

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-086

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FINAL DECISION ON RECONSIDERATION

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 upon receipt of the applicant's completed application on April 17, 2015, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated February 12, 2016, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

BACKGROUND: BCMR DOCKET NO. 2014-062

In BCMR Docket No. 2014-062, the applicant, who was then a lieutenant junior grade (LTJG) serving on active duty, asked the Board to remove from his record his non-selection for promotion by the active duty lieutenant (LT) selection board that convened in September 2013. He alleged that his record was prejudicially incomplete because his Officer Evaluation Report (OER) dated December 3, 2011, was missing from his record when the Board convened. He submitted evidence showing that he had repeatedly tried to get the OER entered in his record and had been assured by an officer in the Reserve Personnel Management (RPM) branch of the Personnel Service Center (PSC) in August 2013 that his record was complete.

In the advisory opinion for 2014-062, the Coast Guard admitted that the applicant's OER dated December 3, 2011, was not in his record when it was reviewed by the selection board in 2013 even though it had been received and validated by RPM in July 2013. Because his record was missing this OER when it was reviewed by the selection board, PSC recommended that the Board remove the applicant's non-selection for promotion from his record and, if selected for promotion in 2014, backdate his date of rank to what it would have been had he been selected for promotion in 2013.

Upon receiving the advisory opinion from the Coast Guard on July 22, 2014, the Chair asked the Coast Guard for the applicant's current address because the BCMR's prior mail to the applicant at the address he provided on his application form had been returned by the Post Office

as undeliverable. Multiple attempts by the BCMR staff to contact the applicant by the phone number he had entered on his application had failed, and in accordance with 33 C.F.R. § 52.21(d), “[i]t is the applicant’s responsibility to include his or her correct mailing address on the DD Form 149 and to inform the Chair in writing of any subsequent change of address until the Board or the Secretary takes final action on the application.” The Coast Guard provided a new address, and so the Chair sent a copy of the Coast Guard’s advisory opinion to the new address and invited him to respond. However, this mailing was also returned to the Board by the Post Office as undeliverable and all attempts to contact the applicant failed. Upon inquiry, the Personnel Service Center stated the applicant had requested discharge and was discharged on May 18, 2014, and that the personnel database showed the applicant’s military status as terminated.

In the Final Decision, dated October 17, 2014, the Board found that the applicant had proven by a preponderance of the evidence that his record was erroneous and unjust when it was reviewed by the 2013 LT selection board because the OER was missing, as the Coast Guard admitted:

4. The missing OER covered the applicant’s service for five months and contained many positive marks and comments and a strong recommendation for promotion. Therefore, the applicant’s record was clearly prejudiced by error when the selection board reviewed it, and the first prong of the *Engels* test is met. The second prong of the test has also been met because there are no negative marks, comments, or other entries in the applicant’s military record that would have precluded his selection for promotion even if the missing OER had not been missing. Accordingly, the applicant’s non-selection for promotion in September 2013 should be removed from his record.

5. The Coast Guard recommended additional relief [backdating his date of rank if selected for promotion by the LT selection board in 2014] that would have been appropriate had the applicant remained in the Service. Since the applicant has been discharged, however, the additional recommended relief would serve no useful purpose.

6. Accordingly, the applicant’s non-selection for promotion in September 2013 should be removed from his record but no further relief is warranted.

On February 26, 2015, the applicant contacted the BCMR staff inquiring about his case and was sent a copy of the Final Decision. In an email dated March 3, 2015, the applicant explained the following regarding his mailing address:

- The address he provided on his application form was correct and he was still residing there when the Post Office inexplicably returned the BCMR’s mail as undeliverable. As evidence that he was still residing at the address on his original application form when the Post Office returned the BCMR’s mail as undeliverable in early March 2014, he submitted two pieces of mail that he received at the same address in May 2014 from the Coast Guard and the Department of Veterans’ Affairs.
- The “new” address provided to the Chair by the Coast Guard was in fact an old address where he had lived in 2011. He submitted a copy of his 2011 discharge form DD 214, which shows the “new” address as his then current address.

- His actual new address at the time the advisory opinion was being mailed to him in July 2014 was in the Coast Guard's databases, as shown by the fact that it was the address entered on the DD 214 he was issued on May 18, 2014.
- He had been told that the BCMR process took ten months and so was not surprised not to receive anything in the mail before the Board issued its decision in October 2014.

