

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-017

████████████████████
████████████████████

FINAL DECISION

This proceeding was conducted according to 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 completed application on October 31, 2016, and assigned it to staff attorney ██████████ to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated August 4, 2017, 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 active duty Health Specialist Technician (HS), asked the Board to correct his record by reversing his removal from a 2015 advancement list, removing the mark of “not recommended for advancement” from his record, and advancing him to a Chief Health Services Technician (HSC/E-7). He stated that he was unjustly removed from the advancement list due to an administrative error that was no fault of his own. He claimed that his supervisors provided no guidance or options for him to rectify his status, that the training course he needed to qualify for advancement was unavailable, and that his removal from the advancement list was punitive in nature, not administrative.

The applicant submitted two statements along with his supporting evidence. The first is largely identical to the appeal the applicant submitted after being removed from the advancement list (discussed below in the Summary of the Record). In that document, the applicant alleged that he had provided proof of certification as an emergency medical technician to his Officer in Charge (OIC) , HSCM A, on December 30, 2015, which was prior to the January 15, 2016, deadline he had been given. He stated that on February 27, 2015, he completed a National Registry of Emergency Medical Technicians (NREMT) refresher course well before his certification expiration date on March 31, 2015. The applicant explained that this refresher course satisfied the core competency requirement needed for his rate. He stated he had “clearly met all the guidance” he had received in order to be eligible for advancement. However, after taking the May 2015 servicewide examination (SWE) for advancement to HSC, his name was removed from the list and he did not

advance in 2016 as he had been set to do. He stated he “did not receive any notification as to why [he] did not advance, or previous notice that [he] was in fact officially being removed” from the advancement list.

The applicant also stated that an “extenuating circumstance” existed that he requested the Board consider. He stated that prior to the May 2015 SWE, he had been informed that he “was in full compliance and...fully qualified to sit for the May 2015 SWE.” He claimed the “only potential conflict” that could have resulted in a lapsed NREMT qualification was that his February 2015 refresher course “was submitted under the wrong affiliation center initially; clearly a clerical error not on [his] own behalf.” He stated that it was through no fault of his own that his refresher course was not properly recorded in the NREMT system. Once he became aware that he needed to recertify to have his NREMT qualification, he stated that he “wasted absolutely no time and successfully completed this objective.” He claimed that removing him from the advancement list was punitive, and not administrative in nature. The applicant claimed that he received “no guidance or leadership advice...on how to appeal or even rectify this situation prior to this debacle.”

The second document the applicant provided appears to have been written solely for the Board’s consideration. In that document, he explained that he was removed from the HSC advancement list “due to a qualification issue.” He stated that the NREMT qualification, however, is not used in his current position and he has not used the qualification since joining the Coast Guard sixteen years ago. He argued that the training he received through the Coast Guard “out ranks” the NREMT qualification. His career training has provided him with the skills necessary to provide routine and emergency healthcare services. The NREMT qualification is not needed to perform these medical services, he claimed. He added that many of the services he can provide, such as clinical lab tests and administering immunizations, are skills that are not taught by the NREMT. The applicant went on to discuss the duties he performs as an Independent Duty Health Services Technician and added that these “skills nullify the qualification of being a NREMT due to the fact that the role and training performed is minor if not obsolete in comparison to the training, qualification, and skills [he] already possesses as an Independent Duty Health Services Technician.”

The applicant also stated that in addition to being removed from the 2015 advancement list, he was also not eligible to compete in the 2016 SWE. He stated that issues like this are typical for members who have been reprimanded or punished, yet he has done nothing deserving of either. He argued that he has served honorably in the Coast Guard for sixteen years, has received “great” performance evaluations, and has been consistently recommended for advancement. He reiterated that the NREMT should not be a necessary element for advancement because there is no NREMT billet in the Coast Guard and because he does not use the knowledge from that qualification while performing his duties as a Health Specialist Technician.

In support of his application, the applicant provided many emails and documents. They are discussed below in the Summary of the Record.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on March 28, 2000. He attended HS “A” School and advanced to HS1/E-6.

On February 25, 2015, the applicant received a CPR Pro card, which indicated he was qualified for adult, child, and infant CPR. He received a Certificate of Completion from the U.S. Customs and Border Protection (CBP) Search, Trauma, and Rescue Team for successful completion of a three-day, twenty-four hour EMT refresher course on February 27, 2015.¹ The applicant also provided documents from his refresher course showing that he successfully completed each portion of the training.

