

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2013-133



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 after receiving the applicant's completed application on June 20, 2013, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated February 14, 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 [REDACTED] (pay grade E-5) on active duty, asked the Board to correct his record to show that he advanced to [REDACTED] E-6 on August 1, 2010. He also asked the Board to award him the back pay and allowances he would be due as a result of this correction.

The applicant alleged that in 2010, his name was erroneously removed from the [REDACTED] E-6 advancement list. At the time, the applicant's name was [REDACTED] on the [REDACTED] advancement list, but his command thought that he had to qualify as a Boarding Officer to advance in the [REDACTED] rating. When he did not qualify as a Boarding Officer, the command marked him as not recommended for advancement on his April 30, 2010, performance evaluation. As a result of that mark, his name was removed from the [REDACTED] advancement list. However, the applicant alleged, qualifying as a Boarding Officer was not actually a requirement for advancing to [REDACTED] and so he should have been recommended for advancement. Had he been recommended for advancement, his name would not have been removed from the list, and he would have advanced to [REDACTED] E-6 in August 2010. In support of these allegations, the applicant submitted the following documents:

- ALCOAST 410/09, issued by the Commandant on July 16, 2009, established policy for advancements to the recently established [REDACTED] rating. The ALCOAST stated that upon publication of the [REDACTED] selection panel results, all members selected to lateral to the new [REDACTED] rating would be removed from their legacy rating advancement lists and merged onto a new [REDACTED] advancement list.

- A memorandum from the Enlisted Personnel Management Branch (EPM) of the Personnel Service Center (PSC) dated December 16, 2009, published the new [REDACTED] advancement list promised in ALCOAST 410/09. The attached list shows that the applicant's name was [REDACTED] on the list for advancement to [REDACTED]
- An email dated May 2, 2013, from the applicant's command to the Coast Guard Pay and Personnel Center (PPC) states that the applicant's name was removed from the advancement list in 2010 because he did not qualify as a Boarding Officer. However, Boarding Officer qualifications are irrelevant to advancement in the [REDACTED] rating, so his failure to qualify as a Boarding Officer should not have affected his advancement to [REDACTED]
- An email dated May 3, 2013, from PPC to the applicant notes that the applicant's command had asked PPC in August 2010 to change the applicant's mark from not recommended for advancement to recommended for advancement but had not followed through when advised of the proper procedure for making the change. PPC stated that the applicant's name was [REDACTED] on the list for advancement to [REDACTED] following the SWE in November 2009 and that he would have advanced to [REDACTED] on August 1, 2010, "had he not lost the recommendation for advancement."
- On May 31, 2013, the Chief of the Advancement Section at PPC advised the applicant's command that the request to change the advancement recommendation on the applicant's April 30, 2010, performance evaluation had been approved based on the information that the original mark was assigned in error or with incomplete information. The Chief stated that the applicant should ask the BCMR to consider advancing him retroactively.
- An email from PPC dated June 5, 2013, states that PPC had corrected the advancement recommendation on the applicant's performance evaluation dated April 30, 2010, after consulting with Commandant. However, PPC noted that further changes would require an order from the BCMR.

VIEWS OF THE COAST GUARD

On October 30, 2013, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant relief in this case. In so doing, he adopted the findings and analysis in a memorandum on the case prepared by PSC.

PSC stated that following the [REDACTED] selection panel in 2009, members selected to "lateral" to the [REDACTED] rating were removed from the advancement lists for their legacy ratings and merged into a new [REDACTED] advancement list for 2010 that was published on December 16, 2009. PSC stated that the applicant's command erroneously marked him as not recommended for advancement on his April 30, 2010, performance evaluation because he had not qualified as a Boarding Officer.

