

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-106

██████████
████████████████████

FINAL DECISION

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. After receiving the applicant's completed application on April 15, 2014, the Chair docketed the case and assigned it to ██████████ to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated November 21, 2014, 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 ██████████ at the time of his discharge on February 4, 2013, asked the Board to remove all documentation associated with a positive drug test dated January 11, 2012, and the subsequent discharge proceedings, including the documentation of an Administrative Separation Board (ASB) that took place on June 20, 2012. He asked the Board to void his discharge; reinstate him on active duty retroactive to his date of discharge; assign him to a billet in New Jersey, Pennsylvania, or the New York tri-state area; expunge his poor performance evaluations (EERs) in 2012 and add good evaluations to his record for 2012, 2013, and 2014; award him a Good Conduct Medal as of May 13, 2012; promote him to chief petty officer ██████████/E-7 to offset the harm done to his reputation; reimburse him for 31 days of leave he was forced to use (or lose) before his discharge; reverse the recoupment of his reenlistment bonus and award him any subsequent bonus for which he was eligible; and award him all back pay and allowances. Furthermore, the applicant asked the Board to order the Coast Guard to pay him \$150,000.00 in special damages due to "a year in hell and future lost wages" and to reimburse him for all or part of the \$69,273.96 in legal fees and costs that he incurred when the Coast Guard attempted to revoke his Merchant Mariner credential after his discharge in 2013, although he acknowledged that he has already requested reimbursement from the Administrative Law Judge under the Equal Access to Justice Act (EAJA). The applicant also requested a hearing before the Board.

The applicant alleged that he was wrongfully discharged as a result of a drug test performed on January 11, 2012, which returned with a positive result for the presence of cocaine.

Although he strongly denied using cocaine and submitted the results of a negative hair test and a polygraph test into evidence at the ASB, the ASB accorded them little evidentiary weight and relied on the urinalysis results to decide that he had incurred a “drug incident.”

Following his discharge on February 4, 2013, the applicant stated, the Coast Guard filed a complaint against him to try to revoke his Merchant Mariner credential. At the applicant’s request, his urine specimen bottle was delivered directly to the ALJ by Tripler laboratory. During the trial before an Administrative Law Judge (ALJ) on May 2, 2013, it became clear that the urine specimen bottle with the applicant’s Social Security Number (SSN) did not also bear the applicant’s initials, as required by COMDTINST M1000.10. The applicant alleged that the bottle should also have had the observer’s initials on it but did not. The applicant alleged that the testimony showed that no designated Urinalysis Coordinator was present and an Alternate Urinalysis Coordinator, who should not have been in charge, did not follow correct procedures. In addition, he alleged, the person whose name follows his on the urinalysis ledger returned his specimen to the coordinator’s table before the applicant returned his specimen.

The applicant stated that following the introduction of this evidence, the Coast Guard requested and received a 30-day continuance to investigate the matter and then tried to withdraw its complaint on May 24, 2013, but the ALJ dismissed the complaint with prejudice instead. In support of these claims, the applicant submitted a record of transcript of his hearing before the ALJ on May 2 and 3, 2013.

After the ALJ dismissed his case, the applicant filed a request for the legal fees he had incurred and, in answering that complaint, he alleged, the Coast Guard admitted that the urinalysis had not been properly conducted, that the specimen bottle bearing his SSN likely did not contain his urine, that the urine testing positive for cocaine likely belonged to another member, and that the Coast Guard had no other reason to discharge the applicant or to try to revoke his Merchant Mariner credential.

The applicant argued that requested corrections and payments are necessary to offset the errors in his record and the injustice done to him, his finances, and his professional reputation. With a General discharge, he was unable to continue his professional career in law enforcement and instead worked two full-time security jobs, suffered terrible financial hardship exacerbated by huge attorney’s fees, and lost the opportunity to advance to chief petty officer. He noted that under *Yee v. United States*, 206 Ct. Cl. 388, 398 (1975), and *Caddington v. United States*, 178 F. Supp. 604, 607 (Ct. Cl. 1959), the Board has “an abiding moral sanction to determine, insofar as possible, the true nature of an alleged injustice and to take steps to grant thorough and fitting relief.”