Regarding the Board's decision, the applicant stated that it is erroneous and unjust for the following reasons:

- The applicant stated that he did not resign his commission; instead, he was mandatorily discharged because he had been non-selected for promotion in both 2012 and 2013. In support of his allegation, he submitted a copy of his DD 214, which shows that he was separated due to "non-selection for promotion" on May 18, 2014.
- The applicant argued that, had the Board known that he had not resigned, it would have granted the full relief recommended by the Coast Guard and he would have been reinstated on active duty and had another opportunity to be selected for promotion. However, because the Coast Guard gave the applicant an old address, he had no chance to inform the Board of his status or to submit his DD 214 to prove that he had not resigned.

Because of the Board's misunderstanding of the nature of his separation and the erroneous address provided by the Coast Guard, which at least in part prevented the applicant from reviewing and responding to the advisory opinion, the Chair docketed the case for reconsideration.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant asked the Board to void his discharge, return him to active duty, and award him back pay and allowances. He also asked the Board to reinstate him on active duty as a lieutenant (O-3), instead of a lieutenant junior grade (O-2).

The applicant stated that when it issued the decision in 2014-062, the Board believed that he had resigned his commission, when in fact he was mandatorily discharged after being twice non-selected for promotion. He explained that he was discharged on May 18, 2014, instead of June 30, 2014—the last day he could have remained on active duty—because of a job offer. He accepted the job offer and requested an early discharge because, although he had applied to the Board, he did not yet know the outcome of the case, he and his wife were expecting a child at the end of May, and not having a job upon his discharge would have been very difficult for them. He noted that the law allows officers who are being mandatorily discharged due to non-selection no later than June 30th to be discharged earlier without loss of benefits. Requesting to be discharged earlier, he argued, is "not a voluntary resignation, only a request to move the date of discharge" in accordance with Coast Guard separation guidance. The applicant submitted a copy of his request for an earlier discharge, dated April 15, 2014, which notes that he had a job offer starting May 19, 2014, his baby's due date was May 31, 2014, and he want "to settle my family into our new location prior to the arrival of our new baby." He also noted that he was returning

to service in the Reserve. The applicant's request was supported with an endorsement from his commanding officer.

The applicant noted that his second non-selection for promotion, in 2013, was found by the Board to have been based on an erroneous record due to the missing OER and so the Board expunged this non-selection. Therefore, with only the 2012 non-selection in his record, there was no basis for mandatorily discharging him in 2014.

The applicant asked the Board to return him to active duty as a lieutenant (LT/O-3) because of the gap in his performance record his erroneous discharge has created. The applicant stated that the gap in his OERs, which is due to no fault of his own, would be very detrimental to his career and prevent him from being selected for promotion to LT.

VIEWS OF THE COAST GUARD

On October 16, 2015, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant alternative relief in this case by ordering the Coast Guard to convene a special selection board to consider the applicant for promotion pursuant to 14 U.S.C. § 263, which states the following:

(b) Officers considered but not selected; material error.--

(1) In general.--In the case of an officer or former officer who was eligible for promotion, was considered for selection for promotion by a selection board convened under section 251, and was not selected for promotion by that board, the Secretary may convene a special selection board to determine whether the officer or former officer should be recommended for promotion, if the Secretary determines that--

(A) an action of the selection board that considered the officer or former officer--

(i) was contrary to law in a matter material to the decision of the board; or

(ii) involved material error of fact or material administrative error; or

(B) the selection board that considered the officer or former officer did not have before it for consideration material information.

(2) Effect of failure to recommend for promotion.--If a special selection board convened under paragraph (1) does not recommend for promotion an officer or former officer, whose grade is that of commander or below and whose name was referred to that board for consideration, the officer or former officer shall be considered--

(A) to have failed of selection for promotion with respect to the board that considered the officer or former officer prior to the consideration of the special selection board; and

(B) to incur no additional failure of selection for promotion as a result of the action of the special selection board.

