

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

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 1997-161

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.

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

Request for Relief

The applicant was a senior chief ██████████ pay grade E-8) when he applied for correction of his military record.

The applicant asked the Board to backdate the date of his promotion to senior chief petty officer (E-8) to November 1, 1995. His actual date of promotion to that grade was November 1, 1996.

He alleged that he was # 5 on the eligibility list on the May 94 Servicewide Examination (SWE) for advancement to E-8. He stated that he should have been promoted on November 1, 1995, but he was in fact not promoted until November 1, 1996. The applicant declared that he deserved to be promoted November 1, 1995 because he "performed the duties of the leading chief petty officer [CPO] from June 1995 to July 1996" and because the leading CPO was "usually" an E-8.

He was told that he would not be promoted in 1995 because the billet involved (E-8/██████████) was being deleted because the C-130 aircraft were being withdrawn from the base. This was untrue as the C-130 aircraft did not depart

until June 1996. The decision to make him a "carry over" was unjustified, in his opinion, because there was nothing in writing.

The applicant submitted a signed letter from a commander (CDR) who said that he had selected the applicant as his "Leading Chief." The CDR explained that this meant that the applicant filled an E-8 billet, even though he had not yet been advanced to E-8. He said that for a period of 13 months (May 1995 to June 1996) the applicant was assigned to an E-8 billet which was one level above his pay grade of E-7.

Views of the Coast Guard

On June 2, 1998, the Chief Counsel of the Coast Guard (CG) recommended that the Board deny relief in this case.

On March 16, 1998, the Commander, CG Personnel Command (CGPC), recommended to the Commandant that relief not be granted to the applicant. The Commander said that the applicant was listed as #5 on the eligibility list for advancement to E-8, on the basis of the May 94 (June 6, 1994) SWE. CGPC said that the only way the applicant could have concluded that he was due for promotion on November 1, 1995 would have been to speculate on vacancies using whatever unofficial or second-hand information he may have obtained. The Commander said that advancements are very dynamic and that "no member is ever guaranteed a specific date of advancement." CGPC stated that the CG's advancement process was followed correctly in this case, and that the applicant did not show that the Coast Guard committed any error or injustice.

The Chief Counsel said that the CGPC opinion was the advisory opinion of the Coast Guard. The Chief Counsel said that the "[a]pplicant has not shown error or injustice."

Applicant's Response to the Views of the Coast Guard

On June 22, 1998, the applicant responded to the views of the Coast Guard.

The applicant said he did not speculate or use second hand information to determine his promotion date. He said that members #1 to #4 on the SWE list were advanced November 1, 1995, and an existing [REDACTED] retired on November 1, 1995. The applicant concluded that he should have been promoted on November 1, 1995 based on the retirement and his conclusion that the need for [REDACTED] petty officers remained the same. (A substantial reduction in the number of aircraft took place at the base involved, but the removal of the C-130s did not take place until the following year, in June 1996)

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 applicant's military record, and applicable law:

1. The Board has jurisdiction of this case pursuant to section 1552 of title 10, United States Code. The application was timely.

2. The applicant was number 5 on the eligibility list on the May 94 Servicewide Examination (SWE) for advancement to E-8.

3. On the basis of need and vacancy, the applicant concluded that he would be promoted to E-8 on November 1, 1995. The four members who were #1 to #4 on the eligibility list were advanced by that date, and an existing E-8 retired November 1, 1995.

4. There is no evidence to indicate that the Coast Guard would fill the fifth billet on the date the E-8 retired.

5. The applicant did not introduce any evidence to the effect that the Coast Guard committed error or injustice with respect to the advancement of the applicant. All the evidence indicates that normal procedures were followed, and that there were no errors or injustices.

6. Accordingly, the application should be denied.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application of
correction of his military record, is denied.

USCG, for

