

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 2000-050

DECISION OF THE DEPUTY GENERAL COUNSEL

I approve the recommended Order of the Board.

I disapprove the recommended Order of the Board.

I concur in the relief recommended by the Board.

DATE: May 20, 2001


Deputy General Counsel
Delegate of the Secretary
Department of Transportation

DEPARTMENT OF TRANSPORTATION
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FINAL DECISION

██████████ Deputy Chairman:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on January 11, 2000, upon the Board's receipt of the applicant's complete application for correction of his military record.

This final decision, dated April 12, 2001, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, an ██████████ (pay grade E-7), asked the Board to advance him to ██████████ (pay grade E-8) with back pay and allowances. The applicant is a Coast Guard Reservist serving on extended active duty (EAD) under a four-year active duty contract.

SUMMARY OF RECORD AND SUBMISSIONS

On August 9, 1973, after spending six years in the Army Reserve, the applicant enlisted in the Coast Guard Reserve as a port securityman first class (PS1). While serving in this rating, he was advanced to port securityman chief (PSC).

Although a port securityman (PS), the applicant had worked in the ██████████. On March 3, 1998, the Coast Guard changed the applicant's rating from PSC to ██████████ with a May 6, 1997, effective date of rank. On July 3, 1997, he was permitted to reenlist in the Reserve for six years, although he had almost 30 years of service.

The applicant stated that on December 12, 1997, ██████████ asked him to perform a period of EAD (extended active duty) to fill a "critical billet" in one of its offices. The applicant accepted the offer and on March 11, 1998 signed a four-year active duty agreement, beginning on March 15, 1998 and ending in March 2002. (The active duty agreement did not contain any limitations on advancement.)

Prior to signing the active duty agreement, the Commander, Coast Guard Personnel Command (CGPC) told the applicant, in a March 3, 1998 letter, that "reservists in emergency ratings while on EAD may qualify through the reserve SWE competition for advancement in their rating." This letter further stated that "reservists

in emergency ratings will continue to follow the Reserve enlisted performance evaluation submission schedule."

On August 21, 1998, after beginning EAD, the applicant received a "USCG Personal Data Extract for the Oct 1998 SWE [servicewide examination (to the next higher grade)]," advising him that he was not eligible for advancement due to "insufficient time in rate." During the previous year, while a selected reservist (pay), the applicant had been told he was not eligible for advancement due to "insufficient time remaining" in the selected reserve.¹ The applicant stated that he advised the appropriate Coast Guard officials that he thought he was eligible to take the 1998 SWE because he had more than two years of remaining service, having just signed a four-year active duty contract. He also told them that his correct date for advancement to chief petty officer (pay grade E-7) was March 1, 1981. The applicant stated that he was advised on October 14, 1998, that he was eligible and qualified to take the October SWE.

On October 17, 1998, the applicant took the SWE for advancement to E-8. He placed number 1 on the advancement eligibility list for his rating, with a cut-off of one (the number of definite advancements that would be made from the advancement eligibility list). On December 23, 1998, the applicant was informed by message from Commander, Coast Guard Personnel Command (CGPC) that he would be advanced to [REDACTED] (E-8) effective January 1, 1999. The applicant also received a certificate memorializing his appointment as an [REDACTED]

The applicant stated that on December 30, 1998, the unit's chief yeoman (YNC) told the applicant that his advancement to [REDACTED] had been rescinded. According to the chief yeoman, the applicant's name would be removed from the advancement eligibility list because his 30 years of service made him ineligible for advancement. The applicant stated that the reasons offered by CGPC for removing his name from the advancement list, were contrary to the YNC's understanding that "as long as Reservists had more than 2 years remaining in a pay status, the member could advance in rate."

On December 31, 1998, CGPC released a message informing the applicant's command that the applicant's name had been removed from the eligibility advancement list. CGPC stated that under 7.C.12.b.² of the Reserve Policy Manual and ALDIST 229/96,³ the applicant was ineligible to take the SWE and was ineligible for

¹ The Coast Guard Reserve had a policy that once a reservist attained 30 years of service he could no longer serve in a pay billet or compete for promotion. Members with 30 years of service were involuntarily transferred to the Individual Ready Reserve (IRR).

