

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2023-025

██████████ ██████████ ██████████
MCPO/E-9

FINAL DECISION ON RECONSIDERATION

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 March 9, 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 29, 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 Master Chief Petty Officer (MCPO/E-9), asked the Board to reconsider its previous decision in docket 2020-050 dated August 26, 2022, and correct his military record by backdating his date of rank as an E-9 from November 1, 2019 to December 1, 2018.

The applicant alleged that he was denied advancement from E-8 to E-9 in 2018 because the Coast Guard Personnel Service Command (PSC) failed to adhere to Coast Guard advancement and separation policies and procedures in the Military Separations Manual with respect to another E-8 member. He alleged that, if PSC had followed policy and procedures, the other E-8 would have been separated under High Year Tenure (HYT) policy¹ in 2018, and the applicant would have advanced to E-9 on December 1, 2018 instead of the following year.

First, the applicant contested the Board's August 26, 2022 decision wherein it stated that the applicant did not submit a response to the advisory opinion. According to the applicant, he

¹ Military Separations Manual, COMDTINST M1000.4, Article 3.A. states, "High year tenure (HYT) is a workforce management tool that establishes limits on the active military service time an active-duty enlisted member can complete based on their pay grade. HYT is designed to increase personnel flow, compel members to advance in their rating, and allow more consistent training and advancement opportunities for the enlisted workforce."

submitted a response to the advisory opinion date stamped August 27, 2020, which he allegedly emailed from his Coast Guard account. The applicant stated that unfortunately, due to Coast Guard server retention policies, his email to this Board no longer exists. The applicant claimed that the certified signature stamp on his document is sufficient evidence that he submitted his response to this Board.

The applicant stated that he has obtained additional evidence that was discovered after his original submission to this Board that he obtained as a result of his current assignment within the Coast Guard. The applicant explained that he is currently in the position of the Electronics Technician Rating Force Master Chief (RFMC) and the representative for his rating in all matters of the Electronics Technician workforce. The description of the position:

Rating Force Master Chiefs are the principal advocate for their specialty or rating and are advisors to senior policy officers on matters concerning the workforce and are responsible for oversight within their programs, which includes the number of personnel in a specialty or rating, the location of billets, setting competency standards, developing Enlisted Performance Qualifications (EPQs), developing job and promotion qualifications and the content of formal and on-the-job training/professional development.

According to the applicant, the RFMC fulfills an advisory role in the HYT process. The applicant explained that the RFMC's responsibility is to present to the panel the status of the workforce and the need of waivers based on workforce strength and other factors, if applicable. The applicant stated that in this position, he is now privy to sensitive, ratings specific information not available outside of this position. The applicant claimed that he can attest from a discussion and information passed down from his predecessor, who presented to the FY18 HYT panel, that his predecessor strongly and adamantly advised against any HYT waivers for the E8 or E9 paygrade, and that the rating and workforce was sufficiently staffed. Additionally, the applicant claimed to have it on strong authority that the panel vote was not unanimous on the granting of the waiver for the E-8 who ultimately should have been separated pursuant to HYT guidelines. The applicant stated that the information he is disclosing, including the voting outcome of each member, is not available to the public but can be subpoenaed by the BCMR Board President. The applicant requested that the Coast Guard produce the deliberative documentation of that HYT Panel in question as evidence that the panel was not unanimous in its decision to grant the E-8 an HYT waiver.

