

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2013-166**



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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 after receiving the applicant's completed application on August 21, 2013, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated May 9, 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, an [REDACTED] asked the Board to correct his Personnel Data Extract (PDE) to reflect a point start date (PSD) of March 10, 1998, which he alleged will reinstate his sea time and awards points. He wants the change to be reflected on his May 2013 servicewide profile letter.

The applicant alleged that ALCOAST 318/09 stated that sea time and awards points reset after advancement but did not explain what happens with respect to members who have been reduced in rank. Moreover, he stated that the ALCOAST does not apply to him because it expired on May 26, 2010, and he was reduced from E-7 to E-6 on September 7, 2011. He further alleged that the change to the Personnel Manual, COMDTINST M1000.6A, regarding changes to sea time awards and points being reset was not released until September 29, 2011, which was several weeks after he was reduced in rank. He argued that because he was reduced in rank after the ALCOAST expired and before the publication of the Personnel Manual change, he should "fall under the rules set forth in M1000.6A, which was the authorized instruction at the time of my reduction." The applicant also stated the following:

According to COMDTINST M5215.6F, ALCOASTs are self-cancelling after one year and must be followed up with a Change Notice to the effected directive. This did not happen in regards to ALCOAST 318/09. It was released on 26MAY2009 and expired on 26MAY2010. There were no changes made to

COMDTINST M1000.6A reflecting the new sea time and awards points resetting policy. At the time of my reduction the only manual I had to reference policy from was COMDTINST M1000.6A which does not reference or describe any scenarios for points resetting upon direction. ALCOAST 318/09 did not explain the policy for members that have been reduced in rank either. The examples for that were not explained until the publication of COMDTINST 1000.2 on 29SEP2011. I've had several revisions to my PDE and believe that my points start date should be 10MAR1998 which was the case on my 2012 PDE. With a points start date of 10MAR1998 I would have 8 points for Medals/Awards and 12.1666 points for Sea points. With these points reinstated I will have a total final multiple of 147.6 for this year's servicewide exam [SWE<sup>1</sup>]. The responses from PPC Topeka have reinforced my belief that I should have my points reinstated. PPC referenced a memo date September 30, 2009, with an attached MCPOCG Digest stating that "There was no clear direction on the mechanics of how the points would be reset" and the business rules for points resetting. This information was not updated into COMDTINST M1000.6 nor was this information explained until 29SEPT2011 with the release of COMDTINST M1000.2. PPC states the reason this information was not entered into the PERSMAN because the policy branch (CG-1221) was working on a complete rewrite of the PERSMAN but with other changes were accomplished during this time such as change 42 which occurred on 23APR2010. Furthermore, PPC also states that "it has been the position of the CG that the technical rule on ALCOAST messages expiring after one year does not void the rule promulgated by that ALCOAST" and that it would create chaos following the rule set in place for ALCOASTs and policy implementation. This is not an acceptable answer for not reinstating my earned award point and sea time points. I understand that I was reduced in pay grade due to my own actions and I was held accountable to the "technical rule." I expect the Coast Guard, and organization, to following the policies that are in place the same way it requires its members to follow them.

In further support of his application, the applicant submitted copies of email correspondence from CWO2 W, Supervisor, ██████████ to the PPC Advancements section. In those emails, CWO2 W argues on behalf of the applicant, asserting that when the applicant was reduced to ████████ there was no authorized manual that permitted the resetting of his PSD. He also argued that ALCOAST 318/09 should not apply to the applicant's situation because ALCOASTs are self cancelling and there was no continuation of policy after ALCOAST 318/09 expired. In PPC's response, the Branch Chief of PPC Advancements disagreed with the CWO2's assertion that there was no authorized manual in place during the applicant's reduction in rank that permitted the resetting of his PSD. He noted that ALCOAST 318/09 was published, that the rule was and is Coast Guard policy, and that members advanced "during this period" were covered by the same ALCOAST and business rules. PPC also argued that RADM H, the Assistant Commandant for Human Resources, approved the business rules for implementing ALCOAST 318/09 on

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<sup>1</sup> Under Article 5.C.3.b. of the Personnel Manual in effect in 2011, following the SWE in May each year, the candidates for advancement to a particular rate, such as ████████ are ranked on an advancement list according to a calculation that assigns points for each candidate's SWE score, performance marks, time in service, time in present pay grade, medals and awards, and sea duty.