According to the NREMT and the Coast Guard, the applicant’s NREMT certification lapsed on March 31, 2015, due to his failure to complete all of the required steps to be certified.²

On June 24, 2015, the Personnel Service Center (PSC) released the HSC advancement eligibility list from the May 2015 SWE, which shows that the applicant was ranked number 24. A copy of the listed annotated by PSC indicates that the first four members were advanced in January 2016, members ranked fifth through seventeenth were advanced between April and August 2016, and members ranked eighteenth through twenty-seventh were all advanced in September 2016, except the applicant and two other members.

On September 10, 2015, the applicant received an email from HSCM A with the subject “Validation of current NREMT certification request.” The top line of the email states, “NOTICE: Potential Removal from the May 15 Advancement list (READ ENTIRE EMAIL).” The applicant was the only member who received this particular email according to the information in the email header. The email states that a discrepancy had been identified between information in the Direct Access (DA) database (a Coast Guard human resources system) and the NREMT database. The applicant was informed that he received the email either because his “unit training officer didn’t properly enter [his] EMT certification..., or National Registry didn’t show you as current for various reasons.” In order to “correct this discrepancy,” the applicant was instructed to send HSCM A a copy of his NREMT card to show he was current on February 1, 2015. In the event his NREMT certification had expired on March 31, 2015, he was instructed to provide the newest, most current copy of his NREMT certification, which should be valid through 2017. The email states that the consequence of failure to respond by close of business on September 18, 2015, would be removal from the May 2015 advancement list. The last sentence states, “Hopefully in the future we will not have to take this extra measure once all databases are aligned.”

On September 15, 2015, a co-worker emailed Chief B in the administrative branch of the Command for the applicant due to “computer issues.” The co-worker stated that the attachment

¹ Pursuant to ALCOAST 326/13 and Coast Guard manuals, maintaining certification as an EMT is a core competency for the HS rating and required qualification for eligibility for promotion in that rating.

² According to the NREMT website, to be recertified, individuals must both complete refresher training and log in to their online NREMT account, update their user profile, submit an electronic recertification application, and pay the recertification fee. See <https://www.nremt.org/rwd/public/document/recertification>.

was the applicant's proof of "EMT Re-Cert qualifications."³ Chief B forwarded the attachment to Lieutenant (LT) T and asked her to update the applicant's certification qualification in the Training Management Tool (TMT). LT T responded, stating that she would take care of this request. Chief B then replied to the applicant and asked him to check his 2015 SWE personnel data extract by the end of the week and to let her know if it had not been updated.

HSCM A emailed the applicant on September 18, 2015, requesting a "historical good standing statement" from NREMT. He asked that the applicant provide it to him as soon as possible.

Also on September 18, 2015, the applicant exchanged emails with NREMT employees. The first email available in the chain is from an NREMT Certification Representative, LW, who stated that she looked at his account and found that he had a lapsed registration. She stated the reason his status was lapsed was because he "did not submit [his] application" when he was due to recertify. He responded the same day and stated he was sure he submitted all of the required documentation in mid-February 2015 in order to keep his NREMT qualification current. He stated that he took a course in February and "logged it all into the system" and claimed that he was "green" and up to date. At this time, he also requested a "historical good standing statement" per his supervisor's request. LW responded and stated that she was not able to provide that information and that the applicant would have to contact another NREMT employee, AW. The applicant forwarded this email chain to AW and requested the "historical good standing statement" from her. He also asked for assistance regarding his NREMT lapsed qualification, stating that he had taken a course in February and had logged everything into NREMT previously. AW responded and attached a copy of his historical statement of good standing.⁴ She added that he was not certified at that time and that his certification had lapsed twice before and he had regained certification. She then informed him of the steps he needed to take to regain certification, which consisted of submitting a new application, sending the NREMT proof of a recent 24-hour refresher course, and passing both cognitive and psychomotor examinations. She also stated that the course the applicant had taken in February with CBP would suffice for the refresher course requirement.

According to the NREMT website, the cognitive examination is a computer-based test which can be scheduled by the individual once he has applied for the examination. The website states that an individual must speak with their "instructor or State EMS Office about the format and logistics of completing a state-approved Emergency Medical Technician (EMT) psychomotor exam."⁵

On September 24, 2015, LT T emailed Chief B to let her know that she had entered the applicant's EMT certification⁶ into TMT that day with a certification date of February 27, 2015. LT T mentioned that it could take a few days to update in the DA database. Chief B then emailed the applicant with the same information.

