

**DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction of  
Coast Guard Record of:

BCMR Docket  
No. 2000-088

**FINAL DECISION**

[REDACTED]

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was docketed March 15, 2000, upon the BCMR's receipt of the applicant's complete application for correction of his military record.

This final decision, dated January 25, 2001, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a retired Reserve lieutenant commander (LCDR), asked the Board to promote him to the rank of commander (CDR), to reinstate him in the Selected Reserve with pay, and to pay him back pay from November 1, 1999.

The applicant was involuntarily transferred to the Retired Reserve (RET-2) effective October 1, 1999.

**EXCERPTS FROM RECORD AND SUBMISSIONS**

The applicant alleged that he was not considered for promotion to CDR by the CDR selection board that met on October 12, 1999, because the Coast Guard failed to submit his military record for consideration by that board as required by law. He claimed that his October 1, 1999 involuntary retirement by the Coast Guard was invalid and as such, he remained in an active status and his record should have gone before the 1999 CDR selection board. He has asked the BCMR to promote him to the rank of CDR, claiming that if he is returned to an active reserve status "[he] cannot get a fair review at the next [CDR selection] board," because he has been in a retired status since October 1999.

**Background**

The applicant's record was considered by the CDR selection boards that met in 1994, 1995, 1996, 1997, and 1998. He was not selected for promotion by any of these boards. After each of his 1995 and 1996 failures of selection for promotion, the applicant was advised of the following:

Your name was not included on the list of officers recommended for promotion. This is the second time you were not selected for promotion

to commander. . . . Per Section 740 of [title 14, United States Code], you are retained in an active status so that you can accumulate 20 years of satisfactory service for retirement eligibility . . . . As of your anniversary year ending 5 September 1995, you have 16 years, 03 months, and 13 days of satisfactory service toward a Reserve retirement. Since you have partial year credit, (03 months and 13 days), you could earn 20 creditable years of service for retirement as early as 22 May 1999 or as late as 5 September 2000.

After his 1997 failure of selection for promotion to CDR, the applicant was advised of the following:

Per Section 12646 of [title 10 of the United States Code], commissioned officers, who on the date prescribed for discharge or transfer from an active status are entitled to be credited with at least 18 but less than 20 years of satisfactory service for retirement, shall not be discharged or transferred from an active status without their consent, or until completion of 20 years of satisfactory service, or until accumulation of 2 years of unsatisfactory service (i.e., less than 50 points each years).

As of your anniversary year ending 5 September 1997, you have completed 18 years, 03 months, and 13 days of satisfactory service toward a Reserve retirement. You could earn 20 years creditable service for retirement as early as 22 May 1999 or as late as 5 September 2000.

He was given this advice again after his failure of selection for promotion to CDR by the 1998 selection board, except that he was told that he "could earn 20 years of creditable service for retirement as early as 22 May 1999 or as late as 22 May 2000."

In a letter from the [REDACTED] Human Resources Service & Information Center (HIRSIC), dated September 30, 1999, the applicant was advised that he had earned at least 20 years of satisfactory service and would be eligible to receive retired pay upon reaching 60 years of age.

A letter from the [REDACTED] Coast Guard Personnel Command (CGPC), dated October 8, 1999, advised the applicant that he had obtained 20 years of satisfactory service for retirement and that he was transferred to the Retired Reserve (RET-2) effective October 1, 1999. He was further advised that as a retired member, he could not earn retirement points, participate in Reserve training activities, or be considered for promotion.

On October 26, 1999, a letter was prepared by the applicant's CO to CGPC, asking that the applicant be recalled to the Selective (pay) Reserve, effective October 1, 1999. The CO stated that neither the applicant nor he had received any prior notice that the applicant would be transferred to the Retired Reserve on October 1, 1999. He stated that, in fact, the applicant had received notice that he would be considered by the CDR selection board that convened on October 12, 1999. The CO stated that in September 1999, the applicant had discussed his status with personnel in the Reserve section, at

Coast Guard Headquarters. He stated that a LCDR in that unit told the applicant that his record would be considered by the 1999 CDR selection board and if he were not selected, he would be offered the opportunity to request retirement or transfer to the inactive duty status list (ISL).

In a letter dated October 29, 1999, [REDACTED] Coast Guard Human Resources Service & Information Center (HIRSIC) advised the applicant that he had been transferred to the Retired Reserve, effective November 1, 1999. (As discussed below, the Coast Guard determined the November 1, 1999 date to be erroneous.)

