

DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS

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Application for Correction  
of Coast Guard Record of:

BCMR Docket  
No. 114-97

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**FINAL DECISION**

**Chairman:**

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on April 30, 1997, upon the BCMR's receipt of the applicant's request for correction of her military record.

The final decision, dated April 9, 1998, is signed by the three duly appointed members who were designated to serve as the Board in this case.

**Applicant's Request for Relief**

The applicant alleged that she was discriminated against because the Coast Guard's assignment process considered her gender in making an assignment decision for her.

The applicant was a [REDACTED] pay grade E-7) at the time she applied for relief (April 30, 1997). On September 1, 1997, she was advanced to [REDACTED] pay grade E-8. In 1995, she applied for promotion to CWO2 (Chief Warrant Officer (2)). She was selected and tendered an appointment as a CWO2, with a date of rank of January 1, 1996 and with appropriate pay and allowances.

Her appointment as a CWO2 was "conditioned on her acceptance of orders" to USCGC [REDACTED] a cutter that was homeported in [REDACTED]. She rejected that appointment because of this condition, on the ground that the condition was gender-based and discriminatory.

The precondition allegedly related to the fact that another woman officer had already been ordered assigned to the [REDACTED]. The applicant alleged that the Coast Guard conditioned her appointment because it "wished to avoid having only one female officer aboard" that ship. The applicant also alleged that the Coast Guard refused to entertain any alternatives that would permit the applicant to address family obligations (her mother was ailing), while it accommodated a male chief

warrant officer at the same time.

The applicant also alleged that the precondition violated an allegedly anti-discrimination rule (Article 4.A.7.a. of the Personnel Manual).<sup>1</sup> That section provided that the Service "will not arbitrarily deny women an assignment solely due to lack of a second woman."

In September 1995, when the applicant was tendered an appointment as CWO2 [REDACTED] she was not "the next prospective CWO2 [REDACTED] on the promotion list." The next person on the promotion list was a male CWO2. Despite the fact that this person was above her among the [REDACTED] specialists on the CWO promotion list, he was not tendered a commission before she was. The applicant alleged that she was discriminated against by being tendered a commission before him because the Coast Guard's assignment process considered her gender instead of only her position on the promotion list.

The applicant also alleged that there was no [REDACTED] vacancy on the [REDACTED]. A vacancy was, however, created on the [REDACTED] by prematurely reassigning a male officer from [REDACTED] to [REDACTED].

The applicant alleged that the Coast Guard committed two errors: (1) It permitted a male CWO to leave the [REDACTED] and rejoin his family two years early, and (2) it made the applicant a companion for a female ensign on the [REDACTED]. The applicant alleged that this one-two punch disregarded "the normal process" of working down the CWO2 promotion list as well as the Personnel Manual. The normal process involved offering promotion "in the proper sequence" from the promotion list.

According to a November 26, 1995 letter by the applicant to the President, Women's Advisory Council, acceptance of the [REDACTED] assignment would have required her to dispose of her house in [REDACTED] quickly. She learned that to do so she would have to sell the house at a \$24,000 loss or rent it as a depressed rental. According to the letter, she told the Council that she "was disadvantaged because [she] was forced to decline an appointment because the orders were based on gender." She said she felt that "the practice of assignment by gender is totally wrong, if not illegal."<sup>2</sup>

The applicant alleged that she was "improperly tendered the . . . appointment

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<sup>1</sup> The provision was originally Art. 4.A.10(a)(4) of the Personnel Manual, which was adopted as part of Change 20 (7/7/94). The current text was adopted on 2/3/97 as part of Change 26.

<sup>2</sup> According to the head of the CG Personnel Command, there is no record of the women's council having received the applicant's 1995 letter or of responding to it.

out of sequence. . . . Had the Coast Guard taken [the applicant] in order, rather than out of order, she would doubtless have accepted appointment and orders ."

Several appendices were attached to the application for relief.

### Views of the Coast Guard

On March 23, 1998, the Chief Counsel of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in this case.

The Chief Counsel of the Coast Guard said that the applicant failed to prove that the Coast Guard committed error or injustice in her case. He said that she has not established that she was a victim of gender discrimination merely by showing that her gender was considered in an assignment decision. The Chief Counsel said that assignment decisions "call for the exercise of considerable discretion" and that in exercising that discretion Coast Guard personnel are presumed to have discharged their duties correctly and lawfully "absent . . . convincing evidence to the contrary." The Chief Counsel stated that the applicant has not presented evidence rebutting that presumption and is not entitled to relief.