However, the applicant was on the [REDACTED] advancement list, and qualifying as a Boarding Officer “was not a requirement for the [REDACTED] rating.”¹

PSC noted that the applicant’s command tried unsuccessfully to fix the mark in August 2010. Although the mark was finally fixed in June 2013, the applicant was referred to the BCMR for any further correction of his record. Therefore, PSC recommended that the Board retroactively advance the applicant to [REDACTED]/E-6 as of August 2010 and to award him the corresponding back pay and allowances.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 8, 2013, the applicant responded to the views of the Coast Guard and agreed with them.

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.²

2. The applicant alleged that he should have advanced to [REDACTED] on August 1, 2010, and that he failed to advance only because his command had erroneously not recommended him for advancement based on his failure to qualify as a Boarding Officer, which was not a proper criterion for advancement to [REDACTED]. When considering allegations of error and injustice, the Board begins its analysis in every case by presuming that the disputed Page 7 is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that it is erroneous or unjust.³ Absent evidence to the contrary, the Board presumes that a member’s military records have been prepared “correctly, lawfully, and in good faith.”⁴

3. The Coast Guard has admitted that the applicant’s command erroneously marked him as not recommended for advancement on his April 30, 2010, performance evaluation based on his failure to qualify as a Boarding Officer, which was not a criterion for advancement to [REDACTED]. At the time, the applicant was [REDACTED] on the [REDACTED] advancement list, and the Coast Guard has admitted that the erroneous mark on his performance evaluation caused his name to be removed from the [REDACTED] advancement list. Therefore, he did not advance. PPC stated that the applicant’s command tried to correct the mark in 2010 but failed to follow PPC’s instructions for doing so. The Coast Guard has since corrected the mark on the applicant’s performance evaluation and

¹ See U.S. Coast Guard, CG-3303C-ME, Record of Enlisted Performance Qualifications: Maritime Enforcement Specialist (ME) (Dec. 2009).

² The application was received more than three years after the disputed Page 7 was entered in the applicant’s record, but under *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994), section 205 of the Soldiers’ and Sailors’ Civil Relief Act of 1940 “tolls the BCMR’s [3-year] limitations period during a servicemember’s period of active duty.”

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).

now recommends that the Board advance the applicant to [REDACTED]/E-6 as of August 1, 2010, and award him the corresponding back pay and allowances.

4. The applicant has proven by a preponderance of the evidence that his name was erroneously removed from the [REDACTED] advancement list in 2010 based on an erroneous mark of not recommended for advancement on his April 30, 2010, performance evaluation. Had his name remained on the advancement list, he would have advanced to [REDACTED] on August 1, 2010. Therefore, he has proven by a preponderance of the evidence that his failure to advance to [REDACTED] in August 2010 was erroneous and unjust. The Coast Guard has already corrected the applicant's performance evaluation, but the Board should further correct his record to show that he advanced to [REDACTED] on August 1, 2010, and by awarding him corresponding back pay and allowances.⁵

(ORDER AND SIGNATURES ON NEXT PAGE)

⁵ *DeBow v. United States*, 193 Ct. Cl. 499, 504 (1970), *cert. denied*, 404 U.S. 846 (1971) (“once the Board decides to give a remedy, it should not be free to slice the relief illegally or arbitrarily, sending the claimant forth with half-a-legal-loaf or even less”); *see Bonen v. United States*, 229 Ct. Cl. 144, 149 (1981) (“The ‘half-a-loaf’ doctrine normally applies where a corrections board grants plaintiff’s claim, but stops short of awarding the full appropriate relief requested by plaintiff. Failure of the board to grant full relief where it is mandated by the records change results in ‘a new cause of action’ or “‘continuing’ claim’ which revives the statute of limitations.”) (citing *Denton v. United States*, 204 Ct. Cl. 188, 195, *cert. denied*, 421 U.S. 963 (1975)).

ORDER

The application of [REDACTED] [REDACTED] USCG, for correction of his military record is granted. The Coast Guard shall correct his record to show that he advanced from [REDACTED]/E-5 to [REDACTED]/E-6 on August 1, 2010, and shall pay him any amount due as a result of this correction.

February 14, 2014

