

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

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 52-96

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on December 28, 1995, upon the BCMR's receipt of the applicant's request for correction of his military record.

The final decision, dated June 7, 1996, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a [REDACTED]; pay grade E-7), asked that his name be submitted for consideration for appointment as a warrant officer by "the June 95 CWO (chief warrant officer) Appointment Board."

The applicant applied for appointment by the 1995 CWO Appointment Board, but the Coast Guard concluded, in April 1995, that he was not eligible for such consideration because he did not have a current favorable NAC (national agency check). In July 1995, after the 1995 CWO Board had adjourned, Coast Guard headquarters found that he had a current favorable NAC; one had been completed on him on September 2, 1993.

On December 5, 1995, the Commander of the Military Personnel Command (MPC) apologized to the applicant by saying "[i]t is indeed unfortunate that the correct information . . . was not discovered until after the June 1995 CWO Appointment Board had already adjourned." MPC encouraged him to apply for consideration by the 1996 CWO Appointment Board.

Views of the Coast Guard

On May 16, 1996, the Coast Guard recommended that the BCMR grant relief to the applicant.

Final Decision: BCMR No. 52-96

2

MPC stated that the applicant's "preboard score qualified him as a primary candidate in 1995," but it stated that his name was removed from that list because his NAC was listed as not current. MPC said the applicant "was disadvantaged through no fault of his own" when the Service was unable to verify the existence of his 1993 NAC.

MPC, accordingly, recommended that his record go before the 1996 CWO Appointment Board. MPC recommended that if his name appears on the 1996 list (i.e., if the 1996 Board recommends him for appointment), his name should be added to the 1995 list in the same position that his name appears on the 1996 list. If, on the other hand, the 1996 Board removes his name from the list of primary candidates, he is not entitled to further relief.

The Chief Counsel of the Coast Guard submitted the Coast Guard's advisory opinion. It recommended that relief be granted as outlined by MPC.¹

Response of the Applicant to the Coast Guard Views

On May 22, 1996, a copy of the views of the Coast Guard was sent to the applicant. The applicant did not comment on them.

The Coast Guard did notify the BCMR, on May 14, 1996, that the "[a]pplicant has been made aware of this proposal, . . . [and] has indicated to CGPC-opm that he finds it acceptable."

FINDINGS AND CONCLUSIONS

The Board makes the following findings of fact and conclusions of law on the basis of the applicant's request and submissions, and the Coast Guard's concurrence in the request:

1. The BCMR has jurisdiction of the case pursuant to section 1552 of title 10, United States Code. The application is timely.

2. The Coast Guard in 1995 erroneously concluded that the applicant did not have a current favorable NAC. In fact, he held a current NAC as of September 1993. A side effect of this error was that the applicant was not considered eligible for consideration in June of 1995 by the warrant officer appointment board.

3. As the Coast Guard stated, "[t]hrough no fault of his own, [the applicant]

¹ MPC is now known as the Coast Guard Personnel Command.

Final Decision: BCMR No. 52-96

3

3. As the Coast Guard stated, "[t]hrough no fault of his own, [the applicant] could not provide proof [that he had a current NAC] prior to the board's convening and therefore he was disadvantaged."

4. The fairest way to correct this error, while maintaining the principle that an individual must compete at a Board in order to be appointed, is to direct the 1996 warrant officer board to consider the applicant as a primary candidate. If the 1996 warrant officer board selects him for appointment as a warrant officer, his date of appointment shall be backdated, so that his appointment will be from the list prepared by the 1995 warrant officer board, which will contain his name in the same position as that in which his name appears on the 1996 list.

ORDER

The military record of _____, USCG, shall be corrected as follows:

The applicant's record shall be considered by the 1996 CWO Appointment Board. If his name appears on the final list prepared by the 1996 Board, it shall be added to the final list prepared by the 1995 CWO Appointment Board, in the same position as it appeared on the 1996 Board, and he shall be offered an appointment accordingly. If the 1996 Board selects him for appointment as a warrant officer, he shall be appointed from the final list prepared by the 1995 Board.

If the applicant's name is removed from the list of primary candidates by the 1996 Board, he is not entitled to any other relief from the BCMR on account of his removal from the list of candidates for consideration by the 1995 Board.