The Chief Counsel noted that there are occasions when the Coast Guard is required to consider gender. For example, it is directed to make every attempt to provide support. According to the first half of provision 3, Article 4.A.7.a.3. of the Personnel Manual, "The Service makes every attempt to assign women to units in groups of two or more for medical and companionship."

The Chief Counsel also noted that Article 4.A.7.a. of the Personnel Manual requires gender consideration. It requires that women in the Coast Guard be assigned only to Coast Guard units "having adequate privacy for each gender in berthing and personal hygiene." The Chief Counsel said that the [REDACTED] the cutter the applicant preferred, "did not have berthing available for a woman warrant officer."

The Chief Counsel alleged that the applicant presented no evidence to support her claim that the Coast Guard favored a male officer over her solely because she was a woman. He said that the assignment process includes less desirable assignments because the process is of necessity discretionary.

The Personnel Manual says (Art. 4.A.1.a.1) that in assigning personnel "Service needs come first."

The Chief Counsel accordingly said that the applicant has failed to prove error or injustice and her application should therefore be denied.

### **Applicant's Response to Coast Guard Views**

On March 23, 1998, the Board sent the applicant a copy of the views and recommendations of the Coast Guard, with an invitation to her to respond to them.

On April 3, 1998, the applicant sent the Board her responses to the views of the Coast Guard. The applicant sharply criticized the Coast Guard's failure to generate a timely advisory opinion. She predicted that the final decision in this case "is certain to be a hurry-up 'Tom Stoppard' version of agency action, wholly antithetical to the remedial purposes of the record-correction statute."

She also criticized alleged defects in the advisory opinion that was submitted to the Board. She criticized the statements by Coast Guard witnesses and called for an evidentiary hearing. She also submitted a three-page statement by a CWO4 who has submitted a two-page statement with the application.

### **SUMMARIES OF STATEMENTS AND INTERVIEWS**

The applicant submitted statements from three Coast Guard members, and the Coast Guard submitted statements and reports of interviews from seven Coast Guard members. The most significant statements and interviews are summarized below.

#### Applicant's Witnesses

a. A CWO4 [REDACTED] submitted a statement in support of the applicant. He stated that the applicant's assignment officer violated Coast Guard policies by "issuing orders to her before [they were issued to another member] who was above her on the list and by rights should have received orders to the next open billet." (The CWO4 did not identify the Coast Guard rule or regulation that prohibits a member from issuing orders to a lower-ranked person, nor did he identify the meaning of "by rights should.") The CWO4 also stated that the applicant was discriminated against because she was female.

b. A second statement was submitted by a CWO (Ret.) [REDACTED]. The CWO stated that the applicant was treated unfairly by the Coast Guard, which did not consider her needs. The applicant's mother, who lived in [REDACTED] was afflicted with crippling arthritis, osteoporosis, other conditions, and was emotionally dependent on the applicant. Assignment of the applicant to the CGC [REDACTED] would have been "better" for the applicant because it was homeported in [REDACTED] close to her mother and sister. Assignment of the applicant to CGC [REDACTED] which was homeported in [REDACTED] would make it "almost impossible" for the applicant to address an emergency with respect to her mother.

c. A CWO3 [REDACTED] said that "[i]t was unwritten policy at the MPC (Personnel Command) to assist new personnel as best as they could, we always tried to find solutions to problems. This was not done for [the applicant]. The assignment officer for [the applicant] was ridged (sic) and unbending."

Coast Guard Witnesses

a. A CWO [REDACTED] stated that all known assignments for the next year are published in the preceding August (shopping list); all prospective CWOs are required to submit their assignment data by October. The billets are competed for and are not filled by first come, first serve. "In no instance is a vacancy simply arbitrarily filled by the next prospective CWO. The assignment decision is based upon assessment of all pertinent information."

b. Another CWO4 [REDACTED] found that all the staterooms on [REDACTED] were occupied by male officers, none of whom were scheduled for rotation. [REDACTED] was accordingly unavailable to accommodate a female officer. The applicant has indicated that her least desired assignment area was Alaska, so that billet was filled by another CWO. She was then assigned to [REDACTED] where she could head a department afloat.

