

The applicant stated that he received marks of not recommended for advancement on his next two semiannual EERs based on his inability to regain his security clearance and to stand watch as an inport CDO. In November 2013, however, his CO told him that he felt the applicant “had shown the maturity and judgment necessary to start breaking in as an inport CDO despite still being unable to renew my security clearance.” The applicant was certified as an inport CDO on January 28, 2014, and began standing watch even though he had not regained his security clearance. Moreover, on his EER dated April 30, 2014, he was recommended for advancement even though he still had not regained his security clearance.

The applicant stated that on November 26, 2014, the new CO of his cutter told him that he would no longer be able to stand watch as a CDO due to his lack of a security clearance and access to restricted spaces. When the new CO asked him how he had qualified as a CDO without a security clearance, the applicant advised him of the history of his security clearance, removal from the advancement list, and CDO qualification. The new CO “then informed me that not having a security clearance is not a reason to deny a [REDACTED] advancement” and that he should challenge the removal through the BCMR.

In support of his allegations, the applicant submitted a letter to the Board from his new CO and the following documents:

- Article 3.A.4.b. of COMDTINST M1000.2 states that, to be eligible to advance, members must “[m]eet citizenship or security clearance requirements for advancement in certain rates or ratings. (See Article 3.A.10. of the Manual.)
- Article 3.A.10.c. of COMDTINST M1000.2 lists the BM rating among those that “generally do not require access to classified information.”
- The [REDACTED] advancement list resulting from the November 2011 service-wide examination shows that the applicant placed [REDACTED] on the list.
- ALCGENL 010/12, issued on January 24, 2012, shows that the initial cut-off for advancement to [REDACTED] was set at [REDACTED] on the advancement list.
- On July 23, 2012, the applicant signed a memorandum advising him of the Final Decision to Deny Security Clearance. He indicated that he would appeal the decision.
- ALCGENL 206/12, issued on September 12, 2012, shows that the cut-off for advancement to [REDACTED] was revised down to [REDACTED] on the advancement list.
- On his EER dated October 31, 2012, the applicant received primarily marks of 4 and 5 (out of 7) in the various performance categories but a low mark of 3 for Responsibility and a mark of Not Recommended for Advancement. The comment states that he—

is not recommended for advancement because he is unable to fill the duties and responsibilities of an E-5 aboard [the cutter] due to his lack of a security clearance. Because he cannot access restricted spaces, he is only able to stand the inport and underway watches normally reserved for E-4 and below. In many ways, [he] shows that he is ready to advance to E-6, and his dedication to the unit and his work-ethic are among his most outstanding qualities, but due to concerns about his ability to contribute to the unit at the E-5 level, he cannot be recommended for advancement.

- In a message dated November 13, 2012, PSC advised the applicant's command that his name had been permanently removed from the November 2011 and May 2012 advancement lists.
- ALCGENL 244/12, issued on November 23, 2012, shows that the Commandant authorized advancements to [REDACTED] for everyone above the cut-off on the advancement list as of December 1, 2012.
- On his EER dated April 30, 2013, the applicant received higher marks, including a standard mark of 4 for Responsibility, but he was not recommended for advancement. The comment states the following:

[The applicant] has maintained a positive attitude despite losing his recommendation for advancement last marking period due to an inability to obtain a security clearance, a requirement for his billet. [He] has made attempts to rectify his indebtedness, however all attempts have been unsuccessful. He has made significant progress on the ship, including earning a [REDACTED] and progressing towards [REDACTED]. Due to his continued inability to obtain a security clearance, [he] is not recommended for advancement.
- On his EER dated October 31, 2013, the applicant received primarily marks of 5 and a standard mark of 4 for Responsibility, but he was not recommended for advancement. The comment states the following:

