

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:



BCMR Docket
No. 93-96

DECISION

Attorney-Advisor:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It has been decided in accordance with the provisions of § 52.32 of title 33, Code of Federal Regulations. That section authorizes the Chairman to summarily deny an application to the BCMR under certain enumerated circumstances.

This proceeding was commenced on March 20, 1996, by the filing of an application for relief with the BCMR. This decision, dated April 3, 1997, was signed by the Chairman pursuant to 33 CFR § 52.33 (a)(1).

Applicant's Request for Relief

The applicant, a pay grade E-6), asked the BCMR to reactivate orders he had received to report to sea duty, or if that was not possible, to allow him to "perform for two evaluation periods at a neighboring command allowing [him] an opportunity to qualify for sea duty."

The applicant asserted that in January 1996, he received orders to report to independent duty on board a Coast Guard cutter, effective April 1, 1996. He stated that his supervisor informed him that the commanding officer "had some concerns [regarding his] assignment to independent duty based on [his] last set of evaluation marks."

The applicant stated that on a later date he discussed the independent duty issue with his supervisor, executive officer, and CO, and that his "supervisors gave the CO a verbal favorable recommendation [of him] for independent duty." He also asserted that after he received the verbal approval from his command, he did not receive any indication that his transfer orders would be withheld pending his improved performance.

The applicant stated that he left his duty station to report to the cutter on February 23, 1996. On March 6, 1996, however, he was recalled to his duty station by his supervisor because his transfer orders had been canceled. He alleged that the orders had been canceled "based on draft policy guidance not yet in effect."¹

SUMMARY OF APPLICANT'S SUBMISSIONS

In support of his application, the applicant submitted a copy of his request for assignment to a new duty station, dated November 13, 1995. The assignment request had a comment section for his command with regard to the applicant's choices for assignment. The comments suggested that the applicant be placed in an assignment where he had "opportunity to develop [the skills of his rate] under the close tutelage of a [chief warrant officer, chief [REDACTED] or senior chief [REDACTED]." The comments further stated that the applicant "should be carefully considered for independent duty afloat."

The applicant also submitted a copy of the letter submitted by the CO of the cutter to the Commander of Coast Guard Personnel Command (CGPC), dated February 22, 1996. The CO asked that the applicant's orders be canceled and that CGPC assign a "suitable - and qualified - replacement" to the cutter. The CO based his request on the recommendations of the applicant's command at his former duty station.

The letter stated that the applicant had been removed from his assigned duties in the [REDACTED] of his former duty station due to poor performance. The CO also asserted that the applicant had received "three marks of 2 and numerous 3s" (on a scale of 1 to 7, with 7 being the highest mark) on his performance evaluation. The CO stated that prior to his transfer, the applicant's former command had informed the detailer² that it believed that the applicant was incapable of "handling the responsibilities of independent duty," and formally requested that he not receive orders to a cutter.

Views of the Coast Guard

On February 13, 1997, the Coast Guard recommended that the applicant's request be summarily denied. The Coast Guard stated that the applicant's requested relief was beyond the jurisdiction of the BCMR because the application failed to include a specific allegation of error or injustice.

¹ The applicant did not submit a copy of this "draft policy" nor did he indicate where the policy was located. It is unclear what Coast Guard policy the applicant is referring to.

² The detailer is in charge of processing assignment requests of Coast Guard members.

The Coast Guard stated that the Coast Guard Personnel Command (CGPC) (formerly Military Personnel Command) has "extremely broad discretion in the matter of assignments, and may transfer personnel at any time." The Service stated that the applicant had admitted, and the evidence he submitted showed, "that his orders were canceled based on the opinions of senior members of his previous and prospective commands that he was not suitable for independent duty. . . ."

The Coast Guard stated that the applicant had provided no hard evidence that the Coast Guard had abused its discretion in canceling his independent duty orders.

The applicant was sent a copy of the Coast Guard's views and was encouraged to respond. The applicant did not submit a response.

RELEVANT REGULATION

Title 33 of the Code of Federal Regulations, §52.32 provides, in part, as follows:

(a) The Chairman may, notwithstanding §52.64 [Final Action], and without written findings and conclusions, deny in writing all requested relief to an applicant at any time prior to consideration of the applicant's case by a Board if:

(1) The information or evidence submitted by the applicant is insufficient to demonstrate probably substantial error or injustice;

[SIGNATURE ON FOLLOWING PAGE]

CONCLUSION

No relief shall be granted to the applicant.

The applicant's submissions support the Coast Guard's determination that the applicant was unqualified for independent duty. There is no evidence to show that the Coast Guard's determination of the applicant's ineligibility was arbitrary or an abuse of discretion.

Accordingly, the application is denied without prejudice to further consideration pursuant to subsection (b) of §52.32 of the Code of Federal Regulations. Further consideration should be available if the applicant submits evidence in addition to that contained in his original application.

