

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2012-095

**XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX**

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 March 13, 2012, 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 December 7, 2012, 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, a Reserve lieutenant commander (LCDR) serving on active duty, asked the Board to correct her record to show that her LT date of rank is July 3, 2005, instead of July 30, 2005, and to show that she was promoted to LCDR on March 1, 2012, instead of May 1, 2012. She also asked the Board to award her the corresponding back pay and allowances she would be due as a result of these corrections.

The applicant stated that in 2005, she was serving on extended active duty. Her classmates who were serving on inactive duty—i.e., on the inactive duty promotion list (IDPL)—were all promoted to LT on July 3, 2005, but she and her classmates who were serving on extended active duty—i.e., on the active duty promotion list (ADPL)—were not promoted until July 30, 2005, as authorized in ALCGPERSCOM 058/05.

Moreover, the applicant stated, her Reserve officer classmates on the IDPL, even those below her in class precedence, were promoted to LCDR on March 1, 2012, while classmates on the ADPL are still waiting to be promoted. When she complained about the errors, she was advised to apply to this Board.

In support of her allegations of error, the applicant noted that under 14 U.S.C. 41a(b), a Reserve officer "shall, when he enters on active duty, be placed on the active duty promotion list in accordance with his grade and seniority," and that 14 U.S.C. § 725 states that a "Reserve

officer shall not lose precedence when transferred to or from the active duty promotion list, nor shall that officer's date of rank be changed due to the transfer."

The applicant also submitted a PowerPoint presentation showing class precedence before and after her entry on active duty and the Reserve officers' dates of rank. She alleged that in July 2005, she and her fellow Reserve LTJGs should have been promoted to LT depending solely on their precedence on the Officer Personnel Allowance List (OPAL) and not on whether they were on the IDPL or ADPL.

VIEWS OF THE COAST GUARD

On August 8, 2012, the Judge Advocate General (JAG) of the Coast Guard recommended that the Board deny the applicant's request. In so doing, he adopted the findings and analysis in a memorandum on the case prepared by the Coast Guard Personnel Service Center (PSC).

PSC submitted a class roster showing that there were 25 officers in the applicant's Reserve Officer Candidate Indoctrination Class, which graduated on August 3, 2001. ALCG-PERSCOM 058/05, issued on June 23, 2005, authorized the promotion of 22 of the 25 officers to LT as of July 30, 2005.

PSC submitted copies of the 2006 Register of Officers and Register of Reserve Officers, showing that all 22 of the LTs had dates of rank of July 30, 2005. However, a PSC staff member erroneously entered July 03, 2005, as the date of rank for 18 of them in the Coast Guard's Direct Access database. Therefore, when the 2007 registers were issued, for 18 of the 22, their dates of rank were inadvertently shown as July 03, 2005. Moreover, as a result of that error, 12 of the applicant's classmates were erroneously promoted to LCDR two months early in 2012.

PSC stated that the July 03, 2005, dates of rank are clearly erroneous because under Article 3.A.4.h.(4)(a) of COMDTINST M1000.3, all officers must serve a minimum of 30 months in the grade of lieutenant junior grade (LTJG) before being promoted to LT. PSC stated that on April 24, 2012, it took corrective action by correcting the erroneous dates of rank from July 03 to July 30, 2005; correcting each Reserve officer's running mate accordingly; and correcting the 12 officers' LCDR dates of rank from March 1 to May 1, 2012. PSC submitted a copy of the letter it sent to the officers in question to notify them of the correction of their dates of rank.

PSC noted that the applicant was also promoted to LCDR on May 1, 2012, and concluded that the erroneous dates of rank in the officer registers have been corrected and that the applicant "has failed to substantiate any error or injustice with regards to her record." Therefore, PSC recommended that the Board deny relief.

APPLICANT'S RESPONSES TO THE VIEWS OF THE COAST GUARD

On August 21, 2012, the Chair sent the applicant a copy of the views of the Coast Guard and invited her to submit a response within thirty days. No response was received.

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 filed because the applicant has been serving on continuous active duty.¹

2. The applicant alleged that her LT date of rank should be July 03 instead of July 30, 2005, and that her LCDR date of rank should be March 1 instead of May 1, 2012. She complained that her dates of rank were later than those of her classmates even though 14 U.S.C. § 725 states that a "Reserve officer shall not lose precedence when transferred to or from the active duty promotion list, nor shall that officer's date of rank be changed due to the transfer." 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.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. PSC stated that dates of rank in the officer registers were erroneous, but it was her classmates' July 03, 2005, LT dates of rank that were erroneous, not the applicant's July 30, 2005, LT date of rank. In addition, PSC stated that the applicant and her classmates should all have been promoted to LCDR on May 1, 2012, but because of the erroneous database entry switching July 30s to July 03s, some of her classmates were erroneously promoted on March 1, 2012. PSC submitted persuasive documentation and information supporting these claims and evidence that it has corrected the errors in the applicant's classmates' records. The applicant did not rebut PSC's documentation or information. Therefore, the Board finds that the applicant has not proved by a preponderance of the evidence that her LT and LCDR dates of rank are in error.

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

¹ *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994) (holding that, under § 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, the BCMR's three-year limitations period under 10 U.S.C. § 1552(b) is tolled during a member's active duty service).

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 xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCGR, for correction of her military record is denied.

Donna M. Bivona

Andrew D. Cannady

Francis H. Esposito