

**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. 2012-192**

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████████████████████

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**FINAL DECISION**

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case upon receipt of the applicant's completed application on July 21, 2012, and assigned it to staff member ██████████ to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated May 9, 2013, 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, currently a ██████████ in the regular Coast Guard, asked the Board to advance him from ██████████ to ██████████ with a date of rank of August 1, 2009. He alleged that upon returning from a voluntary, temporary separation from active duty to care for his newborn child, he was erroneously and unjustly reenlisted as a ██████████ instead of a ██████████ contrary to the policy in ALCOAST 299/09. He alleged that he should have been reenlisted as a ██████████ because he served in the Selected Reserve (SELRES) during his temporary separation and was advanced to ██████████ as a reservist. He argued that under the terms of ALCOAST 299/09, he should have been reenlisted as a ██████████ because he advanced to that rate while serving in the SELRES.

**SUMMARY OF THE RECORD**

The applicant enlisted in the regular Coast Guard on February 27, 2003, and advanced to ██████████. On July 25, 2008, he submitted a request to the Commander, Coast Guard Personnel Command (CGPC), asking for a temporary separation from active duty so he could care for a newborn child. The applicant's submission included a signed Statement of Understating of Conditions for Temporary Separation, and paragraph 1 states the following:

1. The member must be discharged or RELAD from the U.S. Coast Guard; officers returning to Active Duty receive a subsequent appointment to their former grade and an adjusted date of rank; enlisted members must reenlist through a recruiting office to return to Active Duty with the same grade last held on Active Duty. ...

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7. If an applicant elects to join the Coast Guard Reserve, he or she understands that they pursue one of the following options.

- a. Return to Active Duty after the up to 2-year separation period at the original rank/rate ...

CGPC granted the applicant's request for a temporary separation and issued orders for him to be separated on February 2, 2009. The orders state that he was being discharged under the Care of Newborn Children Program, Article 12-F-6 of the Coast Guard Personnel Manual.<sup>1</sup>

In his request for a temporary separation, the applicant had also requested permission to affiliate with the SELRES during his temporary separation. The applicant affiliated with the SELRES after his temporary separation and advanced to [REDACTED] as a reservist on August 1, 2009.

On May 19, 2009, the Commandant issued ALCOAST 299/09, titled "Update to Temporary Separation and Care of Newborn Children Policy." Among other changes to the policy, it announced that "[m]embers who choose to affiliate with the Selected Reserve and compete for advancement through the Reserve Servicewide Examination process will be authorized to return to active duty at the higher grade held if advanced while serving in the Selected Reserve." ALCOAST 299/09 did not contain any provision for retroactive application or address whether members already separated could return at the higher grade held if advanced while in the SELRES.

On October 6, 2009, the Commandant issued ALCOAST 583/09, titled "Clarification to Temporary Separation and Care of Newborn Children Policy," which states that "[f]or members who advance in the Reserves and subsequently return to active duty, [the Personnel Manual] is amended to read. [sic] Enlisted members who depart the Service on temporary separation and choose to affiliate with the Selected Reserve and advance through the Reserve Servicewide Examination process may be authorized to return to active duty at the higher grade attained if all current active duty requirements of [the Personnel Manual] are met and there is an existing Service need."

On December 6, 2010, the applicant submitted a memo to CGPC, notifying them that he intended to return to active duty on January 1, 2010, [sic] or "as soon as possible under the provisions of the temporary separation policy."

On December 22, 2010, the Coast Guard Personnel Service Center (PSC) sent a message to the Commander of Sector Charleston authorizing the applicant's discharge from the Reserve and reenlistment in the regular Coast Guard as a [REDACTED]. The following day, PSC sent another message amending its previous message by stating that the applicant should be reenlisted "as a [REDACTED] (rank at tempsep)", rather than a [REDACTED].

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<sup>1</sup> Article 12.F.6.6. of the Personnel Manual in effect in 2009 states the following: "The member has up to 2 years from the separation date to re-enlist through a recruiting office (if not affiliated with the Reserve) or Commander, (CGPC-epm) (if affiliated with the Reserve) and retain the previously held pay grade. Applicants are guaranteed the pay grade held upon return to Active Duty after the temporary separation if they re-enlist within 2 years."

The applicant reenlisted in the regular Coast Guard for a term of 4 years on January 15, 2011, and the reenlistment contract states that his pay grade is [REDACTED]

### VIEWS OF THE COAST GUARD

On February 12, 2013, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board [REDACTED] relief in this case. In so doing, he adopted the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC).

[REDACTED] PSC stated that under ALCOAST 583/09, members who temporarily separate and are advanced while serving in the Reserve “may be authorized to return to active [REDACTED] at the higher grade attained if all current active duty requirements are met and there is an existing Service need.” PSC stated that the applicant was reenlisted as a [REDACTED] based on Service need.

The JAG stated that [REDACTED] policy in effect when the applicant began his temporary separation was subsequently amended to allow the Coast Guard to reenlist temporarily separated members at their Reserve rank if they met the active duty eligibility requirements and if there was a “Service need.” The JAG noted that [REDACTED] policy is permissive and does not require PSC to articulate a reason for its decision. The JAG argued that “[n]othing about the policy or procedure followed in this case ‘shocks the sense of justice,’” and the applicant “has provided no evidence to show the Coast Guard committed error or injustice” in reenlisting him as a [REDACTED]

### APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 14, 2013, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to submit a response within 30 days. The applicant sent the Board an email requesting a 10-day extension to submit a response, which the Chair granted, but no response was received.

### 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 submission, 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 discovery of the alleged error or injustice in his record.

2. The applicant alleged that under ALCOAST 299/09, he should have been reenlisted as a [REDACTED] instead of a [REDACTED] on January 15, 2011, because he advanced to [REDACTED] on August 1, 2009, while a reservist. 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 his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust. 33 C.F.R. § 52.24(b). 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.” *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Ci. [REDACTED] 2); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

3. The preponderance of the evidence shows that when the applicant requested and began temporary separation on July 25, 2008, and February 1, 2009, respectively, he knew the policy then in effect—i.e., he knew that even if he advanced to [REDACTED] while in the Reserve, his rank upon reenlistment in the regular Coast Guard would be [REDACTED].

4. While the applicant was temporarily separated from active duty, he advanced to [REDACTED] in the Reserve and the Coast Guard issued ALCOASTs 299/09 and 583/09. Under those ALCOASTs, the regular Coast Guard could have reenlisted the applicant as a [REDACTED] if such action was in line with “Service need”—which would presumably be a shortage of active duty [REDACTED] and/or a lack of active duty [REDACTED] on a waiting list for [REDACTED] advancement to [REDACTED]. The applicant has not submitted any evidence that contradicts the Coast Guard’s claim that there was no Service need to reenlist him as a [REDACTED].

5. The record shows that on December 22, 2010, PSC originally issued a message for the applicant to be reenlisted as a [REDACTED] but amended the message within a day to authorize his reenlistment only as a [REDACTED]. The applicant has not shown that he relied to his detriment on the first message.

6. Accordingly, the applicant’s request should be denied because he has not proved by a preponderance of the evidence that his reenlistment as a [REDACTED] constitutes an error or injustice.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

[REDACTED]

[REDACTED]

[REDACTED]

**ORDER**

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

