


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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2019-182**

  
MK3 (former)

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**FINAL DECISION**

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on August 6, 2019, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated March 25, 2022, 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, a former Machinery Technician third class (MK3/E-5) who was honorably discharged on September 1, 2019, asked the Board to correct his record by reinstating him into the United States Coast Guard at his previous paygrade of E-5 as either a Machinery Technician or Diver. The applicant’s separation was the result of the Coast Guard’s High Year Tenure policy (HYT).<sup>1</sup>

The applicant argued that his forced separation from the Coast Guard under Military Separation Command Instruction (COMDTINST) M1000.4 was unjust because his work and training as a diver stunted his growth and advancement as a Machinery Technician. The applicant stated that he was promised, in no uncertain terms, he would be allowed a lateral transfer to the Dive (DV) rating when it was established.<sup>2</sup> However, the applicant stated that upon the establishment of the DV rating in 2015, he was denied a lateral transfer into the rating—despite

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<sup>1</sup> Military Separations Manual, COMDTINST M1000.4, Article 3.A. (“High year tenure (HYT) is a workforce management tool that establishes limits on the active military service time an active-duty enlisted member can complete based on their pay grade. HYT is designed to increase personnel flow, compel members to advance in their rating, and allow more consistent training and advancement opportunities for the enlisted workforce.”)

<sup>2</sup> The Coast Guard did not have an official diver rating until April of 2015. Those who worked as divers before April of 2015 did so as a collateral duty or as an out-of-rate assignment.

positive endorsements and recommendations—because of his time in service, lack of advancement as an MK, lack of initiative for professional leadership development, and the risk of high year tenure.

To support his application, the applicant submitted the following documents:

- A continuation of part 6 of the application wherein the applicant continues his explanation of why he believes his forced separation due to the HYT policy was unjust. Specifically, the applicant stated that although he was a third-class petty officer, he had the qualifications of a second-class diver. In addition, the applicant stated that even with the positive endorsement from the MK Rating Force Master Chief, he was denied the lateral move into the DV rating.
- A bulletin about the Dive Program Early Solicitation for Enlisted Assignment Year 2016 (AY16).
- A Memorandum on Change in Rating Request, dated April 7, 2016, wherein the applicant requests a Change in Rate (CIR) from Machinery Technician Third-Class to Diver Second-class in accordance with the Enlisted Accessions, Evaluations, and Advancements manual, COMDTINST M1000.2.
- A Letter of Endorsement on behalf of the applicant, dated March 29, 2016, wherein a Coast Guard Commander, who was also the applicant's commanding officer at the time, praised the applicant for his maturity, adaptability, and professional competence. He is also praised for being the example of a team player.
- The applicant's diving and lateral qualifications.
- An undated Letter of Endorsement on behalf of the applicant, wherein the diving commander expresses his confusion and dismay over the applicant's initial rejection into the DV rating. The commander also states he has no doubt the applicant would have thrived as a DV.
- An undated letter from the applicant's wife to their congressman pleading with the congressman to intervene on the applicant's behalf and prevent his forced discharge under the HYT policy. She explains in detail all of her husband's (applicant) work and sacrifices while in the service of the Coast Guard.
- A list of the applicant's awards and accommodations.
- An undated Letter of Endorsement from a commander of the Coast Guard strongly recommending the applicant for advancement into the DV rating.
- An email, dated July 1, 2015, from a DV-Rating Master Chief Petty Officer (MCPO) explaining why he did not endorse the applicant for a change in rating to DV. Specifically, the Master Chief stated that the applicant's time in service (13.5 years at the time) plus the estimated time it would take him to advance from DV2 to DV1 (3-4 years) would mean the applicant would not advance in time to avoid the HYT policy. In addition, the Master Chief expressed concern for the applicant's lack of initiative for professional leadership development in his current rating (MK) and as a diver. He encouraged the applicant to remain in his current rating and advance within that rating.

### SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard as a Seaman Recruit (E-1) on January 22, 2002. He advanced to E-2 on March 15, 2002, and to E-3 a year later, on March 24, 2003. He completed training and advanced to MK3/E-4 on April 1, 2005, and did not advance to MK2/E-5 until more than eleven years later, on December 1, 2016.

The applicant's record shows that while an MK3/E-4, he was assigned to a Dive Detachment Team from June 2008 to January 2012. He then served aboard an icebreaker for a year before being assigned to a buoy tender from July 2013 to July 2016.