³ It is not clear what attachment was included with this email. Presumably, the certificate from the applicant's February 27, 2015, refresher course was included.

⁴ The applicant did not submit a copy of this document from NREMT.

⁵ <https://www.nremt.org/rwd/public/document/emt>.

⁶ Because the applicant was not NREMT certified at this point, presumably LT T entered the certificate of the applicant's completion of EMT refresher training into TMT.

On October 5, 2015, HSCM A emailed several other HSCMs to let them know that he had enrolled everyone who had been slated to take an EMT recertification class, and he still had 26 seats open. He asked his fellow HSCMs to ensure members were aware that NREMT certification was required to be eligible to sit for the SWE. This email was forwarded to several members, including the applicant, on October 6, 2015.

On October 16, 2015, HSCM A sent a memorandum to PSC with the subject line "Request Removal from May 2015 SWE Eligibility List." HSCM A informed PSC that four members should be removed from the May 2015 SWE eligibility list "due to not meeting the established requirements." He also asked that four other members, including the applicant, be retained on the list "temporarily until they obtain National Registry of Emergency Medical Technician certification by December 31, 2015." HSCM A informed PSC that this would provide the members with "ample time" to allow them to recertify. The applicant was listed as one of these four members. The memorandum went on to explain that a core competency for the HS rating for members E-4 through E-7 is to maintain their NREMT certification in order to compete in the SWE. He stated that this "new requirement" was also considered a condition of work which was tracked in the TMT database. HSCM A explained that on May 18, 2015, he received a report from the District that some members who took the May 2015 SWE may not have been current on their NREMT qualification and were therefore not eligible to have sat for the SWE. He was informed that "a potential clerical error in TMT or Direct Access (DA) created inaccurate data," and it was discovered that 71 HS members had data discrepancies. HSCM A sent an email to the 71 members on September 10, 2015, asking for validation of their NREMT certification with a September 18, 2015, deadline. He discovered that sixty-three had current certification and were qualified to take the May SWE; four had had current NREMT certification as of February 1, 2015, but the certification had since lapsed; three were not certified on February 1 but still took the SWE; and one did not respond.

On October 29, 2015, a certification representative at NREMT, AG, emailed the applicant and asked for a copy of his refresher course completion documentation so that she could approve his application for recertification. She emailed him again later that day and stated that she was "holding [his] application for verification of the required 24 hours to test." The applicant responded on November 17, 2015, and asked if there was anything he could do to assist with the process. He stated that there are other courses he had taken that he had "logged into the site but now they are all gone." He stated that the courses took hours to complete, and some were weeks long.

On November 19, 2015, the applicant received a memorandum from PSC regarding validation of his advancement following the 2015 SWE. PSC informed the applicant that he had been identified as having his NREMT certification as of February 1, 2015, but he would need to recertify by December 31, 2015. Confirmation that he had recertified was required to be received by PSC by January 15, 2015. The applicant was warned that if he did not follow these instructions, he would be removed from the May 2015 advancement list.

On November 19, 2015, the applicant sent LT T a high-importance email. He stated that he was having issues trying to find his recertification form so that he could "compete for HSC."

He stated, “So instead of me waiting on a miracle may I request a ‘C’ school for EMT Re-Cert?” LT T responded the same day and told him she had submitted the request and asked him to check his DA every few days to see if he received orders to attend “C” school. Later that day he replied and told LT T that he had been informed the requested class was full and asked if he needed to submit a cancellation. She replied that no cancellation was needed and asked if there was another course that would work prior to the terminal eligibility date⁷ for the SWE.

On November 19, 2015, the applicant sent HSCM A an email asking if he could join the December 7 to 10, 2015, class pursuant to HSCM A’s email dated October 4, 2015. He stated that he had completed his recertification, but he was “having issues producing the paperwork,” so he decided to try to take a class again “instead of waiting until the last minute.” HSCM A replied on the same day and informed the applicant that all of the courses were full except the May 2016 course. HSCM A explained that he had requested a few more seats for each class and if that was approved he would place the applicant in one of the seats. He informed the applicant that he would need to be ready to take the NREMT examination if he got into one of the classes. He also asked the applicant if he had followed the instruction he had sent in September. The applicant responded on November 23, 2015, and informed HSCM A that he had spoken with the CBP head instructor about the refresher course he had taken in February. He stated that the CBP instructor had confirmed that they had “indeed entered the EMT completion into the NREMT system.” The CBP instructor was “confused as to why [the applicant] wasn’t given the ‘good to go’ and why his EMT wasn’t updated for another 2 years.” The applicant stated that he was no longer concerned with this issue and was now wondering if there was somewhere else he could “get tested.” He reminded HSCM A that this issue could prevent him from sitting for the next E-7 SWE.

