

**DEPARTMENT OF HOMELAND SECURITY  
BOARD FOR CORRECTION OF MILITARY RECORDS**

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2015-151**

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**FINAL DECISION ON RECONSIDERATION**

This is a proceeding under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the application upon receipt of the completed application and military records on July 10, 2015, and assigned it to staff member ██████████ to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated May 27, 2016, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

**BACKGROUND: BCMR DOCKET NO. 2014-154**

In BCMR Docket No. 2014-154, the applicant, who as a temporary officer was twice non-selected for promotion to lieutenant and consequently reverted to enlisted status,<sup>1</sup> asked the Board to correct his military record by removing his officer evaluation reports (OERs) for the periods October 1, 2010, through January 31, 2011, and February 1 through July 8, 2011. The applicant alleged that these two OERs were in error and unjust. He also requested that his temporary commission as an officer be reinstated, allowing him to compete for promotion before the next lieutenant (LT) selection board.

The applicant challenged the disputed OERs based on several premises. First, he alleged that his direct supervisor did not authorize his OERs, thereby rendering them inaccurate. The applicant also alleged that the command unjustly used his performance of collateral duties as a basis for lowering his marks in the OERs. Next, the applicant alleged that the rating chain was biased against him and lowered his marks because he was switching career fields to engineering. He further alleged that the disputed OERs were contradicted by statements within his other OERs and his service record. The applicant also alleged that the “scope” of the second OER was incorrect because the two OERs in question “mirror[ed] each other, as if there w[ere] no interest in writing [his] departing OER.” Lastly, the applicant supported his arguments generally by

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<sup>1</sup> When an individual is passed over for promotion two consecutive times, that officer is normally separated from the service. The applicant did reenter the Coast Guard as an enlisted member. See COMDTINST M1000.6A, Article 1.A.8.a.1(a) (in effect at the time of the applicant’s disputed OERs).

stating his alleged performance deficiencies were never otherwise documented and that his certifications were not revoked.

In the Coast Guard's advisory opinion for 2014-154, PSC addressed the applicant's allegations that his rating chain was flawed and somehow unjust, the applicant's allegations regarding bias due to his career choice, and the applicant allegations that his prior positive OERs showed that the disputed OERs were flawed. The advisory opinion was accompanied by five supporting declarations from members of the applicant's rating chain. Further, the Coast Guard advisory opinion stated that

14 USC § 253(b) allows any officer eligible for consideration by a selection board to send communications to the Board to invite attention to any matter of their record. ROO did not communicate with either PY13 or PY14 Selection Boards.

In the applicant's response to the views of the Coast Guard, he stated the following: "I didn't communicate to the PY13 board because my command and OPM did not feel the need to based on my record." Regarding the PY14 board, the applicant stated that he did in fact communicate with that Board, contrary to PSC allegations. The applicant attached an email to his response to the advisory opinion which contained communications from the applicant to the president of the PY14 Lieutenant Assignment/Selection Board. In that communication, the applicant emphasized the improvement in his performance once he was shifted to a position involving engineering. He further stated that the communication was meant to show the PY14 board "who [he] was" and what he wanted as a Coast Guard member.

The applicant opined that the PY14 selection board may not have received the communication, although he did receive a confirmation message that stated no further action was required on his part. He also opined that if the PY14 board did not in fact receive his communication, that would be "an OPM mistake that could have cost me my LT promotion."

In this Board's Final Decision for 2014-154, dated February 27, 2015, the Board found that the applicant had not proven by a preponderance of the evidence that the disputed OERs made his record erroneous or unjust. Therefore, there were no grounds for amending or expunging the OERs. The Final Decision also addressed the applicant's communication to the PY14 LT selection board:

12. Although the applicant submitted a communication to the PY 2014 selection board to explain his circumstances, that Selection Board, like the PY 2013 board, did not select the applicant for promotion. Nothing in the record supports the applicant's conjecture that the PY 2014 board did not receive his communication. Because the applicant has not proven by a preponderance of the evidence that his record was prejudiced by error or injustice when it was reviewed by the selection boards, he is not entitled to the removal of his non-selections or reinstatement as an officer.<sup>2</sup>

### APPLICANT'S REQUEST AND ALLEGATIONS

The applicant requested reconsideration and asked the Board to review his record to determine whether or not his communications to the PY14 selection board were received by

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<sup>2</sup> *Engels v. United States*, 678 F.2d 173, 176 (Ct. Cl. 1982).



Personnel Service Center (PSC-OPM) and presented to the selection board. If the applicant's PY14 communications to the selection board were not received, the applicant requested that his PY14 non-selection for promotion to LT be expunged and he be reinstated as a temporary officer and considered by the next scheduled LT selection board. Alternatively, the applicant stated that if the PY14 communications were received by the PY14 selection board, the erroneous statement in the Coast Guard's advisory opinion for 2014-154 must have biased the BCMR in making its decision and as a result the applicant suffered an injustice that must be corrected.

