

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-096


LCDR (O-4)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on April 4, 2024, and assigned the case to the staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision dated July 17, 2025, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant, an active-duty Lieutenant Commander (LCDR/O-4), requests the Board to correct his military record by adjusting his date of rank for LCDR to June 1, 2021. He alleges that his current date of rank of July 1, 2023 was the result of his promotion being delayed two boards as a result of an erroneous CG-3307 in his military record. This record was removed by order of this Board in Docket Number 2022-039, dated December 15, 2023.

SUMMARY OF THE RECORD

The applicant was commissioned in 2010 and promoted to LT in 2014. He was first considered for promotion to LCDR in promotion year (PY) 20, and was not selected. He was again not selected in PY21.

The applicant applied to this Board on April 7, 2022 requesting that a negative CG-3307 be removed from his file.

The applicant was promoted to LCDR in the PY22 promotion board, and was subsequently promoted to LCDR with a date of rank of July 1, 2023.

For reasons not relevant to the current request, the Board granted relief in Docket Number 2022-039, dated December 15, 2023. The Board's decision does not address whether a special selection board (SSB) is warranted, or whether the applicant should have his date of rank adjusted on the promotion list.

THE APPLICANT'S ALLEGATIONS

The applicant alleges that "After submitting my initial BCMR Docket No. 2022-039, which was ruled in my favor, and the erroneous document was removed, I was subsequently promoted." He asserts that this Board's action established that the derogatory CG-3307 in his record (related to being on weight probation) constituted an injustice, and further that this 3307 in his record was the "causative factor" in his nonselection for promotion. He argues that the "Engels Test,"¹ announced by the Court of Federal Claims in 1982, requires this Board to grant the relief he seeks because his record was prejudiced by the presence of the erroneous CG-3307, and because there was a substantial nexus between this error and his non-selection in the PY20 and PY21 boards.

VIEWS OF THE COAST GUARD

On April 8, 2025, a Judge Advocate (JA) for the Coast Guard submitted an advisory opinion in which he recommended that the Board grant alternate relief in this case and adopted the findings and analysis provided in a memorandum prepared by the PSC.

The JA argued that the applicant was selected for promotion after the BCMR ordered removal of the CG-3307 at issue in this case. As a result, they agree that the applicant is entitled to relief. Instead of adjusting his date of rank, the Coast Guard requests that the BCMR order them to convene a special selection board (SSB) for the PY20 promotion board.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

The applicant was provided the Coast Guard Advisory Opinion, and an opportunity to respond by May 24, 2025. The Board did not receive a response.

APPLICABLE LAW AND POLICY

COMDTINST M1000.3A establishes Coast Guard policy for Special Selection Boards:

6.B.13.a. Purpose

A SSB considers one or more commissioned or former commissioned active duty offers for promotion to lieutenant (junior grade) through captain for either of the following reasons . . . :

¹ Engels v. United States, 230 Ct.Cl. 465, 678 F.2d 173 (1982).

- (1) An officer considered but not selected for promotion to the next higher grade because of a material error in their record, or
- (2) An officer not considered and not selected for promotion to the next higher grade because of an administrative error.

6.B.13.d. Convening Authority for a SSB

Commander (CG PSC) shall be the convening authority for all officers eligible for consideration

6.B.13.e. Basis for convening a SSB

SSBs may be convened pursuant to 14 U.S.C. [§ 2120] to consider or reconsider commissioned officers or former commissioned officers for promotion when one or more of the following occur:

- (1) An officer was not considered from in or above the promotion zone by a regularly scheduled selection board because of administrative error.
- (2) The Secretary determines that a selection board that considered an officer from in or above the promotion zone acted contrary to law or made a material error.
- (3) The selection board that considered an officer from in or above the promotion zone did not have before it some material information required to be presented to the board by Coast Guard policy.
- (4) The Coast Guard Board for Correction of Military Records (CG BCMR) or a federal court directs a SSB be convened.

6.B.13.f. Prohibition for convening a SSB

SSBs shall not be convened for the following reasons:

....

