

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

Application for Correction of  
Coast Guard Record of:

BCMR Docket  
No. 2002-145

**FINAL DECISION**

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 July 23, 2002, upon the Board's receipt of the applicant's complete application for correction of his military record.

This final decision, dated April 30, 2003, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant asked the Board to correct his record to show that he was advanced to senior chief [REDACTED]; pay grade E-8) retroactive to September XX, 200X through May XX, 200X, the date immediately preceding his promotion to chief warrant officer - W2 (CWO2), with back pay and allowances. He stated that he was removed unfairly from the September XX, 200X E-8 advancement list when he announced his intention to accept an appointment to chief warrant officer (CWO) effective June 200X.

**EXCERPTS FROM RECORD AND SUBMISSIONS**

The applicant alleged that the Coast Guard's policy of requiring an enlisted member's name to be removed from the enlisted advancement eligibility list if he elects to accept a warrant officer appointment is unfair. He stated that simply announcing an intention to accept a CWO appointment, rather than actually accepting the appointment, causes one's name to be removed from the enlisted advancement list. He asserted that the Coast Guard should give more consideration to the time and effort required of enlisted members who successfully compete in the advancement process and to how its advancement policy affects enlisted members and their families. He stated that by the time he was promoted to CWO in June 2002, he had lost eight months of time in grade as an E-8 and approximately \$3,787.64 in pay. He stated that if had declined the appointment to CWO, he would have been required to wait two years before he could reapply to the CWO selection board.

The applicant stated that he took the May XXXX servicewide examination (SWE) for advancement to [REDACTED] (E-8). He placed number 4 on the [REDACTED] advancement list, but he was not guaranteed advancement because the then cut-off was at number 1.

In January 200X, the applicant applied to the CWO selection board for an appointment. Also, about this time, the cut-off for advancement to [REDACTED] was revised from 1 to 5, which meant that the applicant would have been advanced to E-8, if he was not above the cutoff on the CWO appointment list or if he was above the cutoff on the list but declined the appointment.

On August XX, 200X, the eligibility list for appointment to CWO was released and the applicant ranked number 8 on the list, with the cut-off at number 8. Since he was at or above the cut-off, he was guaranteed an appointment to CWO from this list, if he indicated an intention to accept it. The message releasing the eligibility list for appointment to CWO advised, "those whose names appear at or above the cutoff are not eligible for advancement to chief, senior chief, or master chief petty officer. Their names will be automatically removed from the enlisted advancement eligibility list 60 days after publication unless they have notified [CGPC] that they do not intend to accept an appointment to warrant grade" per Article 5.C.13.D. of the Coast Guard Personnel Manual.

On August XX, 200X, Headquarters released a message authorizing the applicant's advancement to E-8 on September 1, 2001. The message also advised those like the applicant who were above the cutoff on the CWO appointment list to advise Commander, Coast Guard Personnel Command (CGPC) of their decision to either accept advancement or appointment to CWO prior to September 1. The message indicated that a failure to notify CGPC would result in the removal of the member's name from both lists.

The applicant elected the CWO appointment and his name was removed from the enlisted advancement list. He stated that his CWO appointment did not become effective until June 200X, which meant that he was neither advanced to E-8 nor appointed to CWO for a period of eight months. He asserted that if he had been on the August XX, 200X enlisted advancement list rather than the September XX, 200X advancement list, he would have been advanced to E-8 and subsequently appointed to CWO in June 200X.

On January 3, 200X, the applicant wrote the Commandant requesting a waiver of Coast Guard policy, which if approved would have allowed the applicant to be advanced to E-8 while waiting for his June 2002 CWO appointment. In this letter he made assertions similar to those discussed above.

On February 12, 200X, the Commandant disapproved the applicant's request for a waiver. The Commandant wrote that "the policy of requiring individuals to declare their decision to elect or decline promotion to chief warrant officer, while at the same time appearing on the eligibility list for advancement, is necessary to effectively manage

our military workforce." The Commandant further explained to the applicant that requiring members to commit to a career path meets the needs of the service by providing assignment officers a clearer and more up-to-date picture of assignment vacancies and personnel eligible to fill those vacancies. The Commandant further explained that "[b]y permitting a member to advance and remain on the chief warrant officer promotion list, especially in the controlled E-8 and E-9 pay grades, the next person below the cutoff would be prevented from receiving an advancement opportunity they . . . deserve."

### **Views of the Coast Guard**

On November 29, 2002, the Board received an advisory opinion from the Chief Counsel of the Coast Guard, recommending that the Board deny relief. He adopted the comments in a memorandum from the Commander, Coast Guard Personnel Command (CGPC), which was attached as Enclosure (1) to the advisory opinion.