The applicant explained that the sole authority for HYT waivers and enlisted advancement is given to the Commander of Coast Guard Personnel Service Center, Enlisted Personnel Management (PSC-EPM). According to the applicant, at the time of the Advancement Year (AY) 2018 (AY18) HYT panel, Commander PSC-EPM was Captain (CAPT) F, who also served as the president of the HYT Panel. The applicant alleged that a conflict of interest was present during the deliberations and the ultimate outcome of the HYT panel because the president and PSC-EPM knew the E-8 who was granted a waiver and had a professional relationship with him. The applicant further alleged that CAPT F was the commanding officer of a training center from 2013 to 2016, where the E-8 was also stationed from 2014 to 2018. The applicant stated that CAPT F and the E-8 had an overlap of two years, indicating that a professional relationship was present and subsequently led to a conflict of interest in the AY18 and AY19 HYT panel results. The applicant claimed that evidence alludes to the fact that the results of the AY18 panel has a perceived notion of nepotism by the president of the HYT panel, as the "Sole Granting Authority,"

evidenced by the fact that he granted an unwarranted waiver based on workforce evidence that was contrary to the decision to grant the waiver.

The applicant contended that workforce numbers and ratings strength did not justify a need for a waiver in the ET rating at the E-8 and E-9 paygrades. The applicant further contended that the incumbent ET RFMC strongly opposed granting any waivers for the E-8 and E-9 paygrades. The applicant claimed that there were no critical fill positions that demonstrated a need to keep an HYT candidate for the ET rate. The applicant contended that HYT is designed to increase personnel flow, compel members to advance in their rating, and the waiver granted to the E-8 did not satisfy this definition of the purpose of the HYT, but had the opposite effect, denying advancement to ET Master Chiefs that should have advanced that year. The applicant alleged that the demographics of granted waivers was dismal and lacked a demonstration of diversity equity. The applicant claimed that evidence suggests that for optic purposes, unjustified waivers were granted to show demographic fairness, granting one (of two) to a minority (Hispanic) who the president of the AY18 panel, CAPT F, personally knew, meets the narrative of showing diversity in HYT waivers. The applicant contended that all empirical evidence indicates that an HYT waiver was not and could not have been justified, waiver was granted against the RFMC's recommendation, and the panel was not unanimous in granting the E-8 a waiver, resulting in an unwarranted waiver being granted and his advancement being held back due to that waiver.

In support of his application, the applicant submitted a copy of the response to the advisory opinion from his original application wherein he contested the Coast Guard's arguments. A summary of the response is provided below:

- The applicant claimed that the Coast Guard all together ignored his arguments regarding the timeline of the waiver granted to his colleague. According to the applicant, his colleague became ineligible to remain on the advancement list on December 31, 2017. The applicant argued that the timeline of events is of extreme importance because if the Coast Guard conducted the HYT panel as described in the policy, this entire situation would have been avoided. According to the applicant, if the HYT panel would have been convened prior to December 31, 2017, then policy would have been followed, but the panel was not held until after December 31, which meant that his colleague's HYT waiver was not granted until after he became ineligible for advancement. The applicant claimed that the HYT panel does not have the authority to overturn the ineligibility of a member and grant a waiver to a member ineligible to advance. The applicant claimed that the Coast Guard's interpretation of policy was inaccurate. The applicant further requested that the Board subpoena records from the Coast Guard to prove his arguments are true.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on October 3, 2000, at age 18, and entered a technical rating, where he continued to advance until he advanced to E-8 in September 2014.

In May 2017, the Coast Guard conducted the annual SWE for advancement. On June 23, 2017, PSC issued a Memorandum on Eligibility List for Advancement to Pay Grade E-5 through E-9 in the May 2017 Service Wide Examinations (SWE) with the advancement lists for each rate and rating. The applicant placed second on the E-9 advancement list for his rating as a result of

the May 2017 SWE. The memorandum stated that for advancement to grades E-7 through E-9, the eligibility list would be effective from January 1, 2018, through December 16, 2018. It also stated that the cutoffs for advancement would be published at a later date, would be based on forecast losses and position reductions during the period of eligibility, and were designed primarily for Assignment Officer planning purposes. Finally, this memorandum stated that 2018 High Year Tenure (HYT) candidates who took the May 2017 SWE would lose eligibility to advance unless granted a waiver that allows the member to continue to compete for advancement.

