

**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. 2018-034**

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**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 November 22, 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 August 17, 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, ██████████, asked the Board to correct his record by permanently restoring the ethnicity field of his military record to reflect ██████████. He stated that at some point the Coast Guard re-categorized him as "Multi Race" and/or "White." He argued that every employment action which considered his record while his ethnicity was improperly labeled should be reconsidered with his correct ethnicity. The applicant argued that changing his ethnicity was an "attempt by the Federal Government to erode [his] identity and deny ██████████ its place in America today." He asserted that ██████████

The applicant stated that he checked his ethnicity in his record periodically and he never noticed that it reflected anything other than ██████████. However, he stated his ethnicity was changed in his record before his record was reviewed by the Promotion Year ██████████ ██████████ selection board. He stated that he believes that his ethnicity was changed as reprisal due to his "participation in EEO [Equal Employment Opportunity] complaint activity and/or the worklife program." He therefore requested "reconsideration of erroneous employment actions, specifically the ██████████ selection board and ██████████ Appointment Board, in order to mitigate the impact of discrimination in the Coast Guard." In support of his application, the applicant provided several documents proving his full membership with a ██████████

### SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard Reserve on December 14, 2004. He became active duty on August 1, 2005. He was sworn in as a Reserve officer on [REDACTED]. He began extended active duty on September 30, 2011, and has been serving on active duty since. He has no negative documentation in his record. He has received mostly positive evaluations, with a few neutral to positive evaluations earlier in his active duty career. On the applicant's Member Information page, his ethnicity is listed as [REDACTED]

On [REDACTED], the results of the [REDACTED] selection board were released. The applicant was not selected for promotion. The selection rates by race show that [REDACTED] were selected, indicating that no [REDACTED] were candidates for promotion according to the Coast Guard's database at the time the records were reviewed.

### VIEWS OF THE COAST GUARD

On April 26, 2018, 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 doing so, he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC). PSC stated that the application is timely and recommended that it be considered on the merits. PSC noted that according to the [REDACTED] selection board results, there were no [REDACTED] personnel files reviewed, which would have been incorrect because the applicant was listed as [REDACTED]. Because the applicant was not selected for promotion, PSC stated that this line should have shown as "(0/1)" instead, so it "can be assumed that he was listed under another ethnic category." However, according to COMDTINST 1410.2, Article 7.a., personal demographic information is not provided to promotion boards. Included in personal demographic information is an officer's ethnicity. PSC therefore argued that although there was apparently an error in the Coast Guard's database at the time the applicant's record was viewed by the [REDACTED] selection board, the error had no bearing on the selection process because his ethnicity information was not authorized to be shown to or considered by the promotion board.

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

On April 30, 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.

### APPLICABLE REGULATIONS

Documents Viewed by Coast Guard Officer Promotion and Special Boards, COMDTINST 1410.2, Article 7.a., states that "it is Coast is Coast Guard policy that the following data sets shall not be provided to officer promotions boards: Personal Demographic Information, Sensitive Assignment Data, Medical Data, Security Clearance data." Article 6.d. defines personal demographic information as including "an officer's gender, race, ethnicity, religion, and age."

### 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 requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.<sup>1</sup>

3. The applicant alleged that his ethnicity was marked erroneously in his military record when it was viewed by selection boards. 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.<sup>2</sup> 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."<sup>3</sup>

4. It appears from the report of the results of the [REDACTED] selection board that the Coast Guard's database did not show the applicant's ethnicity as [REDACTED] when that board convened. If the database had been correct, the results would have shown that 0/1 [REDACTED] [REDACTED] were chosen for promotion. However, the database has since been corrected, because it currently reflects that he is [REDACTED]

5. The applicant claimed that he was prejudiced before the [REDACTED] selection board and the [REDACTED] appointment board because of the error in his record. However, COMDTINST 1410.2 makes clear that personal demographic information, which explicitly includes ethnicity, may not be shown to such boards. Therefore, the Board finds that the applicant has not proven by a preponderance of the evidence that the error regarding his ethnicity in the Coast Guard's database in [REDACTED] was reviewed by those boards or had any influence on the results of those boards.

6. Accordingly, the applicant's request for relief should be denied.

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

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<sup>1</sup> *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

<sup>2</sup> 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)).

<sup>3</sup> *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 [REDACTED] USCG, for correction of his military record is denied.

August 17, 2018

