


DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 70-96

FINAL DECISION


This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on or about February 1, 1996, when the applicant filed his request for relief with the BCMR.

This final decision, dated February 24, 1997, is signed by the three duly appointed members who were designated to serve as the Board in this case.

Request for Relief

The applicant asked:

- (1) that all references to the applicant's removal from the Lieutenant Commander (LCDR) Promotion List be deleted;
- (2) that the applicant's name be restored to the LCDR Promotion List;
- (3) that the applicant be promoted to LCDR, effective August 1, 1992;
- (4) that records be corrected to show that the applicant retired at the rank of LCDR, instead of LT, and that he be given back pay (active duty), retirement pay, and allowances retroactive to the date of rank; and
- (5) that the applicant's Coast Guard's Achievement Medal which was allegedly removed from his record after his retirement be returned.

In August 1991, the applicant, a lieutenant (LT), was selected for promotion by the 1991 LCDR Selection Board. He was scheduled to be promoted to LCDR on August 1, 1992, but in 1991 and 1992 he was accused of and investigated for filing false travel claims. He denied the travel claim charges, alleging that there was "no clear

evidence to either support or refute the charges" that he filed several claims for monetary reimbursement of travel expenses for trips that he did not take. He said that the lighthouses and transmitting sites he was assigned to inspect were in remote areas and did not have any personnel assigned to them who could verify that he was present.

The investigation of the applicant's travel claims lasted 18 months; according to the applicant, it was opened and closed on three separate occasions. During that period, the applicant's district commander requested, and the Commandant granted, an indefinite delay of the applicant's scheduled promotion. In addition, the applicant and his district commander concluded a "mast agreement" on February 3, 1993. The applicant alleges that the agreement has been violated and should be enforced.

On July 15, 1993, a show cause determination board found that the applicant should be required to show cause for his retention in the Coast Guard, and a special board recommended that his name be permanently withdrawn from the 1992 LCDR promotion list. On July 30, 1993, the Secretary of Transportation accepted the latter recommendation and directed that his name be permanently removed from the 1992 LCDR promotion list. Subsequently, the applicant was considered for selection by the 1993 LCDR Selection Board, but he was not selected. This failure was considered his second failure of selection as the removal of his name from the 1992 LCDR promotion list was considered his first failure of selection. On May 31, 1994, the applicant retired as a lieutenant in the Coast Guard with separation code RBD (retirement after 20 years active Federal service).

The applicant alleged that he was not permitted to present any evidence on his behalf when he was considered for retention as an officer. He also alleged that he never even knew that this Board had been convened until well after his permanent removal from the LCDR promotion list.

Views of the Coast Guard

The Chief Counsel of the Coast Guard recommended that the Board deny "all relief" to the applicant. The Service said that the permanent removal of his name from the LCDR promotion list, and the determination that he should show cause for retention, did not deny him any rights provided by law. The Coast Guard declared that the applicant's "mast agreement" was neither unfair nor illegal; that the applicant's submission did not support a finding of error or injustice with respect to the mast proceeding by the district commander; and that the district commander's actions did not violate the mast agreement.

The Coast Guard said that the permanent removal of the applicant's name from the LCDR promotion list was documented by a report of a Coast Guard board. The Coast Guard stated that "[t]he board members simply did not believe Applicant's explanation of events." Following the applicant's second failure of selection, he was permitted to retire on the date on which he would have completed 20 years of active service, in accordance with 14 U.S.C. §283.

Response of the Applicant to the Views of the Coast Guard

On January 14, 1997, the BCMR sent a copy of the views of the Coast Guard to the applicant. On February 4, 1997, the BCMR received the applicant's response to the views of the Coast Guard. The applicant's attorney reiterated his representations and particularly urged the BCMR to "enforce" the February 1993 agreement between the district commander and the applicant.

EXCERPTS FROM RECORD

February 2, 1993 Agreement between District Commander and Applicant

From: Commander, First Coast Guard District

To: [Applicant]

Subj: TERMS OF AGREEMENT

1. In consideration of your having made restitution for monies improperly received and admitting at Flag Mast to having committed certain offenses, I agree to dismiss charges currently pending against you at a special court-martial. I further agree not to initiate any action seeking to administratively discharge you for your actions that serve as the bases for the pending special court-martial.

June 10, 1993 Memo from District Commander to Commandant

I held Flag Mast on [the applicant] on 03 February 1993. At mast, [the applicant] admitted to having committed five criminal offenses, specifically [dereliction of duty, conduct unbecome an officer (3), and wrongfully advising a junior offer to record inaccurate information]. . . . [The applicant] also admitted to committing . . . three inaccurate travel claims. . . .

In my view this admitted criminal conduct forestalls any current promotion privilege. Future consideration for promotion should, of course, be based on his entire record. My request of 02 December 1992 [for removal of his name from the promotion list] stands.