(c) Requirements for special selection boards.--Each special selection board convened under this section shall--

(1) be composed in accordance with section 252 and the members of the board shall be required to swear the oaths described in section 254;

(2) consider the record of an applicable officer or former officer as that record, if corrected, would have appeared to the selection board that should have considered or did consider the officer or former officer prior to the consideration of the special selection board and that record shall be compared with a sampling of the records of--

(A) those officers of the same grade who were recommended for promotion by such prior selection board; and

(B) those officers of the same grade who were not recommended for promotion by such prior selection board; and

(3) submit to the Secretary a written report in a manner consistent with sections 260 and 261.

(d) Appointment of officers recommended for promotion.--

(1) **In general.--**An officer or former officer whose name is placed on a promotion list as a result of the recommendation of a special selection board convened under this section shall be appointed, as soon as practicable, to the next higher grade in accordance with the law and policies that would have been applicable to the officer or former officer had the officer or former officer been recommended for promotion by the selection board that should have considered or did consider the officer or former officer prior to the consideration of the special selection board.

(2) **Effect.--**An officer or former officer who is promoted to the next higher grade as a result of the recommendation of a special selection board convened under this section shall have, upon such promotion, the same date of rank, the same effective date for the pay and allowances of that grade, and the same position on the active duty promotion list as the officer or former officer would have had if the officer or former officer had been recommended for promotion to that grade by the selection board that should have considered or did consider the officer or former officer prior to the consideration of the special selection board.

(3) **Record correction.--**If the report of a special selection board convened under this section, as approved by the President, recommends for promotion to the next higher grade an officer not eligible for promotion or a former officer whose name was referred to the board for consideration, the Secretary may act under section 1552 of title 10 to correct the military record of the officer or former officer to correct an error or remove an injustice resulting from the officer or former officer not being selected for promotion by the selection board that should have considered or did consider the officer or former officer prior to the consideration of the special selection board.

In making this recommendation, the JAG adopted the findings and analysis provided in a memorandum on the case prepared by PSC. PSC stated that the applicant was not selected for promotion by the active duty LT selection board in 2010. He was temporarily separated from active duty from December 4, 2011, to February 18, 2013, under the Coast Guard's Temporary Separation Program, and served in the Reserve during that period. While in the Reserve, he was considered by the inactive duty LT selection board in 2012 and was one of the 58 of the 72

candidates selected for promotion to LT as a Reserve officer. However, when he returned to active duty on February 19, 2013, he returned as an LTJG, in accordance with the program rules.

PSC stated that the applicant was again considered for promotion by the active duty LT selection board in September 2013 but was not one of the 290 of the 376 candidates selected (77%). Following this non-selection, the applicant determined that an OER documenting his service in the Reserve for the five months ending on December 3, 2011, had not been entered in his record. PSC noted that it “is not possible to say what impact, if any, the applicant’s lack of a Reserve OER may have had on the proceedings of the [active duty LT selection board in 2013]” but alleged that active duty OERs are more important than Reserve OERs to an active duty selection board and that it is unlikely the outcome of the 2013 active duty selection board would have been different if the OER had not been missing. However, PSC noted, the Board removed the applicant’s 2013 non-selection because the impact of the missing OER could not be known.

PSC stated that the applicant should not be reinstated on active duty as a LT because he was never found best qualified for promotion by an active duty LT selection board. However, PSC stated, there are two options for granting alternative relief:

- First, the Board could order the Coast Guard to convene a special selection board (SSB) pursuant to 14 U.S.C. § 263, which authorizes such boards to reconsider officers or former officers for promotion if their record was affected by a material error during the original consideration. The applicant’s corrected record would be compared to a sampling of the other candidates’ records and, if selected for promotion, he would receive the same date of rank he would have received if selected in 2013, as well as back pay and allowances. PSC stated that this option is most advantageous to both the applicant and the Coast Guard, but at the time of PSC’s memorandum, the regulations for SSBs had not yet been approved by the Secretary.
- Second, the Board could return the applicant to active duty so that he would be considered by the next regularly convened LT selection board. PSC alleged that to do so, the applicant would have to be offered a new original permanent commission as only the President may appoint regular officers.¹ PSC stated that this option is not recommended because it would be costly to return the applicant to active duty for what might be just one more year of service if he is again not selected for promotion.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 15, 2015, the applicant responded to the views of the Coast Guard. He pointed out that the missing OER dated December 3, 2011, was an active duty OER, not a Reserve OER as PSC alleged. He served in the Reserve during his temporary separation from December 4, 2011, to February 18, 2013, and so the missing OER, dated December 3, 2011, was the last substantive active duty OER in his record before he entered the Reserve. Moreover, the applicant pointed out, in its Final Decision in 2014-062, the Board has already found that the applicant’s record was prejudiced by error before the 2013 LT selection board because of the

¹ The Board notes, however, that the BCMR has many times voided an officer’s discharge and returned him to active duty at the same rank held at the time of the voided discharge. No re-commissioning is necessary.

missing OER, so PSC's discussion of whether the missing OER negatively affected his chance of selection for promotion should not have been a topic for discussion in this case.

