

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2002-004

FINAL DECISION

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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 commenced on November 7, 2001, upon the BCMR's receipt of the applicant's complete application for correction.

This final decision, dated July 18, 2002, is 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 asked the Board to remove an Administrative Remarks form CG 3307 (page 7), dated September 8, xxxx, from his record; to advance him to pay grade E-5 as of March 1, xxxx; and to award him back pay and allowances.

The applicant alleged that in xxxx, he was one of the few and first Coast Guard members stationed at a particular base of another military service. On April 1, xxxx, he was informed that he would have to pay the base directly for his \$785 monthly rent with half due on the 1st and half due on the 15th of each month. Unfortunately, he did not receive any BAH in his pay check until April 15, xxxx, and so started in arrears.

The applicant alleged that when he realized he was in arrears on the rent, he contacted a base housing office representative and was told just to try to get caught up. However, in June xxxx, a new housing representative reported him to a member of his command, a chief warrant officer (CWO). He alleged that the CWO told him to "come up with a plan of action" for repaying the rent. So the next day, he emailed the CWO a "very aggressive plan" for getting caught up by mid August. However, when a family medical emergency arose requiring travel expenses and when their car required repairs, his wife spent some of his basic allowance for housing (BAH), instead of setting it aside for rent, and so he fell even further behind in his rental payments.

On August 24, xxxx, because he had not caught up and was one month behind in paying the rent, the base housing representative again reported him to the CWO, who suggested that he apply for a mutual assistance loan. He alleged that he filled out the loan papers the same day and sent them to the CWO. Several days later, however, the CWO told him that his family income was sufficient to pay the rent and he should not need a loan. After he explained all of the financial obstacles he had faced, his CWO told him to resubmit the loan application. The applicant did so "within hours." However, during the following week, the CWO did not return any of his calls or emails, and he was never in the office when the applicant stopped by.

The applicant alleged that when the CWO finally responded, he again stated that he should not have a problem paying the rent, so the applicant sent him an email reiterating his unusual financial predicament. Moreover, because the applicant was becoming ill and had to take leave, he "made arrangements with Coast Guard legal office to have a power of attorney done up for [his] wife and again emailed [the CWO] and informed him to get in contact with [his] wife and all her contact numbers" for getting the loan. While he was ill, his wife and the base housing representative repeatedly tried to contact the CWO without success. The base was threatening to evict them. Finally, on September 20, xxxx, the housing representative bypassed the CWO and went to another chief warrant officer who was "shocked and enraged" to learn that the CWO had not acted upon the loan application for almost a month. Their loan was approved the same day, and the money was used to pay the rent in full.

The applicant alleged that because of his financial difficulties, the CWO placed a negative administrative entry ("page 7") in his record and he received an unsatisfactory conduct mark. Moreover, his name was removed from the advancement list and so he was not advanced on March 1, xxxx, as he otherwise would have been. He alleged that these were unjust consequences of his financial difficulties. In support of his allegations, the applicant submitted copies of some of his email correspondence. It shows that in response to an inquiry from the applicant on August 24, xxxx, the CWO told him to apply for a Mutual Assistance loan.

SUMMARY OF THE RECORD

The applicant enlisted on May 19, xxxx. He was advanced to E-4 on February 11, xxxx. Following the May xxxx servicewide examination (SWE), he was xxth on the list for advancement to E-5. The list was to expire on June 16, xxxx.

On September 8, xxxx, the CWO entered the following page 7 in the applicant's record:

Unreliable due to failure to pay debts. On or about 15 June xxxx you were counseled regarding your need to catch up on paying for the government quarters you were assigned on [the base]. This counseling took place because of a complaint from the Housing Office at [the base] that you had not paid you bill for quarters. At the time of

the counseling you were told that you would need to set up a plan on how you would become current on your payments. On 19 June xxxx you stated in e-mail to me that you would become current on your account with [the base] by paying \$785 on 3 July, \$392.50 on 17 July, another \$392.50 on 1 August and \$785 on 15 August in order to become current. On or about 31 August I was advised that you would require a loan from Coast Guard Mutual Assistance because you needed to pay [the base] for your quarters in order to avoid eviction. Your failure to become current in your payments for quarters to [the base] was compounded by waiting to request assistance until the need became critical. You further compounded the problem by going on leave for a week despite not having approval on your request for a loan.

On an Enlisted Performance Evaluation Form (EPEF) completed in mid September, the applicant received an “unsatisfactory” conduct mark, and he was not recommended for advancement.¹ A page 7 in his record dated September 30, xxxx, documents the unsatisfactory conduct mark and states that his period of eligibility for a Good Conduct Award had ended. Because of the unsatisfactory conduct mark and his loss of his commanding officer’s (CO’s) recommendation for advancement, the applicant’s name was removed from the advancement list. However, his command apparently failed to counsel him properly about his removal from the list.² If he had remained eligible, he would have been advanced to E-5 on March 1, xxxx.