SUMMARY OF THE RECORD

On May 13, 2003, the applicant enlisted in the regular Coast Guard. Before enlisting, he was counseled about the Coast Guard’s drug policy. The applicant earned the [REDACTED] (E-4) rating and served on active duty in various billets. On May 7, 2007, the applicant reenlisted in the Coast Guard for an additional six years as a [REDACTED] (E-5), through May 6, 2013. He has been awarded a Commendation Medal and an Achievement Medal, as well as several team and unit awards, and on October 1, 2011, the applicant advanced to [REDACTED] (E-6). On his

EER dated November 30, 2011, the applicant received good marks but was not recommended for advancement by his commanding officer (CO).

On January 11, 2012, the applicant participated in a random urinalysis at his unit. After the Tripler Army Medical Center Forensic Toxicology Drug Testing Laboratory reported that the applicant's urine specimen had tested positive for cocaine, the applicant's CO initiated an investigation during which the applicant denied using cocaine and alleged that someone must have put some in his food or drink without his knowledge. Based on the urinalysis result and investigation, the CO determined that the applicant had been involved in a "drug incident" and initiated his separation in accordance with COMDTINST M1000.10. Because the applicant had more than eight years of service, he was entitled to a hearing before an ASB. After the applicant appeared at a hearing before the ASB on June 20, 2012, the senior member of the ASB prepared the following summary of the facts:

On 06 April 2012 ... Commanding Officer USCG Station [X], notified [the applicant] that action to discharge him had initiated for reason of test results from an 11 January 2012 urinalysis resulting in a positive confirmation of cocaine. On 20 April 2012 ... Commanding Officer Military Personnel (CO MILPERS), USCG Sector [Y] endorsed [the CO's] 06 April 2012 memo and ordered an Administration Separation (ADSEP) Board to convene in accordance with references (a) and (b). The Convening Authority (CA) directed the Board to render findings based on the facts obtained and recommend either retention in or separation from the U.S. Coast Guard of [applicant], USCG. If the Board recommended separation, it was to indicate the reason for and type of discharge certificate. The CA letter advised [the applicant] of his rights with respect to an administrative discharge. The Board held a hearing on 20 June 2012 at Coast Guard Sector [Y]. [A private] attorney, represented [the applicant] throughout the proceedings. [A lieutenant], USCG, served as Recorder for the Board. On 13 July 2012, the Board submitted its written findings and opinions in support of its conclusion that a Drug Incident did in fact occur and that [the applicant] be discharged with a General Discharge for Misconduct.

The ASB's recommendation for discharge was subsequently approved, and on February 4, 2013, the applicant received a General discharge for misconduct with a separation code denoting drug use and an RE-4 reentry code (ineligible to reenlist). On that date, several Page 7s were entered in the applicant's record documenting his discharge.

At a suspension and revocation hearing concerning the applicant's Merchant Marine credential in May 2013, it came to light that the urine specimen bottle with the applicant's SSN did not bear the initials of the applicant. The Coast Guard confirmed that a procedural mistake had occurred, and the complaint was dismissed. Thereafter, the applicant submitted to the ALJ through his attorney a Motion to Recover Attorney Fees and Costs, spelling out the errors made by the Coast Guard. On April 15, 2014, the applicant submitted his request to the BCMR.

VIEWS OF THE COAST GUARD

On September 22, 2014, the Judge Advocate General (JAG) submitted an advisory opinion recommending that the Board grant partial relief in this case in accordance with the findings and analysis provided in a memorandum submitted by the Commanding Officer, Coast Guard Personnel Service Center (PSC).

PSC admitted that the urinalysis was not properly conducted but also argued that the applicant himself failed to satisfy his obligation as the sample provider, in that he did not “verify the correctness of the information contained in his urine sample” as required. PSC stated that this lack of attention to detail was one of the causative factors that led to the applicant’s discharge. PSC acknowledged though that an “error undoubtedly occurred in collection of the [applicant’s] specimen. This error led to the positive results in the urine sample, which was the determinative factor in the applicant’s discharge.” PSC acknowledged that under these circumstances, it is clear that the applicant was unjustly discharged and that his discharge from the Coast Guard was in large part due to administrative error. As such, PSC recommended the following relief, and the JAG concurred:

- (1) All documents and records relating to the Applicant’s positive drug results and subsequent separation should be removed, including any reference in the Applicant’s evaluations and records.
- (2) Provided the applicant can meet retention standards, the applicant should be reinstated on active duty in the Coast Guard via Coast Guard Recruiting Command/local Recruiting Office as directed. The applicant should be entitled to recoupment of lost pay, entitlements and benefits to include lost leave and recouped/withheld bonuses, if any, as Pay and Personnel Command (PPC) may direct. The applicant requested but is not entitled to any legal fees, compensation for attorney fees for his administrative trial proceedings or special damages or attorney’s fees for his BCMR application IAW 33 C.F.R. § 52.23.
- (3) Moreover, applicant’s counsel has admitted to having an Equal Access to Justice (EAJA) claim under review for attorney’s fees stemming from the administrative hearing, which is the proper venue to assert such. PSC does not recommend any additional monetary payment(s). Once reinstated, the Applicant must qualify upon evaluation at the recruiting station and, if/when eligible; abide by the proper process for duty assignment.
- (4) The applicant should receive a good conduct ribbon and reimbursement of leave.

PSC stated that the applicant should not be entitled to any additional relief than that listed above. With regard to the applicant’s request for automatic advancement to BMC, PSC stated that the applicant is not entitled to automatic advancement to BMC because he was not on the service-wide examination eligibility list at the time of his separation from the Coast Guard. PSC stated that while the applicant might have become eligible to compete for advancement, there is no certainty that he would have actually advanced. In this regard, PSC noted that the applicant was not recommended for advancement on the performance evaluation that he received in 2011 *before* the erroneous urinalysis. PSC stated that upon the applicant’s reinstatement on active duty, he should compete for advancement during the next available advancement cycle and that no retroactive adjustments should be made in this particular instance.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 9, 2014, the Chair of the BCMR sent the applicant a copy of the Coast Guard’s views and invited him to submit a written response within thirty days. The BCMR did not receive a response.

APPLICABLE LAW AND POLICY

Article 1.A.2.k.1. of COMDTINST M1000.10, the Coast Guard Drug and Alcohol Abuse Program Manual, explains that a “drug incident,” which is determined by the CO, includes the intentional use, wrongful possession, or trafficking in controlled substances as well as the intentional use of other substances, such as inhalants, glue, cleaning agents, and medications “to obtain a ‘high,’ contrary to their intended use.” Under Article 1.B.18. of the Military Separations Manual, an enlisted member who incurs a “drug incident” must be discharged with no better than a General discharge.

Article 4.A.6. of the manual provides the following procedures for collecting urine specimens and states that “[p]roper collection of urine samples is the key to a successful urinalysis program. Poor collection procedures, such as samples provided without direct observation or a break in the chain of custody of the sample, undermines the credibility of the drug testing program and can result in dismissed court-martial proceedings”:

- (a) Have the member report to the coordinator with his/her ID card in hand. If the member does not have his/her military ID card, a current driver's license or other picture ID may be used.
- (b) The coordinator initiates the Unit Urinalysis Ledger and will record the member's name, rank, test basis, social security number and enters the document/batch and specimen number.
- (c) Advise the member to note all prescription and over-the-counter drugs they are currently taking. ...
- (d) The coordinator will initiate the bottle label. Record the date and the member's social security number on the bottle label.
- (e) The member will verify to the coordinator that the information on the ledger and bottle label is correct.
- (f) The member will sign the ledger and initial the bottle label documenting his/her name, social security number, batch/document number, rank, and date are correct on the ledger and his/her social security number and date are correct on the label. This will be accomplished prior to the label being affixed to the specimen bottle.
- (g) The coordinator will remove an empty bottle from the box in front of the member. The coordinator will remove the cap, verify with member and observer that the bottle is clean and that there is no foreign matter in the bottle, and recap the bottle in full view of the member and observer.
- (h) The coordinator will place the member's ID card in the same slot from which the bottle was removed in step g.
- (i) The coordinator then will attach the label to the specimen bottle in full view of the member and observer.
- (j) The coordinator will give the specimen bottle to the member in the presence of the observer.
- (k) The observer ensures that he/she has full view of the specimen bottle at all times. The member will maintain custody of the specimen bottle from the time the coordinator gives him/her the bottle until it is filled and capped. If the custody is broken, the member/observer will inform the coordinator and the process will be terminated. The coordinator will void the specimen and destroy the specimen bottle. The member will begin the process again.
- (l) The observer shall escort the member from the coordinator's table to the head or collection point. Male observers should ensure that male members use only the urinal, and female observers should ensure that the stall door is kept open for female members. The observer must stand in a position to clearly view the urine actually entering the sample bottle. If wide-mouth containers are used for females, the observer shall view the individual pouring the sample from the wide-mouth container into the urine specimen bottle. The individual must provide at least 30 milliliters (just over quarter of a bottle) of urine and then cap the bottle. ...