**PERTINENT PROVISIONS OF THE PERSONNEL MANUAL**

**4.A.1.a. Objective**

.... In distributing and assigning members, Service needs come first.

**4.A.6.a. Commandant's Policy**

[I]t is a long standing feature of military service and the Commandant's policy that all Coast Guard members be available for unrestricted duty assignment worldwide.

**4.A.7. Women's Duty Assignments and Rotations**

Commander, CGPC assigns women to any Coast Guard unit having adequate privacy for each gender in berthing and personal hygiene. . . .

3. The Service makes every attempt to assign women to units in groups of two or more for medical and companionship reasons; however, the Service will not arbitrarily deny women an assignment solely due to lack of a second woman.



Cf. 4.B.3.c. 2. Assignment Continuum

2. The Assignment Officer (AO) shall consider the following assignment continuum when making any assignment decision:

a. Service needs

b. Assignment priorities and geographic stability. The AO will attempt to reassign the member first within the local area (local stability). If an appropriate assignment is not available there, the next attempt will be made to reassign the member within the geographic boundaries of the current district (regional stability) where he or she now is stationed. If the district geographic area does not provide an assignment opportunity, then the entire Area (Atlantic or Pacific as appropriate) will be considered.

c. Career enhancement, diversity, and qualification requirements; advancement potential.

**FINDINGS AND CONCLUSIONS**

The Board makes the following findings and conclusions on the basis of the submissions of the applicant and the Coast Guard, the military record of the applicant, and applicable law:

1. The Board has jurisdiction to determine the issues in this proceeding under section 1552 of title 10, United States Code. The application was timely.

2. The applicant requested an oral hearing. The Chairman, pursuant to §52.31 of the Board's rules, recommended disposition on the merits without a hearing. The Board concurred.

3. The applicant brought this application to secure her tendered appointment as a CWO2 plus retroactive date of rank, backpay, and allowances. She alleged that she was compelled to refuse the tendered appointment because it contained a "gender-based pre-condition" set by the Coast Guard that was discriminatory and "not feasible" for the applicant.

4. In 1995, the applicant competed for promotion to CWO in [REDACTED]. She was selected to become a CWO2 by the Warrant Officer Selection Board, but her appointment was conditioned upon her accepting orders to the CGC [REDACTED]. She alleged that this condition was gender-based because a male CWO2 (and not the applicant) was at the top of the [REDACTED] promotion list and because the

Coast Guard's sole reason for the pre-condition was to avoid having only one woman officer aboard the [REDACTED] (The other woman officer was a newly-commissioned Ensign.)

5. Article 4.A.7.a.3 of the Personnel Manual mandates assigning women in the manner employed in this case. Clause 3. of Article 4.A.7.a. provides that "[t]he Service makes every attempt to assign women to units in groups of two or more for medical and companionship reasons[.]"

6. The second clause of Article 4.A.7.a.3 of the Personnel Manual provides that no woman can be denied an assignment because of the lack of a second woman. This policy was not violated in this case, because she was not denied an assignment.

7. The same provision requires that Coast Guard women be assigned to units that have adequate berthing facilities. The Coast Guard determined that the other cutter named, the [REDACTED] "did not have berthing available for a woman warrant officer." The [REDACTED] was homeported in [REDACTED] and was therefore closer to the applicant's ailing mother, but an assignment to the [REDACTED] did not meet the requirements of Article 4.A.7.a. of the Personnel Manual.

8. The applicant has confused gender discrimination with gender consideration and has called both concepts "gender-based." Assignment of women in groups of two or more and adequate berthing facilities are not examples of gender discrimination, although they are examples of gender consideration. The applicant alleged that the Coast Guard "falsely asserted" that its handling of this matter "was not a gender-based issue." The applicant was wrong in her terminology. The Coast Guard might reasonably have concluded that recruitment of women might decline if berthing facilities were not adequate for women or if women officers were required to be alone on patrols on ships with crews of close to 100 men.

9. Article 4.A.6.a. (Commandant's Policy) states that "[i]t is a long standing feature of military service and the Commandant's policy that all Coast Guard members be available for unrestricted duty assignment worldwide." To the extent that the applicant was not available to move from [REDACTED] to [REDACTED] for a duty assignment, she was in violation of this article.

10. Accordingly, the applicant has not proven that the Coast Guard committed any error or injustice. The application should be denied.

**ORDER**

The application to correct the military record of \_\_\_\_\_  
ISCG, is denied.