In an undated letter, CGPC advised the applicant's CO that the applicant had been removed from an active status effective October 1, 1999, and therefore was not eligible for consideration by the CDR selection board that met on October 12, 1999. CGPC further stated that policy does not permit retired members to be recalled to a drill pay status. CGPC also informed the CO that the November 1, 1999 retirement date contained in HIRSIC's October 29, 1999 letter was incorrect would be corrected to show October 1, 1999 as the effective date for the applicant's retirement. CGPC noted that prior to the applicant's notification of his change in status he had already performed October drills for which he would be paid. Finally, CGPC stated "[w]e have reviewed the events that led to this situation and have changed several processes in CGPC . . . which will facilitate timely notification to members reaching 20 years retirement after having been placed in a legal lock-in status." In response to the applicant's request, CGPC enclosed information about the BCMR for the applicant's use.

#### **Views of the Coast Guard**

On October 5, 2000, the Board received the views of the Coast Guard submitted by the Chief Counsel. He recommended that the Board deny relief to the applicant. He summarized the Coast Guard's position as follows:

The applicant's allegations of error are meritless. Although Applicant did not receive timely notification of transfer from an active status, the Coast Guard acted properly under law and regulations to transfer Applicant to an inactive status as of 01 October 1999. Hence, he was not eligible to have his record presented to the promotion board that convened on October 12, 1999. Moreover, the result in this case does not rise to the level of injustice as it has been defined in this setting. Applicant was informed some four years prior to the date of his separation that he would face mandatory separation upon reaching 20 years satisfactory service. Therefore, the Board should reject Applicant's unfounded allegations and deny relief.

The Chief Counsel stated that although the 1995 CDR selection board did not select the applicant for promotion, it recommended that he be retained in an active reserve status until he completed 20 years of satisfactory service, pursuant to Article

14.D.6. of the Reserve Administrative and Training Manual.<sup>1</sup> (At the time of the 1995 CDR selection board, the applicant had approximately 16 years of satisfactory service.) He stated that this provision of the Manual is based on section 740(b)<sup>2</sup> of title 14 of the United States Code, which states in pertinent part: "A reserve officer who has twice failed of selection to the next higher grade and who is not removed from an active status under subsection (a)(1) shall be retained for the period prescribed by the Secretary."

The Chief Counsel stated that, pursuant to Section 740 (c) of title 14 United States Code, it was within the discretion of the Commandant to transfer the applicant to the Retired Reserve once he had obtained 20 years of satisfactory service. This provision of the law states that

Subject to section 12646 of title 10,<sup>3</sup> a Reserve officer who is removed from an active status [after having twice failed of selection to the next higher grade] shall be given the opportunity to transfer to the Retired Reserve, if qualified, but unless so transferred shall, in the discretion of the Secretary, be transferred to the inactive status list or discharged . . . .

The Chief Counsel stated that upon the applicant's reaching 20 years of satisfactory service on September 6, 1999, the Commandant was statutorily authorized to transfer the applicant from an active status as of October 1, 1999. See 10 U.S.C. § 12646 (a) & (b).

The Chief Counsel stated that the applicant has failed to prove he was eligible to have his record presented to the 1999 Reserve CDR selection board. He stated that under Article 7.A.7.f. of the Reserve Administration and Training Manual,<sup>4</sup> Reserve officers recommended for administrative retention will continue to be eligible for promotion as long as they remain in an active status. In the instant case, the applicant was transferred to a Retired status as of October 1, 1999. Therefore, according to the Chief Counsel, no error was committed when applicant's record was not presented to the 1999 Reserve CDR selection board. The Chief Counsel stated that Article 7.A.7.f. of the Reserve Administration and Training Manual provided for the following: "[A]

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<sup>1</sup> The Reserve Administration and Training Manual was the predecessor to the Reserve Policy Manual and it was canceled on March 28, 1997.

<sup>2</sup> The Board notes that the Chief counsel inadvertently cites 14 U.S.C. § 704 instead of 14 U.S.C. 740. The Board has substituted the correct cite for the incorrect one.

<sup>3</sup> Section 12646(a) of title 10, provides for the following: "If on the date prescribed for discharge or transfer from an active status of a reserve commissioned officer he is entitled to be credited with at least 18, but less than 19, years of service computed under section 12732 of this title, he may not be discharged or transferred from an active status . . . without his consent before the earlier of the following dates—(1) the date on which he is entitled to be credited with 20 years of service . . . ; or (2) the third anniversary of the date on which he would otherwise be discharged or transferred from an active status."

