

**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. 2010-217**

**XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX**

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**FINAL DECISION**

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 Chair docketed the application upon receipt of the applicant's completed application on July 29, 2010, and subsequently prepared the final decision as required by 33 CFR § 52.61(c).

This final decision, dated April 28, 2011, 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 ALLEGATION**

The applicant asked the Board to correct his record by reinstating him on active duty and by authorizing him to receive the Zone B selective reenlistment bonus (SRB) that he was promised on November 2, 2009 reenlistment contract that the Coast Guard voided. The applicant alleged that an administrative error delayed his advancement and led to his receipt of improper counseling and to his discharge from the Coast Guard.

**BACKGROUND**

Prior to enlisting in the Coast Guard, the applicant served in the Marine Corps. He enlisted in the Coast Guard for 4 years on October 11, 2005. On May 9, 2009, his commanding officer (CO) approved August 19, 2009 as the date for the applicant's placement on the supplemental FS2 (food specialist second class) advancement list. To obtain his placement on the FS2 supplemental advancement list, the applicant's command was required to send a message to the Commander, Personnel Service Center, Enlisted Personnel Management Branch, authorizing placement on that list. Members are placed on and advanced from the list in the order in which PSC receives the messages. The applicant's command trusted a FN (pay grade E-3), who was temporarily assigned to the administrative shop, with the responsibility to prepare and submit the message to PSC for the applicant's placement on the supplemental list. The E-3 purportedly did this on August 24, 2009, but on September 10, 2009, the command discovered that the message had not transmitted to PSC because it was not properly prepared. Therefore, another individual

was placed on the list ahead of the applicant and advanced on October 1, 2009, the date the applicant would have been advanced if the message had been properly prepared and transmitted.

The applicant's enlistment was due to expire on October 10, 2009. Therefore, to remain on active duty the applicant had to extend or reenlist with an effective date of October 11, 2009. The applicant requested a three-month extension to allow for time to resolve the advancement issue. While waiting for PSC to approve the short-term extension, the applicant's ID card expired and the office responsible for issuing a new ID card required him to execute a 12 month extension to get one. The applicant alleged that he was told that once the 3-month extension was approved the 12-month extension would be voided. The applicant advanced to FS2 on November 1, 2009 and subsequently executed a 6-year reenlistment contract on November 2, 2009, for which he was promised a Zone B SRB.

According to the advisory opinion, on March 15, 2010, the applicant's command was advised that the November 2, 2009 reenlistment contract and the 3-month extension were invalid and only the 12-month extension was valid. As a result of the 12-month extension contract, the applicant's expiration of enlistment was October 10, 2010. The Coast Guard did not pay the SRB promised on the November 2, 2009 enlistment contract, but sent the applicant permanent change of station (PSC) orders. The applicant refused to obligate service for the orders in March 2010. The applicant was apparently discharged on June 21, 2010, under ALCOAST 173/10 because he failed to obligate service for PCS orders. The message dictating this new policy about time limits for obligating service for PCS orders was issued on April 6, 2010. This message stated in pertinent part:

For members not in a retirement eligible status, or serving on an indefinite enlistment contract, the obligated service requirement for the purposes of PCS orders shall be executed within 5 days of orders issuance. Otherwise, CG PSC – EPM shall be notified via message of enlisted members failing to meet obligated service requirements.

The failure to obligate service may . . . result in the members being separated prior to the expiration of their enlistment by reason of convenience of the government . . .

For members already in receipt of PCS orders during AY10 [assignment year 2010], the voluntary election of obligated service must be completed within fourteen calendar days of the message [time/date group] above [April 6, 2010]. Members failing to obligate service for an AY10 assignment shall reconfirm their decision under this policy. Failure to obligate service shall be communicated via message to CG PSC-EPM.

The applicant changed his mind about refusing the PCS assignment and his command informed PSC on two different occasions, April 19, 2010 and May 3, 2010, that the applicant was willing to accept any worldwide assignment. On May 20, 2010, PSC responded that the applicant should be honorably discharged by June 21, 2010, for miscellaneous/general reasons

because he had refused orders. The applicant was advised by his command to seek correction of his record through the BCMR.

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

On December 17, 2010, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant relief by reinstating the applicant into the Coast Guard and reenlisting him for 6 years on October 1, 2009 for a Zone B SRB under ALCOAST 353/09. The JAG stated that due to the failure of the applicant's command to properly transmit the message placing the applicant's name on the supplemental list as of August 2009 and not discovering the error until September 2009, another candidate was placed on the list and advanced ahead of the applicant causing him to miss advancement in October 2009 and the opportunity to reenlist for an SRB prior to or at the expiration of EOE on October 10, 2009. The JAG also stated that the administrative error led to the applicant's undesired discharge from the Coast Guard. The JAG stated that it is reasonable to believe that had the administrative errors not occurred, the applicant would have been advanced on October 1, 2009 and reenlisted on October 2, 2009, for a Zone B SRB.

