DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of Coast Guard Record of: **xxxxxxxxxxxxxxxxx** xxxxxxxxxxxxxxxxx	BCMR Docket **No. 2001-073**

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 April 12, 2001, upon the BCMR's receipt of the applicant's complete application for correction of his military record.

This final decision dated February 28, 2002, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx (xxxxxxxxxxxxxxxxxx), asked the Board to correct his record to show that he was advanced to his present grade on August 29, 2000, rather than December 4, 2000, and to grant him back pay and allowances.

SUMMARY OF RECORD AND SUBMISSIONS

On September 28, 1999, the applicant enlisted in the Coast Guard for four years. The applicant was promised training in the ET rating, which he received. On xxxxxxxxxxxxxx, while at ET school, the applicant was taken to non-judicial punishment (NJP) for failure to obey an order by "wrongfully possessing and consuming alcohol while on duty." His punishment included 30 days of restriction, a reduction in rate to pay grade E-2 (SA), and a $400 forfeiture of pay. The reduction in rate and the forfeiture were suspended for six months. He graduated from ET school on August 3, 2000, but was not advanced to ET3 at that time. (Individuals who complete a basic "A" schools are advanced to petty officer third class, if they remain eligible for advancement. See Article 5.C. of the Personnel Manual.) The applicant reported to his new duty station on August 29, 2000. He was subsequently advanced to ET3 on December 4, 2000.

The applicant claimed that the delay in advancing him to E-4 was in error or unjust because no records indicating that his promotion to E-4 had been delayed were sent to his current unit upon his graduation from ET school. He claimed that the necessary officials at his school command approved his advancement to E-4. In support of his allegation, he submitted a copy of the program from his graduation ceremony, which listed him as an ET3. He submitted a certificate showing his appointment as a petty officer third class (ET3). He also submitted a copy of his transfer orders containing this language – member advanced to ET3 on August 3, 2000. The orders were dated xxxxxxxxxxxxx.

The applicant's current commanding officer (CO) wrote a letter, dated April 10, 2001, recommending that the Board grant the applicant's request for a retroactive advancement. He stated that prior to reporting to his current unit, the applicant contacted his supervisor and advised him of the alcohol incident and subsequent NJP. The CO further stated the following:

> The [applicant's] supervisor discussed the situation with me and expressed his desire to closely monitor [the applicant's] performance for the first few months after reporting to the unit.
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> After approximately three months monitoring [the applicant's] job performance, the . . . supervisor recommended him for promotion to petty officer third class. I signed [the applicant's] advancement request on 4 December 2000. Due to his good job performance and can do attitude, I asked the Integrated Support Command . . . about a possible retroactive advancement date. In researching the original alcohol incident and subsequent sequence of events, several discrepancies in his personnel record were found.
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> Upon graduating from ET . . school on 3 August 2000, [the applicant] received his advancement certificate to petty officer third class signed by the commanding officer of [the training command]. A search revealed no message was sent to CGPC-epm stating [the applicant] would not be advanced to ET3. In addition, no counseling was performed and no page 7 entry with an explanation for non advancement was written. [The applicant's] orders to [his new unit] also stated that he was advanced to ET3 on 3 August 2000.

The applicant's headquarters military record shows that the applicant received a mark of not recommended for advancement (resulting from the NJP) on a special performance evaluation dated xxxxxxxxxxxxxx. The applicant's military record also contains an administrative remarks (page 7) entry informing him that he had been given an unsatisfactory mark in conduct and that his eligibility period for a Coast Guard Good Conduct award terminated on xxxxxxxxxxxxxx and began anew on xxxxxxxxxxxxxx. The record does not, however, contain the required page 7 entry advising the applicant that he was not recommended for advancement, as required by the Personnel Manual.

Views of the Coast Guard

On September 14, 2001**,** the Board received an advisory opinion from the Chief counsel of the Coast Guard recommending that the Board deny relief to the applicant.

The Chief Counsel stated that the delay in the applicant's promotion had nothing to do with a failure to transmit documents to his current unit, but resulted from the former CO's recommendation that the applicant not be advanced and the unsatisfactory conduct mark of 2 he received on his performance evaluation dated xxxxxxxxxxxxxx. The Chief Counsel stated that the negative advancement recommendation and the unsatisfactory conduct resulted from the applicant's NJP.

The Chief Counsel stated that Article 5.C.28.c of the Personnel Manual states that "[c]ommanding officers shall not advance a member retroactively, advancements are considered retroactive after 30 days have elapsed since the requested date of advancement." Even if the Board were to find error or injustice, the earliest date that the applicant could be retroactively advanced would be November 4, 2000.

In a memorandum attached to the advisory opinion, the Commander, Coast Guard Personnel Command (CGPC) stated that the CO of the training center where applicant attended ET school, made an administrative error by signing applicant's graduation certificate listing the applicant as an ET3.

Applicant's Response to the Views of the Coast Guard

On September 17, 2001, a copy of the Coast Guard's views was sent to the applicant with an invitation for him to submit a response. He did not submit a response.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10, United States Code. The application was timely.

2. The applicant has failed to show that the Coast Guard committed an error or injustice by not advancing him to E-4 upon his graduating from ET school. He has also failed to establish that the Coast Guard's refusal to make his subsequent advancement to E-4 retroactive to August 29, 2000 to be in error or unjust.

3. According to 5.C.4.b. of the Personnel Manual, in order for an enlisted member to be advanced in rate, he must have the recommendation of the CO. The applicant was not recommended for advancement on a special performance evaluation he received after a NJP for an orders violation. Therefore, he was ineligible for advancement until he received a positive advancement recommendation from his CO. He received that recommendation from his current CO and was advanced on December 4, 2000.

4. Although his current CO recommended that his December 4, 2000, advancement to E-4 be retroactive to August 29, 2000, the date the applicant reported to his current unit, Article 5.C.28.c. prohibits retroactive advancements. Therefore, it would be a violation of the Personnel Manual to make the applicant's advancement retroactive to August 29, 2000.

5. There is no page 7 entry in the applicant's military record documenting the negative advancement recommendation, as required by Article 5.C.4.b. of the Personnel Manual. However, the applicant has not submitted any evidence showing that he was unaware of the

negative advancement recommendation, or that the outcome of his situation would have been different if the page 7 entry had been prepared.

6. The applicant has not shown the existence of any error or injustice in this case that requires corrective action by this Board. Accordingly, relief should be denied.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxx, xxxxxxxxxxx, USCG, for correction of his military record is denied.

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George J. Jordan

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John A. Kern

_____
David M. Wiegand