<sup>4</sup> The Reserve Administration and Training Manual was canceled on March 28, 1997. However, this provision is found at Articles 7. A.8.f. and g. of the current Reserve manual.

commander or lieutenant commander who twice fails of selection may be retained *for not more than* (Emphasis added) the minimum period of time necessary to complete 20 satisfactory years for retirement, plus one additional year, if required, if so recommended by the selection board in which the second failure of selection occurs." The Chief Counsel stated that by virtue of his attainment of 20 years credible federal service on 06 September 1999, the applicant was automatically transferred to a non-active status.

With respect to the applicant's claim that he should have been allowed the opportunity to choose between retirement and placement on the inactive status list (ISL), the Chief Counsels stated the following:

(1) Contrary to Applicant's allegations, he was not entitled to choose between retired status and placement on the [ISL] after completing 20 years of federal service. Application and placement of a Reserve officer in a RET-2 status is discretionary and not a matter of right. See Article 8.C.5.h., Reserve Policy Manual, COMDTINST M10001.28. Moreover, the decision to place a member on the ISL is a matter of statutory discretion delegated to the Commandant by the secretary of Transportation. See 14 U.S.C. § 740 and 49 C.F.R. part 1. Service regulation provides that in the absence of a retirement request from an officer eligible for retirement, the Commandant shall assign an officer to the ISL. See Article 1.C.6.b.(2).(c), Reserve Policy Manual. . . Hence, in either case, Applicant had no discretion to decide for himself when and if he would be transferred to an inactive status.

(2) If CGPC had strictly followed its regulations and placed Applicant on the ISL in the absence of a retirement request per Article 1.C.6.b.(2).(c), Reserve Policy Manual, Applicant would have been deprived of the benefits available to members in a RET-2 status. . . . [A]lthough Applicant should have been placed on the ISL, in the absence of a specific request for retirement, CGPC's action to place him in a RET-2 status was beneficial to Applicant's interest; placement on the ISL would not have provided Applicant with any discernable advantages. [In footnote 2, the Chief Counsel stated that if the applicant requests placement on the ISL there would be objection from the Coast Guard.]

(3) Additionally, Applicant was fully paid for the drills he inadvertently completed in October 1999 after he was placed in a RET-2 status. . . .

(4) Finally, the record reveals Applicant was provided written notice as early as late 1995 that he would face mandatory separation once he attained 20 years of satisfactory service. Applicant's allegation that he was improperly "retired" is disingenuous and without merit. Moreover, Applicant has failed to furnish evidence that would establish that an injustice that "shocks the senses" was committed by retiring him after the completion of 20 years federal service. Sawyer v. United States, 18 Cl. Ct.

860, (1989) rev'd on other grounds, 930 F.2d 1577 citing Reale v. United States, 208 Ct. Cl. 1010, 1011 (1976).

### **Applicant's Response to the Views of the Coast Guard**

On October 18, 2000, the Board received the applicant's response to the views of the Coast Guard. He disagreed with them and summarized his position as follows:

The logic of the [advisory opinion] is very difficult to follow; most likely because the Coast Guard is attempting to cover up an egregious error in [his] case caused by the deliberate manipulation of the selection board system. It is clear from the Coast Guard's reply and the record [he] was not offered the opportunity to transfer to the Retired Reserve as required by law and policy and in any case [he] could not have been retired or removed from active status before 1 November 1999. Thus [he] was in an active status when the [1999] Reserve Commander Selection Board met and my record should have been considered as required by law and policy.

The applicant offered the following chronology of events, in pertinent part:

"1. In December 1998 I was notified by the coast Guard that pursuant to 10 USC 12646, I could not be transferred from an active status prior to my eligibility for retirement which could be as early as 22 May 1999 and as late as 22 May 2000.

"2. In April 1999, I was notified by the Coast Guard that I would be considered for promotion by the [1999] Reserve Commander Selection Board due to convene on October 12, 1999....

"3. I had enough creditable service to retire in May 1999 but did not receive my '20 year' letter until October 1999....

"6. On 15 September 1999 I took off work and made a special trip to Coast Guard Headquarters in Washington, DC to ensure the [1999] Board had my complete record. I met with LCDR [B.] of CGPC-rpm who retrieved my record from the 1999 Board files.

