

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2023-001

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SCPO/E-8

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on April 18, 2023, and assigned the case to the staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision dated August 15, 2024, 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 Reserve Senior Chief Petty Officer (SCPO/E-8), asked the Board to correct his record by advancing him to Master Chief Petty Officer (E-9/MCPO), effective December 1, 2021, and providing him with all backpay and allowances that would flow from this correction.

The applicant alleged that he would have been advanced to E-9 on December 1, 2021 had the Coast Guard followed all published, documented, and commonly understood methodologies for advancing reserve personnel. The applicant claimed that the October 2020 Reserve Service Wide Examination (RSWE) was not honored. According to the applicant, 12 reservists advanced to E-9 from the October 2020 RSWE based on rated vacancies, but 5 reservists on the same eligibility list were not afforded the same opportunity to advance. The applicant explained that the 2020 RSWE was administered by the Coast Guard with the expectation that advancements would be based on vacancies in rate and other normal advancement criteria. The applicant claimed that no deviation to paths of advancement were announced prior to the 2020 RSWE cycle, but a deviation to advancement was announced in July 2021 that effectively cancelled the reserve E-9 advancements. The applicant contended that there was no indication that the RSWE Eligibility list, which did not expire until December 16, 2021, would not be honored. According to the applicant, all other paygrades except E-9 were advanced when rated vacancies occurred.

The applicant alleged that he was not afforded the full timeline to advance as all other reservists who had competed for advancement in the RSWE process. The applicant cited to Article 7.C.2. of the Reserve Personnel Manual, COMDTINST M1000.28C, which outlines additional eligibility requirements for advancement to E-7, E-8, or E-9. Specifically, the Article states, “[R]eservists scheduled for separation, due to reach their 30 year pay base date anniversary, or reaching the maximum age for mandatory retirement during the two-year period following the terminal eligibility date are ineligible to compete for further advancement.” The applicant explained that his the 2020 RSWE was his last opportunity to compete for advancement due to time in service constraints. The applicant contended that he would have advanced on the RSWE on December 1, 2021 if the Reserve Master Chief Advancement Panel (MCAP) process did not prematurely change the coding of billets to general MCPO in July 2021 as announced in a July 2, 2021 ALCOAST 064/021 bulletin.¹

The applicant claimed that the Reserve MCAP process implementation differed from the active-duty implementation which honored the May 2019 SWE process and eligibility letter. The applicant further claimed that the active duty implementation MCAP honored the timelines of the May 2019 SWE Eligibility list, but the implementation of the Reserve MCAP did not. The applicant contended that Reservists were not afforded the same opportunity to advance due the implementation of the billet recoding of MCPOs in July 2021, which would have been the mid advancement cycle. Additionally, the applicant claimed that no opportunity was provided or announced to compete for a deviated path to advancement as in other cases such as changes in rate, for example: Operations Specialist to Intelligence Specialist; Port Security Specialist to Maritime Enforcement Specialist, etc. The applicant argued that military departments, like other federal agencies, are bound to follow its own procedural regulations should it choose to promulgate them. The applicant cited to 14 U.S.C. § 3704, which states, “The grades and ratings in the Reserve, including cadets but not grades above rear admiral, are those prescribed by law or regulation for the Coast Guard. A member of the Reserve on active duty or inactive-duty training has the same authority, rights, and privileges in the performance of that duty as a member of the Regular Coast Guard of corresponding grade or rating.”

The applicant explained that after the retirement of another Master Chief on November 1, 2021, he expected that a vacancy would open and allow him to advance to Master Chief on December 1, 2021, but he received no communications. He stated that he emailed Reserve Personnel Management – Advancements Branch (RPM) to inquire as to why his advancement had not been announced and the status of four other E-8s that should have been advanced. The applicant explained that RPM responded by citing to paragraph 5 of ALCOAST 064/021,² stating, “It is RPM’s stance that all policies, to include the authority to deviate from the normal path to advancement via Commandant Notice, were followed in CY 2021.” The applicant contended that

¹ ALCOAST 064/021 outlined the implementation of the Reserve Master Chief Advancement Panel (R-MCAP) for advancement to E-9 in the Reserve Component.

