

**DEPARTMENT OF HOMELAND SECURITY  
BOARD FOR CORRECTION OF MILITARY RECORDS**

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2015-046**



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**FINAL DECISION**

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the application upon receipt of the applicant's completed application on December 18, 2014, and prepared the draft decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 18, 2015, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST AND ALLEGATIONS**

The applicant asked the Board to correct his record to show that he was promoted to the rank of rear admiral before he retired from the Coast Guard Reserve on November 6, 1980. The applicant alleged that the admiral selection board that convened in 1979 failed to select him based solely on the fact that he had been an officer in the Air Force before being recruited to transfer to the Coast Guard Reserve as a lieutenant commander. He alleged that a member of the selection board stated, "We can't promote this officer ... to RADM in that he transferred into the CG from the Air Force."

The applicant stated that he knew of this error in 1979 but argued that it is in the interest of justice to excuse the untimeliness of the application and waive the Board's three-year statute of limitations because the admiral selection board's reason for not selecting him for promotion was unsupportable. The applicant did not submit any evidence in support of his allegations and stated that the evidence is "no longer available."

The applicant argued that the admiral selection board's reason for not selecting him "is without justification for which I now seek retribution. I do not seek any financial adjustments with the possible increase in pension from the date of my desired promotion.

### SUMMARY OF THE RECORD

The applicant began his military career on March 17, 1942, as a cadet in the U.S. Army Air Corps. He became a navigator and served on active duty in the U.S. Army Air Forces for more than three years during World War II; was released to inactive duty on November 5, 1945; and transferred into the U.S. Air Force Reserve when the Air Force separated from the Army in 1947. The applicant drilled regularly in the Air Force Reserve and was promoted to the rank of major. In November 1958, the applicant applied for a direct commission as a lieutenant commander in the Coast Guard Reserve. In a letter to his commanding officer in the Air Force Reserve, dated October 13, 1958, the applicant requested release for the transfer because “[d]espite numerous correspondence courses and a recent change in A.F.S., I have been unable to get an “M” Day assignment or short tours of active duty. The U.S. Coast Guard has offered me a Class “A” assignment which includes 48 pay periods plus two weeks of active duty. I will be accepted at an equivalent rank.”

The applicant was discharged from the Air Force Reserve on September 15, 1959, and appointed a lieutenant commander in the Coast Guard Reserve the next day. He drilled regularly in the Coast Guard Reserve and was promoted to commander in 1968 and to captain on March 1, 1972. As a captain, the applicant applied for and was considered for promotion to rear admiral by the selection board that convened on March 21, 1973. He was not selected, but he was selected for retention in an active status by a captain retention board that convened in November 1973.

In October 1974, the applicant submitted his resume and other documents for consideration by another captain retention board. On December 2, 1974, he was informed in a letter that he had not been selected for retention and so would be separated from an active status in the Reserve. The letter notes, “As a captain, you have been considered by so many retention and promotion boards that by this time in your career, competition is extremely keen and the task for the members of the boards most difficult. Having carefully considered and compared the records of all inactive duty Reserve captains, it was the board’s recommendation that it is now your turn to step aside, as we all must do eventually.”

On [REDACTED], the applicant was transferred to the Standby Reserve (inactive status). He had accumulated 32 years, 11 months, and 14 days of satisfactory service for retirement purposes. In the Standby Reserve, he was no longer eligible to drill or earn points towards retirement.

On his 60<sup>th</sup> birthday, [REDACTED], the applicant was transferred to the retired list in the grade of captain.

### VIEWS OF THE COAST GUARD

On July 13, 2015, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in accordance with the findings and analysis in a memorandum submitted for the case by Commander, Personnel Service Center (PSC).

PSC stated that the application is untimely and that the applicant did not justify his delay in applying to the BCMR.

PSC stated that the admiral selection board members who reviewed the applicant's record swore or affirmed that they would, "without prejudice or partiality, and having in view both the special fitness of officers and the efficiency of the Coast Guard, perform the duties imposed upon them," in accordance with 14 U.S.C. § 254.<sup>1</sup> Furthermore, the deliberations of that Board were by law confidential under 14 U.S.C. § 261<sup>2</sup> and would not have been disclosed to anyone.

PSC stated that with no evidence to the contrary, PSC believes that the selection board members carried out their duties correctly, lawfully, and in good faith. PSC concluded that the applicant has failed to show any error or injustice occurred with respect to his non-selection for rear admiral.

### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On July 24, 2015, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to submit a response within thirty days. No response was received.

### **FINDINGS AND CONCLUSIONS**

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

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.<sup>3</sup> The record shows that the applicant knew he was not being promoted to rear admiral or retired at that rank no later than November 1980. Therefore, his application is untimely.
3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.<sup>4</sup> In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board should not deny an application for untimeliness without "analyz[ing] both the reasons for the delay and the potential merits of the claim based on a cursory review"<sup>5</sup> to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted that "the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review."<sup>6</sup>

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<sup>1</sup> Pub. L. 88-130, § 1(10)(C), 77 Stat. 179 (Sept. 24, 1963).

<sup>2</sup> Pub. L. 88-130, § 1(10)(C), 77 Stat. 181 (Sept. 24, 1963).

<sup>3</sup> 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

<sup>4</sup> 10 U.S.C. § 1552(b).

<sup>5</sup> *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

<sup>6</sup> *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396, 1405 n14, 1407 n19 (D.C. Cir. 1995).

4. The applicant provided no justification for having delayed his application for more than thirty years. Nor did he submit any evidence supporting his claim that the admiral selection board members based their decision not to select him on bias because he had begun his military career in a different military service. As PSC noted, the selection board members were required to swear to perform their duties “without prejudice or partiality, and having in view both the special fitness of officers and the efficiency of the Coast Guard,”<sup>7</sup> and their deliberations were by law confidential and could not be disclosed to anyone.<sup>8</sup> The record before the Board contains no evidence that substantiates the applicant’s allegations of error or injustice in his military record, which is presumptively correct.<sup>9</sup> Therefore, the Board finds that the applicant’s claim cannot prevail, and it is not in the interest of justice to waive the statute of limitations.

5. Accordingly, the Board will not excuse the application’s untimeliness or waive the statute of limitations. The applicant’s request should be denied.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

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<sup>7</sup> Pub. L. 88-130, § 1(10)(C), 77 Stat. 179 (Sept. 24, 1963) (codified at 14 U.S.C. § 254).

<sup>8</sup> Pub. L. 88-130, § 1(10)(C), 77 Stat. 181 (Sept. 24, 1963) (codified at 14 U.S.C. § 261).

<sup>9</sup> 33 C.F.R. § 52.24(b); *see Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties “correctly, lawfully, and in good faith.”).

**ORDER**

The application of CAPT [REDACTED] USCGR, for correction of his military record is denied.

September 18, 2015

