

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-062

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed this case on January 12, 2007, upon receipt of the completed application, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated August 30, 2007, 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 ALLEGATIONS

The applicant, who on September 22, 2005, enlisted in the Coast Guard as a seaman (SN; pay grade E-3), asked the Board to correct his record to show that he enlisted in pay grade E-4 instead of E-3. The applicant stated that because he was discharged from the [REDACTED] in pay grade E-5 on September 7, 2005, he should have been enlisted at least as an E-4 and should not have lost two pay grades. He did not specify in what rating he should have been enlisted, although when he submitted his application he was enrolled in [REDACTED] "A" School to become an [REDACTED]. The applicant noted that his break in service between the [REDACTED] and the Coast Guard was only fifteen days.

In support of his allegation, the applicant submitted a copy of his discharge form DD 214 from the [REDACTED]. The DD 214 shows that he served on active duty in the [REDACTED] from September 8, 1999, through September 7, 2005, and that during his enlistment he completed six weeks of basic training and six weeks of [REDACTED] Leadership School and was discharged as a staff sergeant (pay grade E-5). The DD 214 also shows that the applicant's specialty in the [REDACTED]

SUMMARY OF THE RECORD

On September 22, 2005, fifteen days after being discharged as an E-5 from the [REDACTED], the applicant enlisted for four years of active duty in the Coast Guard. His enlistment contract shows that he enlisted as an E-3. On the same day, he also signed a form CG-3301G, titled

“Annex ‘G’ (SOU-PAY Grade).” Part 3 of this form was initialed by the applicant to show that he understood that he was being enlisted in pay grade E-3 because he had previously attained pay grade E-4 or higher in another military service. The applicant also signed “Annex ‘S’: Statement of Understanding, U.S. Coast Guard Enlistment Bonus, No Guaranteed ‘A’ School,” which shows that the applicant was not promised enrollment in a particular rating’s “A” School or Striker Program (for on the job training).

VIEWS OF THE COAST GUARD

On May 22, 2007, the Judge Advocate General of the Coast Guard recommended that the Board deny the applicant’s request. He adopted the facts and analysis provided in a memorandum on the case prepared by the Coast Guard Personnel Command (CGPC).

CGPC noted that Section 2.D.3.f. of the Coast Guard Recruiting Manual, COMDTINST M1100.2, provides that “[p]rior service personnel from any branch of the U.S. Armed Forces may be eligible to enlist under the ORL [open rate list] if at the time of separation from active duty the prior service applicant: a. Held a rating listed on the ORL or a comparable Military Occupational Specialty (MOS).” CGPC also noted that when the applicant enlisted in September 2005, ALCOAST 518/04 was in effect, and the only [REDACTED] ratings on the ORL were [REDACTED] and [REDACTED] with backgrounds in [REDACTED]

CGPC stated that the applicant’s [REDACTED] [REDACTED]—corresponds to the Coast Guard’s [REDACTED] rating, which was not on the ORL in September 2005. CGPC stated that the applicant’s [REDACTED] specialty “does not relate directly to the [REDACTED] specialty. Thus, there was no provision to enlist the Applicant as a petty officer in the [REDACTED] specialty. The open rate list provides paths for direct petty officer accessions in specialties where there is Service need. There was no urgent Service need for direct accession [REDACTED]s at the time of the applicant’s enlistment in the Coast Guard.” CGPC stated that since the applicant’s specialty was not on the ORL, he was offered enlistment as an E-3 because “other than the direct petty officer program under the open rate list, there is no provision for enlistment at a higher pay grade.”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 23, 2007, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. No response was received.

APPLICABLE REGULATIONS

Section 2.D.3.f., of the Coast Guard Recruiting Manual (COMDTINST M1100.2E) states the following:

The Open Rate List (ORL) is a list of rates for which the Coast Guard has immediate billet openings, and for which prior service personnel having those skills may apply. An applicant enlisting under the ORL may enlist in the rating authorized by the ... Recruiting Command. Commandant (CG-12) maintains and periodically updates the ORL. The ORL in effect on the date of enlistment

is the official authority. In cases where a rating is removed from the ORL during the processing phase, CGRC may consider the applicant's enlistment in that rating.