[The applicant] is not recommended for advancement for his outstanding financial situation, which precludes him from receiving a favorable investigation for a security clearance.
- On a CG-3307 ("Page 7") dated January 28, 2014, the applicant's CO wrote that based on his performance and oral board results, the CO had certified him as a CDO for the cutter.
- On his EER dated April 30, 2014, the applicant received even higher marks, including a mark of 5 for Responsibility, and the CO recommended him for advancement.
- In his letter to the Board, dated April 15, 2015, the applicant's new CO wrote that about two months after he assumed command in the summer of 2014, he learned that the applicant was standing CDO watches even though he should not have had access to restricted spaces on the cutter. The new CO also learned that the applicant's name had been removed from an advancement list because he had lost his security clearance. The CO alleged that comments in the applicant's EERs indicate that the prior CO erroneously believed that having a security clearance was a rate requirement, and a telephone conversation he had with the prior CO supported this. The new CO stated that according to the regulations, which he has confirmed with the Enlisted Personnel Management branch of PSC, a security clearance is not a rate requirement for [REDACTED].

VIEWS OF THE COAST GUARD

On October 2, 2015, the Judge Advocate General (JAG) submitted an advisory opinion in which he recommended that the Board deny relief and adopted the findings and analysis in a memorandum on the case provided by the Personnel Service Center (PSC)

PSC stated that pursuant to Article 3.A.4.e.(4) of COMDTINST M1000.2, a CO's recommendation for advancement must be based on the member's leadership, personal integrity,

adherence to core values, and potential to perform in the next higher grade. PSC stated that although not all BM billets require access to classified information, the applicant's billet, which included serving as a CDO, required him to have a security clearance so that he could have access to classified information. PSC also pointed out that under Article 5.G.2.a. of COMDTINST M1000.2, a CO's recommendation for advancement does not require that the member be eligible for advancement but that the member be "fully capable of satisfactorily performing the duties and responsibilities of the next higher pay grade."

PSC stated that the applicant was not recommended for advancement on three consecutive EERs due to his inability to contribute to the unit at the E-5 level because he could not serve as a CDO, because he had lost his security clearance, and because of his financial irresponsibility. Although the applicant's CO ultimately allowed him to serve as a CDO and recommended him for advancement despite his lack of a security clearance, PSC argued that this decision "does not negate the concerns the applicant's commanding officer previously had regarding the applicant's ability to perform at the next higher pay grade." PSC noted that although the applicant was advised that he could appeal the loss of his security clearance, he did not submit an appeal.

PSC stated that pursuant to Article 3.A.25.f. of COMDTINST M1000.2, once a member's name is removed from an advancement list, the member must again be recommended for advancement and requalify by taking another SWE. Therefore, PSC stated, once the applicant had lost his CO's recommendation for advancement in October 2012, his name was properly removed from the advancement list and not returned.

PSC argued that no relief is warranted because the applicant has not shown that his CO's decision not to recommend him for advancement was erroneous or unjust. PSC stated that the applicant's CO properly exercised his discretion in deciding not to recommend the applicant for advancement on his EERs based on the applicant's inability to contribute at the E-5 level by serving as a CDO, his loss of his security clearance, and his financial irresponsibility. PSC concluded that the applicant has not proven that his CO failed to perform his duties correctly in making the decision that the applicant should not be advanced.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 7, 2015, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within thirty days. No response was received.

APPLICABLE POLICY

The Enlisted Accessions, Evaluations, and Advancements Manual, COMDTINST M1000.2, contains the following applicable policies:

Article 3.A.4.e. states, "Individual Coast Guard Commanding Officers (CO) and Officers In Charge (OIC) are responsible for the execution of the advancement program. Failure to properly discharge this responsibility reflects adversely on command performance. CO/CIOs are responsible for the timely evaluation of assigned personnel, submitting recommendations, and

coordinating with examining boards as necessary to ensure that every eligible and recommended candidate for advancement has an opportunity to compete.”

Article 3.A.4.e.(4) states “The CO/CIOs 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. Note: the commanding officer’s recommendation for advancement or change in rating by participation in the SWE is valid only for a specific competition and must be renewed for each succeeding competition.”

Article 3.A.25.f. states, “An individual’s name may be removed [from an advancement list] by the Commander (CG PSC) as a result of disciplinary action or for other good and sufficient reasons, whereby the individual is no longer considered qualified for the advancement for which previously recommended. Commanding officers shall withhold any advancement under such circumstances and advise Commander (CG PSC) of their intentions relative to removal from the list.”