(m) The observer shall then accompany the member back to the coordinator's table. Members delivering specimens to coordinators will not be expected to stand in line with urine specimens in public view (in view of personnel other than the observer and coordinator). Members' personal privacy will be maintained to the maximum extent practical.

(n) The observer shall not handle the urine specimen bottle unless he or she is also the unit coordinator. This procedure is not recommended unless the unit coordinator maintains positive custody of all specimens while observing (e.g., small unit). The observer will sign the urinalysis ledger, certifying that the urine specimen bottle contains urine provided by the member and was not contaminated or altered in any way.

(o) The coordinator shall receive the urine specimen bottle from the member and ensure that it contains a minimum volume of 30 milliliters and is not reopened. ...

(p) The coordinator will initial the urine specimen bottle label in the member's presence and transcribe the information to Specimen Custody Document-Drug Testing, DD Form 2624. Coordinators may prepare USCD forms and bottle labels in advance; if so, they must verify that the information on the label and the USCD match. Using word processing equipment with the merge feature is encouraged to reduce the possibility of incorrect transcription of numbers. On collecting all specimens, the coordinator shall sign and date block 12(b) of the USCD(s).

(q) Tamper-resistant tape is required on all specimens collected. Any substitute tape must be the same width and length as the stock tape. Apply the tape by fixing one end of it near the label; pull the tape directly across the widest part of the cap and down the opposite side of the urine specimen bottle. Either the coordinator or the member in the presence of the coordinator may seal the bottle.

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 10 U.S.C. § 1552. The application was timely filed within three years of the applicant's separation.¹

2. The applicant requested an oral hearing before the Board. Pursuant to 33 C.F.R. § 52.31, "[t]he Chair shall decide in appropriate cases whether to grant a hearing or to recommend disposition on the merits without a hearing," and § 52.51 states that "[i]n each case in which the Chair determines that a hearing is warranted, the applicant will be entitled to be heard orally in person, by counsel, or in person with counsel." 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 because he never used cocaine and a procedural error occurred during the urinalysis that resulted in his discharge for illegal drug use, his General discharge is erroneous and unjust and should be voided so that he may be reinstated on active duty and receive the other relief he requested. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military

¹10 U.S.C. § 1552(b).

² See *Steen v. United States*, No. 436-74, 1977 U.S. Ct. Cl. LEXIS 585, at *21 (Dec. 7, 1977) (holding that "whether to grant such a hearing is a decision entirely within the discretion of the Board"); *Flute v. United States*, 210 Ct. Cl. 34, 40 (1976) ("The denial of a hearing before the BCMR does not *per se* deprive plaintiff of due process."); *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).

record is correct as it appears in his 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 presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”⁴

4. The Coast Guard has admitted that the applicant’s command conducted the urinalysis improperly on January 11, 2012, and so the specimen bottle containing the urine that tested positive for cocaine bears the applicant’s SSN but does not bear his initials and may not contain his urine. Whether the urine that tested positive for cocaine was the applicant’s and he failed to initial the bottle properly or whether a mix-up caused the label with the applicant’s SSN to be affixed to a specimen bottle that was used by someone else is unclear. Although the applicant alleged that the observer’s initials also should have appeared on the bottle, under Article 4.A.6. of COMDTINST M1000.10, the observer must initial the ledger but not the specimen bottle. In fact, the observer is not supposed to hold the bottle under the procedures in Article 4.A.6. Nonetheless, because the specimen bottle did not bear the applicant’s initials, as it should have, and because the Coast Guard has admitted that proper urinalysis procedures were not followed, the Board finds that the applicant has proven by a preponderance of the evidence that his CO’s determination that he had incurred a “drug incident” and his consequent poor performance evaluations, denial of a Good Conduct Medal, ASB proceedings, and General discharge for misconduct are erroneous and unjust. Therefore, all Coast Guard records and documentation of the applicant’s urinalysis results, drug incident, non-judicial punishment (if any), discharge processing, ASB, and General discharge for misconduct should be expunged from his record, as well as any EERs that he received after January 11, 2012. In addition, the Coast Guard should award him any Good Conduct Medal he would have received but for the alleged drug incident, restore the days of terminal leave that he used before his discharge to his record, and reimburse him for any reenlistment bonus money that was recouped from him as a result of his early discharge.

