

**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. 2024-051**

**Formerly** [REDACTED]  
BMCS (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. § 2507. The Chair docketed the case after receiving the completed application on February 21, 2024, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated January 16, 2025, 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 Senior Chief Boatswain's Mate, (BMCS/E-8), who received an Honorable discharge on October 1, 2022, asked the Board to correct his record by retroactively restoring his rank of E-9 and changing his rank at retirement from E-8 to E-9.

The applicant claimed he is entitled to this correction because he had recently completed his third consecutive, extremely successful Officer in Charge (OIC) tour and had served in very demanding command cadre positions since 2008. The applicant contended that he sacrificed a great deal for the Coast Guard beyond just his honorable service. The applicant alleged that he has advocated for the Coast Guard and the hundreds of people that have worked under his charge and in many cases making lasting service-wide change. The applicant claimed that he was the reason the Master Chief Advancement Panel was established. He further claimed that he created the requirements for a service wide OIC college and positively influenced countless individuals and reduced the number of reliefs for cause by nearly 75 percent. The applicant stated that his last assignment cycle did not resolve itself in his favor which forced him to make a decision based on the needs of his family, which was to remain living where they were at the time.

## SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on March 5, 1996, where he trained as a Boatswain's Mate.

On July 1, 2021, the applicant advanced to E-9, Master Chief Petty Officer.

On December 30, 2021, the applicant submitted a memorandum the Personnel Service Center – Enlisted Personnel Management (PSC-EPM) and to his Sector Commander, wherein he requested a voluntary retirement. The applicant's request was the result of him not wanting to execute orders given on October 1, 2021, for the 2022 assignment year.<sup>1</sup> In his memorandum, the applicant stated that his requested deviation from the published date of August 1 was based on timelines associated with his OIC relief and the unit's new incoming Executive Petty Officer (XPO), as well as a new incoming Engineering Petty Officer (EPO). The applicant argued that his early retirement date would facilitate a seamless transfer of command. The applicant also attested to the following:

2. I understand if this request is approved, I will no longer be eligible for advancement and my name will be removed from present eligibility lists, as appropriate.
3. I understand if I request to cancel this retirement, Commander (PSC-EPM-1) will consider this request based solely on Service needs. If such cancellation is approved, it will not entitle me to reinstatement in the current Servicewide competition or on the existing eligibility list. Further advancement would require re-competition.
4. I further understand that if I am being processed under the Physical Disability Evaluation System, my request for retirement could be terminated.
5. The zip code of my intended home of selection is [redacted].

On February 2, 2022, the applicant submitted another memorandum wherein he again requested a voluntary retirement, but also wherein he requested a voluntary reduction in rate in order to be entitled to the voluntary retirement. The contents of the memorandum are as follows:

1. I request retirement on the first day of OCT/2022, or as soon thereafter as possible.
  - a. [Applicant digitally signed here] (**High Three**) I have reviewed and meet certain requirements for requesting retirement found article 1.C.11.a of reference (a); however, I will not have completed the two-year obligated service requirement incurred for advancement to paygrade **E-9** identified in article 3.A.19.d.(1) of reference (b). In order to retire on the requested date found in paragraph one of this memorandum, I request a voluntary reduction to paygrade **E-8**, in accordance with article 3.A.30.d.(1) of reference (b). In addition, I agree to waive my rights to a highest grade held board and retire in the paygrade of **E-8**. My voluntary reduction is not due to misconduct my retired pay with be calculated in accordance with 10 USC §1407, under high-three rules.

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<sup>1</sup> Neither the applicant nor the Coast Guard submitted the October 1 orders but given the applicant's claim of wanting to keep his family in place, it is assumed that the October 1 orders the applicant was referring to were transfer orders that would have required the applicant and his family to move to a different duty station, most likely in a different state. This assumption aligns with the Coast Guard's transfer processes, which requires members to transfer every three years, and the applicant's previous transfer which took place in the summer of 2018. The applicant and his family would have had to transfer in the summer of 2022.

b. [Applicant digitally signed here] (Final Pay) I have reviewed and meet certain requirements for requesting retirement found article 1.C.11.a of reference (a); however, I will not have completed the two-year obligated service requirement incurred for advancement to paygrade E-9 identified in article 3.A.19.d.(1)<sup>2</sup> of reference (b). In order to retire on the requested date found in paragraph one of this memorandum, I request a voluntary reduction to paygrade E-8, in accordance with article 3.A.30.d.(1)<sup>3</sup> of reference (b). My voluntary reduction is not due to misconduct and my retired pay will be calculated as an E-8 in accordance with 10 USC §1406, under final pay rules.

2. I understand if this request is approved, I will no longer be eligible for advancement and Servicewide competition, or my name will be removed from present eligibility lists, as appropriate.

