

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

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Application for Correction  
of Coast Guard Record of:

BCMR Docket  
No. 10-97

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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 October 16, 1996, upon the BCMR's receipt of the applicant's request for correction of her military record.

The final decision, dated October 10, 1997, 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 asked the Board to remove four Administrative Remarks (Coast Guard Form 3307), dated 93FEB09, 92NOV17, 92SEP30, 92APR08 [disputed 3307s] from her record. She also asked to be reconsidered for selection to CWO [chief warrant officer] by the next CWO Selection Panel. She also asked to have her date of rank backdated to the date that would have been appropriate if she had been selected by the 1996 Warrant Officer Selection Board (WOAB).

The disputed 3307 entries dated April 8, 1992; September 3, 1992; and September 30, 1992 are called "adverse administrative remarks entry" and "unsatisfactory performance" observation. These three Forms 3307 were very negative. For example, the applicant was alleged to "have demonstrated a lack of integrity and poor judgment" and to have spoken disrespectfully of the commanding officer. She was alleged to have stated that anytime anyone had alcohol in his or her system it would be an alcohol related situation and that two situations equal one incident; she was alleged to have told her supervisor that ponytails were not authorized; she was alleged to have become, on January 14, 1992, resentful, vocal to the point of disrespect, sputtering, and stomping out of the supervisor's office; and to have displayed half truths, underhandedness, and abuse of power to her supervisor. In July 1996, the Coast Guard Personnel Command (CGPA) found the applicant was not fully qualified for warrant

officer appointment because her "record reflects significant leadership and professional deficiencies."

On July 26, 1996, CGPC advised the applicant that the 1996 CWO Selection Board elected to remove her from consideration for selection to CWO. The CGPC said the three disputed 3307s "should not have appeared before the Board [since they "contained substantial negative comments . . . which may have influenced the Board]" On July 24, 1996, the Civil Rights Office confirmed that the "offending" CG-3307s were still on record. They had been ordered removed by the applicant's command and by her district commander and had been reported removed by Commandant in 1993. CGPC found that the last documented adverse entry "captured performance approximately four years prior to the convening of the June 1996 WOAB."

In July 1992, the applicant filed a complaint of discrimination. In 1993, her district commander directed that her record be corrected by removing two Form CG-3307s. The applicant alleged that each of the disputed CG-3307s was erroneously contained in the record of the 1996 CWO Selection Board. These documents were alleged to be a material factor in the Selection Board's decision to remove her from consideration for selection.

Accordingly, the applicant asked to be considered again for selection by the 1996 CWO board or to be considered for a backdating of rank if she successfully competes before a future CWO board.

#### Views of the Coast Guard

On January 7, 1997, the Coast Guard Personnel Command (CGPC) removed three disputed CG-3307s from the applicant's official service record: CG-3307s dated April 8, 1992, September 3, 1992, and September 30, 1992 (uncorrected). On September 22, 1997, the Chief Counsel of the Coast Guard agreed that these three forms, which were in her record as it appeared prior to the 1996 WOAB [warrant officer appointment board], should have been removed.

CGPC stated that "[g]iven the current status of the pending applications, it is evident that [the applicant] will appear before the June 1997 WOAB as a primary candidate. . . . [B]ecause the 1996 final eligibility list may not be exhausted, the proposed relief does not guarantee an appointment. . . . Applicant would not be appointed should she be found not fully qualified by the 1997 WOAB.

On September 22, 1997, the Chief Counsel said that the applicant "suffered a prejudicial error with respect to the 1996 Board" and that "absent the error, she may [have been on the eligibility list]." The applicant, according to the Coast Guard advisory opinion, provided no evidence that the document constituted "biased retributory actions" rather than an accurate reflection of her performance and did not constitute a finding of discrimination by the Coast Guard.

The Chief Counsel admitted that this proffered relief would not result in her becoming a warrant officer. The Chief Counsel said that the applicant should only be granted an appointment as a warrant officer if those above her on the list are also offered warrant officer appointments. "As of 17 September 1997, Warrant [personnel] candidates through number 12 on the 1996 list have been offered appointments and 14 candidates remain on the list." Consequently, the Chief Counsel recommended that the applicant be ranked 31 out of 31.

#### **Response of Applicant to Views of the Coast Guard**

On September 25, 1997, the Chairman sent the applicant a copy of the Coast Guard's views. The Chairman invited the applicant to notify the Board of any rebuttal.

