

**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. 2013-084**



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**FINAL DECISION**

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the completed application on March 19, 2013, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated January 7, 2014, 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 [REDACTED] currently on active duty, asked the Board to correct his record to show that he is eligible to wear the Port Security Unit (PSU) insignia.<sup>1</sup> He stated that he was awarded the PSU pin by the Commanding Officer of PSU [REDACTED] but that he [the applicant] was later notified by the acting Commandant that he was not authorized to wear the PSU insignia because he had not met the eligibility criteria. The applicant argued that the Coast Guard regulation pertaining to the award of the PSU insignia needs to be reviewed and re-written to remove confusion and to eliminate "disparate interpretation" of the policy by field commanders. He also argued that there is historic evidence which shows that the PSU insignia has been awarded to other members who accepted temporary additional duty (TAD)<sup>2</sup> assignments to meet the requirements for the insignia. Finally, the applicant requested reimbursement for the \$100 he spent removing the PSU insignias from his uniforms.

In support of his application, the applicant submitted a copy of an email from CAPT A to CDR F, the executive officer (EO) of PSU [REDACTED]. In the email, CAPT A explains that someone within the Deployable Operations Group (DOG) had challenged the applicant's receipt of the PSU pin and that he had been asked to create a panel to review the applicant's eligibility for the

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<sup>1</sup> The PSU insignia (pin) was created to recognize accomplishments of becoming qualified in the area of port security unit operations. Officer Accessions, Evaluations, and Promotions manual, COMDTINST M1000.3.

<sup>2</sup> As used by the Coast Guard, temporary additional duty (TAD) orders are orders under which the intent is for the traveler to return to his or her PDS upon completion of the temporary duty. COMDTINST 4600.15.

pin. In the email, CAPT A asks CDR F for his thoughts on why he “chose to sign-off on [the applicant’s] award.” In his reply, CDR F stated that the applicant drilled at PSU ■■■ to satisfy the time requirements for the pin, and he (CDR F) had put the applicant through an oral PSU qualification board. CDR F stated that the applicant passed the board, and after reviewing the applicant’s records he determined that the applicant had “indeed met all the requirements for the PSU qualification insignia and awarded the pin to him.” CDR F added that he has since been told that he did not have the authority to issue the PSU pin because the applicant was not permanently assigned to PSU ■■■. CDR F argued that the manual says that the member must be ‘assigned’ to a PSU, and it doesn’t say that the member must be ‘permanently assigned.’ He also stated that he personally knows people who have gone TDY to cutters and small boat stations to fulfill the time requirements for permanent cutterman and coxswain pins.

The applicant submitted a December 13, 2011, email from CDR L to LCDR H, in which CDR L provides examples of members who received waivers of the two-year PSU requirement. He stated that he personally helped two members get their PSU pins despite the fact that they did not complete two years at a PSU. He added that one of the former COs of the Deployable Operations Group (DOG) actually granted the time waiver in one of the cases. The applicant also submitted a January 20, 2012, email from CAPT N to CAPT B, in which he states that his office had reached out to PSU COs regarding time waivers, and were told that no current PSU COs are granting waivers of the two-year requirement. However, he added that other PSU COs have indicated that waivers of the two-year requirement had been granted to members in the past.

The applicant submitted a Page 7 which shows that the CO of the Coast Guard Recruiting Command awarded him the PSU insignia on February 17, 2012.

The applicant submitted the February 27, 2012, findings of a panel that was convened by the Commandant’s office to review the applicant’s eligibility to wear the PSU insignia. The panel, consisting of CAPT A, a lieutenant commander, and a Coast Guard civilian, concluded that the applicant is authorized to wear the PSU insignia because he meets all of the requirements set forth in the Officer Accessions, Evaluations, and Promotions Manual, COMDTINST M1000.3.

In finding that the applicant is eligible to wear the PSU pin, the panel noted that the applicant met the requirement of being assigned to a PSU for two years because he was permanently assigned to PSU ■■■ for 14.5 months and subsequently completed 10 months at PSU ■■■ while on permissive TQAD orders. Therefore, the panel found, the applicant completed 24.5 months at a PSU and thus satisfied the requirement of the two-year PSU assignment established by Chapter 4.B.3.b.(3)(b). The panel also noted that there had been other instances in which a reservist had been allowed to complete the training necessary to meet the PSU insignia award criteria and that a precedent had been set.

The panel made the following findings of fact:

1. Per the requirements of Chapter 4.B.3.b.(3)(a) of the Officer Accessions, Evaluations, and Promotions Manual, COMDTINST M1000.3, the applicant completed the PSU Basic Skills formal training program.

