

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2008-174

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

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 August 1, 2008, 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 April 30, 2009, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant asked the Board to correct her record by removing a special officer evaluation report (SOER)¹ covering her service from February 1 to October 15, 2006, as the Operations Officer of a high-endurance cutter. On or about October 15, 2006, she was dropped off in Singapore to return stateside, having been removed from her position on the cutter, which had recently completed joint exercises with the Navy and was headed to the Middle East. The SOER contains low marks in most of the performance categories,² negative comments, and a mark in the second spot on the comparison scale.³ The applicant also asked the Board to expunge any other documents that refer to her removal as the Operations Officer or to the SOER and to correct the reporting date on the SOER. In this regard, she noted that while she reported to the cutter on March 31, 2006, the SOER erroneously indicates that she reported on March 6, 2006, which was the date her transfer orders were issued.

¹ UNITED STATES COAST GUARD, COMDTINST M1000.6A, PERSONNEL MANUAL, Art. 10.A.3.c.1.a. (Change 39, Mar. 8, 2005) (hereinafter "PERSMAN") (stating that an SOER may "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." PERSMAN, Art. 10.A.4.c.4.g.

³ There are 7 possible marks on the comparison scale ranging from "performance unsatisfactory for grade or billet" to "BEST OFFICER of this grade." A mark in the second spot denotes a "marginal performer; limited potential." 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. UNITED STATES COAST GUARD, Form CG-5310B, OFFICER EVALUATION REPORT (OER) (June 2005).

SUMMARY OF THE APPLICANT'S MILITARY RECORD

On May 22, 2002, the applicant was commissioned an ensign upon graduating from the U.S. Coast Guard Academy. For two years, she was assigned to serve as a deck watch officer aboard a high endurance cutter, serving on watch import and underway; navigating the ship; and serving as the Assistant Combat Information Center (CIC) Officer and Training Officer, among other collateral duties. She received very good marks on her OERs and was strongly recommended for promotion. She was promoted to lieutenant junior grade on November 22, 2003.

From June 21, 2004, to January 31, 2006, the applicant served as the Executive Officer of a patrol boat, where she was responsible for the management, administration, and operation of the boat and for enforcement of policies. She received excellent marks on her OERs in this position and was highly recommended for promotion.

On March 31, 2006, the applicant reported aboard the XXXX, a high endurance cutter with a crew of 180. She was immediately sent ashore for 100 days of Navy training as a Tactical Action Officer (TAO). While in TAO training, she was promoted to lieutenant on May 22, 2006. Upon her return to the cutter in June 2006, the applicant assumed her duties as the new Operations Officer. A new Commanding Officer (CO) also reported aboard in June 2006. The disputed SOER in this case documents her service on the cutter through October 16, 2006, when she was removed from her position, and it was prepared by the Executive Officer (XO) and CO, who served on the applicant's rating chain⁴ as the Supervisor and Reporting Officer, respectively. Because the SOER documents the applicant's removal from her primary duty, it is a "derogatory report" under Article 10.A.4.h.1. of the Personnel Manual.

The numerical marks and comments in the disputed SOER appear in the table below. According to block 2 of the SOER, the applicant's duties as head of the Operations Department on the cutter were the following:

Responsible for plng, coord & execution of unit missions of ship of 180 crewmembers incl[uding] [Search and Rescue], [Law Enforcement], Military ops & flight ops. Resp[onsible] for op reports & unit preparedness for joint operations w/ DOD forces for Middle East deployment. Supervises 3 [junior officers], 3 [chief petty officers], 23 [petty officers]. Budget \$115K/yr. Senior Deck Watch Off[icer] (DWO), Tactical Action Off[icer] (TAO), Command Security Off[icer] (CSO), Nav[igation] & Seamanship Trng Team (NSTT) Leader. OER submitted [in accordance with] Art. 10.A.3.c.1.a., due to performance reflecting serious deficiencies in leadership, technical skills & inability to effectively carry out assigned duties. Per Article 10.A.4.h.1., this OER is a Derogatory Report. Removed from primary duty 15 OCT 06.

⁴ Officers are evaluated by a "rating chain," which normally includes a Supervisor, who is normally the person to whom the Reported-on Officer reports on a daily basis and who completes the first 13 numerical marks in an OER and their supporting comments; a Reporting Officer, who is normally the Supervisor's Supervisor and who completes the remaining marks and comments in an OER; and the Reviewer, who is normally the Reporting Officer's Supervisor, who reviews the OER for consistency, and who need not have observed the Reported-on Officer's performance. PERSMAN, Arts. 10.A.2.a., 10.A.2.d.1.a., 10.A.2.e.1.a., and 10.A.2.f.1.a.

MARKS AND COMMENTS IN THE DISPUTED SOER

#	CATEGORY	MARK	WRITTEN COMMENTS
3a	Planning and Preparedness	3	Often caught unprepared for ops w/ Navy Expeditionary Strike Group (ESG) units during u/w exercises; failed to prep for scheduled ops; daily ops briefs weak despite specific tasking provided in writing & verbal feedback provided on numerous occasions. Failed to adjust priorities to that of command. Insistent that staff prepare for equator crossing ceremony but seemed unconcerned about readiness posture in CIC [Combat Information Center] or DOD exercise event schedule. Intelligent officer; spent long hours researching issues. Failed to use expertise of staff; delegation sometimes done with no apparent follow up & loss of awareness of project status, chart/trackline updates for deployment, mngmt of comms/RADIO. Subordinates sometimes left wondering what to do while ROO was overwhelmed with work. Taskers often not relayed to resp. parties resulting in missed deadlines; Ex: improvements to nav brief, daily ops brief, status of flight deck cert. Sometimes missed helpful comments from ESG staff; missed opportunity to provide input to strait transit plan could have impacted negatively on CG & XXXX except noticed by CO & corrected by staff working through the night. Good shiphandler in most conditions. Moored ship safely; coached young JO during heavy [weather] at sea. Difficulty performing under pressure; once appeared to freeze during simulated missile drill as TAO, very confused during port breakout drill with ESG. Subordinates voiced lack of confidence to command.
3b	Using Resources	3	
3c	Results/ Effectiveness	3	
3d	Adaptability	3	
3e	Professional Competence	3	
4a	Speaking and Listening	3	Comments to officers/chiefs gatherings & at quarters sometimes inappropriately loud for audience, reducing effectiveness of message. Sometimes gave long, drawn out responses to relatively easy questions re speed req'd for next leg of transit, expected time for flight ops, etc. Inability to speak in concise, clear terms degraded confidence of audience. Good writer. Sometimes wrote too much info where short responses would have been more appropriate; lengthy email responses to short questions made it difficult to understand key points requiring additional follow up.
4b	Writing	4	
5a	Looking Out for Others	4	Argued for relaxing ODU uniform on watch & for command to pay increased attention to details of equator crossing ceremony. Did not always use strong skill sets in CIC watchstanders, some with several yrs Navy experience could have been employed better to assist with DOD ops. Continued aggressive PQS program for CIC watchstanders, resulting in additional qualified pers, critical during extended deployment. Somewhat detached from long-term plans for development of pers in Comms Div & Bridge Div. Ineffective as senior officer in CIC despite prior experience as CIC watchstander; extensive formal training, numerous exercises, & tutelage from peers/command. Rarely asked for help except during crisis when requests for help eroded confidence of subordinate watchstanders. Ex: Lack of oversight of CG aircraft under XXXX control. CIC team failure during simulated missile attack; port breakout ex[ercise]. Failed to establish positive relationships w/ Div officers/Chiefs or other dept heads. Sometimes ordered others to provide needed info rather than partnering to develop common sense of purpose. Ex: Inputs for daily situation reports/ briefs, integrated training team planning, logistic requests, ESG ops skeds. Supported COMDT workplace policies. Enlisted evals on time w/ appropriate justification. Completed O2 Officer evals; very well written & on time.
5b	Developing Others	4	
5c	Directing Others	2	
5d	Teamwork	2	
5e	Workplace Climate	4	
5f	Evaluations	5	
6	Signature of the Executive Officer of the cutter as Supervisor, dated October 22, 2006		
7	Reporting Officer's Comments	NA	[Concur.] Performance during this abbreviated period can be described as unfocussed, ineffective & extremely tentative. Appears overwhelmed by fast moving preparations for Out of Hemisphere deployment. Since deployment began has been struggling at nearly every juncture. Organization, prioritization and follow-up virtually non-existent. Informal counseling on several occasions by command cadre failed to make a difference in performance. Has failed to channel energies into a viable leadership style. Subordinates have expressed doubt to command about ability to lead.
8a	Initiative	2	Marginal initiative [with respect to] CENTCOM deployment ops. Specific direc-

