


**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. 2017-163**

 CS1/E-6 (retired)

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**FINAL DECISION**

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the completed application on May 17, 2017, 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 February 2, 2018, 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 retired First Class Culinary Specialist (CS1/E-6), asked the Board to correct her record by retroactively advancing her to a Chief Culinary Specialist (CSC/E-7) as of August 1, 2016, awarding her back pay, and removing her from any retirement list.<sup>1</sup> She stated that after she was transferred in July 2016, her previous unit<sup>2</sup> conducted a record review and “felt there was justification to conduct a formal investigation” and have a Food Service Assistance and Training Team (FSAT) report created. The investigation looked into her management of records and “funds related to the food support accounts.” She stated that while the investigation was still pending, she became eligible for advancement to E-7. However, her new, current command was informed of the ongoing investigation and postponed her advancement pending final disposition of the investigation. She stated that the FSAT was completed on July 16, 2017, and it noted “no significant discrepancies.” She also stated that she had reviewed the FSAT and responded to all of the discrepancies. A Coast Guard Investigative Service (CGIS) report was created in February 2017; however, she stated she never saw the outcome of this investigation.<sup>3</sup> No “other disciplinary action was taken” against the applicant, which she asserted implies the investigation did not reveal any violations of the Uniform Code of Military Justice.

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<sup>1</sup> The application was received on May 16, 2017. At that time, the applicant was set to retire on September 1, 2017. She therefore had requested that the Board provide her with a decision by that date. She has since retired.

<sup>2</sup> There are two units discussed in this decision. For clarity, they will be referred to as her “previous unit” and her “current unit,” despite the fact that she is now retired.

<sup>3</sup> The CGIS report is not before the Board.

The applicant argued that with the FSAT completed in July 2016<sup>4</sup> and because she maintained her advancement recommendation, she remained eligible for advancement “upon selection in August and the entire time through the investigation period” through December 16, 2017. She stated that on December 16, 2017, before the CGIS investigation ended, her advancement recommendation was revoked by her current command “based on significant discrepancies on a recent FSAT Assessment Report and an ongoing investigation.” The applicant argued that “it is impossible to have made a final determination based on the investigation because the investigation was still ongoing.” She stated that her previous command had frocked her to Chief Petty Officer and she was led to believe that she was performing well as a Chief Petty Officer. The applicant stated that the only reason she was given for not being able to advance was because of the investigation, yet after the investigation was completed she received “no negative feedback.”

In support of her claims, the applicant provided several documents, which are described below in the Summary of the Record. She provided responses to many of the items in the FSAT Assessment Report. These are attached and discussed in the Summary of the Record. The applicant also provided character references prepared for the Board. The first is from a Master Chief Culinary Specialist with twenty-nine years of experience in the Coast Guard. He stated that he had been working with the applicant throughout her attempts to “reconcile her situation and regain her recommendation for advancement.” He stated that he had reviewed the FSAT report and, while there were discrepancies in the report, in his opinion, “nothing in the report is egregious enough to warrant withholding advancement.” He stated that the discrepancies were relatively minor and noted that the applicant had maintained a positive attitude throughout this ordeal. She provided a character reference from another Master Chief Culinary Specialist, who strongly recommended that the Board grant the applicant’s request. He stated that he has worked with the applicant during his twenty-four years in the Coast Guard and she has always been a “high-performing member” of his staff, a consummate culinary specialist professional, and an outstanding mentor to junior members. He noted that the applicant trained one of her junior culinary specialists to such a level that she was chosen for a White House chef position. He claimed that the applicant should have received her promotion and would have had “this situation been handled appropriately.”

The applicant provided a letter from a Subsistence Program Manager who asked the Board to grant the applicant’s request. He stated that he had twenty-eight years with the Coast Guard and was responsible for 370 dining facilities and 1,250 Culinary Specialists. He had known the applicant since 1999 and noted her “work ethic, commitment, and integrity.” He stated that the applicant’s previous position (the position which was under investigation) had a critical fill message because the previous member had been removed for cause. The applicant volunteered for the position and filled it, walking into a “very difficult situation” as the dining facility was “financially unstable and without leadership.” He stated that the applicant’s “skills and sound paperwork management quickly turned the dining facility around.” The applicant provided a character reference from her Commanding Officer (CO) at her previous unit. He stated that the applicant was always an excellent mentor and a “go-to” person. He stated that he always gave her high marks on evaluations and always recommended her for advancement. He stated that he was surprised to learn of