² Section 7.C.12b. of the Reserve Policy Manual currently reads that "E-7, E-8, and E-9 candidates must have at least two years of pay status eligibility remaining as computed from 1 January of the year following the October Service Wide Exam, to be eligible for advancement. Individuals scheduled for discharge, due to reach their 30 year pay base date . . . anniversary, or reaching maximum age for mandatory retirement during the two year period following the 1 January date are ineligible to participate [for advancement]."

³ ALDIST 229/96 states that "the intent of [the 30-year waiver for SELRES participation] is to allow personnel with solid performance history and who still add value to their active commands an opportunity to continue in pay status while we continue to increase our SELRES strength. . . . This is a

advancement because he had completed 30 years of service. The applicant was never advanced to [REDACTED]

After the applicant was notified that his name had been removed from the eligibility advancement list, his supervisors made several inquiries to CGPC asking to have the applicant's name reinstated on the eligibility advancement list. On February 16, 1999, one of the applicant's supervisors wrote a letter to CGPC requesting that the applicant be reinstated on the advancement list.

On July 7, 1999, CGPC wrote the applicant a letter explaining in detail why he was not eligible for advancement. CGPC reminded the applicant that October 1994 was the last time he was eligible to take a SWE. CGPC stated that "[p]er paragraph 7.C.12.c. of [CG Reserve Administration & Training Manual (ratman)] Computed from 1 January of the year following the October [SWE], E-7, E-8, and E-9 candidates must have at least 2 years of pay status eligibility remaining. [The applicant's] 30-year pay base date anniversary was 8 Aug[ust] 1997." (Internal quotes omitted.)

CGPC further stated in this letter that on October 3, 1996, ALDIST 229/96 was promulgated temporarily permitting individuals in the selective reserve to remain in a pay status until their 35th year of service. According to CGPC, there was no waiver of the requirement that to be advanced one must have at least two years of pay status eligibility remaining or of the requirement that "personnel with more than 30 years of service are ineligible to sit for the SWE or for further advancement." Therefore, CGPC explained, the applicant was not eligible for advancement in 1995 and 1996. He further explained that the applicant was not eligible to take the 1997 SWE because he had less than two years of pay status eligibility remaining and because he had more than 30 years of service at that time.

CGPC further explained to the applicant that although Para. 4.c.(2) of COMDTINST 1141.3A, issued on October 14, 1997, stated that reservists in the [REDACTED] rating could qualify advancement through the SWE, such eligibility and advancement had to be in accordance with chapter 7-C of the Reserve Policy Manual. In addition, CGPC stated that ALDIST 074/97, issued on April 1, 1997, while allowing individuals to remain in a pay status until their 38th year, made it clear that "personnel with more than 30 years of service are ineligible to take the SWE or for further advancement." (The applicant had 30 years of service on August 8, 1997 when he took the SWE in October 1998.) CGPC stated that "[the applicant] took the [SWE] and finished number one on the list. The decision to allow [him] to take the [SWE] was incorrect . . . [and he was] removed from the eligibility list." According to CGPC, "the same policies and restrictions that applied to [the applicant] as a drilling reservist continued to apply to [him] as a reservist serving on EAD." CGPC told the applicant that it would be unfair to others who have been denied advancement, if the applicant were advanced. (Emphasis added.)

temporary measure. Every effort must be made to convey its temporary nature to those being affected. If after re-evaluation [this waiver policy is rescinded] personnel who exceed 30 years of service will again be transferred to the IRR at the next ISC-assignment panel. Additionally, personnel who have elected and have been transferred to RET 1 or RET 2 status are not eligible for this waiver. Personnel with more than 30 years of service are ineligible to sit for the SWE or for further advancement. . . ."