In April 2013, the Commandant announced that the Coast Guard would be reactivating its HYT policy in 2014 to improve the opportunities for advancement in the enlisted ranks. At the time, the applicant was an MK3/E-4 with more than eleven years of active duty, which would make him subject to HYT when it went into effect.<sup>3</sup>

In 2015, the Coast Guard established the DV rating and invited members to apply to transfer to the new rating. On April 8, 2015, while assigned to the buoy tender as an MK3/E-4, the applicant applied for a lateral transfer to the DV rating with his Commanding Officer's endorsement.

On April 22, 2015, the applicant's request was denied due to the applicant's high susceptibility of becoming an HYT candidate even if he were allowed to switch ratings.

On October 27, 2015, the applicant applied for a waiver to the Coast Guard's HYT policy.

On December 1, 2015, the applicant's HYT waiver request was granted. The applicant was given until September 1, 2018, to advance to MK2/E-5. Under this waiver, the applicant was permitted to reenlist or extend his service to meet the timeline of the waiver. If the applicant did not advance to E-5, he would be discharged.

On December 1, 2016, the applicant advanced to E-5. As a result of this advancement the 2015 HYT waiver was cancelled, and the applicant became subject to the E-5 Professional Growth Points (PGP) of sixteen years of active duty, which he would achieve in 2018.

On April 7, 2016, the applicant again applied for a lateral transfer to the DV rating.

On June 9, 2016, the applicant's second lateral transfer request was denied.

On October 23, 2018, the applicant requested another HYT waiver to allow him to go beyond the E-5 PGP. He needed the waiver because he had completed sixteen years of active duty and was still an E-5.

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<sup>3</sup> When HYT is in effect, E-4s become HYT candidates for involuntary separation on December 31<sup>st</sup> of the year they complete their tenth year of active duty, and E-5s become HYT candidates on December 31<sup>st</sup> of the year they complete their sixteenth year of active duty. CODTINST M1000.4, Article 3.C.

On January 2, 2019, the applicant's second HYT waiver request was denied. Pursuant to the HYT policy, he was involuntarily separated from active duty and transferred to the Reserve on September 1, 2019. He recently retired from the Reserve and will be entitled to retired pay upon reaching age 60.

### VIEWS OF THE COAST GUARD

On February 25, 2020, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

The JAG argued that the applicant failed to show that the Coast Guard committed an error or an injustice. Specifically, the JAG argued that the applicant failed to prove, by a preponderance of the evidence, that the Coast Guard's denial of the applicant's request to transfer into the DV rating was an error or an injustice. The applicant's assertion that he should have been approved for a lateral transfer to the DV rating because he spent most of his career pursuing diving competencies (on a collateral basis) combined with other assurances and assumptions that he would be eligible for a DV rating when it was formed was not enough to establish that the Coast Guard committed an error or an injustice. The JAG argued that the applicant must demonstrate the Coast failed to follow law, regulation, or policy. Finally, the JAG argued that for the applicant to establish an injustice, he must show that the Coast Guard's actions must be more than just unfair, they must shock the sense of justice. As such, the applicant failed to prove the Coast Guard committed an "error" or "injustice."

The JAG further argued that the applicant, despite his significant diving accomplishments and competencies, was never guaranteed the option of lateraling from MK to DV. According to the JAG, at all times the applicant knew, or should have known, that as long as he was an MK, that rating and that rating alone would determine his promotion opportunities within the Coast Guard. The JAG argued the applicant was on notice about his possible HYT issues as early as his initial denial into the DV rating. The JAG argued the applicant admitted in his request for a lateral transfer to DV that he had allowed his passion for diving to consume his time, which had stunted his professional career as an MK. In fact, when the DV rating was established, the applicant was not eligible to transfer because he had not sufficiently advanced within the MK rating to be within the "target audience" for lateral selection.<sup>4</sup> The JAG argued that while unfortunate, the applicant's decision to neglect his promotion potential as an MK, including choosing out-of-rate assignments, does not establish that the Coast Guard erred or was unjust.

Finally, the JAG argued that the decision to separate the applicant under the Coast Guard's HYT policy was not an error or injustice because, according to the JAG, the applicant had already been afforded additional time in service pursuant to his first HYT waiver in 2015, and there was no service for MK2 that would warrant an additional waiver. The JAG argued that while the Coast Guard has discretion to waive the HYT policy, it has expressly chosen not to do so in the applicant's case, but instead permitted the applicant to remain affiliated with the Coast Guard

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<sup>4</sup> The DV rating was established at the E-5 paygrade, and at the time the applicant was only an E-4. Therefore, the applicant would not have been able to make a "lateral" transfer from MK3/E-4 to DV3/E-4 because the Coast Guard had not authorized E-4 lateral transfers to the DV rating.