8b	Judgment	2	tion & close follow up required on several deployment issues, hesitant to conduct critical liaison or provide timely input to counterparts on other ESG units. Requires detailed direction & command follow-up for nearly all reports. Accepted gratis navigational product from Boeing Corp. representative after being told to wait for guidance by command, calling into question judgment. As navigator, failed to properly supervise navigational preps for Philippine Strait transit, missing a critical track leg & using wrong scale charts, resulted in ship transiting in proximity to shoal, direct command intervention required. As TAO, failed to properly supervise ADC [air direction controller] during flight operations, resulting in unit HH65 crossing into air space of 3 different ESG units; seeming oblivious to consequences, command intervention required to relieve ADC. Has stated confusion about role as senior leader aboard cutter, giving distinct impression of uneasiness with critical responsibilities of Dept Head. Hesitant & inarticulate under pressure during combat exercises. Difficulties building strong professional relationships with Dept Head peers. Appears in good health and meets all COMDT Standards.
8c	Responsibility	2	
8d	Professional Presence	3	
8e	Health & Well-Being	3	
9	Comparison Scale	2	[A mark in the second spot denotes that the officer is a "Marginal performer; limited potential."]
10	Potential	NA	This officer has limited potential to successfully perform present responsibilities. I have lost confidence in ability to lead the operations department during a very dynamic and challenging CENTCOM deployment. I am relieving this officer of responsibilities of the Operations Officer, Navigator and Tactical Action Officer. I do believe this officer has the capacity to serve successfully in other operational assignments in the future, and should be given the opportunity to gain professional experience necessary to handle challenging fast paced assignments. Assignment ashore to a Command Centre or similar position is recommended.
11	Signature of the CO of the cutter as the Reporting Officer, dated October 22, 2006		
12	Signature of the Chief of Area Cutter Forces Management as the Reviewer, dated December 5, 2006		

Applicant's Addendum

Because the SOER was a "derogatory report," the applicant was permitted to submit an addendum,⁵ in which she alleged that many of the problems she encountered on the cutter were due to incomplete staffing and untrained personnel. She reported aboard two weeks before the start of "workups" with the Navy in preparation for their deployment, and the Operations Department "had a long way to go" to adapt from standard operating procedures (SOP) for a Coast Guard patrol board to Navy SOP. The Combat Information Center Officer (CICO) did not arrive on board until September and was unfamiliar with Navy SOP; the lead OSC in the CIC had no experience with radar and went on leave during the workups; the one CIC watchstander with prior Navy experience lacked a security clearance and could not enter the CIC; and a new BMC navigator arrived during the final week of the workups. Until her last two weeks on board, her only experienced junior officer was serving as both the CICO and the Assistant Navigator. In addition, communicating about schedules for drills, etc., with the Navy was very difficult as many of her queries via email and telephone calls went unanswered.

⁵ A "derogatory report" includes any OER that "[d]ocuments adverse performance or conduct that results in the removal of a member from his or her primary duty or position." PERSMAN, Art. 10.A.4.h.1.c. Submitting an addendum to a derogatory report "provides the Reported-on Officer an opportunity to explain the failure or provide their views of the performance in question." *Id.* at Art. 10.A.4.h.2. The Supervisor and Reporting Officer may prepare written comments concerning matters address in the addendum, and these comments are also attached to the OER and the addendum. The Reviewer "shall ensure that the evaluation of the Reported-on Officer is consistent and that the derogatory information is substantiated. If the Reviewer finds otherwise, he or she shall return the report to the Reporting Officer for additional information and/or clarifying comments." *Id.*

The applicant wrote that because of repairs and renovations, the cutter had been underway for only 45 days during the prior year, so even many of the continuing crewmembers had little underway experience. Despite these problems, her department worked very hard to learn Navy SOP and to train those who had little or no underway experience. Furthermore, as the TAO, she was standing 1 in 3 watches⁶ and overseeing drills one or two more hours each day, and eight to ten more hours during the workups.

Regarding the flight deck certification, she wrote that as soon as she noticed that it had not been received, she initiated emails and telephone calls to no effect until she sent an official message, which received a quick response, and she forwarded it to the XO.

Regarding the equator crossing ceremony, the applicant wrote that the comments in the SOER exaggerate her interest in the matter. She simply mentioned the ceremony to the Morale Officer and the Command Master Chief a few days before the crossing and “mentioned it in passing a few other times but ... never got involved in planning it beyond speaking to the [Engineering Officer] about it for a few minutes once he had taken over the project.” Regarding her request that the watchstanders be allowed to forgo wearing the standard ODU (Officer of the Day Uniform) shirt while on watch, she did so at the request of several subordinates after the weather got extremely hot when they entered the tropics because she knew that the ODU requirement had been relaxed on other patrols. When her request was denied, she “did nothing more than ensure that the uniform was enforced.”

Regarding her conduct during quarters (department meetings), she stated that she was never told that she was speaking too loud and that the meetings were held near the hangar, where it was difficult for them to hear each other over the noise of the engines and ventilation system. In addition, she stated that she only gave longer explanations when she believed they were needed, such as when there were variables that could affect whatever was under discussion.