Article 5.G.1. states that in deciding whether to recommend a member for advancement, “the rating chain must consider past performance and a member’s potential to perform satisfactorily the duties and responsibilities of the next higher pay grade, qualities of leadership and adherence to the Service’s core values. Each rating chain member must address this independent section every time they complete an employee review.”

Articles 5.G.2.b. and 5.G.3. note that a “not recommended” advancement recommendation is given when a member’s commanding officer determines that the member is “not capable of satisfactorily performing the duties and responsibilities of the next higher pay grade. If the approving official marks “not recommended,” they must ensure the member is properly counseled on the steps necessary to earn a recommendation and prepare supporting remarks.”

Article 5.G.4. states that “the approving official’s decision on the advancement recommendation is final and may not be appealed. However, the approval official can change the recommendation based on new information.”

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 discovery of the alleged error.

2. The applicant alleged that he was unjustly denied advancement to [REDACTED]/E-6 because his CO mistakenly believed that a security clearance was required for advancement to [REDACTED]/E-6 and so did not recommend him for advancement. In 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.¹ 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."²

3. The applicant's record shows that on his November 2012, April 2013, and November 2013 EERs, his CO did not recommend him for advancement to E-6 because he was an E-5 only able to do E-4 level work aboard the cutter because he had lost his security clearance as a result of personal financial problems. The applicant alleged that his CO mistakenly thought a [REDACTED]/E-5 was ineligible to advance to [REDACTED]/E-6 without a security clearance, and his new CO supported this claim. However, the applicant's October 2012 EER shows that the CO did not claim that the applicant was ineligible for such a recommendation but that the CO's concerns were about his inability to contribute to the unit even at the E-5 level. And his April 2013 EER expressly states that the security clearance was a requirement for the applicant's E-5 billet aboard the cutter—not for advancement to E-6 *per se*. This EER also notes that the applicant had been unable "to rectify his indebtedness," and the November 2013 EER states that he was not recommended for advancement to E-6 due to "his outstanding financial situation, which precludes him from receiving a favorable investigation for a security clearance." The Board finds that the preponderance of the evidence shows that the applicant was not recommended for advancement to E-6 on his November 2012, April 2013, and November 2013 EERs because of the combination of (a) his performing only E-4 work aboard the cutter, which was a consequence of his lack of a security clearance, and (b) his financial problems, which were the cause of his lack of a security clearance.

4. The applicant has not shown that his CO was mistaken about the [REDACTED] E-6 advancement eligibility criteria. Nor has he shown that his CO abused his discretion in denying the applicant a recommendation for advancement. Under Articles 3.A.4.e.(4) and 5.G.1. of COMDTINST M1000.2, COs are supposed to base advancement recommendations on a member's "leadership, personal integrity, adherence to core values, and his or her potential to perform in the next higher grade" and "past performance and ... potential to perform satisfactorily the duties and responsibilities of the next higher pay grade, qualities of leadership and adherence to the Service's core values." Given the applicant's inability to perform the duties of his E-5 billet aboard the cutter, the Board finds that the CO's decision not to recommend him for advancement to E-6 on his EERs in October 2012, April 2013, and November 2013 was reasonable and neither erroneous nor unjust.

5. The record shows that in 2014, the CO certified the applicant as a CDO and recommended him for advancement even though the applicant had not regained his security clearance. The reasons for these changes are not explained in the record, but the changes do not prove that the CO's prior refusal to recommend the applicant for advancement was erroneous, unjust, or based on a misunderstanding of the [REDACTED] advancement eligibility criteria.

¹ 33 C.F.R. § 52.24(b).

² *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

6. Because the CO's recommendation for advancement is the most important eligibility criterion for advancement, the applicant's name was properly removed from the advancement list pursuant to Article 3.A.25.f. of COMDTINST M1000.2 when he was not recommended for advancement on his November 2012 EER. Therefore, the Board finds that the applicant has not proven by a preponderance of the evidence that his lack of advancement to E-6 constitutes an error or injustice in his record. No relief is warranted.

(ORDER AND SIGNATURES ON PAGE)

ORDER

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

February 26, 2016