On September 8, 2017, the Coast Guard published ALCGENL 136-17 Bulletin “May 2017 Service Wide Exam Cutoffs.” This bulletin published the cutoffs for advancement and revealed that only one E-9 advancement opportunity was forecast for the applicant’s rating during 2018, and so the cut for advancement to E-9 was above the applicant’s name at the first name on the list.

On October 5, 2017, the Coast Guard published the ALCGENL 155-17 Bulletin “2018 High Year Tenure (HYT) Professional Growth Point (PGP) Waiver Process for the Active Duty Enlisted Workforce.” This bulletin revealed that for the 2018 advancement window, service members between grades E-6 and E-8 who were identified as HYT candidates and desired to serve beyond their PGP should submit a waiver request no later than January 12, 2018. This bulletin further provided that an HYT waiver panel would be conducted from January 22 to 26, 2018, and candidates would be individually notified of waiver panel results via an emailed memorandum through their respective commands.

On December 1, 2017, the Coast Guard published ALCGENL 177-17 “2018 High Year Tenure (HYT) Professional Growth Point (PGP) Update to the E-6 to E-8 Waiver Process.” This bulletin updated the waiver panel dates from January 22-26, 2018, to January 17-19, 2018. It stated that candidates would continue to be individually notified of waiver panel results via an emailed memorandum through their respective commands. All other dates and deadlines remained unchanged.

Between November 22, 2017 and August 10, 2018, the Coast Guard published four ALCGENL bulletins (172-17, 014-18, 033-18, and 122-18) titled “May 2017 Service Wide Exam Revised Cutoffs.” Although there were changes to the cutoffs for other ratings in these bulletins, all four bulletins revealed that there would be only one advancement opportunity for the applicant’s rating during the 2018 advancement window.

Although not documented in the record before the Board, according to both the applicant and the Coast Guard, the member who placed first on the E-9 advancement list in the applicant’s rating submitted a waiver request in January 2018, was granted an HYT waiver, and so was not separated on September 1, 2018. Instead, he continued serving on active duty and advanced to E-9 on December 1, 2018. The applicant took the May 2018 SWE to be eligible for advancement to E-9 in 2019.

On September 5, 2018, the applicant submitted a two-page memorandum “High Year Tenure Policy and Eligibility for Advancement” to the Coast Guard Office of Military Personnel. The purpose of this memorandum was to address the fact that HYT candidates who enter their PGP year are allowed to compete for advancement during their PGP year by taking the SWE even

though any advancements from the resulting advancement lists could not occur until the following year, after they have already become an HYT candidate by not being advanced during their PGP year. The memorandum focuses on the contradictions in policies between the Military Separations Manual, COMDTINST M1000.4, and the Enlistment, Evaluations, and Advancements Manual, COMDTINST M1000.2B. According to the applicant, Article 3.D.1.a. of the Military Separations Manual, COMDTINST M1000.4, states “Members whose active military service time exceeds their PGP are allowed to advance if that advancement occurs on or before 31 December of the year they reach their PGP.” The applicant argued that this policy inadvertently allows members to remain eligible for advancement who have reached their PGP year. The applicant further argued that according to the Enlistment, Evaluations, and Advancements Manual, COMDTINST M1000.2B, the earliest a person can advance from the May SWE is January 1 of the year following the SWE. The applicant alleged that allowing HYT members to remain eligible for advancement contradicts the HYT policy timeline and the advancement terminal eligibility date. The applicant recommended that the Coast Guard better clarify HYT policy by changing the Military Separations Manual, COMDTINST M1000.4, to state that members are deemed ineligible to compete for further advancement after entering their PGP year since that advancement cannot be obtained prior to the December 31 cutoff date of their PGP year and, once a member is ineligible for advancement, he/she cannot be placed back on the advancement list.