On November 24, 2015, AG, the NREMT representative, replied to the applicant’s November 17, 2015, email and stated that she would need verification for his courses, specifically an EMT refresher course. She listed the options that would fulfill the EMT refresher requirement. On November 25, 2013, the applicant forwarded this email chain to the EMS Program Manager at CBP. He stated that he remembered fulfilling the requirements set forth in the email in the February 27, 2015, course he had taken with CBP. He asked how he could provide NREMT with the verification requested. The CBP employee forwarded the email to another employee and asked her to provide the applicant with the “Traditional EMT Refresher” course certificate for his February 2015 class. On December 30, 2015, this employee replied to EMS Program Manager with a copy of the applicant’s February 2015 class certificate.

On November 27, 2015, HSCM A replied to the applicant’s email dated November 19, 2015, and asked if the applicant had submitted his recertification package after attending the recertification class. HSCM A noted that if this was an issue on NREMT’s end, perhaps it could get cleared up. The applicant responded on December 14, 2015, and stated that he did log all of the information into the NREMT system, as well as the extra training that he had participated in on base. He stated that he “may have a way of rectifying this issue,” and that he would keep HSCM A posted.

⁷ The terminal eligibility date is the date the advancement eligibility list becomes effective. The terminal eligibility date for the May 2015 SWE was January 1, 2016.

On December 17, 2015, LT A emailed the applicant and informed him that she submitted a request for him to take the EMT certification course starting on April 4, 2016.

On January 27, 2016, HSCM A sent an email⁸ stating that he had received confirmation of NREMT certification from several members, who were therefore eligible to remain on the May 2015 advancement list. Two members, including the applicant, were named as not having met the deadline for providing proof of recertification and were therefore removed from the advancement list.

On January 29, 2016, the applicant emailed HSCM A with confirmation “for the NREMT testing” from the day prior. He stated he should know the results within one to two business days. HSCM A replied on February 5, 2016, and asked what the results were. The applicant replied the same day stating that he did not pass.

On May 26, 2016, the applicant received certification for completing a twenty-four hour EMT course, which was for Coast Guard Search & Rescue personnel which was in accordance with National EMS education standards.

On August 31, 2016, the Chief Warrant Officer (CWO) for the Health Center, CWO S, emailed HSCM A regarding the applicant’s appeal. CWO S informed HSCM A that the applicant requested to appeal his removal from the 2015 advancement list. On September 19, 2016, the applicant responded to this email (although it does not appear from the original email that he had been copied) to HSCM A and requested guidance on what steps he could take to appeal his removal from the 2015 advancement list. HSCM A responded the same day and stated that he would “review and provide guidance.”

On September 16, 2016, the applicant received confirmation that he had passed the NREMT cognitive examination. The confirmation noted that the applicant was still required to pass the psychomotor examination before he would be NREMT certified. On September 23, 2016, the applicant received verification of his psychomotor examination completion. The verification noted that the applicant had completed his state-approved examination and met all of the criteria.

On September 21, 2016, the applicant sent an appeal to PSC regarding his removal from the May 2015 advancement list. He stated that his appeal was based on the fact that he had completed his NREMT qualification. The body of the appeal is largely identical to the document he attached to his application, discussed above. He argued that he had completed his NREMT recertification in February 2015, and therefore met the requirements to be advanced.

On November 15, 2016, the applicant’s appeal request was sent to PSC by his Command, along with an endorsement. It noted that the applicant did not meet the requirement to be certified by the NREMT for the May SWE, and he did not become current until September 16, 2016. With the endorsement, his Command provided a timeline of events. It states the following:

- 10 SEP 2015: PSC CMC email regarding HS’s that might need to be removed from May 15 SWE list.

⁸ The Coast Guard provided a redacted copy of this email. Presumably, the email was sent to PSC.