² Paragraph 5 of ALCOAST 064/021 states, “Effective immediately, all Reserve E-9 billets have transitioned from rating-specific to universal master chief leadership assignments. The R-MCAP results will be published as an integrated list of ratings, rank ordered by advancement recommendation. Members will then be advanced to vacancies at any available E-9 position. Reserve Assignment Officers will play a key role in determining best placement for the needs of the service, member and unit. This significant change will allow for the advancement of our best qualified Reserve senior enlisted leaders, regardless of rating-specific limitations outside of the member’s control such as retirements.

that RPM's position was unfair because other reservists who competed for E-9 on the October 2020 RSWE were advanced from the same eligibility list prior to the Commandant's notice. The applicant claimed that the 2020 RSWE eligibility list was not amended and no new eligibility list was distributed. According to the applicant, this created an inequity between the active duty and reserve implementation of the MCAP because the implementation of the active duty MCAP provided all members on the May 2019 SWE the opportunity to advance in rating per vacancy or projected vacancy. The applicant stated that the active duty eligibility list was honored until the date prescribed on the primary list and updated the May 2019 SWE eligibility lists.

The applicant claimed that it was communicated to eligible active duty E-8s that their May 2019 eligibility list would be honored and it was. However, the Reserve MCAP implementation in July 2021 abruptly nullified the October 2020 RSWE eligibility list for E-9 advancements only. The applicant contended that the timeline of the implementation of the coding of the MCPO positions in preparation for the October 2021 R-MCAP was inequitable to reservists as their October 2020 RSWE eligibility list was not honored, which adversely affected the advancements of several members who would have advanced to E-8, E-7, and E-6. The applicant argued that if active duty and reserve processes were in alignment then a Reserve E-9 Electronics Technician vacancy that occurred due to a retirement on November 1, 2021 would have allowed him to advance on December 1, 2021.

The applicant argued that Coast Guard policy dictates that the Pay and Personnel Center – Advancements Branch publish and maintain the approved advancement eligibility list. Under this policy, the applicant claimed that implementation of the reserve MCAP should have aligned with the advancement cycle. The applicant argued that the timeline of billets should have been recoded only to affect the reserve MCAP eligible members for advancement year 2022 and appropriate recording should have begun after the October 2020 RSWE eligibility list expired on December 16, 2021. According to the applicant, if the transition from advancing personnel according to normal paths of advancement was implemented at the conclusion of the originally published October 2020 RSWE eligibility list, he could understand the change and accept the change, but it was not.

SUMMARY OF THE RECORD

On May 28, 1993, the applicant entered into the delay entry program in another branch of the United States military (branch unknown) and entered basic training on August 25, 1993. The applicant's record show that he served for four years, with another two years of foreign service, before enlisted in the Coast Guard.

The applicant enlisted in the Regular Coast Guard on September 21, 1999, where he served on active duty until June 1, 2002. He then enlisted in the Coast Guard Reserve on September 19, 2005, where he has continued to serve in the Selected Reserve and advance to the rank of E-8.

On October 31, 2020, the Coast Guard administered the RSWE pursuant to ALCGRSV 026/20. The applicant was the only Electronics Technician Senior Chief who participated in the RSWE, making him number one on the list for advancement to Electronics Technician Master Chief.

On December 11, 2020, the Coast Guard released the advancement eligibility lists wherein all reserve personnel who qualified for advancement between January 1, 2021 through December 16, 2021 were published.

