer evaluation report.” However, Article 10.A.3.c.1.a. of the Personnel Manual states that a special OER “*may* be completed to document performance notably different from the previous reporting period, if deferring the report of performance until the next regular report would preclude documentation to support adequate personnel management decisions, such as selection or reassignment.” (Emphasis added.) Under Article 10.A.4.h.1., any OER that documents “adverse performance or conduct that results in the removal of a member from his or her primary duty or position” is a “derogatory” OER. Therefore, although the Personnel Manual appears not to require documentation of an officer’s removal from his primary duty in an SOER under these circumstances,¹² it certainly allows it and provides special procedures for it. The record indicates

¹² Article 4.F.6.5. of the Personnel Manual requires the preparation of an OER when a CO or an OIC is “removed for cause,” and Article 6.A.1. requires the preparation of an OER when an officer’s flight status is removed. However, the applicant was not a CO or an OIC and his flight status was not removed when he was removed from the FITU. Articles 4.E.4., 4.E.5., and 4.E.6. of the Personnel Manual require evaluation reports to be prepared whenever enlisted members assigned to special duty billets, such as instructor training, are removed from their billets because of performance or attitude problems, but the applicant in this case is an officer.

that the applicant's rating chain found fault not only with the applicant's performance during his training flights but also with his attitude and level of effort as an IUT, and the applicant has submitted insufficient evidence to prove by a preponderance of the evidence that they were wrong in their assessment of his attitude and level of effort. Therefore, the Board is not persuaded that the decision of the applicant's chain of command to document his removal from his primary duty with a derogatory SOER is erroneous or unjust.

8. The low marks and adverse comments in the SOER are documented in the Summary of the Record above. The applicant argued that his academic grades prove that the SOER is inaccurate and unfair, but as stated above, academic grades are not always an accurate indicator of actual performance. CDR Y stated that, contrary to the comments in the SOER, the applicant was removed because the CO lacked confidence in him, not because of unsatisfactory performance. However, the record clearly shows that both the applicant's unsatisfactory performances during some test flights and his failure to inspire his chain of command with confidence in his commitment to learning, demonstrating, and modeling standardization as an IUT and potential IP caused the CO to remove him from the FITU.

9. The applicant has not proved by a preponderance of the evidence that that any of the numerical marks or comments in the SOER are erroneous or unfair or that the Coast Guard committed any procedural error in preparing the SOER. The SOER was prepared upon his removal from his primary duty in accordance with the regulations for special and derogatory OERs in Articles 10.A.3.c.1.a. and 10.A.4.h.1.c. of the Personnel Manual. The applicant has not proved that the SOER violates any statute or regulation. Nor has he proved that the SOER was the product of a "personality conflict" with CDR X, as he argued in his addendum to the SOER, or of a "personal vendetta" by the XO, as he argued in his application. Therefore, the Board concludes that he has not proved that the SOER was adversely affected by (a) a "misstatement of significant hard fact," (b) a "clear and prejudicial violation of a statute or regulation," or (c) factors that "had no business being in the rating process."¹³

10. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

¹³ *Germano*, at 1460; *see also Hary*, at 708.

ORDER

The application of xx, USCG, for correction of his military record is denied.

Francis H. Esposito

Paul B. Oman

David A. Trissell