- 10 SEP 2015: HS RFMC sent email notification to HS1 regarding potential of being removed from May 15 SWE Adv list.
- 16 OCT 2015: HS RFMC signed memo requesting to suspend member from the list until member receives recertification of NREMT by 31 Dec 2016.
- 19 NOV 2015: EPM signed memo to HS1 regarding members requirements to provide required NREMT certification documents otherwise he would be removed from May 15 SWE Adv list.
- 30 DEC 2015: HS1 emailed HS RFMC attaching 27 FEB 2015 NREMT certificate. HS RFMC worked with NREMT POC to find out the additional requirements for NREMT certification.
- 27 JAN 2016: HS RFMC request PPC remove HS1 from HSC adv board.
- 28 JAN 2016: PPC removes HS1 from HSC adv board.
- 29 JAN 2016: HS1 confirms receipt of NREMT test.
- 05 FEB 2016: HS1 confirms not passing the NREMT test.
- 02 DEC 2016: HS RFMC confirmed that member did not complete the exam by the required 31 DEC 2015 deadline.

On November 29, 2016, YNC U emailed HSCM A and requested a time to meet to discuss the “advancement case regarding [the applicant].” After a few emails back and forth discussing when to meet, YNC U emailed HSCM A on December 2, 2016, and stated that PSC had received a congressional inquiry regarding the applicant’s removal from the advancement list. YNC U requested the following information:

- 1) Is NREMT required for all to advance to E-7/HSC, or was this member required to maintain a previous qual? Is there a reference for this?
- 2) What type of training is this? (GMT, resident/non-resident)
- 3) HS1 received a [PSC] memo dated 19 November 2015 stating he needed to recertify before 31 December 2015 in order to remain on the May 2015 SWE list. Would this have been a possible task? I didn’t know if this is a simple “check the box” type of training in LMS or if he would need to attend a course or obtain signoffs, etc.

HSCM A replied on the same day and stated that the NREMT qualification is required for all HS members E-4 through E-7 for competition of E-5 through E-8. He stated the reference was located in HS-RPQ, wherein NREMT qualification is listed as a core competency. He explained that training for the NREMT competency begins at HS “A” school and is a pre-requisite to continue to the next phase of HS training. Members must recertify every two years, usually at a four-day course. The recertification standards are held by the NREMT, and all members are responsible for ensuring that they provide the NREMT with the required documentation for recertification. He went on to state that at the time the applicant received the memorandum, he had been “on track to challenge NREMT exam and the time frame was not necessarily a factor. HS1 was unable to complete the exam.” HSCM A stated that the applicant had allowed his NREMT to lapse, as he had been required to recertify prior to March 31, 2015. HSCM A further stated that he had informed the applicant in September 2015 and had requested verification of the applicant’s NREMT certification.

HSCM A also provided some background on this issue to YNC U. He stated that this core competency was announced to all members in the HS rating around 2011, when they were

informed that this RPQ change would be with the May 2015 cycle. The issue was brought to his attention that some members may not have been eligible to take the SWE exam, but were nonetheless allowed to participate. He emailed his HS members requesting verification of their NREMT certification. Four of those members were identified as having been current on NREMT certification on February 1, 2015, but had since lapsed. Those four members, including the applicant, were given a new deadline by which to come into compliance with the NREMT certification requirement. Of those four, the applicant was the only one who did not come into compliance.

On December 16, 2016, PSC sent the applicant a memorandum regarding his appeal. The applicant was informed that his request had been disapproved. PSC stated that he was required to be NREMT certified, and he did not become certified until September 16, 2016. He had therefore failed to meet the December 31, 2015, deadline, which resulted in his removal from the May 2015 advancement list.

The applicant provided a print-out from the NREMT website showing that he was up-to-date with his NREMT qualification, which expired on March 31, 2019. According to the NREMT website, certifications are valid for two years.

VIEWS OF THE COAST GUARD

On March 28, 2017, the Judge Advocate General of the Coast Guard recommended that the Board deny relief in this case. In so doing, he adopted the findings and analysis provided in a memorandum signed by the Commander, Personnel Service Center (PSC).

PSC stated that the application should be denied because the applicant failed to prove by a preponderance of the evidence that his removal from the May 2015 advancement list was erroneous or unjust. PSC stated that according to the Enlisted Accessions, Evaluations, and Advancement Manual, COMDTINST M1000.2 (series) (Enlisted Manual or Manual), the SWE for advancement to paygrades E-7 to E-9 are held in May of each year. The Manual states that the SWE eligibility date (SED) is the deadline by which members must complete all eligibility requirements in order to compete for advancement. PSC stated that the SED for the May 2015 SWE was February 1, 2015. The terminal eligibility date (TED) is the date the advancement list becomes effective. PSC stated that the TED for the May 2015 advancement list was January 1, 2016. PSC also explained that the Manual states that a cutoff point for each advancement year is established based on anticipated vacancies. PSC issues revisions to the cutoff list to account for additional members on the advancement list who will be guaranteed advancement.