The applicant asserted that CGPC's decision to remove his name from the eligibility list is unfair and incorrect. He stated that he is eligible for advancement under Para. 4.c(2) of COMDTINST 1141.3.A. (Recall of Enlisted Reservists to Extended Active Duty). This provision states that "Reservists serving in Emergency Ratings [REDACTED] may qualify through the Reserve SWE competition for advancement in their rating during their initial period of EAD per chapter 7-C of the Reserve Policy Manual."⁴

The applicant stated that under Section 7.C.12.b. of the Reserve Policy Manual that was effective in October 1998, "E-7, E-8 and E-9 candidates must have at least two years of pay status eligibility remaining as computed from 01 January of the year following the October [SWE]; Individuals scheduled for discharge, due for transfer to non-pay status . . . as a result of reaching their 30 year pay base date anniversary, or reaching maximum age for mandatory retirement during the two year period following the 01 January date are ineligible to participate" in the SWE. The applicant claimed this provision did not affect his eligibility for advancement since he would not reach the mandatory retirement age (62) during the two-year period following the January 1, 1999 advancement date; he had more than two years remaining in a pay status after January 1, 1999; and he was not eligible for transfer to a non-pay status as a result of reaching his 30th year pay base date within the two year period following January 1, 1999.

Views of the Coast Guard

On July 28, 2000, the Board received an advisory opinion from the Chief Counsel of the Coast Guard. The Chief Counsel recommended that the Board deny relief to the applicant. He restated much of the information provided by CGPC in its letter to the applicant, dated July 7, 1999. See discussion pp. 2-3.

The Chief Counsel stated that the Coast Guard properly applied the retention, advancement and pay policies in the applicant's case. He further stated as follows:

⁴ Section 4.c. of COMDTINST 1141.3A states in its entirety as follows: "Advancement. (1) Reservist Serving in Non-emergency Ratings. (a) While on EAD, reservists in non-emergency rating may participate in the active duty SWE competition for advancement, provided they are otherwise qualified. (b) Reservists who successfully competed for a Reserve advancement, but who were not advanced prior to entry upon EAD, may be advanced if their total point score would place them in the advancement zone on the active duty advancement list. Each case will be reviewed and decided individually by CGPC (epm). Advancement, if authorized, will be on the date they would have been advanced if on the active duty list or the date authorized by the Reserve advancement authorization, which ever is later. This requirement is to preclude unfair advantage over either their active duty or Reserve counterparts.

"(2) Reservist serving in Emergency Ratings (PS, DP, IV). Reservists in emergency ratings may qualify through the Reserve SWE competition for advancement in their rating during their initial period of EAD per chapter 7-C of [the Reserve Policy Manual].

"(3) As part of the recall process, reservists shall be specifically advised on procedures for advancement while they are serving on EAD as discussed . . . above."

Applicant alleges injustice in that he was permitted to re-enlist beyond 30 years of service in a pay status in order to benefit the needs of the Coast Guard, while not being permitted to advance. Applicant has apparently confused Coast Guard policy regarding pay status with policy regarding retention and advancement. It is a matter of Coast Guard policy that enlisted reservists are required to retire at age 60. Therefore, barring any other reason, applicant would not be prevented from re-enlisting until he reached age 60. . . . However, he would not normally be paid for reserve drills past the 30th anniversary of his PBD (pay base date), although he could continue to participate in a non-pay status. . . .

Applicant was permitted to re-enlist in a "paid" status beyond his 30-year PBD due to a waiver. This waiver . . . was promulgated to allow Integrated Support Commands (ISCs) to put aside the 30-year limitation for paid enlisted reserve participation. The stated intent of the waiver policy was "to allow personnel with solid performance history and who still add value to their active commands an opportunity to continue in a pay status while [the Coast Guard] continues to increase [its reserve] strength. . . ."

Further the ALDIST [229-96] reiterated that personnel with more than 30 years service are ineligible to participate in the SWE and are ineligible for advancement. . . . This [policy] was made even clearer on April 1, 1997, when the maximum time in service was extended from 35 to 38 years for continuation in pay status . . . This ALDIST again prohibited any member with more than 30 years of service from participating in a SWE and from eligibility for advancement. Therefore, even though Applicant had been erroneously placed on the E-8 advancement list, the Coast Guard was within its authority to remove his name from that list consistent with published policy on this matter.

