

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

---

Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2015-193**



---

**FINAL DECISION**

This is a proceeding under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the applicant's completed application on August 27, 2015, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated July 29, 2016, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST AND ALLEGATIONS**

The applicant is a [REDACTED] in the Coast Guard Reserve serving [REDACTED] [REDACTED]<sup>1</sup> The applicant asked the Board to be reassigned as the running mate of the most senior [REDACTED] on the Active Duty Promotion List (ADPL) selected for promotion in 2011, to have his [REDACTED] date of rank backdated to that officer's LCDR date of rank, which is November 14, 2011, and to receive back pay and allowances. He also asked to be reordered on the Register of Officers below the first in-zone reordered officer on the ADPL.

The applicant stated that in [REDACTED], the ADPL [REDACTED] selection board chose twelve candidate [REDACTED] not only for promotion but also for reordering on the ADPL and the Register of Officers to give them seniority over the other candidates. The same year, the [REDACTED] selection board chose just one candidate—the applicant—for both promotion and reordering on the ADPL and the Register of Officers. The applicant alleged that pursuant to 14 U.S.C. §§ 725<sup>2</sup> and 726<sup>3</sup> Reserve officers must be promoted in the same manner as officers on

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

---

<sup>2</sup> Title 14 U.S.C. § 725 states the following: "(a) Reserve officers rank and take precedence in their respective grades among themselves and with officers of the same grade on the active duty promotion list and the permanent commissioned teaching staff in accordance with their dates of rank. When Reserve officers and officers on the active



the ADPL and a Reserve officer's running mate on the ADPL must be the next senior officer on the ADPL in precedence. However, the applicant alleged, the Coast Guard's policy does not conform to the statutes. In this regard, the applicant pointed out that Article 3.A.4.e. of COMDTINST M1000.3A, the current Officer Manual, states the following:

(5) Placement on Selection List. In order of original seniority, ADPL members that are reordered within their respective promotion zone assume a position above the senior-most selected member.

(6) Reordering and Placement of Reserve Program Administrators (RPAs). In order of original seniority, RPAs reordered within their respective promotion zone are assigned running mates equal to the most junior of the ADPL members that were in-zone reordered during the same year. In the event no ADPL members were reordered during the associated selection board, the senior most selected member on the ADPL will be assigned as a running mate.

The applicant alleged that paragraph (6) above does not comply with the statutes and adversely affects the reordered RPA. He explained that in [REDACTED], all of the ADPL candidates for promotion to [REDACTED] who were chosen for reordering were junior to the RPA who was chosen for reordering, which caused an inequitable change in precedence and so he should have received a different running mate pursuant to 14 U.S.C. § 276(b)(4), which states that "[i]n a situation not expressly covered by this subsection, the Secretary may assign a new running mate as necessary to effect the intent of this section that inequitable changes of precedence do not occur."

The applicant further explained that pursuant to ALCGPSC [REDACTED] the top six, reordered lieutenants on the selection list were promoted to [REDACTED] and so the

---

duty promotion list or the permanent commissioned teaching staff have the same date of rank in a grade, they take precedence as determined by the Secretary. ... (c) A Reserve officer shall, when on the active duty promotion list, be promoted in the same manner as any other officer on the active duty promotion list regardless of the length of active duty service of the Reserve officer. ... (e) The Secretary shall adjust the date of rank of a Reserve officer so that no changes of precedence occur."

<sup>3</sup> Title 14 U.S.C. § 726 states the following in pertinent part:

(a) The Secretary shall assign a running mate to each Reserve officer in an active status not on the active duty promotion list. The officer initially assigned as a running mate under this section shall be that officer on the active duty promotion list of the same grade who is next senior in precedence to the Reserve officer concerned. ...

(b) A Reserve officer in an active status not on the active duty promotion list shall be assigned a new running mate as follows:

(1) If a previously assigned running mate is promoted from below the promotion zone, is removed from the active duty promotion list, suffers a loss of numbers, fails of selection, fails to qualify for promotion, or declines an appointment after being selected for promotion, the new running mate shall be that officer on the active duty promotion list, of the same grade, who is next senior to the previous running mate and who is, or may become, eligible for consideration for promotion. If the previous running mate was on a list of selectees for promotion, the new running mate shall be that officer on the active duty promotion list, of the same grade, who is on a list of selectees for promotion and who is next senior to the previous running mate.

