

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-003


(former)

FINAL DECISION



This proceeding was conducted under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case upon receiving the completed application on October 7, 2015, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 9, 2016, 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 was honorably discharged when his enlistment expired on August 21, 2015, asked the Board to void his discharge, reinstate him on active duty, and award him back pay and allowances. The applicant alleged that he was improperly discharged because his request for a waiver of the reenlistment criteria was denied for arbitrary reasons and because he was denied a reenlistment board, which he was entitled to before he was separated. The applicant noted that after being denied reenlistment, he applied for a waiver and then applied to the Personnel Records Review Board (PRRB) and so has exhausted all of his administrative remedies.

The applicant stated that he was recommended for reenlistment by the Officer in Charge (OIC) of his unit but was deemed ineligible because he has received two unsatisfactory conduct marks on his Enlisted Employee Reviews (EERs) during his career. The applicant alleged that he was deemed ineligible to reenlist only because of a faulty interpretation of new reenlistment criteria issued in ALCOAST 093/14.

The applicant stated that his request for a waiver of the reenlistment criteria was favorably endorsed by his OIC and by the  assignment detailer, but despite these endorsements, his overall good EERs, and the "isolated nature of the minor conduct that led to the unsatisfactory marks, the waiver was arbitrarily denied" based on a lack of "service need." The applicant noted that the PRRB found that the Coast Guard had a manning strength of 98% for  in February and April 2015. However, thereafter, the applicant alleged, there was "a high attri-

tion/low retention rate” for ██████ which has caused the ██████ rating to be deemed a “critical rate” eligible for a reenlistment bonus. The applicant argued that it is contradictory for the Coast Guard to reject his waiver request based on “no service need” but then offer a reenlistment bonus based on the need to retain ██████. The applicant argued that the reenlistment bonus offering shows that there was in fact a service need and so the decision not to grant him a waiver was arbitrary and unjust.

The applicant stated that when he appealed the denial of his waiver request to the PRRB, that Board found that relief should be granted because he was entitled to a reenlistment board, and the PRRB’s decision was approved. However, at that point, the Coast Guard issued a new policy in ALCOAST 274/15, amending the new reenlistment criteria under ALCOAST 093/14, and he was again denied reenlistment.

The applicant further argued that his right to a reenlistment board “vested” when the PRRB decided in his favor on June 18, 2015. The applicant noted that paragraph 10 of the Correcting Military Records instructions, COMDTINST 1070.1, states that the Director of Personnel Management (CG-12) will normally take final action. He argued that the Coast Guard Personnel Service Center could not then remove his right to a reenlistment board simply by issuing an amended policy in ALCOAST 274/15 after the PRRB had issued its decision. He stated that he ██████ advised that the issuance of ALCOAST 274/15 had “nullified” the PRRB’s decision in his case, which he argued was improper. The applicant argued that the PRRB serves no purpose if its decisions can be nullified by the issuance of an amended policy.

The applicant argued that only the policy under ALCOAST 093/14 applies to his case because he was counseled about his ineligibility to reenlist after ALCOAST 093/14 was issued but before ALCOAST 274/15 was issued. The applicant noted that under Article 1.B.4.b. of the Military Separations Manual, commands are required to advise members about whether they are eligible to reenlist about six months before their enlistments end so that the member “has an understanding of his rights, can make an informed choice, and plan for the future.” The applicant stated that when he was counseled, only ALCOAST 093/14 had been issued, and he was advised that he was eligible to reenlist.

The applicant also argued that the language in ALCOAST 093/14 makes it clear that he had a right to a reenlistment board because he had more than eight years of service. By denying him a reenlistment board, the applicant argued, the Coast Guard denied him “the opportunity to fairly and impartially adjudicate when he is suitable for future service, as required by established policy, which was only changed days before the applicant’s contract expired.”

The applicant argued that the fact that ALCOAST 274/15 had already been issued by the date of his discharge is not grounds for denying relief in ██████ case. If so, he argued—if the policy can be changed on the eve of a member’s expiration of enlistment—the Coast Guard could never comply with its own goal of counseling members about their reenlistment eligibility six months before their enlistments expire. He argued that the only way to reasonably interpret and reconcile Article 1.B.4. and 1.B.5. of the Military Separations Manual is to determine that the policy in effect at the time of the member’s counseling is the policy that applies ██████. Under that policy, he argued, he should have been advised that he would be denied

reenlistment and that he had a right to appear before a reenlistment board, but instead he was improperly told that he did not have a right to a reenlistment board.