Regarding the Coast Guard's recommendation for a special selection board, the applicant stated that he agreed except that it would be unfair if his record were compared to the records of other candidates who have remained on active duty and so have received continuing OERs documenting their performance. Under such circumstances, he argued, his record could not be competitive.

The applicant also argued that even if he is not selected for promotion by the special selection board, he should receive back pay and allowances as an LTJG from May 18, 2014, to whatever date he is not selected. He argued that had he not been involuntarily discharged in 2014, he would have remained on active duty and had another chance at promotion. He argued that because he does not have two non-selections in his record, there is "no documented reason I should currently be discharged from the Active Duty Coast Guard."

The applicant argued that he should be brought back on active duty so that he may receive back pay and allowances because of the financial hardship the Coast Guard's errors have cost his family.² The applicant stated, however, that he is concerned about having to uproot his family and leave his current civilian job for what might be a very short period on active duty if he is non-selected again. He stated, "I do not wish to quit my civilian employment only to be discharged from the Coast Guard again shortly after returning to active duty. If brought back on active duty, however, he should receive back pay and allowances as an LTJG from the date of his discharge, and if selected for promotion, he should receive a backdated LT date of rank and corresponding back pay and allowances.

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 10 U.S.C. § 1552. The application to the Board was timely.³

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.⁴

3. The record shows that the application for 2014-062 was received on February 24, 2014, approximately four months before the applicant's mandatory separation date of June 30,

² The Board notes that any back pay and allowances awarded to the applicant would, by law, be offset (reduced) by his civilian earnings during this period. *Groves v. United States*, 47 F.3d 1140, 1147 (1995); *Silver v. United States*, 551 F.2d 295, 297 (1977); *Conn v. United States*, 407 F.2d 879, 880 (1969).

³ 10 U.S.C. § 1552(b) (requiring application within 3 years of the applicant's discovery of the alleged error).

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).

2014. The Coast Guard's advisory opinion was timely received in July 2014 in accordance with 33 C.F.R. § 52.64. By that time, the applicant had changed addresses, but he did not inform the BCMR of his new address as required by 33 C.F.R. § 52.26(d). The Board's docketing letter, which would have informed him of this legal obligation, had been erroneously returned to the BCMR by the Post Office as undeliverable. When the BCMR asked the Coast Guard for his current address, instead of providing the address from his latest DD 214, dated May 18, 2014, the Coast Guard provided an old address that was valid in 2011. When the Board sent the Coast Guard's advisory opinion to this old address, the Post Office returned it as undeliverable too.

4. The Board found in the Final Decision for BCMR Docket No. 2014-062 that the applicant's record was erroneous and prejudiced by material error when it was reviewed by the active duty LT selection board in 2013 because an OER dated December 3, 2011—his last active duty OER prior to his temporary separation on December 4, 2011—was missing from his record despite his prior attempts to ensure that it was timely entered. The Coast Guard admitted this error in its advisory opinion for 2014-062, dated July 10, 2014, and recommended granting relief in that case by removing the applicant's non-selection for promotion and backdating his LT date of rank if he were selected by the LT selection board in 2014. The Coast Guard did not mention in the advisory opinion that the applicant had been discharged and would have to be returned to active duty to be considered by another selection board. Upon inquiry by the BCMR staff, the Coast Guard reported that the applicant had requested discharge in May 2014 and that his military status was terminated. Therefore, the Board mistakenly believed that the applicant had voluntarily separated and did not address his separation.

