


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-105

FINAL DECISION


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 3, 2004, upon receipt of the applicant's completed application and military records.

This final decision, dated December 29, 2004, 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, asked the Board to promote him to the rank of Chief Warrant Officer -W4 (CWO4) and that his date of rank be adjusted retroactively to June 1, 2004, which he alleged would have been the effective date had he been selected by the 2003 CWO4 promotion board,¹ with back pay and allowances. The applicant was not selected for CWO4 by the 2003 inactive duty (Reserve) selection board that met on November 3, 2003.

The applicant was selected for promotion by the 2004 CWO4 selection board that met on October 25, 2004.

APPLICANT'S ALLEGATIONS

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

The applicant alleged that he failed to be selected for promotion by the CWO4 selection board because of an incomplete military record. He claimed that an annual/semiannual OER (officer evaluation report) for the period June 1, 2000, to May 31, 2002, and a special OER for the period May 17, 2003, to September 30, 2003, were absent from his record and not reviewed by the selection board, although they had been validated by Commander, Coast Guard Personnel Command (CGPC) for placement in his military record. In addition to the two absent OERs, he also alleged that the following documents were not reviewed by the selection board when it considered his record: two Meritorious Team Commendation awards, 2002 Bachelor of Arts degree, 2003 Expert Rifle and Pistol awards, 2000 Armed Forces Reserve Medal, documentation of 136 days of active duty performed in 2003, and documentation of his involuntary recall to active duty in 2003.

The applicant alleged that the annual/semi-annual OER covering the period from 2000 to 2002 was forwarded to CGPC approximately 10 months prior to the convening of the selection board and was acknowledged by CGPC approximately six months prior to the convening of the selection board. He alleged that the special OER was faxed to CGPC three days prior to the meeting of the promotion board.

The applicant stated that his record would have appeared stronger if all of the alleged missing documents had been provided to the selection board. He alleged the existence of a nexus between the fact that his record before the 2003 CWO4 selection board was incomplete and his failure to be selected for promotion to that grade.

VIEWS OF THE COAST GUARD

On September 28, 2004, the Board received an advisory opinion from the Judge Advocate General (TJAG) of the Coast Guard. TJAG adopted the memorandum on the case prepared by Commander, Coast Guard Personnel Command (CGPC) as the advisory opinion. CGPC recommended that the Board grant alternative relief by removing the applicant's 2003 failure of selection for promotion to CWO4 from his record and by placing the applicant's record before the next regularly scheduled CWO4 selection board. CGPC further recommended that if the applicant is selected for promotion, he should be assigned a date of rank commensurate with the date his promotion would have been effective if he had been selected by the 2003 selection board.

In contrast to the applicant's contention, CGPC stated that the special OER was available for consideration by the 2003 CWO4 selection board because it was validated and placed in the applicant's record on October 31, 2003.

CGPC admitted that the OER for the period June 1, 2000, to May 30, 2002, was misfiled and not available to the 2003 CWO4 selection board. "This clear administrative

error denied the selection board information on Applicant's first 24 months as a CWO3, and would likely undermine a board's ability to certify Applicant's qualification to as serve credibly as a CWO4."

CGPC also determined that two other OERs covering the periods from May 31, 2002, to May 16 2003, and June 5, 1999, to May 31, 2000, were missing from the applicant's record when the selection board considered it. With respect to the OER for the period May 31 2002, to May 16, 2003, CGPC stated, "While any gap in an OER record can impact a selection board's decision, this gap covered 11 of the last 14 months of the OER record reporting period prescribed for PY [promotion year] board candidates." With respect to the period from June 5, 1999, to May 31, 2000, CGPC stated that the lack of an OER for this period might have caused the selection board to question the applicant's qualification for promotion to CWO4.