3. I understand if I request to cancel this retirement, Commander (PSC-EPM-1) will consider this request based solely on Service needs. If such cancellation is approved, it will not entitle me to reinstatement in the current Servicewide competition or on the existing eligibility list. Further advancement would require re-competition.

4. I further understand that if I am being processed under the Physical Disability Evaluation System, my request for retirement could be terminated.

On February 25, 2022, PSC approved the applicant's request for a reduction in rate and a voluntary retirement date of October 1, 2022.

### VIEWS OF THE COAST GUARD

On November 27, 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 prepared by the Personnel Service Center (PSC).

The JA stated that the applicant voluntarily retired in 2022 after he was granted a voluntary reduction in rate from E-9 to E-8 and a voluntary retirement. According to the JA, the implications of the voluntary reduction in rate and retirement were known and understood by the applicant. The JA argued that the applicant's relief should be denied because the application submitted by the applicant fails to articulate the existence of an error or injustice. The JA stated that pursuant to 33 C.F.R. § 52.21(c) an application for the correction of military records is incomplete unless it contains "a signed DD form 149, *providing all necessary responses, including a specific allegation of error or injustice*, accompanied by substantial evidence or information to support such allegations."<sup>4</sup> The JA contended that in this case, the applicant has failed to outline a specific allegation of error or injustice, nor did he provide substantial evidence or information to support allegation

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<sup>2</sup> This citation is erroneous. The relevant article for obligated service is 3.A.21.c. of COMDTINST M1000.2C (January 2020). Article 3.A.19.d. of COMDTINST M1000.2C pertains to "Verification of Eligibility."

<sup>3</sup> This citation is erroneous. The relevant article for a voluntary reduction in rate is 3.A.32.d. of COMDTINST M1000.2C (January 2020).

<sup>4</sup> 33 C.F.R. § 52.21(c) states, "(c) No application shall be docketed or processed until it is complete. An application for relief is complete when all of the following have been received by the Board:

(1) A signed DD Form 149, providing all necessary responses, including a specific allegation of error or injustice, accompanied by substantial evidence or information in support of such allegation;

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

On October 1, 2024, 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 on November 7, 2024. In his response, the applicant made the same statements as he did in his application, wherein he described his most recent achievements and asked the Board to grant him a retirement rank of E-9 based on the high three year rule.

## APPLICABLE LAW AND POLICY

### *Federal Regulations*

Title 33 C.F.R. § 52.21(c) states, "No application shall be docketed or processed until it is complete. An application for relief is complete when all of the following have been received by the Board:

- (1) A signed DD Form 149, providing all necessary responses, *including a specific allegation of error or injustice*, accompanied by substantial evidence or information in support of such allegation;
- (2) The military records of the applicant; and
- (3) Any applicable military and Department of Veterans Affairs medical records.

### *Coast Guard Regulations*

Article 1 of the Military Separations Manual, COMDTINST M1000.4 (August 2018), provides the following guidance on voluntary retirements and retirements in lieu of executing orders:

#### **Article 1.C.11.a. Requests for Voluntary Retirement.**

- (1) An enlisted member's non-disability retirement occurs at the discretion of Commander (CG PSC-EPM) and Commander (CG PSC-RPM). Therefore, an enlisted member's request will be considered on the basis of overall Service needs and the merits of each individual case. As a general rule, the provisions listed here govern; however, an enlisted member does not automatically accrue a vested right to retire when he or she chooses independently of Service needs merely by completing 20 years of active service.
- (2) An enlisted member may submit a request for voluntary 20-year retirement to Commander (CG PSC-EPM-1) if the member:
  - (a) Has completed 18 years of active service, and
  - (b) Requests an effective date of retirement which provides:

[1] Completing at least one year of duty at current duty station if assigned CONUS.

...

[4] Completing the two-year obligated service (OBLISERV) requirement incurred for advancement to pay grade E-7, E-8, or E-9. (Articles **1.F.1.a.** and **3.A.20.d** of Reference (1), **Enlistments, Evaluations, and Advancements**, COMDTINST M1000.2 (series), and 1.B.12.b.(2) of this Manual.)

(3) Retire in Lieu of Executing Orders (RILO)

(a) If a member receives PCS orders during an assignment year, is otherwise eligible to retire by his/her departure date, and wishes to retire in lieu of executing orders (RILO), he/she must so advise Commander (CG PSC) by message within five working days of orders issue date (30 days for SELRES members) and simultaneously submit a request to retire with an effective date of retirement on or before 1 August of that assignment year. Commander (CG PSC-EPM), or (CG PSC-RPM) for SELRES members, will consider such requests and assign an effective date of retirement based on overall Service needs; however, in certain instances, the member may be required to comply with orders.