2. Per the requirements of Chapter 4.B.3.b.(3)(b), the applicant was assigned to a PSU for a period of two years.
3. Per the requirements of Chapter 4.B.3.b.(3)(c), the applicant completed all billet assigned personal qualification standard (PQS) unique to the watch quarter station bill (WQSB) as outlined in the Operational Logistics Support Plan for PSUs, as well as all mandatory all-hands PQS training requirements.
4. Per the requirements of Chapter 4.B.3.b.(3)(d), the applicant met overseas deployment qualification standards during the two-year period as evident by his deployment with PSU [REDACTED] to support relief efforts associated with the 2010 earthquake in Haiti.
5. Per the requirements of Chapter 4.B.3.c.(2), the applicant was awarded the PSU insignia by the CO of Coast Guard Recruiting Command.

The panel also noted that per the emails provided to the panel by a former CO of PSU [REDACTED], there have been other instances where other CG reservists have been allowed to complete the training and assignments necessary to meet the PSU insignia award criteria and that a precedent had been set—"a precedent which the Deployable Operations Group (DOG) should have been aware of and has not challenged until this point." The panel also noted that RDML A, the former DOG Commander, has granted at least one two-year waiver in the past for a member to obtain the PSU insignia.

The applicant submitted the April 30, 2012, letter from the Acting Commandant of the Coast Guard, in which RADM D states that he reviewed the existing policy regarding the PSU insignia and determined that the applicant is not authorized to wear the insignia based on his current qualifications. RADM D notes that Chapter 4.B.3.b. of the Officer Accessions, Evaluations, and Promotions Manual requires that an individual must complete two years at a single PSU, and that the applicant had not satisfied this requirement. He stated that although the applicant completed drills at PSU [REDACTED], "he was not officially and permanently assigned to that unit and did not complete two years at a single PSU."

The applicant also submitted a March 2, 2013, letter from the Chairman of the panel (CAPT A) to the applicant. In the letter, CAPT A explains that although the panel had determined that the applicant was eligible to wear the PSU pin, the Acting Commandant had rejected the panel's findings, stating that he disagreed with the panel's interpretation of COMDTINST M1000.3 and also based his decision on his historic knowledge "as to what requirements must be met for a member to earn the privilege to wear the PSU insignia."

### SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard as an SN on June 1, 2000. On [REDACTED] he received a commission, and he was promoted to [REDACTED]. The record shows that he was assigned to PSU [REDACTED] from August 14, 2009, through November 1, 2010, (14

months) and was assigned TAD to PSU [REDACTED] from December 1, 2010, through October 1, 2011 (10 months).

### **VIEWS OF THE COAST GUARD**

On June 14, 2013, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant partial relief in this case. The JAG recommended that the Board deny the applicant's request to authorize the PSU pin and deny his request to reimburse him for the \$100 he spent removing the insignia from his uniforms. The JAG, however, recommended that Chapter 4.B.3. of the Officer Accessions, Evaluations, and Advancements Manual should be clarified to read "(b) A minimum two-year permanent assignment to a single PSU."

In recommending partial relief, the JAG adopted the findings and analysis in a memorandum on the case submitted by Commander, Personnel Service Center (PSC). PSC stated that the Officer Accessions, Evaluations, and Promotions Manual lists four requirements for the PSU insignia and that the applicant failed to meet one of those requirements. Specifically, PSC noted that Chapter 4.B.3.b.(3) states that the member must have a minimum two-year assignment to a PSU, but that the applicant served his two years at different PSUs, and that the regulation states that the assignment must be to "a PSU" and not to "PSUs." PSC argued that the singular form indicates that the time is to be served at a single Command.

PSC also added that although some COs may have granted waivers of the two-year PSU assignment requirement in the past, CG-13<sup>3</sup> does not have any formal documentation of any waivers nor have any waivers been granted.

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

On July 1, 2013, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. In his response, the applicant stated that he disagreed with the JAG's advisory opinion because the partial relief recommended by the JAG did not address his request for relief because the JAG merely recommended "to better word poorly worded policy." He also made the following arguments:

1. If the CG is not going to grant relief and allow him to wear the PSU insignia, then it should not allow other members who had earned the insignia in the same manner as he did to wear the insignia.
2. Members of the Deployable Operations Group made efforts to prevent him from wearing the PSU insignia because he made several hostile work environment complaints when he was assigned to PSU [REDACTED].

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<sup>3</sup> CG-13 is the Office of Reserve and Military Personnel.

## APPLICABLE REGULATIONS

### *Officer Accessions, Evaluations, and Advancements Manual, COMDTINST M1000.3*

Chapter 4.B.3. provides the eligibility criteria for the PSU insignia, and states that the PSU insignia will be awarded to those who have qualified in the areas of PQS/basic skills courses for PSUs, served as a member of a PSU for a given time, and demonstrated a practical application of those skills in a PSU setting.