According to the Manual, members must successfully complete the required competencies for their pay grade and rate. Members must maintain advancement eligibility from the date of recommendation through the date of their actual advancement. PSC stated that the Enlisted Manual further states that a CO may withhold a member's advancement for a variety of reasons. Article 3.A.19.b.1.b. of the Manual states that a CO may withhold an advancement for members who do not maintain all of the eligibility requirements for advancement. A withheld advancement may be effected at a later date, but not later than the expiration of the current eligibility list. Article 3.A.25.f. states that a member may be removed from an advancement list by PSC for "other good

and sufficient reasons,” such as when a member is no longer considered qualified for the advancement.

PSC stated that based on information available on the NREMT website, NREMT certification must be recertified every two or three years (depending on when initial certification was received). Once an individual has completed the requisite certification testing, he must update his NREMT profile and submit an application for processing and finalization. If an individual does not meet all of the recertification requirements prior to his expiration date, the certification is considered lapsed. If the lapse was less than two years ago or if an individual is currently state licensed as an Emergency Medical Technician (EMT), then they can regain NREMT certification by taking a cognitive and a psychomotor examination. In order to take these tests, an individual must show proof of the educational requirements, such as an approved EMT refresher course.

PSC further stated that a new advancement requirement was announced on June 13, 2008, in ALCOAST 288/08 for members who desired to advance to HS3/E-4. It states that members in the HS rating are required to maintain NREMT certification. On August 7, 2013, ALCOAST 326/13 announced changes to the enlistment advancement training requirements for all ratings. For the HS ratings, it established the NREMT as a core competency and required HS members to maintain NREMT certification for advancement, regardless of the nature of the member’s current assignment. PSC explained that all HS members were “required to have an active NREMT certification prior to the SED for the May 2015 SWE and maintain this certification through the date of their advancement.” The Rating Performance Qualification System for Health Service Technician Senior Enlisted further states that all members competing for advancement to paygrades E-5 through E-7 are required to hold a current EMT certification.

PSC stated that the EMT refresher course the applicant completed on February 27, 2015, satisfied the requirement for the applicant to complete a refresher training for his NREMT recertification which would expire on March 31, 2015. PSC stated that the NREMT also requires that individuals complete certain documentation in order to verify eligibility for recertification. Because the SED date for the May 2015 SWE was February 1, 2015, the applicant was found eligible to sit for the May 2015 SWE, as he had a valid NREMT certification on that date, PSC explained. According to the advancement eligibility list following the May 2015 SWE, the applicant placed twenty-fourth on the HSC/E-7 advancement list. After being afforded time to come into compliance with the NREMT certification requirement, the applicant did not become NREMT certified by December 31, 2015. The guaranteed advancement was set to number twenty-five on the advancement list, meaning the applicant would have advanced had he maintained eligibility. He was still not certified by February 1, 2016, which meant that he was also unable to sit for the May 2016 SWE. PSC explained that the next opportunity would have been the May 2017 SWE.

PSC stated that the applicant was removed from the 2015 advancement list due to not maintaining his NREMT qualification as required for members in his rate. The requirement to maintain NREMT qualification was “properly promulgated” via ALCOAST 288/08, ALCGENL 326/13, and the Rating Performance Qualification System for the Health Services Technician for paygrades E-7 to E-9. PSC stated that the applicant failed to maintain this qualification, as evidenced by various email correspondences. The applicant was provided with additional time to come into compliance and remain eligible for advancement. When the applicant did not meet this

deadline, PSC argued, he was “properly removed from the SWE” advancement list. PSC argued that the applicant did not prove by a preponderance of the evidence that his removal from the advancement list was erroneous or unjust. PSC therefore recommended that no relief be granted.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 1, 2017, the Chair sent the applicant a copy of the Coast Guard’s advisory opinion and invited him to respond within thirty days. No response was received.

