

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 69-96

FINAL DECISION

██████████ Attorney-Advisor:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on February 1, 1996, by the filing of an application for relief with the BCMR.

This final decision, dated February 28, 1997, is signed by the three duly appointed members who were designated to serve as the Board in this case.

Applicant's Request for Relief

The applicant, a retired master chief ██████████ pay grade E-9), asked the BCMR to amend his record to show that he advanced to pay grade E-9 on February 1, 1994, instead of January 1, 1995.

The applicant stated that he had been wrongfully denied advancement to pay grade E-9 in February, 1994 as a result of an act of his supervisor. He alleged that his supervisor improperly removed his name from the eligibility list for advancement to E-9 in 1992, and that his supervisor wrongfully prevented him from taking the May 1993 servicewide exam (SWE) for advancement to pay grade E-9.

Applicant's Submissions

In support of his allegation that he was improperly denied advancement, the applicant submitted several documents pertaining to his performance on other SWEs, his eligibility for advancement, and his overall performance in his rank.

The applicant's submissions included letters from the commander of the Coast Guard Institute which indicate that he successfully completed the SWEs for September 1991, September 1992, and May 1994, and that he received high marks in those exams. The applicant stated that he sat for the September 1992 SWE for advancement eligibility to E-9 and that in January 1993, he was advised that his score results made him eligible for advancement. The cutoff value for guaranteed advancement was 0 (zero), and his rank in the SWE was 1 (one).¹ The applicant alleged that after his supervisor learned that he was on the eligibility list, the supervisor attempted to have his name removed from the list and to block his advancement to E-9. The supervisor succeeded in stalling the applicant's advancement, but not in removing his name from the eligibility list.

The applicant stated that he was treated for severe depression in 1993 and had been prescribed approved medication to treat his condition. He stated that after his supervisor learned that he was taking medication, his supervisor "pulled [his] access to classified material," thereby limiting his ability to perform the duties expected of him in his position. He stated that in addition to losing his security clearance, his supervisor removed him from his position in the [REDACTED]

The applicant asserted that in April 1993, he asked to be reinstated in his position as a [REDACTED]. He stated that his request was denied, primarily because of an adverse memo from his supervisor, dated May 3, 1993, a copy of which was included in the applicant's submissions. The memo advised against returning the applicant to his former position, and the supervisor explained that he suspended the applicant's security clearance because he "observed in [the applicant] chronic forgetfulness, an incident of alcohol abuse, his stated dislike for his [then] present assignment, and his past medical history."² The supervisor also did not permit the applicant to take the May 1993 SWE.

On June 29, 1993, the applicant appealed his May 1993 evaluation marks. A copy of his appeal was submitted with his application. He stated that he appealed his marks because he was unjustly assigned five marks of 3 (on a scale

¹ Members who take the SWE and rank within the cutoff value are guaranteed advancement. Those members who take the SWE and do not score within the cutoff value must continue to take the exam until their rank is included in the cutoff value. While members under the latter circumstances may have high scores on their exams, they cannot be advanced if there is no position available for advancement in the pay grade for which the exam is being held.

² There is no record of an alcohol incident, or of the applicant's misuse of alcohol, contained in his records or in his submissions. Also, there is no entry in his record that he was counseled on forgetfulness or poor performance.

of 1 to 7, with 7 being the highest mark).³ The appeal was denied on September 10, 1993. The chief of staff who reviewed the appeal stated that it was denied because the applicant's supervisor had provided adequate justification of the marks in addition to specific examples in support of the marks. The applicant stated that he was allowed to return to his former position on the [REDACTED] in July 1993, still as an E-8. Because of the low evaluation marks, and his inability to take the May 1993 SWE for advancement eligibility, the applicant was unable to advance to E-9 in 1993.⁴

The applicant submitted a copy of a page 7 entry dated October 29, 1993 completed by his supervisor; the same supervisor who wrote the May 3, 1993 memorandum. In the page 7 entry, the supervisor praised the applicant for his performance and recommended him for advancement to E-9 "at the first available opportunity," a recommendation which contradicted the supervisor's previous statements regarding the applicant's performance. The applicant stated that in November 1993, he was placed in the position of [REDACTED] which is a position intended for an E-9 member. He stated that on February 1, 1994, he assumed the position of the master chief (E-9) at that station who had retired, but it was not until January 1995 that he was granted advancement to E-9, based on his ranking in the May 1994 SWE. He stated that he served in the [REDACTED] position for 14 months as an E-8, when he should have been an E-9.

