

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-073

**XXXXXXXXXX
XXXXXXXXXX**

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 case on January 29, 2007, upon receipt of the completed application, and subsequently prepared the final decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated October 4, 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

The applicant asked the Board to correct his military record by reinstating him on the May 2006 chief [REDACTED] pay grade E-7) active duty advancement list.

APPLICANT'S ALLEGATIONS

The applicant is a [REDACTED] first class (E-6) in the Reserve with over twenty years of Coast Guard service. Prior to his release from active duty (RELAD) on September 14, 2006, he was serving in the active duty Coast Guard. During this period of active duty, he took the service wide examination (SWE) for advancement to [REDACTED]. According to the Coast Guard, he placed number 51 on the active duty advancement list, which was above the cut¹ that was set at number 74.

The applicant alleged that prior to his release from active duty, he had several counseling sessions with his command enlisted advisor and that he would have made a different decision about leaving active duty if he had known that his request to transfer from the active duty [REDACTED] advancement list to the Reserve [REDACTED] advancement list would probably not be approved.

¹ Members above the cut on the advancement are those who are guaranteed advancement and are not required to recomplete for advancement.

The applicant alleged that in January 2006, YNC H of the in Service Transfer Team told him that upon his release from active duty, “your unit will request that you be placed on the Reserve Advancement List based on your [active duty] results – that’s your incentive.”

The applicant further stated that YNC H and SKSC N (Seattle Reserve Career Development Advisor) told him that all he had to do was to have his Reserve Unit send a message to have his name transferred from the active duty advancement list to the Reserve advancement list. He stated there was no mention that such a request would be approved only if there was a severe shortage of E-7s in the Reserve for a particular rate.

VIEWS OF THE COAST GUARD

On June 19, 2007, the Board received the views of the Coast Guard from the Judge Advocate General (JAG), recommending that the Board deny relief to the applicant. The JAG adopted the analysis provided by the Commander, Coast Guard Personnel Command (CGPC) as the advisory opinion.

CGPC stated that the cutoff for the active duty May 2006 [REDACTED] advancement list was 74 and the applicant was ranked as number 51 on that list. CGPC noted that the applicant was considering whether to RELAD as early as January 2006, which was approximately 3 months before he took the May 2006 active duty SWE. CGPC stated that in February 2006, the applicant’s supervisor notified the [REDACTED] detailer that the applicant planned to leave active duty in September 2006.

CGPC stated that only 19 candidates were advanced from the 2006 [REDACTED] Reserve eligibility list, with over 30 candidates still on the list when it expired. Therefore, the Reserve [REDACTED] rate was not viewed as critical at that time. CGPC further stated that only 4 candidates had been advanced from the 2007 Reserve [REDACTED] eligibility list and that over 50 were still on the list waiting for advancement.

CGPC stated that Article 7.C.7.b. of the Reserve Policy Manual governs the advancement of RELADS. This provision states that “Recommendations for advancement to pay grades E-7, E-8, or E-9 under this section will not normally be approved unless there is a severe shortage in the requested rate in the Coast Guard Reserve.” CGPC further stated the following:

With 12 years of affiliation, and seven as an E-6, applicant is not new to the Coast Guard Reserve. As an E-6 and a seasoned reservist, he should be aware of the policies that govern the Reserve component. The policy is explicit in the justification needed to advance RELADS to pay grade E-7. Additionally, applicant clearly states in the application that in an email to [District 13 command master chief] that he left active duty for geographical stability, not for [a] chance to advance off of the Reserve eligibility list.

The policy is clear on this matter and applicant has suffered no injustice. In fact, it would be an injustice to the members currently on the Reserve [REDACTED] eligibility list to now give the applicant exceptional access to that list.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 23, 2007, the Board received the applicant's response to the views of the Coast Guard. He disagreed with them. The applicant also stated the following:

The [advisory] opinion states that "an E-6 and a seasoned reservist" should be aware of the policies that govern the reserve component. As a seasoned reservist Machinist Mate, I consulted YNC [H], a seasoned active duty E-7 who was tasked with assisting RELADS with transition paperwork and assignment in the SELRES. If the [BCMR] expects that I should have been aware of the policies that govern the reserve component, it stands to reason that I expected someone of YNC [H's] position and Job Description to be a credible source on the policies governing the reserve component.

