

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2017-045**

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██████████

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**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 December 13, 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 September 8, 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, a seaman with the food service specialist rating (SNFS/E-3) at the time of application who has since advanced to FS3/E-4, asked the Board to correct his record by backdating his advancement from E-2 to E-3 from September 23, 2016, to June 28, 2016. The applicant explained that his Career Intentions Worksheet was completed for his advancement to an E-3 at his previous unit in June 2016 before he transferred. He stated that the paperwork was never properly submitted by his previous unit. However, he did not become aware of this until he was attending Food Service (FS) "A" School. At the completion of FS "A" School, on September 23, 2016, he was advanced to an E-3, despite the fact that he was under the impression he had advanced in June 2016. The applicant stated that this delay caused his "6 month wait to make E-4 restart."

The applicant provided several statements in support of his application. The first is from the Commanding Officer (CO) of the applicant's previous unit. He stated that he was informed that the applicant's advancement to an E-3 was not completed on time despite the fact that he was ceremonially advanced on June 18, 2016, while still attached to the CO's unit before departing for FS "A" School. The CO stated that for some reason, the administrative actions were not taken on that date, so the applicant was not timely advanced. He stated that he reviewed the correspondence from his unit's administrative staff and discovered that the Career Development Worksheet for the applicant was generated by the staff but then misplaced and not processed. A new worksheet had to be created in order for the applicant to advance to E-3. The CO stated that there "was never any intention to delay" the applicant's advancement; the applicant was said to be "an outstanding

performer...and should have advanced to E-3 in conjunction with the ceremonial advancement date and be afforded pay and benefits retroactively.”

The second statement is from the CO of the applicant’s current unit. He stated that the applicant should have been advanced on June 28, 2016, and that the delay to September 23, 2016, was an error. He stated that he confirmed this with the applicant’s prior unit as well.

### **SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard on September 9, 2015, as a seaman recruit in pay grade E-1. A print-out from the applicant’s human resources page shows that he was advanced to seaman apprentice, E-2, upon completing recruit training on December 18, 2015. He was advanced to E-3 as a seaman with the FS designation on September 23, 2016.

On December 18, 2016, the applicant’s CO completed a Career Development Worksheet to advance the applicant to E-4. The worksheet states that the applicant met all of the eligibility requirements for advancement as of this date. The applicant’s human resources print-out shows that he had not advanced to E-4 as of January 1, 2017.

### **VIEWS OF THE COAST GUARD**

On April 28, 2017, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion and recommended that the Board grant relief in this case. The JAG adopted the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC).

PSC recommended that the Board grant relief because the applicant has proven by a preponderance of the evidence that the Coast Guard had intended to advance him to an E-3 on June 18, 2016, but misplaced his paperwork and failed to do so. PSC noted that according to the Enlisted Accessions, Evaluations, and Advancements Manual, COMDTINST M1000.2 (Enlisted Manual or manual), a member must complete six months at paygrade E-2 to advance to E-3 or satisfactorily complete “A” school. A CO has the authority to advance a member who meets the eligibility requirements from E-2 to E-3, and the advancement may be effected on any day subsequent to the completion of the advancement requirements. A CO may not advance a member retroactively.

PSC stated that the applicant advanced to an E-2 on December 18, 2015, which means that he was eligible to advance to E-3 on June 18, 2016, after six months in the E-2 paygrade. If the applicant had advanced to E-3 on June 18, 2016, PSC stated, he would have been eligible to advance to E-4 on December 18, 2016, after completing FS “A” School, assuming he had his CO’s advancement recommendation. According to the Career Development Worksheet signed by the CO on December 18, 2016, the CO found that the applicant was eligible for advancement on that date. However, because the applicant had not advanced to E-3 until September 23, 2016, he was not advanced to E-4 until March 23, 2017. PSC stated that the worksheet “appears to have been completed to coincide with the expected...date of advancement” of June 18, 2016. In addition,

PSC noted that the applicant submitted two statements, both of which indicate that the applicant was expected to advance to E-3 in June 2016.<sup>1</sup>

PSC stated that under the Enlisted Manual, the applicant should not have been ceremonially advanced on June 18, 2016, without documentation noting that he was eligible for advancement. However, the documents that the applicant had allegedly routed prior to departing his previous unit were never properly received. PSC stated that upon review of the record, it appears that the applicant's Career Development Worksheet from June 18, 2016, was misplaced despite the fact that his CO intended for him to be advanced on that date. PSC stated that the applicant "has proven by a preponderance of the evidence that his delay in advancement was an error on the Coast Guard's part that warrants correction." PSC therefore recommended that his E-3 advancement date be corrected to June 18, 2016, and that he be awarded all back pay due as a result of this correction.

### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On May 2, 2017, the Board sent a copy of the Coast Guard's advisory opinion to the applicant and invited a response within thirty days. No response was received.

### **APPLICABLE REGULATIONS**

Article 3.A.14.a. of the Enlisted Accessions, Evaluations, and Advancements Manual, COMDTINST M1000.2 (Enlisted Manual or manual) states that the "minimum time in grade and rating required for advancement in rate for active duty and reserve members" is six months to advance to E-3 or satisfactory completion of "A" School. To be advanced to E-4 by one's CO, the minimum time in grade is six months as an E-3, and the member must have graduated from "A" School or completed a striker program to earn a rating and be recommended for advancement by the CO. Enlisted Manual, Articles 3.A.2., 3.A.5.m., and 3.A.14.a.

Article 3.A.20.b.(1) states that when a CO receives "written notification of completion of courses and performance qualifications," he may advance the member to an E-3. According to Article 3.A.22.a., the effective date of advancement to E-3 is on "any date subsequent to the completion of the applicable requirements."

Article 3.A.20.a. states that COs "are authorized to advance, without reference to Commandant (CG-1), from pay grade E-3 to E-4 or E-4 to E-5 members who were assigned a designator upon graduation from a Class "A" course once the member satisfies all applicable eligibility requirements of Article 3.A.5. of this Manual."

Article 3.A.22.c. states that a CO may not advance a member retroactively, and no exceptions to this rule are allowed.

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<sup>1</sup> PSC did note that the second statement from the applicant's current CO incorrectly stated that the applicant should have been advanced on June 28, 2016. The applicant was ceremonially advanced on June 18, 2016, and that was the original expected date of advancement.

## 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 asked the Board to correct his record by changing his date of advancement to June 28, 2016. He claimed that the delay in his advancement until September 23, 2016, was erroneous. 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.<sup>2</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>3</sup>

3. The record before the Board does not include a Career Development Worksheet approving the applicant's advancement to E-3 on June 18, 2016. However, the COs at both the applicant's previous unit and current unit stated that he should have advanced in June 2016. The current CO stated that the applicant should have been advanced June 28, 2016. It appears from other evidence that this date may have been a mistake and that the applicant should have advanced to E-3 on June 18, 2016. According to Article 3.A.14.a. of the Enlisted Manual, the earliest the applicant would have been eligible to advance was June 18, 2016, as he advanced to E-2 on December 18, 2016. The applicant's CO at his former unit also stated that the applicant was ceremonially advanced on June 18, 2016. In addition, the applicant's current CO signed a Career Development Worksheet on December 18, 2016, to advance the applicant to E-4. This date is the earliest the applicant could have advanced to E-4 had his advancement to E-3 been timely processed. The preponderance of the evidence therefore shows that the applicant's command had intended for the applicant to advance to E-3 on June 18, 2016, when he was first eligible for the advancement, and in fact believed that he had.

4. The preponderance of the evidence shows that, had the applicant been timely advanced to E-3 on June 18, 2016, he would have advanced to E-4 on December 18, 2016. The applicant's new CO believed he had advanced to E-3 on June 18, 2016, and signed the Career Development Worksheet to advance the applicant to E-4 on December 18, 2016, showing that the applicant was recommended for advancement on that date and had completed the qualifications. The applicant had completed FS "A" School on September 23, 2016, and on December 18, 2016, he had served exactly six months as an E-3. Therefore, he had met the eligibility requirements for advancement to E-4 in Articles 3.A.5.m., 3.A.14.a., and 3.A.20.a. of the Enlisted Manual. PSC has admitted that instead of advancing to E-4 on December 18, 2016, as a result of the Coast Guard's administrative error, the applicant was not advanced to E-4 until March 23, 2017. The Board therefore finds that the applicant should have advanced to E-4 on December 18, 2016.

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<sup>2</sup> 33 C.F.R. § 52.24(b).

<sup>3</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).

5. The Board finds that the applicant has proven by a preponderance of the evidence that he should have advanced to E-3 on June 18, 2016, instead of September 23, 2016. Moreover, if he had timely advanced to E-3 on June 18, 2016, he would have advanced to E-4 on December 18, 2016, when his CO approved his advancement. Therefore, the Board finds that the Coast Guard should correct his record to show that he advanced to an E-3 on June 18, 2016, and to E-4 on December 18, 2016, and should pay him any back pay and allowances he is owed as a result of these corrections.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

**ORDER**

The application of [REDACTED], USCG, for correction of his military record is granted. The Coast Guard shall correct his E-3 advancement date to June 18, 2016, and his E-4 advancement date to December 18, 2016, and shall pay him all back pay and allowances due as a result of these corrections.

September 8, 2017

