

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

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 74-96

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on February 14, 1996, upon the receipt by the BCMR of the applicant's request for correction of his military record.

This final decision, dated February 28, 1997, 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 chief [REDACTED] pay grade E-7), asked the BCMR to direct the Coast Guard to remove the administrative remarks (page 7) entry from February 17, 1994 for his record.

The applicant alleged that a junior member of his command [member] became extremely hostile and agitated on November 24, 1993. The applicant said that the member threatened "to kill [the applicant] by dismemberment." The applicant said that he put the member in handcuffs "to calm him down."

After this incident, according to the applicant, accusations began to surface that affected the applicant's career. The member's father, for example, said that his son was "mistreated because of his minority status." It was also alleged that the applicant has made "numerous vile comments in Spanish to [the member's wife]." The applicant said that he was "falsely targeted by those wishing to harm [his] career only because [he] had the best interest of the government in mind." The applicant said that the "Administrative Remarks are not at all accurate and paint the wrong picture " of him.

The disputed administrative remarks (page 7) entry was dated February 17, 1994. The entry stated, inter alia, that at "[the applicant] needs to exercise better judgment in choosing his words and the forum in which he uses them. . . . Thoughtless comments about an individual's mental competence, career field, or

(especially) ethnicity are always inappropriate and destructive, and could in the worst case result in civil rights complaints/UCMJ action. . . ."

A copy of the complaint that was entered by the member against the applicant on March 8, 1994, under Article 138 of the UCMJ, was received by the BCMR. It complained of five wrongs allegedly committed by the applicant against the member. The presiding officer, the officer exercising general court-martial jurisdiction, denied the request for redress. The presiding officer found "that the greater weight of the evidence fails to support [the member's] complaint that he has been wronged and has not received redress"

The presiding officer did, however, find that the applicant "used poor judgment " and that certain of his comments were "unnecessary."

Views of the Coast Guard

On January 13, 1997, the Coast Guard submitted an advisory opinion to the BCMR that recommended partial relief in this case. The Service found that the applicant showed "poor judgment and leadership skills." It also concluded that the words " or (especially) ethnicity" should be removed from the disputed page 7 entry.

The Coast Guard Personnel Command concluded, on July 8, 1996, that the situation was "unnecessarily escalated" by the applicant. It recommended that the "or (especially) ethnicity" phrase should be deleted from the page 7 entry because "there does not appear to be a basis for this in the record."

Response of the Applicant to the Coast Guard Views

On February 7, 1997, the applicant wrote the BCMR that he "agree [s] with the Coast Guard's position." The applicant particularly agreed that the "tone in which he chose to communicate with [the member]" was not appropriate.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction of the case pursuant to section 1552 of title 10, United States Code.

2. The language of the disputed administrative remarks (page 7) entry and the events that gave rise to the entry were analyzed by the presiding officer

exercising general court martial jurisdiction. That officer denied all of the member's requests for redress against the applicant, but found that the applicant did use "poor judgment."

3. The advisory opinion of the Coast Guard agreed with the presiding officer, but it added that the words "or (especially) ethnicity" should be deleted from the disputed page 7 entry because there does not appear "to be a basis for this in the record."

4. This phrase should be deleted and the disputed administrative remarks entry should be modified accordingly.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The military record of _____ USCG, shall be corrected by removing the words "or (especially) ethnicity" from the administrative remarks dated February 17, 1994. No other corrections shall be made.

