

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2010-048

**XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX**

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the applicant's completed application on December 7, 2009, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated October 8, 2010, 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 asked the Board to place her on the Inactive Status List (ISL) as of the date of her discharge from active duty in 2007 and to reverse the decision that removed her from the ISL and returned her to the Individual Ready Reserve (IRR) just three weeks before the Reserve lieutenant commander (LCDR) selection board met in 2009. She also asked the Board to remove her failures of selection for promotion in 2008 and 2009.

The applicant stated that she left active duty on November 30, 2007, as a LCDR with more than 15 years of active duty. She did so because she wanted to be geographically stable for her family and because her parenting plan states that she "is active duty, should she elect to accept orders out of state, all parenting rights and responsibilities revert to father." When she joined the Reserves in March 2008, she was offered a commission as a lieutenant (LT), which she accepted, and the date of commission was backdated to December 1, 2007, so that she would have no break in service. However, she was never attached to a command or given any advice about how to proceed.

The applicant stated that following her discharge, she became a federal civilian employee and as such had a one-year probationary period. Therefore, she told the Reserve Personnel Management Division (PSC-rpm) of the Personnel Command that she would be inactive as a reservist for at least a year. The applicant stated that when her "probationary year" ended on January 15, 2009, she "initiated the process to begin drilling in the CG Reserves."

The applicant stated that in 2008 and early 2009, she had no idea that she was in the IRR and not the ISL. She “had no idea what those terms even meant until after months of trying to get my physical straightened, spending thousands of unreimbursed dollars on dental, so that [she] could accept orders, [she] learned that [she] needed to be in the SELRES [Selected Reserve], another term [she] had no idea of its meaning.” She also alleged that during this period she supported her prior unit as a volunteer for no points or pay, but “was under the impression that [she] was in the SELRES.” She alleged that “there was absolutely no reason for [her] to doubt that the process would catch up and everything would be sorted out.” However, she was finally told that she could not drill for points in the ISL and needed to be in the IRR. The applicant alleged that she made calls and sent emails about her situation but received no response. Because she did not belong to a particular unit, she had no advocate.

The applicant stated that after she was finally offered a deployable billet in July 2009, she learned that she “did not have to go through all of the headache and expense that [she] had endured for the last 7 months, [and] that [she] just needed to be in the IRR and [she] could drill for points.” Then in August 2009, she was stunned to learn from the PSC-rpm that she was being discharged because she had failed of selection for promotion in the Reserve twice. She stated that for Reserve officers, such discharges are discretionary, not mandated by statute or regulation, and that the decision to discharge her for twice failing of selection was unfair.

The applicant asked why she was not assigned to a Reserve unit upon her discharge from active duty, why no one gave her transition advice about joining the Reserve since the Reserve is a “far more foreign place” than the civilian world, and why no one gave her career advice when she joined the Reserve. The applicant stated that she was not even issued an ID card so that she could access a base to talk to someone. The applicant argued that if failing of selection twice as a Reserve officer can result in discharge, she should have been warned of this. She stated that when she was promoted to LCDR in the regular Coast Guard, she was told that she was “safe” and would be able to retire with at least 20 years of service even if she was not selected for promotion to commander. She asked why her switch to the Reserve changed her status in this regard and why she was not warned that it would. She asked whether her loss of protection was caused by her acceptance of a commission as a LT. She asked why she was not offered a commission as a LCDR—her rank in the regular Coast Guard—and argued that her Reserve commission as a LT was unfair.

The applicant asked why she was not moved from the IRR to the ISL immediately upon joining the Reserve. She alleged that she “had advised everyone [she] encountered that [she] needed to wait one year before [she] became an active reservist,” and yet she was unjustly “left in the IRR from MAR 2008 till OCT 2009.” She alleged that a lieutenant erroneously advised her to join the IRR so that she could drill for pay and points, but then she was placed in the IRR just three weeks before the selection board convened. She asked why there was not a minimum time for an officer to be in the IRR before they could be considered and passed over for promotion. In support of her allegations, the applicant submitted copies of “email strings,” which are summarized below.

Emails Concerning the Applicant's Reserve Commission

On March 11, 2008, the applicant submitted an Oath of Office to a chief warrant officer at PSC-rpm. On March 12th, he asked her to resend it in a different kind of electronic file. When she did, he told her he would forward it and let her know "when the accession in Direct Access [database] has taken place into the Individual Ready Reserve (IRR)." He provided a link to information about the IRR on the PSC-rpm website.

