


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-120

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 18, 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, asked for "promotion with [his] peers [who were selected by the 2003 CWO4¹ selection board] based on [his] documented performance." The applicant was not selected for CWO4 by the 2003 inactive duty (Reserve) selection board that met on November 3, 2003. ² The Board interprets the applicant's request as one for the removal of his failure of selection for promotion to CWO3 and, if he is selected for promotion to CWO4 by the first selection board to consider him based on a corrected record that his date of rank be adjusted to the date he would have received if he had been selected by the 2003 CWO4 selection board.

¹ CWO4 is an abbreviation for Chief Warrant Officer -W4.

² The calendar year 2003 CWO4 selection board is also referred to as the PY [promotion year] 2004 selection board.

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

APPLICANT'S ALLEGATIONS

The applicant alleged that he was not selected for promotion by the CWO4 selection board because he did not have an officer evaluation report (OER) for the most recent year of the reporting period, which ended on June 30, 2003. He stated that the Personnel Manual required biennial OERS for CWO3s to be submitted in even numbered years. He stated that a 2002 OER had been submitted and he was not sure whether he needed an additional OER prior to the selection board. Therefore, according to the applicant, he sought guidance from his commanding officer (CO) on whether he should have a current (2003) OER prepared and submitted. The applicant stated that the CO told him, after conferring with the Coast Guard Personnel Command, that he did not need a 2003 OER. The applicant further stated the following:

I made every available effort to ensure that I was properly prepared for the PY (promotion year). However due to ambiguous guidance in the [Coast Guard] Personnel Manual, incorrect guidance from my supervisor and the Coast Guard Personnel Command, I was not given a fair chance for advancement due to the absence of an OER which should have been done in July 03.

The applicant's CO submitted a statement on the applicant's behalf. The CO verified that in May-June 2003, the applicant asked him whether the applicant needed to submit an OER ending in July 2003 for consideration by the 2003 CWO4 selection board. He stated that based on the Personnel Manual he did not believe an OER was required. He stated however that he consulted CGPC about the matter, explaining the applicant's situation. He said that CGPC agreed with his interpretation but told him to contact the Reserve Division within CGPC to be sure. The CO stated that he placed several phone calls to the Reserve office, but never received a reply to his request for clarification. The CO stated that based on the above he believed that no additional OER was required.

The CO also stated that after the CWO4 board adjourned, the applicant received a phone call telling him that he should have had a July 2003 OER and that an unusually high percentage of personnel considered by the board did not have a 2003 OER. The CO wrote that in spite of a 96% selection opportunity, more than 27% of candidates considered by the 2003 board were not selected.

The CO further stated that the message announcing the in-grade selection board was not published until October 23, 2003 and the board met on November 3, 2003.³ He alleged that if the message announcing the CWO4 selection board had been published well before the Board's convening date, there would have been sufficient time to prepare and submit an OER.

The CO praised the applicant's performance, stating that the applicant had met or exceeded his most lofty expectations.

The CO's supervisor wrote a statement agreeing with the CO that the applicant did all he could to determine whether he needed a 2003 OER. He recommended that the applicant be granted relief.

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.⁴ In the alternative, TJAG recommended that the Board remove the applicant's 2003 failure of selection for promotion to CWO4 from his record and place his record before the next regularly scheduled CWO4 selection board and if that board selects him that his date of rank be adjusted retroactively to the promotion date he would have received if he had been selected by the 2003 selection board.

CGPC also admitted that his department erred by not adequately responding to the applicant's CO's requests for guidance on whether to submit an OER on the applicant's performance for consideration by the 2003 CWO4 selection board. He stated that providing such guidance to the applicant and his rating chain is a chief responsibility of CGPC OER personnel. "Had CGPC . . . provided a timely response to the supervisor's inquiries, it is likely that the rating chain would have generated the requisite special OER."

CGPC admitted that the Coast Guard failed to give the applicant timely notice that he was to be considered by the 2003 CWO4 selection board. CGPC stated that the selection procedures require the issuance of specific candidate announcements, which supplement general board directives. Such specific messages identify candidates by

³ The message announcing the CWO in-grade selection boards 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.

⁴ TJAG stated that the Coast Guard does not have statutory authority to hold special selection boards.

name, confirm board-convening dates, and provide additional instructions to members and their rating chains. CGPC stated that while there is no legal or 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 announcement message pertaining to the CWO4 selection board preceded the actual convening of the selection by only 10 calendar days. He stated, "Notification of Applicant's eligibility for promotion ten days before the board [was to begin] shortened the period in which Applicant's rating chain could confirm Applicant's status and to determine whether a special OER was required." CGPC concluded its failure to adequately advise the applicant's CO coupled with the short notice provided as to the convening of the selection board resulted in the rating chain's inability to prepare a special OER for the applicant's selection board.

CGPC concluded that the missing special OER likely played a significant role in the applicant's failure to be selected for promotion by the 2003 CWO4 promotion board. He noted that the applicant record shows exceptional performance.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 20, 2004, the Board received the applicant's reply to the views of the Coast Guard, stating that he did not object to the advisory opinion.

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 Coast Guard committed an injustice by failing to provide the applicant's rating chain with accurate and timely assistance in determining whether a special OER should have been prepared on the applicant's recent performance and submitted to the 2003 selection board. The advisory opinion asserted that such advice is a major responsibility of CGPC OER personnel. In-fact, such personnel should have told the applicant's CO that Article 10.A.3.c.1.c of the Personnel Manual requires "the submittal of a Special OER in odd-numbered years for [inactive duty Reserve] officers who are on a biennial schedule and are in zone for promotion on the [inactive duty promotion list]." The Coast Guard committed a further injustice by not publishing the message announcing the convening date for the board and identifying the applicant as a candidate in a timely manner. CGPC acknowledged that it normally publishes such announcements approximately 30 days prior to the convening of the selection board,

but in this case the message was published only 10 days prior to the convening of the selection board. The late message announcing the selection board coupled with CGPC's failure to provide the applicant and his CO with correct and timely OER advice resulted in the applicant not having a current special OER in his record before the 2003 CWO4 selection board.

3. Having found that the applicant's record before the 2003 CWO4 selection board contained an injustice, the Board agrees with TJAG that the applicant's failure of selection for promotion to CWO4 should be removed from his record. In this regard, the Board finds, as CGPC admitted, that the applicant was prejudiced by not having the special OER in his record when the CWO4 selection board considered it. The Board further finds that it is likely that he would have been selected for promotion to that grade if he had been evaluated based on a record that included a current OER.

4. The Board also finds that the applicant, having been selected for promotion by the 2004 CWO4 selection board, should receive the date of rank he would have had if the calendar year 2003 CWO4 selection board had selected him, with back pay and allowances.

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

ORDER

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

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.