On May 21, xxxx, the applicant’s CO wrote a letter to the Enlisted Personnel Management Division of the Coast Guard Personnel Command (CGPC), in which he stated that after reviewing the circumstances surrounding the applicant’s indebtedness and the preparation of the page 7s and the EPEF the previous fall, he had determined that the page 7s should be expunged from the record and that the conduct mark should be changed to satisfactory. The CO stated that the EPEF and page 7s had had unintended, excessive adverse consequences for the applicant in that he had been removed from the advancement list and was ineligible to compete in the May xxxx SWE. He asked CGPC to correct the applicant’s records, restore his eligibility for a Good Conduct Award, and, if possible, advance him to E-5.³

On June 15, xxxx, CGPC notified the CO that his request to correct the marks on the EPEF and expunge the page 7 dated September 30, xxxx, was approved, but his request to have the page 7 dated September 8, xxxx, expunged was denied. CGPC did not address the CO’s request to advance the applicant. Because the advancement list

¹ Article 5.C.6.a. of the Personnel Manual provides that a member who receives an “unsatisfactory conduct mark” is ineligible to advance or to compete in the next SWE. Article 5.c.4.e.4. provides that a CO’s recommendation for advancement is “the most important eligibility requirement.”

² Article 5.C.5. of the Personnel Manual requires that a member be advised in a page 7 when he is removed from an advancement list, and he must be counseled on how he can regain his eligibility.

³ The applicant’s CO was the “marking official” for the EPEF. Article 10.B.11.b.1. of the Personnel Manual permits a marking official to change any EPEF mark of a member still attached to the unit if the marking official receives “additional information that applies to the particular evaluation period.”

expired on June 16, xxxx,⁴ and he had not participated in the most recent SWE, the applicant was required to take a "make-up" SWE.

VIEWS OF THE COAST GUARD

On March 19, 2002, the Chief Counsel of the Coast Guard submitted an advisory opinion recommending that the Board grant the applicant's request.

The Chief Counsel based his recommendation on a memorandum from CGPC. In it, CGPC laid out the facts of the case and stated that "[a]fter a thorough review of applicant's record and BCMR application, [the Enlisted Personnel Management Division of CGPC] agreed that the [page 7] dated September 8, xxxx should also be expunged from applicant's record." CGPC further concluded that, because the applicant was clearly recommended for advancement by his CO before the expiration of the advancement list on June 16, xxxx, he should be advanced retroactively to E-5 as of March 1, xxxx, and awarded "all associated back pay and allowances."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 20, 2002, the BCMR sent a copy of the Chief Counsel's advisory opinion to the applicant and invited him to respond within 15 days. On April 8, 2002, the applicant responded, stating that he agreed with the Chief Counsel's recommendation.

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. The letter of the applicant's CO dated May 21, xxxx, indicates that, if he had understood the circumstances surrounding the applicant's rental arrears and the consequences of the marks in the September xxxx EPEF, he would not have withdrawn his recommendation for the applicant's advancement or awarded the applicant an unsatisfactory conduct mark. The record indicates that, if the CO had not withdrawn his recommendation for advancement or awarded the unsatisfactory conduct mark, the applicant would have been advanced to E-5 on March 1, xxxx. Therefore, the Board finds that the applicant has proved by a preponderance of the evidence that he was unintentionally and unjustly denied advancement to E-5 on March 1, xxxx, because of a misunderstanding. The record also indicates that the applicant clearly regained his

⁴ Article 5.C.25.c.3. of the Personnel Manual provides that, once a member loses his CO's recommendation for advancement, he can only be advanced if he regains his CO's recommendation before the advancement list expires. If the list expires, he must take another SWE.

CO's recommendation for advancement before the advancement list expired on June 16, xxxx. Therefore, under Article 5.C.25.c.3. of the Personnel Manual, the Coast Guard erred in failing to advance him off the list.

3. The CO's letter dated May 21, xxxx, indicates that he was convinced that the applicant's debt was not caused by unreliability and that the applicant was not negligent in attempting to resolve the matter. In light of the CO's letter and the recommendation of the Enlisted Personnel Management Division of CGPC, the Board finds that the applicant has proved by a preponderance of the evidence that the page 7 in his record dated September 8, xxxx, is misleading and unjust and should be removed.

4. Accordingly, relief should be granted.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxx, for correction of his military record is granted.

His record shall be corrected to show that he was advanced to xxx/E-5 on March 1, xxxx. The Coast Guard shall pay him all back pay and allowances he may be due as a result of this correction.

In addition, the Administrative Remarks (page 7) dated September 8, xxxx, shall be removed from his record.

