

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


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Application for Correction  
of Coast Guard Record of:

BCMR Docket  
No. 2000-120

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**FINAL DECISION**

: This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The proceeding was docketed on May 1, 2000, upon the BCMR's receipt of the applicant's complete application for correction of his military record.

This final decision, dated February 28, 2001, is signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST**

The applicant, a lieutenant junior grade in the Coast Guard Reserve, asked for his date of rank to be backdated to what it would have been if he had been considered and selected by the PY (promotion year) 2000 reserve lieutenant selection board. He asked that his date of rank be backdated if he is selected by the PY 2001 IDPL (inactive duty promotion list) reserve lieutenant selection board.

The applicant alleged that he "made a good faith effort" to be considered by the PY '00 IDPL Reserve Lieutenant Selection Board. He stated that through no error of his own "but due to an administration (sic) error at CG Personnel Command, [h]e was not considered by the PY 2000 IDPL Lieutenant Selection Board."

On October 26, 1999, the commanding officer (CO) of a marine safety office said that the applicant was not considered by the selection board through no fault of his own. The CO said that "as a result of this administrative error, an officer of the highest quality was denied a well deserved promotion." The CO said that the applicant's command contacted CGPC on several occasions, and completed part of the process twice, to ensure that the applicant's record would be considered by the PY '00 Reserve Selection Board.

consider letter 1401 dated October 26, 1999, of the Commander, Coast Guard Personnel Command (CGPC), as the Coast Guard's advisory opinion.

The Chief Counsel said that the applicant has proved by clear and convincing evidence that his record was not considered by PY'00 IDPL Reserve Lieutenant Selection Board "due to administrative error." The Chief Counsel said that he should receive the relief requested by virtue of 14 U.S.C. § 739(b).

According to CGPC, "due to the absence at CGPC-rpm on 14 Sep 99 of required, signed correspondence, the selection board could not consider him." The IDPL lieutenant selection board began on September 13, 1999 and ended on September 17, 1999. The unit log indicating that the applicant's resume was sent to CGPC is dated September 23, 1999. CFTC recommended granting relief pursuant to 14 U.S.C. § 262(B).

### **APPLICANT'S RESPONSE**

A copy of the views of the Coast Guard was sent to the applicant on December 4, 2000. The applicant was invited to submit a response within 15 days.

The applicant did not respond.

### **APPLICABLE LAW**

The following provision was quoted by the Chief Counsel from section 739(b) of title 14 of the United States Code:

[A] Reserve officer is not considered to have failed of selection if the Officer was not considered by a selection board because of administrative error. If that officer is selected by the next appropriate selection board after the error is discovered and is promoted, the same date of rank and precedence that would have been assigned if the officer had been recommended for promotion by the selection board that originally would have considered the officer but for the error.

The same section, from a substantive standpoint, is set forth in 14 U.S.C. § 262(B). The first sentence of that section is virtually identical to the corresponding sentence of the first sentence of 14 U.S.C. § 739(b), but the second sentence of 14 U.S.C. 262(B) is stylistically different. The second sentence provides as follows:

If he is selected by the next succeeding selection board and promoted, he shall be given the date of rank and position on the inactive duty promotion list in the grade to which promoted that he would have held if recommended by the first board.

### **FINDINGS AND CONCLUSIONS**

The Board makes the following findings of fact and conclusions of law 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. The application is timely.

2. The applicant was not considered for promotion by the PY '00 IDPL Reserve Lieutenant Selection Board. He alleged that he made a good faith effort to be so considered, but due to an administrative error at CGPC, he was not so considered.

3. The applicant asked the Board to backdate his selection if he is selected by the PY '01 IDPL selection board. He asked that his date of rank be backdated to what it would have been if he had been considered and selected by the PY '00 IDPL selection board.

4. The Chief Counsel found that through no fault of the applicant's, and as the result of administrative error by CGPC, the applicant was not considered for promotion by the PY '00 Reserve Lieutenant Selection Board.

5. The Chief Counsel recommended that the relief provided by 14 U.S.C. §739(b) be provided to the applicant.

6. If the applicant is selected by the PY '01 IDPL Reserve Lieutenant Selection Board, he should be considered to have been selected by the PY '00 IDPL selection board also and his date of rank should be what it would have been if he had been selected by the PY '00 IDPL selection board.

7. Accordingly, the applicant's request for correction should be granted.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

**ORDER**

The military record of LTJG [REDACTED] shall be corrected if he is selected for promotion by the PY'01 IDPL Reserve Lieutenant Selection Board. If he is so selected, his date of rank shall be what it would have been if he had been selected by the PY'00 IDPL Reserve Lieutenant Selection Board.

