

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 125-96

FINAL DECISION

[REDACTED]

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on June 17, 1996, upon the Board's receipt of the applicant's request for correction of his military record.

This final decision, dated June 13, 1997, is signed by the three duly appointed members who were designated to serve as the Board in this case.

Request for Correction

The applicant, a [REDACTED] [REDACTED] asked the Board to delete the Reviewer's remarks from the applicant's Officer Evaluation Report (OER) for the period from April 1, 1992 to March 31, 1993. The Reviewer made the following statement:

I placed [the applicant] in the IRR [Individual Ready Reserve] after he repeatedly failed to align himself with the direction our Reserve program is heading. Further, I had to personally intervene to rectify performance problems with two of his unit members after he failed to take sufficient, positive corrective action.

The applicant also asked that he be promoted to CWO4, as of the 1993 selection board promotion period. The applicant said the Reviewer's comments were factually incorrect (e.g. he was never in the IRR), and the entries on the Reviewer's sheet were inconsistent with the applicant's performance in the Coast Guard. The applicant also alleged that the Reviewer's Sheet adversely prejudiced the 1998 warrant officer selection board and prevented him from being selected for CWO4.

On November 6, 1986, the applicant received a letter from the Commandant saying that he had completed at least 20 years of satisfactory service and that he will

be eligible to receive retired pay upon reaching age 60.

Views of the Coast Guard

On October 4, 1996, the Coast Guard Personnel Command (CGPC) recommended that relief be granted to the applicant.

The CGPC found that the applicant was never transferred into the IRR, as alleged by the Reviewer. The Command also declared that it could not find any supporting evidence to substantiate the Reviewer's other comments on the OER in question. As a consequence, the reviewer's sheet should be removed from the disputed OER, and the applicant should be presented to the next promotion board for consideration.

On May 13, 1997, the Board received the views of the Chief Counsel of the Coast Guard. The Chief Counsel recommended that the reviewer's statement "be removed" from the disputed OER. The Chief Counsel said that this statement was "factually inaccurate" and "may have been the cause of Applicant's non-selection." The Chief Counsel said that the applicant "has shown sufficient harm to merit reconsideration by the next promotion board."

Response of the Applicant to the Views of Coast Guard

On May 16, 1997, a copy of the views of the Coast Guard was sent to the applicant, together with a statement encouraging him to submit a response to those views. The applicant responded by reiterating that the reviewer's sheet be disallowed and that he be promoted to CWO4 by the 1993 CWO selection board. The applicant said that reconsideration by the next promotion board, rather than direct promotion, would adversely affect him because he has not participated in any inactive or active duty for training and because of his age and the fact that he has already completed 30 years of service.

APPLICABLE REGULATIONS

Article 10-A-2f.(2) of the Personnel Manual provides that the Reviewer, inter alia, "[e]nsures the OER reflects a reasonably consistent picture of the Reported-on Officer's performance and potential"; "[c]hecks for obvious errors, omissions, or inconsistencies . . ."; [i]f necessary, adds comments on a separate sheet of paper further addressing the performance and/or potential of the Reported-on Officer. . . ."

Article 10-A-1b. of the Personnel Manual provides that "[e]ach commanding officer must ensure that accurate, fair, and objective evaluations are provided to all officers under their command."

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 applicant's military record, and applicable law:

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

2. The applicant asked the Board to remove the Reviewer's comments from the applicant's disputed OER, on the ground that some of the comments were inaccurate and not substantiated by his service record.

3. Article 10-A-1b.(1) of the Personnel Manual provides that each commanding officer must ensure that evaluations are "accurate, fair, and objective." The reviewer, in his evaluation, stated that he placed the applicant in the IRR, but there is no record that he did so. The reviewer also stated that he intervened personally with two unit members after the applicant failed to take sufficient corrective action. There is nothing in the record that supports this allegation either.

4. The applicant has established that the Reviewer's comments on the disputed OER are inaccurate. The Reviewer sheet should therefore be deleted from this OER.

5. The untrue and/or unsubstantiated statements of the Reviewer were, in all probability, the reason the applicant was not selected for promotion to CWO4. The applicant should be given another opportunity to be considered for selection for this grade on the basis of a record that does not include the Reviewer's sheet. If selected for promotion by the next CWO Selection Board to consider him for advancement, he shall be entitled to retroactive pay and allowances and his date of rank shall be the date of rank he would have had if he had been selected by the 1993 Board.

6. The Board has considered the applicant's request that the Board issue a direct order mandating that he be directly promoted. The Board does not see any need for this extraordinary remedy.