The applicant argued that he has suffered a manifest injustice and that relief is warranted because the PRRB found in June 2015 that he was entitled to a reenlistment board, but he was never allowed to argue his case before one. Instead, the Coast Guard issued ALCOAST 274/15 and denied him a reenlistment board. The applicant argued that the “Coast Guard should not be able to change the rules mid-game – especially when that rule change is specifically designed to strip a military member with an excellent record the right to a fair and impartial hearing on whether he should continue to be employed.

The applicant also argued that if the Board finds that ALCOAST 274/15 did apply to his case, the Board’s decision would punish him for applying to the PRRB. The applicant claimed that the only reason the Coast Guard issued ALCOAST 274/15 was because he brought the issue to PSC’s attention by applying to the PRRB.

In support of his claims, the applicant submitted many incorporated, which are included in the summary of the record below.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on October 24, 2006. A summary of his EER marks shows that he received good EER marks from 2007 through 2014 except for two EERs dated October 8, 2008, and October 31, 2012. On these two EERs, he received unsatisfactory conduct marks and was not recommended for advancement. The October 8, 2008, EER documents nonjudicial punishment (NJP) and an alcohol incident that the applicant received at mast for waking up a subordinate female seaman after he had been drinking, asking her to come to his room, and asking her if she was wearing clothes under her blanket. He then also violated an order not to speak to her by confronting her and telling her she was “hot.” He had also made repeated sexual advances to another female seaman while under the influence of alcohol. The unsatisfactory conduct mark on the October 31, 2012, EER was assigned due to his failure to meet the standards of the Coast Guard’s sexual harassment policy.

ALCOAST 093/14, issued on March 7, 2014, states the following:

SUBJ: IMPLEMENTATION OF ADDITIONAL REENLISTMENT CRITERIA

A. Enlisted Accessions, Evaluations, and Advancements, COMDTINST M1000.2 (series)

B. Military Separations, COMDTINST M1000.4 (series)

1. To ensure the Coast Guard retains a disciplined, high-performing workforce, reenlistments and/or extensions should only be offered to those members (active and reserve) who maintain high professional standards and adhere to the Coast Guards core values. Therefore, to be eligible for reenlistment or extension of (re)enlistment, a member must meet two basic criteria: receive a positive recommendation from their commanding officer and meet the eligibility criteria listed in REF A and paragraph 2 below.

2. In addition to the eligibility requirements listed in Articles 1.A.5. and 1.A.7. of REF A, all active and reserve members, regardless of duty status, must meet the following eligibility requirements during their current period of enlistment (to include any extensions):

- a. Achieve a minimum factor average of 3.5 on their enlisted performance evaluations,
- b. Have no more than one unsatisfactory conduct mark,

- c. Have no special or general courts-martial conviction, ...
3. The commanding officers recommendation remains an integral part of the reenlistment process and provides commands an opportunity to clearly articulate a member's suitability for continued service. ...
4. Members must meet all eligibility requirements to reenlist/extend. Members who meet the eligibility criteria but are not recommended for reenlistment by their commanding officer who have less than eight years total active and/or reserve military service may submit an appeal to CG PSC-EPM-1 for active duty members or CG PSC-RPM-1 for reserve members. Members who have eight or more years of total active and/or reserve military service are entitled to a reenlistment board. Additionally, members who do not meet the eligibility criteria, but are recommended for reenlistment/extension by their commanding officer, may also submit an appeal to CG PSC-EPM-1 for active duty members or CG PSC-RPM-1 for reserve members, regardless of total years of service.
5. These updated reenlistment eligibility criteria are effective 17 March 2014. Article 1.B.4.b. of REF B requires commands to conduct a pre-discharge interview approximately six months prior to a member's expiration of enlistment (EOE) to notify a member whether they are eligible to reenlist. To accommodate this provision, members whose EOE is within six months of the 17 March 2014 effective date (17 September 2014) will not be screened against these updated reenlistment criteria. Members whose EOE is after 17 September 2014 who desire to reenlist or extend their enlistment must be screened against these updated reenlistment criteria within the timeframe of Article 1.B.4.b. of REF B. Commanding officers should coordinate with their servicing personnel office for electronic and paper records reviews prior to effecting enlistments/ extensions. The updated reenlistment eligibility criteria shall not be used as a tool to separate members that would otherwise be eligible under Article 1.B. of REF B.
6. Members not eligible for reenlistment/extension of enlistment will be discharged from the active or reserve component, as applicable, upon the expiration of their enlistment in accordance with the provisions of Article 1.B.11. of REF B with an RE-3 reenlistment code.

The associated FAQs included the following questions and answers:

7. If I am not recommended for reenlistment/extension, what options do I have?

Members who meet the reenlistment eligibility criteria but are not recommended for reenlistment by their commanding officers may submit an appeal to CG PSC-EPM-1 or CG-PSC-RPM-1, as applicable, if they have **less** than eight years total active and/or reserve military service.

