

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-183

FINAL DECISION

██████████ Attorney-Advisor:

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The case was docketed on September 22, 1999, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated June 8, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a captain (CAPT; pay grade O-6) in the Coast Guard, asked the Board to correct his military record by changing his date of rank to what it would have been had he been selected for promotion to the rank of captain by the selection board that met in July 1998 rather than the board that met in July 1999. In addition, he asked that he be awarded back pay and allowances.

APPLICANT'S ALLEGATIONS

The applicant alleged that when the July 1998 selection board met, his record was incomplete because it did not include documentation of a Meritorious Service Medal which had been awarded to him on April 10, 1998. He alleged that if his record had been complete, he would have been promoted by the July 1998 selection board. He stated that "an award of the magnitude of a Meritorious Service Medal, specifically addressing exceptional leadership, organizational and partnering skills, provides a summary of high performance and could sway a borderline decision in favor of selection." He further alleged that the fact that he was selected for promotion by the July 1999 board, after the medal was included in his record, is evidence that he would have been promoted by the July 1998 board if his record had been complete.

The applicant alleged that the Personnel Records Review Board (PRRB) has already granted him partial relief but does not have the authority to grant full relief.

SUMMARY OF THE RECORD

The applicant's military record contains many excellent evaluation reports and two commendation medals.

On April 10, 1998, the applicant was awarded a Meritorious Service Medal for "exceptionally meritorious achievement and superior performance of duties from July 1995 to July 1998." The citation accompanying the medal praises the applicant's "exceptional leadership" as the commanding officer of a marine safety office.

In July 1998, the applicant was not selected for promotion by the captain selection board.

On September 15, 1998, a commander who served as Chief of the Officer Boards, Promotions and Separations Branch of the Coast Guard Personnel Command (CGPC) signed a sworn statement on behalf of the applicant. The commander stated that he met the applicant on July 20, 1998, saw that the applicant was wearing a Meritorious Service Medal, and remembered that the applicant had recently failed of selection. He considered the failure of selection "curious" in light of the medal. Therefore, he checked the applicant's record as it had appeared before the selection board (the records were still on a cart near his office) and found that the documentation for the medal was not included. The commander stated that he then verified with the Personnel Records Section of CGPC and the applicant's command that "the award was approved (and presented) prior to the board." Therefore, he concluded that an administrative error had caused the applicant's record to be incomplete before the July 1998 captain selection board.

The applicant applied to the PRRB to have his failure of selection for captain removed from his record and to have his promotion back dated if he were selected by the 1999 board so that he would receive back pay and allowances. On March 30, 1999, the PRRB recommended granting partial relief. The PRRB found that the applicant had a "very good record showing that he routinely exceeded the expected high standard of performance and was consistently recommended for increasing positions of responsibility and for promotion" and also that his record "would have been much stronger with the inclusion of the award citation." Therefore, the PRRB recommended removal of the applicant's failure of selection. However, the PRRB noted that it has no authority to award back pay and allowances. Therefore, the PRRB recommended that the applicant apply to the BCMR for further relief. On April 1, 1999, the PRRB's recommendations were approved by the Director of Personnel Management.

On August 5, 1999, the applicant's name appeared on the list of commanders selected for promotion to captain by the July 1999 selection board.

IEWS OF THE COAST GUARD

On March 22, 2000, the Chief Counsel of the Coast Guard issued an advisory opinion recommending that the Board grant the applicant's request.

The Chief Counsel adopted the PRRB's decision. He recommended that the applicant's date of rank to captain be changed "to the position on the Active Duty Promotion List (ADPL) he would have held had he been selected by the first Captain Promotion Board to review his record."

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On March 23, 2000, the Chairman sent the applicant a copy of the views of the Coast Guard and invited him to respond within 15 days. On April 3, 2000, the applicant responded, stating that he had no objections to the Chief Counsel's recommendation.

APPLICABLE LAWS

Title 14 U.S.C. § 271 states the following:

(a) When the report of a board convened to recommend officers for promotion has been approved by the President, the Secretary shall place the names of all officers selected and approved on a list of selectees in order of their seniority on the active duty promotion list.

(b) Officers on the list of selectees may be promoted by appointment in the next higher grade to fill vacancies in the authorized active duty strength of the grade as determined under section 42 of this title after officers on any previous list of selectees for that grade have been promoted. Officers shall be promoted in the order that their names appear on the list of selectees. The date of rank of an officer promoted under this subsection shall be the date of his appointment in that grade.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code. The application was timely.
2. The applicant has proved by a preponderance of the evidence that his record was incomplete when it was reviewed by the captain selection board that met in July 1998. Documentation of his recently awarded Meritorious Service Medal should have been in his record but was not. The Coast Guard made an administrative error when it failed to include documentation of the medal in the applicant's record before it was sent to the 1998 selection board.

3. The PRRB found that a nexus existed between the applicant's incomplete record and his failure of selection by the July 1998 selection board. Therefore, it removed that failure of selection from his record. The Board agrees with the PRRB that the applicant's record without the medal was very strong and that his record appears even stronger with the inclusion of the Meritorious Service Medal. Therefore, the Board is convinced that if the medal had been documented in his record when it was reviewed by the July 1998 selection board, the applicant might well have been chosen for promotion to captain.

4. The applicant has proved by a preponderance of the evidence that an administrative error by the Coast Guard caused him to fail of selection in July 1998. Although he was chosen for promotion by the 1999 board, the applicant may unjustly lose back pay and allowances as a result of the administrative error.

5. Accordingly, the applicant's request should be granted.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application of _____, USCG, for correction of his military record is hereby granted.

The applicant's date of rank to captain and position on the Active Duty Promotion List shall be changed to the date of rank and position he would have had if he had been selected for promotion to captain by the selection board that met in July 1998.

The Coast Guard shall pay the applicant any back pay and allowances he may be due as a result of this correction.

