

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-109

FINAL DECISION

AUTHOR: Ulmer, D.

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The application was docketed on May 7, 2004, upon receipt of the applicant's completed application and military records.

This final decision, dated January 27, 2005, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant, a member of the Coast Guard Reserve, "requested to be reinstated to the correct precedence on the PY [promotion year] 04 Reserve Chief Warrant Officer [CWO] In-Grade Selection [Board list]." The applicant was not selected for CWO3 by the 2003 inactive duty (Reserve) selection board that met on November 3, 2003.¹ Therefore, the Board interprets the applicant's request as one for the removal of her failure of selection for promotion to CWO3 and if she is selected for promotion to that grade by the first selection board to consider her based on a corrected record, that her date of rank be adjusted to the date she would have received if she had been selected by the 2003 CWO3 selection board.

The applicant was selected for promotion by the 2004 CWO3 selection board that met on October 25, 2004.

¹ The calendar year 2003 CWO4 selection board is also referred to as the PY [promotion year] 2004 selection board.

APPLICANT'S ALLEGATIONS

The applicant alleged that the Coast Guard failed to publish the message announcing the selection board in a timely manner. The short notice provided by the message denied the applicant sufficient time to prepare and submit a communication to the selection board, which would have included a special officer evaluation report (OER) for the period from July 1, 2002, to June 30, 2003, and her resume.² In this regard she stated the following:

I am assigned to a joint Navy/Coast Guard expeditionary reserve unit that does not have full time support for its Coast Guard members. I live approximately 350 miles from this unit. I do not have access to the CG Message System while not at my drill site, and therefore, I was not aware of the Inactive Duty Promotion List message . . . in time to communicate with the Promotion Board. The message was posted four days after our unit drilled on 19 October 2003, and 11 days later, the [Selection] Board convened on November 3, 2003, which was before our next month's unit drilling date of November 15, 2003.

* * *

I was totally prepared to submit all the enclosed supporting documentation [including the missing special OER] had I been notified in a timely manner.

The applicant's commanding officer (CO) corroborated the applicant's allegation. He stated that his command has no full-time Coast Guard support or remote access to the Coast Guard message system. He stated that it was his understanding that the special OER would be submitted with the applicant's communication to the selection board once the message was published announcing the date the selection board was scheduled to convene and the candidates to be considered by the board. In this regard he stated that the message announcing the CWO3 selection board was posted four days after his unit's October drill terminated and only eleven days prior to the date the selection board was scheduled to convene. He further stated that the selection board convened before the unit's next drill date, which was November 15, 2003. The CO asserted that the short notice provided by the message did not allow sufficient time for the applicant to communicate with the selection board and provide it with the special OER. He concluded by stating that service members attached to his unit "are at a distinct disadvantage to remain cognizant of all message traffic in a timely fashion."

² The message announcing the CWO in-grade selection board also advised members and OER rating chains to expedite submission of OERs for those individuals whose "OER[s] may not extend past their regular submission month." OERs for CWOs are normally due biennially on even numbered years.

VIEWS OF THE COAST GUARD

On September 10, 2004, the Board received an advisory opinion from the Judge Advocate General (TJAG) of the Coast Guard recommending relief. TJAG adopted the memorandum on the case prepared by Commander, Coast Guard Personnel Command (CGPC) as the advisory opinion, except for that portion of the memorandum recommending a special selection board.³ In the alternative, TJAG recommended that the Board remove the applicant's 2003 failure of selection for promotion to CWO3 from her record and place her record before the next regularly scheduled CWO3 selection board, and if selected by that board that her date of rank be adjusted to the date she would have received if she had been selected by the 2003 board.

CGPC admitted that the Coast Guard failed in its responsibility to publish the selection board announcement in a timely manner. CGPC stated that the selection board procedures require the issuance of specific candidate announcements, which supplement general board directives, identifying the candidates by name, confirming board convening dates, and providing additional instructions to members and their rating chains. CGPC stated that while there is no legal or (written) policy standard on when candidate notification announcements are promulgated, CGPC staffs apply a standard of 30 days prior to a board's convening date. The message announcing the CWO3 selection board was published only 10 days prior to the date the selection board was to convene and the message was not received by the applicant's command until four days after that unit's October drill weekend had concluded. CGPC recognized that neither the applicant nor the members of her rating chain were in a position to read or act on the contents of the message until the November 15, 2003, drill weekend, which commenced after the CWO3 selection board had adjourned.

CGPC further concluded that the missing special OER for the period ending June 30, 2003 likely played a significant role in the applicant's failure to be selected for promotion by the 2003 CWO3 promotion board. He noted that the applicant has an excellent performance record.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 23, 2004, the Board received the applicant's reply to the views of the Coast Guard, stating that she did not object to the advisory opinion.

FINDINGS AND CONCLUSIONS

³ The Coast Guard does not have statutory authority to convene special selection boards.

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

1. The BCMR has jurisdiction of the case pursuant to section 1552 of title 10, United States Code. The application was timely.

2. The Board finds that the applicant suffered an injustice by the Coast Guard's failure to give timely notice of the convening of the 2003 CWO selection board. The Coast Guard's failure to provide the customary 30-day notice announcing the convening of the CWO3 selection denied the applicant the opportunity to communicate with the selection board and provide it with a highly favorable special OER covering the year of her most recent performance, as well as her resume. CGPC acknowledged that it normally publishes such messages, announcing the date of the board and identifying the candidates, approximately 30 days prior to the date the selection board is to convene. However, in this case the message was published only 10 days prior to the date the selection board was to convene and was not received by the applicant's unit until four days after it had concluded its October drill. Therefore, the applicant and her CO probably were not aware of the message until November 15, 2003, well after the November 3 convening date. The CO confirmed that his command had no remote access to the Coast Guard messaging system and that he and the applicant were waiting for confirmation of her eligibility for promotion to communicate with the selection board and provide it with the special OER and resume.

3. Having found that the applicant's record before the 2003 CWO3 selection board contained an injustice, the Board agrees with TJAG that the applicant's failure of selection for promotion to CWO3 should be removed from her record. In this regard, the Board finds, as CGPC admitted, that the applicant was prejudiced by not having the special OER and her resume in her record when the CWO3 selection board considered it. The Board further finds that it is likely that she would have been selected for promotion to that grade if she had been evaluated based on a record that included the special OER and resume.

4. The Board also finds that the applicant, having been selected for promotion by the 2004 CWO3 selection board, should receive the date of rank she would have had, if the calendar year 2003 CWO3 selection board had selected her, with back pay and allowances.

5. Accordingly, the Board finds that the applicant is entitled to relief.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The application of _____ USCGR, for correction of her military record is granted.

The applicant's failure of selection for promotion to CWO3 before the 2003 CWO3 Reserve selection board shall be removed from her record. The applicant was selected for promotion to CWO3 by the October 25, 2004 selection board. Therefore, her CWO3 date of rank, once promoted, shall be adjusted retroactively to the date she would have had if she had been selected by the 2003 selection board, with back pay and allowances.

Stephen H. Barber

Adrian Sevier

Thomas H. Van Horn