Reserve. Therefore, the applicant failed to meet his burden of establishing, via a preponderance of the evidence, that the Coast Guard committed an error or injustice, and as such the Board should deny relief.

### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On March 3, 2020, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. The applicant responded on May 4, 2020.

In his response, the applicant argued that the Coast Guard's estimation of his Coast Guard career was erroneous and once again asked that he be given an HYT waiver and reinstatement into active duty. The applicant explained that upon his enlistment he had intended to pursue a career as an Aviation Survival Technician. According to the applicant, he put his name on the "A" list school for Aviation Survival Technician, but after approximately twenty-four months of waiting the Coast Guard discontinued the school and shut the list down. The applicant argued this decision penalized him and put him at a disadvantage because he had to reapply for an "A" School with two years of Professional Growth Points applied against him.

The applicant argued that after graduating from MK "A" School, he was first assigned to an MSST team which was heavily focused on law enforcement with very little exposure to the MK rating. As a result, the applicant was billeted to a boat crew essentially causing him to serve out of rate, with little to no exposure to his own MK rate.<sup>5</sup> As a result of the applicant's work while assigned to MSST he received a Commandant's Letter of Commendation. Due to the experience the applicant received while assigned to the MSST unit, he was selected to be a plank owner of a Coast Guard Dive Locker ("Locker"), which was another out-of-rate assignment. While assigned to the Locker, the applicant excelled and received another Commandant's Letter of Commendation for his performance. After his time at the Locker, the applicant took an MK position on a 110' cutter to get more experience as an MK and move towards advancement.

The applicant explained that after his time aboard the 110', a "critical fill" position opened that he was asked to fill. The applicant stated he took the position because it allowed him to grow in his current MK rate as well as gain experience as a diver, which was his desired field. It was while working in this position in 2015 that the applicant first applied for a change in rating to become a diver. He alleged that at the time, he had already spent ten years working out of his designated MK rating as a diver and with law enforcement teams. However, the applicant still received high recommendations from his command. The applicant argued that he met all of the requirements listed in the Coast Guard's diver solicitation. Specifically, military diving experience, diving qualifications and certifications, conduct and performance report, and leadership experience. The applicant argued he was denied even the chance to be considered due to his E-4 paygrade. During this time, the applicant stated, he continued to work as an MK and collateral duty diver and received multiple commendations such as: Sailor of the Quarter, Commandant's Letter of Commendation, and Coast Guard Achievement Medal.

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<sup>5</sup> The applicant elaborated on his duties and time spent within the MSST unit, but this information is not pertinent or relevant to the applicant's argument and has been omitted for efficiency.

The applicant argued that the JAG's statement, "Applicant was not eligible because he had not advanced sufficiently within the MK rating to be within 'target audience' for lateral selection (DV rating was established at the E-5 rating, at the time the applicant was an E-4)" was unjust because two E-4s were selected for lateral to DV rating, one of whom had just completed dive school.

The applicant further argued that the email from the MCPO was unjust and inaccurate. Specifically, the applicant argued that the MCPO's statement, "You have been a diver since 2006 with three dive units and you show no initiative in your professional leadership development, i.e. SCUBA supervisor" was not only biased, but inaccurate because at the time the Locker did not allow E-4s to become SCUBA supervisors. The applicant further argued that he showed his initiative by becoming the best diver, shipmate, and Coast Guardsman he could be. In addition, the applicant argued that the MCPO's other statement "...your priority should be to stay in the Coast Guard not going to DV, going DV would only hurt your chances of staying in" was inaccurate because, had he been allowed to lateral, he would have immediately advanced to E-5 and been able to advance in the DV rating. (The applicant did not explain how he could have immediately advanced from DV3/E-4 to DV2/E-5.) The applicant stated that when he applied for a lateral to the DV rate a second time, he had earned four Commandant's Letters of Commendation and a Coast Guard Achievement medal, all of which documented his performance as a diver. The applicant argued that although at the time he had not advanced to E-5, his records showed he was not an individual known to sit down and become "stagnant" as stated by the MCPO in his explanation as to why he did not endorse the applicant. The applicant argued the MCPO's statement was unjust and an inaccurate assessment of his proven character. According to the applicant, the need for experienced divers continues to exist even now.