The Chief Counsel stated that the Coast Guard's erroneous decision to allow the applicant to take the October 1998 Reserve SWE, and the erroneous notification that the applicant would be advanced constituted harmless error. The Chief Counsel stated that the applicant should never have been permitted to take the SWE because he had more than 31 years of service at that time. The Coast Guard corrected this error by removing the applicant's name from the advancement list. The Chief Counsel stated that no other member in the same situation would have been permitted to participate in the Reserve SWE, nor would he or she be eligible for advancement past 30 years of service. He stated that the applicant is not in any worse position than he would have been if the errors had not been committed. He further stated that to advance the applicant based on these harmless errors would constitute a windfall to which the applicant is not entitled.

Applicant's Reply to the Views of the Coast Guard

— On November 9, 2000, the Board received the applicant's reply to the views of the Coast Guard. The applicant disagreed with the recommendation of the Coast Guard that his request should be denied.

The applicant stated that according to the Reserve Policy Manual a Reserve member, like himself, serving on full-time EAD is in a different category than a member who is serving part-time in the Selected Reserve or the Ready Reserve. He stated that ALDISTS 226/96 and 074/97, which formed the basis of the Chief Counsel's negative recommendation, addressed "continued participation in the SLRES [Selected Reserve] in a pay status beyond 30 years [of service]." He stated that he was not a part-time drilling reservist but on full-time active duty serving on EAD. He asserted that because of his 4-year EAD contract, he gained eligibility for advancement in accordance with the Reserve Policy Manual and COMDTINST 1141.3A (Recall of Enlisted Reservists to Extended Active Duty). He further stated that he had both sufficient time in rate and sufficient time remaining in a pay status (more than 2 years) to be advanced while serving on a 4-year full time EAD contract.

The applicant disagreed that the Coast Guard committed an error by allowing him to compete in the Reserve SWE. He further stated as follows:

I do allege that the CGPC committed error and injustice in removing my name from the advancement eligibility list and rescinding my advancement to E-8, after I had already taken the [Reserve] SWE, scored number 1 on the written test, ranked number 1 on the advancement eligibility list and was officially notified that I would be advanced on 01 January 1999. Again, my advancement opportunities while serving on EAD for 4 years were not governed by . . . ALDIST 229/96 or by . . . ALDIST 074/97, which were both entitled, "30 Year Waiver for SELRES Participation." These two temporary instructions did not bar my eligibility. They did not apply to me while . . . serving in the category of full time EAD for 4 years.

The applicant stated that contrary to the Chief Counsel's assertion section 7.c.12.b. did not prohibit his advancement. According to the applicant this provision states that : "E-7, E-8, and E-9 candidates must have at least two years of pay status eligibility remaining as computed from 01 January of the year following the October [SWE]. Individuals scheduled for discharge, due for transfer to non-pay status . . . as a result of reaching their 30 year pay base date . . . anniversary, or reaching maximum age for mandatory retirement during the two year period following the 01 January date are ineligible to participate." The applicant argued that this provision did not apply to him because he had more than three years remaining in a pay status, he was not scheduled for discharge or transfer to a non-pay status, and he was not reaching maximum age for mandatory retirement during the 2 year period following the January 1, 1999 advancement date.

The applicant disagreed that the alleged errors, permitting him to take the SWE and informing him that he would be advanced, were harmless. In this regard, he stated as follows:

The action taken by the CGPC ranks as one of the worst errors and injustices that could possibly be committed against a member of the Coast Guard that I can imagine. I cannot see any benefit to the Coast Guard in

this action. To be told that I was finally going to be promoted after years of frustrated effort, celebrating the event with co-workers, friends and family, and to have my peers and superiors send congratulations to me, during the Christmas and New Year holiday period, and then to have it heartlessly snatched away, was shocking and devastating to myself and to my family. I cannot find the words to express the level of distress, frustration, humiliation, public embarrassment and the blow to my pride and well-being and sense of fairness that I felt at the time. My family and I suffered emotionally, mentally, physically and monetarily as a result of the error and injustice committed by CGPC in removing my name from the eligibility list and rescinding my advancement to E-8.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's record and submissions, the Coast Guard's submission, and applicable law:

1. The BCMR has jurisdiction of this case pursuant to section 1552 of title 10, United States Code. The application was timely.

