

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-005

████████████████████
██████████; ENS

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the completed application on September 29, 2017, and assigned it to staff attorney ██████████ to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated July 6, 2018, 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 was commissioned as an Ensign/O-1 on ██████████ asked the Board to correct his record by retroactively promoting him to Lieutenant Junior Grade/O-2 as of September 6, 2017. He explained that he had entered the Coast Guard upon completion of the Interservice Physician Assistant Program (IPAP). He claimed that there was a policy change that went into effect on September 6, 2017, which would have members entering from the IPAP commissioned as O-2s instead of O-1s. The applicant alleged that it has been common practice in the other Armed Forces for members to be commissioned from IPAP as an O-2 "due to their completion of a combined bachelor's and master's program." He claimed that as of September 6, 2017, "all members of the USCG graduating from IPAP will be graduating as LTJG to account for acquiring both a bachelors and master's degree." He therefore requested a retroactive promotion so that incoming members would not be ranked higher than him even though they would have less time in the Coast Guard and the same level of training.

SUMMARY OF RELEVANT DOCUMENTS

A memorandum titled "Decision Memo: Increasing the Appointment Grade of Enlisted Interservice Physician Assistance Program (IPAP) Graduates to Lieutenant Junior Grade (O-2)" states that in 2004, the University of Nebraska Medical Center began granting the Master of Physician Assistant Studies degree to IPAP graduates and the Department of Defense (DoD) services began to appoint all graduates at the O-2 level. The Coast Guard continued to appoint

graduates at the O-1 level, however. Due to recent difficulties in recruiting IPAP graduates, the Director of the Health, Safety & Work-Life Directorate, recommended that the Coast Guard align with DoD and appoint IPAP graduates at the O-2 level as a recruiting and retention tool. Specifically, the author recommended that the Coast Guard Recruiting Manual, COMDTINST M1100.2 (series), and the Officer Accessions, Evaluations, and Promotions manual, COMDTINST M1000.3 (series), be updated to set the appointment grade for IPAP graduates to Lieutenant Junior Grade/O-2 or Lieutenant/O-3 “based on selection board results.” The memorandum was endorsed by the Personnel Service Center and signed as approved on September 6, 2017.

VIEWS OF THE COAST GUARD

On March 16, 2018, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case. The JAG stated that on September 6, 2017, the Director of the Health, Safety & Work-Life Directorate signed a memorandum *recommending* that the Coast Guard Recruiting Manual and the Officer Accessions, Evaluations, and Promotions manual be updated to set the appointment grade for incoming IPAP graduating to Lieutenant Junior Grade/O-2. The JAG stated that the recommendation was based in part on a desire to align with DoD practices and in part to promote retention of IPAP graduates.

Following the release of the memorandum, the applicant submitted his application to this Board. The JAG noted that the applicant did not assert that any error was committed by the Coast Guard, but instead believed that the memorandum justified a retroactive promotion because he felt he should be senior to future IPAP graduates. The JAG stated, however, that the cited memorandum is merely a recommendation to change policy. September 6, 2017, is the date the recommendation was approved and not the date the policy was put into place. The JAG stated that the “policy changes have not yet occurred. While the next revision of the Coast Guard Recruiting Manual does increase the commissioning grade of IPAP graduates to O-2, this revision is still in the concurrent clearance process.” The JAG therefore argued that it would be impossible to retroactively promote the applicant based on a policy that has not yet been cleared and published.

The JAG also argued that even if the policy had been published, a change in policy “does not automatically justify retroactively changing the Applicant’s rank.” The JAG asserted that the Coast Guard “constantly changes policy which affects how individuals are accessed into service.” As an example, the JAG noted that recruitment bonuses are constantly changing for various accessions programs based on the needs of the service. A member may not receive a bonus one year and an identically situated member may receive a bonus the next year; but that does not give the first member a claim to a retroactive bonus. The JAG argued that the applicant has not proven that commissioning him as an O-1 instead of an O-2 was an error or an injustice because he was commissioned in accordance with existing Coast Guard policy. The JAG noted that DoD’s policies are not binding on the Coast Guard and are not evidence of an error or injustice.

Lastly, the JAG argued that it is “very likely” that the applicant will have already been promoted to O-2 by the time this policy does go into effect. He will therefore not be junior to incoming graduates from the IPAP program as he states in his application. The JAG therefore

argued that the applicant did not meet his burden of proving that there was an error or injustice in his record and recommended that the Board deny relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 28, 2018, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 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 was timely.

2. The applicant asked the Board to retroactively promote him from an O-1 to an O-2 effective September 6, 2017. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.¹ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."²

3. The applicant provided a copy of the memorandum recommending that the Coast Guard Recruiting Manual and the Officer Accessions, Evaluations, and Promotions manual be updated to set the appointment grade for IPAP graduates to Lieutenant Junior Grade/O-2 or Lieutenant/O-3 "based on selection board results." This recommendation was approved on September 6, 2017, which is presumably why the applicant has asked that his promotion be retroactively dated to that date. However, the applicant has provided no evidence that the policy was in effect when he was commissioned and the JAG has explicitly stated that it has not yet been published. Nor has the Board found any evidence that it is currently in effect. The Board therefore agrees with the JAG that there are no grounds for retroactively promoting the applicant based on a recommended policy change.

4. The applicant has failed to prove by a preponderance of the evidence that an error or injustice exists in his record. His request for relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

¹ 33 C.F.R. § 52.24(b); *see* Docket No. 2000-194, at 35-40 (DOT BCMR, Apr. 25, 2002, approved by the Deputy General Counsel, May 29, 2002) (rejecting the "clear and convincing" evidence standard recommended by the Coast Guard and adopting the "preponderance of the evidence" standard for all cases prior to the promulgation of the latter standard in 2003 in 33 C.F.R. § 52.24(b)).

² *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

ORDER

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

July 6, 2018