The applicant stated that towards the end of his tour on the CGC [redacted] he realized that becoming a DV was not possible, so he focused on becoming the best Machinery Technician he could be. The applicant argued that he passed his end of course test and competed for the service wide exam, eventually making the cut for advancement to MK2/E-5. After his promotion, and only a few short weeks before Hurricane Harvey struck, the applicant stated, he was stationed to the Houston area. The applicant argued that his knowledge and experience were key to the rapid assembly and availability of necessary equipment. As a result of his knowledge and experience on the job, he received another Commandant's Letter of Commendation for his exceptional competence. The applicant argued that throughout his career in the Coast Guard he has received multiple awards and citations documenting his motivation, with most of them recognizing the applicant's positive performance within the positions he was assigned. Specifically, the applicant argued, he was recognized for consistently performing well above expectations, meeting goals, and achieving results. The applicant appealed once again to the Board to allow him to return to active duty and continue with the career that he loves. He argued that his proven work ethic, training, and positive attitude would benefit the Coast Guard.

Finally, the applicant argued that with has transpired nationally with regard to the COVID-19 pandemic, the Coast Guard is taking actions to try and retain members within critical ranks. According to the applicant, on April 16, 2020, the Coast Guard issued ALCOAST 054/20 which announced seven MK2 off-season critical fill billets, one of which was near his home, which would produce zero transfer costs for the Coast Guard. In addition, the applicant stated that on April 24,



2020, the Coast Guard issued ALCOAST 153/20 which covered the retention of “critical rates,” including Machinery Technicians. According to the applicant, the ALCOAST encouraged members to reach out to shipmates who had been honorably discharged within the past two years and ask them if they would be interested in returning to active duty. Finally, the applicant stated that he is deployment ready and is able to return to active duty immediately.

In addition to the applicant’s response, he once again submitted the same letters of recommendation he submitted with his original application, as well as the email between the applicant and the MCPO.

### **FURTHER PROCEEDINGS**

Upon reviewing this case, the BCMR staff attorney contacted the Personnel Service Center and asked whether they wanted the applicant to be able to reenlist given the critical need for MKs. In an email dated March 7, 2022, a Chief Warrant Officer advised the BCMR attorney that the Chief of the Enlisted Personnel Management Branch had agreed that the applicant could be reenlisted as an MK2 if he met all the medical and legal requirements for reenlistment.

### **APPLICABLE LAW AND POLICY**

Article 3.B.3.b. of the Coast Guard Separations manual, COMDTINST M1000.4, discusses HYT candidates that are in the pay grade E-3 to E-8 as follows:

A member whose active military service time is greater or equal to their PGP each year on 31 December, beginning 2015. Regardless of the exact date a member passes their PGP during a calendar year, 31 December will be the cut-off that determines whether or not a member is a HYT candidate. The member shall become a candidate on 31 December. Members are responsible for knowing their ADBD and understanding when they become a HYT candidate.

Article 3.C. of the manual is a table of Professional Growth Points. It shows that the PGP for an MK3/E-4 is ten years of active military service, while the PGP of an MK2/E-5 (or DV2/E-5) is sixteen years of active military service.

Article 3.D.2.b. of the manual discusses change-in-rate limitations as follows:

Members who request a change in rate must adhere to HYT requirements. Commander (CG-PSC-EPM) will normally deny requests if the member is unlikely to advance before they exceed their new PGP. Requests may be denied for such reasons as Service needs, conduct, performance, or training opportunities.

Article 3.A.11.c. of the Enlisted Accessions, Evaluations, and Advancements Manual discusses changes in rating in relevant part:

(1) General Policy. The Commandant desires Coast Guard members to serve in the rate or rating for which they have the greatest aptitude and interest. Changes in rating may be authorized based on Service need, position vacancies, and the qualifications and desires of members. A change in rating will normally be considered for members with fewer than five years Coast Guard time in service, unless otherwise approved by Commander (CG PSC EPM) or (CG PSC-RPM).

(a) Member Request. At the request of the member concerned submitted to Commander (CG PSC-EPM-1) or (CG PSC-RPM) via the chain of command, or

(b) In the best interest of the Coast Guard. When a commanding officer considers a member is no longer qualified to perform all the duties of their rate or rating for reasons other than incompetence, but is qualified, or can within a reasonable time become qualified, for a change to another rate or rating, the commanding officer must inform Commander (CG PSC-EPM) or (CG PSC-RPM) setting forth the reasons in detail. A statement signed by the member concerning the situation will be forwarded as an enclosure. When Commander (CG PSC) considers the proposed change is required in the best interest of the Service, such change will be authorized. The provisions of this Article will not apply when there is any doubt as to the member's fitness for retention in the Service because of mental or physical reasons.

### FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on 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 10 U.S.C. § 1552.
2. The application is timely because it was filed within three years of the applicant's discovery of the alleged error or injustice in the record, as required by 10 U.S.C. § 1552(b).
3. The applicant alleged his discharge was unjust because the Coast Guard utilized him as a diver for the vast majority of his career and promised him they would make diving an official rating, but when the Coast Guard finally made diving an official rating, he was denied a lateral transfer into the new DV rating. The applicant argued that his work as a diver stunted his advancements within his designated MK rating. In addition, the applicant alleged that the reasons given for his denial into the DV rating were incorrect and biased. When 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 the military record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.<sup>6</sup> Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."<sup>7</sup>

Under 10 U.S.C. § 1552(a), the Board may "remove an injustice" from a service member's record, as well as correct an error in the record. The Board has authority to determine whether an injustice has been committed on a case-by-case basis.<sup>8</sup> Therefore, the Board must also consider whether the applicant's discharge constitutes an injustice.

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<sup>6</sup> 33 C.F.R. § 52.24(b).

<sup>7</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

<sup>8</sup> Decision of the Deputy General Counsel, BCMR Docket No. 2001-043. According to *Sawyer v. United States*, 18 Ct. Cl. 860, 868 (1989), *rev'd on other grounds*, 930 F.2d 1577, and *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976), purposes of the BCMRs under 10 U.S.C. § 1552, "injustice" is "treatment by military authorities that shocks the sense of justice."



4. The applicant argued that his HYT discharge was unjust because his development and advancement as an MK were unfairly delayed due to the cancellation of his first choice of “A” School and his time spent as a diver. He alleged that he was disadvantaged at the start of his career when the Coast Guard closed the “A” School he had waited on for two years. According to the applicant, after his chosen “A” School was closed, he had to put his name on another “A” School list and wait once again. He argued that this change unjustly caused him to spend two extra years as an E-3, which counted against him under HYT policy.<sup>9</sup> A member who, like the applicant, enlists as an E-1 must complete recruit training before advancing to E-2; must complete at least 6 months as an E-2 and pass tests to advance to E-3; and must complete at least 6 months as an E-3, pass tests, and earn a rating, such as MK, to advance to E-4. The applicant spent more than a year as an E-2 and then two years as an E-3 waiting for his second choice of “A” School. However, it is not unusual for “A” School plans to change as the needs of the Coast Guard change. “A” School waiting lists vary in length according to the popularity of the rating, and spending two years, instead of six months, as an E-3 is not so unusual that it shocks the Board’s sense of justice. Although the applicant’s delay in arriving at a desired “A” School was unfortunate, it was not an error or shocking injustice, and it did not prevent the applicant from advancing to MK2/E-5 from 2005 to 2015.

Regarding his time spent as a diver, the Board notes that the applicant was responsible for managing his own career, and the record shows that he requested and received out-of-rate assignments for several years. He did not submit any evidence showing that he had requested strictly MK billets, instead of dive billets. Instead, he assumed that the Coast Guard would establish a DV rating and that he would be selected for a lateral transfer to the new rating whenever it was established even if he had made little effort to advance as an MK in the interim. The applicant has not shown that he was unjustly denied opportunities to work as an MK or prevented from studying and competing for advancement from 2005 to 2015. The Board concludes that the applicant has not proven by a preponderance of the evidence that his HYT discharge resulted from erroneous or unjust delays in his career development as an MK. The applicant has not shown that the Coast Guard failed to follow law, regulation, or policy and has not demonstrated that the Coast Guard’s actions shock the sense of justice.

5. The Coast Guard’s HYT policy increases opportunities for advancement in the enlisted ranks by separating members who do not advance for many years. When the Coast Guard announced the reinstatement of the HYT policy in 2013, the applicant was an E-4 with more than eleven years of active duty. Therefore, he was on notice that if he did not advance as an MK promptly, he would be subject to involuntary separation under HYT. Although the applicant spent a great majority of his career working as a diver, he knew, or should have known, that his development in the MK rating was critical to his career advancement. Article 3.B.3.b. of COMDTINST 1000.4 makes it clear that it was the applicant’s responsibility to ensure he was successfully competing for advancement in his rating and not a candidate for HYT. Evidence shows that although the applicant was an admirable and valuable service member, he neglected his professional growth until it was too late. In fact, the applicant was granted an initial HYT waiver to allow him time to advance to MK2/E-5. Unfortunately his advancement to E-5 came too late. The applicant again became a candidate for HYT when he failed to advance to MK1/E-

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<sup>9</sup> Although the applicant did not raise this argument in his initial application, but only during his response to the advisory opinion, it will nonetheless be addressed here as part of his argument that his career was unjustly delayed.