2. On July 3, 1997, the applicant reenlisted in the Reserve component of the Coast Guard. At the time he had almost 30 years of service. On March 15, 1998, he began a 4-year period of extended active duty [EAD]. In October 1998, while on EAD, he took the Reserve SWE for advancement to E-8 and placed number 1 on the advancement list. CGPC released a message dated December 23, 1998, advising the applicant's command that he could be advanced to E-8 on January 1, 1999. However, on December 31, 1998, CGPC released another message advising the applicant's command that under section 7.C.12.b. of the Reserve Policy manual and ALDIST 229/96, the applicant's name had been removed from the E-8 advancement list because he had more than 30 years of Reserve service and was ineligible for advancement.

3. The applicant has asserted that the regulations cited by the Coast Guard do not apply to him because he was not a member of the selected reserve but was a reservist serving on EAD. He asserts that there is no 30-year service limitation placed on personnel seeking advancement in the active duty service. In contrast, the Chief Counsel has asserted that, although the applicant was on EAD, he was still prevented from seeking advancement while on active duty service because he had more than 30 years of service at the time he took the 1998 SWE. CGPC stated in a letter to the applicant that "the same policies and restrictions that applied to [the applicant] as a drilling reservist continued to apply to [him] as a reservist serving on EAD."

4. The applicant puts forth a persuasive argument that ALDIST 229/96 and section 7.C.12b. of the Reserve Policy Manual do not apply to him because he was not serving in the Reserve component of the Coast Guard, specifically the selected reserve when he took the SWE in October 1998, but rather he was on full-time active duty service. Indeed, ALDIST 229/96 does speak to selected reservists and not to those on EAD. It is entitled "30-year Waiver for SELRES [Selected Reserve] participation" and nowhere mentions reservists serving on full-time extended active duty service.

5. The first question to be answered by the Board is in which component of the Coast Guard was the applicant serving at the time he took the October 1998 SWE. The Board finds that he was serving in the active duty component of the Coast Guard. When the applicant began serving on active duty under his active duty contract, he was no longer serving within the Reserve component of the Coast Guard. Reservists serving in the Reserve component are classified by the following categories: the ready reserve (which includes the selective reserve and the individual ready reserve (IRR); the active standby reserve; and the inactive standby reserve. None of these categories applies to members on extended active duty. However, prior to entering active duty service, the applicant had been a member of the selected reserve, which is defined as "[t]hat portion of the Ready Reserve consisting of units and, as designated by the Secretary concerned, of individual reservists with highest priority for mobilization who participate in inactive duty training periods and annual training in a pay status." See Appendix A of the Reserve Policy Manual.

6. Section 1.D.10 of the Policy Reserve Manual makes it clear that reservists serving on EAD are not in the Reserve component for the period of the EAD contract. This provision states that "[r]eservists serving on [EAD] are not considered members of the Ready Reserve within the context of this Chapter [Reserve Classifications and Training Categories] and are not assigned to a [training/pay category]." Moreover, Section 3-A-3 of the Reserve Policy Manual provides the following explanation of EAD:

EAD is a tour of active duty in an *active component* duty status. While on EAD, reservists are administered as members of the active duty (full-time) Coast Guard. They compete for advancement or promotion on the active duty promotion list Reservists on EAD are placed in a personnel allowance (PAL) billet and *count against (active duty) Coast Guard strength*.⁵ [Emphasis added.]