APPLICABLE POLICIES

Article 3.A.3.b. of the Enlisted Accessions, Evaluations, and Advancement Manual, COMDTINST M1000.2 (series) states that the SWE for paygrades E-7 through E-9 is in May. Article 3.A.3.c. states that the SWE Eligibility Date (SED) is the date by which all members must complete their eligibility requirements before the upcoming SWE. For examinations in May, the SED is February 1 of the examination year. Article 3.A.3.d. states that the Terminal Eligibility date (TED) is the date when the advancement list becomes effective. For May examinations, the TED is January 1 of the following year. A cutoff point for advancement is established based upon vacancies during a given period of eligibility, as discussed in in Article 3.A.3.e.

Article 3.A.5. discusses basic eligibility and advancement requirements. The description states that every “enlisted member must complete and meet the eligibility requirements listed below by the Servicewide Eligibility Date (SED) of the applicable SWE.” Item 1. on the list is that a member must have “successfully completed competencies, as required, for particular pay grade and rate.”

Article 3.A.13. is titled “Circumstances Which May Render Members Ineligible for Advancement.” It states that all members are required to maintain advancement eligibility from the date of recommendation through the date of advancement. Article 3.A.19.b. discusses withholding advancement. A CO may withhold an advancement for “not maintaining the eligibility requirements for advancement found in Article 3.A.5.” An advancement that was withheld may be reinstated at a later date, but “not later than the expiration of the current eligibility list.” A member whose advancement was withheld may not carry over their advancement eligibility onto a new advancement list. Article 3.A.25.f. states that a member’s name may be removed from an advancement list for “good and sufficient reasons, whereby the member is no longer considered qualified for the advancement for which previously recommended...Members whose names are removed from an eligibility list must be recommended and qualify again through a subsequent SWE competition.”

ALCOAST 288/08 was released on June 13, 2008. It released a new advancement requirement for HS3: “members desiring advancement to HS3 must attain NREMT basic Emergency Medical Technician certification.”

On August 7, 2013, ALCOAST 326/13 was released. It created a new rating performance qualification (RPQ) standard for all HS paygrades, which was available in the RPQ for the HS rate. The new requirement was to be implemented for any member who wished to participate in

the May 2014 SWE, and for members who wished to participate in the May 2015 SWE, by February 1, 2015. The Rating Performance Qualification System for Health Services Technicians Senior Enlisted, which was released following ALCOAST 326/13, states that for members who wish to compete for paygrades E-5 to E-7, they must hold a current EMT certification.

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. The applicant claimed that the Coast Guard erroneously and unjustly removed him from the 2015 SWE advancement list, prohibiting him from advancing to E-7/HSC. 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.⁹ 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."¹⁰

3. The applicant claimed that he was unjustly removed from the advancement list in spite of his allegation that he had "clearly met" all of the advancement requirements. The Board disagrees with the applicant's contention that he had met all of the requirements for advancement. As the applicant admitted, maintaining NREMT certification is a published requirement for members in the HS rate. Although the Coast Guard allowed the applicant to sit for the 2015 SWE because he was certified on the SED, February 1, 2015, his NREMT certification expired on March 31, 2015. According to COMDTINST M1000.2, Article 3.A.13., members must stay eligible for advancement through the actual date of their advancement. The applicant was therefore required to properly maintain his NREMT qualification to remain eligible for advancement. Based on the February 27, 2015, certificate of completion from an EMT refresher course and the September 18, 2015, email from an NREMT employee, the three-day course the applicant took was sufficient for the educational component of NREMT recertification. However, the record shows that individuals wishing to be recertified must also login to their online NREMT account, update their user profile, submit an electronic recertification application, and pay the recertification fee before they can print their certification card.¹¹ The applicant vehemently claimed that he submitted all of the proper documentation to the NREMT following his February 2015 refresher course. However, he did not submit any evidence, such as an online confirmation page, a dated copy of the certification card print-out, or a credit card charge showing he had timely paid the recertification fee to show that he

⁹ 33 C.F.R. § 52.24(b); *see* Docket No. 2000-194, at 35-40 (DOT BCMR, Apr. 25, 2002, approved by the Deputy General Counsel, May 29, 2002) (rejecting the "clear and convincing" evidence standard recommended by the Coast Guard and adopting the "preponderance of the evidence" standard for all cases prior to the promulgation of the latter standard in 2003 in 33 C.F.R. § 52.24(b)).

¹⁰ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

¹¹ *See* <https://www.nremt.org/rwd/public/document/recertification>.

had completed all of the steps necessary to prevent his certification from lapsing. As of April 1, 2015, the applicant's NREMT certification and lapsed, and he was therefore no longer in compliance with all of the advancement requirements as mandated by COMDTINST M1000.2, Article 3.A.5.