On March 13, 2008, the applicant informed Ms. H at the Integrated Support Command (ISC) in Seattle that she had accepted the commission as follows: "I went ahead and did it. I'm trusting you!!!!!" Ms. H responded, "You should be fine. Got the confirmation of IRR from [the PSC-rpm CWO]." On March 14th, the applicant responded, "What's next now?" Ms. H replied on March 20th, "Take a look at the CGPC-rpm website and familiarize yourself with the IRR tab. It gives all the information you should need. You are under their control now; I think you may need to do some correspondence courses, etc., to keep your point levels up to 50 for a good year towards retirement."

Emails Concerning the Applicant's Transfer from the IRR to the ISL and Back

On October 24, 2008, the PSC-rpm sent the applicant a memorandum notifying her that a Reserve Mobilization Disposition Board had decided to transfer her to the ISL as of December 1, 2008. She was advised that she could request a waiver.

On January 21, 2009, the applicant submitted a request to be transferred from the IRR to the SELRES, although she was in the ISL. In March 2009, she traded emails with PSC-rpm personnel about updating her physical evaluation. On April 2, 2009, LT M at PSC-rpm noted that the applicant was working with the ISC in Seattle to get a qualifying physical examination to return to the SELRES because her last physical had occurred in June 2007. On May 14, 2009, the applicant advised the PSC-rpm that she was finally physically qualified. She noted that she had had to pay almost \$2,000 for dental work to become qualified. In addition, she asked for a SELRES billet in the Seattle area so that she could begin drilling. LT M replied the same day, reporting that the Direct Access database did not yet indicate that the applicant was fit for duty. However, he advised Ms. H to transfer the applicant to the SELRES as soon as the database showed her as fit for duty.

Also on May 14, 2009, Ms. H noted that when the regular active duty junior officer (JO) assignment process ended, they would "see what is left unfilled." The applicant responded by asking Ms. H, "Is there anything even left at this point, or rather, when is the JO closeout expected to be done?" Ms. H replied, "Hope to have assignment results by 29 May; will keep you advised of gapped positions at that time."

On June 1, 2009, the applicant requested an update on a possible SELRES billet because she was anxious to start drilling. On June 2, 2009, LT M noted that the database still showed the applicant's last physical as occurring in June 2007.

On June 4, 2009, the PSC-rpm offered the applicant a SELRES billet at a Naval War Command unit in her state. She initially stated that she was interested. The Senior Reserve Officer at the unit emailed her the same day, noting the one weekend each month when the unit drilled and that their two-week annual training would be held from July 18 to 31, 2009, on Whidbey Island.

On June 5, 2009, the applicant sent an email to the PSC requesting preparation of a points statement. She noted that she was “looking at earning points in the IRR.” She received the points statement on June 10, 2009, and was offered a position in the Command Center of the District Incident Management Branch.

On June 16, 2009, the applicant asked LT M for advice. She stated that Ms. H was only able to offer her a billet with a deployable unit, but she had left active duty only because she could not deploy. She stated that she was exploring taking a billet at the District Command Center, but such a billet would not use her skills as a lawyer and she was “not operational.” She knew that to have a “good year,” she needed to get 50 points—15 by “breathing” (membership points) and 35 by drilling. She stated that she was willing to drill without pay as long as she did not have to deploy. However, she was also told that since she had transferred to the SELRES she could not just drill without pay for 35 points per year. In addition, the applicant noted that Ms. H had told her that if she rejected the deployable billet, “there would be a bias toward me in the next assignment cycle. All I want to do is to serve honorably for the next 4 years without having to pay the price of losing custody of my children, or pushing myself over the edge with exhaustion because I was forced to accept a position in a command center in another region! I just need someone to explain the process and the options to me. Can you do that?” LT M replied the same day stating that in SELRES assignments, the “needs of the service always come first. However, you can complete your 20 years and earn a reserve retirement in the Individual Ready Reserve (IRR). You are currently in the ISL and may request to join the IRR at any time with the form on our website. ... I recommend you read chapter 4.A.6. and 8.C.5. of the Reserve Policy Manual, which outlines the specific requirements IRR members must complete. You can also drill for no pay to earn points. The manual is located at our website below. Please work with [LT B] for any other ISL and IRR officer issues, as she relieved me today as the [Officer Status Manager].”

On June 18, 2009, the applicant submitted a request to transfer to the IRR with an explanation that she could not take a deployable billet but wanted to drill for points.