7. The Board finds that the applicant, while on EAD, was serving in the active service component of the Coast Guard.

8. The next question is whether the rules pertaining to eligibility for advancement contained in Chapter 7 of the Reserve Policy Manual and ALDIST 229/96 apply to the applicant while on EAD in the active service component of the Coast Guard. The Coast Guard has interpreted the 30-year limitation to apply to all reservists whether or not they are serving on EAD. Section 7.C.1a. of the Reserve Policy Manual makes it clear that its provisions apply to reservists serving in the Reserve component

⁵ Appendix A, further supports the applicant's contention that he was not serving in the Reserve component during the period in question, by defining EAD as "active duty performed by a reservist under 10 U.S.C. 12311. . . [EAD] is normally for a period between 2 and 4 years, requested in full year increments. Reserve officers on extended active duty fill authorized active duty billets and are included on the active duty promotion list (ADPL) unless they are in a status specifically excluded from the ADPL by the Personnel Manual . . . Enlisted personnel on extended active duty fill an authorized active duty billet and compete in the active duty advancement system, except for reservists in the IV [like the applicant] and PS ratings."

of the Coast Guard. This provision states that "Reserve enlisted personnel in the Ready Reserve and Standby Reserve . . . may compete in the [SWE] when fully qualified."

9. However, the Reserve Policy Manual is not so clear on the applicability of the regulation to those members serving on EAD. In discussing reservists on EAD, section 7.C.1e. states that "[w]hile serving on [EAD], enlisted reservists are limited in [SWE] participation and advancement in rating as per the Personnel Manual . . . and as follows"

(1) Reservists in emergency ratings may not participate in an active duty [SWE]. They may participate in the reserve administered [SWE] if recommended by their active duty commanding officer. If the reservist places above the advancement cutoff on the examination, CGPC-rpm will determine whether the reservists will be advanced based on the needs of the service. The reservists may be advanced after release from EAD, if CGPC-rpm does not authorize the advancement while on EAD. The reservist must request this advancement upon RELAD [release from active duty]. . . .

(2) Reservists in general rating may participate only in the active duty [SWE] and advancement system. Participation shall be per the Personnel Manual. . . .

The Board finds that the rules contained in the Reserve Policy Manual apply to members on EAD only to the extent of specifying the manner in which they would qualify for advancement since there are general and emergency ratings in the Reserve, but no such emergency ratings exist in the active service. Members on EAD in general ratings are required to take the active duty SWE, others like the applicant who serve in emergency ratings, are required to take the Reserve SWE to qualify for advancement. There is no active duty [redacted] rating. Therefore, for example, if the applicant had 20 years of service, it would have been necessary for him to take the Reserve SWE in order to advance in the [redacted] rating. Neither the Reserve Policy Manual nor ALDIST 229/96 contains a prohibition against reservists serving on EAD from advancing in rate.

10. Moreover, section 4.c.(1)(a) of COMDTINST 1141.3A (Recall of Enlisted Reservists to Active Duty), issued on October 14, 1997, states that "while on EAD, reservists in non-emergency ratings may participate in the active duty SWE competition for advancement, provided they are otherwise qualified." It further states at section 4.c.(1)(b) that "Reservists in emergency ratings [redacted] may qualify through the Reserve SWE competition for advancement in their rating during their initial period of EAD per chapter 7-C of [the Reserve Policy Manual]."

11. Thus, the above provisions are clear that reservists in general ratings serving on EAD compete for advancement under the rules of the Personnel Manual. These provisions appear to be consistent with Article 5.C.1.b. of the Personnel Manual (Enlisted Personnel), which states that: "This section is applicable to the advancement of: 1. All active duty enlisted personnel and Coast Guard reservists on extended active duty." As late as December 31, 1998, the Coast Guard issued ALDIST 299/98 entitled "Recall of Enlisted Members to Extended Active Duty." While ALDIST 299/98 was not

issued until after the applicant began EAD, it made it easier for reservists on EAD to advance within the active duty system by temporarily amending the Personnel Manual to allow time in present rate for reservists to count toward an active duty advancement. The Board concludes from the contents of this ALDIST that reserve members on EAD service compete for advancement under the active duty advancement system, subject to the rules of the Personnel Manual. The only requirement under the Personnel Manual for active duty members is that they commit for an additional two years of service (to be completed by age 62)⁶ if they are to be advanced to E-7, E-8, or E-9. As the applicant stated he could have made this commitment, having over three years remaining on his active duty contract at the time he would have been advanced.