5. The Coast Guard stated that the applicant should be reinstated on active duty and awarded all back pay and allowances if he is physically fit for retention on active duty. The Coast Guard did not address what should happen if the applicant has become not fit for duty since his discharge. The Board notes, however, that because the applicant’s May 7, 2007, six-year enlistment would have ended on May 6, 2013, he was discharged from the service only three months before his enlistment was due to end. When an enlisted member has been erroneously discharged “his remedy is limited. Because no one has a right to enlist or reenlist in the armed forces unless specially granted one, an enlisted serviceman who has been improperly discharged is entitled to recover pay and allowances only to the date on which his term of enlistment would otherwise have expired had he not been so discharged.”⁵ Therefore, if the applicant is found not to be fit for duty, his record should be corrected to show that he was honorably discharged with an RE-1 reentry code upon completion of his obligated service on May 6, 2013,

³ 33 C.F.R. § 52.24(b).

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).

⁵ *Dodson v. United States Government, Dept. of the Army*, 988 F.2d 1199, 1208 (Fed. Cir. 1993), citing *Maier v. Orr*, 754 F.2d 973, 983 (Fed. Cir. 1985); *Austin v. United States*, 206 Ct. Cl. 719, 723 (1975); and *Clackum v. United States*, 161 Ct. Cl. 34, 36 (1963)); and cited in *Young v. United States*, 2012 WL 758058; *Flowers v. United States*, 80 Fed. Cl. 201, 216 (2008); and *James v. Caldera*, 159 F.3d 573, 581 (Fed. Cir. 1998).

and he should receive the back pay and allowances due as a result of the correction of his discharge date. However, in the interest of justice, if he has remained fit for duty and meets the physical retention standards, he should be reinstated on active duty within four months of the date of this decision and he should receive all back pay and allowances due since the date he was discharged and be credited with active duty (time in service) and time in grade as a BM1/E-6. The Board notes that PSC stated that the applicant should be required to work through a regular recruiting office to be reinstated, but the applicant does not need to meet the standards for a new recruit, which the Recruiting Command would naturally impose, and the applicant deserves personal assistance from PSC in navigating his potential return to active duty.

6. Regarding the applicant's other requests for relief, the Board finds that they should be denied for the following reasons:

- a) The applicant asked to be assigned to a billet in New Jersey, Pennsylvania, or the New York tri-state area, but all members must be available for worldwide assignment, and duty assignments must be made according to the needs of the Coast Guard. However, the Board will direct the Coast Guard to consult with the applicant and take his geographical preferences into consideration when assigning him to a billet if he is fit for retention and agrees to be reinstated on active duty.
- b) The applicant asked the Board to add good EERs to his record for 2012, 2013, and 2014. Inventing EERs for the applicant would be inappropriate, however, and simply repeating the marks from the only EER that the applicant received as a BM1 before the alleged drug incident would be unjust because he was not recommended for advancement on that evaluation.
- c) The applicant asked the Board to advance him to BMC/E-7 to offset the harm done to his reputation. However, the applicant did not advance to BM1/E-6 until October 1, 2011; a member must serve as a BM1/E-6 for at least 24 months, compete successfully on a service-wide examination (SWE), and be recommended for advancement before being eligible for advancement to chief;⁶ and the applicant was not recommended for advancement on his last 2011, pre-urinalysis EER. Therefore, the Board finds that the applicant is not entitled to advancement to chief but, if reinstated, he should be allowed to compete for advancement to BMC/E-7 on the next SWE following his reinstatement on active duty even if he has no new EER in his record by the eligibility date for the May 2015 SWE. Moreover, because a member's placement on a BMC advancement list depends upon the average marks the member receives as a BM1 during the prior 26 months,⁷ if the applicant competes for advancement by taking the SWE in May 2015, his "EER Window" for determining his points and placement on the resulting BMC advancement list should include all EERs dated in 2015 that are entered in his record,⁸ even though this will require recalculating his position on the BMC advancement list after it has been

⁶ COMDTINST M1000.2, Art. 3.A.4. and 3.A.5.