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<sup>4</sup> The applicant had previously stated that the FSAT was completed on July 16, 2017. The only FSAT Assessment Report before the Board is dated July 27, 2016.

the investigation, as the weekly inspections of the galley and timely monthly reports had indicated that the galley was well run. The applicant provided a letter from the Operations Petty Officer from her previous unit. He stated that the applicant was “one of the most professional and best mentors” he had ever had. He stated that in his opinion, the applicant would never have tried to defraud or hide anything from the Coast Guard. Lastly, the applicant provided a letter from a member at her current unit, who stated that this position was a challenge to the applicant because it was different from other assignments within the Coast Guard. She stated that the applicant was an exceptional chef and had a natural ability to exceed customer expectations.

### SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on January 30, 1992. She has received various positive and negative entries in her military record during her career.

On March 12, 2014, the applicant asked for a waiver of the High Year Tenure rules not to exceed thirty-six months and to be allowed to compete for advancement to E-7.<sup>5</sup> On March 26, 2014, her command positively endorsed her request. Lieutenant T, of the applicant’s previous, then-current, unit, stated that her resourceful contributions had overcome significant obstacles her predecessor had left, and that the applicant was then running a “top-notch” galley. On May 5, 2014, the Personnel Service Center (PSC) granted the applicant’s request for a waiver of the High Year Tenure rules that would expire on September 1, 2016.

On June 24, 2015, PSC released a memorandum regarding the eligibility lists for advancement to paygrades E-5 through E-9 resulting from the May 2015 Servicewide Examination (SWE). The memorandum states that for advancement to E-7 through E-9, the eligibility lists would be effective from January 1, 2016, through December 16, 2016. The memorandum notes that only “those members whose name appears at or above the cutoff on this eligibility list are guaranteed advancement if they remain eligible.” Any member who failed to maintain her CO’s recommendation for advancement in this period would not be eligible for advancement. The applicant placed at #24 on the CSC advancement list. The cutoff for advancement on the CSC list was #27, meaning that she would advance to CSC when the 27<sup>th</sup> CSC vacancy arose if she maintained her CO’s recommendation until the date of advancement.

On December 15, 2015, the applicant sent PSC a memorandum requesting that her retirement be rescinded due to the fact that she was above the cutoff point to make Chief Petty Officer/Culinary Specialist Chief. On January 11, 2016, PSC approved the applicant’s request by placing her retirement in abeyance because she was above the cutoff for the May 2015 SWE advancement list. She was informed that she was required to maintain all advancement eligibility requirements and advance before September 1, 2016. If she failed to advance before that date, she would be retired in accordance with the High Year Tenure policy.

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<sup>5</sup> High year tenure is “a workforce management tool that establishes limits on the active military service time an active duty enlisted member can complete based on their paygrade.” Professional growth point (PGP) is the “maximum amount of active military service a member can have for their current pay grade.” A member can receive a PGP waiver, allowing the member to continue on active duty past the required separation or retirement date. Military Separations Manual, COMDINST M1000.4, Chapter 3.

In July 2016, the applicant was transferred to a new unit. On July 15, 2016, PSC released a list of personnel who were authorized to be advanced on August 1, 2016. The applicant's name was included on this list. The communication noted that the CO's recommendation for advancement must be maintained for the period from recommendation through advancement.

On July 27, 2016, an FSAT Assessment Report was issued to the applicant's previous unit. The Report states that any discrepancies in "food safety, sanitation, and/or dining facility administration found during" the visit on July 11 through 12, 2016, were noted in this report. Paragraph 5 states that the "following discrepancies were noted" and lists items in paragraphs a through z (see attached). These discrepancies included actions such as "dishwares used by galley patrons are stored too close to the floor"; "[i]tems in the refrigerator have not been covered, labeled, or dated as required by policy"; "[f]ood residue and general uncleanliness is found throughout the galley area"; and "[f]unds for the sale of meals are routinely received beyond the required five working day collection period." Funds were also found to have been collected that could not be accounted for through the receipt of funds. Paragraph 1 states the following regarding credit accounts:

There are also several bills for the month of Aug that have no record of payment being made. For the month of Jun 2016 [the applicant] owed the Coast Guard 93.90, however she paid \$73.50. To achieve this, she took the overpayments in the amount of \$20.40 the dining facility had received from several members that had over paid on their chow bill. Instead of refunding it to the members involved, [the applicant] instead took the benefit of the discount without doing the research to find the member who the overpayments were intended for. On June 22nd 2016 [the applicant] used her own personal funds in the amount of \$254.45 to cover up a financial mistake; however what the [applicant] didn't know what that the dining facility was financially solvent. She made so many adjustments that she couldn't keep up. It appears the [applicant] doctored the crew's bills to cover any and all mistakes.

The Report concluded that the "overall inventory management practices were less than adequate." It stated that the applicant had "consistently failed to document accurate charge outs which lead to the inventory discrepancies. The [applicant] incorrectly transposed inventory numbers from July 2015 through May 2016." The Report made various recommendations, including trainings for the current staff.

With her application, the applicant provided a five-page response to some of the discrepancies noted in the FSAT Assessment Report (see attached). Her responses included the following: "This is not my responsibility"; "I was not present at the unit and the condition did not exist"; "[t]his was after I left the unit"; "I left, so the cleanliness has nothing to do with me after I leave"; and "this is inaccurate."

On July 28, 2016, the applicant's new command contacted the Personnel Service Center (PSC) and asked that her advancement be withheld due to pending disciplinary action in accordance with the Enlisted Accessions, Evaluations, and Advancements Manual, Article 3.A.19.b. The correspondence states that an Enlisted Employee Review (EER) had not yet been prepared, as the command was awaiting the results of an administrative investigation.

On December 15, 2016, the applicant's new command contacted PSC and asked that her name be removed from the advancement eligibility list in accordance with the Article 3.A.19.c. of

the manual. The correspondence states that she no longer possessed the command's recommendation for advancement. It further states that the applicant understood the reasons for her removal from the eligibility list. It also notes that the CO had entered a memorandum into the applicant's military record on the same date to "officially change recommendation for advancement to 'Not Recommended.'" In the applicant's military record, there is a corresponding entry dated December 15, 2016, which states, "Formally withdrawing [the applicant's] Commanding Officer's Recommendation for Advancement based on significant discrepancies on a recent FSAT Assessment Report and an ongoing investigation." On the same day, PSC responded and confirmed that the applicant's name had been removed from the advancement eligibility list due to the loss of her command's recommendation for advancement.

On March 1, 2017, the applicant asked PSC for another High Year Tenure Professional Growth Point waiver that would not exceed twelve months. She stated that she was pursuing correction of her record through the BCMR so that she could receive retroactive advancement. She explained that she had been slated for advancement on August 1, 2016, but she was informed of an ongoing investigation from her previous unit which caused her advancement to be withheld. The investigation "extended beyond the expiration of the advancement list and [her] advancement was cancelled, and recommendation rescinded." She stated that the investigation concluded on February 28, 2017, and it was determined that there was "no significant reason to pursue administrative or disciplinary action." She therefore requested High Year Tenure waiver while she waited for a decision from this Board.

On March 7, 2017, the applicant's request was endorsed by her current command. Captain L stated that the applicant's advancement had been withheld "pending the results of an ongoing investigation for allegations of misconduct at her previous unit." Because the eligibility list was about to expire and the investigation had not yet concluded, her CO had made the decision to rescind his advancement recommendation "based on initial reports of material account discrepancies, use of personal funds to cover accounting errors, and intentional manipulation of crew mess bills to resolve accounting discrepancies." Captain L noted that the initial report also highlighted "poor leadership practices, including degrading treatment of subordinates." Therefore, he had supported the CO's decision to rescind the recommendation for advancement. However, he acknowledged, the applicant intended to dispute the decision through the BCMR and so recommended that the High Year Tenure waiver be granted to give her the time needed.

On April 17, 2017, PSC denied the applicant's request for a waiver of the High Year Tenure rules. PSC stated that the High Year Tenure process is separate from the BCMR's process. The applicant was instructed to submit a retirement request within two weeks of the date of this memorandum.

On August 8, 2017, the applicant received a negative Page 7 (CG-3307) administrative entry in her military record. It states:

Following my review of [the CGIS Report], which details your significant leadership and administrative shortcomings and overall failure to demonstrate the personal and professional qualities expected of a Chief Petty Officer in the United States Coast Guard, I do not recommend you for advancement to the E-7 paygrade.

