


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

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 2000-158

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. It was docketed on July 10, 2000, following the Board's receipt of the applicant's completed application for correction of his military records.

This final decision, dated May 17, 2001, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED: PRRB

The applicant, then a lieutenant commander (LCDR), failed of selection for commander (O-5) in 1999 before the PY (Promotion Year) 2000 O-5 selection board. The applicant thereupon applied to the Personnel Records Review Board (PRRB) to have his disputed OER (officer evaluation report for April 25, 1998 through April 30, 1999) corrected.

The applicant alleged that the PRRB should correct the disputed OER because it contained false information. The false information allegedly weakened the strength of the endorsement of the Reporting Officer and caused the District Commander not to provide any endorsement at all.

The PRRB concluded that the applicant met the burden of proof that his Reporting Officer was misinformed that the applicant was already selected for O-5 by the 1997 Commander Selection Board. The Reporting Officer confirmed that he was so misinformed, which supported the allegation that the disputed OER contained false information.

The applicant asked that all references to his non-selection by the PY 2000 selection board be removed from his record (assuming a favorable PRRB decision) and that the PY 2001 were considered his "first look" for promotion to O-5.

The PRRB found that the applicant's Reviewing Officer (the District Commander) intended to recommend him for promotion "had he not received inaccurate information regarding the Applicant's promotion status." The PRRB also found that the Reviewing Officer intended to include a recommendation for promotion in the Reviewer's comments had he not received inaccurate information regarding the applicant's status.

On May 24, 2000, the PRRB granted the applicant the relief requested. It provided that the applicant has the Reporting Officer's "strongest recommendation for promotion" and the Reviewing Officer's "highest recommendation for promotion."

RELIEF REQUESTED: BCMR

On July 10, 2000, the applicant asked the BCMR for further relief, as follows: "Now that my record has been corrected by the Coast Guard, I request that my non-selection for Commander in 1999 be removed from my record, and that the 2000 Commander board be considered my first look." If the applicant were selected by the 2000 Board, the applicant asked that he also receive back pay and allowances and a 1999 date of rank.

The applicant restated the findings of the PRRB with respect to the mistaken belief of the Reporting Officer and the inaccurate information received by the Reviewing Officer. He added, in his application, that the Supervisor on his rating chain shared the same mistaken belief.

The applicant said he believed these errors were causative factors in his] non-selection for O-5 in August, 1999.

VIEWS OF THE COAST GUARD

On September 29, 2000, the Commander of the Coast Guard Personnel Command (CGPC) recommended that relief be granted to the applicant.

CGPC said that the applicant failed of selection for commander before the PY 2000 O-5 selection board. According to the "leadership and potential" block on the disputed OER, the Reporting Officer did not strongly recommend him for promotion as the Reporting Officer erroneously thought Applicant had already been selected for commander. The disputed OER was changed.

With his record corrected, the applicant was selected for promotion by the PY 2001 Commander Selection Board. CGPC said that "it is reasonable to assume that Applicant's non-selection by the PY 2000 board was due to the

erroneous information in his record, particularly in light of his selection by the PY 2001 board."

On December 7, 2000, the Chief Counsel of the Coast Guard recommended that the Board grant full relief to the applicant. The Chief Counsel adopted the analysis provided by the CGPC, and the PRRB decision, as the advisory opinion of the Coast Guard. The Chief Counsel recommended correcting applicant's date of rank (DOR) of Commander (O-5) to the position on the ADPL (active duty promotion list) that he would have held if he had been selected by the first commander selection board to consider him.

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On December 8, 2000, the Board sent the applicant a copy of the Chief Counsel's views and the advisory opinion of the Coast Guard. The applicant was invited to respond with any comments within 15 days.

On December 19, 2000, the applicant notified the Board that he agrees with the findings and believes that the case is ready for decision.

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 applicant, 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. On May 24, 2000, the applicant's record was corrected as directed by the PRRB. With his record corrected, the applicant was selected for promotion by the PY 2001 Commander Selection Board. It is reasonable to assume that the applicant's previous non-selection was due to the false information in his record, particularly in light of his selection by the PY2001 Board.

3. The applicant has proved by a preponderance of the evidence, including his selection by the PY 2001 Commander Selection Board, that the disputed OER contained erroneous information that contributed to the applicant's failure of selection by the PY 2000 board.

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

ORDER

The application of _____ USCG, for
correction of his military record is granted as follows:

(1) Correct his date of rank (DOR) of commander to what it would have been had he been selected by the PY 2000 Commander Selection Board.

(2) Pay him any back pay and allowances he may be due as a result of this correction.

(3) Remove any reference to his failure of selection by the PY 2000 Commander Selection Board.