On July 2, 2021, the Commandant issued an ALCOAST bulletin, ALCOAST 064/21, wherein he announced the implementation of the Reserve Master Chief Advancement Panel, which would immediately replace the previous advancement process specifically for Reserve Master Chief. The relevant portions of this ALCOAST are recorded below:

1. This message announces the implementation of the Reserve Master Chief Advancement Panel (R-MCAP) for advancement to E-9 in the Reserve Component. The R-MCAP will convene annually, beginning in October 2021, to select eligible Senior Chief Petty Officers (SCPOs) in the Reserve Component, including members of the Selected Reserve (SELRES) and Individual Ready Reserve (IRR), for advancement to Master Chief Petty Officer for all ratings. The R-MCAP was established to be in concert with the Commandant's Guiding Principles, detailed in REF (A). This new advancement panel will serve as a talent management tool that will strengthen the senior enlisted corps by incorporating qualitative information found in a member's record, with a focus on professionalism, leadership, and performance. COs and OICs must ensure dissemination of this message to all Reserve SCPOs within their commands. SCPOs must be aware of the eligibility requirements outlined below and familiarize themselves with the contents of REFs (A) through (F).

2. This panel permanently replaces the E-9 Reserve Servicewide Exam, outlined in Chapter 3.A.3 of REF (B), including this year's October test announced in REF (C). All other paygrades remain unchanged. All members who have completed eligibility requirements for advancement to E-9 will be reviewed by the panel, regardless of intention to compete for advancement.

a. Current eligibility requirements, as outlined in REF (C) and (D), remain in effect and will be used by CG PSC-RPM to determine eligibility.

b. All eligibility requirements must have been completed by the Servicewide Eligibility Date (SED) of 1 July 2021 which will now be referred to as the Panel Eligibility Date (PED).

c. Members will be able to verify their eligibility utilizing the Personal Data Extract (PDE) generated in Direct Access in mid-July 2021.

3. Command and Candidate Responsibilities.

...

b. Candidate Responsibilities. It is the candidate's responsibility to ensure their online PDE shows a status of Eligible in order to be reviewed by the R-MCAP. The PDE for the upcoming R-MCAP must be verified. Candidates expecting extended time away from their unit (e.g. extensive C school, deployments, TDY, maternity leave, etc.) between the PED and the end of the correction period should make alternate arrangements to verify their PDE. Report incorrect PDE data to the unit Admin or Servicing Personnel Office (SPO). After reporting incorrect data, candidates must verify PDE corrections were made by reviewing their online PDE prior to the 01 September 2021 PDE correction deadline. If the online PDE was not corrected, the candidate must submit a Trouble Ticket prior to 01 September 2021 to PPC by e-mail to PPC-DG-CustomerCare@uscg.mil. PDE corrections must be visible on the online PDE and completed NLT 01 September 2021. Failure to report and verify online PDE corrections by the deadline will result in a Not Eligible status for the R-MCAP.

4. It is essential that all SCPOs review and update their personnel records (EI-PDR, ESS, and EERs) in preparation for this advancement panel. You should request your Electronically Imaged-Personnel Data Record (EI-PDR) as soon as possible to allow for ample correction time.

5. Effective immediately, all Reserve E-9 billets have transitioned from rating-specific to universal master chief leadership assignments. The R-MCAP results will be published as an integrated list of ratings, rank ordered by advancement recommendation. Members will then be advanced to vacancies at any available E-9 position. Reserve Assignment Officers will play a key role in determining best placement for the needs of the service, member and unit. This significant change will allow for the advancement of our best qualified Reserve senior enlisted leaders, regardless of rating-specific limitations outside of the member's control such as retirements.

On May 28, 2021, the applicant reached 28 years of continuous military service, thereby making him ineligible to compete for advancement to E-9 under the Commandant's newly implemented Master's Chief advancement announcement because the Panel Eligibility Date (PED) was July 1, 2021, meaning the applicant had to have at least two years of obligated service remaining as of July 1, 2021, which he did not.

VIEWS OF THE COAST GUARD

On August 30, 2023, a Judge Advocate (JAG) for the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the PSC.