5. The applicant waited until February 26, 2015, a year after he submitted his application, to re-contact the Board. His submissions indicate that he would like to renew his career as an active duty Coast Guard officer but not if it would be short-term. He requests reinstatement on active duty as a LT although he has never been selected for promotion to LT by an active duty selection board. The Coast Guard has acknowledged that the applicant is entitled to some relief, but not the requested relief since the applicant has never been selected for promotion to LT by an active duty selection board. Instead, the Coast Guard has recommended that the Board order it to convene a special selection board (SSB) for the applicant pursuant to 14 U.S.C. § 263. The applicant agreed but wants to receive an LTJG's back pay and allowances from the date of his discharge until at least whatever date the SSB convenes if the SSB does not select him for promotion.

6. Congress has provided a remedy for such situations in 14 U.S.C. § 263. A special selection board convened under 14 U.S.C. § 263 is in essence a repeat of the original selection board but with a sampling of the candidates' records instead of all the candidates' records. As the applicant noted, such a comparison would be unjust if the applicant's record were compared to the candidates' current records, so the applicant's record as it appeared when the LT selection board convened on September 16, 2013, except with the addition of his OER dated December 3, 2011, must be compared to a sampling of the other candidates' records as they appeared before the selection board on September 16, 2013. Because Congress has provided this remedy for officers and former officers whose records, like the applicant's, were materially erroneous when reviewed by a selection board, the Board finds that this remedy should be used and will direct the Coast Guard to convene an SSB for the applicant.

7. The applicant asked the Board to award him an LTJG's back pay and allowances from his date of separation until the date of the SSB even if he is not selected for promotion by the SSB. In 14 U.S.C. § 263(b)(2), however, Congress specified that if an SSB does not select an officer or former officer for promotion, he "shall be considered—(A) to have failed of selection for promotion with respect to the board that considered the officer or former officer prior to the consideration of the special selection board ..." In other words, a non-selection by an SSB validates the non-selection that was rendered invalid by the material error in the officer's record. Therefore, under the statute, if the SSB does not select the applicant for promotion, his 2013 non-selection should be deemed valid, in which case he was properly discharged for two non-selections and is due no back pay or allowances.

8. If the applicant is selected for promotion by the SSB, however, he would be entitled to the relief provided by 14 U.S.C. § 263(d), including appointment to LT with a backdated date of rank and the back pay and allowances he would have received had he been selected for promotion in September 2013, subject to legal offsets.⁵ To return him to active duty, his discharge should be voided, so that his record will show that he was not separated and remained on active duty.

9. If the applicant is returned to active duty following selection by an SSB, his record will contain no substantive active duty OERs from the date of his separation until the date he returns to active duty. Therefore, if the SSB selects him for promotion and he returns to active duty, a Continuity OER should be entered in his record, covering his constructive active duty from May 18, 2014, until the date of his return to active duty, and block 2 of this Continuity OER should contain the following statement:

[Applicant's name and rank] Personnel Data Record includes no substantive Officer Evaluation Reports for his active duty service from May 19, 2014, to [the date before he returns to active duty]. His record has been corrected by the Secretary in accordance with 10 U.S.C. § 1552, and no adverse inference of any kind is to be drawn from the lack of Officer Evaluation Reports for this period.

10. The Board also notes that there are no substantive OERs in the applicant's record for the period February 1, 2014, through May 18, 2014. Instead, those months are covered by a Continuity OER that lists his position and duties in block 2 but also indicates in block 1.k. that the occasion for the OER was discharge and that the OER was "Submitted per COMDTINST M1000.3 (series) Article 5.A.6., member separated on 18 MAY 2014." If the applicant is selected for promotion by the SSB and returns to active duty, this Continuity OER should be amended to show that the occasion for the report is "Judicial/Administrative Adjudication" and by removing the sentence showing that he was separated.

11. In the advisory opinion, PSC noted that the regulations implementing 14 U.S.C. § 263 had not yet been implemented, but the JAG recommended convening an SSB. Therefore, if for any reason the Coast Guard does not convene an SSB for the applicant within 120 days of the date of this decision, the following relief should be granted: The applicant should be offered

⁵ See footnote 2, above.

the opportunity to return to active duty expeditiously and if he accepts, his discharge on May 18, 2014, should be voided and he should be returned to active duty expeditiously. In making this offer, the Coast Guard should consult him about his assignment preferences and date of return, and assign him in accordance with the needs of the Service. After his return to active duty, he should be permitted to accumulate at least two additional substantive LTJG OERs in his record before he is considered for promotion by another active duty LT selection board. The corrections to his OER record specified in findings 9 and 10, above, should also be made. If selected for promotion by the active duty LT selection board that convenes after at least two additional substantive LTJG OERs are entered in his record, once promoted, the applicant's LT date of rank should be backdated to what it would have been had he been selected for promotion to LT in calendar year 2013, 2014, 2015, or 2016, at his discretion. The applicant should have this choice and carefully consider his LT DOR because it will determine both the amount of back pay and allowances he receives and how soon he becomes "in zone" for selection for promotion to lieutenant commander and how many LT OERs he will have acquired by then. The applicant should receive whatever back pay and allowances are due pursuant to these corrections.