4. The applicant claimed he was not given any "options or guidance to rectify the status." The Board disagrees with this contention. The applicant himself provided emails that showed that he was not only given guidance, but also extra time to come into compliance with the NREMT certification requirement. The applicant received an email from HSCM A on September 10, 2015, informing him that he could be removed from the advancement list if he did not send in a copy of his NREMT certification card showing he was current on February 1, 2015, and a copy of a certification card showing he was current after March 31, 2015. On November 19, 2015, the applicant received a memorandum from PSC directing him to complete NREMT recertification by December 31, 2015, and to confirm his recertification with PSC by January 15, 2015. The record also shows that on September 18, 2015, the applicant received individual guidance from NREMT staff about the steps he had to take to regain his certification, which did not include refresher training because his completion of CBP's refresher course in February 2015 was deemed sufficient to recertify.¹² The evidence therefore shows that the applicant was provided with proper guidance on how he could remain on the 2015 advancement list despite having allowed his NREMT certification to lapse. Additionally, although the applicant claimed that he had "wasted absolutely no time and successfully completed [recertification]," he was not recertified by the NREMT until September 23, 2016.

5. The applicant complained that "the course" was unavailable for him to take by the given deadline. It is unclear to which course the applicant is referring. He had successfully completed an EMT refresher course on February 27, 2015, and the NREMT staff stated that the course fulfilled that requirement. Because his NREMT had lapsed, he was also required to take the psychomotor and cognitive examinations in order to regain his NREMT certification.¹³ The applicant's emails dated November 17 and 19, 2015, indicate that he wanted to take another EMT refresher course, but none were available prior to the December 31, 2015, deadline. However, the applicant was not required to take another EMT refresher course in order to recertify with the NREMT. He was required to take and pass the cognitive and psychomotor examinations, which three other members in his situation successfully accomplished after HSCM A's notification.. The applicant provided no evidence that he was unable to take the qualifying cognitive and psychomotor examinations prior to December 31, 2015.

6. The applicant also claimed his removal was punitive in nature and therefore unjust. However, the evidence shows that the applicant was given notice prior to being removed from the 2015 advancement list and was given extra time to come into compliance with the eligibility requirements because he had not maintained his eligibility through the date of his advancement to

¹² According to the NREMT website, qualifying EMT refresher training must be completed no more than two years before recertification. <https://www.nremt.org/rwd/public/document/emt>.

¹³ "If the EMT did not meet all recertification requirements by the expiration date, the National EMS certification is considered to be lapsed. If the certification lapsed less than two years, or you are currently state licensed as an Emergency Medical Technician (EMT), you can regain National EMS Certification by completing the cognitive and psychomotor examinations." <https://www.nremt.org/rwd/public/document/emt>.

E-7/HSC as required by COMDTINST M1000.2, Article 3.A.5. The applicant has not proven by a preponderance of the evidence that the Coast Guard took any of these measures in retaliation for any of his actions or as a punitive measure against him. To the contrary, it appears from the record that the Coast Guard gave the applicant extra and ample time to come into compliance, which it was not required to do under the applicable rules. The applicant was unable or unwilling to meet the requirements for recertification prior to December 31, 2015, and was accordingly removed from the advancement list.

7. Although the applicant did not dispute the fact that maintaining NREMT certification is a requirement for his rating, he nonetheless argued that the certification is not a necessary component of his duties and so the lapse of his certification should not have caused his removal from the advancement list. The applicant stated that in his sixteen years in the HS rate in the Coast Guard, he has never used the training received via the NREMT certification process. He asserted that the Coast Guard training goes above and beyond what is taught at the EMT refresher courses, and so the requirement for NREMT certification should be deemed null. However, the Board is not persuaded that the Coast Guard's requirement that members in the HS rating have NREMT certification is unjustified based on Service needs. The Coast Guard is authorized to make its own rules concerning members' training and advancement requirements, and the applicant has not shown that the NREMT certification requirement was erroneously or unjustly applied in his case.

8. The applicant has therefore not proven by a preponderance of the evidence that the Coast Guard erred or acted unjustly in removing him from the 2015 advancement list after he allowed his NREMT certification to lapse on March 1, 2015, and did not regain it before December 31, 2015. His request for relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

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

August 4, 2017