The applicant denied being confused during the port breakout drill, and noted that “it was difficult to maintain an accurate picture of what was going on since I was in CIC and it was primarily a small boat attack drill run from the bridge. We discussed lessons learned for CIC afterwards and took it as a learning experience as none of us had done anything like that before.” Regarding their exercises with the Navy, the applicant wrote that their difficulties

were compounded by the difference in Navy and Coast Guard combat capabilities. While a Navy TAO is stationed in front of computer screens and mainly listens to the recommendations from other warfare areas and authorizes their suggestions for use of force, this is not possible to the same degree on a 378' [Coast Guard cutter]. For example, a Navy TAO does not listen in on voice comm[unication]s with the Helo, but instead takes status updates from the ADC [air direction controller]. This is what I was doing in the situation mentioned in the [SOER] comments. The difference between TAO School training and real life meant that I was learning how the Command

⁶ A “1 in 3” watch means that the member performs two 4-hour watches each day, with 8 hours between the end of one watch and the beginning of the next, on one of three schedules: Midnight to 4:00 a.m. and noon to 4:00 p.m. (known as the “mid watch”); 4:00 a.m. to 8:00 a.m. and 4:00 p.m. to 8:00 p.m.; and 8:00 a.m. to noon; and 8:00 p.m. to midnight. UNITED STATES COAST GUARD RESEARCH AND DEVELOPMENT CENTER, Report No. CG-D-13-01, U.S. COAST GUARD GUIDE TO THE MANAGEMENT OF CREW ENDURANCE RISK FACTORS, 3.4.5.1. (Sept. 2001), available at <<http://stinet.dtic.mil/cgi-bin/GetTRDoc?AD=A396127&Location=U2&doc=GetTRDoc.pdf>>.

wanted it run during the exercises and was compounded by the fact that neither my Chief (when he was there) or any 1st class PO [petty officer] had ever done a traditional RD [radar] job before. It is very difficult to act as senior leadership while trying to train the PO's and Chief on how to acquire tracks, make voice reports or direct a helo, as TAO School by no means makes one an RD or ADC or teaches one how to train RD's on the finer points of their jobs. I was only able to ensure that there was a robust training program, which I am credited for in the OER comments.

The applicant alleged that the comment about the CIC failure during a simulated missile attack is absolutely wrong. She explained that during the simulated attacks, they received reports of incoming missiles from aircraft and avoided all of these. However, a while later, they received a chat message saying "Missile inbound to XXXX," with no bearing, range, or physical representation provided. After her request for such information received no response, she initiated a response based upon the direction of the last threat they had received. She then received a chat message saying that they had shot down only one of two incoming missiles and so were out of the exercise for the next three hours. The XXXX was one of the last vessels to take a "hit" in this way, and when she later asked the Navy trainers what they had done wrong, she was told that the cutter was "hit" because it had been decided that every vessel was going to be hit at least once during the exercise. She explained this to the CO and thought that he had understood and accepted the explanation.

Regarding the "navigational product" from Boeing, the applicant alleged that prior to the cutter's deployment, she was told that "we were going ahead with the Boeing project." She later learned "that there was confusion between two simultaneous Boeing projects" being led by the same people, but she did not know this at the time. Because of this confusion, a Boeing program was loaded onto a stand-alone computer on the cutter for less than one day, and it was never used because she deleted the program ten minutes after learning that it was a different Boeing project that had been approved. The applicant wrote that she explained what had happened to the XO and CO, and they seemed satisfied with how she had fixed the problem and did not criticize her "judgment," although the incident was used in the SOER to justify a mark of 2 in that category.

The applicant alleged that she did not have a negative relationship with any department head, division officer, or division chief, but worked 18+ hour days her entire time aboard the cutter and so had "very little time to discuss anything at length. I certainly did whatever I could to provide them with whatever they needed from me." She also denied feeling any uneasiness or confusion about her role as the Operations Officer and head of the Operations Department. She stated that she loved working aboard cutters and had hoped to make a career afloat. She was "100% dedicated to the mission and the crew and was willing to put in any amount of work necessary to ensure we succeeded." However, although her subordinates were dedicated, they "had not been trained in how to deploy with the Navy." Her counterpart on a Navy ship consisted of three people—a LCDR Operations Officer, a LT Assistant Operations Officer, and a LTJG Navigator—and they had numerous junior officers, chiefs, and petty officers "who had done the mission before and were not required to follow CG operational policies concurrent with the Navy ones." Her position was "quite possibly the most difficult position in the Coast Guard and [she was] expected to ensure we could out-perform a strike group of newer ships with better trained crews and far superior weapons and technology." The applicant stated that she did not know until about ten days before she was removed from the cutter that the difficulties her department encountered as they mastered Navy standards and policies were being counted as black marks against her despite "the numerous times we were commended by the ESG on a job well done."

Rating Chain's Endorsements of the Applicant's Addendum

The XO forwarded the applicant's addendum without written comment. The CO wrote that the training and staffing short-falls on the XXXX "are similar for most cutters during the summer transfer season. While these factors may have been accentuated by lack of underway time the previous year, allowances were made for this in my appraisal of [the applicant's] overall performance and opportunity was given to show progress towards managing the workforce and other responsibilities."

The Reviewer forwarded the addendum stating that he had carefully reviewed it and "found no evidence of inconsistencies, and that the derogatory information is substantiated." He concurred with the CO's description of the applicant's future potential. He stated that the "dynamic and challenging Strike Group workups and subsequent CENTCOM deployment were an obvious mismatch with this officer's current abilities and expertise. However, I do feel this officer has the capacity to grow and gain the necessary operational seasoning and experience that would again make her competitive for future assignments."

Following her removal from the XXXX, the applicant was assigned to serve as a Command Duty Officer, standing watch in a District command center, where she supervised and allocated resources for the District's operations. She has received excellent marks on her OERs in this position and strong recommendations for promotion.

APPLICANT'S ALLEGATIONS

The applicant alleged that the SOER is "filled with exaggerations, prejudice and outright fallacies." The applicant stated that she reported to the XXXX on March 31, 2006, while still an LTJG. Two days later she was sent off the cutter for eleven weeks of training at the Navy's Tactical Action Officer School. She returned to the ship on June 19, 2006, after having been promoted to LT, and she assumed the position of Operations Officer on June 23, 2006, when the prior Operations Officer departed. The CO took command on June 30, 2006, and on July 5, 2006, the XXXX "got underway from Seattle to conduct two months of extensive, arduous training with our Navy Expeditionary Strike Group (ESG) in the San Diego area."

Upon assuming the duties of Operations Officer, she learned that two-thirds of the crew had transferred, so there were "very few personnel qualified to stand watches for a Coast Guard patrol, let alone successfully participate in a Navy ESG." In addition, her department had almost no experienced senior enlisted personnel to fill the key positions. For example, because of the recent merger of the quartermaster and boatswain's mate ratings, there were "no prior Quartermasters in the Navigation Division" who could safely navigate a large cutter, and the Chief for that division did not arrive on the cutter until after the ESG exercises were completed. Likewise, the Radarman rating had been merged with the Telecommunications rating to form the Operations Specialist (OS) rating, and none of the OS crew were prior RDs. Moreover, when merging the two ratings, "the Coast Guard had cut out the portions of the RD training that applied to Navy operations and would be vital to the assigned mission." Therefore, her two most important divisions—Navigation and the Combat Information Center (CIC)—"were being led by chief petty

officers who had spent their entire careers in other mission areas and had been given little or no training for the jobs in which they were looked to as experts.”