Summary of Military Record

The applicant's record contained several other page 7 entries, dating from May 1989 to January 1995, which were explanations for marks of 7 (on a scale of 1 to 7 with 7 being the highest mark) the applicant received on evaluations. All of those page 7 entries described the applicant's professionalism, skills in his grade, and generally excellent performance. The applicant's military record did not contain a copy of the disputed evaluation, the applicant's appeal, or the supervisor's justification of the disputed marks. The military record also did not contain any negative page 7 entries or other comments pertaining to the period in question.

³ Neither the applicant's record, nor his submissions, contain a copy of the appealed performance evaluation. The applicant's military record also does not contain a copy of his supervisor's justification of the marks, or of the applicant's appeal of the marks, dated June 29, 1993. The only evidence available with regard to the disputed performance evaluation is a copy of the applicant's appeal of the marks, which he submitted with his application.

⁴ The applicant's record did not contain any negative page 7 entries or memoranda explaining the low evaluation marks.

Views of the Coast Guard

On January 6, 1997, the Coast Guard recommended that the BCMR grant the requested relief. The Service stated that the applicant's command "did not allow the applicant to take the May 93 SWE based on certain incidents which are provided by the applicant, but are not a part of the permanent record." The Service determined that there was "substantive evidence presented" by the applicant which suggests that the applicant was receiving "mixed signals" in the form of "positive endorsements concurrent to low marks." The Service stated that there was no "consistent pattern of documented marginal/poor performance or other incidents" present in the applicant's record which would warrant the supervisor's decision to remove the applicant's command recommendation for advancement. The Coast Guard also stated that it is unclear from the record and the evidence submitted whether the applicant's command acted impartially and in accordance with Coast Guard policy regarding evaluations and advancements.

The Coast Guard stated that there was "no entry in the applicant's record [to indicate that he was] not being recommended for advancement." The Service ascertained that there was a form in the record which indicated that the applicant had been recommended for participation in the 1993 SWE and recommended for subsequent advancement. Based upon this information, the Coast Guard determined that the applicant should have been allowed to participate in the 1993 SWE, and should have been allowed to advance in 1994 as recommended.

The Coast Guard stated that based upon the applicant's results in the September 1991, September 1992, and May 1994 SWEs, it is "reasonable to assume the applicant would have passed the examination in May 93 and advanced to [REDACTED] on 01 Feb 94 upon the retirement of the incumbent E-9." The Service stated that the applicant proved error in his record and that his claim to advancement to E-9 is valid. The Service therefore recommended correction of the applicant's record to reflect his advancement to E-9 to have been in effect as of February 1, 1994, and not January 1, 1995.

Applicant's Response to the Views of the Coast Guard

The BCMR sent the applicant a copy of the Coast Guard's views for his response. On January 9, 1997 the applicant submitted a response which stated that he agreed with the Coast Guard's findings.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submission, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10, United States Code. The application was timely.

2. The applicant's supervisor failed to follow the provisions of Article 5-C-16 of the Personnel Manual when he withdrew the applicant's recommendation for advancement to E-9. Article 5-C-16 of the Coast Guard Personnel Manual (COMDTINST M1000.6A - change 11, effective 1991 through 1996) states, in part, "[w]hen a member otherwise eligible for advancement is assigned 'Progressing' or 'Not Recommended' " by his/her commanding officer in an evaluation, that action "shall be supported by a CG-3307, Administrative Remarks, [page 7] entry in the enlisted Personnel Data Record as to the reasons therefore [sic]." That provision also states that "[t]he member shall be counseled on the steps necessary to earn a recommendation."

3. The applicant's record does not contain the required page 7 entry supporting the command's decision to revoke his recommendation for advancement. He was not counseled regarding ineligibility for advancement or on the steps he should take to become eligible for advancement, in accordance with Article 5-C-16.

4. The applicant's supervisor did not follow established Coast Guard procedures when he attempted to prevent the applicant's advancement after his eligibility for advancement to E-9 had been established. The Board has also determined that the applicant was wrongfully denied the opportunity to take the May 1993 SWE. The applicant should have been permitted to take the May 1993 SWE and should have been subsequently advanced, following the announcement of his eligibility and his assumption of the [REDACTED] (E-9) position as an E-8 in February, 1994.

5. Accordingly, the requested relief should be granted.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The military record of _____ (Ret.) shall be corrected to show that he advanced to pay grade E-9 effective February 1, 1994. He shall also receive the appropriate backpay and allowances.