• • •

(4) In a situation not expressly covered by this subsection, the Secretary may assign a new running mate as necessary to effect the intent of this section that inequitable changes of precedence do not occur.



reordered RPA should have been promoted to [REDACTED] on that date as well because after reordering, the RPA's new running mate should have been the top [REDACTED] on the ADPL list. However, instead, the RPA (the applicant himself) was assigned the last of the twelve reordered ADPL officers as a running mate and so was not promoted until December 1, [REDACTED] losing precedence and pay. The applicant alleged that this action by the Personnel Service Center (PSC) was not only contrary to the statutes but contrary to how PSC had promoted another reordered RPA [REDACTED] in 2009, when the RPA was assigned the top reordered officer on the ADPL as a running mate and so was promoted when the first ADPL was promoted off the list. The applicant alleged that he discovered this error in 2015.

In support of these allegations, the applicant submitted the following documents:

- The results of the [REDACTED] selection board, published in ALCGPSC [REDACTED] show that twelve ADPL [REDACTED] were selected not only for promotion to [REDACTED] but for reordering and so ended up at the top of the selection list, where they would be promoted to [REDACTED] first as vacancies arose.
- The February [REDACTED] Register of Officers shows that the applicant's ADPL running mate for promotion purposes had been ahead of (in precedence) all twelve ADPL officers who were selected for promotion and reordering by the [REDACTED] selection board later in [REDACTED]
- The results of the [REDACTED] RPA selection board, published in ALCGPSC [REDACTED] state that the [REDACTED] selection board had identified one candidate of particular merit and placed his name at the top of the list. [REDACTED] The ALCGPSC notes that the "Register of Officers will be updated to reflect the date of the reordered officer's promotion."
- The [REDACTED] Register of Officers shows that the applicant's ADPL running mate is the twelfth (most junior) ADPL officer who was reordered pursuant to the [REDACTED] selection board.
- ALCGPSC [REDACTED] shows that the first six reordered [REDACTED] on the ADPL [REDACTED] promotion list were promoted to [REDACTED] as of [REDACTED]
- ALCGPSC [REDACTED] shows that the next fifteen [REDACTED] on the ADPL [REDACTED] promotion list were promoted to [REDACTED] as of December 1, [REDACTED]
- ALCGPSC [REDACTED] authorizes the promotion of the applicant to [REDACTED] on [REDACTED]

The applicant also submitted the following documents concerning the results in 2009:

- The results of the ADPL [REDACTED] selection board in 2009, published in ALCGPSC 046/09, show that the board selected ten [REDACTED] for both promotion and reordering and placed their names at the top of the list.
- The results of the RPA selection board in 2009, published in ALCGPSC 057/09, show that the board selected one RPA [REDACTED] for both promotion and reordering and placed his name at the top of the list.
- On the 2011 Register of Officers, [REDACTED] was assigned as a running mate the top-most ADPL officer selected for promotion and reordering pursuant to ALCGPSC 046/09.
- ALCGPSC 008/10 shows that [REDACTED] was promoted on the same date as the top-most ADPL officer selected for promotion and reordering pursuant to ALCGPSC 047/09.

### VIEWS OF THE COAST GUARD

On February 5, 2016, the Judge Advocate General (JAG) submitted an advisory opinion in which he recommended that the Board deny the requested relief. In so doing, he adopted the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC).

PSC stated that [REDACTED] was assigned a running mate and promoted in accordance with Articles 5.A.6.b. and 5.A.6.j.2. of the Personnel Manual<sup>4</sup> in effect prior to October 2011 and acknowledged that those articles did not directly address in-zone reordering of RPAs. At the time PSC's interpretation of the articles was to reassign reordered RPAs to the most senior active duty officer who was also reordered.

