

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-114

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

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. The Chair docketed the case on March 15, 2007, upon receipt of the completed application, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated November 29, 2007, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant, a lieutenant in the active Reserve who was released from extended active duty on June 30, 2006, asked the Board to correct his record by backdating his date of rank as a lieutenant commander (LCDR) to the date of rank he would have had if he had been selected for promotion in 2006 by the PY (promotion year) 2007 LCDR selection board. He also asked the Board to award him back pay and allowances. The applicant alleged that he was "in zone" for selection for promotion in 2006, but his record was not reviewed by the LCDR selection board because of an administrative error.

VIEWS OF THE COAST GUARD

On July 31, 2007, the Judge Advocate General (JAG) of the Coast Guard recommended that the Board grant relief in this case. The JAG noted that Article 7.A.8.b. of the Reserve Policy Manual states the following:

A Reserve officer is not considered to have failed selection if the officer was not considered by a selection board due to administrative error.

(1) If the officer is selected by the next appropriate selection board after the error is discovered, and is promoted, then the date of rank and precedence on the IDPL 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 (14 U.S.C. 739(b)).

(2) However, such officer's date of appointment, which is the effective date that pay and allowances in the higher grade begin, cannot be backdated. The date of appointment is that date the

Secretary exercises promotion authority regardless of how much later that date may be than the date of rank.

The JAG stated, however, that although the Coast Guard may not backdate the applicant's date of rank or award him back pay and allowances because of the administrative error, the Board may do so pursuant to its authority under 10 U.S.C. § 1552 by adjusting the applicant's date of appointment to LCDR by the Secretary. The JAG noted that under 14 U.S.C. § 736(c), "the date of [an officer's] appointment shall be that date when promotion authority is exercised by the Secretary. However, the Secretary may adjust the date of appointment ... for any other reason that equity requires." Therefore, the JAG stated that, if the applicant is selected for promotion by the PY 2008 selection board,¹ the Board should order the Coast Guard to assign him the date of rank and the precedence on the Inactive Duty Promotion List that he would have received had he been selected for promotion to LCDR by the PY 2007 selection board and should award him corresponding back pay and allowances.

The JAG also adopted the findings and analysis of the case provided in a memorandum prepared by CGPC. CGPC stated that in the summer of 2006, the applicant was ineligible to compete on the active duty promotion list (ADPL) because he had been RELAD when the ADPL LCDR selection board convened. However, CGPC stated that the applicant should have been considered for promotion by the IDPL LCDR selection board that summer. CGPC explained that under ALCGPERSCOM 037/06 the "zone" of Reserve lieutenants eligible for consideration for promotion to LCDR included all those from signal number 445 through signal number 568. However, the list of eligible lieutenants published under ALCGRSV 022/06 on July 24, 2006, did not include the applicant's name. CGPC stated that his absence from the list was an administrative error since he should have been on the list based on his January 17, 2002, date of rank as a lieutenant.

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On October 11, 2007, the applicant responded to the Coast Guard's advisory opinion. He stated that he agreed with the recommendation of the Coast Guard.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on 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 10 U.S.C. § 1552. The application was timely.
2. The Coast Guard has admitted that the applicant should have been considered for promotion by PY07 IDPL LCDR selection board but was not because of an administrative error. According to ALCGPERSCOM 054/07, the applicant was considered and selected for promotion by the PY08 IDPL LCDR selection board, and his promotion has been approved by the Secretary.

¹ On September 20, 2007, CGPC issued ALCGPERSCOM 054/07 with the "PY08 Reserve Lieutenant Commander Selection Board Results." The applicant's name appears therein on the list of lieutenants whose names were selected for promotion by the PY08 IDPL LCDR selection board and approved for promotion by the Secretary.

3. Under 14 U.S.C. § 739(b), 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.” Therefore, the Board finds that the applicant has proved by a preponderance of the evidence that he should receive the date of rank and precedence on the IDPL that he would have received had he been selected for promotion by the PY07 IDPL LCDR selection board and that, as a matter of equity, he should receive corresponding back pay and allowances.

4. Accordingly, relief should be granted in that when the applicant is promoted to LCDR, his date of rank as a LCDR should be backdated to what it would have been had he been selected for promotion by the PY07 IDPL LCDR selection board; he should receive the precedence on the IDPL that he would have had if he had been selected for promotion by that board; and he should receive the pay and allowances he would have received had he been selected for promotion by that board.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxx, USCGR, for correction of his military record is granted. When he is promoted to LCDR pursuant to his selection for promotion by the PY08 IDPL LCDR selection board, the Coast Guard shall

(a) backdate his LCDR date of rank to the date of rank he would have received if he had been selected for promotion by the PY07 IDPL LCDR selection board;

(b) correct his precedence on the IDPL to the precedence he would have received had he been selected for promotion by the PY07 IDPL LCDR selection board; and

(c) pay him the back pay and allowances that he would have received had he been selected for promotion by the PY07 IDPL LCDR selection board.

