

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 90-96

FINAL DECISION

[REDACTED]

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on March 12, 1996, by the filing of an application for relief with the BCMR.

This final decision, dated May 12, 1997, is signed by the three duly appointed members who were designated to serve as the Board in this case.

Applicant's Request for Relief

The applicant was a lieutenant commander in the active reserve (LCDR; pay grade O-4) at the time that he submitted his application for correction. He is currently an LCDR in the inactive reserve in an unpaid position.

The applicant asked the BCMR to cancel his current "retirement orders,"¹ effective June 30, 1996, and to allow him to be considered by the FY97 reserve commander (CDR) selection board.²

¹ After clarification from the applicant, the Board verified that the orders he received, effective June 30, 1996, were not retirement orders, but instead were orders informing the applicant that he had been removed from the active status list (ASL) and placed on the inactive status list (ISL) in the reserve.

² In order for the applicant to be considered by another selection board, he must first have his failure of selection before the FY96 selection board removed from his record. While the applicant did not ask for this relief, the Board assumes that he intends removal of that failure to be included in his BCMR application.

The applicant stated that he had sent a packet of materials, which he intended to be included with his record, to the FY96 CDR selection board.³ He stated that due to a mail delay, the FY96 selection board did not receive the packet before the end of the selection process.

The applicant failed of selection for promotion before the FY96 selection board. It was his second failure of selection for promotion to the rank of CDR. On June 30, 1996, he was removed from the active status list (ASL) for the reserve and placed on the inactive status list (ISL).⁴

SUMMARY OF RECORD AND SUBMISSIONS

In support of his application, the applicant submitted a letter from his current commanding officer (CO). The CO stated that he entered command at the applicant's duty station in [REDACTED] on October 1, 1995. He stated that the applicant had demonstrated himself to be a "dedicated, competent and professional Coast Guard Officer." The CO said that he believed the applicant should be granted the opportunity to compete before the FY97 selection board.

The applicant also forwarded a copy of his acceptance letter from the Naval War College. He had included that letter in the packet he sent to the FY96 selection board.

The applicant's former CO, hereinafter the captain, submitted a letter in support of the applicant's request to be considered by the FY97 selection board. The applicant had sent his selection board packet to the captain for forwarding to the FY96 selection board. The captain asserted that he encouraged officers under his supervision to submit supplementary information to selection boards in order to highlight skills and achievements not otherwise noted in their records. He stated that he believed the applicant's packet had been delayed by the mail, and not by fault of the applicant.⁵ He asserted that the applicant should be given

³ The applicant stated that the packet of materials contained a letter of acceptance for admission to the Naval War College and a notice of his selection to be the primary author of a new plan for the "PACAREA Plans Division."

⁴ Members serving in the active status reserve are placed on the ASL and are guaranteed to be reviewed by selection boards for promotion purposes. In most cases, if an ASL member fails of selection for promotion twice, he or she will be placed on the ISL. Members on the ISL are not guaranteed consideration by selection boards for promotion. (See e.g., Article 7-A-7.e, COMDTINST M1001.27A).

⁵ The captain included a copy of the envelope which contained the applicant's materials, as it was mailed to him. The postmarked date on the envelope was September 25, 1996. The captain

another chance to compete on the ASL for promotion to CDR before an upcoming selection board.

Views of the Coast Guard

On February 19, 1997, the Coast Guard recommended that the applicant's request be denied. The Service stated that the "delay in transmitting [the applicant's] letter to the [FY96 selection board] appears to have been primarily due to his own failure to update his address, his late submission of his communication to the selection board, and his decision to forward his communication via his former supervisor. . . ."

The Service cited Article 14-D-9 (COMDTINST M1001.27A) which states that the "initial burden of ensuring timely submission of communications to the selection board. . ." is on the officer being considered for promotion. Such communications "must be submitted in time *to arrive* not later than three weeks prior to the Board's convening." (Emphasis in original) The Coast Guard stated that the applicant failed to comply with "regulations specifically designed to prevent the harm he now alleges as Coast Guard error."