Members who meet the reenlistment eligibility criteria but are not recommended for reenlistment by their commanding officers who have **more** than eight years total active and/or reserve military service are entitled to a reenlistment board ...

8. If I am not eligible for reenlistment/extension, what options do I have?

Members who are not eligible for reenlistment/extension but are recommended by their commanding officer for reenlistment may submit an appeal to CG PSC-EPM-1 or CG-PSC-RPM-1, as applicable.

On his EER dated October 31, 2014, the applicant received all high marks of 5, 6, and 7 (on a scale of 1 to 7), and was recommended for advancement. The marks of 7 were for "Stamina," because he had "performed above and beyond over the course of this marking period"; "Responsibility" and "Loyalty" because after an incident under the unit's prior Assistant Engineering Petty Officer, the applicant had stepped up to fill the role and become the "go to guy" for

the Engineering Department [REDACTED] "Health and Well-Being [REDACTED]" because of his leadership in being physically active and inspiring others.

A CG-3307 ("Page 7 [REDACTED]ed by the applicant on January 7, 2015, shows that he was counseled about reenlisting more than six months before his enlistment was due to end on July 23, 2015; that his OIC, a chief petty officer, was recommending him for reenlistment; and that the applicant's intention was to reenlist.

On a Page 7 dated March 6, 2015, the applicant was advised that he was ineligible to reenlist because of his two unsatisfactory conduct marks on his EERs during his most recent enlistment. The Page 7 states that because the applicant did not meeting the eligibility criteria but had been recommended for advancement by his OIC, he was entitled to request a waiver of the eligibility criteria within 15 days of the notification.

The applicant's appeal of the determination of his ineligibility for reenlistment under ALCOAST 093/14 is dated March 6, 2015. In his appeal, he stated that he had no excuse or justification for the misconduct that led to the unsatisfactory conduct marks, which he received for an alcohol incident and sexual harassment. The applicant noted that his EER marks had greatly improved since 2012, that he hoped to take the servicewide examination for advancement to [REDACTED] in November, and that he had been "fleeted up" to the position of Assistant Engineering Petty Officer. He noted his qualifications and volunteer worked and respectfully asked to be able to continue his career.

In his endorsement of the applicant's appeal, the OIC noted that the applicant had pending transfer orders for an overseas assignment and that his performance at the boat station had been exceptional. The OIC stated that the applicant had learned from past mistakes and "used them to grow into a well-respected leader amongst his peers." A commander at the Sector also endorsed the applicant's appeal of his ineligibility to reenlist. He stated that his performance at the boat station had shown that he was a great asset to the Coast Guard who would "continue to demonstrate his ever increasing proficiency as a technician and as a leader."

PSC's response to the applicant's appeal stated that his request had been carefully reviewed but was "disapproved due to no service need" and advised the applicant that he would be honorably discharged when his enlistment ended on July 23, 2015.

In his application to the PRRB, dated May 21, 2015, the applicant requested consideration by a reenlistment board. He noted that he had been found ineligible to reenlist under ALCOAST 093/14 because of his two unsatisfactory conduct marks. He argued that there was in fact a "service need" for him because the [REDACTED] Rating Force Notes had forecast a significant shortage of [REDACTED] which would have to be filled with [REDACTED]. In addition, he argued that he was entitled to a reenlistment board because he had more than eight years of service.

On June 18, 2015, the PRRB issued a decision noting that the applicant's appeal of his ineligibility had been denied due to "no service need" and that the "Current Strength of the Enlisted Workforce reports between February and April 2015 showed E-4 [REDACTED] was at least 105% service strength and E-5 Machinery Technician was at 98% service strength."

The PRRB concluded that the applicant “failed to substantiate that any error or injustice with respect to the denial of his waiver for reenlistment” but that he was entitled to a reenlistment board because a sentence in ALCOAST 093/14 states, “Members who have eight or more years of total active and/or reserve military service are entitled to a reenlistment board.” The PRRB also recommended that the ALCOAST “clarify the current policy” because ALCOAST 093/14 provided a link to FAQs with information that conflicted with the sentence stating that “Members who have eight or more years of total active and/or reserve military service are entitled to a reenlistment board.” The PRRB’s recommendations were approved by the Director of Civilian Human Resources, Diversity and Leadership the same day.

On July 6, 2015, before the applicant’s discharge but after the PRRB decision, the Coast Guard released ALCOAST 274/15, which stated that ALCOAST 093/14 “remains valid” but added the following:

SUBJ: AMENDMENT TO ALCOAST 093/14 REENLISTMENT CRITERIA

A. COMDT COGARD WASHINGTON DC 072054Z MAR 14/ALCOAST 093/14

B. Enlisted Accessions, Evaluations, and Advancements, COMDTINST M1000.2 (series)

1. REF A remains valid.

2. Effective immediately, paragraph 4 of REF A is amended to include the following: Members who do not meet the reenlistment eligibility criteria are not entitled to a reenlistment board, even if they have eight or more years of total active and/or reserve military service.