- (5) The convening authority determines that the error in the officer's record was immaterial or could have been discovered and corrected prior to board convening.
 - (a) It is the officer's responsibility to review his or her record before the board convenes and take reasonable steps to correct any errors or notify the board, in writing, of possible administrative deficiencies.
 - (b) The omission of letters of appreciation, commendation, or other commendatory data or awards of the Meritorious Service Medal and below

from an officer's record does not constitute grounds to initiate SSB action under this Article.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on the applicant's military record and submissions, the Coast Guard's submission and applicable law:

1. The Board has jurisdiction over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record. The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued. The application was timely filed within three years of the applicant's discovery of the alleged error or injustice in the record, as required by 10 U.S.C. § 1552(b).

2. The Board may correct any military record of the Coast Guard when necessary to correct an error or remove an injustice.² Error means either legal or factual error.³ Injustice, when not also error, is treatment by the military authorities that shocks the sense of justice but is not technically illegal.⁴ 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 the record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁵ 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."⁶

3. After review of the complete record in this case, the Board finds further relief inappropriate. Although the application does not make this clear, the applicant was selected for promotion to LCDR *before* this Board ordered relief in his prior case. In other words, the Board that selected him did so in full consideration of the erroneous CG-3307. Second, the applicant has not properly asserted grounds for reconsideration of our prior decision. The applicant presents no evidence or information that could not have been presented to the Board in his previous case, if he had exercised reasonable diligence. The applicant also does not present evidence or information that the Board committed legal or factual error in its original determination.

4. The gravamen of the applicant's allegation of error is that the erroneous CG-3307 was the cause of his non-selection at two promotion boards to LCDR. As this Board has ordered it removed from his file, he argues, we should back-date his promotion to reflect his selection with peers in July 2021. He appears to choose his language and punctuation carefully when making

² 10 U.S.C. § 1552(a); 33 C.F.R. § 52.2(a).

³ *Sawyer v. United States*, 18 Cl.Ct. 860, 868 (1989), *rev'd on other grounds*, 930 F.2d 1577 (Fed.Cir.1991).

⁴ *Id.*

⁵ 33 C.F.R. § 52.24(b).

⁶ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

this claim. Quoting from his application: “*After submitting my initial BCMR Docket No. 2022-039, which was ruled in my favor, and the erroneous document was removed, I was subsequently promoted.*” We are not in the business of grading the grammar and style of applications, but upon careful reading, the applicant only claims that his promotion came after his *application* to this Board. This is true. However, his use of the passive voice and multiple commas makes unclear which of the three actions he describes in this sentence occurred before his eventual promotion. This Board has the benefit of the applicant’s military record to resolve that ambiguity in our review. However, a less-than-careful reading gives the impression that his promotion occurred only after the removal of the CG-3307, which is not true. The applicant of course knows that he was promoted to LCDR on July 1, 2023, but that this Board did not render its decision in Docket No. 2022-039 until December 15, 2023. The removal of the CG-3307 occurred well after his selection to promotion. While we consider the Coast Guard’s AO recommending alternate relief, we acknowledge that their opinion was based on an apparent misunderstanding of the relevant facts. To quote from the Coast Guard AO: “*The Applicant asserts that after BCMR (2022-039) granted removal of a negative CG-3307 from his record he was selected for promotion on the subsequent promotion board.*” This is not what the applicant asserted, and is not supported by the record.

5. It is with this in mind that we look to the applicant’s allegation of error. We agree that the applicant has established that inclusion of the CG-3307 in the PY20 and PY21 promotion boards was erroneous. We stated as much in our previous decision. The remaining question is whether this record was a substantial cause of his nonselection by those promotion boards. The applicant appears to rely on the *Engels* tests pronouncement of a burden shift to the Coast Guard to prove harmlessness once a prima facie showing of error is established by the applicant. In other words, he provides no evidence that the CG-3307 was the cause of his nonselection, but argues that the burden is on the Coast Guard to disprove his claim. The Board notes that the *Engels* case relied on by the applicant predates the existence of special selection boards by law, and dealt only with the situation of a nonselected officer applicant requesting expungement of two previous nonselections from the his record to effect his reaccession to the Air Force to re compete for promotion. In the post-SSB era, *Engels* is no longer controlling precedent. Additionally, the applicant misperceives the relief granted by the *Engels* court. In that case, the applicant was only requesting expungement of previous nonselections that were relied upon by the Air Force as a basis for administrative action for nonselection for promotion. In substance, the opinion gave the applicant a renewed opportunity to compete for permanent promotion with the erroneous documents removed from his record.