7. Accordingly, the application should be granted.

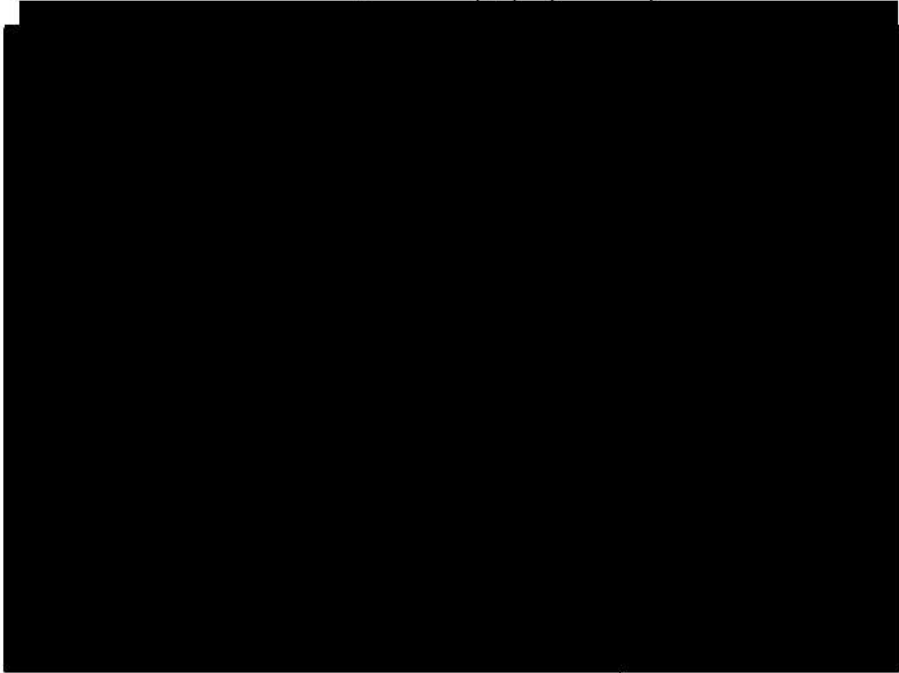
[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application of [REDACTED], USCG, for correction of his military record is granted, as follows:

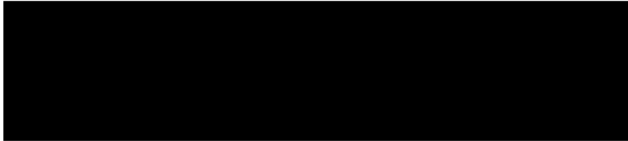
(1) Delete the Reviewer's sheet for the applicant's OER for the period from April 1, 1992 to March 31, 1993.

(2) Award the applicant back pay, allowances, and the same date of rank equal to that which he would have if he had been selected by the 1993 CWO4 selection board.



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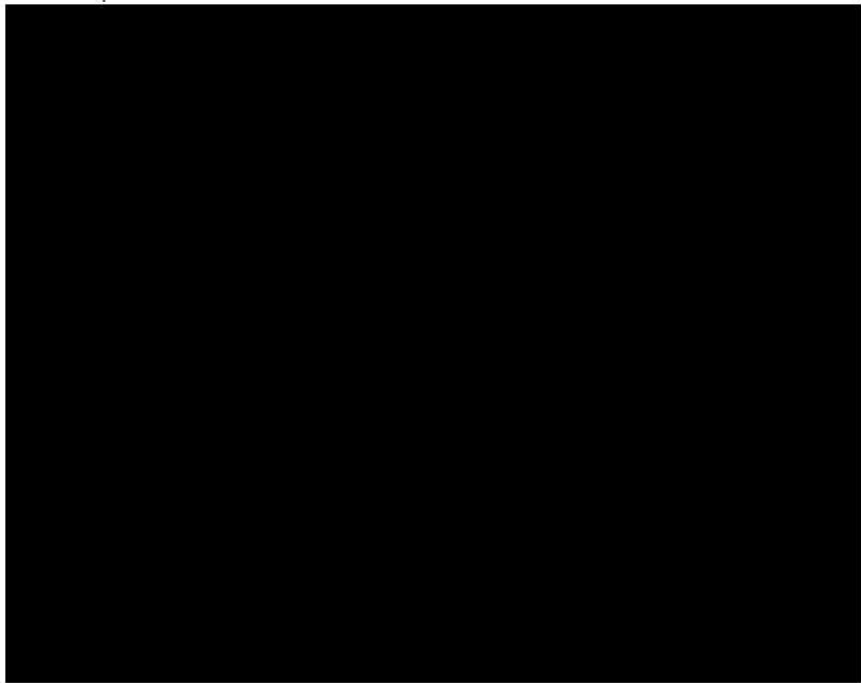
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TECHNICAL AMENDMENT TO ORDER IN FINAL DECISION

OF BCMR NO. 125-96

Amend paragraph (2) of the order in BCMR No. 125-96 by adding the following words at the start of that paragraph:

"If the applicant is selected by the next CWO4 selection board,"



DATE: JUN 27 1997