

DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of  
Coast Guard Record of:

BCMR Docket  
No. 2000-106

FINAL DECISION

[REDACTED]:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on April 3, 2000, upon receipt of the applicant's complete application for correction of his military record.

This final decision, dated March 22, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a lieutenant junior grade (LTJG) requested, "retention in the Coast Guard Reserve as a [LTJG], re-consideration of [his] Lieutenant [LT] selection package presented before the selection board in November 1998, or consideration before the 1999 Reserve [LT] selection board." The Board interpreted the applicant's request as one for the removal of his failure of selection for promotion before the 1999 Reserve LT selection board. The Board further determined that the applicant is asking that his LT date of rank be adjusted to the date he would have received if he had been selected by the 1999 LT selection board, with back pay and allowances.

**EXCERPTS FROM RECORD AND SUBMISSIONS**

The applicant claimed that the 1999 selection board considered an inaccurate record of his performance. He stated that his record of duty performed/annual points record (CG 4175A) was not in his record that went before the selection board. He concluded that this document was not in his record because it did not contain a date stamp showing when it was received by Coast Guard Headquarters. The applicant stated further that he was told by an officer at Headquarters that the document was not in his record at the time the selection board met.

The applicant stated "[t]he lack of this information [was] critical to his presentation before the [selection] board because it reflected [his] entrance into the Select reserve program . . . and departure from the IRR." He further stated as follows:

I may have been considered still in the IRR by the board and no one in the IRR was selected for promotion. The last annual points statement that can be verified as being presented before the Board was dated 10/28/97 and reflected only 15 points credit. . . . [M]y most recent annual statement

dated 10/28/98 is currently being corrected to reflect my training in [REDACTED] during October and November 1998.

The applicant also alleged that the selection board did not receive a letter from him explaining certain of his accomplishments while serving in the IRR. He concluded that the letter was not received by the selection board because it could not be located at the time the applicant checked his record.

#### Views of the Coast Guard

On September 4, 1998, the Board received the views of the Coast Guard submitted by the Chief Counsel. He recommended that if the applicant is selected by the 2001 PY [promotion year] that his date of rank be adjusted to the date of rank he would have received if he had been selected by the PY 1999 selection board, with back pay and allowances. The Chief Counsel based his recommendation for conditional relief on advice from Commander, Coast Guard Personnel Command (CGPC), which was attached as enclosure (1) to the advisory opinion.

CGPC stated that through an administrative error, the applicant's record was not considered by the PY 1998 LT selection board. His record was considered by the PY 1999 LT selection board, but he was not selected for promotion. The Coast Guard erroneously interpreted the applicant's PY 1999 failure of selection for promotion to LT as his second failure and began processing him for discharge on June 30, 1999. The Coast Guard did not present the applicant's record to the PY 2000 LT selection board, under the erroneous belief that the applicant had twice failed to be selected for promotion to LT and should be discharged. CGPC stated that the error was discovered in October 1999 and the applicant's discharge was halted. The applicant was selected for promotion to LT by the PY 2001 Reserve LT selection board.

With respect to applicant's contention that his record of duty before the PY 1999 selection board did not contain an up-to-date annual points statement. The Chief Counsel stated that based on the CG-4175A, dated April 24, 1998, and the applicant's officer evaluation report (OER) for the period ending July 31, 1998, the record presented to the PY 1999 LT selection board was correct. The Chief Counsel stated that the OER documented the applicant's "active participation as a member of a reserve unit and that he had completed 48 drills of the 48 drills scheduled."

The Chief Counsel stated that, moreover, there was no requirement that the Coast Guard place a CG-4175A, dated September 18, 1998 in the applicant's PDR (Personnel Data Record) because the document is produced three months after a member's anniversary date. The Coast Guard stated the applicant's anniversary date is October 29 and the CG-4175A would not have been produced until January 1999, after the PY 1999 LT selection board met. Accordingly, the Chief Counsel argued that no error occurred with respect to this document.

The Chief Counsel stated that the applicant has failed to prove that his letter of communication was not provided to the PY 1999 selection board. The Chief Counsel argued that since the submission of such communications is permissive, the applicant has failed to prove that the Coast Guard had a duty to include such material in the

member's record. Moreover, he stated that there is no requirement that a communication to the selection board be maintained in the member's record after the conclusion of the selection board. "Therefore, under the strong presumption of regularity afforded Coast Guard officials responsible for maintaining officer records and in view of [the] applicant's statement indicating his record's check-off sheet showed the letter was present, the Board should conclude [the] applicant's letter of communication was received by the Board and no error in transmission occurred."

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

On December 15, 2000, the Board received the applicant's response to the views of the Coast Guard. He stated that the Chief Counsel's recommendation of conditional partial relief was acceptable to him. He informed the Board that he had been selected for promotion by the PY 2001 Reserve LT selection board and that he expected that his date of rank would be adjusted to the date he would have received it, if he had been selected for promotion by the PY 1999 LT selection board. He also indicated that he expected to receive back pay and allowances.

#### **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 this case under section 1552 of title 10, United States Code. The application was timely.

2. The Coast Guard committed an administrative error by not placing the applicant's record before the PY 1998 Reserve LT selection board. The Coast Guard committed further error by placing the applicant's record before the PY 1999 Reserve LT selection board as an officer above the zone, although he had not been previously considered for promotion to LT. The Board finds that the applicant's first opportunity for selection before the PY 1999 selection board was diminished because he was incorrectly considered at that time as an officer above the zone. Accordingly, the Board finds that the PY 1999 failure of selection for promotion should be removed from the applicant's record.

3. The Board notes that the applicant suffered another administrative error through the Coast Guard's failure to place his record before the PY 2000 Reserve LT selection board. To remedy the errors committed in this case, the Chief Counsel has recommended that the applicant's LT date of rank be adjusted to the date he would have received if he had been selected by the PY 1999 Reserve LT selection board, with back pay and allowances, if he is selected for promotion to LT by the PY 2001 Reserve LT selection board. The applicant has been selected for promotion by the PY 2001 selection board.

4. The Board finds that the relief recommended by the Chief Counsel to be a fair and equitable remedy to cure the errors and injustices committed in this case. In addition, the applicant agrees with the relief proposed by the Chief Counsel.

5. The other issues raised by the applicant either are rendered moot or are not relevant to the outcome of this case.

6. Accordingly, the Board finds that the applicant should be granted relief.

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

**ORDER**

The application of [REDACTED] USCGR for correction of his military record is granted. His record shall be corrected by removing his PY 1999 failure of selection for promotion to LT. The applicant was selected for promotion to LT by the PY 2001 Reserve selection board. Therefore, his LT date of rank, once promoted, shall be adjusted to the date he would have received if he had been selected by the PY 1999 Reserve LT selection board, with back pay and allowances.

All other relief is denied.

