

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-187

FINAL DECISION

ANDREWS, Attorney-Advisor:

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The BCMR docketed this case on September 28, 1999, upon receipt of the applicant's completed application.

This final decision, dated June 8, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a xxxxxxxxxxx on active duty in the Coast Guard Reserve, asked the Board to correct his record to show that he was commissioned at the rank of LTJG, rather than as an ensign, on July 22, 199x.

APPLICANT'S ALLEGATIONS

The applicant alleged that due to a clerical error, he was commissioned as an ensign (pay grade O-1) rather than as an LTJG. He alleged that he should have been commissioned as an LTJG because he had previously served in the Army National Guard as a first lieutenant (grade O-2). The applicant alleged that because of this error, he received the pay of an ensign until his pay grade was corrected by the Coast Guard Personnel Command (CGPC) on May 11, 199x. The applicant stated that although CGPC corrected his date of rank to July 22, 199x, he did not receive any back pay or allowances. He alleged that this back pay amounts to \$6,083.55.

The applicant submitted with his application a memorandum from his commanding officer endorsing his request. The commanding officer stated that on May 11, 1999, the applicant was "retroactively promoted to his present rank."

SUMMARY OF THE RECORD

On July 22, 199x, the applicant signed an Acceptance and Oath of Office for an appointment as an ensign in the Coast Guard Reserve.

On December 1, 199x, the applicant sent a letter to CGPC requesting that his date of rank be corrected "in accordance with the guidelines set forth in the U.S. Coast Guard Direct Commission Aviator Program." He stated that the error occurred because his recruiter failed to forward his promotion orders with his application for a commission. The applicant's commanding officer favorably endorsed his request, indicating that the applicant originally brought the problem to the attention of the command at his training center in August 199x.

On April 2, 199x, CGPC responded to the applicant's letter, approving the correction of his date of rank. CGPC implemented the change by allowing him to resign his commission as an ensign and request reappointment as an LTJG. CGPC stated that although his date of rank would then be corrected to July 22, 199x, pay and allowances would only begin to accrue as of the date he took the oath of office as an LTJG.

On May 11, 199x, CGPC sent the applicant a memorandum indicating that the President appointed him to the rank of LTJG effective that day but with a date of rank of July 22, 199x. The memorandum indicated that he would receive the pay and allowances of his new rank as soon as he took the oath of office.

Also on May 11, 199x, the applicant signed an Acceptance and Oath of Office for a commission in the rank of LTJG. The form indicates that his date of rank is July 22, 199x.

VIEWS OF THE COAST GUARD

On April 17, 2000, the Chief Counsel of the Coast Guard recommended that the Board grant the applicant's request.

The Chief Counsel stated that the Coast Guard made an administrative error when it appointed the applicant to the rank of ensign. Under the Direct Commission Aviator Program, he stated, the applicant should have been commissioned as an LTJG.

The Chief Counsel stated that the applicant's record should be corrected by changing the rank on the Acceptance and Oath of Office the applicant signed on July 22, 199x, to LTJG, and by voiding the Acceptance and Oath of Office he signed on May 11, 199x.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 21, 2000, the BCMR sent the applicant a copy of the Chief Counsel's advisory opinion and invited him to respond within 15 days. On May 2, 2000, the applicant responded, stating that he concurred in the Chief Counsel's recommendation.

APPLICABLE REGULATIONS

Commandant Instruction 1131.23 contains the provisions for the Coast Guard's various direct commission programs. Chapter 5 contains the requirements for a direct commission as an aviator in the Coast Guard Reserve. Under paragraph 5.a., aviators with prior military service who have the required qualifications can be commissioned either as an LTJG or as an ensign. Paragraph 5.c.(3)(b) states that "[f]or appointment to lieutenant (junior grade), [the applicant] must have served as a commissioned officer in pay grade O-2 or higher."

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code. The application was timely.
2. The Chief Counsel of the Coast Guard and the Commander of CGPC agreed that the Coast Guard committed an administrative error when it commissioned the applicant as an ensign (O-1) on July 22, 199x. They agreed that he should have been commissioned at the rank of LTJG (O-2) when he joined the Coast Guard Reserve under the Direct Commission Aviator Program.
3. The applicant failed to submit to the Board direct evidence that he met the criterion for a direct commission in the rank of LTJG by having previously served as an officer in pay grade O-2 in another military service. COMDTINST 1131.23, Paragraph 5.c.(3)(b). No evidence of his prior service in the Army National Guard appears in his Coast Guard personal data record. However, because both CGPC and the Chief Counsel are convinced that the

applicant has in fact met the requirement for a commission as an LTJG by serving as a first lieutenant (O-2) in the Army National Guard, the Board is convinced that he met the requirement.

4. Although CGPC attempted to correct the administrative error by having the applicant resign and by back dating his new appointment, those actions did not entitle the applicant to the pay and allowances he would have received if the Coast Guard had not erred. Therefore, due to an administrative error by the Coast Guard, the applicant has unjustly been denied certain back pay and allowances.

5. Accordingly, relief should be granted.

ORDER

The application of XXXXXXXX, USCGR, for correction of his military record is hereby granted as follows:

The Acceptance and Oath of Office (CG-9556) dated 22 July 199x shall be corrected to show that he took the oath of office and accepted his appointment on that day in the rank of lieutenant junior grade (LTJG), pay grade O-2.

The Acceptance and Oath of Office (CG-9556) dated 11 May 199x and any record of his resignation of his 22 July 199x commission shall be voided and removed from his record.

The Coast Guard shall pay him any back pay and allowances he is due as a result of this correction.

Terence W. Carlson

Pamela M. Pelcovits

Edmund T. Sommer, Jr.