However, PSC noted, the Personnel Manual was canceled and COMDTINST M1000.3 went into effect on September 30, 2011. PSC stated that clear guidance was provided in Article 3.A.4.e.(6) of the new Officer Manual, which provides that when RPAs are reordered, they are "assigned running mates equal to the most junior of the ADPL members that were in-zone reordered during the same year." The applicant's selection and reordering occurred in October [REDACTED] after the new Officer Manual went into effect and so were done in accordance with Article 3.A.4.e.(6).

PSC stated that the applicant's new running mate was assigned in accordance with the last sentence of 14 U.S.C. § 726(b)(1), which provides that if a Reserve officer's "previous running mate was on a list of selectees for promotion, the new running mate shall be that officer on the active duty promotion list, of the same grade, who is on a list of selectees for promotion and who is next senior to the previous running mate." PSC stated that after reordering, the next senior member to the applicant on the ADPL was the most junior of the reordered ADPL officers.

PSC concluded that the applicant has not shown that his new running mate or date of promotion were erroneous or unjust. Therefore, PSC recommended that the Board deny relief.

### APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 22, 2016, the applicant responded to the views of the Coast Guard. He noted that 14 U.S.C. § 276 states the following regarding the promotion of Reserve officers:

Officers who are not included on the active duty promotion list may be promoted under regulations to be prescribed by the Secretary. These regulations shall, as to officers serving in connection with organizing, administering, recruiting, instructing, or training the reserve components, provide as nearly as practicable,

---

<sup>4</sup> Article 5.A.6.b. of the Personnel Manual, COMDTINST M1000.6A, in 2010 states "Each RPA shall be assigned a running mate as prescribed in 14 U.S.C. 726." Article 5.A.6.j.2. of the Personnel Manual states, "An RPA on the list of selectees shall be promoted effective on the date of his or her running mate is promoted and assigned the same date of rank as his or her running mate under Article 5.A.13. procedures [which concern promotion by the President and taking the oath of office]."



that such officers will be selected and promoted in the same manner and will be afforded equal opportunity for promotion as officers of the corresponding grade on the active duty promotion list.

The applicant argued that pursuant to the applicable statutes, he should be “placed as nearly as possible to [the] top of the reordered Active Duty Promotion list zone of officers from [REDACTED] in alignment with statutes and past practice.”

### APPLICABLE LAW AND POLICY

Title 14 U.S.C. § 259(c)(1) states that “[i]n selecting the officers to be recommended for promotion, a selection board may recommend officers of particular merit, from among those officers chosen for promotion, to be placed at the top of the list of selectees promulgated by the Secretary under section 271(a) of this title. ...” This provision was enacted in 2002.

Title 14 U.S.C. § 726 states the following in pertinent part:

(a) The Secretary shall assign a running mate to each Reserve officer in an active status not on the active duty promotion list. The officer initially assigned as a running mate under this section shall be that officer on the active duty promotion list of the same grade who is next senior in precedence to the Reserve officer concerned. ...

(b) A Reserve officer in an active status not on the active duty promotion list shall be assigned a new running mate as follows:

(1) If a previously assigned running mate is promoted from below the promotion zone, is removed from the active duty promotion list, suffers a loss of numbers, fails of selection, fails to qualify for promotion, or declines an appointment after being selected for promotion, the new running mate shall be that officer on the active duty promotion list, of the same grade, who is next senior to the previous running mate and who is, or may become, eligible for consideration for promotion. If the previous running mate was on a list of selectees for promotion, the new running mate shall be that officer on the active duty promotion list, of the same grade, who is on a list of selectees for promotion and who is next senior to the previous running mate.

• • •

(4) In a situation not expressly covered by this subsection, the Secretary may assign a new running mate as necessary to effect the intent of this section that inequitable changes of precedence do not occur.

Title 14 U.S.C. § 731 states that “[i]f promotion zones are determined as authorized under subsection (a), a Reserve officer shall, subject to the eligibility requirements of this subchapter, be placed in a promotion zone when that officer's running mate is placed in a promotion zone and shall, in accordance with the provisions of this subchapter, be considered for promotion at approximately the same time as that officer's running mate or as soon thereafter as practicable.”

Title 14 U.S.C. § 276 states that “[o]fficers who are not included on the active duty promotion list may be promoted under regulations to be prescribed by the Secretary. These regulations shall, as to officers serving in connection with organizing, administering, recruiting, instructing, or training the reserve components, provide as nearly as practicable, that such officers will be selected and promoted in the same manner and will be afforded equal

opportunity for promotion as officers of the corresponding grade on the active duty promotion list.”