On September 26, 2018, the Coast Guard issued ALCGENL 152-18 “2019 High Year Tenure (HYT) Professional Growth Point (PGP) Waiver Process for Active Duty Enlisted Force.” Within this bulletin, the Coast Guard adjusted the PGP waiver request deadline from January to October for all 2019 HYT candidates. The bulletin did not make members ineligible to take the SWE during their PGP year, as the applicant had recommended in his memorandum.

On November 1, 2019, the applicant advanced to E-9 off the advancement list resulting from the May 2018 SWE.

On August 26, 2022, the Board denied the applicant’s request for relief, making the following pertinent findings:

5.a With respect to the HYT waiver process, Article 3 of the Coast Guard Military Separations Manual, COMDTINST M1000.4, is silent as to an exact date an HYT waiver must be received for service members who reach their respective PGP by December 31st to remain on the following year’s advancement list. December 31st is stated as the deadline for being advanced to avoid becoming an HYT candidate, not the deadline for submitting an HYT waiver request. And nothing in that manual or COMDTINST M1000.2B, the Enlistments, Evaluations, and Advancements Manual, states that an HYT candidate’s name must be removed from an advancement list immediately as of January 1st because they were not advanced by the day before, December 31st.

5.b. The policies in COMDTINST M1000.4 are still instructive, however, and provide sufficient guidance in this case. Article 3.D.1.a.2. states the following:

HYT candidates (i.e., those members whose active military service time is greater or equal to their PGP on 31 December) are not eligible to advance after 31 December, *unless* authorized by a waiver covered in Article 3.H. of this Manual. ***These advancements shall be withheld by Commander (CG PSC-EPM) until HYT PGP waiver results are announced.*** (Emphasis added.)

The clear meaning of this rule is that a service member who becomes an HYT candidate on December 31st can still advance, as long as he or she secures an HYT waiver. And PSC must withhold any advancements of

HYT candidates until the waiver panel results are announced. The corresponding policy in Article 3.H.1.a.4. of the same manual, which states:

Commander (CG PSC-EPM) shall announce which HYT candidates are eligible to request a waiver at least thirty days before convening a HYT PGP waiver panel.

Therefore, PSC is only required to give a minimum thirty-day notice before it can convene an HYT waiver panel. Policy does not require that the waiver panel be convened before December 31, when service members potentially become HYT candidates.

5.c. In the applicant's case, PSC published two bulletins (ALCGENLs) that provided the necessary timeframes and deadlines for 2018 HYT candidates. The first, ALCGENL 155-17, was published on October 5, 2017, and provided an HYT waiver request deadline of January 12, 2018, for members in pay grades E-6 through E-8 for a waiver panel scheduled to convene from January 22 to 26, 2018. The second, ALCGENL 177-17, was published on December 1, 2017, and changed the waiver panel dates to convene five days earlier, but the deadline for submitting an HYT waiver request remained January 12, 2018. The applicant has submitted no evidence to show that the E-8 who was at the top of the E-9 advancement list for his rating failed to meet the prescribed January 12, 2018, deadline. In addition, the applicant admitted that the E-8 received an HYT waiver. Therefore, under Article 3.D.1.a.2. of COMDTINST M1000.4, the E-8 was not subject to an HYT separation in 2018 and was eligible to remain on the 2018 advancement list and to be advanced when the next E-9 vacancy arose in his rating, which was apparently December 1, 2018. As such, the applicant has failed to show that the Coast Guard committed an error or injustice when it promoted another service member ahead of him on the 2018 advancement list and his request for relief should be denied.