"7. LCDR B. was aware I had 20 years service and told me that my record would go to the Board and if I were not selected I would be offered the opportunity to either retire or be placed on the ISL effective 1 July 2000....

"8. LCDR B. is the same officer who signed the post-dated [October 8, 1999] Coast Guard letter stating I will be transferred to the Retired Reserve (Ret-2) [on 1 October 1999]....

"9. In October 1999 the Coast Guard intentionally manipulated the [1999] board process by conducting a "pre-board purge" for the stated purpose to "up the OOS" (opportunity of selection). In the process ten O-4s, including myself, had their records summarily "removed"....



"12. On 8 October 1999, the Coast Guard attempted to involuntarily place me in a retired status retroactive to 1 October 1999.

"13. On 29 October 1999, the Coast Guard changed my retirement date of 1 November 1999." [He submitted an e-mail, an article in a magazine, and an award citation that showed November 1, 1999.]

The applicant stated that the Coast Guard admitted that it committed an error and did not follow the requirements of the law by not offering him the opportunity to transfer to the Retired Reserve. He stated that an involuntary retirement is only authorized when a member reaches age 62, and he was not that age in 1999. He stated that a member must always request retirement and that any approved request for retirement can not be effective any earlier than the first day of the following month. He stated that the Coast Guard also acknowledged that a member is eligible for consideration by a selection board if that person is in an active status.

The applicant stated that since the letter transferring him to the Retired Reserve is dated October 8, 1999, his transfer to that status could not be effective until November 1, 1999. He stated that based on 5 U.S.C. § 8301(a), retirement is effective on the first day of the month following the month in which retirement would be effective.

With respect to the Chief Counsel's argument, that he had been informed on several occasions that he would be transferred from an active status upon completing 20 years of satisfactory service, the applicant stated that he could not have been transferred from active status until September 5, 2000. He stated that the December 1998 letter, cited 10 USC 12464,<sup>5</sup> and stated that he could not be placed in an inactive status before he was eligible for retirement plus one additional year in which he could have earned an unsatisfactory year. He interpreted this to mean that "[he] had until 5 September 2000 to earn 20 years of creditable service and [he] could not be transferred from an active status before then." The applicant further stated as follows:

The Coast Guard . . . incorrectly cited Article 7.A.7.f. of COMDTINST 1001.28 and then takes the disingenuous position the transfer to inactive status is "self-executing". First, this provision applies only to "selective retention" officers and not those in a "legal lock-in" under 10 USC 12646. I was clearly in such a status and there is no similar provision for "legal lock-ins" in Article 7.A.7.h. (I note 7.A.7.f. states a member may be retained "plus one additional year"). Second, the Coast Guard then contradicts itself by acknowledging such a transfer is not self-executing because a member must be given the opportunity to select his or her status. Third, it is Coast Guard policy that retirement eligible reservist be given notice "at least 90 days prior to their separation/transfer date to discuss personnel status options". . . . They then have 60 days to make an election. . . . The Coast Guard never explains how a member could be offered the opportunity to transfer to the Retired Reserve without the Coast Guard sending a letter for this specific purpose.

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<sup>5</sup> The letter actually cites 10 U.S.C. § 12646.

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[T]he Coast Guard's post-hoc rationalization that it somehow did me a "favor" by transferring me to the Retired Reserve is both patronizing and incorrect. I would have preferred to continue drilling and had my record considered by the [1999] Board as I was told it would. There is no discernable difference in benefits between RET-2 and the ISL and the Coast Guard does not explain any. However, if a member is on the ISL he or she can apply for transfer back to active status and continue earning retirement points and pay. This same opportunity is not available to a member in a retired status. Such an election is a personal decision I was never given the opportunity to make. As a result the Coast Guard's actions were a nullity and I legally remained in an active status and my record should have been reviewed by the [1999 selection] Board.