The applicant stated that because of these staffing and training gaps, during the “workup” exercises with the Navy that began in mid July, her department had no Navigation Chief, an inexperienced CIC Chief, one moderately experienced OCS ensign trying to manage both the Navigation and CIC Divisions, and one brand-new Academy ensign learning the ropes with the Radio Division.” In addition, they had very few qualified CIC or bridge watch standers of any rank or rate. Therefore, she urged everyone into a robust training program to try to close the gaps and “hoped that the Command would understand the difficulties we faced as well as our efforts to overcome them.”

The applicant alleged that the command climate created by the new CO, however, made her very difficult situation almost unbearable. Because she believes her own claims in this regard might sound simply vengeful because of the SOER, she has submitted four statements from other crewmates, which are summarized below. She noted that her allegations about the CO’s attitude and conduct are also supported by the fact that he was relieved of command of the XXXX for striking an enlisted watchstander a few months after her departure.

The applicant stated that at first the CO seemed “tough but fair” and, when she explained the staffing problems her department faced, he seemed to understand and was “determined to get us up to speed” prior to reaching the Middle East. However, once they began working with the Navy, he became increasingly “angry, irrational, belittling, and even physically violent.” She first encountered his anger on July 16, 2006, during one of their first exercises with the Navy. She was in the CIC but was not acting as the TAO; instead, she was an observer, taking notes on areas for improvement. The Navy ships were much better equipped for the exercise: The Navy cruisers could detect aircraft up to 300 miles away, whereas the XXXX’s detection range was just 100 miles; the Navy cruisers could shoot aircraft down with advanced missile systems, but the XXXX had only a “main gun”; and the Navy cruiser had an “advanced tracking system,” while the XXXX had a very old system that lost connectivity frequently. Therefore, during the exercise, the Warfare Area Commander was not selecting the XXXX to participate in shooting any of the targets, which enraged the CO “who began to belittle me and the enlisted personnel in CIC, as though [our] failures were due merely to a lack of effort or interest.” When she tried to explain to the CO that their difficulties were due to training and equipment,

he turned his fury on me ... he grabbed me by the upper arm and pulled me to the center of CIC. Standing just inches away from me, towering over me, and still holding tightly to my arm, he proceeded to berate and humiliate me in front of my own Department. He told me that I had better look around, because my lack of effort would get them all killed in the Persian Gulf, etc. I saw the crew looking at us, but I felt completely powerless and unable to speak. In that instant, my trust in his leadership was shattered, just as I feared he had shattered my personnel’s trust in mine. Just as quickly as he had come in, the CO let go of my arm, turned on his heel, and left CIC.

Later the XO offered to speak to the CO on her behalf, but she asked him not to because she feared retribution from the CO. In retrospect, she realizes that she should have taken her complaint outside of the command, but at the time she rationalized the CO’s actions as “simply passionate” and she wanted to “avoid the complications inherent in making that type of accusation.” However, the applicant alleged, the

incident in CIC pretty much set the tone for the deployment, and just about everyone in the Department came to fear the CO's rage. On multiple occasions, for example, he slammed phone receivers down hard enough to break them, and would berate personnel for equipment failures and situations beyond their immediate power to prevent. On more than one occasion, he threw things at us or towards us, including an incident during a morning brief with most of the officers and chiefs present. He grabbed my pen from me and threw it as hard as he could at my Nalgene water bottle, which was about 2 feet away from him and right next to me. It bounced off and hit me in the chest, just as he stormed out of CIC. I provide these examples not as an indictment of the CO, but instead to paint a picture of the Command Climate that we all had to deal with onboard XXXX.

The applicant stated that her difficulties as the Operations Officer were compounded by the fact that she had to stand watches due to the lack of qualified watchstanders, whereas Operations Officers do not usually stand watches, and she had to stand 8 hours of TAO watch every day. The applicant described her days on the XXXX as follows:

Just as I would come off my morning [4:00 to 8:00 a.m.] watch, the day's events would begin, and I would have to return to CIC to take over as Primary TAO, where I would remain until my evening [4:00 to 8:00 p.m.] watch began. Since the XO insisted that I still attend evening reports and I had to be awake first thing in the morning for the Operations Brief, the only watch that I could stand was the 4-8's, meaning that I was on watch during the Exercises from 0330 until 1930, with only a few short breaks for meals. It was only after watch and evening reports that I was able to start in on the massive task of acting as Operations Officer for a major cutter—normally a full-time job. To try and keep up, I would work until one or two in the morning, then try to get a few hours of sleep before getting back up for watch at three. The rotation was grueling and exhausting, but made immeasurably worse by the Command's refusal to act as though I had any less time in the day for my normal duties as would a regular Coast Guard Operations Officer on a Coast Guard patrol. I was expected to do too much, but when I tried to explain this to the XO, he told me that I had better just get used to it. My requests to make changes within my own Department—such as by moving my division officers around to reassign the XO's Administrative Assistant, an Academy ensign with one year's experience, to the Navigation Division while I awaited qualified relief—were frequently taken by the XO as personal attacks against his leadership & decision-making instead of simply attempts on my part to streamline and overcome our manning challenges. From the time of the incident in CIC onward, I felt almost as though the Command were pushing me toward failure, as though they wanted me to fail and were just looking for ways to justify it.

The applicant stated that the XO made it very clear from the beginning that he was unwilling to confront the CO or even tell him the truth. During a fueling at sea evolution, the XO was supervising an ensign serving as the "conning officer for speed," while the applicant supervised the "conning officer for course." She had warned the XO that the "conning officer for speed" had no experience. During the evolution, the cutter went too fast and got too far forward because the XO waited too long to tell the ensign to slow the vessel. The CO "exploded in rage" and asked the XO who was at fault. The XO blamed the ensign, and the CO screamed at the ensign and made her leave the bridge. Therefore, she planned to allow the ensign to be a conning officer during their approach to Singapore a few days later to help the ensign regain her confidence. However, when she discussed the matter with the XO, he said that the CO would not let the ensign drive the ship again and it was clear to her that the XO would never confront the CO on behalf of his subordinates.

As another example of the XO's alleged attitude, the applicant stated that each day she prepared an Operational Summary for the command. The XO often rewrote entire paragraphs before handing it to the CO. "On multiple occasions, the CO would berate me for the wording of

paragraphs that the XO had actually written himself, but the XO would simply shake his head disapprovingly at me, as though he had not been the author.” The applicant chose to remain silent rather than “rat out” the XO, but felt even further alienated from the command.

The applicant alleged that both the XO and the CO “refused to be pleased or satisfied with anything [she] did.” At one meeting, she reported that her calculations showed it would take seven full days, from noon on September 16 to noon on September 23, 2006, to transit from Seattle to Hawaii. However, the CO insisted that that was eight full days and that they should be able to make it in seven. Other department heads spoke up and agreed with her that it was seven days, rather than eight, but the CO “berated and belittled me in front of them all as he continued to incorrectly count the dates on his fingers by including the 16th and the 23rd, with only 12 hours of transit time each, as 2 full days. He later told me that I was either lazy or stupid, and tried to force me to pick one.” Therefore, she sent an email to the XO with the details of her calculations, and the XO responded that she had insulted him and wasted his time by providing so many details “when a simple ‘yes’ or ‘no’ on whether or not we could make it to Hawaii early would suffice. ... This is but one example of the situation I faced each day—whether concerning transit times, weapons capabilities, the quality of the intelligence summaries sent to us by Pacific Area or the excess or lack of information contained in the daily Operations Brief.”