5.d. The applicant also complained that the Military Separations Manual, COMDTINST M1000.4, and the Enlistments, Evaluations and Advancements Manual, COMDTINST M1000.2B, contradict one another in regard to advancement eligibility. According to the applicant, under Article 3.A.13. of the Enlistments, Evaluations, and Advancements Manual, the applicant was required to be removed from the 2018 advancement list at midnight on January 1st because he had failed to maintain eligibility. However, the instances provided in Article 3.A.13. that render a service member ineligible to advance do not include failure to obtain an HYT waiver before December 31st of the year the service member exceeds his or her PGP. On the contrary, Article 3.A.14. of the Enlistments, Evaluations, and Advancements Manual specifically carves out an exception for HYT eligibility. Article 3.A.14. directs the reader to Article 3 of the Military Separations Manual for guidance on advancement eligibility for HYT candidates, indicating that the necessary authority for HYT eligibility is in Article 3 of the Military Separations Manual, not in the Enlistments, Evaluations and Advancements Manual. Therefore, the applicant has failed to prove, by a preponderance of the evidence, that the Coast Guard's policies contradicted one another and erroneously caused him to be denied promotion to E-9.

VIEWS OF THE COAST GUARD

On September 19, 2023, a Judge Advocate (JAG) for the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

The JAG argued that the applicant failed to put forth any new evidence or information that proves that the Coast Guard committed an error in fact or in law that would warrant reconsideration. The JAG contended that the applicant's request for reconsideration on the basis that he did actually submit a response to the previous advisory opinion, as evidenced by a digital signature on his document, is not evidence of error. The JAG argued that a digital signature, certifies the identity of the signer of the document, and indicates when the document was signed, but does not prove when, how, to whom, or whether a document was sent. The JAG noted that the applicant did not provide the Board with an email record indicating the date he sent the email and

faults the Coast Guard email retention policy as the reason he did not have proof of sending the response. Furthermore, the JAG argued that the applicant failed to offer an explanation as to why he did not retain any copies of his proof of transmittal to the BCMR or any substantiation of error on behalf of the BCMR. The JAG stated that regardless of whether the applicant's response to the previous Coast Guard advisory opinion was timely, the information contained therein, discussed in would not result in a different outcome than that reached in the previous BCMR case, and would not warrant reopening of the issues raised in that case.

Regarding the applicant's claim that he is now "privy to sensitive and ratings specific information" based on his current position and that he has information on "strong authority" regarding the proceedings of the 2018 HYT Panel, the JAG argued that beyond providing further, unsubstantiated allegations of nepotism in the HYT Panel, and extending an invitation to the BCMR to act as an investigative body, the applicant provides no new evidence or information for the Board to consider that could result in a determination other than that originally made.² Finally, the JAG argued that the applicant also failed to present any evidence that the BCMR committed a legal or factual error when the prior Board issued its final decision as required by 33 C.F.R § 52.67(a)(2).³

PSC argued that the applicant did not earn a placement above the published cut for advancement to paygrade E-9 in his rating specialty and there is no evidence that any of the panel's proceedings were in violation of the Personnel Service Center's procedures and all actions taken were based on matters of the members' professional development records. PSC explained that although CG PSC-EPM retains responsibility for granting the waiver, the HYT Panel exists to ensure a majority of the panel members reach concurrence to grant waivers to eligible members based on service need. According to PSC, unanimous concurrence is not required nor are individual votes recorded. Furthermore, PSC stated that there is no documentation to indicate favoritism existed in selection of the mentioned member for a HYT waiver and there is also no evidence to support the statement by the applicant that "I have on strong authority that the panel vote was not unanimous on the granting of the waiver of [E-8]." PSC argued that panel members are not authorized to discuss panel proceedings, which includes member records or voting characteristics. PSC contended that the applicant provided no evidence that the panel president favored another member when granting a HYT waiver. PSC further contended that the fact that both were assigned to the same large ashore training center is not evidence of favoritism.

² Regarding evidentiary requirements for applications of reconsideration, 33 C.F.R § 52.67 states, "a.) Reconsideration of an application for correction of a military record shall occur if an applicant requests it and the request meets the requirements set forth in paragraph (a)(1) or (a)(2) of this section.