On July 2, 2009, the applicant asked LT B for an update on her request to move from the IRR to the ISL. She stated that she wanted to begin drilling and would start looking for places to drill.

On July 14, 2009, the applicant’s prior office stated that her offer to drill there was very welcome. She replied that her ability to drill had “a few limitations” because of her civilian job required her to travel and because of her child custody arrangements. She was told that she could have “total flex hours.” The applicant advised LT B that her “old unit has expressed an interest in allowing me to drill with them for points. I need to know if my move from the

SELRES to the IRR has been approved. I have been trying to reach you now for a month by both email and phone messages. If there is something else I need to know or do, please advise!”

On July 15, 2009, the applicant told a workforce analyst that she had “tried relentlessly to contact LT B and LT J [at the PSC-rpm] to no avail. Can you help me verify my status. [Her prior unit] is already putting me to work, so I want to make sure that it is counting. Also, I need to get an ID card, a vehicle sticker ... Once I am in the IRR, I think that I can do that.”

On July 20, 2009, PSC-rpm sent the applicant a memorandum stating that her request to transfer to the IRR had been approved and was effective as of July 1, 2009. The memorandum advised her that she would remain eligible for promotion in the IRR and that she could accrue qualifying years of service for retirement purposes by earning at least 50 points per year by drilling or completing correspondence courses. The memorandum also stated that if she failed to maintain the minimum standards of the IRR, she would be transferred to the ISL, and that after three years on the ISL, she would be discharged unless she sooner requested return to the Ready Reserve, which consists of the IRR and the SELRES. In response to this memorandum, the applicant sent the Chief of PSC-rpm an email and thanked him for his assistance.

Emails Concerning the Applicant’s Interest in Drilling in a Civil Rights Office

In August and September 2009, the applicant traded emails with a Civil Rights Office and with Reserve detailers about the possibility of drilling at the Civil Rights Office in addition to her prior unit. She asked questions about how drill points could be credited and noted that she had some logistical questions because she did not have a Coast Guard identity card or car sticker. PSC-rpm personnel responded, explaining how points were credited, referring her to the Reserve Policy Manual, and asking whether she had the two units’ written agreements to drill for points.

Emails About the Applicant’s Auxiliary Volunteer Work

On September 15, 2009, the applicant sent someone at her prior active duty office an email about awards she was drafting for personnel in that office. On September 17, 2009, she sent that office the paperwork for certain awards. An officer replied, thanked her for the work, asked how her Reserve issues were evolving, and offered to “weigh in.”

Emails About the Applicant’s Pending Discharge

On September 18, 2009, CAPT N, the Chief of PSC-rpm, sent the applicant an email referring to a telephone conversation on September 15, 2009, and asking when she would be available for a telephone conference. On September 21, 2009, the applicant sent the Chief of PSC-rpm, CAPT N, an email thanking him for his email. She sent him the email strings summarized above and noted that they contained no reference to the time frame in which she needed to be selected for promotion to remain in the Reserve. She stated, “I have not been lazy. If anything I have been persistent and dedicated. This means so much to me. ... If you are right that I must be discharged, there must be some exception. Certainly the time frames here must allow for some review. Please help.”

On September 22, 2009, the applicant sent CAPT N another email asking how she could be considered for promotion while in the IRR. She stated that she did not think that someone on the IRR could be reviewed for promotion. She forwarded him a memorandum dated December 19, 2007, which is not in the record, which, she said, shows that she

was advised that I would be moved to the IRR by [PSC-rpm] if I did not accept a SELRES position. At that time, I advised that I did not want an immediate assignment because I desired to focus on my civilian job for one year, until I passed probation which occurred on 1/15/09. My actions on 1/20/09 wherein I requested a transfer from IRR to SELRES by completing the Reserve Drilling Request support that. Further that 19 Dec 07 memo says that [PSC-rpm] will arrange for my rehire/accession into the reserve component directly to the IRR.

The applicant further asked CAPT N why she was considered for promotion in 2008 if she was in the IRR. She noted that she was transferred back to the IRR on July 19, 2009, although she had asked for the transfer on June 18, 2009, and that before that, she had been trying since January 21, 2009, to pass a physical examination so that she could qualify for the SELRES. The applicant concluded that she had not “even had a chance to have a ‘bad’ year, much less three of them as [is] required for the board to suggest separation as indicated in the PERSMAN! I haven’t even been released from active duty for two full years yet! I know that I am not an expert, but surely there has been a mistake!”