The applicant alleged that aside from belittling her in public, the CO and XO only formally counseled her once before she was removed from her position. During the counseling session, which occurred on the way from Hawaii to Singapore, the CO said that she needed to “improve” but that he was not considering removing her. He told her that she “needed to be more involved in the details of my Department” and better friends with the other department heads, but did not give her much specific direction. He suggested that she chat with the other department heads at breakfast, but she was still standing watches at breakfast time. Later, the XO told her to delegate more and take more “personal time” to be happier, but that advice contradicted the CO’s. The applicant stated that she had already asked for certain jobs to be reassigned within her department so that she would not have to stand so many watches, and her requests had been refused and so her hands were tied but they “criticized [her] for not being able to juggle all that was handed to [her].”

Two days after the counseling session, the CO volunteered her for “two huge additional responsibilities. First, to create the Straits Transit Plan for our passage through the Philippine Islands and second, to take over the immense task of acting as Surface Warfare Commander for the remainder of our transit to Singapore.” Whereas the Navy cruisers had teams of personnel trained to do these things, she was the only person in her department who had attended TAO School and knew what these duties entailed, so she had to do it herself or train her “already exhausted personnel in how to help” her. Moreover, she was not told that she was personally responsible for the Straits Transit Plan until the night before the brief was due. On the cutter’s last night in Singapore, the applicant alleged, the CO called her in and told her that she

had done a good job, but that he thought he could get someone better. He said that I would have been successful had we been conducting a regular Coast Guard patrol. He told me that he didn’t think that any of our TAO’s could successfully “fight the ship” in an attack, but that he believed others could do better than I could. Most shocking was the CO’s declaration that he had decided 2 weeks after his arrival that I was simply not the OPS boss he wanted, and now he had a replacement. ... I later found that the Command had been lying to me for the previous weeks, and that

they had been making arrangements to replace me even before I was first counseled—that they had contacted [another lieutenant] and asked him if he would replace me. Prior to my arrival at the Command Center [that lieutenant] learned from several of his friends onboard what the Command Climate was like, and withdrew his request to go. With this knowledge, the Command's refusal to be satisfied with any of my actions and their combination of counseling and additional responsibilities seemed, in my mind, to fall into place.

Regarding the comment in the SOER that she was often caught unprepared, the applicant stated that scheduling and communications with the Navy were very difficult, and that the CO or XO would often “receive the answer [to her inquiries] unsolicited before [she] could get [an answer] through efforts on [her] end.” Regarding the strait transit brief, the applicant alleged that she did not prepare one because she had been expressly told that she was not expected to prepare one, although the CO had asked the ESG for this responsibility. When the CO discovered an email tasking them with the job late in the evening before the brief was due, he became enraged when she told him that she had not prepared a transit brief. The XO later recommended that she not try to explain it again to the CO “but instead to simply take the blame and move on.”

Regarding the allegedly weak “ops briefs,” the applicant alleged that the CO had unreasonable expectations. He expected them to create their own intelligence slides even though they had no Intelligence Team or information from the PACAREA. In another case, the CO asked them to “list all upcoming message requirements,” and the XO berated them for not including the message requirements of other departments, such as logistics, engineering, and weapons. When they produced detailed slides with this information the next day, the XO accused her of mocking him by providing too much information. But when they removed those slides from the presentation, the CO was angry they had done so. The applicant stated that the CO required very detailed morning briefs, and his desires constantly changed, so that it seemed “they were determined to find fault with our efforts and, in particular, me.”

The applicant denied that her subordinates were ever left “wondering what to do.” Regarding her allegedly unrelayed “taskers,” she stated that the XO and CO would daily give her a to-do list while she was “on watch in CIC and unable to locate many of my subordinates to pass these ‘taskers’.” They would often ask her if the tasks had been completed before she had had a chance to ensure that they were. Regarding the flight deck certification, the applicant alleged that she was “not responsible for this until there was a problem.”

Regarding the comment that she had frozen during a simulated missile drill, the applicant alleged that she froze because the CO had grabbed her by the arm, not because of what was happening in the drill. In addition, the applicant alleged that the comment about her becoming “very confused” during a drill is twisted and taken out of context. She alleged that this port breakout drill was a simulated small boat attack run from the bridge by the CO and the XO and that the person who was charged with reporting what was happening to the CIC, where she was located, failed to report properly. Therefore, during the brief afterward, she reported that because of the lack of information about the attack being passed to the CIC from the bridge, she and others in the CIC were “very confused about what was going on.” She reported this problem so that they could develop “a better system for passing information, not to express any confusion or difficulty on my part.” The applicant alleged that if any of her subordinates voiced a lack of confidence in her, it was likely because the CO was “always publicly criticizing and berating” her.

Regarding the comment that she was ineffective as the senior officer in the CIC, the applicant stated that she “got the feeling that the CO wanted [her] to scream and rant at the CIC personnel,” which she could not do in good conscience because their lack of training in the skills needed in the CIC was not their fault. She could only ensure that there was a robust training program, and she is credited with that in the SOER. In addition, she alleged that while her TAO training taught her to use a computer to communicate online in a chat room with other TAOs, the CO wanted her standing in the middle of the CIC, away from the computer, listening to all of the radio communications from each warfare area.

Regarding the drill in which the helicopter passed into the air space of three different Navy vessels, the applicant stated that she was training a new ADC, who was not yet qualified to direct low visibility approaches, and the glitch in the radar, which she thought had been fixed, recurred. The pilot complained directly to the CO that they had “almost killed” him, and both she and the ADC were publicly berated. Moreover, she stated that as the TAO, she was not responsible for direct oversight of the flight patterns, which is the responsibility of the ADC.

The applicant again denied having negative relationships with any other department head or division chief. She also denied ordering others to provide needed information, instead of “partnering” with them. She also stated, contrary to the comment that she was hesitant to “conduct critical liaison or provide timely input to counterparts on other ESG units,” that she had exhausted every avenue she could think of in trying to communicate with the Operations personnel and carrier support staff, but “they were almost impossible to reach.” Moreover, as with the strait transit brief, the Navy often provided information only to the CO, which he failed to pass on timely to her.

Regarding the comment about “marginal initiative,” the applicant alleged that the comments about her long hours of research and being overwhelmed with work contradict this characterization of her initiative. She further stated that she worked exhausting hours and was never counseled about failing to show initiative. She stated that the CO and XO “from the beginning and without cause sought to direct [her] in the day-to-day operation of [her] Department, demanding oversight on issues as low-level as the Watch Schedule.” They also directed her tasking and gave her subordinates some major projects without advising her.