CGPC stated that Article 5.C.13.d. of the Coast Guard Personnel Manual contains the policy with respect to promotion to warrant officer. CGPC stated the following with respect to this provision:

[P]ersonnel selected for promotion to CWO, above the cutoff on the CWO list, are ineligible for advancement to E-7, E-8, and E-9. Their names are automatically removed from the enlisted advancement eligibility list 60 days after the publication of the CWO list, unless an individual concerned has notified CGPC . . . that they do not intend to accept the appointment. If a member is selected to be advanced to E-8 during the 60-day window, the member must make a decision at that time, vice 60 days after publication, regarding their intentions to accept either enlisted advancement or appointment to CWO.

CGPC stated there were no procedural or other errors committed by the Coast Guard in carrying out the policy requiring the applicant to choose between advancement to pay grade E-8 and appointment to CWO. He stated that the Coast Guard properly applied Article 5.C.13.d. of the Personnel Manual in the applicant's case and did not commit an injustice by refusing to grant the applicant a waiver.

The Chief Counsel stated that the Board should give great deference to the personnel management policy explained in the CGPC memorandum and the Commandant's February XX, 200X, reply to the applicant's request for a waiver. He argued that granting the applicant's request would detrimentally affect the Coast Guard's ability to manage its assignment and workforce processes and would ultimately place the member's desires above the needs of the service.

### **Applicant's Reply to the Views of the Coast Guard**

On December 18, 2002, the Board received the applicant's reply to the views of the Coast Guard. He disagreed with them.

The applicant stated that the comment that the Coast Guard's policy "enabl[es] the next person below the E-7, E-8, or E-9 cutoff [on the enlisted advancement list] to receive an advancement opportunity" is false. With respect to this contention, he stated the following:

I was number 4 on the advancement list for E-8. The personnel who were in advancement position 1, 2, and 3 (above me) all received extensions in their current assignments. This left someone who was advanced to E-8 but was filling an E-7 position for a whole year's time period. This decision to do this totally refutes the quote . . . and . . . the Coast Guard uses this as a crutch [to] justify its decisions. If personnel advance to a position . . . that position should be held by [a person of that rank]. This [is] not what happened in my case. If I held my E-8 advancement and turned down promotion to chief warrant officer my assignment officer told me I would complete my full tour at my present unit . . . as an E-8, which by the way was a 3 year assignment, but the assignment I was filling was an E-7. I asked the assignment officer if I would transfer to an E-8 assignment once making E-8; he flat out stated, "No, you will complete a full tour on the Coast Guard cutter [to which I was assigned] . . . It seems to me they, the Coast Guard, apply this policy when it's in their best interest and not in the interest of the military member.

The applicant stated that CGPC's comment that the policy of requiring a member to choose between enlistment advancement or electing a warrant officer appointment permits another member below the cutoff to have an opportunity for advancement, disregards the member who earned the advancement. He pointed out that there are only 22 E-8s in his field in the Coast Guard. He maintained his assertion that the Coast Guard erred in his case and did not act in good faith.

## 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 under section 1552 of title 10, United States Code. The application was timely.
2. The applicant has failed to prove that the Coast Guard committed an error or injustice in his case. Articles 1.D.9.c. and 5.C.13.d. of the Coast Guard Personnel Manual clearly state that a member who is on the enlistment advancement eligibility list and the warrant officer appointment will only be permitted advancement from one or the other, not both. Specifically, Article 5.C.13.d. states that personnel who are at or above the cutoff on the CWO appointment list shall be removed from the enlisted

eligibility advancement list 60 days after publication of the officer eligibility lists, unless an individual concerned has notified Headquarters they do not intend to accept the CWO appointment. The provision further states, "If a member who has been selected is to be advanced to [senior petty officer] during the 60 day window, the member must make a decision at that time, vice 60 days after publication, regarding their intentions to accept either advancement or appointment to CWO." The Coast Guard followed its regulations by requiring the applicant to chose whether to accept a warrant officer appointment or to be advanced to E8 from the enlisted advancement eligibility list.

3. The applicant claims that he has suffered a monetary loss because he was neither advanced to E-8 nor appointed a warrant officer for a period of eight months. The Board finds no injustice in this situation. The regulations were published at the time the applicant took the enlistment SWE and at the time he applied for a warrant officer appointment. He knew or should have known that if he chose appointment as a warrant officer, he probably would not be advanced to E-8. If immediate monetary gain was the applicant's main goal, he could have accepted advancement to E-8 and foregone the warrant officer appointment. The Board concludes that he chose the career path that was most advantageous for him.

4. The Commandant, in his letter to the applicant, explained that service need was the basis for the Coast Guard's policy in requiring members to choose between advancement and appointment to CWO. The Board will not interfere with Coast Guard personnel policy, including the assignment policy, in the absence of an error or injustice; neither of which has been established in this case. The rules discussed herein apply to all not just the applicant.

5. Even if relevant, the applicant has not presented any evidence, and the Board is not aware of any, supporting his allegation that if his name had been on the August XX, 200X advancement list, instead of the September XX, list, he would have been advanced to E-8 and subsequently appointed to CWO in June 200X.

6. Accordingly, the applicant's request should be denied.

**ORDER**

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