The Coast Guard also stated that the captain was no longer in the applicant's chain of command, and therefore, the applicant erroneously sent his packet to him. The applicant had not shown that the forwarding of his packet to the captain was the result of misinformation or error by the Coast Guard.

The Service stated that the applicant had the responsibility of ensuring that his address information would be updated after he moved. The applicant failed to confirm that his address change had been received by the necessary parties. His failure to follow established guidelines for selection board review resulted in his packet not being received by the FY96 selection board in time for review.

Applicant's Response to the Views of the Coast Guard

The applicant was sent a copy of the Coast Guard's views and was encouraged to respond. On February 27, 1997, the BCMR received the applicant's response in which he explained the circumstances behind the delayed receipt of the supplementary packet.

The applicant asserted that he had notified the Reserve Management Support Activity (RMSA) in Washington and California of his address change in

stated that he received the materials on September 28, 1996, three days after it was postmarked. The envelope had been sent via U.S. Priority Mail.

early January 1995, and he believed that the RMSA offices would forward the address information to all relevant Coast Guard divisions. He stated that after his move, he had been "receiving [his] monthly paychecks and other correspondence without delays or other problems." On August 23, 1995, the applicant received a certified letter from Coast Guard headquarters informing him that he would be considered by the FY96 selection board. The letter was postmarked July 1995 and had been sent to his old address in Washington state. He received the letter approximately one month before the FY96 selection board was scheduled to meet.

The applicant stated that he "picked up [his] letter from the promotion board at the San Jose post office in the middle of August, 1995 (a few days before 23 August)." He stated that he "completed [his] typed resumé form and a letter to the board on the first available weekend. . ." and he "then mailed [his] communication to [the captain]." The applicant's packet did not reach the captain until approximately one month after he sent it, which was three weeks after the FY96 selection board had met.

He stated that the absence of that information in his record before the selection board "negatively affected [his] chances of success at the FY96 Reserve Commander Selection Board." He stated that his acceptance to the Naval War College was a significant accomplishment because he was a non-resident student and to his knowledge, he was "the only Coast Guard Reserve officer in [his] geographical area attending this highly regarded program of study."

The applicant amended his initial request by asking to compete on the ASL before the FY98 selection board instead of the FY97 selection board. He stated that in the time since he filed his application with the BCMR, the FY97 selection board had met.

Applicant's Supplemental Correspondence (March 1997)

On March 12, 1997, the applicant submitted a letter in which he reiterated points he had made in previous correspondence regarding his performance while on the ASL and his current activities as a student at the Naval War College. The applicant also submitted a letter from his former professor at the Naval War College. The professor's letter attests to the applicant's excellent performance in the school.

In a telephone conversation on March 20, 1997 with the BCMR staff attorney, the applicant stated that he had mailed the packet of supplementary materials through the outgoing office mail at his duty station. He stated that this was not a U.S. postal station, but an internal Coast Guard mail system which

processed correspondence by affixing proper postage and mailing correspondence through the U.S. mail.

Additional Information Requested by the Board

On April 18, 1997, the Board reviewed the applicant's case and asked the BCMR staff attorney to obtain additional information regarding the Coast Guard's pre-selection board notification process for its reserve units. The Coast Guard provided the Board with the following additional information:

On June 13, 1995, ALDIST 116/95 was distributed to all Coast Guard units. The ALDIST identified those reserve officers who were in the zone for promotion before upcoming promotion boards. ALDIST 116/95 provided in paragraph 4 that "officers under consideration for selection boards are strongly encouraged to submit communications. . . to the board." The same paragraph cited Article 14-D-9 of COMDTINST M1001.27 with reference to guidelines for submission of the communications. Paragraph 4.C stated that "COMDT (G-RSM) will track receipt of OERs and resumés/communications to the board and provide a weekly status report to each district. . . ." Finally, paragraph 4.D stated that "District should confirm members' intent to submit resumés and/or communications to the board and advise member of the non-receipt by headquarters, if appropriate." The applicant was listed as being in the zone for promotion to CDR before the FY96 selection board.

Additionally, the mailing of certified letters to officers scheduled to appear before upcoming selection boards was a practice begun in January 1995. The Coast Guard began supplementing ALDIST announcements regarding promotion boards with the certified notification letters as a courtesy to its local reserve officers to ensure that they received notice about selection board meetings.