Regarding the Philippine Strait Transit, the applicant stated that they did *not* miss a track leg. They had plotted all the track lines correctly on the proper chart, but the schedule changed the night before the transit, and she did not realize that the Navy had added an extra waypoint to move them farther from waters that were potentially too shallow for the aircraft carrier. Since she was standing watch in the CIC during the transit, she could not see which chart the bridge team was using. However, their use of the wrong chart simply meant that the hazardous water appeared closer to them on the chart than it actually was, which posed no additional danger to the cutter. Moreover, command intervention was not required. When the navigation and CIC teams noticed the problem, they simply turned the ship and directed it on a new course.

Regarding the allegation that she had expressed confusion about her leadership role, the applicant alleged that this comment concerned only an expression of frustration she made when she learned that the XO had allowed the Deck Division, which was part of her department, to spend her department’s money without her knowledge.

The applicant alleged that the only time she was hesitant and inarticulate under pressure was when she was being intimidated by the CO. The applicant stated that during her six years as an officer, she has “stood down belligerent fishermen as a Boarding Officer, kept [her] cool as a Deck Watch Officer when the engines suddenly shut down during a dangerous harbor transit, maneuvered a patrol boat around numerous hazards to shield a nuclear submarine from potential threat and navigated across a hazardous breaking bar” that even the CO of the patrol boat doubted he could do successfully. She always performed as required and was never accused of being hesitant or inarticulate, but it “is hard to describe what happens to you ... when you are subjected for months to the belittling, demeaning comments of a Commanding Officer who seems determined to prove to himself that you are not worthy of the position.”

The applicant noted that as a Command Duty Officer at her subsequent assignment, she qualified for the position in an unprecedented short time and has received “nothing but high marks and praise for [her] work there.” The applicant stated that she is “very introspective by nature” and would not ask for the removal of the SOER if she had “any belief that the failures set down ... were true.” She is asking for its expungement because “it is inaccurate and prejudiced, based on the arbitrary and capricious demands and expectations of my command.” In support of her allegations, the applicant submitted four statements from her subordinates in the Operations Department, which are summarized below:

Statement of the OSC of the Combat Information Center

A chief operations specialist (OSC) in the CIC on the cutter stated that she believes the applicant was treated unfairly. The command climate aboard the cutter was “miserable. Senior members were cursed at regularly by the CO in front of subordinates. Explosive tirades on the Bridge and CIC occurred on a regular basis and there was always a feeling of walking on egg shells. The CO seemed to be intensely angry at someone or some circumstance most of the time. ... The Executive Officer ... exacerbated these situations by acting as a police detective, questioning someone he already determined to be guilty of dereliction of duty. The conversations in the Chief’s mess concerning the oppressive leadership and fear driven command climate were frequent amongst all the Chiefs with the exception of one,” who was a close friend of the CO and would report everything said to him. The OSC stated that the applicant “communicated clearly and professionally during stressful situations. The times when I witnessed her having trouble communicating was when the CO was screaming and cursing at her. [She], as far as I could tell, had a positive working relationship with all the Chiefs in the Mess. As a member of the Mess, I never heard anyone saying they were having difficulties working with her.”

The OSC stated that although she, herself, steered a helicopter into the airspace of other ships during a drill, the applicant, as the TAO, took most of the blame. During that drill the radar “was experiencing a recurring problem maintaining a solid return on the scope when the Helo was in flight. This made it almost impossible to see where the Helo was during flights.” Although an electrician’s mate tried to fix the problem, it was not fixed during the drill. Eventually, the pilots asked to navigate themselves, and she agreed. The next day, the CO publicly dressed her down and replaced her as the Air Direction Controller (ADC) by a subordinate in front of her entire division. Two weeks later, after the electrician changed the video card, they

were able to complete the drill successfully. The OSC stated that she does not “see how [the applicant’s] actions could have prevented what happened.”

Regarding the morning briefs, the OSC stated that the command’s expectations continually changed, and no matter how hard they tried, something was always wrong, either with the presentation, or the format, or the information provided. Upon the applicant’s departure, the OSC stated, three male officers were sent in temporary stints to fill the position of Operations Officer for the rest of the deployment. The CO never dressed them down in the same manner he had dressed down the applicant for similar mistakes.

Statement of the OSC of the Communications Division

The OSC who served as the lead petty officer in the Communications Division on the cutter stated that, prior to their overseas deployment, she and the applicant “worked together to ensure all known communications and security issues were resolved prior to deployment.” In the summer of 2006, about one-third of the crew had transferred and been replaced. In addition, three members in the CIC lost their security clearances due to debt issues. Therefore, “CIC and Radio were both undermanned for this patrol.” However, the applicant “always displayed a positive attitude and worked as a team player with Radio and CIC personnel. As a leader, she always absorbed the brunt of the Captain’s angry displeasure when Radio or CIC did not live up to his expectations. Unfortunately, she came into a command where minor problems in every division were blown out of proportion and thus became major problems which affected morale. This ultimately created a highly stressed environment throughout the entire ship, resulting in many individuals, both enlisted and commissioned, retiring, deciding not to reenlist, or transferring with tainted memories after the patrol.”

Statement of the First Lieutenant

The First Lieutenant⁷ of the cutter, a chief warrant officer who reported directly to the applicant, stated that 2006 was a hectic year because the cutter was undergoing a two-month yard period and a six-week training exercise with the Navy before deploying to the Middle East in September. Between the yard period and the six-week training with the Navy, a new CO reported aboard. The new CO was

arrogant and abrasive ... simply an abusive individual who thought nothing of the crew and their welfare. Unfortunately for [the applicant], she became a lightning rod for his abuse. From my perspective, [the CO] seemed very dismissive of her opinions and recommendation while taking enjoyment, in the form of openly chastising and berating her, in any misstep she or one of her subordinates made or was perceived to have made. I felt that [the applicant] was a very competent officer who was not given any chance to succeed. I found her to be a hardworking and level-headed officer who always had time to help anyone who needed assistance. She never once complained about the abuse she was subject to, and she outwardly supported the command in all their decisions. I do not know why [the CO] singled her out, but I feel it could possibly have been because of her sex as the three other Operations Officers that followed were male and they did not nearly put in the effort that she did, yet they were openly praised by [the CO] and were rewarded

⁷ On a vessel, the “First Lieutenant” is a position—the head of the deck department or division—and does not necessarily hold the rank of lieutenant. UNITED STATES COAST GUARD, COMDTINST M5000.3B, UNITED STATES COAST GUARD REGULATIONS, Chap. 6-7-1 (1992).

upon their departure. ... It should be noted that the [CO] was recently relieved as Commanding Officer ... and found guilty at Admiral's Mast for assaulting an enlisted member. This speaks volumes to what the crew, and specifically [the applicant] had to endure onboard [the cutter] ... [H]er career should not hinge on one obviously slanted and grossly unfair [SOER]."