#### APPLICABLE REGULATIONS

Article 7.A.8 of the Coast Guard Reserve Policy Manual (COMDTINST M1001.28), which became effective on March 28, 1997 states, in pertinent part, as follows:

e. Officers who twice fail of selection are removed from an active status on 30 June following the approval date of the board report upon which the second failure of selection occurs. (Coast Guard policy based on 14 U.S.C. 740 (a).<sup>6</sup>) Unless eligible for retention in an active status, the officer will be given an opportunity to:

- (1) Transfer to the retired Reserve, if qualified,
- (2) Be transferred to the Inactive Status List, or
- (3) Be discharged, as directed by CGPC-rpm.

f. A commander or lieutenant commander who twice fails of selection may be retained for not more than the minimum period of time necessary to complete 20 years of satisfactory years for retirement, plus one additional year, if required, if so recommended by the selection board in which the second failure of selection occurs. To be eligible for (selective) retention, the officer must:

- (1) Have less than 18 years of satisfactory federal service for retirement. . . .

(g.) Officers selected for retention under this paragraph will continue to be eligible for promotion as long as they remain in an active status. No further continuation action shall be taken.

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<sup>6</sup> This section of the law states, in pertinent part, that "[t]he Secretary (1) may remove from an active status a Reserve officer who has twice failed of selection to the next higher grade . . . ." Section (b) states that "A Reserve officer who has twice failed of selection to the next higher grade and who is not removed from an active status under subsection (a)(1) of this section shall be retained for the period prescribed by the Secretary."



h. A Reserve officer of any grade who is due to be removed from an active status as the result of twice failing of selection and who on 30 June following the approval date of the board report on which the second failure of selection occurs has completed (14 U.S.C. 740 and 10 U.S.C. 12646) [see footnote 3 for reading of this statute]:

(1) Eighteen but less than 19 years of service for retirement computed under 10 USC 12732, may not be discharged or transferred from an active status, without the officer's consent before the earlier of the following dates:

(a) Date on which entitled to be credited with 20 years service under 10 USC 12732, or

(b) The third anniversary of the date on which the officer would otherwise be discharged or transferred from an active status.

(2) Nineteen but less than 20 years of service for retirement computed under 10 USC 12732 may not be discharged or transferred from active status, without the officer's consent before the earlier of the following dates:

(a) Date on which entitled to be credited with 20 years service under 10 USC 12732, or

(b) The second anniversary of the date on which the officer would otherwise be discharged or transferred from an active status.

### **FINDINGS AND CONCLUSIONS**

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

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

2. The applicant is correct that as long as he remained in an active status, he was eligible to be considered for promotion to the next higher grade.

3. However, when the CDR selection board met on October 12, 1999, the applicant had been removed from an active status. He was involuntarily transferred to the Retired Reserve effective October 1, 1999. He was notified of the change in his status in a letter dated October 8, 1999. A retired member is not eligible to be considered for promotion.

4. The issue is whether the applicant's transfer from the active Reserve status in 1999 was in accordance with the law and regulation. The Board finds that the applicant's transfer from the active Reserve was neither in error nor unjust.

5. The resolution of this matter is governed by section 12646 of title 10 United States Code and by the Reserve Policy Manual, specifically Article 7.A.8.h., which

became effective on March 28, 1997, and not the Reserve Training and Administration Manual, which was canceled on the current's Manual's effective date. Any reference from hereon to the Reserve Manual is to the current one.

6. The applicant endured his second failure of selection for promotion to CDR in 1995 and since he had less than 18 years of service at that time he could have been transferred from an active status. However, he was selected for retention pursuant to section 740(b) of title 14 of the United States Code and section 7.A.8.f. of the Reserve Policy Manual. Section 740(b) of title 14 United States Code authorized officers who had twice failed of selection to be removed from an active status, however, those not removed could be retained for the period prescribed by the Secretary (who has delegated his authority in this area to the Commandant).

7. Accordingly, the Commandant through section 7.A.8.f. of the Reserve Policy Manual authorized that "a commander or lieutenant commander [with less than 18 years of satisfactory service] who twice fails of selection *may be retained for not more than the minimum period of time necessary to complete 20 satisfactory years for retirement, plus one additional year, if required* [emphasis added]... The letters sent to the applicant after the 1995 and 1996 selection boards were consistent with this provision of the regulation. They advised the applicant that he would be retained in an active status so that he could accumulate 20 years of satisfactory service. They further informed him of the maximum amount of time that he would be allowed to earned the 20 years of satisfactory service. The applicant was advised that if he accumulated two unsatisfactory years (earning less than 50 points per year) he would be removed from an active status. Nothing in the law (14 U.S.C. 740(b)), the regulation or the letters from the Coast Guard on the subject, promised the applicant that he would have the option of choosing whether he would be retired or placed on the ISL, once he attained 20 years of satisfactory service. The applicant was retained in an active status under 10 U.S.C. 740(b) and Article 7.A.8.f. of the Reserve Policy Manual until he reached 18 years of satisfactory service toward a 20 year retirement in 1997. He then enjoyed the protection of section 12646 of title 10 of the United States Code.