3. Members meeting criteria in REF A, but who are not recommended for reenlistment, and who have eight or more years’ total active and/or reserve military service, are entitled to a reenlistment board.

4. Final authority regarding the decision to approve reenlistments for members who do not meet the eligibility criteria in REF A rests with CG PSC (epm) or CG PSC (rpm). Commands may recommend members for reenlistment even if they do not meet the criteria in REF A. Specifically, commands should identify how the member has overcome the circumstances that made them ineligible. CG PSC reviews every case in which a member fails to meet criteria in REF A while considering the commands recommendation for reenlistment.

On July 7, 2015, PSC sent the applicant a memorandum stating that the PRRB had granted the applicant’s request for a reenlistment board based on a determination that he was entitled to one under the Military Separations Manual and ALCOAST 093/14. PSC stated that ALCOAST 274/15, issued on July 6, 2015, “promulgated an update to [ALCOAST 093/14] that affirmatively stated, ‘Members who do not meet the reenlistment eligibility criteria are not entitled to a reenlistment board, even if they have eight or more years of total active and/or reserve military service.’” PSC stated that because ALCOAST 274/15 “nullified the decision of the PRRB, your separation orders will not be cancelled. However, due to the delay in processing your separation, you may request to delay your separation by up to thirty (#) days.”

The applicant’s DD 214 shows that he was honorably discharged on August 21, 2015, based on his “completion of required active service.”

On September 2, 2015, the Coast Guard issued ALCOAST 346/15 announcing bonuses for critical rates in which potential personnel shortages had been foreseen. The ALCOAST authorizes a bonus to new recruits who agree to attend [REDACTED] “A” School to join that rating; to

non-rated members (E-1 through E-3) who agree to complete [REDACTED] “A” School to join that rating; and to current [REDACTED] in Zone A (less than six years of service). ALCOAST 346/15 did not authorize a bonus for [REDACTED] in Zone B (more than six years of service), but it offered Zone B bonuses for members in the EM rating and for FS2s and OS2s.

VIEWS OF THE COAST GUARD

On February 25, 2016, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief and adopted the findings and analysis provided in a memorandum prepared by PSC.

PSC stated that the applicant was ineligible for reenlistment under ALCOAST 093/14 because of his two unsatisfactory conduct marks. He received the first such mark in 2008 due to an alcohol incident after the applicant violated an order by making sexual advances to other members on multiple occasions, including on occasions when he was intoxicated. He received the second unsatisfactory conduct mark for failing to meet the standards of the Coast Guard’s sexual harassment policy in 2012. PSC stated that the applicant was advised of his ineligibility on the Page 7 dated March 6, 2015.

PSC stated that the applicant was not entitled to a reenlistment board under ALCOAST 093/14. PSC argued that under that ALCOAST, only members who were eligible to reenlist and had more than eight years of service but who were not recommended for advancement by their COs were entitled to a reenlistment board. PSC stated that under ALCOAST 093/14, members who did not meet the eligibility criteria were only entitled to appeal—seeking a waiver of the criteria—and were discharged if they were not granted a waiver. PSC stated that this interpretation of ALCOAST 093/14, which it was implementing, was apparent in the FAQs, which provided that the only option for members ineligible to reenlist was to submit an appeal to PSC.

PSC noted that the BCMR has already found in its decision in BCMR Docket No. 2015-002,¹ a copy of which it attached, that under ALCOAST 093/14, enlisted members were not entitled to a reenlistment board if they did not meet the reenlistment eligibility criteria. PSC stated that ALCOAST 274/15 was released to clarify the language in the ALCOAST 093/14 because

¹ In 2015-002, the applicant alleged that he was being unjustly discharged under the new policy in ALCOAST 093/14 and asked the Board to remove an NJP from his record because it would prevent him from being reenlisted. In the Final Decision for 2015-002, the Board quoted the second and third sentences of paragraph 4 of ALCOAST 093/14 (see page 4 above) and found that read alone, the latter sentence “appears to give the applicant a right to a reenlistment board because he had more than eight years of active duty. Read in conjunction, however, these two sentences appear to mean that members with less than eight years who are eligible but not recommended to reenlist may appeal, while such members with more than eight years are entitled to a reenlistment board.” The Board also noted that according to a PSC staff judge advocate’s email dated October 1, 2014, PSC interpreted paragraph 4 of its ALCOAST 093/14 as follows:

- 1) Eligible & recommended = reenlist
- 2) Eligible & not recommended = request a waiver/appeal from epm-1 (less than 8 years’ service) or reenlistment board (over 8 years’ service)
- 3) Not eligible & recommended = request a waiver/appeal from epm-1 regardless of years in service – no reenlistment board
- 4) Not eligible & not recommended = no reenlistment, no waiver/appeal

the PRRB decision showed [REDACTED] required clarification [REDACTED] SC stated that it issued ALCOAST 274/15 to clarify the policy in ALCOAST 093/14 by amending paragraph 4 to expressly state that “members who do not meet the reenlistment eligibility criteria are not entitled to a reenlistment board, even if they have [REDACTED] or more years of total ... military service.” PSC stated that there “was no basis to allow the member a reenlistment board following the amendment to the policy” despite the PRRB’s interpretation of the ALCOAST 093/14. PSC noted that the policy enacted in ALCOAST 093/14, as clarified in ALCOAST 274/15, was incorporated in the next version of the Military Separations Manual issued in December 2015.

PSC noted that the applicant did not dispute the fact that he was ineligible to reenlist under ALCOAST 093/14. PSC argued that his appeal requesting a waiver of the reenlistment eligibility criteria was properly denied due to “no service need” based upon projected force strengths. Therefore, PSC recommended that the Board deny relief because the applicant did not meet the criteria for reenlisting due to his two unsatisfactory conduct marks.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 6, 2016, the applicant responded to the views of the Coast Guard. He stated that he is entitled to relief because the Coast Guard’s advisory opinion is unresponsive, unclear, and [REDACTED]rsuasive. The applicant repeated his arguments that the denial of his request for a waiver of the reenlistment criteria was arbitrary because there was a service need; that he was entitled to a reenlistment board as determined by the PRRB; that ALCOAST 274/15 amended rather than clarified the policy to deny members in the applicant’s circumstances a reenlistment board after the applicant’s right to a reenlistment board had vested because of the PRRB decision; that only the policy in ALCOAST 093/14 applied because he was counseled about his ineligibility to reenlist before ALCOAST 274/15 was issued; and that his discharge without a hearing before a reenlistment board is a manifest injustice. The applicant also noted that in 2015-002, the BCMR dismissed the allegation that that applicant had been unjustly discharged without prejudice because that applicant had not provided arguments or information concerning ALCOAST 093/14—the very arguments and information that the applicant has submitted in this case.

APPLICABLE REGULATIONS

Article 1.A.5. of COMDTINST M1000.2, the Enlisted Manual, lists the requirements for eligibility for reenlistment in the regular Coast Guard, including having certain minimum average performance evaluation marks, being physically qualified, and being recommended for reenlistment by one’s CO. ALCOAST 093/14 added new reenlistment criteria (see pages 3 and 4 above).

Article [REDACTED].4.b. of COMDTINST M1000.4, the [REDACTED]y Separations Manual, states that a command shall advise each member of his or her eligibility to reenlist approximately six months before his or her enlistment expires to allow enough time to process the member for separation or reenlistment, but “[u]nder Article 1.B.5.a. of this Manual, the commanding officer may conduct this interview in less than six months’ time before the member’s enlistment expires.” Article 1.B.5.a. states that the procedures in Article 1.B.5. apply at the time of th [REDACTED]

interview conducted under Article 1.B.4.b. or “any time after a commanding officer determines an enlisted member is not eligible to reenlist.”

Article 1.B.5.c. states that COs must notify members with eight or more years of service of their ineligibility to reenlist on a Page 7 stating the basis for the determination, the right to consult counsel, and the right to appear in person before a reenlistment board represented by counsel. Article 1.B.5.i. states that the Final Reviewing Authority for a reenlistment board is Commander, PSC.

ALCOAST 093/14, quoted on page 3 above, implemented additional reenlistment criteria to go into effect as of September 17, 2014, including the provision making members with two or more unsatisfactory conduct marks ineligible to reenlist. It also states the following:

4. Members must meet all eligibility requirements to reenlist/extend. Members who meet the eligibility criteria but are not recommended for reenlistment by their commanding officer who have less than eight years total active and/or reserve military service may submit an appeal to CG PSC-EPM-1 for active duty members or CG PSC-RPM-1 for reserve members. Members who have eight or more years of total active and/or reserve military service are entitled to a reenlistment board. Additionally, members who do not meet the eligibility criteria, but are recommended for reenlistment/extension by their commanding officer, may also submit an appeal to CG PSC-EPM-1 for active duty members or CG PSC-RPM-1 for reserve members, regardless of total years of service.

