

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of Coast Guard Record of:



BCMR Docket
No. 1998-066

FINAL DECISION

Chairman:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on March 13, 1998 as BCMR Docket No. 1998-066, upon the Board's receipt of the applicant's request for correction of his military record.

The final decision, dated February 11, 1999, is signed by the three duly appointed members who were designated to serve as the Board in this case.

There were two earlier BCMR applications for correction involving the same applicant:

(1) The first was received on May 11, 1995 and docketed as BCMR Docket No. 1995-124. On May 31, 1996, the members who were designated as the Board in this case denied this application. (The Board denied the applicant's request to remove one page 7 entry and to review another page 7 entry.)

(2) The second was received from the applicant on October 1, 1996. It was docketed as BCMR Docket No. 1997-002. This application was never decided, however, because the applicant asked the BCMR to withdraw it, on September 15, 1997, before it had been decided. ("I am retiring from the Coast Guard ... and no longer wish to take time" on the case.) The application in BCMR No. 1997-002 was ordered withdrawn by the Board.

REQUEST FOR RELIEF

On March 11, 1998, the applicant submitted another application, which was docketed as BCMR No. 1998-066. He was, at that time, a pay grade E-6). He requested that particular marks be upgraded, that he be "retroactively promoted o E7," and he alleged that the Coast Guard

██████ told the applicant that he would be promoted soon. He alleged that he filed a "Voluntary Retirement Request," but he said that the Command changed it to a "Request for Involuntary Retirement."

The applicant requested that administrative remarks (page 7 entries) from 1994 to 1997 be removed from the applicant's record and that he be retroactively advanced to pay grade E-7.

The Coast Guard submitted a memorandum in support of involuntary retirement on the ground that the applicant had "repeated, career long episodes of substandard performances." The memo concluded that "[t]he ██████ and the Coast Guard, simply cannot afford to carry an individual with this many documented incidents of poor performance. [His record] warrants consideration for early retirement as soon as possible." On March 31, 1998, the applicant was honorably discharged with a reenlistment code of RE-2 ("ineligible for reenlistment due to retirement") and a separation code of "LBD" ("sufficient service for retirement").

VIEWS OF THE COAST GUARD

On December 24, 1998, the Coast Guard Personnel Command (CGPC) recommended to the Commandant (G-LMJ) that the applicant's May 1994 to May 1997 negative administrative remarks not be removed from his record. CGPC also recommended that the applicant's request for retroactive advancement to pay grade E-7 be denied.

CGPC also commented on the allegation that the applicant "was forced" to retire. CGPC said that, under Chapter 12.C. 10.c of the Personnel Manual, commanding officers are authorized to recommend members who have completed 20 years of service for involuntary retirement if the members performance is below the required standard. According to the CGPC memo, "[t]he applicant's record of marginal service and difficulty in following established procedures and regulations, all documented by the Command's dissatisfaction with the member's performance, is obvious. . . . [N]o error has occurred in the documentation of the applicant's performance. . . ."

On January 8, 1999, the Chief Counsel of the Coast Guard issued an advisory opinion recommending that this application be denied. The Chief Counsel said there were 12 adverse record entries in the applicant's record for the period from March 26, 1986 through December 5, 1995. Five of the entries dealt with counseling on performance problems and performance probation, and five dealt with quality of work.

The Chief Counsel said there was no evidence to support the applicant's assertion that he was forced to retire from the Coast Guard. "Considering the well-documented history of Applicant's substandard [redacted] and military performance, this action was clearly appropriate In fact, the Coast Guard [was extremely patient] in its tolerance of applicant's substandard performance." The Chief Counsel "could have initiated administrative action to involuntarily separate [the applicant from the Coast Guard] prior to 20 years in the service with no eligibility for retirement." The Chief Counsel asserted that the applicant's claim that he was forced to retire "under adverse circumstances is totally unsupported by the record."

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The Board rejected the applicant's claim that two of his disputed page 7 entries were inaccurate.