Article 3.A.4.e. of COMDTINST M1000.3, the Officer Manual in effect in October [REDACTED] states the following regarding reordering of officers who are candidates for selection for promotion:

(1) Background and Authority. In Zone Reordering is a tool that may be utilized by any ADPL and RPA best qualified promotion board (O3 through O6). After selecting the officers to be recommended for promotion, a selection board may recommend officers of particular merit, from among those officers chosen for promotion, to be placed at the top of the list of selectees. Officers displaced from the top of the list shall retain their previous precedence immediately below those officers reordered and inserted at the top of the promotion list (14 U.S.C. § 259).

• • •

(5) Placement on Selection List. In order of original seniority, ADPL members that are reordered within their respective promotion zone assume a position above the senior-most selected member.

(6) Reordering and Placement of Reserve Program Administrators. In order of original seniority, Reserve Program Administrators reordered within their respective promotion zone are assigned running mates equal to the most junior of the ADPL members that were in zone reordered during the same year. In the event no ADPL members were reordered during the associated selection board, the senior most selected member on the ADPL will be assigned as a running mate.

## 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 concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely filed.

2. The applicant alleged that following his reordering on the RPA promotion list in [REDACTED], his running mate was erroneously and unjustly assigned, which resulted in an erroneous delay of his promotion by sixteen days and corresponding loss of pay and benefits. In 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 his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.<sup>5</sup> 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.”<sup>6</sup>

3. The applicant alleged that the policy in Article 3.A.4.e.(6) of the Officer Manual, COMDTINST M1000.3, under which he was assigned the junior-most reordered LCDR

<sup>5</sup> 33 C.F.R. § 52.24(b); see Docket No. 2000-194, at 35-40 (DOT BCMR, Apr. 25, 2002, approved by the Deputy General Counsel, May 29, 2002) (rejecting the “clear and convincing” evidence standard recommended by the Coast Guard and adopting the “preponderance of the evidence” standard for all cases prior to the promulgation of the latter standard in 2003 in 33 C.F.R. § 52.24(b)).

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



candidate as a running mate, instead of the senior-most, does not comport with the applicable statutes. The statutes show that reordering among officers on the ADPL or on the RPA promotion list is authorized pursuant to 14 U.S.C. § 259(c)(1). Title 14 U.S.C. § 726(b)(1) specifies the way to assign a new running mate to an RPA if the previously assigned running mate “is promoted from below the promotion zone, is removed from the active duty promotion list, suffers a loss of numbers, fails of selection, fails to qualify for promotion, or declines an appointment after being selected for promotion”—none of which circumstances apply in this case—or if “the previous running mate was on a list of selectees for promotion,” which is the provision the Coast Guard claims to have applied but failed to explain why it should apply. Under the latter circumstance, “the new running mate shall be that officer on the active duty promotion list, of the same grade, who is on a list of selectees for promotion and who is next senior to the previous running mate.” The Coast Guard alleged that pursuant to this statute, the officer “next senior to the previous running mate” was the junior-most reordered officer on the ADPL [REDACTED] promotion list.

4. When the selection board reordered the applicant, he was placed at the top of the [REDACTED] on the RPA [REDACTED] promotion list, as permitted by 14 U.S.C. § 259(c)(1). That statute authorizes reordering of regular active duty officers on the ADPL promotion lists and of RPAs on the RPA promotion lists but does not specify how such reordering affects the assignment of running mates. Therefore, the applicant’s new status at the top of the RPA promotion list does not *per se* prove that his new running mate must be the [REDACTED] at the top of the ADPL promotion list after the reordering of the ADPL. In this regard, the Board notes that not every ADPL officer is a running mate while others are running mates to numerous Reserve officers by happenstance based on their dates of rank. Running mates are not assigned on a one-for-one basis starting at the top of the lists.

