

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

Application for Correction of
Coast Guard Record of:

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

BCMR Docket
No. 2002-153

FINAL DECISION

ULMER, Chair:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on August 2, 2002, upon the Board's receipt of the applicant's complete application for correction of his military record.

This final decision, dated May 22, 2003 is signed by the three duly appointed members who were designated to serve as the Board in this case.

Application for Relief

The applicant asked the Board to adjust his lieutenant commander (LCDR) date of rank from September 1, 2002 to June 1, 2001 with back pay and allowances. Subsequently, he amended his application requesting an adjustment to his date of rank from September 1, 2002, to July 1, 2002, with back pay and allowances.

The applicant alleged that he was not considered for promotion by the calendar year (CY) 2001 LCDR selection board because the Coast Guard failed to submit his military record to the selection board.

Two years earlier in 1999, the applicant had been selected for promotion to LCDR by the 1999 selection board. However, the applicant declined the promotion, when it was offered to him in June 2001. He stated "I declined promotion . . . as a result of the uncertainty of the HU-25 Falcon Jet program at Coast Guard Air Station . . . & my unwillingness to accept additional obligated service due to the promotion." He further stated as follows:

My scheduled retirement date was 1 Nov 2002, but with terminal leave I was planning on separating on or about 1 July 2002. I received a call from OPM-1, the office of officer promotions, in September 2001 to let me know that an error had occurred. I was not included in the next promotion board for selection again to LCDR. They advised me that I would be looked at for promotion in

August 2002 & that I should submit the paperwork for a BCMR to get my original date of rank & back pay as if I would have promoted off of the August 2001 promotion board that I missed.

After filing his application for correction of his record, the applicant notified the Board that the Coast Guard promoted him to LCDR on September 1, 2002. He was told to amend his BCMR application to request a date of rank adjustment retroactive to July 1, 2002, which he did.

Views of the Coast Guard

On November 29, 2002, the Board received an advisory opinion from the Chief Counsel of the Coast Guard. He adopted the comments of the Commander, Coast Guard Personnel Command (CGPC), which are attached as Enclosure (1) to the advisory opinion.

CGPC concluded that the applicant "has basis to request that his date of rank be changed, to receive back pay and allowances from [September 1, 2002 to July 1, 2002]." He offered the following chronology of events:

Applicant was originally selected for promotion to [LCDR] by the [1999] board. Accordingly, he was scheduled to promote on June 1, 2001. At that time he declined promotion.

Applicant's promotion status should have changed from "Selected" to "non-Selected" once he declined promotion. He was then eligible to be seen by the next promotion board as an above zone officer.

The [2001 LCDR] selection board convened on August 20, 2001. This selection board should have considered him. Due to an administrative error within Coast Guard Personnel Command, Officer Personnel Management, his new status was not effected until after [the selection board adjourned]. As a result, the [2001 LCDR selection board] did not see [the applicant's record].

.... Had the [2001 LCDR selection board] chosen the applicant, he would have been promoted on July 1, 2002.

Applicant was promoted to [LCDR] on September 1, 2002.¹

¹ The Chair had several conversations with Coast Guard personnel about the applicant's promotion to LCDR. The Chair was informed that when the applicant declined his promotion in June 2001, his name should have been removed from the promotion list and his record placed before the next LCDR selection board as an above zone officer. However, the Coast Guard neither removed his name from the promotion list nor placed his record before the 2001 selection board. After discovering that it had committed an administrative error by not placing the applicant's record before the 2001 LCDR selection board, the Coast Guard determined that

Applicant's Reply to the Views of the Coast Guard

On December 11, 2002, the Board received the applicant's response to the views of the Coast Guard. The applicant agreed with the Chief Counsel's recommendation for relief.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's record and submissions, the Coast Guard's submission, and applicable law:

1. The BCMR has jurisdiction of this case pursuant to section 1552 of title 10 and section 425 of title 14 of the United States Code. The application was timely.

2. The applicant was promoted to LCDR on September 1, 2002. The Board has some concerns about the manner in which this applicant was promoted, particularly with promoting him without selection by a subsequent LCDR selection after he declined an offer of promotion in June 2001. However that issue is not before this Board, as the applicant has already been promoted, and we do not address it.

3. On the matter of adjusting the applicant's LCDR date of rank, the Board finds that he is entitled to relief. The Coast Guard concedes it committed an administrative error by not placing the applicant's military record before the 2001 LCDR selection board. The Coast Guard stated that if the CY 2001 LCDR selection board had considered and selected the applicant for promotion to LCDR, he would have been promoted to that grade on July 1, 2002. The Board has no basis to conclude that the applicant's date of rank, if considered and selected by the CY 2001, would have been otherwise.

4. Relying on the Coast Guard to have properly promoted this applicant and in an effort to cure the administrative error suffered by the applicant, the Board will direct that his LCDR date of rank be adjusted to July 1, 2002, as recommended by the Coast Guard.

5. Accordingly, the applicant's request for relief should be granted.

it could correct the administrative error by promoting the applicant without further selection board consideration because his name had never been removed from the promotion list as a result of his 1999 selection, even though he declined that promotion. The Coast Guard promoted the applicant on September 1, 2002. Accordingly, the Coast Guard recommended that this Board correct the applicant's record to give him a July 1, 2002 date of rank, as if he had been selected by the 2001 LCDR selection board.

ORDER

The application of XXXXXXXXXXXXXXXXXXXX USCG, for correction of his military record is granted. His record shall be corrected to show that he was promoted to LCDR on July 1, 2002 rather than September 1, 2002, with back pay and allowances.

Julia Andrews

Margot Bester

Francis H. Esposito