October 14, 2009, and PPC started applying the rules on January 1, 2010. He added that the business rules memo did not change policy and that RADM H was simply approving the business rules to implement the already published policy.

### SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on November 10, 1997. He was reduced in rank from [REDACTED] to [REDACTED] on [REDACTED], following a trial by court-martial for adultery and false statement. A personal data extract for the applicant shows that his award points and sea points were reset to zero upon his reduction in rank. On July 10, 2013, the applicant submitted an appeal to the Coast Guard to correct his May 201 [REDACTED] er. In the appeal, he argued that his profile letter should reflect a PSD of March 10, 1998, and he requested restoration of all lost award and sea time points.

### VIEWS OF THE COAST GUARD

On January 6, 2014, the Judge Advocate General (JAG) submitted an advisory opinion in which he recommended that the Board deny relief. In so doing, he adopted the facts and analysis provided in an enclosed memorandum prepared by the Coast Guard Personnel Service Center (PSC).

PSC argued that the applicant has based his request for relief on his erroneous belief that ALCOAST 318/09, which announced the change in rules, was over a year old when he was reduced in rank and because the new manual incorporating the revised rules had not been promulgated. PSC submitted a statement from the Personnel and Pay Center (PPC), which argued that the position of the Coast Guard is that the technical rule on ALCOAST messages expiring after one year does not void the new rule promulgated by that A [REDACTED] eged that such an interpretation would “create chaos in the personnel field” and that the “rule has been enforced in this manner for 3½ years and has undergone multiple reviews as to its legitimacy. Therefore, PSC concluded, the applicant’s reduction did not occur within a gap between policies as alleged by the applicant, and the revision to the Personnel Manual announced in ALCOAST 318/09 was “in effect” and would remain so by direction of the ALCOAST until the revised PERSMAN (rule inclusion) was completed and reissued.

PSC stated that ALCOAST 318/09, COMDTNOTE 1430, SWE Sea/Surf Duty and Awards Point Policy Change announced a policy change to the procedure for crediting point [REDACTED] me, and awards in the final multiple on the SWE. The change was that members will receive “final multiple credit for only that sea time, surf time, and those awards earned at a member’s current pay grade when their date of rank in that pay grade is 1 January 2010 or later.”

PSC noted that on October 14, 2009, Admiral H signed [REDACTED] ting forth the business rules for implementing ALCOAST 318/09, and the memorandum describes the policy on reductions due to discipline, stating that the PSD will reset to the date of reduction. Moreover, PSC argued, ALCOAST 318/09 clearly indicates the rule change as a permanent change and revision to the CG PERSMAN. Therefore, PSC argued, the applicant’s PSD was properly reset when he was reduced in rate.





3. This change will take effect for the Reserve component with the October 2010 [SWE] and apply to all dates of rank of 1 January 2010 and later.

On October 14, 2009, RADM H signed a memorandum setting forth the business rules for implementing ALCOAST 318/09. The attachment to the memorandum provides the PSD of members under various scenarios, such as “normal SWE advancement,” “supplemental advancement,” and “voluntary advancement,” and it states that for members reduced in rate due to discipline, “[t]he PSD will reset to the date of reduction.”

Chapter 1.D. of COMDTINST M5215.6F, the Coast Guard Directives Manual in effect when ALCOAST 318/09 was issued, describes various kinds of Coast Guard directives. Chapter 1.D.7. states the following:

A Message-Type Directives. (ALCOASTs) There are Commandant Notices of an urgent nature transmitted through the telecommunications system. Also see Chapter 1 paragraph D.3 of this Manual, for more information. They shall not be used to make policy changes to other directives unless the emergency is clearly identified in the message. After release of the ALCOAST, it must be followed up with a Change Notice to the affected directive. An ALCOAST is self cancelling after one year. In the Directives System, URGENCY is defined as insufficient time to get essential information to personnel (see Appendix A, Paragraph C.1 for Message-Type Directives (ALCOAST)).

Chapter 1.D.3. of COMDTINST M5215.6F states the following:

Notice. A notice (NOTE) is a directive of a one-time or brief nature and has the same force and effect as an instruction. All notices have self cancelling provisions. Notices remain in effect until the date of cancellation, if less than one year, or are automatically cancelled after one year. Information that is expected to remain in effect more than one year must be issued as an instruction.

