

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 103-96

FINAL DECISION ON REQUEST FOR RECONSIDERATION

[REDACTED]

This proceeding, BCMR No. 103-96, has been conducted pursuant to the provisions of section 1552 of title 10, United States Code, and section 52.67 of title 33 of the Code of Federal Regulations. It was commenced on April 8, 1996, upon the BCMR's receipt of the applicant's request for reconsideration of the final decision in BCMR Docket No. 102-95.

This final decision on the request for reconsideration, dated April 18, 1997, is signed by three duly appointed members who were designated to serve as the Board in this case.

First BCMR Proceeding (BCMR 102-95)

On April 3, 1995, the applicant, a lieutenant (LT) in the Coast Guard Reserve on active duty, asked the BCMR to remove an allegedly inaccurate OER from his record. The applicant alleged that the disputed OER resulted in his failure of selection for promotion to lieutenant commander (LCDR).¹

On July 6, 1995, the Coast Guard recommended that the applicant's request for relief in BCMR No. 102-95 be denied.

On March 8, 1996, the Board denied the applicant's application for correction of his military record. It found that the applicant failed to establish that the disputed OER was erroneous, and it found that the applicant failed to prove that he was discriminated against or that his BCMR Board application was determined adversely affected by his civil rights complaint.

The Board denied the application on the ground that the applicant failed to

¹ In 1993, the applicant filed a civil rights complaint alleging that the Coast Guard had discriminated against him on the ground that he was Jewish. The Coast Guard rejected that allegation. On February 15, 1994, the Director of Civil Rights of the Department of Transportation advised the Board "that the USCG's rejection of the allegations in [the applicant's] complaint was proper."

prove that the Coast Guard committed any error or injustice.

Second BCMR Proceeding (BCMR 103-96)

On April 8, 1996, the BCMR received a request from the applicant for review of the March 8, 1996 decision. In his request, the applicant declared that he was appealing the March decision on the ground that it was "clearly erroneous." The Board has no authority to handle the appeal of a final decision, but it is authorized to reconsider a final decision, under § 52.67 of the Board's rules.

Views of the Coast Guard

On February 19, 1997, the Commander, Coast Guard Personal Command (CGPC), advised the Commandant that he did not favor any further BCMR review in this case. On March 17, 1997, the Chief Counsel of the Coast Guard recommended to the Board that it deny relief to the applicant. According to the Chief Counsel, the application failed to meet the prerequisites for a request for reconsideration. The Chief Counsel reviewed those requirements and concluded that the Board's determination in Docket No. 102-95 "was correct in law and fact."

Response of the Applicant to the Views of the Coast Guard

On April 2, 1997, the applicant submitted a rebuttal to the views of the Coast Guard. He argued that a letter he had authored to [REDACTED] that was received by the Board after the first proceeding was closed, constituted "evidence or information that was not previously considered by the Board." He stated that "[i]t is incredible that one highly questionable OER has overshadowed all the awards I have received

SUMMARY OF REGULATION REGARDING RECONSIDERATION

The decision on eligibility for reconsideration is made in accordance with paragraph (a) of § 52.67. Section 52.67(a) states that a final decision can be reconsidered if the applicant presents evidence or information (1) that was not previously considered by the Board; (2) that could result in a determination other than that originally made; and (3) that could not have been presented to the Board prior to its original determination in the exercise of reasonable diligence. A request can also be reconsidered if the Board or Secretary "committed legal or factual error" that could have resulted in a determination other than that made.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusion on the basis of the applicant's request for reconsideration of BCMR 102-95, the submissions of the applicant and the Coast Guard, the final decision in BCMR 102-95, and applicable law:

1. The Board has jurisdiction of the applicant's request, pursuant to § 52.67 of title 33 of the Code of Federal Regulations.

2. The applicant asked the Board to review its previous determination denying relief. He alleged that "[t]he Coast Guard has, in fact, not addressed [his] central complaint or allegation head-on since [he] filed the Complaint of Discrimination."

3. In support of his application, the applicant criticizes findings and conclusions of the first BCMR proceeding (102-95) on paragraphs (3) and (4) of page 7; pages 5 and 6; page 4 (bottom paragraph); and pages 2 and 3. All of the information and argumentation about these points were raised or could have been raised in the first proceeding. For example, he repeated, in the reconsideration proceeding, the allegation that his commanding officer had his security access withdrawn because he filed a request to change duty days so he could attend services on Rosh HaShona. The applicant added, in his reconsideration package, information on the impact of these allegations on a member of his family, but that could have been made in the first proceeding.

4. The applicant's request for review should not be granted under § 52.67(a)(1) because it does not meet the three requirements for reconsideration of an application under that provision:

a. The applicant is required to present evidence or information that was not previously considered by the Board. The applicant in this case presented arguments in his application, but he did not present any evidence or information that had not been previously considered. The letter submitted after the first proceeding was not evidence or information not previously considered because it reiterated points that were previously considered by the BCMR.

b. The new information should be considered if it "could have resulted in a determination other than that originally made." The new arguments offered by the applicant in this case would not have changed the outcome of this case.

c. The new information "could not have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence." The applicant's arguments could have been presented to the Board before the first determination.

5. The applicant's request should not be granted under § 52.67(a)(2)) because the applicant has not shown legal or factual error on the part of the Board.

6. Accordingly, the application for reconsideration should be denied.

ORDER

The request for reconsideration of [REDACTED]
USCGR, is denied.