On September 23, 2009, LT M, the Reserve selection board coordinator for PSC-rpm, advised the applicant that in accordance with Chapter 7.A.8. of the PSC-rpm, she would be honorably discharged as of June 30, 2010. He noted that although in the past, PSC-rpm had held LT retention boards to retain Reserve LTs who had not been selected for promotion, in 2009, the Commandant directed PSC-rpm not to hold a retention board.

On September 24, 2009, the applicant sent an email to CAPT F about her pending discharge. She stated that she had resigned her active duty commission because she could not move from the State of Washington without losing custody of her children. On her last day of active duty, she was offered a Reserve commission as a LT, which upset her, but she eventually took the oath of office on March 11, 2008, and informed Reserve personnel that she needed to wait a year before drilling. She was placed in the IRR. On October 7, 2008, she was advised that she had not been selected for promotion by the Reserve LCDR promotion board that convened on September 8, 2008. On October 24, 2008, she was told that a Reserve Mobilization Board had transferred her to the Standby Reserve, ISL, as of December 1, 2008. On January 20, 2009, she asked to move from the IRR to the SELRES and soon thereafter learned that she could not transfer to the SELRES without a physical and without replacing all of her dental work, which cost about \$2,000. On June 3, 2009, the PSC issued ALCGRSV 024/09, which noted, *inter alia*, that the Reserve LCDR selection board would convene on August 18, 2009, to consider LTs for promotion and that only LCDRs and CDRs who had failed twice of selection for promotion to the next higher grade would be considered for retention. On June 4, 2009, she was offered a SELRES billet, but it was with a deployable unit. She tried to get another billet and figure out what to do, but numerous inquiries went unanswered. On June 16, 2009, she was told that she could transfer from the ISL to the IRR to drill for points without pay. Previously, she had thought that she had to be in the SELRES to drill for points. On June 18, 2009, she submitted a request to transfer to the IRR. On July 6, 2009, she began to inquire about drilling opportunities. On July

20, 2009, the PSC-rpm issued a memorandum transferring her to the IRR retroactively as of July 1, 2009. On August 18, 2009, the LCDR selection board convened, and on September 15, 2009, she learned that she would be discharged.

The applicant told CAPT F that she should have been warned that she would be discharged if she was not selected for promotion, even though she could not have been discharged for failing of selection if she had remained on active duty. In addition, she stated that someone at PSC-rpm should have told her to wait a month before transferring to the IRR because of the new rules regarding retention of Reserve officers. She stated that, “[s]ince everyone knew I had been inactive, as well as how hard I was trying to get back into the reserves, this failure is unconscionable.” She stated that in “hundreds of pages of emails ... the likelihood that a non-selection will result in my discharge does not even come up once!” She noted that CAPT N and his staff called her and told her that because she was so anxious to drill they had “tried to accommodate me and that is why they allowed me to be transferred from the ISL (a place of protection from his rule) to the IRR with less than three weeks before the board!” She stated that the advice she had received on June 16, 2009, to transfer to the IRR was negligent given that noted that ALCGRSV 024/09 had been issued just ten days earlier.

The applicant told CAPT F that the PSC-rpm’s actions showed “a complete lack of stewardship. Where did anyone ever help me make the transition to the reserves? At no time have I ever received a package of ‘how to ... or ... what to expect’s or ... need to know’s.’ I simply got a magazine, an oath of office and was directed to the Reserve Policy Manual. I do not even have an ID card! I was never attached to a unit where I would have been given advice. This is not acceptable. We are shipmates! We are all leaders. Discharge?!! This cannot be true. I was forced to get out of the Coast Guard by a misguided judge [who] wrote in my parenting plan, ‘Mother is on active duty, should she elect to accept orders out of state, all parenting rights and responsibilities shall revert immediately to father.’ My decision to leave the Coast Guard does not mean that I do not care and that I do not have a lot to offer to the Coast Guard.”

On September 28, 2009, CAPT F wrote to the PSC asking for advice on the applicant’s situation and stating that the applicant “worked very hard to try to get into and understand the reserve process, but it appears to me that her pending discharge was a result of no/bad advice and is in my view a process fouled on all accounts.”