The JAG argued that the applicant failed to prove an error or injustice regarding his non-advancement to E-9. The JAG stated that the applicant's claims that the eligibility list for advancement from the October 2020 RSWE was "not honored" and that he would have been advanced but for the implementation of the MCAP is misplaced. The JAG argued that the applicant incorrectly presumes that advancement to E-9 is an automatic process, but he does not take into account other factors affecting advancements such as Fiscal Year (FY) cap limitations for E-9 personnel established pursuant to 10 U.S.C. § 517. The JAG explained that while Enlistments, Evaluations, and Advancements Manual, COMDTINST M1000.2, guarantees a fair and impartial opportunity for advancement, it does not, however, guarantee that any particular member will be advanced. Regarding the applicant's claim that the transition from rating specific billets to universal master chief leadership assignments negatively impacted the E-9 advancement process, the JAG stated that the applicant provided little substantiation of the alleged impact. Accordingly, the JAG argued that the applicant failed to establish that the Coast Guard committed an error or injustice regarding his advancement.

The JAG further argued that the implementation of the RMCAP was announced by the Commandant via an ALCOAST Commandant Notice (ACN) in accordance with the requirements for a deviated path of advancement set forth in COMDTINST M1000.2C. Accordingly, the JAG argued that the implementation of the MCAP was within applicable Coast Guard policy. Overall, the JAG stated that there is insufficient evidence to substantiate the applicant's allegations of error and injustice in his military record, which is presumptively correct.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 12, 2023, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited him to respond within thirty days. The Chair received the applicant's response via email on September 21, 2023.

The applicant objected to the Coast Guard's advisory opinion and once again requested that this Board advance him to E-9 (Master Chief Petty Officer) with an effective date of December 1, 2021. He further requested all backpay and allowances that would result from this correction.

The applicant claimed that contrary to the Coast Guard's advisory opinion, the October 2020 RSWE eligibility list was not honored and opportunities were not distributed fairly to participants of the October 2020 RSWE. The applicant alleged that the Coast Guard advanced 12 E-8s to E-9 in various other ratings from the same eligibility list that he was listed number one on for his ETSC rate. The applicant claimed that the 12 newly advanced E-9s were advanced as vacancies in their respective ratings occurred. The applicant contended that this process was unjust because those who would have advanced were denied advancement when vacancies in their respective ratings occurred after the July 21, 2021 ALCOAST 064/21 was published. According to the applicant, the 12 advancements that did occur, occurred in traditional fashion, which is supported by a June 28, 2023, email from Coast Guard PSC to Coast Guard legal. The June 28, 2023, email stated the following:

PSC-RPM utilizes the following “six” steps to develop the ERAA each month advancing our Reserve enlisted members:

1. Grade Vacancies: RPM utilized the CG-126 monthly Reserve Manpower Report; this determines paygrade vacancies within the Reserve Component.
2. Pyramid Health: RPM utilizes the CG-126 Bodies-to-Billets Report, a subset from the Manpower Report, against received retirement requests to determine which paygrades and ratings have deltas.
3. Advancement Eligibility: RPM utilizes the Direct Access RSWE eligibility list to determine which paygrades and ratings have an opportunity to advance.
4. Monthly Advancements: RPM utilizes the billet deltas and RSWE eligibility list to determine how many from which paygrades and ratings advance.
5. Pay and Personnel Center role: PPC utilizes the numbers that RPM generates for each paygrade and ratings, then provides those member names to advance.

The applicant cited Article 3.A.27.c. of the Enlistments, Evaluations, and Advancements Manual, COMDTINST M1000.2C, which states:³

Effective Period of Eligibility List. The effective period of the advancement eligibility list will be identified in the list. Normally, each list will remain in effect until superseded by a new eligibility list resulting from a subsequent SWE competition. When the new list is published, all eligible members who were above the cutoff on the superseded list and have not yet advanced will be carried over to the top of the new list in their respective rates. If no competition was conducted in a particular rate, the old list will be reprinted.

³ Article 3.A.27. of COMDTINST M1000.2C, states, “Eligibility List for Advancement or Change in Rating to Pay Grades E-4 through E-8. *Advancement eligibility to the Pay Grade of E-9 will follow steps outlined in Chapter 5 of this Manual.* (Emphasis added.)