On April 23, 1997, the applicant was contacted by telephone by the Board staff attorney for oral comment regarding ALDIST 116/95. In conversation, the applicant stated that he was aware that ALDISTs were distributed that listed officers in the zone for promotion. He stated that he tried to be "conscientious at reading the ALDISTs and ALCOASTs published," and that he "probably saw ALDIST 116/95." The applicant stated that he "customarily waited for the notification packet regarding upcoming selection boards."

The applicant stated that he was aware that the resumé forms (which were standard forms) were available at his unit, and that he did not have to wait for the certified letter to arrive before completing his form. He also stated that he expected to be considered by the FY96 selection board because he had failed of selection before the FY95 board the previous year.

Applicant's Additional Submissions (April 1997)

On April 29, 1997, the applicant submitted a letter with respect to his knowledge of ALDIST 116/95. He stated that he had received a copy of ALDIST 116/95. In his statement, he focused on paragraph 4.C of the ALDIST which stated that the Commandant would track receipt of OERs and communications. He stated that he did not receive notification of the non-receipt of his communication until after the selection board had met. He stated that he "accept[s] some blame for not being more proactive in tracking [his] own communication, but [he does] not see the Coast Guard as being totally blameless considering that the ALDIST states that they [the Coast Guard] would track receipt of 'resumés/communications'." He stated that the non-receipt of his packet made his record incomplete before the board.

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 section 1552 of title 10, United States Code. The application was timely.
2. The applicant requested an oral hearing before the BCMR. The Chairman, acting pursuant to 33 CFR §52.31, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.
3. The Coast Guard Reserve Personnel Administration and Training Manual (COMDTINST M1001.27A), Article 5-A-1, states that a member shall notify his commanding officer of his current address and any change of address. The Board finds that the applicant did make a concerted effort to notify the relevant Coast Guard divisions of his pending address change by contacting the RMSAs at his duty stations.
4. Article 14-D-9 of COMDTINST M1001.27A states that officers interested in submitting supplementary information to a selection board must submit such communication through "official channels." The Personnel Manual does not define the term "official channels," but the Coast Guard stated that official channels refers to the officer's chain of command.

There is nothing in the applicant's record to indicate that the captain was not his CO in August 1995. The applicant's current CO corroborates the applicant's statement because he asserted that he did not assume command at

the applicant's duty station until October 1, 1995. A preponderance of the evidence leads the Board to determine that the captain was still the applicant's CO in August 1995 and still in the applicant's chain of command. The captain was therefore the appropriate recipient of the information packet.

5. Article 14-D-9.f states that "[c]ommunications . . . are to be submitted to arrive . . . not later than three weeks prior to the board convening date." Notwithstanding the fact that the Coast Guard mailed the applicant's notification letter to his old address, the Board finds that even with the delayed receipt of his certified letter, the applicant had ample time prior to the convening of the FY96 selection board to submit his packet for the Board's consideration.

6. The Board questions whether the applicant acted promptly in preparing and mailing his packet to the captain for forwarding to the selection board. He alleged that he prepared his package on the first available weekend, but cannot provide the Board with an actual date. It is unclear whether he could have immediately prepared the packet the same day the letter was received, and, if this was a possibility, the applicant has not shown why he did not act more immediately, given the obvious time constraints upon him. Additionally, the applicant alleged that he mailed the packet through inter-office outgoing mail, but he failed again to provide the actual date he mailed it. The applicant has thus failed to provide any clear evidence to support either of the above allegations. Indeed, according to the only available evidence, the package was not posted until September 23, 1995.

The Board presumes the regularity of delivery of inter-office mail. Customarily, items placed in inter-office outgoing mail for delivery reach their internal or external destination within three days after deposit in the inter-office mail system. Therefore, if the applicant did place his package in inter-office mail in late August, 1995, it would follow that it should have reached its destination at least three days after being mailed. The applicant has not provided an acceptable explanation for why the package took over a month to reach its first destination (the captain), other than his assertion that it was lost in the mail.