The Board did not receive any response from the applicant.

#### **Applicable Regulations about CWO's from the Personnel Manual**

Chapter 1.D of the Personnel Manual defines CWOs as commissioned officers of the Coast Guard. Section 1.d.2.a. lists the eligibility standards as a valid investigation for suitability within five years; a valid security clearance within the last 10 years; a favorable National Agency Check (NAC) within five years; a member with eight years active duty service in any armed force in pay grade E-6 or above. Members whose request for retirement have been approved, or who have had either a court-martial or NJP in the three years prior to the January 1 deadline are not eligible to apply to be a warrant officer.

The final eligibility step in the warrant officer appointment process is the recommendation of the commanding officer.

Section 1.D.8.a. provides that the Commander of the CGPC shall, at such times as the needs of the Service require, convene a Board to recommend eligible candidates for appointment to warrant grade.

Section 1.D:11.a provides that appointments as CWOs shall be made by the Secretary of Transportation, from among enlisted personnel of the Coast Guard who have been placed on an eligibility list as a result of approved action of a Coast Guard appointment board.

On December 10, 1996, two months after she applied for correction of her military record, the applicant was "submitted for consideration as [one of four] candidates for the Warrant Officer Appointment Process."

### **Prior Adjudicative Actions**

**SRB Proceeding:** On April 29, 1991, the applicant asked the BCMR to correct her record to show she extended her enlistment prior to February 15, 1982 for six years to obtain a Zone B Selective Reenlistment Bonus (SRB). The Coast Guard denied responsibility for the claim on the ground that the application was untimely and a stale claim. The BCMR denied her application for a SRB on that ground that the applicant had not met the burden of demonstrating lack of prejudice to the Coast Guard. On April 1, 1992, the Coast Guard was notified that the BCMR had denied the application.

**Physical Disability Proceedings[PEB]:** On April 21, 1993, the findings of the Physical Evaluation Board were approved by the Commandant. The PEB ruled that the applicant should not be retired or separated by reason of physical disability. On May 17, 1992, she had fallen down steps and broken her ankle. According to the injury report, the steps were very old and not in compliance with the 1991 Uniform Building Code. On August 25, 1992, her commanding officer reviewed the injury and stated that this accident could be classified as an alcohol related situation. The applicant signed an acknowledgment that she could be processed for separation if she is involved in a subsequent similar situation. On March 5, 1993, her executive officer said she had been assigned to routine tasks while waiting Board action.

### **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 of the case pursuant to section 1552 of title 10, United States Code. The application is timely.
2. The applicant sought to be appointed a chief warrant officer (CWO) by the 1996 Warrant Officer Appointment Board (WOAB).

3. The record upon which the applicant was considered by the 1996 WOAB contained four CG-3307 (administrative remarks) entries which she challenged in a discrimination complaint. The Coast Guard concluded, in an agreement settling her discrimination complaint, that three of these entries amounted to prejudicial error with respect to the 1996 Board.

4. The Coast Guard stated that "absent the error, she may have been selected by [the WOAB] for placement on the current eligibility list."

5. The Coast Guard stated that the three forms CG-3307 should have been removed in 1993 but were not removed until on or about January 7, 1997.

6. A fourth form CG-3307, dated September 30, 1992, was not removed because the Coast Guard did not agree with the applicant that this "document was erroneous." The applicant argued that this document showed "biased retributory actions" by the CO. The Coast Guard was accurate in not deleting the document because the applicant provided no evidence that the document in fact constitutes "biased retributory actions."

7. The applicant was considered, on the basis of her corrected record, by the 1997 WOAB. The 1997 WOAB ranked her 25 out of 25 in the Personnel Administration (PERS) category.

8. The applicant has not established that the Coast Guard committed any error or injustice, other than with respect to the three CG-3307 that were removed by consent. Accordingly, her record has been corrected.

9. The applicant has not established by a preponderance of the evidence that the Coast Guard committed any uncorrected error or injustice with respect to her appointment as warrant officer.

ORDER

The application of \_\_\_\_\_, USCG, for correction of her military record is partially granted, as follows: the applicant shall be ranked as No. 31 of 31 on the eligibility list for appointment to warrant grade effective June 1997 through May 1998. If No. 30 is offered an appointment, the applicant shall be offered the next available appointment.