On October 23, 2009, the applicant told CAPT N that she had not yet received an official notice from his office about her pending discharge or an Annual Screening Questionnaire (ASQ) that they had promised to send her and that was not available on-line. She also stated that he had promised to have his staff assist her in applying to the BCMR. On October 26, 2009, CAPT N advised her that his “promise still stands.” He noted that she been sent an email about her discharge on September 23, 2009, and that a “hard copy memo” about her discharge would be sent to her within two weeks and that the ASQ form would be sent to her and the rest of the IRR in a week.

In an undated email, the applicant submitted her ASQ form, which she dated November 18, 2009, and advised CAPT N that she had not received any of the correspondence he had discussed in his October 26, 2009, email.

VIEWS OF THE COAST GUARD

On April 28, 2010, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case. In so doing, the JAG adopted the findings and analysis of the case provided in a memorandum prepared by the Personnel Service Center (PSC).

The PSC stated that the applicant's emails show that in March 2008, she intentionally enlisted in the IRR, whose members can earn points and remain eligible for promotion. The PSC stated that if the applicant intended not to participate in any way in 2008, the ISL "would be the most appropriate status to assume." However, the PSC stated, she submitted no evidence that she ever told the PSC-rpm in 2008 that she intended not to participate for a year, and the PSC possesses no such evidence. Therefore, she remained in the IRR and was considered for selection for promotion to LCDR in September 2008 pursuant to 14 U.S.C § 732 and Chapter 7.A of the Reserve Policy Manual (RPM). The PSC submitted a copy of the notification memorandum regarding her failure of selection in 2008. It states that, "[p]rovided you remain in an active status, you may be eligible for selection by the next board." Because of her inactivity in the IRR, a board transferred her to the ISL as of December 1, 2008. The PSC submitted copies of memoranda addressed to the applicant regarding her transfer to the ISL dated October 24 and December 29, 2008.

The PSC stated that on January 21, 2009, the applicant requested a transfer from the IRR (although she was then in the ISL) to the SELRES, in which she could drill for pay and receive performance evaluations. When the applicant refused her orders in June 2009 because she did not want to deploy, the PSC-rpm advised her of the benefits of the IRR. On June 18, 2009, she freely submitted a request to transfer back to the IRR, which was granted.

The PSC stated that the applicant's name appeared eighth on the list of Reserve LTs who would be considered for promotion by the LCDR selection board set to convene on August 18, 2009, and a notation beside her name on the list shows that she had no recent performance evaluation in her record and should contact the administrator of the Officer Evaluation System immediately. However, the applicant did not respond, and so her record was reviewed by the selection board, and she failed of selection a second time. Therefore, the PSC-rpm notified her that she would be discharged pursuant to 14 U.S.C. § 740.

With regard to her transfer to the IRR as of July 1, 2009, the PSC stated that the emails show an "open pattern of communication" between the applicant and PSC-rpm staff. However, "this communication was not heeded to the fullest extent possible, thus resulting in the current state of affairs."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 4, 2010, the Chair sent the applicant a copy of the views of the Coast Guard and invited her to respond. No response was received.

SUMMARY OF THE REGULATIONS

Chapter 1.C. of the RPM contains a chart of the organization of the Reserve, including the Ready Reserve, which includes the SELRES and the IRR, and the Standby Reserve, which includes the ASL (active status list) and the ISL. It also contains descriptions of these different Reserve components. The differences between these components are described throughout the RPM but particularly in Chapter 4.A., where the different participation opportunities and requirements of the SELRES and the IRR are explained. Chapter 5.A. describes how Reserve assignments occur, and Chapter 5.B. discusses transfers between the Reserve components.

Chapter 7.A. contains the rules for Reserve officer promotions. Chapter 7.A.2.a. states that all Reserve officers except those on the ISL and retired officers are considered to be in an “active status.” Chapter 7.A.3.a. states that the Commandant maintains an “Inactive Duty Promotion List” (IDPL) of all Reserve officers in an active status. The officers on the IDPL are eligible for promotion.

Chapter 7.A.8.d. states the following regarding two failures of selection for promotion:

Officers who twice fail of selection are normally removed from an active status on 30 June following the approval date of the board report upon which the second failure of selection occurs, unless needs of the service dictate otherwise. Unless eligible for retention in an active status as described below, the officer will be given an opportunity to transfer to the Retired Reserve, if qualified, or shall be transferred to the Inactive Status List or discharged, as directed by CGPC-rpm.

Chapter 7.A.8.e. states the following:

A commander, lieutenant commander or lieutenant who twice fails of selection may be retained for not more than the minimum period of time necessary to complete 20 satisfactory years for retirement, plus one additional year, if required, if so recommended by the selection board in which the second failure of selection occurs.

