

DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of  
Coast Guard Record of:

BCMR Docket  
No. 2000-150

**FINAL DECISION**

██████████ Deputy Chairman:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on June 23, 2000, upon the Board's receipt of the applicant's complete application for correction of his military record.

This final decision, dated April 19, 2001, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a yeoman second class (YN2; pay grade E-5), asked the Board to advance him retroactively to YN2, with back pay and allowances. The applicant alleged that his advancement date should be July 1, 1999 rather than July 1, 2000.

**Applicant's Request for Relief**

The applicant stated that he was scheduled to be advanced to E-5 on July 1, 1999. However, his commanding officer withheld his advancement because of the charges pending against him before a General Court-martial. On June 2, 2000, the applicant was acquitted of all of those charges.

**Views of the Coast Guard**

On January 10, 2001, the Board received an advisory opinion from the Chief Counsel of the Coast Guard, recommending that the Board grant relief in accordance with a memorandum from the Commander, Coast Guard Personnel Command (CGPC), which was attached as an enclosure to the advisory opinion.

CGPC offered the following information:

June 18, 1999: Applicant's name appeared on [a] Coast Guard message ... Enlisted Personnel Advancement Announcement No. 07-99.

Advancement Announcement 07-99 shows the applicant as number 39 on the list of personnel to advance from yeoman third class to yeoman second class on the July 1, 1999.

June 21 1999: [a] message . . . from the applicant's command requested the applicant's advancement be withheld pending disciplinary action.

June 22, 1999: [a] message . . . officially placed applicant's advancement on hold due to General Court-martial proceedings. The message further stated that the applicant's advancement list expired December 16, 1999.

Article 5.C.25.c.1.a of the Coast Guard Personnel Manual . . . states that a commanding officer shall withhold advancement for [pending] disciplinary action.

Article 5.C.25.c.3 of the Coast Guard Personnel Manual permits an advancement to be withheld pending disciplinary action to be effected after the disciplinary action is adjudicated, but not later than the expiration of the current eligibility list. And, that no member whose advancement has been withheld may be carried over to the new eligibility list.

May 22, 2000: Applicant tried by court-martial proceedings.

June 2, 2000: Applicant found not guilty of all offenses, disciplinary action adjudicated.

July 1, 2000: Applicant advanced to Yeoman Second Class (E-5).

CGPC stated that the applicant's advancement was properly withheld due to pending disciplinary action. CGPC further stated that it would be an injustice not to advance to E-5 effective 1 July 1999, since he was found not guilty of the charges that were the basis for withholding his advancement to E-5.

#### **Applicant's Reply to the Views of the Coast Guard**

On January 29, 2001, the Board received the applicant's reply to the views of the Coast Guard. He agreed with the advisory opinion.

#### **FINDINGS AND CONCLUSIONS**

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

1. The BCMR has jurisdiction of this case under section 1552 of title 10, United States Code. The application was timely.

2. The Coast Guard withheld the applicant's advancement to pay grade E-5 because of the court-martial charges that were pending against him at that time. The applicant was, subsequently, acquitted of all charges. The Chief Counsel stated that it would be an injustice not to correct the applicant's date of rank, in light of his acquittal. In addition, the Board notes that a denial of relief would be tantamount to the

imposition of punishment although the applicant has been acquitted of the charges against him. The applicant would have been advanced on July 1, 1999, if the Coast Guard had not withheld his advancement due to a pending court-martial.

3. The Board agrees with the Coast Guard that the applicant has suffered an injustice and is entitled to relief.

4. Accordingly, the applicant should be granted relief.

**[SIGNATURES AND ORDER ON NEXT PAGE]**

ORDER

The application of Y USCG, for correction of his military record is granted. The date of his advancement to YN2 shall be corrected to July 1, 1999. He is entitled to back pay and allowances.