Statement of an OS2 in the CIC

An OS2 stated that during an air defense drill in August 2006, the CIC was manned by between seven and nine OS watchstanders; herself as the acting CIC watch supervisor; the applicant as the TAO; and the new CO. During the drill, "there was a lot of confusion within CIC over something that had been missed by the watchstander on air radar." While the OS2 was trying to help the watchstander and to let the Navy vessels know what was happening, she heard the CO raise his voice at someone. Then the CO yelled at her to contact another ship, but

he was trying to get me to do it on the wrong frequency. I did not know how to correct him so I just stood there for a second trying to get to the other radio. He threw his pencil at me and it flew by and hit the TV screen. I do not remember what he said or what was going on at that point, except I just picked up the radio he wanted me to and I tried to call out to the other vessel. ... [After the other vessel failed to respond] I could hear the Captain yelling at [the applicant] about the drill going poorly, and I looked over and saw him grab [her] by the arm and pull her to the middle of the room. He was yelling at her but I was trying not to pay attention After the debrief, I walked over to [the applicant] who looked very upset

VIEWS OF THE COAST GUARD

On November 18, 2008, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended granting partial relief by changing the start date of the evaluation period for the SOER to the date she actually reported to the cutter, which was March 30, 2006.

The JAG argued that the applicant's "allegations and lack of persuasive evidence has not established fact to overcome the presumption that her rating chain acted correctly, lawfully, and in good faith in evaluating and documenting [her] deficient performance." The JAG stated that the SOER was submitted in accordance with Article 10.A.3.c.1.a. of the Personnel Manual and documents her CO's decision to remove her as the Operations Officer. The JAG stated that the OER "accurately reflects the applicant's serious performance deficiencies" as observed by the XO and CO of the cutter. The JAG also argued that the fact that the applicant has performed well in other assignments is not probative of the validity of the SOER. Citing *Grieg v. United States*, 640 F.2d 1261, 1269 (Ct. Cl. 1981), the JAG argued that it "is a well settled point of law that the mere fact that [an applicant] had better ratings either before or after the disputed OER is of no legal moment or probative value as to [the] rating period covered by [the] disputed report." Therefore, the JAG recommended that the Board correct only the reporting date on the SOER.

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On January 2, 2009, the applicant responded to the views of the Coast Guard. She stated that the SOER "does not accurately portray [her] performance while onboard" the cutter. She stated that she has always "striven to be a model of behavior and performance," and her other OERs reflect this effort. She argued that while her other OERs are not "proof" that the SOER is

erroneous and unfair, they do not reveal “any weaknesses ... that would show a correlation to what was written” in the SOER.

The applicant argued that she has refuted the comments in the SOER line by line, and produced statements from five other officers who support her contention that she was treated unfairly. She alleged that the comment that she had “marginal initiative” contradicts the comment that she was an intelligent officer who “spent long hours researching issues.” The applicant stated that she will not speculate as to why her command treated her so unfairly, but “it is obvious from the comments and marks in the OER that they exaggerated and twisted facts in order to fill it with “justification.”

APPLICABLE REGULATIONS

Under Article 10.A.3.a. of the Personnel Manual in effect in 2006,⁸ lieutenants usually receive a regular, annual OER at the end of May each year. However, Article 10.A.3.c.1.a., states that a special OER (SOER) “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 or SOER (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.

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⁸ See PERSMAN, footnote 1, above.

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., 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 in an addendum before the OER is passed to the Reviewer. Article 10.A.4.h.2. allows the Supervisor and Reporting Officer to add comments to the addendum before forwarding it to the Reviewer, who ensures that the information in the OER is consistent and that the derogatory information is substantiated.

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 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.⁹

3. The applicant alleged that the SOER she received following her removal as the Operations Officer of the XXXX is inaccurate and a product of gender bias on the part of an abusive CO. 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.”¹⁰ 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.¹¹ Absent evidence to the contrary, the Board presumes that the applicant’s Supervisor and Reporting Officer (the XO and CO) prepared the SOER “correctly, lawfully, and in good faith.”¹²

⁹ See *Steen v. United States*, No. 436-74, 1977 U.S. Ct. Cl. LEXIS 585, at *21 (Dec. 7, 1977) (holding that “whether to grant such a hearing is a decision entirely within the discretion of the Board”).

¹⁰ *Germano v. United States*, 26 Cl. Ct. 1446, 1460 (1992); see also *Hary v. United States*, 618 F.2d 704, 708 (Ct. Cl. 1980); CGBCMR Dkt. No. 86-96.

¹¹ 33 C.F.R. § 52.24(b).

¹² *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

4. Given the statements of the applicant's four subordinates—the OSCs of the CIC and the Communications Division, the First Lieutenant (head of the Deck Division), and an OS2 in the CIC—the applicant has proved that her CO had an anger-management problem, which created a stressful command climate as he publicly and privately chastised personnel he perceived to have made significant mistakes, especially her. Although the applicant speculated that the CO may have been prejudiced against her because of her gender, there is little evidence to support this allegation. The Coast Guard prohibits sexual harassment of and discrimination against military members,¹³ but neither the applicant nor her subordinates claim that the CO chastised only her or only female crewmembers. The OSC of the CIC and the First Lieutenant noted that the CO did not publicly chastise subsequent male Operations Officers for “similar mistakes” to those of the applicant, but there is insufficient information about the nature and frequency of the “similar mistakes” or the overall leadership and performance of these subsequent Operations Officers for the Board to conclude that the CO's treatment and evaluation of the applicant were prejudiced by her gender.

5. The applicant appears to be arguing, at least in part, that she was subject to a “hostile work environment,”¹⁴ which was so severe that it interfered with her ability to perform her duties. However, she has not shown that the CO's angry language and physical conduct toward her were in any way sexual or prejudiced, which is a required element of a “hostile work environment.”¹⁵ However, Chapter 3.A.1.a. of the Equal Opportunity Manual states that every member of the Coast Guard deserves to be treated with honor, dignity and respect. It is theoretically possible that a CO could treat a junior officer so horribly that the junior officer could not reasonably be expected to perform her duties well even if the CO's abuse was not based on gender, race, or religion. An SOER resulting from such treatment might constitute an “injustice” in the officer's record and so be removed by the Board.¹⁶ Although the applicant has not shown that her CO criticized her because of her gender, the legal criteria for a “hostile work environment” are instructive as to the type of evidence needed to prove that a command climate is so abusive that a competent officer cannot reasonably be expected to perform her duties well. Occasional hostile

¹³ UNITED STATES COAST GUARD, COMDTINST M5350.4B, EQUAL OPPORTUNITY MANUAL, Chap. 3.A.3.a. (Nov. 1, 2005) (hereinafter “EOM”) (“Although the statutory prohibitions against discrimination in civilian employment do not apply to members of the uniformed services, it is the Coast Guard's policy to provide its military members equal opportunity during their military service and access to the rights, responsibilities, and privileges of such service, regardless of: Race; Color; Religion; Sex; National origin; or Participation in EO related activities.”).

¹⁴ Military officers are not protected from “hostile work environments” under Title VII of the Civil Rights Act of 1964. 42 U.S.C. § 2000e-16; see *Roper v. Dep't of the Army*, 832 F.2d 247, 248 (2nd Cir. 1987) (finding that “the *Feres* doctrine prevents members of the military from challenging military decisions through actions brought under Title VII”). However, “it is the Coast Guard's policy to apply the same protections [in Title VII] to the military workforce.” EOM, Chap. 3.A.5.b. The Coast Guard prohibits “sexual harassment,” which it defines to include “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when ... such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.” *Id.* at Chap. 3.A.5.c. “To meet the definition of a hostile environment, the harassment must be so severe and pervasive that a reasonable person would view the environment as hostile, offensive, or abusive.” *Id.* at Chap. 3.A.5.d.