...

c. Effective Period of Eligibility List. The effective period of the advancement eligibility list will be identified in the list. Normally, each list will remain in effect until superseded by a new eligibility list resulting from a subsequent SWE competition. When the new list is published, all eligible members who were above the cutoff on the superseded list and have not yet advanced will be carried over to the top of the new list in their respective rates. If no competition was conducted in a particular rate, the old list will be reprinted.

The applicant claimed that reservists at the time did not have a “cutoff” which was an error on the Coast Guard’s part because they did not predict advancement opportunities for reservists. According to the applicant, Reserve Personnel Management did not develop a cutoff for reservists whereas Enlisted Personnel Management did.

The applicant contended that he has not presumed anything, as claimed by the Coast Guard, but rather, he researched available processes, procedures, and guides that were available to Coast Guard members, all of which were established to protect and preserve a fair and equitable advancement process. The applicant explained that he took the October 2020 RSWE in good faith, believing that the processes would be fair and equitable for the entirety of the promotion year. The applicant stated that he placed number one on the eligibility list. He claimed that it was commonly understood that all members who took the October 2020 RSWE would advance throughout the year based on the period stated in paragraphs 3 and 4 of the published eligibility letter. However, the RSWE process agreement was not fulfilled due to the promulgation of ALCOAST 064/21, specifically, paragraph 5, which states, “Effective immediately, all Reserve E-9 billets have transitioned from rating-specific to universal master chief leadership assignments.” The applicant claimed that all other references in ALCOAST 064/21 refer to promotion year 2022. The applicant argued that it shocks the sense of justice that ALCOAST 064/21 would affect promotions/advancements in 2021 as it was contrary to the honest expectations of the service member.

The applicant alleged that the Coast Guard did not follow its own policies when it referenced paragraph 5 of ALCOAST 064/21. To support his claim, the applicant cited to Article 3.A.11.d of COMDTINST M1000.2C, which states, “The Commandant may authorize deviations from the normal path of advancement in Commandant Instructions or Notices to establish, disestablish, or merge ratings.” The applicant stated that this was reiterated in the Coast Guard’s advisory opinion as a barrier to his advancement. The applicant claimed that there is no program of record that established, disestablished, or merged ratings in promotion year 2021 for the Reserve E-9 paygrade. The applicant further claimed that as of today, eligible E-8s desiring to advance to E-9 must complete Rate Performance Qualifications (RPQ) in their respective career field to qualify for advancement. The applicant argued that it shocks the sense of justice that he would have to qualify as an Electronics Technician Master Chief to fill a position of general leadership.

In conclusion, the applicant argued that it was unjust to change the rules for someone who had completed the requirements to advance under a system, which he called an agreement, and not offer or extend them the opportunity to complete the updated requirements. The applicant stated that he did not feel that the Coast Guard’s actions were made with malice but rather lacked forethought. The applicant claimed that actions were made to change a system that was inconsiderate of existing rules and common practices. He contended that the October 2020 RSWE was offered as a path to advancement and he completed all the requirements to take the October 2020 RSWE. He noted that he was next in line and the rules were changed when his turn for advancement came, which was unjust. The applicant argued that the eligibility list should have been honored and the RMCAP advancements should have begun as vacancies that occurred after the completion of the already existing eligibility list. The applicant claimed that there were vacancies in rate and rating but no definitive answer as to why he was not advanced according to all published methodologies to advancement.

To support his application, the applicant submitted emails from 2016 and 2023 and spreadsheets with various numbers and calculations. However, the applicant's allegations arise from 2021 not 2016 or 2023, and the documents are not probative in the applicant's claims that the Coast Guard committed an error or injustice regarding his non-advancement. For those reasons, only those records relevant to the applicant's allegations were recorded in this decision.