⁷ COMDTINST M1000.2, Art. 3.A.6.

⁸ Active duty members in pay grade E-6 receive semiannual EERs on the last day of each May and November but may receive "unscheduled" EERs on other occasions. COMDTINST M1000.2, Articles 5.E.1. and 5.E.2.

issued. However, the applicant should only be advanced to BMC in 2016 if he has been recommended for advancement by his CO.⁹

- d) The applicant asked to be made eligible for any subsequent reenlistment bonus he might have received, but no reenlistment bonuses have been authorized since 2010.
- e) The applicant asked the Board to order the Coast Guard to pay him \$150,000.00 in “special damages” due to “a year in hell and future lost wages.” However, 10 U.S.C. § 1552, the Board’s statute, is not “money-mandating.” Instead, 10 U.S.C. § 1552(c)(1) states that the Secretary “may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another’s service.” Therefore, the Board is only authorized to order the Coast Guard to pay amounts that become due to an applicant under other statutes as a result of corrections the Board makes to his record. The Board is not authorized to award any “special damages.”
- f) The applicant asked the Board to reimburse him for any part of the \$69,273.96 in legal fees and costs he incurred that he is not awarded by the ALJ under the Equal Access to Justice Act (EAJA). However, as explained above, the Board is only authorized to order the Coast Guard to pay amounts owed to an applicant under other statutes as a result of corrections made to the applicant’s record. There is no correction that the Board could make to the applicant’s military record that would entitle him to reimbursement for attorney’s fees under a statute. Attorney’s fees incurred in BCMR proceedings are not reimbursable,¹⁰ and the ALJ is the proper authority to determine whether or how much of the applicant’s prior attorney’s fees should be reimbursed under EAJA.

7. Accordingly, partial relief should be granted, as described above, because the applicant has proven by a preponderance of the evidence that he was improperly discharged from the Coast Guard on February 4, 2013, as a result of an erroneously conducted urinalysis.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁹ COMDTINST M1000.2, Art. 3.A.4.e.(4), states that “[t]he CO/OICs recommendation for advancement is the most important eligibility requirement in the Coast Guard advancement system. A recommendation for advancement shall be based on the individual’s qualities of leadership, personal integrity, adherence to core values, and his or her potential to perform in the next higher pay grade.”

¹⁰ 33 C.F.R. § 52.23(a).

ORDER

The application of former [REDACTED], USCG, for correction of his military record is granted, in part, as follows:

- The Coast Guard shall expunge from all Coast Guard records and database entries pertaining to him all records and documentation of (a) the results of his January 11, 2012, urinalysis, the consequent investigation, and the alleged drug incident, (b) any non-judicial punishment awarded as a result of the alleged drug incident, (c) any EERs he received following the urinalysis on January 11, 2012, (d) his discharge proceedings, including his ASB, and (e) his General discharge for misconduct on February 4, 2013.

- The Coast Guard shall also (f) award the applicant any Good Conduct Medal he would have received had he not been charged with a drug incident; (g) repay him any reenlistment bonus money that was recouped as a consequence of his early discharge; (h) restore to his record in FY 2013 the terminal leave he used because of his pending discharge; and (i) adjust his leave balance accordingly.

- Within 30 days of the date of this decision, the Personnel Service Center shall contact the applicant and assist him in scheduling a physical examination with a military medical officer to determine whether he is fit for duty under the retention standards for active duty members. If the medical officer finds that he is not fit for retention, his record shall be corrected to show that he was honorably discharged upon completion of his obligated service on May 6, 2013, with an RE-1 reentry code. If the medical officer finds that he is fit for retention, the Coast Guard shall, with the applicant's agreement, reenlist him on active duty within 120 days of the date of this decision; consult him and take his geographical preferences into consideration when assigning him to a billet as the needs of the Service allow; authorize him to compete for advancement to [REDACTED]/E-7 by taking the May 2015 SWE and, if he takes the May 2015 SWE, count all of (and only) his 2015 EERs in the "EER Window" to determine his points and position on the May 2015 SWE [REDACTED] advancement list before advancements are made off that list in 2016; and credit him with active duty time in service and pay grade since February 4, 2013, as if he had never been discharged. The Coast Guard shall pay him all back pay and allowances due as a result of the corrections made pursuant to this order, subject to legal offsets.

November 21, 2014