¹⁵ EOM, Chap. 3.A.5.c.

¹⁶ The Board may remove injustices from any Coast Guard military record. 10 U.S.C. § 1552(a). For the purposes of the BCMRs, “[i]njustice”, when not also “error”, is treatment by the military authorities, that shocks the sense of justice, but is not technically illegal.” *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976).

or humiliating words and actions are insufficient.¹⁷ Factors that courts consider aside from bias include the frequency of the conduct; the severity of the conduct; whether the conduct is physically threatening or humiliating or merely offensive; and whether the conduct unreasonably interfered with an employee's work performance.¹⁸ A "hostile work environment" in the civilian sector exists "[w]hen the workplace is permeated with 'discriminatory intimidation ridicule, and insult' that is 'sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.'"¹⁹ However, in assessing such matters, the Board must also take into account the distinctly different military, shipboard, combat-training environment on the XXXX, as well as the potential dangers incurred by poor performance.

6. The evidence of the CO's alleged inappropriate behavior toward the applicant is incidental: When there was confusion in the CIC during one air defense drill, the CO grabbed her arm, pulled her into the center of the CIC, and stated that her lack of effort would get them all killed in the Persian Gulf; when frustrated during a brief one morning, he grabbed a pencil out of her hand and threw it down so hard that it bounced off her water bottle and hit her; and he once asked her during a discussion of their transit time whether she was lazy or stupid. The First Lieutenant wrote that she became a "lightning rod for [the CO's] abuse" and described her as a "very competent officer who was not given any chance to succeed," but he was head of the Deck Division and apparently did not observe her performance in the CIC during the drills. The applicant alleged that she was humiliated by the CO and that he undermined her leadership, but there is insufficient evidence concerning the frequency of the CO's public criticisms, the nature of his language, and the problems and potential dangers to which he was reacting for the Board to conclude that the command climate was arbitrarily hostile and abusive, as the applicant alleged, or that she could not reasonably have been expected to perform her job to the CO's satisfaction. The Board in no way excuses the CO for not expressing his anger more appropriately. However, the evidence in the record is insufficient to prove that the attitude and actions of the CO were arbitrarily abusive or warrant expungement of the SOER.

7. The applicant has alleged that many of the examples of her performance cited in the SOER are inaccurate, exaggerated, or lacking context and inaccurately blame her for situations not in her control. For example, she stated that as the TAO, she should not have been blamed for sending the helicopter into the air space of three Navy vessels during an exercise, as directing the helicopter was the responsibility of the ADC, and that as the TAO she was supposed to be sitting at a computer observing rather than listening to radio communications and directly overseeing the ADC. However, she also admitted that the subordinate she had serving as the ADC during the drill was still unqualified and in training. She alleged that her relationships with the other department heads were not negative, as indicated in the SOER, but she did not submit any statements from fellow department heads to support her allegation.

8. The applicant alleged that she was horribly overworked; that most of her department's problems resulted from broken or inadequate equipment, poor communications with the Navy, and a severe lack of trained personnel in the CIC and other Operations divisions; and that

¹⁷ See *Overton*, 373 F.3d at 99 (concurring) (Pooler, J., concurring) (noting that a handful of racist comments spread out over several years was insufficient to create a "hostile work environment").

¹⁸ *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21 (1993).

¹⁹ *Id.* (citations omitted).

her CO and XO refused to acknowledge her department's limitations because of these issues. She has submitted statements from three OS subordinates supporting her view of what caused the cutter's helicopter to enter the air space of three Navy vessels during a drill and how the CO reacted, of the command's continual dissatisfaction with the morning briefs, and of unexpected undermanning in the CIC. The evidence of these subordinates, however, is inadequate to prove that any of the specific examples of her performance cited on the SOER are inaccurate or unjust or that the numerical marks are too low. While the applicant described her circumstances aboard the XXXX in way that makes it appear that it would have been impossible for her to succeed or to please the CO, she has not supported her claims in this regard with sufficient evidence. In fact, her subordinates' statements indicate that the CO was satisfied by the performance of subsequent Operations Officers during the deployment. While the work schedule she describes appears very demanding, the Board cannot determine, by the evidence presented, that another lieutenant could not have performed substantially better and satisfied the CO and XO during the evaluation period. Absent corroborative statements from the XO, other department heads, or the Operations Officers who followed her on the XXXX, the Board is not persuaded that the numerical marks and comments in the SOER are inaccurate or unjust.

9. The applicant made numerous allegations with respect to the actions and attitudes of her CO and XO. Those allegations not specifically addressed above are considered to be not dispositive of the case.²⁰

10. The SOER was prepared upon the applicant's removal from her primary duty in accordance with Articles 10.A.3.c.1.a. and 10.A.4.h.1.c. of the Personnel Manual. The applicant has not proved that she was subject to gender discrimination or to a command climate that was so arbitrarily hostile that she could not reasonably have been expected to perform her duties in accordance with the command's expectations. She has submitted ample evidence that the CO expressed anger inappropriately, but she has not proved that she did not in fact make many significant mistakes that warranted the criticisms in the SOER. Nor has she proved that the CO's actions and attitude resulted from her female gender. The applicant has submitted insufficient evidence to overcome the presumption of regularity accorded the marks and comments in the SOER or to prove by a preponderance of the evidence that it was adversely affected by a "misstatement of significant hard fact," a "clear and prejudicial violation of a statute or regulation," or factors that "had no business being in the rating process."²¹

11. Both the applicant and the JAG agree that she reported to the XXXX on March 31, 2006, and that the report date shown in block 1.e. of the SOER is erroneous because it reflects the date of her orders, March 6, 2006, rather than the date she reported to the cutter. Therefore, the report date on the SOER should be corrected.

12. Therefore, the applicant's request should be granted in part in that the report date shown in block 1.e. of the SOER should be corrected to show that she reported on March 31, 2006. All other requested relief should be denied, except that the Board finds that the Chair

²⁰ See *Frizelle v. Slater*, 111 F.3d 172, 177 (D.C. Cir. 1997) (noting that the Board need not address arguments that "could [not] affect the Board's ultimate disposition").

²¹ *Germano*, 26 Cl. Ct. at 1460; see also *Hary*, 618 F.2d at 708.

should grant further consideration if, within 180 days of this decision, the applicant requests it and submits new evidence that the Chair believes could result in a different outcome of the case.

ORDER

The application of LT xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of her military record is granted in part as follows:

The “Date Reported” in block 1.e. of her OER for the period February 1, 2006, to October 15, 2006, shall be corrected to March 31, 2006.

In addition, she may request further consideration of the remainder of the requested relief if, within 180 days of the date of this decision, she submits new evidence that the Chair believes could result in a different outcome of the case.

Paul B. Oman

Thomas H. Van Horn

Janice Williams-Jones