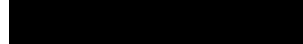


**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-043


CSCS (reserve)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552. The Chair docketed the case after receiving the completed application on February 20, 2024, and assigned it to an attorney to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision dated December 5, 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 is a Reserve E-8 Culinary Specialist Senior Chief (CSCS) who seeks to be advanced to E9 Culinary Specialist Master Chief (CSCM) effective October 1, 2021 with backpay for the same day. The applicant asserts that she was named on the eligibility for advancement list for the promotion period of January 2021 through December 2021, however, because of a change in advancement policy, the prior eligibility list was not honored. The applicant argues this is an injustice by the Coast Guard in departing from established Coast Guard policies for the advancement of reserve personnel and that, had those policies been continued, she would have advanced in October of 2021. The applicant also argues that there is space for the advancement of E-8s to E-9s as there is a delta between bodies and available E-9 billets. The implementation of the Reserve Master Chief Advancement Panel (R-MCAP), which eliminated reserve rating-specific E-9 billets and transitioned them to universal master chief leadership assignments, began in October of 2021. Additionally, the applicant asserts that the eligibility list containing her name has never been nullified or notice given that the list is no longer valid.

SUMMARY OF THE RECORD

The applicant is a current reserve Culinary Specialists Senior Chief (E8) and asserts that she met all the requirements for advancement in October 2021.

The applicant sat for the October 2020 Reserve Service Wide Examination (RSWE) achieving a spot on the eligibility list, but in October 2021 the Coast Guard enacted the Reserve

Master Chief Advancement Panel (R-MCAP) and disregarded previous eligibility lists to enforce the new process for advancement.

The applicant held the rank of E-8 during the period in which the R-MCAP began. The October 2021 eligibility list was not utilized during the period of validation and expired on December 16, 2021.

In November of 2021 the applicant ranked at 25 in the R-MCAP's panel results, which fell below the cutoff for advancement in 2022.

VIEWS OF THE COAST GUARD

On September 19, 2024, a Judge Advocate (JA) 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 on June 25, 2024 prepared by the Coast Guard Personnel Service Center (PSC).

The JA concurred with the PSC evaluation of the applicant's request. PSC determined there was no error or injustice and the applicant's request should be denied.

The JA argued that the applicant failed to prove an error or injustice with her non-advancement to E-9. There was no error in adopting newly released policy with noted effective dates. The Coast Guard fully complied with law and policy when it created the R-MCAP program. There was no authorized cap space from October 1, 2021 through the expiration of the eligibility list on December 16, 2021, but even if there were cap space the applicant was not positioned on the eligibility list above the cut off making it less likely she would have advanced at that time.

The JA concludes that while it is unfortunate a policy change occurred at a point when the applicant believed she would be advancing through the former RSWE eligibility list, the change in policy does not constitute treatment by military authorities that "shocks the sense of justice" as required by *Sawyer v. United States*. For these reasons, the JA recommends relief be denied.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 18, 2024, the Chair sent the applicant a copy of the Coast Guard's views and invited her to respond within thirty (30) days.

On November 17, 2024, the applicant submitted her response to the Coast Guard advisory opinion in which she firmly dissented. The applicant asserts numerous errors in the JA's presentation of information and restates her original position.

The applicant finds the non-use of the eligibility list, which her name was listed on, to move onto a new process shocks the sense of justice. She asserts again that the previous eligibility list was never invalidated and therefore she remains eligible.

APPLICABLE LAW AND POLICY

The Enlistments, Evaluations, and Advancements Manual, Commandant Instruction (COMDTINST) M1000.2C paragraph 3.A.11.d. states that the “Commandant may authorize deviations from the normal path of advancement in Commandant Instructions or Notices to establish, disestablish, or merge ratings.”¹

The SWE Advancement process does not guarantee a member will be advanced; paragraph 3.A.3.a states that “[w]hile 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 of a particular rating will have an equal advancement opportunity.”²

On July 2, 2021, ALCOAST Commandant Notice (ACN) 064/21 authorized a deviation from the normal path of advancement for reserve E-8s advancing to E-9 by establishing the Reserve Master Chief Advancement Panel (R-MCAP). ACN 064/21 stated “[the R-MCAP] permanently replaces the E-9 Reserve Servicewide Exam outlined in Ch.3.A.3. of [COMDTINST M1000.2C],” and, “[e]ffective immediately, all Reserve E-9 billets have transitioned from rating specific to universal master chief leadership assignments.” Thus, the R-MCAP process replaced the SWE advancement process for Reserve E-8’s hoping to advance to E-9 effective July 2, 2021.

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 over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in her Coast Guard military record. The Board finds that the applicant has exhausted her 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. The application was timely 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 Board acknowledges the applicant’s name on the October 2020 eligibility list for promotion to E-9. The change in procedure for advancement prior to the applicant being promoted off the past protocol’s list of eligibility is understandably frustrating but fails to shock the conscious or the sense of justice. The Coast Guard’s decision to change policies for promotion of reserve component E-8’s to E-9 clearly affected all E-8’s competing for promotion during the relevant time frame. The Board acknowledges that the effect of this decision was likely positive for some, and negative for others. The effect on the applicant was clearly negative, and may have delayed her promotion to E-9. However, placement on an eligibility list

¹ COMDTINST M1000.2C at Ch.3.A.11.d

² COMDTINST M1000.2C at Ch.3.A.3.a

for promotion is not tantamount to selection for promotion, and is not a guarantee that promotion will occur. As the applicant herself acknowledges, her promotion from that eligibility list was contingent, at least in part, upon the positions becoming available prior to the list expiring through voluntary retirements or other personnel actions outside of her control.

4. The applicant expresses disbelief that her name from the list of eligibility would now be invalid without any announcement of such. However, the list expired on December 16, 2021, as noted on the eligibility list announcement. This provides clear notice that the former eligibility list is no longer valid to assess promotion as it has since expired. Those not promoted from the list during the promotion time frame do not promote. This is customary under the past process of the RSWE and promotion list process. While the Board recognizes that the Coast Guard opted not to advance those on the October 2020 eligibility list, this is not an affront to justice, but a choice by the Coast Guard to move into the new procedure in which everyone got the same opportunity to participate for advancement using the R-MCAP. Additionally, even if the SWE remained in effect through its original expiration date, the applicant has not established by a preponderance of the evidence that she would have been promoted. Simply being on the eligibility list does not guarantee promotion. While disappointing to the applicant, this does not amount to an injustice that merits relief from this Board.

5. The change in process for advancement was shared in July of 2021 and the applicant participated in the R-MCAP. Although not yet promoted to E-9, the applicant continues to have the opportunity utilizing the R-MCAP.

ORDER

The application of reserve E8 [REDACTED], USCG, for advancement to E9 with back pay from October 1, 2021, is denied.

December 5, 2024

