

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 1997-160

FINAL DECISION

██████████ Chairman:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on August 4, 1997, upon the BCMR's receipt of the applicant's request for correction of his military record.

The final decision, dated June 25, 1996, is signed by the three duly appointed members who were designated to serve as the Board in this case.

Application for Relief

The applicant, a ██████████; pay grade E-6), asked that he be retroactively advanced to ██████████ as of January 1, 1997.

The applicant asserted that he would have made ██████████ by January 1, 1997, if he had been allowed to take the service wide examination. (SWE) in May 1996 instead of taking it in November 1996. He alleged that the supervisors at his clinic barred him from taking the exam. According to the supervisors, "no one has enough experience to take their first eligible service wide examination regardless of what Coast Guard regulation governs."

The applicant makes a strong argument, based on his past performance, why he should have been permitted to take the May 1996 SWE.

Views of the Coast Guard

On March 4, 1998, the Board received a recommendation from the Chief Counsel of the Coast Guard to grant the applicant retroactive advancement.

The Chief Counsel admitted that the applicant's statement that certain supervisory personnel had dissuaded him from taking the May 1996 SWE "was corroborated by an investigation into similar allegations conducted by Commanding Officer." The Coast Guard conceded that this conduct constituted an error or injustice and that absent these actions, he would have taken the May 1996 SWE.

The Chief Counsel concluded that the applicant would have passed the May 1996 SWE, and as a result, would have advanced to pay grade E-6 effective April 1, 1997.

The Chief Counsel did not, however, recommend that the applicant's advancement be backdated to January 1, 1996, as the applicant had requested. That would "unfairly make [him] senior" to members who scored higher than he would have if he had competed in the May 1996 SWE.

Response of the Applicant to the Coast Guard Views

On March 19, 1998, the applicant accepted the Coast Guard's position. He accepted the Coast Guard's recommendation that he be retroactively advanced to E-6 as of April 1, 1997, with 10 months of back pay.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the submissions of the applicant and of the Coast Guard; the military record of the applicant, 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 applicant requested an oral hearing. The Chairman reviewed that request and decided to recommend disposition on the merits without an oral hearing, pursuant to 33 CFR § 52.31. The Board concurred in that recommendation.
3. Coast Guard supervisory personnel effectively barred the applicant from taking the May 1996 SWE exam, which forced him to take the November SWE.
4. An investigation was conducted at the Cape May Training Center. The base educational officer found that people were discouraged from taking the test through what seemed to be inappropriate counseling.

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5. The unmerited denial of the opportunity to take a Coast Guard test is an error or injustice.

6. Accordingly, relief should be granted.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The military record of _____, USCG is corrected by advancing him to paygrade E-6, as of April 1, 1996, with backpay and allowances.