6 by 2018. The Board is mindful that this result is disheartening and unfortunate, but it is not erroneous. Nor does it rise to the level of shocking the sense of justice because in setting personnel policies, the needs of the Service must prevail.

6. The applicant alleged that his HYT separation was unjust because he was unjustly denied a lateral transfer to the DV rating. He alleged that if he had received the DV rating, he would have immediately advanced to E-5 and not been subject to separation under HYT. The applicant's diving experience did not entitle him to selection for that rating, however, and it is not clear why the applicant believes he would have "immediately" advanced to DV2/E-5 after a lateral transfer to DV3/E-4. Even if he had transferred ratings in 2015 and then advanced to DV2/E-5 in 2016, there is no evidence that he would have advanced to DV1/E-6 by 2018—in time to avoid separation under HYT. Also, according to the MCPO, the Coast Guard opted to allow only E-5s and higher to lateral into the DV rating, and so it must have filled the DV3/E-4 ranks with newly trained, younger divers. In addition, the MCPO stated that members, such as the applicant, who were very likely to be separated under HYT were not selected for the new DV rating. These policy decisions apparently caused or contributed to the applicant's non-selection for the DV rating, and the applicant has not shown that they were arbitrary, erroneous, or unjust. The Board is not persuaded that the Coast Guard committed an error or injustice by denying the applicant's request to transfer into the DV rating.

7. The applicant argued that his HYT separation was unjust because the reasons given by the MCPO for failing to endorse the applicant's request for a lateral transfer were erroneous and biased. The MCPO pointed to the applicant's history of unsatisfactory test taking and his struggles to advance from E-4 to E-5 for nearly 8 years, and the applicant has not persuaded the Board that his long-term failure to advance from E-4 to E-5 is not a sound basis for denying his transfer to a new rating. The MCPO was also justified in being concerned that the DV rating would likely lose the applicant to HYT before he was able to advance. Article 3.D.2.b. of the manual requires commanders to take into consideration an applicant's potential HYT exposure when considering members' requests to change ratings. Specifically, the COMDTINST states, "Members who request a change in rate must adhere to HYT requirements. Commander (CG-PSC-EPM) will normally deny requests if the member is unlikely to advance before they exceed their new PGP. Requests may be denied for such reasons as Service needs, conduct, performance, or training opportunities." The DV rating was, and continues to be, a highly competitive rate. As such, it is inevitable that highly qualified and dedicated service members, like the applicant here, will not make the cut. This Board cannot and should not interfere with those decisions when no error or injustice has been committed.

8. Although the applicant's arguments have not proven, by a preponderance of the evidence, that the Coast Guard committed an error or injustice by discharging him under HYT, that does not preclude the Board from granting some alternative relief in this case. The applicant has presented other persuasive arguments that this Board believes deserve attention and relief. Specifically, after his discharge, the Coast Guard continued to have a very high demand for Machinery Technicians. The demand was so severe, the Coast Guard issued ALCOAST 054/20 advertising the need for seven MK off-season critical fill billets. The Coast Guard issued another ALCOAST, ALCOAST 153/20, which listed the MK rating on the critical fill list. That ALCOAST asked members to reach out to newly discharged service members and ask them if they are

interested in coming back to active duty. In addition, the applicant was a highly recommended and respected Coast Guard member. During his time in the Service, the applicant received multiple Commandant's Letters of Commendations. Not only was the applicant a dedicated and highly respected service member, but he was also never disciplined for any kind of alcohol or drug related incidents. The applicant has had an admirable military career. Given the applicant's desire to return to service and the Coast Guard's pressing need to fill MK positions, the Board finds it to be in the best interest of both the Service and the applicant to afford the applicant an opportunity to return to active duty and finish out his Coast Guard career in the MK rating. This is a unique situation. Granting the applicant such alternative relief provides the Service with a dedicated and experienced service member, while at the same time providing the applicant with his desired result; a return to the active duty and the chance to earn a regular retirement. Given that the needs and wishes of the Service and the applicant are mutually aligned, the Board finds that it is in the interest of justice to grant the alternative relief recommended by PSC in this case.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