Chapter 4.B.3.b. lists the qualifications for the PSU insignia, and states that qualification is divided into three areas based upon the date of the formal commissioning of the first PSU, May 1, 1995. Chapter 4.B.3.b.(3) is applicable to the applicant based on his PSU service dates:

- (3) Qualifications for those who served with PSUs after May 1, 1995:
  - (a) Completion of PSU Basic Skills formal training conducted at either an established school, by a specific security unit, or by a PSU training team approved by the Commandant (G-OPD)(e.g., Phoenix Readiness at Fort Dix, USMC Basic Training at Camp Pendleton or PSU TRADET); and,
  - (b) A minimum two-year assignment to a PSU; and,
  - (c) Completion of all billet assigned PQS unique to the WQSB as outlined in the Operational Logistics Support Plan (OLSP) for PSUs, COMDTINST 4081.8 (series) as well as mandatory all hands PQS training requirements as outlined in the PSU PQS, COMDTINST 1540.11; and,
  - (d) Fully met all overseas deployment qualification standards during the two-year period (waiverable through Area staff).

## 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 pursuant to 10 U.S.C. § 1552. The application was timely filed.
2. 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.
3. The applicant asked the Board to correct his record to show that he is eligible to wear the PSU insignia, and to be reimbursed for the \$100 he spent having the insignias removed

from his uniforms. He argued that he satisfied the eligibility criteria to wear the PSU insignia and that it was taken away because of differing interpretations of the regulation and because he had made hostile work environment claims against a former PSU command. He also alleged that other members have satisfied the two-year PSU assignment criteria by going TAD to other units, just as he did. He argued that the Coast Guard should take their PSU pins away as well.

4. The Board begins its analysis in every case by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust. 33 C.F.R. § 52.24(b). 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." *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

5. The JAG argued that the applicant's request to wear the PSU pin should be denied because the applicant did not complete two years at a single PSU, as required by Chapter 4.B.3.b.(3) of the Officer Accessions, Evaluations, and Promotions Manual. The JAG noted that although the applicant met three of the four requirements for the PSU insignia, he served two years total time at multiple PSUs and CG policy states that the assignment must be to "a PSU" and not to "PSUs." He argued that the singular form of "PSU" indicates that the two years must be served at a single PSU, and in this case the applicant served his two years at two different PSUs.

6. Chapter 4.B.3.3(3) of the Officer Accessions, Evaluations, and Advancements Manual lists four qualifications that must be attained before an officer can wear the PSU insignia. The JAG acknowledged that the applicant clearly met three of the four criteria, but failed to serve two years at a single PSU. The record shows that the applicant served at two different PSUs for a total of 24.5 months with no intervening assignment and was awarded the PSU pin by his CO on February 17, 2012. The panel convened by the Commandant to determine if the applicant was authorized to wear the pin found that the applicant's 24.5 months of PSU service satisfied the requirements of Chapter 4.B.3.3(3). However, the acting Commandant rejected the panel's findings and determined that the applicant is not qualified to wear the pin because he "was not officially and permanently assigned to that unit and did not complete two years at a single PSU." The Acting Commandant acknowledged that the language in Chapter 4.B.3. is confusing and stated that he had directed his staff to clarify those areas during the next revision of the manual to prevent future misunderstandings.

7. The only issue before the Board is whether the applicant's service at two separate PSUs satisfies Chapter 4.B.3.b.(b) which requires "A minimum two-year assignment to a PSU." Webster's Ninth New Collegiate Dictionary, p. 1, defines "a" as "used as a function word before singular nouns when the referent is unspecified (*a man*) and before number collectives and some numbers (*a dozen*)." Therefore, the Board agrees with the Coast Guard that the use of the phrase "to a PSU" under the circumstances of 4.B.3.b(3) means two years at a single PSU, and not two years at multiple PSUs. Although the Board acknowledges the ambiguity of the language within Chapter 4.B.3.b(3), regarding the two-year requirement, the Coast Guard's interpretation of its regulation and policy, if reasonable, is entitled to deference. *Chevron U.S.A. Inc. v. Natural*

*Resources Defense Council, Inc.*, 467 U.S. 837, 842-4 (1984). In this case, the Coast Guard has interpreted Chapter 4.B.3.b(3) as requiring a member to serve two years at a single PSU. The Board agrees with the Coast Guard and finds that the JAG's interpretation of Chapter 4.B.3.b(3) is reasonable, and therefore, it is entitled to deference.