7. The evidence shows that on June 13, 1995, ALDIST 116/95 was distributed to all Coast Guard units. The ALDIST announced those officers who were in the zone for promotion before upcoming promotion boards. The applicant was listed as being in the zone for promotion to CDR before the FY96 selection board.

8. The applicant was notified through ALDIST 116/95 that he would be considered by the September promotion board. The evidence shows that the applicant was aware of the publication of ALDISTs that list officers in the promotion zone, and that the applicant expected to be considered by the FY96

selection board because he had once failed of selection before the FY95 selection board. The applicant's knowledge that he would be considered by the next selection board warranted early preparation of his communication packet and resumé form so that it would be ready for prompt mailing to his chain of command. Receipt of the certified letter was not a prerequisite for mailing communication packets to the selection board.

9. The Board finds that the applicant's assertion that the Coast Guard neglected to notify him that his communication packet was not received is without merit. The ALDIST stated that the District should advise members of non-receipt of communication packets if appropriate, but that the officers being considered should notify the District of their intent to submit packets. The applicant has offered no evidence to show that he advised the District that his packet was sent or to whom he sent it. The applicant has not shown whether he contacted the captain or the District to confirm receipt. Moreover, Article 14-D-9.a references the policy for submission of communications, Article 5-A-4.e of the Coast Guard Personnel Manual (COMDTINST M1001.6). Article 5-A-4.e(2) states that "[c]ommunications received will be acknowledged when a completed, self-addressed Acknowledgment/Referral Card. . . is submitted with the letter." The provisions of ALDIST 116/95 do not negate the provisions of Article 5-A-4.e(2). The applicant has not shown that he took steps to ensure confirmation of receipt of his packet.

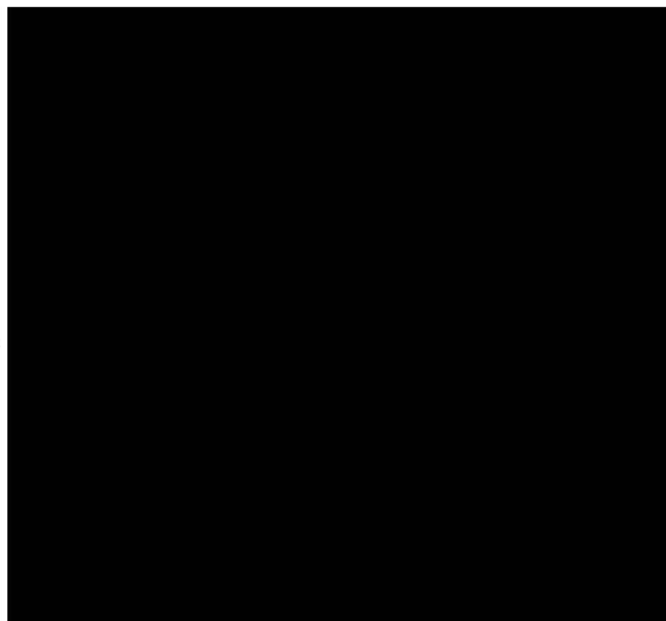
10. The applicant asserted that his record was incomplete because the information contained in the packet was not with his record when presented to the selection board. Article 14-D-9 states that an officer's "[f]ailure to submit a resumé form (CG-5481) or absence of the resumé form from the board records will not in and of itself be a reason for non-selection by the board." The Board has found in the past that submission of supplementary communications to a selection board is an option available to the officer scheduled for consideration, but that such packets are not mandatory components of a military record. A complete military record is all that is required for review by a selection board. It is the responsibility of the officer interested in submitting additional materials to that board to ensure that such materials are timely received.

11. In summary, the applicant has not shown that he acted promptly in mailing his package to the captain to arrive within the three-week time period required by Article 14-D-9 *supra*. The evidence submitted is insufficient to rebut the presumption of regularity of inter-office mail, and therefore, insufficient to support the applicant's argument that he mailed the packet approximately one month before the selection board met.

12. Accordingly, the application should be denied.

ORDER

The application to correct the military record of
, is denied.



*  concurs with the Board only in the Order of this decision.