

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

Application for Correction of
Coast Guard Record of:

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

BCMR Docket
No. 2001-085

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. It was docketed on May 4, 2001, upon the Board's receipt of the applicant's complete application for correction of his military record.

This final decision, dated March 21, 2002, is signed by the three duly appointed members who were designated to serve as the Board in this case.

Application for Relief

The applicant, xxxxxxxxxxxxxxxxxxxxxxxx, asked the Board to award him back pay and allowances retroactive to June 1, 2000, which is his CWO3 date of rank. Specifically, he requested that he receive back pay and allowances for any drills and active duty training that he has performed since June 1, 2000.

The applicant stated that due to an administrative error, the 1999 CWO3 inactive duty promotion list (IDPL) selection board did not consider his record. He was subsequently selected for promotion to CWO3 by the 2000 IDPL CWO3 selection board. He was promoted in January 2001, with an adjusted CWO3 date of rank retroactive to June 1, 2000, the date he would have had if he had been selected for promotion to CWO3 by the 1999 IDPL CWO3 selection board. In a letter from the Commander, Coast Guard Personnel Command, xxxxxxxxxxxxxxxx, the applicant was told that although the Coast Guard had adjusted his date of rank, he had to apply to the BCMR to receive back pay and allowances.

Views of the Coast Guard

On September 25, 2001, the Board received an advisory opinion from the Chief Counsel of the Coast Guard. He recommended that the Board grant relief.

The Chief Counsel stated that 14 U.S.C. § 739 (b) provides that "a reserve officer is not considered to have failed of selection if the officer was not considered by a selection board because of administrative error. If that officer is selected by the next

appropriate selection board after the error is discovered and is promoted, the same date of rank and precedence shall be assigned that would have been assigned if the officer had been recommended for promotion by the selection board that originally would have considered the officer but for the error." The Chief Counsel stated that the applicant is entitled to relief because he has met the requirements of this statute.

Applicant's Reply to the Views of the Coast Guard

On October 17, 2001, the Board received the applicant's response to the views of the Coast Guard. He agreed with the Chief Counsel's recommendation for relief.

FINDINGS AND CONCLUSIONS

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 this case pursuant to section 1552 of title 10, United States Code. The application was timely.

2. Due to an administrative error, the 1999 IDPL CWO3 selection board did not consider the applicant's record. Subsequently, the applicant was selected for promotion by the 2000 IDPL CWO3 selection board. In January 2001, he was promoted to CWO3 and given the date of rank (June 1, 2000) he would have had if he had been selected by the 1999 IDPL CWO3 selection board. The Coast Guard has conceded that it committed an error in this case, and it has adjusted the applicant's date of rank, pursuant to 14 U.S.C. § 739(b).

3. Although, the Coast Guard corrected the applicant's date of rank, it did not authorize back pay and allowances. Therefore, the applicant asked the Board to enter an order directing that he receive back pay and allowances as a CWO3 retroactive to June 1, 2000, his CWO3 date of rank. The Board finds that pursuant to 14 U.S.C. § 739(b) the applicant is entitled to back pay and allowances. The Coast Guard concurs in this grant of relief.

4. Accordingly, the applicant's request for relief should be granted.

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCGR, for correction of his military record is granted. His record shall be corrected to show that he is entitled to back pay and allowances as a CWO3 retroactive to June 1, 2000. Specifically this order of back pay and allowances shall include any drills and active duty for training that he performed from June 1, 2000.