The Board found that the first page 7 entry that he disputed, that the applicant was 20 minutes late for [redacted] had merit. The applicant's claim that he was looking for his jacket during this 20 minute period was not, according to the Board, sufficient explanation for his tardiness.

The Board also found that the second disputed page 7 entry documented marks of "2" on a special performance evaluation, in accordance with the Personnel Manual (PM). The PM mandates that a special performance evaluation be prepared upon an award of nonjudicial punishment (NJP).

The Board concluded that the applicant failed to prove that the two disputed page 7 entries were prepared in violation of the regulations.

RESPONSE OF APPLICANT TO VIEWS OF THE COAST GUARD

On January 28, 1999, the applicant responded to the views of the Coast Guard. He said that he disagreed with the findings of the Service, urged the Board to deny their recommendation, and to grant the applicant retroactive promotion to [redacted] E-7. The only reference in the response to the applicant's performance as a member of the United States Coast Guard band was the following closing statement: "I am not asking for any more, nor any less, than any [redacted] retiree in the [redacted] history [since] the 1960s."

EXCERPTS FROM PERFORMANCE RECORD

According to the applicant's record, he was given at least 10 negative comments with respect to performance and quality of work, not including the two page seven entries upheld in BCMR Docket No. 124-95. The date of some such performance and work quality observations, and a summary of the observations, are set forth below:

December 22, 1995. "During the [REDACTED] on 95OCT29, you were removed from a passage because you were not able to [REDACTED] This is the latest example of a continuing problem. . . . You cannot be depended upon to carry the workload of a Coast Guard [REDACTED]"

December 5, 1995. Assigned a mark of "2" for quality of work. According to this entry, you "did not fulfill the basic levels of performance requirements for an [REDACTED]"

March 29, 1995. "In a [REDACTED] on 3/19/95, you made a [REDACTED] in the wrong place. . . . [Y]ou failed to realize the error, [REDACTED] again in the wrong place despite the efforts [of the [REDACTED] member]."

December 12, 1994. The applicant was assigned marks of "2" for four categories (responsibility, military bearing, professional knowledge, and quality of work). "His professional work was of poor quality."

January 15, 1993. Assigned mark of "2" for the performance factor. The quality of his [REDACTED] work was well below par for the level of professionalism of the [REDACTED]"

March 26, 1986. "During the Coast Guard [REDACTED] . . . [the applicant] [REDACTED]"

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the submissions of the applicant and the Coast Guard, the military record of the applicant, 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 applicant claimed that his marks, comments, and page seven entries were inaccurate, and he requested that they be invalidated. The applicant's official record does not indicate that he ever sought to appeal the low marks, and there is no indication that he protested the adverse record entries, other than those raised in BCMR Docket No. 1995-124.

3. The applicant has not produced any evidence demonstrating that the performance marks were incorrect, nor has he met his burden of proof to show that the Coast Guard committed an error or injustice.

4. The applicant also requested retroactive promotion to [REDACTED] at pay grade E-7. He claimed that the Coast Guard [REDACTED] promised to promote him "soon." The applicant did not, however, introduce any corroborative evidence in writing in support of that promise.

5. On December 22, 1995, the applicant's commander asked that the applicant be "involuntarily discharged . . . for substandard performance." In March 1996, the applicant submitted a voluntary request to retire as of April 1, 1998. (The latter request eliminated any need for formal action to involuntarily remove the applicant from the Coast Guard.) On March 31, 1998, the applicant was honorably discharged with a separation code of "LBD" (sufficient service for retirement).

6. The applicant presented no evidence to support his claim that he was under duress when he submitted his voluntary request for retirement. In fact, he admitted that he submitted his request for retirement after his command initiated an involuntary discharge procedure.

7. The applicant provided no evidence that he was forced to request retirement or face an administrative discharge board. The Commander of the CGPC said that the applicant's poor performance and numerous adverse page 7's and evaluations "did not impact the amount of his retirement allowance." The applicant's DD-214 shows that he earned "a voluntary honorable discharge made possible by sufficient service for retirement."

8. The applicant has not established that the adverse remarks should be removed.

9. The application should be denied.

ORDER

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