APPLICABLE LAW AND POLICY

Article 7 of the Reserve Personnel Manual, COMDTINST M1001.28C, provides the following guidance on Reserve eligibility requirements for advancements to E-7, E-8, and E-9:

C. Reserve Enlisted Members. The provisions of Reference (r), Enlisted Accessions, Evaluations, and Advancements, COMDTINST M1000.2 (series), apply to Reserve enlisted members except as modified by this Section. The point of contact for all Reserve enlisted advancements is Commander (CG PSC-RPM). Enlisted reservists serving on EAD compete for advancement, in accordance with Reference (r), Enlisted Accessions, Evaluations, and Advancements, COMDTINST M1000.2 (series).

...

2. Additional Eligibility Requirements for Advancement to E-7, E-8, or E-9. Senior enlisted candidates must have at least two years of SELRES eligibility remaining as computed from the 1 January terminal eligibility date following the RSWE to be eligible for advancement. Reservists scheduled for separation, due to reach their 30 year pay base date anniversary, or reaching the maximum age for mandatory retirement during the two-year period following the terminal eligibility date are ineligible to compete for further advancement. Command or Surfman certification is not a prerequisite to compete for advancement to BMCS or BMCM for Reservists.

Article 3 of the Enlistments, Evaluations, and Advancements Manual, COMDTINST M1000.2C, provides the following guidance on the Servicewide Examination:

3.A.3.a. Servicewide Competition. Advancements by servicewide exam is applicable for competition to paygrades E-5 to E-8 and reserve E-9. Active duty advancements to E-9 are covered in Chapter 5 of this Manual.

a. Servicewide Competition Equity. While it cannot be guaranteed that any one member will be advanced, the servicewide examination (SWE) process ensures a fair and impartial opportunity for advancement and a guarantee that all enlisted members, in paygrades E-4 through E-7, of a particular rating will have an equal advancement opportunity.

...

Article 5 of the Enlistments, Evaluations and Advancements Manual, COMDTINST M1000.2C (January 2020) provides the following guidance on advancements to E-9:

A. Master Chief Advancement Panel Overview. Commander (CG PSC) will annually convene a personnel selection panel to examine the matters of record of those active duty member's that are eligible for advancement to pay grade E-9, except for the Musician rating. The Master Chief Advancement Panel (MCAP) will recommend candidates for advancement who have proven qualities of superior leadership, military performance and professional merits.

B. Roles and Responsibilities. The MCAP will produce an annual active duty Master Chief advancement eligibility list for advancement to E-9. The intent and purpose is to provide the Coast Guard a means to advance members to satisfy workforce strength and staffing requirements for each specific rating.

...

C. Eligibility Criteria. All members who have completed eligibility requirements for advancement to E-9 will be reviewed by the Panel.

1. Panel Eligibility Date. The Panel Eligibility Date (PED) is the deadline date, identified in the Master Chief Advancement Panel announcement message, for which members must complete all eligibility requirements.

2. Eligibility and Advancement Requirements. Each enlisted member must complete and meet the eligibility requirements listed below by the PED of the applicable MCAP.

...

i. Be able to meet the two (2) years obligated service requirements, unless otherwise prohibited by Reference (c), Military Separations, COMDTINST M1000.4

...

K. Advancement Eligibility List.

1. Master Chief Advancement Eligibility List. After the Panel Report has been submitted, Commander (CG PSC) will approve the Master Chief advancement eligibility list with candidates listed by order of merit as determined by the MCAP. Once approved, the Master Chief advancement eligibility list, ranked by order of merit, will be the order of precedence by which members are to be advanced in the applicable year.

2. Cutoff Points. Cutoff points for advancement are established for each rating and rate based upon vacancies anticipated during a specific period of eligibility. Commander (CG PSC) announces cutoff points separately by ALCGENL message. Only those members whose name appears at or above the cutoff are guaranteed advancement if they remain eligible. Members whose name appears at or above the cutoff will have their name permanently removed from any subsequent advancement eligibility lists.

3. Advancement Announcement. Members identified in the Master Chief Advancement Panel results message will be advanced as indicated by Commander (CG PSC) in an Enlisted Personnel Advancement Announcement (EPAA).