Specifically, [the report] describes multiple occasions of abusive language towards subordinates, including calling members of the galley staff “retarded”, “stupid”, or “idiots”. Your abrasive language and leadership style created a hostile work environment where subordinates attempted to avoid you. Additionally, [the report] detailed a myriad of administrative errors including gun-decking monthly inventories, over-charging members on their monthly chow bill, and writing personal checks to cover accounting errors.

The applicant retired from the Coast Guard on September 1, 2017, as a CS1/E-6.

### **APPLICABLE REGULATIONS**

All applicable regulations discussed are from the Enlisted Accessions, Evaluations, and Advancements manual, COMDTINST M1000.2. Chapter 3 of the manual covers policy regarding enlisted advancements. Article 3.A.3.a. states that the SWE process is meant to ensure fair and impartial advancement opportunities, but it does not guarantee any one member that he will be advanced. Article 3.A.3.b. states that members who wish to compete for advancement to paygrade E-7 may participate in the May SWE. Article 3.A.3.e. states that a cutoff point is established for each rating based upon vacancies during each period of eligibility. Only members whose names appear at or above this cutoff point are guaranteed advancement if they remain eligible through their advancement date.

Article 3.A.4.b.(3) states that the CO’s “recommendation for advancement is the most important eligibility requirement in the Coast Guard advancement system.” This article notes that the COs recommendation is only valid for each specific advancement eligibility period, and must be renewed for each SWE cycle. The CO’s “recommendation for advancement must be maintained from the recommendation date up to the advancement date.”

Article 3.A.4.b.(4) states that a command must make an entry into a member’s record when a Commanding Officer withdraws their recommendation for advancement.

Article 3.A.5. discusses basic eligibility requirements. Section (m) states that a member must be recommended for advancement by the CO.

According to Article 3.A.13., members must maintain their advancement eligibility from the date of recommendation through the date of their advancement. Members who do not maintain their Commanding Officer’s advancement recommendation cannot be reinstated on an existing eligibility list for advancement.

Article 3.A.19.b. allows a Commanding Officer to withhold the advancement of a member who has disciplinary action pending. A withheld advancement may not be carried over onto a new eligibility list.

According to Article 3.A.19.c., a Commanding Officer may withdraw a recommendation for advancement if a member has failed to remain eligible by informing PSC and having the member removed from the eligibility list. Article 3.A.25.f. states that a member may be removed from an eligibility list due to disciplinary action or “for other good and sufficient reasons, whereby the member is no longer considered qualified for the advancement.”

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

On October 17, 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 submitted by the PSC.

PSC stated that according to the Enlisted Accessions, Evaluations, and Advancements Manual, Article 3.A.4.b.(3), the Commanding Officer's recommendation for advancement "is the most important eligibility requirement in the Coast Guard advancement system." According to Article 3.A.5., a member must complete all eligibility requirements, including being recommended for advancement by her CO, by the SWE eligibility date. Article 3.A.13. states that members must maintain their advancement eligibility from the date of recommendation through the date of advancement. Following the issuance of the FSAT Assessment Report on July 27, 2016, from her previous unit, a formal CGIS investigation was initiated in order to investigate potential larceny committed by the applicant, in addition to other potential violations noted in the FSAT report. While the investigation was still ongoing, the applicant's current unit chose to remove her from the advancement list on the date prior to the last day to effect an advancement from the May 2015 SWE advancement eligibility list. Following the conclusion of the CGIS investigation in 2017, her command maintained its decision to remove the applicant's advancement recommendation and awarded her a negative administrative entry in her military record. PSC argued that the applicant failed to maintain recommendation for advancement through the date of her advancement and did not regain the recommendation prior to the expiration of the May 2015 eligibility list's expiration. PSC therefore recommended that the applicant's request for relief be denied, as she failed to prove an error or injustice exists in her record.