12. The Board notes that the only reference to the Reserve Policy Manual in COMDTNST 1141.3A is contained in the provision that reads that "Reservists in emergency ratings [REDACTED] may qualify through the Reserve SWE competition for advancement in their rating during their initial period of EAD per chapter 7-C of [the Reserve Policy Manual]." However, no such mandate is directed to reserve members in general ratings serving on EAD. The Coast Guard has suggested that this provision makes reservists in emergency ratings subject to the advancement rules of the Reserve Policy Manual, in their entirety.

13. If true, this allegation would amount to a difference in treatment among reservists serving on EAD. If members in a general rating may be advanced while on EAD, the Board can find no compelling reason for denying advancement to those serving on EAD in emergency ratings and the Chief Counsel has provided none. The only reason for the Coast Guard to direct that reservists on EAD in emergency ratings advance by taking the Reserve SWE is the absence of active duty counterparts and SWEs for these ratings. Therefore, it was necessary for the Coast Guard to allow reservists in emergency ratings to compete for advancement while on EAD by participating in the Reserve SWE. The Board concludes that since there are no [REDACTED] ratings for active duty members (see Chapter 5 of the Personnel Manual), reservists with these ratings serving on active duty must take the Reserve SWE to qualify for advancement. The distinction between the general and emergency ratings was not to prohibit or limit advancement, but rather to direct the path for advancement for each category.

14. The plain language of the Reserve Policy Manual and the ALDISTs speak to reservists serving in the Reserve component (not on active duty) of the Coast Guard, either in the selected reserve, the active standby reserve, or the inactive standby reserve. The Reserve Policy Manual itself distinguishes between the reservist serving on EAD and the reservists not on active duty. For example, section 1.D.10 of the Reserve Policy Manual states that "[r]eservists serving on [EAD] are not considered members of the Ready Reserve . . . and are not assigned to a [training/pay category]." Even ALDISTs 229/96 and 074/97 are entitled "30-year Waiver for [Selected Reserve] participation." They do not mention reservists serving on extended active duty. The Personnel Manual states clearly at section 5.C.1.b. that the advancement rules contained therein apply to all members on active duty including reservists on EAD. Accordingly, the plain

⁶ Sixty-two is the mandatory retirement age for members of the military. See 14 U.S.C. § 553. The applicant's date of birth is [REDACTED].

language of the Personnel Manual, Reserve Policy Manual, ALDIST 229/96, and 074/97 compels the Board to conclude that these regulations were not meant to impede the promotion of a reservist serving on extended active duty.

16. Moreover, even if the Board accepted the Chief Counsel's interpretation of the regulations in this case, the Board notes the applicant's argument that he was still eligible for advancement under section 7.C.12.b. of the Reserve Policy Manual that was effective in October 1998. He stated that he would not reach the mandatory retirement age (62) during the two-year period following the January 1, 1999 advancement date; that he had more than two years remaining in a pay status after January 1, 1999; and that he was not eligible for transfer to a non-pay status as a result of reaching his 30th year pay base date within the two year period following January 1, 1999 because he had an EAD contract that would not expire until March 2002.

17. The Board finds that whether or not the Coast Guard committed an error, it committed an injustice. The Coast Guard approved the applicant's request to take the SWE, placed him on the advancement eligibility list, published that advancement list to the fleet, and sent the applicant a certificate of advancement to senior chief. To remove his name from the list a day before he was to be advanced appears to be unfair under the circumstances of this case. Moreover, even Coast Guard personnel responsible for decisions with respect to enlisted advancement issues were confused by these complicated and unclear regulations. Under the circumstances of this case, it is an injustice for the Coast Guard to deny the applicant advancement to E-8.

18. Accordingly, the Board finds that the applicant should be granted relief.

ORDER

The application of [REDACTED], USCG, for the correction of his military record is granted. His record shall be corrected to show that he was advanced to [REDACTED] pay grade E-8] on January 1, 1999. He shall receive back pay and allowances.