8. The applicant also alleged that other members have been allowed to serve TAD at other units to complete their two-year requirement, and argued that if the Coast Guard is not going to let him wear the PSU pin then it should take the pin away from other members who did not complete their two years at a single PSU. In its advisory opinion, PSC noted that although it is possible that some COs may have granted waivers of the two-year requirement in the past, CG-13 does not have formal documentation of any waivers nor has CG-13 granted any waivers.

9. The preponderance of the evidence shows that Chapter 4.B.3.b(b) has been reasonably interpreted in different ways by different commands authorized to award the insignia in the past. Although the Coast Guard has stated that it will be making changes to the wording of Chapter 4.B.3.b(b) in the future to eliminate such confusion, to the Board's knowledge the Coast Guard has not yet done so. The Board finds that the applicant should be treated the same as other Coast Guard members who have been authorized to wear the insignia under the broader interpretation of Chapter 4.B.3.b(b) until such time as the Coast Guard issues guidance clarifying Chapter 4.B.3., assuming it has not already done so. Once the Coast Guard issues the guidance, the rules in that guidance should determine the applicant's eligibility to wear the insignia.

10. The applicant asked the Board to order the Coast Guard to reimburse him for the costs he incurred to attach the insignia to his uniform. However, the Board's statute, 10 U.S.C. § 1552, is not money-mandating,<sup>4</sup> and BCMR applicants are only entitled to money as a result of a BCMR decision if a record correction ordered by the Board, such as backdating a date of rank or advancement, causes the Coast Guard to owe the applicant money pursuant to a different statute, such as the Military Pay Act. In this case, there is no correction to the applicant's record that the Board could make that would cause the Coast Guard to owe him money under another statute for the costs he incurred in changing his uniform.

11. Accordingly, relief shall be granted in part as described in finding 9 above.

**[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]**

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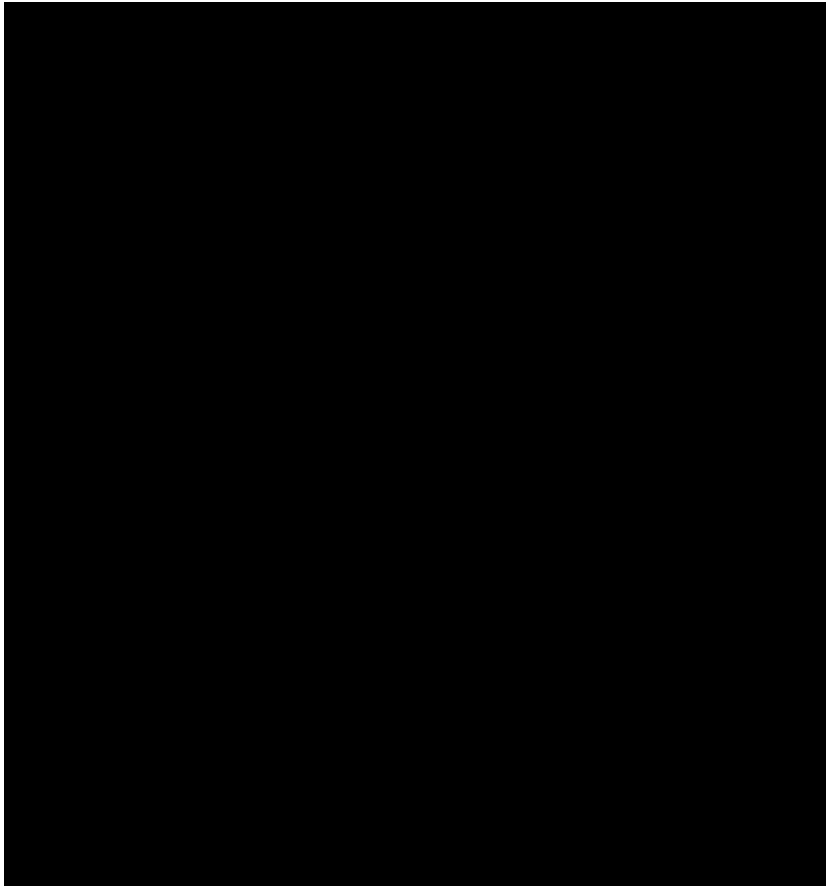
<sup>4</sup> *Foster v. United States*, 111 Fed. Cl. 658, 661-63 (2013).

**ORDER**

The application of [REDACTED] [REDACTED] USCG, for correction of his military record is granted in part, so that he shall be eligible and entitled to wear the Port Security Unit Insignia until such time as the Coast Guard issues new guidance clarifying Chapter 4.B.3. of COMDTINST M1000.3, which shall govern his eligibility thereafter.

January 7, 2014

Date





**ORDER**

The military record of [REDACTED] [REDACTED] USCG, shall be corrected to show that he is eligible to wear the Port Security Unit Insignia.

