

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 1997-151

FINAL DECISION

████████ Chairman:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on July 18, 1997, upon the BCMR's receipt of the applicant's request for correction of his military record.

This final decision, dated June 25, 1998, is signed by the three duly appointed members who were designated to serve as the Board in this case.

Applicant's Request for Relief

In January of 1995, the applicant was tried by a special court-martial for violation of Article 128 (simple assault) and Article 92 (driving with suspended driving privileges). He was found guilty at the special court martial, which sentenced him to confinement for two months and reduced his pay grade from E-6 to pay grade E-3. He was found guilty of assaulting another Coast Guard petty officer with a handgun, as well as of violating a lawful order not to drive on base.

The applicant concluded that his punishment was excessive and that correction of it was required. The applicant asked the Board to "mitigate" the sentence because the punishment given was "simply excessive." He also asked that all evidence of separation for HYT (high years tenure) be expunged from his records, that he be returned to active duty with back pay and allowances to the date of reinstatement, and that he be given credit for time in grade.

The applicant also asked the Board to mitigate his reduction in pay grade from E-3 to E-5.

The applicant's attorney argued that the "severity of the assault" is the only issue in this case. The orders violation was a "simple traffic matter." Driving

with a suspended driving privilege is, the attorney said, hardly the stuff of significant reduction in rank. The attorney implied that an assault with an unloaded revolver is not very serious and should be treated "on equitable grounds."

Views of the Coast Guard

According to the Coast Guard, the Chief Counsel recommended summary denial of relief. The Chief Counsel said that the applicant was convicted by a special court martial of assaulting another petty officer with a handgun, as well as of violation of an order not to drive on base. The proceeding was approved and ordered executed by the Convening Authority. It was then reviewed by a law specialist; by the Chief Judge of the Coast Guard Court of Criminal Appeals; and by the Chief Counsel.

The Chief Counsel said that a BCMR has no authority to undertake legal review of a court martial. A BCMR is limited to correcting action on the sentence "for purposes of clemency." Section 1552(e) of title 10, United States Code, provides that "With respect to records of courts-martial cases tried or reviewed . . . may extend to-- . . . (2) action on the sentence of a court-martial for purposes of clemency."

The Chief Counsel also recommended that the application be summarily denied for lack of jurisdiction. He argued that the Board had no jurisdiction to grant the requested relief. The findings and sentences of courts-martial are final and conclusive, subject only to petition for a new trial, clemency action by the Secretary under 10 U.S.C. § 874, or the authority of the President.

Response of the Applicant to the Views of the Coast Guard

On December 9, 1997, the Chairman sent the applicant a copy of the views of the Coast Guard. The Chairman encouraged the applicant to notify the Board of any rebuttal and response.

The Board did not receive any rebuttal or response from the applicant.

FINDINGS AND CONCLUSIONS

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

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

2. The applicant was tried by a special court-martial. The court-martial found him guilty of violating Article 128, simple assault, and Article 92, driving with suspended driving privileges. The applicant was sentenced to two months confinement and a substantial cut in pay.

3. Section 1552(f) of title 10, United States Code (10 U.S.C. § 1552(f)) provides that action under this section may only extend to action on the sentence of a court martial for "purposes of clemency."

4. The Board has jurisdiction to grant clemency, under § 1552 (f), but clemency is not appropriate in this case.

5. The applicant should be denied the relief requested because he has not established that the Coast Guard committed any error or injustice.

6. The application, accordingly, should be denied.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

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

, USCG, for