Chapter 7.A.8.f. states the following:

In accordance with 10 U.S.C. 12646, a Reserve commissioned officer of any grade who is due to be removed from an active status as the result of twice failing of selection, and who on 30 June following the approval date of the board report on which the second failure of selection occurs has completed:

(1) At least 18 but less than 19 years of service for retirement computed under 10 U.S.C. 12732, may not be discharged or transferred from an active status without his or her consent before the earlier of the following dates:

- (a) The date on which he or she is entitled to be credited with 20 years’ service, or
- (b) The third anniversary of the date on which he or she would otherwise be discharged or transferred from an active status.

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 10 U.S.C. § 1552. The application was timely.

2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.

3. The applicant asked the Board to place her on the ISL as of the date of her discharge from active duty in 2007 and to reverse the decision that removed her from the ISL and returned her to the IRR just three weeks before the Reserve LCDR selection board met in 2009. She also asked the Board to remove her failures of selection for promotion in 2008 and 2009. The Board begins its analysis in every case 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. 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)). 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." *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

4. The applicant has failed to prove by a preponderance of the evidence that the Coast Guard erred by leaving her in the IRR for most of 2008 instead of transferring her to the ISL. The emails show that she knowingly affiliated with the IRR when she accepted her Reserve commission in March 2008, even if she failed to read the RPM or Reserve web pages to learn the requirements and consequences of her affiliation with the IRR. There is no evidence to support her claim that the PSC-rpm staff were aware of her intention not to participate in 2008. As an officer in an active status, her name was on the IDPL, and her record was properly reviewed by the LCDR selection board in September 2008. Therefore, she has not shown that her first failure of selection for promotion in the Reserve resulted from an error or injustice committed by the PSC-rpm staff or other member of the Coast Guard.

5. The applicant claimed that the Coast Guard's decision in July 2009 to grant her request to transfer to the IRR, making her quickly eligible for promotion in August 2009, was erroneous and unjust. She admitted that she had requested transfer to the IRR in June 2009, but stated that if someone had mentioned that such a transfer would make her eligible for promotion and, hence, discharge, she would have delayed her transfer. However, the applicant was eligible for promotion as a member of the IRR in 2008 and was informed of her failure of selection for promotion that year. Therefore, she knew or should have known that she would be eligible for promotion as a member of the IRR in August 2009 and yet requested transfer to the IRR in June 2009. Whether serving on active duty or in the Reserve, officers who fail twice of selection are eligible for separation or retention, and under Chapter 7.A.8.d. of the RPM, separation is the norm. Moreover, in June 2009, the Commandant issued ALCGRSV 024/09, under which

Reserve LTs who failed of selection for a second time in 2009 would not be considered for retention. While it would have been good if one of the PSC-rpm staff with whom she was communicating about transferring to the SELRES or the IRR had mentioned this change to the applicant, the Board cannot reasonably find that their failure to do so was an error or injustice. The RPM and the ALCGRSV were published on-line, the applicant had access to them, and had she evinced any interest in promotion issues, she would have read them. The officers with whom she was discussing possible assignments and transfers to the SELRES or the IRR were reasonably focusing on her stated desires first for an assignment and then to transfer and how they could accommodate those desires, not on whether she had already failed of selection once, whether she was eligible for advancement in 2009, or whether her record would be non-competitive for advancement because of past non-participation. The emails show that the PSC-rpm staff was communicative and trying to be helpful, and they presumably would have provided accurate and timely advice about promotion matters if the applicant had raised the subject with them, but she did not even though she had failed of selection the year before.

6. The applicant alleged that she was not afforded sufficient counseling about Reserve matters and so was unjustly discharged after more than fifteen years on active duty. The record shows, however, that the applicant assumed—without bothering to learn even the most basic information about the Reserve, which was readily available in the RPM and on-line—that if she resigned her active duty commission, she would be able to continue and retire as a Reserve officer on her own terms. Although an attorney, she apparently failed to read numerous, critical parts of the RPM, which was drawn to her attention several times. She also failed to pay any attention to her eligibility for promotion, which is normally critical to an officer's ability to continue in any military service until eligible for retirement. The applicant has not proved that her discharge was erroneous, and given her own failure to pay sufficient attention and conduct sufficient research to ensure her own success as a Reserve officer, the Board finds that she has not proved by a preponderance of the evidence that her failures of selection for promotion and consequent discharge were unjust.

7. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