Paragraph 1.c. of Appendix A to COMDTINST M5215.6F states the following:

If an ALCOAST is making an urgent policy change, it must reference the directive that will incorporate the new policy and include the following statement within the message: THIS CHANGE WILL BE INCORPORATED IN THE NEXT PROMULGATION OF REF A. As an ALCOAST is self cancelling after one year, it must be followed up with a Commandant Change Notice to the affected directive within one year, or sooner.

### ***Manuals***

Article 5.C.33.b.1. of the Personnel Manual, COMDTINST M1000.6A (Change 41), issued in 2007, states that “[m]embers who have been reduced in rate, except those who fall within the provisions of Articles 15(d) and 15(e) of the Uniform Code of Military Justice, are

subject to the normal advancement system, unless they are considered by their commanding officers to be deserving of special advancement.”

Article 5.C.3. states that in the computation of points for advancement, members may receive up to 10 points for the medals and awards they have received by February 1<sup>st</sup> of the year in which they compete for advancement by taking the SWE, and each type of medal receives a certain number of points. Article 5.C.16. states that all personnel competing in the SWE will receive credit for each full month of their Coast Guard sea duty earned after February 1, 1994, not to exceed two whole points per year, up to a maximum of 30 points in a career.

In April 2010, the Commandant issued Change 42 to the Personnel Manual, but the policies in Articles 5.C.3., 5.C.16., and 5.C.33. were not changed.

As of October 1, 2011, the Commandant divided the Personnel Manual into multiple smaller manuals. Article 3.A.16.c. of the new Enlisted Accessions, Evaluations, and Advancements Manual, COMDTINST M1000.2, incorporated the provisions of ALCOAST 318/09 as follows:

The Points Start Date (PSD) is the accrual start date for sea/surf/award points for SWE final multiple. This date is reset upon an advancement to E-5 and above or reduction in grade. The following rules apply:

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(6) Involuntary Reduction in Grade Due to Discipline. The PSD will reset to date of reduction regardless of whether the member is reinstated to the higher grade at a later date.

## 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 over this matter under 10 U.S.C. § 1552(a). The applicant has exhausted his administrative remedies as required by 33 C.F.R. § 52.13(b), and his application is timely.

2. The applicant requested an oral hearing before the Board. 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.<sup>2</sup>

3. The applicant alleged that in 2013 the Coast Guard erroneously and unjustly set the date of his reduction in rate by court-martial, September 7, 2011, as his PSD for the purpose of computing the points he receives for sea duty and medals and awards, instead of assigning him points for all of the sea duty he has served and medals and awards he has received throughout his career. When considering such allegations of error and injustice, the Board begins its

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<sup>2</sup> 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”).

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.<sup>3</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>4</sup>

4. The applicant argued that his PSD was reset pursuant to ALCOAST 318/09, but that the policy established in the ALCOAST was canceled on May 26, 2010, and so does not apply to him because he was not reduced in rate until [REDACTED], and the policy in the ALCOAST was not properly incorporated in a manual until COMDTINST M1000.2 went into effect on October 1, 2011. Furthermore, he alleged that ALCOAST 318/09 did not address what the PSD of a member reduced in rate should be and so did not authorize the resetting of his PSD pursuant to the business rules approved on October 14, 2009.

5. ALCOAST 318/09 effectively amended Articles 5.C.3. and 5.C.16. the Personnel Manual as of January 1, 2010. Nothing in the ALCOAST indicates that the amendment was to be in effect only from January 1 to May 25, 2010, as the applicant claimed. Although COMDTINST M5215.6F provides that ALCOASTs self-cancel after a year and must be followed up with a Change Notice to the affected directive within a year, COMDTINST M5215.6F does not specify any consequences if a Change Notice is not issued or is issued without incorporating the provisions in the ALCOAST. The applicant asks the Board to infer that the self-cancellation of an ALCOAST voids any policy amendment provided therein, and the provisions in COMDTINST M5215.6F could certainly be interpreted in this way. The Coast Guard, however, states that it does not interpret the automatic self-cancellation of an ALCOAST after a year as voiding any new policy announced therein.