(1) An applicant presents evidence or information that was not previously considered by the Board and that could result in a determination other than that originally made. Such new evidence or information may only be considered if it could not have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence; or

³ 33 C.F.R. § 52.67(a)(2) states, "An applicant presents evidence or information that the Board, or the Secretary as the case may be, committed legal or factual error in the original determination that could have resulted in a determination other than that originally made.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 28, 2023, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited him to respond within thirty days. As of the date of this decision, no response was received.

APPLICABLE LAW AND POLICY

Article 3 of the Enlistments, Evaluations and Advancements Manual, COMDTINST M1000.2B states the following about advancement eligibility for HYT candidates.

3.A.14. High Year Tenure (HYT). See Chapter 3 of Reference (c), Military Separations, COMDTINST M1000.4(series) for advancement eligibility for members who are High Year Tenure candidates.

Article 3 of the Military Separations Manual, COMDTINST M1000.4, provides the necessary guidance on HYT PGP waiver process. In relevant part:

3.B.4. HYT PGP Waiver. A waiver from this policy granted by Commander (CG PSC-EPM) allowing the member to continue on active duty past the required separation or retirement date listed in Article 3.H. of this Manual. This is separate and distinct from a waiver described in the Command Senior Enlisted Leader (CSEL) Program, COMDTINST 1306.1 (series) and Military Assignments and Authorized Absences, COMDTINST M1000.8 (series), for Rating Force Master Chiefs (RFMC).

...

3.D.1.a. Eligibility to Advance.

- (1) Members whose active military service time exceeds their PGP are allowed to advance if that advancement occurs on or before December 31 of the year they reach their PGP.
- (2) HYT candidates, (i.e. those members whose active military service time is greater or equal to their PGP on December 31) are not eligible to advance after December 31, unless authorized by a waiver covered by Article 3.H. of this manual. These advancements shall be withheld by Commander (CG PSC-EPM) until HYT PGP eligible waiver results are announced Commander (CG PSC-EPM) shall advance the next eligible member as appropriate. HYT candidates who do not receive a HYT PGP waiver with the advancement option shall lose their advancement. If a waiver is approved with the ability to advance, the advancement date will not be retroactive.

...

3.H.1. Granting Waivers.

3.H.1.a.2. Authority. Commander (CG PSC-EPM) is the sole waiver granting authority for HYT PGP waivers.

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 over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record.

The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

2. Under 10 U.S.C. § 1552(a)(3)(D), “[a]ny request for reconsideration of a determination of a board under this section, no matter when filed, shall be reconsidered by a board under this section if supported by materials not previously presented to or considered by the board in making such determination.” Because the applicant has submitted new evidence and made new arguments that were not in the record when the decision in BCMR Docket No. 2020-050 was issued, the Board finds that his request meets the statutory requirements for reconsideration. Therefore, the Board will review his case on the merits.

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 his failure to advance to E-9 on December 1, 2018 was erroneous and unjust because the Coast Guard failed to adhere to separation policy and procedures when they advanced a service member who should have been removed from the 2018 advancement list after he failed to secure an HYT waiver before reaching his PGP on December 31, 2017. According to the applicant, the service member was granted a waiver due to nepotism and favoritism. 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. Error. The applicant alleged that the Coast Guard erred when it failed to follow separation policies and procedures by granting an HYT waiver to another service member, who had reached his PGP on December 31, 2017, allowing the service member to promote instead of being separated in accordance with HYT policy. According to the applicant, under Coast Guard policy, this service member should have been removed from the 2018 advancement list because he did not secure a waiver before his PGP date of December 31, 2017. The applicant alleged that this failure to follow policy was the result of nepotism and favoritism by the president of the HYT panel because he had previously worked at the same unit as the service member who was granted the waiver. The applicant has asked the Board to reconsider its earlier decision in Docket No. 2020-050, wherein it denied the applicant’s request for relief to have his date of advancement backdated to December 1, 2018. The Board’s position was that the applicant’s contentions and evidence were insufficient to establish that the Coast Guard erred when it granted the service

