

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-030



FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the application after receiving the applicant's completed application on December 18, 2015, and assigned the case to [REDACTED] who 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, who was medically retired at the rank of Lieutenant Junior Grade (LTJG/O-2) with a [REDACTED] asked the Board to correct his record to show that he was retired at the rank of Lieutenant (LT/O-3). He also asked to receive back pay for the difference between LTJG and LT disability retired pay from [REDACTED] to the present.

The applicant alleged that he should have been retired as a LT because he was selected for promotion to LT prior to his disability retirement, and 14 USC § 294 states that if an officer is selected for promotion prior to being retired for a physical disability then the officer shall be retired in the grade to which he was selected for promotion. In support of his request, he submitted a copy of the Promotion Year 2014 (PY14) active duty lieutenant selection board results and his name appears on the list of the officers selected for promotion to LT.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on June 3, 2008, as an E-3 under the [REDACTED] [REDACTED] On [REDACTED] he accepted a Reserve commission as an Ensign (O-1) and agreed to remain on active duty for approximately three years. On August 1, 2013, a Formal Physical Evaluation Board (FPEB) determined that the

applicant had a medical condition¹ that rendered him unfit to perform his duties and recommended that he be permanently retired with a rating of [REDACTED]. During the week of September 16, 2013, the PY14 LT selection board convened to identify the officers who would be selected for promotion to LT, and the applicant was selected. On [REDACTED] the findings of the FPEB were approved. On [REDACTED] he agreed to extend his enlistment by approximately six months. On November 22, 2013, the results of the PY14 selection Board were released in ALCGPSC 149/13, and the applicant's name was among the 290 LTJGs selected for promotion to LT. His DD 214 shows that he was medically retired on [REDACTED] at the rank of LTJG (O-2).

VIEWS OF THE COAST GUARD

On May 20, 2016, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant relief. The JAG adopted the findings and recommendation provided in a memorandum submitted by the Personnel Service Center (PSC).

PSC argued that relief should be granted because the applicant was selected for promotion to LT before the date on which he was involuntarily retired for physical disability. PSC noted that 14 USC § 294 provides that an officer who is selected for promotion and is subsequently retired for physical disability prior to being promoted shall be retired in the grade to which he was selected for promotion.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 1, 2016, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. He responded on June 8, 2016, and stated that he agreed with the recommendation of the Coast Guard.

APPLICABLE REGULATIONS

Title 14 USC § 294 states that an officer whose name appears on an approved list of officers selected for promotion to the next higher grade and who is retired for physical disability under the provisions of chapter 61 of title 10 prior to being promoted shall be retired in the grade to which he was selected for promotion.

ALCGPSC 149/13, the PY14 Active Duty Lieutenant Selection Board Results, was released on November 22, 2013, and lists 290 LTJGs selected for promotion to the grade of LT. The applicant's name is number [REDACTED] on the list.

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:

[REDACTED]

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application is timely.

2. The applicant asked the Board to correct his record to show that he was retired at the rank of LT instead of LTJG. He alleged that he should have been retired as a LT because he was selected for promotion to LT prior to the approval of his medical retirement. When considering such allegations of error or 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.² 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."³

3. The record shows that on August 1, 2013, the applicant was found to have a medical condition that rendered him unfit to perform the duties required of service members of his rank and he was recommended for permanent physical disability retirement from the Coast Guard. The record also shows that he was selected for promotion to LT by the PY14 LT selection board, which convened the week of September 16, 2013, and that the FPEB's recommendation that he be medically retired was approved on [REDACTED]. The applicant was medically retired at the rank of LTJG on [REDACTED].

4. The Board agrees with the JAG that relief should be granted. The applicant was selected for promotion to LT in September 2013 but his medical retirement was not approved until [REDACTED]. Title 14 USC § 294 states that an officer whose name appears on an approved list of officers selected for promotion to the next higher grade and who is retired for physical disability before being promoted shall be retired in the grade to which he was selected for promotion. Therefore, the Board finds that the applicant's record should be corrected to show that he was retired at the rank of LT because his name appeared on an approved list of officers selected for promotion to LT before he was medically retired.

5. The applicant also asked the Board to correct his record to show that he is eligible to receive back pay for the difference between LTJG and LT disability retirement pay from the day that he was discharged. The Board agrees, and will order the Coast Guard to ensure that the applicant receives any back pay to which he is entitled.

(ORDER AND SIGNATURES ON NEXT PAGE)

² 33 C.F.R. § 52.24(b).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

ORDER

The application of [REDACTED] USCG (Retired), for correction of his military record is granted. His military record, including his DD 214, shall be corrected to show that his rank upon retirement on [REDACTED] was lieutenant (LT/O-3). The Coast Guard shall pay him any amount due as a result of this correction.

July 29, 2016