1. Eligibility. Prior service personnel from any branch of the U.S. Armed Forces may be eligible to enlist under the ORL if at the time of separation from active duty the prior service applicant:

- a. Held the rating listed on the ORL or a comparable Military Occupational Specialty (MOS);
- b. Provides proof that it has been less than five years since separation from active duty; and
- c. Active duty service does not total more than 14 years.

ALCOAST 518/04, which went into effect on December 1, 2004, and was not canceled until January 1, 2006, stated the following:

2. The ORL is a workforce planning tool designed to enlist skilled and qualified prior-service members to fill vacancies in specific ratings, as follows: AET3 (with a background in aircraft communication, navigation, and electrical systems), BM1, BM2, BM3, DC1, DC2, EM1, EM2, ET1, ET2, ET3, FS2, FS3, GM1, GM2, MK1, MK2, MST1, MST2, MST3, OS1, OS2, OS3.

3. All applicant qualifications for enlistment will be determined by the appropriate assignment officer in consultation with the rating force master chief. Final approval or disapproval of an applicant's enlistment via the ORL will be made by CGPC.

4. The ORL recruiting focus is targeted to the above ratings; however, enlistments in ratings other than those listed may be approved on a case-by-case basis.

5. As with other workforce interventions, we expect that bringing petty officers directly into the Coast Guard will have a minimal impact on advancements. In fact, advancements are projected to be near or above historical highs over the next few years.

ALCOAST 645/05, which went into effect on January 1, 2006, included the following ratings on the ORL: AET2 and AET3 (w/ specific background in aircraft communication, navigation, and electrical systems), BM1, BM2, EM1, EM2, ET1, ET2, ET3, FS2, FS3, GM1, MST1, OS1, OS2, OS3.

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 submissions, 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 applicant alleged that he should have been enlisted as a petty officer, in a pay grade higher than E-3, because fifteen days before his enlistment he was discharged from the [REDACTED] in pay grade E-5. The Coast Guard enlists all recruits, including prior service members, to meet the needs of the Service and sets policy accordingly. Therefore, to prove that his enlistment as an E-3 was erroneous or unjust, the applicant must prove that he was entitled to enlistment at a higher pay grade under applicable policies and regulations.

3. When the Coast Guard needs petty officers in a particular skill rating, and it does not expect to gain enough such petty officers through the training and advancement of its own non-rates (seamen recruits, seamen apprentices, and seamen in pay grades E-1, E-2, and E-3), it places the skill rating on the open rate list (ORL) and allows recruiters to enlist petty officers from other military services into petty officer pay grades (E-4 and above) if they have the critical skills. As indicated in paragraph 5 of ALCOAST 518/04, in placing ratings on the ORL and enlisting petty officers at higher pay grades, the Coast Guard tries to be careful not to diminish its own non-rates' opportunities for advancement.

4. Under Section 2.D.3.f., of the Recruiting Manual, the applicant would have been eligible to enlist in a petty officer pay grade (higher than E-3) if he "[h]eld the rating listed on the ORL or a comparable Military Occupational Specialty (MOS)." The applicant's [REDACTED] DD 214 shows that his MOS was [REDACTED] which corresponds to the Coast Guard's [REDACTED] rating. ALCOASTs 518/04 and 645/05 show that the [REDACTED] rating was not on the ORL in effect in either 2005 or 2006. Therefore, the applicant was not eligible or entitled to enlist in a petty officer pay grade in September 2005.

5. The Board notes that under paragraph 4 of ALCOAST 518/04, the Coast Guard acknowledged that "on a case-by-case basis," it might enlist a prior service member in a petty officer rating even if that rating was not on the ORL. The applicant has not proved that he was entitled to or unjustly denied enlistment in a higher pay grade under this provision.

6. The applicant has not proved by a preponderance of the evidence that the Coast Guard committed an error or injustice¹ by enlisting him as a seaman in pay grade E-3 on September 22, 2005, even though he was discharged from the [REDACTED] on September 7, 2005, as an E-5.

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

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

¹ For purposes of the BCMRs under 10 U.S.C. § 1552, "injustice" is "treatment by military authorities that shocks the sense of justice." *Sawyer v. United States*, 18 Cl. Ct. 860, 868 (1989), *rev'd on other grounds*, 930 F.2d 1577 (citing *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976)).

ORDER

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