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).

member ahead of the applicant on the advancement list an HYT waiver. In addition, the Board found that, despite the applicant's contentions to the contrary, Coast Guard policy, specifically, Article 3.D.1.a.2. of the Military Separations Manual, COMDTINST M1000.4,⁷ and Article 3.H.1.a.4. of the same manual, established that the waiver granted to the service member above the applicant on the advancement list was within policy.⁸ The Board continues its previous position and finds that the waiver granted by the Coast Guard was within policy and was not erroneous.

6. Injustice. In his current application for relief, the applicant claims that the waiver was unjustly granted based off of nepotism and favoritism by the HYT panel president. According to the applicant, the panel president, CAPT F, and the service member who was granted the waiver, worked in the same training center for approximately two years.

Under 10 U.S.C. § 1552(a), the Board may "remove an injustice" from a member's record, as well as correct an error in the record. The Board has authority to determine whether an injustice has been committed on a case-by-case basis.⁹ Therefore, the Board must consider whether the Coast Guard's granting of an HYT waiver to the applicant's colleague that allowed him to advance in place of the applicant was an injustice. The applicant claimed that he had it on "strong authority" that the panel president granted a waiver against the recommendation of others, and failed to get a unanimous decision when the waiver was granted, making the panel president's decision unjust. However, outside of the applicant's uncorroborated allegations, he has submitted no evidence to support his claims that there was unlawful favoritism and nepotism during the HYT panel. Furthermore, the applicant failed to point to one Coast Guard policy, and the Board could find none, that required an HYT panel to arrive at a unanimous decision for a waiver to be granted. The Board is unclear where the applicant's contentions regarding unanimity come from. The fact that the service member who was granted a waiver worked in the same training center as the panel president does not prove that the service member who received the waiver benefited from unlawful favoritism or nepotism. The Coast Guard is a small service, and overlap is inevitable, especially with higher officer and enlisted ranks such as E-8 and Captain. The Board finds the applicant's uncorroborated statements, supplemented by nothing else, insufficient to overcome the presumption of regularity afforded to the Coast Guard.¹⁰ Accordingly, the Board finds that the Coast Guard's issuance of an HYT waiver to the service member who placed first on the advancement list was not an injustice. The record shows that the applicant was promoted the following year, in accordance with his placement on the advancement list and the needs of the service. The fact that the applicant had to wait a year was neither erroneous nor unjust.

⁷ HYT candidates (i.e., those members whose active military service time is greater or equal to their PGP on 31 December) are not eligible to advance after 31 December, *unless* authorized by a waiver covered in Article 3.H. of this Manual. ***These advancements shall be withheld by Commander (CG PSC-EPM) until HYT PGP waiver results are announced.*** (Emphasis added.)

⁸ For a more thorough summary of the Board's previous decision, please see the Summary of the Record portion of this decision.

⁹ Decision of the Deputy General Counsel, BCMR Docket No. 2001-043. According to *Sawyer v. United States*, 18 Cl. Ct. 860, 868 (1989), *rev'd on other grounds*, 930 F.2d 1577, and *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976), purposes of the BCMRs under 10 U.S.C. § 1552, "injustice" is "treatment by military authorities that shocks the sense of justice."

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

7. Subpoenas. The applicant has almost demanded that this Board subpoena the Coast Guard to provide records to establish his allegations and contentions are true. According to the applicant, this Board's "president" has the authority to subpoena whatever documents it needs. However, the applicant's position is erroneous. This Board is not an investigative body and does not have the power to subpoena as alleged by the applicant. Furthermore, the burden to provide documents and evidence falls on the applicant, not this Board. Accordingly, the applicant's request to have this Board subpoena the Coast Guard for records pertaining to the 2018 HYT panel is denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

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

August 29, 2024

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