On July 6, 2015, before the applicant’s discharge but after he was told by the PRRB that he was entitled to a reenlistment board, the Coast Guard released ALCOAST 274/15, which stated that ALCOAST 093/14 “remains valid” but added the following:

SUBJ: AMENDMENT TO ALCOAST 093/14 REENLISTMENT CRITERIA

A. COMDT COGARD WASHINGTON DC 072054Z MAR 14/ALCOAST 093/14

B. Enlisted Accessions, Evaluations, and Advancements, COMDTINST M1000.2 (series)

1. REF A remains valid.

2. Effective immediately, paragraph 4 of REF A is amended to include the following: Members who do not meet the reenlistment eligibility criteria are not entitled to a reenlistment board, even if they have eight or more years of total active and/or reserve military service.

3. Members meeting criteria in REF A, but who are not recommended for reenlistment, and who have eight or more years’ total active and/or reserve military service, are entitled to a reenlistment board.

4. Final authority regarding the decision to approve reenlistments for members who do not meet the eligibility criteria in REF A rests with CG PSC (epm) or CG PSC (rpm). Commands may recommend members for reenlistment even if they do not meet the criteria in REF A. Specifically, commands should identify how the member has overcome the circumstances that made them ineligible. CG PSC reviews every case in which a member fails to meet criteria in REF A while considering the commands recommendation for reenlistment.

In December 2015, the Coast Guard reissued the Enlisted Manual as COMDTINST M1000.2A. Article 1.A.5. now incorporates the provisions of the ALCOASTs as follows:

The Coast Guard offers reenlistments and/or extensions only to those members who consistently demonstrate the capability and willingness to maintain high professional standards, moral character, and an adherence to the Coast Guard’s core values. To be eligible for reenlistment, or extension of enlistment, a member must receive a positive recommendation from their commanding officer in accordance with Article 1.A.5.a. of this Manual, and meet the eligibility criteria listed in

Article 1.A.5.b. of this Manual. In addition, SELRES members, and IRR members on active duty, or approved to drill for points, must also meet the eligibility criteria listed in Article 1.A.5.c. of this Manual. Members who have eight or more years of total active duty and/or reserve military service that meet the eligibility criteria, but are not recommended for reenlistment by their commanding officer, are entitled to a reenlistment board, as outlined in reference (c), Military Separations, COMDTINST M1000.4 (series). However, members who do not meet the eligibility criteria are not entitled to a reenlistment board, even if they have eight or more years of total active and/or reserve military service. The procedures in Article 1.A.5.d of this Manual shall be followed for members who do not meet the eligibility criteria.

Under Paragraph 7.c.(3)(b) of COMDTINST 1070.1, after reviewing applications for correction, the PRRB “recommends to the Director of Personnel Management, or the Director of Reserve and Leadership, action to be taken on applications for correction of error.” Under paragraph 7.c.(10), “[i]n most cases, the Director of Personnel Management will take final action on recommendations of the PRRB involving active duty members and the Director of Reserve and Leadership will take final action on records concerning reservists. The final action authority will approve, disapprove, or modify the recommendation of the PRRB. Actions that disapprove or modify the recommendations of the PRRB will include reason(s) for doing so.”

PRIOR BCMR CASE

On July 8, 2016, the Board issued its decision in BCMR Docket No. 2015-150 in which the applicant argued that under ALCOAST 093/14, he was entitled to a reenlistment board and submitted a copy of the PRRB’s decision at issue in this case. As in BCMR No. 2015-002, the Coast Guard recommended denying relief in 2015-150 and noted that the staff judge advocate for PSC had sent the Coast Guard’s General Law Division an email on October 1, 2014, explaining that paragraph 4 of ALCOAST 093/14 was to be interpreted as follows:

- 1) Eligible & recommended = reenlist
- 2) Eligible & not recommended = request a waiver/appeal from epm-1 (less than 8 years’ service) or reenlistment board (over 8 years’ service)
- 3) Not eligible & recommended = request a waiver/appeal from epm-1 regardless of years in service – no reenlistment board
- 4) Not eligible & not recommended = no reenlistment, no waiver/appeal

The Board denied relief in BCMR No. 2015-150 and made the following finding regarding the interpretation of ALCOAST 093/14:

9. The applicant alleged that he was entitled to a reenlistment board even under ALCOAST 093/14 because he had more than eight years of service and his GTCC card had been suspended but not revoked. As the Board noted in 2015-002, paragraph 4 of the ALCOAST could be interpreted in two different ways:

Members who meet the eligibility criteria but are not recommended for reenlistment by their commanding officer who have less than eight years total active and/or reserve military service may submit an appeal to CG PSC-EPM-1 for active duty members or CG PSC-RPM-1 for reserve members. Members who have eight or more years of total active and/or reserve military service are entitled to a reenlistment board.

