


DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:



BCMR Docket
No. 30-97

FINAL DECISION

 Attorney-Advisor:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on December 3, 1996, upon the BCMR's receipt of the applicant's request for correction.*

This final decision, dated January 16, 1998, is signed by the three duly appointed members who were designated to serve as the Board in this case.

Applicant's Request for Relief

The applicant is a lieutenant commander (LCDR; pay grade O-4) serving on active duty in the Coast Guard. He asked the Board for the following corrections to his personnel data record (PDR):

- 1) insert an Administrative Remarks (page 7) entry dated January 4, 1995, "which documents [his] compliance with the Coast Guard Weight Program" in his PDR;
- 2) expunge his "non-selection for Commander [CDR] by the July 1996 Selection Board" from his record and allow him to be considered as an "in-zone candidate" before the July 1997 CDR selection board; and
- 3) if he is selected for promotion by the July 1997 CDR selection board, he asks for "back dated date of rank and back pay."

The applicant also asked the Board to order that weight compliance Administrative Remarks entries "in Officers' administrative records not be considered

* The Coast Guard's comments in this case were not received by the BCMR until October 29, 1997, approximately 10 months after the BCMR's receipt of the applicant's completed application.

by or made available to future selection Boards," because of unclear regulations that exist regarding the consideration of such entries in members' military records.

The applicant asserted that he believed his record was in error because the January 4, 1995, page 7 entry was not included in his record when it was reviewed by the July 1996 CDR selection board. On August 10, 1994, the applicant had been placed on probation for being 31 pounds overweight. He was advised that his maximum allowable weight (MAW) was 222 pounds. He was ordered to lose the 31 pounds by March 15, 1995. The applicant asserted that he requested weight reassessment in order to establish a new MAW for his body frame.

The page 7 entry dated January 4, 1995, stated that the applicant was assigned a new MAW of 234.5 pounds. The page 7 entry stated that he had achieved the new MAW and was therefore in compliance with the Coast Guard weight program. His new weight was 21.5 pounds above the MAW standard then in effect.

The applicant stated that the page 7 entry was significant because it showed that he was given the new standard due to his body mass and body fat ratio. He stated that such changes of body weight standards are rare. He asserted that as a result of the omission of the page 7 entry, his record was "not as strong" as it could have been before the selection board. He stated that his new body weight standard was an important factor that should have been recognized by the selection board when it reviewed his record.

The applicant also stated that he knew the July 1996 CDR selection board was extremely competitive. He stated that "in zone candidates" had only a "58.3%" chance of selection for promotion to CDR. He asserted that it was obvious that "even the smallest doubt or prejudice against a candidate could have been enough to cause that candidate to miss the cut." All the same, he stated that he believes he has a "very strong performance record that should have made [him] a strong candidate for selection to commander."

The applicant stated that page 7 entries that address weight standard compliance should not be included in a member's PDR when it is sent before a selection board. He stated that the unreliable nature of PDR management in the Coast Guard records division often results in errors similar to what he experienced. He stated that to prevent submission to selection boards of negative documents without their later, positive counterparts, in the future, the Coast Guard should stop requiring weight standard information to be placed in administrative records. He stated that this would prevent unfair disadvantage to those members going before a selection board who may have new information pertaining to their weight compliance that is not included in their military record.

Views of the Coast Guard

On October 29, 1997, the Chief Counsel of the Coast Guard recommended that the applicant's request be denied.

The Chief Counsel stated that the applicant had already received part of the relief he requested. The page 7 entry dated January 4, 1995, was added to the applicant's administrative record in June 1997. Therefore, the record presented before the July 1997 CDR selection board included the information on the page 7 entry, as requested by the applicant.

The Chief Counsel stated there is no basis on which to grant the other relief requested by the applicant because he "has not shown that his record as a whole, as it stood before the 1996 [CDR selection] board, appeared substantially worse than it would have in the absence of the error, and it is unlikely that he would have been selected even if this error had not occurred. Engels v. United States, 230 Ct. Cl. [465], 470, 678 F.2d 173, 177 (1982)."