**APPLICABLE REGULATIONS OF THE COAST GUARD PERSONNEL MANUAL
AND THE U. S. CODE**

The following sections of the Personnel Manual and the U.S. Code are among those that are relevant to this case:

Article 5-A-13f.(1), Personnel Manual

"It is the responsibility of each officer in the chain of command or Commandant (G-P) to withhold a promotion of officers if there is knowledge that they have disqualified themselves after being placed on a promotion list. Disqualification, as used herein, is deemed to be any circumstance which cast doubt on the moral or professional qualifications of the officer concerned."

Article 5-A-13 f.(2), Personnel Manual

"A complete report of the circumstances shall be forwarded to Commandant (G-PO) recommending removal of the selectee's name from the promotion list . . . The selectee shall be furnished a copy of the report and shall be required to acknowledge receipt."

Article 5-A-13 f.(4), Personnel Manual

"The Commandant shall refer the case to a board of officers to recommend whether or not removal of the selectee's name from the promotion list shall be recommended to the President."

Article 12-A-15 f.(8), Personnel Manual

"An officer who has been notified that a determination board has found that he/she be required to show cause for retention on active duty may request early discharge from the Service or apply for voluntary retirement. . . . [i]f neither of these actions is taken, the officer shall be ordered to appear before a board of inquiry."

14 United States Code §272 (a)

"The President may remove the name of any officer from a list of selectees established under section 271 of this title."

14 United States Code §283(a)

"Each officer of the Regular Coast Guard . . . who is serving in the permanent grade of lieutenant and who has failed of selection for promotion for lieutenant

commander for the second time shall (1) be honorably discharged on June 30 of the promotion year in which the second failure of selection occurs; or (3) [on the date] he has completed at least 20 years of active service"

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 submissions, and applicable law:

1. The Board has jurisdiction of the case pursuant to section 1552 of title 10, United States Code. The application is timely.

2. The Chairman has recommended disposition of the case without an oral hearing. 33 CFR § 52.31 (1996).

3. In August 1991, the applicant was selected for promotion to LCDR. An investigation was conducted, starting in July 1991, into allegations that he had filed false travel claims. As the investigation was not completed at the time of the applicant's scheduled promotion to LCDR, his district commander requested a delay in the promotion. The Commandant granted the delay.

4. On November 20, 1992, the applicant was notified that the district commander was planning to recommend that his name be permanently removed from the promotion list. On February 2, 1993, the district commander entered into an agreement with the applicant under which he agreed to dismiss charges currently pending against the applicant at a special court martial, and not seek the administrative discharge of the applicant. No reference was made in this agreement to the district commander's plan to recommend his permanent removal from LCDR promotion list. The district commander complied with the agreement; there is thus nothing to enforce. The applicant was retired, not administratively discharged. In any case, the Coast Guard was not responsible for the statements of the district commander. United States v. Debarrows, 41 M.J. 710 (1995).

5. On June 10, 1993, the district commander requested that the applicant's name be permanently removed from the list of selectees. A month later, on July 15, 1993, a show cause determination board and a separate special board (both boards had the same membership) were convened to examine the applicant's case. The boards recommended that he show cause for retention on active duty and that removal of his name from the list of selectees be recommended to the President. On August 6, 1993, he was notified that he had been removed from the promotion list by the Secretary of Transportation, as of July 30, 1993. His removal constituted his first failure of selection, pursuant to 14 U.S.C. § 272(a).

6. In August 1993, the applicant was considered for selection by the 1993 LCDR selection board. He failed of selection for promotion before that board. This was his

second failure of selection. He was required to be retired under 14 U.S.C. §283(a) because he had failed of selection for LCDR for the second time.

7. The applicant made various allegations regarding the retention board, but he did not submit any corroboration of the allegations. Also, the proceeding was conducted in conformity with Article 12-A-15f. of the Personnel Manual:

"(3) The determination board will impartially review the Personnel Data Record of the Officer concerned, the recommendation of the initiating officer and other available information relevant to the reasons for separation to determine whether the officer should be required to show cause for retention."

"(4) The determination board does not examine witnesses. It is limited to consideration of the documents presented to it."

8. The applicant has not presented any evidence that corroborates his allegation that his Coast Guard Achievement Medal was removed from his record by the Coast Guard.

9. The applicant has failed to prove, by a preponderance of the evidence, that the Coast Guard committed an error or injustice. The Service followed all appropriate laws and regulations in withholding the applicant's promotion, in permanently removing the applicant's name from the LCDR Promotion Board, in holding a show cause determination board, and in allowing the applicant to retire.

10. Accordingly, the application should be denied.

Final Decision: BCMR No. 70-96

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ORDER

The application to correct the military record of
[REDACTED] is denied.