8. The applicant was informed of the protection offered by section 12646 of title 10 of the United States Code in a letter advising him that he had failed to be selected for promotion by the 1997 CDR selection board. At the time the applicant failed of selection for promotion to CDR in 1997, he had reached the point in which he fell into the "legal lock-in" provided under 10 U.S.C § 12646 and Article 7.A.8.h.(1) of the Reserve Policy Manual. This law guarantees that officers with at least 18 years of service will be allowed the opportunity to earn at least 20 years of satisfactory service for retirement, and cannot be transferred from an active status without their consent before the earlier of "[d]ate on which entitled to be credited with 20 years service" or "[t]he third anniversary of the date on which the officer would otherwise be discharged or transferred from an active status." The applicant received a similar letter after his 1998 failure of selection. In 1998, he was told that he could earn 20 years of satisfactory service as early as 22 May 1999 or as late as May 2000. The applicant stated in his response to the advisory opinion that he earned 20 years of satisfactory service in May 1999. Nothing in this provision of the law or the regulation requires the Coast Guard to obtain the applicant's consent for removal from an active status once he had been

credited with 20 years of service. Accordingly, the applicant's removal from an active status was in accordance with the law.

9. The applicant relies on a statement from a LCDR who told the applicant that he would be allowed the opportunity to go before the 1999 CDR selection board and then be given an opportunity to request transfer to the Retired Reserve or the ISL, if he was not selected for promotion. The advice, even if given to the applicant by this LCDR, cannot override a later lawful decision made by the Commandant that the applicant having attained 20 years of satisfactory would be transferred from the active Reserve. The Coast Guard did nothing more than that identified in its 1997 and 1998 letters wherein the applicant was informed that he would be retained in an active status until he attained 20 years of satisfactory service. The applicant was on notice as early as 1995 that he would be retained in an active status only until he attained 20 years of satisfactory service. The purpose of the law (10 U.S.C. § 12646) is to ensure that once a member obtains 18 years of service he will not be discharged until given the opportunity to earn 20 satisfactory years for retirement purposes. The applicant received the benefit of this statute by being permitted to remain in an active status until he earned the years necessary for retirement.

10. The applicant alleged that the Commandant intentionally manipulated the 1999 CDR selection process by removing his record, as well as others similarly situated from consideration by that board. The applicant has failed to prove this allegation. The information before the Board shows that the Commandant conducted a review of records and transferred those members, like the applicant, from an active status. The timing of the action does not make it illegal. The applicant was transferred from an active status, which had the effect of making him ineligible for consideration by the 2000 CDR selection board. Section 12646 of title 10 United States Code permitted this course of action after the applicant had attained 20 years of satisfactory service. Whether the applicant had been transferred to the ISL or retired, his record would not have been considered by the 1999 CDR selection board. Members in either status are ineligible for promotion consideration.

11. While it would have been ideal to have given the applicant more notice prior to his transfer from the active Reserve, the Board notes that, under the circumstances of the applicant's case, neither the law nor the regulation requires such notice. Moreover, the Board notes that the applicant had already been previously considered for promotion to commander at least five times before being transferred from an active status. The Board finds that the Coast Guard did not commit an error or an injustice by transferring the applicant from the active Reserve after he had attained 20 years of satisfactory service for retirement purposes.

12. There is some validity to the applicant's argument that he should not have been transferred to the Retired Reserve unless he had requested this status. See Article 1.C.3 of the Reserve Policy Manual. However, transferring the applicant to the Retired Reserve rather than to the inactive duty status list, would not make his removal from the active Reserve erroneous. It simply means that he might have been placed in the wrong category when he was transferred from an active status. The Chief Counsel indicated in his advisory opinion that the Coast Guard would not object if the applicant preferred the ISL to the Retired Reserve. The applicant did not indicate in his reply to

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the advisory opinion that he wanted to change his status, and the Board will not act to order it.

13. Accordingly, the Board finds that the applicant is not entitled to relief.

**[ORDER AND SIGNATURES ON NEXT PAGE]**

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ORDER

The application of LCDR [REDACTED]  
correction of his military record is denied.

[REDACTED]