The Chief Counsel asserted that the applicant's corrected record was presented to the 1997 CDR selection board, which convened in July 1997. The Coast Guard does not record previous non-selections in a member's military record, and the selection boards are "not informed which candidates [for promotion] are above the zone and which are in-zone." The Chief Counsel stated that the applicant was therefore reviewed by the July 1997 CDR selection board "as an in-zone candidate with a corrected record." The applicant was not selected for promotion by the July 1997 CDR selection board. The Chief Counsel stated that the applicant's "request for, and entitlement to, a back date of rank is conditional upon selection."

The Chief Counsel stated that the applicant's request for prohibition of the inclusion of weight-related page 7 entries in members' administrative records is beyond the scope of review of the BCMR, and therefore is not a form of relief available to him.

Applicant's Response

On October 31, 1997, the applicant was sent a copy of the Coast Guard's views and was given 15 days to respond. On January 5, 1998, the BCMR received the applicant's response.

He stated that he believed that a "truly corrected record [in his case] would be one with all weight control page 7's removed." He also asserted that he believed a review of the system requiring inclusion of weight control page 7 entries is something that necessitates BCMR review.

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:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10, United States Code. The application was timely.

2. The applicant asked the Board to place a page 7 entry in his record, dated January 4, 1995, which indicated that he was assigned a new MAW under Coast Guard weight program standards based on his body fat/mass ratio. It also stated that he was in compliance with the Coast Guard weight program. He alleged that the page 7 entry was not included in his record, which meant that his record was incomplete before the July 1996 CDR selection board. He asked the Board to forward his corrected record to the July 1997 CDR selection board, and, if he was selected, to back-date his date of rank and give him back pay accordingly.

3. The Coast Guard stated that the applicant's record was corrected before it was reviewed by the July 1997 CDR selection board. A copy of the applicant's PDR, prepared June 30, 1997, included the page 7 entry dated January 4, 1995. The applicant was reviewed by the July 1997 CDR selection board, but he was not selected for promotion.

4. The applicant also asked the Board to direct the Coast Guard to stop including page 7 entries regarding weight program compliance in members' personnel data records (PDRs). Commandant Instruction M1080.10C (Military Personnel Data Records (PDR) System) lists those documents which must be included in the PDR. "Weight Compliance (Ltr/CG-3307 [page 7 entry])" is one of those documents for which inclusion is mandatory.

The decision to include these documents in the PDR is wholly within the discretion of the Coast Guard. The Board will not substitute its judgment for that of the Coast Guard in matters of personnel management.

5. The applicant alleged that his record would have appeared stronger if the information contained in the page 7 entry had been included in his record before the July 1996 selection board. He alleged that he had a strong performance record, and an exceptional educational background as an engineer.

However, the applicant also stated that he recognized that the July 1996 CDR selection board made few selections of officers for promotion to CDR. That being the case, the Board finds that it is quite possible that the applicant would not have been selected had the information on the page 7 been included in his record. The applicant

has the burden of making a "prima facie case" that his record was prejudiced by the absence of the page 7 entry from his record. Engels, supra, 230 Ct. Cl. at 470-471, 678 F.2d at 176-177. He has not shown that it is likely he would have been selected if his record had been complete, notwithstanding the competitive nature of the selection process before the July 1996 CDR selection board.



6. The Board recognizes that weight compliance is a factor that is considered by selection boards. However, the Board cannot conclude that the absence of the page 7 entry from the applicant's PDR was the sole reason for his failure to be selected for promotion. The applicant's corrected PDR was reviewed by the July 1997 CDR selection board, and he was not selected for promotion by that board, either. The applicant's failure of selection for promotion to CDR by the July 1997 board suggests that the applicant's non-selection in 1996 was not wholly due to the absence of the page 7 entry from his record.

7. Since the applicant was not selected for promotion by the July 1997 selection board, he is not eligible for the other relief he requested (back-dated date of rank and back pay).

8. Accordingly, the application should be denied.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application for correction of the military record of 
 USCG, is denied.