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

On January 4, 2011, the Board sent a copy of the views of the Coast Guard to the applicant for a response. The Board did not receive a reply from the applicant.

### **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 section 1552 of title 10 of the United States Code. The application was timely.
2. For the reasons discussed below, the Board agrees with the JAG that the applicant is entitled to be reinstated on active duty, advanced to FS2 retroactively to October 1, 2009, and reenlisted on October 2, 2009 for a Zone B SRB.
3. The applicant's command committed an error against the applicant by failing to ensure that the message placing him on the supplemental advancement list for FS2 was properly drafted and transmitted to PSC in August 2009. The command discovered and corrected the error made by an E-3 in September 2009. However, by that time another individual had been placed on the list and was advanced on October 1, 2009 ahead of the applicant. Members are advanced from the supplemental list in the order in which messages are received. The applicant was not advanced until November 1, 2009, but would have advanced on October 1, 2009, if not for the command's mistake.

4. The delay in the applicant's advancement meant that he could not reenlist prior to October 10, 2009, his EOE, for an SRB because under the SRB ALCOAST in effect at that time, he was required to be in pay grade E-5 (FS2) to be eligible for the SRB. The applicant was not advanced until November 1, 2009 due to the E-3's error. After the applicant advanced to FS2 on November 1, 2009, he reenlisted (contract signed by all necessary parties) for 6 years on November 2, 2009 for the Zone B SRB, but the Coast Guard unilaterally voided the contract and refused to pay the SRB, for reasons not explained in the record. On March 15, 2010, the Coast not only determined that the 6-year enlistment contract was void, but so was the 3-month extension, leaving the 12-month extension as the only valid contract. The Coast Guard has not articulated a basis for unilaterally voiding a duly executed reenlistment contract. Therefore, the Board finds that the Coast Guard committed an error and/or injustice against the applicant by doing so.

5. During all of the confusion about his advancement date and enlistment/extensions, the applicant refused to obligate service for PCS orders. PSC then ordered the applicant discharged under ALCOAST 173/10, for refusing to obligate service for PCS orders, although the applicant subsequently indicated on April 19, 2010 and May 3, 2010, that he would accept orders. The ALCOAST issued on April 6, 2010, stated in pertinent part, "members already failing to [obligate service] for an AY10 assignment shall reconfirm their decision under this policy." The applicant complied with the notice requirement of the ALCOAST for members in his situation. However, PSC refused to accept his change of mind and discharged him on June 21, 2010 stating that his orders had been canceled. The ALCOAST does not mandate discharge for those members who refused orders prior to the issuance of ALCOAST 173/10 but subsequently change their minds upon learning of the ALCOAST. Additionally, there is some question whether ALCOAST 173/10 applied to the applicant's situation since he initially refused his orders prior to the issuance of the ALCOAST. Regardless, the Board finds that the Coast Guard committed an injustice against the applicant by discharging him under ALCOAST 173/10 despite his timely notification that he would accept any orders.

6. To summarize, the Board finds that the errors and injustices discussed above all resulted from the command's error in not ensuring that the applicant's name was placed on the FS2 supplemental list in August 2009, including his wrongful discharge from the Coast Guard. Therefore, the Board agrees with the JAG and finds that the applicant is entitled to relief. As the JAG recommended, the applicant should be reinstated on active duty, advanced to FS2 on October 1, 2009, and reenlisted on October 2, 2009 for a Zone B SRB. The Board agrees with the JAG that if the applicant had been properly advanced on October 1, 2009, he could have signed the 6-year reenlistment contract on October 2, 2009 instead of November 2, 2009, for a Zone B SRB, which would have given him the necessary service for PCS orders.

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

**ORDER**

The application of XXXXXXXXXXXXXXXX, for correction of his military record is granted. His record shall be corrected to show that he was not discharged on June 21, 2010, but has served continuously on active duty in the Coast Guard since his enlistment on October 11, 2005. The applicant shall be reinstated on active duty within 90 days from the date of this final decision.

His record shall be further corrected, once reinstated, to show that he was advanced to FS2 on October 1, 2009, and that he reenlisted for 6 years on October 2, 2009 instead of November 2, 2009, for a Zone B SRB under ALCOAST 353/09. Any extension or reenlistment contracts in the applicant's record that are inconsistent with this order shall be voided and removed, if not removed already.

The Coast Guard shall pay the applicant any back pay and allowances due as a result of this correction.

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Anthony C. DeFelice

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Peter G. Hartman

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Vicki J. Ray