

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-034

██████████
██████████ (Retired)

FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the application on February 4, 2016, upon receipt of the applicant's completed application and military records, and prepared the draft decision for the Board as required by 33 C.F.R. § 52.61(c).

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

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant, who retired from the Coast Guard as a lieutenant commander (LCDR/O-4) on December 31, 1974, asked the Board to correct his record to show that he was promoted to commander (CDR/O-5) before he retired. The applicant stated that he was considered for promotion by CDR selection boards in 1972 and 1973 but was not selected. He alleged that the selection boards were biased against him because of personal dislike. He stated that "personal dislikes by two consecutive commanding [officers] prevented [him] from getting fair consideration."

The applicant acknowledged that he knew of the alleged injustice before he retired but argued that it is in the interest of justice for the Board to consider his request because his lack of promotion caused him and his family "extreme embarrassment and hardship" and because "complaints at the time were not received well because of extreme personal bias."

The applicant stated that he served at his last two duty stations, Air Station ██████████ and Air Station ██████████ for about six years and the command climate at those air stations "was anything but optimum." He stated that it "would be impossible to list all of the harassment and public humiliation that I suffered during that amount of time."

At Air Station ██████████ the applicant stated, when a local newspaper reported that his son and a friend "had taken someone else's car for a 'joy ride', [the Captain] called me into

his office the next day and said; ‘If you don’t get that little bastard under control, I’ll see to it that you’ll never get promoted again.’” Another time, the applicant alleged, when he was the “ready” helicopter pilot when an alarm sounded for a “scramble departure.” The “ready” pilots were supposed to wear their uniforms and change into flight suits before departing. However, instead of changing into his flight suit, he flew the helicopter in his uniform and then discovered that there were no charts on board. The applicant stated that he had not performed a pre-flight check just before departure because he had performed one earlier. After being recalled to the base, he learned that the incident had been an unannounced drill and that the captain had intentionally removed the charts from the helicopter before the drill. The captain “told us that he intentionally sabotaged the helicopter, knowing that I would react as I did, and wanted to make an example of me for not changing into a flight suit and not pre-flight inspecting the helicopter (which I had already done). I was singled out for that humiliating experience.”

The applicant alleged that when he was awarded the Distinguished Flying Cross, the captain once again belittled him by calling him into the office and saying, “You S.O.B. they are giving you the DFC for doing the same thing I did a few years ago, and I only got the Air Medal.” The applicant stated that he was singled out for this type of humiliation—both publicly and privately but mostly privately without witnesses—for four years.

At Air Station [REDACTED] the applicant stated, his primary collateral duty was to serve as the administrative assistant to the captain. The applicant stated that he was “frequently and privately ‘counseled’” about his performance of this collateral duty. Then he was reassigned as “head of the administrative section” and had to open all of the air station’s mail in addition to standing a normal “1 in 4” watch duty and carrying his “share of the flight schedule load.” The applicant stated that the “paperwork was almost overwhelming.” When it came time to requalify as a pilot, he asked to drop his helicopter qualification, but this request was refused. He stated that he suspects that his captain in [REDACTED] “privately communicated” with his captain in [REDACTED] to force him to requalify on the helicopter even though he had decided he was “finished with helicopters” after a bird strike caused him to lose control of a helicopter and crash into 36-degree water, which broke his back, stopped his heart twice, and left him in the hospital for two months. The applicant stated that having to requalify on two types of aircraft was not a safe situation because of his heavy administrative workload.

The applicant stated that after he was passed over for promotion to CDR the first time, he began studying for a Master’s degree in Public Administration, but the captain told him, “It won’t do you any good because you’re not a graduate of the Coast Guard Academy and you don’t have an advanced degree.”

The applicant stated that these incidents are just a few examples of “two tours of career-damaging duty” and asked the Board to direct the Coast Guard “to have a promotion board reconsider my qualifications, minus the fitness reports written by [the captains of his two air stations]. ... I realize the time is beyond the usual 3 years, but these personal discriminations were so damaging to my career, and so hurtful to my family and me, that I plead that you consider those personal actions against me and reconsider my failure to be promoted to Commander.”

The applicant included with his application recent correspondence that he has exchanged with Coast Guard officers regarding his non-selection for promotion and the reasons therefor. He alleged that the fitness reports he had received were erroneous because his commanding officers were biased and that he was not selected for promotion because of these fitness reports.

VIEWS OF THE COAST GUARD

On April 11, 2016, the Judge Advocate General of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in accordance with the findings and analysis in a memorandum submitted for the case by Commander, Personnel Service Center (PSC).

PSC stated that the application is untimely and that the applicant did not justify his extreme delay in applying to the BCMR.

Regarding the applicant's claim, PSC stated that the applicant was twice non-selected for promotion to CDR in 1971 and 1972 and so, in accordance with 14 U.S.C. § 285, was retained on active duty until retirement-eligible and honorably retired upon attaining 20 years of service. PSC stated that the selection board members who reviewed the applicant's record would have sworn or affirmed that they would, "without prejudice or partiality, and having in view both the special fitness of officers and the efficiency of the Coast Guard, perform the duties imposed upon them," in accordance with 14 U.S.C. § 254.¹

PSC stated that the applicant has submitted no evidence showing that his non-selections for promotion were erroneous or unjust. Therefore, PSC argued, because his military records are presumptively correct, the Board should deny relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 27, 2016, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to submit a response 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 submission, the Coast Guard's submission, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.² The record shows that the applicant knew he was not being promoted to commander no later than his retirement on December 31, 1974. Therefore, his application is very untimely.

¹ Pub. L. 88-130, § 1(10)(C), 77 Stat. 179 (Sept. 24, 1963).

² 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.³ In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board should not deny an application for untimeliness without “analyz[ing] both the reasons for the delay and the potential merits of the claim based on a cursory review”⁴ to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted that “the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review.”⁵

4. The applicant provided no justification for having delayed his application for more than forty years. Nor did he submit any evidence supporting his claims that the captains of the air stations were biased against him or that his fitness reports were inaccurate or unjust. As PSC noted, the selection board members were required to swear to perform their duties “without prejudice or partiality, and having in view both the special fitness of officers and the efficiency of the Coast Guard,”⁶ and their deliberations were by law confidential and could not be disclosed to anyone.⁷ The record before the Board contains no evidence that substantiates the applicant’s allegations of error or injustice in his military record, which is presumptively correct.⁸ Therefore, the Board finds that the applicant’s claim cannot prevail, and it is not in the interest of justice to waive the statute of limitations.

5. Accordingly, the Board will not excuse the application’s untimeliness or waive the statute of limitations. The applicant’s request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

³ 10 U.S.C. § 1552(b).

⁴ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁵ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396, 1405 n14, 1407 n19 (D.C. Cir. 1995).

⁶ Pub. L. 88-130, § 1(10)(C), 77 Stat. 179 (Sept. 24, 1963) (codified at 14 U.S.C. § 254).

⁷ Pub. L. 88-130, § 1(10)(C), 77 Stat. 181 (Sept. 24, 1963) (codified at 14 U.S.C. § 261).

⁸ 33 C.F.R. § 52.24(b); *see Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties “correctly, lawfully, and in good faith.”).

ORDER

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

November 18, 2016