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

On December 1, 2017, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited a response within 30 days. The applicant responded on December 18, 2017, and disagreed with the advisory opinion. She stated that the reports, presumably the FSAT and the CGIS reports, were "untrue and not substantiated by facts." She stated that the allegations within the reports were "an effort to obfuscate the real issue," which was a lack of leadership at her previous unit. She asserted that she consistently held her subordinates to high standards, which was "unpopular" with her command. The applicant also claimed that she worked in a hostile work environment, as she had to work with a chain of command that "never backed [her] up." She argued that she would not have received the treatment she did if she were not a lesbian woman. She stated that she was used as a scapegoat because the members in her chain of command at her previous unit never liked her or respected her and they did not like her leadership style. She claimed that the CGIS investigation was merely a "witch hunt." The applicant stated that her record speaks for itself and that she had never before been not recommended for advancement. She stated that she believed she was singled out for being "the only senior female that was stationed there." She asked the Board to grant her request for relief and disregard the Coast Guard's advisory opinion.

## 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 alleged that her retirement as a CS1/E-6 was erroneous and unjust and asked the Board to award her a retroactive advancement to E-7 as of August 1, 2016, and to void her retirement. 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>6</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>7</sup>

3. The applicant alleged that her ineligibility for advancement was erroneous and unjust because no disciplinary or administrative action was taken against her based on the FSAT Report and a CGIS investigation. The record shows, however, that the applicant's CO did take administrative action based on the FSAT Report and an investigation first by withholding her advancement on July 28, 2016, and then by withdrawing her recommendation for advancement and having her name removed from the advancement list on December 15, 2016. According to Article 3.A.4.b.(3) of COMDTINST M1000.2, the CO's "recommendation for advancement is the most important eligibility requirement in the Coast Guard advancement system." And a CO's "recommendation for advancement must be maintained from the recommendation date up to the advancement date." Article 3.A.13. likewise states that members must maintain their advancement eligibility from the date of recommendation through the date of their advancement. Although the applicant submitted her responses to the FSAT Report and several reference letters highly praising her performance, she has not proven by a preponderance of the evidence that her CO abused his discretion or acted out of bias by first withholding her advancement and then removing her name from the advancement list based on the reported discrepancies. She submitted no evidence of the alleged bias and no evidence disproving some significant discrepancies in the Report for which she was held accountable. In addition, advancement is not an entitlement and, to recommend a member for advancement, the Commanding Officer must be fully confident that the member is not only ably performing the duties of his or her current grade, but ready and able to perform the duties of the next higher grade.<sup>8</sup>

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<sup>6</sup> 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)).

<sup>7</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>8</sup> Enlisted Accessions, Evaluations, and Advancements manual, COMDTINST M1000.2, Article 4.D.3.b.



4. The evidence of record shows that the applicant's CO based the decision to remove her name from the advancement list on the information in the July 27, 2016, FSAT Assessment Report regarding discrepancies listed in paragraphs a through z. Many of the discrepancies noted the applicant by name, including violations regarding money handling. Article 3.A.25.f. of the manual states that a member may be removed from an eligibility list due to disciplinary action or "for other good and sufficient reasons, whereby the member is no longer considered qualified for the advancement." The applicant's command apparently found in the July 27, 2016, FSAT Report "good and sufficient reasons" to first withhold her advancement and then remove her name from the eligibility list for advancement. When the CGIS investigation concluded, the applicant's command affirmed its prior decision to not recommend the applicant for advancement and chose to enter a negative Page 7 in her record to document counseling about her performance. These actions and records are presumptively correct, and she has not proven by a preponderance of the evidence that her removal from the eligibility list was an error or injustice. Given some of the criticisms of the applicant's performance in the FSAT Report, the Board cannot conclude that her CO erred in withdrawing the recommendation for advancement.

5. In the applicant's response to the Coast Guard's advisory opinion, she claimed that she had worked in a hostile work environment at her previous unit and that she was treated poorly for being a gay woman. The applicant did not raise these claims in her initial application to the Board, and the Coast Guard therefore did not have an opportunity to respond to these claims. In addition, the applicant has submitted no evidence supporting her claim of a hostile work environment. Therefore, the Board finds that these claims are unsubstantiated.

6. Accordingly, the Board finds that the applicant has not proven by a preponderance of the evidence that her lack of advancement to E-7 is erroneous or unjust. The Board finds no grounds for advancing her or for voiding her retirement. The applicant's request for relief should be denied.

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

**ORDER**

The application of retired CSI [REDACTED], USCG, for correction of her military record is denied.

February 2, 2018