6. The record before us is fundamentally different. The applicant is not asking for expungement of earlier nonselections. Such action would provide no relief, since the applicant has been selected for promotion. Had the applicant not been selected, this Board – upon a request by the applicant – would likely consider referral of his case to a SSB, which is far better suited to determine if promotion is warranted based on the applicant’s file. In any event, it is outside of our power to order the tendering of a new original appointment outside the processes established in Title 14, U.S.C.

7. What the applicant appears to be asking for is an adjustment to his seniority based on grounds of injustice, not expungement of a previous nonselection. He has not provided any

evidence that his nonselection was the result of consideration of the disputed CG-3307. He was ultimately selected for promotion with this document in his file and considered by the board that selected him. The Board presumes that subsequent promotion boards considered additional Officer Evaluation Reports (OERs) and other service records reflecting the applicant's continued service in the Coast Guard between the PY20 and PY22 boards. As the applicant acknowledges, we have no way to know what aspects of his record were persuasively considered by promotion boards. However, the Board finds it much more likely that the additional evaluations or service documents placed in his file between 2020 and 2022 were the reason for his subsequent selection, not the CG-3307 that was visible to each promotion board. The applicant provides no supporting evidence to support any other conclusion, and therefore fails to make even a *prima facie* showing of a nexus between his nonselection and the presence of the disputed CG-3307.

8. The applicant's request should also be denied because it fails to assert any basis for reconsideration of our prior decision. The applicant contended in his prior application that the existence of this CG-3307 in his record was unfairly impacting his potential for promotion. He had been non-selected at least once before he submitted his initial application on April 7, 2022. By the time he received the advisory opinion in his initial application, he had been non-selected again. It does not appear that the Board addressed the question of back-dating his promotion to LCDR or convening a SSB in our prior decision. The applicant did not ask for such relief, and the Board did not order it. In any event, the applicant now asserts no error in that prior decision's failure to order a SSB or back-dating of his promotion to LCDR.⁷ Furthermore, the only additional information before the Board today that was not available to the applicant at the time of his original application is the applicant's selection for promotion to LCDR with the disputed CG-3307 in his file. If anything, this cuts against his contention that the CG-3307 was the cause of his non-selection.

9. The Board considered the Coast Guard's proposed alternate relief, and does not find it warranted in this case. The SSB is a statutory promotion selection board established by 14 U.S.C. § 2120 to consider officers not selected for promotion due to administrative or material error. They are not vehicles to make recommendations to either the Coast Guard or this Board about whether to back-date a selected officer's date of rank. The applicant in this case has been selected for promotion to LCDR, and has been promoted; convening a promotion board to consider him for promotion to that grade is unnecessary and inappropriate.

10. Based on the lack of evidence supporting the applicant's claim, the applicant's request for relief is denied.

[ORDER AND SIGNATURES ON NEXT PAGE]

⁷ The record is unclear as to what the Board understood from the record at the time they issued the decision in Docket Number 2022-039. The applicant's rank was captioned at the top of the opinion as LT, and he was referred to as a LT/O-3 on active duty in the body of the opinion. The advisory opinion in that case was received by the Board before his promotion to LCDR, and it is likely that there were no updates to the record between his promotion to LCDR in July 2023 and the Board's decision in December 2023. Regardless, referral to a SSB (if not yet promoted) or adjustment of the applicant's date of rank (if promoted) was not requested by the applicant or addressed by the Board.

ORDER

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

July 17, 2025