Read alone, the second sentence above appears to give the applicant a right to a reenlistment board because he had more than eight years of active duty. Read in conjunction, however, these two sentences appear to mean that members with less than eight years who are eligible but not recommended to reenlist may appeal, while such members (eligible but not recommended) with more than eight years are entitled to a reenlistment board. As the JAG noted in the advisory opinion, on October 1, 2014, PSC's attorney reported to the JAG's office that PSC's interpretation of paragraph 4 of ALCOAST 093/14 is as follows:

- 1) Eligible & recommended = reenlist
- 2) Eligible & not recommended = request a waiver/appeal from epm-1 (less than 8 years' service) or reenlistment board (over 8 years' service)
- 3) Not eligible & recommended = request a waiver/appeal from epm-1 regardless of years in service – no reenlistment board
- 4) Not eligible & not recommended = no reenlistment, no waiver/appeal

This interpretation of paragraph 4 of ALCOAST 093/14 was incorporated in ALCOAST 274/15, which was in effect when the applicant was discharged and which provides that members who do not meet the reenlistment eligibility criteria in ALCOAST 093/14 are not entitled to a reenlistment board. Therefore, although the applicant had more than eight years on active duty, the Board finds that he was not entitled to a reenlistment board prior to his discharge under the applicable policy announced in ALCOAST 093/14 and clarified in PSC's email to the JAG's office dated October 1, 2014, and in ALCOAST 274/15. He was not entitled to a reenlistment board because he was not recommended for reenlistment by his CO and he did not meet the eligibility requirements because of his conviction at mast for offenses for which the maximum punishment under the UCMJ includes a punitive discharge.

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 regulations:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely filed.
2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.²
3. The applicant alleged that the denial of his request for a waiver of the reenlistment criteria in ALCOAST 093/14 and his discharge without an enlistment board are erroneous and unjust. In considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in her record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.³ Absent evidence to the contrary, the Board

² *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

³ 33 C.F.R. § 52.24(b).

presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”⁴

4. The applicant cited ALCOAST 346/15, issued on September 2, 2015, as evidence that the denial of his request for a waiver of the reenlistment criteria based on “no service need” was arbitrary and contrary to fact. ALCOAST 346/15 announces bonuses for critical rates in which potential personnel shortages had been foreseen and authorizes a bonus to new recruits who agree to attend [REDACTED] “A” School to join that rating; to non-rated members (E-1 through E-3) who agree to complete [REDACTED] “A” School to join that rating; and to current [REDACTED] in Zone A (less than six years of service). ALCOAST 346/15 did not authorize a reenlistment bonus for more experienced [REDACTED] in Zone B (more than six years of service), such as the applicant. Therefore, and in light of the other evidence of record about the [REDACTED] force strength, the Board finds that the applicant has not proven by a preponderance of the evidence that the denial of his request for a waiver of the reenlistment criteria based on “no service need” was arbitrary, erroneous, or unjust.

5. The applicant alleged that he was entitled to a reenlistment board under ALCOAST 093/14, issued by PSC on March 7, 2014, as the PRRB found when he applied to that board. As this Board noted in 2015-002 and 2015-150, paragraph 4 of the ALCOAST could reasonably be interpreted in two different ways:

Members who meet the eligibility criteria but are not recommended for reenlistment by their commanding officer who have less than eight years total active and/or reserve military service may submit an appeal to CG PSC-EPM-1 for active duty members or CG PSC-RPM-1 for reserve members. Members who have eight or more years of total active and/or reserve military service are entitled to a reenlistment board.

Read alone, the second sentence above appears to give the applicant a right to a reenlistment board because he had more than eight years of active duty. Read in conjunction, however, these two sentences appear to mean that members with less than eight years who are eligible but not recommended to reenlist may appeal, while such members (eligible but not recommended) with more than eight years are entitled to a reenlistment board. In denying that the applicant is entitled to a reenlistment board under ALCOAST 093/14, PSC is reading these two sentences in conjunction, as reflected in the answers to the published FAQs ##7 and 8.

6. As noted in BCMR No. 2015-002, a copy of which was sent to the applicant with the Coast Guard’s advisory opinion, on October 1, 2014, about two weeks after the new reenlistment criteria went into effect on September 17, 2014, pursuant to paragraph 5 of ALCOAST 093/14, PSC’s attorney reported to the JAG’s office that PSC’s interpretation of paragraph 4 of ALCOAST 093/14 is as follows:

- 1) Eligible & recommended = reenlist
- 2) Eligible & not recommended = request a waiver/appeal from epm-1 (less than 8 years’ service) or reenlistment board (over 8 years’ service)
- 3) Not eligible & recommended = request a waiver/appeal from epm-1 regardless of years in service – no reenlistment board
- 4) Not eligible & not recommended = no reenlistment, no waiver/appeal

⁴ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

This email shows that PSC's interpretation of paragraph 4 of ALCOAST 093/14 as authorizing reenlistment boards only for members who are eligible under the criteria and have more than eight years of service but are not recommended for reenlistment by their COs was in effect essentially *ab initio* and was not made after the applicant challenged the denial of a reenlistment board via the PRRB. Therefore, PSC's interpretation of paragraph 4 is not a post-hoc justification for denying the applicant a reenlistment board; the email shows that PSC had been interpreting the language in paragraph 4 of ALCOAST 093/14 as denying members in the applicant's circumstances the right to a reenlistment board since at least October 1, 2014.