12. Accordingly, the relief described in these findings should be granted. If pursuant to the Coast Guard's implementation of this relief, the applicant is offered the opportunity to return to active duty but declines to return, no further relief should be granted.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of [REDACTED] USCGR, for correction of his military record is granted in part as follows:

1. Within 120 days of the date of this decision, the Coast Guard shall convene a special selection board pursuant to 14 U.S.C. § 263 based on the material error in his record when it was reviewed by the active duty LT selection board that convened in September 2013, so that his record as it appeared before that board—except with the addition of his December 3, 2011, OER—shall be reviewed along with the required samplings of other candidates' records as they appeared before the active duty LT selection board in September 2013.

2. If not selected for promotion to LT by the special selection board, in accordance with 14 U.S.C. § 263(b)(2), he shall be considered to have failed of selection for promotion with respect to the active duty LT selection board that convened in September 2013 and he shall be entitled to no further relief under this order.

3. If selected for promotion by the special selection board, (a) he shall be entitled to all the relief provided by 14 U.S.C. § 263(d)—including appointment to LT with the LT date of rank and the back pay and allowances he would have received had he been selected for promotion to LT in September 2013, subject to legal offsets; and (b) he shall be expeditiously reinstated on active duty and his discharge dated May 18, 2014, shall be expunged from his record as null and void so that his record shall reflect that he has continued to serve on active duty.

4. If for any reason the Coast Guard does not convene the special selection board pursuant to 14 U.S.C. § 263 and paragraph 1 of this Order within 120 days of the date of this decision, he shall be offered the opportunity to return to active duty as an LTJG expeditiously. If he accepts the offer and returns to active duty, his discharge on May 18, 2014, and all documentation of it shall be expunged from his record as null and void and, after his return to active duty, he shall be considered for promotion by another active duty LT selection board after he has received at least two additional substantive active duty LTJG OERs; and—

- if not selected for promotion to LT, he may be separated the following June 30th for twice failing of selection; but
- if selected for promotion to LT, once promoted, his LT date of rank shall be backdated to what it would have been had he been selected for promotion to LT in calendar year 2013, 2014, 2015, or 2016, at his discretion.

5. If he returns to active duty pursuant to paragraph 3 or 4 of this Order, his Continuity OER dated May 18, 2014, shall be amended to show that the reason for the report is “Judicial/Administrative Adjudication,” instead of “Discharge,” in block 1.k. and the comment “Submitted per COMDTINST M1000.3 (series) Article 5.A.6., member separated on 18 MAY 2014” shall be removed from block 2. In addition, the Coast Guard shall enter a new Continuity OER in his record to cover his constructive active duty from May 18, 2014, until the date of his return to active duty, and block 2 of this Continuity OER shall contain the following statement:

“[His rank and name]’s Personnel Data Record includes no substantive Officer Evaluation Reports for his active duty service from May 19, 2014, to [the date before the day he returns to active duty]. His record has been corrected by the Secretary in accordance with 10 U.S.C. § 1552, and no adverse inference of any kind is to be drawn from the lack of Officer Evaluation Reports for this period.”

6. If he returns to active duty pursuant to paragraph 3 or 4 of this Order, the Coast Guard shall pay him all back pay and allowances owed to him as a result of the corrections made to his record pursuant to this Order, subject to legal offsets.

7. If he is eligible to return to active duty pursuant to paragraph 3 or 4 of this Order, the Coast Guard shall consult him concerning his assignment preferences and date of return and shall assign him in accordance with the needs of the Service.

8. If he declines to return to active duty within 120 days of the date the Coast Guard offers him in writing the opportunity to return pursuant to paragraph 3 or 4 of this Order after consulting him in accordance with paragraph 7, no further relief is granted.

February 12, 2016

