


DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 25-97

FINAL DECISION


This is a proceeding under the provisions of section 1552 of title 10, United States Code. This final decision, dated September 26, 1997, is signed by the three duly appointed members who were designated to serve as the Board in this case.

On June 20, 1995, the BCMR ordered relief to be granted to the applicant in a proceeding that was docketed as No. 58-94. The current proceeding commenced on November 25, 1996, upon the BCMR's receipt of the applicant's request for amendments to the 1995 decision.

In BCMR No. 58-94, the BCMR ordered the applicant's failures of selection voided and directed that the applicant be afforded an opportunity to return to active duty as a lieutenant (j.g.). In 1996, he was considered for selection for promotion to lieutenant by the 1996 lieutenant selection board. He failed of selection.

After the 1996 failure of selection, the Coast Guard discovered a highly prejudicial document in the applicant's record. It was a letter approving his request to revert to his permanent enlisted status. Upon further review, two additional letters were found in his record that referred to his enlisted status after he had been restored to officer status.

On November 25, 1996, the Board received a request from the applicant that the prejudicial document and letters, as well as the 1996 passover, should be removed from his record. Failure to do so, in the opinion of the applicant, defeated the purpose of the relief awarded by the BCMR in 1995.

The Coast Guard Personnel Command (CGPC) and the Chief Counsel of the Coast Guard said that if the Board finds that the inclusion of the prejudicial documents were the result of error or injustice, "it should also find that applicant

has established the required nexus between the errors and injustices and his non-selection for promotion to lieutenant." The two further stated that the applicant has overcome the presumption of administrative regularity with regard to an improperly corrected record.

The CGPC and the Chief Counsel recommended that the relief requested by the applicant be granted.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the agreed 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 was granted relief in BCMR No. 58-94 (dated June 20, 1995). The Board also granted two technical amendments to BCMR No. 58-94 on July 21, 1995 and October 3, 1995.

(3) The applicant failed of selection for promotion to lieutenant (LT) by the LT selection board that convened October 15, 1996

(4) The Coast Guard recommended that this failure of selection be voided on the ground that the record on which the applicant was considered contained three highly prejudicial documents.

(5) The Board finds that the inclusion of these documents in the applicant's record resulted from error or injustice because the record was directed to show no break in his officer status. One of the documents referred to the applicant's request for reversion to enlisted status and two of them involved reports regarding his performance as an enlisted member. All of them were prejudicial, and their inclusion in the applicant's record defeated the purpose of the relief awarded by BCMR No. 58-94.

(6) The 1996 failure of selection should be removed from the applicant's record since the applicant has established the required nexus between the errors and injustices and his non-selection for promotion to lieutenant.

(7) The applicant should be considered by the next lieutenant selection board on the basis of a corrected record. If selected by the next selection board after this decision, applicant's date of rank, pay, and allowances would be in effect as if he had been promoted as a result of the 1992 LT Selection Board.

ORDER

The military record of _____ USCG, shall be corrected, as follows:

(a) Applicant's non-selection for promotion at the lieutenant selection board convening October 15, 1996 shall be expunged;

(b) Applicant shall be considered by the next selection board (1997) as if appearing for the first time;

(c) If selected by the 1997 selection board, applicant's date of rank, pay, and allowances would be effected as if he had been promoted as a result of the 1992 LT Selection Board.