7. The record shows that the PRRB applied paragraph 4 of ALCOAST 093/14 in its decision contrary to the way PSC had been interpreting and implementing it. The PRRB also recommended that PSC clarify its written policy. PSC declined to follow the PRRB's nonbinding decision because it contradicted PSC's policy and issued ALCOAST 274/15, which amended the language in paragraph 4 of ALCOAST 093/14 to better explain its policy. Both ALCOAST 093/14 and ALCOAST 274/15 were in effect when the applicant was discharged, and under a reasonable interpretation of the former—which PSC had apparently intended and enforced from the start—and the clearer language of ALCOAST 274/15, the applicant did not have a right to a reenlistment board because he did not meet the criteria for reenlistment under ALCOAST 093/14. Therefore, although the applicant had more than eight years on active duty, the Board finds that he was not entitled to a reenlistment board prior to his discharge at the end of his enlistment under the applicable policy announced in ALCOAST 093/14 as explained in PSC's email to the JAG's office dated October 1, 2014, and in ALCOAST 274/15. He was not entitled to a reenlistment board when his enlistment ended because he did not meet the eligibility criteria for reenlisting based on the two unsatisfactory conduct marks he received during his enlistment.

8. The applicant alleged that because the PRRB found that he was entitled to a reenlistment board under paragraph 4 of ALCOAST 093/14, he had a "vested" right to one and could not legally be discharged without one. The applicant cited no law supporting this claim, and the Board can find none. Whereas the BCMR's decisions are binding on the Coast Guard under 10 U.S.C. § 1552(a)(4), the Coast Guard has not made the PRRB's decisions binding on itself in COMDTINST 1070.1. The instruction provides only that in most cases, the Director of Personnel Management takes final action on the recommendation of the PRRB and that if the final action authority (whoever it is) modifies or disapproves the recommendation of the PRRB, the member will be told the reason. The record shows that on July 7, 2015, PSC notified the applicant that the decision of the PRRB had been nullified based on ALCOAST 274/15, which had amended the language in paragraph 4 of ALCOAST 093/14 to state more clearly that members who did not meet the eligibility criteria for reenlistment were not entitled to a reenlistment board even if they had more than eight years of service. (Only members who were eligible for reenlistment under the criteria but were not recommended for reenlistment by their COs and had more than eight years of service were entitled to reenlistment boards.) Therefore, the applicant was not entitled to a reenlistment board, and his separation orders remained in effect.

9. The record shows that for about three weeks—from the date of the PRRB's decision to the date of PSC's letter (June 18 to July 7, 2015)—the applicant was misled by the PRRB's decision that he would have a hearing before a reenlistment board before he could be discharged based on his ineligibility to reenlist when his enlistment expired. There is no evi-

dence showing that the applicant relied to his detriment on the PRRB's decision, however. When PSC informed him that he would be discharged without a reenlistment board, PSC also authorized a one-month extension of the applicant's enlistment to allow additional time for separation processing. The Board is convinced that because of this three-week period, the applicant's discharge without a reenlistment board is erroneous or unjust because he did not meet the criteria for reenlistment and was not entitled to a reenlistment board under either ALCOAST 093/14, as interpreted by PSC, or ALCOAST 274/15. The Board notes that even if the applicant had been provided a reenlistment board pursuant to the PRRB's decision and despite PSC's interpretation of its own policy, the Final Reviewing Authority for the reenlistment board would have been Commander, PSC.

10. Nothing in the law entitled the applicant to reenlistment when his contract expired. Under the policy in effect under ALCOAST 093/14—as reasonably interpreted by PSC since at least October 1, 2014, two weeks after the September 17, 2014, start date—the applicant was not entitled to a reenlistment board before being discharged (the results of which would have been subject to approval by Commander, PSC anyway). Although he was apparently misled by the PRRB's decision for a period of about three weeks to believe that he would have a reenlistment board, the Board finds that the applicant has not proven by a preponderance of the evidence that his discharge without a reenlistment board is erroneous or unjust.

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

(ORDER AND SIGNATURES ON NEXT PAGE)

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ORDER

The application of former [REDACTED], USCG, for correction of his military record is denied.

September 9, 2016