YN [H] . . . referred me to SKSC [N], the Reserve Career development Advisor at ISC Seattle for additional information. SKSC [N] not only agreed with YNC [H's] assessment and advice, he also provided me with specific instructions on how to have PSC Topeka reconstruct my final multiple so that my AD SWE could then be transferred to the Reserve list.

The applicant submitted an undated, unsigned letter from SKSC N informing the applicant that his Reserve unit is responsible for drafting and sending the message to PSC (Personnel Support Center) and CGPC for a transfer, and that PSC would reconstruct the applicant's final SWE multiple. SKSC N told the applicant that the [REDACTED] cut for 2006 was 0 (no guarantees for advancement) and the cut for 2005 was 3. According to the applicant, SKSC N told him that usually an active duty final multiple transfers over quite high to the Reserve SWE. SKSC N also told the applicant to "[t]ake a look at the RSWE lists off the advancement link of the PSC homepage . . . the [REDACTED] cut for 2006 is zero & was three for 2005."

The applicant stated that contrary to the advisory opinion, geographical stability was not his main concern, but rather his main concern was advancing to [REDACTED]. He argued that he used prudent judgment in consulting with senior staff personnel at the Headquarters and District levels, and they were in agreement that not only would his active duty SWE transfer but that such a transfer would likely increase the likelihood of his making [REDACTED]. He asserted that the incomplete and inaccurate advice provided to him from official Coast Guard sources was the basis for his ultimate decision to RELAD.

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 has not proven that he was provided inaccurate and/or incomplete advice about transferring from the active duty [REDACTED] advancement list to the Reserve advancement list if he chose to RELAD. He presented evidence that YNC H told him that his Reserve unit would request that his name be placed on the Reserve Advancement list once he was released from active duty into the Reserve. He further presented evidence that SKSC N told him that his unit had to submit a request to PSC and CGPC, that PSC would reconstruct his final SWE multiple, and that active duty final multiples usually transfer over quite high on the Reserve SWE. However, there is no evidence that either of these individuals promised or guaranteed to the applicant that his request to transfer from the active duty [REDACTED] advancement list to the Reserve [REDACTED] advancement list would be approved by CGPC. In contrast to the applicant's argument, the evidence is that each of these individuals told the applicant that his Reserve unit had to request the transfer on his behalf and that PSC would be required to reconstruct his active duty SWE multiple; however he has not shown that either individual promised him that CGPC would approve his request to transfer to the Reserve advancement list. Subsequent to his RELAD, the applicant's Reserve unit requested his transfer to the Reserve advancement list, but CGPC disapproved it because the Reserve did not have a shortage of [REDACTED]s at that time. It appears to the Board that the applicant read more into the comments and advice provided by YNC H and SKSC N than was actually stated.

3. Moreover, SKSC N told the applicant that the cut for the 2006 Reserve advancement list was 0 which meant that no E-7 vacancies had been expected for that year. SKSC N also told the applicant that the cut for the 2005 advancement list had been 3, which meant that only 3 [REDACTED]s were guaranteed advancement to [REDACTED] from that list. The applicant was on notice, based on the historical figures provided by SKSC N that few, if any, vacancies had been projected within the Reserve for [REDACTED]. The applicant having been advanced from [REDACTED] through [REDACTED] should have known that with so few [REDACTED] vacancies predicted for the two earlier advancement cycles, it was questionable whether he would have been advanced, even if he had been allowed to transfer to a Reserve advancement list. Therefore, the Board finds that the applicant had sufficient information to make an informed decision whether it was in his best interest to RELAD.

4. CGPC's disapproval of the applicant's request was in accordance with Article 7.C.7.b. of the Reserve Policy Manual, which states that recommendations for advancement to E-7 for RELADs will not normally be approved unless there is a severe shortage in the requested rate in the Reserve. As the advisory opinion states, there was no shortage of [REDACTED] in the Reserve at the pertinent time.

5. Therefore, the applicant has failed to prove that the Coast Guard provided him with incomplete or inaccurate advice about RELADS transferring from the active duty advancement list to the Reserve advancement list. The Coast Guard Reserve did not have a shortage [REDACTED] at the time of the applicant's RELAD, and therefore acted in accordance with the Reserve Policy Manual in disapproving his request to transfer from the active duty advancement list to the Reserve advancement list.

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

ORDER

The application of XXXXXXXXXXX, XXXXXXX, USCGR, for correction of his military record is denied.

