

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2004-119**

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**FINAL DECISION**

**AUTHOR: Ulmer, D.**

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The application was docketed on May 18, 2004, upon receipt of the applicant's completed application and military records.

This final decision, dated February 10, 2005, is signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST**

The applicant, a member of the Coast Guard Reserve, asked for "promotion with [his] peers [who were selected by the 2003 CWO4<sup>1</sup> selection board] based on [his] documented performance." The applicant was not selected for CWO4 by the 2003 inactive duty (Reserve) selection board that met on November 3, 2003. <sup>2</sup> The Board interprets the applicant's request as one for the removal of his failure of selection for promotion to CWO3 and if he is selected for promotion to CWO4 by the first selection board to consider him based on a corrected record that his date of rank be adjusted to the date he would have received if he had been selected by the 2003 CWO4 selection board.

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<sup>1</sup> CWO4 is an abbreviation for Chief Warrant Officer -W4.

<sup>2</sup> The calendar year 2003 CWO4 selection board is also referred to as the PY [promotion year] 2004 selection board.

The applicant was selected for promotion by the 2004 CWO4 selection board that met on October 25, 2004.

### **APPLICANT'S ALLEGATIONS**

The applicant alleged that he was not selected for promotion by the CWO4 selection board because he did not have an officer evaluation report (OER) for the most recent year of the reporting period, which ended on June 30, 2003. He stated that the Personnel Manual required biennial OERS for CWO3s to be submitted in even numbered years. He stated that a 2002 OER had been submitted. Therefore, according to the applicant, he sought guidance from his rating chain on whether he should have a current (2003) OER prepared and submitted. The applicant stated that the rating chain informed him, after conferring with the Coast Guard Personnel Command, that he did not need a 2003 OER.

The applicant's commander submitted a statement on the applicant's behalf. He verified that the applicant's supervisor obtained and relied on erroneous information provided by CGPC to another rating chain facing a similar situation. The supervisor for the other rating chain stated in BCMR No 2004-120 that he consulted CGPC on whether a special OER was required for a CWO3 and was told that GCPC agreed that no special OER was required.

The commander stated that his staff made every effort to obtain correct guidance, including placing calls to CGPC. The commander stated that based on the supervisor's research and CGPC's advice, the rating chain mistakenly believed a special OER was not required. He stated that the applicant and his peers deserve correct guidance and have the right to compete for promotion on a level playing field.

### **VIEWS OF THE COAST GUARD**

On September 14, 2004, the Board received an advisory opinion from the Judge Advocate General (TJAG) of the Coast Guard, recommending relief. TJAG adopted the memorandum on the case prepared by Commander, Coast Guard Personnel Command (CGPC) as the advisory opinion, except for that portion of the memorandum recommending a special selection board.<sup>3</sup> In the alternative, TJAG recommended that the Board remove the applicant's 2003 failure of selection for promotion to CWO4 from his record and place his record before the next regularly scheduled CWO4 selection

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<sup>3</sup> TJAG stated that the Coast Guard does not have statutory authority to hold special selection boards.

board and if that board selects him that his date of rank be adjusted retroactively to date he would have received if he had been selected by the 2003 selection board.

CGPC stated that the applicant's rating chain erred in relying on inadequate third party information as to whether an OER was required for the applicant. He noted that CGPC personnel had provided this erroneous advice to a supervisor on whom the applicant's supervisor relied for guidance.

CGPC stated that the situation was further aggravated by the Coast Guard's failure to give the applicant timely notice that he was to be considered by the 2003 CWO4 selection board. CGPC stated that the selection board procedures require the issuance of specific candidate announcements, which supplement general board directives. Such specific messages identify candidates by name, confirm board-convening dates, and provide additional instructions to members and their rating chains. CGPC stated that while there is no legal or policy standard on when candidate notification announcements are promulgated, CGPC staffs apply a standard of 30 days prior to a board's convening date. The announcement message pertaining to the CWO4 selection board preceded the actual convening of the selection board by only 10 calendar days. He stated, "Notification of Applicant's eligibility for promotion ten days before the board [was to begin] shortened the period in which the applicant's record could be adequately reviewed and made complete prior to the selection board.

CGPC concluded that the missing special OER likely played a significant role in the applicant's failure to be selected for promotion by the 2003 CWO4 promotion board.

### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On September 23, 2004, the Board received the applicant's reply to the views of the Coast Guard, stating that he did not object to the advisory opinion.

### **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 the case pursuant to section 1552 of title 10, United States Code. The application was timely.

2. The applicant's rating chain committed an error by not preparing an OER on the applicant's performance prior to the convening of the 2003 CWO4 selection board. Article 10.A.3.c.1.c of the Personnel Manual requires "the submittal of a Special OER in odd-numbered years for [inactive duty Reserve] officers who are on a biennial schedule and are in zone for promotion on the [inactive duty promotion list]."

3. The Coast Guard also committed an injustice by not publishing the message announcing the convening date for the selection board and identifying the applicant as a candidate in a timely manner. CGPC acknowledged that it normally publishes such announcements approximately 30 days prior to the convening of the selection board, but in this case the message was published only 10 days prior to the convening of the selection board. The late message announcing the selection board shortened the time normally allowed for a candidate to review and make whole their military records.

4. Having found that the applicant's record before the 2003 CWO4 selection board contained an error, the Board agrees with TJAG that the applicant's failure of selection for promotion to CWO4 should be removed from his record. In this regard, the Board finds, as CGPC admitted, that the applicant was prejudiced by not having the special OER in his record when the CWO4 selection board considered it. The Board further finds that it is likely that he would have been selected for promotion to that grade if he had been evaluated based on a record that included a current OER.

5. The Board also finds that the applicant, having been selected for promotion by the 2004 CWO4, selection board should receive the date of rank he would have had, if the calendar year 2003 CWO4 selection board had selected him, with back pay and allowances.

6. Accordingly, the Board finds that the applicant is entitled to relief.

**[ORDER AND SIGNATURES ON NEXT PAGE]**

**ORDER**

The application of \_\_\_\_\_ USCGR, for correction of his military record is granted.

The applicant's failure of selection for promotion to CWO4 before the 2003 CWO4 Reserve selection board shall be removed from his record. The applicant was selected for promotion to CWO4 by the October 25, 2004 selection board. Therefore, his CWO4 date of rank, once promoted, shall be adjusted retroactively to the date he would have had if he had been selected by the 2003 selection board, with back pay and allowances.

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James G. Parks

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Dorothy J. Ulmer

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Darren S. Wall