4. Obligated Service. Members will incur a 2-year (24 months) service obligation upon advancement to E-9. Those who do not have sufficient time remaining in service must reenlist or extend to meet the obligated service, or decline advancement. Follow Article 3.A.21.c.(2) of this Manual for members who decline advancement or voluntarily elect to have their name removed from the advancement eligibility list. If the advancement is delayed for administrative reasons, the service remaining requirement will begin on the original date the member would have been advanced.

5. Effective Period of Eligibility List. The effective period of the Master Chief advancement eligibility list will be identified in the published list. Normally, each list will remain in effect until superseded by a new Master Chief advancement eligibility list resulting from a subsequent MCAP. When a new list is published, all eligible members who were above the cutoff on the superseded list and have not yet advanced will be carried over to the top of the new list in their respective rating.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on 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.
2. The application was timely because it was filed within three years of the applicant's discovery of the alleged error or injustice in the record, as required by 10 U.S.C. § 1552(b).
3. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.⁴
4. The applicant alleged that he was erroneously and unjustly denied advancement to E-9 after the Coast Guard changed the advancement procedures for Master Chief from a "rate-specific" selection process to a "universal" process. 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 the military record, and the applicant bears the burden of proving, by a preponderance of the evidence, that the disputed information is erroneous or unjust.⁵ 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."⁶
5. Background. The Board's review of the record shows that in October 2020, the Coast Guard held its regular Reserve Servicewide Eligibility Examination for Master Chief. Because the applicant was the only Electronics Technician Senior Chief who participated in the RSWE, he was placed number one on the advancement list published in December 2020. For the applicant to have qualified for advancement under the October 2020 RSWE, he was required to have at least 24 months of service eligibility remaining as of January 1, 2021, which he did. However, on July 2, 2021, approximately eight months after the Coast Guard published the December 2020 advancement list, the Commandant published an ALCOAST bulletin wherein the implementation of the Reserve Master Chief Panel was announced. The Commandant stated that the new panel would immediately and permanently replace the Master Chief RSWE when deciding which SCPOs to advance. This announcement replaced the "Servicewide Eligibility Date" with the "Panel Eligibility Date (PED)" and required that all SCPOs meet advancement eligibility requirements for Master Chief by the PED of July 1, 2021. Pursuant to Article 5.C.2.i. and j of the Military Separations Manual, COMDTINST M1000.2C, the applicant was required to be able to complete two years of obligated service at the time of advancement and be eligible to reenlist. However, because of the changes implemented by the R-MCAP, the applicant was no longer

⁴ *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

⁵ 33 C.F.R. § 52.24(b).

⁶ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

eligible for advancement to E-9 because he did not have the requisite 24 months of obligated service remaining, so the applicant's record was not reviewed by the R-MCAP panel.

The difference in the two advancement systems is that under the RSWE, those who are placed on the advancement list for their specific rating were guaranteed an advancement to MCPO upon the next retirement in that specific rating. However, under the newly implemented "Universal Master Chief Leadership Assignments" all eligible SCPOs' records would be evaluated by the new panel and an integrated list of ratings would be published, with SCPOs being listed by advancement recommendation. Under the new system, the next opening for MCPO would go to the first SCPO on the recommended for advancement list, regardless of rating. This new advancement system was implemented to "serve as a talent management tool that would strengthen the senior enlisted corps by incorporating qualitative information found in a member's record, with a focus on professionalism leadership, and performance."

6. Allegations of Error. The applicant alleged that it was erroneous for the Coast Guard to change the Reserve MCPO advancement procedures in the middle of an advancement cycle. The applicant claimed that it was commonly understood that all members who took the October 2020 RSWE would advance throughout the year based on the period stated in paragraphs 3 and 4 of the published eligibility letter. However, the applicant's contentions are unpersuasive. First, the applicant has failed to point to one Coast Guard policy that prohibited the Commandant from changing advancement guidelines or that once an advancement list was released it could not be superseded by a subsequent advancement process. Second, the applicant's claim that it was commonly understood that all members who took the October 2020 RSWE would advance throughout the year is unpersuasive because the applicant was put on notice by the Commandant's July 2, 2021 ALCOAST 064/21 bulletin wherein the applicant was informed that effective immediately "all Reserve E-9 billets have transitioned from rating-specific to universal master chief leadership assignments. The R-MCAP results will be published as an integrated list of ratings, rank ordered by advancement recommendation."