6. COMDTINST M5215.6F does not expressly state that any policy amendment effected by ALCOAST is void if not incorporated in a Change Notice within a year, and the Coast Guard's reasonable interpretation of its own policy is entitled to deference.<sup>5</sup> The Board finds the Coast Guard's interpretation reasonable in this case because it is consistent with past practice in that the Coast Guard has frequently amended the Personnel Manual by ALCOAST or other directive but has not habitually issued Change Notices once a year. For example, the Coast Guard issued no Change Notices for the Personnel Manual in 2004, 2006, 2008, or 2009. If all of the amendments effected by ALCOAST or other directive during those periods were voided within a year when the ALCOASTs self-canceled, chaos would likely have reigned in the Coast Guard's military personnel policy, as PPC alleged. Moreover, the 42 different Change Notices issued for the Personnel Manual since it was published in 1988 also self-canceled after a year. Therefore, if the self-cancellation of notices voided the policy amendments therein, the Personnel Manual would never have been permanently amended and would have remained exactly as it was published in 1988, which is an absurd result. In light of these considerations, and especially because ALCOAST 318/09 on its face clearly purports to permanently amend the Personnel Manual beyond a year's duration, the Board finds that the Coast Guard's interpretation in this

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<sup>3</sup> 33 C.F.R. § 52.24(b).

<sup>4</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>5</sup> *Chevron v. Natural Resources Defense Council*, 467 U.S. 837, 866 (1984).



case must prevail. Therefore, the Board finds that the policy amendment effected by ALCOAST 318/09 was not voided when the ALCOAST self-canceled on May 26, 2010. The Board notes that the meaning and purpose of the one-year self-cancellation provision of all ALCOASTs and Change Notices amending the Personnel Manual is not explained in the record, but the lack of an explanation does not persuade the Board that the dozens—perhaps hundreds—of amendments to the Personnel Manual issued by ALCOAST and Change Notice since 1988 must therefore be void.

7. The applicant argued that the fact that the new policy announced in ALCOAST 318/09 was not incorporated in Change Notice 42, issued in April 2010, proves that the policy was no longer in effect when he was reduced in rate on [REDACTED]. The Coast Guard did not explain why Change Notice 42 did not include the new policy, but Change Notice 42 removed and replaced just 16 pages of the Personnel Manual and did not state anything about voiding policy amendments effected in prior ALCOASTs. The pages removed and replaced by Change Notice 42 were related to Don't Ask/Don't Tell policy and not to advancement policy, so the Change Notice did not affect or re-amend the advancement and points policies at issue in this case. Therefore, the fact that the Coast Guard issued a Change Notice with its Don't Ask/Don't Tell policy in April 2010 does not persuade the Board that the policy amendment effected in ALCOAST 318/09 was intentionally or accidentally voided.

8. As the applicant noted, ALCOAST 318/09 does not expressly state how a reduction in rate would affect a member's PSD. Paragraph 1 provides that a member whose date of rank is January 1, 2010, or later will receive point credit only for the sea duty and awards earned in their current pay grade when competing for advancement. A member's date of rank is normally the date they advanced to their current pay grade but may also be the date they were reduced in rate as punishment at mast or court-martial. Therefore, pursuant to paragraph 1 of ALCOAST 318/09, the applicant's PSD was properly reset to [REDACTED], as a result of his reduction in rate. Paragraph 2 states, "All members will receive full credit for all earned Coast Guard sea time, surf time, and all awards currently authorized final multiple points for their first advancement on or after 1 January 2010," and cites as an example a member who is not advanced in 2010 and so does not receive a new date of rank but competes for advancement at a later date. If paragraph 1 did not exist, then pursuant to the first sentence of paragraph 2, the applicant would be entitled to point credit for all of his sea duty and awards when first competing for advancement after January 1, 2010, regardless of his reduction in rate. However, paragraph 1 and 2 must be read, interpreted, and implemented in conjunction, and under paragraph 1, the applicant does have a date of rank after January 1, 2010, because he was reduced in rate on [REDACTED]. Moreover, on October 14, 2009, the Assistant Commandant for Human Resources authorized "business rules" instructing PPC how to implement the new policy in ALCOAST 318/09, and those rules reasonably interpret the new policy as resetting the PSD for members who have a date of rank after January 1, 2010, due to a reduction in rate. Because the applicant's PSD was properly reset to his new date of rank on [REDACTED] in accordance with both paragraph 1 of ALCOAST 318/09 and the business rules authorized by the Assistant Commandant, the Board is not persuaded that the applicant was entitled to have his PSD revert to his date of enlistment when he competed for advancement in 2013.



**ORDER**

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

May 9, 2014