The applicant stated that the 2014-154 advisory opinion erroneously indicated that applicant never submitted a communication to the PY14 selection board. He alleged that if the communication was never received then the PY14 selection board did not adequately review his record because his application was incomplete. The applicant concluded that the missing communication to the PY14 selection board might have demonstrated to that board a lack of interest in his career and could have been the reason why that board did not select him for LT.

Alternatively, the applicant stated that if his communication was in fact received by the PY14 selection board, then the advisory opinion was mistaken. The 2014-154 Coast Guard advisory opinion stated that "14 USC § 253(b) allows any officer eligible for consideration by a selection board to send communications to the board to invite attention to any matter of their record. ROO did not communicate with either PY13 or PY14 Selection Boards." The applicant conceded that he did not communicate with the PY13 selection board; however, he did communicate to the PY14 selection board. The applicant alleged that if the Coast Guard was mistaken, then its inaccurate findings persuaded the Board to unfairly conclude that the OERs were not erroneous and unjust.

The applicant asked the Board to expunge the PY14 selection decision from his record and to allow him to be considered for the next LT selection board.

### **VIEWS OF THE COAST GUARD**

On September 21, 2015, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case. In so doing, he adopted the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC).

PSC stated that the applicant's PY14 communication to the LT selection board was received by PSC-OPM and appropriately presented to the PY14 LT selection board. The LT selection board president signed and acknowledged receipt of the communication on September 18, 2013. As evidence of this, PSC attached the PY14 communication signed by the president of that board.

PSC acknowledged that its input for BCMR 2014-154 states that the applicant "did not communicate with either the PY13 or PY14 LT Selection Boards." PSC agreed that this statement was in error as the applicant did provide communications to the PY14 LT selection board.

PSC stated that the error was not an injustice to the applicant as his communications were received and reviewed by the PY14 selection board. Further, PSC argued that the BCMR was not biased by the misinformation because the BCMR clearly addressed and acknowledged the applicant's PY14 communication to the selection board in the Final Decision for 2014-154 stating, "Although the applicant submitted a communication to the PY 2014 selection board to explain his circumstances, that selection board, like the PY 2013 board, did not select the applicant for promotion."

PSC concluded that the communications were received by the PY14 LT selection board. Further, the Final Decision in 2014-154 demonstrated that the erroneous statement regarding the PY14 selection board communication in the advisory opinion had no impact on the BCMR's decision. PSC recommended that no relief be granted.

### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On October 20, 2015, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within thirty days. No response was received.

### **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 submission, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application to the Board was timely.<sup>3</sup>

2. The Coast Guard's advisory opinion for BCMR Docket No. 2014-154 stated that the applicant did not submit written communications to the PY14 LT selection board. The applicant alleged that if his communications to that board were not received, then his PY14 non-selection was unjust because his record was incomplete. The applicant requested that his non-selection for promotion be expunged and that he be reinstated as a temporary officer to be considered by the next scheduled LT selection board. The Coast Guard's new advisory opinion in this case stated that the PY14 LT selection board did in fact receive the applicant's communications. The Coast Guard attached to its advisory opinion a copy of the applicant's communication to the PY14 selection board, which was signed by the selection board president and dated September 18, 2013. Therefore, the Board finds that the preponderance of the evidence shows that the applicant's communication to the PY14 LT selection board was properly submitted to and reviewed by that board.

3. Alternatively, the applicant argued that the Coast Guard's erroneous statement in the advisory opinion for 2014-154 that he had not submitted a communication to the PY14 LT selection board biased the BCMR. The advisory opinion for 2014-154 stated that "14 USC § 253(b) allows any officer eligible for consideration by a selection board to send communications to the board to invite attention to any matter of their record. ROO did not communicate with either PY13 or PY14 Selection Boards." The applicant alleged that this statement biased the

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<sup>3</sup> 10 U.S.C. § 1552(b) (requiring application within 3 years of the applicant's discovery of the alleged error).



BCMR and he suffered an injustice as a result. However, in the Final Decision for 2014-154, this Board expressly acknowledged that the applicant did communicate with the PY14 LT selection board. Finding 12 of the Final Decision in 2014-154 states, “Although the applicant submitted a communication to the PY 2014 selection board to explain his circumstances, that selection board, like the PY 2013 board, did not select the applicant for promotion.” This finding shows that the Board acknowledged in 2014-154 that the applicant did indeed communicate with the PY14 LT selection board. Therefore, the Board was clearly not misled or biased by the Coast Guard’s misstatement and the applicant is not entitled to relief because of the error in the advisory opinion for 2014-154.

4. The preponderance of the evidence shows that the applicant’s communications were received by the PY14 LT selection board and so there are no grounds for removing the non-selection by that board from his record. Furthermore, the applicant’s contention that the erroneous statement in the advisory opinion regarding his submission of a communication to the PY14 LT selection board negatively affected the BCMR’s review of his request is refuted in Finding 12 of the Final Decision in 2014-154. For these reasons, as well as the reasons provided in the Final Decision for 2014-154, the Board finds that the applicant’s request for relief in this case should be denied.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

**ORDER**

The application of [REDACTED], USCG, for correction of his military record is denied.

May 27, 2016