The applicant stated that after the retirement of another Master Chief on November 1, 2021, he expected that a vacancy would open and allow him to advance to Master Chief on December 1, 2021, but he received no communications. The applicant's belief that he would be advanced is unreasonable given that he was informed four months prior, in July 2021, that the 2020 advancement list would immediately be replaced with the R-MCAP. As stated above in Finding 5, because of the timing of the changes the applicant's record was not reviewed by the R-MCAP panel because the applicant was unable to maintain eligibility requirements throughout the entire advancement period. The fact that the applicant's record was not reviewed by the R-MCAP panel after previously being placed on the advancement list as a result of newly implemented policy by the Commandant does not make the policy erroneous. Arguably, the changes would have had an unfavorable outcome on some reservists regardless of its implementation. Accordingly, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that the Coast Guard erred in implementing the new R-MCAP without first honoring the already existing advancement list.

7. Injustice. The applicant alleged that it was unjust for the Coast Guard to honor the active duty advancement list and not the reserves. According to the applicant, because of the abrupt

changes, some reservists received the benefit of advancement halfway through the advancement period, whereas other reservists like himself were denied the fair opportunity to advance. Pursuant to 10 U.S.C. § 1552, the Board is authorized not only to correct errors but to remove injustices from any Coast Guard military record. For the purposes of the BCMRs, “injustice” is sometimes defined as “treatment by the military authorities that shocks the sense of justice but is not technically illegal.”⁷ The Board has authority to determine whether an injustice exists on a “case-by-case basis.”⁸ Indeed, “when a correction board fails to correct an injustice clearly presented in the record before it, it is acting in violation of its mandate,”⁹ and “[w]hen a board does not act to redress clear injustice, its decision is arbitrary and capricious.”¹⁰ In this case, the Board finds that the applicant has failed to prove that the Commandant’s change in advancement procedures for E-9s constituted an injustice. The Commandant acted within his authority when he issued the July 2, 2021 ALCOAST and the changes implemented and the applicant’s lack of advancement to E-9 do not shock the sense of justice. Likewise, neither does the fact that the Coast Guard honored the active duty advancement list before implementing the new universal assignment advancement procedures.

8. For the reasons outlined above, the applicant has also failed to show that the Coast Guard erred by extinguishing the December 2020 Master Chief advancement list and replacing it with the newly implemented R-MCAP advancement process. Therefore, the applicant has failed to prove, by a preponderance of the evidence, that he should be retroactively advanced to E-9. His requests for relief should therefore be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁷ *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976); *but see* 41 Op. Att’y Gen. 94 (1952), 1952 WL 2907 (finding that “[t]he words ‘error’ and ‘injustice’ as used in this section do not have a limited or technical meaning and, to be made the basis for remedial action, the ‘error’ or ‘injustice’ need not have been caused by the service involved.”).

⁸ Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002).

⁹ *██████ v. United States*, 378 F.3d 1371, 1381 (Fed. Cir. 2004) (quoting *Yee v. United States*, 206 Ct. Cl. 388, 397 (1975)).

¹⁰ *Boyer v. United States*, 81 Fed. Cl. 188, 194 (2008).

ORDER

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

August 15, 2024

[REDACTED] [REDACTED] Digitally signed by [REDACTED]
[REDACTED] [REDACTED] Date: 2024.08.22 14:14:47 -04'00'

[REDACTED] [REDACTED] Digitally signed by [REDACTED]
[REDACTED] [REDACTED] Date: 2024.08.22 16:27:08 -04'00'

[REDACTED] [REDACTED] Digitally signed by [REDACTED]
[REDACTED] [REDACTED] Date: 2024.08.22 16:39:15 -04'00'