With respect to the applicant's other allegations, CGPC offered the following observations.

a. The Coast Guard's policy prohibits the attachment of awards to OERs, except for personal awards. Therefore the applicant's two Meritorious Team Commendations, two Marksmanship awards, and his Armed Forces Reserve Medal would not have been attached to any OERs. However, the applicant could have provided this information to the selection board through a written communication.

b. The Officer Education Reporting Program is a voluntary program and relies on the officer to submit a Record of Professional Development, Form CG-4082, to report educational accomplishments. There is no CG-4082 in the applicant's record. However, the applicant could have provided this information to the selection board through a written communication. Moreover, CGPC stated that the applicant's resume² noted that he had earned a BA in 2002. Therefore, the selection board was informed that the applicant had earned a college degree.

c. The applicant claimed that the selection board did not have the documents showing that he was serving a one-year recall to active duty beginning in October 2003. CGPC stated that the applicant's resume appropriately cited this tour of duty and was available for the selection board's consideration. In addition, CGPC stated that the applicant could have provided this information to the selection board through a written communication.

² A summary of an officer's career that includes listing units to which assigned, primary and collateral duties performed, major professional accomplishments achieved, including academic achievements. Article 1.D. of the Personnel Manual.

CGPC concluded that it committed an administrative error by not ensuring that the applicant's OER for the period ending May 30, 2002, was filed in his military record. He also determined that the applicant's rating chains for the periods June 5, 1999, to May 31, 2000, and May 31, 2002, to May 16, 2003, failed in their responsibilities by not completing OERs for these periods.

CGPC further concluded that the applicant's failure to be selected for promotion by the 2003 CWO4 promotion board resulted directly from the fact that the applicant's OER record contained a period of approximately four years in which there were no OERs documenting his performance. "Such a significant gap in OERs prevented the . . . CWO4 . . . [s]election [b]oard from finding applicant fully qualified for promotion to CWO4."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 5, 2004, the Board received the applicant's reply to the views of the Coast Guard. He stated that he accepted the Coast Guard's recommendation in his case, except that he believed his date of rank should be backdated to June 1, 2004, if he is selected for promotion by the first selection board to consider him based on a corrected record. He also asked for back pay and allowances, once promoted, if his date of rank is adjusted retroactively.

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 the case pursuant to section 1552 of title 10, United States Code. The application was timely.
2. The Board finds that the 2003 Reserve CWO4 selection board did not have a complete record of the applicant's performance. Specifically, OERs for the periods from June 5, 1999, to May 31, 2000, June 1, 2000, to May 30, 2002, and May 31, 2002, to May 16, 2003, were missing from his military record. Accordingly, the Board finds that the Coast Guard committed an error by not ensuring that the applicant had a complete record before the 2003 Reserve CWO4 selection board.
3. The Board agrees with the TJAG that the applicant's failure of selection for promotion to CWO4 should be removed from his record. In this regard, the Board finds that the applicant was prejudiced by not having a complete record before the CWO4 selection board and it is likely that he would have been selected for promotion to that grade if he had been evaluated based on complete record.

4. The Board further finds that the applicant having been selected for promotion by the 2004 CWO4 selection board based on a substantially correct record should receive the date of rank he would have had, if the calendar year 2003 CWO4 selection board had selected him. The Board also finds that the Coast Guard is in the best position to determine what the applicant's adjusted date of rank should be, and therefore, refuses to direct the date requested by the applicant.

5. Since the applicant has agreed with the relief recommended by the Coast Guard, it is unnecessary for the Board to rule on his other allegations of error.

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

ORDER

The application of _____ USCGR, for correction of his military record is granted, in part.

The applicant's failure of selection for promotion to CWO4 before the 2003 CWO4 Reserve selection board shall be removed from his record. The applicant was selected for promotion to CWO4 by the October 25, 2004 selection board. Therefore, his CWO4 date of rank, once promoted, shall be adjusted retroactively to the date he would have had if he had been selected by the 2003 selection board, with back pay and allowances.

All other requested relief is denied.

[REDACTED]

[REDACTED]

[REDACTED]