(b) Commanding officers may request that a member's effective date of retirement be delayed based on needs of the Service (i.e., on-site relief needed for a critical billet). Commander (CG PSC-EPM) will consider such requests based on the overall needs of the Service.

(c) Commander (CG PSC-EPM) will not cancel a retirement so scheduled except to allow disability processing.

The Enlistment, Evaluations, and Advancements Manual, COMDTINST M1000.2C (January 2020) provides the following guidance obligated service for members advancing in the ranks of E-7 through E-9:

**Article 3.A.21. General Provisions for Advancement.**

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c. Obligated Service Requirement.

1. For Advancement to E-7, E-8, E-9.

a. Members advancing to pay grade E-7, E-8, or E-9 will be required to remain on active duty for two years from the effective date of their advancement to the new grade unless otherwise prohibited per Reference (c), Military Separations, COMDTINST M1000.4 (series).

b. Members who accept advancement to pay grade E-7, E-8, or E-9, not serving on an indefinite reenlistment, will be required to either extend their enlistment or reenlist prior to advancement, if necessary, to ensure meeting the two year obligated service requirement unless otherwise prohibited.

2. Request for Voluntary Retirement. Members advanced to pay grade E-7, E-8, or E-9 understand that a request for voluntary retirement or early release will not be affected prior to completion of the two year obligated service requirement per Reference (c), Military Separations, COMDTINST M1000.4 (series).

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**Article 3.A.32. Reduction in Rate.**

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**d. Reduction in Rate upon Request of the Member.**

1. Enlisted Member in Pay Grades E-7 through E-9. A request from a Chief Petty Officer, Senior Chief Petty Officer or Master Chief Petty Officer for voluntary reduction in rate will be submitted to Commander (CG PSC-EPM) or (CG PSC-RPM) for action.

**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. 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. The applicant requested, without alleging any error or injustice on the part of the Coast Guard, that the Board change his retirement rank from E-8 to E-9 and have his retirement pay calculated based on the E-9 rank. 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.<sup>5</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>6</sup>

5. Failure to Claim Error or Injustice. Here, the applicant failed to allege one error or injustice committed by the Coast Guard that warrants relief. The only hint of an error was the applicant's statement that his last assignment cycle did not resolve itself in his favor which forced him to make a decision based on the needs of his family—to remain living where they were at the time. Given that the applicant submitted a voluntary request to retire in lieu of executing orders, the Board takes the applicant's statement to mean that he received transfer orders—orders that

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<sup>5</sup> 33 C.F.R. § 52.24(b).

<sup>6</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).

were routine after the end of a three year tour of duty—that he did not want to follow, so instead chose to voluntarily retire in accordance with Article 1.C.11.a.3. of the Military Separations Manual, COMDTINST M1000.4. The applicant’s request to voluntarily retire in lieu of executing orders required that he take a voluntary reduction in rate pursuant to Article 3.A.32.d. of the Enlistment, Evaluations, and Advancements Manual, COMDTINST M1000.2C because he had only recently advanced to the rank of E-9 and had not completed his two years of obligated service that was required for his advancement. Article 3.A.29.d. of COMDTINST M1000.2C states that voluntary reductions in rate usually occur so that the member concerned may achieve a specific goal. In the applicant’s case, that specific goal was retiring so that he would not have to move his family. All of the actions taken by the Coast Guard were the result of the applicant initiating the voluntary reduction and retirement processes. The record shows that the Coast Guard followed policy and as already stated, the applicant failed to put forth a specific allegation of error or injustice.

6. Regarding his request to have his retirement rank changed from E-8 to E-9, the applicant has also failed to clearly articulate one error or injustice committed by the Coast Guard. The Board’s review of the record shows that the applicant advanced to the rank of E-9 on July 1, 2021. Approximately six months later, on December 30, 2021, after receiving his transfer orders for the 2022 transfer cycle, the applicant submitted a request to voluntarily retire, and followed up that request with a second request on February 2, 2022, wherein he once again requested a voluntary retirement, but also requested a reduction in rank to E-8 in order to satisfy retirement eligibility requirements. The Coast Guard approved the applicant’s request—a request that was voluntarily submitted by the applicant and a request wherein the applicant clearly articulated his understanding of the consequences of his request. Accordingly, the record shows that the applicant was retired in accordance with his request which included a reduction in rank from E-9 to E-8. The applicant is not entitled to the retirement rank of E-9 because he did not satisfy his two year service obligation that was required after his advancement. Accordingly, because the applicant has failed to articulate one error or injustice as required by 33 C.F.R. § 52.21(c) and because the Board’s review of the record shows that the Coast Guard followed requisite policies and regulations, the applicant’s request for relief should be denied.

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

**ORDER**

The application of Retired BMCS [REDACTED], formerly [REDACTED], USCG, for the correction of his military record is denied.

January 16, 2025