5. Under 14 U.S.C. § 726(b)(4), “[i]n a situation not expressly covered by this subsection, the Secretary may assign a new running mate as necessary to effect the intent of this section that inequitable changes of precedence do not occur.” Therefore, the Secretary has significant discretion in making policies for situations not expressly covered by § 726, which seems to be the case here. Pursuant to Article 3.A.4.e.(6) of the Officer Manual, COMDTINST M1000.3, the Secretary’s policy has interpreted § 726 so that an RPA reordered to the top of an RPA promotion list receives as a running mate the ADPL officer of the same grade who is “next senior” to the officer previously at the top of the ADPL promotion list—i.e., the junior-most of the reordered ADPL officers. The applicant argued that his running mate should instead have been the senior-most of the twelve reordered ADPL officers, but cited no statute or policy expressly requiring it.

6. The applicant argued that he should have been assigned the senior-most of the reordered ADPL officers as a running mate in [REDACTED] because [REDACTED] was assigned the senior-most of the reordered ADPL officers as a running mate in 2009. The record shows that the Coast Guard had no written policy dispositive of this issue in 2009, when the Personnel Manual was in effect, but had adopted one in the new Officer Manual, COMDTINST M1000.3, by the time the applicant was selected for promotion and reordering in October [REDACTED]. Therefore, the Board is not persuaded that the Coast Guard committed an error or injustice by assigning him a running



mate in accordance with the new policy in effect in October [REDACTED] even though [REDACTED] running mate was assigned differently when there was no written policy in 2009.

7. The applicant received an authorized jump in precedence against other [REDACTED] on the RPA [REDACTED] promotion list as a result of the reordering in [REDACTED]. While the RPA [REDACTED] selection board had authority to determine his precedence in relation to other RPAs, it did not have authority to determine his running mate on the ADPL. Pursuant to Article 3.A.4.e.(6) of the Officer Manual, COMDTINST M1000.3, the applicant was assigned as a running mate the junior-most of the [REDACTED] reordered on the ADPL [REDACTED] promotion list because the Coast Guard considers the junior-most of the reordered regular [REDACTED] to be the “next senior” running mate available for an RPA who has been reordered to the top of the RPA promotion list. Although the applicant argued that this policy results in an “inequitable change of precedence,” contrary to 14 U.S.C. § 726(b)(4), the Board disagrees. The applicant’s precedence on the RPA list was not adversely affected by application of the policy in Article 3.A.4.e.(6). His position on the RPA list relative to other RPAs would be the same whether his running mate was the junior-most or senior-most of the reordered regular officers.

8. The applicant argued that the policy in Article 3.A.4.e.(6) violates 14 U.S.C. § 276, which states that “[o]fficers who are not included on the active duty promotion list may be promoted under regulations to be prescribed by the Secretary” and requires regulations that allow RPAs to be “as nearly as practicable ... selected and promoted in the same manner and ... afforded equal opportunity for promotion as officers of the corresponding grade on the active duty promotion list.” The applicant argued that his promotion sixteen days after the promotion of the senior-most reordered officer on the ADPL list shows that he was not afforded an equal opportunity for promotion as required by § 276, but the Board is not persuaded that the Article 3.A.4.e.(6) violates § 276. The Board notes in this regard that slightly unequal results would likely arise whether the senior-most or junior-most reordered ADPL officer is the new running mate for reordered RPAs depending upon the numbers of ADPL and RPA officers reordered each year and the rate at which vacancies arise in the higher rank in any given year. The statute only requires equal opportunity “as nearly as practicable,” and it does not require all reordered RPAs to be assigned the senior-most reordered ADPL officer as a running mate or state that the top, reordered RPA on an RPA promotion list must be assigned as a running mate the ADPL officer at the top of the corresponding ADPL promotion list following reordering of the ADPL. Therefore, and given the use of “next senior” in § 726(b), the Board finds that the applicant has not proven by a preponderance of the evidence that the Coast Guard’s policy in Article 3.A.4.e.(6) of COMDTINST M1000.3 violates a statute or constitutes an abuse of the Secretary’s discretion.

9. Accordingly, the applicant’s request for relief should be denied.

**(ORDER AND SIGNATURES ON NEXT PAGE)**



**ORDER**

The application of [REDACTED] USCGR, for correction of his military record is denied.

July 29, 2016

